

MSI-MED

***Committee of experts on Media Pluralism and
Transparency of Media Ownership***

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Recommendation on media pluralism and transparency of media ownership

Second revised draft as of 8 June 2017

Preamble

1. Media freedom and pluralism are crucial components of the right to freedom of expression, as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, hereinafter "the Convention"). They are central to the functioning of a democratic society as they help to ensure the availability and accessibility of diverse information and views, on the basis of which individuals can form and express their opinions and exchange information and ideas.
2. The media play essential roles in democratic society, by widely disseminating information, ideas, analysis and opinions; acting as public watchdogs, and providing forums for public debate. In the present multi-media ecosystem, these roles continue to be fulfilled by traditional media, but are also increasingly performed by other media and non-media actors, from multinational corporations to non-governmental organisations and individuals.
3. Pluralist democratic societies are made up of a wide range of identities, ideas and interests. It is imperative that this diversity can be communicated through a range of independent and autonomous channels and outlets, thus creating an informed society, contributing to mutual understanding and fostering social cohesion.
4. Different types of media, along with different genres or forms of editorial content or programming contribute to diversity of content. Although content focusing on news and current affairs is of most direct relevance for fostering an informed society, other genres are also very important. Examples include cultural and educational content and entertainment, as well as content aimed at specific sections of society, such as local content.

5. In the present multi-media environment, online media and other internet platforms enable access to a growing range of information from diverse sources. This transformation in how media content is made available and used creates new opportunities for more and more people to interact and communicate with each other and to participate in public debate.

6. This technological evolution also raises concerns for media pluralism. While variety in media sources and types can be instrumental in enhancing diversity of media content and exposure to such diversity, it does not of itself guarantee it. Individuals still have to select what media to use and what content to watch, listen to or read among vast quantities of diverse content distributed across various media. This may result in them selecting or being exposed to information confirming their existing views and opinions, which can, in turn, generate fragmentation and result in a polarised society. While limited news resources and self-imposed restrictions on the choice of content are not new phenomena, the media and internet intermediaries may amplify their inherent risks, through their ability to control the flow, availability, findability and accessibility of information and other content online. This is particularly troubling if the individual users are not aware of these processes or do not understand them.

7. As new actors enter the evolving online market, the ensuing competitive pressures and a shift in advertising revenues towards the internet have contributed to an increase in media consolidation and convergence. Single or a few media owners or groups acquire positions of considerable power where they can separately or jointly set the agenda of public debate and significantly influence or shape public opinion, reproducing the same content across all platforms on which they are present. Convergence trends also lead to cost-cutting, job losses in journalism and media sectors, and the risk of financial dependencies for journalists and the media. These developments may cause a reduction in diversity of news and content generally and ultimately impoverish public debate.

8. Fresh appraisals of existing approaches to media pluralism are called for in order to address the challenges for pluralism resulting from how users and businesses have adapted their behaviour to technological developments. New policy responses and strategic solutions are needed to sustain independent, quality journalism and diverse content across all media types and formats.

9. There is a need for an enhanced role for independent public service media to counteract on-going processes of concentration and convergence in the media. By virtue of their remit, public service media are particularly suited to address the informational needs and interests of all sections of society, as is true of community media in respect of their constituent users. It is of utmost importance for public service media to have within their mandates the responsibility to foster political pluralism and awareness of diverse opinions, notably by providing different groups in society – including cultural, linguistic, ethnic, religious or other minorities – with an opportunity to receive and impart information, to express themselves and to exchange ideas.

10. In light of the increased range of media and content, it is very important for individuals to possess the cognitive, technical and social skills and capacities that enable them to critically analyse media content, and to understand the ethical implications of media and technology. Media literacy contributes to media pluralism and diversity by empowering individuals to effectively access, evaluate and create diverse types of content; by reducing the digital divide; facilitating informed decision-making, especially

in respect of political and public affairs and commercial content, and by enabling the identification and countering of false or misleading information and harmful and illegal online content.

11. The adoption and effective implementation of media-ownership regulation plays an important role in respect of media pluralism. Such regulation should ensure transparency in media ownership; it should address issues such as cross-media ownership, direct and indirect media ownership and effective control and influence over the media. It should also ensure that there is effective and manifest separation between the exercise of political authority or influence and control of the media or decision making as regards media content.

