

Alison Harcourt

Researcher

Nationality: British - Country of residence: UK

Recommendation #1:

The European Parliament called on the European Commission to introduce a Directive on media freedom, pluralism and independent governance in its European Parliament Resolution of 10 March 2011 on media law in Hungary. However, although the European Parliament's discussions leading up to the Resolution, particularly criticism of the lack of independence of public service broadcasters, protecting the confidentiality of journalistic sources, and political control of the national regulatory authorities by political parties, is important to highlight, the EU has no real treaty basis for a Directive in this field. The only possible basis on which to base a Directive is Article 151(4) of the Treaty which is a weak instrument as its link to media pluralism is tenuous and it requires unanimity. It has mainly been used thus far to justify funding programmes. There is reference to "The freedom and pluralism of the media shall be respected" under Article 11 of the Charter of Fundamental Rights of the European Union. However, although the Charter needs to be respected under EU law, cannot be utilised as a basis for a Directive. Meanwhile, media policy, particularly that enacted for media pluralism is protected under subsidiarity with an exemption from competition law for national media decisions under Article 21 (4) of the 2004 Merger Regulation which states that "Public security, plurality of the media and prudential rules shall be regarded as legitimate interests". Therefore, it is recommended that the European Commission improve media transparency and build media pluralism monitoring via the 2009 European Charter on Freedom of the Press, the 1992 European Charter for Regional or Minority Languages, extending the Mavise database and organising initiatives under the contact committee of the Audiovisual Media Services Directive (see reply to Recommendation 2).

Recommendation #2:

Rather than the monitoring through the European Union Fundamental Rights Agency, the EU should build upon existing activities and legal provisions available. One recommendation is to extend the Mavise database and organise monitoring initiatives under the contact committee of the Audiovisual Media Services Directive and liaison with EPRA. Firstly, the European Commission already funds the Mavise database (<http://mavise.obs.coe.int/>) which provides information on national audiovisual markets and licensing arrangements. Currently it provides information on 6263 broadcasting companies. My recommendation is to extend the database to include information on media ownership which is made available publicly. This could be provided to Mavise by national regulatory authorities. The database could be extended to include press groups. Justification for including information on press ownership, in addition to broadcast ownership, is provided by principles outlined in the 2009 European Charter on Freedom of the Press. Once the database is established, and working well, the European Commission could propose a soft (self-regulatory) initiative under the "media pluralism" clause of the AVMSD to be implemented by the Contact Committee in cooperation with EPRA to cement the ownership database and make this a permanent requirement. A best practise example of provision of media ownership information is the German KEK publications e.g. http://www.kek-online.de/Inhalte/programmliste_2010.pdf and <http://www.die->

medienanstalten.de/service/publikationen/programmliste-kek.html which flanks the Federal Gazette. A searchable more user friendly format could be introduced at the European level to the website of the US Securities and Exchange Commission. The KEK's yearly report <http://www.kek-online.de/Inhalte/jahresberichte.html> is excellent but could be better organised according to group and (as stated) combined with Federal Gazette information (e.g. adding Federal Gazette reports like this one ProSiebenSat1 https://www.bundesanzeiger.de/ebanzwww/wexsservlet?session.sessionid=2f42992cc8556f9172ed1b124d2fffb0&page.navid=detailsearchlisttodetailsearchdetail&fts_search_list.selected=db75a4dbe_b34f73c&fts_search_list.destHistoryId=27811 directly to the companies concerned). Hence, information reorganised into company files. Detailed information should be made available about off-shore holdings similar to the KEK's overview of ProSiebenSat1's ownership in the Cayman Islands. OpenCorporate's work could be linked here: <http://opencorporates.com/>. The non-media-specific transparency requirements under the UK 2006 Companies Act ("CA 2006"), Section 854 are another example of best practice. As is the US Securities and Exchange Commission itself under which companies are obligated to submit quarterly and annual reports as well as management reports. Companies are taken to court if they have misinformed the SEC or violated company law. The 2004 EU Transparency Directive and 2007 Recommendations for implementation now require companies to disclose financial information to regulatory authorities in half-yearly reports. But there is a need for public disclosure and access of such information and the Recommendations should be revised accordingly and used to implement the media database effectively.

Court decisions and decisions on media mergers should also be uploaded or linked to the data base. Links from the database could be provided to civil society organisations registered in the European [Commission / European Parliament joint Transparency registry \(http://europa.eu/transparency-register/index_en.htm\)](http://europa.eu/transparency-register/index_en.htm). Interest groups could upload their current reports on media ownership and add additional information to expand upon that provided by the NRAs which would enable cross-national exchange. Civil society organisations should be given route to request information from NRAs. Similar to the Open Government Data Portal in Austria <http://www.data.gv.at/>. Finally, reports on media concentration and plurality should be provided every 3 years by the NRAs and uploaded to the website.

Other legal instruments should be utilised. Media companies should be required to prepare their financial accounts and audit reports in accordance with the International Accounting Standards (IAS) in each Member State. Differences in transparency/disclosure requirements for public and private limited companies should be tackled by the European Commission. This is a particular problem in Germany. Lastly, the database could provide links to legal provisions required of companies on as well as full disclosure documents that public companies are required to file with national authorities. When a company registered in the database is controlled by another company, the latter must also provide information on its own shareholders and their respective voting shares. Transparency recommendations should be related to size and profit in a given market. e.g. on-line media as well as press and broadcasting companies should be disclose ownership interests. But smaller media providers such as independent media/investigative blogs/small media holdings should not be included. There should be no cost for access to this database.

Recommendation #3:

As stated, there is no need to establish an additional monitoring centre but to expand funding to existing initiatives established by the Council of Europe, EPRA and the European Commission (as above). The

pooling of existing resources is preferable to creating an ad-hoc specific centre for a short period of time which simply repeats or downgrades work done elsewhere.

Recommendation #4:

I do not believe that the European Union has jurisdiction for this policy at present.

Recommendation #5:

National libel laws are protected under subsidiarity and are not an area where the European Union has Treaty basis. Data protection is covered under the General Data Protection Regulation (GDPR) of the European Union as proposed in January 2012 and currently under discussion.

Recommendation #7:

A network of national audiovisual regulatory authorities already exists in the form of EPRA and the IRG (which informs the ERG as mentioned, but not by name, in recommendation 6 above).

Most national competition authorities already make pro-active regular assessments of media environments and markets. I agree that these should be made available - not just to the European Commission - but publically via a website. It is important to note that sector specific rules are protected under Article 21 (4) of the 2004 Merger Regulation which states that "Public security, plurality of the media and prudential rules shall be regarded as legitimate interests". These include traditional instruments used to govern media ownership, such as circulation limits turnover/revenue limits, restrictions on share capital or voting rights, cross media ownership rules and audience share limits on television. Most importantly the lowered thresholds for competition decisions on media mergers and acquisitions are included as "legitimate interests" under Article 21 (4) and it is important that this protection never be removed at the European level.

Query could be made by the European Commission as to why domestic media are treated differently to cross-border media. i.e. why are sector specific rules applied to some media and not to other? For example, the Austrian Cartel Act (CA) 2005 includes a section on media mergers (introduced in 1993) which has additional requirements for media companies. This prevents publishers and print media from acquiring radio or television stations and requires reporting to the FCA. Decisions on media mergers are taken by the Cartel Court and can be appeal in the Supreme Cartel Court. Companies are required to notify media mergers to the FCA. But this only applies to the Austrian market and not companies registered in Austria and operating abroad. The same can be stated about companies holding non-domestic television licenses which are not subject to sector-specific ownership rules in the UK.

Recommendation #8:

As stated, most national competition authorities already take into account media pluralism. The Article 21 (4) of the 2004 Merger Regulation permits national competition authorities to do this and should not be removed.

Recommendation #9:

Agreed but this provision would need Treaty basis in order to be enacted.

Recommendation #10:

Agreed in principle as long as the instrument is not utilised strategically to pressure third countries to open markets to European media companies thereby threatening the development of domestic media sources, particularly in nascent democracies.

Recommendation #11:

Caution should be taken to protect independent media/investigative blogs and non-for-profit online media from excessive regulation and, in particular, prosecution.

Recommendation #12:

Agreed. The European Commission should back the W3C Tracking Protection Working Group which promotes Do Not Track software.

Recommendation #14:

Agreed that net neutrality should be promoted on grounds of pluralism. However, BEREC found that traffic management is common across Europe and sanctioned by regulatory bodies such as OFCOM.

Agreed with Recommendation 14 but this funding should be given to the IFJ and other third sector groups rather than coordinated by the European Commission.

Recommendation #15:

Agreed in principle, but I have two queries relating to this: Firstly, why should the European Commission would be better at cherry picking which content is fundable as opposed to public service broadcasters or third sector groups? Secondly, how this is compatible with state aid provisions under the EU Treaties? Subsidisation of media content is protected by subsidiarity but I see no legal basis for this provision at the European level except under Article 151(4) for reasons of culture (i.e. the MEDIA programmes) and national language (the Charter). According to a 2009 Commission press release, public broadcasters in Europe receive over €22 billion annually from license fees or direct government aid, placing them third, after agriculture and transport companies, among recipients of state aid. From this point in time, dozens of cases have been brought against public service broadcasting funding schemes which were viewed to be 'incompatible with the common market'. Hence, on what basis could the European Commission possibly fund media content?

