

2016 Annual Colloquium on fundamental rights Public consultation on "MEDIA PLURALISM AND DEMOCRACY"

Introduction

Media freedom and pluralism are essential safeguards of well-functioning democracies. Freedom of expression and media freedom and pluralism are enshrined in the EU Charter of Fundamental Rights and they are at the core of the basic democratic values on which the European Union is founded. The second Annual Colloquium on Fundamental Rights will take place on 17-18 November 2016. It will provide the stage for an open exchange on the many different aspects of media pluralism in a digital world, and the role of modern media in European democratic societies. The colloquium should enable policymakers at EU and national level and relevant stakeholders — including NGOs, journalists, media representatives, companies, academics and international organisations — to identify concrete avenues for action to foster freedom of speech, media freedom and media pluralism as preconditions for democratic societies.

The Commission's objective with this public consultation is to gather broad feedback on current challenges and opportunities in order to feed into the colloquium's discussions. The questions asked are thus meant to encourage an open debate on media pluralism and democracy within the European Union — without, however, either prejudging any action by the European Union or affecting the remit of its competence.

IMPORTANT NOTICE ON THE PUBLICATION OF CONTRIBUTIONS

Contributions received from this survey will be published on the European Commission's website. Do you agree to the publication of your contribution?

<input checked="" type="checkbox"/>	Yes, my contribution maybe published under my name (or the name of my organisation)
<input type="checkbox"/>	Yes, my contribution may be published but should be kept anonymous (with no mention of the person/organisation)
<input type="checkbox"/>	No, I do not want my contribution to be published. (NB — your contribution will not be published, but the Commission may use it internally for statistical and analytical purposes).

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A. Identifying information

1. In what capacity are you completing this questionnaire?

<input type="checkbox"/>	Individual/private person
<input type="checkbox"/>	Civil society organisation
<input type="checkbox"/>	Business
<input type="checkbox"/>	Academic/research institution
<input checked="" type="checkbox"/>	Other (please specify): European-level representative association

2. If you are answering this consultation as a private citizen, give your name: -----

3. If you are answering this consultation on behalf of an organisation, please specify your name and the name of the organisation you represent:

[European Broadcasting Union \(EBU\) AISBL](#)

The EBU is a Europe-wide alliance of public service media with 73 member organisations in the European Union and beyond. The headquarters of the association are based in Geneva, Switzerland. The EBU operates EUROVISION, which distributes and produces top-quality live news, sport, entertainment, culture and music content, and EURORADIO, which organises music and news exchanges.

Contact person: [Nicola Frank, Head of European Affairs, EBU Brussels Office](#)

Is your organisation included in the Transparency Register?

<input checked="" type="checkbox"/>	yes
<input type="checkbox"/>	no

If yes, please indicate your Register ID-number:

[93288301615-56](#)

4. If you are an individual/private person: -----

B. Media freedom and pluralism

5. In the context of media freedom and pluralism, what should be the role of the State, if any, in the regulation of media? What should be the role of self-regulation?

Independent media and ethical journalism are essential safeguards of media freedom and democracy. Media independence is one of the six core values of Public Service Media (hereafter addressed as PSM) unanimously adopted by all EBU members. The respect of this principle is a necessary condition for having accountable and free media services that can foster and support democracy.¹

The construction of a modern media environment capable of supporting democracy and good governance requires both media self-regulation and media regulation. Media professionals should regulate themselves but at the same time the State should act proactively, provide appropriate infrastructure, funding of public broadcasters and ensure the right regulatory environment.² In addition, the role of the State is essential to create mechanisms of legal certainty, transparency and regulatory support that guarantee the independence of media and media regulatory authorities. With regard to the latter, the vital role of independent media regulatory bodies for the broadcasting sector is also clearly stated in the Council of Europe Recommendation [Rec\(2000\)23](#).

