A free and pluralistic media to sustain European democracy

The Report of the

High Level Group on Media Freedom and Pluralism

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'The freedom and pluralism of the media shall be respected.'

Article 11.2 of the Charter of Fundamental Rights of the European Union

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Summary of Key Findings and Recommendations

This report presents the findings and recommendations of the High Level Group (HLG) on Media Pluralism and Freedom, chaired by Professor Vaira Vīķe-Freiberga with Professor Herta Däubler-Gmelin, Professor Luís Miguel Poiares Pessoa Maduro and Ben Hammersley. The remit of the Group was to provide a set of recommendations for the respect, the protection, the support and the promotion of pluralism and freedom of the media in Europe.

The HLG recognises that a free and pluralistic media is crucial for European democracy. But there are currently a number of challenges which can potentially restrict journalistic freedom or reduce pluralism, whether through political influence, undue commercial pressures, the changing media landscape with new business models, or the rise of the new media. At the same time, the misconduct of some journalists, which has recently come to light, also has the potential to undermine the sector's credibility and, as a consequence, long term viability.

The HLG acknowledges that the main responsibility for maintaining media freedom and pluralism lies with the Member States. However, the European Union also has an important role to play. Beyond cross-border issues which arise in the Single Market, including competition policy issues, the EU also has a role in upholding the fundamental rights of EU citizens.

In addition, as argued in this report, the EU must also act in this area when necessary to uphold the rights of freedom of movement and to protect the democratic sphere necessary for the functioning of EU democracy, in case this might be threatened by restrictions on media freedom and pluralism in one of the member states.

> *Recommendation:* The EU should be considered competent to act to protect media freedom and pluralism at State level in order to guarantee the substance of the rights granted by the Treaties to EU citizens, in particular the rights of free movement and to representative democracy. The link between media freedom and pluralism and EU democracy, in particular, justifies a more extensive competence of the EU with respect to these fundamental rights than to others enshrined in the Charter of Fundamental Rights.

In addition, the EU must act in those areas where common rules in the Single Market may be necessary to prevent distortions in the functioning of the media arising from divergent Member State laws and impacting on media freedom and pluralism.

> *Recommendation:* For improving the functioning of the Single Market, further harmonisation of EU legislation would be of great benefit. Currently, the existence of divergences between national rules can lead to distortions in the framework of cross-border media activities, especially in the online world. It would be particularly important to adopt minimum harmonisation rules covering cross-border media activities on areas such as libel laws or data protection.

Recommendation : European and national competition authorities should take into account the specific value of media pluralism in the enforcement of competition rules. They should also take into account the increasing merging of different channels of communication and media access in the definition of the relevant markets. In addition, the High Level Group calls upon the European and national competition authorities to monitor with particular attention, under competition policy, new developments in the online access to information. The dominant position held by some network access providers or internet information providers should not be allowed to restrict media freedom and pluralism. An open and non-discriminatory access to information by all citizens must be protected in the online sphere, if necessary by making use of competition law and/or enforcing a principle of network and net neutrality.

Recommendation: National competition authorities need to make (or commission) pro-active regular assessments of individual countries' media environments and markets, highlighting potential threats to pluralism. At the EU level, there should be pro-active market assessment under competition policy in the form of a sectoral inquiry.

Within the EU, more must be done to ensure that citizens can critically engage with media. In addition, there is a need to develop a more engaged public debate at EU level.

Recommendation: Media literacy should be taught in schools starting at high-school level. The role media plays in a functioning democracy should be critically assessed as part of national curricula, integrated either with civics or social studies.

Recommendation: EU political actors have a special responsibility and capacity in triggering European news coverage. The Presidents of the EU institutions should regularly organise interviews with a panel composed of national media from across the EU. This format would have the advantage of not only increasing national coverage of EU affairs but also making that coverage more pluralist, since the interviews to be broadcast or printed in the different Member States would include questions from journalists from other Member States.

The EU should not only act to protect media freedom and pluralism within its own Member States but also beyond its borders, in particular where the EU has clear responsibilities such as with regards to trade and enlargement.

Recommendation: Media freedom and pluralism should play a prominent role in the assessment of accession countries. A free and pluralist media environment must be a pre-condition for EU membership.

Recommendation: The EU should raise the issue of journalistic freedom in all international fora where human rights and democracy are discussed, including as part of trade/partnership agreements and in the context of provision of aid.

To be able to fulfil a more pro-active role, the EU needs to be able to access up-to-date information on the state of media freedom and pluralism in the Member States (monitoring), as well as developing a deeper knowledge of this rapidly-changing sector.

Recommendation: To reinforce European values of freedom and pluralism, the EU should designate, in the work programme and funding of the European fundamental rights agency, a monitoring role of national-level freedom and pluralism of the media. The agency would then issue regular reports about any risks to the freedom and pluralism of the media in any part of the EU. The European Parliament could then discuss the contents of these reports and adopt resolutions or make suggestions for measures to be taken.

Recommendation: As an alternative to the mechanism suggested in the previous Recommendation, the EU could establish an independent monitoring centre, ideally as part of academia, which would be partially funded by the EU but would be fully independent in its activities.

Recommendation: To evaluate the manner in which media consumption patterns are changing, as well as their social impact, comprehensive longitudinal studies are needed at the EU level. More broadly, the EU should provide sustainable funding for academic research and studies on the changing media environment, in order to provide a solid academic basis for policy initiatives in this field.

The rise of new technologies and of new business models, along with accelerating changes to journalism as a profession, require on-going adaptations to the regulatory framework. Such adaptations, in turn, must be based on effective monitoring of the changing media environment, if any new interventions are to produce the desired effect.

Recommendation: Any new regulatory frameworks must be brought into line with the new reality of a fluid media environment, covering all types of journalistic activities, regardless of the transmission medium.

Recommendation: Journalist and media organisations should adapt their codes of conduct and journalistic standards to the challenges posed by a rapidly changing media environment. In particular, they should clearly address questions of source verification and fact checking, as well as transparently regulating their relationship with external sources of news.

In view of the increasing role of the internet as a source of information, the end-users of such services need to be informed about the application of any filtering, selecting or hierarchical ordering of the information they receive. In addition, they should have the right to object to the automatic application of such filtering algorithms, should they so choose.

Recommendation: In order to give complete transparency as to how individualised a service is, services that provide heavily personalised search results or newsfeeds should provide the possibility for the user to turn off such personalisation, temporarily for an individual query, or permanently, until further notice.

Recommendation: Channels or mechanisms through which media are delivered to the end user should be entirely neutral in their handling of this content. In the case of digital networks, Net Neutrality and the end-to-end principle should be enshrined within EU law.

Given the pressure of new business models and the competition of new technologies for spreading information, there is a growing need to provide more, and better focused, support for the creation of content (rather than just its distribution) and high quality journalism.

> *Recommendation:* There should be streamlining and coordination of support and funding for quality journalism, as already exists in several EU countries. Europe-wide awards should be made available for talented journalists and those having made significant breakthroughs. An additional study should be commissioned on possible new forms of funding for quality and investigative journalism, including making use of new technologies such as crowdfunding.

Public non-profit media have a special role to play in maintaining pluralism and democratic values. There may be a debate, however, about the right balance between privately-owned and public service or state-supported media, especially about the proportion of resources allotted to public service broadcasting, or the extent of state support for other media.

> *Recommendation:* Any public funding should only be available for media organisations which publish a code of conduct easily accessible to the public (including on their site).

> *Recommendation:* Any public funding to media organisations should be given on the basis of non-discriminatory, objective and transparent criteria which are made known in advance to all media.

> *Recommendation:* In order to build up cadres of professional journalists competent to operate in a rapidly changing media landscape, or to offer them the possibility to do investigative journalism, journalistic fellowships should be offered to both entry-level and and mid-career candidates who could take leave from their media organisations. Universities and research centres should set up positions for journalists in residence under such fellowships to be funded by the EU. The selection of the journalists would be done by the academic and scientific institutions themselves. The fellowships would be particularly valuable for investigative journalism, or for training journalists to mediate between complex subjects such as science, technology, finance or medicine and the wider public.

> *Recommendation:* The provision of funding for cross-border European media networks (including such items as translation costs, travel and coordination costs) should be an essential component of European media policy. Support for journalists specialised in cross-border topics should be included in such funding.

> *Recommendation*: Attention is called to national journalism schools and university professors for the possibility of applying to the Jean Monnet programme to support curricula and teaching on coverage of European issues. The Commission should be especially pro-active in informing journalism schools of this possibility and consider this area one of the priorities in the selection procedure under such a programme.

> *Recommendation:* There should be a provision of state funding for media which are essential for pluralism (including geographical, linguistic, cultural and political pluralism), but are not commercially viable. The state should intervene whenever there is a market failure leading to the under-provision of pluralism, which should be considered as a key public good.

Clearly, recent events have highlighted that in a number of countries there is a need to develop the overall framework in which the media operates, with regard to media councils or regulators. In addition, media organisations themselves must show clearly how self-regulation is applied in their organisation.

> *Recommendation:* To ensure that all media organisations follow clearly identifiable codes of conduct and editorial lines, and apply the principles of editorial independence, it should be mandatory for them to make them publicly available, including by publication on their website.

> *Recommendation:* All EU countries should have independent media councils with a politically and culturally balanced and socially diverse membership. Nominations to them should be transparent, with built-in checks and balances. Such bodies would have competences to investigate complaints, much like a media ombudsman, but would also check that media organisations have published a code of conduct and have revealed ownership details, declarations of conflicts of interest, etc. Media councils should have real enforcement powers, such as the imposition of fines, orders for printed or broadcast apologies, or removal of journalistic status. The national media councils should follow a set of European-wide standards and be monitored by the Commission to ensure that they comply with European values.

> *Recommendation:* A network of national audio-visual regulatory authorities should be created, on the model of the one created by the electronic communications framework. It would help in sharing common good practices and set quality standards. All regulators should be independent, with appointments being made in a transparent manner, with all appropriate checks and balances.

> *Recommendation:* Any public ownership of the media should be subject to strict rules prohibiting governmental interference, guaranteeing internal pluralism and placed under the supervision of an independent body representing all stakeholders.

Media freedom requires a robust framework for protecting journalistic freedom in all Member States, which represents a special case of the general right to freedom of expression.

> *Recommendation:* All EU countries should have enshrined in their legislation the principle of protection of journalistic sources, restrictions to this principle only being acceptable on the basis of a court order, compatible with the constitution of that country.

> *Recommendation:* Access to public sources and events should depend on objective, non-discriminatory and transparent criteria. This ought to be notably the case with regard to press conferences, with electronic means used to broaden out these events to a wider audience where practically possible.

Since rights carry responsibilities, journalists have the professional obligation to provide accurate information and must always be responsible and accountable for their output.

Recommendation: Member States should ensure that appropriate instruments are put in place for identifying those responsible for harming others through the media, even in the online space. Any internet user-data collection necessary for this purpose, however, should be kept confidential and made available only by a court order.