Recommendation #16:

See reply to Recommendation 15.

Recommendation #17:

Any funding should be funnelled to the third sector (e.g. the IFJ or national organisations such as the NUJ) rather than be organised by the European Commission itself.

Recommendation #18:

Caution should be taken to protect independent media/investigative blogs and non-for-profit online media from excessive intervention.

Recommendation #19:

Media literacy already is taught in schools. This is a domestic policy which can be (and is to some extent) coordinated at the EU level, particularly via the European Commission's 2013 Lifelong Learning Programme which provides €7 billion in funding. Any Any funding schemes should be pooled into one programme rather than split into separate programmes, initiatives and DGs.

Recommendation #20:

Again, agreed in principle but funding should be allocated via the Eighth Framework Programme of the European Commission (Horizon 2020).

Recommendation #21:

Agreed.

Recommendation #22:

Not if this means that political parties or government institutions can mandate access to media platforms.

Recommendation #23:

Caution should be taken to protect independent media/investigative blogs and non-for-profit online media from excessive regulation and, in particular, prosecution.

Recommendation #24:

See reply to Recommendation 15 relating to public funding of media content. Regarding right of reply, jurisdiction remains at the national level.

Recommendation #25:

Jurisdiction remains at the national level.

Recommendation #26:

Jurisdiction for provision of media funding should remain at the national level.

Recommendation #27:

Agreed in principle.

Recommendation #28:

See Recommendation 15 relating to public funding of media content and provision.

Recommendation #29:

Academics can already apply to the Jean Monnet programme to support these activities.

Recommendation #30:

Media organisations should be independent of intervention in news reporting from government and international organisations.

Additional comment:

I included some best practise examples in the replies but have more if you contact me.

Mrs D.J. Appel MSc
Klein Heiligland 52rd
2011 EH Haarlem
The Netherlands

Haarlem, 14 February 2013

Dear Mrs Kroes,

With great interest I read the report 'A free and pluralistic media to sustain European democracy', as well as your reply in 'De Volkskrant' to the knee-jerk response of some journalists. I would like to contribute to your public consultation.

I am a political scientist, graduated on the topic of media responsibility. I have had a few articles published on the subject. Before I studied political science, I worked as Head of the Press Department of various organizations. I also attended the presentation of the Leveson Inquiry report in London.

There are two problems with the debate regarding media regulation. The first is that to politicians it is difficult to say aloud that some media misuse press freedom. This is understandable, because it is a sensitive subject. But because of this, developments in journalism cannot come from the government – and thus from society. Public discontent with media will not reach the media through political representatives.

The other problem with media is that exactly what is wrong with media, is not clear to the main public. Exactly how bad journalists do their work, and how damaging that is to democracy, is hard to prove (although not impossible). The fact that newspaper stories are hardly ever entirely correct, the fact that media copy each other's stories all the time, that they give organisations very little time to respond to a story, that they interview only in search for a quote that fits their story, is not widely known with most people, nor might media realise how wrong this is. Because media regulate themselves and they have to do without media as their guard dog. The anxiety that caused the book by Joris Luyendijk among journalists a few years ago shows that journalists are not very used to wake up calls. It's a very unhealthy situation. Both problems create a situation where the subject can almost never be addressed.

There is a strong case to be made in favour of stronger supervision on media. Media have a lot in common with banks. Whenever things go wrong with media, they turn to governments, claiming the importance of their work to society and asking for support. Also, there is an unhealthy blending of journalism and entertainment that resembles de mixture of regular banking with the 'gambling' type of banking activities. Both types of journalism however, claim the same democratic rights. And also in journalism as well as in the financial sector, the importance of freedom is always stressed, without media having to carry any responsibility for possibly damaging consequences of this unlimited freedom, just like banks. In the financial sector they call this phenomenon, as you know, 'moral hazard'.

A good start for more solid regulation could be to make a distinction between 'actual journalism' and other media (also in education), to create a register for this group and a more institutionalised form of public accountability.

If nothing changes, there are two possible damaging consequences. Firstly people could be faced with having to practice their democratic rights without being properly informed. In that case, citizens don't see financial crises coming, don't know what the purpose or benefits of the EU are, they think the rule of law is failing, that exceptions are the rule etc. It Some scholars say this is already damaging our society. Secondly, the concerns with media could turn into a call for less press freedom. The weak quality of most media has then become the biggest threat to all media.

I wish you wisdom and courage to address the subject.

Yours sincerely,
D.J. Appel MSc

Esra Arsan

Researcher

Nationality: Other - Country of residence: outside the EU

Recommendation #1:

I heard about EU's efforts in implementing such a regulation, but I haven't read this report.

Recommendation #2:

No. But this would be a very good attempt.

Recommendation #3:

No. I would be very interested in such a project since my country and its citizens really need that kind of monitoring and reporting about freedom of media and pluralism.

Recommendation #4:

No. It is a great idea as well.

Recommendation #7:

No.

Recommendation #8:

It is a very complicated issue in my country (Turkey) since the government is trying to get personal data and information of the social media users from the service providers.

Recommendation #9:

It is definitely true.

Recommendation #10:

It is perfectly true.

Recommendation #11:

I agree.

Recommendation #12:

I agree.

Recommendation #14:

I agree. That would be great.

Recommendation #15:

It might be encouraging for the media outlets.

Recommendation #16:

It might be encouraging as well.

Recommendation #17:

I am a great admirer of journalism fellowship programs since I am a former Reuters Foundation fellow in Oxford. That kind of programs are very good in terms of personal and professional improvement.

Recommendation #18:

Recommendation #19:

I agree.

Recommendation #20:

That would be wonderful.

Recommendation #21:

In our case (Turkey) this might be dangerous since the court order is directly connected to the governmental agencies.

Recommendation #23:

In Turkish case, I'm afraid this might turn into a witch hunt of the government against opposition.

Recommendation #24:

Interesting idea.

Recommendation #25:

It is necessary.

Recommendation #26:

State intervention might be really dangerous for Turkey case. But, for those countries which have a long PSB tradition, it works well.

Recommendation #27:

I agree.

Recommendation #28:

Great idea.

Recommendation #29:

This is such a good idea.

Recommendation #30:

That might work. But again, the coverage of the Eu events will be in a nationalist context.

Ewa Thompson

Researcher

Nationality: Other - Country of residence: outside the EU

Recommendation #1:

If the appropriate organ of the EU receives complaints about discrimination of certain media in some countries, and if such complaints are numerically significant, it should investigate the matter.

Recommendation #2:

I do not think this is a good way to solve the issue.

Recommendation #3:

Western academia tends to be unanimous when it comes to philosophy or political science. Thus any monitoring centre dependent on academia is likely to have bias built into it.

Recommendation #4:

Yes, if such councils consist of ordinary citizens rather than of professional politicians or academics. William F. Buckley once said that he would prefer that the United States be ruled by a hundred men and women randomly chosen, than by a hundred academics. There is deep wisdom in this quip, in my opinion.

Recommendation #5:

no

Recommendation #7:

I do not think EU should anticipate anything by creating special bodies to regulate anything. Rather, it should wait for complaints coming from individual countries.

Recommendation #8:

Some governments, such as that of Poland, create bodies that distribute permits to use certain bandwidths to broadcast TV programs. In spite of numerous protests and a petition signed by 2.5 million adult Polish citizens, the Catholic TV TRWAM has not received a permit to broadcast within this band. This appears to be discriminatory. The EU monitoring centre should investigate whether the complaints of Polish viewers are legitimate.

Recommendation #9:

Could not agree more--as long as the government does not favor certain media by advertising exclusively in such media, or by purchasing thousands of copies of a particular newspaper to be placed in all government institutions and waiting rooms (to the exclusion of those newspapers that represent an opposition party).

Recommendation #10:

Just talking about it, without mentioning names and countries, will not do much good.

Recommendation #11:

I do not think EU needs any more regulations. It just needs to monitor individual countries and listen to complaints coming from them--such as those described above.

Recommendation #12:

Recommendation #14:

I do not think this is necessary.

Recommendation #15:

Governments should not subsidize any media, in my opinion.

Recommendation #16:

no governmental support for the media--that invariably leads to discrimination and favoritism

Recommendation #17:

absolutely not. this would resemble the Soviet system and not a free country system

Recommendation #18:

such rules do exist, there is no need for further verbiage

Recommendation #19:

People are smart enough to see media manipulation without being taught about it at schools. Schools should teach basic skills and values, and not how to read newspapers.

Recommendation #20:

I think this is a very bad idea. It smells of the Soviet system.

Recommendation #21:

I support such rules.

Recommendation #22:

This is too general a statement to express an attitude toward it.

Recommendation #23:

Absolutely not. This is censorship of the media that should be avoided at all cost--even at the cost of occasionally offending some people or institutions.

Recommendation #24:

I think Europe pays too much attention to these media defamations. In the United States we see them every day. Just shrug your shoulders and go on. Leave litigation to private persons.

