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Publishers
Council

COMMENTS ON THE MEDIA PLURALISM MONITOR ON BEHALF OF THE EUROPEAN PUBLISHERS COUNCIL, JUNE 2009

The European Publishers Council is a high level group of Chairmen and Chief Executives of leading media companies in Europe whose business interests span newspaper, magazine, book, journal, database and internet publishing as well as in many cases television and radio broadcasting. A list of our members is attached.

➤ **Introduction**

We welcome the opportunity to provide comments on the Media Pluralism Monitor following participation at the Stakeholder workshop on 8th June 2009 in Brussels. During this session, the hosts, speakers and participants could not have been left in any doubt as to the high level of concern felt by representatives of the press as to the eventual impact such a tool could have on a free press; a press independent from government, unlicensed and independently funded, subject to the general law as opposed to a licensed, regulated audiovisual sector.

Whatever the possible merits and quality of the academic work, in our view the implementation for political or regulatory purposes of such detailed and diverse indicators could never be objectively deployed. Furthermore this would give rise to unwelcome, if unintended, consequences for a) the freedom of expression and b) the future economic viability of European media companies.

- A free press can be good or bad, but, most certainly, without freedom a press will never be anything but bad.
Albert Camus
- Our liberty depends on the freedom of the press, and that cannot be limited without being lost.
Thomas Jefferson
- Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.
John Milton

Such is the passion with which these principles are held that on May 25th, 2009 [46 editors-in-chief and leading journalists](#) from 19 countries adopted and signed the

EPC

Chairman > Francisco Pinto Balsemão
mgil@impresa.pt

Executive Director > Angela C. Mills Wade
angela.mills@wade.uk.net

“European Charter on Freedom of the Press” in Hamburg. Since then many more have signed and will continue to do so.

In ten articles, the charter formulates principles for the freedom of the press from government interference.

<http://www.pressfreedom.eu/uk/index.php>

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The Media Pluralism Monitor raises yet again the problems that were at the very heart of the quotations from Camus, Milton and Jefferson. The more one attempts to reduce media pluralism to a scientific analysis, the more one can invent technical solutions to what is in essence a matter of belief and conscience. This is why we believe that however thorough and rigorous the academic work has been, there are matters that cannot be regulated when taking into consideration that some of the most important values like the freedom of the press must not be reduced to mathematical or quantitative analysis of risk or abuse.

➤ ***Further Comments on the Media Pluralism Monitor***

The preliminary study on indicators for media pluralism in the Member States takes a novel, yet theoretical, approach to assessing different aspects of media pluralism within cultural, political and geographical spheres, as well as by media types. These indicators comprise a highly complex and detailed set of criteria to be measured, that extend way beyond existing rules at national level applicable to media pluralism.

Most EU member states already impose some form of special regulations on the ownership of media industries to safeguard pluralism – over and above competition law, specifically in order to promote diversity of opinion as well as ownership in democratic societies. In addition, the European Commission has competition powers to examine mergers and acquisitions of media companies to prevent abusive concentration within clearly defined relevant markets. Media concentration through merger or acquisition, leading to cross-media ownership, is not, of course, always abusive – or anti-competitive, a fact recognised by competition authorities throughout the world.

Notwithstanding the recognition by the European Commission that the EU has no legal competence to legislate for pluralism, any discussion at European level on media pluralism and particularly media ownership, has traditionally always led to calls for stricter statutory controls, usually on the claimed grounds of safeguarding pluralism, rather than leading to any discussion on or measures to stimulate competitiveness.

More recently, in addition to continued calls for statutory controls on media ownership, we have witnessed a worrying trend of calls from MEPs and some regulators for legislation to promote editorial diversity; in particular that which would lead to interference in editorial freedom, in order to provide politically-motivated



“balance”, for example in areas of gender stereotyping or through more general themes born of politically correct dogma. Unfortunately, the preliminary study follows this trend on the claimed grounds that there should be some kind of “democracy” within newsrooms.

Taken together with proposed indicators in areas such as the affiliation of media owners with political parties, employment and working conditions, diversity of employees, we believe that such notions are out of step with the reality of news reporting, comment and analysis and would be contrary to the fundamental right to the freedom of expression.

The study states that “while it urges the application of the same analytical framework in all Member States to ensure comparability of the results obtained, it is not a call for harmonisation of policies in this area.” In our view this is at best naïve or at worst disingenuous as the study goes on to talk about an “EU-standardised monitoring tool”. Ideas of applying the indicators in “an identical manner in all EU Member States” in order “to allow for comparability between member States” is harmonisation in all but name. This is especially so when on page 22 of Annex 1 it is stated that “when applied in a uniform, consistent and correct way, the MPM will:

- help assess the societal threat of pluralism by signalling the areas or domains where pluralism is most endangered in a particular country, and showing the underlying cause;
- become a monitoring framework for Member States and provide greater transparency about (the level of) media pluralism in the EU;
- help national policy-makers and other stakeholders to assess pluralism and to define priorities and actions for improving media pluralism;
- ensure conformity to EU principles of ‘better regulation’ by encouraging national policy makers to scrutinise actual and potential risks before adopting regulatory safeguards, and by assisting them in selecting the most appropriate regulatory tools, based on the nature of the problem, proportionate and justified in the light of the objectives pursued and
- generate an open-minded, objective discussion on media pluralism both at EU and at national level.

The introduction of such complex measurement tools at the very moment when we are seeing burgeoning freedom of expression and diversity of opinion through the rapid expansion of new forms of communication and media outlets, as well as through new forms of distribution which fall outside traditional patterns of media ownership, seems unnecessary complex and disproportionately burdensome on traditional media companies. There is no barrier to entry any more, not even in broadcast media.

Yet the study, although acknowledging the positive advantages of the ability of citizens to access different types of content, including their active as opposed to passive role in selecting content, doubts the ability of individuals to select “pluralistic” content. This is tantamount to suggesting that citizens need to be told



what is good for them. This is contrary to the freedom of choice, freedom of expression and freedom of information which prevail in democracies.

This very media diversity brings new challenges which have not adequately been taken into account. As the technologies and markets converge, not only does pluralism expand to the benefit of citizens, but publishers face new forms of competition from players not traditionally associated with the publishing market. These new competitors include state-funded broadcasters, search engines, telecommunications companies as well as the many internet service providers, which offer a wide range of news, information and entertainment services. Any new measures which increase the regulatory burden on the press will not bring the benefits the authors of the study might wish to promote. In particular, the study has not adequately taken into account the impact distorting effect of state aid to publicly funded broadcasters on private media.

Finally, we would like to draw attention to a significant flaw in the Monitor. As the final result of applying the indicators will, according to the authors, have to be "interpreted"¹, the result is always going to be highly subjective and dependent upon the political views or regulatory objectives of the person(s) or body that is carrying out the final adjustment. This means that the Monitor is not, and never can be, an objective tool to assess media pluralism.

For all these reasons, the EPC believes that the proposal will contribute to the deterioration of the fine balance integral to the freedom of the press and of expression that, as we all recognise, is an important contribution from the European media industry to Democracy.

European Publishers Council
24th June 2009

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¹ 7.2.2 Lessons Drawn from the Testing "Once the scores for all the indicators have been filled in, a report is automatically generated per risk domain. Although the boxes produce a red, green or orange result, this does sometimes not reflect the generally held views about the degree of pluralism in that country. These issues can and need to be corrected in the interpretation part, pointing to the importance of interpretation by staff who are familiar with the specificities of the national context."



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