Media self-regulation is vital to ensure media independence of PSM and it aims at establishing minimum principles on professional ethics, accuracy, protection of privacy and other personal rights, while fully preserving editorial freedom and freedom of speech, as well as a diversity of viewpoints and opinions.³ Media self-regulation is also regarded as a tool for media accountability, which is important to ensure audience's trust in PSM.⁴ To this regard, it is fundamental for PSM to establish media accountability mechanisms that guarantee the responsibility of PSM towards their audiences. There is no one-fits-all model of media self-regulation. The EBU Members have developed internal editorial principles, codes of conducts and guidelines to ensure responsible and high-quality reporting. Alongside they also put in place various mechanisms such as committees, councils, ombudspersons institutions to appropriately implement the aforementioned principles in their daily practice.

Furthermore, while the opportunities and threats to media pluralism and freedom vary significantly across the EU, all lawmakers have a duty to protect and preserve these principles. The special quality of PSM as a bastion of media freedom and pluralism in Europe must be duly reflected in national media legislation and policy. Although the specific mission, structure and funding of national PSM should clearly remain a matter for national legislators, the EU can uphold media freedom and pluralism by keeping a watchful eye on media independence and media ownership.⁵

Finally, on European level there is a need for stronger political instruments defending media independence. Media freedom and pluralism should be taken into account whenever relevant in the drafting of new legislation and policies (e.g. AVMSD review, Net Neutrality, updating of

¹ Empowering society: A Declaration of the Core Values of Public Service Media," EBU, 2012

² "The Importance of Self-Regulation of the Media in Upholding Freedom of Expression," Andrew Puddephatt, UNESCO, SERIES - CI Debatesm, N.9 – February 2011, ISSN 2176-3224, p 10

³ "The Importance of Self-Regulation of the Media in Upholding Freedom of Expression," Andrew Puddephatt, UNESCO, SERIES - CI Debatesm, N.9 – February 2011, ISSN 2176-3224, p 10

⁴ "The Media Self-Regulation Guidebook," OSCE Representative on Freedom of the Media, OSCE, 2008, pp 9-10

⁵ EBU Viewpoint "Media Freedom and Pluralism," 2013

Must-Carry rules etc.) and they should be also constantly monitored on a European level. Projects like the Media Pluralism Monitor (MPM) that do go in this direction need to be made sustainable in the long run and should be further strengthened.

6. Could you provide specific examples of problems deriving from the lack of independence of media regulatory authorities in EU Member States?

The independence of media authorities from political powers at all levels is of utmost importance for media freedom and pluralism, and for the functioning of the democratic systems in the EU and in the Member States. Therefore, it is of great relevance and importance to ensure the independence of audiovisual regulators, in line with the Council of Europe Recommendation (2000)23 on the independence and functions of regulatory authorities for the broadcasting sector. However, in view of the variety of constitutional systems and political cultures, and the different organisational set-ups of the democratic institutions in the Member States, the appropriate measures to effectively guarantee independence will inevitably vary from Member State to Member State.

Moreover, media regulatory authorities have a key role to play in respecting and ensuring the independence of PSM. In general, Member States' regulatory bodies function well and carry out their work of implementing the relative policy framework in an independent manner. However, in certain countries the legal safeguards to ensure the independence of regulators are weak, and there are also sometimes incidents of political or other interference which impair the well-functioning of media authorities. For instance, in some EU Member States, there have been cases where political majorities have undermined the independence guaranteed by law.

8. What should be the role of public service media for ensuring media pluralism?

Media freedom and pluralism are indispensable preconditions and essential safeguards of well-functioning democracy and PSM organisations do play a crucial role in ensuring media freedom and pluralism in the EU Member States and, by extension, in the construction of well-informed public opinion. This role is clearly outlined in the EU Treaty Protocol on the system of public broadcasting in the Member State that highlights that national public broadcasting is “directly related to the democratic, social and cultural needs of each society and the need to preserve media pluralism.”