12. Transparency of media ownership, organisation and financing help to increase media accountability. Transparency and media literacy are therefore indispensable tools for individuals to make informed decisions about which media they use and how they use them, to search for, access and impart information and ideas of all kinds. This makes them practical instruments of effective pluralism.

13. Against this background, the present Recommendation reaffirms the importance of existing Council of Europe standards dealing with different aspects of media pluralism and transparency of media ownership and the need to fully implement them in democratic societies. The Recommendation builds further on those standards, adjusting, supplementing and reinforcing them, as necessary, to ensure their continued relevance in the current multi-media ecosystem.

Under the terms of Article 15.b of the Statute of the Council of Europe (ETS No. 1), the Committee of Ministers recommends that governments of member States:

i. fully implement the guidelines set out in the appendix to this recommendation;

ii. remain vigilant to, and address, threats to media pluralism and transparency of media ownership by regularly monitoring the state of media pluralism in their national media markets, assessing risks to media freedom and pluralism and adopting appropriate regulatory responses, including by paying systematic attention to such focuses in the on-going reviews of their national laws and practices;

iii. fully implement, if they have not already done so, previous Committee of Ministers' Recommendations and Declarations dealing with different aspects of media pluralism and transparency of media ownership, in particular those specified in the guidelines appended to the present Recommendation;

iv. promote the goals of this recommendation at the national and international levels and engage and co-operate with all interested parties to achieve those goals.

Appendix to Recommendation

Guidelines

In the context of this Recommendation, unless otherwise specified, the media are generally understood as including print, broadcast and online media.

I. A favourable environment for freedom of expression and media freedom

1. The principles of freedom of expression and media freedom, as grounded in the Convention, must continue to be developed in a way that takes full account of the features of the present multi-media ecosystem, in which a range of new media actors have come to the fore.
2. States have a positive obligation to foster a favourable environment for freedom of expression, in which everyone can exercise their right to freedom of expression and participate in public debate effectively, irrespective of whether or not their views are received favourably by the State or others. States should guarantee free and pluralistic media for their valuable contribution to robust public debate in which societal diversity can be articulated and explored.
3. National legislative and policy frameworks should safeguard the editorial independence and operational autonomy of all media so that they can carry out their key tasks in democratic society. The frameworks should be designed and implemented in such ways as to prevent the State, or any powerful political, economic, religious or other groups from acquiring dominance and exerting pressure on the media.
4. Relevant legislation should ensure that the media have the freedom at all times to provide accurate and reliable reporting on matters of public interest, in particular concerning vital democratic processes and activities, such as elections, referenda and public consultations on matters of general interest. Adequate safeguards should also be put in place to prevent interference with editorial independence of the media in relation to coverage of conflicts, crises and other sensitive situations where quality journalism and reporting are key tools in countering propaganda and disinformation.
5. In a favourable environment for freedom of expression, media regulatory authorities and other authorities or entities entrusted with responsibility for regulating or monitoring other (media) service providers or media pluralism must be able to carry out their remit in an effective, transparent and accountable manner. A prerequisite for them to be able to do so is that they themselves enjoy independence that is guaranteed in law and borne out in practice.
6. The independence of the authorities and entities referred to in the previous paragraph should be guaranteed by ensuring that they: have open and transparent appointment and dismissal procedures; have adequate human and financial resources and autonomous budget allocation; work to transparent procedures and decision-making; have the power to take autonomous decisions and enforce them, and that their decisions are subject to appeal.

7. States should ensure transparency of media ownership, organisation and financing, as well as promote media literacy, in order to provide individuals with the information and critical awareness that they need in order to access diverse information and participate fully in the present multi-media ecosystem.

II. Media pluralism and diversity of media content

General requirements of pluralism

1. As ultimate guarantors of pluralism, States have a positive obligation to put in place an appropriate legislative and policy framework to that end. This implies adopting appropriate measures to ensure sufficient variety in the overall range of media types, bearing in mind differences in terms of their purposes, functions and geographical reach. The complementary nature of different media types strengthens external pluralism and can contribute to creating and maintaining diversity of media content.