Recommendation #25:

I can see gillions of ways to avoid being truthful in these matters. Therefore, I would not support mandatory identification.

Recommendation #26:

I disagree. No media should depend on the state for support.

Recommendation #27:

I fear this is wishful thinking.

Recommendation #28:

No.

Recommendation #29:

Ordinary people are smart enough to figure out which system to support. No special teachings on European issues are necessary.

Recommendation #30:

Sounds like a good idea.

Additional comment:

I decided to express my opinion because I have read a great deal about discrimination of a potentially large Catholic TV station in Poland. Its name is Trwam, and for years it has had difficulties obtaining a right to broadcast withing a certain width. The head of the committee deciding on such permits, Mr. Jan Dvorak, remains adamantly insensitive to receiving a protest letter signed by 2.5 million names, plus innumerable individual letters (my own including). I feel the issue is ripe for lodging a complaint with the appropriate monitoring body within the EU.

F. Javier Herrera

Researcher

Nationality: Spanish - Country of residence: Spain

Recommendation #1:

I would like to see reflected also the fundamental right to receive truthful information, together with the ones of free movement and representative democracy.

Recommendation #2:

Agreed.

Recommendation #3:

I don't understand the position "ideally as part of academia". I would prefer a networked group of independent experts selected on the basis of professional merits, regardless their institutional adherence.

Recommendation #4:

Agreed.

Recommendation #5:

Agreed.

Recommendation #7:

"...potential threats to pluralism, including open or cover subsidizing some media over the others, and fighting the potentially harmful consequences of excessive concentration".

Recommendation #8:

No, it's perfect.

Recommendation #9:

The current members must maintain the same standards in its internal environment.

Recommendation #10:

The "journalistic freedom" can be an opportunistic formulation for criticizing some countries and leaving others go unnoticed only because have a formal media market, although journalists are being threatened, harassed, or killed. What is important is the right to information freedom, irrespective of the source of the information, i.e., conventional media companies or independent agents, including the Internet based freelancers or correspondents.

Recommendation #11:

Agreed.

Recommendation #12:

Agreed. The user must be empowered to trigger on or off the collection of information from her/him. Technology promoting that empowerment must be preferred over the one unable to guarantee it.

Recommendation #14:

I would add that the support of quality journalism should be supported by citizen organizations.

Recommendation #15:

Publishing a code is not enough. The organization must abide by them too, and this must be assessed by independent third parties.

Recommendation #16:

Agreed. The criteria should be elaborated by experts on the basis of the outcomes of open public debate.

Recommendation #17:

Agreed.

Recommendation #18:

"... source verification, fact checking, and data non-manipulation,..."

Recommendation #19:

"Media literacy and critical thinking should be taught..."

Recommendation #20:

Criteria for such studies must prevent repetitiveness and unusefulness.

Recommendation #21:

Agreed.

Recommendation #22:

This ought to be also the case with regard to public administrations collected and owned data.

Recommendation #23:

Except for the above mentioned purposes, random or exhaustive data collection must be prevented.

Recommendation #24:

No, in my opinion, retractions and corrections should be escalated to the immediate upper level in positioning and format.

Recommendation #25:

Scrutiny of the compliance of those codes can be exercised by experts or the citizens. For the latter, open spaces for posing questions and asking for clarifications have to be provided by the media on their website.

Recommendation #26:

Entirely agreed.

Recommendation #27:

This should be extended to the selection of managerial staff in those media.

Recommendation #28:

I acknowledge the need for cross-border EU networks but I have doubts regarding the increase of translation costs, in general.

Recommendation #29:

No objections.

Recommendation #30:

No objections.

Additional comment:

It is essential that public funding be separated from journalistic practices of endorsing a given political option.

Francois Nicolas

Researcher

Nationality: Finnish - Country of residence: France

Recommendation #1:

La liberté (et le pluralisme) des médias constitue une question distincte de celle de la démocratie représentative. Leur confusion ne peut être que préjudiciable.

Le respect de l'une et de l'autre étant par ailleurs des conditions à l'appartenance d'un Etat à l'Union, celle-ci n'est pas fondée à s'en préoccuper "activement" – à moins de considérer que tel Etat ne satisfait plus aux conditions de son appartenance. Le principe de subsidiarité doit prévaloir.

Recommendation #2:

L'expression "renforcer ses valeurs de liberté" ne veut rien dire.

C'est de libertés qu'il est question, pas de "valeurs de liberté".

Soit on garantit des libertés, soit on les affaiblit. En "démocratie représentative", cela ressortit à la responsabilité des parlements, nationaux et européen. Pas à un "agence".

Recommendation #3:

Ce serait moins préjudiciable aux libertés démocratiques, en effet !

A ce détail près : l'Université est par vocation indépendante ; elle n'a pas à déférer à une requête de la Commission.

Recommendation #4:

Ce type d'organisation est de domaine de la subsidiarité.

L'UE serait plus inspirée d'affirmer haut et formellement quelques principes fondamentaux, comme la protection des sources.

Recommendation #5:

Les médias en ligne et les collecteurs de données ne connaissent pas les frontières extérieures de l'UE...

Recommendation #7:

Si le droit de la concurrence est qualifié pour traiter du pluralisme des médias, pourquoi tant de tracas ?

Recommendation #8:

La question est donc celle-ci :

la Commission est-elle la plus qualifiée pour garantir en l'espèce la bonne application du droit de la concurrence ou d'un (sic : il y en aurait plusieurs ?) principe de neutralité des réseaux ?

Recommandation #9:

On croyait que la liberté et le pluralisme caractérisaient déjà l'Europe.

Ces redondances politique ne sont que bruit.

Recommandation #10:

Mais oui, soulevez donc.

Recommandation #11:

Tout nouveau cadre réglementaire sera en retard sur l'évolution des moyens de transmission, sauf restriction autoritaire de ceux-ci. Ils gagneront donc à être modestes.

Recommandation #12:

Le respect de la vie privée n'est pas opposable aux seuls "services qui fournissent des résultats de recherche ou des fils d'information".

Recommandation #14:

L'UE s'honorerait de contribuer à la formation multilingue au journalisme, dans le respect des autonomies universitaires.

Il ne revient pas à des structures étatiques ou supra-étatiques de décerner des prix de journalisme

(si l'UE y tient vraiment, elle trouvera des précédents qui l'inspireront dans l'histoire de l'Union soviétique)

Recommandation #15:

Non. On peut se conduire très bien, et dans l'estime générale, sans code de conduite.

Recommandation #16:

Certes.

Recommandation #17:

C'est une réglementation que l'UE projette, ou une foire aux bonnes idées ?

Recommandation #18:

La liberté de la presse est le code de conduite.

La vérification des sources et des faits est l'enjeu grandissant du débat public. Elle ne peut se décréter.

Recommandation #19:

Les programmes scolaires ne sont pas du domaine de l'UE.

Recommandation #20:

Recommandation #21:

... compatible avec les traités internationaux en matière de droits de l'homme...

Recommandation #22:

Recommandation #23:

Les Etats n'ont pas besoin d'être encouragés à juger de ce qui est nuisible ou pas. Ils y sont assez portés.

Recommandation #24:

Bien.

Le droit de réponse est indissociable de la déontologie journalistique, indépendamment des tribunaux...

Recommandation #25:

Imposer l'indépendance !

Mais combien de médias n'ont aucune idée de ce que peut être leur "ligne éditoriale" ? Laissez-les vivre !

Recommandation #26:

Oui.

Attention toutefois aux effets pervers de la subvention poche à pauvreté...

Recommandation #27:

organisme indépendant, oui, mais qui définit la liste des "parties concernées" ?

Recommandation #28:

Recommandation #29:

pas seulement sur la couverture des "questions européennes" au sens restrictif qui risquerait d'être celui de la Commission.

Recommandation #30:

Parler moins, mais parler mieux.

Juraj Polák

Researcher

Nationality: Slovak - Country of residence: Slovakia

Recommendation #1:

I agree. As elaborated in the report media freedom and pluralism is directly linked to some of the most important "pillars" of the EU democracy. Out of many I would point out the right for free and fair election. It is beyond question that only within free and pluralistic media landscape the actual free and fair election may take place. To ensure fair and equal terms of all candidates the transparent and fair rules on media coverage must be set up. Even in such substantial precondition for free and fair election we may observe many examples of incoherency throughout the Member states (e.g. in Slovakia there is a ban for any political advertising for the election to the self-governing regions for more than ten years even though for any other type of election e.g. parliamentary, presidential, municipal etc. there is set of rules for the political TV advertising in certain period before election. No justification was ever provided for the special treatment of this election). Even harmonized set of rules present only one aspect of the whole picture. The equally important issue is the real application of these rules along with the monitoring of this rules by regulatory bodies. In my personal view very little was made so far in this respect (ensuring that values and basic rights will be guaranteed at same level throughout MS) on EU level and with the increasing importance of the cross-board element eve with connection to the election (possible election on EU level that might come with the "federalization" of EU, joint online campaigns of parties in EU parliament etc.) This issue should be addressed with higher intensity (for start gather relevant data in this field, surveillance of the regulatory interference with respect to the election campaigns in mass-media etc.)