More broadly, PSM organisations have positive effects on different areas including economy, technology, democracy and education and culture (see Fig.1).⁶ They highly contribute to the creation of inclusive and democratic societies thanks to the production of educational programmes, media and digital literacy initiatives, as well as policies to ensure that all parts of the society are well represented both on television and in their staff. In alignment with their remits, PSM offer also high quality journalism, backed by unique networks of European and international correspondents and investigative journalists. This in turn contributes to a transparent and reliable circulation of information and news, which ultimately strengthens respect for and protects media freedom and pluralism.

⁶ EBU – Media Intelligence Service source

Moreover, EBU Members play a leading role in supporting and strengthening media freedom and pluralism, and such role is reflected in the EBU Core Values Declaration driven by the principles of **universality**, **pluralism**, **independence**, **diversity**, and **accountability** towards the public.⁷ With particular regard to pluralism, PSM firmly support the so-called *internal pluralism* that reflects the social, political and cultural diversity of Member States i.e. the representation of different cultural groups in the media as well as divergent political or ideological opinions, viewpoints and sources of information. These core values underline “the importance of sharing and expressing a plurality of views and ideas” and the existence of “a public sphere in which all citizens can form their opinions and ideas.”⁸

Being a pluralist and trustworthy source of information and content is a fundamental aspect of PSM and it differentiates them from other media. Even though the digital revolution has hugely benefited the plurality of information sources adding an extra dimension to freedom of expression, a larger number of sources and voices has not necessarily improved the quality of information, or its accuracy. Thus, citizens while turning to the Internet, online newspapers and blogs for opinion and information, also give a prominent place to PSM-made content. Indeed, broadcast media (both radio and TV) are still the most trusted media as opposed to the online sources.⁹

Furthermore, in today’s converging media landscape, increasing online gatekeeper power needs a counter-balance. When large and vertically integrated media conglomerates, platforms operators and internet intermediaries are in a position to quickly establish market power and act as gatekeeper, the presence of autonomous and independent PSM is one of the factors that can counter-balance such concentration.

Finally, PSM is also a very important instrument to promote content diversity and to ensure a healthy diversity of voices. The diversity of PSM content output should be seen at least as important as its contribution to the so-called structural media pluralism. This feature also distinguishes PSM from community media. The latter may provide a narrow programme output only, thus serving specific communities, whereas PSM has to serve all sections of society and represent all voices. Furthermore, European PSM organisations guarantee the diversity of information by producing high-quality news and current affairs programmes which, on average, represent 25.9% of EBU members’ programming (2014).¹⁰ In addition, to foster the expression of cultural diversity in Europe, PSM also produces, finances or commissions a high proportion of domestic and European programmes. In comparison to their commercial counterparts, the share of European fiction programmes is almost double on PSM channels (Fig. 2). In fact, European fiction represents 64% of total fiction programmes broadcast by PSM channels, whereas the share falls to 33% when only considering commercial channels (2014).¹¹ Nevertheless, to further invest in the production of original content and to foster the European cultural diversity, PSM organisations need to rely on sustainable funding and stable financial condition in the long-term.

⁷ “Empowering society: A Declaration of the Core Values of Public Service Media,” EBU, 2012