2. States are called upon to ensure that there is periodic independent monitoring and evaluation of the state of media pluralism in their jurisdictions based on a set of objective and transparent criteria for identifying risks to the variety in ownership of media sources and outlets, the diversity of media types, the diversity of viewpoints represented by political, ideological, cultural and social groups, and the diversity of interests and viewpoints relevant to local and regional communities. States are further urged to develop and enforce appropriate regulatory and policy responses effectively addressing any risks found.

Specific requirements of pluralism

Diversity of content

3. States should adopt regulatory and policy measures to promote the availability and accessibility of the broadest possible diversity of media content as well as the representation of the whole diversity of society in the media, including by supporting initiatives by media to those ends.

States should encourage the development of open, independent, transparent and participatory initiatives by social media, media stakeholders, civil society and academia, that seek to improve effective exposure of users to the broadest possible diversity of media content online.

Wherever the visibility, findability and accessibility of media content online is influenced by automated processes, whether they are purely automated processes or used in combination with human decisions, States should encourage social media, media stakeholders, civil society and academia to engage in open, independent, transparent and participatory initiatives that:

- increase the transparency of the processes of online distribution of media content, including automated processes;
- assess the impact of such processes on users' effective exposure to a broad diversity of media content, and

- seek to improve these distribution processes in order to improve users' exposure to the broadest possible diversity of media content.

4. States should make particular efforts, taking advantage of technological developments, to ensure that the broadest possible diversity of media content, including in different languages, is accessible to all groups in society, particularly those which may have specific needs or face disadvantage or obstacles when accessing media content, such as minority groups, children, the elderly and persons with cognitive or physical disabilities.

5. Diversity of media content can only be properly gauged when there are high levels of transparency about editorial and commercial content: media and other actors should adhere to the highest standards of transparency regarding the provenance of their content and always signal clearly when content is provided by political sources or involves advertising or other forms of commercial communications, such as sponsoring and product placement. This also applies to user-generated content and to hybrid forms of content, including branded content, native advertising and advertorials and infotainment.

Institutional arrangement of media pluralism

6. States should recognise the crucial role of public service media in fostering public debate, political pluralism and awareness of diverse opinions. States should accordingly guarantee adequate conditions for public service media to continue to play this role in the multi-media landscape, including by providing them with appropriate support for innovation and the development of digital strategies and new services.

7. States should adopt appropriate specific measures to protect the editorial independence and operational autonomy of public service media by keeping the influence of the State at arm's length. The supervisory and management boards of public service media must be able to operate in a fully independent manner and the rules governing their composition and appointment procedures must contain adequate checks and balances to ensure that independence.

8. States should also ensure stable, sustainable, transparent and adequate funding for public service media in order to guarantee their independence from governmental, political and commercial pressures and enable them to provide a broad range of pluralistic information and diverse content. This can also help to counterbalance any risks caused by a situation of media concentration.

9. States should encourage and support the establishment and functioning of community, minority, regional and local media, including by providing financial mechanisms to foster their development. Such independent media give a voice to communities and individuals on topics relevant to their needs and interests, and are thus instrumental in creating public exposure for issues that may not be represented in the mainstream media and in facilitating inclusive and participatory processes of dialogue within and across communities and at regional and local levels.

10. States should facilitate access to cross-border media, which serve communities outside the country where they are established, supplement national media and can help certain groups in society, including immigrants, refugees and diaspora communities, to maintain ties with their countries of origin, native cultures and languages.

Support measures for the media and media pluralism

11. For the purpose of enhancing media pluralism, States should develop strategies and mechanisms to support professional news media and quality journalism, including news production capable of addressing diverse needs and interests of groups that may not be sufficiently represented in the media. They should explore a wide range of measures, including various forms of non-financial and financial support such as advertising and subsidies, which would be available to different media types and platforms, including those of online media. States are also encouraged to support projects relating to journalism education, media research and innovative approaches to strengthen media pluralism and freedom of expression.

12. Support measures should have clearly defined purposes; be based on pre-determined clear, precise, equitable, objective and transparent criteria, and be implemented in full respect of the editorial and operational autonomy of the media. Such measures could include positive measures to enhance the quantity and quality of media coverage of issues that are of interest and relevance to groups which are underrepresented in the media.