Recommendation #2:

I agree. As indicated in the report and stated e.g. also in the European's parliament study (<http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=75133>) by the journalists themselves "Real and continuing troubles for journalistic work are caused by defamation claims based on provisions of civil code" the protection of the freedom of the media on national level may differ strongly in various MS. Due to the difficult relations between the politics and media (quite common for transforming countries) and due to even higher threat - the continual decrease of the general's public support for the journalistic freedoms (which allows politics to ignore the non-profit sector) it is now almost unthinkable how the basic values and freedoms shared in EU with respect to media may be effectively and swiftly (which rules out the traditional less intrusive methods such as ECHR decisions) "implemented" without more direct and more intense approach of EU which in most of the cases stands as the institution of last resort.

Recommendation #3:

Due to the facts indicated in previous observation I would strongly prefer the official status of the agency. Only official EU institutions are capable to really influence and change the common "illicit" practises which are presently carried out in large scale by not only politicians but courts (esp. lower) as well. The Academia in Slovakia so far showed very little ability to change the unsatisfactory condition of the freedom of media. The Academia might possess limited powers to influence politics but it certainly does not possess any power to influence the practice of courts.

Recommendation #4:

Please note that I work for the regulatory body responsible for services falling within the scope of the AVMS Directive. I do agree. The UK case and other indicators shows that there is a need for governmental/public overview of the media. The structure and standards of such Councils shall however be assessed and set up with the most possible care and precaution to secure actually effective built-in checks and balances opposed to the formal independence e.g. of the AVMS regulatory bodies where all members of this body are elected solely by the parliament. The process of the choice of the candidates and the election of the candidates should be kept distinct. More subjects should be involved in the actual election (e.g. parliament would elect only some part of the Council etc.) and the industry should always be able to elect or appoint some of its own representatives as members of Council. The powers of the Council should predominantly contain educational or raising the awareness instruments. The competency to issue the fine should be left for the exceptional cases with clear safety mechanism such as the necessity of a qualified majority or unanimous vote with respect to fines or other serious sanctions.

Recommendation #5:

As indicated before I do actually think that more harmonisation of rules on libel laws etc. is the only way how to achieve noticeable results in reasonable time schedule.

Recommendation #7:

I agree.

Recommendation #8:

Recommendation #9:

I agree. As indicated in report this aspect might have been underestimated in previous cases (including Slovakia) and same mistake should not be repeated.

Recommendation #10:

I agree.

Recommendation #11:

I agree and I only add that not only new regulatory frameworks but also the existing ones.

Recommendation #12:

The mechanisms should not only provide the possibility to turn off these settings but they also should provide the user in clear and comprehensive manner the actual extent of the provided information even when the settings are on (e.g. currently displaying 3 articles out of the 21 articles in this section etc.).

Recommendation #14:

I am not entirely sure. It seems to me that this is the aspect that should be left for the market. If other incentives or various activities will bring higher demand for the quality journalism the supply will emerge by itself. The lack of the talented quality journalists is not a cause of the problem but its consequence. On the other hand there is certainly issue on the table how to promote among general public the benefits of the quality journalism and to increase the support of the general public towards quality journalism as such. This may be done by focusing and presenting the positives aspects (including concrete examples) e.g. through awards. The key factor however to teach general public how to distinguish and recognize the quality journalism from its other forms.

Recommendation #15:

With no exceptions whatsoever.

Recommendation #16:

I agree.

Recommendation #17:

Recommendation #18:

Certainly. This should be one of the key competence of the independent media Councils (recommendation 4) which should at first focus on alert the public on the level of the commitment of the given media towards codes of conduct and journalistic standards and thus once again promote the quality journalism.

Recommendation #19:

It should be however as many of so far mentioned initiatives also this one should be promoted and implemented by EU on much higher level.

Recommendation #20:

Recommendation #21:

I agree.

Recommendation #22:

I agree. I believe that in the on-line world it is necessary to grant not only the access to events but to the information about bodies funded from public funds as such. I think this issue need to be equally if not more stressed since e.g. in Slovakia right to access information is the most used instrument for journalistic/public control of government. It is therefore vital to set up legal framework that will enable to effectively exercise this right. The approach of public institutions towards the requests for information and the possible court's decision in this matter should be monitored closely even on the EU level. The fact that satisfactory legal framework shall not always be sufficient when interpreted in absurd way may be illustrated on very recent decision of Supreme court in Slovakia. NGO requested information about controversial public tender. The respected Ministry informed NGO that they send the information (the results and evaluation of submitted bids) for the official audit to the supreme audit office. NGO therefore requested the information from the audit office. The office declined the request with the reasoning that the information concerns the performance of the control and such information are by given Act disqualified from disclosure. NGO appealed against this decision arguing that the information did not concern the performance of the inspection but the information itself was the subject of the inspection. The information as such was by provisions of the Act information that must be disclosed if requested. Mere fact that information becomes subject of inspection by public authority must not prevent journalist from obtaining it. The purpose of the Act is to allow the public control of governmental bodies. Interpretation that enables to avoid public control simply by launching official governmental inspection is in clear conflict with the purpose of the Act. The Supreme court in it final ruling refused these arguments. Court agreed that if the Ministry possessed the information in time of the request they would have to disclose it. However since they were sent for official inspection they concern the performance of the inspection thus they may not be disclosed. Court refused to acknowledge any difference between information that is subject of control and information that concerns the performance of control. On the contrary he stated that such information (subject of control) will always concern the performance of the control. As for the constitutional aspects according to court to interfere with one's right to access information it is sufficient that the condition in Act is fulfilled. The

proportionality of such decision or the condition of the Act itself was not assessed in any way. On the contrary court in its decision (in quite unfashionable way) advised the NGO to use the tools of the Act only for "effective" public control and not as an excuse for meaningless and formalistic court trials. Court explicitly stated that NGO should have waited with the request until the end of the inspection entirely ignoring the possible great public interest in exercising public/journalistic control at time when the topic is "hot". Recommendation #23:

I agree.

Recommendation #24:

The responsible journalism which includes also the "reparation" of mistakes (which can never be totally avoided) is the only way how to achieve that media will re-win their position and credit among general public. Only under such conditions the threats emerging from the poor economy and fast changing media landscape can be effectively fought.

Recommendation #25:

I agree.

Recommendation #27:

I agree.

Recommendation #30:

Additional comment:

As indicated before the preservation of the free and pluralistic media and to maintain the ability of the media to fulfill their role in future fast changing media landscape might in current state sound almost as mission impossible. The wide spread of new technology esp. free journalistic content on the internet combined with poor economy significantly lowered professional standards of media. Concrete and high profile cases (mostly in UK) shows that media in many ways lost the ability to regulate themselves. Poor journalistic standards and lack of will to set or follow own codes of conduct resulted in considerable decrease of the credibility of the media and the general's public belief that media are still able to serve as public watchdog of democracy. At the same and for the same reasons the demand for even the quality journalism is continually decreasing. The apathy of the general public towards media created many possibilities for the state bodies and politics with the predisposition to control or restrict media. Such actions now threatens the very last "islands" of quality journalism which are still trying to manage against the economy and technological disadvantages. In time like these it is vital to raise the awareness and to promote the role and benefits of quality journalism. In many transforming countries only the EU and its institutions possess the needed credibility to influence the public's opinion and the power to restrain the politics and government from the interference with the freedom and pluralism of the media. For all proposed actions it is however essential to receive full and unconditional support from the quality journalists themselves therefore it is more than necessary to fully harmonize any actions with the industry.

Lawrie Hallett

Researcher

Nationality: British - Country of residence: UK

Recommendation #1:

I agree with the basic premise of this recommendation. In order to protect media freedom and pluralism at State level, the EU needs to proactively support a diverse range of media - public, forprofit and, crucially, community-based. Although public service media and press / online outlets can be effective in supporting democracy at a wide-area level, it is community media that is best placed to promote democratic awareness and involvement at the local level. In the UK, we have seen that a well-regulated 'third-sector' of not-for-profit community (broadcast radio) media, coupled with online resources can be very effective at the micro level, complementing larger public and private media.

Recommendation #2:

Please see Recommendation 3 (below).

Recommendation #3:

I believe that this approach is likely to be preferable to that suggested in Recommendation 2 (above). Similar to issues of regulatory independence at State level, there are notable potential benefits to be derived from ensuring the independence of EU wide oversight mechanisms.

Recommendation #4:

I agree with this recommendation and would suggest that it should also consider issues of media concentration and diversity, ensuring, for example, a fair division of broadcast frequency resources between public, private and community (non-profit) media organisations.

Recommendation #5:

I broadly agree with this recommendation.

Recommendation #7:

I broadly agree with this recommendation.

Recommendation #8:

Please see comment regarding Recommendation 4 (above).

Recommendation #9:

Aspirant EU member States should be encouraged to ensure that media pluralism includes structures supporting the deliver of community media as well as public service and commercial operators.

Recommendation #10:

I broadly agree with this recommendation.

