



Universitat Autònoma de Barcelona

DE-REGULATION OF EUROPEAN MEDIA POLICY (2000-2014)

*The debate on media governance and
media pluralism in the EU*

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-To my husband, Marius-

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INTRODUCTION

1. ORIGIN AND AIM OF THE INVESTIGATION

Since the establishment of the European Economic Community in 1958, the economic European objectives have expanded and at the same time, the protection of human rights interest has grown. The signing of the Treaty of Lisbon (2009) and the attachment of the Charter of Fundamental Rights of European Union (The Charter) to the EU framework in 2009 is an evidence of it and has had a significant role in shaping the EU objectives. These advancements do not have to forget about the “*economic engine*” of the Union, which is the “*single market*”. In a Union that brings increased emphasize on human rights, the single market objectives maintain their primordial position.

However, “*Everyone has the right to freedom of expression*” is now an essential objective of EU, as stated by the Article 11 of The Charter:

“(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

(2) The freedom and pluralism of the media shall be respected.”

Media pluralism has a strong connection with both the human rights values of freedom of information and freedom of expression, as the text describes, and connecting these as well with the free market where goods, services and money move freely to facilitate a competitive environment and fulfill public interest objectives. The dilemma for the media industry and the EU audiovisual regulation is how to balance the two objectives, social and economic, and protect media pluralism without acting in the disadvantage of either objective. As a first important precedent of this dilemma, it is necessary to go back to 1992 when the European Commission’s *Green Paper on Pluralism and Media Concentration in the Internal Market* was discussed. It represented a positive endeavor towards a media pluralism initiative at the European Union (EU) level, which ended up as a draft directive based on internal market principles, broke into pieces in 1997 and became a negative precedent (Harcourt, 2005; Llorens, 2001). This turn out led to a strong position of the EU institutions defending that EU Member States had the legal competences to preserve media pluralism. Letting aside the non-action outcome, the actual exercise of going through a great length of consultations and drafting an actual proposal for a directive proved that different parties at the

EU level recognized that action at the supranational EU level for the protection of media pluralism as being debatable. Moreover, this awareness call came at a time when the technological changes were not as drastic and overbearing as from the year 2000 on.

The last fourteen years (2000-2014) have been shaped by strong technological changes, which brought convergence to a form that capacitates the phenomenon to redefine societal habits and create new economics developing trans-border markets. Added to these changes, the European Union in itself changed in size and priorities.

On the background of the new changes, and while various EU countries have lived the weakening of the media pluralism principles, the perception on media pluralism *apparently* did not changed greatly regarding the regulation at the EU level. From a legislative point of view, the European Commission (EC), the legislative initiator at the EU level, brought an array of proposals and initiatives to safeguard media pluralism in the EU Member States for the period analyzed in this study (2000-2014). This period will be the main focus of this research and the EU institutions actions on this matter will be the object of study of this research.

Whether media pluralism needs to be regulated at the supranational EU level or should remain the sole responsibility of the Member States, while respecting the general principle of subsidiarity (Article 5(3) TEU) of the EU law, is not the focus of this thesis. This is a media policy study and not a law research.

2. OBJECT OF STUDY, STRUCTURE AND RESEARCH QUESTIONS

The object of this thesis is to study the case of media pluralism policy at the European Union's institutions level. The study is looking to examine if there is an evolution on the EU media policy from a strict-government regulation to a soft-governance approach regarding the protection of pluralism from 2000 to 2014.

This research starts analyzing theoretical approaches of the concept of media pluralism with the aim to understand how this concept evolved and most importantly to find out how it is described and used nowadays. After learning what the European institutions are aiming for when are trying to analyze media pluralism, the focus will be on the theoretical analysis of media governance concept, which opens the possibility for a new approach in order to protect media policy and media pluralism objectives at the EU level as well.

Furthermore, the study is analyzing how the soft-regulatory measures can be reliable mechanisms from a theoretical and practical point of view at the EU level of regulation, alongside statutory regulation. Overall, this study is not looking for policy measures to better replace statutory regulation when it comes to media pluralism but is looking for approaches to see how soft-

regulation, in the form of complementing the statutory regulation, has been developed and argued to protect media pluralism at EU level and consequentially at Member States level.

This study **proposes** to analyze how well the EU, with its supranational status, has supplemented the efforts of the Member States and helped coordinate the regulatory measures taken in different countries to look for a better level of media pluralism protection:

“Whilst the protection of media pluralism is primarily a task for the Member States, it is for the Community to take due account of this objective within the framework of its policies.”

(Commission Green paper on Services of General Interests, COM (2003)270 final, p.45)

Enlisting the main parts of the study

This study is divided in two main parts, with the division between theoretical concepts and the media policy actions of the European Commission and other institutions.

THE FIRST PART of the theoretical framework includes three chapters with the focus on two theoretical concepts: media pluralism and soft-governance (chapters 1-3). The first two chapters focus on media pluralism concept. The first chapter analyzes the theoretical developments of the pluralism concept according to the media researchers while the second chapter deals with the theoretical developments and contributions coming from EU institutions, the Council of Europe and from the different stakeholders and interest groups like EU media organizations.

The first chapter tries to answer the following research question:

Which are the main contributions from media experts and stakeholders to the debate of media pluralism concept?

The second chapter seeks to respond to the following research question:

How is media pluralism defined and used in media policy in the EU (for the period 2000-2014)?

The third chapter addresses the development of the theoretical concept of soft governance. This chapter explains the governance and media governance concepts and examines if the application of soft-regulatory measures is a potential solution for the media pluralism regulation at the EU level. The theoretical model of Puppis (2010) is used as a framework for this study and it will be improved as well. The research question is:

Which are the main contributions and the assessments of media-governance concept and soft-policy measures in the debate on media policy and media pluralism?

THE SECOND PART is focused on policy actions analysis. It is divided into three chapters (chapters 4-6). The focus of **the fourth chapter** is directed towards policy actions and initiatives for the protection of media pluralism advanced by the EU institutions except the European Commission (DG INFSO/Connect), which has its own chapter. Therefore, this chapter deals with the European

Parliament, the Council of Europe, civil society organizations and initiatives, cross-media mergers regulation in EU, and a small reference on UK regulation. *The research question is:*

What are the initiatives and the arguments of other EU institutions (European Parliament, Council of Europe) and media stakeholders in participating on the EU media policy for media pluralism?

The ***fifth chapter*** includes the main proposals and initiatives brought by the European Commission (DG INFSO/Connect) with the actions of the three commissions analyzed: Commissioner Viviane Reding, with two Commissions (1999-2004; 2004-2009) and Commissioner Neelie Kroes (2010-2014).

These actions are based on hard regulation like the Audiovisual Media Service Directive (AVMSD), as well as soft-regulation including the Study “*Media pluralism in the Member States of the European Union*” in 2007 and a tool for the voluntary measure of media pluralism in a Member State “*Independent Study on Indicators for Media Pluralism in the Member States –Towards a Risk-Based Approach*” (MPM) in 2009. These initiatives were taken under the direction of Commissioner Reding.

Under the direction of Commissioner Kroes, two new initiatives were promoted: the Centre for Media Pluralism and Media Freedom (CMPF) at the Robert Schuman Centre in Florence and a High Level Group on Media Freedom and Media Pluralism (HLGMFP). Lastly, at the end of her mandate, Commissioner Kroes launched two consultations: one on the final document of the HLGMFP and one on the “*Independence of the Audiovisual Regulatory Bodies*” and announced also that European Commission will “*allocate a grant to implement the Media Pluralism Monitor in 2013*”¹, which actually initiated in October 2013 when the grant was awarded to the Centre for Media Pluralism and Media Freedom (CMPF)². The latest action in January 2014 represented the establishment of the European Regulators Group for Audiovisual Media Services (ERGA) group, which held its first meeting in March 2014. *The research question is:*

What are the actions and the arguments of the European Commission in the media pluralism related issues in the period 2000-2014? How they can be assessed?

In the ***sixth chapter***, all the initiatives are brought together and the study tries to assess EU institutions policy actions, strategies and arguments related to the pluralism protection in the 2000-2014 period. Additionally, it can be assessed if the European Commission is distancing further more

¹ Kroes, N. (2013) Speech in the plenary of the European Parliament, 20 May: Strasbourg.

² “*The EU Commission awarded a grant to the CMPF to conduct a pilot implementation of the Media Pluralism Monitor*”, Retrieved October 2013 from <http://cmpf.eu.eu/News/All/131015MediaPluralismMonitor.aspx>.

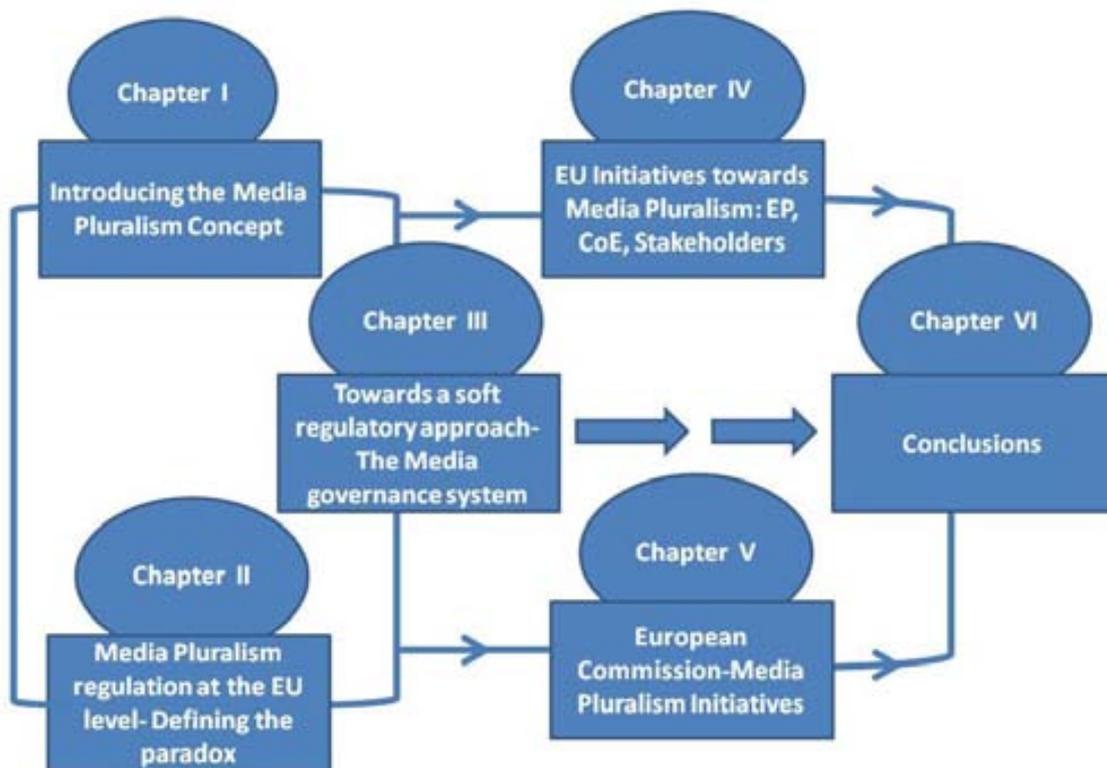
from the subject or is bridging the gap towards the initiatives of the Member States to complement these initiatives with soft-regulatory initiatives at the EU level. *The questions to answer here are:*

Is there an EU strategy protecting pluralism within the analyzed period? Has it been coherent and rational driven? Have soft-regulation measures been a good option to improve pluralism policy at the EU level? How has the European Commission listened and acted according to the different recommendations from European Parliament, European Council and civil society or the EU privileged Member States and Industry? Are there better regulatory measures or mechanisms that the EU can employ to assist Member States in promoting media pluralism for the actual digital media?

This research study will attempt to answer these questions in the final chapter VI, while drawing up the final conclusions.

3. METHODOLOGY AND THEORETICAL FRAMEWORK

FIGURE 1.1: Structure of the Study



SOURCE: Elaborated by the author

Methodology

The methodology of this research is based on a literature review from the theoretical texts and policy documents and on semi-structured interviews taken with the different actors like the

European Commission officials, academic experts and assistants of Members of European Parliament during the spring of 2013.

Therefore, the first part of the study is based on an extensive literature review and analysis of the development of the concepts of media pluralism and soft-governance in the EU policy documents, focusing on the ambit of the EU media. The most important scholars that analyzed the concept are coming from the sphere of social sciences, political sciences and law as well as from the economical sciences. With respect to the policy documents the study is based on EU policy documents analysis, of position papers and contributions to public consultations raised by the European Commission by representatives of the industry and civil society organizations.

Theoretical Framework

This study focuses on the concept of media pluralism as a vital concept of a democratic society and assesses the principles that build the concept as well as the main characteristics that underline the importance of the concept for the media policy. The societal developments, along with the technological changes and political influences had a direct influence over the concept of media pluralism and the development of the external and internal part of this concept. These influences contributed to the increased value of the application and passage of the concept into the media policy debate. Furthermore, this study will look to distinguish new definitions and characteristics of the concept advanced by the EU institutions and different stakeholders in order to supplement the efforts of media scholars.

Another theoretical concept used in this study is soft-governance, while aiming to discover the characteristics and advantages of the soft-governance for media pluralism at the EU policy level. The theoretical concept of soft-governance, which developed in the past decade as a theoretical concept able to open a new way of media regulation, can offer the mechanisms and the structure to regulate media beyond the statutory regulation.

A media governance system, through the promotion of equal participation and application to the both statutory and soft-regulatory mechanisms is presenting an opportunity for enhanced representation of media pluralism. The theoretical study on media governance concept develops from the first ideas of governance, characteristics of the system and the different mechanisms: co- and soft-regulatory mechanisms. Media governance has been consolidated by Puppis (2010) and by the contributions towards a definition of the concept brought by media scholars like Bardoel (2007), Freedman (2008) and Meier (2011). The definitions of the concept could throw a new light towards the possibilities to assist the needed attention towards the values promoted by media pluralism in the new digital environment.

Later, the focus is directed towards the mechanisms of co- and self-regulation, the soft-regulatory measures that could supplement the statutory governance and to the difficulties of implementing this kind of regulation. Finally, the theoretical framework will be applied to the concrete case of the European Union media governance with the purpose to analyze media pluralism actions at the European Union level and provide for a better framework of media pluralism protection.

3.1. SUPPLEMENTARY CONSIDERATIONS

This study relies heavily on the analysis on media policy documents at the EU level, the treaty documents of the function of the EU and documents issued by the Council of Europe and of other interested groups for the debate of media pluralism. Therefore the intention is to include the most relevant documents that can bring a clear picture of the media pluralism coverage. Nevertheless, the study cannot pretend to have included all the documents that EU institutions and other institutions and organizations issued on this subject but can account for the most relevant and most discussed at the EU level and between scholars and media practitioners.

**PART I-THEORY AND LITERATURE
REVIEW**

CHAPTER I. INTRODUCING THE MEDIA PLURALISM CONCEPT

The first chapter of this study introduces the theoretical concept of media pluralism by looking at foundation principles, characteristics that were added along the way by media scholars and the role of the concept in the society. Therefore, it analyzes how the concept developed and what represents nowadays. Later on, this study will be used to analyze the EU media policy actions towards media pluralism protection at the European Union's institutions level, the focus of this thesis. This chapter will follow a chronological analysis focusing on the theoretical advancements.

First, it is introduced the role of mass media and the view on public interest, while attempting to answer the question of *what is at stake?* and towards what ideal objective the theoretical works are aiming to.

Second, when media pluralism is described, a constant reference is made to media diversity. Therefore, this concept is included alongside media pluralism. The analysis of the concept of diversity is seen here as appropriate since it is an opportunity to see how the two concepts developed together and when these took separate routes. Additionally, a reference is made to plurality and the close meaning to pluralism. Plurality it seems to be an *easier* concept in "*ensuring there is a diversity of viewpoints available and consumed across and within media enterprises [and] preventing any one media owner or voice having too much influence over public opinion and the political agenda*", according to the Independent regulator and competition authority for the UK communications industries (Ofcom, 2012, p. 8).

Third, the concept of media freedom is introduced together with media pluralism analysis. While in the beginning media pluralism was described in association with the concepts of diversity and plurality (McQuail, 1992; Cavallin, 2000; Miguel, 2004; Klimkiewicz 2009) (Sub-chapter I.2), recently media pluralism has been approaching in description and meaning to the concept of media freedom with the objective of attaining a democratic society (Nieminen, 2010; Barzanti, 2012; Sarikakis, 2012) (Sub-chapter I.3). Therefore, the characteristics and objectives of media freedom and media pluralism for the construction of a democratic society brought them closer.

Fourth, the contrasts that build the concept of media pluralism are analyzed starting with the internal and external part of pluralism advanced by the Council of Europe definition in 1994. However, this is not the only dichotomy comprised by the concept. The following dichotomies will be further analyzed: political/cultural characteristics (Doyle, 2002); economical/cultural and a precondition/an instrument (Barzanti, 2012).

Last, the centrality on either media or the end user as objectives to be attained through media pluralism policy is analyzed. This approach is taken while observing the evolution of the media

pluralism definitions and the different emphasizes. It is important to note that EU documents with definitions on pluralism for the period of 2000-2014 will be analyzed in the next chapter II.

I.1. MASS MEDIA AND PUBLIC INTEREST

Over the years, the media scholars described the role that media plays in a society to include positive and negative aspects. Some scholars argue that media shape the society in a negative way, starting with the *hypodermic needle* extreme theory that highlights the persuasive view of media effects, and going until there to shape the public opinion in a certain direction and are “*harmful to democracy*” (Couldry et al. citing Lippman, 2007). On the other side, is the view that media have a positive side in informing and nurturing cultural identity. This view is supported by the European Union and Council of Europe while awarding great emphasize on its policies to support the public service broadcasting remit in order to coexist with the private broadcasters, maintain a *public value* and build an example for the society. However, safeguarding the public broadcasting system has been identified with a restricted form of public interest just as McQuail observed that private broadcasters “*are also expected to deliver similar benefits for society on ‘public interest’ grounds*”(1992, p. 3).

Harrison and Woods (2007) followed the functionalist and critical theories to make a connection between the functions of media and the creation of media policy. Media Functionalism recognizes the values of media while influencing the people, with a positive and a harmful function at the same time. The positive part includes an inclusive function for the promotion of *cohesion and solidarity*, a *surveillance* function as it has a base of information provider and *desirable social norms and values creation* function. The critical theorists, Marxist influenced, focus on media conveyers of certain directed political views and the role of diminishing the cultural role. In their analysis, the authors focused directly on media broadcasting but these values exposed by them could be extended to media in general.

Another role of the media, aside to the *socio-cultural*, is the *economic role* (Just, 2009). The economic part of media ownership developed aside from the first influence of the governments over the public opinion. Therefore, the non-economic function follows democratic, social and cultural goals of the society. The economic gains are extended to the individuals and society at large through the creation of jobs but these can be left on the second place compared with the advantages for industry. These advantages are represented by the media products classified by Albarran (2004) in *information* and *entertainment media*, which emphasize the further importance of media for the industry brought by the technological advances. This distinction allowed the industry to achieve even more economical advantages, by use and reuse of this media by marketing to both advertisers

and consumers. This point is underlined as well by Doyle (2002) citing also Picard (2000) in her text, when talks about media capacity to generate content and audiences as a key economic characteristic of media.

Talking about the construction of media policy, this includes the elements of public welfare like *“freedom, diversity, quality of content and public accountability”* (Van Cuilenburg & McQuail, 2003, p. 186). Policy needs to be conducted with the *“public interest”* principles in mind in *“which democratic states are expected to pursue on behalf of their citizens”* (Van Cuilenburg & McQuail, 2003, p. 182). The pitfall of this concept is that *“public interest is whatever the people who enforce it want it to be”* (Grisold, 2006, p. 187).

The existence of *“some kind and degree of public interest in the operation of mass media[...] has much to do with the rise of democracy and of a ‘public sphere’”* for the education and opinion formation of citizens and expression of *“common knowledge and of widely held values”* (McQuail, 1992, p. 4). In the end media do not have the power to influence in a positive or negative way a democratic society more than the participants to this society; it *“depends a great deal on political actions, on citizens and on organizations in society”* (McQuail, 2003, p. 259).

In the following sub-chapters will be analyzed what is the role of media pluralism in the rise of democracy and its connection with other concepts.

I.2. PRINCIPLES BUILDING THE CONCEPT OF MEDIA PLURALISM

Before looking at a definition of media pluralism, a few elements built the concept in the beginning. From the start, the concepts like diversity and plurality that interchanged in meaning and ended up being assimilated by the media pluralism concept and being an integral part of it later on.

Scholars had a rather difficult task in properly differentiating media pluralism from the diversity one. There is a perpetuated confusion between the meaning and application of pluralism in comparison to diversity. As we can see from the work of McQuail (1992) and also expressed by Cavallin (2000) pluralism is better to be divided, in explanations and analysis, from the diversity, which in a way limits its argument.

For McQuail diversity became a valuable concept due to its capability to *“acquire the status of an end in itself”*(1992, p. 142), based on the values promoted by the modern societies: *“individualism, change, freedom of thought and movement”*, while pluralism became a political concept, with roots coming from the eighteen century. The political connotation of the concept of pluralism depicts a general reaction of not depending on the state control, *“a positive reference to any political forms opposed to statism or absolutism”*, while associated with pluralistic political arrangements *“to prevent undue concentrations of power”* (McQuail, 1992, p. 141). Moreover,

McQuail added that pluralistic mass media contributes to diversity in three ways: *“reflecting diversity in society, giving access to different points of view and offering a wide range of choice”* (1992, p. 144). These openings for participation brought by the pluralistic mass media give the opportunity of media users to *“increasingly control how and when they interact with media services [which directly] stimulates diversity* (Klimkiewicz, 2009, p. 49).

Moreover, media diversity in itself has found a faster embrace from the regulatory side than media pluralism. The value of media diversity for the construction of media regulation is identified when adding the principle of cultural diversity: *“all media regulation claim cultural diversity as their ultimate goal, irrespective of whether they are market-driven or state-induced”* (Grisold, 2006, p. 174).

Cavallin (2000) continued the line of analysis of the two theoretical concepts of McQuail (1992) and implicitly introduced us to the first theoretical expansion of the concept of media pluralism. He differentiated media pluralism from diversity as being the former a more general concept *“since pluralism does not only pertains to ‘contents’ but to entire social structures”* and is *“contributing to the pluralism of society at large”* while is *“something rather distinct from the mere diversity of the media”*(Cavallin, 2000, p. 126). A socio-cultural phenomenon, pluralism *“has numerous meanings, but normally associated with plurality of views, opinions, attitudes of a political, religious, ethical nature”*(2000, p. 128). Therefore, the author identified pluralism with the representation of different views and opinions, only that he uses the term plurality instead of diversity.

A reference has to be made to plurality and diversity as two different concepts. Miguel (2004) described the plurality and diversity in order to compare the concepts to media pluralism. Plurality refers to present factors in a certain society, which have to be protected for the formation of a democratic society and pluralism, while pluralism is referring to media as the instruments to ensure the plurality. Therefore, Miguel advanced the idea: *“the plurality of media is what can be named media pluralism”*(2004, p. 1). Diversity has different perspectives to be studied upon like different formats and themes, contents, groups and geographical location. With this last description of the different perspectives of diversity, the author observed a proximity between the two concepts of pluralism and diversity and ends up to resume the following considerations about the two: *“pluralism is synonym with diversity; pluralism supposes diversity; pluralism justifies plurality;[...]the plurality is descriptive and the pluralism normative”*(Miguel, 2004, p. 2). In consequence, the author presented the pluralism as a perfective value that needs to maintain at the present level and increment in the future.

Klimkiewicz (2009) made this reference to the plurality and diversity, discussed also by Miguel, while looking at the UK White Paper 'A new Future for Communication' for diversity: "*the range of different programmes and services available to viewers and listeners*" and at the Department of Trade and Industry (2000) for plurality "*the choices viewers and listeners are offered between different providers of such services*". Therefore, plurality adds to the values of diversity and look at similar services and the differences in contents between them.

Arriving at the characteristics of pluralism Freedman (2008) considered the most important normative characteristics of pluralism to be the **accountability, impartiality and autonomy**, with the same goal of combating individual characteristics and incorporating views of multiple stakeholders. Again the author emphasizes the need for more voices to be implicated and heard in the media processes, since this action leads to the **freedom of expression**. This can be done through a limitation of state intervention especially in the **content regulation**, with the exception of the moment when regulation is needed for child protection in advertising and invasion of privacy.

Furthermore, Cavallin named as the main property of pluralism the "*independence, of different groups and views expressed by groups (persons, etc.) in society*" (2000, p. 127). In order to ensure the independence mentioned above, media can contribute, according to the author, in three ways: "*by reflecting existing pluralism and diversities or differences in society, by offering space to diverse opinions in society, by offering to the audience (general public, users) a diverse supply*" (Cavallin, 2000, p. 125). A society where media ensures all these conditions is a pluralistic society. Cavallin's conditions enlisted above will be followed later by Doyle (2002), which will look at the conditions of the society that primordially affect pluralism.

Doyle presented diversity and pluralism as different elements but which can be always found together when discussed by communication scholars. Moreover, there has been created also an expectation alongside with the "*need for diversity and plurality of media content and media sources*" (Doyle, 2002, p. 12). This expectation that can also be translated in the awareness the society has of the role of these elements together for the construction and functioning of a democratic society.

Furthermore, Doyle also looked at the determinants of this concept because it does not only depend on political will or societal expectations. Pluralism is also influenced by: **size/wealth** of the market and the final product depends on the **availability of resources** with smaller or bigger countries affecting differently the concept of pluralism; **diversity of suppliers** to provide the channels for the expression of different political or cultural voices; **consolidation of resources** refers to an efficient use of the available resources, whether are few or many; **diversity of output** is related to the content presented to the public. These determinants regulate also the relation between

pluralism and media concentration, a variable that can affect the pluralism in a negative way if the relation is not well monitored.

The different descriptions of the diversity and plurality in relation with media pluralism do not show a consensus between scholars. However, the analysis it makes very clear that both the concepts are now an integral part of media pluralism, either as prerequisites or as just parts participating to the description of the analyzed situation. These two concepts of diversity and plurality are clearly interchangeably forming the “*multidimensional*” concept of media pluralism, as mentioned by Miguel (2004).

The next sub-chapter will look at the concept of media freedom, which is lately associated with media pluralism with an objective of reaching a democratic society.

I.3. MEDIA PLURALISM, MEDIA FREEDOM AND DEMOCRACY

Media Pluralism has become a concept indispensable for the construction of a democratic society with the view that the “*very essence [of media pluralism] has to be related with the very nature of democracy*” (Barzanti, 2012, p. 3). This relation expressed by Barzanti spurs from the basic role of media in general in a democratic society, as described by McQuail: “*It is hard to imagine a democracy in modern society, which is not supported by media*” (2000, p. 258) as discussed above at point I.1. of this chapter. The “*well-functioning*” of a democracy in itself “*calls for a confrontation of democratic political positions*” because a “*liberal democratic society requires a debate about possible alternatives*” (Mouffe, 2009, p. 551). Consequentially the role of media pluralism in a democracy is to contribute to the debate of possible alternatives by providing the places for these alternatives to be expressed and heard in a society. And these alternatives are very important to exist in media because one should not forget that media have been and remain in a first instance “*purveyors of information, not of absolute truths*” (HLGMFP, 2013, p. 11).

“*Political elites and the state are historically seen as negative forces in controlling and suffocating media freedom[...] At the same time politics and private market interests also intersect*” (Sarikakis, 2012, p. 249). This is why Nieminen (2010) suggested a *new democratic framework* which should be based on the concept of “*citizens’ communication rights*” that could include: “*rights to information, orientation, social and cultural communality, and self-expression*” (2010, p. 23). This goes back to the previous sub-chapter (I.1) where public interest was discussed as part of media regulation objectives, although Nieminen referred to it as social interests’ access to media.

Media pluralism has a close relation with media freedom and both concepts are often described to build and sustain a democratic society, while complementing each other (Centre for Media Pluralism and Media Freedom-CMPF, 2013). Both participate to the creation of freedom of

speech, freedom of information and freedom of expression and deliberation. Freedom of speech is described as “*both individual and cultural [...] the ability to participate in an ongoing system of culture creation*”(Balkin, 2004, p. 5). The role of media is emphasized by both media freedom giving the “*possibility to express oneself and to access information*” and by media pluralism with the “*degree of outreach of this freedom, i.e., the outcome being that every group in a society can enjoy this freedom*”(CMPF, 2013, p. 9). In the end, in the same study of the CMPF media freedom is described as a ***necessary pre-condition for the proper functioning of pluralistic media system*** especially when looking for the relevant legislation to provide for the both values.

Media Pluralism is evolving with the emphasize that is also put on other concepts and since more attention is given to the creation of a democratic society the association with media freedom comes as a natural advancement since freedom of speech, of information and of expression are primordial for media pluralism. Important to observe is the contribution of Sarikakis and Niemien which suggested to advance towards a new democratic framework including ***citizen’s communication rights*** which actually opens the field to the media pluralism and media freedom ***collaboration***.

After analyzing the different associations of media pluralism with certain concepts and having a more general image of the characteristics of media pluralism the next sub-chapter is looking at these characteristics and analyzes the dichotomies in the concept.

I.4. MEDIA PLURALISM- A CONCEPT OF CONTRASTS

Introducing ***the first dichotomy*** of media pluralism, it has to be said that Council of Europe (CoE) has made a good work on pluralism regulatory definitions. At the 4th Ministerial Conference on Mass Media Policy (1994), with the theme “*Media in a democratic society*”, was forwarded a definition of the media pluralism as follows: “***internal in nature, with a wide range of social, political and cultural values, opinions, information and interests finding expression within one media organisation, or external in nature, through a number of such organisations, each expressing a particular point of view***”(CoE, 1994, p. 8)³. The most important feature of the definition is the recognition of both *internal part*, referring to content requirements to achieve pluralism and *external part*, which includes the need of a different and diverse media ownership.

The work of the Council of Europe continued in 1999 and pluralism was defined as a “*plurality of independent and autonomous media (generally called structural pluralism) as well as a diversity of media types and contents (views and opinions) made available to the public*”(CoE, 1999, p. 3). The internal and external sides of pluralism are preserved although this 1999 definition brings

³ MM-CM, Council of Europe’s Committee of Experts on Media Concentrations and Pluralism, 1994.

a novelty with the concept of independence and autonomy of the media, which was not made clear before in a previous definition.

This dichotomy between internal/external is the most recognized and emphasized for media pluralism definition. Klimkiewicz (2009) reiterated it once again by defining media pluralism:

“Media pluralism is to be best structured and achieved at the level of media system as a whole, through the existence of a range of media outlets or organizations reflecting the points of view of different groups or cultural representations, rooted in different traditions of a society”(2009, p. 50).

Moving on to another dichotomy, Doyle (2002) made the distinction between **political** and **cultural pluralism**, both sides related to the needs of society. A political pluralism is depicted “in the interests of democracy, for a range of political opinions and viewpoints to be represented in the media”. Here the interest of society is guarded by political voices, represented by different political parties. A cultural pluralism represents the need for “*a variety of cultures, reflecting the diversity within society*” (Doyle, 2002, p. 12). It can be resumed in the representation of different political and cultural voices.

Klimkiewicz (2009) further analyzed the term of media pluralism from two areas of interest where it can be employed. Firstly, from the **social and political point**, pluralism has an important role in the formation of civil society as a public sphere formation. This is denominated the “*inclusive approach*” because media is part of the public sphere as constructing and preventing negative effects in a society. Secondly, from the **economic** side, the “*autonomous*” approach of pluralism, media is identified with an increase in the “*growth of professional norms, self-regulation*” and “*media autonomy from a political system but not from economic forces*” (Klimkiewicz, 2009, p. 51).

A more recent work (Barzanti, 2012) pointed to another dichotomy which was not emphasized too much in literature. The scholar started from the description of media pluralism in the ECHR case-law as a “**characteristic of and a condition for a democratic society**” describing a passive and an active side of the concept. “*The passive/descriptive dimension-that is recognizing and respecting what already exists in society and a dynamic/active side-that is the need to pursue and promote the rooting of an essential precondition for democracy*” (Barzanti, 2012, p. 2). The passive side is also seen by the open platform that media offers for different voices to be heard, while the active one is the actual interchanging of this views and promoting constructive debates. Moreover, Barzanti advanced and expressed that media pluralism became a “*precondition for the existence and exercise of freedom of expression and information, and (also) an instrumental tool for enjoyment of the right of everyone to be informed*”(Barzanti, 2012, p. 3). It has to be observed that these values described above are also described as part of media freedom, a value that was

emphasized here as having a strong connection with media pluralism for the better construction of a democratic society.

The several dichotomies presented above show the complexity as well as the importance of preserving media pluralism for a democratic society. While dichotomies build a complex process these also pose a difficulty at the time of regulation for the protection of media pluralism. A balance has to be searched in order to not protect only one value or part of it in the detriment of others.

I.5. MEDIA PLURALISM AND OLD MEDIA-MEDIA CENTRALITY

Additional contributions to pluralism definition look for a different approach. Kaitatzi-Whitlock (1996) and Gibbons (2000) focus on the media role, leaning from the 1994 definition of the Council of Europe, which was balanced between media organizations' plurality and content diversity.

In her analysis of audiovisual media activity and EU regulation, Kaitatzi-Whitlock (1996) focused on an important characteristic attributed to the pluralism concept: "*freedom of information*" and defined media pluralism as: "*the equitable management of the principle of freedom of information*" (1996, p. 458). This definition takes upon the role acquired by the media in society which it affects and it is affected by media constantly (Kaitatzi-Whitlock, 1996, p. 458). Moreover, this concept of freedom of information is further included also in a later work of Gibbons (2000). Essentially, media pluralism is "*a major manifestation of the democratic interest of the media*" fitting perfectly with the democratic objectives of freedom of representation, freedom of information and freedom of expression (Gibbons, 2000, p. 306).

All of these contributions place media organizations at the center of the media pluralism debate and regulation.

I.6. MEDIA PLURALISM AND NEW MEDIA-"END USER" CENTRALITY

A new world appeared around the new century. The growth and the burst of the "*dotcoms*" in 2000; strong political changes in international politics as the attack on the twin towers in New York and the uprising of China power; the growth of mobile devices; the expansion of internet and digital technology. These and other factors brought together generated a switch to *a user-centered society*. Social changes became heavily crafted by the digital decade and rapidly led to a change in the structures of communication.

As a consequence, further advancements in pluralism theoretical discussions considered more and more the end user capability to use all the information provided by the media and its needs to access and participate to the process of content creation and distribution (Perez Gómez;

2000, Westphal, 2002; VanCuilenburg & McQuail, 2003; Miguel, 2004; Tomás, 2004, Curran, 2005; Freedman, 2008; Klimkiewicz, 2008, 2009).

One of the first authors that mark the change of media pluralism from media organizations towards the end user is Perez Gómez (2000) which described the concept as: *“the possibility of the public to access various autonomous and independent media and to access contents of different types”*(p. 86). He took the external and internal parts of media pluralism and applied them to needs of the end user. Furthermore, Westphal described media pluralism **through its scope**: *“media pluralism aims at protecting and enhancing democracy by providing the citizens with a broad range of information and views needed for the effective exercise of their respective citizenship”*(2002, p. 478). Another author that is in the same conceptual description is Tomás (2004) which stayed with the same description of protecting the **citizen** in the description of media pluralism: *“the pluralism applied to the audiovisual media is present in the possibility of all the citizens to access in an equal way the maximum of opinions, ideas and information”*(2004, p. 1).

The 2003 work of VanCuilenburg and McQuail brought a light over the meanings and changes of the *“public interest”*, while distinguishing a new policy paradigm in Europe *“for media and communications, mainly driven by an economic and technological logic, although it retains certain normative elements”*(2003, p. 198). These authors hold an important position in describing the evolution of media that brings along changes in society and more deeply in the roles of the *“public”*. These scholars saw a change in the constant redefinition of the concept of **public interest** towards economic and consumerist values presented in the last third phase, *“The New Paradigm”*, which is developed in the middle of the technological convergence. It is seen as an opportunity by the state to approach as many **masses** as possible. The final goal of media is *no more the* social equality of the public interest but the consumerist value of the masses. The new three-core principles on this new media policy paradigm are **freedom to communication, access and control**. They are based on the technological changes molding the needs of society, where the **end user** is a key actor to build up his own pluralism.

Furthermore, for Miguel (2004) media pluralism became already a **social value and politically accepted**, one marking a clear shift from the vague denominations given by the EC in 1992 Green Paper. We were presented by Miguel with a multidimensional and perfectible value, which needs a regulation (Miguel, 2004). There is a similar resolution in the direction asked by Miguel (2004) from Curran (2005) who advanced the idea that media pluralism could be safeguarded with the implementation of *“structural reforms that widen social access to the public debate or extend social representation”*(p. 137). This action brought to the forefront the representative role of the

media, which is in accord with *“the facilitative role of the media”* of Gibbons (2000) and with *“the integration programming”* of Hoffman-Riem (1996).

Therefore, Curran projected that media pluralism should be conceived as a *“contest that is open to different social groups to enter”* (2005, p. 137). In the same line of thought, Freedman (2008) advanced as the most important normative characteristics of pluralism: **accountability, impartiality and autonomy**, with the goal of combating individual aspirations and *“incorporate the views of multiple stakeholders”* (2008, p. 33).

Klimkiewicz (2008, 2009) does continue in the same analysis and adds the idea of the end user ability to use the media by allowing participation and access to information. Klimkiewicz (2008) is one of the authors that brought to the center of her argument *“the potential of the full usage of pluralism that depends on the end user”* (p. 83). The users, the receivers and senders of the media message, need to have the ability to *“critically read media content, distribute their own content and generate individual ways of interaction with media services”* (Klimkiewicz, 2008, p. 83). What had a great impact, according to the author, is the digital revolution that have led to media convergence and provided more liberty for the end user to select and use **new** emerging media. Nevertheless, Gibbons (2000) gave an early warning on the enhanced diversity of choice: *“new content diversity platforms and digital technology appears actually to correct any problems of market failure that might have existed previously”* (p. 308). The warning was on the **appearance** of problem solving. It cannot pass automatically from diversity of sources to diversity of contents. It is an exercise of the citizens of practicing a democratic responsibility that could be ignored if *“audiences would have no realistic reasonable prospect of finding alternative ways very easily or cheaply”* (Gibbons, 2000, p. 309).

In a later work, Klimkiewicz (2009, p. 48) introduced the concept of **building blocks** as pluralism tools through which media pluralism’s full potential is reached. These blocks are: multiple centers of media control, multiple sources, multiple opinions and views, multiple access to and participation, multiple values and multiple forms of interactions. The block of multiple access to and participation *“in an exchange of media images, words, and representations defines a process of socialization and shapes models of behavior”* (p. 49), is linking very closely to the ideas of Curran (2005) of widening social access and again it focused on the end user. Moreover, is notably interesting to see that especially these values are represented very asymmetrical in society nowadays: there is no universal access and no universally interactivity and therefore participation, since the technological changes impose asymmetry that media policy is not yet capable to correct. Here there is a direct exemplification that when a concrete action is proposed to protect media

pluralism the new media can bring additional difficulties of application especially for the end user (Klimkiewicz, 2009).

On top of that, the “*end user*” named by Klimkiewicz (2008) has gathered different connotations as named by Westphal (2002) “*citizen*”, by Gibbons (2000) and Cavallin (2000) “*audience*”, and Freedman (2008) as “*stakeholder*”. According to the new paradigm of VanCuilenburg and McQuail (2003) the “*end user*” is the “*consumer*” in this technological phase of media, which translates on its economical role. However, when media pluralism refers to access and participation as central values, it cannot include only the consumer role of the “*end user*”. When the focus in media systems moves from the centrality of media to the centrality of the “*end user*”, media pluralism has new stakeholders to rely on: user, citizen and consumer at the same time, like a “*Triple Vision*”(Llorens & Costache, 2013b). This “*Triple Vision*” comes from a need to recognize that an overly idealistic view of promoting only the citizen’s interests or an excessively economic one of the consumer’s interests are not making any right of representation to the active participatory individual in the communication processes. Therefore, is envisioned as an appropriate solution the inclusion of the three connotations of the end user in this “*Triple Vision*”, holding the interests of all three.

CONCLUSIONS CHAPTER I

This chapter has started from the research question:

Which are the main contributions from media experts and stakeholders to the debate of media pluralism concept?

Media have been described in this chapter as having from the beginning both a positive and a harmful effect over the public. The roles of informing and educating have been described as the first positive effects. Regarding the harmful ones, firstly it was a way of government control, followed by advertising control and media ownership control through the media. Later on, media roles have been described to be socio-cultural and economic (Just, 2009). The economic role does not only bring a positive result for the industry but also has a positive influence over the media capacity to generate content and audiences. Nevertheless, the influence media has on public interest objectives depends on “*political action, on citizens and on organizations in society*”(McQuail, 2000, p.259). These influences bring the objectives of media pluralism closer to the media needs.

Looking at the first concepts correlated in the beginning with media pluralism there are the diversity and plurality concepts. Pluralism has been framed as separating from the political influences and “*preventing undue concentrations of power*”(McQuail, 1992, p.141) and this approach exemplifies the first harmful role attributed to the media above: control of the public by the

government through the media. Therefore this description seems to come as a natural action of “*escaping*” political control through giving the opportunity of different voices to be heard, apart from governmental messages since “*pluralism pertains[...] to entire social structures*” (Cavallin, 2000, p.126). The conclusion is not to eliminate political views at all but to present through media all type of views either political, religious, or only opinions, views.

Therefore, the first characteristics of media pluralism appear after a long deliberation of scholars between the advantages of having diversity and plurality in the media. Cavallin (2000) and Freedman (2008) name as the most important characteristics of media pluralism: independence of different groups and views expressed by groups, accountability, impartiality and autonomy. These characteristics and especially the voicing of own opinions in an independent way paves the way to freedom of expression and consequentially towards another concept identified lately as close to media pluralism: media freedom. The concepts of diversity and plurality are not left aside but rather are assimilated by the media pluralism concept in the path of its theoretical evolution with Doyle describing the direct expectations we have today from the media: “*need for diversity and plurality of media content and media sources*” (2002, p. 12).

What has to be made evident is the closeness of media pluralism to media freedom due to the increased need to have both concepts constructing and maintaining a new democratic society. The influence comes from the political side with social scholars acknowledging how media can participate to this political need of restructuring our democratic perception of a society. Sarikakis and Niemen have contributed to the view with the proposal of a democratic system based on the citizens’ communication rights. And here we are actually forming a close circle and go back to the first and biggest influence: of political elites over the public through media. Media Pluralism should direct to a stronger stance for citizens’ participation because in the past ten years technological changes raised the economic influences but also brought new types of political influence.

The evolution of the definition of media pluralism from media centrality to end-user centrality depicts the same circle and brings us back to the description of McQuail that media influence over the public interests is a result of stakeholders’ actions to media processes. The condition is who has a bigger influence. Westphal’s definition depicts the actual protection of the democracy while focusing on the citizens: “*media pluralism aims at protecting and enhancing democracy by providing the citizens with a broad range of information and views needed for the effective exercise of their respective citizenship*” (Westphal, 2002, p. 478). Going around and building a full circle is enforced by the warnings of scholars like Gibbons (2002) which do not see the new changes in technology as enhancing the diversity of choice but only apparently creating an **illusion of diversity** and problem solving of previous problems.

Another “*problem solving*” issue appears when media pluralism is used as a condition to protect consumers interest, which do not actually represent public interest and exclude end-user and citizens interests. The different uses by the scholars of these concepts and the different objectives created the need to have a triple solution and build media pluralism policy towards the interests of all three, “*the triple vision*”: consumer, citizen, end user (Llorens & Costache, 2013a, 2013b).

To conclude, a multidimensional concept, media pluralism did not only evolve in the focus of the definitions but also in the relation with the concepts it is associated. And the two evolutions seem to be strongly related. Nevertheless, the evolution did not left behind the “*old*” associations or concepts that constructed media pluralism concept, like the diversity and plurality one. The evolution has actually assimilated these concepts, taken at this point as integral parts of media pluralism and is approaching to another concept as media freedom. Similarly, the definition of media pluralism has passed from media centrality and a focus based on plurality and diversity to a focus on the citizens’ rights to communication apart from political and government influences. Citizens’ rights include the values brought by media freedom: freedom of information, of communication and freedom of expression closing a circle of media pluralism development at the pace of the technological and economical developments.

CHAPTER II. MEDIA PLURALISM AT THE EU LEVEL- DEFINING THE PARADOX THROUGH DOCUMENTS

This chapter analyses the most important European legal documents that include an explicit reference to media pluralism. These documents are from the EU institutions, different European stakeholders and from the Council of Europe. The Council of Europe policy studies and recommendations are taken as a point of reference in this study for two reasons: its broad theoretical developments and its policy uses for media pluralism by EU institutions. The studies commissioned by the European Commission and policy papers take very often the work of the Council of Europe as a point of reference.

The structure of this chapter takes into consideration firstly the institution that issued the document and secondly the timeline for the issuing of the documents and the importance given to the media pluralism issue, whether the focus is mainly on media pluralism definition or the protection of media pluralism from the point of view of the analyzed institution.

The distinction according to the institution situates the documents simultaneously in the legal framework, since different institutions have a different legal weight in: initiating legislation, proposals, recommendations or only issuing a report or an opinion with smaller influence on the regulatory mechanisms. Therefore, the analysis starts with the heavy regulatory documents, and ends up with the positions and opinions of different stakeholders on media pluralism.

Regarding the European Commission (EC) two documents are highlighted in this chapter: the *“Media Pluralism in the Member States of the European Union”* (2007) and the Media Pluralism Monitor (MPM) (2009), part of the *“three-step approach”* strategy promoted by Commissioner Reding. Both documents are including references to media pluralism definition and are contributing to the concept from the part of the European Commission.

The Resolution issued by the European Parliament (EP) is analyzed next (EP, 2004) and this is coming from the committee on Civil Liberties, Justice and Home Affairs (LIBE). Here the idea is to analyze how media pluralism is defined and used by the European Parliament.

In the following the documents from the Council of Europe are analyzed, where great importance is given to the concept of media pluralism since the first definition advanced in 1994. Alongside the recommendations of the Council of Europe are studies also on the works of the groups of experts that issued opinions and research documents of monitoring the situation in different Member States for the Council of Europe.

Lastly, there are analyzed documents or position papers of the interest groups and media organizations that have an active role at the EU level debate for the media pluralism.

Whereas the first criterion is the one of the *type of institution*, the second criteria is *the timeline*, where all the documents are presented in a chronological order.

The third criterion is based on the *importance given to the pluralism concept*. There is widely recognized that media pluralism received greater emphasize from the Council of Europe in the nineties than from the EU institutions. Nevertheless, the importance is surpassed by the criteria of the institutions since the first focus of this study is the presence of media pluralism at EU level, whereas the Council of Europe has only the power to issue recommendations and which focus is on its forty seven members and not only the EU Member States.

II.1. DOCUMENTS EU INSTITUTIONS-EU LAW TREATIES

This sub-chapter includes two legal documents with relevance for the functioning of the EU and additionally for media pluralism: The European Charter of Fundamental Rights (the Charter) and the Lisbon Treaty. Since the first document signed in 1951 establishing the European Steel and Coal Community, the treaties have represented the rule of law of the EU: *“The European Union is based on the rule of law. This means that every action taken by the EU is founded on treaties that have been approved voluntarily and democratically by all EU member countries.”*⁴ The treaties are separated into parts: the objectives of the European Union, the general provisions for the functioning of the EU with its main decision makers grouped into three institutions, the European Commission, The European Parliament and the European Council, and the relationships between these institutions and the Member States and between the Member States.

The two documents mentioned above are the most relevant and the most recent documents for the general application of EU law. Additionally, there has been included a study of the Charter made by a group of experts: *“The EU Network of independent Experts on Human Rights”* initiated by the European Commission in 2000. All together, these documents represent the backbone of EU law which has to be respected whenever new EU hard-law is developed, like the media directives, and implemented at the level of the Member States.

II.1.1. THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (THE CHARTER-2000/2009)

The Charter was proclaimed in 2000 and was developed with the objective to have a single document where the EU enlists all the values it protects in the Union: *Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice*. Media pluralism is presented here in Article 11, in direct

⁴ Retrieved from: http://europa.eu/about-eu/basic-information/decision-making/index_en.htm (26November, 2012).

connection with the value of freedom and associated with freedom of expression, freedom to hold opinions and receive and impart information and ideas, directly linked with the internal side of pluralism.

Article 11 of the Charter:

“(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

(2) The freedom and pluralism of the media shall be respected.”

The Charter was included in the Lisbon Treaty in 2009 by reference but without being a part with legal status of the Treaty, while respecting the Article 5 of subsidiarity principle of the Treaty of the European Union (TEU):

“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.” Article 5(3) TEU

Moreover, the Charter can be applied only when EU law is applied at the Member States level. For the right implementation of the Charter, the European Commission started in 2010 a monitoring system, which includes: the legal scrutiny of the directives that are adopted, if these comply with the Charter, the information of the citizens and lastly the monitoring of the application of the legislation according to the Charter.

Even if the presence of freedom and pluralism in Article 11 is welcomed and appraised by the researchers of the Network of Independent Experts on Fundamental Rights (The Network, 2005) and of the report of the Centre for Media Pluralism and Media Freedom (CMPF) they address the concern of the **weak wording** in paragraph 2 of Article 11. The CMPF report notes: *“the 2nd paragraph has an approach which is too shy because of its short and weak syntax [...] “media pluralism and freedom shall always be granted” would have had a strong impact”* (2013, p. 53). This observation of the CMPF can be related to other two observations on specific weak wording related to media pluralism: in the Audiovisual Media Service Directive (Article 30)⁵ referring to the independence of the national regulatory bodies and in the *“Resolution on the EU Charter: standards setting for media freedom across the EU”* (2013)⁶. In these documents the provisions are addressing the Member States and the wording has been changed from the first proposals, from strict action verbs like *“Member States shall guarantee the independence”*(AVMSD) or *“Member States oblige*

⁵ Sub-chapter V.1.2.4.

⁶ Sub-chapter IV.1.4.

the media sector”(EP, 2013) to a softer wording in the final documents “*Member States shall take appropriate measures*”(AVMSD) or “*Member States invite the media sector*”(EP, 2013). As a first conclusion on the **weak wording** in policy documents, initiated by the European Commission or European Parliament, and related to media pluralism, media freedom, this comes with a forceful rejection from the Member States. Therefore, it can be mentioned that the attempt to add EU regulation, related with protection of media pluralism and media freedom, to Member States, is translated as an attempt to the integrity and minimizing of the subsidiarity principle, it is vehemently rejected by Member States and some groups of the European Parliament.

The adoption of the Charter represents a commitment of the European institutions to protect the values of media pluralism while exercising their powers and proposing new legislation. However, the EU institutions find themselves in front of a legal obligation to respect first the principle of subsidiarity and second the principle of media pluralism at EU level.

When looking at the three actions, mentioned above, related with the application of the Charter advanced by the EU institutions these are mainly related with the content and applications of the directives, the application of the EU law and information provided to the citizens. Accordingly, EU influence does not go deeper, to the actual content of a directive with more focus on the values proposed by the Charter and implicitly protecting media pluralism more actively at the EU level. Moreover, even if a directive including media pluralism provisions at the EU level is proposed by the European Commission and supported by the European Parliament, this directive has to pass the scrutiny and consent of the European Council. This body, the representatives Member States, is the one that has the last decision in leaving the provisions like media pluralism as they are, the responsibility of each Member State, or to delegate some powers to the EU level.

The existence of the media pluralism provision in the Charter gives the European Commission more liberty to actually include provisions in their recommendations and consultation papers, asking the Member States to protect the “*freedom and pluralism of the media*” for the EU broadcasting systems. From that point on, will be the decision of the Member States to discuss the right approaches and how these are going to be included in a directive, if possible.

Looking at the actual implication and application of the Charter by the European Commission a great testimony are the three Annual Reports on the Application of the EU Charter of Fundamental Rights (2010-2012). Accordingly, this study exemplifies how the reports acknowledge media pluralism as was mentioned in the Article 11 of the Charter and at the actions and exemplifications of it is protection by the European Commission itself.

The first report on the Application of the EU Charter of Fundamental Rights (2011) did not have any reference to the media pluralism at all but only on freedom of expression, focusing only on

the first paragraph of Article 11. Here the European Commission referred to two cases: Romanian case with the *“Romanian Supreme Defence Council (CSAT), which described the media as a security threat”* and the Hungarian case with the *“national media law and raised concerns regarding its compatibility with the Audiovisual and Media Services Directive”*. In the first case, the European Commission responded to concerns that *“within the scope of its competences, fully committed to ensuring and promoting the respect of freedom of expression”*(2011, p. 35). However, since the actions of the Romanian institutions were not part of EU law the redressing was let to the national authorities: *“the Member State concerned did not act in the course of implementation of EU law and it is for the national authorities to ensure that their obligations regarding fundamental rights are respected”*(2011, p. 35). In the case of Hungary the action verbs describing the European Commission’s action were: *“was in contact with the Hungarian authorities”* and *“raised concerns”*(2010, p. 35). In the case of both countries, the concerns coming from those Member States came as an appeal to the European Commission to take action against the national governments that should had respected media freedom and media pluralism in first place. However, the European Commission did not have the legal support to impose action from the EU.

The second report on the Application of the EU Charter of Fundamental Rights (2012) made again a reference to the Hungarian case: *“Following the Commission’s intervention on the Hungarian media law, using the full extent of its legal powers to enforce the acquis, the Hungarian government agreed to amend its national media law so that it complies with substantive EU law”*(2011, p. 6). Nevertheless, the use of the word **intervention** from the part of the European Commission in the Hungarian situation cannot be extended to legal application of the law but only to wording like *“a number of concerns have been expressed”* in writing a series of letters to the Hungarian government but with no enforcement. In this second report, another reference is made to different actions of the European Commission. According to the concerns raised by citizens and European Parliament over freedom of expression and media freedom and pluralism, there was commissioned a High Level Group (HLGMFP) to give their recommendations on these issues. The role of the HLGMP and the report issued in January 2013 are analyzed in detailed in sub-chapters V.2.1. and V.2.1.1.

The third report on the Application of the EU Charter of Fundamental Rights (2013) once again pointed out to the situation in Hungary under the heading *“Actions taken by the Commission to ensure the respect of the Charter by the Member States”*, where media freedom and pluralism are mentioned as part of the discussions between European Commission and Hungarian authorities.

Referring to the overall application of the Charter in the last three years, the European Commission made the following assertion:

“The increasing reference to the Charter gives a first indication of an effective, decentralised application of the Charter within the national constitutional orders” (2012, p. 16).

This is particularly noticeable for the Article 11 and the reference to media pluralism, because the European Commission shows here that is very aware of the legislative “powers” of the Charter while appraises “*the increasing reference to the Charter*”.

To conclude, the added value of the Article 11 of The Charter is not in the actual legal basis but in the fact that after several years of debates media pluralism surfaced into an EU document with a primary focus the fundamental rights in EU and increasingly is made reference to it. Media pluralism was not present in the EU law back when the first proposal for media pluralism was proposed in 1992 and rejected in 1997 but now the Charter opens the horizons for the protection of media pluralism. This position is supported by the report of CMPF: “*Despite the possible interpretation of a non-interference approach on the part of the legislator [Article 11] it introduces the media pluralism and freedom principles into a source of primary law (although it is not a legal basis for EU competence)*” (CMPF, 2013, p. 53).

In the next section, a thorough analysis of the Charter is conducted while looking at the work of related documents including the analysis of the Charter of a group of experts “The EU Network of independent experts on fundamental rights”, which is analyzed in the following section.

II.1.1.1. THE EU NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS (2002-2006)

An independent network of experts (The Network) on fundamental rights was initiated by the European Commission, leaving from the advice of the European Parliament. This Network not only issued documents on the fundamental rights situation on the Member States (2000-2005), according to their mission, but also issued a non-binding document analyzing the actual Charter.

In the report issued on the monitoring of human rights in the Member States in 2003, the Network mentioned the analysis of the actions of EU institutions and of European Commission on the basis of Charter in the area of media pluralism and concluded that EU institutions “*have the required powers to formulate rules imposing on the Member States to take measures ensuring that pluralism in the media is respected*” (2004a, p. 42). Furthermore, it gave as example the application of the TVWFD, in force at the time of the report, as ***the most economical way to do so***.

The report of the following year reinforced the position of the Network in pointing out to the EU Directive for the audiovisual services as the main element that could regulate media pluralism if

the provision would be clearly mentioned in the articles. It is acknowledged the mentioning of the media pluralism as a value to be protected, as an essential value, by the Member States:

“it is essential for the Member States to ensure the prevention of any acts which may prove detrimental to freedom of movement and trade in television programmes or which may promote the creation of dominant positions which would lead to restrictions on pluralism and freedom of televised information and of the information sector as a whole”(Council Directive 89/552/EEC)

However, the contestation from the Network it is made by the lack of any measures required from Member States to actually protect media pluralism: *“the body of the Directive does not contain any provision aimed precisely at requiring that the Member States take certain measures to guarantee the maintenance of pluralism in television broadcasting, whereas the Directive does contain, for example, detailed provisions on the protection of minors (Article 22) or on the right of reply (Article 23)*. Moreover, the Network mentioned the approachable revision in 2005 of the TVWFD that should take into consideration media pluralism which is considered to bring an *“added value”* if there would be a provision with *“specification at Community level of the requirements of media pluralism in the media [...] in particular in order to clarify the legal framework applicable to such initiatives adopted by the Member States”*(2005, p. 69). This suggestion from the Network pointed out that after several years of monitoring the situation of human rights in the Member States, these would need clearer requirements coming from the EU to build up a framework. And this framework can be consequentially used by the Member States to initiate regulation for the protection of media pluralism. Furthermore, the Network warned about the possible concerns of the Member States in seeing this kind of regulations *“as violating the freedom to provide audio-visual services or the freedom of expression of audio-visual service providers”*(2005, p. 69).

In the analysis of the Charter, the Network referred also to the Article 11(2) focusing on media freedom and pluralism. The second paragraph of Article 11 holds the concept of pluralism itself is of *“great importance, because it contains the aspect of an institutional guarantee of freedom of the media”*(2005, p. 123). Furthermore, the Network made an observation of the wording in the Article 11(2) regarding the freedom and pluralism of media, which uses *“shall be respected”* instead of *“shall be guaranteed”*(Article 11, II.1.1.).

The opinion of the Network was that the only reason to use this wording is due to the **limited jurisdiction** of the European institutions for the audio-visual sector. The second paragraph of Article 11 is seen as a consequence of respecting the first paragraph of the same article. For the limitation, as stated in the report, there is suggested the application of Article 52(1) of the same

Charter “Any limitation on the exercise of the rights and freedoms recognized by this Charter must be provided for by law and respect the essence of those rights and freedoms”(2005, p. 123).

In conclusion, the work of the Network adds to the discussion two main points. First, the experts were of opinion that EU can impose rulings on Member States to protect media pluralism via the Directives (from TVWFD to AVMSD), which names as the main elements of hard-regulation to enforce regulation in this direction. Second, was the concern over the opposition that will come from the Member States in this direction of any regulation in the shape of a Directive. The work of this group of experts is obviously pro hard-regulation and imposing the regulation in the most direct way over the Member States when it come to rules on media freedom and pluralism.

II.1.2. THE LISBON TREATY (2009)

The Second document discussed here is the last signed Treaty of the European Union. The signing of this document brought important changes to the EU legal landscape and it can be pointed out the increased decisional powers for the European Parliament, increased powers for the citizens with the Citizens’ Initiative for the initiation of a directive directly from the citizens, the “*double majority voting*” introduced in the European Council’s decisions for a better decision making and more powers awarded to the European Union for the areas of policy making of freedom, security and justice.

The ratification process for the Lisbon Treaty started in 2007 and ended in 2009 when the Treaty entered into force on December 1. The discussion and adoption of the Treaty of Lisbon came after a controversial initiative to establish a Constitution of Europe, which failed due to the negative vote of several Member States referendums. Relating with this extensively discussed Constitution there has to be made a point when it comes to media pluralism. Media pluralism was present in the articles of the Constitution (Article II-71) with the same wording with the Charter from the present Lisbon treaty. The adoption of the Constitution would have been increased a lot of the legislative competencies at the EU level for this regulation.

The failure of the Constitution led to the discussions of a new Treaty in the European Council meeting in 21/22 June 2007. Therefore, the new treaty was finalized in writing in October 2007, signed in 13 December 2007 and entered into force on 1 December 2009. One of the important novelties introduced by the Treaty and relevant for the future actions towards the safeguarding of media pluralism is the increased powers of the European Parliament and the introduction of the Citizens’ Initiative. This Citizens’ Initiative will be actually used for a proposal for media pluralism promotion in 2012 and is left for the future year of 2013 to see if the proposal will receive the citizens’ support by gathering 1 million signatures until the end of 2014 and furthermore

discussed by the European Commission. The analysis of this initiative is done in detail in sub-chapter IV.3 of this study.

The Treaty of the European Union (TEU) mentions pluralism in the Article 2, which was not mentioned before in the previous Treaty of Nice. This article 2 resembles with Article 6 of the Treaty of Nice but amended to include as founding values of the Union: **freedom, human dignity, equality, the rule of law and protection of minorities**. Additionally, these values are presented to be protected in the societies where pluralism is between the prevailing values:

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.” (Article 2)

Furthermore, the Protocol No.29 is making an explicit reference to media pluralism in connection with the status of system of public broadcasting, which is seen *“directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism”*. This description of the public broadcasting is related to the no-intrusion of the Treaty on the Member States allocation of funding for public service broadcasting, while the remit of public service is achieved and the function of the internal market is not affected.

The inclusion of the concept of pluralism in Article 2 could represent a legislative opening towards the real protection of media pluralism at the EU level. This power it lands in the hands of European Institutions in the cases of major disturbance for the protection of human rights. This power is enlisted in Article 7(1):

“On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.”

This Article 7 has been discussed with antecedence since the signing of the Treaty of Nice by scholars like Craufurd-Smith (2004) as *“opening the way for systematic monitoring of member states conformity with fundamental rights and identification of situations likely to lead to breaches in the future”*(p. 652). When it comes to media pluralism, there are expected actions to be taken in the situation of serious breach of human rights regarding media. For the time being there is not a

thorough analysis due to the lack of application of Article 7(1) but there is an acknowledgement that its main role covers: “*identifying potential abuses, exerting political pressure for change, and feeding information into the system*”(Crufurd-Smith, 2004, p.652) which can indirectly contribute to guarantee media pluralism.

The Lisbon Treaty can be defined as the result of a ***bitter-sweet deal*** because the Constitution of Europe, which had a provision on media pluralism, has not been approved but with the entering into force of this Treaty the Citizens Initiative entered into force, a novel initiative giving new ***powers to the citizens*** to ask the European Commission for legislative measures. Furthermore, the respect for pluralism is mentioned in Article 2 while Article 7 is a very valuable article for a collective decision of EU institution to overturn the decision of a Member State. The concern is that it is left to the EU institutions to define when a situation in a Member State is in ***serious*** breach of human rights to actually apply EU law. For the time being can be applied as a warning from the European Commission when a situation gradually deteriorates in a Member State. If in the end, if the EU institutions would use this Article 7 as described in the above situation of admonishing a Member State and for “*naming and shaming*” a last concern can appear: What is the effect of such measure in a situation like the monopoly in Italy that deteriorates for years?

In the following parts are analyzed the documents of the European Commission, the European Parliament, European Council and interest groups, which all take into account the Treaty and the Charter and cite their articles referring to media pluralism in order to construct their arguments and build on these legislative competencies their initiatives and recommendations.

As an introduction, the European institutions needed a stricter concept definition of media pluralism in order to protect it or regulate it. This was the first step taken towards a definition from the merely enumeration of characteristics and building a definition. The European Commission (EC), strongly supported by European Parliament (EP), started a discussion around media pluralism concept in 1992 when launched a Green Paper: “*Pluralism and Media Concentration in the Internal Market*” that focused on the relation between pluralism and media concentration, but it did not give a direct definition of the term of pluralism. It mentioned several terms: “*pluralism of the media [...] pluralism in the media [...] the pluralist nature of the expression of currents of thought and opinion [...] pluralism of information [...] pluralism of the press [...] and [...] plurality of the media* (EC, 1992, p. 14). The document was followed by three consultations, where the European Parliament, journalist associations and trade unions expressed the need to protect pluralism from the dangers of media concentration and cross-ownership, whereas media companies and some Member States were against this position. Despite this opposition, a draft for a Directive, led by the Commissioner Mario Monti, was discussed in 1996. Unfortunately, the document did not materialize

in a Directive even if later the focus was changed from pluralism and concentration issues to internal market problems originated by different media ownership laws from each Member State (Harcourt, 2005; Llorens, 2001).

The European Parliament did not cease to focus on media pluralism with several resolutions, while the European Commission took a long time before returning to the issue. The European Commission decided to approach pluralism with a softer line than before. It started with the study “*Media pluralism in the Member States of the European Union*”(2007) and commissioned a study for monitoring media pluralism: “*Independent Study on Indicators for Media Pluralism in the Member States –Towards a Risk-Based Approach*”(2009). These actions were presented by the EU institutions as valid steps to discuss again a concept that was put aside after the 1997 failed Draft Directive.

II.2. THE EUROPEAN COMMISSION

European Commission is the initiator of legislative proposals, the initiator of Green and White papers, and the promoter of Directives for the media like the Audiovisual Media Service Directive (AVMSD). However, the European Commission cannot adopt legislation, only formally propose a legislative act: “*neither an executive nor a legislature the Commission combines certain elements of both*”(Dinan, 2000, p. 57), since the proposals go to the European Parliament and European Council for approval.

In January 2007, at the initiative of European Commission, the Commissioner Reding and Vice President Wallström announced in a press release the decision to initiate a **three-step approach** for advancing the debate on media pluralism in Europe. The **three-step approach** was presented to start with a document to assess the situation regarding media pluralism in Member States as a first step, to continue with an independent study on media pluralism in EU Member States and to conclude with a European Commission Communication on the indicators for media pluralism in the EU Member States (in 2008), on which a broad public consultation would take place.

At the same date with the press release (January 2007), the first step of the initiative was published: the working document on “*Media Pluralism in the Member States of the European Union*”. This document is analyzed in the following sub-chapter.

II.2.1. MEDIA PLURALISM IN THE MEMBER STATES OF THE EUROPEAN UNION (2007)

This document started by outlining some characteristics of media pluralism like: “*diversity of ownership, variety in the sources of information and in the range of contents available in the different Member States*” while pointing out that “*diversity of ownership*” came to be identified with

the concept of media pluralism. Nevertheless, the European Commission admitted that media ownership rules are not self-sufficient to promote pluralism of media and “*need to be complemented by other provisions*” (2007, p. 5).

Therefore, the European Commission defined media pluralism as: “*Ensuring media pluralism, [...] implies all measures that ensure citizens access to a variety of information sources, opinion, voices etc. in order to form their opinion without the undue influence of one dominant opinion forming power.*” According to the theoretical analysis of the concept, this definition is centering on the citizen, it has the centrality of the citizen and not of the media in itself to its core.

Furthermore, the European Commission brought the argument that technical developments should be seen as real opportunities and not as new threats because new structures help to a stronger audiovisual European Market that will be a plus also for media pluralism and vote for “*the underlying principle of pluralism to be technological neutral*”(2007, p. 5).

After a brief introduction of the main problems affecting media pluralism in a convergent media, the document was structured according to the issues directly building and influencing media pluralism, either in a positive and a negative way: freedom of expression and freedom of Information; interrelation between politics / economic interests and media; media concentration; cross-border concentration - global competitiveness; media content; internal and external pluralism; pluralism in the broadcasting sector: dual landscape and independent regulators; and technological developments.

“*The way forward*” presented by the European Commission was to proceed to the second step of the approach proposed in the press release and start a study that differentiate from other studies on media pluralism by identifying “*systematically the range of concrete indicators necessary to measure media pluralism in the Member States*”(2007, p. 17). In the following section will be discussed the second step, while the third step is still left for the accord of the decision makers for a later implementation or a total abandon. Two circumstances delayed the implementation of the third step: the change in Commissioner in 2010, shortly after the launch of the second step, and the absence of application of the tool in either Member State.

II.2.2. THE INDEPENDENT STUDY ON INDICATORS FOR MEDIA PLURALISM IN MEMBER STATES-THE MEDIA PLURALISM MONITOR (MPM) (2009)

The second step of the “*three-step approach*” regarding media pluralism is the Media Pluralism Monitor (MPM), which was announced earlier on in January 2007 by the European Commission. This study was completed and published in July 2009 by a team of researchers from Katholieke Universiteit Leuven (Catholic University of Leuven), Central European University and

Jönköping International Business School, with the collaboration from researchers from all European Member States.

The main scope of the study was the development of a:

“monitoring tool that can assess potential problems for media pluralism in the EU Member States and identifying threats to such pluralism with different sets of indicators, covering pertinent legal, economic and socio-cultural considerations”(2009, p. 15).

In order to delimitate the focus of the study, the document tried to give a holistic definition of media pluralism: *“as the scope for a wide range of social, political and cultural values, opinions, information and interests to find expression through the media”*(MPM, p. 5). As observed above at the document on Media pluralism in the Member States, and comparing it with the other definition, here the focus goes on the media. More clearly, is media-centered and not user-centered. Furthermore, even if the authors refer to the Council documents (2007, 1999) another approximation of this definition can be made with the first definition advanced by the Council of Europe in 1994⁷:

“internal in nature, with a wide range of social, political and cultural values, opinions, information and interests finding expression within one media organisation, or external in nature, through a number of such organisations, each expressing a particular point of view”.

The emphasize on this 1994 definition is not made for the mere comparison of definitions but to see how the concept evolved from a theoretical point of view and from the policy application point of view. Consequentially, it can be seen that while the concept evolved from a **media centrality** to **end-user centrality** from a theoretical point of view and from the point of view of the working definitions from the Council of Europe, not the same thing can be said for the European Commission. At a first approximation, if the two definitions are observed on a timeline it can actually be pointed out that the European Commission went backwards on the concept from the user-centrality to media- centrality. At a second look, it can firstly be deduced that due to the use of different experts, of functionaries for different documents, the coordination between concepts, from a theoretical point of view, is not perfect.

It can be advanced the question why the group of experts chose the media-centered definition as the working definition? One explanation is the broadness of the definition and the actual operatively that the tool is looking for, while the focus on the end-user access to the media would had been complicated the actual framework of the study. Another suggestion came from

⁷ Activity Report MM-CM, CE's Committee of Experts on Media Concentrations and Pluralism, 1994.

Prof. Valcke⁸, which explained that the main reason for keeping the definition in a broad way was due to the will of the European Commission of not imposing a definition. However, the possibility of imposing a definition from the perspective of a soft-regulatory tool is little, only if there will be future initiative to include the tool in the hard-regulation mechanisms. And also directs the attention on how much influence the European Commission has on the work of a group of experts which is commissioned to develop a specialized work according to their expertise. Either way, the reality of a discussion on the rightful media pluralism definition would have led to endless discussions that could have limited in a way the time frame for the advancement of the study. Furthermore the definition is clarified by enlisting the composing elements: the definition “*understands media pluralism to mean; the diversity of media supply, use and distribution, in relation to 1) ownership and control, 2) media types and genres, 3) political viewpoints, 4) cultural expressions and 5) local and regional interests*”(2009, p. 17).

II.3. THE EUROPEAN PARLIAMENT

The European Parliament (EP) presented several constructive documents that raised high debates in the plenary and also contributed to the promotion of the concept on the agenda of media policy in the analyzed period. The legislative instruments of the EP are: **reports** that are written by a rapporteur, an MEP in charge of drafting the legislation in a committee; **motions for resolutions** that can be initiated by any member of any committee or by joint members from different committees for a joint motion for a resolution; **resolutions**, documents adopted in the plenary of the European parliament and by which the EP shows its stand in a certain issue. The adopted resolutions are non-binding documents and are being used to adopt a firm stand, to be sent to the European Commission to ask for an action on a proposed resolution and to the Member States asking for further actions from the national governments.

With the enlargement of the European Union, the representation in the European Parliament grew accordingly with the number Member States and “*digressively proportional*” to the population of the Member States. During the period of analysis of this study (2000-2014) have been three enlargements: the fifth enlargement (2004) with ten countries⁹, the sixth enlargement with two countries¹⁰ and the seventh enlargement with Croatia joining the EU. However, according to the Lisbon Treaty the number of the seats in the European Parliament was limited to a number of 751, including the president (Article14 (2),TEU).

⁸ Interview conducted in Brussels, 20.04.2012.

⁹ The ten countries that joined the EU in May 2004 are: Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia and Slovenia.

¹⁰ The two countries that joined the EU in January 2007 are Bulgaria and Romania.

Moreover, the documents analyzed in this study are representing the work of three legislatures: the fifth legislature (1999-2004), the sixth legislature (2004-2009) and the seventh legislature (2009-2014). During these three legislatures, the majority in the EP seats was and it is held by the EPP group of Christian Democrats with a strong view towards protection of subsidiarity principle and the consolidation of the internal market. This holds a particular influence towards the initiation of legislature towards the protection of media pluralism at the EU level, when taking in consideration their distribution and influence in the committees like Culture and Education Committee (CULT) and Civil Liberties, Justice and Home Affairs Committee (LIBE). One example is represented by the seventh (2009-2014) legislature composition of the CULT committee with 31 members, a chair from the EPP group, as well as 11 members from the same political group, holding a majority in the committee.

In this sub-chapter, looking only at the media pluralism definition from the part of the European Parliament, is highlighted only one resolution (EP, 2004). This document is the only one that addresses the media pluralism concept directly and is promoting the definition and direct descriptions of the concept of media pluralism. Therefore, this advances our analysis of media pluralism concept use at the EP level. The rest of the documents from European Parliament, looking at the media pluralism in an indirect way will be analyzed in chapter IV.

II.3.1. RESOLUTION ON THE RISKS OF VIOLATION, IN THE EU AND ESPECIALLY IN ITALY, OF FREEDOM OF EXPRESSION AND INFORMATION (ARTICLE 11(2) OF THE CHARTER OF FUNDAMENTAL RIGHTS) (2004)

This report advanced by rapporteur Johanna L.A. Boogerd-Quaak is regarded as one of the most compelling in what regards media pluralism, according with Giovanni Melogli, International Alliance of Journalists¹¹. The resolution can be considered a good example not only as a good political initiative from the EP but also from the theoretical advancement regarding the concept of media pluralism issued by an EU Institution.

This Resolution started by defining political and cultural pluralism. Political pluralism *“is about the need, in the interests of democracy, for a range of political opinions and viewpoints to be expressed in the media”* and *“cultural’ pluralism is about the need for a variety of cultures, reflecting the diversity within society, to find expression in the media”* (2004, p. 3). Both democracy and cultural diversity could be threatened if not all voices are represented via media in a society or if one voice is much more represented than others. However, the preliminary report advanced by rapporteur Johanna L.A. Boogerd-Quaak in 2003 contained a reference to the focus of this report towards

¹¹ Interview conducted in Brussels, 04.05. 2012.

political pluralism, without the disregard to cultural pluralism. Therefore, it is a clear distinction why there is no evidence of the effects of Television Without Frontiers directive (TVWF) (applicable at the time) over cultural pluralism. There is a serious point that needs to be acknowledged here: since more reports and resolutions are coming from the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (LIBE) the more attention will be directed to political pluralism and less to cultural pluralism, since the cultural pluralism it is more of the responsibility of the Committee on Culture and Education (CULT).

Furthermore, in this Resolution the EP is presented a solution for the situation when Member States do not have the possibility or do not want to protect the values of media pluralism. This is represented by the action that EU can take upon a moral, political and legal obligation in ensuring that the rights of all citizens are respected for a free and pluralist media. In addition, the regulatory situation in EU only permits the EU to use its powers in some areas in order to specify the minimum conditions to be respected by the Member States to ensure an adequate level of pluralism. These areas of competence are: *"in relation to audiovisual policy, competition policy, telecommunications policy, state aid, public service obligations, citizens' rights"* (2004, p. 4).

At a time when the concept of media is under change due to technological convergence, *"consumer choice and pluralism of content is the key issue, more so than pluralism of ownership or supply"* (2004, p. 4). Bringing the consumer choice as a key issue alongside pluralism at this moment for the media policy is representing a change in line with the theoretical advancements (sub-chapter I.3).

This resolution is the prove that theoretical advancements of the concept of media pluralism match the media policy reality that looks also to bring the citizen to the centrality of its objectives, at least from the part of the EP.¹²

II.4. COUNCIL OF EUROPE AND PLURAISM DEBATE

The Council of Europe (CoE) represents a different organization from the European Institutions, which includes in its 47 members also the countries of the European Union. It started in 1959 with only ten countries and extended in time to cover the entire continent. The work of the CoE is based on monitoring of the situation in different Member States and a permanent analysis of scholars involved in the monitoring and functioning of the CoE.

The main objectives of this institution are the human rights, democracy and rule of law to be promulgated all along the continent. In order to achieve these objectives the Council of Europe has

¹² Sub-chapter I.6. for the theoretical discussion on end-user centrality.

under its umbrella seven institutions that separate the work according to objectives and specialization of the institutions: Committee of Ministers, Secretary General, Parliamentary Assembly, European Court of Human Rights, Congress of Local and Regional Authorities, Commissioner for Human Rights and Conference of INGOs. Regarding the departments focusing on media issues, the Council of Europe went through restructuring in the composition of the Steering Committee and renaming as follows.

TABLE 2.1: Media Departments Council of Europe

Year	Name	Acronym
1975 - 2005	Steering Committee on Mass Media	CDMM
2005 - 2011	Steering Committee on Media and new Communication Services	CDMC
January 2012 - onward	Steering Committee on Media and Information Society	CDMSI

SOURCE: Elaborated by the author

The Steering Committee on Media and Information Society (CDMSI)'s main objective is to set standards for media in its 47 Member States. The CoE motivates this last change in the Steering Committee for the media as a new way to adapt to "changes in the media and the information society".

The recommendations, studies and declarations coming from the CoE are all developed from the position of the values of Article 10 of the European Convention of Human Rights (ECHR):

(1.) "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises."

The ECHR is representing the former *Convention for the Protection of Human Rights and Fundamental Freedoms* drafted in 1950 by CoE. The members of all 47 signatory countries can appeal to the European Court of Human Rights, which can rule with the finality of binding actions in the state concerning the citizen that made the appeal.

The documents focusing on the promotion of media pluralism include recommendations based mostly on monitoring studies in order to see the state of media pluralism and diversity of media content, the role of the media in a democracy in the context of media concentration, indicators for media in a democracy, the regulation of audiovisual media services, declaration to respect Article 10.

The main topics treated by the Council of Europe in its remit are: *media freedom, media pluralism, diversity of media content, freedom of expression on the Internet, the public service broadcasting on the internet, empowering children and on protecting them in the new information and communication environments*, are reflecting also upon the media pluralism protection and are covered by the following documents analyzed in this study.

TABLE 2.2: Documents of the Council of Europe; Period 2000-2014

Year	Title Documents-Council Of Europe
2000 (October)	Report on media pluralism in the digital environment
2003 (28 May)	Recommendation Rec (2003)9 of the Committee of Ministers to Member States on measures to promote the democratic and social contribution of digital broadcasting.
2005 (10-11 June)	Opinion of the Venice Commission on the compatibility of the “Gasparri” and “Frattini” laws of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media
2007a (January)	Recommendation CM/Rec (2007)2 of the Committee of Ministers to Member States on media pluralism and diversity of media content
2007b (January)	Declaration of the Committee of Ministers on protecting the role of the media in democracy in the context of media concentration
2008 (7 July)	Indicators for Media in a Democracy (11683) Committee on Culture, Science and Education Rapporteur: Mr Wolfgang WODARG, Germany, Socialist Group
2009 (November)	Report: Methodology for monitoring media concentration and media content diversity
2011 (6 December)	Media Pluralism and Human Rights-Issue Discussion Paper
2012 (June)	Case of Centro 7 S.R.L. and Di Stefano vs Italy (2012)

SOURCE: Elaborated by the author

II.4.1. REPORT ON MEDIA PLURALISM IN THE DIGITAL ENVIRONMENT (2000)

This report was advanced by the group of specialists on media pluralism (MM-S-PL) established by the Steering Committee on the Mass Media (CDMM). There are several ideas advanced in this report strengthening the protection of media pluralism.