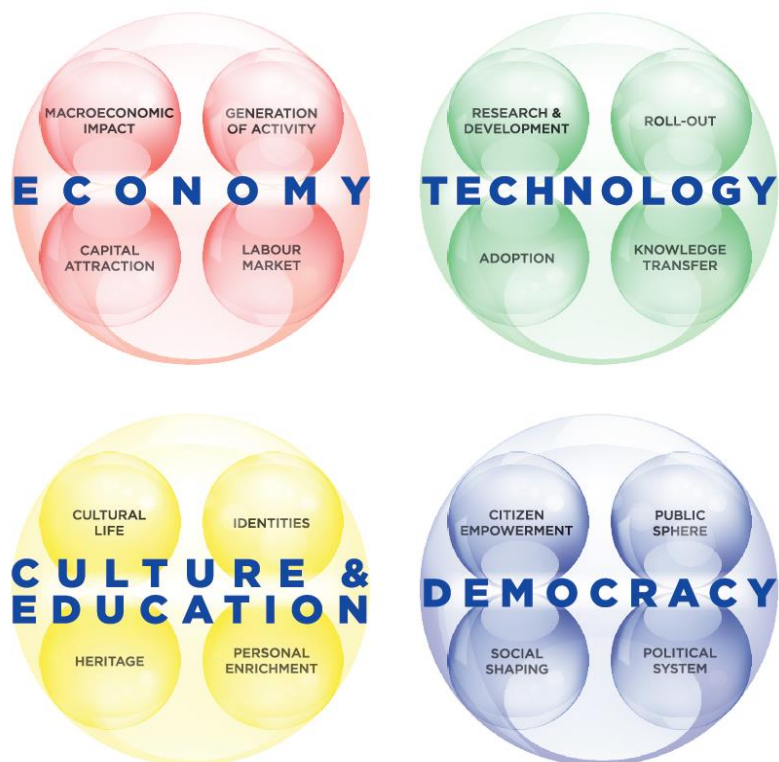
⁸ Ibid.

⁹ Data source, EBU-MIS Trust in Media 2016

¹⁰ EBU – Media Intelligence Service source

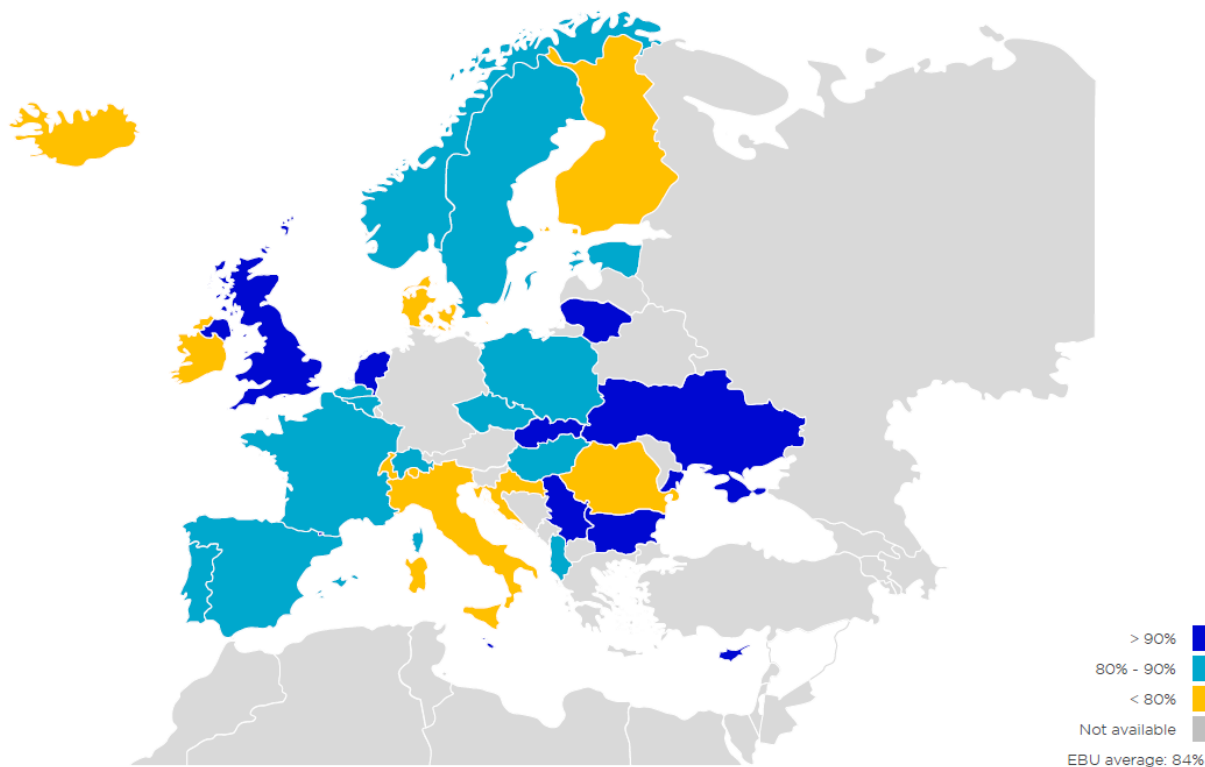
¹¹ EBU – Media Intelligence Service, based on Members’ data