Recommendation #11:

Whilst I broadly agree with the general thrust of this recommendation, I would suggest that it is important not to be too simplistic when considering the diverse range of differing transmission mediums available for media delivery. Journalistic activities can be both facilitated and constrained in different ways on different media platforms. Economic as well as social and technical issues all need careful consideration in relation to this recommendation.

Recommendation #12:

I broadly agree with this recommendation.

Recommendation #14:

I broadly agree with this recommendation.

Recommendation #15:

I agree with this recommendation and would note that in the community media sector this is often established common practice today. See for example AMARC / CMFE.

Recommendation #16:

I broadly agree with this recommendation.

Recommendation #17:

Although I broadly agree with this recommendation, I would suggest that it is not only in complex scientific and financial areas etc. that this approach might be valuable. Members of the general public often perceive social policy and political issues to be equally complex, and these should not be ignored. Journalism is not just about 'hard' news, it is equally about 'softer' issues of local public concern and this should be reflected in any EU policy attempting to enhance public engagement through the media.

Recommendation #18:

I broadly agree with this recommendation.

Recommendation #19:

I broadly agree with this recommendation.

Recommendation #20:

I broadly agree with this recommendation.

Recommendation #21:

I broadly agree with this recommendation.

Recommendation #22:

I broadly agree with this recommendation.

Recommendation #23:

I broadly agree with this recommendation.

Recommendation #24:

I broadly agree with this recommendation.

Recommendation #25:

I agree with this recommendation and would note that, as an example, in the UK all Ofcom licensed Community Radio Stations are already required to publish a set of "Key Commitments" and to provide an annual report detailing how they have measured up to key deliverables.

Recommendation #26:

I consider this to be a key recommendation. Often the key limit on the effectiveness of non-profit community media is an inability to access core funding streams. Where such media is delivering against public policy objectives it should be supported in doing so.

Recommendation #27:

I broadly agree with this recommendation. Please see also Recommendation 4 (above).

Recommendation #28:

I broadly agree with this recommendation.

Recommendation #29:

I broadly agree with this recommendation.

Recommendation #30:

I broadly agree with this recommendation.

Additional comment:

As a former broadcast regulator in the UK, I saw at first hand the benefits of enhancing local media pluralism through the establishment of not-for-profit Community Media in the form of licensed Community Radio Services. Whilst by no means perfect (and often grossly under-funded) some of these stations have become effective replacements for declining local commercial media, which over recent years has become increasingly nationally focused. Perhaps some of the best examples are to be found in the Republic Of Ireland, which has a more mature Community Radio Sector that neatly complements RTE as the main public service broadcaster and the various commercial operators in that country.

Miroljub Radojkovic

Researcher

Nationality: Other - Country of residence: outside the EU

Recommendation #2:

To make an Agency is OK. But, the effect does not go further than EP recommendations. In many countries members of EU (Italy, Hungary, etc.) there is no policy which guaranties freedom of the press. Especially, it makes bad impact on the countries willing to join EU. It should be more effective influence on problematic solution in EU countries.

Recommendation #3:

There are so many monitoring centres. To make one would be good if the plenty is reduced. One of existing in more practical matter is site network European Journalism Observatory. It could be used as disseminating center troughout 12 member states and sites.

Recommendation #4:

So far as I know a waste majority of EU and non EU European countries has Media Councils already. The point nis how to empower their influence more.

Recommendation #5:

The emphasis must be on data protection after experiencis with China, Prisma in USA, etc.

Recommendation #8:

It will be extremely difficult to follow media merges through the process of convergation. What is tehnocigal necessity and what is economic concentration or diversification is not always clear. There must be decision if the access to the net is open, or still should stay controled, especially because Europe wants to preserve public services.

Recommendation #9:

Not only in process of accession. Changes done during it should remain unchanged once the country is in EU.

Recommendation #11:

I doubt that traditional Law could help in virtual reality. Therefore, regulatory framework must be wider than law only.

Recommendation #14:

By awarding Europe-wide awards indagenous experts, not only members of jury, must be consulted. Otherwise, these prizes serve in some cases as support of certain political options and interfere in local political life.

Recommendation #17:

A lot of money for the goal described as investigative journalism and quality professionals goes to NGO-s not to Universities. In this way NGO-s use the funds for sometimes short, unqualified and basically vocational training of journalists. It is especially hampering so called state universities, because many Foundations are not allowed to subsidize "state institutions" e.g. state universities. The change is needed.

Recommendation #19:

Media literacy must not be generational biased. It should be a part of curricula of primary and secondary schools, which is not the case in all countries. On the other hand, media literacy must be spread among all citizens, including the older ones, because all of them could be writers and "journalists" on Internet. Universities could propose this kind of knowledge to be served by life long and distant education.

Recommendation #29:

I strongly support.

Recommendation #30:

No

Additional comment:

This set of recommendations should be made most visible in accessing countries, not only within EU.

Prof. Dr. Erika Bock-Rosenthal

Researcher

Nationality: Cypriot - Country of residence: Germany

Recommendation #1:

Freiheit und Vielfalt der Medien zu erhalten ist äußerst wichtig, zumal es in der EU Länder gibt, die es mit der Unabhängigkeit der Medien nicht so genau nehmen. Medien haben aber einen doppelcharakter, sie sind Wirtschafts- und Kulturgut zugleich. Und insofern ist auf das Amsterdamer Protokoll zu verweisen. Deutschland hat mit dem dualen System, dem öffentliche rechtlichen Rundfunk und dem privaten Sektor ein bewährtes System, das auch für andere europäische Länder als BestPractice-Beispiel

gelten könnte. Es wird also keine EU-Aufsichtsbehörde gebraucht sondern eher ein verstärkter Austausch zwischen vorhandenen Kontrollgremien und eine Anlaufstelle für Anfragen und Beschwerden.

Auf Ebene der EU sollte eine Beschwerdestelle eingerichtet werden, an die sich alle EU-Bürger und - Institutionen wenden können, die die Unabhängigkeit und Vielfalt der Medien verletzt sehen und sich in ihrer Informationsfreiheit und damit an demokratischer Teilhabe eingeschränkt sehen.

Recommendation #2:

keine Agentur, aber eine Beschwerdestelle, die möglichst direkt dem Europäischen Parlament zuarbeitet

Recommendation #3:

Die Mediensysteme in den einzelnen Staaten sind viel zu unterschiedlich, als dass es sinnvoll sein könnte, eine einzige Monitoring-Stelle einzurichten. Die kulturellen Traditionen sind so unterschiedlich, dass es schon schwierig sein würde, für vergleichende Untersuchungen einheitliche Definitionen und Operationalisierungen zu finden. Es würde Jahre dauern, ein empirisch aussagekräftiges Monitoring aufzubauen.

Es wäre besser, gezielt in den Ländern, in denen die Freiheit und Funktionsfähigkeit der Medien gefährdet ist, mit Initiativen, Nachfragen und Impulsen anzusetzen.

Recommendation #4:

In Deutschland gibt es auf vielen Ebenen Medienräte, die pluralistisch zusammengesetzt sind von von unabhängigen, entsendungsberechtigten Organisationen besetzt werden. Die einzelnen Bundesländer haben im Rahmen von Rundfunkgesetzen festgelegt, welche Organisationen entsendungsberechtigt sind, so dass die Allgemeinheit möglichst adäquat repräsentiert ist.

Medienräte in allen Bereichen des öffentlich rechtlichen Rundfunks, die im Rahmen des Drei-StufenTests für die Zulassung von Telemedien die letztinstanzliche Entscheidung treffen.

Für den privaten Sektor gibt es die Landesanstalten für Rundfunk, deren Gremien die Exekutive, die Direktoren wählen und die auch für die inhaltlichen Entscheidungen zuständig sind, wie für Lizenzen und die Wahrung der Vielfalt.

Daneben gibt es vielfältige Formen der Selbstkontrolle, vor allem im Pressebereich den Deutschen Presserat.

Ein einziger nationaler Medienrat könnte die verschiedenen Aufgaben gar nicht übersehen oder bewältigen.

Recommendation #5:

Für den Persönlichkeits- und Datenschutz wäre eine Harmonisierung wünschenswert..

In Bezug auf grenzüberschreitende Regelungen ist noch anzumerken, dass im Rahmen des Verhandlungsmandats für das Freihandelsabkommen mit den USA der Bereich Kultur und Medien dringend ausgenommen werden sollte, wie es das UNESCO-Abkommen zur kulturellen Vielfalt ohnehin erfordert.

Recommendation #7:

Eine vorausschauende Sektoruntersuchung macht zur Zeit angesichts des geplanten Freihandelsabkommens mit den USA gar keinen Sinn, denn die Strategien der global Player, die dann ins Spiel kommen, sind noch garnicht abzuschätzen.

Die EU sollte sich dringend für die Netzneutralität einsetzen, für den Datenschutz und die Einhaltung von Jugendschutzgesetzen und die völlige Kommerzialisierung der Suchmaschinen

Recommendation #8:

Gefahren drohen längst nicht mehr auf den nationalen Märkten sondern eher durch global agierende Unternehmen wie google. Klassische Methoden zur Messung der Medienkonzentration in einem Binnenmarkt greifen nicht mehr. Netzneutralität und diskriminierungsfreier Zugang ist kaum noch zu wahren, wenn nicht der Bereich der Kultur und Medien im Mandat für das Freihandelsabkommen mit den USA ausgenommen wird.