The report discussed the measures to maintain pluralism and diversity in the new digital environment adapted to the specific environment, order to surpass competition law and ownership

rules. Accordingly, the report did not ask directly for immediate action in the form of hard-regulation, like the initiation of a directive, but better to implement the following measures before taking action: *“strengthening European production, monitoring vertical integration and viewer access to audiovisual content, encouraging diversity of information sources, supporting PSB and continuing to monitor developments in the Internet environment”*¹³.

Another issue highlighted by the report is the independence of the regulatory authorities, which not only should have the power of monitoring and issuing recommendations, but also to take some action when media pluralism needs to be protected.

Lastly, media diversity it represents another important objective for the media in a digital environment, with accent on diversity of culture, promotion and protection of minority cultures, diversity of content and sources and in the way media is produced.

The CoE sheds a focus on the two issues of independence of regulatory authorities and the protection of media diversity taking both as correlated and as basic conditions for the protection of media pluralism in a digital environment.

II.4.2. RECOMMENDATION OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON MEASURES TO PROMOTE THE DEMOCRATIC AND SOCIAL CONTRIBUTION OF DIGITAL BROADCASTING (2003)

This Recommendation presented a strong link between the developments of digital broadcasting and the protection of pluralism. The change to digital presents advantages but also disadvantages which are translated by the Recommendation in high concentrations in broadcasting.

Therefore, the Member States are instructed to

“maintain regulation which limits the concentration of media ownership and/or any complementary measures which they may decide to choose to enhance pluralism, while strengthening public service broadcasting as a crucial counter-balance to concentration in the private media sector” (2003, p. 5).

The reference to maintain regulation limiting concentration of media was made on the assertion of the Council of Europe that digitalization is multiplying the number of channels but does not curb the media concentration levels.

Furthermore, due to the risks technological advancements and transformation of the media market could bring on media pluralism, *“a balance must be struck between economic interests and social needs, clearly taking a citizen perspective”* (2003, p. 2). The focus from the Council of Europe

¹³ Oetheimer, M., Programme adviser, Media Division, Directorate General of Human Rights, CoE.

was still on media concentration for the protection on pluralism but at the same time on “complementary measures” left to the decision of Member States are advanced.

The following document from the Council of Europe is coming with the reference to the case of one Member State and provides for a practical example addressing freedom of expression and pluralism.

II.4.3. OPINION OF THE VENICE COMMISSION ON THE COMPATIBILITY OF THE “GASPARRI” AND “FRATTINI” LAWS OF ITALY WITH THE COUNCIL OF EUROPE STANDARDS IN THE FIELD OF FREEDOM OF EXPRESSION AND PLURALISM OF THE MEDIA (2005)

This document represents the work of the European Commission for Democracy through Law, part of the Council of Europe. This commission convenes in Venice, which made this Commission of experts of professors of law, judges, members of national parliaments and civil servants very well known as the Venice Commission. The primary role of the Venice Commission is to advice the Member States, Council of Europe or international organizations on constitutional matters.¹⁴

Regarding the opinion on the compatibility of the “Gasparri” and “Frattini” law, in Italy, with the standards of Council of Europe, the Venice commission received the request from the Parliamentary Assembly of the Council of Europe. Only the “Gasparri” is referring to the broadcasting system, while “Frattini” law refers to the conflicts of interests.

The evaluation was made with the starting point of the standards of the Council of Europe for the freedom of expression and pluralism as being: “*a legislative framework establishing limits for media concentration [...] independent media authorities with powers to act against concentration[...] specific measures against vertical integration [...] transparency of media[...] pro-active measures to promote the production and broadcasting of diverse content[...] granting, on the basis of objective and non-partisan criteria, [...]transparent procedures and subject to independent control, [...] financial support to increase pluralism [and] self-regulatory instruments such as editorial guidelines and statutes setting out editorial independence*” (2005, p. 15). These standards are not enshrined in a specific resolution of the Council of Europe, yet are the result of a conjunct of recommendations and resolutions of the Council of Europe’s Committee of Ministers and Parliamentary Assembly, which have been resumed by the Venice Commission in this opinion paper.

¹⁴ Retrieved January 2012 from http://www.venice.coe.int/WebForms/pages/?p=01_Presentation.

This study highlighted the problems that can arise for media pluralism, especially when ***different media outlets are treated differently***, which is not often discussed when media pluralism is analyzed:

“internal pluralism must be achieved in each media sector at the same time: it would not be acceptable, for example, if pluralism were guaranteed in the print media sector, but not in the television one.”(2005, p. 12)

This case is presented in respect to the case of Italy and actually is representing a study case for the situation when media pluralism is analyzed only unilaterally, from the point of view of only certain outlets in a society:

*“Plurality of the media does not only mean, in the Commission’s view, the existence of a plurality of actors and outlets, it also means the existence of a wide range of media, that is to say different **kinds** of media”* (2005, p. 35).

The conclusions of the Venice commission in respect with the “Gasparri” law looking to protect media pluralism was found to be unsuitable for the proposed objective since the digital argument is employed too soon for the justification of this law: *“the mere increase in the number of channels which will be brought about by digital television is not sufficient in itself to guarantee media pluralism”*(2005, p. 48). Additionally, this law could in effect worsen the situation of media pluralism in Italy since *“larger companies will enjoy greater purchasing power in a wide range of activities such as programme acquisitions, and will thus enjoy significant advantages over other national content providers”*(2005, p. 48). These would actually translate in an expansion of already acquired market power to the new digital environment.

This was the particularity of the Italian media landscape that illustrates why media pluralism needs more than one outlet with different views. The characteristics of audio-visual media of wide transmission and reception was used for the political monopoly while the press was left free to guarantee apparent diversity of voices, only keeping in mind the smaller distribution and access of the end user. Ultimately, media pluralism was not guaranteed in the society at large which cannot be called a democratic society.

II.4.4. RECOMMENDATION CM/REC OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON MEDIA PLURALISM AND DIVERSITY OF MEDIA CONTENT (2007a)

The document reaffirmed from the beginning that media pluralism and diversity altogether *“are essential for the functioning of a democratic society and are the corollaries of the fundamental right to freedom of expression and information as guaranteed by*

Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms” (2007a, p. 1).

In this light, the recommendation came with a monitoring advice directed to the Member States for an implementation of a evaluation, on a “*regular basis*” of “*the effectiveness of existing measures to promote media pluralism and content diversity*” for a possible revision due to the new *economical, technological, social developments*” (2007a, p. 2).

The recommendation included measures for Member States to promote media pluralism, content diversity, media transparency and to promote scientific research. For the promotion of media pluralism the Recommendation includes general principles, ownership regulation, public service media, other media contributions, access regulation and interoperability and other support measures.

Out of these elements, public service media is promoted as one of the most relevant element for the media pluralism. Accordingly, the Recommendation asked the Member States to put public service media in a “*visible place*” and to play an “*active role*” (2007a, p. 3) for the internal and external characteristics of media pluralism. Furthermore, the Member States were encouraged to implement and open the way for new media contributions that could favor media pluralism.

Referring to the measures focusing on content diversity the principle of “*editorial independence*” is advanced while advising the Member States to encourage media to provide a diverse culture “*promoting a critical debate and a wider democratic participation of persons*” (2007a, p. 4). Moreover, the focus of media should be on the promotion of diversity through the inclusion of minorities and to promote “*digital media literacy and to bridge the so-called ‘digital divide’*” (2007a, p. 4).

The main measures advanced in this recommendation are part of the ongoing debate on media pluralism and media diversity, while the references to media literacy and digitalization and interoperability are already surfacing as new concerns for media pluralism in the digital era.

II.4.5. DECLARATION OF THE COMMITTEE OF MINISTERS ON PROTECTING THE ROLE OF THE MEDIA IN DEMOCRACY IN THE CONTEXT OF MEDIA CONCENTRATION (2007b)

Once again, the Council of Europe referred to media concentration effects for the democratic functioning of a society. The Committee of Ministers acknowledged the positives and warned for the negatives of globalization a media concentration for the media landscape. For the positives marked the market diversification, efficiency, costumed tailored content. For the negatives were named: the considerable power a dominant media owner can achieve which can be potentially misused, conflict of interests that can lead to the lost of editorial independence.

Through this declaration, the Council of Ministers of the Council of Europe warned the Member States of the high risk of misuse of “*media power caused by media concentration which could have negative effects over political pluralism and democratic processes*”(2007b, p. 2). As a result, the Council of Europe included five recommendations to avoid the negative effects over political pluralism and democracy are: a clear “*separation between the exercise of control of media and decision making as regards media content [...] implementation of regulatory measures to guarantee full transparency of media ownership [...] implementation of co-and self-regulatory measures for monitoring media markets and media concentration [...] to adequately equip and finance PSB [...] implementation of policies to encourage the development of non-profit-media [...] ensure a higher diversity of autonomous channels*”(2007b, p. 3).

The reference to the media power influences and effects over media pluralism has been encountered before in the discussed above documents of the Council of Europe. Nevertheless, this document can be emphasized to be one of the main documents that centers on the negative influence of the ***misuse of media power*** over the political pluralism and on solutions for preventions.

II.4.6. INDICATORS OF MEDIA IN A DEMOCRACY (2008)

This report represents the work of the Committee on Culture, Science and Education, rapporteur Wolfgang WODARG, for the Parliamentary Assembly. The basic principle of this report: “*the legal protection of the freedom of expression and information through the media is a requirement for any democracy*”(2008, p. 7). The Report outlined the need of Member States to permanently monitor their state of democracy and analyze the own media situation regularly and in a comparable manner in order to recognize the weaknesses and take action in the right direction.

Regarding media pluralism, the report advocated for the need for specific action from Member States on the media pluralism issue, not indirect action: “*concrete positive action should be taken to promote media pluralism*”(2008, p. 3). In line with the previous discussed Declaration (CoE, 2007b), once again, a report warns on the negative effects of media concentration on media pluralism: “*Media monopolies or dominant market positions of individual media outlets are a serious threat to media pluralism and prevent diversity of information and opinions.*”(2008, p. 9). However, the report continued that promotion of media pluralism is as important as media monopolies limitation.

The conclusion of this report went back to the action of monitoring in Member States of the situation of media pluralism “*member parliaments and governments should periodically assess the media situation in their country*”(2008, p. 11). Lastly, a series of twenty-six questions were enlisted to assess the situation of media in a Member States with the first one addressing legislation for

media freedom: “*Is the right to freedom of expression and information through the media guaranteed under national legislation and can this right be enforced by courts?*” (2008, p. 11).

When referring to the monitoring of the media in Member States and having the example of the questions enlisted by the Council of Europe, it would be useful to make a parallel between these questions and the ones assessing the protection of media pluralism. There is only one tool commissioned by the European Commission, the Media Pluralism Monitor (MPM), that could have taken full account of these questions for its construction around the concept of media pluralism. Unfortunately, the MPM does not make any reference to this report in its proceedings.

II.4.7. REPORT: METHODOLOGY FOR MONITORING MEDIA CONCENTRATION AND MEDIA CONTENT DIVERSITY (2009)

The work of the Group of Specialists on Media Diversity (MC-S-MD) of the Directorate General of Human Rights and Legal Affairs started from Article 10 of the European Convention on Human Rights. With this Article as a starting point, this report looked at the legislative measures directed to media pluralism of nineteen member countries of CoE, of which sixteen are also members of the EU.

The outcomes of this report are open to discussion especially for the differences that can be found between different countries: “*there are different visions on media pluralism and media diversity*” (2008, p. 11) and the importance given to the concept of media pluralism is different, there are only a few examples with positive measures to protect media pluralism. Between the similarities is the lack of a definition of media pluralism in all the countries that replied to the study and the existence of a support body for media pluralism is almost always seen together with media diversity. Therefore, the report talked in the conclusion part about the absolute absence of a legal definition of media pluralism and ***suggest the implementation of at least a working definition.***

The lack of a definition of media pluralism at the level of Member States proves the absence of measures directed exclusively to media pluralism. Consequentially, when the group of experts working on the Media Pluralism Monitor (MPM) used a very broad definition of media pluralism for the tool and justified the format with no intention of imposing a definition on the Member States this actually distanced from the goal of the European Commission to “*lead by example*”, quoting president Barroso in 2012 State of the Union declaration, quoted in the third report (2012) on the Application of the EU Charter on the Fundamental Rights (2012, p. 16).

II.4.8. MEDIA PLURALISM AND HUMAN RIGHTS-ISSUE DISCUSSION PAPER¹⁵ (2011)

This issue paper was part of a discussion on media freedom commissioned by the Commissioner for Human Rights to the former OSCE Representative on Freedom of the Media, Miklós Haraszti.

This issue paper emphasized from the beginning that media pluralism is a “*necessary condition for freedom of speech and contributes to the development of different societies, where different voices can be heard*”(2011, p. 4). Furthermore, the discussion paper advanced a definition of media pluralism as:

“a structure that is comprised of competition, diversified, independent media outlets, covering all concerns of society, and conveying a great variety of information and opinion”(2011, p. 4).

This definition is a testimony of the focus on the supply side of media pluralism, on the external pluralism. This definition is associated with the media-centrality definitions referring to the achievement of media pluralism through a variety of media outlets covering a variety of information and opinion. No reference is made to the end user and the capability to access, read and contribute to media.

The principles promoted in this document to defend media pluralism comprised, alongside the independence of regulators, transparency of media ownership and countered measures for monopolies tendencies also “*the need for a concrete policy to ensure plurality of media*”.

Additionally, the democratic ideal is depicted by describing media pluralism as having the power to “*unlock the door of freedom of information and freedom of speech*” to facilitate “*a robust marketplace of ideas and placing robust checks on the power of states*”(2011, p. 5). The democratic ideal was not something easily to prove when it comes to media pluralism as the paper sustain that it took a long time for “*media pluralism’s relationship with freedom of speech to be properly understood*”(2011, p. 5).

As seen in the beginning, media pluralism is described as a structure and the actual description of a pluralistic media “*multi-centred and diverse enough to host informed, uninhibited and inclusive discussion of matters of public interest at all times*” directs us to a predominant political perspective given to the concept (2011, p. 6).

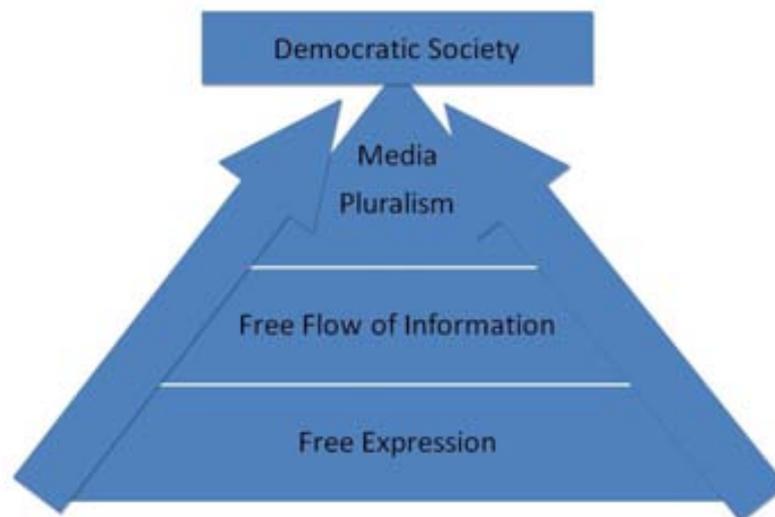
Consequentially, media pluralism is seen as the institutional fulfillment of the individual rights of freedom of expression and freedom to impart information. This does not separated pluralism from individual rights, on the contrary, the methods of fulfillment, according to the study,

¹⁵ Author: Commissioner for Human Rights, CoE, prof. Miklós Haraszti.

are only done through an institution: “pluralism is a quality of democratic societies, as well as an individual human right that can be enforced through judicial, constitutional and international mechanisms”(2011, p. 6). Like the freedom of speech and information that “do not occur naturally” because are exercised in a democratic society can be concluded from the description in this issue paper that media pluralism cannot either happen naturally without the “assistance of free media”, as presented for the other two democratic values.

The issue paper described a pyramid of values that can be constructed to better **achieve and maintain democracy** (2011, p. 6).

FIGURE 2.1: Building a Democratic Society



SOURCE: Elaborated by the author according with the text of the report (CoE, 2011)

This report stands out firstly with the definition advanced on media pluralism, even if the definition lacks in pointing out to the last developments made in the direction of the inclusion of the end-user abilities to read the media for the achievement of media pluralism.

Nevertheless, the report acknowledged the raising role of the end-user for the media pluralism in the construction of a democratic society. Consequentially it includes in the media pluralism the values of freedom of expression and freedom of information that are emphasized with the advent of the digital technology.

Lastly, the document emphasized that freedom of speech, freedom of information and media pluralism only appear in a democratic society backed by institutionalized guarantees. This is translated as a supportive opinion for the hard-regulation in the construction of a democratic society, without any reference to possible soft-regulatory regulatory mechanisms that could accompany the hard regulation.

II.4.9. CASE OF CENTRO 7 S.R.L. AND DI STEFANO VS ITALY-ECHR (2012)

This case presented a ruling of the European Court of Human Rights on the issue of protection of media pluralism, broadcasting license and allocation of frequencies. Even if the purpose of this thesis is not to study the judicial ruling of the European Court of Human Rights, it is important to introduce this document in the analysis because it has a new approach to the relation of media pluralism and the protection of a democratic society. Moreover, this is a document different from the ones of media researchers, EU functionaries or media activists, it is a document that came from the legal work of the judiciary system and can bring a different view from the previous uses and description of the media pluralism concept.

Centro 7 S.R.L. represents a broadcasting media outlet that presented a case against the Italian government for the inability to broadcast for as long as a decade period of time license on biased grounds. The paradox was represented that Centro 7 S.R.L. was holding a broadcasting license but was denied the television frequencies.

This case once again brought into attention the duopoly situation in Italy. The ECHR assessment took in consideration pluralism in the audiovisual media and analyzes from the point of a democracy, which strives for freedom of expression. The Court considered media pluralism and advanced the following definition:

“true pluralism in the audiovisual sector in a democratic society [...] to provide for the existence of several channels or the theoretical possibility for potential operators to access the audiovisual market [and] to allow effective access to the market so as to guarantee diversity of overall programme content, reflecting as far as possible the variety of opinions encountered in the society at which the programmes are aimed” (2012, p. 39).

The definition is following the same line with the one presented in the above discussed paper (CoE, 2011) with the focus on the supply side of the media. Understandable is also the point of view of the case raised in front of the ECHR, which went as far as the law was describing the situation of the market entrance of a different operator and focus on this side of media pluralism.

The role of audiovisual media is underlined as being a particular one for the construction and progress of a democratic society *“their power to convey messages through sound and images, such media have a more immediate and powerful effect than print”*(2012, p. 39). Consequentially, the government not only has the duty of non-interference but also *“to guarantee effective pluralism”*(2012, p. 40). These two provisions have the focus on the Italian situation, the specificities of the concentration of political media power on the broadcasting with *“more immediate and*

powerful” and the direct effect the political influence had on the denying of the license to the Centro 7 S.R.L.

In the end the ECHR ruling was in pointing of the violation of the Article 10 of the Convention on Human Rights because have missed the deadline of the licensing and based their decisions on confusing application of the law. Therefore, The ECHR ruled for a financial fine to be paid by the government to the Centro 7 S.R.L.

This case and the way the ECHR interpreted media pluralism and applied the legislation gives an example of the argument of how important are also the particularities of a certain Member States in applying media pluralism and media freedom regulation. In this case the focus of the Italian audience on broadcasting rather than on print media raised the stakes of the access to the broadcasting of any new potential operator. This case accounts on one side for more voices raising for the way media pluralism and media freedom should be protected at the level of the Member States keeping in mind the culture of a certain country. On the other side, the Italian government itself was the one endangering media pluralism while restricting the access of a new entrant to the market.

II.5. INTEREST GROUPS

The interest groups presented in this section account as the most active and powerful interest groups at the European lobby level for the shaping of the EU media policy. These groups not only monitor and account of policy changes for its members but send permanent position statements and written contributions to the European Commission’s documents, participate in meetings organized by the European Commission for change of opinions, knowledge and presentation of results of the policy influence over the members it represents and lastly come with own research and analysis of the economical and technological changes and organize information meetings and awareness seminars for the dissemination of information for its members and for the European Institutions.

The documents presented in the following paper will look at the definitions or the descriptions of media pluralism of different interest groups in the European audiovisual media and will also supplement this information with the one gathered from the conducted interviews. Most of the documents are written contributions or declaration in conferences relating with the 2003 and 2005 consultation on the revision of the TVWFD and on the promotion of the MPM.

II.5.1. EUROPEAN BROADCASTING UNION (EBU)

The European Broadcasting Union it represents the association of public service media organization including 74 members in 56 countries with members from all EU Member States and outside European Union. The association has a permanent representation to Brussels with close ties to the European institutions. The strategy promoted at the EU level is to maintain the status of public service broadcasting in the European landscape and to maintain the level of quality in programming in all its Member States. Moreover, an essential part of its strategy is *“to let content speak for itself”* (Wouter Gekiere, European Affairs Adviser). The role of public service media in the EU ecosystem is recognized in the Treaty of Lisbon and in particular is related to media pluralism: *“[...]the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism”* (Protocol 29).

Media pluralism is considered in many policy documents of the European Commission and the European Parliament as being at the heart of the remit of PSBs. In the latest Declaration on the Core Values of the PSB (October 2012), this idea is reinforced: *“We want to play a defining role in guaranteeing freedom of expression and pluralism of views”* by promising universality, independence, excellence, diversity, accountability, innovation. This statement is underlined again by the democratic ideal for the creation of a public sphere *“where all citizens can form their opinions and ideas”*.

From the interview conducted¹⁶, it is concluded that EBU has the vision of internal and external media pluralism with *“the role of public broadcasters in the media environment, if are functioning well in all media countries [...] they have an important role: as a reference point for the public”*.

II.5.2. EUROPEAN PUBLISHER COUNCIL (EPC)

The European Publisher Council is an association representing the newspapers and magazines in Europe but not exclusively, since the association includes also a few broadcasters. The association is looking for the interests of media industry at the EU level of regulation since 1991. The objectives to attain in media legislation by the EPC are to strive for *“freedom to report, self-regulation, for the capability to earn advertising revenue and manage the intellectual property, innovate and respond to challenges, and to compete with public service broadcasting.”*¹⁷

¹⁶ Interview conducted in Brussels with the Head of the European affairs, Ms. Nicola Frank, 07.05.2012.

¹⁷ Reference retrieved 9.12.2012 from <http://epceurope.eu/about/our-members/>.

The main value for EPC could be described the freedom for self-regulation: *“It is essential for media pluralism and the maintenance of democracy that there should be fair play conditions to allow a free, independently funded European media to flourish alongside publicly funded broadcasters”*.

EPC’s first description of media pluralism during the interview¹⁸ was of *“diversity of opinion and diversity of ownership”*. The focus went further the issue of *“national level media pluralism has been protected by ownership regulation and cross-media ownership regulations”* provisions which now are seen as outdated *“due to the fact that are applied only to “old” traditional media i.e. looking only at ownership levels of the newspapers and broadcasters”*. What is missing for a better protection of media pluralism is also *“the consumer point of view, to assess levels of freedom of information and freedom of expression via the vast range of services now available in terms of news and entertainment which don’t only originate from traditional, regulated media”*.

II.5.3. EUROPEAN CONSUMER ASSOCIATION (BEUC)

The European Consumer Association (BEUC) is directed towards several issues relevant to the consumer like consumers’ contracts, food, health, digital rights and media policy is one of them. There is not exclusivity on media like the previous organizations. The focus of this association is on the consumer and protecting and improving its rights. With a history of existence starting from 1962, BEUC is one of the oldest associations to be present at the EU level and lobby for the interests of consumers. At present the association represents 40 individual national members coming from thirty European countries. The goal of BEUC is to protect the interests of the member organizations and consequentially the end consumer through the protection of market competitively but with the support of measures to prevent abuses against consumer.

Relating to the media, BEUC position papers include media pluralism with the universal access to a wide range of broadcasting content and services and emphasize in the recommendations for the revision of AVMSD: *“the Commission should ensure that the directive safeguards universal access to a wide range of broadcasting content and services, and investigates the effects of media concentration, especially for pluralism and diversity”*. In the interview¹⁹ conducted with a legal officer for the audiovisual media, the first description of media pluralism was of *“independent sources and different content”*. Furthermore there were highlighted the dangers for media pluralism like concentration of media and the effects on competition (telecom providers entering in agreements with content providers), the few media players controlling the channels of distribution and the

¹⁸ Phone interview with the Executive Director of EPC ,Angela Mills Wade, 27.04.2012.

¹⁹ Phone interview conducted with Mr.Kostas Rossoglu, Senior Legal Officer BEUC, 23. 05.2012.

increasingly blurring line between editorial content and advertising of product placement and political issues.

II.5.4. ASSOCIATION OF COMMERCIAL TELEVISIONS (ACT)

The Association of Commercial Television (ACT) is an umbrella organization representing the interests of 33 commercial televisions through 37 European countries since 1989. The last efforts of ACT have been directed towards the latest technological advancements in broadcasting like on-demand and catch-up offers. Moreover, the commercial broadcasters have been invested and promoted the online presence and content distribution through the new online options. The mission of the ACT is to offer greater choice, greater innovations and greater services to meet the demands of the consumers.²⁰

ACT statement related to media pluralism is focusing on the plurality of the offer: “*with the great variety of programmes and services commercial broadcasters contribute directly to the existence of a pluralistic media landscape in Europe*”. In the interview²¹ with the director general, he described the support of media pluralism on the same line of offering an increased number of channels, therefore resuming to plurality.

CONCLUSIONS CHAPTER II

This chapter is constructed around the research question advanced for this chapter in the beginning of this study:

How is media pluralism defined and used in media policy in the EU (for the period 2000-2014)?

The answer to this question results from gathering the information coming from the five sources presented above EU treaties, European Commission (EC), European Parliament (EP), Council of Europe (CoE) and the stakeholders. Additionally, these conclusions are divided between definitions and associations of media pluralism with different concepts and its use in the media policy construction.

Regarding the definition of media pluralism at the level of policy documents, there are five definitions discussed in this chapter, two from the EC, one from the EP (2004) and two from the CoE. The focus of these definitions was directed towards the subject of the policy document, with the concept of media pluralism covering different purposes. Accordingly, there are similarities in the

²⁰ Reference retrieved on 3.03.2012 from http://www.acte.be/EPUB/easnet.dll/execreq/page?eas:dat_im=025AE6&eas:template_im=025AE9.

²¹ Interview conducted in Brussels with Mr. Ross Biggam, ACT Director General, 20.04.2012.

characteristics of media pluralism expressed in different definitions but also differences in application of the concept.

The most direct definitions are the ones from the media organizations collected during the interviews with representatives of these organizations. In general, the definition of media pluralism is correlated directly with the objective of the organization and with the classical distinction between internal and external pluralism: like the definition of a *“great variety of programmes”* of the Association of Commercial Televisions (ACT), the distinction between diversity of opinion and diversity of ownership from the European Publisher Council (EPC) and *“citizens have access to a large range of sources, views and opinions, and that no single act has an overbearing influence over the political agenda”* of the European Broadcasting Union (EBU). As a general observation, none of the organizations has a definition of media pluralism in their position papers or used as a general guidance for their activities.

Furthermore, in the definitions of the EC there is no coordination between the definitions of the same institution as pointed out above. One definition focuses on end-user centrality: *“measures that imply citizen access [...] in order to form their opinion”* (EC, 2007) while the other definition is focusing on a broad concept of media pluralism enlisting more elements leaning towards the media-centrality: *“internal in nature with a wide range of [...] values, opinions [...]finding expression within one media organization”*(EC, 2009). The first definition is used in the working paper of the EC for the evaluation of media pluralism in the Member States, while the second definition is a very broad definition maintaining the focus on the internal and external parts of the media pluralism, while being used as a starting point for the construction of the media pluralism monitor.

Moreover, the definition of the EP is obviously one-sided addressing the political pluralism *“the need, in the interest of democracy, for a range of political opinions and viewpoints to be expressed in the media”* and cultural pluralism *“the need for a variety of cultures reflecting the diversity within society, to find expression in the media ”*(EP, 2004). The use of this definition is linked with the situation in Italy and this it is also the reason for a separated definition of political and cultural pluralism, in order to clearly show how the situation should be in a democracy when media pluralism is preserved.

The definitions of CoE are both coming from media experts, from the Venice Commission (CoE, 2005) and from the former commissioner on human rights (CoE, 2001) but there is no correlation between them either. The definition of the Venice Commission addresses only internal pluralism, only one side of the definition expressed in the definition of EC (2009). Moreover the definition of CoE only addresses the supply side: *“internal pluralism must be achieved in each media sector at the same time* (CoE, 2005)” and the definition from the former human rights Commissioner

points to a system based “*on competition, with diversified, independent media outlets, covering all concerns of society*”(CoE, 2011). This last definition resembles the most with the broad definition presented in the study developing the Media Pluralism Monitor (EC, 2009).

The similarities of these definitions are found in the permanence of diversity side of the concept referring to media providers, independence from political powers in the supply side of the media, with one exception referring to “*citizens access*”(EC, 2007). This points out to the fact that while in the literature there is already a change towards improvement of the concept including the citizens’ access and participation, media policy is slowly adapting to this direction.

This conclusion is also supported by the associations of the concept of media pluralism with media freedom and with the measures that should be taken for the support, implying citizens’ access to different media programmes and the ability to form different opinions, which theoretically should advance along with the definition.

Before moving to the next point one more observation is appropriate. Out of these definitions discussed above there is no widely accepted definition taken as a reference at the level of the EU. Taking into consideration the legal aspects and the principle of subsidiarity enlisted in the TEU, it is “*commonly known*” to have only proposals of definitions and no general working definition for a later inclusion in the EU law when coming from the European Commission’s side, due to the endless discourses over subsidiarity. Nevertheless, when it comes to the situation in the Member States (CoE, 2008) there is no legal definition at the level of the Member States either. This raises further problems when looking for the development of mechanisms for the protection of media pluralism.

CoE is contributing to this debate while advancing a series of recommendations to avoid the negative effects of political power over a democratic society (CoE, 2007b, 2012). These influences of the political power over media pluralism affect the construction of a democratic society “*pluralism is a quality of democratic societies, as well as an individual human right*”(CoE,2011). The argument of the construction of a democratic society comes strongly advanced by the CoE and followed closely by the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the EP (2004). As constituting pillars to a democratic society the freedom of expression and information in the media are advanced for the further protection by the Member States.

Moreover, freedom of communication and receiving information surge as another values to be protected in situations like the one in Italy (CoE, 2011), where appears a higher need to protect the end-user due to the broadcasting monopoly in the country. While theoretically both sides of media pluralism, from the provider side and from the user side, should be equally protected, in

practice the protection of media pluralism takes certain priorities due to the particularities in a certain country of the problems arising against media pluralism.

In the same line with the idea of the construction of a democratic society is the document *“Indicators for media in a democracy”* (CoE, 2008) which enlists twenty-six questions for the study of the situation of media in a society. As mentioned before there is no correlation between the Media Pluralism Monitor of the group of experts commissioned by the EC and the CoE document towards situation of media, even if the focus of the last tool is much more restrictive than the one on media in general.

To conclude, the definitions of media pluralism and the uses of the concept of media pluralism in the policy documents did not represent straightforward changes in the way the concept is used compared with the past decade. Moreover, the cautious wording touching upon the media pluralism and the effects on the Member States regulation did not proved for big advancements on the use at the EU level (The Charter). This has a direct effect on the definition of the tools to measure and protect media pluralism all across Europe.

The increased reference to the Charter and the Article 11 protecting media pluralism could actually be considered the most explicit advancement for the analyzed period. The existence of a reference to media pluralism in the EU law with a primary focus on fundamental rights, even if not enforceable at the level of Member States, except only when EU law is applied, expanded its reference in the discussions related to the protection of fundamental rights (EP, 2004; CoE, 2009; EBU, 2009).

There are several changes in the definitions towards the *“end-user centrality”* and increasingly use in correlation with the construction of a democratic society and defense of human rights like the freedom of expression, freedom of communication and information especially by the EP and CoE. The positive effect that has to be highlighted is that to a certain degree the EP took upon the use of the concept of media pluralism in the reactions against the situations of influence of political power over media pluralism.

Lastly, the effects of media concentration do not have to be disregarded in a new environment where the proliferation of channels gives the apparent belief that media concentration can be resolved at the rate of the technological advances.

The overall appraisal is that when it comes to hard-regulation there is no breakthrough at the EU level use of the concept of media pluralism, especially from the part of the European Commission, as will be analyzed in depth in chapter V. Furthermore has to be seen how well the concept is used in other types of mechanisms from the European Commission and from other stakeholders.

CHAPTER III. TOWARDS A SOFT-REGULATORY APPROACH-THE MEDIA GOVERNANCE SYSTEM

This chapter introduces the concept of Media Governance as a tool of analysis of the European audiovisual media policy. The concept of governance is analyzed in the next sub-chapter, as an introduction to the one of soft-governance. Media governance study includes the different views and theoretical contributions brought by different media researchers and school of thoughts. These analyses are made in a chronological way starting with the characteristics discussed in the literature, the definitions and the critiques brought along with the concept. Lastly, this chapter will look at the potential of soft-governance for media governance, how it can be used and applied in order to provide a better setting for the protection of media pluralism.

III.1. GOVERNANCE

Introduction

This sub-chapter on the concept of governance has the role to present the *characteristics, potentials and limits* of the concept. Later on, Governance moved over to the concept of Media Governance, which is treated in the next sub-chapter. This part will address also the characteristics of European Governance-Good Governance (Sub-chapter III.1.2.) which developed thoroughly as soon as the attention of regulators (European Commission) and scholars turned to the general concept of governance. Two of the main contributors to the concept, Peters and Pierre (1998) described European policy more driven than the American one towards the concept of governance. Nevertheless, the general concept of governance received a great impulse from American policy makers Osborne and Gaebler (1993), whose ideas, especially of the changing role of the state in the vision of the phenomenon of governance as from a rowing to a steering role, have been undertaken by European media scholars. A significant literature focused on the characteristics of the concept of governance has emerged during the 90s (Rosenau, 1992; Kooiman & VanVliet, 1993; Osborne & Gaebler, 1993; Rhodes, 1996 ; Stoker, 1998, Cotino, 2003).

III.1.1. GOVERNANCE-FIRST CHARACTERISTICS AND DEFINITIONS

The beginnings - A strong relation with the government

The concept of governance has reached a peak of variability and use in various spheres like the social, political, economic and lately media theories. With origins in the social spheres where launched by Foucault theory of **governmentality**, the concept of governance spread its use to the

political spheres. For Foucault governmentality included three characteristics: first *“the ensemble formed by institutions, procedures, analysis and reflections[...] that allow this the exercise of this very specific albeit complex form of power”*; second *“the tendency which [...] has steadily led towards the pre-eminence over all other forms (sovereignty, discipline etc.) of this type of power which may be termed government”*; last *“the process, or rather the result of the process, through which the state of justice of the Middle Ages[...] gradually becomes ‘governmentalized’”* (1991, p. 102).

One of the early descriptions of the concept of *“governance”*, since the beginnings of Foucault theory, was made by Rosenau (1992) while mentioning that governance is not synonym with government: *“governance is a more encompassing phenomenon than government”* (1992, p. 4). While government encompasses activities that come from government’s authority *“backed by formal authority”*, governance comprises more activities that are *“backed by shared goals”*, including or not legal rules and do not depend on these kind of rules to attain its goals.

Furthermore, the author accentuates the connection of governance with the concept of **order** in a society, as interactive aspects, each one influencing the other: *“governance obviously shapes the nature of the global order. It could not do so, however, if the patterns constituting the order did not facilitate governance”* (Rosenau, 1992, p. 8). The same order is highlighted by Kooiman and VanVliet defining the concept of governance as a *“structure or an order which can not be externally imposed but is the result of the interaction of a multiplicity of governing and each other influencing actors”* (1993, p. 64). When it comes to **order**, both governance and government are attempting to respect the same objectives. Governments are still having the needed authority in many aspects but *“some of the functions of governance [...] are now performed by activities that do not originate with government”* (Rosenau, 1992, p. 3).

The purpose of governance coming from a necessary change

Kooiman and VanVliet present the *purpose* of governance as being twofold: *“coping with the problems but also the opportunities of complex, dynamic and diverse modern societies”* (1993, p. 64). The governance pattern is becoming a **necessary change** for the variations in societies, a change to balance the negatives and the positives towards the **enhancement of common goals**. The new pattern has to look on how *“political and traditional hierarchical governing and social self-organization are complementary”* and accept each other’s propositions as partner contributors (Kooiman, 1993, p. 252).

Additionally, the above-mentioned change is described by Osborne and Gaebler (1993) also as being a shift in the changing role of the government and they express it through a precise metaphor: ***the government is required to steer that rowing into the regulatory system***. They assert

that is not a need of more or less government but a need of a **change** towards something different, called **governance**. Therefore governance is defined as “*the process by which we collectively solve our problems and meet our society’s needs*”(Osborne and Gaebler, 1993, p. 24). Moreover, the government is mentioned as an instrument that is used to resolve the society’s needs and as from now is considered **outdated** in the solutions it could give, compared to governance. Governance is more demanded now, the “*leading society, convincing its various interest groups to embrace common goals and strategies*”(Osborne and Gaebler,1993, p. 34). Therefore, the government is left with a **steering** action as more important than the **rowing** role: steering is “*to facilitate problem solving by catalyzing action throughout the community*”(Osborne and Gaebler, 1993, p. 28).

These three contributions have a main point in common, through which distinguish the pattern of governance, the combined effort for decision making: **shared goals** (Rosenau, 1992), **the result of interaction of multiplicity of governing** (Kooiman & VanVliet, 1993) and **collectively solve our problems** (Osborne and Gaebler, 1993). There is an emphasize on the fact that there is no more a sole directing voice that makes the decisions and now are collective voices looking for a decision. It has to be noted that these entire positions share a more idealistic distance from the concept of power present at all the levels in a society advanced by Foucault (1991) and reinforced by Freedman: “*there is no necessary relationship between the number of participants in a decision-making process and the eventual decision that is taken*” (2005, p. 7).

Governance- Building a Definition

A definition of the concept of governance appears to be constructed starting with the contribution of Rhodes (1996). Rhodes shows at first that governance surges from a change in government “*referring to a new process of governing; or a changed condition of ordered rule; or the new method by which society is governed*”(1996, p. 652). What makes difficult to define governance represent the six separate uses that could be attributed to the “*new process*”. Firstly, as **minimal state** Rhodes looks at the preference of the society for *less government* intervention on a general scale. Secondly, **as corporate governance**, there is a new system to give direction to an organization. Thirdly, **as a new public management** is the way to achieve competition, costumers and outcomes of an entrepreneurial government and new public management. Fourthly, as **good governance** Rhodes cites Leftwich to enlist three characteristics of good governance: “*systematic, political and administrative*” (1996, p. 656). Fifthly, **as a socio-cybernetic system**, governance underlines the limits to governing since the power of coordination and control does not lie anymore only on the government side. Lastly, governance as **self-organizing networks** refers at how these networks are managed, since different organizations, outside the government control, build the networks in order

to reach their goals via interchanged relations. This type of networks, according to the author, are reaching through governance autonomy and self-governing.

Later on, Cotino takes upon the six descriptions of governance given by Rhodes (1996) above and concentrates them in only two: like “*a new and more complex form of government but a regular one*” and like “*a compendium of principles of the good government*” (Cotino, 2003, p. 7). In an attempt to include all the above six applications of governance, Rhodes (1996) defines governance: “*refers to self-organizing, interorganizational networks*”(1996, p. 660).

Taking into consideration the applications of governance and the definition that Rhodes built, there are four “*shared characteristics*” that the author brings to the attention: “*interdependence between organization [...] continuing interactions between network members [...] game-like interaction [...] a significant degree of autonomy from the state*” (1996, p. 660).

Rhodes (1996) centered his work on characteristics of governance by defining the participating actors and their description: the networks that include external statutory actors, interdependent and with a significant degree of autonomy. Stoker (1998) takes these actors and describes what the actions are and the processes produced between them, enlarging therefore the image of governance. When Stoker (1998) defines governance, focus should be on “*governing mechanisms*”(1998, p. 17) in order to catch the importance of the concept. In addition, these mechanisms are not based on any external control that could come from government but on the contribution of different stakeholders. Moreover, “*the processes of governance lead to outcomes that parallel those of traditional institutions of government [...] it is rather a matter of a difference in processes*”(1998, p. 17).

Furthermore, Stoker presents five aspects of governance based on the description provided above of governance. First, governance is challenging the traditional institutional method through the increase involvement of stakeholders, outside government in the governance process. Second, governance is described as a method to identify the “*blurring of boundaries and responsibilities for tackling social and economic issues*”(Stoker, 1998, p. 18). This means that through governance responsibility could pass from government to private players and even citizens. Third, governance involves the **power dependence** as a condition for collaborative work of different stakeholders outside government regulation. This dependence over others participants to the decision process is defined as transmission of information and agreements in order to work for the same outcome. Fourth, governance is expressed as self-governance, which involves the auto-sufficiency in designing their rules of governance and **not just only influencing government policy**. Last, Stoker identifies the capability to reach the same goals through governance without the coercion of government, which can retain the capacity to coordinate and guide the actors involved. The author concludes in looking

back at the **changing world of government** through the perspective of governance and emphasizes in the role this concept can gain as an “*evolutionary way to capture the processes of adaptation, learning and experiment that are characteristic of governance*”(Stoker, 1998, p. 26). Stoker distinguished his work on governance, compared with the previous authors, through his capability to capture the new change and describe it with the exact development in applicability differentiating from the governmental system.

The concept of governance, as presented in this sub-chapter, went from a few characteristics to clear definitions relating with the socio-political science “*the process by which we collectively solve our problems and meet our society’s needs*” (Osborne & Gaebler, 1993), “*self-organizing, interorganizational networks*” (Rhodes, 1996), “*paralleling the traditional institutions of government*”(Stoker, 1998). In the following sub-chapter the concept of governance is approaching the European Union’s sphere and consequentially the scholars are relating and adapting the concept to the European context.

III.1.2. FROM GOVERNANCE TO EUROPEAN GOVERNANCE

Immediately after the 90s, the concept of governance started to appear more often in relation with a change in the government at the European level (Peters & Pierre, 1998; Bardoel & d’Haenen, 2004; Trieb et al., 2007; Bache et al., 2010; Puppis, 2010). The road it travels left social issues and approached more and more political ones.

Decision Making by Interaction of Networks

Peters and Pierre (1998) focus on the assertion of **governance without government** in European Union, idea that has developed as prioritizing “*networks, partnerships and markets (especially international markets)*”(1998, p. 223). This assertion comes from the idea that governance came at a time when government’s role weakened with a lot of power to loose in face of governance, as well as “*policy involvement and a network structure already in place that can replace or supplement the power of government*”(Peters & Pierre, 1998, p. 224). These authors are the first to pinpoint to a different way of looking at the governance by trying to distinguish between an overall theoretical debate and a real change in the nature of the government.

The most prominent characteristic of governance coming out of this argument is represented by the **networks** that do not exclude the government from the decision-making, it only reduces its central position. Additionally, Peters and Pierre (1998) are situating governance as a clear political theory, with a focus on an inter-organizational process since “*describes a certain type of exchange between the state and society*”(p. 232). Lastly, it has to be noted that a look at the EU

governance system is taken by Trieb et al. (2007), while citing Eising and Kohler-Koch (1999), in order to point out “*network governance*” as the predominant type of governance at EU level.

Governance-Transfer to Political science

Bardoel and d’Haenen (2004) make the transfer of the concept to the political science. They take the concept from the primary image of governance that concerned the **new** relation of the government with statutory actors: the **steering** action described by Osborne and Gaebler (1993) and describe it as a concept essentially belonging to the political science. The definition starts from the idea of “*a new way of evaluating the government and the relationships between the government and society*”(2004, p. 171).

While for Peters and Pierre (1998) the central characteristic of governance has been the use of networks for Trieb et al. (2007) the changing role of government is highlighted bringing along the previous contributions of Osborne and Gaebler (1993), Bardoel and D’Haenen (2004).

According to Trieb et al. (2007) governance describes a “*change in the nature of the state*” (2007, p. 3) from the traditional model, where the elected government took decisions, to the one where the decisions are taken along with the societal actors or by coordinating the interaction of these actors in the society. Moreover is translated as a “*change in actors constellation*”, while referring to “*societal steering and is often described as a process of coordination of networks*” (2007, p. 3). The authors take upon the concept of Osborne and Gaebler (1993) of the steering method to describe the new role of the state into a governance system.

Furthermore, Trieb et al. (2007), citing Benz (2004), present a definition of governance, that according to the authors comprises all the understandings of the concept until that moment “*steering and coordination of interdependent (usually collective) actors based on institutionalized rule systems*”(2007, p.3). Nevertheless, these understandings are closely related with the perspective from which governance is analyzed: **politics, polity and policy**. Firstly, from the **politics** perspective, governance is encompassed in the constellation of actors and the relation between them. Secondly, from a **polity** perspective, governance is presented as a “*system of rules that shape the actions of social actors*” (2007, p. 3). Thirdly, from **the policy** perspective, Trieb et al. accentuates that “*governance refers primary to policy dimension*” and what make policies distinctive are the **steering** instruments for the achievement of these goals (2007, p. 4). These steering instruments have been hard-regulation initiatives from the part of governments, but at the EU level there can also be distinguished voluntary agreements.

The closest approach of governance to the political science is brought by Bache et al. (2010) defining the EU governance as a “*highly compound regional polity*” (2010, p. 123) and cite Schmidt

(2006) when presenting what this polity includes: the combination of *“corporatist policy-making processes and regionalized or federalized structures”* (2010, p. 123). This categorization of multilevel governance promoted by European Union and the study advanced by Bache et al. (2010) determines that European Commission has fluctuated in promoting this governance. Moreover, sometimes it strengthened centralization in certain situations, and Bache et al. (2010) gave the example of several countries that were in the pre-accession process to the EU membership. The pre-existing domestic institutional arrangements are important for each Member State and the particular situations have to be respected and acknowledged before change is applied in relation with the distribution of power.

It is for the relevance of this paper to include the delimitation of *“new modes of governance as new public policy making”* advanced by H ritier and Lehmkuhl (2011, p.127). These authors presenting six modes of governance, of which two are considered relevant for the soft-regulatory initiatives that are analyzed later on in this thesis: *“the delegation of regulatory tasks to independent authorities, including the formation of networks of regulators”* (2011, p.127) and *“the bipartite and tripartite policy-making: the social dialogue”* (2011, p.130). For the first mode of governance, H ritier and Lehmkuhl (2011) use the example of telecommunication policy, energy and financial markets which have been implanted at the EU level, while for the second mode use the example of social end employment policy. Relating with the audiovisual policy later on in this thesis is analyzed the proposal and initiation of a network of audiovisual media service regulators (Sub-chapter V.2.2.2.) corresponding with the first mode of governance presented by H ritier and Lehmkuhl (2011). As for the second mode of governance, the social dialogue, for the audiovisual sector, a good example is the European Citizens’ Initiative (Sub-chapter IV. 3).

A new delimitation of governance is brought by Puppis (2010): *“a new process of governing”*, in line with Rhodes (1996) and a *“collective co-ordination”* in a broad sense. In the narrow sense, governance is seen as an adjustment in the mode of governance, which includes the cooperation mode or organizing and ruling processes, all outside the government authority. The broad sense of defining governance shows the government as included in decision making and constructing the regulatory body. Moreover, Puppis sees the role of the government, in a different light from the other authors because he sees it as a **facilitator** that acquires more power with this role in a governance system. Therefore, *“the state remains important despite the emergence of non-statutory forms of regulation”* (Puppis, 2010, p. 137) and the author emphasize that the state does not see its role diminishing, but it changes in a *“facilitator or primus inter pares”* (Puppis, 2010, p. 137). To sum up, the author reiterates that governance debate could rather be not so new in governing and the

scholars can be only now “*catching up with the reality of the public sector in the contemporary world*”(Peters & Pierre, 1998, p. 240).

Once established the connection with the political science and the possible changes brought by the governance concept for the government and the forming of outside and inside networks, the next sub-chapter will focus on the new assumptions of **good governance** and **soft-governance**. The chapter will lead from the European Commission’s 2001 White Paper and its view and the contributions of the scholars from that moment on.

III.2. SOFT-GOVERNANCE

The openness towards **soft-governance**, especially when media pluralism appears in media policy debates, is aiming to the democratic goals in a society. Therefore, there can be distinguished two main reasons for an inclusion of soft-governance for the media pluralism protection, supplementing hard regulation and finding a balance in accommodating the democratic objectives with the subsidiarity principle: “*Constitutional justifications for the maintenance of distance between politics and the media, combined with the fact that the goals of pluralism and diversity are difficult to enshrine effectively in law, are encouraging a shift from state to coregulation or self-regulation*”(D’Haenens et al., 2010, p. 131). The clarification that has to be made here is that co-regulation and self-regulation mentioned by D’Haenens et al. (2010) are considered as basic mechanisms of soft-regulation.

In order to establish a base ground for the description of soft-governance is needed to start from a clear definition of soft-laws presented by Cini (2011) while citing Snyder as being “*rules of conduct which, in principle, have no legally binding force but which nevertheless may have practical effects*” (1993:2). Cini (2011) proceeds to identify soft-law as a “*distinctive form of regulation, one which implies a softer form of governance [...] negotiated settlements and voluntarily agreed codes of conduct*”(p.195). Soft-governance represents a new method of governance added to good governance. Nevertheless, soft-governance is better understood as a method based on practical application like the mechanisms of co-and self-regulation mentioned by D’Haenens et al. (2010).

This research approaches the concept of soft-governance in close relation with the EU policy case. When the European Commission itself describes good governance as based on the principles of openness, participation, accountability, effectiveness and coherence, there is an open spot for soft-governance alongside hard legislative measures. There were signs that institutional hard governance could need assistance to avoid the “*time-consuming, resource-intensive and politically unpopular*” directives to become a burden for the implementation in Member States (Simpson, 2011). Additionally, Cini (2011) sees this softer form of governance, based on soft law, as

possibly applied in some policy areas at the EU level in order to “*replace or serve as an alternative to more conventional ‘hard’ forms of legislation*”(p.195).

The actual launch of a White Paper centering on governance at the EU level is a new way of acknowledging the change in the government processes. *European Governance-A White Paper* (2001) introduces **governance** as one of the strategic objectives of the European Commission, as established since 2000. In this White Paper, the European Commission reiterates the concept of “*European governance*” as entailing:

“rules, processes and behavior that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence”(2001, p. 8).

This definition presents the European governance as a normative category including the terms like openness and participation as future positive features for the new way of governing of the European Commission. In summary, the main objectives presented in the White Paper to be achieved through European Governance are: a better involvement of the civil society and a higher contribution to the global governance.

In the “*European governance*” context, the European Commission promotes a specific mechanism named **Open Method of Coordination (OMC)**, which is defined as a “*soft-law*” **policy method**. As a general way of reaching different issues in the EU policymaking, the OMC is not directed to only one topic: the information society, research and development, enterprises, economic reform, education, employment and social inclusion. This method was established after the Lisbon treaty by the EU Council of Ministers as means to provide **better EU governance**. The method was beforehand included into the EU employment strategy and consequentially included in the Lisbon strategy in order to improve the economic strategy of EU. The OMC is looking for a way to coordinate the efforts of the EU Member States and exchanging national experiences in order to better come up with solutions. It is described as an “*approach to problem solving*”(Radaelli, 2003).

Going further into the analysis, the OMC is not described as limited to only one method but spreading to different kinds of policies as different applicable OMCs according to the specificities of each Member State. What identifies the pattern of the OMC is that “*the emphasis [goes] not on direct regulation or intervention from above, but rather on indirect methods of benchmarking, peer review, self-evaluation [...] all of which takes place under the surveillance of the European Commission*”(Shore, 2011, p. 298).

Consequentially, the OMC **brings soft-regulatory measures** to achieve the positive response from the Member States in an easier and less-painful way: by exchanging practices of implementation in different Member States, by leaving the monitoring process to the European

Commission, benchmarking, leaving peer review as a powerful arbiter and even opening the door to ***naming and shaming***.

The use of soft-governance does not show an easily acceptance or application of the concept. Simpson warns of considering soft-governance as “*second best or a fallback option when hard governance measures prove inadequate or are impossible to agree at EU level, as seems to have been the case*”(2011, p. 14). This could be interpreted that soft-governance is used mainly as a ***political compromise*** when there is and not as an equal measure to the hard legislative governance measures. In order to actually raise soft-governance to the same level there is a need to grow a culture of accountability and regular implementation of the mechanisms in order to have the acceptance from all parts involved in the decisional process, either at EU level or national level.

The next sub-chapter will shed more light on the mechanisms the soft-governance of co- and self-regulation.

III.2.1. MECHANISMS OF SOFT-GOVERNANCE: CO-AND SELF-REGULATION

When approaching the topic of media regulation in Europe, Hoffmann-Riem (1996) sustains that in discussing the idea of statutory regulation the right perspective is not on how to justify this regulation but by searching of the ways of “*how to design it adequately*”(1996, p. 327). The mechanisms of co- and self-regulation are mechanisms developed apart from the model of statutory regulation. This section tries to present and discuss the contributions for the both mechanisms of co- and self-regulation in a chronological way for a more precise image of the development and possible application of these mechanisms. The analysis starts with the mechanism of co-regulation.

According to Hoffmann-Riem (1996) media regulation has been developed for carrying out objectives of high qualitative communication for the construction of a democratic society based on the development of individuals and on the development of the society as a whole. Even though, there are groups of media organizations that see the achievement of these goals as better done through mechanisms outside this state control and mostly go in the direction of co-regulation and self-regulation(EMMA- European Magazine Media Association, ENPA- European Newspapers Publishers Association, EPC- European Publishers Council, Mediaset, 2013). They base their argument on the positive aspect of a ***greater efficiency*** when the state is not involved in regulation.

Starting with co-regulation the discussion leads again from the White Paper on European Governance (2001) of the European Commission where co-regulation is described as “*an example of better regulation that combines binding legislative and regulatory actions with measures taken by the actors most concerned, drawing on their practical expertise*”(2001, p. 21). Additionally, McGonagle sustains that implementation of this process is in the interest of both parties:

government and media organizations. Co-regulation is seen as the *“light approach to regulation”*(McGonagle, 2003) with two political reasons behind, as two different points of views. One is from the part of the industry that sees the process as a first step towards a complete deregulation. Second is from the part of the state that provides a looser regulation and control on one side, while on the other side is looking to maintain its dominant position. Focusing on the media policy, co-regulation could be the **solution** brought by a new media governance for the need of independence of media (Wyss and Keel, 2009). Co-regulation therefore is perceived as having the ability to reinforce and raise the governance of the media.

Puppis (2010) does not share Palzer’s (2003) or McGonagle (2003) opinion that co-regulation can be initiated by the state and affirms that the process of co-regulation is entirely conducted by the media industry and the implication of the state is only in the form of a monitoring organism. Moreover, such a passive position from the state, envisioned by Puppis (2010), when co-regulatory mechanisms are applied, would forward the question where will be the position of the state in application of self-regulatory mechanisms.

Continuing with self-regulation, in the beginning, the descriptions of this mechanism came as an *“attractive alternative to direct governmental regulation because the state simply cannot afford to do an adequate job on its own”*(Ayres and Braithwaite, 1992, p. 103). There are two motives advanced for the application of self-regulation: **efficiency** and **liquidity**. The concept of self-regulation was first implemented and applied in the journalistic communities. This method was accepted first and implemented to increase the responsibilities of journalists and editors, due to its voluntary understanding between the *“authors and owners about fundamental professional standards of journalistic and professional work”*(Hrvatín, 2003, p. 71). Therefore, the main goal of the self-regulatory mechanism is the accountability of the media without the use of sanctioning tools.

However, Hoffmann-Riem (1996) furthered his opinion that the state cannot be completely excluded from the regulatory mechanism since the society alone cannot fight the power accumulations. Therefore in the situation of the European Union, according to Hoffmann-Riem, *“the state and the European Commission as sovereign powers must set up the structures for a socially compatible self-regulation”*(1996, p. 337). The outcomes of a successful self-regulation, as described by Hoffmann-Riem (1996), represents: a prevention or compensation for negative societal effects and reduction in state intervention (1996, p. 336). The focus needs to be on shifting the responsibility of societal effects as well as resolving actual problems to *“the suppliers of communication”* since involving them in resolving the undesired socio-cultural effects should be featured by their role to deliver the communication content to the society as a whole.

Another view of the application of self-regulation is that it can exist only as a sparse element of statutory regulation when private organizations are only drafting the rules and the state monitors and enforces the application of rules (Baldwin and Cave, 1999). The authors underline the two main advantages that self-regulation brings to the regulatory regimes, mentioned before by Hoffmann-Riem (1996): **efficiency and expertise** and warn about the negative side: **mandate, accountability and fairness of procedures**. If these three negative aspects are not monitored it could lead to power struggles, which Hoffmann-Riem (1996) also mentioned as the main downfall of the application of self-regulation.

Later on, Palzer (2003) affirms that the best advantage of this mechanism of regulation is not based on **punitive or exemplary actions**, but on agreements and understandings that the parties working together are working for the same goal (Palzer, 2003). It is important to see that new theoretical developments are bringing two new characteristics to the concept and reinforce its status as completely apart from the one of government: **the responsibility** and **the voluntary character of the application** of self-regulatory mechanisms and participation.

New characteristics of self-regulations are identified by Künzler (2007), in a study comparing the two mechanisms of co-regulation and self-regulation. Künzler (2007) describes the outcome of interviews conducted with professionals on their opinions in respect to the implementation of self-regulation: *“the threat of statutory regulation and the industry’s will to prevent [...] the assumption that self-regulation could include higher practical relevance.[...] press councils are dealing with media ethics; a matter which is difficult to cover by law”*(2007, p. 352). The reference to the ethical reasons appears as a condition differentiating the self-regulatory mechanism from other regulatory systems.

The above reasons can be interpreted in a positive way, in comparisons with the reasons that Puppis exposes for the implementation of self-regulation: *“to keep the state off from regulation and not because the industry has secret desires for more rules[...] self-regulation may conduce to the realization of private interests rather than the public interest”*(Künzler, 2007, p. 333) .

While the most authors look at the desired results form a self-regulatory mechanism, Baldi (2007) express the concern for the real efficiency of the self-regulatory organisms. The application of this mechanism has increased rapidly but this does not mean that its application and function is always correct. Therefore, for him the **concrete implementation** is of major importance. Puppis (2007) argues the lack of **democratic legitimacy** for the self-regulation and in the same line with Baldi (2007), presents a concern of the real application of this mechanism, since there are no guarantees that rules will be applied or if these are not, if sanctions will be enforced.

These ideas do not bring state regulation fully back in discussion, when there is the already accepted idea that non statutory regulation is needed and applicable. The idea being discussed is if

the self-regulation mechanism is the most appropriate and how can be improved, even if the participation of the state appears in a minimum part. The only time when state involvement is strongly seen as negative is when related to content regulation of the media (Künzler, 2007).

Summing up, both co- and self-regulation present the advantages of greater efficiency for both the private sector and the state (Hoffmann-Riem, 1996) and also the advantages of liquidity, of eliminating unnecessary bureaucratic spending.

What comes to a clear understanding and is accentuated by most of the authors is that: state intervention cannot be entirely eliminated from both mechanisms. There are reasons to diminish state intervention and reduce it to monitoring but it is still a need for at least on evaluating of a small part of the work advanced by self-regulators.

Some of the authors argue that state cannot afford anymore a permanent statutory regulation due to lack of economical liquidities or specialization (Ayres and Braithwaite, 1992) or that state can only have an approach of looser regulation to coordinate from another position (McGonagle, 2003). Neither of these acceptations presents the perfect situation for the implementation of another regulatory regime. Moreover, not even the motivations of private-actors in looking for absolute independence from the state have as a main goal the public interest. The accountability problem does not present the application of these processes in a better light (Baldwin and Cave, 1999; Palzer, 2003; Hrvatin, 2003).

The two mechanisms are motivated by strong elements of autonomy, efficiency, flexibility and adaptability accepted by both parties of the regulatory system but cannot be forgot that also leave the place to individual objectives of political and economical dominance from the part of private organizations.

These conclusions of the actual **fragility** of the mechanisms of co-and self-regulation are leading to the following sub-chapter focusing on the critical visions that rose along the development of the concept of governance.

III.2.2. CRITICAL VISIONS OF GOVERNANCE

When Rhodes (1996) mentioned the characteristics of governance he warned about the overlooking of the negative effects that could be brought and these are mainly related with the *autonomy of the organization* that could bring along the resistance from a central guidance. At the same time, even if the state leaves the central position, or at least it gives this impression, it can still **steer** networks and consequentially coordinate even if not from a **statutory** position.

Moreover, Peters and Pierre (1998) find two main negative treats: the issue of **accountability** assignation and the choice of some channels of accountability like “*consumer choice*

and stakeholderism" (Peters & Pierre, 1998, p. 228). With governance, the accountability loses an assignment since the governmental organizations cannot fully be held accountable if their capacity to take political decisions is limited. The channels of accountability mentioned above are applicable to consumers and stakeholders but not to the other part of the population which does not find in the same position at a certain point even if are part of the permanent collective mass that finances the services for the two categories.

Another problem appears when another element of governance surfaces: **competition**. It is an element that applied to the public sectors in the same manner as to the private sector can raise the productivity and efficiency of this sector for the good benefit of the people. Even if governance does not mainly look at the competition element as a central one it accepts as viable and an element of stimulus towards positive results. The only problem that causes this implementation of competition is as the authors observe: "*public-sector organizations were never designed with that objective, but rather to ensure legality and equity*" (Peters & Pierre, 1998, p. 230).

There are two critics introduced by Cotino (2003) coming from the acceptance that the concept of governance first appeared in the international discussions as a **good government** to which are attributed all the best virtues:

"legitimate, democratic, transparent, responsible, efficient, coherent, competent government and which gives an answer to the necessities, orientated towards consensus, with strategic perspectives, equitable, respectful of human rights and of the Rule of Law" (2003, p. 22).

Firstly, governance in the EU is named as an intelligent political device because is described like a cure for an ill European political system. The use of governance reports the vices of the actual decisional process in the European Union: "*remoteness of the citizens, opacity, lack of participation, unintelligibility, lack of political responsibility and of accountability*" (Cotino, 2003, p. 20). The objective of governance would be then translated, according to Cotino, in an effort of the EC of adapting new forms of regulation that would bring the EU closer to its citizens, makes the EU more efficient, reinforce the democracy in Europe and consolidate the legitimacy of its institutions.

Secondly, the author is introducing the negative perception of the concept and its principles as presented in the 2001 White Paper. The rather *obscure* choice of values promoted by governance: "*legitimate government, democratic, transparent, responsible, efficient, coherent, competent*" are not including: "*the respect for the Rule of Law, equity (equality of opportunities) and fundamental rights*" (Cotino, 2003, p. 22). Therefore, the chosen values appear to be more related to management or public administration (Cotino, 2003, citing Bar Cendón, 2001 and Curtin, 2002). This observation lead Cotino, citing Allot (2002), to affirm that governance as expressed in the White

paper is no more than a well thought strategy around the new concept of governance, a part of a new international crusade launched from the economical side to the political one. The conclusion is that with such a strategy behind neither the attainment of all democratic objectives will led to a more democratic EU (Cotino, 2003, p. 23).

The critics of this concept, especially for the EU application, can be summarized in two main arguments. When the concept of governance approaches, the European sphere attention has to be distributed firstly to the changes in the decision makers. Therefore, the autonomy of organizations as decision makers has to be accompanied by accountability in order to have the full cooperation and trust of the government in this new method of regulation. Furthermore, the second attention has to be given to the distribution of interests seen in the values attached to the concept, especially by governmental institutions, in this situation being the European Commission with the White Paper on European Governance. The scholars (Cotino, 2003; Allot, 2002) have discovered and warned than a concept like ***governance*** can let the space for the intrusion of the industry's interests in the political sphere and therefore alienate from the basic principles of participation of the individual to the regulatory process.

In the following sub-chapters will be analyzed how much of the identity and values of governance are transferred to media governance and including how much of the concerns and characteristics of application.

III.2.3. SOFT-GOVERNANCE AND MEDIA GOVERNANCE

Media governance, a much novel concept that the one of governance, will be analyzed in two phases of development. Media governance is interpreted in this study as governance system with an active part of soft-governance, going further than statutory governance and supplementing this regulation with new elements to emphasize on. First, will be presented the incipient ideas related to the inclusion of all stakeholders, people centrality and the concern over media accountability. Second, the focus will be on the definitions of media governance and the application of the concept to the European media regulatory system.

III.2.3.1. MEDIA GOVERNANCE- FIRST IDEAS

The concept of media governance developed as a theoretical model in the last decade, subsequent to the general concept of governance. This sub-chapter is looking at the first ideas and principles related with the concept of media governance (Hamelink, 1994; McQuail, 1997; Bertrand, 2000; Siochrú & Girard, 2002; VanCuilenburg & McQuail, 2003; Bardoel & D'Haenens, 2004; Harcourt, 2008; Wyss & Keel, 2009).

Inclusion of All stakeholders

Starting from the idea that citizens' rights in the area of media governance are weak, Hamelink (1994) is suggesting the **right to communicate** as a basis for a democratic collaboration, for a **tripartite global conference**, and participation of the three most important groups in media governance: people, government and industry. Accordingly, *"only an alert and vibrant world civil society can begin to influence the other players towards the adoption of and the compliance with political arrangements for world communication that reflect people's interests"* (Hamelink, 1994, p. 316). The importance given to the people, named public, is reinforced by Bertrand (2000): *"has to make sure that the evaluated media has as primary purpose to serve the public; the establishment of the needs and desires of the public; the previous established are satisfied"* (2000, p. 108).

Hamelink (1994) proposes the new organization of governance of media from peoples' perspectives, and not from consumers' perspectives. Therefore, he directs the attention to the idea of **people matter** as a central objective for media in general. This idea of *"rise importance of the citizens"* is named by Bardoel & D'Haenens (2004) as an universal solution to the negative changes in media policy, like: *"political and market-oriented accountability do insufficient justice to the public as a full partner in the social communication process"* (2004, p. 191); the public is treated as a media consumer; autonomy of professionals like journalists and producers of media is seen diminishing.

According to this idea, important elements to build around the concept of media governance are: the importance of turning to the rights of people, established through negotiations of the three parties and, a last essential element, **the need of robust enforcement procedures for the new agreements** (Hamelink, 1994). The last element mentioned is the one that mostly changes and evolves during the development of media governance, mostly because it gives the essence of this governance as a new form of governance of media in the opinion of Hamelink (1994).

The Accountability dilemma

McQuail (1997) focuses on the accountability of media in society and determines the effects of media governance over the rules and regulations in European Union in saying that are shifting from national governmental policies, from exclusively government domains, to markets professionals and public interests and pressure groups. There appears a dilemma when the shift of rules and regulations changes from government to other parties. This dilemma is how to assure the needed **media accountability** in order to meet the three general objectives enlisted by McQuail: *"protect and promote media freedom, prevent and limit harm which the media might cause, [...] promote positive benefits from media to society"* (1997, p. 525).

Starting with the need of “*accountability of media*”, McQuail (1997) further asked “*to whom accountability is due?*” in order to look for the answer between: “*sources, audiences, those affected by media (directly reported on) and regulators*”(1997, p. 519). Therefore media accountability is an indispensable element for any media system but McQuail (1997) poses the problem of whom will assure this condition when there is a shift in media regulation from governments to other external parties.

Bertrand (2000) looks at the accountability as establishing it as a tool, a media accountability system to be applied for the interest of all parties and by all the parties involved: **media owners**, **media professionals** and **media users**. Continuing with Siochrú and Girard (2002), they bring to our attention that: “*governance of media and communications is not the exclusive activity of any institution*”(p. 143) and in consequence neither the accountability is not exclusive for any institution.

The biggest trends in the global governance that affect the media governance system are seen as related to **globalization, the amplification of market boundaries**, that do not pay attention to social, cultural and developmental aspects in different countries and when **the reform of international institutions** that are too confined in scope and frequently **forget to focus on human development** as an objective (Siochrú & Girard, 2002).

VanCuilenburg and McQuail (2003) accentuate as well the need to include accountability between the core principles of a new communication policy paradigm, where the accountability is seen as answerability for the use made of the access to media. However, the above-mentioned dilemma of “*who is accountable?*” remains. Bardoel and D’Haenens (2004) describe the accountability, alongside responsibility as a very vague concept, not yet established at all, where the accountability towards citizens is the least represented.

Unlike other authors, Bardoel (2007), in order to describe the composing elements of this “*fairly new concept*”(2007, p. 445), brings to our attention the idea of media responsibility, for a media governance system to function properly. This responsibility is translated in social responsibility, of media towards society, and responsiveness, the manner in which media listen and consider the public. However, responsibility is not the same with accountability, naming the former as the theory and the later the practice. Therefore, responsibility comes first and accountability second: **political, market, professional and public** since these are the forces that participate in the **pluricentric power relations**. In consequence, the responsible parts have to be designated, before holding one accountable. The author is sustained by Wyss and Keel (2009) that present the implementation of a management quality system into the interests of all stakeholders as a prerequisite for media governance. Only the implementation of this system, in the opinion of Wyss and Keel, can lead to “*a culture of responsibility and media accountability*”(2009, p. 118).

Here appear **four aspects** on which media governance needs to be based, according to Wyss and Keel (2009), while citing Jarren (2007, p. 141–142). First, is **the need of independence** of media professionals, professional independence for and within each media group. Second, these media groups **should pay attention when developing their activity to all parties** interested and not only the political ones because these are not the only ones that can control and apply direct sanctions anymore. Third, is **the equal access to media for all interest groups** since without access there cannot be an equal participation to the self-regulatory process. Fourth, is the concept of **accountability**, showed by respecting “*the rules that are stipulated by organized interests within the society*”(Wyss and Keel, 2009, p. 117).

A principal element that rises between the arguments following the responsibility path is the importance of the society for the new media governance because this is based on **a culture of responsibility**. Such a society can be build with a media governance of self-regulation and self-control, where citizens or their representatives are involved. This concept of social responsibility of media is also mentioned by Bardoel (2007) when is mentioning its two sides of “*responsibility*” of media for the society as a whole and of “*responsiveness*”, which is the approach of how media “*listens and considers the public*”.

Furthermore, another concept is added to the one of accountability and responsibility: **transparency**, a concept of “*fundamental importance in underpinning democratic values*” (Baldi, 2007, p. 17). The concept of *transparency* is named as a basis for the accountability system: “*at the heart of a public accountability we always found the amount and quality of the information available to citizens or their agents*”(2007, p. 18) but unfortunately, as the author states, this transparency process is not encouraged and promoted adequately. The same concept of transparency is emphasized also by Harcourt (2008a). Therefore, for Harcourt (2008a) the concept of soft-governance is presented alongside media governance and as a part of it, a concept that needs to be based on three elements: transparency, legitimacy and accountability.

As presented above, the accountability is mentioned as an indispensable part, close to responsibility and transparency, for a new communication policy paradigm construction, a soft-governance implementation and ultimately for media governance application. In short, on the positive side, the need for accountability is established early by the scholars. On the negative side, the accountability is weakly represented and neither of the scholars finds the answer at the dilemma to whom accountability has to be attributed. This **weakness** is also attributed to the soft-governance principle that include co- and self- regulation mechanisms and in a way enlarging the supposedly accountable participants to the media process and weakening the image of media governance as promoting non-legalizing ways for the media.

To sum up, from the point of view of accountability, the situation of media regulation is not an easy one to disentangle, but from the point of view of media liberty and democracy, it appears to be a good way of providing participation and involvement of all stakeholders in society. This idea goes towards the centrality of people: *“for the shape of a new governance system of media and communication with people at the center”* (Siochrú & Girard, 2002, p. 180), coinciding with the first scholars identified in the first period, Hamelink (1994) and Bertrand (2000).

III.2.3.2. MEDIA GOVERNANCE-DEFINITIONS

The construction of a definition for media governance has strong roots in the development of the concept of governance, to which the particularities of a media regulatory system are taken into account (McQuail, 2003; Meier, 2006; Bardoel, 2007; Meier & Perrin, 2007; Donges, 2007; Terzis, 2008; Freedman, 2008; Puppis, 2010; Meier, 2011).

One of the first definitions of ***governance of media*** comes from McQuail:

“(...) covers all means by which mass media are limited, directed, encouraged, managed, or called into account, ranging from the most binding law to the most resistible of pressures and self chosen disciplines” (2003, p. 91).

It can be considered a comprehensive definition for including both governmental and self-regulation and all forms of regulation from limitations to encouragements. The scholar starts from the definition given to governance in general: *“government without politics”* which he finds more than adequate for the situation of media governance since this domain he states to be one of the most sensitive for government intervention.

Furthermore, Meier and Perrin (2007) look at the role of media governance:

“media governance is supposed to mediate rising conflicts of interest by creating a platform which empowers previously neglected stakeholders, mainly civil society and at the same time encourage the state and media organizations to assume their obligations to society” (2007, p. 337).

This approach is named ***multi-stakeholder approach*** since equal participation of the parties affected is becoming central to media governance description. The authors distinguish between two types of corporate governance: public governance of media, with state governance at the center *“ensuring media serve for the public interest”* and media corporate governance defined as *“good corporate governance”* of media organizations and media owners.

Furthermore, Bardoel (2007) gives a similar definition of media governance as Meier and Perrin and on the same line of McQuail (2003) of inclusiveness of all parties: *“the pluricentric power relations and various regulatory regimes that altogether shape the media performance”* (2007, p.

445) and advices to look for a governance model based on negotiation and understanding between parties: *“it is more important to look for new governance arrangements that include a proper balance of market, state, profession and, last but not least, the public”*(2007, p. 456).

A later definition comes from a delimitation of the concept as having two different connotations: as *a scientific and theoretical approach and as an instrument of media regulation* (Donges, 2007, p. 328-329). The first approach is based on the connection of media governance and institutionalized rules: *“institutionalized rules of media governance are the basis [...] the outcome [...] an instrument of media regulation”*(2007, p. 328). The second approach of the instrument of media regulation presents the governmental or regulatory authorities that establish the rules or can motivate the other participants to regulation to negotiate these rules. The author concludes that media governance could become *“a possible and fruitful theoretical bridge between several scientific disciplines and theoretical paradigms”*(Donges, 2007, p. 329).

With a direct correlation to the media systems Terzis defines media governance as

“shifting media rules and regulation from national government policies to local, regional, multinational and international ones and away from exclusively governmental domains to others like market, professional and public interest/pressure groups”(2008, p. 11).

This definition moves the centrality from the government as well as from national governments to the international ones. While a move from the government towards **professional and public interest/pressure groups** is representing a step towards inclusiveness and diverse participation to the regulatory structure, the move towards higher forms of government can still be considered as statutory regulation.

In the definition of Freedman (2008), media governance is described as a concept that: *“refers to the sum total of mechanisms, both formal and informal, national and supranational, centralized and dispersed, that aim to organize media systems”*(Freedman, 2008). The last part of the definition, *“that aim to organize media systems”*, is also undertaken by Puppis (2010) in his definition of the concept. Puppis (2010) is looking at a new concept for the analysis of media policy and regulation. He is centralizing all forms of media regulation in a definition of media governance with an essential requirement to *“encompass the entirety of forms of collective rules”*. Therefore, Puppis defines media governance as *“a regulatory structure as a whole, i.e. the entirety of forms of rules that aim to organize media systems”*(2010, p. 138). It can be distinguished here the effort of inclusiveness of all forms of regulation, on a horizontal, including statutory, co- and self-regulation, and on a vertical path, regulation at a national, regional and international level. This kind of inclusion is implicitly involving all the stakeholders present at these stages.

Moreover, Puppis's definition incorporates both **collective** and **organizational governance**. Collective media governances are applied to national, regional and global levels to all media organizations and organizational governance it refers to self-regulation for the one media organization. *Non-statutory regulation* is entering the regulatory structure of media governance as an answer to *"the dilemma of how to reconcile media regulation with media freedom"* (2010, p. 140). This concept of media governance presented by Puppis (2010) in the new developed definition is based on the theory of the new sociological institutionalism containing three pillars: **cultural-cognitive, normative and regulative**. According to Puppis it depends on the will and capacity of the media organizations to respond to all three of these pillars and prove that *"unavailability of sanctions does not necessarily conflict with the potential for regulatory impact"*(2010, p. 144).

This presumed **answer** brought by the media governance is the solution to the dilemma of reconciling media regulation with freedom of media and can be translated in three **positive approaches**: statutory regulation-direct state influence and control, self-regulation-the regulation from non-state actors, at industry level and co-regulation, implying regulation of industry with monitoring from the state.

Another author that took upon some of the elements of Freedman's definition (2008) is Meier (2011), which describes media governance as the *"total of centralized and dispersed mechanisms with the aim to organize mass media from the inside, as well as from outside"* (p.160). The definition of Meier refers to the mass media, to the initial situation and not media systems, the direct result. Therefore, it brings a new element that was not included in Freedman's definition but does not preserves as much as the final product: the new media systems. Another element very well emphasized is the action of organization from inside as well as from outside. In this very concise description, media governance is surpassing statutory governance and is including new forms of regulation (Meier, 2011). It is a way of looking towards the organization of mass media and not a way to control or direct them in an already established path. Without the independence of professionals, attention to all parties, equal access to all groups and accountability, media governance could be lost in too disperse and unorganized systems or could go back to statutory governance and nothing more. In this direction a new definition of media governance, looking to add the accountability value to this system, can be advanced:

"Media Governance is referring to the total sum of mechanisms, both formal and informal, national and supranational, centralized and dispersed aiming at organizing the mass media from inside, as well as from the outside into a new regulatory structure where the participants are ready to be hold accountable for the initiation of these mechanisms" (Llorens & Costache, 2013a, 2013b)

This definition could be applied to mass media and to new media, which has turned the phenomenon of media governance to a wider level bringing different media systems together into one convergent media system. The fulfillment of this new governance depends in a high percentage of the capability and will of the participants to apply the soft-regulatory measures based on the theoretical concept of the responsibility and practical application of accountability emphasized earlier by Bardoel (2007).

Brief, media governance has been defined in this sub-chapter as representing “*means to control or direct*” (McQuail, 2003), “*relations between various regulatory regimes*”(Bardoel,2007), “*shifting rules and regulation*”(Terzis, 2008). That means movement, the change from one old system to another but also cooperation and negotiation between parties. All these characteristics are building the “*new co-regulatory systems*”(Terzis, 2008) and lastly are changing the “*regulatory structure as a whole*” (Puppis, 2010). The 2010 definition of Puppis is very holistic, making reference to all regulatory forms of rules and is differentiated mostly by making the point of the transformation of media governance into a new regulatory structure. This definition is the only one that gathers all the rules and relations and actually names a new system of regulation into a new regulatory structure.

Finally, the main elements of the definitions presented above have been preserved for the development of a new definition (Llorens & Costache, 2013a, 2013b) where an important element has been added, the accountability issue. This is done in an attempt to work on one of the concerns for the application of this new regulatory system.

CONCLUSIONS CHAPTER III

This chapter has been focusing on the theoretical concept of governance and media governance starting from the following research question:

Which are the main contributions and the assessments of media-governance concept and soft-policy measures in the debate on media policy and media pluralism?

The relationship Governance-Media Governance

Rosenau (1992) introduced one of the first characteristics attributed to the governance concept as being backed by ***shared goals***, a very much valid characteristic also for media governance. Governance and media governance imply that a new regulatory system, which includes both governmental and non-governmental rules, has a better potential to be applied for “*shared goals*” since a higher range of interests can be represented.