Recommendation: Compulsory damages following court cases should include an apology and retraction of accusations printed with equal positioning and size of the original defamation, or presented in the same time slot in the case of radio or TV programmes. In addition to this and to a legally-imposed right of reply, it should become accepted as responsible practice among news media to also publish retractions and corrections of wrong and unverified information on the simple request of citizens providing justifications to the contrary. Any such retractions and corrections should be published with the same relevance as the original coverage when the correction of the potential harm done by such false information so justifies. Any public funding should be conditional on the inclusion of such provisions in the code of conduct of the media organisation.

The HLG believes that the EU can, and should, have a bigger role in supporting media freedom and pluralism in the EU and beyond. The recommendations in this report should be understood as an encouragement to develop the overall EU framework, ensuring that high quality media can continue to contribute to European democracy across the EU.

The High Level Group on
Media Freedom and Pluralism

The High Level Group on Media Freedom and Pluralism was established by European Commission Vice-President Neelie Kroes in October 2011. The group was chaired by the former President of Latvia, Professor Vaira Vīķe-Freiberga. The other members were Professor Herta Däubler-Gmelin, Professor Luís Miguel Poiares Pessoa Maduro and Ben Hammersley.

The remit of the Group was to provide a set of recommendations for the respect, the protection, the support and the promotion of pluralism and freedom of the media in Europe. The Commission had invited the group to analyse and provide recommendations on issues such as:

- limitations to media freedom arising from political interference (state intervention or national legislation)
- limitations to media independence arising from private and commercial interference
- the question of the concentration of media ownership and its consequence for media freedom/pluralism and on the independence of journalists
- existing or potential legal threats to the protection of journalists' rights and their profession in Member States
- the role and independence of regulatory authorities
- existing or potential measures in favour of quality journalism, ethics and media accountability, within the respective competences of national, EU and international authorities.

This Report presents the findings of the Group and its recommendations.

The members of the Group have drawn up the recommendations in this Report independently. They do not represent a particular organisation or any particular interest and are acting here in a personal capacity.

The Group would like to thank the Secretariat of DG Connect for the support received in drawing up this Report. They would also like to thank all the individuals and organisations which have provided input to the Group, either in written submissions or by providing evidence in person. A full list of these inputs is contained in Annex A.

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1. Why media freedom and pluralism matter

"Freedom of the press is essential to a democratic society. To uphold and protect it, and to respect its diversity and its political, social and cultural missions, is the mandate of all governments."[1]

1.1   The democratic function of the media

The scope and focus of this report is on the crucial role that free and pluralistic media play in the preservation and good functioning of democracy.

A fundamental principle of democratic systems is that equal rights are accorded to all citizens, with the possibility of their direct or indirect participation in collective decision-making, especially through free elections, the choice of political representatives and the power to hold elected officials accountable. If citizens are to exploit these rights to the fullest, however, they must have free access to information that will give them sufficient basis for making enlightened judgements and informed political choices.[2] If not, control over the flows of information and manipulation of public opinion can lead to a concentration of power, the ultimate form of which is seen in authoritarian and totalitarian systems, which use both censorship and propaganda as tools for staying in power.

Historically, the concept of media freedom has evolved in parallel to the fundamental human rights of freedom of conscience and of expression. Media freedom has gone hand-in-hand with the evolution of democracy, while the degree of control and censorship of the press and other media has been in direct correlation with the degree of totalitarianism in a country's form of governance. With the kind of chequered past of authoritarian or totalitarian rule that Europe has experienced within the last 100 years, it is small wonder that its citizens should feel extremely sensitive about any possibility of relapse in terms of political control of the media. The debates surrounding a number of recent resolutions passed by the European Parliament attest to this legitimate concern. Given Europe's history and the memory of dangers of totalitarianism and authoritarianism, maintaining and preserving the democratic function of the media is a special responsibility.

Democracy requires a well-informed, inclusive and pluralistic public sphere; the media are, to a large extent, the creators as well as the "editors" of this public sphere. In this they become the holders of considerable power and may come to assume the status of a "fourth estate" within society. At the same time, the public service aspect and democratic function of media can come under threat either through political interference, undue commercial influence, or increasing social disinterest and indifference on the part of the general public.

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[1] European Charter on Freedom of the Press, 2009
[2] O'Neil, 1998, quoted in Andrea Calderaro & Alina Dobrev, 2012, 'Exploring the current state of media pluralism and media freedom in the European Union – Political and Social Aspects'

The role media plays in a democratic society requires strong protection, but also carries with it equal responsibilities. The public must never forget that media are purveyors of information, not of absolute truths. They should not be seen as sacred cows that are beyond criticism and are accountable to no one. The media are part and parcel of the overall social fabric of society and may either help or hinder communication and mutual understanding between different parts of it, fostering or suppressing democratic debate, as the case may be. There is no doubt that media should be free from political censorship and from any political requirement to fit all communication within a strict ideological framework. At the same time, the democratic function of media may also be undermined by poor quality journalism and a lack of journalistic integrity. It is thus as important for media to strive to be objective, truthful, unbiased and high-quality, as it is for them to enjoy maximum freedom from undue outside pressures.

In setting up objectivity as one of the defining criteria of media quality, it must be remembered that media can never be fully objective. Back in 1964, in his ground-breaking book "Understanding the Media: The Extensions of Man", Marshall McLuhan famously pronounced that "The Medium is the Message". This implies (among other things) that any channel of information transmission inevitably adds an element of "noise" to the original signal. With respect to the message conveyed by the media, subjective aspects are always present and bias often permeates different narrations of the facts. Thus, taking daily news as an example, a newspaper, radio or TV station will make its own subjective selection as to what items are to be included as "news", and which are not, and it will include a slant on each item included as well as an editorial element of interpretation, minimal or extensive, as the case may be.

There is also a long-standing tradition for certain media, especially the written media, to embrace a political editorial identity. This kind of slant is accepted as a legitimate expression of the diversity of opinion, if done in a transparent manner and respecting the distinction between fact and opinion. As in the parable about the blind men and the elephant, the inability of any one source to lay claim to Absolute Truth is what makes it so important to guarantee a pluralistic media environment, where a variety of slants on reality have a chance to be expressed. Democracy requires an environment where not only different versions of the facts can be contrasted and tested by citizens, but where differing emphasis and coverage given to those facts and events may be found.

1.2   The public function of the media

The public role of the media in a democratic society applies to the news sector above all others, since the quality of the news received will affect the ability of citizens "to contribute to and participate in the decision-making processes which concern them. This applies to local, national or international governance models as well as to other specific communities."[3]

Responsible and high quality media can also challenge abuses of power and hold politicians accountable. In this context, a special mention should be made of the public role of investigative journalism. It frequently (but not always) investigates cases involving abuse of power or the theft or misuse of public funds, whether those of governments, or of public companies and

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[3] Council of Europe, 2011, 'Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media'

corporations. Where both internal and external controls have been insufficient to prevent the occurrence of abuses of power, this type of journalism is of high importance as a mechanism for ensuring compliance with the rule of law, proper use of public funds, safeguarding public safety, exposing misleading statements, and protecting democracy itself, at different levels of government, from different forms of private and public corruption. High quality investigative journalism can thus serve an important watch-dog function in protecting the interests of society, but obviously it cannot replace the need for criminal investigations and the due process of law. Furthermore, investigative journalism should not assume only the narrow, often sensationalist form of the *exposé*, but it should also embrace a wider range of topics, including deeper investigations that aim to explain complex ideas and processes to the general public.

As noted above, media do not only have to be free and independent, they also have to be pluralistic, as well as inclusive, offering a wide range of different views and opinions and reflecting the diversity of a country's population. The concept of pluralism embraces both cultural and linguistic pluralism, taking account of the needs of minorities, reflecting geographical diversity as well as local and regional priorities. A key function of media, therefore, is to protect local cultures (whether national or regional), and, with them, Europe's cultural diversity.

While their primary function remains to serve the national public of individual member states, the media can also be expected to contribute to a wider pan-European public sphere. Only the latter will be liable to genuinely support the democratic exercise of the powers that the European Union already holds, whatever our view on the precise nature and extent of those powers.

This, however, should not blind us to the fact that the quality of the information conveyed to the ordinary citizen may vary widely, even where the press and other media are free from censorship and other forms of political control or influence. The content of the message and its degree of correspondence to anything resembling an "objective truth" may be (and frequently is) impaired by the more or less subtle or direct economic pressures exercised by the owners of the media, as well as by their advertisers. The professional qualifications and integrity of the journalists creating the content of the message, as well as adequate working conditions, also have a substantial impact on the quality of the information conveyed. Not all journalists are equally able or willing to answer to the high expectations of objectivity placed upon them by a hopeful and trusting public. Indeed, not all journalism is intended to be entirely objective in the first place.

1.3   Defining media freedom and pluralism

The concept of media itself, as a collective term for all forms of non-official public means of providing information, is historically a relatively recent one. Ever since the invention of the printing press, the printed word developed as the only medium of public expression (next to the age-old power of the spoken word), although its physical embodiments kept changing over the centuries from pamphlets, broad-sheets, Almanacs and the like, to newspapers and magazines as we know them today. Radio - as an auditory medium of communication - only entered the scene during the first part of the 20th century; and TV - as an audio-visual medium - in the decade following the end of World War 2. Electronic media, especially the internet - combining as they do all three (written text, audio and visual elements) - have become serious players on the scene only since a few decades before the turn of the millennium. With the accelerating rate of change in both communication hardware and software, it is to be expected that the media landscape will

continue to undergo rapid and even radical changes within the next five years and beyond, the precise nature of which is impossible to predict at the moment.

The concept of **media freedom** is closely related to the notion of freedom of expression, but not identical with it. The latter is enshrined in Europe's fundamental values and rights: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."[4] Beyond freedom of expression, however, media freedom also implies special rights, protections and responsibilities for journalists' media activities. These include for example the right to protect sources, protection from harassment or threats and freedom from undue commercial pressures.

These special rights carry with them special responsibilities as well. It goes without saying that journalists have to conform to the law of the land, including criminal law, as long as the law is itself compatible with the protection of democracy and fundamental human rights. Responsibilities also include adhering to legal principles such as protection of individual rights and freedoms, for example in respect of libel or protecting the right of reply for those covered in media stories, as well as following certain ethical standards, for example in relation to how political radicalism is portrayed in the media.

Media responsibilities also include adhering to any tools of self-regulation for the profession, such as, for example, abiding by relevant charters. In online media, traditional types of media accountability instruments, such as ethical codes, ombudsmen and press councils, are increasingly complemented by instruments involving the audience users' comments, media users' blogs and social media (such as Twitter or Facebook).

