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Strasbourg, AGORA Building (Room G5)

Draft recommendation on
media pluralism and transparency of media ownership

Preamble

1. The right to freedom of expression, as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), comprises freedom to hold opinions and to receive and impart information and ideas of all kinds without interference by public authority and regardless of frontiers.
2. Media freedom and pluralism and diversity of media content are corollaries of the right to freedom of expression and they are essential for the functioning of a democratic society as they help to ensure the availability and accessibility of information and ideas from diverse sources, on the basis of which individuals can form their own opinions.
3. States have a positive obligation to create a favourable environment in which everyone can participate in public debate and express their opinions and ideas without fear.
4. States also have a positive obligation to guarantee pluralism, especially in the audiovisual media sector, due to the wide dissemination and impact of audiovisual programmes. This entails ensuring that a diversity of voices, including critical ones, can be heard. This is, however, not limited to the audiovisual sector, as other media and information sources can also have immediate and powerful effects.
5. The media, in particular public service media and community media, can make a crucial contribution to fostering public debate, 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.
6. Ongoing technological developments have transformed the traditional media environment, as described *inter alia* in CM/Rec (2011)7 on a new notion of media, leading to new notions of media and new understandings of the evolving media ecosystem. Advances in information and communication technologies have made it

easier for an increasing range of actors to participate in public debate, thereby playing a role similar or equivalent to that traditionally played by the institutionalised media and professional journalists.

7. In the evolving media ecosystem, new intermediaries have emerged, especially online, and through their ability to control or influence the flow, availability, findability and accessibility of information, ideas and other content online, they have acquired important gate-keeping functions and powers. The presence and impact of such intermediaries alongside traditional media point up the need for fresh appraisals of existing approaches to media pluralism. The recalibration and reinvigoration of existing Council of Europe standards in this area, in accordance with the Guidelines set out in the appendix to the present Recommendation, aim to provide member States with inspiration and guidance for developing new, or adapting existing national policies and methodologies.

8. Independent media regulatory authorities can play an important role in upholding media freedom and pluralism and as such, states should safeguard their independence.

9. There must be sufficient independent and autonomous channels and online services and sources capable of presenting a plurality of ideas and opinions to the public, in order to ensure the existence of adequate space for public debate on matters of general interest. By virtue of their remit, public service media are particularly suited to accommodating and catering to the informational needs and interests of all sections of society, as is true of community media in respect of their constituent users.

10. Adequately equipped and financed public service media, in particular public service broadcasting, enjoying genuine editorial independence and institutional and operational autonomy, can contribute to counterbalancing the risk of misuse of the power of the media, in particular, in a situation of strong media concentration.

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 and prevent concentration of 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. Media concentration can place a single or a few media owners or groups in a position of considerable power to separately or jointly set the agenda of public debate and significantly influence or shape public opinion, and thus also exert influence on the government and other state bodies and agencies.

13. Transparency of media ownership, organization 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.

14. 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 and systematically include such focuses in the ongoing reviews of their national laws and practices as envisaged by CM/Rec(2016)4 on the protection of journalism and the safety of journalists and other media actors;
- 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

The present Guidelines re-affirm 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 Guidelines also build on those standards, adjusting, supplementing and reinforcing them, as necessary, to ensure their continued relevance in the current multi-media ecosystem.

It is important to place the Recommendation's main focuses – media pluralism and transparency of media ownership – in a broader context. The Guidelines are therefore structured in a way that emphasizes a number of key related themes: a favourable environment for freedom of expression and media freedom; a culture of independence; diversity of media content; structural pluralism; concentration of media ownership and control of modalities of access to content; transparency of media ownership, organization and financing; media literacy/education.

[Editorial note: Concrete recommendations to be boxed to enhance visual impact. Each set of recommendations (per theme) should recall, as relevant, specific Council of Europe standards that are centrally important for that theme: these references are strategic and will allow us to avoid repeating the content of the most relevant standards unnecessarily.]

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

1. The European Convention is a living instrument and the right to freedom of expression – like all other rights safeguarded by the Convention – must be interpreted in light of present-day conditions. This right is not merely theoretical or illusory: its exercise must be practical and effective.

2. This means that the free speech principles developed by the European Court of Human Rights in respect of traditional (mass) media must be viewed in the light of contemporary technological realities where a range of different online intermediaries supplement traditional institutionalized media.

3. The media continue to play essential roles in democratic society, by widely disseminating of information and ideas, acting as public watchdogs and providing forums for public debate. In the new media ecosystem, those roles are increasingly also being fulfilled in different ways by other media and non-media actors, which vary from multinational corporations to non-governmental organisations and individuals.