Fig.1 PSM Impact Map



(EBU-Media Service Intelligence source)

Fig. 3 Proportion of domestic and European programmes in total EBU PSM air time (2014)



(EBU-Media Service Intelligence source)

9. How should public service media be organised so that they can best ensure the public service mandate?

The organization of PSM revolves around national laws and internal statutes aiming to ensure that they are independent, universal, pluralistic, diverse, accessible to all, representative of their audiences and accountable for the public.

The main legal instrument requiring PSM to provide diverse media content is the public service remit as defined in Member States' laws and secondary legal instruments, in line with the Amsterdam Protocol. Moreover, as also the Council of Europe Recommendation (2007)3 mentions, PSM's remits should present as key elements the provision of varied content which complies with high ethical and quality standards; the provision of a forum for pluralistic public discussion; and the active contribution to audiovisual creation and production and greater appreciation and dissemination of the diversity of national and European cultural heritage.¹² In a nutshell, to have positive impacts on media pluralism and democracy, PSM should "transmits impartial, independent and balanced news, information and comment and in addition provide a forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed."¹³

To ensure that PSM effectively makes its contribution to media pluralism, it is not only important for States to guarantee its editorial independence and pluralistic character, but also to put in place the right organisational and financial conditions to enable it to fulfil its mission. The Council of Europe Recommendation (2012)1 on public service media governance is an important achievement in the promotion of pluralism and diversity in the media ecosystem. It complements previous Council of Europe recommendations on the independence and on the remit of public service media and offers a comprehensive set of European standards and benchmarks.

Given these premises, we propose that the governance of PSM should be guided by the principles of independence, accountability, transparency and sustainability.

Independence

Firstly, PSM should be organised in the form of independent institutions which are entrusted with a public service remit and committed to public service values. **Editorial independence** and **institutional autonomy** are absolutely essential for PSM to avoid undue interference by political or economic powers, regarding for example the content of programmes or the hiring of staff. Moreover, without a sufficient level of independence, PSM cannot sustain their credibility and will lose popular support. PSM can only be successful in fulfilling their role if they are, and are perceived as being, truly independent from the government and from other political and economic powers.¹⁴

To reduce the risk of undue interference, most countries have introduced legal safeguards and supervisory systems which distance PSM from political institutions, in particular from the executive and legislative branches, but also from political parties. Furthermore, to strengthen editorial independence and impartiality, it is of great importance for PSM to adopt, implement and publish editorial guidelines or codes of professional ethics.¹⁵ However, apart from the

¹² Council of Europe Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states On the Remit of Public Service Media in the Information Society, 31 January 2007

¹³ Manole & Others v. Moldova, 100-101

¹⁴ "Legal Focus: Governance Principles for Public Service Media," EBU, 2015

¹⁵ Ibid. p 18

legal and structural frameworks, PSM independence may be influenced by a variety of other factors, such as political and social structures, political and corporate culture, and the interaction among stakeholders at a particular time.

Accountability

PSM should be accountable to supervisory bodies but also to other stakeholders and to the public at large. In this sense, supervisory bodies act as guarantor of independence of PSM and to adequately fulfil such role, they should be themselves independent and composed in a balanced or pluralistic way. In particular, the appointment and dismissal procedure should be transparent and State representatives or politicians must be prevented from gaining a determining influence in the governance of these bodies. In this sense, the supervisory body is a buffer between politics and PSM which does not allow political interference and protects the interests of the public ensuring a democratic and pluralistic media landscape.