There is a close relationship between media freedom and **media pluralism**: "Media freedom is closer related to independence of media from government/authorities control and media pluralism is closer related to independence of media from private control and disproportionate influence of one or few economic, social and/or political powers."[5]

While many concerns regarding media pluralism have focused on media ownership, the concept of pluralism is broader:

"Media pluralism is a concept that goes far beyond media ownership … It embraces many aspects, ranging from, for example, merger control rules to content requirements in broadcasting licensing systems, the establishment of editorial freedoms, the independence and status of public service broadcasters, the professional situation of journalists, the relationship between media and political actors, etc. It encompasses all measures that ensure citizens' access to a variety of information sources and voices, allowing them to form opinions without the undue influence of one dominant opinion forming power."[6]

There is an internal and an external dimension to pluralism, where internal pluralism refers to pluralism within a particular media organisation. Thus many countries require the public service

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[4] EU Charter of Fundamental Rights, Article 11
[5] Andrea Calderaro & Alina Dobreva, July 2012, 'Exploring the current state of media pluralism and media freedom in the European Union – Political and Social Aspects'
[6] EU Media Futures Forum, Final Report – September 2012, 'Report for European Commission Vice-President Neelie Kroes'

broadcaster to reflect a wide range of political views and interests of minorities or other parts of the population. External pluralism refers to the media landscape as a whole, for example in terms of the number of different media providers active in any given country. Where all newspapers in a country, for example, are in the hands of the same owners, this has the potential of becoming a serious threat to the variety of opinions expressed in the public sphere. In such a situation, only the strictest adherence to the editorial independence of each paper can preserve media pluralism (as well as freedom).

Media ownership can thus create significant challenges to pluralism if owners use their economic power to restrict journalistic freedoms or interfere with the exercise of responsible journalism. On the other hand, in a free market economy, owners must have the ability to determine the strategic direction of their companies, exploit available commercial opportunities and remain competitive and profit-making. An essential element of pluralism is that it does not imply complete neutrality or a lack of opinion. In fact, having an editorial line is an essential part of the role of editors, as long as this line is made transparent to staff and to the consumers. An editor of a newspaper has the right - if not even a responsibility - to establish a clear editorial line, which should be as explicitly and clearly stated as possible.

Media pluralism may also depend on the level at which the media operates: one needs to take into account media concentration at different levels. One could also consider that the absence of European news coverage constitutes a lack of pluralism as it affects democracy at both the European and national levels, notably by hindering the political accountability of both State and European political actors.

1.4   Diversity

The media landscape in Europe is characterised by significant diversity. Within each country, it has evolved through history and local political and market conditions, and reflects a country's specific culture. It also reflects local demographics, for example in historically multi-lingual countries such as Belgium or in countries with more recent minorities speaking a different language, such as the Russian-speaking minorities in the Baltic States, or Arabic or Turkish-speaking minorities in several Western European countries. This diversity must be taken into account, but so must our common past, whose different dark moments have led us to a shared belief in certain values and the EU's role in upholding them.

Different countries also have very different institutional and regulatory frameworks. In some countries public service media and private profit–oriented media each play their respective roles in a dual system. This dualistic system, often guaranteed by national constitutional rules, is deeply entrenched in the political culture of some countries. The way in which a particular national regulatory framework is supported by and supportive of national political culture is a factor that must be given due regard by EU regulators. This is so even if there might sometimes exist tensions with EU competition rules, advertisement regulations, or new media implications. The intervention of EU regulators must take into account the specific national context and, in particular, be mindful of the extent to which different political cultures may require different media regulatory frameworks so as to better protect media freedom and pluralism in that particular state.

In some countries, there is a long-standing and recognised role for the media within the legal framework. There is an established self-regulatory framework with independent press councils or complaints commissions, with a clear responsibility for a regulator or regulators to set the framework for certain types of media or for all media. In other countries, this framework is far less developed.

Within this context, it is crucially important not to confuse rules with values. The different political cultures or realities in different Member States may result in the same rule having very different consequences for the protection of the values of media freedom and media pluralism. For example, qualified parliamentary majorities are often required for the appointment of members of media councils or regulatory authorities, with the purpose of guaranteeing the representation of a diversity of viewpoints in such bodies. But where a single political party may end up holding such a qualified majority by itself, such a well-meaning rule will not necessarily guarantee diversity and the protection of media freedom and pluralism. It may even lead to the opposite result, by entrenching representatives of a single political view in a dominant position in such bodies, and systematically excluding the holders of differing views.

For this reason, safeguarding media freedom and pluralism cannot be achieved simply by adopting a specific set of common rules, necessary as they are. Rules necessarily must be adapted to different political cultures and they need to be implemented in a way which firmly keeps the aim of media freedom and pluralism at the forefront. In addition, promoting media freedom and pluralism requires furthering a certain political culture, as well as enhancing media quality. Rules may be necessary but they are not sufficient.

It is in this complex setting that any new initiatives taken at the level of the European Union for the promotion of media freedom and pluralism must, first and foremost, focus on commonly accepted fundamental values, and exercise great care in respecting the national context within which any new regulations will have to be applied.

1.5　Challenges to media freedom and pluralism at Member State level

While media freedom and pluralism have been universally accepted as fundamental to the common values prevailing within the European community, in practice a whole range of potential challenges to them have been documented in recent reports and systematic studies. These include issues highlighted by recent court cases, official enquiries and national as well as European parliamentary debates:

- Media legislation being implemented in such a way that freedom of expression is restricted, with significant concern over possible political influence on the setup and membership of Media Councils, as well as the influence of politicians on public service broadcasting, for example through the appointment system;

- Libel/defamation laws potentially being used to restrict the freedom of the press to report on possible misconduct by public and private figures, or – conversely – to muzzle politicians and prevent them from freely expressing their opinions;

- Excessive influence of media owners or advertising clients on politicians and government and the covert manipulation of political decisions in favour of hidden economic interests;

- The concentration of ownership of commercial media and the influence this might have in the political space, whether concentration of ownership in the hands of ruling politicians, concentration of all media in a country within the hands of a single owner, or (especially dangerous in the case of small countries) concentration of all media in the hands of foreign owners;

- The effect of media concentration and changing business models in reducing the quality of journalism (investigative or otherwise), restricting the degrees of editorial freedom and the erosion in the quality of working conditions and job security for journalists;

- The lack of media ownership transparency and opacity of funding sources;

- The corruptive influence on society of some journalists resorting to criminal activity in their search for sensational (and profit-making) stories, including widespread and systematic bribing of policemen, prosecutors and other public officials, undue harassment of publicly known figures and gross infringements of individual rights to privacy (such as phone tapping) and freedom of movement;

- Potential conflicts of interest arising from journalists' closeness to business interests.

Given that infringements on, or abuses of, media freedom and pluralism may take such a wide variety of forms, the question of regulation or lack of it has taken on a particular urgency of late. Thus, in debates at the level of the European Parliament, as well as at the Council of Europe, concerns have been expressed about the ability of the European Union to ensure compliance with its values within its own borders. At the same time, at the national level, serious failings have come to light in some countries as to the ability of the media industry to comply with its avowed commitment to self-regulation. The weakness of national self-regulating bodies, even in countries where they had, until now, been considered as highly successful, has been highlighted during the Leveson Inquiry in the United Kingdom.[7]

Before addressing the nature of possible steps to remedy this situation, the High Level Group would like to emphasise that its remit is not to review and assess the situation in the different Member States, which is already in progress through various inquiries, court cases and research reports. While strongly welcoming all actions taken to address any concrete challenges to media freedom and pluralism, the focus of this report will be to make broader, long term recommendations which can ensure that these kinds of cases are challenged effectively in future, if necessary at a European level.

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[7] For further details on and the findings of the Leveson Inquiry, see: http://www.levesoninquiry.org.uk/

2   The role of the European Union

Media freedom and pluralism have recently been prominent issues in the European debate, with a heightened focus on possible challenges. Given the important role media plays as part of a functioning democracy - by creating transparency, by having the ability to challenge those in power and by helping to develop informed citizens – these concerns go to the heart of 'the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law'[8] on which the European Union is based.

Article 11 of the Charter of Fundamental Rights of the European Union states that freedom and pluralism of the media should be respected as essential elements of the common vision of a democratic Europe. This means that the EU has a responsibility to observe its adequate implementation and to actively defend basic democratic values, including media freedom and pluralism:

"media freedom and media pluralism are part of the rights, freedoms and principles enshrined in the Charter and in the ECHR and firmly rooted in the national constitutional traditions of the Member States, and, as such, form a normative corpus that already had and will potentially have a role in the interpretation and application of European law."[9]

Legally, the Charter is addressed to the EU institutions, with due regard for the principle of subsidiarity, and to Member States only when they are implementing EU law.[10] While this implies that matters relating to media are predominantly dealt with at the Member State level, there are a number of areas where either the existence of cross-border activities or the protection of European democracy is bound to interact with the operation of national frameworks. This has been emphasised during intense debates in the European Parliament, despite the respected predominance of Member State competences in this field. Apart from specific concerns regarding the situation in certain countries, the HLG notes an increasing recognition of the European Union's role in upholding the fundamental rights of Europe's citizens. Clear appeals have been made for the European Union to intervene in media issues even at State level, by making use of its competences in areas such as competition policy or free movement provisions to compensate for its more limited jurisdiction in the area of fundamental rights.

In even broader terms, it must be recognised that the internal market and the space for freedom, security and justice within the EU creates a common social and political space that requires media freedom and pluralism to be guaranteed equally throughout it. These are also necessary elements for an effective democratic legitimacy of the powers exercised at the European level itself. There can be no genuine democracy at the EU level if media freedom and pluralism are not guaranteed throughout the European political space.

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[8] Consolidated Treaties of the European Union, Preamble
[9] Elda Brogi & Paula Gori, 2012, 'Legal analysis/perspective on the EU instruments to foster media pluralism and media freedom in European Union competencies in respect of media pluralism and media freedom'
[10] Charter of Fundamental Rights, Article 51, para. 1

In case of severe challenges to freedom and pluralism in a Member State, the European institutions can go beyond acting as a general moral compass. For one thing, they can alert the respective member state, if necessary by naming and shaming. As the efficacy of this approach may be open to question, depending on the resonance such an assessment has for the public in the particular Member State, additional tools, such as the threat to withhold certain funding, might be used to reinforce a negative assessment.

In cases where there is clear interference with the democratic function of media, the EU has an obligation to intervene directly with the country in question. *In extremis*, the EU can make use of Article 7 of the Treaty on European Union (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.

It is, however, obvious that Article 7 can only be used in extraordinary circumstances. The extremely high threshold for its application, its political nature and special procedure, all make it particularly contentious as well as difficult to apply. Hopefully, Article 7 should mostly act as a deterrent for Member States not to engage in particular egregious violations of fundamental rights. On the other hand, it does remain available as a "last recourse" instrument when a Member State's activities are no longer in compliance with the EU basic values stated in Art. 2 TEU.

2.1 Recent EU Actions with regard to media freedom and pluralism

Given the strictly circumscribed nature of EU competences, the HLG notes with satisfaction the broad range of EU activities engaged in of late. First of all, EU Commissioner Neelie Kroes and the governments of some member states have been engaged in an intensive dialogue concerning legal and regulatory actions to which serious objections have been raised. Such dialogue should always be the first step in searching for a solution, and its efficiency has been shown by the willingness of governments to take active steps to bring the national situation in line with EU values.