When talking about the idea of the governance as a ***necessary change*** (Osborne & Gaebler, 1993), the change is much more prominent in the case of media regulation, based on the two

mechanisms of co- and self-regulation, where **people's centrality** is essential. With these specific arrangements of co- and self-regulation, the external parties, media organizations, can bring possible better efficiency (Ayres & Braithwaite, 1992; Hoffmann-Riem, 1996) and less bureaucracy due to higher specialization. However, there are only **possible** better efficiency and less bureaucracy, because there are scholars that still do not believe in a better efficiency (Baldi, 2007; Puppis, 2007, Harcourt, 2008) especially of the self-regulatory mechanisms because consider the mechanism too immature.

Media governance, as well as governance in general, brings to the light the importance and potential of **networks** (Peters & Pierre, 1998), **collective actors** (Trieb et al., 2007), including the governmental ones since both structures recognize the importance of a minimal presence of the statutory regulation or only a surveillance role. The work of the networks is primordial towards the attainment of the shared goals: governance "*refers to self-organizing, interorganizational networks*" (Rhodes, 1996, p. 660). Where governance is more permissive and inclusive regarding the statutory intervention, the media governance has more restrictive approach. Governance looks for openness and participation from all parties (Hamelink, 1994; Bertrand, 2000; White Paper on European Governance, 2001; Siochrú & Girard, 2002; Palzer, 2003; Terzis, 2008), even dominance from the external actors (Peters & Pierre, 1998) while the governments maintain only a **steering role** (Osborne & Gaebler, 1993; Trieb et al., 2007) in the regulatory process. Media governance is more concentrated on the independence of the professionals in media (Wyss & Keel, 2009), alongside with the values of openness and inclusiveness brought earlier by governance.

This system of media governance appears to be, in the view of some scholars, an accessible way "*by which we collectively solve our problems and meet our society's needs*" (Osborne and Gaebler, 1993, p. 24) and reach to our **shared goals** based on the work of **interorganizational networks** (Rhodes, 1996) including an essential **right to communicate** of the individuals as a base for a democratic collaboration (Hamelink, 1994).

A New Media Governance System: main critiques

Leading from the inclusiveness of all stakeholders into a media governance system, which provides for the diversity of voices and contents pursued by media pluralism ideals, there appears to be a more favorable territory for media pluralism than in a statutory system.

A door seems to be opened when media governance advocates for the inclusion of all stakeholders and here we have to mention also the individual ones, not always representatives of the civil society. However, this door does not lead to the perfect "*Promised Land*" since economical restraints are the first to darken the picture. Cavallin (2010) and Meier (2011) are of the few authors

to describe the economical difficulties faced by the small players to participate in media governance. A very important point is made when Cavallin (2010) warns about the assumption that a number of different small voices in the market can make up for the domination of the power players. It is only an illusion and the small players *“should not be assumed to play a role equal to that of major power-holding players”* (2010, p. 193). In a media governance system, where every stakeholder has the right to participate, the deliberative power of taking a decision is brought by resources, which allow *“to participate in intense decision-making processes”* (Meier, 2011, p. 162).

On the other hand, the accountability appears to be one of the most important difficulties brought by an overall implementation of media governance, largely advanced and discussed by the communication scholars (McQuail, 1997; Bertrand, 2000; Bardoel, 2007; Wyss & Keel, 2009). Media accountability in a media governance system is much more difficult to apply.

In theory, when the system of media governance is based on interdependent networks (Trieb et al., 2007), the probability to reach a democratic consensus for improving civil society is big and therefore media pluralism could be preserved. Nevertheless, this statement is totally shattered when we do not know who is able to participate to the process of taking a decision, to be accountable for them and to whom.

Accompanying this idea, another difficulty is in the fact that media pluralism asks for autonomy of different voices in order to have a free and independent expression of their thoughts and ideas, regardless their capability to be held accountable. In this line of thought, freedom of communication comes from the need to participation. The already present mechanisms of consultation processes do not give the total power of decision-making and according to Meier (2011) *“the aim should not simply be the consultation of civil society groups, but their full participation in the decision-making process through some forms of decision rights provided to participants”* (p.163). Additionally, the implementation of an accountability system, that needs to provide for the legitimacy of the media governance system, comes with the need to access media contents.

Media governance based on the mechanisms of soft-governance represents an open door towards participation and equal access but it comes with many illegitimacy issues and lack of real accountability. In this climate, while agreeing with Meier (2011), additional regulation is still needed, while recognizing that government is required in a media governance system, in order to monitor the rightful application of basic democratic values and self-regulatory mechanisms. We will see in the end of this thesis if this open door of media governance could be useful for regulating media pluralism, alongside the statutory governance.

PART II-EU MEDIA POLICY ACTIONS

CHAPTER IV-EUROPEAN INITIATIVES TOWARDS MEDIA PLURALISM: EUROPEAN PARLIAMENT, COUNCIL OF EUROPE, STAKEHOLDERS

This chapter provides an analysis of media pluralism policy initiatives and positions of European bodies (European Parliament, European Commission DG COMP) and organizations (Council of Europe, European Citizens Initiative on Media Pluralism) excluding the European Commission DG INFSO/DG CONNECT, which will be studied in chapter V.

The analysis focuses on general aspects comprised by each institution with the objective to have an overall image on the approaches for media pluralism protection policy at certain levels in Europe, and not only the European Commission or European institutions in general. Analysis of the definitions of media pluralism, as a theoretical and policy concept, is excluded since this has been conducted in chapter II. This chapter is looking for similarities and differences between the institutions policy positions and actions.

The structure of this chapter is divided between the different initiatives. In the conclusions will be summarized the most important advancements and the relations between the different initiatives. In addition, it is important to analyze how these initiatives have had any influence on the European's Commission DG INFSO/DG CONNECT initiatives and vice-versa.

From a theoretical point of view or from the actual functioning of the legislator process in the European Union there should be a close relationship from the initiatives of different stakeholders and different EU Institutions and the policy initiatives of the European Commission. Additionally, any new approaches to pluralism policy protection should be observed at all levels in the society when *“there is a clear shift towards the adoption of a broader perspective”* (Valcke, 2009, p. 21) from the traditional approach on media ownership and media concentration prevention. The methodology for this chapter is focusing on the policy documents and the policy discourse, without overlooking the theoretical contributions and analysis of experts on these issues.

IV.1. THE EUROPEAN PARLIAMENT (EP)

This sub-chapter, focusing on the initiatives of the European Parliament (EP), analyzes the European Parliament suggestions for new approaches to media pluralism protection. These policy documents contain recommendations made directly to European Commission in order to use its full competences in the direction of media pluralism, as well as to the Member States, especially in the resolutions looking at the situation in Italy (EP, 2004) and in Hungary (EP, 2011) for the respect of the principles of media pluralism and media freedom as presented in the Article 11(2) of the Charter.

Therefore, this sub-chapter will look at continuing problems identified by the European Parliament in relation with media pluralism, the proposed solutions and alternatives and to whom these solutions and actions that have to be taken are addressed.

From the five resolutions issued by the European Parliament and one motion that did not resulted into a resolution, only one of them (EP, 2004) is addressing the media pluralism issue directly. This resolution (EP, 2004) has been analyzed in chapter II for the focus this had on the media pluralism definition and direct description.

The rest are addressing and touching upon the issue of media pluralism indirectly while examining the following issues of: **media concentration, freedom of expression and information, media freedom, the future of the public service broadcasting in the digital era** and **the minimum standards**. These provisions are advanced in order to be respected in each EU Member State in order to secure a minimum of essential standards for freedom of information and adequate levels of media pluralism and independent media governance.

TABLE 4.1: Documents of the European Parliament; Period 2000-2014

Year	Title Document - European Parliament
2004 (22 April)	Resolution on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights) (2003/2237(INI))
2008 (25 September)	Resolution on Media Concentration and Pluralism
2009 (14 October)	Motion for a resolution on Freedom of Information and Media Pluralism in Italy and in the European Union
2010 (25 November)	Resolution on Public Service Broadcasting in digital era: the future of the dual system (2010/2028(INI))
2013 (8 October)	Resolution on EU Charter: Standards setting for Media Freedom across the EU

SOURCE: Elaborated by the author

The following four relevant documents from the EP are analyzed in this chapter (EP, 2008a; EP, 2009; EP, 2010; EP, 2013).

IV.1.1. RESOLUTION ON CONCENTRATION AND PLURALISM IN THE MEDIA IN THE EUROPEAN UNION (2008a)

This report by MEP Marianne Mikko as rapporteur, did not had an easy adoption in the plenary. On the contrary, the inclusion of direct names provoked actually a request to return the report to the committee and to restrain from the voting from the part of the Groups of European People's Party (Christian-Democrats)-EPP and the Union for Europe of the Nations- UEN. Neither

action materialized, while the resolution was voted with 237 votes in favor to 24 against and with 14 abstentions.

Media pluralism was described here as being guaranteed by only a *“proper political balance in the content of public service television”* while is easily jeopardized by unrestricted concentration of ownership (2008a, p. 5). In the era of the shift to the digital technology, enter in the market new services of dissemination of information and have changed the quality of the content and the way of distribution while large media enterprises gained dominance of the market.

Moreover, it went further and emphasized on the valuable role of media pluralism for a democratic society, which was also seen in the report of MEP Johanna L.A. Boogerd-Quaak in 2004. This value is important to raise the democratic ideals into the focus of all institutions and Member States of the EU: *“a pluralistic media system is an essential requirement for the continued existence of the democratic European social model”*(2008a, p. 9).

This resolution of Marianne Mikko highlights media pluralism as one of the main factors for the construction of a democratic society. The transition is also made from the media ownership concerns and protection of *“consumer rights and pluralism of content”*(EP, 2004) to political concerns (EP, 2008a).

IV.1.2. MOTION FOR A RESOLUTION ON FREEDOM OF INFORMATION AND MEDIA PLURALISM IN ITALY AND IN THE EU-FAILED MOTION IN THE EP PLENARY (2009)

The group of Social and Democrats (S&D) of the European Parliament presented a Motion for a Resolution on freedom of information and media pluralism in Italy and in the European Union. The motion stated that *“EU legislative framework for media pluralism and media concentration still remains inadequate”* and actions are needed to be taken by the European Commission in the following areas:

“internal market, audiovisual policy, competition, telecommunications, State aid, public service obligations and the fundamental rights of citizens, in order to define the minimum essential conditions that all Member States are obliged to respect to ensure, guarantee and promote freedom of information and an adequate level of media pluralism”(2009, Article 5).

Political influence was presented here as the main problem to freedom of communicating and receiving information and to media pluralism: *“Is convinced that the freedom to receive and communicate information without interference from public authorities is a fundamental principle upon which the European Union is based and an essential element of democracy, as is media pluralism, both being enshrined in Article 11 of the Charter of Fundamental Rights”*.

The case of Italy remains one of the most **iconic** in EU for the exemplification of political influence over the media directly affecting media pluralism. Different from the focus of the other EP documents on the **freedom of expression and information** for the reach of a democratic society, this motion highlighted how **freedom of communication and receiving information** are central for the liberation from the political influence.

Where in the first instance the focus was on the providers of information, the media, in the case of Italy the focus is on the receivers of the information, the end users. Nevertheless, in order to guarantee media pluralism both sides of the spectrum are significant and treating only one side does not translate in solving the situation.

This text has been proposed in the plenary on 21 October 2009 as a Joint motion between the Social and Democrats (S&D), Alliance of liberals and Democrats for Europe (ALDE), European United Left/Nordic Green Left (GUE/NGL) and Greens political groups and it failed. These groups thought to have a majority and pass the motion in the plenary, against the opposition of the EPP group, which from the beginning opposed the focus on Italy and tried to change the name of the motion while eliminating Italy from the text. Since the EPP group had the biggest number of representatives in the EP and a big number of Italian MEPs, this motion needed a strong common front and representation from all the other political parties that were part of the joint motion. However, according to Giovanni Melogli, journalist and former assistant in the EP, this was exactly what this motion had missed, a strong united front and coordination from the parliamentarians advancing the motion: *“the motion for a resolution failed due to a bad organization, and not a coordinated strategy for the vote. It was possible but not all the members were present in Strasbourg when the vote took place”*²².

The developments that led to the rejection of this motion show how **easily** the positions of the political parties and the various shifts in power in the EP can influence the political agenda and consequentially the political discourse on media pluralism and media freedom. Accordingly, the EP missed a new opportunity to advance the situation of media pluralism and media freedom in Europe. This happened due to a combination of poor coordination, resilience of some Italian parliamentarians to the negative focus on Italy and the power of the EPP political party in reiterating that principle of subsidiarity does not leave place for discussion at the EU level for the protection of human rights principles.

²² Interview conducted in Brussels, 06.06.2012.

IV.1.3. RESOLUTION ON PUBLIC SERVICE BROADCASTING IN DIGITAL ERA: THE FUTURE OF THE DUAL SYSTEM (2010)

The report presented by rapporteur Ivo Belet emphasized the dual system of public and private service broadcasting as “*part of the EU aquis*”. The main achievement of this system is the insurance of a diversity of offer of media for the end users. Inclusively, the human right of freedom of expression is promoted through this dual coexistence:

“Underlines, in particular, the fundamental role of a genuinely balanced European dual system in promoting democracy, social cohesion and integration and freedom of expression, with an emphasis on preserving and promoting media pluralism, media literacy, cultural and linguistic diversity and compliance with European standards relating to press freedom.”(Article 3)

Furthermore, the EP stressed that for the existence of this dual system the PSB needs to be **well-funded** and be an example for other broadcasters in promoting the values cited above in Article 3. The motivation of this supporting statement in favor of PSB is the consideration of the EP that exists an imbalance in what the ideal dual system proposes. The imbalance turns to be against the PSB in a financial and even political sway in certain Member States. An under-funded PSB or controlled by the political powers in a state could clearly lead to disturbance in the freedom of expression and information and affecting directly media pluralism. Additionally, attention was drawn to the changes the digital environment brings to the **classic dual system** since the tendency is to have more than these two players, public and commercial, but to have also other new entrants like: **internet service providers as well as search engines, citizen-journalism and user-generated content**. Attention and resources go now in much more directions than the traditional duo and a **multi-player environment** affects the position of PSB more than before.

IV.1.4. RESOLUTION ON THE EU CHARTER: STANDARD SETTINGS FOR MEDIA FREEDOM ACROSS THE EU (2013)

This Resolution is another initiative advanced from the part of the Civil Liberties, Justice, and Home Affairs (LIBE) committee with Ms. Renate Weber, member of the Alliance of Liberals and Democrats for Europe (ALDE) group in the European Parliament, as rapporteur.

The report in itself was not directed to media pluralism in particular, while starting from media freedom standard settings. Through the document and as touched upon the experts contributing to the Public Hearing (6 Nov 2012) the concept of media pluralism was paired to the one of media freedom: “*whereas citizens’ fundamental rights to freedom of expression and information can be guaranteed only through media freedom and pluralism*”(2013, p. 5).

The report dedicated a paragraph to media pluralism to characterize it as:

“a pillar of media freedom, in terms of ensuring that media are diversified, ensure access to different social and political actors, opinions and viewpoints (including NGOs, citizens’ associations, minorities, etc), and offer a wide range of views”.

This characterization describes media pluralism as a part of media freedom, a **pillar** that sustains media freedom, marking in this way a difference between the two concepts. Furthermore, the description goes on the same framework of the external pluralism ensuring a diversified media and universal access to these media, which should offer a **wide range of views**.

A difference from the previous reports, this report does not call for a directive for media ownership and pluralism. Instead, it calls on both the European Commission and Member States to take *“appropriate, timely, proportionate and progressive measures where concerns arise in relation to freedom of expression, information, media freedom and pluralism in the EU and in its Member States”*(2013, p. 16). This use of adjectives **appropriate, timely, proportionate and progressive measures** shows a prudent approach this report it takes in asking for action in protecting the values of **freedom of expression, information, media freedom and pluralism**. This could be translated as being a similar approach to the one EC is presenting for a long time. For the Civil Liberties, Justice and Home Affairs (LIBE) committee, initiator of this motion, this approach led to open discussion and avoided the rejection of the motion. The Motion was adopted with a majority of 539 votes to 70 and with 78 abstentions.

Interestingly however is to note that one of the paragraphs was not adopted. This is Paragraph 24 (part 2), where Ms. Weber extended a helping hand exactly before the final vote on 20 of May, which could be interpreted as a last try to obtain a positive vote on this paragraph. The change here has been made from the verb *“oblige”* to *“invite”* when referring to the relation between European Commission and Member States in asking the media sector to develop professional standards. The final text of Paragraph 24(part2) remained as follows:

*“calls upon the European Commission to propose an instrument [...] to ensure that the Member States **invite** the media sector to develop professional standards and ethical codes which include the obligation to indicate a difference between facts and opinions in reporting, the necessity of accuracy, impartiality and objectivity, respect for people's privacy, the duty to correct misinformation and the right of reply”*(2013, p. 13, Article 24).

This change reminds of another modification that has been done in the Audiovisual Media Service Directive (AVMSD) regarding the independence of the media regulatory bodies and the *invitation* to the Member States to preserve this independence (Article 30, Chapter XI). In the first

proposal of the European Commission there was present an obligation for the Member States to preserve the independence of the regulatory bodies, the final text did not include one (discussion follows in sub-chapter V.1.2.4.).

The correlation between the invitation in the Article 30 of the AVMSD and the invitation in this Resolution on Standards Setting for Media Freedom across the EU resembles to come from the same point: the fear of the Member States to lose the sovereign power in this area. The AVMSD has been adopted in 2007 and the feeling of protection of the national sovereign power is still strong. As a result, including the last minute change of Ms. Weber, the paragraph has not been adopted, even if the document in its entirety has been adopted.

Regarding the rejection of the obligation of the independence of regulatory bodies in the AVMS directive, this has been a product of the European Council, while the rejection in the 2013 resolution comes from the members of the European Parliament (MEPs). Looking at the two texts as a whole in building the position of EU institutions versus the presence of media pluralism at the EU level, there is a new rejection from the European Parliament to ask for action from the European Commission. However, the concern arises from the fact that in previous situations the European Parliament has been on the opposite side from the European Commission, while now it slightly changes sides. This translates in a ***much softer approach*** from the EP for the ***protection of freedom of expression, information, media freedom and pluralism***. This change appears mostly due to the increasing voices coming especially from the EPP that are supporting the subsidiarity principle and endorse addressing directly and supporting the efforts of the Member States in this direction more, than under the coordination of the EU umbrella.

Resuming the main points of EP documents

For the EP the issues are related more in depth with fundamental human rights like freedom of expression and information, media freedom in general and with the actual situation in a particular EU country, which is Italy. The focus on Italy gave the country a bad reputation at the EP level regarding the regulation of media and discussions led from this situation as the epitome of the EU negative example for lack of media pluralism protection. However, the 2009 failed resolution presents a new facet of repetition of the same example which translates on a focus more on the country which receives resistance from certain MEPs and the danger of actually losing a battle for the promotion of the issue at EU level.

Looking at the committees that initiated the motions for resolution the one that has the most motions is the Committee on Civil Liberties, Justice and Home Affairs (LIBE). The Committee on Culture and Education (CULT) has only one motion of focus for this study in the analyzed period

(Resolution on the risks of violation, in the EU and especially in Italy, of freedom of expression and information Article 11(2) of the Charter of Fundamental Rights). The resolution on media concentration is the effort of a joint motion. This wave of motions coming from the LIBE committee it can be taken as a trend of shaping the media pluralism issue and treating it from the point of view of human rights and civil liberties than focusing exclusively on media and culture. It can be a winning trend for the media pluralism or not, since the last motion on freedom of information and media pluralism was rejected in the plenary and taken already as an example of division of views in the EP on the issue by the European Commission functionalities²³.

The winning trend for media pluralism while the Civil Liberties, Justice and Home Affairs Committee is taking upon the issue, is that a closer attention is given to human rights and media freedom in relation with media pluralism, the most stringent issues since the enlargement of the EU towards the eastern borders. However, lesser attention is given to the relation of the media and culture. Adding to these differences is the slightly dissonance between the European parliamentarians, which was observed also by the members of the European Commission and which ask for a better united front from the European Parliament in order to help the European Commission proceed to the next steps and include media pluralism protection into new EU discussions.

There is obviously a more guarded approach from the European Parliament when it comes to media pluralism issues, in the analyzed period (2000-2014) compared with the previous decade. It has the 1997 failed Directive precedent and the unsuccessful motion (EP, 2009) as some of the motives for prudence. Therefore these approaches of the **media concentration** on one side, which has been related to the external part of media pluralism, and the ones **freedom of expression and information, media freedom, the future of the public service broadcasting** on the other side, related with the internal part of media pluralism, can be considered viable attempts to treat the issue. The conclusion that can be expressed here is that the present focus of the European Parliament, for the analyzed period (2000-2014), is to address and eliminate *“all those influences that present obstacles to a pluralism reflecting the actual states of affairs[...]as well as fostering values deemed important to the society”* (HLGMFP, 2013, p. 37).

The analyzed period (2000-2014) resonated in indirect actions towards media pluralism, especially when the **media concentration** issue was tackled. Two of the resolutions advanced by the European Parliament in the period 2000-2014 have been focusing exclusively on media concentration (EP, 2002, 2008a) with increased concern from the European Parliament towards this phenomenon, despite the rise of the internet and growth of the media market players. Media

²³ Interview conducted in Brussels, 23. 04. 2012.

pluralism, alongside the free flow of information, opinions and ideas are considered by the European Parliament as *“an indispensable basis for any policy in the media field”* (EP, 2002). The concentration in the media creates uniformity in content of the message and monopolies lead to barriers of entry in a certain markets, both distorting the democratic values of freedom of information and expression.

The problem of media concentration receives a new dimension when the technological developments bring new opportunities for the growth of concentration and consequentially jeopardize pluralism, democracy and cultural diversity when are not properly regulated. Where *“the digital revolution offers unprecedented opportunities for creating a vibrant system of free expression”* but also *“the production and distribution of information [become] a key of digital wealth”*(Balkin, 2004, p.3). Historically, the economic interests prevailed over the public interests and the European Parliament has reiterated many times the failed attempts to focus the EU media policy on the public interest objectives.

Therefore the European Parliament seeks for a proper development and functioning of new communications and information services for the protection of media pluralism, to ensure that media is free and diversified and to counter-act a growing disparity in national anti-concentration rules. The European Parliament is even promoting the regulation of media concentration far beyond the production of media content to the *“dissemination of content on the internet, such as search engines”*(EP, 2008a). A difficult issue to approach is the regulation of media content on the internet, especially for the search engines, issue which has not been included in the AVMSD due to lack of information on the effects of internet and search engines on the development of a democratic society in general.

What needs to be noted is that the 2002 European Parliament Resolution is not backed by hard facts, it is only an observation of three main evidences: **the last assessment** of the internal market by the European Commission in relation with the media has been done in 1994 with a Communication following on a Green Paper *“Pluralism and media concentration in the internal market _ an assessment of the need for Community action”* (COM(1994) 353); **the technological developments** in the past ten years brought along with them also **a shift in advertising distribution** and lastly there is no insurance for the European Parliament that **new technologies**, without any regulatory framework for the new media are actually protecting the values of media pluralism. Actually, in a later resolution (EP, 2008a) the division between the multiplication of media sources and the actual multiplication of the quality of the content is accentuated:

“however, a quantitative increase in media and services does not automatically guarantee content diversity [therefore] respect for pluralism of information and

diversity of content is not automatically guaranteed by technological advances, but must come about through an active, consistent and vigilant policy on the part of the national and European public authorities”(EP, 2008a).

Therefore, the European Commission is invited to conduct a consultation to see the impact of the new technologies and how the mergers are affecting media pluralism that needs to be followed by a Green Paper and a directive to safeguard media freedom and pluralism. However, from a legal point of view the EU does not have the power to legislate media concentration and this position is acknowledged by the European Parliament (2008a), while encouraging the European Commission to use the actual tools that would help the protection of media pluralism but in an indirect way: *“competition and state aid law, audiovisual and telecommunication regulation, as well as external (trade) relations”(EP, 2008a, p. 6).* In this situation, and acknowledging the indirect effects of the above powers of the European Commission, with emphasize on competition, the European Parliament does not forget the efforts that Member States have to make in the direction of media pluralism: *“stresses the importance of independent, Member State supervision of the media and urges, to that end, that media regulation at a national level be effective, clear, transparent and of a high standard”(EP, 2008a).* Here it can be seen how the lack of power in application and initiation of legislative policy proposals, the European Parliament is trying to keep a balance between the solutions and actions that can be pursued by the European Commission and by the Member States.

Taking in consideration the legal shortcomings in this situation, the advice given to the European Commission to submit a proposal to the *“European Convention an appropriate proposal so that the principle of freedom of the media may be given a stronger basis in the Treaty”* (EP, 2002) was understandable coming from the European Parliament. This is mentioned here also to underline that European Parliament made this recommendation at a point when the discussion for a Constitution of Europe was under way. A **stable legal framework** (EP, 2008a) for the protection of media pluralism seems the ultimate objective, especially when the problem of media concentration resurrects along with the new technological developments.

If the above discussion was focused on the media concentration that eventually led to concentration of economical and political power there is a shift recently towards a **concentration of political power** that had recent developments. The Hungarian case with the Media Council that entered into force in 2011, after the constitutional changes initiated by the new elected government headed by Orbán, with two-thirds of the parliament advantage over opposition, is one example of concentration of political power: the Media Council has four members affiliated with the political party in power “Fidesz” out of the four. The Media Council is responsible for allocating radio

frequencies, power which has been enforced and allocated only to government-friendly radio stations (Molnár, 2013).²⁴ Accordingly, when there are numerous pleas from the European Parliament for the independence of media councils from political and economic factors, as an obligation for the EU Member States, the Hungarian issue comes as the most direct example to reinforce the necessity of this type of legislative measure.

Another recurrent issue addressed by the European Parliament in all its resolutions and in particular in the 2010 *“Resolution on the Public Service Broadcasting in the digital era: the Future of the Dual System”* is the role of the **public service broadcasting** (PSB) for the protection of media pluralism. This is another issue that is completely in the hands of the Member States but where it faces different systems of functioning and financial independence. The European Parliament has been guarding for the political as financial independence of PSB in order to counter-balance the more financially powerful and free from state influence of private broadcasters. And the digital age affects the PSB position and consequentially the proliferation of media pluralism. The PSB are graded as promoters of cultural diversity which need to reach as much as possible audiences, which in the digital market is translated to the presence on new media services (EP, 2004).

The European Parliament identifies a few dangers for the PSB in the digital age: in some Member States the PSB encounter political and financial hardships which deter the broadcasters from accomplishing their remit, *“the EU does not have the appropriate instruments at its disposal to monitor, and react to, threats to public service media and the dual system in the member states or specific regions of the EU”* and *“the lack in several member states of legal provisions to public service broadcasting activities on the internet could affect the sector’s ability to expand into new platforms”*(EP, 2010). The European Parliament acknowledges the exclusive competence of the Member States in defining the actual remit of the PSB and also in financing them, which is also emphasized in the Audiovisual Media Service Directive (2007). This leads the European Parliament to further emphasize on the role of Member States in actually providing sufficient funding for the proper functioning and presence on all new platforms to offer their services.

Even if the 2010 resolution focused on the financial independence directed towards the equal presence of the public and private media on the new digital platforms of distribution, the European Parliament pointed out in an earlier resolution that financial independence would allow PSB to become *“to be genuinely independent of political pressures and market forces”* (EP, 2008). An equal presence and coexistence of the public and private media is supported by the European

²⁴ Péter Molnár, researcher at the Center for Media and Communication Studies at Center European University, Budapest, quoted in The Guardian article: *“Hungary says its press freedom is ‘completely perfect’. Europe disagrees”*(Feb, 26, 2013).

Parliament for the actual improvement of media content and consequentially for the protection of media pluralism.

Leading from this equilibrium that has to be maintained in the media market, the European Parliament had three controversial initiatives based on heated debates relating to actual breach of media freedom in certain Member States. The situation in Italy was presented and long debated before the period analyzed for this study (2000-2014) but the situation in Hungary, a new country of the EU (2004)²⁵ has developed recently. The problems affecting media pluralism and media freedom in these countries became famous due to the long lasting duopoly in the broadcasting for Italy and the dominant political influence of the former Italian Premier Silvio Berlusconi and due to the sudden rise to power of prime-minister Viktor Orbán and the very decisive and open move in changing the constitution of Hungary and restricting the freedom of the press. Political power over the media and exercised through the media represent the common ground for the two situations.

The 2004 resolution was directed to the EU situation and in particular to Italy with the objective of looking for EU solutions for the situations when a Member State cannot provide the liberty of the press and the protection of media pluralism. The main suggestions here for EU action from the European Commission look to the provisions and policy powers found in the audiovisual policy, competition and telecommunications and citizens rights. The resolution comprises the situation of media in eight EU countries, study leaded by the European Institute for the Media. This study is used to build the recommendations since the situations found different issues that required further investigation. The most prevalent problem found was related with media concentration, with Italy having the highest level in Europe. Adding to the political power exercised by one political man through the media the strategies of attracting the largest amount of advertising by the Mediaset group, one of the largest private televisions in Italy and in the world, revenues account also for an economic power. Moreover, in Italy Mediaset is part of the duopoly that drives the country alongside the RAI presence of state television.

Next, the recommendations of the media policy tools to be used by the European Commission in this situation, the European Parliament strengthens that EU competences in several policy areas should be used as ***core elements of the Community's policy to safeguard media policy***: free access for undertakings to important events, rules on fair, reasonable and non-discriminatory access to APIs (application program interfaces) and EPG (electronic programme guides), “must-carry” and use of open API for digital interactive television services and platforms. Furthermore, competition law needs to focus on media diversity in assessing different cases which would be a really big change in legislation if taking into consideration. This would prevent abusive positions in

²⁵ Hungary joined the European Union on 1 May 2004, alongside Cyprus, the Czech Republic, Estonia, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

the direction of media content and will not only look at the structure of the market without the influences in content of a possible merger or acquisition. These recommendations lead towards a *political, moral and legal obligation* of the EU to ensure the rights of EU citizens, to ensure EU citizenship-“*citizens have the right to stand and vote in municipal and European Elections in a Member State of which they are not a national*”(Klimkiewicz, 2009, p. 60). Usually the argument advanced by Klimkiewicz is forgotten or does not receive sufficient attention when EU competencies are discussed and in a situation like Italy is of utmost importance. When referring to the “*citizens right to stand and vote*”, the argument goes to political pluralism and the role of media to inform the citizens in all Member States equally, in a transparent and consistent manner, in order to form a clear opinion concerning their rights and decide on their democratic future. The same argument is valid when talking about information and participation to the European Parliament elections. This idea is reinforced also by the High Level Group on Media Freedom and Pluralism naming “*representative democracy [...] would be compromised in any Member State where media freedoms are curtailed or media pluralism compromised, for this would deprive citizens of their right to form informed opinions*”(HLGMFP, 2013, p.20).

The action plan envisioned by the European Parliament for a EU intervention protecting media pluralism (EP, 2004) contains the following **points of actions**: inclusion of the media pluralism in the new audiovisual directive, independence of PSB through EU-wide minimum conditions, the actual obligation for the Member States to have an independent regulator, rules requiring the transparency of ownership, the EU merger regulation to have a “*pluralism*” test. The rest of the points of action include reference to further studies to assess the effects of different market and technological changes on media pluralism. It is worth to notice that an earlier resolution (EP, 2002) asked for the same study in the effects of the new technologies on media concentration and media pluralism, while the concern of the European Parliament increases with the growth of the importance of the technologies in the EU society.

Unfortunately, the situation in Italy and the inaction of the European Commission or of the Italian government determined the European Parliament to enter in a new debate on freedom of expression and information in the media with the Italy case at the centre. Therefore, the discussion continued in a highly debatable motion (2009) in the European Parliament. The 2009 motion is not directed entirely at the Italian case, the country is mentioned from the title and there is a direct in-text reference to Italy: “*concerns have grown in Italy over the last few months owing to the enduring conflict of interests with reference to the Prime Minister’s media ownership and political control of both major private and public media, including control over how advertising resources are allocated*” (EP, 2009, p. 3). The worries refer to the in-country situation but also to the possible extension to

the European sphere and the overall protection of human rights. Therefore, in this situation resurrects the need to have an adequate EU legislation to act upon in the situation when media pluralism is endangered by the government of an EU Member State. Consequentially the European Parliament asks the European Commission to make use at this point of the existing powers mentioned also for media concentration problem *“to define at least the minimum essential conditions that all Member States must respect to ensure, guarantee and promote freedom of information and an adequate level of media pluralism”* (EP, 2009, p. 4). Linked to this is the need to have a proposal for a new directive aimed at media concentration and media pluralism. Even if the above recommendations of action for the European Commission were not materialized due to the failure of the motion in the plenary, the European Parliament met with a new occasion to repeat them (EP, 2011). The resolution on the Media Law in Hungary brought these recommendations once again to the agenda.

The media law in Hungary led to a politically homogenous Media Authority and Media Council, observed also by the OSCE media representatives, with a direct political control over the media. Additional worrisome characteristics were the appointment of one person to act as the national media and telecommunications authority and the violation of the confidentiality of journalistic sources that directly affect freedom of expression and regulation of content. In front of this situation, the European Parliament found it opportune to highlight the previous attempts in asking for a proposal on media freedom, media pluralism and independent governance while the European Commission postponed addressing the issues. A directive would have given the Commission the possibility to take direct action and to sanction a Member State on the basis of infringements of media freedom and media pluralism. In the present situation the European Parliament just asked again the European Commission to make use of its powers enlisted in all the previous resolutions and have minimum standards defined for all the Member States to follow.

On the note of the urgency of the case, the European Parliament issued specific recommendation based on specific Articles of the Treaty of the Functioning of the EU (TFEU) that could compensate for the lack of actual legal power of the European Commission and add to the political pressure initiated by Commissioner Kroes. There have to be acknowledged the importance of this kind of the advice because there is a step forward in looking for viable actions to support the protection of fundamental rights in the Member States of the EU:

“Calls on the Commission to act, on the basis of Article 265 TFEU, by proposing a legislative initiative pursuant to Article 225 TFEU on media freedom, pluralism and independent governance before the end of the year, thereby overcoming the inadequacies of the EU’s legislative framework on the media”(EP, 2011).

The Policy Paper presented by the Centre for Media Pluralism and Media Freedom (CMPF) concludes to the same need for more action from the European Commission, based on the latest policy discussions and including the analysis and positions of the European Parliament presented in the recommendations analyzed above:

“although there already are immanent competences of the European Union in respect of media pluralism and media freedom, they should definitely be enhanced and improved and, especially of the democratic aspect of the issue, it is important to have a more consistent and active intervention from the EU”(CMPF,2013, p. 63).

The conclusion of the CMPF policy paper is in accord with the approach of the European Parliament of looking for **consistent and active intervention** from the EU especially for the cases like the Hungarian one which presented and approved the new Constitution on the period of one month. In this case the capacity of the EU has been drastically reduced by the time strategy of the Hungarian government, which added to the needed time to find a viable solution, according to the competences, to deal with the situation at the EU level. The resolution analyzing the situation in Hungary (EP, 2011) has been an example of how well connected and how much attention the European Parliament pays to the Council of Europe and also to the Organization for Security and Cooperation in Europe (OSCE) advices. Therefore the European Parliament was sharing the OSCE concerns how *“the new legislation undermined media pluralism, abolished the political and financial independence of the public-service media and cemented the negative features for the free media in the long term”* (EP, 2011, p. 2) and advices on the same line with the Commissioner for Human Rights of the Council of Europe *“a ‘wholesale review’ of the Hungarian media law package”*(EP, 2011, p. 3).

As a consequence of the latest developments, the European Parliament, leaded by the actions of the Committee on Civil Liberties, Justice and Home Affairs (LIBE), turned to the human rights issues even more and was prepared a new motion(2012), approved in February 2013 in the LIBE committee. The resolution has been approved in May 2013. The content is described below.

Discussing the resolution on the *“EU Charter: standard settings for media freedom across the EU”* (EP, 2013), it is advanced a soft-regulatory measure and not a proposal for a new directive. This resolution had as the central point the protection of media freedom and pluralism through the Article 11 of the Charter of Fundamental Rights of the European Union which was presented as the translation of the EU commitment to protect media pluralism. Media pluralism was considered an essential pillar of the right to information and freedom of expression, the first international document bringing media pluralism to the forefront as a right to be respected (EP, 2013).

The resolution reiterated the effort of the European Parliament to have these minimum standards from the previous document on the situation of Media in Hungary (EP, 2011). Consequentially, a minimum of rules to be approved by the Member States and harmonized all through Europe were presented: the need to establish an EU-institutionalized group for audiovisual media services monitoring by the National Regulatory Agencies and to harmonize the status of national regulatory agencies (NRAs) to be *“independent, impartial and transparent [...] and that they have appropriate sanctioning powers”*(EP, 2013, p. 7). Lastly, the resolution made direct reference to the Audiovisual Media Service Directive (AVMSD, 2007) which does not have a clear provision for the obligation of the Member States to ensure the existence and independence of the NRAs but only a voluntary proposal.

Concluding Ideas European Parliament

The recommendations of the European Parliament depict the approach of this institution towards media pluralism and media freedom in general. The European Parliament it actually pays active attention to these issues as an EU institution and even when there is no apparent problem the attention is kept very active for the possible changes, especially taking into consideration the technological ones (EP, 2002). The collaboration with other institutions outside the EU is continuous and can be seen in the quotes and the references in their policy documents to the studies and advices of the Council of Europe, OSCE, European Institute for the Media (EP, 2004, 2009, 2011). This attitude supports the idea that the European Parliament *“tried to sustain a normative scope for public interest goals”*(Christensen, 2010, p. 39) on *“attempts to build on political and cultural definitions”*(Karppinen, 2006, p. 57) , while the European Commission *“is inclined to equate media pluralism with a liberal market consisting of multiple economic actors and freedom of expression with mere access to medium”*(Christensen, 2010, p. 39). And this approach comes from the type of reasoning that: *“media pluralism is seen by the European Parliament as a fundamental value of the European Union in sustaining and reinforcing its democratic ideals”*(Klimkiewicz, 2009, p. 60).

As for the main recommendations of the European Parliament, media concentration it is still a preoccupation despite the rise of the new technologies and especially due to all the unknown effects the digital environment has over the media market. Unfortunately, the boost of the digital welfare does not seem to lean towards the citizens' side when left unregulated. Therefore the European Parliament fears that an unregulated digital environment can affect media freedom and media pluralism. The same issue comes into discussion when the situation of the Public Service Broadcasting (PSB) is advanced. The digital environment requires an overall presence for the PSB and the European Parliament stresses the importance of financial and political independence of the

PSB to achieve the presence on all media services. In this way there will be an equal coverage by public and private televisions and the diversity in content is maintained.

The reality in the EU media market has been recently transformed not only by the technological changes but also in the rise of media power moves. Political power exercised over media or through media received extensive attention from the European Parliament for the recurrent case of Italy and the unforeseen case of Hungary. In front of these situations the European Parliament struggled between asking for more action from the European Commission and giving more on-the-point specific recommendations of EU supranational action using the TFEU on one side. On the other side the European Parliament has made the effort to provide the Member States with the most adequate recommendations in achieving in-country media freedom and media pluralism through the recommendations on the role of the PSB and media ownership regulation, where Member States are sole responsible. Ad-hoc solutions and delaying of decision-making from the European Commission motivated the European Parliament to ask for **consistent and active intervention** that can be provided by a **stable legal framework** and not only with solutions taken *on a note of urgency*.

This ultimate objective of stable framework for media policy starts for the European Parliament with the obligation for the Member States to have independent media regulators, with extended abilities and implementation of a monitoring system from the European Commission for the supervision of the protection of media pluralism and media freedom. Either this objective is attained when there will be drafted a proposal for a new directive on media ownership and media pluralism at the EU level or when are accepted minimum standards across the EU. However, it has to be observed that a directive is not universally accepted or promoted by all the members of the European Parliament either, with a large number of EPP members appointing first for the protection of the subsidiarity principle.²⁶

IV.2. THE COUNCIL OF EUROPE (CoE)

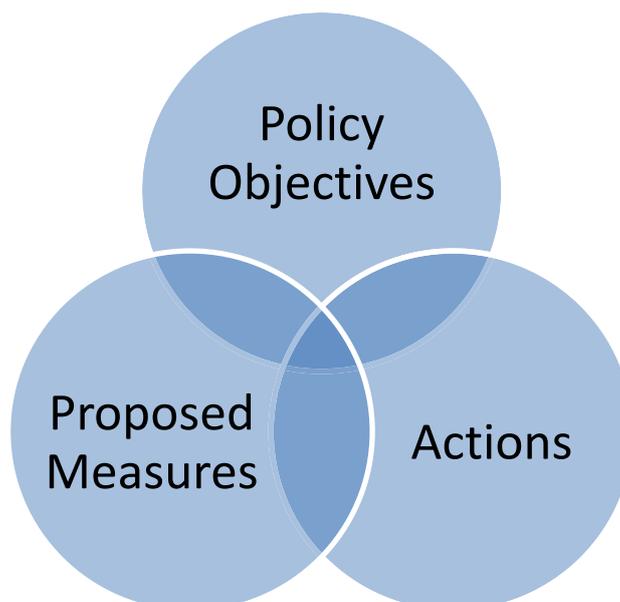
The Council of Europe has been introduced as an institution with an active role towards defining and framing the media pluralism concept in the chapter II of this study. Nevertheless, while there were treated only the definitions of media pluralism, the focus in this sub-chapter will be on the overall position of the Council of Europe when it comes to media pluralism. The Council of Europe releases recommendations coming from its Parliamentary Assembly and adopted by the Council of Ministers. The work of Council of Europe is relying on monitoring and the work of experts and recommendations go primordially to the Member States but oftentimes these are directed to

²⁶ Sub-chapter II.3. for the discussion of the political distribution of the MEPs.

the EU institutions for the area of the European Union. Regarding media pluralism, the Council of Europe strived to build a stronger definition while releasing and adapting principles and standards to be followed by Member States.

The recommendations from the Council of Europe contain policy objectives, measures and actions that can be taken to protect media pluralism. Moreover, these recommendations not only prescribe a high level of protection of a democratic society but also offer a support in formulating policy objectives. Therefore, this sub-chapter analyzes all these measures the Council of Europe considers viable for media pluralism protection, which will give the main view of the institution. This approach will help comparing the position and standards of the Council of Europe with the ones of other institutions like the European Commission, European Parliament and civil society organizations like the action of the Citizen's initiative which will be analyzed in the next chapter. The following figure resumes the main elements promoted by the Council of Europe.

FIGURE 4.1. Council of Europe Policy Strategy



SOURCE: Elaborated by the author according to the strategy of CoE, 2008, p.34

From a theoretical point of view, the first step is to look at the policy objective, then the appropriate measures to attain the objectives and lastly the exact actions to be undertaken. From a practical point of view, these steps are interrelated and allow going back to objectives of the measures proposed if the actions are not appropriate and cannot be implemented from the mere specificity of the media sector which needs specific rules and actions.

Policy Objectives, Rules and Actions for Media Pluralism-Council of Europe

Media pluralism has been and still remains a central objective for the Council of Europe especially when democracy is being taken seriously for a healthy society. Therefore, the policies developed for a democratic communication include: “*the right to a plurality of information from a number of sources and the right to have access to a diverse and quality range of information*”(Ward, 2005, p. 2)²⁷.

One of the first recommendations coming from the Council of Europe looks at the ***independence of the regulatory authorities***: “*governments of Member States [should] establish, if they have not already done so, independent regulatory authorities for the broadcasting sector*”(CoE 2000, p. 2). An independent regulatory body is one of the basic guarantees, like the independence of public broadcasters, that media freedom of expression and of information are maintained and internal media pluralism are protected. The recommendation of the Council of Europe provides a mean for the existence of these authorities and secondly for the powers to actually enforce actions and not only to issue recommendations.

This type of recommendation comes long before the first proposal of the European Commission for the new AVMSD. The Council of Europe goes further and recommends the independent status of regulatory bodies to be reinforced clearly by rules and procedures enshrined in the legislation. Moreover the guidelines of the report describe how this independence can be reached: the membership in the regulatory body should be protected by political and economic influences, with transparency of appointment and of dismissal when needed, financial independence that should be specified in law, the power to issue regulation for broadcasting within the framework of the law and should be accountable to the public by issuing period reports about their activity (Council of Europe, 2000). Referring to the main objectives of these bodies the issue of licensing should remain a priority but it should be added the monitoring of broadcasters with the liberty to ask and receive information from these when needed.

Another objective is to obtain ***media diversity***, which can be reached with the help of the actions recommended also for the independence of regulatory bodies. The previous objective can be considered a prerequisite to have a diversity of media. When looking at media diversity in relation with media pluralism the Council of Europe divides diversity of culture and diversity of content as aspects of media pluralism (CoE, 2000).

Therefore, ***diversity of culture*** is depending on plurality of media which reaches their objective with the protection of freedom of information. EU culture it is defended and promoted if

²⁷ “The Role of Media Freedom and Pluralism in strengthening democracy”. Ward, M. speech, Trieste, Italy 24-28 January 2005.

the audiences have the liberty to consume a diverse number of news, ideas and consequentially cultures. The strategy focuses **on the promotion and protection of minority cultures** in the amalgam of EU cultures. The Council of Europe wants to transmit this policy as contributing both to the European identity but also to democracy. The **diversity of content and sources** are completing the concept of media pluralism in a society because a diversity of media outlets needs a diverse content. In this regard, the Council of Europe recommends paying attention **to the way media is produced**. If the production of content is disregarded the monopoly situations appear and threaten media pluralism by manipulating the public opinion.

Furthermore, content diversity, alongside **structural pluralism** and **media transparency** are mentioned as the main objectives in promoting media pluralism in a later recommendation of the Committee of Ministers on media pluralism and diversity of media content (CoE, 2007).

Between the measures proposed for promoting content diversity the Council of Europe advocates for the endorsement of the principle of **editorial independence** and asks the Member States to encourage a *“wider democratic participation”* for dialogue and promotion of different opinions. Additionally, the must-carry rules for distribution and delivery platforms should be adopted when needed, especially in the new digital environment. And another important recommendation does not forget the professionals, the training of journalist in order to produce original content and not only select the news from a press agency.

Moving to the objective of **structural pluralism** this includes **ownership regulation**, public **service media**, **access regulation and interoperability**. The general principles to be followed for structural pluralism are looking at the external part of the diversity of outlets that should find a favorable environment to coexist and the separation between political orientations and media content.

Regarding **ownership regulation** the Council of Europe observes the position of the European Commission and of the Member States to leave the media pluralism in the responsibility of the later. Moreover, the Council of Europe agrees that *“it would be unrealistic to consider that a common European regulatory approach in this area would be feasible”*(CoE, 2002, p. 10) due to the high variety of models that exist between the Member States. The argument does not end here and the Council of Europe suggest that a viable model for the ownership regulation can be **the audience share approach** *“reflecting the real influence of a broadcaster in a given market and which, at the same time, is neutral on the number of licences which the broadcaster can hold and allows its international development”*(CoE, 2002, p. 10). However, it acknowledges that this kind of model cannot be applied universally, especially for the smallest countries. Therefore a later recommendation is made to try to issue regulation to limit the ownership of a single person, or a

company or a group, in a market, regulation which has to be adapted to the size and particularities of a country: *“2.3 These rules may include introducing thresholds based on objective and realist criteria, such as the audience share, circulation, turnover/revenue, the share capital or voting rights”*(CoE, 2007).

Nevertheless, when it comes to media ownership prescriptive regulation is necessary for the convergent processes and new players entering the market to require a consistent monitoring system to better understand the ownership changes and the increasing power acquired by some players: *“Member states should start regular collection of basic data showing the market structure of their media systems, including data on owners”* (CoE, 2008, p. 12). The argument looks at the structure of the market as something evolving and adaptable if there is political will to accept these processes. Moreover, the structure is never the same between Member States and each transnational action from a neighboring country or just monopoly strategies have the potential to influence differently each particular state. In what regards future actions, Council of Europe proposes collaboration between policy makers and media researchers *“in order to approach in an informed, meaningful and effective way the challenges”* (CoE, 2008, p. 12). For the media pluralism and diversity the recommendation is to have regular meetings with experts and receive from those an early monitoring and analysis of media content. This is a timely recommendation taking into account that in 2009 the Media Pluralism Monitor has been developed and completed by a group of experts commissioned by Commissioner Reding.

It could not be absent from the discussion, a central point recognized by the majority of Member States: **public service broadcasters** are essential in protecting media pluralism. The first point advanced by Council of Europe is that PSB should have total independence from the state and have a strong position in a country in order to balance the media concentration trends (CoE, 2002, 2008). Moreover, when it comes to the political representatives, these should not be legally protected from criticism in the media. The internal pluralistic features of such a PSB are another requirement to complete in order to build an example in representation. Regarding the functioning of the PSB related with the funding, there are advanced a few recommendations to acquire the needed funding like:

“3.5. Member states should define ways of ensuring appropriate and secure funding of public service media from a variety of sources – which may include licence fees, public funding, commercial revenues and/or individual payment – necessary for the discharge of their democratic, social and cultural functions”(CoE, 2007).

A new point related to PSB is the representation in the digital environment that should increase with the technology and maintain a strong position also in the new media: *“they should*

have legal, technical and financial security to adapt to the competitive pressure from private broadcasters”(CoE, 2007, p. 5). This recommendation is bringing the discussion to the new digital environment, discussion which is widely opened and analyzed a year later in a Recommendation on digital broadcasting of the council of ministers (CoE, 2003). In this document the support for the PSB is reiterated, especially for the digital environment, where access is key especially in the beginning when platforms are just being built. One point that leads from the issue of access is the importance of final user when it comes to policy initiatives and the Council of Europe is focusing also on the “*preparation of the public for the digital environment*” with schemes to be set-up for adequate information and training (CoE, 2003, p. 2). Moreover, the broadcasters are required to also prepare a system to inform the population. It has to be mentioned that rarely the EU institutions refer in their policy documents to the training of the public for the digital environment with the exception of the Media Programmes and more specifically Media Literacy Programmes which usually are directed to students and media professionals but are not addressed to cover the entire population.

Overall, the Council of Europe looks at the democratic and social contribution of the digital broadcasting and encourages Member States to contribute with adequate economic and legal provisions to support its development to: “*guarantee the pluralism of broadcasting services and public access to an enlarged choice and variety of quality programmes*” (CoE, 2003a.) The digital switchover it has to be achieved in a rapid and non-detrimental manner for the end-users. Furthermore, focusing on the promotion of the digital content, freedom of expression and information have to be preserved (CoE, 2007). This recommendation is addressed to the Member States as well to the private sector in order to protect human rights in order to obtain a balance between freedom of expression and freedom of information.

Concerning **media transparency**, it ensures access of the public to the information related to ownership of certain outlets, the implications and interests of certain owners, capabilities to influence the content of the programmes, support measures received and procedures on the right of reply and complaint. The objective of transparency is to create the ability of the public to make “*its own analysis of information, ideas and opinions expressed in the media*”(CoE, 2007).

A later document, a report on Indicators for Media in a Democracy (2008) highlights all the measures and principles exposed above with a focus on the **profession of journalists** and their main independence from political, economic influences, especially for are liable media content. The independence of journalists is guaranteed by additional measures brought to the legislation: safeguarded by the protection from any kind of threats, having legal employment contract without any undue requirements by the state before they can work and decent working conditions with the right to create associations. Simultaneously, the independence of foreign journalists has to be taken

into account: “8.6 foreign journalists should not be refused entry or work visas because of their potentially critical reports” (CoE, 2008). This last point is an important one regarding freedom of establishment and freedom of expression. According to HLGMP, each time the journalistic profession is menaced by the political and economical interests in one country “*may be interpreted as likely to hinder the free movement of other journalists to that Member State*”(HLGMP, 2013, p. 19). These practices interfere with the media freedom and the principle of free movement of EU citizens. Therefore, the HLGMP connects this principle of free movement with the restrictions on media freedom and media pluralism seen also as restrictions on the “*economic activity itself that is object of protection by the economic free movement provisions*”(HLGMP, 2013, p. 20).

Council of Europe position

The Council of Europe is an organization, which includes 47 countries with the different levels of political and economic influence in the media. The focus of the recommendations on the independence of media regulators as well on the independence of journalists takes a more central stand than ownership regulation and media transparency. On the one side, Council of Europe is aware that exist a basic ownership regulation in the majority of the Member States but is still adamant on requiring Member States to adapt this regulation “*particularly with regard to media ownership, and adopt any regulatory and financial measures called for in order to guarantee media transparency and structural pluralism as well as diversity of the content distributed*”(CoE, 2007, p. 1).

On the other side, the ownership regulation depends on the specificities of a country and the position of the Council of Europe is more than clear in separating itself from the harmonization of rules. The argument of different regulation for different environments is clear but not a defeated one while looking for a better regulation against monopolies. Different documents and studies of the Council of Europe discussed above look at different regulations and even see a viable one, **audience share approach**, to be followed when possible. However, what the Council of Europe observes and wants to make it imperative for all Member States is that the market evolves constantly and they need monitoring mechanisms to collect data for any media ownership regulation.

One strong argument in the Council of Europe recommendations is the presence and the status of the PSB in the Member States for the protection of a democratic society. As it can be seen the objectives of the Council of Europe are gravitating towards the preservation of the democratic society with the PSB and the profession of journalists as main pillars for the construction. Media freedom and media independence, alongside media pluralism are building a healthy and democratic society, which is attained, in the efforts of the Council of Europe, with an independent PSB, independent journalists and media transparency.

The recommendations of the Council of Europe do not go further than supporting and advising but these have a clear and constant message translated in creating the conditions for a **high level protection for the democratic society**.

In the following chapters, two actions of the stakeholders represented by the civil society and a national regulatory agency will be analyzed.

IV.3. EUROPEAN INITIATIVE FOR MEDIA PLURALISM (EIMP) (2012-2013)

This initiative is considered relevant for this research due to four main characteristics. First, this is an initiative focusing on the protection of media pluralism and introduces measures to protect and strengthen media pluralism in the EU Member States. Second, this is a novel initiative, made possible by the introduction of the Citizens' Initiative in the EU legislation with the entering into force of the Lisbon Treaty (2007). Therefore there is no other precedent on the promotion of the importance of media pluralism for the society and coming from the society itself. The effort to create awareness for the initiative and actually to attract the participation of one million citizens through their signature is going to create a public awareness on the issue of media pluralism that did not happened before. The debate has been conducted until now at the EU institutions level where the political discourse did not offered great chances for popularization. Third, the initiative has been initiated by two different organizations: a civil society group focused on politics and culture at the EU level (European Alternatives) and a journalists' organization (International Alliance of Journalists) with the same goal of protecting media pluralism in the EU. Now, the initiative is represented and leaded in ten EU countries by similar nongovernmental organizations for the protection of media freedom and human rights in general. Fourth, this initiative grew as a viable action for the protection of media pluralism from the citizens, as opposed to the actions coming from the European institutions.

A recent example came from the failed 2009 Motion for a Resolution on Media Freedom and Media Pluralism in Italy and EU, where the Alliance of Liberals and Democrats (ALDE) initiated the motion. ALDE²⁸ trusted that will pass a Resolution with the help of the Greens and Social and Democrats (S&D) against the European People's Party (EPP), which "*campaigns for a strong Europe based on the principle of subsidiarity. Our objective is a more competitive, inclusive and sustainable*

²⁸ ALDE has 84 members, Greens have 55 members, S&D have 184 members and EPP has 265 members in the European Parliament in the Seventh term of the EP (2009-2014). Retrieved January 2011, from <http://www.europarl.europa.eu/aboutparliament/en/004a50d310/Composition-of-Parliament.html> .

*social market economy*²⁹ and consequentially against any action towards media pluralism regulated at the EU level³⁰. However, the strategy did not work and the alliance against the EPP did not raise enough votes from the Members of other political groups.

The disagreement in the European Parliament is supplemented by an old one between the European Parliament and the European Commission, with the European Commission less open to initiatives and debates on media pluralism.

In this circumstances, according to Melogli³¹, the Citizens' Initiative came into action, while supported from the first steps (November, 2010) by the members of the Committee on Culture and Education (CULT) and on the intergroup on Media, which organized a meeting at the European Parliament discussing the initiative.

Introduction to the Initiative

The document registered at the site of the European Citizens Initiative (5th of October 2012) has as a main objective the addition of amendments to the AVMSD, or a new directive, for partial harmonization of national rules on media ownership and transparency and setting EU standards for the sufficient independence for the media supervisory bodies, adding to this the necessary steps toward the correct functioning of the internal market (EIMP, 2012)(Annex 2).

Due to technological problems related to the online collection of the signatures the initiative could not collect online signatures before late in March 2013 (the rules of the Citizen's Initiative allow for a simultaneous collection of signatures online and offline). This led to a real setback towards the goal of gathering 1 million signatures in one year. As a consequence, the organizers of the initiative reregistered the initiative on 19 of August 2013. This gives the organizers a real timeframe of one year to gather the 1 million signatures.

For the analysis of the proposal there have to be taken into account two dimensions because there are two audiences to whom the document is addressed: the signatories of the petition, the EU citizens of nine countries (Bulgaria, Belgium, France, Hungary, Italy, The Netherlands, Portugal, Romania, and United Kingdom) and the European Commission. The initiative has been proposed and advanced from the beginning (2009) by the European Alternatives and Alliance Internationale de Journalistes, when various initiatives were conducted in the European Parliament, including the organization of a workshop on the application of media pluralism monitor (MPM) in June 2010 and gaining the support for a EIMP from the MEPs. Gradually, different local committees, of the

²⁹ EPP website, "Our Priorities" section, retrieved from <http://www.eppgroup.eu/menu/our-priority/Economy-%26-Environment>, April 2013.

³⁰ Interview conducted in Brussels with Giovanni Melogli, representing of International Alliance of Journalists, on 04.05. 2012.

³¹ Ibid. 37.

countries mentioned above, allied to the initiative and its actions of promoting the initiative in each participant Member State and at the EU level. The participation of representative organizations is vital in building the awareness needed in each country in order to collect the minimum of 1 million signatures. Additionally, attention has to be paid to the minimum number of signatures that need to be collected in each country because the regulation states as follows³²:

“in at least one quarter of Member States, the minimum number of signatories of a citizens’ initiative should correspond to the number of the Members of the European Parliament elected in each Member State, multiplied by 750”.

In consequence, there is a direct connection between the number of signatories and the number of the citizens in a Member State since according to the Lisbon Treaty *“Representation of citizens shall be degressively proportional”*(TEU, Article 14, N2). The exact numbers of the needed signatures is enlisted in the following table.

TABLE 4.2: Number of signatures needed for the support of the EIMP initiative by country

Country	Signatures Needed for support of the Initiative
Belgium	16 500
Bulgaria	13 500
France	55 500
Hungary	16 500
Italy	54 750
The Netherlands	19 500
Portugal	16 500
Romania	24 750
United Kingdom	54 750

SOURCE: Elaborated by the author from EIMP, 2012

Moreover, the document has been written and submitted focusing in a first instance on the readers, the signatories of the petition. The success of this initiative depends on the accessibility of the document and the clear message that has to be transmitted to the EU citizens, while at the same time has to be legally coherent to pass the legal analysis and possible future action that has to be undertaken by the European Commission.

The procedure for the completion of this kind of initiative implies two important steps. First, after the registration of the proposal on the website of the European Commission for European

³² Commission delegated regulation (EU) No 268/2012 of 25 January 2012 amending Annex I of Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizens’ initiative.

Citizens' Initiative³³ the initiators start the collection of a minimum of 1 million signatures of letters of support from the citizens of the nine countries enlisted above (the procedure admits a minimum of seven countries) for the period of one year, which can come in the shape of paper and on-line form, as mentioned above. Second, after the collection of the signatures, the European Commission is going to analyze the proposal in order to give a decision if will issue a proposal for a directive or not, or what kind of initiative will take.

The Content of the Proposal

When looking at the content of this document first it has to be mentioned that re-registration of the initiative in 2013 did not resulted in content changes to the proposal. The document of the proposal remains the same with the one attached in 2012.

The document is divided in three parts: the presentation of the main objective, the description of the proposal and the last part the listing of the legal basis for the proposed initiative. As presented in the introduction the main objective is to look for some kind of "*minimal but sufficient harmonization of rules and procedures [...] on the protection of information pluralism*".

In the *Description of the Objectives* the proponents of the initiative present the argument advanced for the harmonization of rules. The main elements advanced in this proposal and seen as basic for implementation in the EU audiovisual policy:

- Member States should adopt ***measures needed to ensure pluralism***.
- Member States ***should ban the creation and retention of dominant positions on media markets and related markets***.
- A clear rule shall establish an ***incompatibility between media sector and political activities ("conflict of interest")***.
- Clear Rules to require Member States to invest in ***Independent Authorities with powers to apply the rules and guarantee their independence vis-à-vis economic and political influence***.

The argument builds from "*famous and recent cases*" (e.g., Hungarian media law) where the European Commission hit the wall of the legal gap between the need and the power of taking any action. This initiative is trying to fill the needed gap by advancing the needed legal "***guarantee of the independence of the media supervisory bodies***".

Moving to another point, referring to the ***ban of the creation of dominant positions***, this condition is motivated by the highly false impression that a bigger number of information providers would provide for a bigger opportunity for media pluralism. Moreover, the proponents point out

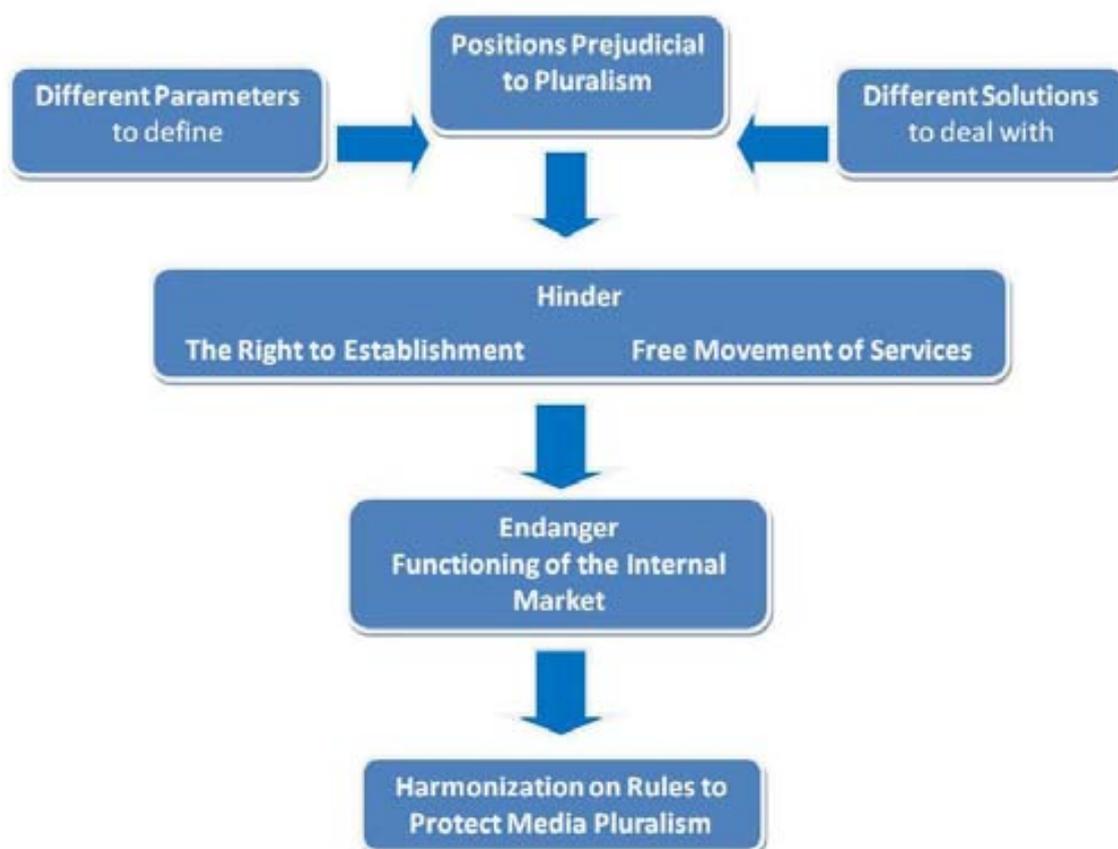
³³ Retrieved June 2012 from <http://ec.europa.eu/citizens-initiative/public/welcome>.

here to the fact that no matter how high is the number of outlets, there appears the reality of the power and capability of a few actors to control these “*either directly or indirectly*”. This influence of power and the pressure put by certain governments along certain media owners lead to a disturbance in the internal market by disturbing the free movement of services and the right of establishment. This point is the central one of the argument and the most compelling one because ***any disturbance to the media landscape represented by political pressures of dominance by a few actors in a market in a Member State affects the freedom of expression and information and will “discourage companies for entering new markets” disturbing the entire European landscape as a consequence***. This argument of the free movement has been developed also by the High Level Group on Media Freedom and Pluralism (HLGMFP) in their report with the highlight on the situation of the journalists: “*if journalists are regularly intimidated, threatened, subject to censorship or to undue criminal prosecution in a Member State, that may be interpreted as likely to hinder the free movement of other journalists to that Member State*”(HLGMFP, 2013, p. 19). This would go further to the right of European citizenship and the right to move and reside freely in the territory of the Member States, as pointed by the HLGMFP to the TFEU (Article 20, (2a)). The internal market argument resigns also because is the only one that can allow the EU, from a legal point of view, to take the action in its hands when needed.

One remedy of the EIMP for the situations when certain countries are interfering with the rights of freedom of establishment and of movement of services in the EU is that “*national rules should [...] be put aside*” and this “*justifies the full competence of the Union to take action*”, which ultimately has the highest protection to fundamental rights.

In addition, the proponents of the paper make a delimitation of two causes detrimental to media pluralism in a certain country which in the end endanger the functioning of the internal market and require a harmonization at EU level: different parameters to define and different solutions and diverging rules to deal with the positions prejudicial to pluralism. The summary of the situation is depicted in the following figure.

FIGURE 4.2: Delimitation of the two causes detrimental to media pluralism



SOURCE: Elaborated by the author from EIMP, 2012

The difference in parameters and taking different solutions sprouts not only from the cultural difference of media environments but also from the political environment dealing with media regulation. The document directs a particular attention to the political differences and decisions that are taken or not taken at all in the detriment of media pluralism.

The Different Parameters to define the positions prejudicial to pluralism are described in the proposal as being:

- The number of channels controlled-the ownership problem.
- Resources.
- Audience share.

The Different Solutions in the Member States to deal with positions prejudicial to media pluralism are:

- Diverging rules for incompatibility between political actions and media ownership.
- Obligations to transpose transparency of ownership.
- Obligations for financial transparency.

The particularity of different solutions is that are applied in different countries at different levels or better said in some countries the rules are much more lenient than in others or simply there are no such rules at all to solve the problem of media pluralism or protect media pluralism at all. In a 2009 study of the Council of Europe are enlisted the different practices across EU to monitor media concentration, media pluralism and diversity like subsidies, grants for journalists, promotion of plurality and diversity of electronic media and press funds. The practices are not exhaustive, are focusing more on the traditional media like newspapers and there no country to have all the practices in place. On the contrary, out of the nineteen countries of Council of Europe, only four presented these kinds of measures. The report includes in the conclusions the following reality:

“While in some member states there are quite advanced systems of monitoring concentration and also attempts to link the results of the monitoring to the general state of media freedom, pluralism and diversity, in the other states, there are no measures to prevent concentration in the media industry, consequently no processes to monitor results”(CoE, 2009, p. 9).

While the cultural differences between Member States are recognized by the principle of subsidiarity in the TEU, the political differences can leave a place for the supremacy of EU law, as sustained by the promoters of this document.

The Legal Basis of EIMP

The legal basis is built by articles from the basic documents of the European Union TEU, TFEU, the Charter of Fundamental Rights of the European. The legal basis is looking at two main themes: Article 50 (1) TFEU is looking to attain *“the freedom of establishment [...] by means of directives”* and Article 114 (1) directs to the actions that have to be taken by the European Commission and Council to *“adopt measures [...] which have as their object the establishment and functioning of the internal market.”*

This legal basis is supported by a general framework directed to the protection of human rights in the Union with freedom of participation and freedom of expression and internal market obligations of the Union as main pillars. An applauded effort is done in **not running from** the principle of subsidiarity, which is highly protected by Member States and European Commission in particular. The proponents recognize the subsidiarity principle and mention Article 51 (1) of the Charter where the limits of the Union, as conferred in the Treaties, are endorsed to be followed and respected. The intention of the document is to go further and adapt the EU legislation to the new realities, which ask for more powers of the EU when the efforts of the Member States lack in this direction of constructing a democratic EU as a whole.

The tone of this proposal, which aspires to reach the level of a policy document and have the main points translated to amendments proposed to the AVMSD or have a new media directive altogether, turns from a certain point of view against the liberal view of deregulation. Actually there is the opposite situation when is asked for more regulation even if basic harmonization rules in situation when there are strictly necessary. On one side, this proposed regulation, if accepted and implemented, will end up controlling the media economics side and will provoke new worries for the industry. On the other side, the work has to be directed in parallel at the Member States level with stricter roles to prevent political pressures for the media.

Lastly, the proposal examines media content for the protection of media pluralism and is asking from the Member States the implementation of *measures needed to ensure pluralism* alongside with the independence of *media supervisory bodies*. The proposal does not go in detail explanations of what kind of measures are required from the Member States to implement for the media content and protection of internal pluralism. The actual tone of the internal market argument has mostly stretched the argument to the external pluralism of the issue. Taking into consideration that a partial harmonization of national rules is required one has to look at all the solutions enlisted above and see that neither of these can pretend to ensure pluralism of media content. Concomitantly, one has to go back to the procedure of acceptance of this kind of proposal and recall that without a legal certainty, which still is the internal market, no proposal on media pluralism can put a foot on the door yet.

In conclusion, this document could be a first step of new legislation, which could bring more change to the media pluralism position on the EU agenda than three EU media policy mandates from 2000 to the present 2014. Firstly, the proposal presented sounded minimal requirements that can bring a stability of the democratic values at the media level at the EU level and in each country at the time. Secondly, the mere recognition of the European Commission of this proposal and the translation in a policy document would be the first step, which has never been done before. Lastly, there is a huge precedent coming in this way if a proposal like this is accepted, especially coming from the citizens directly, where the European Parliament and European Commission did not manage to accomplish something.

The next section will look at the first relation between one peculiar merger decision of the European Commission and the regulatory agency of a Member State. Moreover, it presents a new way of looking at the media pluralism from the perspective of a cross-media merger.

IV.4. CROSS-MEDIA MERGERS EU AND UK DECISIONS

Media pluralism is not mentioned as an objective of the EC merger regulation but the effects of merger regulation have direct influence on media pluralism. There is a clear awareness that at EU level media concentration is not regulated in any legal way and the competition law remains the only tool that indirectly leads to media pluralism objectives.

However, the “*Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)*” contains a provision referring to the plurality of the media:

“[...] Member States may take appropriate measures to protect legitimate interests other than those taken into consideration by this Regulation and compatible with the general principles and other provisions of Community law.

Public security, plurality of the media and prudential rules shall be regarded as legitimate interests [...]” Article 21(4)

The European Commission applies merger regulation for any mergers that acquire a “Community Dimension”. In this regard, the trend, according to Ariño (2004) seems to be in the increased concerns with vertical operations within one Member States and more lenient position towards trans-national merger cases.

Furthermore, this provision strengthens the position of media pluralism decisions taken at the Member States level, in cases where a Member State considers appropriate to take further measures to better regulate media pluralism. On theory, at a first look the protection of media pluralism is twofold. Once there is the protection from the European Commission on one side, when applies merger rules and watches the abuses of power and consequentially approves or denies certain mergers. Twice is the protection from the Member States, giving them the ability to overturn a positive decision from the European Commission for a merger and deny the merger on the base of the violation of media pluralism values.

When the European Commission looks at the disturbances in the market or the efficiency offered for the functioning of the market by the players at stake and takes a decision, the Member States could go further and study in more depth the dominance in the power of opinions coming from the outcome of a merger. At the present time, the Member States are, according to the legislative framework, more in power to assess the disturbance of market power only for the media in itself, separated from other services. Still, the provision is only giving a liberty, which has not been **ever** used by the Member States. A note has to be made here making reference to the UK case of the News Corporations proposed acquisition of British Sky Corporation (BSkyB) which was approved by the European Commission but further investigated by the national regulatory authority in UK,

Ofcom. Since the acquisition has been retired by News Corporation no legal action has been taken and no decision has been taken by the Ofcom. Opening an investigation by the Ofcom, after the positive evaluation of the European Commission, is believed to be wearing some influence in the abandon of the acquisition. However, in the end it cannot be named to be the only example when the provision of Article 21(4) has been used by a Member State since the opening of an investigation did not guaranteed the actual legal action against the acquisition.

The merger regulation provides for now a combination between EU competition rules with indirect objective of media pluralism through the specific regulation for media pluralism at the level of Member States. The final observation is that apart from the legal prospects laid down by the EC merger regulation, the EU Member States never used, with one exception in the UK case mentioned above, which took the media pluralism issue in consideration related to a certain case. Ignoring their power to impose harder regulation on the media mergers affecting primordially a certain Member State may prove in one way another gap between legislative aims and actual practices in the Member States.

The UK case of News Corporation proposed acquisition of British Sky Corporation (BSkyB) and the effects towards media pluralism are important for this study since is the closest example where media pluralism is taken into consideration when approving an acquisition on an EU Member State. This proposed acquisition comes on the background of the ownership by the News Corporation of a 39 percent of BSkyB. This means that acquiring the rest of 61 percent will give full ownership by NewsCorp of the largest pay-tv broadcast in both UK and Ireland. The acquisition gives the unique example when the EU regulator actually allowed the merger under EU Merger Regulation in 2010 but the UK media regulator Ofcom actually turned against this decision on the basis that is against the public interest.

The acquisition did not take place in the end but not because the law was enforced but because mostly circumstances forced News Corporation to retire the bit in the midst of the News of the World phone tapping scandal in the UK. Even if the final outcome did not depended entirely by Ofcom position and enforcement of law, the case built a precedent for the possible enforcement of article 21(4) of the EC Merger Regulation.

The analysis focuses on the policy approach of Ofcom in protecting media pluralism, which implies two main elements, according to Craufurd Smith and Tambini (2012), a ***close attention to the definition of the relevant field*** and ***how sufficient plurality was assessed***.

Rulings of the EU Commission and Ofcom

The proposal for the acquisition was initiated in November 2010, when the European Commission was notified of the bid of News Corporation. The decision came in a short time, on December 2012, one month distance, with a positive outcome of allowing the acquisition since the European Commission did not find any impediments to effective competition at the level of European Economic Area (EEA). Regarding the effects in the UK, the European Commission observed that there are no impediments since the companies are active in different markets in UK and Ireland and *“the Commission found that the proposed transaction would only lead to a small increment on BSkyB's existing share of the market for the supply of basic pay-TV channels in the UK and Ireland.”*

When it comes to the media pluralism issue, the Commissioner for Competition Almunia is quoted in giving his opinion of the decisions that have to be taken at the level of Member States: *“The effects on media plurality are a matter for the UK authorities”* since the European Commission has the exclusive legal power to look at the influence of the acquisition on the competition side with the least extension in looking at the plurality of media but not on the public interest effects that go beyond economic effects.

For the UK side the UK Secretary of State for Business Innovation and Skills asked the regulatory agency to look at the effects on public interest objectives: *“requires the Office of Fair Trading to investigate and report in accordance with article 4 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 and Ofcom to investigate and report in accordance with article 4A of that Order”*.³⁴ As a result Ofcom issued a report in January 2011 where it asks for a second stage of review by the Competition Commission *“1.58 [...] to assess the extent to which the concentration in media ownership may act against the public interest”* (2010, p. 15).

Protecting media pluralism

Ofcom took in consideration several factors in order to give an advice for the Secretary of State: the relevant audience, the media market situation with the influence of both News Corporation and BSkyB on the news and current affairs and consumers' behaviors, the static effects of the proposed transaction and a forward view (dynamic) of the effect of the proposed transaction.

Firstly, ***the relevant audience*** was defined by Ofcom from the point of view of cross-media news and current affairs while looking at the elements of content types, geographical location, media platform and subgroups. News and current affairs were considered to have the highest influence over society from a personal and societal point of view. This decision of a distinction between types of content promoted by a medium made the Ofcom approach an innovative one.

³⁴ European intervention notice given pursuant to section 67 enterprise act 2002 – Anticipated acquisition of British Sky broadcasting plc by News Corporation. Secretary of State. 4 November 2010, UK.

Secondly, the **sufficient plurality assessment** can be separated in two strains for the **internal plurality**: “how far the range of views expressed within media enterprises may ensure sufficient plurality following the proposed transaction, including the effects of the impartiality rules for broadcast news, the culture of newsrooms and audience expectations” and **external plurality**: “the range and number of persons having control of media enterprises in the context of their ability to influence opinions and control the agenda” (2010, p.53).

In the **internal plurality issue**, Ofcom pointed to the independence of the BSkyB in producing original content, once owned in its entirety by News Corporation, again only in relation with news and current affairs: “1.39[...] we do not consider that we can reach the view that internal plurality will ensure sufficient plurality in the provision of news and current affairs as part of a first stage review”. In the end BSkyB will cease to be a completely different or independent media company. The argument is enforced by the ongoing proved history of the News Corporation with the ownership of the newspapers.

The **external plurality** did not posed any problems from the European Commission point of view taking into consideration the information made available to the public. The Ofcom, however, looked above the basic counting of media outlets and pointed out to the capacity of certain outlets to actually influence the public by influencing the news agenda. This phenomenon appears by accumulation of power, which is seen as possible in this acquisition. In this regard, Ofcom looked at the following factors: audience share and reach within individual platforms, analysis of consumers’ consumption of news and primary research of consumers’ claimed use of different media. The acquisition would give News Corporation a significant presence on all media platforms (TV, newspapers, online, radio) and audience share would be much higher than before the acquisition and will have: “full control of a presence on the TV platform”. Ofcom concluded that even the share of the BSkyB is not a high one on the market but the influence over the public opinion is quite significant due to the built presence and reach on TV in particular. An additional observation is made in relation to the internet presence where, once the acquisition completed, Ofcom sees a reduction in the number of voices and a concentration in news audience on this platform.

Finally, the report of the Ofcom and the several remarks that lead to a recommendation for a second inquiry into the issue overall pointed out to the strong relation between media ownership and media pluralism. Theory on media economics (Doyle, 2012; 2002; McQuail, 2000) has brought both the cons and pros of a media merger, especially for media pluralism. Which situation applies to the UK will always depend on the media environment and the analysis becomes much difficult when certain thresholds are not in place yet for the regulators to assess the situation. Without entering into the debate for the necessity of having certain thresholds, the liberty of analyzing a merger from

a completely new point of view is also of big advantage like in this case. Here, Ofcom looked at the type of media content and analyzed the influence on the end-users and society for that media content, for news and public affairs, while going exactly to the root of the problem: the capacity of an organization of influencing the news agenda in any way.

CONCLUSION CHAPTER IV

The research question advanced for this chapter is as following:

What are the initiatives and the arguments of other EU institutions (European Parliament, Council of Europe) and media stakeholders in participating on the EU media policy for media pluralism?

Comparing European Parliament and Council of Europe approaches on media pluralism there are many common points. The way the two institutions see and treat media pluralism in their policy documents revealing again fundamental similarities: *“the logic of setting up media pluralism standards involves harmonizing or balancing the forces of globalization (outside European Union) with a stimulation of democratic participation and more pro-active citizenry (Inside the European Union)”* (Klimkiewicz, 2009, p. 65). This chapter includes also the recommendations of the EIMP and the Ofcom decision on News Corporation proposed acquisition of British Sky Corporation (BSkyB).