Transparency

Openness and transparency, just like independence, are most certainly preconditions for building trust with the audience, which is an important source of legitimacy for PSM. Citizens have a legitimate expectation that 'their' PSM organisations are:

- 'Transparent and open', in the way they are governed and fulfil their remit, and in the way they interact with audiences and other stakeholders,
- 'Responsive and responsible', in the way they integrate audience and stakeholder feedback, and in the way they implement high editorial and production standards.¹⁶

Sustainability

For PSM, the principle of sustainability refers not only to PSM's ability to fulfil their remit and play a vital role in European democratic societies, but also their ability to adapt and respond to new technological, social and political challenges and to be a driving force for innovation and creativity.¹⁷ As mentioned before, PSM organizations are not just content providers, their activities and services can have an impact on many areas of society. However, to fulfil their remit they should have an appropriate and stable level of funding which should not change every year in an unforeseeable way. It must be sufficient and long-term to allow PSM to fulfil their remit, ensure continuity of service, introduce new technologies, and plan for new services to meet new audience demands. In this sense, independent and sustainable PSM are a benchmark for commercial media services and stimulate competition in the production of high-quality content and services.

¹⁶ "Legal Focus: Governance Principles for Public Service Media," EBU, 2015, p 26

¹⁷ Ibid. p 30-31

10. Have you experienced or are you aware of obstacles to media freedom or pluralism deriving from the lack of independence of public service media in EU Member States?

x	yes
	no

If yes, please give specific examples.

Media freedom implies editorial independence, the protection of journalists and the unrestricted public access to information sources. Media pluralism means that citizens have access to a range of sources, views and opinions and that no single media player has an overwhelming influence over the political agenda. The written press, television, radio, social networks, blogs and other online media are all an integral part of a diverse, pluralistic and rich media environment. Any threat to the independence and availability of these media, whether via governmental interference, the intimidation of journalists, a lack of transparency in ownership structures and concentration, overriding commercial interests, or deliberate attempts to block access to content, upsets the overall state of media freedom and pluralism in any European country. And yet each media sector and each European country faces distinct threats, challenges and opportunities. For instance, recent events in Poland raised concerns on the independence of the Polish public broadcasting system. The EBU community fears that the structural and personnel changes affecting the governance of EBU members Telewizja Polska (TVP – Polish Television) and Polskie Radio (PR – Polish Radio) will have a serious effect upon PSM in Poland and reduce, rather than enhance the independence of its governance and of its special supervisory and management bodies.¹⁸

Threats to the independence of public service media can also undermine the broader media freedom and pluralism of a democratic society. Threats to media freedom and pluralism include:

– **Misuse of power and political influence on the governance of public service media**

In this case, factors which put media freedom and pluralism at risk and which should be avoided include: political interference in the editorial independence; politicisation of appointments; revolving-doors and career paths between PSM organisations and ministries or political parties; media owners or managers affiliated with political parties; and majority of ruling party undermining the safeguards of the national media laws. With regard to the latter, arbitrary changes and negative amendments of media laws without public consultations are causing a great concern in certain countries.

In some EU Member States we witnessed worrisome influences of political parties on the respective PSM. For instance, recently the EBU expressed its concerns with regard to the reports of increased political pressure on the management of Hrvatska Radiotelevizija

¹⁸ EBU has publicly expressed its grave concern regarding proposed changes to public service media in Poland in various occasions. For more information please see our press release <http://www.ebu.ch/news/2015/12/ebu-urges-polish-government-to-e> and the open letter to the Prime Minister of Poland Beata Szydło from EBU President Jean-Paul Philippot <http://www.ebu.ch/files/live/sites/ebu/files/Publications/Open%20letters/open-letter-to-the-prime-ministe.pdf>

(HRT – Croatian public service broadcaster).¹⁹ Another worrisome case regarded the Ellinikí Radiofonía Tileóراسι (ERT- Greek public service media), whose television and radio transmissions were stopped in 2013 with a not-clearly justified co-ministerial decision.²⁰ However, such decision was then overruled by the Council of the State which partially suspended its enforcement recognizing that such measure would have negatively altered media pluralism and freedom of information.²¹

Finally, PSM are usually publicly owned, publicly funded - at least in part - and have a not-for-profit purpose. This requires effective safeguards to ensure that State ownership and State funding do not result in overall State control but they respect the independence of PSM.

