ANDREEA M. COSTACHE AND CARLES LLORENS
Autonomous University of Barcelona

A bridge too far? Analysis of the European Commission's new developments on media policy and media freedoms through the concept of soft regulation

ABSTRACT

This article tries to examine the latest European Commission (EC) policy developments in the media sector through the new concept of soft regulation. Much criticized for its media policy approaches, the EC seems to try to rebuild media freedom and media pluralism protection foundations at the EU level with several new initiatives based on soft regulation. This article analyses these soft-regulatory media policy actions to answer the following questions: Have soft-regulatory measures been a good option to improve media pluralism policy at the EU level? Are there better mechanisms that EU can employ to assist Member States in promoting media pluralism? The aim of the research is to see whether these new EC debates and soft-regulatory initiatives have made a real change in the traditional way that EC has been dealing with audio-visual matters or whether it is only repeating old answers to old questions.

KEYWORDS

European Union
soft regulation
soft governance
soft power
media freedom
media pluralism

I. INTRODUCTION

Recent technological advancements and political developments related to media issues in Hungary, the United Kingdom and Italy made the European Commission (EC) aware of the limits of its competences on media freedoms. Therefore, the EC has been confronted to look for supplementary ways to oversee and better protect the freedom of the press, the freedom of information, and media pluralism in the Member States from a European dimension. Brussels has had to push its soft power to the boundaries in order to better protect media freedoms. In other words, it has been obliged to adopt policy choices to try to respect 'the values that underpin the regulation of audio-visual media services in Europe […] freedom of expression and media pluralism, the promotion of cultural diversity, protection of personal data' (EC 2013a).

In order to point out the recent European policy choices for the promotion of these values, this article uses a new concept: soft regulation. Different from self-regulation and closer to the soft-power concept, soft regulation can be used as a new tool that helps better understand and define EC media policy. Thus, this article analyses the soft-regulatory media policy actions coming from the EC taken after the Audiovisual Media Service Directive (AVMSD) adoption in 2007. The EC headed towards the support of the internal market with the AVMSD adoption, whereas the cultural and human rights side of the audio-visual media was left to soft-regulatory strategies. Much criticized for these soft-regulatory approaches, the EC seems to try to protect media freedom and media pluralism foundations at the EU level with an array of new initiatives.

This article seeks an answer to the following questions: *Have soft-regulatory measures been a good policy option to improve media pluralism and media freedom policies at the EU level? Are there better mechanisms that the European Union can employ to assist Member States in promoting media pluralism and media freedoms?* The aim of this article is to explore whether these new EC debates and soft-regulatory initiatives have made a real change in the traditional way that EC has been dealing with media policy or whether it is only repeating old answers to old questions. Hence, are the EC's new aims on media policy and media freedoms a bridge too far, an unattainable objective?

Thus, this article is structured into three main parts, with the first part including soft-regulatory media policy initiatives and actions coming from the EC, with an accent also on the activities of the European Commissioners Viviane Reding and Neelie Kroes. Their actions have been examined through the comprehensive analysis of their press releases and discourses, with the focus on the key words of media freedom and media pluralism. An identical examination has been made through the documents released by the EC or through studies commissioned by the EC, like the Media Pluralism Monitor (MPM), the policy documents of the High Level Group on Media freedom and Media pluralism (HLGMFP) and those issued by the Centre for Media Pluralism and Media Freedom (CMPF).

A second part analyses the concept of soft regulation, soft governance and all its dimensions of soft power adapted to the EC case. This involves an extensive literature review and analysis of their development of the concept coming from the media researchers and European institutions.

In the last part we try to apply these concepts to the concrete case of European Union media policies for media freedom, in order to assess whether a new policy formula or strategy has been applied by the EC and whether a distinction between ad hoc or future proof policies could be found.

II. MEDIA POLICY INITIATIVES AND ACTIONS – EC (2007–2014)

This part portrays media policy initiatives and actions of the EC towards the protection of media freedoms from 2007 to 2014. The study is based on a comprehensive analysis of press releases, speeches of the EU Commissioners for the media, and initiatives like the High Level Group for Media Freedom and Pluralism (HLGMFP). However, it is important to note that it is not the objective of this article to analyse in detail each element, since the focus is on the general content and context of launching an initiative and on the EC's political discourse.

