

**Committee of experts on Media Pluralism and
Transparency of Media Ownership
(MSI-MED)**



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Recommendation on media pluralism and transparency of media ownership

Revised draft as of 9 March 2017

Preamble

1. Media freedom and pluralism 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 and ideas, acting as public watchdogs and providing forums for public debate. In the present multi-media ecosystem, this role is fulfilled by traditional media and increasingly also by other media and non-media actors, which vary 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 indispensable 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 public, other genres are also very important for society. Examples include cultural, educational, entertainment and commercial content, as well as content targeting specific sections of society.
5. In the new media landscape online media and other internet platforms enable access to more and more information from different sources, thereby transforming the ways in which media content is made available and used by the public. Online platforms have increased individuals' access to diverse content and opportunities for communication and

interaction, which has enabled large numbers of people to participate in the public sphere.

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. Volumes of diverse content distributed across various media render is necessary for the audience to select what media to use and what content to view, hear, or read. This may result in individuals selecting or being exposed to information confirming their existing views and opinions, which can, in turn, generate fragmentation and result in a polarised society. Internet intermediaries may amplify these risks, through their ability to control the flow, availability, findability and accessibility of information and other content online.

7. As new actors enter into emerging online market, the ensuing competitive pressures coupled with a shift in advertising revenues towards the internet and the deregulation of the media ownership rules result in an increasing media consolidation and convergence among various types of media. 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 and job losses among media professionals. These developments may result in reduced diversity of news and ultimately in impoverishment of public debate.

8. The new media environment calls for fresh appraisals of existing approaches to media pluralism and new policy responses to maintain independent journalism and thus secure diversity. Strategic solutions are needed to ensure sustainability and further development of quality journalism across all media types and formats of content.

9. The ongoing processes of concentration and convergence in the media require an enhanced role for independent public service media. By virtue of their remit, these 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 these 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. Increased availability of a wide range of media and content highlights the importance of possessing the cognitive, technical and social skills and capacities to critically analyse media content, and of understanding 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, harmful and illegal online content.

11. The adoption and effective implementation of media-ownership regulation also 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, 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, as well as media literacy, are 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 as a matter of urgency 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 pluralism and freedom and adopting appropriate regulatory responses, including by systematically including such focuses in the ongoing 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 European Convention for the Protection of Human Rights and Fundamental Freedoms, 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. As ultimate guarantors of pluralism, States have a positive obligation to put in place an appropriate legislative and policy framework to guarantee effective pluralism, so that all actors can exercise their right to freedom of expression and participate in public debate effectively through all media, irrespective of whether or not their views are received favourably by the State or others.
3. Such frameworks should apply to all media and should safeguard their independence and prevent the State, or any powerful political, economic, religious or other groups, from acquiring dominance and exerting pressure on broadcasters, thereby interfering with their editorial freedom and undermining the role of freedom of expression in democratic society.
4. While all media must enjoy independence, 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, executive and editorial 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.
5. Relevant legislation should include provisions to safeguard the editorial independence of media when they contribute to public debate on vital democratic processes and activities, such as elections, referenda and public consultations on matters of general interest.
6. Adequate safeguards should also be put in place to prevent interference in editorial decisions with regard to media coverage of conflicts and crises, when propaganda and strategic communication often trump truth and factual reporting.
7. Media regulatory authorities and authorities 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.

II. Media pluralism and diversity of media content

1. States should adopt regulatory and policy measures ensuring 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 should take measures to ensure the availability and accessibility of diverse media content, including by requiring media and online platforms to promote the visibility and findability of such content.
3. States should make particular efforts to ensure that a diverse supply of media content is accessible to all groups in society, particularly those which – for whatever reason – may face disadvantage or obstacles when accessing media content, i.e., members of (linguistic) minority groups, children, the elderly, persons with cognitive or physical disabilities, etc.
4. 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 partisan political sources or involves advertising or other forms of commercial communications, such as sponsoring and product placement. This also applies to hybrid forms of content, including sponsored content, advertising and entertainment information.
5. States should recognise the crucial role of public service media in fostering public debate, political pluralism and awareness of diverse opinions. Public service media should accordingly be guaranteed adequate conditions to assume such a role in the new media environment and be provided with appropriate support for the development of digital strategies. States should seek to strengthen the status of public service media as an independent alternative to the commercial production and dissemination of content through online platforms.
6. States should ensure stable, sustainable, transparent and adequate funding for public service media in order to guarantee their independence from governmental, political and commercial pressures and to counterbalance any risks caused by a situation of strong media concentration.
7. 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 providing public visibility for issues that may not be represented in the mainstream media and in facilitating inclusive and participatory processes of dialogue within communities and at regional and local levels.
8. States should facilitate access to transnational media, which serve communities outside the country where they are established, supplement national media and can help certain groups in society, including (diaspora) minorities, immigrants and refugees, to maintain ties with their countries of origin, native cultures and languages.