Before intervening in any way, however, a clear assessment of the existing situation is always necessary. This may take a variety of concrete forms, so long as regular, systematic and non-political assessments are provided for. Along these lines, the HLG notes the founding of the Centre for Media Pluralism and Media Freedom in Florence in December 2011, entrusted with generating policy studies and papers on issues related to media freedom and pluralism (for instance, a special study of EU competencies in this regard). Independent of the type of institutional infrastructure, the funding of research projects such as MEDIADEM (European media policies: valuing and reclaiming free and independent media in contemporary democratic systems) is to be greatly encouraged, as these offer valuable, in-depth scholarly analyses.[11]

While recognising the difficulties inherent in such a mission, the HLG strongly encourages the EU Commission to pursue activities in this direction. This is to be seen as a long-term commitment, which will require, among other things, the development of a monitoring tool for assessing risks

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[11] Along the same lines, one might mention specific studies such as MediaAct (Media accountability and transparency in Europe) and Media and Democracy in Central and Eastern Europe (MDCEE), or the funding of a study on "Indicators for Media Pluralism in the Member States - Towards a Risk-Based Approach"

for media pluralism in the EU Member States and identifying threats to such pluralism. One such Media Pluralism Monitoring (MPM) tool has already been developed and is available online, but must be considered as a first effort which still needs considerable improvement. It has been criticised for being too cumbersome to apply and indeed has not been up and running so far. A pilot project of the European Parliament has been submitted and evaluated positively. Pending final agreement, the MPM could be put in practice in 2013.

An EU Media Futures Forum has also been created, to reflect on the impact of technological developments on European media industries, resulting risks and opportunities for these industries as well as for consumers/citizens, and the emerging new business models. The goal of this reflection is to assess which overall policy framework is most conducive to respond to these developments so as to foster a pluralistic media sector and quality journalism in the future.

The "No disconnect strategy" may also be briefly mentioned, created as it was to uphold the EU's commitment to ensuring that internet and other information and communication technology (ICT) can remain a driver of political freedom, democratic development and economic growth.

In addition, the Commission also provides direct support to a number of media organisations. Such support includes partial funding of a European TV network and of EURANET (radio network), a grant to Euronews, support to a network of press publishers (Presseurop.eu) and seminars and training events for journalists (through the European Journalism Centre)[12], as well as funding for audiovisual programmes (cinema and broadcasting).[13]

2.2   EU competences in protecting media freedom and pluralism

It should be noted that Article 7 is not the only legal basis empowering the Union to act for the protection of fundamental rights and freedoms of the media at a national level. The relationship between both media pluralism and media freedom and existing competences and areas of action of the Union allow, if not require, EU actions in the protection of fundamental rights in this area of the law. This is a natural consequence of the developments highlighted above, in particular the strong link between media freedom and pluralism and both free movement and democracy at the EU level itself.

EU competences with respect to media freedom and pluralism have been already partly recognised and exercised in the area of the internal market, in particular free movement provisions. Certain national policies that restrict media pluralism and/or violate media freedom are naturally bound to also hinder the exercise of free movement to that Member State by media companies or journalists. If, in a particular Member State, the licensing of a media company is not subject to objective and non-discriminatory criteria, or if such a company may be subject to arbitrary sanctions for whatever reason (including, by definition, related to the content of its media activities), such State actions must be considered as restricting the right of establishment. In the same way, if journalists are regularly intimidated, threatened, subject to censorship or to undue criminal prosecution in a Member State, that may be interpreted as likely to hinder the free movement of other journalists to that Member State. Such restrictions, in turn, may then be legally objected to. This reasoning can be extended to the rights arising from European citizenship,

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[12] For more details see European Commission, 2008, 'Communicating Europe through audiovisual media'
[13] For details on the MEDIA Programme, please see http://ec.europa.eu/culture/media/about/index_en.htm

in particular the right to move and reside freely in the territory of the Member States.[14] It is arguable that a case of systematic restriction of media freedom and pluralism in a Member State must be considered as having "the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union".[15] The legal argumentation for this is contested, but it is worth noting that it is there. It must also be recognised that restrictions on media freedom and media pluralism are restrictions on the economic activity itself that is the object of protection by the economic free movement provisions.

The second ground for EU action is the intimate relationship between a free, open and pluralist media space at the national level and the exercise of democracy at the European level. The democratic legitimacy of the European Union is achieved in different ways, but a core component is representative democracy at the EU level, as required by Article 10 TEU. This is realised, in the first place, by the right granted, by the same provision, to all European citizens to participate in the elections to the European Parliament. This fundamental right would be compromised in any Member State where media freedoms are curtailed or media pluralism compromised, for this would deprive citizens of their right to form informed opinions. While the treaties clearly foresee for elections to the European Parliament to take place at the national level, it is equally clear that they must conform to common EU values and democratic principles. Any flaws in the electoral process at the national level, including restrictions on media pluralism and freedom, are bound to compromise the EU democratic process itself. The same could be said of the right given to all European citizens to vote in local elections. The substance of this right will be affected where such elections might be influenced by restrictions imposed on media freedom or the lack of media pluralism.

The protection of the right to vote in European elections, however, is not the only dimension of EU democracy required by the Treaties. It also requires an open, free, informed and plural political debate that supports such elections, as well as the permanent accountability of the European Parliament and other EU institutions to the citizens. A free, open and pluralist political space must be ensured not only in the context of elections, but as part of the permanent process of accountability inherent in democratic representation. This process, in turn, must be supported by a free and pluralistic media in each member country. Seen in this light, the democratic requirements of participation and representation stated in the Treaties give authority to the Union to act at a national level, whenever the challenges to media freedom and pluralism are serious enough to put into question the very democratic legitimacy of the Union.

This, as is well recognised, does not mean that the Union has a general jurisdiction over state measures susceptible of impacting on media freedom and pluralism. Its competence and jurisdiction must remain within the framework of the arguments advanced above. The threshold for potential intervention is high, yet such power to act at the EU level must exist, in order to protect those EU rights to which media freedom and pluralism are instrumental. Several proposals put forward in this report for different types of EU action follow from this understanding.

Given the serious questions that have been raised about interference by political authorities in the work of journalists in a number of countries, be it by restricting access to public advertising

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[14] Consolidated Version of the Treaty on the Functioning of the European Union, Article 20, para. 2 a)

[15] Judgment of the Court of Justice of the European Union of 8 March 2011, C-34/09, Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm), not yet published, para. 42.

funding, preferential treatment for government-friendly journalists or through the excessive use of libel provisions, there is also a need to monitor the situation at the European level. This becomes particularly relevant when there is significant conflict at the national level, involving the institutions which are supposed to safeguard journalistic rights (such as a disputed selection mechanism for members of a Press Council). There is also a need to assess and share good practices across the EU, but there is currently no mechanism to do this.

With due regard to the arguments advanced above, the HLG presents the following recommendations:

Recommendation 1: The EU should be considered competent to act to protect media freedom and pluralism at State level in order to guarantee the substance of the rights granted by the Treaties to EU citizens, in particular the rights of free movement and to representative democracy. The link between media freedom and pluralism and EU democracy, in particular, justifies a more extensive competence of the EU with respect to these fundamental rights than to others enshrined in the Charter of Fundamental Rights.

Recommendation 2: To reinforce European values of freedom and pluralism, the EU should designate, in the work programme and funding of the European fundamental rights agency, a monitoring role of national-level freedom and pluralism of the media. The agency would then issue regular reports about any risks to the freedom and pluralism of the media in any part of the EU. The European Parliament could then discuss the contents of these reports and adopt resolutions or make suggestions for measures to be taken.

Recommendation 3: As an alternative to the mechanism suggested in the previous recommendation, the EU could establish an independent monitoring centre, ideally as part of academia, which would be partially funded by the EU but would be fully independent in its activities.

Recommendation 4: All EU countries should have independent media councils with a politically and culturally balanced and socially diverse membership. Nominations to them should be transparent, with built-in checks and balances. Such bodies would have competences to investigate complaints, much like a media ombudsman, but would also check that media organisations have published a code of conduct and have revealed ownership details, declarations of conflicts of interest, etc. Media councils should have real enforcement powers, such as the imposition of fines, orders for printed or broadcast apologies, or removal of journalistic status. The national media councils should follow a set of European-wide standards and be monitored by the Commission to ensure that they comply with European values

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2.3   Cross-border issues within the Single Market

Culture and media are traditionally areas which are not treated at the European level, but in the case of culture, the Treaties specifically stipulate that the role of the Union is to support and supplement Member State action. However, ever since the creation of the Single Market, the EU has been legislating on all aspects of cross-border trade in services and goods, including media products.

In a context where media can circulate, broadcast and be online across borders, the capacity of states to effectively regulate them is seriously affected. Mutual interpenetration means that how any one state regulates media is likely to impact on the situation in other states. If one EU country, for instance, has extremely lax rules for registering media stemming from third countries, this situation may force other EU countries to accept such media, even if they do not even operate in the country where they are registered. Or again, content that is legally published online in one Member state can become the object of a libel suit in another State. A Single Market without common and uniformly-enforced rules can open the door to phenomena such as "libel tourism", i.e. choosing the most favourable jurisdiction within the EU for a particular lawsuit.

The 'Audiovisual Media Services Directive' (AVMSD) was adopted with the purpose of enabling the internal market in audiovisual media services. It introduces a set of harmonised rules applying throughout the EU, notably concerning advertising and promotion of European works, and contains a provision to address possible circumvention cases for cross-border channels. The AVMSD extends to all audiovisual media services the country of origin principle. This means that each service must comply with the rules of the country in which its provider is located. The enforcement of the rules is the responsibility of that Member State.

Yet despite the AVMSD, many differences persist between national media environments, in effect fragmenting the Single Market. Issues such as libel law, perceived lower supervision of fulfilment of requirements and the differences in legislation relating to taxation, financial subsidies (such as discounts on postal distribution fees) or data protection, for instance, can all influence location choices of media outlets, among other things. Problems which require a common answer may thus be generated, but their solution would require a degree of harmonisation that needs to take into account each country's right to formulate its own rules.

Another area where there is a need for some degree of harmonisation is in defining the composition and role of regulators. At the moment, Art. 30 of the AVMSD only requires the cooperation of the 'competent independent regulatory bodies'. It should be noted that regulators exist only for audiovisual media, but not for the press sector, which is subject to self-regulation. If a regulator were to cover all media, it should be specified that its role has to be different according to each kind of media.

Recommendation 5: For improving the functioning of the Single Market, further harmonisation of EU legislation would be of great benefit. Currently, the existence of divergences between national rules can lead to distortions in the framework of cross-border media activities, especially in the online world. It would be particularly important to adopt minimum harmonisation rules covering cross-border media activities on areas such as libel laws or data protection.