II.a. Commissioner Viviane Reding – Information Society and Media (2007–2009)

In this period there were two speeches of Commissioner Reding and six press releases related to media freedom issues, out of 51 speeches and 291 press releases made by the DG Information Society and Media. Therefore, 2 per cent of the press releases and 4 per cent of the speeches were addressed to media freedoms, which translates into a low political priority for these issues.

In her speeches during this period Commissioner Reding talked about the contribution of the European Union to freedom of expression, even if this is a fundamental right constitutionally protected in the EU Member States:

> Even if the freedom of expression is already an indisputable part of European constitutional understanding, the EU's media policy can contribute towards encouraging the development of this freedom as well as its practical effectiveness in the European Union.
>
> (Reding 2007a)

It is interesting to highlight that the Commissioner names this European Union contribution during the negotiations for the accession to the European Union by several ex-Soviet countries. Freedom of expression was closely linked by the Commissioner with freedom of information, and she underlined the importance of permanently defending these fundamental rights: Even if freedom of expression and freedom of information may appear self-evident to many in Europe, these freedoms nevertheless require constant confirmation (Reding 2007a). However, the Commissioner did not give a certain solution to how the European Union should encourage the development of freedom of expression in order to become practically effective all around the European Union. She only mentioned that the European Union could have a role in this direction. Nevertheless, in another speech the Commissioner gave a specific position on how the European Union can deal with media pluralism protection: 'In terms of media pluralism, I would therefore advocate a conservative European politics. Earlier this year, the Commission started a process that, at first, will be to develop common criteria for measuring media pluralism'[1] (Reding 2007b). The EC had launched a 'three-step approach' strategy towards media pluralism protection (EC 2007b), of which the Commissioner referred to the second step when she announced a project to develop common criteria for measuring media pluralism, the MPM.

The EC 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 on three types of indicators: economic, socio-democratic and legal. There was no immediate or previous declaration

2. 'Regulators should be independent from national governments as well as from audio-visual media service providers order to be able to carry out their work impartially and transparently and to contribute to pluralism' (EC 2005, Recital 47).

for an EU-wide application of the tool by the EC, since there needed to be a clear separation between the scope of the tool and a potential EU harmonization process. Moreover, the Commissioner changed after the launch of the tool in 2009, and the new Commissioner, Kroes, did not show any signs to continue this initiative of the previous Commissioner, leaving unfinished the third step of the 'three-step approach', which was the application of the MPM to the European Union countries.

Other reference to soft-regulatory elements came from Commissioner Reding when she mentioned in another speech that 'self- and co-regulatory models can be attractive alternatives to traditional regulations' for the new media and digital economy (EC 2007c). The Commissioner talked about a balance that can be reached between hard-regulation and soft-regulatory elements: 'For the media and Internet industry to flourish responsibly, the regulatory framework needs to strike the right balance between fairness and firmness while still allowing industry to respond quickly to change' (EC 2007c). This statement was made in relation to the study on co-regulatory measures commissioned to the Hans-Bredow Institute (Schulz et al. 2006). This study analysed the elements of *responsibility* of the society and interest parties, *transparency* and *openness* related to soft-regulatory measures. Overall, when both the co- and self-regulation elements were mentioned by the Commissioner, they were named as 'a way to achieve better regulation' (EC 2007c), a concept of strategy of Barroso's Commission: 'This European Commission under President Barroso strives for better regulation' (Reding 2005). The study on co-regulatory measures could be considered a soft-regulatory measure in itself as it sheds light on already existing co-regulatory measures in 25 Member States and gave recommendations towards the application of these measures. The most important finding highlighted by the EC is that co-regulatory measures could be used for the application of European directives.