9. States are called upon to periodically monitor and evaluate the state of media pluralism in their respective states based on a set of criteria for identifying risks which may limit the variety of media sources and outlets owned by different actors, 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 invited to identify and enforce appropriate regulatory and policy responses effectively addressing any risks found.

10. States should conceive, for the purpose of endorsing media pluralism, development strategies aimed at supporting 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. Measures of support adopted to this end should be interpreted broadly and can include various forms of non-financial and financial support including advertising and subsidies. States are also encouraged to endorse projects relating to journalism education, media research and innovative approaches to strengthen media pluralism and freedom of expression.

11. States have a wide discretion in the choice of support measures, which must be adapted to the realities of their specific media environment. However, any support schemes should be inclusive of a variety of needs exhibited by different media types and platforms, including those of online media, and should operate in full respect of the editorial and operational autonomy of the media.

12. Support measures should have clearly defined purposes. They should be based on predetermined clear, precise, equitable, objective and transparent criteria. This principle does not exclude positive measures ensuring adequate quantity and quality of media coverage of issues relating and relevant to groups which are underrepresented in the media. 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.

13. An effective monitoring system should be introduced to supervise that the support measures serve the purpose for which they are intended, and in particular to prevent further media consolidation and to maintain competition and pluralism in the face of technological and economic changes in media markets.

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

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

2. Regulation of competition in the media market including mergers and acquisitions should prevent particular actors from achieving a level of dominance in the overall national media sector or in a specific media market/sector at the national level or at different geographical levels, to the extent where such consolidation of ownership adversely affects meaningful choice in the available media content.

3. Media ownership regulation should apply to all media platforms and could include restrictions on horizontal, vertical and cross-media ownership, including by determining threshold levels 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, number of licences, audience share or audience reach.
4. States should set clear criteria for determining ownership and control of media undertakings by explicitly addressing in appropriate ways direct and beneficial ownership and control of the media. Relevant ownership criteria can include proprietary, financial or voting strength within a media undertaking or undertakings and the determination of the different levels of strength that lead to exercising control or significant direct or indirect influence over the strategic decision-making of the undertaking or undertakings including their editorial policy.
5. As the key democratic tasks of the media include holding authorities to account, legislation should stipulate that it is incompatible for any individual to hold public office and be involved 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 criteria, such as having specific or detrimental effects. The criteria of incompatibility and a range of appropriate measures for addressing and resolving conflicts of interest should be set out clearly in law.
6. States are encouraged to develop and apply suitable methodologies for the assessment of media concentration which, in addition to measuring the availability of media sources, 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.
7. Monitoring and decision-making activities in this area should be conducted by an independent national regulatory authority that is provided with adequate staff and financial resources to be able to carry out these tasks.
8. The independent regulatory authority should be vested with powers to assess the expected impact of the proposed merger or acquisition from the perspective of media pluralism and diversity and to make appropriate recommendations or decisions, as appropriate, about whether the proposed merger or acquisition should be allowed to go ahead, subject or not to any restrictions or divestiture commitments. Decisions of the independent authority should be subject to judicial review.
9. Media ownership regulation should include clear procedures to pre-empt media mergers or acquisitions that could adversely affect pluralism of media ownership or diversity of media content. Such procedures should involve a requirement for media owners to pro-actively notify the relevant independent regulatory authority of any proposed media merger or acquisition whenever certain criteria or ownership and control thresholds, as clearly set out in legislation, are met.
10. Owners of licensed broadcast media should also be required by law to notify the relevant independent regulatory authority immediately of any changes to the ownership or control of their media undertaking as set out in the licensing agreement.

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

IV. Transparency of media ownership, organisation and financing

1. States should ensure a regime of transparency regarding media ownership that provides independent regulatory authorities with relevant, detailed data necessary for informed regulation, decision- and policy-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 significant 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 enabling them to indirectly exercise control or significant influence on the operation and strategic decision-making of the media outlet. Beneficial shareholding applies to natural persons who ultimately own or control shares in a media outlet or on whose behalf those shares are held.
- 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 undertakings which could lead to decision-making influence over those undertakings, 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 income generated by State and other funding measures and (State) advertising.

- The existence of structural relationships or contractual cooperation with other media or advertising companies 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 commercial nature of the media outlet, a wide audience reach, exercise of editorial content, frequency and regularity of publication or emission, 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 relevant regulatory authority to maintain 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. States should also put in place legislation setting out ongoing monitoring and periodic reporting requirements that independent regulatory authorities may have towards the public and/or relevant public bodies responsible for setting policies relating to media ownership. They should also ensure that the regulatory authorities are given adequate funding to carry out those tasks. The reporting requirements 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 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. 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.
4. 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.
5. 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 enabling 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.