Recommendation 6: A network of national audio-visual regulatory authorities should be created, on the model of the one created by the electronic communication framework. It would help in sharing common good practices and set quality standards. All regulators should be independent, with appointments being made in a transparent manner, with all appropriate checks and balances.

2.4   Competition and concentration

Competition policy - and its implementation - is also a field where the EU has clear competence. "Empirical observations show that there is a natural tendency to concentration in media markets,"[16] through concentration of media resources in the hands of few owners, as well as the intensification of cross-ownership, by holding shares and participations in different companies. This raises questions as to how to maintain a pluralistic environment in markets in general, and in smaller markets specifically.[17]

The level of assessment of market concentration also matters. While many media organisations operate in the Single Market, where each individual organisation is likely to have a small market share overall, most media markets are still essentially national, strongly delineated by national boundaries, although foreign ownership is high in some countries. Foreign ownership can become a significant issue in small countries, especially if there is an agenda to use media power to manipulate public opinion. The concentration in the national media market is thus the level which should usually be the key metric for market concentration assessments.

Concentration of ownership needs to be considered not only with respect to specific media sources (such as press), but across different media and in relation to distribution channels, whether for traditional media (for example, newspaper kiosks) or for new media (for example, broadband connectivity).

Digital intermediaries, such as search engines, news aggregators, social networks and app stores should be included in the monitoring of the sector. The increasingly important role they play in either improving or restricting media pluralism should be considered, especially as they start producing content. However, care must be taken to distinguish between media that publish original work directly, and services that allow users to republish or link to other peoples' work.

While competition can contribute to pluralism, it does not necessarily do so, for it may well lead to a more uniform, homogenised offering in terms of content. In setting competition policy, authorities need to look at market concentration not only as an issue related to competition, but also related to pluralism. In doing so, media consumption also has to be taken into account when measuring Media Pluralism.[18]

> ***Recommendation 7:*** National competition authorities need to make (or commission) pro-active regular assessments of individual countries' media environments and markets, highlighting potential threats to pluralism. At the EU level, there should be pro-active market assessment under competition policy in the form of a sectoral inquiry.

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[16] Giovanni Gangemi, 2012, 'Exploring the current state of media pluralism and media freedom in the European Union – Economic Aspects'

[17] This is not necessarily dependent on country size, for example shared language might to some extent enable cross-border pluralism.

[18] See OFCOM, 2012, 'Measuring Media Plurality' and Centre for Media Pluralism and Freedom, 2012, 'EU competences in respect of Media Pluralism and Media Freedom'

> **Recommendation 8**: European and national competition authorities should take into account the specific value of media pluralism in the enforcement of competition rules. They should also take into account the increasing merging of different channels of communication and media access in the definition of the relevant markets. In addition, the High Level Group calls upon the European and national competition authorities to monitor with particular attention, under competition policy, new developments in the online access to information. The dominant position held by some network access providers or internet information providers should not be allowed to restrict media freedom and pluralism. An open and non-discriminatory access to information by all citizens must be protected in the online sphere, if necessary by making use of competition law and/or enforcing a principle of network and net neutrality.

2.5   Promoting European values beyond EU borders

Given the importance of fundamental values such as media freedom and pluralism for the EU, these also need to be enforced for new entrants to the Union. The issue of media freedom and pluralism is thus crucially relevant to accession negotiations. Here, the European Union has a lever to enforce minimum standards. As accession criteria stipulate that a country must be ready to adopt the full acquis, this also entails monitoring and ensuring media freedom and pluralism.

The Commission is now giving a higher profile to media freedom and civil society development in the current accession negotiations and provides political support to dialogue between governments and media. The Commission is also setting concrete requirements based on best practices, which was not the case for the accession of the twelve previous countries.[19]

There is also provision of guidance, sometimes in cooperation with the Council of Europe, to candidate and potential candidate countries (e.g. Albania), including guidance on draft Media Laws. This goes beyond the scope of the AVMS Directive (for instance guidance on Public Sector Broadcasters' regulation), but remains limited to audiovisual media. The Commission has also organised seminars in the Western Balkans on specific issues related to media freedom and pluralism (for instance, on independence of Public Sector Broadcasters in 2009).

As one of the key champions of democracy in the world, the EU must push for the protection of journalistic freedom and media pluralism in its international activities. While European countries have certainly not always been paragons of virtue in this respect, the EU has a responsibility to promote agreed European human rights standards and enforce regulations which are now being developed in the international sphere. These standards are not only part of the EU internal identity but also part of how the Union represents itself to the outside world. As such they should inform its external relations and be promoted in its external policies, making support for countries conditional if necessary. Pressure should continue to be put on some countries (for example though the Generalised System of Preferences - GSP+ - instrument) to improve the freedom and security of journalists.

The HLG also welcomes the support given to a large number of projects with civil society organisations aimed at increasing the professional capacities of journalists, providing urgent

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[19] Presentation of Mr Andris Kesteris in the 3rd HLG meeting

protection needs and promoting freedom of expression in law and in practice through the European Instrument for Democracy and Human Rights (EIDHR).

Recommendation 9: Media freedom and pluralism should play a prominent role in the assessment of accession countries. A free and pluralist media environment must be a pre-condition for EU membership.

Recommendation 10: The EU should raise the issue of journalistic freedom in all international fora where human rights and democracy are discussed, including as part of trade/partnership agreements and in the context of provision of aid.

3. The changing media landscape

The European – and global - media environment is changing and will continue to do so for the foreseeable future. Change can be beneficial, as in opening up new ways of accessing and interacting with different forms of media. At the same time, there remains a need to safeguard media freedom and pluralism and ensure that high quality journalism continues to fulfil its essential democratic function.

The changes to the media landscape are a mix of intertwined factors. New technologies are one of the key drivers of this change, already having a profound impact on the media. They are driving the creation of new forms of media (for example dissemination and filtering mechanisms such as internet search engines), changing media consumption patterns and how people relate to media (for example putting a greater emphasis on instant mobile access) and inter-mixing different channels of communication (TV, radio, internet, press). These technologies, the media marketplace and the changing of the journalistic profession will continue to reshape the media landscape, albeit not in any predictable way. While the recommendations made in this Report cannot claim to foresee the future, they are intended to be adaptable to this changing landscape and help media face these challenges.

> **Recommendation 11:** Any new regulatory frameworks must be brought into line with the new reality of a fluid media environment, covering all types of journalistic activities, regardless of the transmission medium.

3.1 The impact of new technologies

The expansion of the digital world has led to the emergence of new media, opening up a wide range of sources and opinions to citizens everywhere. At the same time, new technologies are transforming traditional media business models, with many media organisations struggling to survive financially. This has led to increasing pressure for rationalisation and consolidation within the older members of the industry, potentially impacting on pluralism. What matters most of all is the quality of sources: a large number of homogeneous and low quality sources of unverified opinion does not increase pluralism. It should be noted that we do not imply that the new media are necessarily more homogeneous, nor of a lower quality, than the old. We merely note that this may become the unwanted outcome of a financial crisis within media in general, as they transition between differently structured business models.

Responsible journalism, subject to the rules of freedom of media, today is and increasingly will be displayed by internet – the medium of the future. Every user of the internet may by now publish news and opinions, being neither privileged nor bound by journalistic rules and professional ethics, but acting simply on his or her right of freedom of expression and the rules and limitations resulting out of that fundamental right. This right, however, is a very robust one, being equally guaranteed by national constitutions of member states, the European Convention of Human Rights and the EU Charter of Fundamental Rights.

The internet also means that there are far lower barriers of entry for new media organisations or indeed individuals (though it cannot be excluded that new barriers may emerge in the online market). This can lead to different concentration trends in different media, with traditional media consolidating and new media expanding. But the sheer increase in new media does not guarantee pluralism: "despite the technological change, the question about whether the increase in the number of sources and the overcoming of scarcity is really enlarging the market and countering concentration is far from being resolved."[20] A tendency seems to be emerging whereby two opposing trends can be noted: higher concentration on mass media of broad appeal and a multiplication of small media targeted at niche markets.

There are also a number of new issues which need to be taken into account in the debate around media pluralism and new technologies, including availability/access, net and internet neutrality, the changing nature of delivery of media content (e.g. connected TV), frequency allocation and internet censorship.

In addition, the new media environment increases the importance of 'gate-keepers', digital intermediaries who are the access route to the internet (for example search engines and social networks); whose personalisation of content risks creating a "filter bubble" for the reader - or internet service providers, who have the ability to arbitrarily censor citizens' connections to the internet. For these actors, only the EU has the effective capacity to regulate them, given its role in competition policy and the transnational character of these actors.

New formats also change how people relate to information. Increasing filtering mechanisms make it more likely for people to only get news on subjects they are interested in, and with the perspective they identify with. There are benefits in empowering individuals to choose what information they want to obtain, and by whom. But there are also risks. This new reality will decrease the role of media as editors and interpreters of information. It will also tend to create more insulated communities as isolated subsets within the overall public sphere. Cass Sunstein, for example, raises concerns that the internet will enable people to be less engaged in society, given the increasing capabilities for personalised filtering and the decreasing presence of "general-interested intermediaries" (such as newspapers). [21]

Such developments undoubtedly have a potentially negative impact on democracy. Thus we may come to read and hear what we want, and nothing but what we want. It is clearly not possible to force people to consume media they do not wish to: that would be equivalent to propaganda, brainwashing or neural programming. The concern is people forgetting that alternatives do exist and hence becoming encapsulated in rigid positions that may hinder consensus-building in society.

Recommendation 12: In order to give complete transparency as to how individualised a service is, services that provide heavily personalised search results or newsfeeds should provide the possibility for the user to turn off such personalisation, temporarily for an individual query, or permanently, until further notice.

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[20] Giovanni Gangemi,2012, 'Exploring the current state of media pluralism and media freedom in the European Union – Economic Aspects'
[21] Cass Sunstein, 2009, "Republic.com 2.0"

> **Recommendation 13**: Channels or mechanisms through which media are delivered to the end user should be entirely neutral in their handling of this content. In the case of digital networks, Net Neutrality and the end-to-end principle should be enshrined within EU law.

3.2   Changing business models

The whole media industry, and specifically the profit-oriented media, is in a process of change, with new business models being developed across the whole sector. The financial viability of traditional media business models is clearly under pressure, as seen by current developments in the printed press and the changing role of advertising spending. Advertising revenue is increasingly targeted on the internet, mainly for the benefit of digital intermediaries, meaning media are virtually required to provide some form of online offer.

Financing news media through sales alone has become increasingly challenging: "Hard news is perhaps the hardest to make profitable. It is increasingly instant, constant and commoditised … With rare exceptions, making money in news means publishing either the cheap kind that attracts a very large audience, and making money from ads, or the expensive kind that is critical to a small audience, and making money from subscription. Both are cut-throat businesses."[22]

The changing funding model constitutes a significant challenge for quality journalism (news, investigative). In many, but not all, EU countries this type of journalism is increasingly suppressed or replaced by less expensive free-lancing, with journalists working under deteriorating or even degrading working conditions and having insufficient resources to pursue stories in depth. More and more news is provided by agencies.