4. States have a positive obligation to foster a favourable environment for freedom of expression in which all actors can exercise their right to freedom of expression and participate in democratic society effectively across all platforms and without fear, irrespective of whether or not their views offend the State or others. Pluralistic media can therefore enhance robust, pluralistic public debate in which societal diversity can be articulated and explored. States must therefore safeguard the independence of the media, especially public service media, so that they can continue to offer inclusive forums for public debate.

5. The European Court of Human Rights has affirmed that States are the ultimate guarantors of pluralism in the audiovisual sector and that they accordingly have a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism. The underlying concern is to avoid situations whereby a powerful economic or political group could acquire dominance and exert pressure on broadcasters and thereby interfere with their editorial freedom and undermine the role of freedom of expression in democratic society. The same concern exists when such situations arise in respect of online actors.

6. Media-related pluralism entails a number of inter-related components such as: content (output), source (ownership) and type (outlet). Diversity of media content concerns variety in political and cultural media output, both in terms of ideas and information. It is influenced by the extent to which the media are owned or controlled by a range of different parties and the extent to which the media themselves are diverse in their nature. Strong pluralism in media sources and types can be instrumental in enhancing diversity of media content, but they do not of themselves guarantee it.

RECOMMENDATIONS

II. A culture of independence

1. In a favourable environment for freedom of expression, a culture of independence must prevail for all relevant actors. Individuals must be able to participate in public debate freely and without fear. Media, media service providers and all other actors must be assured the necessary independence to enable them to contribute to public debate. Such independence precludes interference from, or influence by, governmental, political, religious, commercial and other partisan influences. It also precludes, *a fortiori*, interference of any kind from intolerant, racist, terrorist, extremist, criminal and other illegal factions.

2. In order to uphold a general culture of independence, specific requirements may arise in different contexts and in respect of different media and other actors.

3. A culture of independence is, for instance, of particular importance in the context of public debate concerning democratic decision-making and other processes, such as elections, referenda and public consultations. Such activities and processes are at the heart of democratic society and pluralistic debate provides an important safeguard for their integrity.

4. It is also of particular importance in the context of conflicts and crises, when propaganda and strategic communication often trump truth and factual reporting.

5. A prerequisite for media regulatory authorities and authorities entrusted with responsibility for regulating or monitoring other (media) service providers to be able to carry out their remit in an effective, transparent and accountable manner is that they themselves enjoy a culture of independence that is guaranteed in law and borne out in practice.

6. While all media must enjoy independence, various specific measures may be required 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.

7. Laws and policies designed to ensure a culture of independence should be cognizant of the range of indirect financial threats and pressures that can interfere with the editorial and operational autonomy of the media, especially in respect of public service media and community media. Such threats and pressures can be used to exploit financial and funding dependencies, which are exacerbated in times of financial crisis and austerity. Funding and financing schemes and policies of States and independent public bodies, for instance involving the allocation of subsidies, state aid and state advertising, should be designed around equitable, objective and transparent criteria and administered in a non-discriminatory and transparent manner. State schemes and policies making financial provision for media should also include, as appropriate, attention for online media actors, for instance insofar as they contribute to the promotion of the public service value of the Internet.

RECOMMENDATIONS

III. Diversity of media content

1. The diversity of media content should be reflective of the actual diversity of identities, ideas and interests in society. True diversity necessarily includes not only ideas and information that are favourably received, but also ideas and information that offend, shock or disturb the State or any section of the population. The central democratic values of pluralism, tolerance and broadmindedness demand no less.

2. Structural (or external) pluralism, which implies the co-existence of a variety of different types of media, can contribute to creating and maintaining diversity of content. Public service media can play a distinct role in terms of structural pluralism by providing not only a range of content corresponding to the diverse identities, ideas and interests in society, but also a shared, dialogical forum in which such heterogeneous and sometimes frictional content can be exchanged. This, in turn, can help to advance pluralism, tolerance and broadmindedness, as well as social cohesion. Community media can also make a distinct contribution to overall diversity of media content in society by enabling the production and dissemination of content specifically for different communities.

3. Besides different types of media, different types, genres or formats of editorial content or programming can contribute to diversity of content. Although content focusing on news and current affairs is of most direct relevance for fostering an informed public and facilitating participation in public debate, 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.