Some of the resolutions resulted from the concrete cases and from actual situation in the Member States, as has also been studied by the Council of Europe, where media pluralism is in jeopardy due to media concentration or actually due to the faulty application of basic human rights legislation. Other resolutions came from situations like the one of Hungary, where even if there is a common audiovisual legislation, AVMSD, the application is inefficient, therefore the biggest *“difficulties are found in the implementation and transposition stages”* (Klimkiewicz, 2009, p.65).

The increase number of recommendations leaning towards soft regulatory measures of monitoring and transparency are not surpassing the concerns related to anti-concentration measures. In this regard, Valcke (2009) is underlining that it is still early to consider that ownership regulation has lost its validness for the protection of media pluralism because ownership of media has a strong relation with the effects of shaping of public opinion. As generally known, competition rules do not specifically apply to the media pluralism interests and media ownership is still seen as one of the main danger for media pluralism by the EIMP, EP (2002, 2004, 2008a, 2009), CoE (2002,2007, 2008), and the Ofcom decision. However, due to the recent cases and instability of the media regulation in this area, a broader perspective of measures is developed (Klimkiewicz, 2009; Valcke, 2009) which are coming from all levels and going beyond the contributions of the EU institutions: *“ensuring an active role for public service media, recognizing the role of community and minority media, access regulation and interoperability, support measures for the adoption of new*

technologies, must carry/,must offer rules, safeguards for editorial independence, quotas for original programs and measures to support diversification of audiovisual production”(Valcke, 2009, p. 21).

Therefore, both the European Parliament and Council of Europe still look at the importance of the Public Service Broadcasting and the transparency of media ownership in a healthy society but ***much more difficult problems arise from the conflicts between media and politics***. This last feature is highlighted by the EIMP and developed in the particular cases of Italy, Hungary and the UK. What these concrete cases show, especially the decision of the Ofcom to ban the proposed acquisition of BSkyB by News Corporation, is how the reach of relevant audiences leads to political power through the media and through the media monopoly. Sometimes one media organization does not need a high market share if it has a high audience share. Inclusively this depends on the culture of the country that permits certain companies or certain players to position themselves in such way to have the largest audience share and the power to form the public opinion. Finally, one obtains the political and economic power by winning and directing the public opinion (HLGMFP, 2013, p. 10).

It is fair to say that while the Council of Europe still researches for the normative approaches and has a positive influence in this regard on the resolutions of the European Parliament. Accordingly, the European Parliament has actively focused more on the actual developing situations in the EU Member States than in defining media diversity and media pluralism and their regulation. The Council of Europe has been always an example of theoretical restlessness to keep the democratic society based on the values of freedom of information, freedom of speech and media pluralism. Recently, Committee of Culture and Education(CULT) of the European Parliament leaves the lead of media freedom and media pluralism to the Civil Liberties, Justice and Home Affairs (LIBE) Committee, also closer in the objectives with the Council of Europe. Recommendations as minimum standards for media freedom and media pluralism are left to the LIBE resolution (EP, 2013), the civil organizations and the civil society altogether with the EIMP initiative.

As a consequence, the biggest objective of the European Parliament has changed: the appeal to have a directive on media ownership and media pluralism drifted towards the standards setting for media freedom in the Member States and asking for the actual independence of the media supervisory bodies, while supporting also the EIMP initiative.

There can be indicated three actions to support this perspective.

First, the redistribution of the political parties and the predominance of the EPP members in the EP in general and in the CULT committee and the LIBE committee in particular has an influence on the initiation of legislation towards media pluralism protection at EU level. While the EPP is posting for the subsidiarity principle, the motions initiated from other political parties need a

much careful wording and political support from the other parties in order to be adopted in the plenary.

Second, the latest motion of the EP on the situation on Italy (EP, 2011) can be considered a failure because it has not been adopted as a resolution but at the same time it is a “*lesson learned*” for a new approach of a proposal for a Directive on media pluralism and media ownership. It is a lesson in approaching the other opposing party of the EP, as well as the European Commission.

Third, this direction is supported by the latest developments in Member States and the changes that start in a country like the UK, the constant support of the Council of Europe and the new initiative of the EIMP and the Ofcom decision based on theoretical advances on media pluralism protection.

The two new aims required by the EP, achievement of the independence of media supervisory bodies and implementation of minimum standards for media pluralism and media freedom in Member States, represent a new approach to media regulation. Therefore, it can be inferred how this different approach could have a bigger chance to build a stable regulatory framework than asking directly for a directive on media pluralism altogether. The short-term objective is to combat the incompatibility of media-political positions that lead to clear conflict of interests. In conclusion, this approach proves that European Parliament and civil society had to adapt to identify in the policy proposals short-term tangible objectives that will bring the support of the civil society in order to build a strategy for the protection of media pluralism.

CHAPTER V-THE EUROPEAN COMMISSION-DG INFO/DG CONNECT

The European Commission has the central role of initiating legislation. Additionally, to the role of proposing legislation, the European Commission is also the guardian of the treaties, executor of the Community activities monitoring the implementation of EU regulation like the principal rule of law the application of directives. A directive represents *“a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to decide how.”*³⁵

Besides the binding documents, the European Commission issues also non-binding documents especially for the situations when the European Commission needs to address to the Member States like a Recommendation which can also be used by the Council of Ministers: *“A recommendation allows the institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed.”*³⁶ Moreover, the European Commission uses Green and White Papers for the preparation of a Directive, like the Audiovisual Media Service Directive (AVMSD).

The composition of the European Commission reflects different areas of policy making with different Directorates Generals (DGs), each headed by a Commissioner from a Member State. The Commissioners are being responsible to the European Parliament (EP), which has to approve each Commissioner after the nomination by the president of the European Commission.

This chapter includes the work of two Commissioners responsible for the media over three mandate periods: Viviane Reding (1999-2004; 2004-2009) and Neelie Kroes (2010-2014). The main objective is to follow the actions of the two Commissioners in what regards media with a focus on media pluralism. This will not be restricted at the policy documents but also at declarations, speeches and most important actions and programs that have been applied or are on the point of being applied at the time of writing of this thesis. In addition, the analysis is supplemented with information gathered from the interviews conducted in Brussels with the representatives of the European Commission and interest parties: industry, media practitioners, researchers and representatives of civil society.

One observation has to be made when looking at the different departments where media issues have been covered. From the Prodi Commission, where media were close to culture and youth topics, the change went to a more related electronic communication networks and services approach during the Barroso Commission. The last three commissions are not an exception. This

³⁵ Retrieved from: http://europa.eu/eu-law/decision-making/legal-acts/index_en.htm (26November, 2012).

³⁶ Ibid. 7.

move is also reflecting the convergence effects of previously separated sectors of telecoms and audiovisual.

The last change took place during the mandate of Commissioner Kroes (2012) when the directorate was renamed from Directorate of Information, Society and Media (DG INFSO) to Directorate of Communication, Networks, Content and Technology (DG CNECT/Connect). The audiovisual policies and the media pluralism task force stay under the actual DG INFSO or the new changed name of the directorate DG Connect headed by Ms. Kroes.

Possible factors for these changes could include the accommodating the portfolios in front of the enlarging EU membership and the technological changes that transform the society and the functioning of the European Commission with rewriting of objectives as well. This asks for more cooperation and coordination between portfolios.

The documents taken into consideration in this chapter are coming from the Directorate for Information Society and Media (DG INFSO) which includes the audiovisual media policies. Before 2005 Media was part of the Directorate under Education and Culture. Starting with January 2005, media is becoming a part of the DG INFSO's remit. Therefore, media resides besides audiovisual and internet under Unit A. This organization of the Directorate was changed in June 2012, when the Directorate became Communication Networks, Content and Technology (CNECT) or DG Connect, as mentioned above, with Media part of G1 Unit: Converging Media and Content. The differentiation between the documents of different DGs is very important, lesson learned from the previous period (1990-2000) when the issue of media pluralism was debated between the two DG X (Culture) and DG III (Internal Market) (Llorens-Maluquer, 2001).

When studying the work of the European Commission, the *Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (AVMSD)* is the first document to mention. This is the document of reference as the hard-regulation for the audiovisual media in the EU as from 2007 when it was signed by the Member States and entered in force in December. Even if the concept of media pluralism is mentioned six times in the recitals there is no article focusing on the media pluralism. While looking at the recitals, there is no definition of media pluralism advanced by the European Commission but the concept is mentioned in relation with the following issues: description of the dual characteristics of audiovisual media services, cultural and economic, with one of the role in ensuring media pluralism (5); the needed prevention of dominant positions on the audiovisual markets that affect media pluralism (8); for the promotion of a strong, competitive and integrated industry the principle of the country of origin has to be respected in order to protect the pluralism of

information (34); the promotion of pluralism through the diversity of news production (48); the Member States have to choose the right instruments for the protection of media pluralism (94).

The policy documents related with media pluralism, advanced by the European Commission in the analyzed period, are focusing on certain aspects as follows: the services of general interest, the regulation of public service broadcasting (PSB), the monitoring of media pluralism and diversity in the Member States for the revision of the new audiovisual directive. The main reason for highlighting these documents and not others issued by the European Commission comes from the status and place of the media at the EU regulatory level. First, media pluralism regulation is part of the remit of Member States and the only reference that it is made at the EU level appears in the legal documents related to the denomination of the media as an “*audiovisual service*” seen as a part of the functioning of the internal market, therefore the inclusion of the documents relating with the Services of General Interest. Second, the PSB is part of the dual system of the European audiovisual environment with a commitment in its remit to guaranty media pluralism. Any reference to the function and the remit of PSB at the EU level has a direct resonance to the way Member States can find new means of guaranteeing media pluralism through the proper functioning of the PSB. Third, the inclusion of the documents and conferences for the adoption of the new directive contain direct references to media pluralism due to the actual debate of having media pluralism present in the articles of the AVMSD or not. The importance of the preliminary documents and the monitoring studies and tools developed for media pluralism become more significant for analysis when in 2007 emerges the AVMSD without any article referring to media pluralism.

Therefore the documents included in the following table present the opportunity to see how far the debate and definitions on media pluralism went and more importantly how shape and weight received and receives until this point.

TABLE 5.1: Documents of the European Commission; Period 2000-2014

Date	Title Document -European Commission
2000 (20 Sept)	Communication from the Commission. Services of general interest in Europe COM(2000)580 final
2001 (15 Nov)	Communication from the Commission on the application of State aid rules to Public Service Broadcasting(2001/C 320/04)
2003 (5 May)	Green Paper on Services of General Interest
2003 (15 December)	Communication from the Commission to the Council, the European Parliament, the European economic and social committee and the committee of the regions- <i>The future of European regulatory audiovisual policy</i>
2004 (12 May)	White Paper on Services of General Interest
2005 (20-22 Sept)	Audiovisual Conference-Between Culture and Commerce
2007 (16 Jan)	Commission Staff Working Document Media pluralism in the Member States of the European Union, SEC(2007) 32
2007 (19 December)	AVMSD enters into force
2009 (July)	The Independent study on Indicators for Media Pluralism in Member States Media Pluralism Monitor study is published
2009 (27 October)	Communication from the Commission on the application of State aid rules to Public Service Broadcasting (2009/ C 257/01)

SOURCE: Elaborated by the author

One last observation regarding the documents presented in the above table has to be made to the type of documents, which is also important when analyzing the position of media pluralism on the agenda of the European Commission. There are a high number of Communications, White papers and Green papers. These three types of documents are consultation documents, with no legal obligation for the Member States to which these are addressed. A Communication is used after there is a study commissioned by the European Commission to a study group or a group of experts. A Green paper is used to “*communicate ideas and stimulate inter-institutional and public discussion about proposed policies and programs*”, while a White paper is a “*communication document setting out proposed legislative documents*”.³⁷

Before analyzing these documents, an introduction to the profile of the Ms Reding and the investment hearing as a Commissioner could help to understand the future strategies presented for each Commission.

³⁷ Retrieved from: http://europa.eu/about-eu/basic-information/decision-making/index_en.htm (26 November, 2012).

V.1. COMMISSIONS HEADED BY VIVIANE REDING

Introduction-Profile of the Commissioner Reding

The Commissioner Viviane Reding was in charge of the European media policy on two mandates: 1999-2004 as the Commissioner for Education, Culture, Youth, Media and Sports and 2004-2009 as the Commissioner for Information Society and Media (DG INFSO). A journalist of professional career and doctor in human sciences, Commissioner Reding started her political career as the leader of the Luxemburg's European People's Party. Her path into the EU institutions began with the work in the EP where she served three terms (1989-1999) before she was appointed Commissioner for Education, Culture, Youth, Media and Sports in 1999.

The Commissioners in EU have to receive a double confirmation at the level of the Member State and of the European institutions to be in charge of a portfolio in the European Commission:

"The commissioners-nominated by the member states, appointed by the European Council, approved by the EP, and sworn in by the European Court of Justice(ECJ)-are a college of supposed equals. [...] In reality commissioners are far from equal, nor are they entirely independent of national independence. The way that commissioners are popularly known-by their country of origin-emphasizes the point" (Dinan, 2000, p.59)

In the case of Commissioner Reding, the country of origin, Luxembourg, has a certain particularity, which has to be mentioned in this study: the lack of a public television for its households. The size and position of the country marks the special position of having a large share of audience dominated by a private television RTL group. Luxembourg is also the home for the diffusion of the RTL programs, which is established as *"Europe's leading audiovisual group"*³⁸.

The most noticeable actions for the media policy changes, during the mandates of the Commissioner Reding, are the revision of the TVWF Directive and the *"Three-Steps Approach"* for Media Pluralism and Media Freedom.

The revision of the TVWFD started during the first mandate and finalized during the second mandate of the Commissioner Reding with two previous consultations and focus groups held on the issue of media pluralism.

The most important and direct action regarding pluralism, from the three mentioned above, is the *"Three-Steps Approach"* for Media Pluralism and Media Freedom.

During the two mandates of Commissioner Reading there were legislative documents that entered into force at the EU level namely the Treaty of Amsterdam (1999), the Treaty of Niece (2003) and the Treaty of Lisbon (2009). Lastly, there was a failed Constitution of Europe in 2007,

³⁸ Mavise, Database of TV companies and TV channels in the European Union and candidate countries. Retrieved January 2013 from <http://mavise.obs.coe.int/country?id=20#section-1>.

which could have brought important changes for media pluralism at EU level if adopted. The Treaty of Lisbon added to the legal framework the Charter of Human Rights of European Union, with direct mentioning of media pluralism (2009). All these changes had their influence on the debate over media pluralism, especially on the legal framework where media pluralism can be depicted and protected at EU level, while respecting the principle of subsidiarity³⁹.

The analysis of the European Commission actions is structured in a chronological order, with the delimitation between the two mandates and also between the different initiatives with relevance for media pluralism. Here the initiatives of the European Commission came almost always with the background of previous initiatives which will be briefly resumed and included in these sections in order to orientate the analysis and certain reactions and declarations of the Commissioners or the way certain documents are phrased.

V.1.1. COMMISSION FOR EDUCATION, CULTURE, YOUTH, MEDIA AND SPORTS (1999-2004)

The first mandate of Commissioner Reding is coming after the 1997 failed directive on media pluralism. Therefore, an echo was still felt from the lost debate for EU media pluralism protection. The new Commission headed by Commissioner Prodi placed media and culture under the umbrella of the same directorate for the first time.

In the hearing of the Prodi's Commissioners in front of the European Parliament, Ms. Reding had to answer also to questions related to media pluralism. An Italian member of the European Parliament, Mr. Veltroni (Socialist Group-PSE) asked Ms. Reding if a directive on media pluralism "*laying down common or similar standards at European level to regulate concentration of ownership, avoid undertakings achieving excessively dominant positions in the market, and establish equal opportunities for access*" could be considered once again after years of discussions and no concrete actions. The response of Ms. Reding made a reference to the subsidiarity issue included in the Amsterdam protocol at the time of discussion. Furthermore, she pointed out the need to discuss with the competition Commissioner (Mario Monti) in order "*to preserve cultural specificity and diversity*". However, for what it refers to a directive: "*It will be up to other Commissioners to ensure that there is a level playing field with regard to concentration of ownership and competition*".

In one of the speeches given in 2000, Commissioner Reding refers to the EC Communication "*Principles and Guidelines for the Community's audiovisual policy in the digital age*"(EC, 1999) highlighting the main objectives of the new Prodi Commission for the regulation in the audiovisual

³⁹ Sub-chapter II.1.1. on the discussion on the Charter and the Conclusions on chapter II.

sector: *“pluralism, cultural and linguistic diversity, copyright protection, the right of reply, the protection of minors”*. The wording of the Commissioner Reding was that *“primary purpose of regulation in the audiovisual sector is, or has been, to safeguard certain public interest objectives”*. According to Reding, the failure of the market for the achievement of such objectives at EU level meant a graduate approach of regulation and specially a need to not over-regulate from the European Commission.

However, Reding is discussing a possible new approach for the content regulation, where media pluralism is mentioned as an objective of public interest that *“will increasingly be met by the market itself”*. This could be interpreted from the beginning as outdistancing from the actions of the previous Commission trying to include media pluralism in the EU legislation, especially in the revision of the TVWF. When a reference is done to the market as the sole responsible or capable of meeting media pluralism objectives, especially from the Commissioner of Education and Culture, this could have a definitive influence over the further political developments of the agenda in what regards the subject. As discussed in the sub-chapter I.4 of this study media pluralism does need more than the internal market to meet its objectives, it needs the wide range of opinions and views to be expressed through media. Leaving aside the internal part of media pluralism, or hoping that the market would include this part in the future, due to the technological advancements it only leads to ignoring the end user capability to use media and market forces that tend to monopoly if left alone (e.g., the Italian case with the monopoly of Silvio Berlusconi’s Mediaset Group). Therefore, when looking at the actions of the Commission under Commissioner Reding this statement has to be kept in mind for a better understanding of the framework of EC action for the media pluralism issues.

This upgrading process of the TVWFD had in sight, according to the Commissioner, the mentioned graduate approach and the flexibility of the community legislation enough to be *“future-proof”*. The dilemma with the audiovisual media policy is perfectly presented exactly when the Commissioner is questioning the best way to *“safeguard vital public interest objectives without stifling innovative services and the development of a competitive European electronic content industry”*(2000). With the adoption of the AVMSD it is significant to see how the ideas and elements presented in this speech at the beginning of the mandate of Viviane Reding materialized in the actions at the EU legislative level.

In the following are presented the documents highlighted in Table 5.1 and introduced in the beginning of this chapter.

V.1.1.1. SERVICES OF GENERAL INTEREST (2000, 2003, 2004b)

The focus of the Commission on the Services of General Interest went from a Communication (2000) on the issue to a Green Paper (2003) and as long as to the White Paper (2004b). In 2011 there was again issued a Communication “*A Quality Framework for Services of General Interest in Europe*”, which however does not contain any reference or a definition to media pluralism.

The 2000 Communication mentioned media pluralism as a value on which is based the regulation of both private and public media sector, considered specific regulation in the general interest. Taking this into consideration, the following Green Paper included a reference to the task of Member States to regulate media pluralism and the existing community instruments used for “*ensuring a certain economic balance for market operators [...] affect the media sector as an area of economic activity and not – or at least only very indirectly - as a means of delivering information to the citizen*”(2003, p. 22). The question referring to necessary Community action for pluralism: (17)“*Should the possibility to take concrete measures in order to protect pluralism be reconsidered at Community level? What measures could be envisaged?*” was motivated by the “*progressing concentration of the media sector and the proliferation of electronic media*”(Green Paper, 2003).

Nevertheless the “*option for ensuring respect for the pluralism of the media at the Community level has not been retained by the European Commission in the White Paper*”(The Network, 2004a, p. 63). The reason was presented as being the **broad agreement** of the consultation papers that saw that “*in the light of difference that exists across Member States the issue should be left to the Member States at this point in time*”(2004b, p. 19). One observation besides an increased monitoring that resulted from the consultations has been a stronger cooperation between the EU and the national regulatory agencies (NRAs) for the issue of media pluralism.

Two conclusions can be extracted when referring to the documents focusing on the *services of general interest*. On one side, these were used to address to the Member States the need to regulate media pluralism mainly focusing on the market operators (Green Paper) that could affect the freedom of information of the citizens. It is important to pinpoint that here the European Commission referred to the rights of the citizens and of the consumers. On the other side, was advanced the idea of collaboration between the European Commission and the NRAs on media pluralism protection, idea which is particularly important since it is mentioned later in the AVMSD and also later on in the recommendations of the High Level Group on Media Freedom and Media Pluralism (2013) and on the report of the Center for Media Pluralism and Media Freedom (2013), both coming from groups of experts.

V.1.1.2. PUBLIC SERVICE BROADCASTING (PSB) (2001, 2009a)

The PSB is presented from the Lisbon Treaty as having a strong relation with the protection of media pluralism through Protocol 29. One of the main role of PSB is directed to participation and opinion formation of the citizens: *“enriches public debate and ultimately ensures that all citizens participate to a fair degree in public life”*(2001, Article 8).

The analyzed documents that emphasize the issue of Public Service Broadcasting (PSB) are related more with the needed financing by the state and there have been issued two Communications in this regard in 2001 and respectively in 2009.

The remit of the PSB is defined:

“as aiming at a balanced and varied programming, capable of preserving a certain level of audience for public broadcasters and, thus, of ensuring the accomplishment of the mandate, i.e. the fulfilment of the democratic, social and cultural needs of the society and the guaranteeing of pluralism”(Article 13).

The role of the PSB in the 2001 Communication is defined in accordance to the definition and values of the broadcasting system presented by the European Commission in the 2000 Communication on Services of general interest in Europe, consequentially media pluralism being added to the cultural values, at the core of the PSB remit. Moreover, the value of the private broadcasters in contributing to pluralism is recognized, alongside the one of PSBs (Article 14).

Like the definition and protection of media pluralism, the definition of the public service mandate is under the legal competence of the Member States. Therefore, the European Commission only can make suggestions and reference to the EU treaties when coming to these issues:

*“given the specific nature of the broadcasting sector, a ‘wide’ definition, entrusting a given broadcaster with the task of providing balanced and varied programming in accordance with the remit, while preserving a certain level of audience, **may be considered”***(Article 33).

This definition including a *balanced and varied programming* can fulfill the objectives of *“democratic, social and cultural needs of a particular society and guaranteeing pluralism, including cultural and linguistic diversity”* (Article 33).

The definition of the PSB coming from the European Commission through these two communications (2001, 2009a) was clearly focusing on the diversity of choices, on a **balanced and varied programming**, which accounts for diversity in opinion. What cannot be overlooked is that no matter the diversity of voices offered by the PSB the total diversity can only be offered with the participation of private broadcasting. The European Commission mentioned this balance but the ultimate deciders in the public funding awarded to PSBs are the Member States and here is where

the political influence comes heavily into place. Monitoring is the solution advertised by the European Commission, which in a way is limited to application of EU law.

For the next sections, the documents analyzed are the product of two consultations (EC, 2003; EC, 2005) from the European Commission for the revision of the TVWF directive. Media pluralism it has a direct issue paper focusing on the issue in the second consultation, while the first one does not include a direct reference, only indirect measures.

V.1.1.3. THE AUDIOVISUAL MEDIA SERVICE DIRECTIVE (AVMSD)-FIRST STEPS

The AVMSD represented another way of the European Commission to bring the legislative framework in line with the digital advancements and mostly with the convergence effects. The previous directive (TVWFD) entered into force in 1989 and with the mandate of Commissioner Reding the efforts for a new directive have started to be put in place. The main reasons to proceed to a changing process of a directive have been the technological changes that increasingly influenced and changed the audiovisual media services, the media consumption, the need to adapt the advertising rules to the new advertising techniques and to the protection of minors and disadvantaged groups. Many of these reasons have been enumerated by the Commissioner Reding in her speeches (2000, 2001, 2002, 2004).

Actually, in June 2001, at a management conference Commissioner Reding introduced the subject of amending the TVWF directive⁴⁰. While talking about the public interests, pluralism was the first value mentioned alongside cultural and linguistic diversity, copyright protection, the right of replay, consumer protection and protection of minors. Therefore, in the opinion of the Commissioner, the reasons for regulation would be if the market does achieve these values. Nevertheless, the Commissioner highlights ***the freedom to provide broadcasting services in the European Union remains the main reason for regulation*** as being maintained as such from the previous directive.

Furthermore, the Commissioner explicitly makes a reference to the lack of legislative support in the Treaty regarding the issues of media pluralism and children protection and mentions how *“it is necessary that national rules on these vitally important public objectives be harmonized at a least a minimum degree”*(2001). Despite this promising testimony, there is no other reference from the Commissioner on how this harmonization can be reached or implemented. Moreover, no more reference to this phrase of minimum harmonization was made from the part of the Commissioner, when discussing the revision of the TVWF directive.

⁴⁰ SPEECH/01/34.

On the initial steps of the revision of the TVWFD, at the Audiovisual/Culture Council of Ministers meeting (2002), Commissioner Reding launched the discussion for this revision. She presented three proposals of action⁴¹:

Option 1: Propose a radical amendment of the Directive immediately;

Option 2: Propose a "fine-tuning" of the current Directive;

Option 3: Set out a work-programme to prepare a proposal at a later date.

The answer was a positive one for the support from the Commissioners and agreement for the Option 3 in setting-out a programme before launching a proposal, mainly due to the economic difficulties. The view of the Commissioner for the new directive includes the idea *"to go beyond the current concept of television and to develop a more consistent approach towards content regulation across all media"*. The proposal for a complementary approach, to include both EU initiatives and Member States efforts to apply hard and soft-regulation, *"it can be usefully developed"*. The only hindrance will be the way of achieving a consensus between all parties and this is the biggest challenge that the proposal has to be confronted with.

In the following, the consultation process for the adoption of the AVMSD Directive will be analyzed.

V.1.1.3.1. THE FIRST PUBLIC CONSULTATION-AVMSD-JULY 2003

This public consultation received written contributions before 15 of July 2003 and held public hearings between April and June 2005.

The consultation process included six themes: events of major importance for society; promotion of cultural diversity and of competitiveness of the European programs industry; protection of general interests in television advertising, sponsorship, teleshopping and self-promotion; protection of minors and public order-the right to replay; application; short extracts of events and other elements not covered by the Directive.

Examining these themes, media pluralism is not between the discussed topics in the first consultation. Even if there is a reference to media diversity in theme 2 this is included only in relation with the equal promotion of European works by the broadcasters and independent producers. In fact, the discussion paper 2 starts with the clear message: *"The main aim of the Directive is to establish the legal framework for the free movement of services"* and directs the discussion to *"the freedom to supply and to receive television broadcasting services"*, in other words concentrating the efforts for distribution and infrastructure, with a priority to the audiovisual economic aspects.

⁴¹ SPEECH/02/282.

This consultation is actually contradicting the announced effort in the investiture hearing to hold the side of the cultural objectives in any discussion or consultation on media policy. Additionally, one year earlier (June, 2002) the Commissioner had declared, while making an evaluation of the EU actual tools to protect media cultural diversity, that: *“neither the market nor self-regulation are sufficient or appropriate to achieve the aim-as laid down in the Treaty-of promoting cultural diversity.”* On the other side, when it comes to media pluralism the idea of *“avoiding over-regulation”* is put on the table with the suggestion that the *“access to a vast range of electronic content”* can lead to the market of solving the problem of media pluralism in itself. Where there are gaps then self-regulation can come in place and be part of the solution.

By analyzing the discussion paper 6 *“Short extracts of events and other elements not covered by the Directive”*, it could be pointed out that the exclusion of independent media and news agencies from events of public interest has a negative effect on choice and plurality, which is the link with the external part of pluralism. When the dissemination of news is only made by the big broadcasters, the ones that are in disadvantage are not only the small broadcasters, but also the public. In this document, it is also made the connection between Article 9 of the European Convention on Transfrontier Television, when talking about the right to short reporting as a right that is based on the right of the public to receive information. Moreover, through this short reporting right a plurality of information sources in transfrontier television is ensured.

Moreover, the European Commission acknowledges that even if the regulation of promotion of news by broadcasters stays at the level of Member States, the application of this regulation has to be done under the Article 11 of the EU Charter of Fundamental Rights, which mentions the respect of media freedom and media pluralism.

In the same analysis of this consultation can be mentioned the proposed studies by the European Commission. The studies, which are announced to be, along with the consultations the preparation for the first draft for the directive are exclusively focusing on the markets and the technological developments:

- A study assessing the impact of measures to promote the distribution and promotion of European TV programs: *“Study on the application of measures concerning the promotion of the distribution and production of European works in audiovisual media services (i.e., including television programmes and non-linear services)” (28 May 2009).*
- A study to see the recent technological and market developments: *“Outlook of the development of technologies and markets for the European Audio-visual sector up to 2010” (June 2002).*

- A study into the newest advertising techniques: *Study on the development of new advertising techniques (April 2002)*.⁴²

Short Analysis of the proposed studies

The three studies commissioned look at different issues that affect the audiovisual and that could affect the sector in the near future, like the second study on *technological trends* proposes to look at the technological trends and predict scenarios up to 2010.

While the last study regarding the measure to promote the distribution and promotion of European TV programs has no reference to media pluralism, the first two studies (2002) do have references to pluralism in general. Therefore, only these two studies are relevant here to be analyzed.

The first study referring to *the new advertising techniques* was commissioned to the Bird & Bird / Carat Crystal and presented in the final version on April 2002. Separated between the present panorama of the advertising techniques and the new emerging advertising techniques, the study presents an analysis for each period at an economic and legal level. In the conclusions media pluralism is presented as part of the general principles that have to be followed when “*new rules are adopted or existing rules are amended*” (p. 100). Pluralism is part of the general objective to create a balance between optimal economic development and the public interest: “*to seek a fair balance between optimum economic development of the European media industry, and public interests such as consumer protection (especially of minors), the safeguarding of pluralism, the promotion of cultural diversity, and respect of the Treaty’s rules on competition* (p. 101)”. The other principles to be respected are: the minimum of regulation required to be implemented, the enhancement of legal security, application and enforcement of the regulation in an effective way and the respect of the principle of subsidiarity.

The second study commissioned includes two references to pluralism and like the precedent, the reference is made in connection with the consideration of public interest. The study on *the recent technologies and market developments* was commissioned to Arthur Andersen and was finalized at two months distance from the first study, in June 2002. In this study were addressed two main questions to the eighteen countries studied: one based on the economic side (“*How will the economic viability of the sector and its operators evolve in the future?*”) and the second one on the consumer (“*How will consumer choice and control evolve in the future?*”).

The first reference to pluralism is made when the consumer choice is discussed as a quantifiable dimension to “*synthesise the achievement of general interest objectives such as cultural*

⁴² SPEECH/01/435.

diversity and pluralism" (2002, p. 7). With the consumer dimension the study refers to the "personalization scenario" or on-demand effect that consumer has in building his own set of programs to watch, which is adjacent to the number of channels available in each country.

The second reference to pluralism replicates in other words the conclusions of the first study on advertising and mentions the need to analyze not only "the economic point of view of the industry" but also "to look at the industry from a general interest point of view" and to take into account the amount and the diversity of content (2002, p. 20).

The conclusion that could be extracted from the two studies analysis would include the need to approach the new policy changes and amendments to the TVWFD in a dual manner and include the consumer interests and cultural diversity of content in guaranteeing pluralism alongside economic interest in the new directive. As it can be seen from the actual AVMSD introduced in 2007 the main objective remains the economic objective of the internal market and implicitly the recommendations referring to media pluralism did not found a place in the new directive.

V.1.1.3.2. THE FUTURE OF EUROPEAN REGULATORY AUDIOVISUAL POLICY JULY 2003

This document is announced to come as conclusions drawn from the public consultation on the review of TVWFD and to set up priorities for the European audiovisual sector on a medium term. This paper marked the measures used in the Union to ensure media pluralism: "limit maximum holdings in media companies and prevent cumulative control or participation in several media companies at the same time [...] competition policy to measures promoting culturally and linguistically diversified content - can contribute to media pluralism"(EC, 2003, p. 8). Nevertheless, the European Commission pointed out here that media pluralism it is promoted through indirect measures at the EU level: Community Competition law "preventing a degree of cumulative control or participation in media companies which might endanger the existence of a wide spectrum of views and opinions in the media markets [...] the promotion of European works and of works by independent producers" brought by the TVWFD (in force at the time of the Communication). The admission of the European Commission that "The aim of all measures in favor of media pluralism is to protect **freedom of expression** and to ensure that the media reflect a spectrum of views and opinions characteristic of a democratic society"(2003, p. 8) is a significant advance for the reinforcement of the concept of media pluralism. However, the document refers to the Green Paper on Services of General Interest (EC, 2003a) which underlines that media pluralism remains the responsibility of the Member States. Pluralism remained a non-European object for EU media policy.

The Communication made a short analysis of European audiovisual landscape with TV and cinema still having the biggest shares of the market in 2001 and with a trade balance between the European and US productions “*constantly negative*” for the Europe side. Regarding the technological changes that could affect in the future the audiovisual sector is enlisted: flat panel displays, high definition TV (HDTV) and interactive television. The Internet is not mentioned as a big influence on the audiovisual sector in the future even if it is acknowledged that it has changed communication styles and has offered new access methods to audiovisual. The communication observes that still fewer people use internet than traditional TV.

When talking about the actual policy legislation affecting audiovisual media the first reference goes to competition law.

Besides the trends in the EU audiovisual sector, this Communication has pointed out to some of the problems the broadcasting sector is facing like the new advertising techniques that require adequate regulation for the protection of media consumers and the right of the consumers for information and short term reports. These problems were raised by the stakeholders with the 6 discussion papers mentioned in the previous sub-chapter (V.1.1.3.1.) and in the written contributions from these stakeholders.

The Main Points of Discussion-Problems Raised by Stakeholders

The Scope of the directive was one of the first points discussed, especially by the delegations of the Member States, which asked for an extension of the scope. In this direction, the European Commission acknowledged that for the new directive the technological changes and the changes in the structure of the audiovisual market have to be taken into account.

The Right to Information-on events of major importance is a subject which received little attention from stakeholders: “*the consultations showed that there is no urgent, pressing need for a revision of this provision of the Directive*”(2003b, p. 16). However, there were some suggestions looking at the list with EU events of major importance to avoid the marketing of certain rights, but the European Commission stays of opinion that decision of these events has to stay at the level of Member States. In what regards other stakeholders the provision is “*crucial*” (BBC), “*mandatory for all Member States*”(BEUC, 2003) and has to be maintained and strengthened as well as possible because “*universal access to broadcasts of major events is of utmost importance to help ensure full participation in society*”(BEUC,2003, p. 16).

European works by independent producers (Article 5 of the TVWF Directive) receives in the previous directive a 15% quota and proposals came from both ways of increasing the quota or removing the quota and replacing with different mechanisms. Nevertheless, the majority of contributors were agreeing to maintain the present quota as it was in the TVWFD. Other changes or

clarifications came to have a clear definition in the directive of what it is an independent producer, even if the lack of a definition “*is not an obstacle towards the circulation of works within the EU*” (2003b, p. 17).

Co- and Self-Regulation rules come to be more involved and effective when it comes to the application of protection of minors and rules on advertising, as the European Commission found out. The problem with these mechanisms however sprouts from the different use and definition of the concepts in the Member States: “*regulatory models that are called “self-regulation” in one Member State would be clearly qualified as “co-regulation” by others*”(2003b, p. 23). In this direction the European Commission focused more on co-regulation to launch a study in order to see the state-of-play in the European countries in order to take a decision for further policy actions: “*how best to ensure that the development of national co- and self-regulatory models do not disturb the functioning of the internal market by a refragmentation of markets*” (2003b, p. 23).

In the conclusion, part of this Communication the Commission proposes 2 types of actions: on short term and on medium term. For the short term, is advanced an interpretative Communication on to what extent the present Directive applies to new advertising techniques and an update to the Recommendation on the protection of minors and human dignity. On the medium term a number of issues will be discussed in the focus groups and studies. The focus groups established between October 2004 and May 2005 included the following themes: regulation of the audiovisual content (FG1), the level of detail in the regulation of advertising (FG2), the right to information and right to short reports (FG3) and on cultural diversity (FG4).

V.1.2. COMMISSION FOR INFORMATION SOCIETY AND MEDIA (2004-2009)

The second investiture Introduction

Commissioner Reding was again at the European Parliament’s hearings when nominated by the new president Barroso as the Commissioner for Information Society and Media (Annex 3). Talking about the drafting of a new directive Commissioner Redig touches upon a new directive on content which in her opinion could be discussed: “*the idea of a content directive, which would establish the ‘rules of the game’ for media content, irrespective of the mode of delivery, is one possibility which will be analyzed*”. The wording is again important because the idea is not mentioned to be already on the agenda, but only mentioned as a possibility to be analyzed. Furthermore, the Commissioner motivates this choice of words by pointing to the factors of “*number of users and type of content as well as the degree of choice and control by users.*” Without these associations cannot be applied a

directive on content combining “hard” and “soft law” and most important cannot be defined the added value for such a directive.

At the direct question from the EP on the media pluralism: “How do you think media pluralism and content should be ensured, respecting the principle of subsidiarity?” the Commissioner answers firstly that competencies of both the EU and Member States should be respected. Moreover, since there is not a “size-fits-all” at the level of Member States for the protection of media pluralism the general recommendations are presented as:

- regulation at national level;
- application of competition law at EU level;
- promotional measures at both national and EU level to ensure a plurality of sources.

Therefore, the next section will analyze the strategy of commissioner Reding regarding the pluralism issue during her mandate in order to see if she followed the arguments presented during the investment hearing.

V.1.2.1. ISSUE PAPER FOR LIVERPOOL AUDIOVISUAL CONFERENCE: MEDIA PLURALISM-WHAT SHOULD BE THE EUROPEAN UNION’S ROLE? (2005)

Part of the second consultation for the new media audiovisual directive, the issue paper aimed at focusing on the issue of media pluralism, which has to be pointed out that was not included in the first consultation of 2003. Moreover, this paper served as a focus for the European Commission on the feedback from the interest parties and also for the discussion developed at the Liverpool Audiovisual Conference organized by the United Kingdoms’ (UK) presidency at the time.

The paper highlighted that application of “antitrust and merger control principles competition policy can make an important contribution to maintaining and to developing media pluralism, both in traditional television markets and in new upcoming market”(2005c, p. 2). At the same time, EU competition law is not intended to replace national laws of the Member States.

Looking at the measures to foster media pluralism, TVWFD had limited standards and the role of PSB is paramount. The problem, aside from the financial is the status of the broadcasting in a society. The importance of the “status of commercial and public service broadcaster, editorial freedom, (economic) situation of journalists, training of journalists” are however left to the Member States to be answered.

The main point of this issue paper is: “the central question must be **the added value of additional European actions**”(emphasize made in the document). To this question the European Commission emphasized that apart the questions on media ownership the focus when discussion media pluralism protection should be also on: “status of commercial and public service broadcaster,

editorial freedom, (economic) situation of journalists, training of journalists”(2005c, p. 5). However, since these are issues under the mandate of the Member States, the European Commission pointed out to the previous *White Paper on services of General Interest* (2004b) and the commitment to continue monitoring the situation.

This question and discussion on the possible additional value incorporated by the European Commission to media pluralism was taken further to the Liverpool Conference under the UK presidency.

V.1.2.2. BETWEEN CULTURE AND COMMERCE-CONFERENCE (2005)

In the speech of 22 September 2005 at the Liverpool Audiovisual Conference “*Between Culture and Commerce*”, Commissioner Reding contributed to the discussions during the conference by pointing out that proposals have to be analyzed mainly from two principles in order to achieve the “*better regulation*” proposed by the Barroso administration:

“This European Commission under President Barroso strives for better regulation. This implies careful political and economical impact assessment of key proposals, screening of proposals to check their compatibility with the Lisbon strategy and rollback of unnecessary or outdated legislation if not in line with our competitiveness and jobs goals. Co- or self-regulation has an important part to play especially in this field.”⁴³(underline made by the author)

This statement depicts very clearly that any changed foreseen by the European Commission when it comes to the Audiovisual Media Service Directive comes with the political and economical impact assessment. Furthermore the Commissioner encourages for “*euro-wide rules*” to clarity of the functioning of the industry with “*legal certainty*”, which in the view of the European Commission it translates into “*fewer burdens and less regulation, not the opposite!*”.

The Commissioner also uses this speech at the Liverpool conference to announce the launch of the work for a new directive for the audiovisual media sector as one of the three options for the near future “*Option one is to change anything.[...] Option two is to tidy up the 1989 Directive as we already did in 1997. Option three is to propose a new directive, future-oriented towards the needs of both the industry and the consumers in the near future*”. There is a new concept of “*near future*” when these actions have been discussed in May 2002 Audiovisual/Culture Council of Ministers meeting and openly announced the decision taken in that meeting by the Commissioner.

During this conference, there was a focus group on the issue of media pluralism and the Issue Paper (IP) launched by the European Commission. The document issued by the Focus Group on

⁴³ SPEECH/05/532.

Media Pluralism at the Liverpool conference is not a policy document, is a product of the work of a group of experts with members of the European Parliament (MEPs) and representatives of interests groups for the media which reunited at the invitation of the European Commission. The focus groups discussed the role of the European Union, or the European Commission, in guaranteeing media pluralism at the EU level and through the actions of each individual Member State. All this discussion came on the background of the previous Television Without Frontier Directive (TVWFD) and the proposals of the new possible changes to be translated into the announced new Audiovisual Media Service Directive (AVMSD).

The conclusions of the discussions at the Liverpool conferences were published in a workbook of the conference. Furthermore, the conclusions of the focus group written by Bernat Joan I Mari, Member of the European Parliament (MEP), are very important for this study because includes a direct reference to the construction of a definition of media pluralism: *“The aim is to have a clear definition of media pluralism so that there can be further discussion on which instruments are relevant for solving the related problems”* (2005d, p. 26). This is a definitive point when the need for a definition is recognized and put on the table due to the simple fact of diversity of EU members: *“new members states tended to have different notions of what pluralism means than the older members of the Union. There is a danger of applying double standards when dealing with pluralism issues”* (2005d, p. 24). Moreover, not only new members have different definitions from the old members but also the first members of the EU have different definitions or lack a definition as it can be seen in the studies of the Council of Europe. Another reason for a need of a clear definition was the actual exercise of the focus group of defining media pluralism which resulted in various trials according to different perspectives: regional, national, cultural, which did materialized in a proposal for a definition.

In addition, the focus group was taking into consideration the impact of EU policy over media pluralism. All EU legislation is drafted in relation with the signed Treaty of Nice (in force at that time) but the focus group outlined the need for *“the Commission [to] clarify and publish the criteria it uses to assess the impact of the EU instruments on media pluralism could be improved”* (2005d, p. 26).

Here has to be emphasized the discussion over the need to have a media pluralism definition at the EU level with the role to develop from a definition the needed instruments to protect media pluralism. There has not been a discussion centering on a definition of media pluralism since the nineties, coming from the European Institutions.⁴⁴

⁴⁴ Chapter I.4.

Since the European Commission did not followed up on these discussions, there were not any useful outcomes coming out of this discussion on the IP on media pluralism. There were voices (Williams, 2007) which described the IP and the discussion at the conference as: *“a commentary rather than a policy document, did not offer any positive policies”*. The idea was reinforced by comments from the European Commission that a discussion took place and an IP was laid down in order to ease the European Parliament concerns since there was still an echo from the 1997 failed directive on media pluralism. When talking with the Media Task Force team about the lack of reference to media pluralism in the AVMSD they explained that AVMSD’s main objective is plurality and internal market.⁴⁵ In fact, other issues included for discussion for the new directive, like the scope of the audiovisual media services, the distinction between linear and non-linear services, advertising and product placement, protection of minors and incitement to hatred and cultural diversity, do not include any reference to media pluralism. In this light, by going back to the text it can be seen that the European Commission, through the words of the Commissioner Reding, expresses the intention to develop a directive for the interests of the *“industry and the consumer”*. The use of this terminology can be interpreted as support to internal market objectives rather the democratic ones.

V.1.2.3. THE ADOPTION OF THE AVMSD-MAIN CHANGES

The AVMSD was adopted through a co-decision procedure in 11 December 2007. According to the Lisbon Treaty a co-decision procedure became an *“ordinary legislative procedure”* and *“it is based on the principle of parity and means that neither institution (European Parliament or Council) may adopt legislation without the other's assent.”*⁴⁶ This directive is amending the 1989 TVWFD and maintains the same main objective of free movement and reception of broadcasting services in the entire European Union. The directive entered into force on 19 December 2007 with a two years transposing time limit given to the Member States. Unfortunately, at the end of 2009 the European Commission acknowledged that only three countries have completely adopted the directive: Belgium, Romania and Slovakia.⁴⁷ The rest of the countries either notified of partial implementation, others were still in the incipient phase of discussions for the best measures of implementation.

Two years later in 2011, the European Commission proceeded to writing inquiry letters on the application of the directive and by the end of the year received 23 answers of application, of which 20 countries applied the directive in full.

⁴⁵ Interview conducted with Members of the Media Task Force in Brussels, 23.04.2012; 06.06.2012.

⁴⁶ The Co-Decision of ordinary legislative procedure. Retrieved December 2011 from http://ec.europa.eu/codecision/procedure/index_en.htm .

⁴⁷ Press Release. Brussels 24 June 2010. IP/10/803.

The adoption proposal is represented graphically in the following figure.

FIGURE 5.1: Adoption of the Audiovisual Media Service Directive



SOURCE: Elaborated by the author

From the EC Proposal to the Final AVMSD Document

The first EC proposal was launched after a long consultation process based on consultation papers and feedback from the stakeholders, as seen in the above chapters (V.1.1.2.1. and V.1.2.1.). The proposal included new provisions from the previous TVWFD, which are going to be discussed in brief in the following paragraphs.

The first novelty was in the definition of '**audiovisual media service**' described as provision of *programmes*. This definition is closely related with **the extension of scope**, one of the points that were under the intense debate. The extension of the scope to the non-linear services has been opposed from the beginning by the industry but in the end remains one of the major changes brought by the AVMSD, alongside the relaxation of advertising rules (Valcke & Lievens, 2008).

The first distinction that has been made in the definition of the concepts of **linear and non-linear, on-demand service, which is television-like** and later in the decision to see what kind of regulation is appropriate for each. The separation between the two comes from a new separation in the types of distribution of content via different platforms characterizing this type of regulation as a *graduated regulation*, excluding a horizontal approach of regulation.

The distinction has been made finally between the **broadcasting** defined as: *“an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule”* (Article 1(e)) and **on-demand services(non-linear)** defined as:

“audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider” (Article 1(g)).

One of the provisions that make the AVMSD *“particularly significant”* (Dizon, 2010) is the inclusion of **co-regulation** by the European Commission, as an encouragement from the European Commission to the Member States to take into account the co-regulatory processes to apply Community law. Additionally, Dizon points out that AVMSD represents *“the first community legislation that formally refers to the term ‘co-regulation’”* (2010, p. 7). The adopted AVMSD document includes more than co-regulation, it presents also **self-regulation** as another *complementary method* to the governmental one, this coming from the European Parliament and the Council of Europe amendments. Furthermore, there is a more emphasize of the use of co- and self- regulation for the implementation of the non-linear services, as acknowledged by Ariño and Llorens (2008) since in the technological change environment when the media users are becoming more and more responsible for the media use *“self- and co-regulation schemes can prove to be a better and more flexible means of delivering a high level of consumer protection”* (2008, p. 138).

Another element in the AVMSD that also influences, indirectly, media pluralism is the introduction of the **short news reporting** provision with the influence it can have on the freedom of information. The proposal continues a similar provision for the coverage of major events, already in place in the TVWFD. In the proposal for the short-news reporting:

“broadcasters established in other Member States are not deprived of access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted by a broadcaster under their jurisdiction” (Article 15(2)).

Since the provision was accepted by both the EP and Council only with the specificity to be applied only to linear services and to non-linear when it was first offered on linear by the same media service provider: *“short extracts shall be used solely for general news programmes and may be used in on-demand audiovisual media services only if the same programme is offered on a deferred basis by the same media service provider”* (Article 15(5)). However the actual conditions for access to short extracts are left to the choice of the Member States to be decided.

The general conclusion when analyzing the changes brought by the new AVMSD is that it brought mostly negative points for consumer than positive ones and that it is a biggest win for the

industry. Some of the new changes, especially the advertising and product placement and country of origin are still contested by the organizations like The European Consumers' Association (BEUC) considering that have no positive influenced for the consumer. The extension of the regulation to non-linear services it seemed in the beginning like the biggest change because it acknowledges a change in the technology and the society and acts upon it but at the same time is one of the most disputed as not fulfilling the internal market objective and it has only applied to digital video on-demand services (Ariño and Llorens, 2008). Looking at three others changes considered important (a horizontal approach of extending regulation beyond the broadcasting sector, attention to co- and self-regulation, technology-neutrality in qualifying a service as "an audiovisual media service") alongside the one of graduated regulation of the linear and non-linear services, Valke and Lievens (2009) reiterate the future of this directive:

"it seems doubtful whether the new directive fills in the details of these principles in a correct and appropriate way in order to provide a consistent and future-proof regulatory framework for the audiovisual content services"(2009, p. 150).

The key points here are **consistency** and **future-proof**, interdependent values which make up for the viability of the application of a policy document that is proposed to have a longer life than ten years. This assumption of the time for the viability of the AVMSD is made on the fact that it took the legislators and European Community eighteen years to review the Television Without Frontiers Directive, adopted in 1989, when already existed a provision to review TVWFD by 30 of June 2002, in Article 25 (a)). No such provision regarding a future revision is presented in the AVMSD. This includes a lot of research on the changes of the media environment, both technological and economical, accompanied by consultations and discussions with the EU media and between the EU institutions. The political processes involved in reviewing a Directive in an enlarged Europe are much longer and time consuming.

Now, four years after the AVMSD entered into force the scholars predicting an inappropriate differentiation in regulation between linear and non-linear were not wrong, especially if the technology innovation and convergence processes are taken into account.

V.1.2.4. THE AVMSD AND MEDIA PLURALISM

The AVMSD does not contain any provision referring directly to media pluralism, even if there was a discussion in the 2005 conference on an Issue Paper (IP) on media pluralism. The proposal of the European Commission did not contain any reference. What has to be observed is that not even the European Parliament went on making notable changes in this direction. After the proposal in 2005, the EP held a Public hearing on 1-2 June 2006 on the revision of the Directive.

Media pluralism had been included in the discussion by inviting the participants to answer to the following questions:

“How far are competition rules and the free movement of audiovisual media content within Europe able to improve media pluralism and a larger choice for the viewers? Does this revision of the Directive TVWF allow for (as demanded by the EP) an agreement at European level on the safeguard of pluralism and on media ownership?”

The expected discussion especially on the issue of media pluralism did not take place and only a few voices were heard which did not bring any strong changes to focus on media pluralism in the answer to the proposal. And this was where the consultation process and the opportunity to have media pluralism in a new directive were lost once again.

When relating to the content of the AVMSD, even if the directive does not have the main goal as media pluralism, there are certain provisions that are mentioned on the European Commission website and in the declarations of the Commissioner Reding⁴⁸(Annex 4) that protect media pluralism:

- *promotion of independent TV productions (R 64)*
- *the access to short extracts in the EU (R 55)*
- *promotion of independent media authorities at the national level (R 94)*

While the access to short extracts it represents a new provision opposed to the previous directive, underlining the freedom to information, the independence of national media authorities has been subject to continuous debates in the EP and the European Council, which did not result in a positive outcome for media pluralism. The main point relating to the independence of regulators and affecting media pluralism would have been the actual independence of the national regulatory agencies from the political control of the state, which represents an indirect approach to protecting media pluralism and its parts relating to the media content. The final document of the adopted directive it actually does not guarantee the independence of the national regulatory agencies since *“there is no real obligation for the Member States to ensure the Independence of national regulatory bodies.”*

Members of the European Commission pointed how the obligation for Member States to have independent regulatory bodies for media was in the first draft from the European Commission- *Article 23(b)*:

“1. Member States shall guarantee the independence of national regulatory authorities

⁴⁸ Discourse Commissioner Reding in European Parliament Plenary Meeting of 8 Oct 2009. Retrieved on October 2010 from <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20091008+ITEM-005+DOC+XML+V0//EN&language=EN> .

and ensure that they exercise their powers impartially and transparently.

2. National regulatory authorities shall provide each other and the Commission with the information necessary for the application of the provisions of this Directive.”

However, this article was forcefully rejected by Germany, in the European Council meeting over the first proposal of the European Commission for the amendment of the TVWFD, due to the highly decentralized system based on lands (Länder-federal states) (Herold, 2013, p. 264). Additionally, Spain was one of the countries that did not want a regulatory body at all and consequentially campaigned in such strong manner for the rejection of the proposal like would have been the “*landing in Normandy*”.⁴⁹

The final text was compressed in one paragraph attributed to the Article 30:

“Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of this Directive, in particular Articles 2, 3 and 4, in particular through their competent independent regulatory bodies.”

More than one member of the Media Task Force reiterated that the European Commission wanted to include this provision to have the obligation for Member States to have independent regulatory bodies.⁵⁰ The argument was enforced by the objective to create a separation between those that create the rules and the actual enforcement, those that apply the rules.

The relevance of the independence of National Regulatory Agencies regulating the media sector in order to protect media pluralism and media freedom could be seen in the EU discussions starting with the revision of the AVMSD (EC, 2005) and was emphasized by Viviane Reding in front of the EP after the adoption of AVMSD (EC, 2007) as being as one of the elements of with important contributions to the “*pluralistic landscape*”(Viviane Reding, 2009). The connection between the independence of the NRAs and media pluralism is given by the same AVMSD in Recital 94 connecting the need of “*appropriate instruments*”, “*the form of the competent independent regulatory bodies*” to implement the Directive “*impartially and transparently*” and contribution to the “*promotion of media pluralism*”. Therefore, independence of audiovisual regulators is translated as independence from economic and political influences in order to promote the external and internal pluralism. According to Herold (2013), “*regulators should be independent from market parties, to be able to foster plurality of different voices in the media market, and independent from political influences, to ensure journalistic freedom and objectivity*”(p. 266).

⁴⁹ Interview with Joan Botella, professor of political sciences at the Universitat Autònoma de Barcelona, ex member of the Catalan Council of Audiovisual, conducted by Ph.D. student Patrícia Maní.

⁵⁰ Interview conducted with Members of the Media Task Force in Brussels, 23.04.2012.

Various reports and policy papers reflect upon the importance of the independence of the national regulatory authorities for the audiovisual environment. The report of the **High Level Group on Media Freedom and Pluralism** (2013) actually included in Recommendation 6 that national audio-visual regulatory authorities “*should be independent, with appointments being made in a transparent manner, with all appropriate checks and balances*”(2013, p. 22). Additionally, Member States need to achieve this independence of media councils “*with a politically and culturally balanced and socially diverse membership*” (2013, p. 21) in order to produce a fair investigation of possible complains, examination of a presence of codes of conduct of media organizations (Recommendation 4). **The European Citizens’ Initiative for Media Pluralism** articulates the significance of independent media supervisory bodies by giving a recent example of the situation in Hungary in 2010:

“Had this proposal of the Commission become part of the AVMSD some years ago, it would have been a clear and enforceable rule that members of the Media Council in Hungary could not have been selected exclusively by the governing super-majority in the national Parliament” (2012, p. 2).

Furthermore, the Policy report of the **Centre for Media Pluralism and Media Freedom(CMPF)** draw attention that importance of existence the independent regulatory bodies it is also increased by the “*legal issues raised by new technologies*”(2013, p. 117). The idea is supported by the example of the internet regulation and the copyright infringements, which “*only independent authorities could be entrusted to decide cases where fundamental rights are at stake*”(2013, p. 117).

An important point related to the issue of Independence of National Regulators after the adoption of AVMSD is the commissioned study to the Hans Bredow Institute as leading project center (2009-2011) on “*Indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive*”(INDIREG).

The INDIREG report was published in February 2011. The objective of the study was not to assess “*the actual level of independence of regulatory bodies*” in Member States but to provide “*regulators, Member States and European institutions with a tool for self-assessment of independence and effective functioning*”(2011, p. 6).

First, one of the objectives of the Member States enlisted in the report is “*to ensure a national regulatory framework [...] is capable of providing impartial media supervision*”(2011, p. 355). For the impartiality to become a reality, the report asks for “*a minimum requirement of independence*”(2011, p. 354) for the regulatory body to function against influences for the government in power, different political parties and the media sector.

Second, the report points out to one slip of the AVMSD where Article 30, referring to the cooperation between the regulatory bodies of the Member States, is focusing only on the existing regulatory bodies and their cooperation and does not mention the situation when one country has no such regulatory body: *“If an independent regulatory body has not been established in the Member State, an Obligation to establish such a body does not follow from Article 30 AVMS Directive”* (2011, p. 356).

The independence of the national regulatory authorities for the audiovisual environment has been outlined by expert groups and brought forwards by civil organization for the situation in Hungary. The AVMSD is clearly missing an enforcement part, which previous reports unveiled.

In 2013, the Commission headed by Ms. Kroes took account of all the recommendations and initiatives expressed above and launched a public consultation on this actual matter of independence of audiovisual national regulatory agencies. The consultation was announced to officially last 12 weeks (from 22 March 2013 to 14 June 2013) but this term was extended with two more weeks until 27 of June 2013. An analysis of the consultation document and the options laid by the Commission it is elaborated in sub-chapter V.2.2.2.

Leading from three points mentioned above by Commissioner Kroes remains the question if there are any other points that contribute to media pluralism in this AVMSD directive and if there are any provisions that could have been included to better protect media pluralism.

Prof Pauwels⁵¹ pointed out to that what is missing from the AVMSD is the ***literacy*** and the ***state aid*** issues. She made a short analysis of each point: regarding the independence of regulatory regimes issue many Member States are saying they already have independent regulatory regimes but how is this independence defined is the problem; regarding the European works, this brings another old debate on how much promotion of European works is achieved when usually the European countries promote only the works of their countries.

Adding to this analysis Prof. Valcke⁵² is observing as a missing point from the AVMSD the support for the local production of content. One more opinion, this time coming from a journalist, former assistant in the EP, Giovanni Melogli⁵³, reiterates the fact that opening of the European market and organization of media market, brought by the AVMSD, falls short in protecting viewers' rights and making any link with the quality of information. And there is the Independence of the regulatory bodies brought as an argument again that should be a provision that makes this independence legally binding for the Member States in order to be no control from the

⁵¹ Interview conducted in Brussels, 06.06.2012.

⁵² Interview conducted in Brussels, 20.04.2012.

⁵³ Interview conducted in Brussels, 04.05. 2012.

governments. The same as Prof. Pauwels, journalist Giovanni Melogi raised the same question “*What is the meaning of Independent?*”

Furthermore, *the opinions of the stakeholders* differ widely when it comes to the three points discussed above and what needed to be included for the protection of media pluralism:

The EPC bluntly agreed with the three points and underlined that this issue should be treated only by the Member States since the EU has no legal competence. Another stakeholder, the Association of Commercial Television in Europe (ACT) only focused on media pluralism from its organization point of view by pointing what the positive aspects for media pluralism can be brought by the work of its organization: “*what has a real advantage for media pluralism is to launch more channels*” with ACT director, Mr Ross Bigam, referring that: “*the further discussion about media pluralism involving more than the number of channels I leave it to the [communication] scholars to be argued.*”⁵⁴

Even if the European Consumers’ Association (BEUC) “*would agree with the three points*” the organization made it clear from the beginning that “*there were more negative points for the consumer than positive*”(in the AVMSD): product placement, advertising issues, especially related with advertising for children, country of origin. Nevertheless, from the BEUC point of view the most positive points are the European quota and the engagement to promote European works, striving to have this engagement to promote European works to the online distribution.

Lastly, EBU wanted to emphasize that for the protection of pluralism there are missing measurements for diversity of content. Moreover, the independence or regulatory bodies is stressed here as very important especially due to the differences between countries and media systems.

Focusing also on the most important points(the new definition of “audiovisual media services”, the extension of the scope of the directive to the non-linear, on-demand, services, the reinforcement of the country of origin principle, the short news reporting principle, advertising and product placement) of the AVMSD for the stakeholders were advanced two main questions by the author of this study: “*What was the most important point in the reform of the audiovisual media policy brought by the AVMSD for your organization?*” and “*How is this point contributing to media pluralism in your opinion?*”

Most of the answers of the interests groups to the first question have been balanced with the second question. It could be concluded that above-mentioned points “*have a marginal contribution in helping media pluralism*”, in line with the opinion of Association of Commercial Television (ACT) director, Mr. Ross Biggam.⁵⁵ These were *the relaxing of advertising rules, product*

⁵⁴ Interview conducted in Brussels, 20. 04.2012.

⁵⁵ Interview conducted in Brussels, 20. 04.2012.

placement, extension to non-linear, exemption of the websites of newspapers and magazines from the scope of the directive, a clear distinction between linear and non-linear.

One of the points that surfaced as highly contested for the future application of AVMSD has been the different regulation for linear and non-linear. The director of the Association of Commercial Television (ACT) mentioned that even if there is additional legislation for the non-linear services there are still no results in application, while the head of European affairs of the European Broadcasting Union (EBU) pointed out that provisions brought by the AVMSD can become at a certain time obsolete. One point the two organizations, ACT and EBU, coincide here is that the AVMSD has a *“lack of vision of the future”*(ACT) referring to the implementation at the national level and also to the increasingly blurred line between linear and non-linear. In the beginning, the AVMSD was regarded as *“a good compromise”* but nevertheless even at that point was *“a little obsolete”*(EBU). Furthermore, by the way the trend is interpreted separates the two organizations again: with EBU seeing the blurring line between linear and non-linear going on a trend of *“downsizing the regulation”* and mentioning that the real danger is that reducing the differences between the linear and non-linear would reduce regulation; while ACT seeing too much of an old *“conservatorism”*, with the general *“impression”* of the EP who believes that *“if we don’t put it there won’t happen”*(referring to the new regulation, new provisions). On the same issue, BEUC is now of the opinion that both linear and non-linear regulation should be at the same level, whereas at the point of the adoption of AVMSD was against the extension of the regulation to non-linear.

As a conclusion, it could be said that the AVMSD brought significant changes to broadcasting regulation regarding the extension of basic regulation to on-demand services, the advertising and product placement but did not bring significant changes to media pluralism policy. This directive focused on the regulation of the internal market, how members of the European Commission clarified⁵⁶. If there is any relation with media pluralism, as it can be seen from the above analysis, it is only a tangential one, a relation which has to be attentively extracted. In fact, the European Commission itself found only a list of three provisions touching media pluralism, as stated by Commissioner Reding in her speech in front of the plenary of EP (Reding, 2009)⁵⁷. Media pluralism is found in this Directive at an even lower level than in 1996 because discussions on media pluralism have been significant lower to minimal in what regarded the consultation process for the revision of AVMSD. It was a sign that media pluralism was moving from statutory to other policy tools as soft regulation or voluntary measures.

The next EC actions directed towards media pluralism can be seen also as a reaction to the lack of presence of the concept of media pluralism in the AVMSD. Either is a good way of filling a gap

⁵⁶ Interview conducted with Members of the Media Task Force in Brussels, 23.04.2012.

⁵⁷ See No.59.

or just a political strategy to cover up the lack of direct action in this issue. In any event, the next initiatives strictly focusing on media pluralism can be regarded as rather more significant than the AVMSD.

The *“three-step approach”* was announced by Commissioner Redig and Vice-President Wallström in 2007 as a mean of *“responding to continuing concerns from the European Parliament and non-governmental organisations about media concentration, and its possible effects on pluralism and freedom of expression”*⁵⁸. There are two main points that have to be analyzed here: the EC approach and the timing on launching of the initiatives.

The approach presented by the European Commission is to analyze and prevent the negative effects of media concentration on media pluralism. It is a straightforward market-oriented approach, which situates media concentration to the center, as the main problem for media pluralism.

Regarding the *time of the launch of the initiatives*, the announcement, along with the presentation of the first step, which will be analyzed in the following section, were held in January 2007. There is almost one year difference before the adoption of the AVMSD and the presentation of the initiative. This anticipation in redirecting the focus on media pluralism towards a new initiative could explain the AVMSD low profile in the issue.

The reactions of the scholars have been less hopeful than the presentation made by the European Commission: *“despite great anticipation and much hope, one cannot shed the feeling that ‘the three-step plan’ is a road to nowhere”* (Komorek, 2009). Furthermore, Klimkiewicz (2009) names the presentation of first step of the *“three-step approach”*, the working document *“Media Pluralism in the Member States of the European Union”*, as another technicality to only monitor media pluralism and not launch an initiative. This appears to be a technicality that aligns with the Issue Paper on Media Pluralism-*“What Should be the European Union’s role”* presented in 2005 for the discussion of the revision of Audiovisual Media Service Directive, which did not brought any concrete legislator results. The timing of launch of the three-step approach *“announced”* that another strategy is taken for media pluralism, while the AVMSD was directed only to improve the internal market.

The following chapters will discuss how this three-step approach evolved across the years.

⁵⁸ Press release, IP/07/52.

V.1.2.5. MEDIA PLURALISM IN THE MEMBER STATES OF THE EUROPEAN UNION-EC COMMUNICATION (2007)

This is the first step of *the three-step approach*⁵⁹, a working document, which was published by the European Commission on January 2007 and which in the working stages, as emphasized by Komorek (2009), took into account the possibility of a “*harmonizing directive*”(Annex 1).

This document started by outlining some characteristics of media pluralism and with a definition of the concept as a reference for the working document. Specifically, the characteristics of media pluralism are described as: “*diversity of ownership, variety in the sources of information and in the range of contents available in the different Member States*” while pointing out that “*diversity of ownership*” came to be identified with the concept of media pluralism (2007, p. 4). This identification nevertheless is not recognized as being exclusive since the European Commission admits that media ownership rules are not self-sufficient to promote pluralism of media and “*need to be complemented by other provisions*” (2007, p. 5).

Therefore, in the conception of the European Commission a definition of media pluralism could be: “*Ensuring media pluralism, [...] implies all measures that ensure citizens access to a variety of information sources, opinion, voices etc. in order to form their opinion without the undue influence of one dominant opinion forming power*”(2007, p. 4). This focus on the citizens and access to information while preparing to form an opinion indicates a citizen oriented approach for the protection of media pluralism.⁶⁰ Furthermore, the European Commission brings the argument that technical developments should be seen as real opportunities and not as new threats because new structures help to a stronger audiovisual European Market that will be a plus also for media pluralism and vote for “*the underlying principle of pluralism to be technological neutral*”(2007, p. 5).

After a brief introduction of the main problems affecting media pluralism in a convergent media, the document is structured according to the issues directly building and influencing media pluralism, either in a positive and a negative way: freedom of expression and freedom of Information; interrelation between politics / economic interests and media; media concentration; cross-border concentration - global competitiveness; media content; internal and external pluralism; pluralism in the broadcasting sector: dual landscape and independent regulators; and technological developments.

The first issue, ***freedom of expression and freedom of Information*** represents an issue that is legally protected in all Member States. The European Commission however observes that is an issue also applied and monitored differently and even with some restrictions in some countries,

⁵⁹ Sub-chapter II.2. for an introduction to the “*three-step approach*” rationale of the European Commission.

⁶⁰ Sub-chapter I.6. referring to the theoretical developments of the media pluralism concept.

which cannot be seen in others. These kinds of restrictions are imposed on internal editorial freedom for the press law.

Another issue is the ***Interrelation between politics / economic interests and media*** is one of the issues that influence negatively media pluralism since *“there is no European Member State where political and /or economic actors do not try to influence media coverage according to their own interest”* (2007, p. 6). Another important role is played by public broadcasters that can enhance media pluralism in a Member State but in some situations these broadcasters face difficult challenges *“including questions of editorial independence, of recruitment of staff and of funding”* (2007, p. 7).

When it comes to the issue that mostly affects negatively media pluralism ***media concentration*** remains the main one. In this respect, media competition law plays an important role at the EU level because it prevents abuses and offers an equal chance to new young market players. Nevertheless, the European Commission makes it clear that EU competition law does not outplay *“national media concentration controls and measures to ensure media pluralism”* (2007, p. 8). Cross-border concentration - global competitiveness is a new process that affects media pluralism. It has two dimensions to be considered: an international and an intercommunity dimension, where the first refers to the non-European investors in Europe and the second with the European investors that extended to the new countries that joined EU in 2004 and 2007. The concerns emerging along this process are dealing with the increasing difficulty of national and smaller publishers to impose themselves on the market in front of the big foreign broadcasters. Moreover, in this situation is much more difficult to apply national media regulations with the national competition to counteract the actions of foreign media owners.

Furthermore, for the issue of ***media content***, this cannot be guaranteed only by the diversity of ownership since what counts here is also the way media content is produced. The European Commission is highlighting that a great step has been made with the proposal of AVSMD that *“includes the right use of short extracts from TV coverage of major events”* (2007, p. 11). Nevertheless, ***internal and external pluralism*** have to be seen together even if it is important to accentuate that internal pluralism *“can be essential for smaller markets”* (2007, p. 11). In addition, internal pluralism can be reached in the audiovisual field by *“imposing programme requirements and obligations in the law or licence”*, according to the European Commission. Therefore, pluralism in the broadcasting sector has to be based on two elements: *the dual landscape* and *independent regulators*. The dual landscape is referring to the fact that media pluralism is strengthened by the presence of both public service and commercial broadcasters. Regarding the independent regulatory

authorities, they ought to play a central role in this respect for the implementation of regulation and protection of media pluralism.

Lastly, the issue of **technological developments** includes the digital television and internet. The digital television brought the possibility for enlarging the number of channels considerably compared to the analogue. A higher number of channels could count for media plurality, external part of pluralism, but at the same time cheaper programming could lead to no internal pluralism, since the content provided is not new one or innovative. Therefore, the European Commission underlines that a balance is needed by the opportunities in distributions the new business models bring and the high-quality programming.

Internet represents, at a first view, a high potential for pluralism with the high participation and low costs. Nevertheless, the threats to media pluralism are represented on one side by *the low quality of information* coming from the unprofessional participants to the dialogue. On the other side are coming from *the way the search engines apply different criteria of selecting the search results*, many times including the pages of advertisers.

The working document has enlisted all the factors affecting media pluralism in the Member States while starting from a definition of the media pluralism from the point of view of the European Commission. However, even if the definition focuses on the *ways of access to the media of the citizens* in order to facilitate *the formation of different opinions*, the Commission sees the achievement of this objective through internal market mechanisms.

The argument started from the idea that media pluralism debate has to be based on the *“reality of the market and the structure of the media”* (2007, p. 5), which is presented as mainly shaped by the *opportunities* of the technological advancements, present for market players as well as for the citizens. And the argument is addressed to the market players when the European Commission proposes actions to allow *“new structures to emerge”* and *“the development of strong European players in the global media landscape helps preserve media pluralism”*(2007, p. 5). Further regulation envisioned by the Commission has two main elements to be based on, a full knowledge of new technologies and business models.

As an observation, the actions proposed by the European Commission appear to be unidirectional, affecting directly the market players and not the citizens. Actions that could guarantee political and cultural diversity and keep a real difference between political and economical interests and free functioning of the media could have been proposed as well.

In conclusion, this working document can be named as a *“brief catalogue”* of the main problems largely discussed by the media scholars⁶¹ during the debates and in the policy documents

⁶¹ Chapter I of this study.

at the EU level⁶² based on documents and data from the Member States and the European Commission. The document discusses several possible actions for the protection of media pluralism in a market oriented analysis.

As a practical result, the “*the way forward*” presented by the European Commission is to build a reliable system upon which to take an action for the pluralism protection. The idea was to start a different study from other studies on media pluralism by identifying “*systematically the range of concrete indicators necessary to measure media pluralism in the Member States*”(2007, p. 17). It ought to include all the discussed points in the working document: media ownership, technological developments opportunities, freedom of expression, freedom of information, interrelation between politics/economic interests and media and media concentration. It will become the media pluralism Monitor and it will be discussed in the next section.

V.1.2.6. INDICATORS FOR MEDIA PLURALISM IN THE MEMBER STATES-TOWARDS A RISK-BASED APPROACH (MEDIA PLURALISM MONITOR-MPM)

The Media Pluralism Monitor (MPM) represents the second step of the “*three-step approach*” towards media pluralism announced by the European Commission in 2007. First, the main characteristics and structure of the tool will be analyzed. A big emphasis will be made on the indicators and their application.

General descriptions of the structure, type of indicators and domains have been discussed at the public consultation in June 2008 with the participation of more than 190 stakeholders in Brussels. The tool has been explained by the experts designing the tool like the leading professor Valcke (2011/2012). However, the actual application of the tool is actually not very well known between the stakeholders. This observation leads the discussion of who are the stakeholders for the application of this tool in the eyes of the European Commission. Who can apply the tool and what have been their reaction and doubts expressed at the public consultation and in their written opinion papers and interviews conducted? In this way this study brings a new way of looking at and analyzing the tool from the stakeholders’ eyes and focusing on certain indicators and their relevance for the end result.

The main motivation to take this direction of analysis was the absolute zero impact the launch of the tool had on the European audiovisual environment. Four years after the launch of the study, one could consider enough time for discovering and creating awareness for the tool. The next step should be the application and evaluation of the results. However, professor Valcke, the voice presenting the tool, was still introducing this study to different stakeholders and media professionals

⁶² Chapter II of this study.

at the *Regional Symposium: Media pluralism and Diversity and Countering “Hate Speech” in Europe* (27 March, 2012) and *The workshop A definition of Media Pluralism in Media sector* (27-28 April, 2012). Application is far behind but not out of reach how the policy advisor Mr. De Cockborne commented⁶³.

The following sub-chapters will analyze the structure and application of the Media Pluralism Monitor, main characteristics, the reactions of the main stakeholders regarding the structure, purpose and application of the tool and the EU institutions and the use of the tool.

V.1.2.6.1. STRUCTURE AND APPLICATION MPM

The tool in itself is presented in three separate documents. The final report is explaining the concept of media pluralism starting with the holistic definition of the concept (See chapter II), the approach and methods to develop the tool for the delimitation of the types of indicators in economic, legal and socio-democratic, the testing of the tool, the process of consultation with the main problems of the stakeholders and the answers of the team of researchers and finally the description of indicators. The second document is representing the user-guide and focuses on methods to apply the document and each set of indicators. Most importantly, this document includes the direct indications of the use of the third document, the Excel, to insert the collected data and obtain the results for the indicators that have been collected and also how to interpret the results.

Focusing on the indicators, these are grouped in three types and as it can be seen in the table below there is not an equal distribution between the types:

TABLE 5.2: Number of Indicators in the Media Pluralism Monitor

166 Indicators	
Number	<i>Type of Indicators</i>
67	Legal Indicators (LI)
60	Socio-Demographic Indicators (SI)
39	Economic Indicators (EI)

SOURCE: Elaborated by the author

The application of the tool is explained thoroughly in the guidelines document with the six risk domains featuring a certain number of indicators and a certain type of indicators according to the type of risk. The differentiation of the six risk domains was a result of the definition of media pluralism that was taken as a basis reference for the entire study. Furthermore, the Basic Domain

⁶³ Interview conducted in Brussels with Mr. Eric De Cockborne, 08.06.2012.

includes all the indicators that could not have been included in the other six five risk domains delimited.

TABLE 5.3: The numbers of the Indicators per Type and Risk domain (MPM)

<i>Risk Domains for Media Pluralism</i>	<i>No. of EI</i>	<i>No. of SI</i>	<i>No. LI</i>
Basic Domain	-	-	11
Cultural Pluralism in the Media	6	25	13
Political Pluralism in the Media	-	21	16
Geographical Pluralism in the Media	6	12	7
Pluralism of Media Ownership and Control	15	-	13
Pluralism of Media Types and Genres	12	2	7

SOURCE: Elaborated by the author

The type of Risks and the Indicators are looking also to follow a quantitative methodology, a measurable one and as little as possible qualitative ones. The three types are also covering three types of Risk Areas: *Supply (S)*, *Distribution (D)* and *Use (U)* looking in this way at the basic external and internal characteristics of media pluralism. Since the three risk areas are associated with the media value chain the **Use** can be associated with more qualitative methods, while the **Distribution** and **Supply** with more quantitative methods of application. As observed in the user guide, the Use area received only 11 indicators, while the Distribution are received 21 indicators and the Supply area the biggest number of 134 indicators (p.30). This structure and distribution of indicators is in line with the objective of building **a user-friendly tool** and a quantitative predominance of methods. The one thing it is also in synch is with the general tendency of relying more on the supply and distribution side than on the user side.

In the next section the characteristics of the tool are analyzed with the inputs from the media experts.

V.1.2.6.2. CHARACTERISTICS MPM

The MPM represents a diagnostic tool for media pluralism developed at the EU level, which can be considered a substantial advancement for the EU legislators and for the EU media specialists for the audiovisual media. The tool contains 166 indicators that could be translated in 166 characteristics of media pluralism.

Moreover, this tool represents a big advancement for media pluralism debate as a theoretical concept. Regarding the political environment, this tool it could provide evidence for up to date media policies or future changes when needed. Nevertheless, even if there is a tool at the

disposal of European countries to apply and detect the eventual risks for media pluralism, there is no prove that all these indicators included in the tool are widely accepted by the Member States. And the tool does not pretend to be applied to all Member States, does not pretend to be applied simultaneously and on contrary can be applied by any Member State, at any given time and not even by looking at all types of indicators at the time, as commented by the team of researchers. Harmonization is not the objective of this tool and the authors wanted to emphasize in various occasions this point especially coming as a tool developed at the EU level and which implicitly could raise this suspicion:

“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”(MPM, 2009, ix)

and

“During the meeting, the representatives expressed their main concern, which is that the study would lead to harmonisation initiatives in the area of media pluralism and concentration, in the form of a directive. The research team explained that the sole purpose of the study is to develop an objective measurement tool that will increase transparency about the level of media pluralism in Member States” (MPM, 2009, 19)

and

“The MPM itself does not call for a particular policy approach. Neither should it be interpreted as a call for harmonisation of the policies in the area” (MPM, 2009, p.134)

The main characteristics presented in the main report and reiterated in the user guide are reinforcing the main starting ideas for this tool which have been described above: a diagnostic tool with not harmonization objectives. Other characteristics include: a neutral tool, concrete, holistic, risk-based, practical and user-friendly.

Starting with the characteristics of a **Neutral tool** and a **Concrete (Objective as possible)** these place the MPM in an objective area of collecting information through indicators and leaving the results to *“speak for themselves”*. Here have been encountered some problems in associating the tool a neutral characteristic when quantitative and qualitative data are to be included, which require in the end a certain interpretation from media professionals or anyone applying the tool. This point has been clearly emphasized by Prof. Mancini and Prof. Gambaro in their interventions in the workshop *“A definition of Media Pluralism in Media sector”* (27-28 April, 2012) and other stakeholders which raised this concern during consultation, as acknowledged in the final report (p. 147).

One point has to be made clear and that is the presence of experts and the implication these have in collecting, introducing and applying the data. There cannot be an application without a physical person and in the case of the socio-demographic indicators even a team of experts is advised to be used to apply the tool. The difference is made in how much the contribution of experts in the application the tool can be reduced and once there, how efficient and objective this application can be done. In this direction, the tool has included in the user guide also guidance for interpretation, to reduce these kind of risks and worries that can appear.

One difficult way to prove the ulterior neutrality of the process and consequentially the neutrality of the tool is the ability to later asses the correct interpretation of the results. There is no permanent independent body that could function as a control body and for the present time there is no plausible reason to have such a body since there is no undergone implementation yet. Moreover, since the tool has a voluntary application the disclosure of the results is voluntary also and consequent evaluation by any other body, especially NGOs from the country that do not have the man power and abilities to apply the tool is hindered.

This struggle to prove the neutrality of the application lies with the arguments expressed above like the ability to later assessment of the interpretation of the results by an external body than the initial one, the voluntary disclosure of the results. To these items could be added the financial difficulties from applying the tool for a minimum one year and having also to finance an external team. One other idea to build the "*robustness of the methodology*" came from Prof. Tambini at the same workshop "*A definition of Media Pluralism in Media sector*" by proposing the application of the tool in the same country by two teams simultaneously. This approach would build the needed reassurance in the final results that come from different teams applying the same framework on the same sample.

