

THE EUROPEAN COMMISSION'S "THREE-STEP APPROACH" TO MEDIA PLURALISM – A CONDUIT FOR THE PROTECTION OF FREEDOM OF EXPRESSION IN THE EUROPEAN UNION?

*Ewa Komorek**

Introduction

Media pluralism has for decades been subject to scrutiny by the Council of Europe and the European Court of Human Rights. It has always come to their agenda as a prerequisite for the established human right of freedom of expression, which is guarded by Article 10 of the European Convention on Human Rights (ECHR).¹ Obviously, without media pluralism, freedom of expression would be non-existent.²

In the European Union the attitude towards media pluralism has been far more precarious. Following the failed attempt to introduce a media concentration directive in the mid-1990s, the European Commission adopted a commercial stance to the media sector. While acknowledging the importance of regulatory safeguards for media pluralism, it has consistently rejected the European Parliament's calls to come back to the discussion on the EU-level regulation of the issue. The main argument has been that protection of media pluralism should be left entirely in the authority of the Member States. The European Union's role must necessarily be limited to fostering competition and market effectiveness, so as to allow for the growth of the 'European champions' capable of competing with American rivals.

Nevertheless, in 2007, responding to the mounting pressure from the European Parliament to address the concerns for growing media concentration and its effect on pluralism and freedom of expression, the Commission launched a so-called "Three-step approach for advancing the debate on media pluralism across the European Union".³ This new development is supposed to underline the European Union's commitment to protecting media pluralism as "an essential condition for preserving the right of freedom of expression that underpins the democratic process".⁴

*LL.B (Warsaw), LL.M (Amsterdam), Ph.D. (Trinity College Dublin).

¹ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950.

² E. Barendt, *Freedom of Speech*, 2 ed., Oxford University Press 2005 p. 447.

³ European Commission, "Media pluralism: Commission stresses need for transparency, freedom and diversity in Europe's media landscape", Press release of 16 January 2007, IP/07/52.

⁴ *Media Pluralism*, Website of DG Information Society and Media
http://ec.europa.eu/information_society/media_taskforce/pluralism/index_en.htm
(accessed on 9 November 2009).

However, numerous voices are being raised that the ‘three-step plan’ will not bring a major change to the current, commercial stance of the European Commission towards the media sector.

I. Prelude – Liverpool Audiovisual Conference (2005).

The Liverpool Audiovisual Conference held in July 2005 as part of the debate on the reform of the Television Without Frontiers Directive,⁵ allowed for some degree of optimism. The aim of the conference was, *inter alia*, to discuss the six ‘issues papers’ produced by the European Commission in the process of the revision of the directive. The subject of issues paper number 6 was “Media Pluralism – What should be the European Union’s role?”⁶ The Commission concluded that in fact there are currently many different measures in place on the European level aimed at safeguarding pluralism, even if a specific action against media concentration is not one of them. The Commission recalled the report for the European Parliament by the European Institute’s for the Media (EIM)⁷ and the Commission’s White Paper on Services of General Interest⁸, which both recommended monitoring media concentration as one of the fields where the Commission’s activity could be improved. Apart from this, the Commission asked how the European Union could bring true added-value to the instruments that already exist, bearing in mind that maintaining the right balance between safeguarding media pluralism in Europe and the possibilities for European companies to compete globally is crucial.

The final report of the working group on media pluralism of the Liverpool Conference provided some answers to this important question. First of all, the participants concluded that the notion of pluralism should have a clear definition agreed at European level. Currently it is often given different meanings, in particular by the old and new members of the European Union, which causes concern for the possibility of applying double standards when dealing with pluralism issues. Furthermore, the working group’s conclusion was that transparency of media ownership at the EU level must be increased.

⁵ Currently renamed Audiovisual Media Services Directive - Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L332/27).

⁶ European Commission, ‘Media Pluralism – what should be the European Union’s role?’, Issues Paper, http://ec.europa.eu/avpolicy/docs/reg/modernisation/issue_papers/ispa_mediaplur_en.pdf (accessed on 10 November 2009).

⁷ European Institute for the Media, Final report of the study on ‘The information of the citizen in the EU: obligations for the media and the Institutions concerning the citizen’s right to be fully and objectively informed’, Düsseldorf, 31 August 2004, <http://www.epra.org/content/english/press/papers/European%20Citizen%20Information%20Project%20Final%20REPORT.pdf> (accessed 9 November 2009).

⁸ European Commission, ‘Services of general interest (White Paper)’, COM(2004) 374 final.

Only then will it be possible to determine if concentration is indeed excessive. In this regard, the working group widely supported the recommendation included by EIM in its report for the European Parliament, which was to establish a European Observatory focusing on media markets and concentration. The Observatory would run a data-base of information on media markets of EU Member States and the EU as a whole. Finally, the working group advocated for a stronger role in the EC Treaty for the European Parliament and all European institutions in the media field.

The above recommendations allowed for some hope that constantly raising awareness will result in balancing the market oriented stance of the European Commission, with some public interest solutions. The three-step plan towards advancing the debate on media pluralism is the only direct aftermath of the Liverpool Conference. The plan consists of three elements which will be implemented by a specially created Task Force for Co-ordinating Media Affairs within DG Information Society and Media.