Investigative journalism and news media need to be supported by a wider range of funding sources. Globally, there are some examples of philanthropy financing critical journalism. The possibility to exploit new technologies to access funding, such as, for example, to obtain crowdfunding, should not be underestimated. The public sector might contribute to this diversification of funding through prizes and awards. At the same time, in countries where public funding constitutes an important part of advertising revenues, there is a need to ensure that this funding is distributed in a transparent and equitable manner, reflecting not only numbers of readers but actively supporting responsible journalism and pluralism. Furthermore, allocation of public funding should be conditional on media outlets making public the ethical codes on which they base their conduct.

As indicated above, new media can also contribute to additional tension between media seen as a business and media seen as a 'public service', with certain public service obligations potentially imposed on commercial operators, e.g. certain types of content in commercial TV. This raises a question of balance: what restrictions and conditions can be imposed on commercial operators without reducing their ability and willingness to provide the service.

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[22] The Economist, June 9th 2012; Non-news is good news

Recommendation 14: There should be streamlining and coordination of support and funding for quality journalism, as already exists in several EU countries. Europe-wide awards should be made available for talented journalists and those having made significant breakthroughs. An additional study should be commissioned on possible new forms of funding for quality and investigative journalism, including making use of new technologies such as crowdfunding.

Recommendation 15: Any public funding should only be available for media organisations which publish a code of conduct easily accessible to the public (including on their site).

Recommendation 16: Any public funding to media organisations should be given on the basis of non-discriminatory, objective and transparent criteria which are made known in advance to all media.

3.3   Changing nature of journalism

It would be too easy to conclude that new technology is the only driver of change in the media industry. Trends which can potentially challenge the quality of journalism are clearly of great importance. The media needs to deliver high quality journalism which is credible, trustworthy and entertaining. At the same time, the journalistic profession should also reflect the diversity in the general population and media outlets must be encouraged to reflect the diversity of the population in their newsroom and on-screen (see for instance the Media4Diversity initiative).

As part of fulfilling its role in democratic societies, high quality journalism in the future will have to work even harder to help people sift through masses of information and understand increasingly complex developments. Thus the quality of journalism and its capacity to contextualise the news will acquire ever greater importance. This will require more high quality professional training of journalists and an improvement in their working conditions, especially in those countries where the status and social/working conditions of journalists have altered significantly in recent years, making it harder to make a living from journalism alone.

The new media environment landscape also reinforces the trend towards freelancing, in part driven by new technologies, in part by funding problems, with media companies relying less on highly trained staff and more on content provision that can come from a wide range of people, not necessarily just journalists. High quality journalism is bound to suffer by this. Upholding high journalistic standards within the framework of the new media opportunities will require treating the contributions of non-journalistic persons - witnesses, interested citizens and others - as potentially welcome additions, but not as substitutes for high quality journalism.

These challenges make it even more important for journalists and their associations themselves to uphold and strive to achieve the highest ethical and journalistic standards. The new challenges faced by certain media and journalists can never justify lower journalistic standards on issues such as evaluation of sources or fact checking. The new forms of journalism should be accepted and welcome as reflective of our current society, but should not be allowed to evade the core values of journalism.

The rise of new media is also changing the nature of journalism. A particular impact is that borders between different types of media are becoming more fluid. A single journalistic outlet might use the same material to write an article for the print press, reflect in a blog, tweet and prepare a clip for TV. These new environment and forms of transmitting content are also putting time pressure for delivering the news, often leading to more relaxed journalistic standards.

News has become more of a commodity, with pan-European/global press agencies providing more and more news content. While this might be more commercially efficient, it can also reduce the amount of critical content, with newswire articles generally being simply reproduced without contextualisation, verification of sources or any attempt to provide an editorial view.

Recommendation 17: In order to build up cadres of professional journalists competent to operate in a rapidly changing media landscape, or to offer them the possibility to do investigative journalism, journalistic fellowships should be offered to both entry-level and mid-career candidates who could take leave from their media organisations. Universities and research centres should set up positions for journalists in residence under such fellowships to be funded by the EU. The selection of the journalists would be done by the academic and scientific institutions themselves. The fellowships would be particularly valuable for investigative journalism, or for training journalists to mediate between complex subjects such as science, technology, finance or medicine and the wider public.

Recommendation 18: Journalist and media organisations should adapt their codes of conduct and journalistic standards to the challenges posed by a rapidly changing media environment. In particular, they should clearly address questions of source verification and fact checking, as well as transparently regulating their relationship with external sources of news.

3.4   Changes in how people relate to media

In this report, the role the media play in a functioning democracy has been repeatedly highlighted. The media quite literally form the major locus of interaction between citizens and the political and economic driving forces active in any society. When all is said and done, it is the citizens (as readers, listeners or watchers) who remain the ultimate target and end-user of media activity, while their level of participation and engagement in society is, to a large measure, shaped by the ability of the media to awaken and maintain their interest in a variety of issues. If reports produced by the media are superficial, unprofessional, visibly biased or just plain boring, citizens will "turn off" and disengage from topics that may have important consequences for them.

As evidenced by every-day observation as well as scholarly studies, new media formats are changing how people relate to information at an ever accelerating rate. One of the aspects of that change is the deluge of information available at the touch of a finger-tip, which many individuals find stimulating, others addictive and still others overwhelming, if not depressing. Traditionally, the editorial page of newspapers used to set the tone in drawing attention to topics deemed important. By now, the electronic media are offering both general and individualised filtering mechanisms that either completely screen out unwanted elements or – just as important – present news items in a hierarchically ordered way. This makes it possible for people to get only the news or information that they are interested in, presented with the perspective that they identify with. The principle as such is nothing new, as most people have always had certain pages

of the newspaper that they turn to first, as well as pages that they simply turn over and never look at. In the electronic media, it is clear that filtering mechanisms can save the users a great deal of wasted time and aggravation and become a form of empowerment in their relation to flows of information. What may pose certain risks is the hidden nature of such filtering, that is, its forced imposition without the user being aware of it.

While on-going developments may liberate some people from the tyranny of having their news filtered through the convictions and prejudices of someone else, they may also decrease the presence of "general-interested intermediaries" such as newspapers and the public role of journalists as editors of the public sphere. This will, in a certain sense, increase information costs for citizens and may render more difficult the treatment of complex facts. Instead of broadening the mind, it may serve to reinforce existing prejudices.

Some fear that filtering mechanisms on the internet, given their increasing capabilities for personalisation, might tend to create more insulated and less engaged communities within the general public. In our view, the only way this might differ from what has always existed, would be if the internet truly kept people away from minimal face-to-face social interaction. The other side of the coin is that the internet has opened up vast opportunities for sharing views in bilateral (or extended) exchanges or chat rooms, which have become a substitute for the old-fashioned gossip that used to take place over the fence or in the market-place. The only drawback – and it is a serious one – is that the exchange of gossip, innuendo or idle chatter is not quite the same as serious journalism.

Information isolation and fragmentation, together with an inability to check and evaluate sources, can have a damaging impact on democracy. At present, research is still unclear on the extent to which these new formats will promote greater decentralisation or, actually, more centralisation on how news are gathered and edited. What is abundantly clear, however, is that a well-educated public will be more resilient to withstand whatever negative influences they may encounter. Media literacy and the ability to perform a choice and critical evaluation of information sources is therefore something that the citizen of tomorrow will need as much as basic and digital literacy.

> **Recommendation 19:** Media literacy should be taught in schools starting at high-school level. The role media plays in a functioning democracy should be critically assessed as part of national curricula, integrated either with civics or social studies.

> **Recommendation 20**: To evaluate the manner in which media consumption patterns are changing, as well as their social impact, comprehensive longitudinal studies are needed at the EU level. More broadly, the EU should provide sustainable funding for academic research and studies on the changing media environment, in order to provide a solid academic basis for policy initiatives in this field.

4. Protection of journalistic freedom

Journalistic freedom, as its main instrument of expression, lies at the very heart of a free and pluralistic media environment. Journalists must be able to work in an environment which allows for free expression and provides the journalist with the assurance that they can work free from pressure, interdictions, harassment, threats or even actual harm. The right of journalists to protect their sources and to conduct probing investigative journalism into all areas of power – be it political or economic – is an essential component of such journalistic freedom. This implies protection of journalists and their findings against unconstitutional infringement. Their rights also come with responsibilities: journalists must conduct themselves with due regard to the laws of the land, taking responsibility for their conduct and output.

4.1 Rights of journalists

One of the fundamental rights of journalists is to be able to protect their sources. This should not only include the people who have been the source for a particular story. The working spaces of journalists and the self-researched material should also be protected from search and seizure. The only permissible exceptions to these rights must be sanctioned by judges, acting in line with the European and State's fundamental rights and constitutional provisions.

To fulfil their democratic role, journalists need equal and open access to public events and documents where there is a clear public interest, for example in relation to data, information and documents released by governments. Access to this information should be non-discriminatory and there should be transparency on what criteria are used for deciding on access to 'public' or 'official' events such as press conferences, with electronic means used to broaden these events out to a wider audience.

> **Recommendation 21:** All EU countries should have enshrined in their legislation the principle of protection of journalistic sources, restrictions to this principle only being acceptable on the basis of a court order, compatible with the constitution of that country.

> **Recommendation 22:** Access to public sources and events should depend on objective, non-discriminatory and transparent criteria. This ought to be notably the case with regard to press conferences, with electronic means used to broaden out these events to a wider audience where practically possible.

4.2 Responsibilities of journalists

Journalists have to comply with the law of the land in accordance with the constitutional guarantee of freedom of media. This requires clear legal regulation about the rights of citizens being wrongfully mentioned or even damaged or intentionally defamed, ranging from the right to counter-state wrong news or articles to the right of revocation and adequate compensation. Cases of intentional and damaging defamation, constituting a crime according to the penal code of the land in compliance with the constitution, require clear regulation not allowing any grey zones.

The rise of the internet also raises a range of additional regulatory issues. One key challenge is that it creates legal uncertainty – there is a global internet but only national rules for now and presumably for the predictable time to come. As this can lead to individual journalists feeling restricted by the most restrictive legal system, EU–wide harmonisation of the cross-border issues raised in this area is required.

This harmonisation not only refers to rights and obligations of journalists (regardless of the media outlet used by them), but also to rights and obligations of non-journalist users of the internet. As mentioned, these users are covered by the human right of freedom of expression; unrestricted access to the internet offers a new dimension of freedom of expression for normal citizens, which has to be acknowledged, protected and guaranteed. But it also creates new challenges in the separation of private and public speech and by maximising the possible harm done to others by false and even malicious statements diffused through the internet.