Recommendation #9:

ja!

Recommendation #10:

ja, unbedingt Recommendation #11:

ja, allerdings muss definiert werden, was alles als journalistische Tätigkeit gelten soll.

Recommendation #12:

ja, aber das setzt auch die Offenlegung von Algorithmen der Diensteanbieter voraus, weil sonst mögliche Manipulationen nicht überprüft werden können.

Recommendation #14:

Gegen die Auslobung von Preisen ist nichts einzuwenden.

Studien zur Finanzierung eines hochwertigen Journalismus können vermutlich nur bezogen auf die unterschiedlichen Rahmenbedingungen in den einzelnen Staaten und nicht europaweit vorgenommen werden.

Recommendation #15:

ja, aber die Veröffentlichung von Kodices reicht nicht, sie müssen auch befolgt werden.

Recommendation #16:

Staatsferne sollte gewährleistet sein!

Recommendation #17:

Die Finanzierung von Stipendien zur Qualifizierung von Journalisten wäre begrüßenswert.

Recommendation #18:

Das ist Aufgabe der Berufsverbände und der Professionalisierungsinstanzen.

Recommendation #19:

Das liegt in der Kulturhoheit der deutschen Bundesländer.

Anstrengungen zur Medienkompetenzförderung werden auf vielen Ebenen unternommen.

Recommendation #20:

Statt einer dauerhaften Finanzierung einer Forschungseinrichtung wäre die Ausschreibung von Projekten sinnvoller. In vielen Staaten liegen sicher auch Nutzungsdaten vor. Angesichts des raschen Wandels im Zuge der Digitalisierung, der Individualisierung und Globalisierung erscheint es kaum sinnvoll eine neue Forschungsinstitution zu schaffen. Besser wäre eine Forschungsförderung auf nationaler Ebene und deren Vernetzung.

Recommendation #21:

als Empfehlung wünschenswert

Recommendation #26:

Diese Empfehlung greift zu kurz. Der öffentliche Rundfunk in Deutschland ist nicht nur Lückenbüßer bei Marktversagen, sondern hat einen klaren Auftrag zur Grundversorgung. Die Beschränkung auf Marktversagen entspricht nicht dem deutschen Grundgesetz.

Recommendation #27:

Was soll man sich unter "allen Beteiligten" vorstellen? Die allgemeine Öffentlichkeit wird in Deutschland durch Rundfunkräte repräsentiert. Der öffentlich rechtliche, beitragsfinanzierte Rundfunk in Deutschland entspricht der Empfehlung.

Recommendation #28:

nein, das ist viel zu allgemein und unübersichtlich formuliert.

Recommendation #29:

Hinweise gut

Recommendation #30:

Geschieht das nicht schon?

Additional comment:

Mit großer Sorge werden aus deutscher Sicht die Vorbereitungen für das Freihandelsabkommen mit den USA gesehen. Eine Bereichsausnahme für Kultur und Medien im Verhandlungsmandat wird dringend gefordert.

Victor Castro Rosa

Researcher

Nationality: Portuguese - Country of residence: Portugal

Recommendation #1:

The legal basis for EU intervention in pluralism and cultural diversity issues, as well as freedom of speech, is extremely doubtful. Some legal opinions say that it lies in Art 11 of the Charter of Fundamental Rights which states that "freedom and pluralism of the media should be respected as essential elements of the common vision of a democratic Europe". Art. 6 no. 1 of the TEU acknowledges the fundamental rights and freedoms enshrined in the Charter of 07.12.2000, adapted in 12.12.2007 in Strasbourg, which hold the same legal value as the Treaties.

However, according to art. 6 no. 1 second §, the provisions of the Charter shall not extend in any way the competence of the Union as defined in the Treaties" .

The same will happen to the Convention for the Protection of Human Rights and Fundamental freedoms, to which the Union shall accede, if and when such accession takes place. According to Art. 6 no. 2, such accession shall also not affect the Union's competences as defined in the Treaties. Therefore, the Charter and the Convention may not be regarded as a sufficient legal basis for such a legislative intervention.

Legally, the Charter is addressed to the EU institutions with due regard for the principle of subsidiarity, and to the Member States, only when they are implementing EU Law (art. 51, no. 1).

This implies that matters relating to media are predominantly dealt with at Member State level. It is also commonly accepted as legal basis for acting in the media environment, the design to foster and create an internal market, as a space for freedom, security and justice within the EU , i.e. a common social and political space that requires media freedom and pluralism to be guaranteed equally, throughout the whole European economic space.

As a last resource, there is always Art. 7 TEU, which allows the Council, acting by qualified majority, to decide to suspend certain rights of a Member State found in serious and persistent breach of EU values enshrined in the Treaty, namely as stated in Art 2 TEU, where pluralism is referred to, side by side with non-discrimination, tolerance, justice, solidarity, equality between genders. In fact, according to Art. 2 TEU, "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

Nevertheless, in order to make the international framework fully compatible and complete, it would still be extremely important and meaningful that the EU formally applied to the Human Rights European Convention adopted in the framework of the Council of Europe, as proclaimed in Art 6 no. 2 TEU.

Most of the work of the High-Level Group, at EU level, replicates and/or complements the work that has been carried out by the Council of Europe Institutions, namely several Recommendations from the Committee of Ministers, and risks becoming redundant since all the 27 Member States also belong to the Council of Europe.

As a general note, we have to acknowledge that very few of the High Level Group recommendations are, indeed, innovative, in comparison with the long standing work of the Council of Europe. In fact, nearly all the Recommendations are to be found, in a more developed framework, within the legacy of the Council of Europe, which renders the exercise somehow frustrating and, in a way, useless.

Recommendation #2:

This is precisely what we mean by redundancy, since it is already the task of the Council of Europe Secretary and the Committee of Ministers, namely through the Steering Committee on Media and Information Society (CDMSI) which replaced the Steering Committee on Media and New Communication Services in 01.12. 2012, set up by the Committee of Ministers under Art. 17 of the Statute of the Council of Europe in accordance with Resolution CM/Res(2011) 24 on intergovernmental committees and subordinate bodies. Their terms of reference may be consulted in http://www.coe.int/t/dghl/standardsetting/media/CDMSI/CDMSI_Mandate_en.pdf.

Among other matters, this Steering Committee is also competent in the field of measures to promote the respect of article 10 of the European Convention on Human Rights, which deals with Freedom of Speech.

The European Fundamental Rights Agency, created by the Regulation (CE) 168/2007 of 15.02.2007, aims to provide information and data as well as assistance and expertise on fundamental rights matters to the relevant institutions, bodies, offices, agencies and authorities of the Community and its Member States when implementing Community Law, in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights.

According to art. 5 no. 2 e) of the above referred Regulation, the Multiannual Framework to be set for the Agency shall "include provisions with a view to ensuring complementarity with the remit of other community and union bodies, offices and agencies, as well as with the Council of Europe and other international organizations active in the field of fundamental rights". This reference to complementarity seems to indicate that the agency should not be burdened with tasks which are already committed to other institutions, be it within the EU framework or outside, namely in the Council of Europe Framework.

The same concern regarding the need to avoid duplication and ensure complementarity and added value is expressed in Art. 9 of the above referred Regulation, pointing at an absolute inconvenience of allowing the remit of the Agency to coincide with other international institutions, which would happen should this Recommendation be followed.

Furthermore, the Agency is not empowered to examine individual complaints, exercise decision making powers or carry out systematic and permanent monitoring of EU countries. On the other hand, we also need to take into consideration, in order to avoid duplication, the mandate of the OSCE Representation on Freedom of the Media, as stated by the OSCE Permanent Council Decision N.° 193 of 5.11.1997 (Mandate): according to no. 2 of said Decision, the OSCE Representative on Freedom of the Media will observe relevant media developments in all participating States and will, on this basis, and in close coordination with the Chairman-in-Office, advocate and promote full compliance with OSCE principles and commitments regarding freedom of expression and free media.

The OSCE Representative on Freedom of the Media will assume an early warning function, and address serious problems caused by, inter alia, obstruction of media activities and unfavourable working conditions for journalists.

He or she will, in close cooperation with the participating States, the Permanent Council, the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities and other OSCE bodies, as well as national and international media associations, address the authorities of the participating States and other parties concerned, whenever there is an allegation of serious non-compliance with OSCE principles and commitments by participating states in respect of freedom of expression and free media. He or she will assess the facts, assist the participating State and contribute to the resolution of the issue.

He or she will keep the Chairman-in-Office informed about his or her activities and report to the Permanent Council on their results, and his or her observations and recommendations. Regular reporting to the Permanent Council and

to the Implementation Meeting on Human Dimension Issues or the OSCE Review Meeting is also determined.

Cooperation with relevant international organizations, as the UN, or its Agencies, and the Council of Europe is also foreseen, in order to enhance coordination and avoid duplication.