Moreover, Prof. Valcke mentioned that in the case of application of the tool by the national regulators this would be interpreted as an actual evaluation of themselves, of their work as regulators. In the end will not be an easy job to keep the objective application of the tool and consequentially it could result in a reluctance of the regulators to actually start any application of the MPM. This is reinforced by the Prof. Tambini, which made a similar observation that any application of this kind of tool will come with a reason behind, especially coming from national authorities. The results would ask for action in case of negative results. Prof. Valcke added that nevertheless this application from the national governments is not the only motive for a lack of application at the national level, the main reason comes from the actual remit of the national regulatory agencies which does not include this task and consequentially does not have the budget to develop this initiative.

Lastly, it has to be acknowledged the effort of the designing team to make the legal indicators as “*quantitative*” as possible in order to avoid at the most possible the qualitative part that could give place to subjectivity.

Continuing with other characteristic, the tool is described as a ***Holistic tool***, which represents the holistic definition of the concept of media pluralism, with six dimensions to focus on. The suggestion made in the user guide goes to the fact that all the indicators analyzed have to be interpreted in the wider context of the country of analysis and “*need to be interpreted in the light of related indicators in order to have a complete and correct analysis of the situation*”(p. 21). This suggestion leads to the actual unfeasibility to apply only parts of the monitor, or to look at only some of the risks chosen as such by the decision maker. The tool has to be applied as a whole to have a comprehensive image of the situation. And the whole application would need different approaches for different indicators. Different teams of experts worked to the different indicators according to specialties: legal, socio-demographic and economic. This approach led to different applications of the monitor which are actually understandable since the types of indicators are different. These build three different types of applications that at the moment of application the execution team has to be aware of them and which will be discussed in the following paragraphs.

Therefore, ***the legal indicators*** are analyzed in two steps: firstly applying a questionnaire to see if the needed legislation for a certain indicator is in place and secondly to see if the legislation is effective, if there have been previous sanctions and changes form an existing regulatory body.

Furthermore, ***the socio-demographic indicators*** are researched through case-studies, media and audience samples or different surveys. Undoubtedly some of the indicators are much more difficult to answer to and apply the required methods in the guide on the practical side, especially when coming to socio-demographic indicators: e.g., C.1 Risk: Insufficient media representation of European cultures has two social indicators looking at the Promotion of European works in television broadcasting in linear (C1.1.) and non-linear services (C1.3.). These indicators are answered by looking at a media sample: at the generalist TV channels and the catalogues of five non-linear services providers with larger subscriber base. On the other side, for the G.5. Risk: Dominance of a limited number of information sources for local issues the social indicator of G5.1 News source preferences of audiences for local issues (what is the primary source of information?) deals with audience sample and questions to be addressed to this sample for the proffered media sources on the local issues.

Lastly, ***the economic indicators*** are looking at the aspects that can find and answer in the National Statistic Agencies and be collected much easier than the other two types of indicators. The

Risk T3 – Lack of sufficient market resources to support range of media has the economic indicator T3.1. Ratio of consumer spending on different media per capita to GDP per capita which can find an answer in the method presented above.

Another characteristic is that it is a **Risk-Based monitoring tool**. With this characteristic the tool cannot give policy answers or any solutions to the problems it might find. Regarding this part the team of experts recognizes that indicators included cover newspapers, broadcasting and new media but is dealing with an evolving environment where improvements need to be made along the way. This idea is address by Prof. Craufurd-Smith in the workshop “*A definition of Pluralism in media sector*” suggesting that for “*the tool to be a diagnostic tool it might be important to see what the diagnostic relates to and which aspect of that debate about media pluralism, those tools, can be important for; how those different dimensions can help us identify particular aspects of the problem of media pluralism*”. Therefore, the idea promoted by Prof. Craufurd-Smith is to look at the problems from a different direction and see “*what media pluralism is trying to resolve*”. However, looking at only one problem or different problems that media pluralism is trying to resolve does imply that it could exclude analyzing and protecting all the parts of media pluralism. Consequentially, some other hidden problems that can exist in a country could be left hidden with the media landscape and media pluralism insufficiently analyzed.

The previous characteristic relates with the characteristic of **Evolving tool**, by including traditional media but also elements from the new media. Nevertheless, prof. Valcke mentioned that if one looks to the evolving characteristic of the media this is and needs to be an evolving tool. Therefore in 2012, three years after the release of the tool in the public domain this is considered to be actually left behind in what regards the new media, idea advance by many stakeholders like ACT, EBU and also recognized by professor Peggy Valcke.

The last characteristic refers to the **Practicability and User-Friendly** structure of this tool. This part is enforced by the extensive user-guide and the excel document for the introduction of all data. The objections that come with this tool are connected with the extensive number of indicators that need a team of minimum 3-5 people to apply the tool and that certain parts of the tool, referring to the socio-demographic indicators, need the participation of media specialist to apply the tool and interpret the results despite the extensive interpretation guidelines.

It is particularly important to analyze the reactions of the stakeholders to the application and structure of the MPM. This analysis will be conducted in the next sub-chapter.

V.1.2.6.3. STAKEHOLDERS REACTIONS TO MPM

The team of experts held a public consultation with the stakeholders regarding the MPM on 8 of June 2009. However the participants to the public consultation had the opportunity to discuss and also to give written contribution as a feedback and the MPM was also discussed during the interviews.

One of the main concerns regarding the MPM, as the scholars identified, it was related with the actual application of the tool: *“Our main concern is [...] with the (unavoidably) subjective nature of the value judgments”*(ACT, Feedback Form, p.4); *“the implementation for political or regulatory purposes of such detailed and diverse indicators could never be objectively deployed”* (EPC, Feedback Form, p. 1). The final report also summarized the main comments related to the overall evaluation of the tool that were: *“strong reservations about the practical application of the toolkit”*(p. 145). As a consequence of these reactions one of the questions addressed to Prof. Valcke in the interview was related to the type of tool MPM is: a political, a complex technical, normative study and the answer came that *“depends on what purpose it is used”*. On the one side, this openness and public test leaves the door open to these kinds of fears and comments coming from the industry. On the other side, if only the governments could use this tool, it’s the purpose will still be contested.

Another point extremely visible is the complexity or the number of indicators that have to be analyzed. Prof. Pauwels mentioned that even if the tool wanted to be *“as simple as possible but as sophisticated as necessary”*, as Prof Valcke mentioned, the tool is very extensive and if it is applied *“we would know nothing in the end about media pluralism”*. Prof. Pauwels made a reference here to the attempt of the regulator in Flanders to apply the tool and their efforts to look at each indicators, attempt which in the end had to be abandoned mainly due to the highly amount of information that needed to be gathered. This criticism comes also from the part of European Broadcasting Union (EBU) which sees the tool too complicated and suggests that *“member states need basic criteria to be used by all member states, an objective criterion for comparison”*.

One of the points raised by the industry (ACT, p.3) was related to the Risk T4.: -Lack of sufficient resources to support public service media and Risk T.5- *“Insufficient engagement of PSM in the new media”* as such. The explanation comes that in certain countries the actual opposite of these risks could create a media pluralism deficiency, as Mr. Biggam explained in the interview. And the examples are Austria and Ireland, countries with a complete monopoly which represents a risk for media pluralism. Nevertheless, it has to be pointed out that these two countries have access to the UK and German channels, which eliminates the monopoly idea. Furthermore, the team of experts acknowledged that there has been reached a balance between the indicators and by having the under-representation of PSM as a risk does not hinder the position of private broadcasters since

there is another example of Luxembourg where PSM does not exist and the monopoly is represented by private media.

Another point observed by the team of researchers as very important for the print media was that *“newspapers and publishing houses have the right to be biased”*. Moreover, during the interview with Ms. Angela Mills Wade (EPC) addressed the issue of use of results of MPM from the freedom of speech point of view because the main: *“skepticism is coming from the purpose of monitoring something rather difficult like freedom of speech”*. The way the tool is employed, *“could lead to unintended consequences for freedom of speech and also for an economical development of a company”*.

The new media, a point made also by Prof. Valcke, is one of the contested parts not from what indicators represent new media but through what indicators are missing in representing new media. This under-representation is motivated by the study team that some indicators that represent new media are included and nevertheless the prominence of the new media for the larger population is not as big as the traditional media as the time of the construction of the tool.

The indicators mentioned in the final report that include new media are mostly related with the infrastructure: *“Several indicators also assess risks related to infrastructure provision (e.g., 09.1, P7.1, G2.6, G6.3 and G6.4, T1.6, etc.)”*

Another focus is on the representation of **traditional media** in the new media and here the PSM has an important place for the PSM with the T5 Risk of *“Insufficient Engagement of PSM in the new media”* with the indicators T5.1 to T.5.3. Furthermore for the Geographical pluralism domain there is attention given with G1.1./G1.2. to the local/regional media also for the online with the presence of news websites.

Regarding the focus only on **new media** there is the example in the *“Pluralism Ownership and Control”* domain with the *“Risk of High ownership concentration in internet content”* provision including indicators O.6.1 to O.6.3.; in the Pluralism media types & Genres with T1.5. looking at the capability of the user to access new media alongside traditional media, which can encounter huge differences between Member States, where some of the reasons of under-representation of the new media are the budgetary power of the users. An important risk focusing on the **end user** is the T.6 *“Insufficient attention paid to public participation”* with the indicator looking for the proportion of online media offering space for publicly available comments and complaints. On the same line, for the political pluralism domain there is the Risk P.8 *“Insufficient citizen activity and political impact in online media”*. This trend on the new media plays an important role for the freedom of expression and freedom of information opening the user participation to the online content. The inclusion of the new media in itself has been in this tool directed to the presence of the user online

disseminating new ideas, opinions, political views independently from the content of an article or a video content, giving a glimpse of how media pluralism is making its presence in the online media.

Even if the presence of new media is not as high as the traditional media for the entire EU population, when it comes to differences between Member States the reality is that certain countries are embracing at a higher rate the new media consumption than other countries and this could lead to huge differences if the MPM would have been given a higher space to new media indicators. There is actually now an imbalance towards the traditional media and while the stakeholders, as mentioned in the final report (p. 139) are looking for a higher balance, the study team finds it right that it is still too early since the balance does not exist yet at the user side. And rightly one, they have the first step, the working document presented by the European Commission to show the real situation. However, what has a greater weight, for the new business models developing on the new media and for the part of population relying on it is the actions of the search engines and the influence these have on the research query, as well as the migration of the traditional media into new media or new models developing directly into the new media like the exclusive online channels and newspapers or the Google News types.

Regarding the period of the analysis, four years after the launch of the tool, one of the contestations made at the time of the revision of the tool and along the way after the launch is the usability of the tool and the evolving characteristics for the addition of new indicators in line with the new technologies. The two seem at a time interrelated since the lack of certain indicators actually lead the industry to affirm that it is an “old tool” already after three years. The usability has two ramifications: the complexity of the tool translated in number of indicators as well as methodologies of application and the purpose of application, as seen above described by the scholars and stakeholders.

In conclusion, the purpose of the tool of diagnosis is served very well by the complex and evolving nature of the tool but burden the public interest organizations, which would actually be inclined to apply the tool, especially with the financial and specialist work they would need. On the other hand, the purpose of application, the actual action that needs to be taken after the results are in place hinder the actual national regulators to invest in this tool not only for the time needed to be spent and people involved but mostly for the effort to have the changes that would affect their status quo.

V.1.2.6.4. THE EUROPEAN INSTITUTIONS AND THE MPM

The Commission headed by Viviane Reding launched this initiative of MPM and even if the work was commissioned to a group of experts the basic requirements for the tool remain of the

decision of the Commission. Therefore the Commission stressed the importance of the construction of a user-friendly diagnostic tool to be released into the public domain, based on a holistic approach of a definition of media pluralism and based on the three types of indicators: economic, socio-democratic and legal. There was no immediate or previous declaration for an EU-wide application of the tool by the Commission, since there wanted to be a clear separation between the scope of the tool and the harmonization process. Moreover, after the launch of the tool the Commissioner changed and the new Commissioner Kroes did not continued the initiative of the previous Commissioner leaving unfinished the third step.

The political response of Commissioner Kroes is described as a very pragmatic one by the team of the Commissioner since when this team started the MPM was already there, on the public domain, a **completed job**.⁶⁴ The Commissioner did not wanted to impose the monitor upon the Member States and even if the MPM is seen as very useful “*there are other ways to achieve the same objective*” like the initiatives started in 2011 and which will be discussed in the next chapters. The paradox is that without the application of a diagnostic tool, the objectives to be achieved cannot be easily defined according to the real situation.

The application of the tool could have been brought much clearer and faster results to see the objectives and where the competencies of the European Commission could have been met, especially when new competencies could have been discovered as needed for the commission in this area.

The European Parliament seems to share this last point and reacted to the stand-by position of the European Commission and proposed the application of the tool by the European Commission itself. There were several written questions to the European Commission by MEPs: Tavares, Trüpel, Rinaldi, Portas, Le Hyaric, Alvaro, Badia i Cutchet(Annex 5, 6 and 7) asking the following questions:

“Could the Commission tell us how much was spent on this study?”

If the Commission considers that media pluralism is a competency of Member States, why did it ask for this study?

Does the Commission consider that, even though the EU has spent resources on this study and on the development of this tool, it will never be implemented?

Does the Commission agree that there is an increasing need for a tool that would be implemented by an independent entity to monitor media pluralism in EU Member States, especially when we consider recent cases which reveal that there is a real problem with media pluralism in the majority of EU Member States?

⁶⁴ Interview conducted in Brussels Ms. Lorena Boix Alonso, 01.06.2012.

When is the Commission going to put in practice the new instrument with indicators for media pluralism?

According with the previous plan presented in 2007 is the Commission going to issue a communication on media pluralism?"

The answers of the European Commission focused mainly on the actions of the new Commission:

*"Given these concerns the Commission has decided not to await the results of a lengthy monitoring exercise on all aspects of pluralism and embracing all Member States. EU strategy should instead find solutions to actual problems. The Commission therefore launched a High Level Group (IP/11/1173(1))"*⁶⁵.

This point was underlined also by the funcionarios in the European Commission that an application from the European Commission would need a big contract, a big team, a tender procedure which will take 6-9 months and the work could be presented between 18 months to 3 years.

Even if there is a highlight of the actual direction and the fact that MPM is in the public domain there is hope in the actual declaration that: *"The Commission does not rule out deploying the tool itself at some point in future if appropriate"*. Another answer directs to the actual responsibility of the Member States to safeguard media pluralism and that a way of doing so is by implementing the MPM themselves, voluntarily: *"safeguarding the pluralism and the media freedoms the principal obligation of the member states (and to their national courts)"* (E-001014/2011)⁶⁶.

The European Parliament presented a Pilot Project Proposal through the MEP Rui Tavares on behalf of the Greens/EFA group, proposing a 2 million euro budget for the application of the MPM in the Commission Draft Budget for 2012⁶⁷ (Annex 8). The evaluation received from the European Commission was a D. The lower is the grade given by the European Commission the lower the possibility for financing from the next year EU budget and the implementation of the pilot project proposed by the European Parliament. Therefore, the project was rejected from the budget plan for 2012.

The contribution of Mr. Melogli, International Alliance of Journalists, was the most critical towards the European Commission: lack of political will *"if the MPM would be applied the Commission would have to say: Hungary you have a problem which would create institutional frictions with the member states"*, the European Commission waited one year and there was no

⁶⁵ Press release: IP/11/1173 .

⁶⁶ Answer of Ms. Kroes in name of the Commission. E-001014/2011.

⁶⁷ PP 33 08 10: Pilot project to enable the implementation of an already existing Media pluralism Monitoring Tool(MPM) for assessing media freedom across the EU.

action, while the formal argument is that the MPM was the work of the previous Commissioner Reding. Referring also to the lack of political will, Ms. Avadani (Executive Director of the center for Impendent Journalism in Romania)⁶⁸ commented that when it came to the MPM completion there was a difference between the way the European Commission presented the completion of this step and the normal “*communicative*” way of promoting the work of the European Commission. She summarized this idea by pointing to the difficulty to actually find the tool on the website of the European Commission in the beginning, in the so called “*public domain*”.

Adding to the first argument emerged the one that now the monitor is too old for the actual media ecosystem to be applied. Melogli acknowledges that application is difficult and the EP tried to push the application and failed. Nevertheless, Melogli mentioned that for the budget of this year another pilot project will be introduced to improve and apply the monitor.

While the MPM is not applied to the present time, the dilemma remains with the stakeholders pointing out to the European Commission for lack of political will to apply the MPM and the European Commission pointing out that it cannot be restricted to application only to the European institutions but also can be done by the national regulators and any other ONG and interested organizations.

And in 2013 the breeze suddenly changed and with it the direction of the European Commission of “*ignoring*” the MPM. Commissioner Kroes announced the support for the application of the tool in the Plenary of the European Parliament (20 May, 2013), during the debate on the adoption of the Motion for a Resolution on the “*EU Charter: Standards Setting for Media Freedom across the EU*” (Annex 9).Commissioner Kroes announced:

“we are about to allocate a grant to implement the Media Pluralism Monitoring tool in 2013 on the basis of a budget allocated by you[European Parliament]. This tool will give us a much more coherent overview of where pluralism is under threat across Europe”(2013).

The Commissioner refers to the Pilot Project from the EP for this budget to allocate 1 million euro for the application of the Media Pluralism Monitor (Annex 10). The announcements is supplemented by a working project for a European Center for Press and Media Freedom and for a next launch of a consultation for these two initiatives: “*We plan to launch a call for proposals very soon.*” This decision comes after a lack of endorsement of the Media Pluralism Tool from the beginning of the mandate of this actual European Commission (2010-2014). Contrary to the efforts

⁶⁸ The discussion with Ms Avadani (representing Romania as one of the 9 countries for the Initiative) was held at the end of the Citizens’ Initiative for Media Pluralism,31 May 2012. This was not a formal interview only a spontaneous 10 min discussion due to the presence of Ms Avadani to the meeting.

of the European Parliament, mentioned above, members of the European Commission⁶⁹ did not suggest in 2012 any possibility for an upcoming implementation of this tool. Actually, the pragmatic way of Commissioner Kroes has been emphasized while presenting the new initiatives focused on media pluralism and media freedom: the creation of the High Level Group on Media Freedom and Media Pluralism (HLGMFP) and the establishment of the Center for Media Pluralism and Media Freedom (CMPF) at the Robert Schuman Institute. The outcomes of these initiatives will be discussed in the following chapters but it is in the interest of the present analysis on the MPM to highlight the positions of these experts regarding the tool.

The HLGMPF is labeling the MPM as “*a first effort which still needs considerable improvement*”(2013, p. 19), without any reference to the actual improvements that need to be done. The analysis of the HLGMPF is actually limited to this short “*evaluation*” without any substance and sound support, except the observation of being a tool criticized for being cumbersome to apply. Therefore, the European Commission did not have any strong evaluation towards a future application of the tool coming from the HLGMPF. On the contrary, the HLGMPF actually presented a negative evaluation.

The contribution of the Center for Media Pluralism and Media Freedom (CMPF) identified the first version of the MPM as a “*significant example of designing a neutral and standard tool which is applicable across countries and provides measurable outcomes*” (CMPF, 2013, p. 19). The tool was introduced in the CMPF study alongside different approaches of measuring media pluralism and media freedom, while entering the category of comparative and quantitative research strategy. However, the MPM cannot completely be included in the category of the quantitative research, no matter how much the research team tried to reduce the qualitative part.⁷⁰ The socio-demographic indicators are the ones that are mostly based on interviews and evaluations of the viewers of the *quality* of the media. Additionally, the final evaluation needs an expert group to compile both quantitative and qualitative indicators.

Therefore, the evaluation of the CMPF, does not find the MPM as the best tool to be applied in reflecting “*the complex nature of the phenomena*”(2013, p. 21), since the MPM is presented as a quantitative tool. The conclusion asks for a combination of methodologies, of qualitative and quantitative tools, whereas there is an acknowledgement of the lack of “*unanimity on the most appropriate methods for measuring media pluralism across Europe*” and especially “*when framing a comparative analysis*”(2013, p. 25). This second contribution does not present a support for MPM application by the European Commission also.

⁶⁹ Interview conducted in Brussels with Members of the Media Task Force, 23.04.2012; Ms. Lorena Boix Alonso, 01.06.2012; Mr. Eric De Cockborne, 08.06.2012.

⁷⁰ Analysis on V.1.2.5.2.

The only supporting initiatives are the ones in the shape of Policy Projects and inquiry questions from the European Parliament for the application of the MPM. Despite little evidence of support from the recent policy reports advance by the experts, the European Commission advanced the support for the application of the MPM this year with the support from the European Parliament.

In October 2013, the European Commission awarded 500,000 euro to Centre for Media Pluralism and Media Freedom of the European University Institute at Florence (CMPF) to actually update the tool with new indicators including the new role of the internet and also will apply a test and pilot-implement the tool.⁷¹The announcement has been made by the CMPF and not by the European Commission in a Press Release.

The next chapter will analyze the Media literacy, another initiative from the Commission headed by Ms. Reding, and later on the focus will be on the actions of the present Commission headed by Ms. Kroes (2010-2014).

V.1.3. MEDIA LITERACY

A vital sector for all ages in this new digital environment, media literacy holds a great deal of responsibility: *“media literacy is a key pre-requisite of the twenty-first century”*. The motivation for the inclusion of this sub-chapter is the close relation of the media literacy with the media pluralism concept. Media pluralism protection can benefit from the results of the media literacy programmes providing the ability of the media users to access the media, critically read the media and also participate to the media process. Without an active media user, media pluralism cannot attain its objectives. Therefore, this sub-chapter aims at discussing all the advantages media literacy can bring for the media pluralism.

The main objectives of this programme are to create for everyone the ability to:

- Access the media
- Understand the media and have a critical approach towards media content
- Create communication in a variety of contexts.

The efforts of Media literacy are extended to all digital media starting with television and cinema, radio, internet and print media. The section was introduced by the European Commission via a Communication in 2007 and it is also a way of supplementing the provisions of the AVMSD, more specifically Article 33 on monitoring and reporting on the issue:

⁷¹ The EU Commission awarded a grant to the CMPF to test and pilot-implement the "Media Pluralism Monitor", Retrieved 18 October 2013 from <http://cmpf.eui.eu/News/All/131015MediaPluralismMonitor.aspx>.

*“Not later than 19 December 2011, and every 3 years thereafter, the Commission shall submit to the European Parliament, to the Council and to the European Economic and Social Committee a report on the application of this Directive and, **if necessary, make further proposals to adapt it to developments in the field of audiovisual media services**, in particular in the light of recent technological developments, the competitiveness of the sector and levels of **media literacy** in all Member States.” (AVMSD, 33)*

Immediately in 2008, the EP adopted a *“Resolution on Media Literacy in a digital world”* where the first paragraph starts with a reference to the actual audiovisual framework with both reference to media pluralism and media literacy: *“whereas the media make themselves felt in politics and the day-to-day life of society; whereas a high degree of media concentration can endanger media pluralism; and whereas media literacy is therefore central to political culture and active participation by Union citizens”*(2008b, p. 10). The link between the two values is coming from the capability of the media literacy not only to open the horizon and of an individual by increasing its capabilities to access the new media, but also makes this individual capable to participate to the creative industries and give back his own input and experience. Here, the EP resolution emphasize also on the capabilities of becoming a journalist and spreading the content in a professional-like manner.

The importance of integrating this media literacy in the educational system of the Member States is also vital for diminishing the inequalities that exist between different regions and closely linked with *“the degree to which ICT is integrated and used within education”*, as the report clearly points out.

In the end, ***a pluralistic society is build on media literacy*** *“that helps people to strengthen their behaviour as active citizens and their awareness of both rights and duties [and] affording them a deeper insight into the principles and values of professionally produced media content”*(2008b, p. 11). This kind of setting, with a literate end user capable to read the media content and appreciate the different messages from which it can form opinions and also be capable to give back an educated opinion and create content of its own, is the perfect cradle for media pluralism to flourish.

On the set of this 2008 resolution of the EP, where the European Commission is invited to adopt a recommendation and develop an action plan on media literacy, the following year the European Commission issues a Recommendation in this direction (2009b). This recommendation inserts the advice directed to Member States to invest and support the actions to create awareness of the importance of media literacy and cultural heritage and increase the literacy levels. Moreover the Member States are encouraged to look for ways to explain and introduce the media literacy as a

subject in the educational curriculum. Lastly, the media industry role in increasing the media literacy is highlighted by having the power to provide *“information tools relating to digital content and search engines, awareness-raising campaigns about techniques used for commercial communication purposes (product placement and online advertising), information packs for young people on the processing of personal data, information days on the creative economy and copyright”*⁷².

Some of the advices of the European Commission could be considered bold ones, especially directed to the media industry but at the same time these have an increased potential to raise media literacy with the issues that are to a large extent unknown and not easy to apprehend on itself when it comes to legislative acts and the information of the youth for their conduct with the digital media.

Media Literacy needs to receive a higher interest from the Member States because these are tools to ***formation of knowledgeable individuals, better prepared and capable to foster media pluralism in the new digital environment***. A link has to be made here with the literature on the concept of media pluralism (Sub-chapter I.6) and more specifically with Klimkiewicz (2008) that argues for the importance of the ability of the media users to *“critically read media content, distribute [...] and generate”*. The *“potential of the full usage of pluralism [...] depends on the end user”*, on the ability of the end user to understand media content and participate actively.

Taking into consideration the possible positive influence of the media literacy initiative, enumerated above, and the needed continued application, this type of programs need to be extended in the future at the EU level.

V.2. COMMISSION HEADED BY NEELIE KROES (2010-2014)

Introduction- Profile of the Commissioner Kroes

Commissioner Neelie Kroes received the portfolio for Communications after completing a previous one as the Commissioner of Competition (2004-2009) where she defended her trust in the free-market principles, as highlighted by the MEPs at the investiture hearing in the European Parliament. She has been named by Malcolm Harbour, member of the Internal Market and Consumer Protection Committee in the European Parliament, a *“competition champion”*, for delivering a highly competitive telecommunication market encouraging investment and tackling cases of market dominance for different industries, the fight against the cartels, which has been named by the Commissioner Kroes itself as a *“top priority”* of the past Commission on Competition⁷³.

⁷² Retrieved from http://europa.eu/legislation_summaries/information_society/strategies/am0004_en.htm on February 2012.

⁷³ SPEECH/09/375.

She was in charge of the Directorate for information Society & Media (DG INFSO) until June 2012 when the DG was reorganized. The new directorate general, starting with 1 July 2012, is named Communication Networks, Content and Technology (CNECT) or DG Connect. Media is part of G1 Unit: Converging Media and Content. Within this new redistribution the Media Task Sector, directed at the media content and media pluralism initiatives, is still in place.

It is important to know that the background of the Commissioner Kroes is in economics with a Ph.D. obtained from the Rotterdam University. A Dutch national, Ms. Kroes held a series of positions at the educational level like the president of Nyerode University, a private business school and assistant professor in economics at the Rotterdam University. For her political background she has been a part of the Dutch Parliament. Nevertheless, her background in economics has been the most notable with many participations on the board of several companies. This strong business background questioned her first nomination as Commissioner for Competition (199-2004) under the Prodi Commission.

The Investing Hearing-EP-2012

The hearing for her appointment was held on 14 January by the European Parliament Committee of Industry, Research and Energy (ITRE), where also participated members of other, notably the Culture and Education Committee (CULT). There were two points of discussion that held a resonance for this study.

As a first point, the members of ITRE committee raised the question of network neutrality no more than four times. Actually, a member of the European Parliament (MEP) forced an answer to have a clear opinion of the future Commissioner for the support of the network neutrality issue: *“Are you ready to commit yourself to protecting the neutral network of the net?”* addressed by Tsoukala Ioannis (MEP, PPE). The answer of the future Commissioner stressed on the need of collaboration between the European Commission, Member States and the national regulators.

This emphasize on the Network Neutrality (NN) is made because recently has emerged a theoretical connection with media pluralism. The principle of NN is based on the openness of a network that *“treats all it carries equally, indifferent of the nature of the content or the identity of the user”*(Wu, 2010, p. 202). According to Cave and Crocioni (2007) the most important elements building the net neutrality framework are *“no prioritization (or no charging for prioritization) and a prohibition against blocking access to specific websites and applications”*(p. 671).

Therefore, NN is described as a principle that allows to link *“anti-discrimination regulation with network innovation”* by giving the *“users the right to use non-harmful network attachments or applications, and give innovators the corresponding freedom to supply them”*(Wu, 2003, p. 142).

Moreover, it protects in the new media environment along the democratic interests of freedom of communication (VanCuilenburg & McQuail, 2003), freedom of representation, freedom of information and of expression promoted by media pluralism (Gibbons, 2000), the opportunities “to widen social access” (VanCuilenburg & McQuail, 2003; Curran, 2005) and the participation of the end users (Klimkiewicz, 2008). Brief, this principle is strongly related with the internet and an approach of this issue, would also mean an approach of the media pluralism over the internet, which ultimately addresses the regulation of the internet in itself.

The other point of discussion during the hearing came from the members of the Culture and Education Committee (CULT) was the content as main focus that the Commissioner needs to have in its actions for the mandate of the future Commission. Mr. Cavada (PPE) indicated to the written answers of Commissioner Kroes and the introductory speech at the hearing which did not made any reference to content and regulation but only about the organization of the industry. In that sense Mr. Cavada asserted that “*we have a problem if your term of office solely looks at investment systems*”. He continued that without content the structure is worthless and the content will flow from the outside (of the European Union). And for this he names the division between media and culture at the level of portfolios as being a mistake. Ms. Honeyball (S&D) took the same direction in pointing to the need of the Commissioner to look at content and quality and actually asks directly for concrete answers to ensure media pluralism across Europe from Ms. Kroes. Ms. Kroes acknowledged the need for content focus and for a roundup with experts to identify the problems with media pluralism and find a common solution. As an example of this strategy, Ms. Kroes developed several soft-regulatory measures like: the establishment of the **High Level Group on Media Freedom and Pluralism** (HLGMFP)(2011), **The Centre for Media Pluralism and Media Freedom**(CMPF)(2011), the **revision of the Media Pluralism Monitor** commissioned to the same CMPF in 2013 and the establishment of the **European Regulators Group for Audiovisual Media Services** (ERGA)(2014).

V.2.1. HIGH LEVEL GROUP ON FREEDOM AND PLURALISM OF THE MEDIA (HLGMFP) (2011)

The High Level Group (HLGMFP), formed in November of 2011 by the Commissioner Kroes as a fully independent group, was invited by the European Commission to analyze and to provide recommendations on limitations to media freedom from political, private and commercial interferences; the relation between media concentration and media pluralism, the situation of journalists and the status of regulatory authorities. The expected answer was to provide a political response, which will not only look at the 2011-2012 situation but should also to asses future developments. Essentially, the main objective of the group was to “*provide a set of*

recommendations for the respect, the protection, the support and the promotion of pluralism and freedom of the media in Europe.”

One of the reasons for the establishment of the HLGMP came after the situation in Hungary, as underlined by the Media Task Force, to have a broad way on how media freedom and media pluralism have to be reached.⁷⁴ The Media Constitution and Media Act adopted in Hungary in December of 2010 had raised a lot of criticism from the European Union’s Institutions and the public, mainly referring to the new Media Authority and to the new appointment procedures of the members of this authority, and to possible control from the politicians in power. Furthermore, the proposed law conflicted with the AVMSD and in particular with the “*country of origin principle*” because the regulation was extended to media residing in other Member State. This infringement would have directly affected the single market objective of the AVMSD.

The changes of the Hungarian media law found the European Commission unprepared mainly due to the narrow space for action that the AVMSD offered to take action against the Member state legislators, which regulate against the principles of a Directive. Therefore, Commissioner Kroes, had to rely on the strategy of political pressure and on the support of the European Parliament and civil society. As a result, in February 2011 the Hungarian authorities accepted to amend the Media Law according to the concerns raised by the Commissioner Kroes but this situation opened the debate about the lack of power of the European Institutions in front of the abusive governments when media pluralism and media freedom are clearly affected.

Returning to the HLGMP, members of Media Task Force did confirm how the members of the HLGMP were appointed by the Commissioner Kroes itself and the EC Media Task Force did not provided any input in the selection of the experts. The selection process was driven by finding of four different specialists, of which neither is related directly to media policy (Thompson, 2013). One of the members worked at the EU court of Justice (Prof. Luís Miguel Poiares Pessoa Maduro), two were Politicians- one is the former minister of justice of Germany, which resigned in 2002 (Herta Däubler-Gmelin) and –one is the former president of Latvia that is presiding the group (Prof. Vaira Vīķe-Freiberga) and the last one is Ben Hammersley (editor of Wired, journalist). This choice of the members of the HLGMP from the outside of the media policy expertise has both an advantage and a disadvantage: “*It lowered the risk of repeating conventional wisdom, while it increased the risk of misjudging priorities*” (Thompson, 2013).

The first meeting of the group took place on 11 November 2011 and was expected to conduct the work over one year time. The final report was first expected to be presented in

⁷⁴ Interview conducted with Members of the Media Task Force in Brussels, 23.04.2014.

November 2012 in front of the European Parliament, however there was a delay until 21 of January 2013.

The report was sent for the reading to the European Commission over the week-end of 18-20 January and officially presented in the morning of 21 of January 2013. In the afternoon of the same day the report was presented in front of the EP, in the LIBE meeting by Prof Vaire Vike Freiberga and Prof Herta Daubler-Gmelin.

The presentation of the report was carried on in front of the European Parliament (EP), of the Civil Liberties, Justice and Home Affairs (LIBE) Committee. Right from the start, the MEPs observed that the Report does not recommend the application of the Media Pluralism Monitor (MPM). The MPM, a high priority of the EP, was not considered as important by the HLGMPF⁷⁵. During the later consultation process on this report, the application of the MPM was mentioned again by the International Alliance of Journalists and the Peace Institute: *“we support the establishment of a monitoring mechanism on EU level [...] also recommend to apply or update the Media Pluralism Monitor”*.

Immediately after the official presentation, Commissioner Neelie Kroes presented the meeting in her blog⁷⁶ and announced that *“the appropriate next step is a very serious and EU-wide political debate, including public consultation”*. Therefore the Commissioner announced that firstly expects feedback on the actual report to be sent to the Media Task Force before taking a decision on the recommendations.

On this note, the consultation on the report recommendations was launched on 22 of March 2013 for 12 weeks, until the 14th of June 2013. There has to be made the observation of the careful phrasing of the purpose of possible future decision that can be made by the European Commission: *“The decision of any possible follow-up actions will be based on an in-depth analysis of the competences of the European Union”* (2013, p. 1). Along these lines, the European Commission does not commit itself to major changes in legislating media pluralism and media freedom, even if acknowledges the opening of a debate on these topics with the launch of this consultation. Lastly, this observation has a significant weight in distinguishing between the support for a debate and the support for a concrete action, when coming from the EC.

In the following chapter, the analysis of the report will be conducted along with the reaction of different stakeholders to the recommendations. The reactions were provided by the written declarations of the respondents to the consultation launched by the European Commission. The respondents to the consultation have been divided between citizens, NGOs, public authorities, trade associations, researchers, industry and other organizations.

⁷⁵ Analysis at the end of sub-chapter V.2.1.1.

⁷⁶ Retrieved 22 of January 2013 from <http://blogs.ec.europa.eu/neelie-kroes/hlgreport/>.

V.2.1.1. REPORT “A FREE AND PLURALISTIC MEDIA TO SUSTAIN EUROPEAN DEMOCRACY” (2013)

The inclusion of an extensive analysis of the HLGMP report in this study is justified first by remit of this group in highlighting the situation of the media freedom and pluralism in the EU Member States and giving their recommendations on this situation. Second, this is one of the newest documents revitalizing the debate on media freedom and media pluralism at the EU level. From the reactions of the stakeholders, the debate quite a heated-up one. Last, this report has not been analyzed by previous scholars and this counts for a fresh look at the recommendations of the document, especially in relation with media pluralism, and at the reactions of the stakeholders, all adding to the shaping of EU media policy.

The HLGMP report contains thirty recommendations as a central point of the report. Furthermore, the document is divided in four main parts according to different topic: The Role of the EU regarding media pluralism and media freedom; the changing media landscape; Protection of Journalistic freedom; and Media Pluralism. Accordingly, the recommendations are advanced as a result of the analysis of each topic.

The report emphasizes from the beginning the importance of different values and cultures existent in the EU. This is particularly important since the HLGMP is planning to frame the recommendations starting on common accepted fundamental values between the different cultures of the 27 Member States of EU:

“any new initiatives taken at the level of the European Union for the promotion of media freedom and pluralism must, first and foremost, focus on commonly accepted values, and exercise great care in respecting the national context within which any new regulation will have to be applied” (2013, p. 15).

This strategy comes from the acknowledgement that a simple common set of rules are much more difficult to be accepted and applied if these not envisioned to be adapted to the specific cultures. Accordingly, the recommendations are introduced and described to be broader and applicable for a long-term application against future challenges. The endeavor to have a long term strategy for the application of the recommendations is after all conditioned and dependent by the changes in the media environment.

In the following, the most relevant and debatable recommendations in relation with media pluralism will be discussed along with the reactions of the respondents to the public consultation. Before the analysis there is one observation that has to be made regarding the high number of answers coming from the citizens. These answers have been put together in a single document that compiles 370 pages. The majority of the answers are coming from Polish citizens living inside and

outside of Poland, signaling a situation of political interference in the broadcasting. This reference is made to the Catholic media "TV Trvam", which did not received the right from the Polish National Council of Radio and Television to be placed on the digital platform MUX-1. These answers can be better described as appeals or opinions asking first and foremost the intervention of the European Commission for the protection of media pluralism in Poland in this situation (e.g., Adam Kozlowski, Agnieszka Kowalska, Andrzej Koczkodaj, Angelika Jędrzejewska, Bielawny Krzysztof, Eng.Krzysztof TUKAJ etc.). Moreover, these citizens are mostly focusing only on Recommendation 1 (on competence of EU for media pluralism), 2 (on the independence of media councils and monitoring from the European Commission, and respecting European-wide standards) and recommendation 7 (on pro-active assessment of individual countries on the ascension process) which they in almost majority approve.

Recommendation 1

The first topic is relating to **the Role of the European Union concerning media freedom and pluralism**. The first recommendation of this report under this topic holds one of the most striking recommendations in the event of a possible policy action:

"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 right to free movement and representative democracy"(HLGMFP, 2013, p. 21).

This recommendation is central to the debate over the powers of the European Commission to regulate media pluralism at the EU level at it is the central recommendation of this report according to the remit of the group: *"to provide a set of recommendations for the respect, the protection, the support and the promotion of pluralism and freedom of the media in Europe"*(HLGMFP, 2013, p. 3). The HLGMFP is introducing this first recommendation by making a reference to the Charter of the EU and the *"increasing recognition of the European Union's role in upholding the fundamental rights of Europe's citizens"*(HLGMFP, 2013, p. 17).

Regarding the comments, this recommendation is vastly **supported** by the Digital Civil Rights in Europe Association (EDRI), Peace Institute⁷⁷ and by five signatories of Hungarian organizations which explicitly addresses the issue: *"we agree unreservedly with the expansion of the European*

⁷⁷ Peace institute, Ljubljana, coordinator of the SEE Media Observatory. Non-Governmental organization. Slovenia.

Union's margin of appreciation with regard to media" (CIJ et al., 2013, p. 4)⁷⁸. EDRI adds to the recommendation that "EU should set a minimum standard for the countries to comply with, but also allow them, as usual, to implement a stronger level of protection if they wish to do so"(EDRI, 2013, p. 1)⁷⁹.

A more balanced reaction in favor of this first recommendation comes from the world Association of Community Radio Broadcasters (AMARC) and Red de Medios Comunitarios-Spanish Community Media Network, which advises that any action of harmonization from the European Union has to be in conformity *"with the work of other international organisations, in particular the Council of Europe (CDMSI), Organization for the Security and Co-operation in Europe (OSCE), United Nations Educational, Scientific and cultural Organization (UNESCO) and a reference to relevant existing standards and policies"*(AMARC, 2013, p. 1).

Furthermore, **the strongest supporting position** of this recommendation comes from European Initiative for Media Pluralism-International Alliance of Journalists with the clear wording demanding for:

"a new Directive aiming at a partial harmonization of national rules on media ownership and the sufficient independence of the media supervisory bodies as necessary steps towards the correct functioning of the internal market" (EIMP-AIJ, 2013, p. 1).

The Alliance Internationale de Journalistes is actually reiterating the demands they introduced for the Citizens Initiative for Media Pluralism⁸⁰, with the note that a Directive is aimed at only *"partial harmonization"*. The wording holds careful attention to the possible evaluation of *"over-regulation"*. On this note, none of the organizations cited here and in favor of Recommendation 1 are going for more than what is expressed in the recommendation or what could be named *"over-regulation"*.

On the other hand there are voices **against this first recommendation**. From the academics part, Prof. Harcourt leads the discussion from the point that no matter how many times the European Parliament asked for a directive on media freedom, pluralism and independent governance there is no basis for a Directive in the EU Treaty, except Article 151(4), which requires unanimity. Therefore the researcher advises for an intensification of transparency and monitoring via existing policy documents: as the 2009 Charter on Freedom of the Press, the 1992 Charter for

⁷⁸ The Hungarian organizations signatories of a conjunct answer: Center for Independent Journalism(CIJ), Hungarian Civil Liberties Union(HCLU), Hungarian Europe Society (HES), Mertek Media Monitor(Mertek) and South East European Network for Professionalization of Media(SEENPM).

⁷⁹ EDRI answer to the Public consultation on the Independent Report from the High Level Group on Media Freedom and Pluralism (2013).

⁸⁰ The initiative is analyzed in detail in sub-chapter IV.3.

Regional or Minority Language and with the help of the organizing committee for the application of the AVMSD.

This contribution of Prof. Harcourt is in line with the position of European Broadcasting Union (EBU): “*EU secondary legislation to ensure greater transparency of media ownership may help to promote media pluralism in the EU*”(EBU, 2013a, p. 5) and the Nordic Public Service Broadcasters. Therefore, EBU finds any extension of EU competencies unnecessary on the basis that “*could not take into account the diverse cultural and national issues involved*” (EBU, 2013a, p. 5). Additionally EBU supports the use of Article 7 TFEU⁸¹ for the protection of fundamental values in the EU. The same idea of “*no competence*” from the EU for the regulation of media ownership at EU level according to EU treaties is also shared by Association of Commercial television in Europe (ACT). Additionally, the European Association of Radios (AER) and The Newspaper Society, an UK organization, sustain that the EU should limit the regulation to Competition policy and state aid law.

One of ***the most adamant reactions against this first recommendation*** came from the press associations: European Magazine Media Association (EMMA), European Newspapers Publishers Association (ENPA), European Publishers Council (EPC). The EPC reaction can directly and strongly summarize the opinion of all the press association enlisted above: “*Any notion of harmonised rules of the game, monitored by the EU, is anathema to press freedom – the very thing the group was tasked to protect*”(EPC, 2013, p. 2). On the side, the EPC infers that while “*we don’t need new media regulation*” they need “*the right market conditions for the long term viability of quality journalism and professional media*”(EPC, 2013, p. 3).

Lastly, other voices rising against the first recommendation are the ones of the industry with the resonance of: Discovery, Mediaset Italy and Sky Italia. A very interesting point against the Recommendation 1, comes from the Mediaset which focuses on the responsibility of the Member States to regulate media pluralism. Therefore, Mediaset indicates that an EU concept of “pluralism” does not exist and “*its definition pertains to the Member States [...] to define what “pluralism” is, and how it should be granted*”(Mediaset, 2013, p. 1). The lack of a definition at the EU level has been, as reiterated by the authors of the Media Pluralism Monitor, in order to not impose any definition onto the Member States. However, as rightfully is found in the position of Mediaset, the definition of pluralism also shapes the mechanism and strategies to protect it or not. On an additional contribution from the industry, Google, points out to the solutions that should ensure “*the rights of everyone, as today anyone can be part of the media*”(Google, 2013, p. 5) when a more extensive competence of the EU is discussed. This point was raised in the middle of an argument that puts the digital world with the lead on the internet in the middle.

⁸¹ Article 7 TFEU: “*The Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers.*”

Turning back to the arguments of the HLGMPF the European space is discussed to achieve a European democracy based on media freedom and pluralism. And one of the actions that are suggested in case of endangering these values is to apply the “*naming and shaming technique*”, a tactic which members of the European Commission and Media Task Force⁸² mentioned to leave it as an ultimate resort in these cases.

The European democracy includes the European citizenship and the right to move through the EU Member States, the representative democracy through the media, closely linked with the freedom of information related to European elections. This last reference involves the political influence that can be exercised over the media affecting media pluralism and media freedom for the journalists and ultimately for the citizens. The HLGMPF enlist a series of recommendations in complementing the first recommendation focusing on competence: the *inclusion of the media pluralism and media freedom values in the remit of the European Fundamental Rights Agency (FRA)*, the *establishment of an independent monitoring centre* and the requirement to implement in *all Member States independent media councils*.

The following three recommendations can be considered as complementary to the first recommendation: the suggestion of ***further harmonization of EU legislation*** (Rec. 5) in order to minimize differences between Member States, the creation of a ***network of national audio-visual regulatory authorities*** (Rec. 6) and the “*prominent*” role of media pluralism and media freedom for ***the assessment of accession countries*** (Rec 9). If the first two recommendations take into consideration cross-border difficulties when *country of origin principle* is threatened, the recommendation looking at the accession countries it has been discussed before. Moreover there was no application before for the accession countries while the cases from inside the EU did not presented the best image when asking future Member States to comply with something that is actually not a reality in the entire EU.

As a summary of the reactions for the first recommendation, most non-governmental associations and civil interests associations are supporting this recommendation without lengthy discussion. On the other side, the trade organizations, public service broadcasters and industry are referring to the EU law, subsidiarity legislation supported by the Amsterdam Treaty and are looking for the enforcement like the Article 7 under TFEU and EU secondary legislation like monitoring and self-regulation.

⁸² Interview conducted in Brussels with Members of the Media Task Force, 23.04.2012; Ms. Lorena Boix Alonso, 01.06.2012.

Recommendation 4

The recommendation for the implementation **of independent media councils** with: “*real enforcement powers, such as imposition of fines, order for printed or broadcast apologies, or removal of journalistic status*” (HLGMFP, 2013, p. 21) caused a stir especially from the journalistic association of European Federation of Journalists (IFJ) even before the launch of any public consultation from the European Commission.

Before looking at the reactions of the stakeholders, has to be pointed out that such a recommendation has more than a strain of worries since is covering a lot of regulatory initiatives. Firstly, the HLGMPF announces that independent media councils should have also “*real enforcement powers*” to impose fines and also to remove journalistic status. Secondly, these councils are announced to follow European-wide standards and also to be monitored by the European Commission. If the power of action is worrying enough for a sector like the journalistic profession that relies heavily on self-regulatory rules, the idea of having an increased EU monitoring, makes this recommendation at least very *daring* for any short-term change in regulation.

On a **full opposition** to the Rec. 4 are the IFJ, EFJ, *Reporters sans frontiers*, EMMA, ENPA and the Newspaper Society. The IFJ points to the idea that there is no “*journalistic status*” in the EU that can be removed by an independent media council. This kind of action and power for the media councils can threaten the journalistic profession, when actually the media councils are self-regulated.

Other worries are coming from the part of the Hungarian organizations explaining that it should be a clarification if the recommendation makes a reference to “*self-regulatory bodies or media regulators*” when talking about *media councils*. On an overall opinion, these organizations see this recommendation as “*counterproductive regarding freedom and pluralism of the media in Hungary*” (Hungarian Associations, 2013, p. 5). Moreover EMMA points out those tools like “*removal of journalistic status, orders for printed apologies*” would lead to “*seriously jeopardize media pluralism and freedom of expression*”. This would consequentially lead to “*create an atmosphere of self-censorship due to the threat of non-proportional imposition of countermeasures*” (EMMA, 2013, p. 4).

The International Alliance of Journalists, on an opposite side from other journalist organization like the IFJ, **agrees** completely with this recommendation. Furthermore organizations like AMARC and the Spanish Community Media Network are advising that Rec. 4 could, aside the good intentions, create a framework for new opportunities of political influences in controlling media. When it comes to “*freedom of press*” there is a very sensitive observation that abuses are often taking place from the part of media conglomerates, with the UK example as the most relevant.

In this light, the Spanish Community Media Network sees this recommendation for the regulation from an independent body as a timely one.

Few reactions came from the part of the trade organizations and the industry regarding this recommendation since it has been translated much as a focus for the written press. One remark in this recommendation it is actually making a reference to the broadcast apologies right as part of the powers of the media councils in case of infringements. It is worth mentioning here the comment of Google in relation with the creation of media councils. This organization points to a *burdensome and costly* process for a Member State which would have to create a new media council, where there is none.

As a conclusion for this recommendation debate there was a higher participation in the consultation of the written press and these references to media councils and the journalistic professions have been one of the reasons. As mentioned before, the journalistic associations reacted almost immediately after the launch of report, without waiting for the public consultation.

The Changing Media Landscape

Here the HLGMPF focuses on recommendations looking mainly at the technological advancements with the transparency and network neutrality as main recommendations, especially for the digital networks.

One first point under this theme has been ***to adapt the regulatory framework*** to the reality of the media environment in order to include *“all types of journalistic activities, regardless of the transmission medium”*(Rec. 11). EDRI subscribes to this recommendation in order to make the regulatory frameworks *future-proof*. On the other side, the same organizations opposing the recommendation No 1 on harmonization, are also opposing here to the suggestion of the adaptation of the regulatory framework: EFJ, EMMA, ENPA and Sky Italia.

The issue of ***net neutrality*** is treated in Rec. 13: *“In the case of digital networks, Net Neutrality and the end-to –end principle should be enshrined within EU law”*. This recommendation is appraised by the Hungarian associations admitting that it: *“touches a really important part of access to information and free speech”*(Hungarian Associations, 2013, p. 8). Likewise, the Nordic Public Service Broadcasting is supporting the principle of net-neutrality and of non-discriminatory access to information *“particularly in converged environments, to further support media pluralism and diversity”*(Nordic PSB, 2013, p. 4) and AER agrees with the HLGMPF that net neutrality *“should be enshrined within EU law”*. Additionally, the EFJ, EMMA, Mediaset and EBU are accepting this recommendation. EBU builds a very compelling case for the protection of net neutrality as a:

“fundamental instrument [...] to preserve fundamental general interest objectives such as freedom of expression, media pluralism and cultural diversity. There is an inevitable link between regulation of transmission and regulation of content”(EBU, 2013, p. 12).

For the **consumption habits** the HLGMP centers on the Media Literacy recommendation for the high-school level and advises the EU to invest comprehensive longitudinal studies for consumption, led by the academia. Most of the contributions on this recommendation are positive. EMMA considers this recommendation very important because media literacy is *“absolutely key”* and *“schemes aimed at promoting reading/literacy empower people to be both critical thinkers and creative producers of an increasingly wide range of messages”*. Other very positive positions are coming with supplementary suggestions to be implemented alongside media literacy. These are coming from EDRI with the recommendation to teach also *“online security at schools”* and from Google suggesting for *“ICT training and digital guidance for young people”*.

As a kind of opposition of ACT is not giving a straight negative answer to this recommendation: *“We don’t believe this report is competent to dictate school curricula”* but is moving the conversation to the competencies of the members of the HLGMP. Nevertheless, a statement starting with the idea that ACT supports media literacy but does not believe into the competencies of the HLGMP would have been much clearer on the position of the association.

The reference in this part to the adaptation of the new regulatory framework to the technological developments did not meet much support due to the *“fear”* of a possible harmonization, as expressed also in Rec. 1. On the other side, the need of a net neutrality law implemented into EU and the reinforcement of media literacy for the youngsters, starting with high-school meet much more support. These last two issues can be also translated into concrete and direct actions that can be clearly envisioned, while the adaptation of the new framework needs much legislative refining and supporting studies.

Protection of Journalistic Freedom

The third topic of the HLGMP report is directed mostly to the rise of the internet and the legal uncertainties related with the rights and responsibilities of journalists. There is a direct reference to the Levenson inquiry set up by the UK government as a response to the illegal and massive phone-tapping by the journalists, and especially to the harsh report asking for *“stringent institutional supervision”*. Even if the HLGMP is of the opinion of supervisory bodies receiving the power to act and not only to supervise, the group acknowledges that *“may well be EU countries that decide to remain within the framework of self-regulation, rather than instituting new structures or*

practices”(2013, p. 35). This situation has to be tackled, in the opinion of HLGMP, with the enforcement of mechanisms to ensure the adherence to self-regulatory codes of conduct.

The most contested recommendations regarding responsibilities of journalists are Rec. 23 and Rec.24. First, Rec. 23 refers to the application of “*appropriate instruments*” by the Member States to identify those that harm others, including the online space. Additionally “*data collection necessary for this purpose should be kept confidential*”. According to the respondents to the consultation what raises the most concerns is the ambiguity of the recommendation, mostly based on the vague wording that has been chosen. In this regard, EDRI comments that such wording could have “*unintended consequences*” especially for freedom of expression. There is no explanation of “*appropriate instruments*” that Member State need to apply nor what “*harming other means*” or how data will be kept confidential. Moreover, the Hungarian organizations try to dissect how a “*harming speech*” would be considered for different types of media, how would be differentiated a television broadcast from a text or a broadcast over the internet. Additionally there has to be considered who is being harmed by a certain speech. Google advanced an example: a distinction should be made between “*harm to security or harm to commerce*”.

Second, Rec. 24 refers to the apologies, corrections and to the legally-imposed right of reply. There comes a very comprehensive reaction and analyze of this recommendation from the Hungarian organizations advancing the idea of the difference that has to be done between facts and opinions. Accordingly, opinions may not be required to issue apologies and the mistakes in reporting the news may be required. Furthermore, the differences between linear and non-linear services pose other problems related to the time of the apology.

On another line of thought EBU points out that apology and retractions concern “*civil law aspects*” and a harmonization of EU legislation “*may not necessarily result in strengthening the position of the victim*”(EBU, 2013, p. 17).

The freedom of expression and information are basic tools for the profession of journalists. However, the recommendations expressed here are also directed to the responsibilities and not only to the facilities brought to this job. As a reaction, the press sector is very much present with extensive contributions in the direction of keeping the EU legislation as far as possible from the national legislators and from the self-regulatory tradition of this profession.

Media Pluralism

While the remit of the HLGMP was “*to provide a set of recommendations for the respect, the protection, the support and the promotion of pluralism and freedom of the media in Europe*”(2013, p. 3), the report directly addresses the issue of media pluralism as a separate topic of

the report. There are three points that have to be emphasized in relation with the HLGMP's analysis of the concept of media pluralism.

A first point is referring to the use of the concept of pluralism in this report, the HLGMP advises to use of the concept *"in the widest possible sense, both within individual media organizations and across the whole media landscape"*(HLGMP, 2013, p. 37). There is a connection here with the media governance model advanced by Puppis (2010). For one, the main role of media pluralism of contributing to *the debate of possible alternatives*⁸³ has to be constructed in each media organization as well as across the whole spectrum, including here the entire European Union Member States. For second, placing this feature in the media governance model of Puppis, a system where *"describing, explaining and criticizing the entirety of forms of rules that aim to organize media systems"*(Puppis, 2010, p. 139) potentiates the contributing role of the end user and the presence of media pluralism raises considerably. Therefore, the widest approach of media pluralism advanced by the HLGMP can be considered adapted to the theoretical advancements for media policy development. However, the definition of media governance⁸⁴ advanced in this research includes the accountability issue when participating on the construction of media pluralism in a media governance system. Discussing possible alternatives without the support of an accountability system could have a less effective result on diversity of ideas and possible alternatives.

As a second point, the HLGMP is suggesting that along with the technological advancements, the protection of media pluralism has to be guarded across all types of media. This would suggest its extension from newspapers and television to the online media and the need to include standards on them like quality journalism.

A third point, the HLGMP addresses the quantification of media pluralism. This issue has been widely addressed in the Media Pluralism Monitor⁸⁵, developed by the former Commission of Ms. Reding. However, the HLGMP does not make any reference to this tool in this part of the report. The HLGMP concentrates on a better strategy, in their opinion, of better *"eliminating all those influences that present obstacles to a pluralism reflecting the actual state of affairs in a given country or society"* than imposing any *"arbitrary quantitative thresholds for the desirable level of pluralism"* (HLGMP, 2013, p. 37). Furthermore, under the same topic of Media Pluralism in the HLGMP report are presented the public service broadcasting and the European coverage.

⁸³ Discussion sub-chapter I.3.

⁸⁴ Discussion sub-chapter III.2.3.2.

⁸⁵ Sub-chapter V.1.2.6.

The Public Service Broadcasting

While topics like the protection of journalists, quality journalism, changing business models and cross-border issues within the single market are having their role in influencing media pluralism and media freedom at the EU level there is a separation of importance since these issues are not included under the media pluralism topic. Therefore the attention given to the Public Service Median (PSB) is much higher even if not the only factor positively influencing media pluralism: *“Among the tools for ensuring media pluralism, public service media take on a special place”*(HLGMFP, 2013, p. 38). This study wants to bring a critique to this position since the report of the HLGMFP is not the “tool” for a differentiation of prioritization of factors, especially coming from an independent group of experts, which could influence into a prioritization of recommendations.

The argument started from the imbalance that profit motivated media would bring to the media landscape, without the existence of public service media. However, at the same time, there is an explicit acknowledgement of the positive and negatives effects of the public service media and the public funding. While the public funding is necessary in order to have a place to provide different opinions, the central position of the public service media would reduce pluralism when *“restricts market access for private operators and reduces the number of commercially viable providers”*(2013, p. 38). Despite this acknowledgement the HLGMFP gives the public service media a central role especially in the section centering on media pluralism. Referring to the recommendations on the PSB, the HLGMFP follows firstly the same line of the Council of Europe and European Parliament recommendations for *“the provision of state funding for the media which are essential for pluralism”*(Rec. 26).

Regarding the comments, EFJ is in support of this recommendation but with additional responsibilities that have to be respected: *“laws on intellectual property rights of the creators [and] collective agreements (companies that receive public money need to be socially responsible and accountable”*(EFJ, 2013, p. 3). On a completely opposing position Mediaset considers funding to promote media pluralism as *“detrimental to competition and to editorial independence, as well as to the neutrality of the institutions”*. This position comes from the affirmation that is *“no clear and direct relationship between pluralism and market efficiency in the field of media”*(Mediaset, 2013, p. 4).

European Coverage

The European coverage is mainly directed to the idea of contributing to the European public sphere. And this is envisioned *“to promote pluralism in the form of increased coverage of EU affairs”* (HLGMFP, 2013, p. 39). This last recommendation (Rec.30) looks at the deepening lack of EU trust from its citizens and is searching to involve these citizens via their journalist for different and

pluralistic change of opinions about EU affairs. To this last point EDRI suggest that when it comes to European coverage “*is a need to give more information to European citizens on the activities of the European institutions*”(EDRI, 2013, p. 5). And the comment is well motivated since before having a participatory pluralistic media covering the EU affairs, the EU should basically inform the citizens in a transparent way of their activities. The closer the EU institutions are the less pluralistic press coverage and less support from the citizens.

Conclusions on the Report of HLGMP and Reactions of the Stakeholders

The HLGMP report was commissioned by the European Commission but with the autonomy to give recommendations to the institutions or organizations to whom find it appropriate. From the number of contributors to the public consultation and from the first reactions in January (2013), the written press was a main topic. On the other side, the broadcasting sector did not receive many direct recommendations. One reason could be the echo raised by the situation in UK with the infringements of the press. And this is also reinforced by the recommendations directed to the independence of national regulatory bodies, editorial independence of media and protection of journalists, which in a way resonated from the recent situation in Hungary. From this point of view the report could be named a very timely one because it follows the precedents that have to be corrected and tries an adaptation to the “changing media landscape”. From the point of view of the press, no matter the precedents and the technological changes, their self-regulatory tradition is treated like infallible.

Brief, this Report directs much more attention to the written press than the AVMSD which focused on the broadcasting and excluded the online presence of the newspapers presenting any audiovisual services on their websites. A changing environment pointed out by this Report could affect the position the newspapers and publishers enjoyed outside the regulation of the AVMSD.

The general acceptance of issues like the net neutrality to be included in the EU law and of the rules to implement media literacy in the curriculum prove that HLGMP’s report is not so deviant from the media environment changes and the needs of adaptability of the EU media legislation.

In conclusion, when it comes to the Rec. 1 or Rec. 4, the general view of the respondents is that the line into the national regulatory legislation is breached and great opposition is raised. The opposition is still based on the argument of protection of the subsidiarity and cultural identities. However a big advancement is that monitoring of the status of media in the Member States is highly valued. And some of the recommendations appear that could have been much positive or would have received greater acceptance if the *EU monitoring* or the *European-wide standards* would not have been mentioned. Finally, from monitoring to the application of the Media Pluralism Monitor

should be only a step for clear evidence of the actual situation. Unfortunately this step appears to be big enough and still an insecure one.

V.2.2. CENTER FOR MEDIA PLURALISM AND MEDIA FREEDOM (CMPF)(2011)

The CMPF was established (2011) at the European University Institute's (EUI) Robert Schuman Centre for Advanced Studies in Florence and led by Prof. Pier Luigi Parcu, with a background in economics. The centre received from the European Commission a 600,000 Euros grant for the activity starting in December 2011 for a one year period. The CMPF was expected not only to develop “*new ideas on how to ensure a highly diverse and free media, and work to enhance the quality of the reflection on media pluralism in Europe*” but also to prepare a document on the competencies of the European Commission for media pluralism in Europe.

Additionally, the centre should lead debates, education and training activities especially for the media professionals and journalists. The actual funding came from “*funds originally earmarked for an "Erasmus for Journalists" programme proposed by Mr. Paul Rübig MEP*” as was expressed in the press release⁸⁶.

The CMPF has developed a set of events in 2012. The biggest events focusing on media freedom and media pluralism have been a *Symposium Combating 'Hate Speech' in Europe (26-27 of March, 2012)*, a workshop on a “*Definition of pluralism in the media sector*”(27-28 of April, 2012) and a policy conference on *EU Competencies in Respect of Media Pluralism and Media Freedom (29 October 2012)*. Neither of the events concluded or had some written documents for a follow up. However, the last conference was held to present the first draft of the document expected to be presented at the end of the year to the European Commission on the competences of the European Commission. The draft document, as presented during the policy conference, was separated and along with it also the structure of the report in 3-4 parts.

The first draft part of the CMPF report was looking at framing and measuring of the media pluralism and media freedom in the social and political context with a previous section in dealing with the definitions. The second part of the CMPF report looked at economics-media ownership concentration and was separated in three parts covering: the natural aspect of concentration in industries, online media suppliers and relevant markets and competition law. The third part of the CMPF report had two major points dealing with the same issue of legal instruments, the first making an overall legal analysis for media pluralism at the EU level and a second that probed the legal instruments that can be used in the future from the existing ones. These possible legal actions for the protection of media pluralism were presented as competition and cultural aspects that can be

⁸⁶ Press Release. IP/11/1307.Brussels.

considered, internal market harmonization, the role of NRAs and the role of the Fundamental Rights Agency.

The last draft part of the CMPF report received some harsh comments due to the fact that nothing new as expected from the participants and the European Commission itself came from the report for the protection of media freedom and media pluralism. However, one participant noted that solutions and more actual practical application would had come if the study have started with actual concrete studies like the one in Hungary. Other observation came from Nikoltchev (European Audiovisual Observatory) in relation with the soft tools and contested the role of the European Fundamental Rights agency as too soft to protect media freedom and media pluralism, since the sole remit of the Agency is to issue recommendations.

V.2.2.1. POLICY REPORT “EUROPEAN UNION COMPETENCIES IN RESPECT OF MEDIA PLURALISM AND MEDIA FREEDOM”(2013)

The Policy Report of Center for Media Pluralism and Media Freedom, “*European Union Competencies in Respect of Media Pluralism and Media Freedom*”, has four chapters. This structure was kept the same with the one presented during the conference on *EU Competencies in Respect of Media Pluralism and Media Freedom*.

The executive summary expresses very bluntly the opinion of the scholars contributing to this policy document regarding previous and future the position of the European Union on media freedom and pluralism: “*Even if EU competencies sometimes appear to be scattered and residual in respect of the Member States, the EU cannot be “neutral” in what regards media freedom and pluralism*”(CMPF, 2013, p. 4). Another preliminary idea is the argument of harboring under the EU media regulation also the cultural aspects alongside the economic ones. The report is presented to start with the role of media in a democratic society, the influence of new technologies that bring an increased supply but not greater diversity in content, the unclear definition of relevant markets with hindrance to the application of media ownership concentration and the reconsideration of different measures for the protection of the national and European industries.

On the note of the position of the European Union on media freedom and pluralism, the executive summary resumes to four main legal instruments for action in the area of media freedom and pluralism. The first two are widely used by the European Parliament, Council of Europe, journalists and public interest organizations: the Article 11 of the Charter and the broad case law of the ECtHR on Article 10 ECHR. The following two legal provisions are part of the TFEU and one covers the internal market argument (Article 167(4)):*“The Union shall take cultural aspects into account in its actions under other provisions of the Treaties, in particular in order to respect and to promote the*

diversity of its cultures” and transfer of power to the European institutions even if not conceded in the Treaties in special circumstances and with the unanimity of all three institutions of the EU:

“If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures”(Art 352, TFEU).

This second legal basis of the TFEU (Article 352), cited above, is put forward as an alternative for the disbelievers of the internal argument for media freedom and pluralism. Undoubtedly, this last article it can be applied only in situations of emergencies, with the unanimity of all the institutions of the EU and with no intention of underlined harmonization as clearly mentioned in paragraph 3: *“Measures based on this Article shall not entail harmonisation of Member States’ laws or regulations in cases where the Treaties exclude such harmonisation.”* Regarding the legal basis, the primary legal base is still the internal market argument and the other articles are supporting this argument or are coming to safeguard a difficult situation when the EU has to take a stand when a Member State’s or media organizations’ actions harm the principles of media freedom and pluralism.

Lastly, the executive summary mentions as a soft law regulation the implication of the European Union Agency for Human Rights for the measurement and safeguarding of media pluralism and media freedom, alongside with the establishment of National Regulatory Agencies responsible also of the two principles of media freedom and pluralism. Lastly, the team of experts sees as another possible solution the establishment of an ad hoc Agency for measurement and safeguarding of the status of media freedom and pluralism and the situation of journalistic status in a Member State.

In the following paragraphs will be analyzed the four chapters of the CMPF report with emphasis on the references to media pluralism definition, characteristics and discussed competencies of European Commission and possible solutions advanced in this regard. The extensive description and analysis of this document is justified by the focus on competencies of European Union on media pluralism and media freedom, while distinguishing the possible legal paths for competencies and other possible solutions that can be included in protecting the two principles at the EU level. Moreover, apart from the discussion of the document at a conference organized by the CMPF for the analysis of the first draft, there has not been an analysis by previous scholars on this recent document.

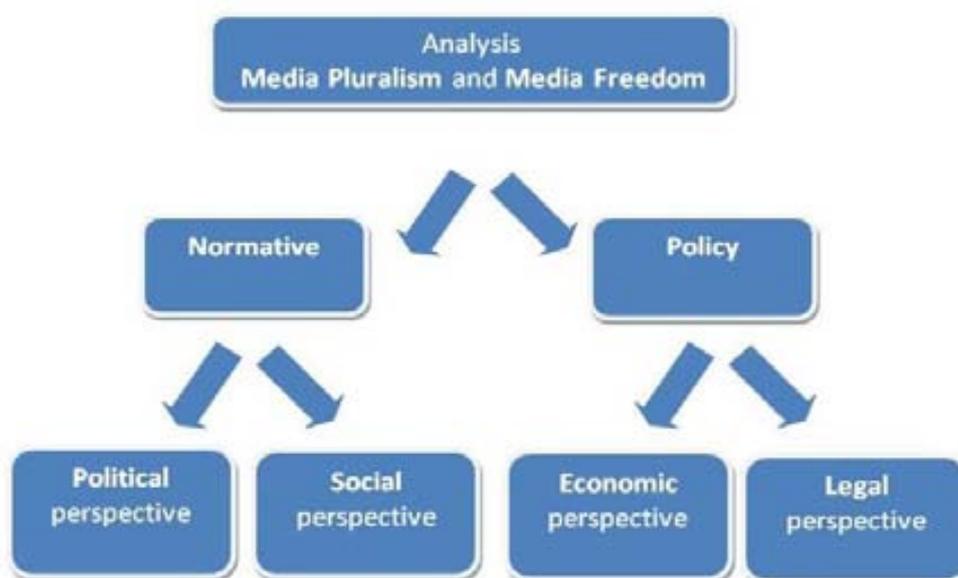
Chapter I of the CMPF report

This first chapter introduces the lecturer to the actual reason standing behind the focus of the document on the competencies of the European Union in respect of two issues of media freedom and pluralism taken together. Moreover, the entire work of the CMPF has been focused on the two issues due to the perceived complementarities between the two.

The connection between media freedom and media pluralism is better highlighted by the first function of media freedom in providing a platform for self-expression: *“if media freedom provides the possibility to express oneself and to access information, then media pluralism is the degree of outreach of this freedom, i.e., the outcome being that every group in a society can enjoy this freedom”* (CMPF, 2013, p. 9). Furthermore a second link between the two concepts comes when media pluralism is seen as complementing media freedom in all its functions especially when a free flow of information is supplemented by a pluralistic one and when free and diverse voices in a society safeguard and improve the conditions for democracy.

The document highlights the major structural elements of both media freedom and media pluralism for a proper evaluation and use in policy and legislative acts: sources, distribution, demand and consumption of culture, market player, market sustainability, guarantee of high-quality coverage, extensive newsgathering and investigative journalism, political representation. The suggestion is to take all these elements in consideration when these two issues are being analyzed *from both a theoretical and legislative standpoint*. Moreover, the analysis provided in this document is twofold as well with a normative perspective including political and social views and from a policy perspective including economic and legal views, as presented in the following figure.

FIGURE 5.2: Structural Elements of Media Pluralism and Media Freedom



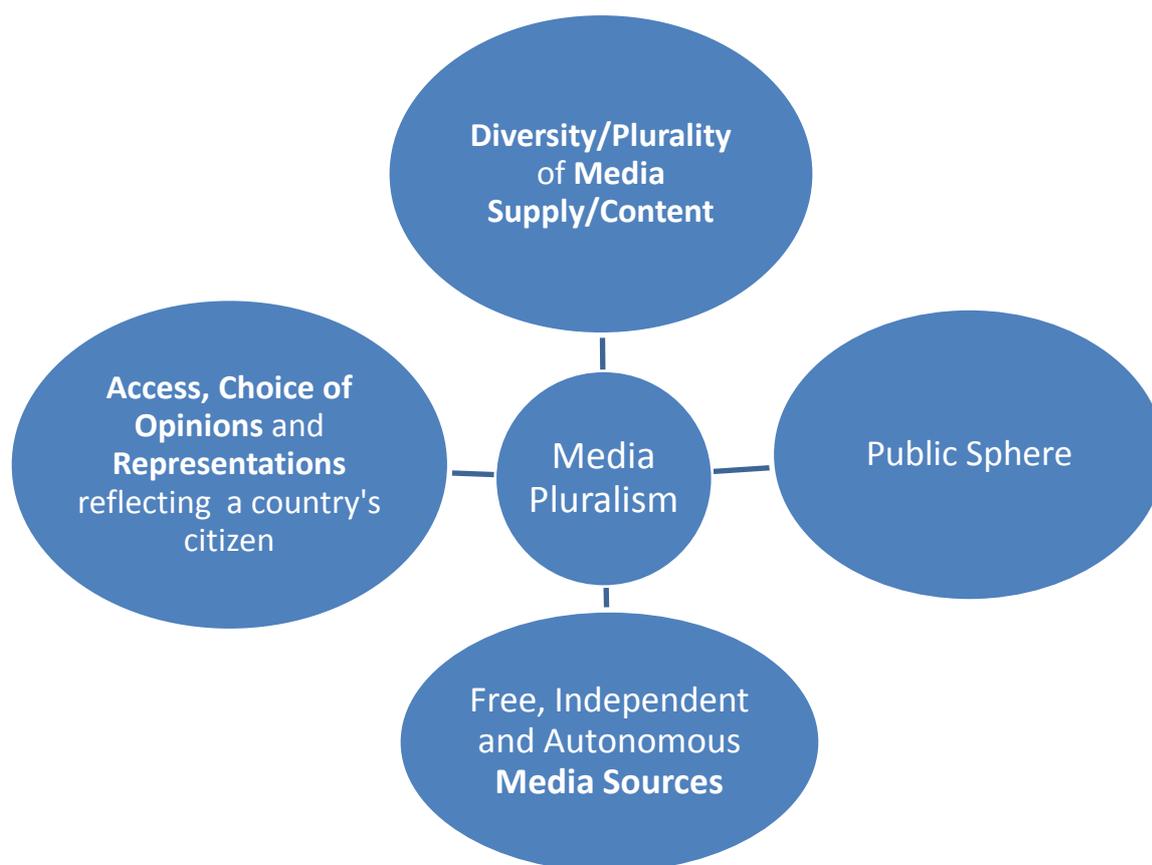
SOURCE: Elaborated by the author according to the text in the CMPF paper

From a normative perspective the document describes the term of media freedom as signifying *“the independence of media institutions from restrictions and interference from politics and other sources of power”*(CMPF, 2013, p. 11). On the other side media pluralism is identified with independence from private control seen as economic, social and political influence. Additionally, media pluralism is *“usually based upon the tolerance and inclusiveness of both the political system and society in general”*(CMPF, 2013, p. 11), which implies that media freedom represents a pre-condition for proper functioning of pluralistic media system. This discourse features the complementary relationship of media pluralism with media freedom. However does not put the two issues on the same level of analysis. Media freedom is the base for the construction of media pluralism and the document reference shows the complexity of the media pluralism issue, which alongside the freedom of media requires *“the protection of cultural and linguistic issues, the needs of minorities and geographical diversity”* (CMPF, 2013, p. 11).

When the document arrives at the actual analysis of the definition of media pluralism the first assertion is that ***a commonly accepted definition of media pluralism does not exist***, which is an opinion in line with the theoretical contributions of Valcke (2011) and Karppinen (2007). The authors resumes themselves at mentioning that the concept is treated from different points of view with different emphasizes and enlist some key elements, without leaving aside the well-known association of media pluralism with media diversity. One of these key points is the free, independent and autonomous media sources, which actually translates in media freedom at its basic value. Unfortunately, the document does not approach any of the definitions advanced by the scholars of other policy documents like the CoE (1994, 1999), Green Paper of the European Commission on Pluralism and Media Concentration in the Internal Market-An Assessment of the need for Community Action (1992) or the latest Media Pluralism Monitor (2009).

The following figure includes all the key elements describing media pluralism in the CMPF policy document.

FIGURE 5.3: Key Elements of Media Pluralism



SOURCE: Elaborated by the author

The diversity of media supply and content includes at its turn other elements: “diversity as a reflection of society, diversity as access to different points of view, and diversity as provided choice” (CMPF, 2013, p. 22) as quoting McQuail (1992). Here is discussed the difference between the external and internal pluralism and the way some Member States put more emphasize on or side or the other. These practices depend on the media system, cultural traditions, and media ethics.

Regarding **the public sphere** this depends nowadays by the media, by the way of interacting of the public in order to create the public opinion and political will, while facilitating public debate. As described by the scholars in this CMPF policy document and as described in this study in chapter 1, when analyzing media pluralism as a theoretical concept, the difficulty in regulation is finding the best way to regulate and include the public sphere interests along economic interests. In the same chapter 1, these economic interests are resumed in looking for the **consumer interest** and suddenly the **end user interests are left aside**. Future media regulations should include the “triple vision” (See chapter 1) of end-user, citizen, consumer centrality characteristics in order to build a public sphere alongside a strong economic sustainable media market.

The concerns raised by the CMPF scholars are related to the over **evaluation of the characteristics of media pluralism** “as a possible answer to any shortcomings in the media system”

(CMPF, 2013, p. 14) and also the over use of the politicians to gain a positive image if they are showing support for media pluralism and media freedom values for a better and democratic society. Moreover, the link between the consumption, the demand and the need for media pluralism policies it is also raised by quoting Valcke (2011): *“in case there is no demand for pluralistic media content, policies that aim to increase it could stumble into the problem of not being fully justified”* (CMPF, 2013, p. 15). The reverse thinking reveals the actual close circle of the need to create an educated public which will appreciate the right to equal opportunities, to objectivity and will acknowledge the need for the existence of media policies directed at media freedom. This idea is supplemented later by the support for media literacy programs included in media policies, along the ones ensuring access and/or exposure to pluralistic information alone (CMPF, 2013, p. 16). This need for media literacy is reinforced by the arrival of new media which creates the impression of plurality but does not ease the navigation of the amount of information in the attempt to sort the needed information, the quality journalistic information from the less reliable or repetitive.

Chapter II of the CMPF report

Regarding the measurement of media pluralism and media freedom the suggestion is to keep in mind that the two concepts are representing means to an end and the measurements on these concepts are undertaken for the development and implementation of media regulation that in the end will contribute to the construction of democratic societies.

The discussion on the economic aspects of media pluralism and media freedom is first approached from the tendency of the media market to media concentration. Furthermore, the new media is analyzed in the light of the ownership concentration. The report points firstly to the elimination of the *“resource scarcity”* with the emergence of the digital television and the internet. The advancements and influence of the new technology over the media prompted the CMPF researcher to name innovation as *“potentially a key tool for the expansion of the distribution of content and audience access”* (CMPF, 2013, p. 28) which also points out to the *“well prepared and solid firms that can afford”* to innovate. However, innovation without access and participation of the end user and of all the market players affects directly media pluralism. Additionally, the report cites Noam (2009) in introducing *“media optimists”* and *“media pessimists”* in regard with the advent of the new technologies and the influences on the access.

A factor that influences internal pluralism and that has been named from the first analyses of the relation between media pluralism and media concentration is that *“increased abundance on the supply side does not correspond to greater variety on the demand side”* (CMPF, 2013, p. 31). It has been a perception that needs permanent attention for any attempts to measure the effects of

media concentration in a certain Member State. Furthermore, the CMPF report points out to the consumption and the audience trend to concentrate on only a number of suppliers when the diversity of supply is very big (CMPF, 2013, p. 32). A final conclusion is advanced to take in consideration both supply and consumption levels of concentration future the measuring analysis of the conditions to foster media pluralism.

Focusing on the consumption patterns, the report is emphasizing, while citing Arsenault and Castells (2008) that despite the internet and the new portals for media consumption like blogs and information sites the mainstream media is still the primordial tool used well ahead the emerging media. This emphasize is proving that present concerns for the effects of the internet over consumption are not yet very stringent ones. These concerns are enlisted to be: native internet players are rarely involved in content production, are having a tendency towards concentration and geographical origins that creates an imbalance between US and the rest of the world. With the raise of the consumption habits, the raise of these concerns goes back to the market concentration of the resources offered over the new media.

The final point made by the CMPF in this chapter is that for the digital market there is no single market, which is already affecting the competitive potential of the European industry. This chapter of the CMPF report has been given a general overview of the theoretical concept of media concentration in relation with media pluralism and of the main technological advancements and influences on the media markets and consumption habits. This evidence gives an economic basis for the future legal instruments and soft-regulatory measures discussed in the next two chapters of the policy report.

Chapter III of the CMPF report

In this chapter, the existing EU legal instruments are discussed in relation to the protection of media pluralism and media freedom. The analysis briefly introduces the Sacchi case of the EJC ruling on the *“free movement of good [...] applied to television signals”*(CMPF, 2013, p. 44), follows with the introduction of the TVWFD, the Treaty of Maastricht and *“the opening to a cultural policy”* (CMPF, 2013, p. 45), the 1990 debate on the Monti’s Draft Directive on pluralism, the relation between media pluralism and competition law, the new AVMSD directive, the public service broadcasting and its relation with media pluralism, the fundamental rights in EU and the discussions and initiatives on media pluralism in the European Parliament. The following will be analyzed in the next rubric: the view of the CMPF on the AVMSD, public service broadcasting, the approach to the fundamental rights issues and the latest initiatives on media pluralism.