Commissioner Reding had a third soft-regulatory initiative in commissioning another study to the Hans-Bredow Institute on the independence of national regulators for audio-visual media: 'Indicators for independence and efficient functioning of audio-visual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive' (INDIREG). The objective of the study was to provide 'regulators, Member States and European institutions with a tool for self-assessment of independence and effective functioning' (INDIREG 2011: 6). This represents a very clear soft-regulatory objective pointing to those self-regulation mechanisms that a Member State can use. The EC implicitly linked the independence of audio-visual national regulatory bodies and protection of media freedoms, especially media pluralism (EC 2005[2]; AVMSD 2010, Recital 94). The argument is that an economically and politically independent regulatory body can better protect media pluralism and media freedom in a country (Llorens and Costache 2014).

In summary, the references to media freedoms and actions of Commissioner Reding in this period are scarce, considering the overall number of speeches and press releases. These mainly make references to telecom regulations, broadband access and competition. It revealed the support of the EC in this period for the co-regulatory measures commissioning the studies on co-regulatory measures and on indicators for independence and efficient functioning of audio-visual media national regulatory bodies. Additionally, the Commissioner directed a third soft-regulatory action: the study on indicators for media pluralism, the MPM. However, the studies did not raise much awareness on the soft-regulatory mechanisms that can be applied in protecting

media freedoms. Several years passed before the MPM and the importance of the independence of audio-visual national regulatory bodies became relevant issues on the agenda of the EC, mainly due to the political clashes with some of the Member States and the efforts of the European Parliament (EP) and civil society organizations.

II.b. Commissioner Neelie Kroes – Communication Networks, Content and Technology (2010–2014)

The European Commissioner for Digital Agenda, Neelie Kroes, made 25 speeches and six press releases related to media freedoms out of 424 press releases and 306 speeches. It represents 8 per cent of speeches and 1.5 per cent of press releases coming from Commissioner Kroes. Therefore, comparing the two commissioners there were a similar number of press releases but an increased number of speeches linked to media freedoms. It can be concluded that media freedom concerns increased during Commissioner Kroes' mandate even if the overall attention can still be considered very low.

This slight increase in references to media freedoms could be explained by situations of direct attacks on media freedom in different EU Member States. One of the most obvious cases was Hungary. The Media Act adopted in December of 2010 included a new Media Authority dealing with telecommunications, e-commerce and media issues. As a part of it, a Media Council was created. However, the appointment procedures of both have raised a number of concerns over their independence. Under the new legislation, the president of the Media Authority is appointed by the Prime Minister for indefinitely renewable nine-year terms. The president of the Media Authority 'from the moment of appointment' also becomes the candidate for the chairperson of the Media Council, with final appointment subject to two-thirds parliamentary approval. Critics say the system of 'dual appointments' to the positions of Media Authority President and Media Council Chairperson gives the government de facto control over the Media Council. According to an analysis conducted for the Organization of Security and Cooperation in Europe (Jakubowicz 2010), although the practice of government-appointed directors to telecommunication agencies is not unusual, 'the manner of appointment of the Media Council Chairperson amounts to nothing less than government capture' of Hungary's media governance authorities, because 'Parliament is left no choice but to vote for the Prime Minister's candidate' (Jakubowicz 2010: 41).

The Media Act allows the Media Council to fine media outlets for a number of imprecise offences, including failure to 'provide balanced coverage', publishing news that is 'insulting to communities', or in opposition to the broad concept of 'public morality'. Moreover, the restrictions are not limited to mass media outlets, but include personal websites and blogs. Finally, the proposed law was in direct conflict with the 'country of origin principle' of the AVMSD due to the extension of the law to media with residence in a different Member State but with activity in Hungary. Ultimately the result was a real threat to media freedoms.

Commissioner Kroes had several contacts with the Hungarian authorities and used political pressure in showcasing the infringements to European media freedom principles and pushed the authorities to change the law. She pointed out the possibility of using Article 7(1) of the Treaty of the European Union (TEU), which allows suspending a Member State's EU rights if a persistent breach of values of article 2 is verified and a qualified majority of

the Council is met[3]. Article 7 has been discussed with antecedence since the signing of the Treaty of Nice by scholars like Craufurd-Smith as 'opening the way for systematic monitoring of member states conformity with funda-mental rights and identification of situations likely to lead to breaches in the future'(Craufurd-Smith 2004: 652).