So, in conclusion, there is absolutely no point in entrusting the Fundamental Rights Agency with tasks that will only deviate its attentions and resources from its real obligations, namely when these tasks are already performed at an international or European level by other institutions with which the Agency is supposed to cooperate, thus avoiding duplications as well as fostering complementarity.

Recommendation #3:

Assuming that the main task would be to have a permanent follow-up of the evolution of media freedom protection standards throughout the EU, where strict independence guarantees would be provided by the academic structure, it might work as an Observatory, such as for example the European Community Center for Media and Communication Studies, the Community Media Forum Europe, the Global Reporting Initiative, and of course, the Open Society Foundation Model. However, it remains to be seen whether there is a strict need to implement a new structure, given the existence of so many Think Tanks and Press or Media Institutes at international level. Besides, the Commission has recently established the Centre for Media Pluralism and Media Freedom in Florence, in December 2011 and continues funding research projects such as MEDIADDEM, so a new independent monitoring Centre doesn't seem necessary.

Recommendation #4

The above described is normally enshrined within the remit of the media regulator, and such is the case of Portugal. Unfortunately, there is still an excessive degree of political influence in the appointment of members for the national media regulator because four out of five members of the Regulator's Board have to be appointed by qualified majority of the Portuguese Parliament, and the President should be chosen by its peers. In practice, the President is agreed between the two most voted political Parties and only afterwards is he /she subject to appointment by its peers.

The Portuguese Media Regulator (ERC) benefits from an enormous amount of competence, namely in areas which should be committed to other lower organizations, such as a Press Complaint Committee or a Press Council (which doesn't exist yet, but may be created in the future) appointed by the press companies themselves, to act as a kind of Ombudsman for the readers and the general public, including those which are affected by a piece of news.

The current Media Regulator's Statute is very broad and the Regulator is awarded a large set of enforcement measures, such as fines, administrative and daily penalties in case of breach of any duty towards the regulator, or accessory sanctions such as loss of licenses or any other working permit, or prohibition to participate in any tenders or to ask for further licenses/authorizations/registries.

The Regulator is also charged with the duty to classify all the media, namely the new press titles, according to its geographical dispersion as well as periodicity. This competence is also applicable to new audiovisual offers such as new thematic channels.

However, there is still a sector which is very important for the media landscape, the regulation of which is not fundamentally committed to the Media regulator: Public Service Remit and duty to fulfill the P.S. obligations. The only competence the Regulator holds in relation to P.S. is the obligation to appoint an external independent audit to conduct a yearly audit on the fulfillment of such obligations. However, there seems to be no competence for the Media Regulator to apply any sanctions in case of breach of P.S. duties: such competence lies with the

Government.

There is also a lack of legal provisions for the Ex-Ante test to be carried out in case the P.S. undertaking decides to launch any new services, according to Section 6.7 (paragraphs 80 and the following) of the Commission's Communication of 27.10.2009 (Communication from the Commission on the application of State aid rules to public service broadcasting).

The Media regulator is also responsible for transparency in relation to market access but it has failed to address the extremely relevant issue of access to the market, namely where distributions platforms, portals and search engines are concerned, because these are truly the new "Gatekeepers", according to the expression rendered famous by the social psychologist Kurt Lewin.

In fact, the role which used to be the one of journalists and traditional media is now clearly shifting towards new media realities such as internet portals, search engines , privately operated Internet platforms , Internet domain names and name strings, and Internet filters . See the Recommendation of the Committee of Ministers to Member States of the Council of Europe no. CM/Rec(2012) 3 on the protection of human rights with regard to search engines (adopted by the Committee of Ministers on 04.04 2012 at the 1139th meeting of the Ministers' Deputies); the Declaration of the Committee of Ministers on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers, adopted on 7.12.2011; the Declaration of the Committee of Ministers on the protection of freedom of expression and information and freedom of assembly and association with regard to Internet domain names and name strings, adopted on 21.09.2011; the Recommendation of the Committee of Ministers to Member States on measures to promote the respect for freedom of expression and information with regard to Internet filters, adopted on 26 March 2006.

Some of these competences are shared with the Electronic Communication's regulator (ICP- ANACOM), when they are closely related to the field of media pluralism and should be treated as such.

Meanwhile, the Media Regulator is normally overburdened with statistics of national, European and independent programming quotas, compliance with the advertising limits, right of reply in every kind of publications and other minor subjects which distracts the regulator from the real important issues which are occurring, such as the unlevelled competition for advertising resources between national generalist and extraterritorial thematic channels, as well as competition between the heavily regulated traditional broadcasters and the total deregulated audiovisual services offered by Internet/Web 2.0.

Recommendation #5:

Data protection is a field where extensive legislative harmonization has already been carried out, and more is still ongoing, rendering this last reference rather useless. Just for the record, the so far harmonized rules on Data Protection are as follows:

Directive 95/46/EC of the E.P. and of the Council of 24.11.1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data;

Directive 2002/58/EC of the E.P. and of the Council of 12.07.2002 concerning the processing of personal data and the protection of privacy in the electronic communication's sector;

Directive 2006/24/EC of the E.P. and of the Council of 15.03.2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communication services or of public communication networks and amending Directive 2002/58/EC;

Council Framework Decision 2008/977/JHA of 27.11.2008 on the protection of personal data processed in the

framework of police and judicial cooperation in criminal matters;

Directive 2009/136/EC of the E.P. and of the Council of 25.11.2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communication's sector and Regulation (EC) No. 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

Proposal for a Directive of the E.P. and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detention or prosecution of criminal offenses or the execution of criminal penalties and the free movement of such data (Document COM (2012) 10 of 25.01.2012);

- Proposal for a Regulation of the E.P. and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation);

Libel and Defamation Laws are a very distinct matter, since the whole issue of criminal law is very attached to each Member State's sovereignty and, as such, is not very likely to be the subject of future harmonization.

The Committee of Ministers of the Council of Europe has also devoted its attention to the phenomenon of "libel tourism", in its Declaration on the Desirability of International Standards dealing with Forum shopping in respect of Defamation, "Libel Tourism", to ensure Freedom of Expression, adopted by the Committee of Ministers on 04.07.2012.

It states that "In defamation cases, a fine balance must be struck between guaranteeing the fundamental right to freedom of expression and protecting a person's honor and reputation. The proportionality of this balance is judged differently in different member states within the Council of Europe"

"The existing differences between national defamation laws and the special jurisdiction rules in tort and criminal cases have given rise to the phenomenon known as "libel tourism". Libel tourism is a form of "forum shopping" when a complainant files a complaint with the court thought most likely to provide a favorable judgement (including in default cases) and where it is easy to sue"

"Libel tourism is an issue of growing concern for Council of Europe member States as it challenges a number of essential rights protected by the Convention such as Article 10 (freedom of expression), Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life).

"The prevention of libel tourism should be part of the reform of the legislation on libel/defamation in member States in order to ensure better protection of the freedom of expression and information within a system that strikes a balance between competing human rights"

As a starting point for such a reform, the Council suggests that an "inventory" of the European Human Rights Court's case law in respect of defamation be established, with a view to suggesting new action if need be.

However, at EU level, there seems to be one further step that may be helpful, if not in the harmonization of substantial label law, at least in relation to the procedural law, namely the law of conflicts.

EC Regulation 44/2001 (Brussels I) establishes (Art. 5, no. 3) a special competence for criminal or pseudo-criminal matters for the court of the place where the damaging fact took place. When the places of origin and execution of the damaging fact do not match (common in cases of violations of privacy by the press), it can be inferred from

jurisprudence that the plaintiff can choose to bring the case to the court of the place of the generating fact, or the court of the place where the direct damage took place.

This solution is extremely dangerous for the freedom of the press, because it allows any person who regards him/herself as envisaged by a piece of news to claim for damages in the jurisdiction where he/she considers that the direct damage took place, v.g. in its Country of residence or where he/she is more widely known.

Regulation (EC) no. 864/2007 of the E.P. and of the Council, of 11.07.2007 on the law applicable to non-contractual obligations (aka Rome II regulation), as did the previous Brussels I Regulation does not harmonize the substantive laws of Member states, but, instead, provides several solutions in relation to the national law which should apply, by setting a couple of connection criteria, to be applied successively.

There is an express exclusion of matters related to privacy and personality rights (Art. 1 no. 2 (g)) an exclusion which is currently in force, however there is also an express provision for the revision of this exclusion, in Art. 30 no. 2.

The conflicts law solution provided by the Rome II Regulation is as follows: as a general rule, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur (no. 1).

However, according to no 2 of said article, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country should apply.

As an escape clause, no. 3 states that "where it is clear from all the circumstances of the case that the tort/conflict is manifestly more closely connected with a country other than the indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a preexisting relationship between the parties, such as a contract, that is closely connected with the tort/delict in question."

None of these conflicts rules is helpful to determine with certainty and objectivity the law which will apply in an eventual libel procedure, therefore freedom of the press is threatened by the application of Rome II such as it is, to privacy and rights relating to personality, including defamation.

There should be a specific conflicts rule for press and broadcasting, in order to foster freedom of the press, allowing publications to circulate widely throughout the territory of all the EU Member States, and excuse editors and journalists from having to be experts in all the details of all the libel laws in force in every Country reached by the publication or the broadcasting.