The revision of the AVMSD

Regarding the final text of the AVMSD in relation with media pluralism CMPF refers from the start that “*debate on the media pluralism was not so fruitful, as no European competence was acknowledged*”(CMPF, 2013, p. 48). While quoting Barzanti (2012) the policy report acknowledges that even if media pluralism is not present in the operative part of the AVMSD measures like European quota rules and right to short reporting are aiming to achieve it. Apart from this reference the CMPF only points to Recital 12 and Recital 5 referring to cultural diversity, protection of minors and media literacy. However, the Recitals are only “*informative*” and precede the Articles in a Directive but are not enforcing the law, which is left only to the Articles.

The Public Service Broadcasting (PSB)

In the same line with the report issued by the High Level Group on Media Freedom and Pluralism (HLGMFP), the CMPF policy document gives priority to the connection between media pluralism and public service broadcasting (PSB). The role and remit of the PSB still remains the decision of the Member States. Nevertheless, the European Commission has been actively promoting the role of the PSB in two Communications (2001, 2009) and the CMPF refers to the set of guidelines and rules while deciding state-aid cases in the public-service broadcasting domain (CMPF, 2013, p. 51).

The European Parliament has also contributed actively to the role of the PSB and here is mentioned the report with the 2008 Resolution on Concentration and Media Pluralism where a warning on the extension of public funding to PSB and the possible obstacles to commercial operators are presented. Therefore the European Parliament posted for a *transparent and accountable functioning* of the PSB.

Fundamental Rights

In this part the CMPF stresses for three main instruments to protect the fundamental rights in EU: European convention for the “*Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights in European Union and the common constitutional traditions of the Member States*”(CMPF, 2013, p. 52). Furthermore, the analysis goes much further to the Treaty of the European Union and the articles with reference to human rights.

The particular reference to Article 2⁸⁷ and Article 7⁸⁸ of the Treaty of the European Union is made. The CMPF report calls on Article 7 to introduce a “*general competence of the EU*” for the protection of fundamental values of the European Union.

The CMPF is looking also for a solution to use Article 11 for the protection of media pluralism and media freedom and advises that could be used altogether with Article 53⁸⁹ of the same Charter of Fundamental Rights of European Union, which refers to a much bigger range of application for the protection of human rights.

A last point of reference comes from the work of the European Court for Human Rights (ECtHR): “*the rulings of the ECtHR are also quite clear with regard to the role of the governments in media pluralism*” (CMPF, 2013, p. 56). The governments do not have to interfere in the role of media in the freedom of expression, while at the same time have to look for ways to ensure the media plurality. In other words, content has to be regulated as minimum as possible, while external pluralism has to be promoted through legislation, as expressed by the CMPF.

Recent EU discussions on Media Pluralism and Freedom

The focus of this part of the report is on the work of the European Parliament. The European Parliament has constantly reacted to concrete cases where media pluralism and media freedom were put in danger, like in Italy and Hungary.

In the analysis of the 2004 “*Resolution on the risks of violation, both in EU and in Italy in particular, of freedom of expression and information*” (EP, 2004), the CMPF report shows that European Parliament presents a very strong stance on the relation between media pluralism and democracy. This resolution calls for a Directive from the European Commission based on the “*political, moral and legal obligations*”. In the 2011 Resolution on Media Law in Hungary the European Parliament asks for “*a legislative initiative*” based on the right conferred to the European

⁸⁷ Article 2 of TEU: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

⁸⁸ Article 7 of the TEU: “On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.”

⁸⁹ Article 53 of the Charter: “Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and inter-national law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.”

Commission by the internal market. For this last Recommendation, the European Parliament made reference to Article 225 of TFEU “*on media freedom pluralism and independent governance*”.

Lastly, the Media Pluralism Monitor (MPM)⁹⁰ and the European Initiative on Media Pluralism (EIMP)⁹¹ are briefly mentioned in this part of chapter II of CMPF report but are not analyzed.

The CMPF concludes this chapter III that it is an ongoing discussion on the competences of European Union for media pluralism and appraises the active role of the European Parliament.

As a recommendation of this chapter, CMPF asks for the enhancement and improvement of the competencies of the European Union “*to have a more consistent and active intervention from the EU*”(CMPF, 2013, p. 63). As an observation, this chapter lacks the analysis of the MPM and EIMP initiative. This is made in line with the announcement that in the fourth chapter the CMPF will explore more in detail a “*possible legal basis for a more pro-active role of the EU*”(CMPF, 2013, p. 63). As a consequence, the lack of discussion on MPM and the EIMP proposal will exclude initiatives outside the EU institutional legal framework. This could be name as a lack of legislative innovation. Firstly because a tool like MPM can provide for real evidence for any changes or updates in regulation, either at national or EU level. Secondly, an initiative like the one of the EIMP is based on the direct involvement of the citizens in search for the protection of basic human rights when the protection of the national regulatory institutions is not enough.

Chapter IV of the CMPF report

This chapter addresses possible solutions for the media pluralism and media freedom starting from the existing the soft and hard regulation.

The CMPF is quite correct to note that the ***two major threats for media pluralism*** are coming ***from the political and economical power***. In this regard one of the solutions advanced in this chapter is focusing in these two directions and the amendments that could be added to the Treaties of the European Union. A first amendment would deal with the economic powers: “*it is forbidden to create or maintain a dominant position in media markets*” and the second one would deal with the political influences: “*governments and economic forces cannot exercise any undue influence on media undertakings*”. These provisions are very straightforward and the wording is very clear to avoid confusions or double interpretations for the proposed objectives.

The CMPF does provide for a large array of ideas for the protection of media pluralism and media freedom in this chapter mostly because there are some competences are “*rather hidden and not explicit*” in the opinion of the researchers (CMPF, 2013, p. 65). One observation could be made

⁹⁰ Sub-chapter V.1.2.6.

⁹¹ Sub-chapter IV.3.

that most of the competencies have a rather large discussion at the EU level behind them but not so much clarification.

On that note, when it comes to Article 11 the clarification is much welcomed. Taking upon the work of Casarosa (2010) and Klimkiewicz (2005) the CMPF report considers Article 11 a “*key legal instrument*”(CMPF, 2013, p. 69) and a “*parameter for the national acts when they fall under the ‘umbrella’ of EU law*”(CMPF, 2013, p. 67) like for the implementation of the AVMSD.

Another well-discussed legislation is the European Competition Law which according to CMPF “*needs to be applied in the spirit of the overall objectives pursued by the Treaties*”(CMPF, 2013, p. 69). Therefore the solution foreseen by the CMPF is that an evaluation of the market concentration by the European Commission “*must be placed in the general framework of the achievement of the fundamental objectives laid down in the Treaties [like] respect for cultural diversity and social cohesion*” with “*media pluralism clearly a facet of these objectives*”(CMPF, 2013, p. 69). On the same line of competition law, the CMPF is critique of the approach of the European Commission focusing on the *diversity of supplier* with the effect on concentration but the lack of focus on *exposure diversity*. Consequentially CMPF advises that the European Commission should take account if after a merger a company would use the same news agency, which would reduce *editorial diversity*.

Another idea approached by the CMPF is the *harmonization* with the focus to harmonize “*different legislation at national level that deal with media pluralism regulating media ownership and media ownership transparency*”(CMPF, 2013, p. 71). An observation has to be made here to the reference of the CMPF report to the Citizens Initiative embracing the same recommendation in their proposal. Furthermore, harmonization could also be used for the “*freedom of expression, the right to inform and to be informed [...] and copyright*”(CMPF, 2013, p. 74).

As a general direction CMPF chooses to give an advice on two main legislative bases for an action on media pluralism: using the *internal market* and the *citizenship argument*. These two arguments have been used also by the EIMP, even if here the CMPF does not make a correlation like before with harmonization. First, the internal market uses the lack of transparency in legislation in certain countries that affects directly the internal market. Moreover, CMPF uses here Article 50 for the possibility to adopt a new directive and to obtain the “*freedom of establishment as regards a particular activity*”(CMPF, 2013, p. 74). Second, for the citizenship argument the focus is on the right to vote of the citizens and to participate in elections for the European Parliament, according to Article 25 of TFEU.

From the concrete actions proposed by the CMPF in chapter IV of CMPF, the proposal of obtaining some changes in the Treaties of the European Union, is acknowledged by the researchers that would be difficult to implement which however should not be a reason to forget an option.

A second solution points out to the independence of National Regulatory Agencies (NRAs) while implementing the AVMSD. From this solution surges one of the most reasonable advices in providing for a network of NRAs similar to the one same "*institutional requirements and networks foreseen in the Electronic Communication Package*"(CMPF, 2013, p. 77). This initiative does not provide for EU oversight or to regulate media pluralism and "*could help to develop common guidelines and soft regulation on the issue*"(CMPF, 2013, p. 77). It can be described to be a soft-regulation based on hard regulation because it needs some institutional requirements for the existence of the network, which would exclude voluntary participation.

One last solution is envisioned to use the Fundamental Rights Agency (FRA) to monitor media pluralism situation in Member States, as well to support common standards. As a substitute of this solution with the role of the FRA, CMPF proposes the institutionalization of a completely new agency to focus only on media pluralism and media freedom and for the protection of journalists. This last solution is a soft-regulatory one of an independent agency working with experts, media stakeholders, European Institutions and other international organizations.

In conclusion, most of the solutions presented in this chapter IV of CMPF are mostly based on an elaboration and clarification of previous discussed solutions by the academia and between legislators at the EU level. One of the solutions presented here included a reference to the Citizens initiative on media pluralism connecting the two reports with the idea of harmonization. This is particularly important since the initiative of citizens was not discussed in detail in the previous chapter.

Another solution launched by the report can be highlighted because it results to possibly present a way to combine soft-regulation with hard regulation. Is the creation of the network of national regulators for the audiovisual sector with compulsory participation but which would not require an extension of the regulatory powers of the EU over media pluralism and media freedom on a short-term. It follows in a way also the direction of the proposal of the HLGMPF for a network of NRAs and of the contributions to the public consultation if this would be a solution that excludes EU supervision. The contributions to the public consultation on the report of the HLGMPF showed that much difference is when "*collaboration*" is used apart from "*supervision*" or "*EU-wide rules*". Avoiding any possibility of control or fines coming from the EU level is the main objective of many of the media organizations, while monitoring and collaboration are much better received. To this solution can be added that any improvements of existing legislation and working with the tools and

institutions at hand are counting for less financial investments and time of implementation than for a completely new institution.

Conclusion to the analysis of CMPF policy document

The discussion of this document is resumed in a very compelling phrase in the conclusion when assessing EU competencies in respect of media pluralism:

“Even though the EU’s competencies with regard to media pluralism appear to be scattered in the European legal landscape, it is certainly not correct to affirm that the EU has no competencies in this field”(CMPF, 2013, p. 79).

A few final comments have to be made referring to the structure of this policy report, references to different actions in the direction of media pluralism and media freedom and the proposed solutions.

The structure is started with the relation between media pluralism and media freedom from a human rights theoretical point of view. The direction goes towards a well functioning of a democratic society with very well described concepts and comparison between the two. Apart from theoretical examples and definitions coming from the European institutions there is inserted also an example from a national regulator of a Member State, from Ofcom, on the view on media pluralism. Taking into consideration that media pluralism and media freedom is regulated at the Member States level and the first chapter of CMPF report focuses on the two concepts across social and political contexts there surges the need to have had many more examples from the Member States, from the different political contexts and not only from the EU institutions. Moreover, it would have created a greater balance while having already an example coming from a country with heavily tradition and input on media pluralism like UK. Here would be interesting to add the contribution of the Mediaset group to the public consultation of the report of the HLGMPF. Mediaset indicates that an EU concept of “*pluralism*” does not exist and “*its definition pertains to the Member States [...] to define what “pluralism” is, and how it should be granted*”. This idea is actually reinforced by the CMPF researchers also: ***an accepted definition of media pluralism does not exist***. There is rightfully mentioned in the CMPF report, while citing Becker et al.(2004) that “*More than 100 organizations work on the measuring of media freedom, including NGOs and international governing organizations*”(CMPF, 2013, p. 12). In the end, there is the observation that financial help received from the European Commission could have allowed to include a practical research on the examples of definitions and measures taken in different Member States on media freedom and media pluralism, especially when these processes need a constant analysis due to the constant development of the concepts according with the media changes.

The second chapter of the CMPF report is looking at the tendency to concentration of the media and possible theoretical connotations of measuring media concentration. The impact of the new media receives a particular attention due to the changes that it brings to media ownership and media concentration, with direct effects on media pluralism and media freedom. Concerns and opportunities for the traditional media and new media are compared. Again, a practical example like the one of Italy with a long-lasting monopoly of the broadcasting sector would have given a link between the theoretical examples and the practical policy changes that could be taken. Later on, in the last chapter there is only one reference to media ownership to be included in a revision of the Treaty of EU: *“it is forbidden to create and maintain a dominant position in media markets”*. This a very correct solution but very difficult to achieve which it shines away from practicability, especially on the short-term when a situation like Italy needs immediate solutions. Therefore practical solutions would ask for a closer analysis of the practical situations.

The third chapter of the CMPF report on legal instruments on media pluralism does not make any in-depth analysis or endorsement of the Media Pluralism Monitor. However, the researchers are exhausting all legal possibilities found in the Treaties of the EU, the Charter and in the resolutions of the European Parliament and the Communications of the European Commission. The analysis of Article 11 of the Charter has to be emphasized since it searches for clarification in interpretation which future references in future debates could use.

In the last chapter of the solutions of the CMPF report has been discussed a large area of propositions on the base of already discussed solutions in the literature and debates on media pluralism and have been given new directions. What has to be kept in mind from the start is *“How many of the provisions advanced can be used on a daily bases and in cases of emergency like the case of Hungary?”*

As expressed before, the implementation of a network of the NRAs to exchange information seems the most viable one because combines hard regulation with soft regulation. However, even this solution has been contested and discussed during the *Policy Conference-EU Competencies on Media Pluralism and Media Freedom Conference*, Suzanne Nicolitchev from the European Observatory, pointed out that such similar network of content regulators already exists, it is European Platform for Regulatory Authorities (EPRA) which convenes twice a year to exchange practices and find solutions to problems. The CMPF researcher motivated the exclusion of EPRA from the report because includes also countries from outside EU and does not have even powers to issue guidelines. However, this body would have been worth mentioned because it is a body, which could have received additional powers through legislation like the ones for the planned network of NRAs.

On the same line of NRAs Ms. Nicolchev added that practical examples with best practices including the Swiss and Belgian NRAs were needed and commented on the imbalance in exemplification, also mentioned before that was done when only mentioning the Ofcom example.

In the end the lack of examples in the policy report to start from is motivated by the leading researcher, Prof. Parcu during the same “*Policy Conference-EU Competencies on Media Pluralism and Media Freedom*” that “*cases are behind the reflection*” and that at this point in time cannot face the cases that are there but to look to the future. However the reactions of experts and media practitioners to this study in asking for certain exemplifications of the actual cases would have presented a much stronger case for the policy report, especially when the report received the input of nine researchers and the support of an additional five senior researchers and professors.

V.2.2.2. PUBLIC CONSULTATION ON THE INDEPENDENCE OF AUDIOVISUAL REGULATORY BODIES (2013)

This section analyzes the Public Consultation on the independence of National Audiovisual Regulatory Bodies with the options outlined by the European Commission, which come in a close relation with the INDIREG study mentioned above in sub-chapter V.1.2.3.

The Public Consultation-Description

The objective of this consultation, as presented by the European Commission, is twofold: one looking at the views of citizens, organizations and public authorities for the independence of audiovisual regulatory bodies when the AVMS is applied and other looking at different ways to actually have the position reinforced, including a hard regulation solution: “*a possible revision of Article 30 of the AVMSD*” (2013, p. 1)⁹².

Furthermore, the European Commission is starting this consultation with the support of three main documents: the Media Pluralism Monitor (see sub-chapter V.1.2.5. for analysis), INDIREG study and the Recommendation 6 of the High Level Group on Media Freedom and Media Pluralism:

“A network of national audio-visual 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.” (HLGMFP , 2013, p. 22)

⁹² Article 30 AVMSD: Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of this Directive, in particular Articles 2, 3 and 4, in particular through their competent independent regulatory bodies.

In the Recommendation 6 of the HLGMP there are two main parts which the European Commission takes into consideration for this consultation: the creation of a network *on the model of electronic communication framework* and *options to realize the independence of all regulators in all EU Member States*.

Moreover, the formalization of cooperation of national regulators has already a basis of informal annual meetings that are kept since 2003, without any legal obligation. Therefore, the European Commission suggests that combining the actual Article 30 of the AVMSD, where the Member States are asked to facilitate the collaboration between national regulators with the actual informal meetings held it could provide a strong basis to formalize this cooperation. And the objectives for this collaboration are the future identification of “*shared concerns*” especially for the cross-border activities which ultimately leads to the preservation of the internal market.

Therefore, the options enlisted by the European Commission are one side “*status-quo option*” and on the other side “*action options*”. Regarding the “*status quo option*” the European Commission points out that will take in consideration the opinions of the contributors to this consultation alongside other analyses, without mentioning which are these *other analyses*. This could mean that further analyses can be conducted aside the already mentioned ones of INDIREG, Media Pluralism Monitor Study and the Paper of the High Level group on media freedom and media pluralism.

Furthermore, for “*the action options*” the European Commission proposes a ***non-legislative option***, based on a stronger monitoring of the actual situations in the Member States; a ***legislative option*** in the form of an addition to the Article 30 of AVMSD to have the clear independence of national regulatory agencies into law; ***a further reaching legislative option*** including detailed measures to ensure the independence and will be supplemented by the “*formalization of the Working Group of Audiovisual Regulatory Authorities*”.

In consequence, the European Commission announces that all the input will be used to strengthen the independence of the regulatory bodies, all being kept within the scope of the application of the AVMSD. However, taken into consideration the above mentioned recommendations of the commissioned documents presented above, along with the recommendations from the Citizens’ Initiative on Media Pluralism, the collaboration between NRAs followed by the strengthening of the working group appears to represent a much needed action for the protection of media pluralism at the national level.

Lastly, if the scholar community expressed their position based on the legal, economic and social reasons, the citizens and journalists organizations expressed the position via the Citizens’ Initiative (EIMP), this consultation seems to look for the industry’s opinion and for the reactions of

the regulatory bodies from the Member States to have the whole spectrum of positions. What is a noticeable point that can make a real difference, especially between the decision makers in the European Council is the advantage brought by the legalized network of NRA. This if the advantage is taken in the cooperation and coordination for the protection of the internal market at the European level.

The answers to the public consultation

Compared with the previous consultation on the report of the HLGMPF, launched at the same time, this consultation received lesser contributions, including national regulatory bodies, ministers, industry and individual respondents, citizens⁹³. From these answers only three organizations (European Broadcasting Union-EBU, a joint answer from European Magazine Media Association-EMMA and European Newspaper Publishers Association-ENPA and Ofcom) elaborated on their answers beyond the close-questions questionnaire that was presented for the consultation.

Much of this reaction is also to this type of consultation in the format of a questionnaire with close-questions. The respondents were left to choose between “*very relevant, relevant, not very relevant, no relevant, no opinion*” or between already enlisted options (e.g., 5. Overall, what relevance do you attach to the following elements for the independence of regulatory bodies?) or the “*yes, no, no opinion*” answers. As a result, not much was left for argumentation besides the Closing Observations with further observations on the subject.

In their extended answers EBU, EMMA-ENPA and Ofcom expressed their opinion of opposing any “*far-reaching EU legislative solution setting out detailed conditions for independence would be most unsuitable*”(EBU, 2013b, p. 1) since is “*not compatible with Member States exclusive competence*”(EMMA,ENPA, 2013, p. 5) and “*existing mechanisms are sufficient*”(Ofcom, 2013, p. 6). Accordingly, these organizations are pointing to the fact that Member States should be the ones to guarantee the independence of their regulatory authorities “*that fit their specific national, constitutions, political and institutional structures*”(EBU, 2013, p. 1). Furthermore, as a conclusion of their position, EMMA and ENPA, agree for a non-legislative option expressed by the European Commission between the three options and they are very adamant in not reopening the negotiations on the AVMSD for the revision of Article 30.

On a certain note the position of Ofcom leads back to the discussion about the network of NRAs and the CMPF report. Ofcom highlights in their position that European cooperation already exists and they are part of Audiovisual Regulators Group (ARG) and with the European Platform for Regulatory Authorities (EPRA). Therefore, Ofcom appoints for the “*Commission to seek the expert*

⁹³ The NRAs consultation received a total of 68 answers, of which 17 have been from citizens. The HLGMPF consultation received a total of 457 answers, of which 370 have been from citizens.

advice of a body of EU regulators in developing its own policies in the audiovisual field" (Ofcom, 2013, p. 6), like ARG. This group could follow the same road of Independent's Regulators Group (IRG) which received the appointment from the European Commission in 2002 to provide advice on the field of electronic communications. This statement made by Ofcom is what also expressed by the HLGMPF report and CMPF policy report were proposing an institutionalization similar to the one of BEREC body of electronic communications.

From the part of the national ministries the contribution of the Ministry of Education, Culture and Science from the Netherlands stands out. This Ministry only agrees with a voluntary cooperation of the regulatory bodies and advices that focus of the European Commission should be on *"evaluating de facto independence of media oversight bodies"* (Gov. Netherlands, 2013, p. 20). This advice comes from the fact that the public authority from the Netherlands notices *"a gap between theory and practice"* when the NRA works with complete autonomy but on paper does not look as independent as the theory would advice.

Continuing with the importance of the cooperation of the national regulatory agencies (NRAs) this is emphasized by the correlation of questions number 6 and number 8 presented in the consultation. While question number 6 seeks a direct answer if the respondents consider important the cooperation of NRAs, question number 8 looks in more detail if the cooperation needs to be voluntary or legalized and if it can be realized at the EU level, pan-european level or international-level.

The question number 6 accumulates a positive reaction from the respondents considering the cooperation of NRAs from *"very relevant"* to *"relevant"*. Accordingly, all the positive answers are invited to express their opinion on the question number 8.

At the question 8 the European Commission presents a three way solution for the national regulatory agencies: a voluntary gathering, a legally mandated gathering of competent regulatory bodies or an agency. In what regards the agency to enable the cooperation between the regulatory bodies most of the answers were negative of *"not appropriate"*, with a few exceptions pointing for the establishment of an agency at EU level like: European Initiative for Media Pluralism (EIMP), Consejo Informativo de TVE-The News Council of the National Spanish Television, Mediaset, Greece NRA and Grupo de Investigación en Derechos Fundamentales-The group of Research in Human Rights, from Autonomous University of Barcelona.

A division is made between the respondents regarding the type of cooperation: voluntary or legally mandated. As an important note, the regulatory bodies and representatives of the nations ministries were present from only thirteen countries, which is not a majority number for all the 27 members of EU (before 2013 July enlargement with Croatia). Nevertheless, all the regulatory bodies

expressed the need for a voluntary cooperation, while six countries opted also for a legally mandated cooperation: Belgium, Finland, Greece, Ireland, Portugal and Romania. There were also some answers directed only towards legally mandated cooperation like the EIMP, Grupo de Investigación en Derechos Fundamentales and the Social Party in Hungary.

Continuing with question number 9 makes the connection between the independence of NRAs and the protection of freedom and pluralism of media:

“In your view, what is the impact of a lack of independence of regulatory bodies when acting within the scope of the AVMSD on the freedom and pluralism of the media and the markets in which they operate?” (EC, 2013b, p. 13)

The answers from the Ministry of culture from Latvia, Sky Italia, National Electronic Mass Media Council of Latvia, National Audiovisual Council in Romania, Conseil Superior de Audiovisal-Begium, DLM-Germany, AMARC Europe pointed out that would “significantly worsen” all three elements of: media freedom, media pluralism and market conditions, while the broadcasting Authority from Ireland, Socialist Party from Hungary graded that would “*significantly worsen*” media freedom, media pluralism and “*moderately worsen*” market conditions.

Furthermore, Consejo de informativos the TVE agreed with the previous organizations only with the effects on media pluralism and media freedom and did not give any opinion on the market conditions. European Initiative for Media Pluralism graded “*moderately worsen*” for media pluralism and media freedom and “*significantly worsen*” for market conditions. Mediaset was the organization to answer “no impact” for this question, while emphasizing in the closing remarks that “*on all questions referring to the impact of the Audiovisual Media Service Directive on Media Pluralism (n.1-7-9-10), it is important to underline that media pluralism is not in the scope of this Directive*” (Mediaset,2013, p. 6).

Conclusions to the Consultation

The answers received in the public consultation on the independence of audiovisual regulatory bodies did not resulted in a positive support to the objective of the European Commission, especially in searching for possible legal solutions to reinforce the position of NRAs.

Most of the answers, coming mostly from the media organizations and national regulatory organizations itself do not account for any supervisory or monitoring approach from the European Commission. There are only a few exceptions of six countries naming as “*very appropriate*” also a “*legally mandated gathering of competent regulatory bodies*” at the EU level. The coordination of a network of audio-visual regulatory authorities, while coordinated by the European Commission is very much opposed and support only the actual situation based on voluntary cooperation. This

leads to a high number of respondents choosing the action of a *non-legislative option* from the three actions advanced by the European Commission.

In other line of thought, even if most references were directed to arguments against any intervention from the European Commission, for this study is important to see also the alternative solutions advanced. The choice for the non-legislative action accounted also for a motivation of the position and actually for the advancement of soft-regulatory solutions by the respondents.

And the contributions came on the direction of the cooperation between NRAs which received a very positive answer from all the respondents (question number 6). Here the answers of the regulatory bodies were in a majority for the voluntary cooperation opposite to legally mandate. Moreover, the example is to build on the already existing voluntary cooperation of the ARG and to seek permanent advice from it. However an EU monitoring would not be supported, only an independent network to function differently from the EU institutions appointment. Even if there exists the example of the IRG group given by the participation of Ofcom to the consultation and also by the HLGMPF report and the CMPF report it can be highlighted that when it comes to the audiovisual regulators this kind of cooperation, following the same road of IRG, is not supported.

This point is made on the background of a majority of respondents admitting that the lack of independence of regulatory bodies would significantly worsen media freedom, media pluralism and market conditions (question number 9).

In conclusion, four points need to be highlighted from the launch of this consultation and from the answers received.

First, the way the European Commission took upon three commissioned studies and the recommendations from these studies as a basis for their consultation. Moreover, INDIREG study is an initiative of the previous Commission headed by Ms. Reding (2004-2009) and this is the first time the actual European Commission (2010-2014) takes upon an initiative from the previous one with an influence on media pluralism. The second time was when in May 2013 Commissioner Kroes announced that would look into the application of the Media Pluralism Monitor at the EU level⁹⁴.

Second, the answers received present unanimity in the acknowledgement of the need of the independence of audiovisual regulators and the relevance of cooperation between these regulators. The disagreements come related with the shape of collaboration, resulting that balance is towards the voluntary collaboration and not the one legally mandated by the European Commission or resulting in any coordination or agency institutionalized at the EU level.

Third, the answers of the regulatory bodies of the Member States are of most relevance for this consultation. As mentioned in the beginning, this consultation is apparently designed to gather

⁹⁴ Sub-chapter V.1.2.6.4.

the answers of the national regulatory bodies and of the industry. It is a way to “*take the pulse*” of a possible new discussion in the Council in case of a new proposal coming from the European Commission. However, the small turnover in numbers of respondents cannot hold for the overall opinion of NRAs in all 27 Member States. This turnover does not represent a majority of opinions and positions for a policy decision based solely on this consultation.

Fourth, the studies used by the European Commission for this consultation represent a lot of scientific and legal evidence coming from the part of the researchers. However, the application of these recommendations, under any legal mandate is far from reality. There is a message also in the lack of answers, a message of distancing from any debate that could bring any solution to the table than the voluntary one. Therefore, the gap is not in the reality of the actual existing independence of the NRAs and the theoretical requirements, like the Ministry of the Netherlands generalized for all Member States. The gap is in the interest to actually uncovering this actual independence when it comes to the legally mandated cooperation. Accordingly, any comparison to or exchange of practices with other Member States would trigger more uncovering of the needed independence and the actual independence of the national regulatory agencies.

At this point in the debate, the theory is taking ahead of the reality in the willing of the Member States to openly and constantly protect the independence of the audiovisual regulatory bodies and the protection of media pluralism through them. When the voluntary cooperation is the most emphasized, solutions need to be directed to an actually universal voluntary participation from all 28 Member States, between the borders of the EU. This cooperation at EU level would provide for standards and cooperation applicable in the EU Member States. When this is achieved, the legally mandated step of a network of audiovisual media regulators could be advanced if further needed.

V.2.2.2.3. EUROPEAN REGULATORS GROUP FOR AUDIOVISUAL MEDIA SERVICES (ERGA)(2014)

Following this consultation, the European Council meeting on Education, Youth, Culture and Sport (25-26 November, 2013), came to some conclusions in the direction of media freedom and pluralism in the digital environment. Parts of the conclusions address the independence of the audiovisual national regulatory agencies, while the Council addresses the Member States and the European Commission. For the Member States the Council “*Invites the member States to ensure the independence of their audiovisual regulatory agencies*”, while the Council “*invite the Commission, within its competence, to [...] strengthen, through non-legislative actions, cooperation between Member States’ audiovisual regulatory authorities and promote best practice as regards transparency of media ownership*”. It is important to highlight that a footnote in this document is emphasizing that European Commission did not agreed with the wording “*non-legislative actions*”,

looking for a more “open wording”. The entire “light wording” of the conclusions represents new evidence adding to the answers to the consultation that voluntary actions from the Member States and voluntary collaborations are expected from the participants to this Council meeting.

And in order to seal the present position of the Council, in the last address to both the Member States and the European Commission these are invited to take actions protecting media freedom and media pluralism “within their respective competences” and according to the principle of subsidiarity:

*“Invite the Member States and the Commission, within their respective competencies, to
26. safeguard, promote and apply the values enshrined in the Charter of Fundamental Rights of the EU and in this context address challenges to media freedom and pluralism across the EU in full compliance with the principle of subsidiarity”(European Council, 2013).*

The European Commission did the first big step towards the formal establishment of the first group of EU Regulatory Authorities in the field of Audiovisual Media Services in February 2014 (EC, 2014). Even if the group composition is of the high level representatives of national independent regulatory bodies in the field of audiovisual service, there is no mentioning in the press release if all the 28 Member States are represented.

The first meeting of the European Regulators Group for Audiovisual Media Services (ERGA) on 4th of March 2014⁹⁵, counted with almost all the representatives of the EU Member States, except Germany. This can be considered a success, while taking in consideration the low participation to the public consultation on the independence of NRAs and that only 6 countries agreed for a mandated collaboration between the NRAs.

Regarding the role of the group in the relation with the European Commission this has an advisory role for a “consistent implementation of the AVMSD and other related fields in which the Commission can act” and with the future input for the European Commission in the 2015 revision of the AVMS directive. In what regards the relation between the different NRAs, the European Commission hopes the group will “facilitate cooperation between regulatory bodies in the EU, and will also allow for the exchange of experience and good practices”.

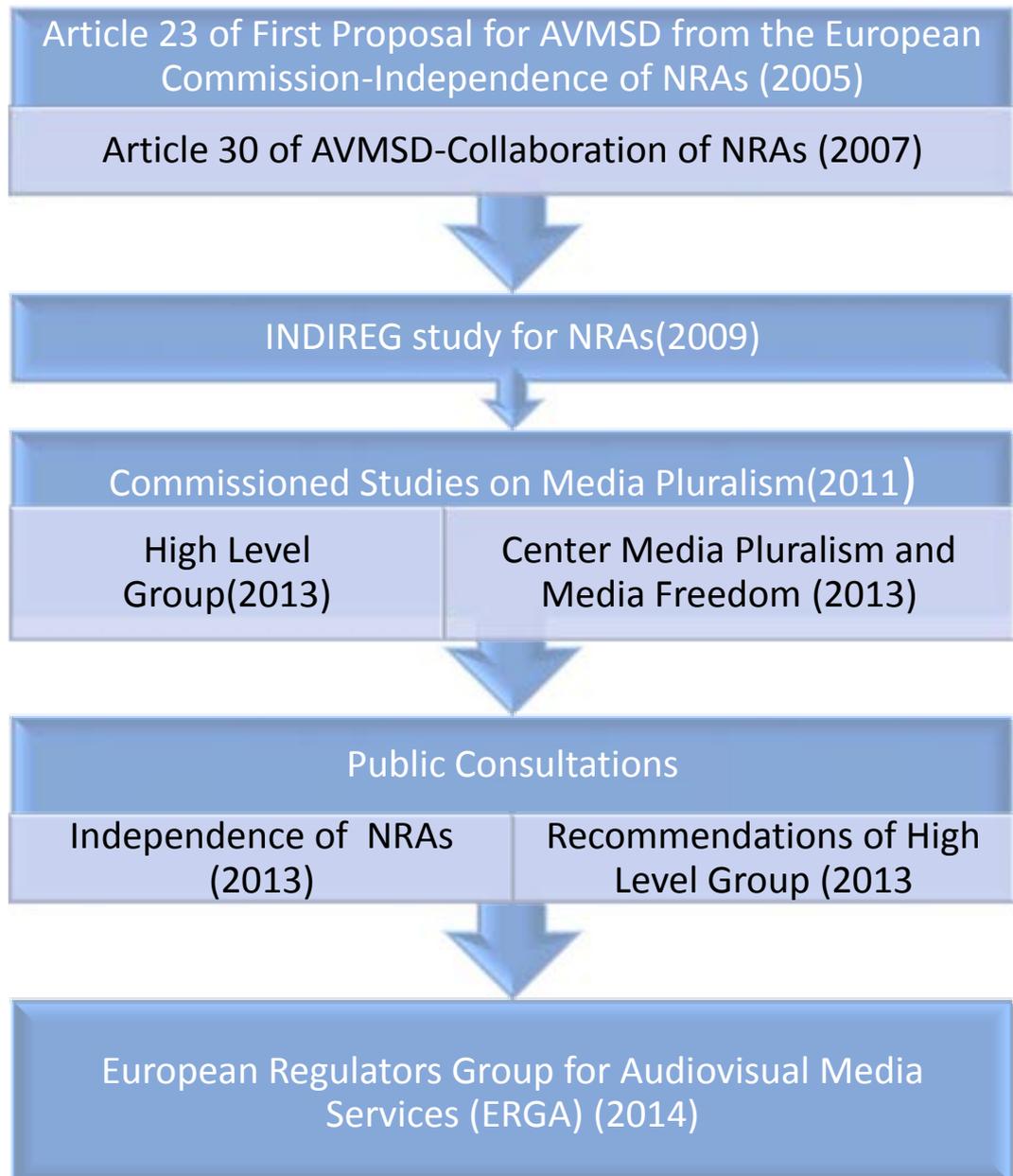
It is left to be discovered if the group will maintain the needed independence, transparency and openness to all stakeholders⁹⁶ in order to achieve the mission of cooperation and independent

⁹⁵ Inaugural Meeting of the European Regulators Group for Audiovisual Media Services (ERGA), Retrieved 12.03.2014 from <https://ec.europa.eu/digital-agenda/en/news/inaugural-meeting-european-regulators-group-audiovisual-media-services-erga>.

⁹⁶ Announcing The New European Audiovisual Regulators Group,(Ariño,2014) Retrieved 12/03.2014 from <http://blogs.lse.ac.uk/mediapolicyproject/2014/03/05/announcing-the-new-european-audiovisual-regulators-group/>.

adviser to the European Commission. The resilience of the European Commission is the main factor that made possible the establishment of this group, despite the low support from the industry and the Member States during the public consultation on the independence of the NRAs and during the European Council meetings. The voluntary format of the group of EU Regulatory Authorities in the field of Audiovisual Media Services does not account yet for full cooperation from all Member States. But is a great step towards the European Commission was looking from since 2005 with the first discussions on the draft of the AVMSD. In the next graphic is presented the evolution of the debate on the protection of the Audiovisual National Regulatory Bodies until the implementation by the European Commission of ERGA group (2014).

FIGURE 5.4: Discussion on Audiovisual National Regulatory Bodies at the level of European Commission



SOURCE: Elaborated by the author

CONCLUSIONS CHAPTER V

This chapter described and analyzed the most significant initiatives of the European Commission, when answering the following research question:

What are the actions and the arguments of the European Commission in the media pluralism related issues in the period 2000-2014? How they can be assessed?

The analysis comprises the initiatives and actions of the Commission headed by Ms. Reding and the Commission of Ms. Kroes: the Audiovisual Media Service Directive (AVMSD), The Media Pluralism Monitor (MPM), the Media Literacy Program, the Report of the High Level Group on Media Freedom and Pluralism (HLGMFP), the Report of the Centre for Media Pluralism and Media Freedom and the Consultation on the Independence of the Audiovisual Regulatory Bodies (NRAs).

Initial evidence of the directions chosen by the Commissioners is brought by the investment hearings and the speeches at the beginning of the mandates. Accordingly, Commissioner Reding makes reference to the subsidiarity principle straight from the beginning, when asked by a MEP about *“laying down common or similar standards at European level”*. Immediately following this argument enters the idea of collaboration with the Competition Commissioner *“for a level playing field with regard to concentration of ownership and competition”*. However, when Commissioner Reding expresses that media pluralism it is a priority for the regulation of the audiovisual sector as an objective of public interest, this is announced to be *“met by the market itself”*. A gap is built in the discourse of Commissioner Reding between the public interest objectives and the capabilities of the market to fully meet these interests. The main interest of the market is the respect of competition rules in the EU internal market translating at the most, in the respect of the external pluralism, but not inclusively in the respect of internal pluralism. Public interest objectives need both internal and external pluralism to be met.

Next, the announcement *“to not over-regulate”* and the *“graduated approach to regulation”* are complementing the image of a cautious approach towards the protection of media pluralism. The AVMSD alone stands as prove of a graduated approach of regulation for the linear and non-linear regulation and for not over-regulation. Moreover, the MPM is another initiative that can be included in *“to not over-regulate”* approach. MPM is a diagnosis tool, which leaves to the decision of the person/institution that applies the tool the decision on how to use the results obtained.

On the side of Commissiner Kroes, from the investment hearing emerged the fact that Ms. Kroes headed in a previous mandate the Competition Commission (2004-2009). The members of the European Parliament (MEPs) from the CULT committee pointed out that in her opening discourse

the Commissioner only referred to the organization of the media industry without any reference to the regulation of content. The suggestion of the MEPs that structure without content would lead to content coming from outside of the EU prompted the Commissioner to acknowledge this reality and promise a roundup with experts to provide possible solutions for media pluralism. Furthermore, Commissioner Kroes embraces the road of a compromise if people come together for such a solution. Until September 2013, the Commissioner followed on the idea of the roundup of experts and commissioned the work of two groups with the objectives of media pluralism and media freedom. In what regards a compromise there is no solution in sight yet, even if the launch of a consultation for the Independence of the Audiovisual Regulatory Bodies (NRAs) opens again the dialogue on this issue.

Another point of concern that appeared during the hearing of Commissioner Kroes was the insurance of network neutrality for the protection of media pluralism on the internet side. Even if during the hearing the Commissioner appointed towards collaboration between Member States and regulators, the Commissioner actually clearly pronounced herself, during the mandate, against a harmonization at EU level towards the protection of network neutrality and taking a “*wait and see*” approach.

When a comparison is done between the works of the two Commissions, correlating also with the backgrounds of the persons behind the seat, it is much clearer why the market approach and the inclination towards the infrastructure of the Commissioner Kroes, an economist and a “*champion*” as a competition Commissioner. Therefore, it can be evaluated that initiatives coming from the Commissioner Reding are much more consistent in what regards the content side of regulation: AVMSD and MPM, a combination between hard regulation and soft regulation. The initiatives for media pluralism coming from Commissioner Kroes are only on the soft-side or regulation although pointing to the roots of the debate: the EU competence in this direction and possible solutions. It cannot be avoided the observation that a possible solution for a straightforward answer was already presented in the MPM tool coming from the Reding Commission. Only to the end of the mandate, Commissioner Kroes acknowledged the existence of this tool and announced that attention will be given to its implementation.

On the part of Commissioner Reding the amendment of the AVMSD is the central regulatory initiative pointing out to changes in the legislative framework. Again, in the investment hearing the Commissioner did not promised to focus on the issue of media pluralism for the proposal of a new directive. The Commissioner only made the commitment to keep the cultural objectives high in any activities and discussions on media policy. And even if the Commissioner admits that “*it is necessary that national rules on vitally important public objectives be harmonized at a least minimum*”

degree”(2001) the objective of the revision of the TVWFD remains “*the freedom to provide broadcasting services in the European Union*”.

The first consultation on the amendments of the TVWFD (2003) did not confirm the commitment to keep cultural objectives high in the discussions on media policy. Media pluralism was not included between the six Discussion Papers and any reference to cultural diversity has been in relation with the promotion of European works. Only Discussion Paper 6 appears to have a relation between the short extracts of events and effects on choice and plurality.

Opposite to this strategy, appears to be the result of two proposed studies by the European Commission to support the future policy changes: the recent technological and market developments and the newest advertising techniques. These studies appoint for a dual change in legislation for the new AVMSD including consumer interests and cultural diversity of content for the protection of media pluralism along market interests for the protection of the internal market.

Until now, there was a gap between the expressed general approach for the cultural objectives of the Commissioner, the results of the commissioned studies and the discussion for the revision of the TVWFD.

On this note, Commissioner Reding received a new opportunity to rethink the amendments of the TVWFD with the second investment hearing for her second mandate. And the Commissioner uses this opportunity to reinforce the need for “*a content directive, which would establish the ‘rules of the game’ for media content, irrespective of the mode of delivery*” which later materialized in the linear and non-linear regulation. In what regards media pluralism the Commissioner kept the previous position of the respect for subsidiarity principle and the application of the competition law at EU level. For both national and EU level the Commissioner envisioned measures to promote plurality of sources. The question from the European Commission regarding the role of the European Commission for the protection of media pluralism: “*How do you think media pluralism and content shall be ensured?*” had a resonance almost one year later during the conference “*Between Culture and Commerce*”(2005), when the European Commission addressed the issue of media pluralism via the Issue Paper “*Media Pluralism-What should be European Union’s role?*”. Even if the conference did not bring any substantial answers to the discussion, there was presented another opportunity of Commissioner Reding to express the views of the European Commission on the focus points of the new changes in the direction of a new directive: “*around careful political and economic impact assessment*”.

When Commissioner Reding addresses the idea to develop a directive for the interests of “*the industry and consumer*” there is a lack in her approach towards the citizen and the end user. The consumer interests are followed by the economic side of media and not by the social and

cultural side. The AVMSD is following this direction and in the end is missing the same social and cultural side. Moreover, the AVMSD presents only some provisions that relate indirectly with the protection of media pluralism like: the country of origin principle, promotion of independent TV productions, the access to short extracts in the EU, promotion of independent media authorities at the national level and the old quota principle.

The promotion of independent media authorities represents a provision in the AVMSD that has a voluntary request for the Member States to respect this independence. It was one of the most debatable points in the AVMSD, which would have had an impact on media pluralism provision: an economically and politically independent regulatory body for the audiovisual sector can protect media pluralism and media freedom in a country. Therefore, it has to be pointed out that exist an actual need for an obligation for the Member States to have a regulatory body for the audiovisual sector and to respect the independence of this body. This has been present in the first proposal of the European Commission, rejected by the Council and changed into a voluntary provision (Article 30, AVMSD). Commissioner Reding tried to compensate this lose by commissioning a study on the importance of the independence of the audiovisual regulatory bodies (INDIREG study, 2011). As the previous studies mentioned during the preparation for the revision of the TVWFD, this study did not had any short-term effect nor changed the regulatory landscape. When later on, the European Commission of Neelie Kroes was confronted with the lack of power with the case of Hungary in 2010, the usefulness of the INDIREG study was appreciated by the present Commission. The situation in Hungary reopened the debate of the Article 30 and the need to ensure the independence of national regulatory bodies. Therefore, in 2013 a public consultation discussed the relevance of the independence with effects on media freedom and media pluralism and used as theoretical evidence the INDIREG study alongside the two new studies commissioned by Ms. Kroes.

This chain of events it proves that AVMSD was a lost opportunity for a better protection of media pluralism and especially for the independence of NRAs in Article 30.

The counterbalance of the lack of focus on media pluralism directly in the AVMSD directive can be considered the commission of a study on Indicators for Media Pluralism in the Member States (MPM). Even if the MPM is part of the *“three-step approach”*, it represents the most noticeable initiative of the Commission headed by Ms. Reding towards media pluralism. It represents the sole tool directed exclusively to the measurement of media pluralism and in addition is initiated by the EU institutions.

Theoretically applauded, the strongest argument for the application of the MPM is that a diagnostic tool with no harmonization objectives could provide evidence for up-to date evidence on the status of media pluralism in the EU Member States and an evidence for the evidence-based

media policies. From the point of view of the Member States this argument does not seem strong enough to initiate a voluntary application, especially when a diagnostic tool can be used to expose their weaknesses and deficiencies for the protection of media pluralism, as pointed out by Prof. Valcke and Mr. J.E. De Cockborne. This lack of application from either side represents the reason for the EP questions addressed to the European Commission on the application of the tool. Economic constraints, time consuming and complexity of the tool have been between the reasons advanced against the application of the tool. And these reasons cannot be put aside or dismissed immediately. However, much more attention needs to be directed to the neutrality of the tool regarding the gathering of the information and interpretation of results.

The tool needs an experimented team or in the beginning a multidisciplinary team of experts to gather and interpret the results in the most objective way as possible. A solution for the construction of a stronger tool, was advanced in the application in the same country by two different teams as mentioned by Prof. Tambini at workshop “*A definition of Media Pluralism in Media sector*” organized by the Centre for Media Pluralism and Media Freedom(CMPF)⁹⁷.

The discussions in the workshops and the interviews on the subject revealed that much more attention is given to the “*difficulty*” of the application of the tool, the methodology of application, than to the content of the tool like: type of indicators, risk domains and risk areas.

Even if some voices pointed to a solution in application of parts of the tool to ease the difficulty of application, the tool guide suggest otherwise. The individual indicators “*need to be interpreted in the light of related indicators in order to have a complete and correct analysis of the situation*”(p. 21). Therefore, any individual application can miss on the holistic application, on the specificities of a country.

Leaving aside the complexity of the tool and difficulty of application, the MPM brings a new approach in the protection of the end-user. The MPM points out to the importance of the access and participation of the end-user in relation with the online media. The reference to the political pluralism with the Risk P.8- “*Insufficient citizen activity and political impact in online media*” marks a difference in approach to the end-user when comparing the new media with to traditional media. The new media brings increased participation prospects and with it the increased worries on the online effects on the freedom of expression and freedom of information. It is particularly important to highlight this focus in the end user because it aligns with the theoretical developments of media pluralism protection and media centrality.⁹⁸ It has been mentioned in the conclusions of chapter II on the analysis of media pluralism in the European institutions that when it came to the definition of media pluralism there was no correlation between the definitions used by different media scholars

⁹⁷ Sub-chapter V.1.2.6.2.

⁹⁸ Theoretical developments on the end-user centrality sub-chapter I.6.

in research studies. Nevertheless, the connection can be made with the change in focus towards the end-user for media analysis with the focus on the online media.

Furthermore, the MPM did not receive the support from the group of experts of the high Level Group on Media Freedom and Media Pluralism (HLGMFP) and the Centre for Media Pluralism and Media Freedom (CMPF) for the application of the tool at the EU level. Despite these theoretical contributions and disagreements, Commissioner Kroes announced in her the last year as Commissioner of the Digital Agenda that MPM could be taken into account as a result of the suggestion of the European Parliament.

Concluding on the tool of MPM, its complexity took the centrality of the debate. This is an unique tool in the EU for the protection of media pluralism that despite the critiques of outdated or complex and uncompleted structure is bringing together indicators for all media and with a focus on the end-user in order to analyze media pluralism, an effort that EU institutions did not reached yet in the media policy making.

The last initiative discussed here from the Commission of Viviane Reding is the Media Literacy programme: *“a key pre-requisite of the twenty-first century”*. The pluralistic society is constructed on the media literacy for both the young generation and the adult generation in order to uplift the *“the potential of the full usage of pluralism”* (Klimkiewicz, 2008).

In conclusion, the Media Literacy programme is one of the supporting programmes for the media policy with direct influence on the formation of the knowledgeable individuals, building for a concept of media pluralism that is giving the: *“the possibility of the public to access various autonomous and independent media and to access contents of different types”* (Perez Gómez, 2000, p. 86). A literate end-user has a *“deeper insight into the principles and values of professionally produced media content”* (Media Literacy programme), is capable to read the media in a critically way and to participate with its own media content. Participation here is directed to the content participation, to the participation to the production of media content. Additionally, media literacy contributes also to *“strengthen their behavior as active citizens and their awareness of both rights and duties”* (Media Literacy Programme) which stands for participation to media policy formation for the interests of the end users.

Summarizing the initiatives of the Reding Commission, there is one more reflection into the actual practicability of these initiatives: can these tools be applied on a daily basis or in a case of urgency for the protection of media pluralism?

The AVMSD is a compulsory tool, representing hard-regulation that needs to be adapted to the national legislations. It depends on the decisions of the Member States how well the promotion

of the independent TV productions is done, how the access of short extracts is provided and how is preserved and promoted the independence of audiovisual national regulatory bodies.

What has to be taken out from this directive is the balance that needs to be reached for the independence of audiovisual national regulatory bodies to achieve a minimum of media pluralism protection when in some countries the national governments are the main dangers of media pluralism. The balance can be brought in a first instance by a literate end-user, with the help of the Media Literacy programmes, an end-user that understands the media messages and abuses to the free dissemination of content and freedom of information. For the MPM, a soft measure for the protection of media pluralism, the focus on the application has affected the content of this tool. An application from the European Commission, as announced by Commissioner Kroes is a promising step for media pluralism at the EU level. Additionally, the beginnings in analyzing the contribution of digital media on an equal level with the broadcasting media for the media pluralism represents a closer step for the end-user protection and for a comprehensive image of media pluralism status in the Member States. Without a doubt, new media tools and uses have to be supplemented with new indicators but the actual indicators cannot be discounted as inefficient yet.

Arriving at the initiatives of the Commissioner Kroes, as mentioned before, the initiatives towards media pluralism are only soft initiatives, addressing the roots of the debate, if the European Commission can actually govern media pluralism at the EU level with the hard-regulatory initiatives. An analytical and practical mind like the one of Commissioner Kroes, as described by her team, decided to put aside the application MPM monitor and leave it to the Member States or any organization interested in application. Therefore the initiatives towards media pluralism were directed to commission two research groups on the objective to identify the actual limitations and issue recommendations for the protection of media pluralism and media freedom in EU and to identify the actual EU competencies and legal choices with regard to media pluralism and media freedom.

Analyzing at the most important ideas advanced by the report of the HLGMPF, there appears to be a surprising focus on the written press with the advanced recommendations, especially affecting the journalist profession and the self-regulatory tradition. The Recommendation 4 focusing on the media councils with the real enforcement powers like the removal of the journalistic profession and Recommendation 1 focusing on competence of the EU to protect media freedom and pluralism opened the biggest debates. One observation is that recommendations met the situations in UK and Hungary with an important focus on solutions, therefore focusing on the “*changing media landscape*” with the technological as well as the political influences. This approach is in a way marking the places where the AVMSD does not apply: the digital presence of the written press.

One way to counteract these recommendations were the suggestions from the trade organizations, public service broadcasters and industry to respect the subsidiarity principle and at EU level to use the enforcement of Article 7 of the Lisbon treaty, when necessary, and the soft regulation in form of monitoring and self-regulation.

In the overall reactions from the public consultation on the report, a big advancement is done in the monitoring of media in the Member States, as a highly valued case. The only reluctance is still the EU monitoring or the “burden” of EU-wide standards.

Looking at the initiatives of Commissioner Reding at the connection with the HLGMPF recommendations, on the one side, the one point that resonates is the search for the independence and collaboration of the national audio-visual regulatory authorities:

“A network of national audio-visual 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” (Recommendation 6).

Moreover, there can be observed in Recommendation 6 of the HLGMPF that no EU coordination is mentioned, only a similarity in organization with the electronic communication framework. This recommendation accomplishes through careful wording and clear content guidance to express the positive advantages of the independence and collaboration of the regulatory authorities.

On the other side, the HLGMPF report marks a gap in evaluating the MPM as “*an effort that still needs improvement*” without any recommendation in the direction of the improvement or on the missing elements that can be added. Furthermore, the second report commissioned by the Commissioner Kroes in the policy document on the competencies of the EU in respect of the media pluralism and media freedom by the Center for media pluralism and media freedom (CMPF). This report is directly affirming that the EU cannot be “*neutral*” in what regards media freedom and media pluralism and the improvement of EU competencies are necessary in order to have “*a more consistent and active intervention*” when needed. And the CMPF notes that action is needed from the EU when it has to reduce the political and economic threats for media pluralism. In this regards, the policy report states that EU has some competencies but are “*rather hidden and not explicit*”.

In this light the CMPF advances four legal instruments that could be used by the EU for the protection of media pluralism and media freedom and also advances a series of solutions. For the

legal instruments are used the Article 11 of the Charter, Article 10 of ECHR, Article 167(4)⁹⁹ of TFEU with the focus on the cultural aspects and Article 352 TFEU with the option to be applied in the situations of emergencies and Article 7 of TEU introducing a “*general competence of the EU*”. The intent of the CMPF is to include the cultural aspects along economic aspects under the spectrum of the EU competencies.

From the solutions presented by the CMPF a combination of soft and hard regulation of a network of audio-visual national regulators represents the continuity in ideas since the Reding Commission. Moreover, it takes upon the Recommendation 6 of the HLGMPF and does not include in the solution any extension of competencies for the EU, only a collaboration of the regulators. The only hard-regulation treat is that collaboration has to be made between all the national regulators of the EU Member States and has to be based on compulsory participation.

Additionally to these main parts of the HLGMPF report there are two ideas that are resonating in the previous initiatives: the focus on media literacy and on the effects on the new media and participation of the end-user. In fact, the two issues are related since the increased diffusion of the new media appears to create abundance on the supply side, which still does not match the demand.

However, two problems appear here: the presumption of the abundance and higher consumption. Original content comes from innovation and diverse consumption. Demand for new content, opposed to concentration on a few suppliers, comes from an educated public.

When innovation forgets about the access of the end users and its levels of literacy to understand the media content, an imbalance is created for media pluralism. The educated end-user is contributing both to the media content production as well as to the construction of the right media policies for the protection of media pluralism. Attending the need for justification of policies for media pluralism is an idea advanced by Prof. Valcke and acknowledged in the CMPF paper. This observation raises the importance of the media literacy for the navigation in the new media environment.

All the initiatives discussed in this chapter are giving a space to the new media and its influences on media pluralism. The MPM is actually considered outdated because it does not fully include the new media with specific indicators. The AVMSD was considered too audacious to extend the regulation to non-linear, even if it actually does not look into the internet. Both the HLGMPF report and CMPF report are analyzing the new media, where the HLGMPF addresses the protection of the journalistic profession and the new digital landscape and the CMPF is focusing more on the connection with the ownership concentration.

⁹⁹ Article 167(4) TFEU: “The Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures.”

Arriving at the Consultation on the Independence of the Audiovisual National Regulatory Bodies (NRAs) once again the EU monitoring becomes one of the most rejected arguments. After the situation in Hungary affecting directly the independence of the NRA, all the efforts made by the Commission of Ms. Reding and the policy documents presented during the Commission of Ms. Kroes the respondents to the consultation do not see the EU implication on this matter as an efficient one. The acknowledgement of the need for independence is universal. A voluntary cooperation is again very well accepted but a generally accepted solution does not appear to be in sight, either voluntary or not. As it has been suggested in the analysis of the consultation and of the answers received, voluntary participation needs to be encouraged between the 28 EU Member States. The gap between the theoretical advancements and reality of achieving an independent regulator for the audiovisual-media are too big to enforce a discussion on a legally mandated step at this point. Is this solution presented by the respondents again future-proof? According to the theoretical advancements, recommendations, complete ignorance of the Member States of the MPM and recent case study of Hungary appears to not have an application not even for the short-term.

In conclusion, the only initiatives focusing on the media pluralism in the analyzed period (2000-2014) coming from the European Commission are soft-regulatory initiatives like the MPM and the policy documents discussing the factors affecting media pluralism and the competencies of the EU in this matter. Solutions have been advanced for the protection of media pluralism by the researchers and by the respondents to the public consultations, especially the ones launched by the actual European Commission.

When analyzed the solutions advanced or recommendations of the researchers these are focusing either on existing legal instruments and cases when these could be applied, like the emergency case of Hungary or on indirect permanent solutions, like the establishment of the network of NRAs that could guarantee a certain level of media pluralism in the Member States.

To a certain point it has been advanced and it is probably approved also by the present European Commission that any solution proposed by the experts would have a stronger case with a complex analysis like the one that could be provided with the MPM. Until then, the Member States and their regulatory bodies could opt-out of any voluntary network of cooperation between regulatory agencies, like the one of ERGA.

CHAPTER VI-CONCLUSIONS-EU SOFT REGULATORY MEASURES AND MEDIA PLURALISM

This study is following the case of the European Union and the protection of media pluralism for a period of fourteen years (2000-2014).

Theoretical and EU legislative Advancements Media Pluralism-Soft Governance

Media Pluralism is a concept in permanent evolution, adapting constantly to the media environment. From an incipient association with diversity and plurality, media pluralism acquires a recent association with the concept of media freedom. This latest association has changed the theoretical concept as well as the political discourse in the European Union institutions. Media pluralism is used as a prerequisite value for a democratic society:

“media pluralism aims at protecting and enhancing democracy by providing the citizens with a broad range of information and views needed for the effective exercise of their respective citizenship”(Westphal, 2002, p. 478).

As a consequence, the theoretical research on media pluralism transferred from a focus on the media role in the society to a stronger focus on the end-user, the consumer and the citizen. This *“triple vision”* includes the interests of the end-user, citizen and consumer, altogether, without promoting one interest over the other and benefiting the communication process by having an active individual participating and consuming the media (Sub-chapter I.6.; Llorens & Costache, 2013b). These are the newest directions of the theoretical developments for media pluralism: towards a human rights protection with the attention to end-user and the freedom of information, freedom of communication and freedom of expression and the construction of a citizenship role of the media in a democratic society. These influences of the theoretical ideas have slowly entered the political discourse even if not at the same pace with the theoretical developments. The differentiation between the consumer and end-user or citizen is still ambiguous in the political discourse. The first focus on the consumer comes from the organizational theory and is a trace of the economic interests, alongside political interests. This was the first step in moving from the media centrality to the consumers, with Van Cuilenburg and McQuail (2003) emphasizing this change along with the economic and consumerist values. However, this change towards the consumer interests is not enough for the protection of media pluralism since the focus only on the consumer is primordially looking at the economic interest of the media owners. Therefore, when the discourse remains on the consumer this means that not much has been changed for the policy actions while

the discourse appears to evolve from the economic interests towards human rights and public interests objectives. The focus has to be on the “triple vision” that includes all the characteristics of the citizen, consumer, and end-user in order to see a real change. Leaving one characteristic out is as unequal as leaving the internal part or the external part of media pluralism out of the regulatory process.

Whereas the “triple vision” focus for media pluralism slowly enters the political discourse, the presence of the concept of media pluralism in the EU documents, of the European Commission and European Parliament is carefully documented. Some researchers named this careful wording as a “weak syntax” for the European institutions (Centre for Media Pluralism and Media Freedom-CMPF report, 2013, p. 53; The EU Network of Independent Experts on Fundamental Rights-The Network, 2005). In this study were discussed three documents with influence on the EU media policy and on the approach of the Member States towards media pluralism. According to the researchers mentioned above these documents could have had a stronger syntax towards statutory regulation. However, these documents do not have a direct regulatory approach and represent a soft-regulatory approach. In the following part is presented the actual wording of the documents and how the researchers envisioned a stronger approach:

a) Article 11(2) of the Charter of Fundamental Rights of the European Union:

“The freedom and pluralism of the media shall be respected.”(2000)

When could have been:

*“The freedom and pluralism of the media **shall be guaranteed**.”(The Network, 2005)*

b) The optional choice for the independence and collaboration of the audiovisual regulatory bodies in Article 30 of the Audiovisual Media Service Directive (AVMSD):

“Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of this Directive, in particular Articles 2, 3 and 4, in particular through their competent independent regulatory bodies.”(AVMSD, 2007)

When could have been:

*“1. Member States **shall guarantee** the independence of national regulatory authorities and ensure that they exercise their powers impartially and transparently.*

*2. National regulatory authorities **shall provide** each other and the Commission with the information necessary for the application of the provisions of this Directive.”*

(Article 23, EC, 2005)

c) The invitation for the Member States to develop professional standards in the “*Resolution on EU Charter: standard settings for media freedom across the EU*”:

*“calls upon the European Commission to propose an instrument [...] to ensure that the Member States **invite** the media sector to develop professional standards and ethical codes which include the obligation to indicate a difference between facts and opinions in reporting, the necessity of accuracy, impartiality and objectivity, respect for people's privacy, the duty to correct misinformation and the right of reply”*(2013, p. 13, Article 24).

When could have been:

*“calls upon the European Commission to propose an instrument [...] to ensure that the Member States **oblige** the media sector[...]*”(2012, Article 24).

This careful wording proves that **subsidiarity principle** is strongly rooted in the EU political discourse. The European Parliament as well as the European Commission is very much aware of the strong position of the Member States.

From the discussion on the definitions of media pluralism in the EU documents and from the contributions of the stakeholders can be concluded that is no overall definition or a general framework of the elements constructing media pluralism. Many definitions are only referring to the internal and external parts of the concept, as a **tradition** coming from the first description by the CoE (1994), as described in sub-chapter I.4. Nevertheless, media pluralism has more than one dichotomy building the concept: political and cultural (EP, 2004); social/political and economic (Klimkiewicz, 2008); the passive dimension protecting the already existing pluralism in the society and the dynamic/active dimension promoting the values to be protected for the construction of a democratic society (Barzanti, 2012). The slow development of the new dichotomies and the minimalist assimilation by the different parties it proves for a slow development of the concept at the level of the EU political discourse. Again, theoretical developments are outpacing the status-quo at the EU policy level, where stakeholders are still comfortable with only the basic characteristics of media pluralism.

The discussion on a definition of media pluralism at the EU level, especially coming from the media researchers (Media Pluralism Monitor, 2009; Pauwels, Valcke, 2012), leads towards the protection of an evolving concept by not advancing a restrictive definition that would hinder future actions towards the protection of the concept in the Member States. It can be concluded that leaving an open concept with a broad framework like the example given by the MPM (2009) does not impose a definition on the Member States and contributes to a healthier environment of theoretical and media policy research. Still, the lack of input from the Member States translated in a

very few examples of definitions of media pluralism at the national level it could not contribute to this healthy environment. Worse, it could hinder the developments of new mechanisms of establishing the problems affecting and protecting media pluralism.

The most important advancements in the dialogue over media pluralism at the EU level are brought by the use of the Article 11 of the Charter and the concerns over the new phenomena affecting media pluralism. First, Article 11(2) of the Charter(2) *“The freedom and pluralism of the media shall be respected”* has been present in the discussions at EU level since the inclusion in the Lisbon Treaty and increasingly used as an argument for the protection of fundamental rights from the part of the EU institutions and of the Member States. Moreover, it marked the connection between the values promoted by the CoE and the EU institutions, with the EP adopting a recent resolution on this same matter (EP, 2013).

Therefore, the Charter gives a premise **to address** the *“protection and freedom of pluralism of the media”* in the policy documents of the EU institutions, in emphasizing to the Member States the values promoted by the Charter. It has been highlighted in sub-chapter II.1.1. the true value of this Article 11 is its existence in an EU document, after many years of debate on the protection of media pluralism, in a *“source of primary law”*(CMPH, 2013). This Article has to be brought to its full potential by emphasizing its existence and using it in more than on a note of awareness, as an element that needs to be respected by the appropriate institutions, no matter their statutory or voluntary obligation.

Second, media concentration remains as one of the biggest concerns for media pluralism and to this effect are being added the political influences over the media. The assimilation of the concept of diversity and plurality into the media pluralism concept came along with the struggle against media concentration, and the new association with media freedom comes along with the efforts against the political influences.

The centrality of the end-user gives more substance to the protection of human rights for the democratic society: *“pluralism is a quality of democratic societies, as well as an individual human right”*(CoE, 2011). The presence of Article 11 in the EU Charter and the greater emphasize of its value comes at a time when concerns over the political influences are exposed more than ever at the EU level.

Moving on to the soft-governance concept, this is a concept where more voices can acquire the ability to contribute to the media pluralism construction aside the national regulators or the EU institutions. This process is explained by the socio-political science as a natural evolution of the governance processes, where the society takes over the collective processes of resolving a society’s needs (Sub-chapter III.1.1).

The collective contribution comes with the mechanisms of co- and self-regulation, which include the statutory regulation partially or not at all. Consequentially, the *“lighter approach to regulation”* brought by co-regulation is building the process of soft-governance on a lighter path of media regulation, which has its advantages for both the regulator and for the media industry. The discussion is not centering on the dominant position for the coordination for the decision-taking, but for a sharing in positions that could accommodate all parties. However, this study has seen that a theoretical position is not reflected constantly in reality and the media industry is taking the lead when co-regulation is implemented, and the state is only basing its actions on the monitoring process. The self-regulatory process in a way motivates this shift from state regulation to the media due to efficiency and knowledge. The only dilemma is that when the shift happens without responsibility and accountability it runs the risk to forget the democratic objectives and media pluralism protection is left behind (Sub-chapter III.2.2.).

The concept of governance has passed along to the European governance, approaching the European study case. Firstly, the decision of European legislators to agree to governance is to actually attract the citizens’ participation to the European regulation. This strategy was based on the theoretical presentation of the concept in opening for the participation of different parts. However, the European initiative, with the 2001 White Paper on Governance, cannot be considered a successful one due to the blurring strategy in decision making while following different interests (Cotino, 2003).

The work of Puppis (2010) is considered a reference for the transfer of the governance ideas to the media governance, to the audiovisual media regulation. Puppis described media governance as *“a regulatory structure as a whole, i.e. the entirety of forms of rules that aim to organize media systems”* and looking at media governance as an answer to *“the dilemma of how to reconcile media regulation with media freedom”* (Puppis, 2010). The added value of a system of media governance that brings together statutory regulation and soft-regulation is brought by the participatory interests for the construction of a democratic society (Hoffman-Riem, 1996). This is where the media governance coincides with the values of media pluralism of access, freedom of information, and freedom of expression.

Media governance does not exclude statutory governance, on the contrary, brings *“the right to communicate”* closer to the statutory governance for the inclusion of all stakeholders in the media regulation (Sub-chapter III.2.3.1.). This characteristic of *“multi-stakeholder approach”* is reinforced by the works on a definition of media governance. The centrality in the media governance system is taken by the equal participation of all parties and by the inclusion of different types of regulation, both statutory and non-statutory.

The accountability issue that appeared during the development of the governance concept is also present in media governance. Accordingly, most theoretical work around media governance points to this particular issue: the accountability issue (McQuail, 1997; Bertrand, 2000, Siochrú & Girard, 2002; VanCuilenburg & McQuail, 2003; Bardoel & D’Haenens, 2004; Bardoel, 2007). From the incipient ideas of Bertrand (2000) a media accountability system involves **media owners, media professionals** and **media users**. When talking about a proper functioning of a media governance system, social responsibility enters into place from the media to the society but now also from the society to the media. The independence of the media stays as a strong pillar to the democratic society and this independence comes with accountability of the media translated into “*media groups should pay attention when developing their activities to all parties interested and not only the political ones*”(Wyss & Keel, 2009, p.117). Another strong pillar entering into the arena with the media governance is that other participants to the media construction should be hold accountable too for their participation to be valued. Participation cannot come without accountability for the construction of a democratic society.

In this regard, the media governance concept advanced by Puppis (2010) was furthermore developed in this study to include the accountability value. This is the proposed new definition:

“Media Governance is referring to the total sum of mechanisms, both formal and informal, national and supranational, centralized and dispersed aiming at organizing the mass media from inside, as well as from the outside into a new media system where the participants are ready to be hold accountable for these mechanisms”.
(Llorens & Costache, 2013a, 2013b)

This definition points to the need to an open participation of responsible participants that can be held accountable for their objectives in participating to the audiovisual regulatory policy. However, there is still missing an accountability process in place that could make this definition applicable immediately. To clarify, this definition only identifies a missing element that cannot be ignored on the road towards the construction of a media governance system. Including the accountability value, this media governance could actually pretend that can provide for a better protection of media pluralism, based on both statutory and soft-regulatory mechanisms.

Besides accountability there appeared a second problem that puts the application of the media governance system in a difficulty and that needs to be reconsidered: **the economical restrains** of the small players, especially new entrants (Cavallin, 2010; Meier, 2011). Even if media governance preaches for participation of as many players as possible on the media market, there is not an easy task to undertake from the point of view of resources. Therefore, a big number of new small entrants with limited resources do not equal the power and the position of big media companies,

already established ones, which have a bigger say. Lack of resources lead to inequality at the time of decision taking and do not account for the media governance *ideal*.

To summarize, media governance system recognizes the involvement into the media policy of the different parties in the society, along the traditional statutory governance. Still, every time participation is proposed these have to come with the right resources with an accountability system in order to guarantee equal participation and a participation that is towards the protection of the media pluralism values and for the construction of a democratic society and not only to counteract other powers and fight for singular hidden objectives.

The second part of this study is opened with an analysis of the policy documents of the European Parliament, Council of Europe and different stakeholders like the Ofcom analysis on News Corporation proposed acquisition of British Sky Corporation and the European Initiative on Media Pluralism from the Citizens' Initiative. Part of the discussion of policy documents needs a recollection of one of the reasons for the failure of the 1997 proposal for a directive on media pluralism: missing the political will and the differences between different Directorates Generals (DGs), Member States and industry opposition.

Nowadays, evidence of the latest political movements in the European Parliament, as introduced in sub-chapter II.3., shows a division between members of the European Parliament (MEPs) in this institution on the priority of the subsidiarity principle, led by EPP members, and priority of fundamental rights led by ALDE, S&D and Greens. This holds a heavy influence on the motions voted in the Culture and Education Committee (CULT) and Committee on Civil Liberties, Justice and Home Affairs (LIBE) and raised in front of the plenary for the protection of media pluralism in conjunction with the protection of human rights and media freedom.

As a consequence, there were only five resolutions tangentially looking at media freedom and media pluralism in the analyzed period (2000-2014) from the European Parliament. Only one resolution is directly addressing media pluralism in relation with a democratic society (EP, 2004). Moreover, there has been a failed motion for a resolution on "*Media Freedom and Media Pluralism in Italy and EU*" (2009) mainly because of the divergences in interest between the MEP in the European Parliament.

As a counterbalance to the developing divergences in the European Parliament is the contribution to the media pluralism debate brought by the European Initiative on Media Pluralism (EIMP), another result of signing of the Lisbon Treaty. This initiative was advanced by a civil society organization (European Alternatives) and a journalistic organization (International Alliance of Journalists) which now counts on the support of hundreds of organizations all across the EU (Sub-chapter IV.3). One of the recommendations of the EIMP are covering the basic requirements for the

measures that Member States need to take to ensure media pluralism and these are envisioned to be made in an amendment to the AVMSD or via another directive. Another recommendation points to the ***conflicts of interests*** between the role of the media and political interests, concern that should be ruled out by clear regulation. An important position of EIMP, which also adds to the debate on the independence of the audiovisual regulatory agencies (NRAs), is the establishment of clear rules at the EU level to require Member States to ensure the independence of NRAs from economic and political influences and provide them with enforcement rules.

One last point highlighted has been Ofcom's analysis on News Corporation proposed acquisition of British Sky Corporation. This analysis brings a theoretical argument to sustain the idea that competition policy in general cannot apply to the characteristics of the media and media pluralism need to be supplemented with additional tools of analysis. In a situation when the European Commission cleared the acquisition, Ofcom, the UK regulator, approached the situation from a different angle: of the relevant audience. The conclusion of the Ofcom was that regulators should look at more than plurality of media and analyze how media can influence the public by influencing the news agenda.

The changes in the European Parliament political directions and the external influences are leading towards initiatives that could protect media pluralism indirectly: independence of the audiovisual national regulatory agencies and the promotion of minimum standards for the protection of media freedom and media pluralism in the Member States. One last position that European Parliament is pushing forwards is the application of the Media Pluralism Monitor in the Member States, with the help of the European Commission.

Arriving at the policy actions of the European Commission (DG INFSO/Connect) in the analyzed period (2000-2014), this study has covered the work of three Commissions. The political situation in EU, along with the efforts of the European Parliament and civil society organization, had an influence in coordinating the policy strategy of the European Commission.

As a result, there are two initiatives that resonated from one Commission to another: the promotion of independence of the Audiovisual National Regulatory Bodies and the importance of the Media Pluralism Monitor. One important remark holds for the influence of the continuation and this is the political developments affecting media pluralism in certain Member States, aside from the policy initiatives of the European Parliament, Council of Europe and civil society organizations.

The Commission headed by Commissioner Reding accounted for three initiatives related to media pluralism:

a) The revision of the AVMSD, which brought three tangential new points for the media pluralism protection and missed on the independence of the Audiovisual National Regulatory Bodies Article 30.

-promotion of independent TV productions (R 64)

-the access to short extracts in the EU (R 55)

-promotion of independent media authorities at the national level (R 94)

b) Indicators for Media Pluralism in the Member States-Towards a Risk-Based Approach (MPM) tool represents a diagnostic tool designed to provide up-to date evidence on the status of media pluralism in the Member States. This tool represents the second step of the “*three-step approach*” proposed by the Commissioner Reding and the most important one for the media pluralism concept in the EU. The indicators designed for this tool are economic, social and political. The research team has made the best efforts to make the application of the tool as quantitative as possible, along with the interpretation of the results. In addition, the tool includes in the indicators references to the importance of access and participation of the end-user to the online media production. The access and participation is depicted as twofold: “*activity*” as creator of media content and “*political impact*” as participation to the policy formation. A setback for the MPM tool has been the big criticism to the application difficulties like the high number of indicators (166), objectivity of the research team that applies the tool and interprets the results and the missing of some indicators applying to the new technological advances.

c) Media literacy programme stands out for the implication it has for the formation of the end-user in how to use the media, participate and contribute to the media in a critically and accountable way.

Media Literacy is a responsibility of the Member States and accordingly, the AVMSD does not include any provisions at the EU level, does not make any references even in the recitals, but only connected with the 3 years report of application of the directive and with future recommendations if needed (Article 33).

Nevertheless, researchers, European Parliament (2008b) and a recent Recommendation of the EC (2009b) brought the discussion on the media literacy up to date, linking the need of a democratic society, to adapt to the new technologies in order to protect their citizenship:

“whereas the media make themselves felt in politics and the day-to-day life of society; whereas a high degree of media concentration can endanger media pluralism; and whereas media literacy is therefore central to political culture and active participation by Union citizens”(EP, 2008b).

The report of the HLGMPF reiterates on the importance of media literacy: “*a well educated public will be more resilient to withstand whatever negative influences they may encounter*”(2013, p.

31) and issues a recommendation for the presence of media literacy education in the high-school curricula:

“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”(Rec. 19, HLGMPF)

Media Literacy is mainly related with the education of the young generation and with the need to support the formation of a knowledgeable citizen capable to access the media, contribute to the creative industries, participate to the media policy creation and critically assess media influence.

On the other hand, the Commission headed by Commissioner Kroes, presented three proposals for media pluralism analysis however these did not materialized in actual actions for the protection of media pluralism: the establishment of the **High Level Group on Media Freedom and Pluralism**(HLGMFP) with the mandate to create a report on the state of media freedom and pluralism in EU and to provide recommendation (2011-2013); the establishment of **The Centre for Media Pluralism and Media Freedom**(CMPF), with a grant awarded to the European University Institute, with the mandate to held conferences, seminars related with media pluralism and media freedom and create a report on the *“EU Competencies in respect of media pluralism and media freedom”*(2011-2013); the **revision of the Media Pluralism Monitor** was proposed in 2013 and was awarded a grant to the CMPF in order to update and apply a pilot project of the MPM in nine EU countries.

Still, the studies commissioned in this period have been directed by the European Commission to continue the dialogue on the EU competencies in respect of media pluralism and the identification of the limitations and opportunities to protect media pluralism in the EU. The policy papers were further used by the European Commission to open again the dialogue for two main issues: **the independence of audiovisual national regulatory bodies** and **the competencies of EU in regard with media pluralism**, according to the recommendations of the High Level Group on Freedom and Pluralism of Media and of the Centre for Media Pluralism and Media Freedom. The documents of the commissioned groups, together with the consultations led to the implementation of the **European Regulators Group for the Audiovisual Service (ERGA)** under the EU umbrella. This group is **supposedly** composed of independent European regulators that can come together to share the best practices between them and advise the European Commission on the implementation and revision of the AVMSD. The new status of the group and the independence of its members have a good potential to contribute to the media pluralism concept at the EU level.

EU Policy Actions-Soft-Governance

In order to conclude on the overall direction of media policies of European Commission, the first introspection comes from the descriptions of the two Commissioners' investiture hearings (Commissioner Reding and Commissioner Kroes). From the start, neither of the Commissioners addresses directly the media pluralism and media freedom issue by announcing concrete planned actions. It actually results that it is not an issue of their main focus for the future Commission: Commissioner Reding indicates that will ask the collaboration with the Competition Commissioner to protect "*cultural specificity and diversity*" via the competition rules, due to the subsidiarity principle; Commissioner Kroes expresses the need to have some actual data and expert opinions in order to design a strategy for media content and media pluralism. Looking at a continuum in the answers and further speeches of the two Commissioners, it can be seen that Commissioner Reding has started with the **old** focus on concentration of ownership and competition to protect the external pluralism and has followed this road while addressing the protection of public interest objectives to be "*increasingly met by the market itself*". Commissioner Kroes focused on the regulation of the infrastructure systems in EU, while targeting the universal accessibility in EU and idea of harmonization of broadband connections for the benefit of the consumers and European industry. The technological advancements have been driven the agenda of the two Commissioners, where innovation and the competitive electronic content have been closely assisted to flourish. However, it has to be pointed out the opinion of MEP Mr. Cavada when addressing to Ms. Kroes, at her investiture hearing, that structure without content it is worthless and content it would have to flow from outside the EU.

Unfortunately, the answers of the two Commissioners at the investiture hearings proved to shape the future actions of the Commissioners and these have been minimal in what regards inclusion of media pluralism at the EU media policy level. Nevertheless, the discussion has been based on soft-regulatory measures that in the end of the mandate of Commissioner Kroes actually saw a small but fruitful initiative: the establishment of the ***European Regulators Group for the Audiovisual Media*** (ERGA).

From the point of view of soft-regulatory measures initiated by the two Commissioners, the focus of this research, these appeared as an answer to the lack of inclusion of the media pluralism objectives in the hard regulatory actions. This brings to the attention the warning of Simpson (2011) when referring at the use of soft-regulatory measures at the EU level, as a "*second-best or a fallback option*"(Sub-chapter III.2.). Taking the example of Commissioner Reding, her main change in the media policy at the EU level, as hard-regulation, has been the modernization of the "*Television Without Frontiers*" (TVWF) directive. Even if Commissioner Reding approached the promotion of

cultural diversity at the EU level with the statement that “*neither the market nor self-regulation are sufficient or appropriate to achieve [it]*”. As for media pluralism, the Commissioner was concerned with the idea of “*over-regulation*” due to, again, the principle of subsidiarity and the lack of legislative support in the EU Treaty. With the approach of the revision of TVWF directive, Commissioner Reding turns once again to the market principles and relies on the “*access to a vast range of electronic content*” translating to the market solution on solving the media pluralism problems. To support this position, Commissioner Reding, based a big part of the revision of the TVWF directive on the commissioned studies on: measures that impact the promotion and distribution of television programmes; recent development and market developments; the newest advertising techniques (Sub-chapter V.1.1.3.1.).