This is why a fair legal regulation is necessary, balancing the new dimension of freedom of expression and the justified rights and interests of other citizens. Access to personal data of internet users, which may be necessary to protect the fundamental rights of other individuals, should be only by court order, and for specific purposes, such as citizens` civil action following severe damages, or criminal prosecution in compliance with the penal code.

A crucial part of the responsibility of journalists and media organisations is to provide a right of reply in situations where unverified and incorrect information has been published or broadcast. Where such information has been defamatory in addition to being misleading, there needs to be an apology and a public reversal of accusations, presented in precisely the same format, size and positioning as the original misinformation or defamation. Media should abandon the deplorable practice of a page one "splash" headline providing the libel and a page eighteen "news in brief" story providing the apology. In addition to reacting to court decisions, responsible media should also adopt, as part of their code of best practice, the voluntary retraction of incorrect, unverified, misleading and potentially damaging information simply at the request of individuals providing credible information to the contrary.

Recommendation 23: Member States should ensure that appropriate instruments are put in place for identifying those responsible for harming others, even in the online space. Any internet user-data collection necessary for this purpose should be kept confidential and made available only by a court order.

Recommendation 24: Compulsory damages following court cases should include an apology and retraction of accusations printed with equal positioning and size of the original defamation, or presented in the same time slot in the case of radio or TV programmes. In addition to this and to a legally-imposed right of reply, it should become accepted as responsible practice among news media to also publish retractions and corrections of wrong and unverified information on the simple request of citizens providing justifications to the contrary. Any such retractions and corrections should be published with the same relevance as the original coverage when the correction of the potential harm done by such false information so justifies. Any public funding should be conditional on the inclusion of such provisions in the code of conduct of the media organisation.

4.3   Who is covered by journalistic rights and responsibilities?

Determining who should be considered as a journalist or what organisation can be considered to be (news) media has become more difficult within a changing media landscape. Next to full-time journalistic professionals, one now finds significant levels of freelancing, and an internet which offers unprecedented opportunities for individuals (whether part of the media or not) to express their opinions. Yet the privileges afforded to journalism as a profession become very difficult to defend, if the net is cast too wide and includes practically everybody who has an opinion to express or a fact to proclaim. The word "journalism" would lose all meaning, if it came to identify everyone who can hold a pen or type on a keyboard. As it is, the numbers of people involved in writing or expressing what could be considered a 'journalistic' opinion in the variety of media which now exist (printed press, interactive radio, TV, blogs, social networks etc.) is definitely increasing geometrically, even as most of them do not consider themselves to be journalists.

In order to effectively protect the rights of journalists, but also to regulate and define their corresponding duties and responsibilities, it is essential to have some means of identifying them. If not, any decisions concerning "journalists" can become simply vacuous. This identification is becoming increasingly complicated, not just for courts and regulators, but also for the public at large. In the rapidly changing context of multiple media formats and types of journalists, defining the nature of speech might be one possible way out of this dilemma. This approach is sometimes adopted by the courts, by asking whether the text in question may be qualified as a form of journalism or not.

Possible other approaches include a process of accreditation or certification, which has been the path followed by many professions as their status in society was developing. In the Middle Ages, guilds and crafts established demanding and lengthy periods of apprenticeship before a person could call themselves master of a trade or craft. Highly specialised professions, such as the law or medicine, still require lengthy periods of formal education, followed by internships in a practical work setting, before a person is allowed to practice that profession. For good journalism, however, the knowledge and skills required are not necessarily such as can be encompassed only by following a given curriculum in a "School of journalism". The ability to write or speak well, plus specialised education in fields such as science or economics, may be more useful to someone wishing to report on these topics to the general public.

Membership in a professional association is certainly a simple and convenient method of identifying who should be considered a "card-carrying" journalist. It can be made immune to potential manipulation by political systems by requiring that only senior members of the profession sit on accreditation boards. This would (in principle) prevent political forces from restricting access to the profession for more critical voices, provided, of course, that members of the profession themselves not become the instruments of political manipulation. This solution, however, is difficult to apply outside the traditional news sphere. It will continue to be challenged by the variety of new formats in which news are delivered and journalist intervene, such as twitters, blogs or tweets, a situation further aggravated by the cross-border nature of new media.

A narrow definition of a journalist as a person for whom journalism is a full-time profession, is also open to challenge. Freelancers will often mix different types of activities, including traditional journalistic work, as well as doing related work such as chairing or contributing to events and conferences, or writing specific pieces to order for a commercial purpose. Many bloggers will only

be occasionally remunerated for their work, even if they spend a significant part of their time on journalistic activities such as writing and editing their own (and others') contributions. Remuneration by itself thus cannot be taken as the defining marker for journalism. Much social good (including writing and editing) is done by people who work for free.

Self-identification might be one way forward, but can be easily discredited by only a few cases of dishonesty and malfeasance. It is also far from clear how such a system might be monitored and verified, and by whom. Clearly, here is one area where a broad and continuing debate, including all stakeholders, will still be necessary for some time to come.

Within the shifting sands of the current media environment, the HLG regrets to refrain from offering any firm and consensual definition of either journalism or journalists. What it does recommend is continued debate among all stakeholders on the question, so as to reach at least temporary and pragmatic formulations that may serve as guidance to courts.

4.4   Enforced self-regulation

There is an understandable preference in media organisations for some form of self-regulation as opposed to regulation from outside, because of the ever-present danger of censorship interfering with the democratic principle of the freedom of the press. The recently released Leveson report in Great Britain, however, has offered overwhelming evidence as to the multiple ways in which this "self-regulation" has not just been interpreted as "no regulation", but has led to gross abuses of journalistic privileges, the breaking of elementary ethical standards, and even activities subject to the criminal code. That this should have happened in a country with such long democratic traditions, and one that had been often cited as exemplary with regard to freedom of the press, is clearly a blow to the prestige of media owners and to that of the journalistic profession.

Until now, the main concern about regulation had been directed to the institutional set-up of independent press councils, the ways in which their members are selected, the scope of such bodies and questions about the enforcement of their decisions. The results of several recent studies have made it clear that an inherent pro-journalist bias can be as unwelcome as bias caused by political conviction or economic interests. Most importantly, there seems to be no ready-made institutional model at hand that could serve as the universal blue-print for every country and situation. It is abundantly clear that the same institutional set-up can produce completely different results, depending on the whole matrix of local legislation, but mostly on contextual differences due to local culture, ingrained customs and interpretations of ethical norms.

The gross abuses revealed in the Leveson enquiry have led its author to propose much more stringent institutional supervision, where the media would be much more closely monitored, become far more accountable to the public and be subject to heavy fines in the case of infractions. That judge Leveson's recommendations should have been rejected out of hand by some politicians in high office, is not very reassuring. If nothing else, this resistance by itself underscores the urgent need for supervisory bodies that can and do act, instead of being supervisory in name only.

Nevertheless, there may well be EU countries that decide to remain within the framework of self-regulation, rather than instituting new structures or practices. In that case, there still remains a need to build in more effective checks and balances, as well as mechanisms of enforcement for

ensuring adherence to self-regulatory codes of conduct. Mere lists of pious *desiderata* without any provision for their enforcement are as good as useless in protecting the values that they claim to uphold.

Because the trust that the general public places in the media is an asset to them, media organisations themselves should justify this trust by being more proactive in matters of self-regulation. Each media outlet should follow clearly identifiable codes of conduct and editorial lines, and it should be mandatory for them to publish these on their website or to state explicitly where the organisation follows common international codes of conduct and ethical guidelines. While there must be flexibility in the choice of the code of conduct an organisation decides to follow, a number of key domains can be identified in which the position of the organisation should be set out, including:

- A clear enunciation of the ethical principles it has decided to follow;
- An explicit affirmation of the principle of editorial independence;
- Transparency in divulging final ownership along with a listing of other media interests held by the same owners;
- Potential conflicts of interest between outlets belonging to the same owners should be noted;
- The general working terms and conditions for their journalists should be available for public scrutiny, including the proportion of full-time workers as against levels of free-lancing;
- Any commitment to pay a 'fair wage' should be publicised;
- In case of a change in ownership, the rights of those journalists differing from the new editorial line should be stated;
- Policies on training and qualifications, if any, should be clearly enunciated;
- Adopted approaches to, and/or available statistics on, workplace diversity, including ethnicity (where appropriate) and gender should be available on demand.

The HLG is well aware that all this information is not of the type that could be simply included, for example, on a newspaper's masthead. The point is that it should be available in the public domain (on demand, if necessary), through whatever technical means are chosen to make this possible.

> *Recommendation 25:* To ensure that all media organisations follow clearly identifiable codes of conduct and editorial lines, and apply the principles of editorial independence, it should be mandatory for them to make them publicly available, including by publication on their website.

5. Media Pluralism

Pluralism is critical to the media environment for the media to perform their challenge and representation functions effectively. Pluralism needs to be considered in the widest possible sense, both within individual media organisations and across the whole media landscape. As indicated earlier, internal pluralism (within an organisation) prevails when a range of opinions is reflected in the news coverage of an organisation. In many countries, the publicly funded audiovisual media are required to reflect a wide range of opinions in their coverage, especially so before elections. External pluralism (across the media landscape) prevails when a range of different opinions is reflected through a variety of different media outlets. It is essential, especially in light of the rise of new media, that pluralism be considered across all different types of media, not simply focusing on one medium, such as newspapers. Pluralism is crucial for encouraging quality journalism and thus standards are needed to ensure that pluralism is maintained in the changing media environment, but the responsibility for ensuring it is not at all the same for internal and external pluralism.

The Council of Europe has long been active in this domain and has already established a wide range of criteria necessary to promote media pluralism, including the following:

"Prerequisites for real rather than nominal media pluralism [that] include either in combination or in some cases isolation the following features:

• A legislative framework establishing limits for media concentration;
• An adequate monitoring system (circulation or revenues);
• An adequate system for enforcement;
• Pro-active measures that positively support media pluralism e.g. encouraging the production of diverse content and granting financial support to increase pluralism;
• Self-regulatory instruments such as editorial guidelines and statutes setting out editorial independence;
• Transparency;
• Independence of regulatory authorities."[23]

It is evident that a number of the prerequisites for media pluralism overlap with those for media freedom, which this report has addressed in earlier sections. In addition, pluralism is rather more difficult to define in any prescriptive sense, since implicit in it is the notion of quantification. There are neither objective nor quantifiable criteria for determining just how many different view-points should be represented out there in the public space, in other words – just how much pluralism is enough. Neither, in our opinion, should there be any attempt to set arbitrary quantitative thresholds for the desirable level of pluralism, which could not avoid being grossly subjective, as well as impossible to apply uniformly across the whole of the EU. Instead, the focus should be on eliminating all those influences that present obstacles to a pluralism reflecting the actual state of

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[23] David Ward, January 2005, 'Media Concentration and Pluralism: Regulation, Realities and the Council of Europe's Standards in the Television Sector'

affairs in any given country or society, as well as fostering values deemed important to that society, but not sufficiently represented in the existing media environment.