– **Lack of independence of media regulatory authorities**

As previously argued, the independence of media regulatory authorities constitutes a vital safeguard for the independence of PSM and in turn also for the protection of media freedom and pluralism. In certain EU Member States, formally independent regulatory authorities are found in situations where they are either not given the chance to fulfil their legal duties or are indirectly subjected to political interests, which is a situation maintained by the method of appointing their members. Moreover, PSM independence is also at risk when the formal institutional framework is bypassed by structural legislative changes (for example, the overturning of decisions taken by supervisory bodies, or the early termination of their mandate).

– **Concentration of media ownership**

The right legislative and organisational conditions to secure media independence and transparent ownership are essential for ensuring independent PSM that can foster media freedom and pluralism. Restrictions on concentration are important in the media sector, not only for economic reasons, but above all as means of guaranteeing a variety of information and freedom of expression. Moreover, diversity of ownership of media outlets is not sufficient per se to ensure media pluralism of media content. Indeed, safeguards against excessive concentration of media ownership should be combined with robust guarantees of independent editorial responsibility since both principles are vital to ensure a pluralistic media environment.

Finally, media pluralism and independence of PSM are also threatened when owners of economic conglomerates with significantly important media branches become active and influential figures in the political scene. In such cases, conflict of interests and concentration of media ownership can substantially harm the plurality and transparency of information sources.

¹⁹ For more information please consult our press release <https://www.ebu.ch/news/2016/02/ebu-urges-croatian-government-to> and the relative letter written by EBU's Director General Ingrid Deltentre to the Prime Minister of Croatia Tihomir Orešković to express the EBU's concern about the aforementioned threats to the independence of HRT

https://www.ebu.ch/files/live/sites/ebu/files/News/2016/02/DG_Prime%20Minister%20Oreskovic_22Feb2016.pdf
²⁰ <https://www.ebu.ch/contents/news/2013/06/ebu-urges-greek-government-to-re.html>

²¹ The sudden decision by the Greek government in June 2013 to close down ERT S.A., the public service media in Greece and a founding Member of the EBU, prompted the EBU to examine in more detail the legal protection offered to public service media by the European Convention on Human Rights. The EBU commissioned two human rights experts, Professor Walter Berka of Salzburg University and Professor Hannes Tretter of Vienna University, to carry out a study on public service media and Article 10 of the European Convention on Human Rights. For more information see: www.ebu.ch/contents/publications/public-service-media-and-article.html

– **Lack of stable funding or other resources**

The failure of the State to ensure adequate, stable and sustainable funding of PSM puts severe pressure on media independence of PSM. Sustainable financial conditions and predictable funding backed by clear, appropriate legal frameworks that are effectively applied are necessary to protect the editorial independence of PSM from political influence and/or economic interests. Therefore, although the institutional autonomy of PSM organisations faces limitations in terms of remit and funding, as they cannot themselves define their remit or determine their public funding, it is nevertheless essential to protect a high level of programme autonomy and financial or budgetary flexibility.

Finally, adequate funding brings in turn sustained investments in quality programmes and such investment is a key driver for technological innovation and the development of new services. Audiences will only access and engage with the various platforms/devices if the stream of creative and high-quality audiovisual works is sustained. Therefore, supporting the investment streams for original European content should be a key part of any future public media policy and it will foster a pluralistic media landscape that reflects the European cultural diversity.