In one of her speeches Commissioner Kroes distinguished between the application of EU's law only and the daily protection of media freedoms, especially freedom of expression: 'In the EU, respect for media freedom and pluralism is not, and should not be, only about the technically correct appli-cation of EU and national law. Rather, it is also about implementing and promoting fundamental democratic principles in practice' (Kroes 2012a). The Commissioner was referring to the new Hungarian media law application in the context of the application of the EU law AVMSD. The problem in Hungary was the political pressure on media freedoms and it was far from specific facts: 'Ultimately, media pluralism and freedom depend on the right atmosphere and political culture' (Kroes 2012a). However, the political pressure towards the Hungarian authorities was direct: 'the Hungarian Government needs to do more and act quickly to reassure the Commission, this committee [EP Civil Liberties, Justice and Home Affairs Committee], and all those who have concerns, to show that it is serious about protecting freedom of expression and media pluralism' (Kroes 2012a).

Despite these political pressures of the EC, regarding the situation in Hungary, the Commissioner observed that NGOs and members of the EP were expecting much more from the EC to protect media freedoms: 'Indeed they expect more than we are currently capable of' (Kroes 2012b). In this regard, the Commissioner recalled that the EU Member States, under the Lisbon treaty, have the legal right to protect fundamental rights, which she could not see as replaceable: 'Europe, therefore, cannot, and should not need to, replace Member States when it comes to enforcing these rights' (Kroes 2012b). Kroes made clear her direction in protecting media freedoms in the EU by excluding any EU enforcement of rules where Member States have the legal upper hand. On this logic, there are several soft-regulatory measures that Commissioner Kroes chose to initiate because 'There is a wide gap between what the Commission can legally enforce and what we are often expected to do' (Kroes 2012b). The EC has only the tools of 'naming and shaming coun-tries ad hoc, as issues arise' (Kroes 2012c). Additionally, when talking about solutions to increasing the actions of the EC in this area of media freedoms, the Commissioner was cautious in looking for new ways to regulate: 'I don't want to rush to regulation. In some cases regulation can support freedom. But if our aim is to separate the media from governments or parliaments, then the risk is that regulation does exactly the opposite' (Kroes 2012c).

However, even if she saw the clear distinction between EU legislation and Member States' jurisdiction in this area, she admitted that something needs to come from the EU side: 'I am clear that freedom of speech is a fundamental EU value; and the EU has a duty to ensure it is safeguarded' (Kroes 2013a). She stressed the relevance of the issue: 'This question of how we safeguard fundamental freedoms like media freedom and pluralism is not an easy one to answer: but it is vitally important and it is not going to go away' (EC 2013a). Therefore, Kroes continued the EU political debate and kept the discus-sion open for input to safeguard media freedoms. It could be considered an effective soft-regulatory measure because it looked for dialogue and coopera-tion from different stakeholders.

The EC headed by Neelie Kroes started when the MPM was an already finished and released study. Commissioner Kroes' decision in not continuing this initiative has been described as a very pragmatic one by her team. The Commissioner did not want to impose the MPM upon the Member States. 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 Commissioner's team[4] claimed that even if the MPM is seen as very useful 'there are other ways to achieve the same objective', like the initiatives started in 2011 on commissioning several groups of experts on analysing media freedoms in the European Union and the role of the European Union in protecting these freedoms: the establishment of the High Level Group on Media Freedom and Pluralism (HLGMFP)[5] and The Centre for Media Pluralism and Media Freedom (CMPF) both established in 2011.