13. Support measures should be administered in a non-discriminatory and transparent manner by a body enjoying functional and operational autonomy such as an independent media regulatory authority. An effective monitoring system should also be introduced to supervise such measures, to ensure that they serve the purpose for which they are intended.

III. Regulation of media ownership: ownership, control and concentration

1. In order to guarantee effective pluralism in their jurisdictions, States should adopt and implement a comprehensive regulatory framework for media ownership and control that is adapted to the current state of the media industry. Such a framework should take full account of media convergence and the impact of online media.

Ownership and control

2. Regulation of competition in the media market including merger control should prevent individual actors from acquiring significant market power in the overall national media sector or in a specific media market/sector at the national level or sub-national levels, to the extent that such concentration of ownership limits meaningful choice in the available media content.

3. Media ownership regulation should apply to all media and could include restrictions on horizontal, vertical and cross-media ownership, including by determining thresholds of ownership in line with Recommendation CM/Rec 2007(2) of the Committee of Ministers to member states on media pluralism and diversity of media content. Those thresholds may be based on a number of criteria such as capital shares, voting rights, circulation, revenues, audience share or audience reach.

4. States should set criteria for determining ownership and control of media companies by explicitly addressing direct and beneficial ownership and control. Relevant criteria can include proprietary, financial or voting strength within a media company or companies

and the determination of the different levels of strength that lead to exercising control or direct or indirect influence over the strategic decision-making of the company or companies including their editorial policy.

5. As the key democratic tasks of the media include holding authorities to account, legislation should stipulate that the exercise of political authority or influence is incompatible with involvement in the ownership, management or editorial decision-making of the media. The incompatibility of these functions should be recognised as a matter of principle and should not be made conditional on the existence of particular conditions. The criteria of incompatibility and a range of appropriate measures for addressing conflicts of interest should be set out clearly in law.

6. Any restrictions on the extent of foreign ownership of media should apply in a non-discriminatory manner to all such companies and should take full account of the States' positive obligation to guarantee pluralism and of the relevant guidelines set out in this Recommendation.

Concentration

7. States are also encouraged to develop and apply suitable methodologies for the assessment of media concentration. In addition to measuring the availability of media sources, this assessment should reflect the real influence of individual media by adopting an audience-based approach and using appropriate sets of criteria to measure the use and impact of individual media on opinion-forming.

8. Media ownership regulation should include procedures to prevent media mergers or acquisitions that could adversely affect pluralism of media ownership or diversity of media content. Such procedures could involve a requirement for media owners to notify the relevant independent regulatory authority of any proposed media merger or acquisition whenever the ownership and control thresholds, as set out in legislation, are met.

9. The relevant independent regulatory authority should be vested with powers to assess the expected impact of any proposed concentration on media pluralism and to make recommendations or decisions, as appropriate, about whether the proposed merger or acquisition should be cleared, subject or not to any restrictions or conditions, including divestiture. Decisions of the independent authority should be subject to judicial review.

IV. Transparency of media ownership, organisation and financing

1. States should guarantee a regime of transparency regarding media ownership that ensures the availability of the data necessary for informed regulation and decision-making and enables the public to access those data in order to help them to analyse and evaluate the information, ideas and opinions disseminated by the media.

2. To this end, States should adopt and implement legislation that sets out enforceable disclosure/transparency obligations for media in a clear and precise way. Such obligations should, as a minimum, include the following information:

- Legal name and contact details of a media outlet;