4. In the spirit of an effective right to freedom of expression and effective pluralism, laws, policies and practices designed to ensure the availability of diverse media content are not enough. In light of the fundamental importance of diverse media content for democratic society, the necessary efforts should be made to promote the visibility and findability of diverse media content in order to ensure its accessibility. Those efforts should 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.

5. In respect of digital and online media and other types of content, online intermediaries have the ability to influence and/or control the availability, visibility, findability and accessibility of content by the techniques of selection, promotion, ranking, de-indexing, etc., that they employ. Their gate-keeping role therefore has a determinative impact on the relationship between individuals and the diversity of content online.

6. A right of reply can contribute to diversity by providing individuals with an opportunity to respond to or to rectify media content concerning their person or interests. It is a mechanism for achieving clarification, correction or refutation. Its responsive character means that it does not proactively contribute to diversity, but it plays an important role in facilitating dialogue and debate via the media. In order for individuals to be able to avail of their right of reply, there must be adequate information and transparency about the procedures governing it.

RECOMMENDATIONS

IV. Structural pluralism

1. Structural pluralism of the media matters because the media differ in terms of their purposes, functions and geographical reach. Accordingly, they are not used in identical ways by all individuals or groups in society. What is important is that there is functional completeness in the media ecosystem, i.e., that there is sufficient variety in the overall range of media types in order to ensure that there is effective pluralism. Functional completeness implies that the existing institutional media offer ensures viable opportunities for individuals and groups to create and access diverse media content.

2. In the evolving media ecosystem, the functionality of online media and other Internet-based applications and services merit particular consideration in the context of structural pluralism.

3. The European Court of Human Rights has repeatedly recognised that public service broadcasting can contribute to the quality and balance of programmes in the broader context of structural pluralism. It has also affirmed that where a public service broadcasting system exists, domestic law and practice must guarantee that the system provides a pluralistic service. It is indispensable for the proper functioning of democracy that public service broadcasting systems transmit impartial, independent and balanced news, information and comment and, in addition, provide a forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed.

4. Community media are independent media run by and for members of a community in a particular geographical area or of a particular community of interest. They give a voice to and train citizens, particularly communities and individuals not represented by the mainstream media. They enable them to become active media-producers and multipliers within their communities and beyond. They take up topics which are relevant for communities, even if they are not present in the mainstream media, and they can hence enable negotiation and public visibility. Community media organizations hold a specifically important role, as they offer and encourage participation at different levels of the structure of their organizations and instil and nurture a sense of active engagement, transcending the borders of communities.

5. Commercial media typically cater to mainstream audiences and their output aims to be of wide appeal, which is in itself an important contribution to media pluralism and overall diversity of media content. Commercial media with public service obligations (either by law or as part of their broadcasting licence conditions) can complement the offering of public service media.

6. Transnational media, which serve communities outside the country where they are established, supplement national media and can help certain groups in society to maintain ties with their countries of origin. This is increasingly important for immigrants and refugees wishing to maintain contact with their native culture and language.

7. An important feature of structural pluralism is the complementary nature of the different types of media involved. As with the independence of the media, especially public service media and community media, adequate financing and funding are prerequisites for the sustainability of a pluralistic media ecosystem. Systemic underfunding of public service media is a serious problem in a number of Council of Europe member States, with the effect that public service media are left behind and unable to fulfil their remit and make a significant contribution to media pluralism. In a few countries, public service media organisations are in a financial crisis that threatens their very existence.

RECOMMENDATIONS

V. Concentration of media ownership and control of modalities of access to content

1. Concentration of media ownership limits the number of media sources that are able to contribute to media pluralism and to create and disseminate diverse media content. Similar threats to media pluralism and diversity of media content can arise from a concentration of control of the modalities of access to online content, including the visibility, findability and accessibility of content.

2. Concentration of media ownership and control of the modalities of access to online content can also pose a threat to the editorial independence and operational autonomy of the media and, as relevant, online actors.

3. Media ownership regulation has traditionally tended to focus on direct ownership and consequently paid insufficient attention to indirect ownership and *de facto* control/effective influence. In keeping with a culture of independence in the media ecosystem, the focus of media ownership regulation should be expanded to avoid such blind spots and to address in appropriate ways growing concerns about (direct and indirect) ownership and control/effective influence of online (media) actors.

4. Media ownership regulation is characterised by its complexity and fragmentation. Besides its relevance for media pluralism, various other public interests such as fair competition, are also implicated.

5. Dominance of particular actors in specific media markets/sectors (e.g. online searching, micro-blogging, etc.) can determine whether the right to freedom of expression is practical and effective in those markets/sectors. There has to be pluralism in the available media and meaningful choice between them.