When asked by several members of the EP on the political will to apply the MPM, the answers of the EC were vague and focused on new EC actions:

> 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.
>
> (Kroes 2011)

According to EC officials, an MPM application from the EC would need a big contract, a big team, and a tender procedure that would take 6–9 months, and the work could take between eighteen months and three years.[6] However, the breeze suddenly changed in 2013 and with it also the direction of the EC of *ignoring* the MPM. The factors that can explain this political change are the political pressure and economic support coming from the EP and especially from the members of the Committee on Culture and Education (CULT) and Committee on Civil Liberties, Justice and Home Affairs (LIBE), the civil society represented by the Citizen's Initiative on Media Pluralism and the media freedom problems of some Member States. Commissioner Kroes announced the support for the application of the tool in the plenary of the EP (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':

> 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.
>
> (Kroes 2013b)

When the Commissioner is referring to the tool as giving 'a more coherent overview' it shows openness to the application of the tool, carrying the political will needed for the effectiveness of any soft-regulatory measure. Therefore, the use of this tool can be seen as a first step for improving media pluralism in Member States: 'the application of the MPM could become a regular process in the EU countries and could also be recommended in the accession countries' (Parcu et al. 2014: 64).

The starting point of this political twist can also be found at Commissioner Kroes' confirmation hearing in front of the EP in 2009. She expressed the need for a roundup with experts to identify the problems with media pluralism

and find a common solution. It is important to mention that the group of experts (HLGMFP, CMPF) and the Commissioner herself did not support the MPM as it was presented in 2009 and they asked for a revision. Moreover, Commissioner Kroes saw other actions as appropriate in defending the MPM. Consequentially, the Commissioner took the advice of the groups of experts and, supported by the advancement, for a second time, of the EP, allocated a budget for this tool. In October 2013, the EC awarded 500,000 Euros to the CMPF of the European University Institute at Florence to actually update the tool with new indicators including the new role of the Internet, and will also apply a test and pilot-implement the tool.

Looking at other soft-regulatory measures initiated by Commissioner Kroes, such as the HLGMFP, it could be seen that its main objective 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' (HLGMFP 2013: 3). All the action words used by the EC in describing the objectives of this high-level group define soft-regulatory actions: *protection, support and promotion*. This proves that EC stays away from the words that could show any hard-regulation initiative in the short term for the Member States. This 'strategy' of using soft-regulatory measures allows the EC to initiate an action at the borders of its competences without risk, while receiving the involvement from the civil society and also industry in answering the questions. This was the case of the HLGMFP report 'A free and pluralistic media to sustain European democracy', which received a high number of answers (457) when the EC started a consultation on this document.

The third soft-regulatory initiative for the protection of media freedoms from Commissioner Kroes was the establishment of the CMPF, which received a similar soft-regulatory objective. CMPF was expected 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' (emphasis added) and prepare a document on the competences of the EC for media pluralism protection in Europe. Enhancing the quality of reflection on media pluralism in Europe holds clearly the intention to create awareness about the issue by bringing coherent arguments from the media scholars. The new ideas expected from CMPF could have actually led to actions and foster openness of the stakeholders in continuing the discussion on protection of media freedoms at the EU level.

Later on, the EC opened again the debate on an issue first advanced by Commissioner Reding: the independence of audio-visual national regulatory bodies for the protection of media freedoms. The debate was advanced by a consultation where one of the most debated questions was related to the monitoring of the EC or the establishment of a network of audio-visual national regulatory bodies under EU supervision. The general answer of stakeholders regarding the establishment of a voluntary network was a supportive one but there was a rejection for any EU supervision. Taking into consideration all these reactions, the EC established a European Regulators Group for Audiovisual Media Services (ERGA) in February 2014. In terms of the relation between the different NRAs, the EC hopes the group will 'facilitate cooperation between regulatory bodies in the EU, and will also allow for the exchange of experience and good practices'. Again, soft regulation at work.

Thus, this initiative reinforces the ammunition of soft-regulatory initiatives advanced by the EC headed by Commissioner Kroes, with an emphasis on *cooperation* and *exchange* of experience and best practices. The resilience

of the EC is the main factor that made possible the establishment of ERGA, despite the low declared support from the industry (EBU 2013; ENPA, EMMA 2013), as seen in the answers to public consultation, from Member States at the European Council meetings.

In the next part, the European Union governance concepts are analysed and a new framework for the analysis of EU media policies protecting media freedoms, which can be future proof, is proposed. The goal is to look for a framework that can bring actions that last longer than a commissioner's mandate.

