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Public consultation on the independent report from the High Level Group on Media Freedom and Pluralism

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QUESTIONS CONCERNING THE RECOMMENDATIONS OF THE HIGH LEVEL GROUP

Below you find the recommendations of the independent High Level Group on Media Freedom and Pluralism which presented its report in January 2013. The report and the recommendations reflect solely the views of its members – the former President of Latvia Professor Valra Viķe-Freiberga, Group Chair, Professor Herta Däubler-Gmelin, Professor Luís Miguel Poiares Pessoa Maduro and Ben Hammersley. Please note that the report does not represent nor prejudice the Commission's position.

Recommendation 1

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

Do you have any observations on this recommendation?

The recommendation is ultra vires. Only the European Court can rule on EU competence on this or any issue. We share the view expressed by the European Commission that there is no competence for substantive harmonisation of media ownership rules under the current Treaty.

Recommendation 2

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

Do you have any observations on this recommendation?

No objection in substance but this appears to duplicate the work already carried out by the OSCE and Council of Europe.

Recommendation 3

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

Do you have any observations on this recommendation?

As we understand it, this recommendation has been already carried out with the establishment of the Florence Centre for Media Pluralism and Freedom.

Recommendation 4

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

Do you have any observations on this recommendation?

This appears to be addressed more to print media than to broadcast and as such we abstain from responding. Issues of independent regulation of broadcasting will be dealt with in a separate response to that consultation.

Recommendation 5

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

Do you have any observations on this recommendation?

We agree that the protection of journalistic activity in the data protection legislation is important and believe that the current text is adequate in this regard.

Recommendation 6

A network of national audiovisual regulatory authorities should be created, on the model of the one created by the electronic communication framework. It would help in sharing common good practices and set quality standards. All regulators should be independent, with appointments being made in a transparent manner, with all appropriate checks and balances. A consultation on the independence of regulatory bodies is currently taking place. Please click here to access it.

Recommendation 7

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

Do you have any observations on this recommendation?

Recommendation 6 could be helpful if part of a wider move by the Commission to devolve regulation of media content to NRAs rather than inserting unnecessary detail in the AVMS directive.
Recommendation 7 is highly problematic. Competition law sector enquiries are by their nature suited to targeted issues rather than broad-brush enquiries into "the media".

Recommendation 8

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

Do you have any observations on this recommendation?

No objection in principle, though we would argue that much of this is already in hand and would question whether issues of net neutrality belong in this report.

Recommendation 9

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

Do you have any observations on this recommendation?

We entirely agree. The Commission and other international bodies have played a positive role in many pre-accession countries and we would urge that this work be stepped up as much remains to be done in these markets.

Recommendation 10

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

Do you have any observations on this recommendation?

We agree.

Recommendation 11

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

Do you have any observations on this recommendation?

This is a medium term question, whether the Commission will be able to do this and we would expect that European states

Recommendation 12

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

Do you have any observations on this recommendation?

No objection.

Recommendation 13

Channels or mechanisms through which media are delivered to the end user should be entirely neutral in their handling of this content. In the case of digital networks, Net Neutrality and the end-to-end principle should be enshrined within EU law. This has been the subject of a recent consultation. Please click this link to access the website of that consultation.

Recommendation 14

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

Do you have any observations on this recommendation?

13: As above, we are not convinced that this is the right place for a discussion around net neutrality.

14: No objection so long as there is a clear distancing of any funding for journalism from the "state", whether at national or European level.

Recommendation 15

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

Do you have any observations on this recommendation?

No objection.

Recommendation 16

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

Do you have any observations on this recommendation?

This is a worthwhile aspiration but appears hard to reconcile with the practice of state financing of public broadcasters, to which the Almark ruling has only a marginal application.

Recommendation 17

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

Do you have any observations on this recommendation?

See response to recommendation 14 above.

Recommendation 18

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

Do you have any observations on this recommendation?

We believe this is largely "in hand" at individual company level.

Recommendation 19

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

Do you have any observations on this recommendation?

We do not believe this Group is competent to dictate school curricula.

Recommendation 20

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

Do you have any observations on this recommendation?

No objection in principle although there has been a proliferation of recent studies in this area so the EU should set tough criteria for added value before commissioning any further research.

Recommendation 21

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

Do you have any observations on this recommendation?

No objection.

Recommendation 22

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

Do you have any observations on this recommendation?

No objection.

Recommendation 23

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

Do you have any observations on this recommendation?

No objection in principle.

Recommendation 24

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

Do you have any observations on this recommendation?

Already in place in broadcasting, with minimum harmonisation in the AVMS-D.

Recommendation 25

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

Do you have any observations on this recommendation?

No objection in principle but we would object to the notion of "mandating" the content of a media organisation's website. This is a matter for the publisher of that website alone. A best practice recommendation would be preferable.

Recommendation 26

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

Do you have any observations on this recommendation?

According to most estimates, European member states already provide around €25bn annually in state aid to publicly funded broadcasters. This level of intervention, in the context of a sector worth €84bn annually, seems to be more than enough to correct market failures, as long as it is accompanied by a clear public service remit to deliver distinctive content.

Recommendation 27

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

Do you have any observations on this recommendation?

If it is to be interpreted as meaning that publicly-owned broadcasters should come under the supervision of the independent NRA, then we agree.

Recommendation 28

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

Do you have any observations on this recommendation?

Acceptable so long as the Commission builds on existing programmes rather than inventing new ones.

Recommendation 29

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

Do you have any observations on this recommendation?

Not really a matter for us.

Recommendation 30

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

Do you have any observations on this recommendation?

This is a matter for the EU political leadership.

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