6. Technological developments (and their impact on traditionally distinct media markets), horizontal and vertical integration, etc.; difficulties in measuring market impact of online media and impact of ownership of online media on the concentration in a particular market.

7. Network neutrality is an essential principle in the media ecosystem, where individuals' freedom of expression and their ability to participate in democratic life depend increasingly on the accessibility and quality of an Internet connection. States should therefore take positive measures to guarantee individuals the greatest possible access to Internet-based content, applications and services of their choice.

RECOMMENDATIONS

VI. Transparency of media ownership, organisation and financing

1. Given the essential roles played by the media in democratic society, there is a strong public interest in ensuring transparency about the ownership, organisation and operation of the media. High levels of transparency can enhance accountability and facilitate the identification of sources of control and influence over the media and, in turn, responsibility and liability for their output.

2. Transparency of media ownership provides data that help members of the public to analyse and evaluate the information, ideas and opinions disseminated by the media, and the regulatory authorities with responsibility for media pluralism with data that contribute to informed regulation, decision- and policy-making.

3. The nature and level of detail of information concerning media ownership may differ, depending on whether the public's needs or the regulatory authorities' needs are at issue. Notwithstanding these differences, maximum transparency should be strived for at all times.

4. Maximum transparency is not limited to media ownership, which is but one of several inter-related aspects of a broader notion of media-related transparency. A focus on media ownership – even when it differentiates between formal and beneficial ownership – does not necessarily provide a comprehensive or accurate picture of the different sources of potential interference with the editorial and operational independence of the media. Other aspects include organisational, editorial, funding and financing structures. Consideration of all of these aspects is necessary for determining degrees and sources of control and influence over the media.

5. Another component of maximum transparency is editorial 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 commercial communications. This also applies to hybrid forms of content, including sponsored content, advertorials and infotainment.

6. Maximum transparency also includes transparency of online media actors, with requirements and approaches tailored to the ways in which they contribute to public debate. For search engine operators, for instance, this would cover transparency concerning how information is accessed and in particular the criteria according to which search results are selected, ranked, promoted or removed. For both search engine

operators and providers of social networking services, it includes transparency about how personal data of users of the services are collected and the purposes for which they are processed.

7. Maximum transparency of online media actors should focus not only on ownership, but also include governance structures, revenue, general algorithmic design/biases, etc. Transparency or disclosure policies addressing these kinds of issues can also be developed in the spirit of corporate social responsibility. They should strive to balance the public's right to information and the online media actors' interest in protecting commercially-sensitive information.

8. The regulatory framework which sets out various transparency obligations for the media is complex and often comprises laws and regulations on media (ownership), anti-corruption, money-laundering, e-commerce, company law, competition law, etc.

9. Possible relevance of right to privacy and data protection/shield of anonymity or pseudonymity for individuals, e.g. bloggers, and its relation to transparency objectives.

RECOMMENDATIONS

VII. Media literacy/education

1. Media literacy is a set of skills or competences that enable individuals to access, understand, analyze, evaluate and create content through a range of legacy and digital (including social) media. Those skills are both of a technical and of a civic nature, whereby mastery of technology and adherence to democratic societal norms and human rights standards are central.

2. The accessibility of content and services depends increasingly on having high levels of media literacy. This means that media literacy is crucial for individuals to be able to exercise their right to freedom of expression in an effective way in the new media ecosystem. It is also crucial for enabling individuals to participate in public debate and democratic society, given the central role played by the media in fostering public debate and public affairs.

3. Media literacy can contribute to the civic empowerment of individuals; the reduction/elimination of the digital divide; the facilitation of informed decision-making, especially in respect of political and public affairs, harmful and illegal online content, and commercial content.

4. Media literacy can also contribute to media pluralism and diversity by enabling individuals to find, access, create and share diverse types of content across a broad range of media.

5. It furthermore complements transparency in the media sector by enabling individuals to use information relating to the transparency of media ownership, organisation and financing in order to better understand the different influences on the production and dissemination of media content. This, in turn, allows them to make an informed evaluation of the information and ideas propagated via the media.

6. Media literacy has many dimensions and involves many different actors, including European and national law- and policy-makers, the media, education professionals, relevant state authorities, regulatory bodies, civil society, etc.

7. By reason of the educational objectives included in their remit and their commitment to societal engagement, public service media and community media can make valuable contributions to the promotion of all aspects of media literacy, including the promotion of specific best practices.

RECOMMENDATIONS