III. SOFT GOVERNANCE, SOFT REGULATION AND EUROPEAN SOFT GOVERNANCE

In order to establish a base ground for the description of soft-regulation initiatives described in the first part, we need to start from a clear definition of soft governance, and this process requires explaining the concept of soft law. Cini (2011) while citing Snyder (1993) defines soft law as being 'rules of conduct which, in principle, have no legally binding force but which nevertheless may have practical effects' (Snyder 1993: 2). Cini 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' (Cini 2011: 195). Therefore, soft governance and soft law are considered nearly identical. However, other researchers describe soft governance as a method based on practical applications like the mechanisms of co- and self-regulation mentioned by D'Haenens et al. (2010). The EC case study will help to achieve a more precise understanding of these concepts.

The main reason for the application of this new kind of governance, especially at the EU level, is attributed by Simpson as coming from a real need to assist institutional hard governance with soft governance, in order to avoid 'time consuming, resource-intensive, politically contested and unpopular' directives to become a burden for implementation in Member States (Simpson 2013). Researchers like Cini see this softer form of governance, based on soft law, as possibly being 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' (Cini 2011: 195).

In fact, a 'European governance' concept was introduced at the EU level in 'European Governance – A White Paper' in 2001, and it included:

> 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.
>
> (EC 2001: 8)

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

In the 'European governance' context, the EC promoted a specific mechanism named Open Method of Coordination (OMC), which was defined as a *soft-law policy method* in 2000. A transversal way of reaching different policy objectives in the EU policy-making, the OMC is not directed to only one topic. It covers information society aspects, research and development issues, enterprise,

economic reform, education, employment and social inclusion among others. This method was established after the Lisbon treaty by the EU Council of Ministers as a means to provide *better EU governance*. It was included in the Lisbon strategy in order to improve the economic strategy of the European Union. The OMC is looking for a way to *coordinate the efforts of the EU Member States* and *exchange national experiences* in order to better come up with solutions. It is described as a 'new approach to problem solving' (Radaelli 2003: 24).

And it is here that the soft-regulation concept comes along. The OMC tries to obtain a positive response from the Member States through *soft-regulatory measures* as *exchanging practices of implementation* in different Member States, *leaving the monitoring process to the EC, benchmarking,* giving *peer review a role of powerful arbiter* and even opening the door to *naming and shaming* (Shore 2011). However, soft-regulation measures do not show an easy acceptance or application. It could be interpreted that these are mainly used as a *political compromise* when hard legislative governance measures cannot be applied.

However, soft regulation cannot be seen as a weak instrument, especially based on its need of a political compromise. Voices coming from political science see compromise as a democratic act: 'If politics is the art of the possible, then compromise is the artistry of democracy' (Gutmann and Thompson 2013: 204). Additionally, if we look at the concept of *power*, which 'in international politics having "power" is having the ability to influence another to act in ways in which that entity would not have acted otherwise' (Wilson III 2008: 115), we can learn that a political compromise is not always a negative result, especially when *soft power* comes in place. If one can actually achieve half of the 'unachievable' through soft power, *using persuasion instead of coercive power,* that is a step towards *collaboration*. Seeing soft regulation as a tool that builds on soft power, it actually enlarges the concept of soft regulation and excludes the coercion action of hard regulation, which does not always imply acceptance from one side and most of the time encounters resistance and possible setbacks.

In order to actually see a soft-governance success, it has to be built on soft power, on a culture of *openness of discussions, cooperation, accountability* and *regular implementation of the mechanisms*. The aim is to have the acceptance from all parts involved in the decisional process, either at the EU level or at the national level.

This article takes the concept of soft regulation a step forward and describes it as a system based on soft laws, 'not legally binding force', with the soft-power elements of persuasion, which 'may have practical effects'. Therefore, it has to bring two blocks together: political will and action.