I.1 Step 1 – Staff Working Paper (2007)

The first step was a Commission Staff Working Paper on Media Pluralism published in January 2007.⁹ When the document was still in the planning stages, its brief description stated that, “given the concerns existing in a certain number of Member States about media pluralism, the *possibility of a harmonising Directive is being studied*”.¹⁰

Such language allowed for some hope that the conclusions of the Paper would establish a different approach than that of the Commission and the answer will not be yet another: “the possibility was studied but the conclusion was reached that no action is necessary”. However, when the Staff Working Paper was finally issued it simply confirmed the low profile that media pluralism was originally given by the European Commission. The Commission analysed the existing national measures aimed at fostering media pluralism and counteracting excessive media concentration and concluded that the only action currently required at EU level is to commission an independent study on indicators necessary to measure pluralism in Member States.

⁹ Commission staff working document, “Media pluralism in the Member States of the European Union”, 16 January 2007, SEC(2007)32.

¹⁰ Commission actions expected to be adopted : 05/06 - 12/06, http://ec.europa.eu/atwork/programmes/docs/execution_report.pdf, (accessed on 9 November 2009), p. 84, emphasis added.

I.2 Step 2 - Independent Study on Indicators for Media Pluralism in the Member States (2009)

The study was performed by a group of experts from Katholieke Universiteit Leuven, Central European University and Jönköping International Business School, accompanied by Ernst & Young Belgium. Various subcontractors (such as members of the Quality Control Team or so-called ‘Country Correspondents’) supported the research team. According to the Commission’s website, the objective of the study was to “develop a monitoring tool for assessing risks for media pluralism in the EU Member States and identifying threats to such pluralism based on a set of indicators, covering pertinent legal, economic and socio-cultural considerations”.¹¹

Accordingly, the outcome of this study is a prototype for a Media Pluralism Monitor (MPM), which the Final Report prepared by the research team describes as a “risk-based, holistic, user-friendly and evolving monitoring tool”.¹² The MPM uses three types of indicators (legal, socio-demographic and economic) to identify risks for media pluralism across six domains: (i) basic domain, (ii) pluralism and media ownership and control, (iii) pluralism of media types and genres, (iv) political pluralism in the media, (v) cultural pluralism in the media, and (vi) geographic pluralism in the media.

Legal indicators cover the presence and effective implementation of policies and legal instruments that support media pluralism (such as rules on media concentration, legal safeguards guaranteeing access to media by various political, cultural or minority views or regulatory safeguards for journalistic practice). Importantly, the first legal indicator mentioned in the basic risk domain is the existence and effectiveness of a regulatory framework that guarantees the freedom of expression. As the Report rightly observes, “an effective protection of free speech is a prerequisite for pluralism and diversity in the media, implying that the public has access to a free media system, which overall, provides balanced, full and varied information”.¹³

As the Report further explains, socio-demographic indicators determine threats to media pluralism related to socio-demographic factors such as geographic location, minority status, age, or gender. Finally, the economic indicators measure the range, diversity and economic performance of media on the supply side based primarily on the number of media companies, the level of market concentration and profitability ratios.¹⁴

¹¹ Independent Study on Indicators for Media Pluralism in the Member States - Towards a Risk-Based Approach, Final Report
http://ec.europa.eu/information_society/media_taskforce/pluralism/study/index_en.htm
(accessed 9 November 2009), p. viii.

¹² *Idem*, p. ix.

¹³ *Idem*, p. 29

¹⁴ *Idem*, p. viii.

Overall, the MPM is to be a diagnostic rather than a prescriptive tool in that it facilitates the collection of information about various risks for media pluralism, but it does not prescribe remedies for the identified risks. Therefore, as the Final Report strongly emphasises, while the MPM “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”.¹⁵

I.3 Step 3 - Commission Communication on indicators for media pluralism in EU Member States (2010?)

According to the website of DG Information Society and Media, Step 3 will be considered in 2010 by the new Commission and it will be followed by public consultation.¹⁶ Should the consultation reveal such a need, a second study could be commissioned in order to systematically apply the media pluralism indicators to all EU Member States.

Conclusion

In summary, despite great anticipation and much hope, one cannot shed the feeling that ‘the three-step plan’ is a road to nowhere. There is a distinct impression that it is simply meant to quiet the demands of the European Parliament and the likes of the European Federation of Journalists (EFJ) who continue to call on the Commission to take action on the issue of media pluralism. In fact, as the Commissioner for Media and Information Society Viviane Reding, admitted: “We of course do not want a harmonising directive on ownership. The exclusive focus on ownership is in our view inappropriate in a period of structural change”.¹⁷

The Commission is therefore, again, taking a very soft approach to the issue of media pluralism by ordering yet another study meant to serve as a basis for *future* discussions. The chairman of the International Federation of Journalists, Aidan White, is right to be sceptical about Brussels’ eagerness to press ahead with the issue. He said that the Commission “does not want to lose friends in the media”. He, however, remains hopeful:

“If something can be done at EU level it would be to tackle this terrible hotchpotch of [media ownership] legislation. We need at least a basic common understanding about how media ownership can be regulated. If this study actually leads to that it would be a good thing”.¹⁸

¹⁵ *Idem*, p. ix.

¹⁶ Website of DG Information Society and Media
http://ec.europa.eu/information_society/media_taskforce/pluralism/index_en.htm
(accessed 9 November 2009).

¹⁷ V. Reding, “Europe’s Magazines and the new media – way ahead”, Brussels 7 October 2009, SPEECH/09/452.

¹⁸ M. Beunderman, ‘Brussels reluctant to regulate national media rules’, *EUobserver*, 17 January 2007.

Strengthening monitoring of media pluralism by the introduction of the MPM is undoubtedly a welcome step in this direction. Nevertheless, the reality remains that there are currently no positive measures at European level aimed at controlling concentrations in the broadcasting sector. Furthermore, the current market-oriented approach of the European Commission signals little hope for such positive measures to appear in the near future. The ‘three step plan’ is thus very unlikely to bring any real change.

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