Furthermore, it appeared surprising that revision of the TVWFD included an “*Issue Paper on Media Pluralism*” and even a working group on media pluralism at the Liverpool conference “*Between Culture and Commerce*” in 2005 and the discussion ended up there, because no inclusion of media pluralism provisions was made in the AVMS directive. These actions were confirmed by members of the Media Task Force that were initiated only to fill the void that started to build after the 1997 failed directive with the media pluralism discussion at the EU level but without any intention to actually further up the discussion in this direction.

The adoption of the AVMS directive did not have any direct impact on the protection of media pluralism principles at the EU level, even if Commissioner Reding tried later on, in addressing in front of the EP plenary (Sub-chapter V.1.2.4.) to pinpoint some provisions relating with media pluralism and discussed above.

The proposal of the soft-regulatory strategy of the “*three-step approach*” seemed as a very organized plan to revive the debate on media pluralism and actually to have some results on the situation of media pluralism in the Member States. Additionally, the first step, the staff working paper on “*Media Pluralism in the Member States of the European Union*” (EC, 2007) has been seen as a study to open the debate on the “*possibility of a harmonizing directive*” including media pluralism concerns of certain Member States (Annex 1). Looking now at the firm stance of the second step, the Media Pluralism Monitor, on distancing from any harmonization role (Sub-chapter V.1.2.6.), the first step can be named as a “*simple rhetoric*”.

The content and the complexity of the Media Pluralism Monitor make this tool the most significant soft-regulatory tool including media pluralism for the two mandates of the Commissioner Reding. The lack of the EU political push to actually have the tool present and applied at the level of Member States left the place for the increase of a series of reasons to impede the application of the tool in the initial structure (Sub-chapter V.1.2.6.3.). With this statement, the author of this study

does not consider the concerns of different stakeholders and media practitioners and researches related to the application of the Media Pluralism Monitor to be wrong. The technological advancements, the need for more inclusion of indicators focusing on the new media, the application of the tool from the point of view of a team of experts and lastly the constant adaptation of the tool are certainly well founded when have passed more than four years and there was no application. Timing of the application with the financial and political help of the European Commission would had gave a more timely application even if not for all the indicators at the same time (legal, socio-democratic and economic indicators). This argument comes also from the idea that an initial application would have resulted in an easier update of the tool besides looking once again at the indicators and application from a strictly theoretical point of view.

Until this point of the launch of the *“three-step approach”* with the actual construction of the Media Pluralism Monitor, it can be stated that debate on media pluralism has encountered a big gap in the period 2000-2007 from the part of the European Commission. This does not translate that a gap was closed in what regards any actions at the EU level media policy. Nevertheless, taking into account the focus of this research on soft-regulatory measures, this is a soft-regulatory strategy that opened the debate for media pluralism. Additionally, it opened the gates towards a media governance system where EP and members of the civil society started to react more and more in asking for the implementation of the tool and looking for their own solutions like the EIMP initiative on media pluralism (Sub-chapter IV.3.). The lack of application of the tool it comes firstly from the reluctance of the Member States. A later decision of the Commissioner Kroes to actually proceed to the revision of the tool and to the pilot projects applications in nine Member States of the EU proves that a media governance system does not exclude the involvement of a central government, characteristic inherited from the governance concept, even if there is a *“change in the nature of the state”* (Trieb et al., 2007, p. 3) (Sub-chapters III.1.1. and III.1.2.). On the contrary, a governance system it still needs coordination, like in this case, the coordination of the European Commission, for the implementation of a tool on media pluralism. This case of the Media Pluralism Monitor is particularly important because the application will be left in the end to the Member States, action that requires the establishment of a *“culture of responsibility”*, a highly-regarded characteristic of media governance (Sub-chapter III.2.3.1.).

As a last point to be made in regard with the Media Pluralism Monitor is that it represents one of the connections between an initiative of Commissioner Reding and one of the Commissioner Kroes, since Commissioner Kroes made a late acknowledgement of the need of improvement and pilot application of the tool (Sub-chapter V.1.2.6.4.)

The second action is the actual creation of a group of national regulators for the audiovisual media (ERGA) (2014). Looking at the lengthily debate (Figure 5.4) on the independence of the national regulators for the audiovisual media that started with the proposal for the AVMSD, the failure to include a strong proposal in the AVMSD, the need of two commissioned groups of experts to acknowledge the need of such a group and a public consultation on this matter, it has to be said that in the end have been all the soft regulatory efforts of the European Commission of the Commissioner Kroes and the final push that helped the creation of the group. This is proved by the fact that despite the support of the studies of the High Level Group on Media Freedom and Pluralism (HLGMFP) (2013, Recommendation 6) and of the researchers of the Centre on Media Pluralism and Media Freedom (CMPF)(2013, p. 5) the Member States and the industry did not see the creation of a group under the EU umbrella as a favorable one. The only solution approved in a close unanimity, during the “*Consultation on the Independence of the Audiovisual Regulatory Bodies*”(2013) has been a voluntary gathering of the NRAs. Despite clear opposition to the documents of the researchers and also expressed in the Public Consultation, the European Commission went along and institutionalized the ERGA group in 2014 with a mandate to help implementation and revision of the AVMSD, besides the provision for collaboration and knowledge exchange (Sub-chapter V.2.2.2.3.). The first meeting did not count for a full participation of the NRAs, with Germany not being present, which actually proves the old and constant opposition of this country mainly due to its organization of the media system (Sub-chapter V.1.2.4.).

What made the Commission headed by Neelie Kroes to actually take a step forward towards the legal boundaries of the EU media policy are also the unexpected difficulties that were raised during this last years, especially with the case in Hungary (Sub-chapter V.2.1.). The European Commission was put in the situation when clearly saw the missing powers, especially towards ensuring an independent regulatory agency in a Member State and mostly how the lack of powers and coordination led to a lack in media pluralism and media freedom. The only tools used by the European Commission were political pressure and the support of the European Parliament (EP, 2011) and the civil society. The ERGA group is the hope to minimize these kind of situations and help the European Commission become more aware of the situation of media pluralism and media freedom in different Member States.

Once again, there are great expectations from this soft-regulatory initiative of the European Commission with the ERGA group and an almost unanimous presence does count for much more outcomes than the application of Media Pluralism Monitor. Additionally, the actual application of the Media Pluralism Monitor, beyond the announced pilot projects, depends on the independence of the NRAs and the strong collaboration of the members of the ERGA group.

Lastly, the soft regulatory efforts of the Commissioner Kroes with the HLGMPF and the CMPF did help by using the reports issued by these groups and forwarding the debate on media pluralism and institutionalizing the ERGA. ERGA, as well as the Media Pluralism Monitor are novel initiatives, are soft-regulatory initiatives with the possibility to have a coordinated, voluntary action that could translate also in media pluralism protection at the EU level more than any previous initiative.

Actual EU Competencies and Further Actions-Media Pluralism

The basic question on the competencies of the European Commission is still present in the policy debates and the EC consultations. There were several occasions reopening the discussion on the competencies: the revision of the AVMSD, the construction of the Media Pluralism Monitor, the situation of the independence of the audiovisual regulator in Hungary and the paper issued by the HLG *“A free and pluralistic media to sustain the European democracy”* (Recommendation 1) and the public consultation of the European Commission on this report.

The revision of the AVMSD marked a clear distinction between the competencies of the EU and of the Member States. The previous discussions at the Liverpool Conference in the focus group on media pluralism did not hold any sense of concrete direction towards the issue (Sub-chapter V.1.2.2.). Nevertheless, the debate advanced on competencies, is sustained by new possible legal solutions: Lisbon Strategy and Article 11 of the Charter, NRAs independence and collaboration at the EU level.

The Media Pluralism Monitor (MPM) in itself started with a broad definition in order to not impose one on the Member States. Furthermore, the tool emphasizes from the beginning on a diagnostic objective with no intention of harmonization: *“The MPM itself does not call for a particular policy approach. Neither should it be interpreted as a call for harmonisation of the policies in the area”* (MPM, 2009, p. 134).

The Situation in Hungary exposed the lack of legal power of the European Commission, as discussed in sub-chapter V.2.1. As a consequence, of only reacting on an advisory role, **raising a series of concerns**, two studies have been commissioned by Commissioner Kroes. These studies went to the root of the problem and looked into competencies and possible solutions.

Both studies resulted in an open support from the scientific part on the competencies of the European Union. This is offered by the HLGMPF on 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 CPMF media policy document pointing to the hidden competencies of the EU for media pluralism: *“Even if EU competencies sometimes appear to be scattered and residual in respect of the Member States, the EU cannot be “neutral” in what regards media freedom and pluralism”*(2013, p. 10).

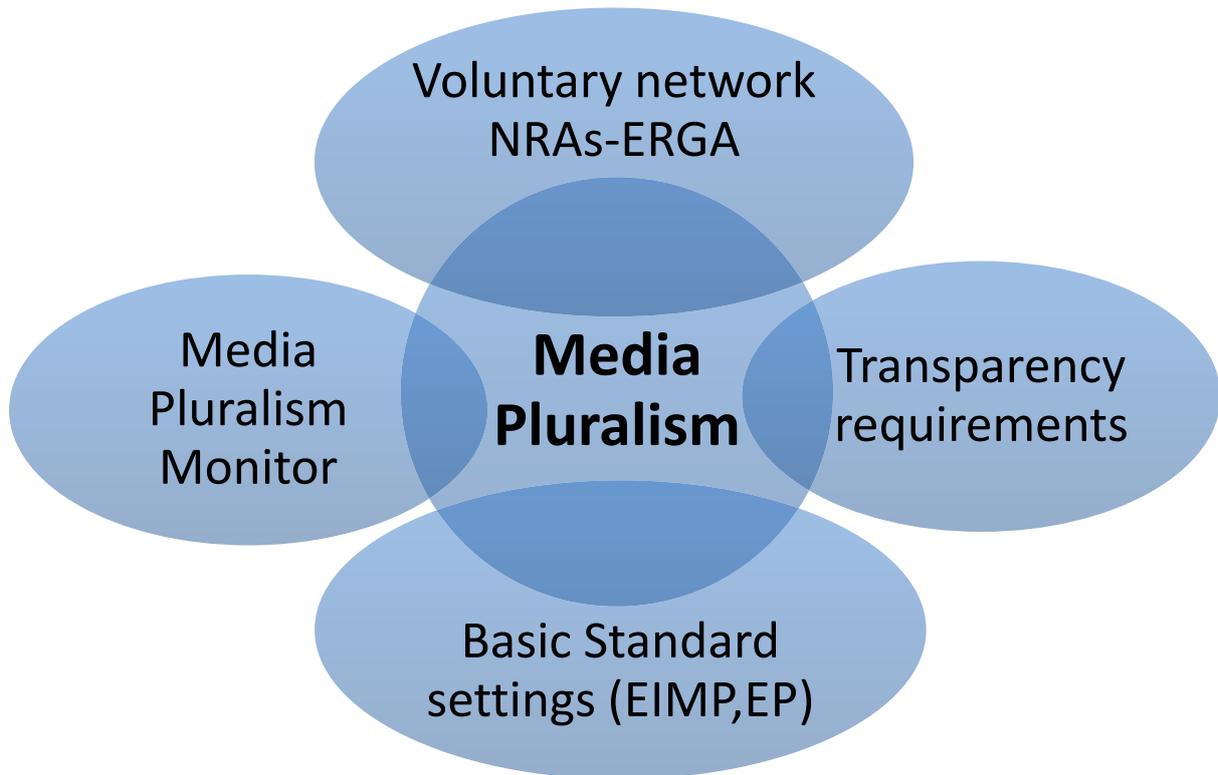
However, even if the discussion has been reopened, continued by the European Commission and supported by European Parliament and civil society organizations, this did not translated into receiving the awaited reaction from the other stakeholders. When it comes to any remote discussion that would take away from the control of the national regulators the position is still firm. In the first place stands the position of the Member States of rejecting from the start the analysis and application of the media pluralism monitor at the level of Member States. On a second place are the positions to the recent consultations in 2013 from the European Commission: *“Consultation on the Independent Report from the High Level Group on Media Freedom and Pluralism”*(EC, 2013a) and the *“Consultation on the independence of the Audiovisual Regulatory Bodies”*(EC, 2013b).

When the recommendations of the HLGMP are discussed Recommendations 1 on the harmonization and Recommendation 4 on the independence of media councils and coordination following European-wide standards, bring the industry, trade organizations and Member States into a common front that clearly points out how these have been stretched to enter the competences of the Member States, as analyzed in sub-chapter V.2.1. One element remains constant: monitoring process of the media is a necessity recognized by majority. The only difficulty comes in the shape of *“European-wide standards and monitoring by the Commission”*(HLGMP, Rec.4).

The European Commission Initiatives, European Parliament and different stakeholders mentioned above shaped the discussion around the media pluralism at the EU level as focusing on four possible soft-regulatory solutions:

- a) Application of the Media Pluralism Monitor;
- b) Voluntary Networks of National Regulatory Bodies;
- c) Establishing Basic Standards Setting for Media Pluralism and Media Freedom in the Member States;
- d) Establishing Standard Transparency Requirements.

FIGURE 6.1: Elements constructing media pluralism at the EU level in 2014



SOURCE: Elaborated by the author

Figure 6.1 presents the soft-regulatory measures promoting media pluralism at the EU level. These elements represent the actual actions for the protection of media pluralism that can be reached at the EU level. Accordingly, these elements include a broad basis for soft-regulatory measures as: independent participation in voluntary collaborative networks; application by the European Commission and the Member States of the media pluralism monitor which can paint the actual situation of media pluralism; and the introduction of standard settings for media pluralism and media freedom, as well as transparency requirements, coming from the European Parliament and the EIMP.

Can these initiatives of the Commission be placed in the theoretical model of media governance for a better protection of media pluralism?

The theoretical model of media governance with the improved definition focusing on the media accountability opens the regulatory space towards the soft-regulatory mechanisms.

First, the inclusion of EIMP initiative in the EU regulatory space is an opening towards the contributions of the citizens. Even if the process is a lengthy one until reaching any results it has the advantage of bringing the awareness on an issue where the European Institutions have a weak

position. Moreover, different voices are heard and contribute to the policy making rather than only giving an opinion (Meier, 2011).

Second is the importance of independence and collaboration of National Regulatory Bodies for the Audiovisual Media (NRAs). The arguments for the creation of a network of collaboration for the independent NRAs have increased in the EU debate in the analyzed period (2000-2014). These arguments are resumed in the following.

The importance of this collaboration of NRAs is recognized by all the participants to the latest *“Consultation on the independence of the Audiovisual Regulatory Bodies”*(EC, 2013b). Voluntary collaboration is a well-accepted action and advancements in the support should not lack. If collaboration comes in a voluntary manner from the NRAs themselves the accountability value should follow. With the accountability comes a formalization of minimum rules and standards settings that have to be respected. The recommendation for the European Commission to only *“seek for expert advice”* from a voluntary network will bring to the forefront of the dialogue the need for an expertise and knowledge rather than imposing already written *“EU-wide standards”*. Moreover, collaboration at EU level has the possibility of building up a consensus for a smaller area and offers the participation of an independent voice coming from each Member State, for the shaping of EU media policy.

The importance of the independence of the NRAs for the protection of media pluralism has been emphasized by the European Parliament and media researchers, especially for the protection of fundamental rights: *“only independent authorities could be entrusted to decide cases where fundamental rights are at stake”*(CMPF, 2013, p. 77).

Additionally, the situation has moved from the theoretical premises to a rapid practical example with the change in constitution in Hungary directly affecting the autonomy of the media regulator. The European Initiative for Media Pluralism (EIMP) makes the clear connection between the lost opportunity of the AVMSD, political pressure, situation in Hungary and the independence of NRAs:

“Had this proposal of the Commission become part of the AVMSD some years ago, it would have been a clear and enforceable rule that members of the Media Council in Hungary could not have been selected exclusively by the governing super-majority in the national Parliament” (EIMP, 2012, p. 2).

The actions towards the independence of the NRAs received a constant attention from the European Commission, discussion over the revision of TVWF directive (Sub-chapter V.1.2.4.), and as well from the different stakeholders. The researchers are advocating for an independence of the NRAs and a statutory legalization of the collaboration between these bodies:

“A network of national audio-visual 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.”(HLGMFP, 2013, p. 22)

On the other side, the Ofcom, the UK regulator, advanced the idea that would be enough for the European Commission to *“seek expert advice group of a body of EU regulators in developing its own policies in the audiovisual field”*(2013, Sub-chapter V.2.2.2.).

When the Consultation over the Independence of the NRAs asked once again about a legally mandated network of audiovisual regulatory bodies cooperation or a voluntary one, the choice is in majority for the voluntary one especially from the participants regulatory bodies to the consultation. The discussion was pointing overwhelmingly to the difficulties of even discussing a remote collaboration of the audiovisual regulatory bodies with the finalization of coordinating fundamental values and reaching constancy in these values all across Europe.

The coordination of the regulatory bodies under the European Regulators Group for Audiovisual Media Services (ERGA) does go against many of the opinions expressed in the above mentioned consultation and does not account for full participation from the Member States or from the presence of all independent NRAs from each Member State. This proves that many of the difficulties presented in the consultation persist and are not easy to be brushed off. However, it has to be mentioned that European Commission has the power to bring these NRAs together and offer them a platform for collaboration and participation to the media policy construction, even if only on a voluntary basis.

Other elements for the protection of media pluralism are represented by media literacy initiatives and the EIMP with transparency requirements and basic standard settings for protection of media pluralism, which are soft-regulatory tools that empower the end-user. Furthermore, the EIMP initiative and the independence of NRAs play a central role in this system. The EIMP supports the independence of NRAs and the NRAs need all the support to build an active positive position for the creation of a voluntary collaboration. Without an independent and active NRA there is no active end-user role and accountability. The NRAs need the input of the end-user and vice versa. In the end, media pluralism and media freedom, these two prerequisites of a democratic society, need these two parties of end-user and independent NRAs to participate to the media governance system at the same decisional level with governmental institutions. It is the soft-regulatory solution to the dilemma of meeting media freedom with media regulation, since democracy cannot be enforced on the Member States, it has to be taught by example and lived.

To conclude, the soft-regulatory measures are having a promised potential to support the statutory-initiatives but not too many have been put in practice. Discussions advanced on the use of the Article 11 of the Charter, independence collaboration of NRAs and the application of MPM or voluntary application of basic standard settings for media pluralism with no concrete results yet. The policy tools of the competition rules and lack of focus of the AVMSD on the media pluralism are still the central part of the statutory regulation at the EU level.

Most of the evidence indicates that political environment does not appoint for the fresh statutory changes but point to a much open discussion towards soft-regulatory mechanisms. And on the background of a constant rejection for more than two decades from the Member States of any EU implication when media pluralism and media freedom are concerned, the opening of the discussion towards soft-regulatory mechanisms has to be considered a step towards the awareness of the importance of the media pluralism concept. The search for constant solutions for media pluralism protection is a positive step forward when looking for “*future-proof*” solutions and eliminate the situations of applying “*on-the go*” solutions.

In the main, the findings discussed suggest that:

First, recent association of the concept of media pluralism with media freedom proves a constant evolution of the concept along with the evolution of the media environment in acting against the new political influences. The Ofcom observation on the BSkyB proposed acquisition by News Corporation (Sub-chapter IV.4) that accumulation of power to influence the news agenda translated in high audience share, has a great impact on the media pluralism and media freedom. This association of media pluralism and media freedom is adjusting the theoretical concept to the social and political reality but little is done in bringing this association to the media policy action. Additionally, theoretical evidence with a focus on the “*triple vision*” needs to be further developed and transferred in order to take a stronger position in the political discourse and supplement the efforts in this direction.

Second, independence of the national regulatory agencies for the protection of media pluralism can be realized at state level if discussions focus on a voluntary collaboration at EU level, without mentioning of the “*EU-wide rules to be followed*” or “*EU monitoring*”. Permanent careful wording is still needed to achieve difficult goals of cultural and media policy competencies. Political discussions over the independence of the national regulatory agencies have missed essential voices in the discussions, the end-users and the NRAs. Even if theoretical evidence is pointing to the electronic communication framework as a “*perfect*” example to be followed, the discussion on the audiovisual regulatory bodies still needs to take a gradual path that first includes soft-regulatory measures of voluntary collaboration like the ERGA.

Third, media governance represents a concept that materialized from the theoretical advancements and entered into the EU media policy alongside the Article 11 of The Charter, Media Pluralism Monitor and Media Literacy programme. However, soft governance tools have not been identified and recognized as viable solutions for media policy due to the distance between the mere introduction in the EU media policy system, only as a fallback option for disagreements at the EU level (Simpson, 2011, sub-chapter III.2) or the lack of acceptance and application from the European Commission as well as from the Member States. Additionally, divergences in the EP counted against the soft-regulatory positions also. The counterbalance brought by the EIMP action brings a stronger voice to the participation of the end-user in the media policy making. However, this voice does not count alone for the media pluralism advancements, soft-regulatory measures need to be more than only advanced and recognized as *“alternative possible solutions”* along the statutory regulation. They need accountability and the help of the National Regulators for the Audiovisual Media Services.

Every soft-regulatory measure needs to be counted as a new action participating to the media policy making, building the media pluralism concept in each Member State alongside statutory regulation. This recognition needs to be made on the basis of an accountability system to guarantee participation towards the better protection of human rights and end-user objectives. Lastly, a gradual application of a governance system is much more welcomed by the Member States before accepting any discussion on legally mandated EU standardization and harmonization. Therefore, this study concludes that media pluralism can be better protected at the EU level and achieve an *“effective pluralism”* (ECHR, 2012, Sub-chapter II.4.9) if the statutory governance at the national level of Member States is complemented with soft-regulatory measures like the ones presented in this study, at the EU level, while considering the circumstances of limitation on competences from the part of the European Commission.

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ABBREVIATIONS LIST

ACT	Association of Commercial Televisions in Europe
AER	European Association of Radios
ALDE	Alliance of Liberals and Democrats in the European Parliament
AMARC	Association of Community Radio Broadcasters
AVMSD	Audiovisual Media Service Directive
BEUC	The European Consumers' Organization
BSkyB	British Sky Broadcasting Group
CMPF	Centre for Media Pluralism and Media Freedom
CoE	Council of Europe
CULT	European Parliament Committee on Culture and Education
DG	Directorate General of the European Commission
DG CNECT	Directorate General for Communications Networks, Content and Technology
DG COMP	Directorate General for Competition
DG EAC	Directorate General for Education and Culture
DG INFSO	Directorate General for Information Society and Media
EBU	European Broadcasting Union
EC	European Commission
ECo	European Council
ECHR	European Convention on the Protection of Human Rights and Fundamental Freedoms
ECI	European Citizens Initiative
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
ECREA	European Communication Research and Education Association
EDRI	European Digital Rights
EFJ	European Federation of Journalists
EIMP	European Initiative for Media Pluralism
EMMA	European Magazine Media Association
ENPA	European Newspapers Publishers Association
EP	European Parliament
EPC	European Publishers Council
EPP group	Group of European people's Party (Christian Democrats) in the European Parliament
EU	European Union

FRA	European Fundamental Rights Agency
HLGMFP	High level Group on Media Freedom and Pluralism
ITRE	European Parliament Committee on Industry, Research, Energy
IFJ	International Federation of Journalists
LIBE	European Parliament Committee on Civil Liberties, Justice and Home Affairs
NRA	National regulatory Agency
MEP	Member of the European Parliament
MPM	Media Pluralism Monitor (Independent Study on Indicators for Media Pluralism in the Member States –Towards a Risk-Based Approach)
NN	Network Neutrality
OMC	Open Method of Coordination
OSCE	Organization for Security and Cooperation in Europe
PSB	Public Service Broadcasting
S&D group	Group of the Progressive Alliance of Socialists and Democrats in the European Parliament
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union
TVWFD	Television Without Frontiers Directive
UNESCO	United Nations Educational, Scientific and cultural Organization

INTERVIEWS LIST

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- Angela Mills Wade, executive director of the European Publishers Council, phone interview, 27/4/2012.
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- Ross Biggam, Director of the Association of Commercial Televisions in Europe, Brussels, 20/4/2012; 23/5/2012.
- Suzanne Vanderzande, member of the Media Task Force, Directorate General of Information Society and Media, European Commission, Brussels, 23/4/2012.

ANNEXES

ANNEX 1– The European Citizens’ Initiative Activity File-Year 1

This document shows how the European Initiative for Media Pluralism has been registered for the first time on 5 October 2012.

ANNEX 2- Ms. Reding Second Mandate Hearing-2004

Part B-Specific Questions.

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and the answer from the Commission.

Subject: Implementation of a media pluralism monitoring tool.

ANNEX 7– Parliamentary Question Giannakou

and the answer from the Commission.

Subject: Supervision of media pluralism in the EU.

ANNEX 8– Pilot Project-Commission Draft Budget 2012

TABLED BY: Rui Tavares, on behalf of the Greens/EFA group

PP 33 02 10: Pilot Project to enable the implementation of an already existing Media Pluralism Monitoring Tool (MPM) for assessing media freedom across the EU.

ANNEX 9– Neelie Kroes- 2013. Declaration European Parliament Plenary.

Debate on Motion for a resolution on the EU Charter: standard settings for media freedom across the EU

ANNEX 10– Pilot project - Commission Draft Budget 2013

Draft amendment 5802

TABLED BY: Ivo Belet, Committee on Culture and Education

Add: 09 02 07: Implementation of the Media Pluralism Monitoring Tool.

ANNEX 11- Transcriptions interviews

YEAR ONE

The European Citizens' Initiative Activity File

ECI (Commission Registration number)	Title	Timing (1: Registration /Non-Registration; 2: Deadline)	Progress (Number of reported statements of support by March 10)	Documentation	Language	Funds	Mode	Info	
(2012) 000001	Fraternité 2020 - Mobility. Progress. Europe.	09/05/2012 – 01/11/2013	59'834 (MAR10) en.fraternite2020.eu/signatures.htm	www.F2020.eu @fraternite_2020 https://www.facebook.com/Fraternite2020	Proposal (all), Website (all)	Reported funding: € 2907	Online	Pro-european networking (No draft legal act) Signature counter per country on FB	
(2012) 000002	Single Communication Tariff Act*	10/05/2012 – 03/12/2012	Did not start to collect before relaunching as ECI (2012)16	> ECI (2012)000016					
(2012) 000003	Water and sanitation are a human right! Water is a public good, not a commodity!	10/05/2012 – 01/11/2013	1'242'063 (FEB24)	www.right2water.eu @right2water www.facebook.com/pages/right2water/	Proposal (all), Website (10)	Reported funding: € 100'000	Online & paper	Against privatisation of water resources (no draft legal act) Signature Counter No country per country statistics published	
(2012) 000004	EU Directive on Dairy Cow Welfare	10/05/2012 -> (WD) 20/07/2012	Did start to collect on paper before withdrawing in July 2012	www.happycows.eu (transformed into a general campaign and petition website)#happycows				„Please show the cows some love“, PR for Ben&Jerry icemaker ***35000 signatures for petition“	
(2012) 000005	One of us	11/05/2012 - 01/11/2013	121'989 (MAR10)	www.oneofus.eu www.facebook.com/pages/ONE-OF-US/144037745755884 @oneofus	Proposal (most), Website (most)	Reported funding: € 50'000	Online & paper	Banning related funding (draft legal act) Signature Counter No country per country statistics published **Former Pope signed as German citizens	
(2012) 000006	Let me vote	11/05/2012 -> (WD) 29/01/2013	Did not start to collect before relaunching as ECI (2013)3	> ECI (2013)000003					
NN	My voice against nuclear power	30/05/2012	Did try to readapt with new ECI but not yet found a feasible way	www.my-voice.eu				Anti-nuclear campaign ***20'000 have joined the movement“	
NN	Recommend singing the European Anthem in Esperanto	30/05/2012	Filed the initiative on April 1 and published communique in all languages	www.europo.eu				Adding esperanto version to EU hymne	
NN	EU citizenship after secession	30/05/2012						** Oral question in EP after refusal (25-07-12), was answered by Mr. Barroso (28-08-12)	
(2012) 000007	Stop vivisection	22/06/2012 – 01/11/2013	104'928 (MAR10)	www.stopvivisection.eu www.facebook.com/Stop Vivisection #Vivisection	Proposal (all), Website (9)	Reported funding: € 8901 (from Italy only)	Online & paper	Phasing out animal experiences (no draft legal act)	
(2012) 000008	High Quality European Education for All	16/07/2012 – 01/11/2013	??? (MAR10, no published info) – did start to gather from December 6/12	www.EuroEdTrust.eu	Proposal (all), Website (10)	Reported funding: € 12000	Online	Unifying education in Europe (no draft legal act)	
(2012) 000009	Initiative responsible waste management	16/07/2012 – 01/11/2013	??? (FEB24, no published info) – did start to gather from July 16/12	ice.id.st	Proposal (6), Website (1)	Low	Paper	Responsible management and treatment of waste (no draft legal act)	
NN	Abolition of bullfighting	19/07/2012	Tried to re-register with an adapted ECI in august 12 but did give up in october	www.aboliciontauramaquia.com					
(2012) 000010	Suspension of the EU Climate&Energy Package	08/08/2012 – 01/11/2013	??? (FEB24, no published info) – did start to gather	www.affordable-energy.eu	Proposal (18), Website (1)	Report funding: €2500, EFD EP	Online	Suspend the 2009 EU Climate & Energy Package (no draft legal act)	
(2012) 000011	Central public online collection platform for the European Citizen Initiative	27/08/2012 – 01/11/2013	No gathering	No website	Proposal (1)	Low	No	Instrumental Test-ECI by independent developers for the Online Collection System (no draft legal act)	
NN	Creation of a European Public Bank focuses on the social, ecological and solidarity	06/09/2012						**European Left Party initiative	
NN	Unconditional Basic Income	06/09/2012	Did not start to collect before relaunching as ECI (2013)1	> ECI (2013)000001					
NN	„A Europe of Solidarity“	06/09/2012	Did start informal online campaign/petition after non-registration	http://www.1millionsignatures.eu				** SEISACHTHEIA, Greek Debt Release Campaign , „83500 supporters“	
(2012) 000012	End Ecocide in Europe: A Citizens' Initiative to give the Earth Rights	01/10/2012 -> (WD) 21/01/2013	Did not start to collect before relaunching as ECI (2013)1	> ECI (2013)000002					
> ECI (2013)000002	European Initiative for Media Pluralism	05/10/2012 – 01/11/2013	1881 (MAR10)	www.mediainitiative.eu	Proposal (9), Website (10)	Report funding: €2000	Online	Proposes legislations against media concentration (no draft legal act) Signature Counter No country per country statistics published	
(2012) 000014	30 km/h – making the streets liveable!“	13/11/2012	16006 (MAR10)	www.30kmh.eu FB: /30kmh.eu	Proposal (14), Website (6)	Report funding: €5050	Online & paper	Signature Counter for each Member State	
(2012) 000015	Termination of the contract of free movement with Switzerland	19/11/2012 -> (WD) 04/02/2013	Did not start to collect before withdrawing in February 2013	www.swissout.eu	Proposal (1), Website (2)	Report funding: €150'000		End free movement with Switzerland ***Happy with the Swiss government“	
(2012) 000016	Single Communication TariffAct (Version 2)	03/12/2012	??? (no published info) – did start to gather from December 3, 2012	www.onesingletariff.com FB: /OneSingleTariff TW: @ONESINGLETARIFF	Proposal (all), Website (4)	Report funding: €2000	Online	Unified flat-rate across Europe (draft legal act)	
(2013) 000001	Unconditional Basic Income	14/01/2013 – 14/01/2014	No gathering (just in petition mode)	www.basicincomeinitiative.eu	Proposal (5), Website (4)	No reported funding	No	Asking the Commission to encourage the member states...	
(2013) 000002	End Ecocide in Europe: A Citizens' Initiative to give the Earth Rights	21/01/2013 – 21/01/2014	12615 (MAR10)	www.endecocide.eu	Proposal (15), Website (22)	Report funding: €2291	Online	Adopt legislation to prohibit, prevent and pre-empt Ecocide (no draft legal act)	
NN	Enforcing selfdetermination Human Right in the EU	21/01/2013		www.europeancitizensdecide.eu	Website (9)			More freedom and self-determination for regional entities across Europe	
(2013) 000003	Letmevote	28/01/2013- 28/01/2014	No gathering (yet)	www.letmevote.eu	Proposal (11), Website (3)	No reported funding	No	Resident voting rights for all EU citizens (no draft legal act)	

Sources: ec.europa.eu/citizens-initiative, ECI websites (see above)/Status: 10.3.2013

be a call for action to facilitate, where appropriate and necessary, identification of, and access to, quality content and services for minors. This includes the provision of means of access in educational establishments and public places.

MEDIA AND THE AUDIOVISUAL POLICY

5. How do you think European audiovisual policy should take account of technological transformations, in particular in the area of digital TV and of interactive media?

The development of digital technologies, the roll-out of broadband and the consecutive proliferation of interactive media lead not only to an in-depth change in the economics of the audiovisual sector, but also to new methods of creation involving new types of content services and content presentation, and hence new creators. These developments will supplement, rather than replace, the 'traditional' media landscape, in order for the future media landscape to demonstrate greater variety. However, content will continue to fall into two basic categories – private communications (e. g. correspondence), and communications directed to the public at large (news, culture, entertainment, sports, etc), generally (but not necessarily) against some form of remuneration. Whilst the former should continue to be governed by basic constitutional provisions rather than sector specific regulation, the latter will continue to require some degree of regulation and/or co-/self-regulation to preserve public interest objectives. The question is: should the same content not be subject to the same principles whatever the mode of delivery?

I would say that the same principles apply, but not necessarily the same detailed rules. The Commission is at present preparing the review of the 'Television without Frontiers' (TVWF) Directive in the light of such considerations. These issues will be further discussed in expert groups later this year and at the beginning of 2005. The idea of a content directive, which would establish the 'rules of the game' for media content, irrespective of the mode of delivery, is one possibility which will be analysed. Such a concept would have to take into account the number of users and the type of content, as well as the degree of choice and control by users, in order to apply proportionate rules combining regulation and 'soft law'. The possible added value of a content directive can only be determined through the assessment of the above criteria, of the different degrees of maturity of delivery modes and of market conditions.

Digital TV is one of many delivery possibilities. Consumers should be able to benefit from the widest possible access to the whole range of modes of delivery and services. The key industry actors in the audiovisual sector who need to take full advantage of digital technologies are producers and distributors. It is important for the professionals within the sector to have the necessary skills to work with and benefit from the opportunities offered by these technologies. In order to ensure that the needs of industry dovetail with technological developments and programme mechanisms, both the current and future MEDIA Programmes provide for pilot projects and individual training offers aimed at promoting conditions in which companies in the audiovisual content sector can seize the best opportunities offered by new production and dissemination services.

6. How do you think media and content pluralism should be ensured, respecting the principle of subsidiarity? When will the Commission come forward with its proposal concerning the review process of 'TV without Frontiers' and what will be its priorities? What measures does the Commission intend to take regarding those Member States which are not implementing the Community directive on 'TV without Frontiers'?

I consider that media pluralism is an essential component of our democratic societies. Both the EU and its Member States should do everything within their power to promote it. It is obvious that the action of both the EU and the Member States must move within their respective spheres of competencies, as laid down in the Treaties.

It must be noted that the challenges presented by media pluralism vary in the Member States. There is no easy 'one-size-fits-all' answer to the difficult problem of promoting media pluralism. Taking into account the respective spheres of competencies of the EU and its Member States, a range of measures are needed, namely:

- regulation at national level;
- application of competition law at EU level;
- promotional measures at both national and EU level to ensure a plurality of sources.

Regarding more specifically the measures to be taken at EU level, the application of European competition policy instruments in the media sector addresses the underlying market structure and economic impact of the behaviour of media undertakings with the aim of preserving the interests of the consumer. It should be noted that it cannot replace - nor does it intend to - national media concentration controls and measures designed to ensure media pluralism. However, secondary Community legislation, such as the 'Television without Frontiers' (TVWF) Directive does contain some provisions that contribute to preserving the diversity of sources of pluralism. This is particularly the case with Article 5 of the Directive dealing with independent production, and also with various actions of the MEDIA programme. Generally speaking, the Single Market is in itself a contribution to a diversity of sources of pluralism.

Turning to the review of the TVWF directive, the results of the 2003 consultation process have shown that there is a large consensus that the Directive remains a valid and appropriate legal framework under current economic and technical conditions. However, considering the time needed for proposing, adopting and implementing a new legal framework, it is the Commission's duty to look ahead and to prepare a review of the TVWF Directive taking into account mid-term scenarios. The Commission, in its Communication on the future of European audiovisual regulatory policy in December 2003, decided to address these issues in two steps. In April 2004, it adopted short-term measures. The *Interpretative Communication on Television Advertising* clarifies to what extent the TVWF Directive applies to new advertising techniques. For the medium term, meetings of expert groups are being organised on the following subjects that also define the areas where further thought is necessary:

- regulation of audiovisual content
- the level of detail in the regulation of advertising;
- the right to information and right to short reports.

The expert groups and the studies commissioned (i.e. on co-regulation) deal with what emerged so far as priorities for discussion, but I do not exclude that in the course of the revision of the Directive further issues could still emerge. The results of the ongoing work will enable the Commission to make the final decision on a revision of the Directive by the end of next year and, if need be, to present a proposal.

The Commission facilitates the implementation of the Directive through the exchange of best practice in the 'Contact Committee' established by the Directive and by the meetings of the Regulators Group. The Commission also acts as guardian of the Treaty and starts infringement procedures where necessary against those Member States who are not correctly implementing the TVWF Directive. At present, there are several cases in relation to the Directive.

7. *What would be your forthcoming policy, within or outside the framework of the future MEDIA Programme, to give new impetus to the audiovisual sector in the Member States?*

The audiovisual sector plays a central role in disseminating European cultural, social and democratic values, in fostering exchanges between Europeans, and in promoting the debate on the European identity. The sector cannot fulfil this essential role without strengthening the structure in which the creative process takes place. In particular, the SMEs active in the audiovisual sector are key players for audiovisual production, translating European cultural values into artistic products accessible to European citizens. SMEs need to be given opportunities to achieve their creative aims and complete successfully their cultural productions. At the same time, audiovisual companies must be encouraged to use better the internal market's opportunities and to multiply synergies, so that they can offer consumers a wider choice of cultural goods and services, both in Europe and on international markets.

The latest data provided by the European Audiovisual Observatory shows that the European audiovisual sector suffers from a lack of competitiveness. The average market share of European audiovisual works in European markets ranges between 40-45% for TV fiction and is around 30% for the cinema and 20% for video and DVD. In addition, the European market share consists mostly of works distributed within domestic markets.

Community action concentrates on strengthening the European dimension of the audiovisual industry and market, leaving direct aid to national industries to the Member States. To increase effectiveness, the Commission has proposed to integrate the existing MEDIA Plus and MEDIA Training programmes into a single programme, MEDIA 2007, focusing on the pre-production and post production phases of the creative and business process. This intervention is in line with the principles of subsidiarity and complementarity, as national policies for the support of the audiovisual sector focus on production. Furthermore, the enhancement of the circulation of European audiovisual works entails a specific European added value that transcends the borders of national policies and can only be pursued at European level. A specific emphasis will be placed on new Member States, since there is some concern about the situation of the audiovisual industry and the national and European market shares in these countries.

Moreover, the prospective Information Society and Media portfolio entrusted to me by President-designate Barroso offers the opportunity to reflect on how to achieve synergies

THURSDAY, 8 OCTOBER 2009**IN THE CHAIR: MR BUZEK***President***1. Opening of the sitting***(The sitting was opened at 09.05)***2. Documents received: see Minutes****3. G20 Summit in Pittsburgh (24-25 September) (motions for resolutions tabled): see Minutes****4. The effects of the global financial and economic crisis on developing countries and on development cooperation (motions for resolutions tabled): see Minutes****5. Freedom of information in Italy (debate)**

President. – The next item is the Commission statement on freedom of information in Italy.

Viviane Reding, *Member of the Commission.* – Mr President, freedom of expression and freedom of information represent a foundation of a free, democratic and pluralistic society. That is my firm belief as a former journalist and it is also the firm belief of the European Union. That is why all the EU institutions – Parliament, the Council and the Commission – have signed up to the EU Charter of Fundamental Rights, Article 11 of which states that: ‘Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The freedom and pluralism of the media shall be respected.’

I would like to recall that the EU Charter also states, in Article 51(1), where and when those fundamental rights apply. I quote again: ‘The provisions of this charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States’, but ‘only when they are implementing Union law’.

Within the EU’s sphere of competence, which we have to respect, the European Commission has always stood up for freedom of the media, freedom of expression, freedom of information and freedom of the press, whether within the EU or in our external relations with third countries. I recall, in particular, the important role played by the EU’s ‘Television without Frontiers’ Directive which, since 1989, has made sure that citizens in all EU Member States are free to receive, without restrictions, broadcasts from other EU countries; an EU directive which has substantially contributed to the free flow of information across borders and to a more pluralistic media landscape in all Member States. In this context, I would like to thank the European Parliament for having helped the Commission to get a modernised version of this directive which extends the freedom of information across borders, beyond broadcasting, to other audiovisual services and, particularly, those transmitted by Internet.

This directive needs to be implemented by all EU Member States by the end of the year and will make important contributions to a pluralistic landscape when it also comes to the online environment. Let me also recall three other very important elements of this directive.

Firstly, the promotion of independent TV productions. There is a rule in the directive that broadcasters need to reserve at least 10% of their transmission time or 10% of their programming budget to European works created by producers who are independent from the broadcasters.

Secondly, the directive foresees in its modernised version the right of journalists and news organisations to access short extracts across the EU for the purpose of short reporting.

Thirdly, and this is of utmost importance, there is a reference in the new directive to the need to have independent media authorities at national level. This is a reference which was proposed by the Commission

and which could only be adopted in the end thanks to strong support by the European Parliament. Thus, for the broadcasting sector, the modernised Television Without Frontiers Directive can be seen as a charter for freedom of cross-border information in the EU.

Now let me recall another important aspect in the EU's field of competence where this institution can act and has acted for the benefit of media pluralism. I mean radio spectrum policy. You all know that there cannot be broadcasting without access to radio spectrum, and it is the EU policy to ensure that all players on the market get non-discriminatory access to radio spectrum. National authorities are thus not entitled to freeze, by means of spectrum allocation, the competitive situation on the media market for the benefit of the operators already active on that market. The European Court of Justice, by the way, has confirmed this important principle, which directly results from the freedom to provide services, in its *Centro Europa* judgment. The Commission welcomed that ruling as a contribution to fair competition and as an important foundation for strengthening media pluralism. On that basis, the Commission has repeatedly acted against Member States where the system of spectrum management has appeared to be in contradiction with this principle.

By way of example, I would like to recall the 2006 infringement proceedings on radio spectrum allocation in Italy, which my colleague Neelie Kroes and I opened. Under the pressure of this procedure, the Italian authorities are now changing their approach. The result of this will be a substantial market opening and a win for media pluralism. Spectrum policy is therefore a clear example of an area where the EU can act within its field of competences in order to enhance competition for the resources on which broadcasters depend, and thereby strengthen media pluralism.

Concerning the written press, the competences of the EU are substantially more limited. The written press is one of those prime examples of national, or even regional, competences and its situation very often reflects the varying cultural traditions in our different Member States. There is thus no EU legislation specifically on the written press, nor can there be legislation under the treaties as they stand. Nevertheless, in the EU institutions and, in particular, the European Commission, we have always flanked the development of the written press across the EU. I recall that in my capacity as EU Media Commissioner, I had numerous meetings with editors-in-chief from all around Europe to discuss the current issues relating to media freedom and media pluralism.

In June 2009, this led to the European Charter on Freedom of the Press, drafted by journalists across Europe. I fully endorsed that charter when the final outcome of this work was handed over to me. The Charter on the Freedom of the Press initiated by the European journalist community is an important reaffirmation of the basic values enshrined in fundamental legal texts such as the EU Charter of Fundamental Rights. It is also a reminder for all policymakers in their field of competence that, in order to have effective freedom of the press, public authorities do indeed have a role to play: they must be ready to protect freedom of expression and foster its development. The charter is therefore an important step towards reinforcing these basic values and rights, allowing journalists to invoke them against governments or against political public authorities whenever they feel that the freedom of their work is unjustifiably threatened.

The honourable Members will see that strong political commitment is being shown by the EU's institutions, and particularly by the Commission, to fundamental rights and freedom of information, of expression and of the media. We are using our competences to uphold those rights and freedoms in our work, on the basis of the Treaties, and will continue to do so.

However, let me also touch on another important aspect, namely the fact that fundamental rights apply to EU policies does not make the EU competent for all matters relating to fundamental rights in one Member State or another. Let us not forget that the Member States have constitutions, many of them with long traditions, and that in all Member States, there are courts, appeal courts and constitutional courts which ensure that fundamental rights are respected and enforced whenever national authorities act. We had an example of this as recently as yesterday in Italy.

This is the result of the fact that we have a division of labour, because Europe is not a superstate, but is comprised of 27 sovereign Member States and will continue to operate like this under the new Lisbon Treaty too.

I would therefore call on you not to make use of the EU institutions to solve problems which should, under our Treaties, be solved at national level. We should not claim a role that we do not have, and we will not have it under the Lisbon Treaty either. Let us concentrate here on applying effectively the rules, principles,

NON-LEGISLATIVE ACTS / ACTES NON-LÉGISLATIFS

Ref. N°	POLICY AREA DOMAINE POLITIQUE	TITLE INTITULÉ	LEAD SERVICE(S) SERVICES(S) CHEF(S) DE FILE	DATE OF ADOPTION DATE D'ADOPTION	LEGAL BASE BASE JURIDIQUE DU TRAITÉ	CONSULTATION CESE / CoR (X=mandatory /o=optional)	POLITICAL MOTIVATIONS AND BRIEF DESCRIPTION MOTIVATIONS POLITIQUES ET BREVE DESCRIPTION	BUDGETARY IMPLICATIONS CONSEQUENCES BUDGETAIRES
2007/FISH/049	Pêche et affaires maritimes	Proposal for a Commission Regulation fixing the Community selling prices for the fishery products listed in Annex II to Council Regulation (EC) N° 104/2000 for the 2008 fishing year.	FISH	Adopté le 21 décembre 2007 [C(2007)6553 ; SEC(2008)2]	Législation secondaire: Article 25(1) and (6) of Regulation (EC) N° 104/2000.		Annual exercise for the fixing of selling prices in the framework of the Common Market Organisation for fisheries products under the Common Fisheries Policy.	Yes
2007/FISH/050	Pêche et affaires maritimes	Proposal for a Commission Regulation fixing the reference prices for certain fishery products for the 2008 fishing year.	FISH	Adopté le 21 décembre 2007 [C(2007)6553 ; SEC(2008)2]	Législation secondaire: Article 29(1) and (5) of Regulation (EC) N° 104/2000.		Annual exercise for the fixing of reference prices in the framework of the Common Market Organisation for fisheries products under the Common Fisheries Policy.	Yes
2007/FISH/051	Pêche et affaires maritimes	Proposal for a Commission Regulation fixing the amount of the carry-over aid and the flat-rate aid for certain fishery products for the 2008 fishing year.	FISH	Adopté le 21 décembre 2007 [C(2007)6553 ; SEC(2008)2]	Législation secondaire: Article 23(5) and 24(8) of Regulation (EC) N° 104/2000.		Annual exercise for the fixing of carry-over aid and flat-rate aid in the framework of the Common Market Organisation for fisheries products under the Common Fisheries Policy.	Yes
2007/FISH/052	Pêche et affaires maritimes	Proposal for a Commission Regulation fixing the amount of private storage aid for certain fishery products in the 2008 fishing year.	FISH	Adopté le 21 décembre 2007 [C(2007)6553 ; SEC(2008)2]	Législation secondaire: Article 25(6) of Regulation (EC) N° 104/2000.		Annual exercise for the fixing of private storage aid in the framework of the Common Market Organisation for fisheries products under the Common Fisheries Policy.	Yes
2007/FISH/053	Pêche et affaires maritimes	Proposal for a Commission Regulation fixing the standard values to be used in calculating the financial compensation and the advance pertaining thereto in respect of fishery products withdrawn from the market during the 2008 fishing year.	FISH	Adopté le 21 décembre 2007 [C(2007)6553 ; SEC(2008)2]	Législation secondaire: Article 21(5) and (8) of Regulation (EC) N° 104/2000.		Annual exercise for the fixing of standard values in the framework of the Common Market Organisation for fisheries products under the Common Fisheries Policy.	Yes
2007/IAS/001	Audit	Annual internal audit report 2006 (FR 86.3)	IAS	Adopté le 2 avril 2007	Législation secondaire: article 86.3 du règlement financier		rapport annuel de l'auditeur interne	
2007/IAS+/002	Coordination des politiques de la Commission Audit	Annual report on the discharge authority on internal audits carried out in 2006 (FR 86.4)	IAS / SG	Adopté le 30 mai 2007 [COM(2007) 280; SEC(2007) 708 ; SEC(2007) 718]	Législation secondaire: article 86.4 du règlement financier		Each year the institution shall forward a report to the discharge authority summarising the number and type of internal audits carried out, the recommendations made and the action taken on those recommendations.	
2006/INFSO/022	Société de l'information	[REDACTED]	INFSO	Adopté le 16 janvier 2007 [SEC(2007)32]			[REDACTED]	
2007/INFSO/035	Société de l'information	Communication of Mrs Reding to the Member States of the European Union	INFSO	Adopté le 16 janvier 2007 [SEC(2007)30]			This communication together with the Services Working Paper (2006/INFSO/022) analyses the issue of media pluralism in depth and indicates the approach and the next steps to be taken (analysis of the audiovisual and print markets, identification of concrete indicators, preparation of a communication from the Commission in 2008)	
2006/INFSO/015	Société de l'information	eContent Plus - implementation report, including reporting on the budget for 2007	INFSO	Adopté le 29 janvier 2007 [COM(2007)29]				
2005/INFSO/030	Société de l'information	Communication on a coherent approach for wireless communications access platforms	INFSO	Adopté le 8 février 2007 [COM(2007)50]			This Communication aims at developing a concept for the application of the principle of technological neutrality to all wireless mobile services (e.g. GSM, Wireless Access Networks, etc).	
2006/INFSO/011	Société de l'information	Commission Decision on the harmonised use of radio spectrum in the 2GHz frequency bands for the implementation of systems providing mobile satellite services	INFSO	Adopté le 14 février 2007 [C(2007)409]			This Commission Decision results from a mandate to CEPT to develop and adopt the measures necessary to ensure the introduction of a harmonised frequency plan in the Community for MSS satellite systems operating in the 2GHz band. It is a spectrum allocation harmonisation measure pursuant to the spectrum decision (676/2002/EC).	
2006/INFSO+/014	Société de l'information Recherche	Communication on scientific information in the digital age: access, dissemination and preservation	INFSO / RTD	Adopté le 14 février 2007 [COM(2007)56; SEC(2007)181]			This Communication will be issued in the context of the i2010 flagship initiative on digital libraries and will deal with digital libraries containing scientific and scholarly information.	

**Pregunta con solicitud de respuesta escrita E-001014/2011
a la Comisión**

Artículo 117 del Reglamento

Maria Badia i Cutchet (S&D)

Asunto: Pluralismo en los medios de comunicación: estrategia de la Comisión

¿Cuándo piensa la Comisión poner en práctica su nuevo instrumento dotado de indicadores sobre pluralismo en los medios de comunicación? De acuerdo con lo previsto en su plan presentado en 2007, ¿piensa la Comisión emitir en los próximos meses una comunicación sobre el pluralismo en los medios de comunicación?

Como respuesta a la preocupación en la UE sobre la creciente concentración de los medios de comunicación y sus posibles efectos en la libertad de expresión y el pluralismo informativo, en 2007 la Comisión Europea estableció su planteamiento en tres etapas (*Three-step approach*) sobre el pluralismo en los medios de comunicación y creó un Grupo de Trabajo específico para el seguimiento de estos temas. Esta iniciativa respondía al compromiso de la UE de proteger el pluralismo, el acceso a la información y a la libertad de expresión, expresado en el artículo 1 de la Carta de los Derechos Fundamentales y el artículo 10 del Convenio Europea para la Protección de los Derechos Humanos y las Libertades Fundamentales.

Se elaboró un estudio interno (*Working Paper*) que sirvió de base (1ª etapa) para la externalización de un estudio independiente (2ª etapa) con el objetivo de establecer una serie de indicadores sobre el pluralismo en los medios de comunicación en los Estados miembros. El desarrollo de este instrumento de observación para evaluar los riesgos y señalar amenazas al pluralismo en los medios se basa en un conjunto de indicadores que cubre las dimensiones legales, económicas y socioculturales que un asunto tan horizontal requiere. Tras más de dos años de trabajo de un grupo de consultoras, en colaboración con la Universidad de Católica de Lovaina y más de 50 expertos, el instrumento está terminado.

Es decir, se han cumplido las dos primeras etapas del plan de la Comisión. La tercera etapa consiste en publicar una comunicación que lleve a la práctica el carísimo estudio e indique la estrategia de la Comisión sobre un tema tan relevante. Considerando el agravamiento de las circunstancias en tiempos recientes, sería conveniente acelerar el proceso y que todos pudiéramos beneficiarnos de ese nuevo instrumento lo antes posible, con el fin de hacer un mejor seguimiento de la evolución en el ámbito de la libertad y el pluralismo en los medios de comunicación como garantes fundamentales de la calidad democrática en la Unión Europea. ¿Piensa la Comisión presentar una comunicación al respecto? ¿Cuándo piensa la Comisión llevar a la práctica el estudio mencionado?

ES
E-001014/2011
Respuesta de la Sra. Kroes
en nombre de la Comisión
(11.4.2011)

Los acontecimientos recientes han puesto de manifiesto la importancia permanente del pluralismo y las libertades de los medios de comunicación, así como la gravedad de las preocupaciones de los políticos y los ciudadanos al respecto. La Comisión comparte esas preocupaciones y ya ha tomado iniciativas importantes para velar por el respeto de las disposiciones pertinentes de la Directiva de servicios de comunicación audiovisual¹ en relación con la ley húngara sobre los medios de comunicación. El 29 de marzo de 2011, la Comisión remitió cartas de investigación a otros dieciséis Estados miembros recabando información sobre su aplicación de la Directiva de servicios de comunicación audiovisual. Los temas planteados varían según los Estados miembros. Las solicitudes de información no suponen que los Estados miembros afectados hayan aplicado incorrectamente la Directiva, sino que la Comisión tiene preguntas pendientes sobre esa aplicación.

No obstante, la responsabilidad de tratar esos asuntos la comparten la UE, los Estados miembros y la sociedad civil en general. Como se indica en las respuestas de la Comisión a preguntas anteriores del Parlamento (E-0121/10, P-011311/10, E-000075/11, E-000035/11, E-000029/11, E-000013/11, P-3258/09, E-3222/09 E-3254/09)², velar por el pluralismo y el respeto de las libertades de los medios de comunicación incumbe principalmente a los Estados miembros (y a sus tribunales nacionales), en su aplicación del Convenio Europeo para la Protección de los Derechos Humanos del que son signatarios. La función de la Unión Europea, actuando dentro de las competencias que le confiere el Tratado UE, es garantizar el cumplimiento de las obligaciones del Tratado y de la legislación derivada.

La Comisión reitera que los Estados miembros, así como terceros, pueden recurrir al instrumento de seguimiento del pluralismo en los medios de comunicación³. En este momento, la Comisión no tiene previsto presentar una Comunicación sobre el instrumento de seguimiento. No obstante, en su próxima respuesta a la Resolución P7_TA-PROV(2011)0094 (que no abarca el seguimiento), la Comisión definirá cómo piensa seguir adelante con su planteamiento sobre el pluralismo en los medios de comunicación. Esto incluirá, entre otras cosas, la creación de uno o varios grupos de alto nivel que sirvan de plataforma para la próxima etapa en que se abordará el pluralismo en los medios de comunicación y el tema relacionado del futuro de esos medios en una época de cambio estructural. El papel del instrumento de seguimiento del pluralismo en los medios de comunicación será uno de los temas debatidos en los grupos.

¹ 2010/13/UE: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:ES:PDF>

² <http://www.europarl.europa.eu/QP-WEB>

³ http://ec.europa.eu/information_society/media_taskforce/pluralism/study/index_en.htm

Parliamentary questions

17 October 2011

E-009281/2011

Question to Rule
 for the
 written
 answer
 Commission
 117
 Rui Tavares (Verts/ALE) , Helga Trüpel (Verts/ALE) , Niccolò Rinaldi (ALDE) , Miguel Portas (GUE/NGL) , Patrick Le Hyaric (GUE/NGL) and Alexander Alvaro (ALDE)

► Subject: Implementation of a media pluralism monitoring tool

 [Answer\(s\)](#)

In the context of its ‘three-step approach for advancing the debate on media pluralism within the European Union’, the European Commission, in 2007, asked for a study whose objective was to develop a monitoring tool for assessing risks for media pluralism in the EU Member States and to identify threats to such pluralism based on a set of indicators covering pertinent legal, economic and socio-cultural considerations. This study was carried out by a consortium of three academic institutes and was launched in 2009. Since then, nothing has been done to implement this media pluralism monitoring tool in EU Member States. The European Parliament has presented a PILOT project to enable the implementation of the MPM tool for assessing media freedom across the EU.

However, the European Commission’s evaluation of this preliminary proposal was a D, which means that the Commission considers that the pilot project ‘can not be implemented or similar actions have already been carried out in the past’.

Could the Commission tell us how much was spent on this study?

If the Commission considers that media pluralism is a competency of Member States, why did it ask for this study?

Does the Commission consider that, even though the EU has spent resources on this study and on the development of this tool, it will never be implemented?

Does the Commission agree that there is an increasing need for a tool that would be implemented by an independent entity to monitor media pluralism in EU Member States, especially when we consider recent cases which reveal that there is a real problem with media pluralism in the majority of EU Member States?

Media freedom and pluralism are important priorities for the Commission. Parliament has underlined the fundamental role of media freedom in its Resolution on media law in Hungary (P7 TA (2011) 0094). Given these concerns the Commission has decided not to await the results of a lengthy monitoring exercise on all aspects of pluralism and embracing all Member States. EU strategy should instead find solutions to actual problems.

The Commission therefore launched a high level group (IP/11/1173⁽¹⁾) to reflect upon media freedom and media pluralism and to report back, with recommendations to ensure improved implementation of existing measures intended to secure these objectives at Member State and EU levels and to outline any further measures required. The group chaired by the former President of Latvia, Professor Vaira Vīķe-Freiberga, will report back within one year. Its output will in the Commission's view be much more timely than the two years or more necessary for implementing the monitoring tool, comprising the following steps: issue a tender; evaluate offers; run a major study programme across all 27 Member States; for all Member States to review relevant country analysis and comment; for their comments to be analysed; and the comments to be incorporated into the final study. The MPM tool is however in the public domain and could be implemented by third parties such as NGOs, public authorities or academic bodies to cover one or more Member States. The Commission does not rule out deploying the tool itself at some point in future if appropriate. The cost of the study — service contract 305685-2007 — of EUR 472 725 was published in Tenders Electronic Daily.

Moreover, on 7 November 2011 the Commission has awarded EUR 600 000 for a new Centre for Media Pluralism and Media Freedom in the European University Institute's (EUI) Robert Schuman Centre for Advanced Studies. Starting in December 2011, the Centre will develop new ideas on how to ensure a highly diverse and free media, and work to enhance the quality of the reflection on media pluralism in Europe.

⁽¹⁾<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1173&type=HTML>

Annex 7

Parliamentary questions 21 January 2010

WRITTEN QUESTION by *Marietta Giannakou* (PPE) to the Commission

E-0121/10

Subject: *Supervision of media pluralism in the EU*

The Commission and the previous Commissioner responsible for the media, Ms. [Answer\(s\)](#) Viviane Reding, had, in the past, presented a three-phase plan to establish supervision of media pluralism in the EU. **The plan in question also intended to help Community bodies understand the complex reality of the European media before putting forward legislation on media ownership and concentration.**

According to the Commission's communications at the time, it had begun to record the diversity of the media throughout the EU, the laws applicable in the various Member States, the large media conglomerates and the changes brought about by the new technologies. It also intended to codify all these data and to develop a number of indicators on the existing level of pluralism and, finally, to issue a policy document proposing a supervisory mechanism for Europe as a whole.

In view of the above, will the Commission say:

1. Does it still believe differentiation and diversity of the media to be a key element in a healthy democratic society, especially at a time characterised by media convergence and concentration and also by an economic crisis which is leading to unforeseen changes in the media ownership arrangements and the use of its human resources?
2. What measures **has it taken, two years after the communications referred to above, or what measures does it intend finally to take in the immediate future, to protect competition** in the media and **to control the concentration of media ownership**?

12 April 2010

Answer given by Ms Kroes on behalf of the Commission

[E-0121/2010](#)

Media pluralism, freedom of expression and press freedom are underlying elements of European democracy. Freedom of expression constitutes one of the essential foundations of our democratic societies, enshrined in Article 11(1) of the Charter of Fundamental Rights of the European Union and Article 10 of the European Convention on Human Rights. Furthermore, Article 11(2) of the Charter of Fundamental Rights states that the pluralism of the media has to be respected. The Commission has consistently defended media pluralism at European Union level and it will continue to promote it untiringly.

Pluralism is a complex concept. Media pluralism is not limited just to the competition law aspects such as rules applicable to concentrations or state aid, but includes all measures that ensure citizens' access to a variety of information sources, opinion, voices etc. in order to limit undue influence on the part of one or more dominant opinion-forming power(s).

As regards competition law, it has to be emphasised **that in recent years, the Commission has on several occasions applied EU competition rules to the media sector**. The concentration between Newscorp and Première (case COMP/M.5121) in Germany and the infringement procedure against Italy concerning the legislation regulating the switch-over from analogue to

digital TV are examples of this application. The Commission will continue to apply these EU rules to prevent distortions and impediments to effective competition in the media sector.

Moreover, Media pluralism is regarded as one of the legitimate public interests in Article 21 of the EU Merger Regulation, which gives Member State the possibility to take measures to uphold this interest when they examine concentrations.

The Commission has not proposed the harmonisation of ex ante legislation on media ownership or media concentration. National regulatory models differ vastly within Europe given the significant differences in culture as well as in the size and characteristics of media markets and in legal and administrative traditions. No single regulatory model could become the standard for all.

As the Honourable Member already knows, the Parliament vigorously debated media pluralism once again in October 2009, prompted by concerns about media pluralism in Italy, but was unable to agree upon a resolution requesting the Commission to launch a legislative initiative. This tends to confirm both the complexity of the issue and the wide range of views.

The complexity of the issue of media pluralism was also confirmed at a scientific level, by the publication in 2009 of an independent study, commissioned by the Commission in the context of the three-step approach the Honourable Member refers to in its question, containing indicators for assessing media pluralism. This study creates a monitoring tool, comprising legal, social and economic indicators for assessing concrete risks to media pluralism at a time of great change in media structures. The nature and the number of these indicators reflect the complexity of the media pluralism concept. The indicators dedicated to ownership are set in a wider context. The monitoring tool will enable Member States and other interested parties to take an evidence-based approach to the important issue of media pluralism.

To conclude, the Commission would like to highlight that Member States retain the main competence for protecting media pluralism, which is an explicit objective of many instruments of media governance at national level.

TABLED BY: Rui Tavares, on behalf of the Greens/EFA group

SECTION III: COMMISSION

	Commission Draft Budget 2012		EP Amounts	
	Commitments	Payments	Commitments	Payments
Budget Line N° & Heading:				
Budget Line N° 33 02 10 - Heading 3a				
Appropriations			2 000 000	2 000 000
Reserve				

NOMENCLATURE:

Create the following new line:

PP 33 02 10: Pilot Project to enable the implementation of an already existing Media Pluralism Monitoring Tool (MPM) for assessing media freedom across the EU

REMARKS:

Add the following:

The main objective of this pilot project is to assess media pluralism across the EU and investigate threats to media freedom with differentiated comparable sets of indicators covering pertinent legal, economic and socio-cultural-demographical considerations.

The Pilot Project will cover the following actions:

- to adapt the Media Pluralism Monitoring tool on the basis of the framework already developed and described in an independent study on "Indicators for Media Pluralism in the Member States - Towards a Risk-Based Approach"¹,
- to assemble resources in order to enable the implementation of the MPM tool,
- to coordinate the work of national regulatory agencies, international organisations, academic research and other relevant entities,
- to gather and consolidate the already existing databases,
- to set up panels of experts who are familiar with specific aspects of media pluralism across Europe in the legal, socio-demographical and economic areas as well as national experts who can access national data sources,
- to process and analyse the results of the monitoring,
- to publicly share and make available to a wide and democratic debate the results obtained,
- to consult a broad range of stakeholders on regulatory, policy or other actions to be taken in reaction to reported risks, also considering the costs of the measures in comparison with the probability that a risk occurs and its possible impact,
- to give a detailed plan of recommended actions based on the results of the monitoring and on the conclusions of the earlier consultations,
- to compare data of the Member States and develop benchmarks and/or best practices,
- to carry out the monitoring at regular intervals in order to obtain a clear view of trends and developments concerning media pluralism in EU Member States.

JUSTIFICATION:

In 2000, the EP, Council and Commission explicitly committed to respecting media pluralism via the Charter of Fundamental Rights, which states that "*the freedom and pluralism of the media shall be respected*".

The EU has spent resources on a media pluralism monitoring tool (MPM) that can assess risks for media pluralism and freedom when it is applied to the reality of a given Member State but has not yet implemented it.

This Pilot Project aims for the implementation of the MPM tool following the recommendations of the EP to assess the state of media freedom in the 27 member states.

Neelie Kroes, Vice-President of the Commission. – Mr President, I am very grateful to Renate Weber for her report and to the honourable Members tonight for the views they have expressed during this debate. I am looking forward to the vote tomorrow, for if the final result reflects the tenor of this debate then the prospects are positive.

The report is a crucial contribution to our in-depth reflection on how to ensure respect for media freedom and pluralism across Europe – and, as we saw last week in the United States, for example, it is not only in Europe that societies face big challenges in relation to the appropriate protection of journalistic freedom.

This is not the first time we have discussed threats to press freedom in this House. The issue has rightly been referred to as one of the basic elements of our democracy, and the point has been made to the Commission that if a country is not dealing appropriately with these fundamental matters, there is a need for intervention.

I could not agree more; but to intervene you need instruments, a definition of responsibilities and opportunities, and these are the matters we are now really starting to debate. So I am glad that this time we have to hand a clear report, with proposals for concrete action, enabling us to have a principled debate with Member States and all the stakeholders. However, in order to decide which actions need to be taken and by whom, we require three things. The first is clarity about EU competences, for you need competences in order to act; the second is reflection on how best to use the competences; and the third is the Member States' political will to play their part.

I am pleased that the Irish Presidency has shown commitment on this issue, and I sincerely hope that the incoming Lithuanian Presidency will build on that. As you know, some time ago I set up an independent high-level group chaired by Professor Vaira Vīķe-Freiberga, the former President of Latvia, to reflect on the underlying issues related to media freedom and pluralism, and earlier this year the group delivered a comprehensive report with 30 recommendations, some of which are similar to what you propose, Ms Weber, in your report.

I would like to point out that we are already acting on some of the areas addressed both in the recommendations of the independent high-level group and in the Weber report. For instance, we are about to allocate a grant to implement the Media Pluralism Monitoring tool in 2013 on the basis of a budget allocated by you. This tool will give us a much more coherent overview of where pluralism is under threat across Europe. At the same time we are working on implementation of a pilot project for a European centre for press and media freedom. We plan to launch a call for proposals very soon.

Other potential actions in the area of media freedom and pluralism require broad consultation with all the relevant stakeholders. That is why I recently launched two public consultations: the first to gather feedback on all the recommendations of the high-level group report, and the second, more specifically, to collect views on the independence of regulatory bodies responsible for audiovisual media services, including the question of a possible revision of Article 30 of the Audiovisual Media Services Directive. So the timing of the report by Renate Weber, just when we need input into the discussion, could not be better, and it is most welcome.

After we close the consultation in mid-June we will have an even better overview of what exactly we need to do. I hope, Mr President, not only that we will soon have another occasion to discuss specific actions but also that we will see concrete results in our efforts to defend media freedom – that is something which unites this House and the Commission.

Draft amendment 5800

=== CULT/5800 ===

Tabled by Ivo Belet, Committee on Culture and Education

SECTION III — COMMISSION

Item 02 02 08 02 — Preparatory action — Sustainable tourism**Amend figures as follows:**

	Budget 2012		Draft budget 2013		Difference		New amount	
	Commitments	Payments	Commitments	Payments	Commitments	Payments	Commitments	Payments
02 02 08 02	p.m.	700 000	p.m.	p.m.	1 000 000	700 000	1 000 000	700 000
Reserve								
Total	p.m.	700 000	p.m.	p.m.	1 000 000	700 000	1 000 000	700 000

Justification:

Following the entry into force of the Lisbon Treaty and the Commission communication of 30 June 2010 "Europe, the world's No 1 tourist destination", a preparatory action has been launched to prepare the ground for future legislative initiatives to promote new European tourism routes based on European cultural heritage (Council of Europe "European Cultural routes" as well as similar European initiatives). The preparatory action has been proven very successful and the work should continue to prepare for the tourism program starting from 2014.

Draft amendment 5801

=== CULT/5801 ===

Tabled by Chrysoula Paliadeli, Silvia Costa, Committee on Culture and Education

SECTION III — COMMISSION

Item 02 02 08 04 — Preparatory action — Promotion of European and transnational tourism products with special emphasis on cultural and industrial products**Amend figures as follows:**

	Budget 2012		Draft budget 2013		Difference		New amount	
	Commitments	Payments	Commitments	Payments	Commitments	Payments	Commitments	Payments
02 02 08 04	2 000 000	1 000 000	p.m.	520 000	2 000 000	1 000 000	2 000 000	1 520 000
Reserve								
Total	2 000 000	1 000 000	p.m.	520 000	2 000 000	1 000 000	2 000 000	1 520 000

Justification:

A call for thematic touristic products related to industrial and cultural heritage will shortly be launched.

Furthermore a promotional campaign for large-scale European cultural itineraries performed in Europe through a cooperation agreement with ETC (European Travel Commission) is under development.

As the PA's activities are still running, while new ones are to be launched, it is important to continue this preparatory action for a second year.

Draft amendment 5802

=== CULT/5802 ===

Tabled by Ivo Belet, Committee on Culture and Education

SECTION III — COMMISSION

Add: 09 02 07

	Budget 2012		Draft budget 2013		Difference		New amount	
	Commitments	Payments	Commitments	Payments	Commitments	Payments	Commitments	Payments

	Budget 2012		Draft budget 2013		Difference		New amount	
	Commitments	Payments	Commitments	Payments	Commitments	Payments	Commitments	Payments
09 02 07					1 000 000	1 000 000	1 000 000	1 000 000
Reserve								
Total					1 000 000	1 000 000	1 000 000	1 000 000

Heading:

Pilot project — Implementation of the Media Pluralism Monitoring Tool

Remarks:

Add following text:

This appropriation is intended for the implementation of the Media Pluralism Tool. The tool was developed through an independent study at the request of the European Commission: "Indicators for Media Pluralism in the Member States - Towards a Risk-Based Approach". It is a monitoring tool for assessing risks for media pluralism in the EU Members States and identifying threats to such pluralism based on a set of indicators, covering pertinent legal, economic and socio-cultural considerations.

The specific objective of this action is to launch a further study that update these indicators in the light of the growing importance of the internet and that applies the indicators in practice for obtaining a broad understanding of the risks to media pluralism in the EU Member States. The assessment of the risks is best carried out in a transparent manner in consultation with stakeholders.

Legal basis:

Add following text:

Pilot project within the meaning of Article 49(6) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1).

Justification:

In its resolution of 25 November 2010 on "public service broadcasting in the digital era: the future of the dual system", the European Parliament calls on the Commission to make full use of the Media Monitoring Tool.

Since respect for the freedom and pluralism of the media is enshrined in the Charter of Fundamental Rights (Article 11) and is thus part of the *acquis communautaire*, the European Commission is called upon to ensure that Member States guarantee proper implementation of those provisions.

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Draft amendment 5803

=== CULT/5803 ===

Tabled by Morten Løkkegaard, rapporteur, Alexander Graf Lambsdorff, Petra Kammerevert, Committee on Culture and Education

SECTION III — COMMISSION

Add: 09 02 08

	Budget 2012		Draft budget 2013		Difference		New amount	
	Commitments	Payments	Commitments	Payments	Commitments	Payments	Commitments	Payments
09 02 08					1 000 000	750 000	1 000 000	750 000
Reserve								
Total					1 000 000	750 000	1 000 000	750 000

Heading:

Pilot project — European Centre for Press and Media Freedom

Remarks:

Add following text:

The proposed European Centre for Press and Media Freedom would follow on from the EU Charter of

Interview 1

Organization: Media Task Force - European Commission (Adam Watson Brown, Monica Aubel Antoine, Suzanne Vanderzande)

Date and hour: 23.04.2012 at 15.00

Theme 1: The future of the EU audiovisual media policy (in what regards media pluralism) (main contribution: Monica Aubel Antoine)

Answer: The AVMSD's main objective: "The free circulation of programs" that leads to Plurality.

1. According to the European Commission's website and declaration of the Commissioner Reding, the Commission acknowledges as having 3 types of measures included in the AVMSD, which aim to promote pluralism in the media.

- the promotion of programmes produced by independent audiovisual production companies in Europe:

Answer: European works can lead to Increasing Cultural Diversity.

-Referring to Quotas-Majority of transmission time for linear services-in Article 16,17 of the directive.

-Referring to Non-Linear-Article 13 is looking at Independent production which does not have a specific proportion mentioned.

There is a flexibility in the way Member States are trying to promote production of European works and access. The National Authorities are the ones that have to set up the obligations.

Until now not all member states have done so-There is no real concrete obligation, no concrete percentage, no obligation to invest, to finance European production.

The EuCo is trying to encourage member states to be more concrete, even if not through first legislation, at least through second legislation, with more detailed measures.

-the requirement for each Member State to ensure the independence of the national regulatory body responsible for implementing the Directive;-nevertheless, this is not mandatory in the AVMSD, it is only a recommendation.

Answer: There is no real obligation for the Member States to ensure the Independence of National regulatory bodies, like it is with the telecom package. This provision was forcefully rejected by Germany due to the highly decentralized system with the lands(Land responsibilities). What made this provision look like this: for different member states there are different economic regulations.

It is about Economical Efficiency → Chicago Rationale=there should be a separation between those that create the rules and the enforcement, those that apply the rules.

The Public interest of Broadcasts links to Politics-Certain Member states would interfere with PSB.

- the right for television broadcasters to use 'short extracts' in a non-discriminatory manner;
What does this mean, to what extent can this promote mp?

Answer: This provision is related to Freedom of Information: "Short Extracts". The broadcasters have the Obligation to provide short extracts related to news only, based on fair remuneration. Again this provision leaves the regulation at national level: conditions of transmission, exploitation, how long, how often.

The Publishers are very keen regarding this provision. !!!

When comes to Public Interest-Where to draw the line? There is not a bright line distinction in a very grey area.

Since this is a new provision brought by this Directive the Transposition of this Provision, the exact "USE", to set up the right legal certainty to the users is still not in place.

"The Application Report comes in a few weeks"

For this new provision we might need infringement procedures to get further because there is still no legal certainty in what regards the terms of implementation of "short extracts" due to the principle of "subsidiarity". But the EuCo tries to avoid infringement procedures to get further, start with dialogue, and in the cases of bad transposition, that we really have to we apply the three steps starting with a letter and so forth.

The Subsidiary principle has to take into account technological, legal and political judgments and also trying not to upset certain countries.

1.a - Are there any measures which could have been included to promote pluralism in a stronger manner.

Answer: MP was not the objective of this directive, plurality and internal market are the objectives.

2. The extension of regulation to the non-linear media with minimal regulatory framework was initiated to look for a level-playing field but did it take in consideration the rapid blurring line between linear and non-linear which actually could disappear until the actual implementation of the Directive? Is this approach sustainable?

Answer: We wanted a level playing field and in principle there is the example of countries that actually impose heavy regulation on (private broadcasters) like France and Belgium.

What came into discussion is Media Freedom, which actually received a greater priority.

Regarding Ownership Concentration, especially of Newspapers trying to oppose TV Channels in the future. Old media is trying/tending to consolidate.

There is still the question of how New Media is defined.(Example from the work of The Media Forum Group: Is Google a Medium/ Media Company but it has no editorial content in any editorial way)

Theme 2: Media Pluralism initiatives under this Commission (Nelie Kroes): The High Level Group and The Center for Media Freedom and Media Pluralism (Suzanne Vanderzande)

Answer-introduction to the actions: There was not drawn any conclusion under the Hungarian presidency. The perspective of the previous Commission was not to rush into what the EP wants: a harmonizing directive. There was also that the Resolution of MF and MP in Italy (2009) failed in the EP.

(Intervention Mr. Adam Watson Brown) The European Parliament (EP) sent 2 signals:

-The EP took the issue very seriously

-There are differences in agreeing between themselves.

The Media Task Force convinced Commissioner Kroes that media pluralism is an important issue and to look how to respond politically. Her political response for MP was:

-The creation of the High Level Group on Media freedom and Plurlism (4 people named by the Commissioner)-to come with an Report

-The creation of a Multi Stakeholder Group (40): EU Future's Forum looking at the economic issues and how these influence the development of the media.-It appears that this group will not be able to agree at the end of its mandate and the Paper it does not seem that will sustain a common point on how to go forward. This group is looking at legal and economical issues.

The creation of the High Level Group came a bit after the situation in Hungary and the idea and a high contribution for the initiative came from the Former President of Latvia.

The recommendation from the High Level Group will be centered in a broad way on how Freedom and Media pluralism have to be reached, and this can be of any kind and at any level: EU Competency, Member States or Stakeholders.

The Report will be presented in November in front of the EP. The work is not public and not ran by the Commission.

The work is based on a process of fact-finding of media specialists. One of the members worked at the EU court of Justice(**Professor Luís Miguel Poiares Pessoa Maduro**), 2 Politicians- one is the former minister of justice in Germany, which resigned in 2002(**Herta Däubler-Gmelin**) and Former president of Latvia that is presiding the group(**Professor Vaira Vīķe-Freiberga**) and **Ben Hammersley** (editor of Wired, professional, journalist).

The group was chosen by Commissioner Kroes and it is responsible to her. Media Task force did not contributed to the selection of the group members. This group wants to reach a balance of competencies→ of a very political nature. It wants to reach a concrete Human Rights point of view on media concentration.

This High level Group is representing a first step on a new strategy which the Commission hopes to lead to more speedy results.

The EP proposed a pilot action but was turned down for reasons of Resources.

The High Level Group will have an Intermediary Report on June(21-27 in Florence) which will not be published.

The Centre on MF and MP in Florence is dealing with topics related to media pluralism in order to have an analysis in order to have a Policy Paper on EU Competencies-on MF and MP.

Theme 3: Media Pluralism Monitor-the work of the previous Commission (Adam Watson Brown)

1. Introductory Question: What was the motivation and rationality behind this initiative of the “3 steps Approach”?

Answer: *To reassure policy makers that media pluralism is in a reasonable health, to create a debate.*

2. What does this tool represents? It represents a political toolkit, a technical one or a complex technical, normative and political study? depends only of what the user’s intention to use the tool?(MPM)

Answer: *It is a diagnostic tool. When it comes to media pluralism there is a very volatile debate: regarding the points that media it is too commercial, too concentrated.*

This tool wants to look at economic realities: limits to what one can achieve. Chops media pluralism in different parts-does not have a permanent content.