Therefore, we find the best solution in terms of conflict law would be as follows:

"1. As regards the law applicable to a non-contractual obligation arising out of a violation of privacy or rights relating to the personality, the law of the country in which the most significant element or elements of the loss or damage occur or are likely to occur shall be applicable.

2. Where the violation is caused by the publication of printed matter or by a broadcast, the country in which the most significant element or elements of the damage occur or are likely to occur shall be deemed to be the country to which the publication or broadcasting service is principally directed or, if this is not apparent, the country in which editorial control is exercised, and that country's law shall be applicable. The country to which the publication or broadcast is directed shall be determined in particular by the language of the publication or broadcast or by sales or

audience size in a given country as a proportion of total sales or audience size or by a combination of those factors. This provision shall apply mutatis mutandis to publications via the Internet and other electronic networks."

Recommendation #7:

National competition authorities are characterized by the circumstance of disposing of powers to act in presence of any complaints, never acting ex-ante, in view of the need to respect the field for intervention of the national sectoral regulatory authorities for the distinct economy areas. Besides that, no further comment.

Recommendation #8:

Agreed, as previously mentioned in observations to Recommendation no. 4 with the caveat expressed in observations to the previous number in relation to the traditional "ex-post" interventions of competition authorities.

The Parliamentary Assembly of the Council of Europe also refers to this issue in §§ 9 -11 of its Resolution 1877 (2012) where it states that "access to ICT-based media for each individual and the public at large is mainly determined by private intermediaries. Many of them, such as Internet access or service providers and mobile phone or telecommunication companies, have a dominant position vis-à-vis individual users because they are system - relevant or exercise significant market power." (...) "The Assembly is concerned that the intermediaries of ICT-based media might unduly restrict the access to, and dissemination of, information for commercial and other reasons without informing their users and in breach of user rights."

Therefore, the Parliamentary Assembly calls on the member States of the Council of Europe to "set up self-regulatory codes of conduct for the respect of users' right to freedom of expression and information", to "ensure that intermediaries of ICT-based media are transparent to the public and inform users of any measures which might impact their right to freedom of expression and information; such transparency may include the requirement to publicise corporate policies affecting the dissemination of, or access to, information and opinions" and "to review, if need be, the mandate of their national regulatory authorities for audiovisual media and telecommunications in order to reinforce freedom of expression and information on the Internet and online media in accordance with this resolution".

Recommendation #9:

Agreed.

Recommendation #10:

Agreed.

Recommendation #11:

Agreed. As Internet should be regarded as a current form of press, the same rules should apply both to online and to offline media, at least for websites or audiovisual services which fulfill all the six criteria determined by the Council of Europe in the Committee of Ministers' Recommendation no. CM/Rec(2011) 7 adopted on 21 September 2011.

The six criteria are the following:

explicit or implicit intent to act as media;

purpose and underlying objectives of the media;

editorial control;

professional standards;

outreach and dissemination;

public expectation.

The current framework for audiovisual media services, for example, draws a clear distinction between traditional broadcasting services (linear services) and on demand audiovisual services. Since most consumption of traditional broadcasting services takes place on demand, namely via timeshifted services, this distinction is no longer applicable, and competition between linear and non-linear is nowadays a disruption factor.

Perhaps in response to the ongoing public consultation on the subject of the Green Paper - preparing for a Fully Converged Audiovisual World the outcome might be a new fully converged framework where every single actor in the online environment will have to show its full identification data, at least in relation to the Internet Services Provider (ISP) which acts as his host, in order to allow any possible responsibility for content displayed in such website or webpage to be legally enforced, with the necessary cooperation from the ISP in order to avoid being held responsible for third parties content. This will entail a rethinking of the increasingly blurred borders between the AMS Directive (Directive 2010/13 of the E.P. and of the Council of 10.03.2010) and the Directive on Electronic Commerce (Directive 2000/31/EC of the E.P. and of the Council of 08.06.2000).

Recommendation #12:

Individualization of media services is generally a positive factor. It is usually very helpful to navigate more swiftly the internet, only finding information and data regarding issues and subjects previously selected. However, it is possible that a person, in particular circumstances, is not willing to be tracked or monitored when navigating. There is a wide range of software available to prevent tracking, cookies, profiling, etc. Besides, a user can always unsubscribe a particular news-feed or newsgroup. In conclusion, we do not believe that such a feature is indeed necessary, but wouldn't oppose such an option to be offered as a standard procedure, as long as this doesn't prevent the implementation of new business models. Recommendation #14:

New business models are attempting to emerge from the tremendous economic crisis which is affecting advertising and the whole media sector. Crowdfunding or crowdsourcing, is one of them, commercial exploitation of news through paid development of "snippets" is another, and probably many more will arise. In fact, the current situation where financial crisis is threatening the survival of most economic media groups, mostly sustained by advertising income has led to the precariousness of working engagements in the media sector and to an enormous danger in relation to independency of journalists.

The EU should set up a financial support mechanism for media companies in distress, in order to ensure that pluralism is preserved. Such mechanism should not discriminate between public and private undertakings but assist both types of media companies in restructuring efforts, in order to allow the special function of media to continue being performed. The programme should be labelled as extraordinary and could be based upon the Guidelines enshrined in the Communication COMMUNITY GUIDELINES ON STATE AID FOR RESCUING AND RESTRUCTURING FIRMS IN DIFFICULTY (2004/C 244/02)

The Committee of Ministers of the Council of Europe has also issued a Declaration on 26.09.2007 on the protection and promotion of investigative journalism, where it states that "the essential function of the media as public watchdog and as part of the system of checks and balances in a democracy would be severely crippled without promoting such investigative journalism, which helps to expose legal or ethical wrongs that might have been deliberately concealed, and thus contributes to the formation of enlightened and active citizenry, as well as to the improvement of society at large".

Recommendation #15:

Agreed.

Recommendation #16:

Agreed. See above our observations to Recommendation 14.

Recommendation #17:

Agreed. The subject of professional education and training of journalists has already been addressed by the Parliamentary assembly of the Council of Europe in its Recommendation 1789 (2007) adopted by the Standing Committee, on behalf of the Assembly on 16.03.2007.

Recommendation #18:

Agreed.

Recommendation #19:

Agreed. The issue of media literacy is also the subject of two Recommendations of the Committee of Ministers of the Council of Europe, namely Rec (2006)12 on empowering children in the new information and communications environment, adopted on 27.09.2006

Recommendation #20:

Agreed.

Recommendation #21:

Agreed. There is already a Recommendation from the Parliamentary Assembly of the Council of Europe on the subject of protection of journalist's sources. It is the Recommendation 1950 (2011) adopted on 25.01.2011 as well as Recommendations R(2000) 7 from the Committee of Ministers of the Council of Europe on the right of journalists not to disclose their sources of information, adopted on 08.03.2000 and Rec (2003) 13 on the provision of information through the media in relation to criminal proceedings, and also the case-law of the European Court of Human Rights (e.g. Goodwin v the United Kingdom, 27.03.1996, § 39), all of them stating that the protection of journalist's sources is a basic condition for the full exercise of journalistic work and the right of the public to be informed on matters of public concern. The Parliamentary Assembly of the Council of Europe had already issued its Resolution 1729 (2010) and its Recommendation 1916 (2010) on the protection of "whistle-blowers".

Recommendation Rec (2000) 7 extends the right to secrecy of sources to all other persons who, by their professional relations with journalists, acquire knowledge of information identifying a source through the collection, editorial processing or dissemination of this information (this definition encompasses secretarial staff, journalistic colleagues, printing staff, the editor or the employer of a journalist, staff of news agencies. E.g. the ECHR in the Case De Haes and Gijssels v. Belgium of 27.02.1997, § 55) and Sunday Times v. The United Kingdom (no. 2) of 26.11.1991 § 50.

Recommendation #22:

Agreed. The Committee of Ministers of the Council of Europe has issued the Recommendation no. R(81) 19 adopted on 25.11.1981, on the access to information held by public authorities, where the Appendix reflects the possibility of the following limitations

Recommendation #23:

Agreed.

Recommendation #24:

This is already the subject of long established legal tradition enshrined in right of reply provisions. An apology is clearly an excessive remedy, as the ECHR stated in its Decision on Application no.

33014/05, of May 2011, Editorial Board of Pravoye Delo and Shtekel v.Ukraine..

Recommendation #25:

Agreed.

Recommendation #26:

Agreed, as long as this doesn't provide an opportunity for the financing of public media which are allowed to compete against private media under different conditions, such as not having to respond for breach of public service remit, not being held accountable for fulfilling public service remit, not having to see new launched services approved on an ex-ante bases, and in general not having to present a genuine public service programming. Any of these circumstances will endanger fair competition between private and public media and create a disruption in the media sector. The rules enshrined in the Commission's Communication of 27.10.2009, on the application of State aid rules to public service broadcasting must be strictly followed and implemented.

Recommendation #27:

Agreed.

Recommendation #28:

Agreed.

Recommendation #29:

Agreed.

Recommendation #30:

Agreed.

Additional comment:

No further comments or observations