Assuming the absence of political or governmentally imposed limitations on pluralism (as an obvious precondition), the biggest danger of reducing the variety of view-points expressed comes from considerations of commercial profitability. If only privately-owned media were to be present in a country, then the whole media landscape would risk becoming more and more reduced to those outlets and those contents that bring in the biggest profits. While this is perfectly in accord with free market principles, in no way does it guarantee that the democratic values embraced by the European Union will be defended on the basis of profitability alone.

Reliance on the profit motive alone could have particularly devastating effects on the cultural and linguistic diversity of the European Union. Countries with smaller populations, and especially linguistic groups with smaller numbers of speakers, would risk disappearing entirely from the public space, if international media conglomerates as owners were to decide that catering to them would reduce their profit margins too much. As it is, measures are already in place to ensure that media within the EU must include a given proportion of European content in their programming. Exactly the same argumentation leads to the need for measures at the national level designed to protect national or regional languages and cultures, thus contributing to cultural diversity as one of the core European values.

Among the tools for ensuring media pluralism, public service media take on a special place, to which we now turn in the following section.

5.1   Public service broadcasting

Not-for-profit media (such as public service broadcasters) play an important role in maintaining media pluralism, although marked differences exist in their operation between the North and South of Europe, as well as between East and West. In countries where public service broadcasting has been thoroughly institutionalised over several decades, it was established in order to support civil society, serve as a tool for distance education, as an agent of enlightenment, and as a means for strengthening national cohesion.[24]

Traditionally, public service broadcasters have constituted a critical component of pluralism by providing a range of opinions, including catering to minority interests. They may be particularly important in smaller markets where it may not be possible for several private broadcasters to be commercially viable. However, public service broadcasters can also restrict pluralism if their privileged position restricts market access for private operators and reduces the number of commercially viable providers.

There is an on-going debate in several European Union countries about the level of government support that public service broadcasters should be allowed to receive, as well as about the funding mechanisms (for instance direct grants versus obligatory subscription fees) to be used. One country (Portugal) has even started proceedings to privatise public service broadcasting, by "contracting out" the services it is meant to provide. This is interpreted by some as an innovative

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[24] Invited remarks by Dr. Gregory Ferrell Lowe, Continuity Director, RIPE International Initiative for PSB Development (www.ripeat.org), delivered in Riga, Latvia.

way out of situations where government budgets have become severely restricted, but by others as a contradiction in terms, for how can "public" remain public, if you decide to privatise it?

As regards Public Service Broadcasting, the 'Amsterdam Protocol' annexed to the EU Treaties acknowledges the important and positive role of these broadcasters for democracy and pluralism and sets at the same time some limits to the national funding systems. These have been further developed in the Commission's Communication on state aid rules applying to Public Service Broadcasters. At the same time, it is evident that public ownership of the media is not synonymous with government propaganda (as it clearly is in many non-democratic countries) and the editorial and artistic independence of Public Service Broadcasters must rigorously be respected by the governments in power.

> ***Recommendation 26:*** There should be a provision of state funding for media which are essential for pluralism (including geographical, linguistic, cultural and political pluralism), but are not commercially viable. The state should intervene whenever there is a market failure leading to the under-provision of pluralism, which may be considered as a key public good.

> ***Recommendation 27****:* Any public ownership of the media should be subject to strict rules prohibiting governmental interference, guaranteeing internal pluralism and placed under the supervision of an independent body representing all stakeholders.

5.2   European coverage

In the context of the current economic and financial crisis and the steps the European Union has taken to address it, the need for democratic legitimacy at the EU level has become an even greater priority. The democratic legitimacy of the European Union is closely dependent, however, on the emergence of a public sphere which is informed about European issues and able to engage in debates about them. This requires, in turn, adequate media coverage of European issues and politics.

The political challenges the Union has faced in tackling the crisis have also highlighted the extent to which the European dimension of certain issues has been insufficiently internalised in the national public spheres. This insufficient Europeanisation of national politics has affected both national debates on EU issues and decision-making processes at the EU level. In the long run, it risks undermining both national democracy and European democracy as a whole.

The very idea of promoting a European public sphere, the possible emergence of European media, increased European awareness within the national public spheres, or increased national coverage of European affairs, is still controversial in many quarters. More importantly, there is a fear that policies to increase European coverage by the media would be guided by some particular conception of the value of European integration, rather than just encouraging broader discussions. This does not mean, however, that the Union and its Member States should abstain from any policy or action aimed at promoting increased media coverage of EU affairs. On the contrary, in the same way that EU and State actions (including funding) may be necessary to promote pluralism at the State level, it is equally appropriate for the Union and its Member States to undertake actions to promote pluralism in the form of increased coverage of EU affairs.

European coverage means more than just the coverage of European Council meetings or Commission activities. It requires a deeper understanding by media of the European dimension of multiple national policies, even when these are being covered at a national level. It also requires for genuinely European politics to be more closely followed and reported on, but this requires both human and infrastructure resources, including high-quality investigative journalism. In the case of small countries, or those particularly hard-hit by the prevailing financial and economic crisis, such resources may simply not be available.

Among possible concrete measures that might offer a partial remedy to this situation, the European Commission could explicitly and emphatically include journalism in the existing Jean Monnet Programme.[25] Higher Journalism Schools, Universities with Journalism programmes and their Professors could then respond to the calls for proposals published every year by the Commission. This would be valuable in increasing their opportunities to address cross-border issues and broaden the pool of those with special competencies in EU affairs.

Recommendation 28: The provision of funding for cross-border European media networks (including such items as translation costs, travel and coordination costs) should be an essential component of European media policy. Support for journalists specialised in cross-border topics should be included in such funding.

Recommendation 29: Attention is called to national journalism schools and university professors for the possibility of applying to the Jean Monnet programme to support curricula and teaching on coverage of European issues. The Commission should be especially pro-active in informing journalism schools of this possibility and consider this area one of the priorities in the selection procedure under such a programme.

Recommendation 30: EU political actors have a special responsibility and capacity in triggering European news coverage. The Presidents of the EU institutions should regularly organise interviews with a panel composed of national media from across the EU. This format would have the advantage of not only increasing national coverage of EU affairs but also making that coverage more pluralist, since the interviews to be broadcast or printed in the different Member States would include questions from journalists from other Member States.

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[25] More information on the Jean Monnet Programme:
http://ec.europa.eu/education/lifelong-learning-programme/doc88_en.htm

Annex A - What we are building on

Hearings

On the importance of journalism, and journalists, the HLG met Mr. Aidan White, former General Secretary of the International Federation of Journalists, and now Director of the Ethical Journalism Network, to discuss rethinking of what journalism should be in a converging environment. The emphasis was put on ethics and values of journalism and the importance of trust in media.

To liaise with the European Parliament, the HLG met with Members of the EP preparing or following the report on "EU Charter: standard settings for media freedom across the EU". The Parliamentarians (Ms. Renate Weber, Ms. Kinga Göncz, Mr. Rui Tavares, Mr. Cornelis de Jong and Mr. Marek Migalski) exposed their views on various issues that should be at the heart of their report: notably the necessity of monitoring media freedom and pluralism, the importance of independent Public Service Broadcasters, media concentration, self-censorship, the implementation of the European Charter of Human Rights, and quality media.

To link with the fundamental work of the Council of Europe in respect of fundamental rights and media freedom, the HLG had an exchange of views with Mr. Andris Mellakauls, Chair of the CoE Steering Committee on Media and Information Society (CDMSI). The HLG was informed of the numerous Recommendations on Media Affairs issued by the CoE, amongst which the recent ones on a new notion of media (2011) and on public service media governance (2012).

To learn more about how the EU deals with media freedom in candidate and potential candidate countries, the Members had a meeting with Mr. Andris Kesteris principal adviser on civil society and media affairs at the European Commission.

The HLG Members met representatives of various media associations: they held a meeting with the participants of the European Newspapers Association (ENPA) general assembly who informed them of their main activities and current concerns, notably in respect of the role of publishers and their editorial responsibility, media concentration and pluralism, as well as on some national specific issues. Similarly, the Members heard representatives of the main broadcasting associations. They spoke with members of the Association of European Public Broadcasters (EBU) on the role and importance of Public Service Media for society, quality journalism, independence of the governance and funding issues. Conversations with representatives of the Association of Commercial Televisions (ACT) related to regulatory issues and independence of the media, as well as to their relationships with internet players and the importance of commercial TVs in funding content. Representatives of the Association of European Radios (AER) raised issues related to access to frequencies, advertising revenues and access to content.

While in Riga, the HLG had the opportunity to meet media practitioners active in a small market: Mr. Dimants (Chair) and Ms. Dulevska (Vice-Chair) of the National Electronic Media Council (NEPLP) emphasised the challenges of a small country on the outer border of the European Union, notably in respect of cultural diversity, regulation and education. Mr. Dzintris Kolāts, Director of

the News service of the Latvian Public Television (LTV) spoke about the responsibilities, challenges and financing mechanisms for Public Service Broadcasters, describing a very difficult situation linked to insufficient funding, which makes it hard to fund original content. Mr. Jānis Siksnis, representative of the Latvian Public Radio described what he called a "special niche in the national information space", describing challenges linked to new platforms, media fragmentation, national dialogue and cultural heritage; he also described a situation where lack of funding makes journalists leaving their job and hampers the development of new digital platforms. Still in Riga, the Members of the HLG had the opportunity to hear Ms. Una Klapkalne, Executive director of the National News Agency LETA and Ms. Aija Brasliņa, Editor in chief of the Baltic News Service (BNS Latvia). They explained the difficult situation of news agencies in small markets characterised by a very limited profitability, mainly due to the small size of the market, highlighting a lack of well-trained journalists to work in agencies and the very limited copyright on news agency material. The representative of BNS, a news service present in three countries however sees foreign ownership as facilitating independence.

To build their expertise on media studies, the Members of the HLG invited several academics to present the results of their studies. The "European Media Policies Revisited: Valuing & Reclaiming Free and Independent Media in Contemporary Democratic System" research project (MEDIADEM) was presented by its coordinator, Dr Evangelia Psychogiopoulou. The aim of this European research project is to examine the factors that promote or hinder policy development for media freedom and independence. Professor Susanne Fengler gave a presentation on the project "Media Accountability and Transparency in Europe" (MediaAct) which involved key results from a comparative study on Media Self-Regulation in 14 countries. Ms. Amy Brouillette, lead researcher and editor of the study 'Hungarian Media Laws in Europe', published by the Centre for Media & Communication Studies (CMCS) of the Central European University answered the questions of the Group Members on the comparison between various situations in the EU. While in Florence, the Members also met Prof. Parcu, director of the Centre for Media Freedom and Pluralism in the EUI, and his team, who presented the work undertaken by the CMPF in relation to EU competencies in the field of media. They also had the opportunity to meet and discuss with Prof. Lawrence Lessig, specialist of copyright law and internet governance who gave a presentation on the importance of independence to resist corruption, as well as Prof. Matthew Hindman, specialised in political communication and (especially) online politics.

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