- Name(s) and contact details of the direct owner(s) with shareholdings enabling them to exercise influence on the operation and strategic decision-making of the media outlet. States are recommended to apply a threshold of 5% shareholding for the purpose of the disclosure obligations.
 - Identity and contact details of natural persons with beneficial shareholdings. Beneficial shareholding applies to natural persons who ultimately own or control shares in a media outlet or on whose behalf those shares are held, enabling them to indirectly exercise control or significant influence on the operation and strategic decision-making of the media outlet.
 - Information on the nature and extent of the share-holdings or voting rights of the above legal and/or natural persons in other media, media-related or advertising companies which could lead to decision-making influence over those companies, or positions held in political parties;
 - Name(s) of the persons with actual editorial responsibility or the actual authors of editorial content;
 - Changes in ownership and control arrangements of a media outlet.
3. The scope of the above minima for disclosure/transparency obligations for the media includes legal and natural persons based in other jurisdictions and their relevant interests in other jurisdictions.
4. High levels of transparency should also be ensured with regard to the sources of financing of media outlets in order to provide a comprehensive picture of the different sources of potential interference with the editorial and operational independence of the media and allow for effective monitoring and controlling of such risks.
5. To this end, States should adopt and implement legislation that sets out enforceable disclosure of the following information:
- Information on the sources of the media outlet's income, including from State and other funding mechanisms and (State) advertising.
 - The existence of structural relationships or contractual cooperation with other media or advertising companies, political parties or the State, including in respect of State advertising;
6. Legislation should set out clear criteria as to which media are subject to these reporting obligations. The obligations may be limited with regard to factors such as the commercial nature of the media outlet, a wide audience reach, exercise of editorial control, frequency and regularity of publication or broadcast, etc., or a combination thereof. Legislation should also determine the timeframe within which reporting obligations must be met.
7. Such legislation should also require the maintenance of a public, online database of media ownership and control arrangements in the State, with disaggregated data about different types of media (markets/sectors) and regional and/or local levels, as relevant. Those databases should be kept up to date on a rolling basis and they should be available to the public free of charge. They should be accessible and searchable; their contents should be made available in open formats and there should not be restrictions on their re-use.

8. Reporting requirements relating to media ownership should include the provision of:

- A description of media ownership and control arrangements for media under its jurisdiction (including media whose services are directed at other countries);
- A description of changes to the media ownership and control arrangements within the State during the reporting period;
- An analysis of the impact of those changes on media pluralism in the State.

9. Legislation should provide for the publication of reports on media ownership to be accompanied by appropriate explanations of the data and the methodologies used to collect and organise them, in order to help members of the public to interpret the data and understand their significance.

10. States should issue clear, up-to-date guidance on the interrelationship and implications of the different regulatory regimes and on how to implement them correctly and coherently. That guidance could take the form of user-friendly guidelines, handbooks, manuals, etc.

11. States should also facilitate inter-agency cooperation, including the relevant exchange of information about media ownership held by media regulatory authorities, competition authorities and company registers. Similarly, the exchange of information and best practices with other national authorities, both within their own jurisdiction and in other jurisdictions, should be facilitated.

V. Media literacy/education

1. States should introduce legislative provisions or strengthen existing ones that promote media literacy with a view to enabling individuals to access, understand, critically analyse, evaluate, use and create content through a range of legacy and digital (including social) media.

2. States should also develop a national media literacy policy and ensure its operationalisation and implementation through (multi-)annual action plans. A key strategy for that purpose could be to support the creation of a national media literacy network comprising a wide range of stakeholders, or the further development of such a network where it already exists.

3. In the multi-media ecosystem, media literacy is essential for people of all ages and all walks of life. Law and/or policy measures promoting media literacy should thus help to develop the teaching of media literacy in school curricula at all levels and as part of lifelong learning cycles, including by providing suitable training and adequate resources for teachers and educational institutions to develop teaching programmes. Any measures adopted should be developed in consultation with teachers and trainers with a view to ensuring a fair and appropriate integration of relevant activities in work-flows. Any measures adopted should not interfere with the academic autonomy of educational institutions in curricular matters.

4. States should encourage all media, without interfering with their editorial independence, to promote media literacy through policies, strategies and activities. They should also promote media literacy through support schemes for media, taking into account the particular roles of public service media and community media.

5. States should ensure that independent national regulatory authorities have the scope and resources to promote media literacy in ways that are relevant to their mandates and encourage them to do so.

6. States are encouraged to include in their national media literacy programmes focuses on media pluralism and transparency of media ownership in order to help citizens to make an informed and critical evaluation of the information and ideas propagated via the media. To this end, States are called upon to include in their strategies for ensuring transparency in the media sector educational content which enables individuals to use information relating to media ownership, organisation and financing, in order to better understand the different influences on the production, collection, curation and dissemination of media content.