At the same time it is not an easy approach, it wants to bring a balance between different things.

It is looking to bring together Economical, Social and Legal indicators. It has a lot of indicators to cover the disciplines and to recognize diversity, not harmonize it.

Example: The Risk of Media Concentration is of one type in France which is a different one in UK and it is different for the 27 member countries.

It is a risk-based approach presenting different ways to recognize diversity in a concrete way. It is looking at the risks rather than fears that have no substance. It could actually lead to less regulation.

3. Regarding the broad definition on media pluralism, I understand that the EU Commission did not want to impose a definition and used a real broad definition (1994 from the Council of Europe). Nevertheless working on a harmonizing definition for all member state would not avoid double standards and double interpretations?

Answer: *We were trying to have a tool as automatic as possible, not political. It is based on qualitative judgments by media specialists whom have to work in good faith for implementation.*

Even if the definition is broad enough to have double interpretations from Member States it can work as an evidence of differences between member states. It can be made a comparison of national diversities and recognized over a period of time.

4. The Media pluralism monitor has not been applied in the member states. What are the main reasons deterring the member states in applying this tool? Why the Commission did not planned the financing of the implementation of the tool to help member states apply the model? What will be done in the future/what could be done to start the regular application of MPM?

Answer: *The MPM does not have to be applied only by national regulators, can be applied by anyone. There can be applied only the legal parts.*

The Problem is represented by the National Regulators because have to pass judgment on their own work!

Moreover, the application would entail a high effort in the matter of costs firstly to apply it for all 27 member states (at the time of the interview), furthermore there is a lot of detail to go into and people (one needs at least 5-6 officials, which should be people that know the country.

Another reason is that it is a very politically sensitive matter: which may upset many member states in two ways:

-One by applying the tool to some countries that have no history with media pluralism problems or restrictions (like Germany);

-One by Naming or Shaming countries like Hungary and Italy on their Human Rights Issues.

European Chamber of Human Rights- a foundation linked to implementation of Community law.

We can send signals since in this kind of area that is what we can do.

5. Which are the weaknesses in your opinion of the MPM or where the tool can be improved? I am referring to the increased effects of digitalization, internet and the increased business opportunities it offers.

Answer: *Technically is very well designed but the weakness is the political willingness to use the tool.*

There is also the level of resources required to apply the tool: it needs a big contract, a big team, a tender procedure which would take 6-9 months and the work could be presented in between 18 months to 3 years.

The Commission wanted the tool user friendly and they were presented with a big task ahead which does not want to be incomplete and lead to criticism.

The fact that we were late with the results, with the tool, the third step could not take place due to the change in commissioners.

Additional questions addressed to Adam Watson Brown

1. The European Commission ensures media pluralism through competition law and the AVMSD with content related provisions, as general pillars in EU. Should attention go also to the crossborder ownership and against restrictions on market access and network neutrality especially for new media?

Either of the two ways (competition law and content related provisions) are representing the essence of media pluralism.

Media remains the states issues. In this situation there are fewer problems for the press.

The EuCo it works on the competition law and non-discrimination.

Regarding Network Neutrality(NN) the broadcasters interest is for the internet to be open.

NN is not the entire solution. There are different levels of services on the internet if content providers want to pay for the quality of service. There has to be managed the transmission of broadcasters.

NN provides very little on transmission, only 5% and NN I not about media pluralism. There are different ways of achieving access (talking about the framework directive).

Look at the work of BEREC.

Reference: Christian Micas for the issue on NN in the EuCo.

Nevertheless MP is an instrument used by many players to get a better deal for itself.
(Germany-conditions)

Example: Interactive TV represents no danger for MP.

Powerful players- no negotiation or no must-carry access rules applied.

2. To summarize, are we going towards a more relaxing EU law soft-regulatory measures opening the participatory processes or we need more harmonizing rules, especially regarding ownership, in order to protect media pluralism?

It is the idea of Legitimacy because Member States can go pass them and Harmonizing rules are not representing something that Member States can accept.

Economics/Technology-Supply is less affected. The problem has changes, is no longer about license or must-carry rules. The problem is how to get the consumer do the right thing.

The problem changed on how to make the consumers to make the right choices (in using the media in a balanced way).

Supply side tools will not be so important in the future.

From an educational point of view will be a resistance to change, especially relating to the focused educational systems in different member states.

Consumers/Citizens (however you want to call them) are more in contact and some of the objectives of media policy can be attained thru that kind of communication, thru that way of communicating between consumers, citizens.

With so many ways to reach the consumer nowadays the traditional bottlenecks are not so likely.

Network operators offer now premium-BBC. Now is the case that is a must-offer on broadcaster than a must-carry on operators.

The problem is now becoming to be in term of End User Behavior.

Following question: And who shapes this behavior? Answer: friends schools, educators[....a pause] also media.

The media systems are not the problem.

In general it is also the weakening of the press-due to online, applications, html delivery. It is difficult to predict.

Following remark: But online newspapers have emerged and at the same time are having an increasingly presence of video on their websites and are not regulated by the AVMSD.

Answer: if they go to video entirely then will be regulated by the AVMSD.

The idea is who achieves control over the consumer, who achieves the attention of consumer in order to convince the advertisers. The advertisers are going more for the presence in the traditional version than online but for this we need metrics to see what it happens.

Interview 2

Organization: Media Task Force - European Commission (Adam Watson Brown)

Date and hour: 06.06.2012 at 9.30 (phone interview)

Theme 1: Media Pluralism Monitor Tool

1. There were some problems regarding the MPM coming out from the first discussion and one of the biggest seemed to be the financial one, in applying the tool for all the 27 countries of the EU. Nevertheless, there was an initiative from the European Parliament in the form of a proposal of a Pilot Project (2011, MEP: Rui Tavares) for the application of the tool. Was this initiative, this pilot project, a weak one from the point of view of the European Commission because I understood that in the end received a very low grade for the project to actually be implemented?

2. Why the Pilot Project did receive such a low grade? Is the evaluation procedure public in order to analyze the parameters the European Commission applied for this Pilot Project?

Answer: First regarding the questions of a few MEPs like Tavares and other for the application of the MPM I wrote the answers and you can use that answers as the official answer of the Commission in the thesis.

Tavares proposed the implementation and offered the money for it but there were yet not resources for the implementation and monitoring, supervision team for all the 27 countries.

There cannot be use: the reference to the Change of Mandate and the fact that is not included in the work of this commission the work of the previous mandate. The other actions do not fit well with the strategy of this Commission.

Theme 2: The Audiovisual Media Service Directive (AVMSD)

I understood that media pluralism was not the actual focus of the AVMSD, but the “*free circulation of programs*” was the focus.

Why the inclusion of the Issue Paper on Media Pluralism in the 2005 Consultation from the European Commission and why was also a working group discussing media pluralism at EU level at the Liverpool Audiovisual Conference (2005) if media pluralism was not the focus of the directive? What was the intention in including media pluralism discussion on the agenda of the revision of the directive?

Answer: Media pluralism is used in some of the recitals of the AVMS directive.

The discussion in the Audiovisual Conference in Liverpool was initiated in order to meet the demand, because some stakeholders wanted to talk and we had a session.

We are looking at consumer protection in the AVMSD and we support media pluralism but it was not the objective of the AVMSD.

The Issue papers for the consultation were there because there was a change in Commission in 2004 and there was still an echo due to the drawback in the situation with the reject of a directive on media ownership and media pluralism in the 90s. There was a lot of background noise brought also by the Italian situation and the Resolution in the EP regarding the mp and the Italian situation.

We did not go further due to the subsidiarity problem and the previous fall of the proposal of Commissioner Monti.

Interview 3

Organization: European Publisher Council (Executive Director, *Ms. Angela Mills Wade*)

Date and hour: 27.04.2012 at 11.00 (phone interview)

Theme 1: AVMSD-Audiovisual Media Service Directive

1. What was the most important point in the reform of the AVMSD for the European publishers-(EPC)-European Publishers Council?

Answer: *The most important point was the clear acknowledgement in the AVMS Directive that the websites of newspapers and magazines are not covered by this directive. The directive is covering broadcasters and not the other players that incidentally have video present on their websites.(Reference here to the online presence of newspapers that have video on their online pages but that this is not the principal purpose of these newspapers, the offering of video content, and this is why are not covered and not regulated by this directive)*

Furthermore, there has been done a clear differentiation between linear and non-linear broadcasting. Nevertheless, this differentiation and regulation is nowadays already outdated.

The discussion is going now if it is a good time to launch a debate about the deregulation.

Another good point from the European publishers' point of view is that the European Commission recognized the overall role of self-regulation. The industry is already very active in advertising self-regulation and coordinates through the European Advertising Standards Alliance. Recently all advertising codes and systems have been updated to take into account digital advertising to reflect the rapid evolving digital environment.

Another really important feature is the country of origin principle, regarding the broadcasters which are licensed at the national level and free to make their services available throughout the EU according to one set of laws.

2a. The European Commission acknowledges as having three types of measures included in the AVMSD, which aim to promote pluralism in the media. These measures are:

-the requirement from each member state to ensure **the independence of the national regulatory body responsible for implementing the Directive.**

-the right for television broadcasters to use **“short extracts”** in a non discriminatory manner.

-the promotion of programmes produced by independent audiovisual production companies in Europe.

Do you agree that these provisions are protecting media pluralism in EU?

Answer: *Yes, I agree.*

2b. Are there any measures which could have been included, from the point of view of EPC (the European publishers), to promote pluralism in a stronger manner?

Answer: *Talking about Media Pluralism, this is a matter of member states, where the European commission does not have the legal competence to regulate.*

3a. (Additional question): What does media pluralism represent for you, for the European publishers?

Answer: *Media pluralism is about diversity of opinion and diversity of ownership. At the national level media pluralism has been protected by ownership regulation and cross-media ownership regulations. Now many of these provisions are outdated due to the fact that they are only applied to "old" (traditional) media i.e. looking only at ownership levels of the newspapers and broadcasters.*

Account should be taken (for media pluralism) also of the consumer point of view, to assess levels of at freedom of information and freedom of expression via the vast range of services now available in terms of news and entertainment which don't only originate from traditional, regulated media, also.

On the other hand, the internet community is not regulated at all and is resisting any regulation or liability for the content they make available, while also wishing to dismantle some of the existing regulation (e.g. related copyright protection, prohibition of obscenity, misleading advertising, privacy).

There is no equality between offline and online. There is a different path for regulation since the regulator continues to limit the traditional broadcasters with heavy regulation. Therefore, competition between old and new media is not at an equal level.

4. Does the directive bring to light a new direction of the EU media policy towards softer methods of regulation like the co- and self-regulatory measures?

Answer: *Yes. The soft-regulatory approaches are representing a pragmatic approach to the very fast technological developments and are very useful.*

The focus should be on Delivery, on Public Objectives, public interests which can be attained through self-regulation just as well to provide transparency and accountability.

5. What does this Directive misses from the point of view of the European Publishers for the reform of the audiovisual sector?

Answer: *More Flexibility. This could have been done in anticipating the massive change in the developments of the industry. More liberal approach with more self-regulation.*

6. (Additional question): Does the EU need a network neutrality framework? Or are the electronic directives?

Answer: *The debate of network neutrality is going to develop as more and more media content is made available online. There will most likely be a shift away from net neutrality as investments from internet providers in 4G networking continue to rise. We see this development as highly worrying since it could be detrimental to the content industry and to the development of new services.*

We recognise that ISPs must manage their networks to a certain degree to ensure internet access across a broad spectrum but there is a need for transparent management techniques. Similar content from any content provider must be treated equally

Theme 2: Media Pluralism Monitor (MPM)

1. What does this tool represents? How do the European publishers see this tool: as a political toolkit, a technical one or a complex technical, normative and political study?

2. Which are the main weaknesses, in your opinion, of the MPM?

3. What is your opinion about MPM application and structure?

- Do you find that the last format represents a balanced representation of all indicators?
- As I read in your written statement for the consultation on MPM your worries were concerning the objectivity of application of such a tool and the possibility to lead to stronger regulation for the press in general(including freedom of expression)

Overall Answer (1, 2 and 3): *Looking at the background, producing a study and trying to identify factors of pluralism across a wide range of aspects represented a sensible approach by the European Commission and a practical way of looking at what if anything needed to be done.*

The skepticism is coming from the purpose of monitoring something rather difficult to quantify like freedom of speech. There is difficulty in measuring in a concrete way, in such a detailed way many different aspects from gender to types of programme etc. when the media should be free to operate within the general law;

We were concerned about how the tool would be employed as it could lead to unintended consequences for freedom of speech and also for an economical development of a company. In the end it could lead to a political decision due to the fact that in some member states there cannot be a truly independent assessment of the results.

Moreover, referring to the new steps of the European commission of creating a High Level Group on Media Pluralism and a Center on Media Freedom and Media Pluralism in Florence this is a more pragmatic way of approaching the issue. No opinion about the actions of the Center on Media Freedom and Media Pluralism in Florence.

4. To conclude, how do you envision the evolution of EU media policy for a better functioning of the publishers (of the written press) and the protection of media pluralism at the same time?

Answer: *There is a big open question about the future viability of the press, particularly the digital press. At the moment there is fierce competition to capture the attention of the consumer and indeed the press online delivers vast audiences throughout the world. The challenges for the European publishers are how are we going to be paid for the content*

produced and coping with the declining advertising revenues. Digital consumers produce nowhere near the revenues coming from non digital.

Even if the decision would be to migrate totally online the European Publishers, perhaps seeing savings from production and distribution, we still have to employ journalists and photographers to produce quality content. At the moment we don't make enough from digital services to support this and digital is still subsidized by the revenues coming from non digital.

The Advertising market is completely different online, based mainly on search advertising. Therefore there is no link between the value of content and price and value of advertising.

Moreover, online there is a problem of dominance, looking for example at the situation with Google's overwhelming dominant position in search, search advertising and now mobile.

There is no bargaining power with these large internet companies. Without a level playing field there is no established way to sustain quality journalism and pay the publishers for content re-used by the others without permission.

New media platforms such as Twitter create opportunities for freedom of expression but at the same time they are not providing quality journalism. There are also many independent blogs, a few are very specialized, some creating journalistic and/or creative content but there are also many blogs that are peddling half-truths or simply rubbish! .

Therefore the main direction of policy should be to look at the conditions which are necessary to create competition, a level playing field and ultimately how to sustain and support quality journalism, professional journalism. This is important for the future of a democratic society.

Interview 4

Organization: SMIT - Studies on Media, Information and Telecommunication
(Professor Caroline Pauwels, Director of the Institute)

Date and hour: 06.06.2012 at 9.00

Theme 1: Media Pluralism (in the context of the European Media Policy)

1. Do you consider that it is “politically inappropriate” to apply harmonization of media ownership rules or media pluralism at EU level?

Why harmonization is not feasible for media pluralism?

If harmonization is not a reality, what can be a reality for media pluralism in EU?

Answer: There are enough struggles with ownership rules and it is impossible to harmonize. We already have in place Competition Policy –that work as gate keeping and need to be more flexible; improvements should be at the merger regulation which is at the level of Member States.

For the moment, they have enough with Competition policy.

Today I would doubt that that harmonization is possible.

The problem is related with Ethics, related also with the internet. Access is much higher that before if the persons have the skills

We can talk about the media and the news and commodities.

The great problem in Europe is the ethics. At the national level-Competition level. The one that should be responsible for media pluralism should be the member states.

The reliance and existence of commercial media is higher but now in Europe there is an increased doubt about the Relevance of the Public Broadcaster.

Harmonization it is not a solution.

Competition policy it is working if member states dare to use the provision on media pluralism. There is a case: the first time when media pluralism was invoiced and used in order to point to merger between BskyB.

Nevertheless, along competition rules are needed complementary actions because the AVMSD only points to the issue.

What about the Skills and Literacy? The Commission should do much more in this direction of skills and literacy.

The Ethical part-it is not used or linked by the EU institutions to the pluralism issue.

The Ethical problem in EU did not started with the internet but started with the liberalization.

The Scoop is a problem of Ethics with the checking of sources. We could see that too much competition also can make the problem becoming worse.

I do not agree with the situation also that:

-Big is Bad.

-Small is Beautiful.

This situation does not work either.

Example of Gilbert John G.-

1. Market System-SMSs compete with big and small companies and their main focus is daily survival, staying in the business than their core business.

2. Planning system-big companies organize competition-resulting in Oligopoly. Big companies that make arrangements between themselves.

Both systems are dysfunctional and the author does not argue for one or another.

Competition and Pluralism should be about Quality and what now they are trying to so is Quantification. Do we have enough quality? Maybe we have too much but there are fragile models and we should look for the Skills to learn and recognize the quality. These acquiring of the skills starts at schools, begins down. There comes the point of Media Literacy.

Theme 2: Audiovisual Media Service Directive

1. According to the European Commission there are three types of measures included in the AVMSD, which aim to promote pluralism in the media.

- the requirement for each Member State to ensure the independence of the national regulatory body responsible for implementing the Directive;
- the right for television broadcasters to use 'short extracts' in a non-discriminatory manner;
- the promotion of programmes produced by independent audiovisual production companies in Europe (the previous TVWF Directive already provides for this)

- Do you agree with this statement that these three provisions are actually protecting media pluralism?

-Are there any measures which could have been included to promote pluralism in a stronger manner or these are satisfactory and adequate for the actual competencies of the European Commission to deal with this issue?

Answer: Looking at the three points where is the literacy?

Could point also to state aid that should be added.

Independent Regulatory Regimes: -there is a problem because many states are saying that they already have independent regulatory regimes. The problem stays with the independence of the regulatory Regimes and the Commission did a good job pointing towards this issue, an action that has been undertaken since 1995.

European Works:- the issue is there that national states use national works, therefore how are promoting European works if are promoting only their national works, national programs. Are there other programs, other movies from other countries than from the United States?

Short-Extracts: it is not about quality.

Going back to Quality and Ethics.

Theme 3: Media Pluralism Monitor

1. Regarding the definition used in the MPM the commission decided to use a very general definition adapted from the Council of Europe(1994 Def of Council of Europe), while in the

First step (Media pluralism in the member states) it used a different definition from the 1999 work of the Council of Europe.

Is there a need to look for a harmonizing definition (one of the recommended points of the Working group on MP at the Liverpool conference) of media pluralism, and even to have a legal definition at the EU level?

2. Which are the weaknesses in your opinion of the MPM or where the tool can be improved?

3. How do you envision the evolution of the EU media policy for a better protection of media pluralism?

Answer (1, 2 and 3): The MPM it is a very extensive tool which if it is applied we would know nothing in the end about media pluralism.

We tried to apply it in Flanders and only looking at how much information we have to acquire it became very difficult to apply.

If we take a country and try to apply a Flow study: To see: which movies are watched (from another country) and which public it is watching the movies. Type of movies (popular or cultural ones) and type of people-elites or general public.

The monitor represents a theoretical work where everybody wanted to have something.

Regarding the unifying of the definition can become very dogmatic, can become an ideology. And we need to look more at interoperability, at multifaceted things.

We have to start with basics, with education in school-Because we have different languages. If we start in schools we learn to be aware of the situation of Pluralism.

The MPM is too administrative, too burdensome.

Media companies speak different about media pluralism, from the economic point of view.

Theme 4: The work of the Media Futures Forum

1. Have been any meeting and exchange of views between the Media Futures Forum and the High Level Group on Media Freedom and Media pluralism?

2. How did the Media Futures Forum advised the High Level Group on the issues related to media pluralism and media freedom?

Answer 1 and 2: No meeting between the 2 groups and no input from one group to another.

Interview 5

Organization: Information Society and Media Directorate-(Mr. Jean Eric De Cockborne, Adviser to the Director General)

Date and hour: 08.06.2012 at 11.00

Theme 1: Media Pluralism (in the context of the European Media Policy)

First Comment: after hearing my presentation of my project study and asking with whom I spoke before, the first thing he mentioned was: Do you know that the actual Commissioner Kroes, at the time of nomination had to go in front of the EP in order to argue the nomination as Commissioner because of the media pluralism issue for the hearing?

The problem with the support for media pluralism is twofold:

-1- First is the framing of the issue for the EP from the point of view of certain member states like Italy and UK with the cross media ownership (the problem of Bsky Group). These reflected the situation in a certain country and not at the EU level. Therefore at a level where is No Legal Basis.

In fact we have Prescriptive Conditions for the new member states in what regards the Copenhagen Criteria-for the complex democratic rule of law. But once the countries entered then there is a different situation. For a legal point of view they are looking for Article 7 of the Treaty as a legal basis, which is usually invoked by the EP. However, this article 7 asks for unanimity in the European Council and this it makes the actual approval much more difficult.

Article 7 is mainly used for the defense of extreme rights.

-2- Economic Influence is the other issue.

Theme 2: Regarding Media Pluralism Monitor Structure and Application

-It is a useful tool and was initiated due to the lack of transparency.

When it comes to application:

-Nevertheless was not applied due to the naming and shaming problem. We (the Commission) were trying to test the monitor in a third member state and we chose Switzerland. When Switzerland heard about our intention was appalled by the intention of the Commission to apply it on their country (maybe due to the naming and shaming issue).

-The Commissioners (Reding and Kroes) have different political backgrounds.

-The EP has called in different occasions the application of the monitor tool.

Did you look at the Soros Foundation and what are they doing in the direction of media pluralism? (different initiatives)

Regarding the situation in Hungary

-There is difficult to have a full-proof legislation.

- There was a need for a modification of the law in Hungary from only one party. Parliamentary 2/3 majority.
- The Commission was checking the conformity of legislation.

Theme 3: Audiovisual Media Service Directive (AVMSD)

Talking about the Independence of Regulatory Bodies

- There was supported by the European Parliament but there was a NO from Member States.
- We (The Commission) wanted this provision
- It is not missing, the EP accepted the Council position of not imposing the independence of Regulatory Bodies.
- There was an agreement –There was a critical rule on Regulatory Authorities and in the end was not so clear.
- In the Council there was a stronger position from Germany-and there are strong political groups in the Council (2-3).
- We have to look at the Text & Spirit in which the text is implemented, when we looked at the Hungarian problem.

- Defamation-Criminal Penalties-in UK; When we talk about Enormous penalties- we can go to the other part to Restriction of Freedom of Expression.
- this asks for Independence of Judicial Power.
- The same provision is applied in different ways.

Freedom of Expression- we have to look at the resonance of History.

- How are working together Old Member States-have Old Hostilities from the 1st world war (EG-Versailles-French-The Treaty of Trianon, when Hungary lost a big part and has still not accepted that treaty(signed at the Trianon Palace at Versailles, France→ this is why Hungary did not wanted to attend a meeting at the Palace of Versailles)
- Out of this situation comes the Protection of Minorities clauses. Going further and talking about the Baltic States-Speaking in Russian→ Baltic countries, furthermore TV languages for minorities in different countries (TV languages in Romanian)-Freedom of Speech is Linked to this representation of different languages
- New Member states are frozen

Regarding the Definition of Media Pluralism

- A Definition can come with the High Level Group
- A Definition cannot solve anything.
- We need a snapshot of the situation to protect media pluralism in Member States.
- Regulated and Non-Regulated media sectors are completely being transformed.

Regarding the press

- There is no extension of the AVMSD to the press-The websites of newspapers are not covered by the directive.
- There is a relation between Video- Content and Written content.(We have to look at the relation between)

Answering to the Question: Do you think it is sustainable on the long run to have different regulation for linear and non-linear? **YES, it is sustainable**, based on the attitudes of the people:

-The Interactive position or

-The Couch potato Position (and studies show that the linear are still raising)

Mentioning the Statistics and report of Act, the linear are still increasing.

-We are talking about the Internet Generation but (in his opinion) attitude is linked to age or differences in generations.

Linear is going up, including people of broadcasting

Discussion: in Germany -about the influence on the Creation of Public Opinion:

1. Regulating the Audiovisual-Audiovisual content-Influence on Written Content

-We have virtual children

-The audiovisual content has much more influence than the writing content

2. Influencing Public opinion-News-but there is more, there is a way of living and consuming things. When it comes to Public Opinion there is a strong impact of the linear television.

If the public has a Multi-Channel packet they only watch a certain number of PSB in the EU (in the older states) and in the new Member States predominates the Private televisions Linear-Non-linear-main stream.

Theme 4: Network Neutrality (NN)

NN it is necessary.

The Problem is that different member states go in different directions.

In EU we talk about Vertical Integration and if a very flexible regulatory framework is the right instrument to address the NN issue.

There are 2 main points here to be discussed:

1) Economical Agreement- about the traffic balance overall

- an imbalance is economically unsustainable

Overall Balance/No of Operators

2) The Quality of Service-for Certain Types of Traffic-

The ISPs need to have a return on investment but they need not to discriminate in order to obtain this return on investment.

Ex-Post Application of Competition Rules-

When we talk about a **High Priority access to the internet-do you really need it?**

Is it Efficient to have High Priority Access for the Economics of the internet Traffic?

There is **No Perfect Solution-Good for Consumer**

-**Network Management**-Throttling

-Price-Telecom-Tariff Imbalance (at the

moment when you use the computer)

-the evolution of technology-less and less distance

The tariff imbalance is due to voice on-line at the open-end.

Packet switching-packet data for a voice over IP like Skype; is no need to keep a line open.

Cost Search using because the Mobile telephony is more expensive. Volume comes with Skype.

Overall, the European Commission is looking for the Best Endeavor Internet.
The problem with the NN is Transparency. The ISP start Competing on Offers.
There is a Business Model for Every Operator-from an economical point of view.
Skype is Free-Google is positioned in Ireland to avoid taxes.

-Concluding-

Responses from the Political Steer-

Telecommunications have a Bottom-Up approach-There is an economical Set of Political Choices-argument

When we talk about Audiovisual and Media-much more Political Decisions

The Business Model-

We have to look at the Future of Quality Newspaper-for the Internet (e.g. financial Times is bought by the companies. The economical newspapers have much more exit)

Quality Newspapers-Opposed to Tabloids and are making less because have free information.

They need to Help to support the Reflection about New Business.

No Quality Media-No Media pluralism anymore

Also PSB have an important role-to set the standard compared to Broadcasting, will go down.

Connected TV.

Large Press Groups maybe will survive but it is unlikely.

The Pan-European Model-Different Platform from country to country.

Interview 6

Organization: International Alliance of Journalists (Mr. Giovanni Melogli)

Date and hour: 04.05.2012 at 13.00

Theme 1: European Initiative for Media Pluralism

1. Why this initiative, what was the main reason of the European Alternatives and Alliance International of Journalists to build this Initiative?

*The European Commission continued with the “no competence speech”
2004-2009 was the Berlusconi era.*

An important statement from the EP was the Boogerd-Quaak report (2004).

The Approach for the Initiative was the following:

-How to collect signatures based on a good proposal because it is quite easy to raise the problem but we needed an interface in each country, an organization to work on media freedom. Therefore we were looking at these kind of organizations.(continuing question 3)

2. What is the main objective of the European Initiative for Media Pluralism, what do you want to accomplish in the end with this initiative?

The main Objective is to Finalize the proposal (31 of May), to see what direction to take with the proposal because there are three ideas to take into consideration:

I. -Profesor R. Mastroianni (University of Naples)-Think about European Citizenship when the fundamental right is in danger-This is the Wide Approach.

II. To use the AVMSD as the Telecom Package for the Independence of the Regulatory Bodies.

III. Internal market argument

-A duopoly in two member states it is a clear danger because it is a close market we are talking about.

The idea is that the initiative needs signatures from at least 7 member states.(Read the Rules-at least 750 citizens, no of the citizens in a country).

3. How many organizations are now taking part to the Initiative?

Therefore, the organizations were the ones the alliance was looking to be represented in each member state.

Put together these organizations met in the European Parliament (EP) in order to bring together:

-The main problems in their country because there are different problems in different member states and to find a common EU solution;

-National coordination: Liberty Justice, Article 21, Union, National Freedom Press.

-These organizations had meetings in their country and chose a coordinator in straight relation with us and coordinate the communication strategy in their country.

The idea how to centralize the campaign-Expert on share competence and share the task-It is important to centralize everything.

4. I understood you had a great support from the EP. What parliamentary group supported the most this initiative?

For the support from the part of the EP –a political one and a financial one since they provided money for the meetings of the initiative.

5. Are you also collaborating with the intergroup on Media that was formed by members of the EP in 2010(chair Jean- Marie Cavada)?

Yes, they also organized a meeting at the EP with the help of J-M Cavada on November 2010.

It was a successful meeting because it was a great attendance which does not happen too often at the meeting of the intergroup which can only underline or stress a problem. The success was held in the fact that it was a good discussion, good statements, it was a place to be and discuss about the issue of media pluralism and the economic modalities to survive of the newspapers. Moreover it was also well organized.

There was not realized actually something concrete but were discussed issues of European anti-trust measures to come and managed to put pressure and use advocacy.

6. What is most important for the European Alternatives Initiatives to succeed: having as many organizations as possible part of the initiative and make it a people's initiative or having mainly the EP as an ally for the initiative?

First was to find the organizations to represent the initiative in each member state and identify the problems in order to find a common solution and present it in the Proposal to the Commission.

Theme 2: The Audiovisual Media Service Directive (AVMSD)

1. Do you consider that the last Directive from the European Commission (AVMSD) was the right tool to help promoting media pluralism alongside competition in the internal market? Was it a step forward or a step backward for media pluralism?

*Not at all, just an economic organization, al law just to organize the media market, not to defend the right of viewers, **to open the European market.***

With the AVMSD there is no link with the quality of information, no improvement in this direction.

There should be a balance among different products on the audiovisual sector.

Moreover there is allowed Product Placement.

2. What was the most important point in the reform of the audiovisual media policy brought by the AVMSD for the journalists in EU?

Nothing.

3. According to the European Commission's website and declaration of the ex-Commissioner Reding, the Commission acknowledges as having 3 types of measures included in the AVMSD, which aim to promote pluralism in the media.

These three points, he absolutely not agrees with them. There is a problem of a lot of conflict of interest: Politics & Media, there is the market-media conflict.(e.g. France-TF1; Italy-La Stampa-Fiat). These are elements against media pluralism.

4. Are there any measures which could have been included to promote pluralism in a stronger manner or these are satisfactory and adequate for the actual capabilities of the European Commission to deal with this issue? If not, which measures are better to be taken for the protection of media pluralism?

Regarding the independent regulatory bodies should be directly binding, not to be controlled by the Government. Nevertheless the question is: What is the meaning of Independent? It is all a political decision if it is a majority of main political parties.

Giovanni Meligli suggested: To Include all the sectors, not looking only at one sector, due to convergence because at the moment it is a good representation but a majority of the ruling government.

Reference to the recommendation of Venice group Council of Europe: Communication and the Gasparri Law in Italy. The Gasparri law was saying that there was no problem with media pluralism due to the digital environment. But this way of perceiving the media is not the solution because everything is linear.

What counts mostly in theory are the particularities of each member state.

Nevertheless we have to guarantee the same rule, the same balance in each member state.

e.g., The Council of Europe guarantees media pluralism in all member states. We do not have to look at different sectors anymore, is all in the same basket. There is not a difference only between broadcasting and newspapers anymore. The difference is in the audience for each Medium.

The strategy of Berlusconi: all the newspapers are against me but the audience (70% of population) was on the TV not reading the newspapers, and his ownership was over the TV medium as a Monopoly.

Theme 3: Media Pluralism Monitor

This “three-step approach” has been as “an Answer to Justify our Role.”

1. What does this tool represents for you? It represents a political toolkit, a technical one or a complex technical, normative and political study?

2. Which are the weaknesses in your opinion of the MPM or where the tool can be improved?

3. The MPM has not been applied in the member states. What are the main reasons deterring the member states in your opinion?

The tool has been applied by AGCOM as an academic test but not as a real political test.

There is no political will to go ahead with the initiative.

They waited 1 year and no action.

The formal excuse is that the monitor was the work of the previous Commission.

Now is the excuse is that: The Monitor is too old for the actual media ecosystem to be applied because the media ecosystem has changed and there are now the social networks that predominate. Therefore the Monitor is not representing the right-the good tool to analyze the situation.

If the MPM would be applied it would have the Commission would have to say: Hungary you have a problem which would create institutional Frictions with the member states.

-The implementation is difficult but this is not the only problem. The EP tried to push the implementation to the Commission with the written questions like:

“Why you don’t use it?”

-The MEPS also initiated a Pilot Project in 2011, the initiator has been: Rui Tavares (Portugal-Independent) because the EP has the right to propose specific policy to the Commission.

Therefore this Pilot Project was saying “we are interested, we give you the money, 2 million, implement it”.

Unfortunately, the procedure is neither so transparent nor democratic because the Commission has to give a comment on the Pilot Project-if the project it is possible or not to be implemented, being a political judgment mostly and the grade was a D, which means no implementation.

This year will be selected another Project which will have the consensus of the Commission-cooperate to their task, improve the monitor and apply the monitor.

Therefore will not be only the citizens’ initiative, also presenting the Pilot Project to improve the situation of media pluralism in the EU.

Therefore the decision has been to restart the process with 2 steps and restart to discuss the problem. These were discussed in the Workshop on Media Pluralism in Florence:

A-Different Kinds of possible monitoring-Sharing Best Practices

Update the Monitor-since it is the best one at the moment. How to help the experts update it with new indicators for new media.

B- To work a study-June Deadline (for the Centre on Media Pluralism and Media Freedom in Florence-CMPF) about the Competences of the European Union for the Media.

The Problem was:-Where to start? They started the discussion at the workshop in order to have the help of experts.

For the time being, the only competence is the AVMSD!

→ How to link AVMSD with the competence from the Charter of Human Rights on the competence of European Union!!! Nevertheless, the EU could only act only if it is a clear competence.

4. Commissioner Reding presented the construction of MPM as the “*homework done*” from the part of the European Commission until the EP brings a new initiative report, “*a serious one*”. Nevertheless, looking at the previous reports from the EP by Boogerd-Quaak on “The risks of violation, in the EU and especially in Italy, of freedom of expression and information” (2004) and the report by Marianne Mikko on “Concentration and Pluralism in the media in the EU”(2008) the EP did not received any answers from the Commission.

Do you also find the initiatives of the EP not strong enough for the Commission to start a new initiative?

The Boogerd-Quaak report has been a good report.

5. As I read on the website of the *European Initiative for Media Pluralism*, one of the initiatives was to lobby and participate in the drafting of the report on Media Freedom and

Media Pluralism in Italy and EU. What was the main contribution of the Citizens' Initiative? 2009(14 October) Motion for a Resolution. Report on Media Freedom and Media Pluralism in Italy and EU.

6. Why did the Motion for a resolution failed in your opinion? (no support from the European Commission, from the national regulators to find the fund to apply the tool?)

The Report was initiated by ALDE group in the EP with the idea that ALDE group with the Greens/GUEL, Democrats, Libertarians have the majority in numbers against the EPP in the European Parliament, which are against any action from the EU towards media pluralism. In the EPP are 38 Italians.

The Motion for a Resolution failed due to bad organization, and not so coordinated strategy for the vote. It was possible but not all members were present in Strasbourg when the vote took place.

Nevertheless, Melogli mentions that the Boogerd-Quaak report has been a very good one regarding freedom of expression and information.

Theme 4: The Future of Media Pluralism in the EU media policy

1. A High-level Group on Media Freedom and Media Pluralism has been established to present a report with recommendations for the respect, protection, support and promotion of pluralism and freedom of the media in Europe is expected in 1 year from the first meeting in October 2011. Is this group representing the right solution for media pluralism issues today? What do you expect from this report? How can the Commission use the report in the future EU media policy?(2 politicians, a journalist, a new media expert) .

This Group is giving the political line to the CMPF.

2. A Center for media pluralism and media freedom has been established in Florence to develop new ideas on how to ensure a highly diverse and free media, and work to enhance the quality of the reflection on media pluralism in Europe and to the give assistance to the high level group. Do you believe this center should have a permanent state in the EU?

27 June Forum for Media Pluralism and New media –talking new priorities. *A part of the High level group will be there. The discussion will be on how to regulate media pluralism, if it is possible and working together with the EP.*

Interview 7

Organization: International Alliance of Journalists (Mr. Giovanni Melogli)

Date and hour: 14.05.2012 at 10.00

Theme 1: Clarifying Questions

1. You were mentioning as an important work for me to study on media pluralism the one of the Venice Commission of the Council of Europe, and especially in relation with the Gasparri law in Italy. Were you referring at the 2005 Opinion document: "On the compatibility of the laws "Gasparri" and "Frattini" of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media"? YES

-for supplementary questions on the Gasparry and Frattini law ask Simona Granata-she worked on this issues for the Council of Europe.

2. Regarding the Pilot Project on the application of the Media pluralism Monitor I did not identified the actual assessment of the Project even if I found the proposal. I understood that is not a very transparent process but the assessment and grading document it is not public?

The Pilot Project was proposed in the decision for the Budget of the European Parliament and the decision for the budget and what Projects to actually finance is taken in collaboration with the European Commission and the EC gave a low grade to the project, of no-implementation.

3. The European Commission stated various times that would be "politically inappropriate" to apply harmonization of media ownership rules or media pluralism and "one size does not fit all in the EU". If harmonization is not obviously a reality, what can be a reality for media pluralism in EU after monitoring and identifying the problems? Is the answer in one of the 3 directions you want to take with the Proposal for the European directive to present to the Commission?

I do not agree with the affirmation of being politically inappropriate. The EC makes this affirmation but it does not say why?

Theme 2: Concluding Question

How do you envision the evolution of EU media policy for a better protection of media pluralism?

We have to improve the AVMSD to have a better exchange of product in what relates to the media. The idea of plurality comes from a libertarian approach. We want to improve the balance of the market. The risk is that a higher competition could lead to lower quality of the media products.

The focus in this situation has to be on the Public Service, paid by the state, therefore not completely separated from the government in order to give a good example of quality, a good example to follow. With a good product it can build higher expectations for the general public. e.g., Media Education.

Regarding the Proposal from a Citizens' Initiative for Media Pluralism the approach will take the wider proposal made by Professor Mastrini and the internal market argument.

Interview 8

Organization: The European Consumers Organization (BEUC) (Mr. Guillermo Beltra, Legal officer)

Date and hour: 21.05.2012 at 11.00

Theme 1: Network Neutrality and Open Internet

1. Does the European Union need a network neutrality framework?

Yes. We look at violations that are already in place but we have to look at those that we cannot detect. We have already the situations of blocking and throttling which looking forward is very hard to detect. We have covered in the legislation only minor aspects like Quality of service and Transparency, which are in the telecom package but are not clear enough.

1a. What does NN mean to you? Do you agree that should be an open and public internet on one side and private internet on the other?(The Netherlands argues in the written statement to the Consultation of the EC in 2010 of the dangers of the two lane concept because the internet providers could legitimize an unwanted breach with the open internet ideal. This would occur if network operators invest all efforts into the managed services lane, while squeezing capacity and quality of the public internet lane.)

For BEUC NN is based on the protection of the end-to-end principle; on a fully neutral internet on any device and for accessing public content and any other content.

There should also be based on full Transparency on the Public internet for any Managed services. Our view is not a radical view like the one of "La Quadrature du Net"(civil society organization in France).

2. Why BEUC considers that "European Union has missed the opportunity to safeguard net neutrality as a fundamental regulatory principle during the revision of telecom rules in 2009" (statement made in the consultation of the EC for a NN in 2010)?

2a. Are the electronic directives not contributing to the neutrality of the network in your opinion? (Via these measures the ISP have to announce the consumer of the intention to adopt traffic management practices; have to ensure transparency and information disclosure rules).

The telecom directives are not clear enough but with these directives has been made a big mistake that NN was not included. It is only mentioned in the Annex of one of the Directives. The defense of the NN is left fundamentally to the Member States. But NN has not been defined, not How it should be protected.

Guillermo Beltra mentioned also that network neutrality is mentioned but vaguely in the end, after the annex of one of the telecom directives. **“Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services.”**:

3. Would a network neutrality law promote and ease the original production of content and access for distribution of public service providers?

We are trying to avoid a lot of risks like:

-Blocking consumer access;

-Protection of the Economical Environment.

If we do not protect technical advancements there are being developed partnering situations with content providers by ISPs and prioritization takes place.

*Not to create more competition that will create the ISPs problems like **Remodeling** and asking the other to pay for the internet that it is used.*

4. What do you believe, from the point of view of BEUC, to be the most important problems that NN can correct? (traffic prioritization of specific content; network congestion; access degradation; lack of effective competition affecting the mobile internet-“in relation with the affirmation that it is difficult for consumers to find an operator that does not impose restrictions or block access to specific applications”-written position 2010)?

The ISP do not want rules to work on congestion strategies. The main problem is that the ISPs can abuse to manage their networks in order not to deliver (e.g. net providers throttle Youtube). There are the Technical and Commercial arguments.

Bandwidth-sell the other services, by looking on where to make more money.

Openness and Freedom of Expression overlap with the tools to manage the networks.

The NN has to ensure the users an open access to public internet with:

-no restrictions;

-insurance that they get what they pay for, as a legal obligation.

There are a lot of techniques from the ISP that they use for people to not use the data plan they have paid for them, in order to use it further.

5. Which do you consider to be the biggest threat regarding net neutrality interferences: at end-user level or at the level of traffic management between network providers and information service providers?

The two are interlinked. Openness goes with Freedom of Expression.

The Control for Commercial can lead to control for Political freedom point of view.

6. After reading your position paper to the Consultation of EuCom on NN and open internet (2010) it appears that the blocking of Voice over Internet Protocol to be the biggest problem when it comes to blocking of certain content from internet service providers, therefore the accessibility to certain applications. Is accessibility still considered the biggest problem with the rapid development of so many tools of accessing the media? (or still remains a high issue since this is related with the ISP and not with the medium through which the media is transmitted.)

Throttling it is as important as blocking voice over Internet protocol but it is much more difficult to talk about it.

BEUC does not condemn traffic management and accepts traffic management when it is conducted in an legitimate way but the problem is when the ISP conduct traffic management for economic and political reasons, for hidden reasons.

7. Regarding the impact of exclusive agreements on competition you proposed an ex-ante regulation and an ext-post evaluation. Referring to the ex-ante regulation which was the model you are supporting: having only EU regulation of the market or a combined model including co-regulatory measures similar to the Norwegian co-regulatory model?

As we received the information from the Norwegian partners, the Norwegian guidelines model does not work. BEUC ask clearly for ex-ante regulation mainly.

But first they try to solve the situation now. How? Waiting for the results of BEREC . The least that BEUC is asking are: Guidelines at EU level on what is legitimate and what it is not legitimate.

8. Taking in consideration that a NN regulation has been recently approved in The Netherlands (8 May 2012), could this be considered a positive step towards an increase mobilization of member states for NN regulation? How do you see that a change like this will affect the future development of the EU policy towards NN legislation?(do you see it as an opportunity to advance the NN legislation since an EU member state approved a NN law?)

The Netherlands, with the approval of the NN law, is creating a huge mess And this relates especially with the mobile networks. There is no coordinated central harmonization at EU level.

The initiative was applauded by some sides but at the same time was politically criticized firstly by Commissioner Neelie Kroes and a few MEPs. One MEP applauded the initiative.

Therefore:

-There needs to be a Clear defined internal direction or follow Dutch lead;

-Dutch law has forced prices to go up.(as a reaction from ISPs to protect themselves from loses).

And there is open the following economics:

-Would you pay more in order to have a neutral access (top down) OR

-Would you pay less and not be sure that the access is a neutral one (and leave it to the competition)

Nevertheless the Dutch are not going to take the law back and YES is creating a very big precedent since it is a very serious member state implementing this law. There is also the example that one goes to one extreme and now- We have to talk about it-Puts the debate on the table-The discussion has to continue.

9. Regarding the definition for “legitimate traffic management measure”(discussed in the Position to the BEREC consultation in 2011) you indicate that a certain definition should be finally defined by the NRAs and not by the industry. Nevertheless if BEUC is looking for NN regulation at EU level this definition should not be worked at the EU level for uniformity?

Ideally it has to be done at the EU level.

BEREC should come up with the definition in order to be a definition at EU level.

To conclude, which are the steps to be taken towards NN legislation at EU level? Starting with clear definitions of “legitimate traffic management measure”, of “quality of service” established by the NRA of each member state and later arriving to a harmonization at EU level?

Firstly BEREC is doing something with the 4 strands of the studies but even with this work nothing it is going to be imposed at EU level.

Nobody is defining NN. At the moment it is an usable concept to what it implies: transparency, quality of service, traffic management.

There are not legitimate measures to define NN and a definition of network neutrality it is not enforceable.

We need first Harmonization for Telecom Package implementation and later Guidelines at EU level for quality of service, traffic management, transparency.

And when we talk about traffic management we talk about legitimate traffic management of the net, referring to what it is called the “best effort internet”. No public interferences to say the least.

-Protecting Public Interest goes also to Innovation because to manage services is more restrictive for the end user

Concluding Remarks

1. Is there anything you would like to add in conclusion?
2. Would it be possible to contact you in the future for further clarification or further questions?
3. Is there anyone else you recommend me to talk too from a consumer point of view?

-Le Quadrature Du Net-France-very radical organization.

-EDRI-European Digital Civil Rights in Europe: <http://www.edri.org/>

- Open Rights Group: <http://www.openrightsgroup.org/>
- Electronic Frontiers foundation-US: <https://www.eff.org/>
- Which-UK: <http://www.which.co.uk/about-which/>
- OCU-Spain-Organization for Consumers and Users:
<http://www.consumersinternational.org/>
- Telefonica with their own version of Skype (TUME)

Interview 9

Organization: The European Consumers Organization (BEUC) (Mr. Kostas Rossoglou, Legal officer)

Date and hour: 23.05.2012 at 15.30 (phone interview)

Theme 1: AVMSD-Audiovisual Media Service Directive

1. What was the most important point in the reform of the AVMSD for the European consumers?

Firstly we think that there were mostly negative points for consumer than positive ones. The negative ones are: product placement, advertising issues, especially related with advertising for children which was very critical from the beginning; country of origin which should protect the consumer to not be deprived of his rights from the country he is in.

For the positive side there are two positive things: the European quota, the engagement to promote European works. And BEUC strives for the promotion of European works to online distribution of audiovisual content. Otherwise we lose the European culture. The promotion of European works has to be implemented for both on-line and off-line.(there was a jump here to the question number 5)

2. How is this point or the most relevant points for the European consumers contributing to media pluralism in the EU media policy?

European quota rule-was a challenged rule because is an important rule for BEUC.

Other is the independence of regulators because otherwise situations like the one in Hungary take place.

There is also the fact that events of major importance for the society can have an impact and this why the provision of "short extracts".

3. The European Commission acknowledges as having 3 types of measures included in the AVMSD, which aim to promote pluralism in the media.

-the requirement from each member state to ensure the independence of the national regulatory body;

-the right for television broadcasters to use "short extracts" in a non discriminatory manner;

-the promotion of programs produced by independent audiovisual production companies in Europe.

Do you agree with these measures as contributing to media pluralism?

I would agree.

What does media pluralism mean for you, the consumers association?

Independent sources and different content.

Concentration of media that has an effect on competition and how competition is transformed by the actions of telecom providers entering in agreements with content

providers (the vertical integration). Concentration, integration of media stakeholders, media players in a way that a few groups are controlling all channels of distribution.

Advertisers with the product placement are creating more blurring lines between editorial content and advertising and also between political and ideal issues.

There is also a correlation between network neutrality and risk of vertical integration, network, content also to consider because can lead to discrimination to other contents.

Supplementary Question: all these problems you have described are affecting media pluralism, are these problems that media pluralism should correct? Answer: yes.

4. What does this Directive misses from the point of view of European consumer for the reform of the audiovisual sector?

Firstly is what it brings from a negative point of view, which is related with advertising: it is allowing product placement. Another negative point is that allows self-regulation for children advertising, which depends a lot on the way how it is done, the way it is creating serious problems. This advertising should not be left to self-regulation.

There I also consumer-protection on different areas, especially when the consumer can be deprived from the protection of rules of his own country.

The **Country of Origin** issue.

Supplementary comment on co-and self-regulation: I understood from your written paper that you are advocating only for co-regulation. Answer: Yes, we see co-regulation starting from the Public authorities: you have regulation in place, a strong regulatory system in place, a general framework and the co-regulation is working when practical issues, how we put in practice certain issue are left to the stakeholders (than the governmental ones.)

5. The extension of regulation to the non-linear media was initiated to look for a level-playing field. Is this approach sustainable in the long run?

When the written statement was wrote, at the time was criticized the extension of the scope of the directive to non-linear services because was no harmonization at EU level, because harmonization was premature [Actually the written statement refers to the extension of the country of origin to non-linear services: "The extension of the principle of country of origin to non-linear services is not acceptable as long as non-linear services are not harmonised at a high level at European level and there is no effective cooperation between public authorities in the event of an infringement"(p.3, written paper 2006)]. (But if you ask me now, the linear and non-linear should be at the same level). Therefore I agree that the actual approach is not a sustainable one because the regulation has to be the same for both.

Therefore this approach is not a sustainable one.

6. Do you find these new media changes (AVMSD) that have been made to better protect media pluralism in the EU?

Media pluralism has been one of the objectives but not the end of the road, not the end of the story. Media pluralism is an on-going issue, which goes further that the AVMSD.

7. Do we need a new communication directive with more relax or stricter rules to cover the whole communication sector, including new media?

We want of course stricter rules, referring firstly to the Scope of the directive.

Firstly we need the rules that are included to be useful rules (for the consumer).

Ssecondly, to be enforced-the enforcement of the rules. If the rules are not enforced then are not useful for both linear and non-linear.

Therefore we have to look at sanctions imposed by national regulatory bodies by giving them more power.

Thirdly, we have to look for data protection, for more and better coordination between member states for the online environment. It has to be an updated and detailed coordination.

Interview 10

Organization: Member of the cabinet of Commissioner Neelie Kroes (Ms. Lorena Boix Alonso)

Date and hour: 01.06.2012 at 12.00

Theme 1: The High Level Group on Media Freedom and Media Pluralism

1. A High Level Group on Media Freedom and Media Pluralism has been established to present a report with recommendations for the respect, protection, support and promotion of pluralism and freedom of the media in Europe is expected in 1 year from the first meeting in October 2011.

1a. Why this decision of establishing a high level group to establish the new strategy on media pluralism?

1b. Was this change taken due to the failure of application of the Media Pluralism Monitor? Why did the application of the monitor fail? The failure was in the structure of the monitor?

Answer (1a.1b.,1c.): No, the monitor was not a failure, not in the structure.

1c. What is the monitor missing? Is the actual Commission looking to see if the monitor has to be improved? Is the Center for Media pluralism and media freedom also working on improving the monitor (to update it to adapt to the internet and digital changes, adding the digital indicators for the new media that are missing)?

Answer: The tool is not missing something concrete.

When this Commission came the monitor was already finished, was a finished job and was already there, it actually was already posted for the general public to access it.

The Commissioner Kroes is very pragmatic, decided to look at the issue in a very pragmatic way.

Firstly did not wanted to impose this tool on the Member States and this is why did not wanted to put it there in a Communication.

The MPM monitor can be very useful but there are other ways to reach the same objective.

Actually having the monitor there in a Communication, would have been started the same way that Mario Monti wanted to start and the member states opposed.

Therefore, the decision was to act in a very pragmatic way and use the legal enforcement of the AVMSD.

Look at the Hungarian case: we actually managed to make them change the law by using the enforcement of the law in the AVMSD application and also achieving to use Hungary as an example for the other countries.

Therefore the Media Pluralism Monitor it is not an easy tool to use and there are much more efficient ways.

1d. Is this High level group representing the next step for media pluralism issues today?

Answer: Starting with Italy and Hungary and looking at the general debate, we would be ready to intervene. The civil society expects more and the Commissioner in a very pragmatic way decided to “put all the cards on the table” and this is why it commissioned the work to the two groups to an input.

1e. What do you expect from the report of this group? How can the European Commission use the report for the future of the EU media policy?

Answer: The two groups (referring also to Media Futures Forum) are going to present two separate reports and the recommendations can be at all levels (of society) but will not be solely for the member states.

Theme 2: Centre for Media Pluralism

1. A Center for Media Pluralism and Media Freedom has been established at the Robert Schuman Institute.

1a. *What is the Center focusing on?* -Is this center focusing more on a clear definition of media pluralism and methods to protect media pluralism or the discussion goes more on media freedom applications in the member states(brought also by the situation with the Hungarian media law)?

Answer: The Center in Florence is looking also at competence of the European Commission also to give input to the High level group.

The center received financing for at least two years, and we would welcome a permanent presence but after these two years have to find their own financing.

1b. Do you believe this Centre should have a permanent state in the EU?

Answer: Yes but they have to provide their own funding after the expiration of the first two years. We agree that those points are protecting media pluralism but there are many others like the provision related to “incitement to hatred”.

The most difficult issue we had to deal with was to find a balance. A balance is very difficult because we want to enforce provision related to “incitement to hatred” in order to protect media pluralism but imposing it too strongly would mean killing the freedom of expression.

The most difficult is trying to reach a balance, to learn how far we go.

-Again the same with the provision on the protection of minorities, we want to protect the minorities but not too strongly.

Theme 3: Network Neutrality and Open Internet

1. Does the European Union need a network neutrality framework?

Answer: There was no initiative from the Commission in the first place in what regards network neutrality :

-The telecom package was not even implemented, it was the deadline this May of 2012. It would have been enough to look at the issue if there have been the telecom package implemented.

-The Commissioner is a Liberal one. The interventionist approach would come to place if it would have been at least necessary.

1a. What is the biggest advantage for media pluralism brought by network neutrality legislation? Or better said first:

1b. What does media pluralism represent for you? How is the Commission seeing media pluralism, which are the main elements?

Answer: To make sure that the government is not dominating any particular media to transmit their believes, letting all choices of different people, killing the possibilities for all to have all possible choices.[here was the reference to J-E Cockborne-advisor to the DG, for a historical point of view]

2. Taking in consideration that a NN regulation has been recently approved in The Netherlands (8 May 2012), how do you see this change affecting the future development of the EU policy towards NN legislation?(do you see it as an opportunity to advance the NN legislation since an EU member state approved a NN law?)

Answer: The situation in the Netherlands makes the situation with the internal market in EU worse.

Additional question: The first reaction of the ISPs was price increasing when the network neutrality appeared no?

The Commissioner does not want to kill the possibility of innovative offers. How we see it the innovative offers appear because is like a shop: you are obliged to sell.

What the Netherlands is doing is a very interventionist system. There are no longer creative offers to actually have creative services. And as a result is killing innovation.

If the market is completely closed and consumers do not have the choice.

NN it is very populist, I know.

But we also need to look at coherence and internal market.

3. Regarding the Preliminary Report of BEREC(6 March 2012) on traffic management on traffic management practices in Europe shows that blocking of VoIP and P2P traffic is common, especially the use of an "application-agnostic" approach (e.g. active buffering),

while others use “application-specific” techniques (typically in order to throttle specific traffic, such as video streaming).

Are these kind of practices affecting media pluralism(in the general sense) or not? (is the respondent looking at freedom of communication, freedom of information) If the answer is not, therefore would a NN principle not be viable only in the situation when fair competition and innovation are affected?

There are three points to cover when it comes to NN and protection of MP:

- fair competition;
- innovation(air access of content producers)-freedom of expression;
- freedom of information.

Answer: The report presented by BEREC did not presented exact names of the countries where they found irregularities by the ISP. They did not wanted to use the names in order to use the “naming and shaming” and also because it was much easier to collect the data needed by using this clause of anonymity.

After reading the report, the approach that we want to take is to look at the Consumer choice: The Consumer have a choice for what they need. If they want one service they could have only one. And like this we have an innovative business model.

The main important point we want to emphasize is for the consumer to always have access to a non-restrictive offer from the operator. And to move from an operator to another.

The Criteria: What is the offer?(translated in Transparency) an Switching operators.

Talking about the mobile networks:

-(We also found out from the report) that even if there is a restriction , the ISP do not enforce the restriction in practice, in reality;

-In most cases is the possibility to have an unrealistic offer.

Therefore these are the biggest issues to tackle:

-Transparency and

-Switching.

Taking also an idea from the French model: “If we are not getting the full access don’t call it internet”

Regarding the increase in Price-Additional question was: This system to have different services will not increase the price for the Full Internet access?

Theme 4: Future European Audiovisual Media Regulation

1. Do you consider that it is “politically inappropriate” to apply harmonization of media ownership rules or media pluralism at EU level, due to the legal limitations of the European institutions when it comes to this subject?

If harmonization is not a reality, what can be a reality for media pluralism in EU?

Answer: Harmonization depends on how high you want to go with the harmonization.

Or just talking about minimum standards, there are also still discussing minimum standards also at the EP level and also standards for journalists.

We have to look at interpretation of the law of the AVMSD to do something concrete.

2. To conclude, how do you envision the evolution of EU media policy for a better protection of media pluralism (focusing on soft-regulatory measures or on stronger regulation starting with stronger anti-concentration rules)?

I would advocate for more power at the EU level (not for Member States), look at the Hungarian law and what it taught us.

It is more efficient to go for self-regulation, more pragmatic.

With good legislation it would work more than self-regulation because we are talking about member states and not industry

Interview 11

Organization: Media Task Force-European Commission (Monica Aubel Antoine)

Date and hour: 30.05.2012 at 09.30

Theme 1: The Audiovisual Media Service Directive

Introductory word to the discussion:

The main purpose behind the directive was not to harmonize, the reference is more on :

-Cultural Diversity

-Right to Information than on media pluralism.

There is very difficult to split media pluralism from media freedom, there is no first or second.

1. I understood that media pluralism was not the actual focus of the AVMSD, but the “free circulation of programs” was the focus.

Why the inclusion of the Issue Paper on Media Pluralism in the 2005 Consultation from the European Commission and why was also a working group discussing media pluralism at EU level at the Liverpool Audiovisual Conference (2005) if media pluralism was not the focus of the directive? What was the intention in including media pluralism discussion on the agenda of the revision of the directive?

Answer: There was reflected on media pluralism.

Reference to Harcourt article: EU Media Ownership Regulation (Journal of Common Market studies).

There is a different focus between the internal market and industry view.

Ownership rules represent only the external part but are not all in this direction of media pluralism.

There are the Concentration-Competition Rules and there it has to be insured that we do not intervene with the DG Competition.

Regarding the Competition DG-on 21.12.2012 there was the case of acquisition of BSkyB by Rupert Murdoch, which was observed and mentioned by OFCOM on a basis of pluralistic values. Nevertheless, OFCOM was not ready to take a decision. This was from a Competition view and the first reaction was to start an investigation.

2. The working group on media pluralism at Audiovisual Conference in Liverpool (2005) presented three conclusions:

-a need for a clear definition of media pluralism (against double standards)

-increased transparency rules needed

-creation of an European Observatory for media markets and concentration

How did the European Commission followed upon these recommendations?

Answer:

Firstly, we have started the Centre on media pluralism that is working on a paper on EU Competences of media freedom and media pluralism for July 2012.

A Preliminary report-Renate Weber-Sept2012. And final Report end of 2012, with the hearing in Oct 2012.

Secondly, the Study on Indicators-the elements that gave us on media pluralism. We can apply but HOW?

Media pluralism is very linked with culture, plurality.

3. One of the big changes and one of the most debated points during the adoption procedure of the AVMSD has been the extension of the scope to the non-linear services. What other points have been between the most discussed during these debates?

3a. Country of origin

Answer: Basic Rules and Principles to be established.

e.g., Strict Regulation-France or Light regulation in other member states. There are circumventions in establishing themselves in a country with basic rules.

Artic 4.-On the circumvention procedure, for stricter rules we can go to Case law and Court of justice. If the Regulator can impose some obligations it is k-The objective is achieved.

We want to avoid heavy procedures and encourage member states to cooperate, this is the best way to deal with it via cooperation.

3b. Content Distributors

A telecom operator does not go under the scope of the AVMSD when it has its own services and does not provide media services. A media provider goes under the scope of AVMSD because it has the editorial responsibility on content.

A network provider goes under the scope of the Directive if provides media services and has editorial responsibility at the same time.

Content distributors-only of channels, already exist.

e.g., -Youtube, user generated content doesn't fall under the AVMSD.

The support is not covered, only editing services. These issues will arise in the future and we will try to define their nature.

Where necessary we will always try to avoid infringement procedures but maybe we will have infringement procedures at the end of the year. In some countries are keen to modify the legislation but are not clear on how will do it.

4. Regarding the legal certainty on "short extracts", Article 15: 1. "Member States shall ensure that for the purpose of short news reports, any broadcaster established in the Union has access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted on an exclusive basis by a broadcaster under their jurisdiction".

The discussion was about the legal certainty in terms of implementation of this provision, since I understood this was one of the problems related with the implementation of AVMSD

because it was a new provision and the European Commission was looking into seeing if there are infringements procedures needed to be applied.

Did the European Commission take a decision in applying infringements procedures in this direction of application of “short extracts” provision and to which countries in particular should be directed?

Answer: Information rights and Short-Extracts are in favor of MP, is clear, but are a bit limited.

The short extracts are more about internal market. It is a permanent discussion, because the problem is to deal directly with media pluralism.

e.g.,. Art 2 EU Treaty: Court of justice that is mentioned by the MEPs it is not about media pluralism.

We did not took a decision yet for infringement procedures. We are still looking at some Member States to convince them for the application, to avoiding infringement procedures, to have a dialogue and to modify legislation. The short answer is NO.

5. Do you consider that it is “politically inappropriate” to apply harmonization of media ownership rules or media pluralism at EU level?

Why harmonization is not feasible for media pluralism?

If harmonization is not a reality, what can be a reality for media pluralism in EU?

Answer: I can't imagine harmonization of the definition and rules on media pluralism.

Is it really feasible?

Assuming we would have the competence: the situation is so different between the Member States, the societies are structured in such different ways due to traditions.

There are societies that have such a long experience with media pluralism and the society works well for the protection of media pluralism, due to the culture and tradition of the society (e.g.Sweden).

A harmonization of basic rules may not be enough for the education of people for certain countries. And we come to the problem of Enforcement-Look at the Hungarian case-we had to proceed on the basis of AVMSD and the Charter of Fundamental rights-Article 51. Furthermore, the Commission had to apply political pressure-Judicial, Financial and treat the package of all problems.

The answer was quite soon taking in consideration Internal Processes and Legal Issues to react according to its competences and the AVMSD.

It is all about competencies and non-feasibility.

There are going to be elements in the Report of High Level Group on Media Freedom and Pluralism.

In some countries there is no balancing power.

6. The European Commission suggested that after the initiative for a directive in 1996 when the Member States opposed, the European Parliament (EP) needs to present a “**serious initiative report**”(quote from the declaration of Commissioner Reding at the Plenary Debate in the EP on the “Motion for a resolution on Media Freedom and Media pluralism in Italy

and EU"2009) if they want the European Commission to pursue another initiative in this direction.

-Moreover, as I understood from the previous discussion the EP is serious about media pluralism but they cannot reach a consensus in opinion and here came the example of the Failed Motion for a resolution in 2009: *"Report on Media Freedom and Media Pluralism in Italy and the EU"*

What about the initiatives from the EP: the report by Boogerd-Quaak on "The risks of violation, in the EU and especially in Italy, of freedom of expression and information (2004) and the report by Marianne Mikko: "Report on Concentration and pluralism in the Media in the European Union"(2008)?

-Are these reports not strong enough and conclusive enough to be taken into consideration in order to build a new case for a directive on media ownership and media pluralism?

Answer: The MEPs internally are insisting on media pluralism, being a political issue. And the focus is also on Italy. They are looking at a way to deal with the issue outside the legal framework.

7. How the European Commission has been cooperating and is cooperating with the Council of Europe, *"which exists to preserve cultural pluralism and media diversity"*, when it comes to the protection of media pluralism and media diversity?

In the 2005 written answer to the IP5-CMFE(Community Media Forum Europe) suggested: *"Although it is clear that the issue will remain firmly in the competence of the Member States, CMFE ask the EU to work further with the Council of Europe to draw up a minimum set of standards for media pluralism which should be observed by all Member States."*

Do you find this suggestion workable in the light of the actual legislation and competences of the European Commission?

Answer: The Council and the EU Commission are two distinct institutions.

The Council can say a lot, work on principles and there are different situations they have to deal with.

Theme 2: Media Pluralism Monitor Tool(MPM)

1. There were some problems regarding the MPM coming out from the first discussion and one of the biggest seemed to be the financial one, in applying the tool for all the 27 countries of the EU. Nevertheless, there was an initiative from the European Parliament in the form of a proposal of a Pilot Project (2011, MEP: Rui Tavares) for the application of the tool. Was this initiative, this pilot project, a weak one from the point of view of the European Commission because I understood that in the end received a very low grade for the project to actually be implemented?

2. Why the Pilot Project did receive such a low grade? Is the evaluation procedure public in order to analyze the parameters the European Commission applied for this Pilot Project?

Answer 1 and 2: When we would talk about the MPM we would need a follow-up. Light regulation could be but things would work? The things are evolving-if something falls in a

perfect system where people via their society and inherited culture are preserving media pluralism(e.g. UK scandal with tapped wires).The MPM cannot be isolated in time as application.

Can look to some improvement in some countries if applied regularly and anybody can apply it not only the Commission. The problem is represented by resources, staff, time and keeping in mind that there is not only one review. It needs an infrastructure to be put in place.

I was directed to talk some more with Adam Watson Brown related with the Pilot Project on media pluralism from the European Parliament.

Interview 12

Organization: European Affairs-European Broadcasting Union (EBU) (Ms. Nicola Frank, Head of European Affairs)

Date and hour: 07.05.2012 at 11.00

Theme 1: AVMSD-Audiovisual Media Service Directive

1. What was the most important point in the reform of the AVMSD for the national broadcasters in the EU?

Extension of the scope of the Directive to non-linear services.

2. How is this point or the most relevant points for the national broadcasters contributing to media pluralism in the EU media policy?

This extension of the scope to non-linear services could influence indirectly, not directly.

3. The European Commission acknowledges as having 3 types of measures included in the AVMSD, which aim to promote pluralism in the media.

Are there any measures which could have been included, from the point of view of public broadcasters, to promote pluralism in a stronger manner?

Independent Audiovisual Production Companies in Europe are not influencing media pluralism.

The measures that could promote pluralism: Measurements for Diversity of Content could influence media pluralism.

Continuing Question: What does media pluralism represent for you?

Media Pluralism has an External and Internal part.

For the External Part: The role of the Public Broadcasters in the Media Environment if are functioning well in all media countries, in the wider context. They have an important role: as a reference point for the public.

For the Internal Part: How they function internally: balance reporting, application of journalists, editorial independence of journalists vis-à-vis governments.

The most important point-Independence of Regulatory Bodies-Different Systems-Independent Regulators for Public and Private televisions, in different countries.

4. What does this Directive misses from the point of view of the national broadcasters for the reform of the audiovisual sector?

This Directive covers a lot of ground. But runs the risk to become obsolete. At the time it represented a good compromise, mostly regarding different regulation for linear and non-linear. Talking about the "Hybrid Television" the same programming.

Even at the time was a little obsolete.

Nevertheless, at the time could not apply all rules: quantitative advertising rules.

The danger now is that reducing the differences between linear and non-linear would reduce regulation.

As Ms Frank says the trend is to downsize the regulation.

5. How would this point contribute to the media pluralism, in your opinion, or how would help the national broadcasters in contributing to media pluralism?

There are three levels of regulation: non-linear, linear and open-internet.

No one will advocate to regulate the internet.

The question is in implementation-Who is the provider of the audiovisual media service? This is linked to the production of audiovisual media service.

E.G. Youtube platform.

It has to be defined Editorial responsibility what it means? And what services may be covered?

Newspapers online are covered by the basic requirements: protection of consumers, of minors.

6. Does the directive bring to light a new direction of the EU media policy towards softer methods of regulation like the *co- and self-regulatory measures*?

Usually co-regulation is mainly used –it could be a way of doing more, it could work but this co-regulation means that in the situation there is a trespassing of a rule-the regulator can intervene.

7. Opposing to the previous question, the extension of regulation to the non-linear media(with minimal regulatory framework) was initiated to look for a level-playing field is representing a sustainable approach in the long run?

It was almost obsolete at the point of adoption of the directive.

8. Are we going for a harmonization of EU law for both linear and non-linear or towards more relaxing EU soft-regulatory measures opening the participatory process?

More relaxing rules-as a trend.

9. Do you find this direction, these new media changes (AVMSD) that have been made to better protect media pluralism in the EU?

Yes, with the extension of the scope to non-linear. EBU understands the importance of the public broadcasters of being on all the platforms, of being on on-demand.

Contribution has to go to news, child protection, literacy (if it is well done) in order to engage the participation of the public.

10. Do we need a new communication directive with more relax or stricter rules to cover the whole communication sector, including new media?

We need a Redefinition of whom or what should be covered-depending on the Member States.

Regulating the internet it could be impossible.

There should be some basic rules and not blaming it on globalization because in this situation we won't be doing anything.

Theme 2: Media Pluralism Monitor (MPM)

1. What does this tool represent? How does EBU see this tool: as a political toolkit, a technical one or a complex technical, normative and political study?

A monitoring system is good but we go back to the competence of the Commission because in this situation of application of MPM it should be the Member States.

A monitoring system is good.

2. Which are the main weaknesses, in your opinion, of the MPM?

It is too complicated, too complex.

The Member States need basic criteria to be used by all member states, an objective criteria for comparison. Usually the political reality, the political situation is different.

Theme 3: Network Neutrality

1. Does EU need a network neutrality framework?

We are still monitoring the situation.

In the telecom package are some rules but are not enough.

We are still looking, is too early to say if we need a NN, if we need something more from the Commission.

There is a danger: e.g. in the UK-there were some throttled services, slowed down services of BBC-IPlayer, due to the congestion of network and the public broadcasters are looking for quality of service.

We want an open internet where the information to be transmitted freely.

If it is fiber everywhere it will not be an issue anymore.

But still the situation needs to be monitored closely.

Where is the problem? Content & Provider

Theme 4: The Future of Media Pluralism in the EU media policy

Referring to the three-step approach, the third step, the Communication from the Commission did not take place. Instead were taken other different steps towards media pluralism:

1. A High level Group on Media Freedom and Media Pluralism has been established in to present a report with recommendations for the respect, protection, support and promotion of pluralism and freedom of the media in Europe

Is this group representing the right approach for media pluralism issues today? What do you expect from this report?

This group as to identify problems. But what about the solutions?

Identify who is responsible for what: Commission-Member States.

Or the role of the Council of Europe.

More important what is the situation of media pluralism in the enlarged countries.

The advice it could be at all levels.

2. A Center for media pluralism and media freedom has been established.

In your opinion, this center should have a permanent state in the EU or the focus should go on another direction?

The result is more in an academic way-it is not enough. Monitoring is missing from their work. They should rely more on the Monitoring role of the Council of Europe.

3. To conclude, how do you envision the evolution of EU media policy for a better functioning of the public broadcasters and the protection of media pluralism at the same time?

I. Monitoring

II. Member States should be more Responsible; the Competence is the issue.

III. In all European Policies should be included impact assessment with regard to media pluralism. What impact have certain measures on MP and MF(including all the enlargement countries)

Interview 13

Organization: EU Media Policy Scholar (Prof. Peggy Valcke)

Date and hour: 20.04.2012 at 16.00

Theme 1: The “three-steps approach” of the European Commission for Media Pluralism

1. Introductory Question: What was the motivation and rationality behind this initiative of the “3 steps Approach”?

To improve transparency and monitoring. Some of the conclusion of the Liverpool Conference were to increase transparency.

Usually the discussion around media pluralism is not a rational one, is usually emotional, and is not based on rational data and evidence and in this direction was the tool initiated: to discuss real problems.

A. Document: “Media Pluralism in the Member States”

2. Was this document initiated in order to raise the awareness of media pluralism principles application in member states or represented more a ground work for the initiation of a second step on a possible Harmonizing Directive?

To put the European Parliament at ease.

The discussion went to the difference between the press releases of the European Commission and the actual legislative process (in order to put different groups at ease). Example of who looked into this issue Dr. Ben Van Rompuy; Senior Associate Researcher.

B. Media Pluralism Monitor Tool

3. What does this tool represents? It represents a political toolkit, a technical one or a complex technical, normative and political study?

It depends on what purpose it is used.

It represents a neutral tool. If Self-regulation and State regulation work together, work better.

It represents the view of the EU Commission –of Policy Makers.

Publishers- are expressing the view of media, of what media wants.

The MPM goes more to the responsibility of the Member States-The State has the power to apply the instrument.

The tool was not designed for the experts, it is not reserved to the experts, it is designed for everybody to apply it. 2 different groups in the same country can apply the document in the same country because is an open method and they could also come to different results. Therefore they can see if differences appear and why.

4. Regarding the broad definition of media pluralism presented in the study. Do you agree that the decision of not working on an EU-wide harmonized definition for this study, is

leaving the definition of media pluralism open for further debate and consequentially for further changes of the concept?

Furthermore, one of the recommendations of the MP group at the Liverpool Conference (2005) was the need to construct a clear definition of media pluralism in order to avoid double standards. Why the study groups still decided to leave a general approach to the concept?

The definition was kept in a broader view because firstly with this study the EU Commission did not wanted to impose a definition.

A legal definition of media pluralism is not useful because people use it in different way and will continue to use it in different ways even if they have a legal definition.(the same with media services, which already has a legal definition).

The Ownership problem stays .The Professor says that it is wandering why no one contested the actual Thresholds they put in the MPM regarding media ownership by different countries according to the size of the country. They have: 50% a high level risk, 30% a medium risk.

5. The Media pluralism monitor has not been applied in the member states. What are the main reasons deterring the member states in applying this tool?

Lack of resources and the remit of national regulators. A few regulators mentioned that if it is not part of their remit to implement the MPM it could actually be illegal to try to implement it. Moreover, the reason for which the application of MPM is not part of their remit is the lack of resources to direct to this application.

Therefore there is no remit, money, people to work on, staff to apply the tool.

6. Which are the weaknesses in your opinion of the MPM or where the tool can be improved?

The greatest weakness is that the media landscape evolves so quickly and the tool does not take in consideration the internet with the issues it brings: role of the search engines and different platforms. It should be an evolving tool.

New indicators should be added for a revision to see the behavior of the public, who do they trust (friends, professional guys, professional media).

If the source is changing we should be confronted with different views'; where is the place where people find information? Is the social media, does social media should be included?

Regarding the Complexity we wanted to make is: As simple as possible but as sophisticated as necessary for the possible content analysis.

The Risk based tool-The Commission picked the three indicators: legal, socio-democratic and economic.

Theme 2: The future of the EU audiovisual media policy (in what regards media pluralism)

A. General Question

1. What is the future of the EU audiovisual media policy in what regards media pluralism?(in the light of the actual legislation).

Too big of a question. The professor did not had an answer.

B. The Future of audiovisual media services and the AVMSD

2. According to the European Commission's website and declaration of the Commissioner Reding, the Commission acknowledges as having 3 types of measures included in the AVMSD, which aim to promote pluralism in the media.

Are there any measures which could have been included to promote pluralism in a stronger manner or these are satisfactory and adequate for the actual competencies of the European Commission to deal with this issue? If not, which measures are better to be taken for the protection of media pluralism?

The Local Production of content.

3. The recommendation in the AVMSD for implementation of *co- and self-regulatory* measures (as complementary ones) was introduced also to facilitate the protection of media pluralism and development of a media governance system (referring to the involvement of as many stakeholders as possible)?

NO-it was more about UK' position which did not wanted independent regulators for the implementation of the Directive and the text was changed from independence of the regulators to sustaining that the regulators should be independent if there are any. –Check proposal and the final version related to independent regulators.

First Draft AVMSD: in relation with independent regulators:

- (47) "Regulators should be independent from national governments as well as from audiovisual media service providers in order to be able to carry out their work impartially and transparently and to contribute to pluralism. Close cooperation among national regulatory authorities and the Commission is necessary to ensure the correct application of this Directive."

Last version AVMSD:

-(94) In accordance with the duties imposed on Member States by the Treaty on the Functioning of the European Union, they are responsible for the effective implementation of this Directive. They are free to choose the appropriate instruments according to their legal traditions and established structures, and, in particular, the form of their competent independent regulatory bodies, in order to be able to carry out their work in implementing this Directive impartially and transparently. More specifically, the instruments chosen by Member States should contribute to the promotion of media pluralism.

4. Referring to the extension of regulation to non-linear media (even if represents only minimal regulatory framework) does mean that European Commission found a way to move towards harmonization rules for an increased competition between audiovisual media services?

The main idea to extend the regulation to on-demand was to have a level-playing field. But the regulation to on-demand is not as strong because at the moment the on-demand services do not have the same impact.

Is it sustainable this approach? –NO more and more people consume on-demand.

Live only news, sports and (political events?) There are also companies that present a selection for consumers to choose from.

The difference between linear and on-demand might disappear.

5. The European Commission ensures media pluralism through competition law and the AVMSD with content related provisions, as general pillars in EU. Should attention go also to the cross-border ownership and against restrictions on market access and network neutrality especially for new media?

A combination between improvement of Media Content Measurement and Infrastructure (was also one of the conclusions of her thesis).

The attention should go to NN, the same with conditional access and satellite tv. The question to follow: who is the gatekeeper?

A colleague of Prof. Peggy Valcke(Natalie Melbecker) is sustaining that media law should be consumer law. Give the consumer the tools to protect also the supplier and make sure that what is promised to deliver is delivered.

6. To summarize, are we going towards a harmonization of EU law and for bigger control from the EU institutions or towards a more relaxing EU law soft-regulatory measures opening the participatory processes?

-Do we need a new communication directive with more relax or stricter rules to cover the whole communication sector?

Looking at trans-border legislation we need more harmonization. Thinking also about public broadcasters.

We need an Objective way for all players; it is also the players' interest to have a harmonizing legislation.

The conditions for European wide players are also helping the European players from third parties.

-In theory-it is not difficult

-In practice-is difficult due to copyright issues, nature-sensitive content issues.

We will use the same format-the works are more and more global.

Additional Question: Why the Communication did not took place?

The third place from the 3 step approach on mp because of the syndrome "not invented here", because of the change of the mandate of commissioners from Viviane Reding to Neelie Kroes.

C. The latest actions with the Creations of High Level Group and Centre for Media Pluralism

7. A High level Group on Media Freedom and Media Pluralism has been established to present a report with recommendations for the respect, protection, support and promotion of pluralism and freedom of the media in Europe is expected *in 1 year from the first meeting in October 2011.*

-Is this group representing the next step for media pluralism issues today? What do you expect from this report? How can the European Commission use the report in the future EU media policy?

The professor does not know what to expect from the High Level Expert Group because does not have an inside information.

8. A Center for Media Pluralism and Media Freedom has been established at the Robert Schuman Institute. Is this center focusing more on a clear definition of media pluralism or is studying both media pluralism and media freedom applications in the member states? Do you believe this center should have a permanent state in the EU?

-The center will also have a try in implementing the MPM.

-Is looking at the competency of EU on MPM.

-Way/Methods to asses media pluralism.

-Develop measures to measure diversity on consumer side.

9. To conclude, how do you envision the evolution of EU media policy for a better protection of media pluralism (focusing on soft-regulatory measures or on stronger regulation starting with stronger anti-concentration rules)?

We need to have clear data and then we will see where the problem lies and then we can talk about what to do.

EU Quota and Telecommunication direction.

An exercise can be made (as the EP tried or tries in the Media committee) to develop certain Standards(e.g. a person that has a political mandate should not be allowed to hold also a position in a media company) on media freedom to be protected and later can be built a directive on media freedom.

It does not need to be right now a special directive, only to include for now maybe the amendments with the standards in the revision of this directive. In particular via media regulators, which need to be independent.

Concluding Remarks

4. Is there anything you would like to add in conclusion?

5. Would it be possible to contact you in the future for further clarification?

Who else should I contact?:

-Giovanni Melogli :

EU Affairs ; Europe (European Institutions).

-Maria Capello, AGCOM- Head of the Digital Rights office, Vice-Director of the Media Services Directorate, Autorità per le garanzie nelle Comunicazioni - AGCOM, Italy