As shown in Figure 1, soft regulation starts with *political will*, addressed first to create *openness* and *awareness* of a certain issue. Awareness can be built also by civil society and industry, but when we talk about the EU's audio-visual media policy, we need the political will as a first step to reach the action part. From *action, a major participation* and collaboration for the exchange of best practices can be achieved from the interested parties and therefore attain *effectiveness*.

It is important to emphasize that application of soft-regulatory measures should always be built on increased *awareness* and *openness* around an issue, for dialogue, an open road for involvement of the civil society, and a higher contribution to the policy process from as many stakeholders as possible. Lastly, actions based on soft regulation '*may* have practical effects' in the short term and may better appoint to practical effects in the long term when compared with hard regulation, which has practical effects immediately. Soft
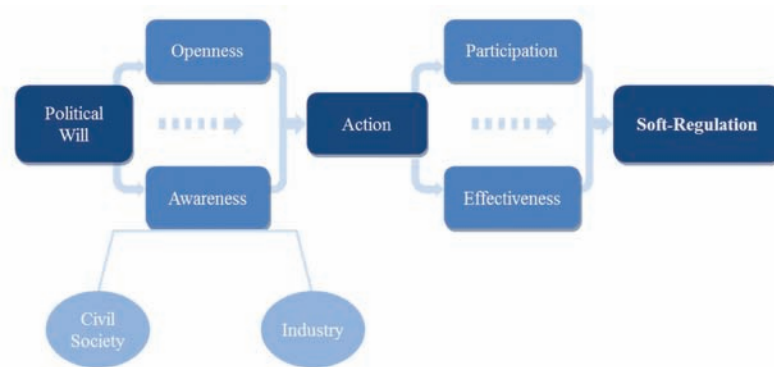
Source: Elaborated by the authors.

Figure 1: Soft governance as a broader concept.

regulation requires taking into consideration the long processes of building upon trust, accountability and participation in a voluntary process, without coercion or sanctions. This scheme allows describing the broad concept of soft regulation and analysing the objectives and actions of the EC for the promotion of media freedoms.

In the next part of this article, a review and classification in soft-regulatory categories of the initiatives of EC is made.

IV. EC MEDIA POLICY TAXONOMY

The soft-regulatory EC measures analysed in this article came in different formats and mostly after lengthy debate. This article has categorized the soft-regulatory actions of the EC into *soft*, including discourses and press releases, *medium-soft*, including the commissioned studies of both commissioners, from the INDIREG study and MPM initiated by Commissioner Reding to the HLGMFP and CMPF studies and the updating of the MPM by Commissioner Kroes, and *hard-soft*, including the establishment of ERGA, the application of the updated MPM and pilot implementation in nine countries and political pressure. This categorization is summarized in the following table:

The table shows a clear chronological advancement of the debate, which resulted in two soft-hard initiatives and the political pressure Commissioner Kroes exercised over the Hungarian government. Maybe the ERGA creation is the most important, because it includes the participation of national regulatory authorities for the audio-visual media from all 28 countries, and for the first time there is no Member State's political representative present in this body.[7] ERGA defines itself as an independent body aimed to exchange best practices. ERGA is the only initiative that included both parts of soft-regulatory action, *political will* and *action*, together.

Nevertheless, this initiative would have not been possible without the previous soft and soft-medium initiatives and it is actually the work of the two Commissioners that led to this result. This helps us answer the first question proposed at the beginning of this article: *Have soft-regulatory measures been a good option to improve media pluralism policy at the EU level?* We consider that soft-regulatory measures, which involved *political will* and *action* leading to *awareness* and *efficiency* for the proposed objectives, have been a flexible option to make a minimal EU media freedom policy possible. Even if

European Commission Soft-regulatory Actions	**Soft**	-Speeches and Press Releases of Commissioners Reding and Kroes
	Soft-Medium	-Study on Co-Regulatory measures (2007) -'Three steps approach'-2 Steps (2007-2009) -INDIREG study (2009-2011) -HLGMFP paper (2011-2013) -CMPF policy paper (2011-2013) -Consultation on HLGMFP paper (2013) -Consultation on independence of audiovisual national regulatory authorities (2013) -Update of MPM (2013-2014) -Seminar on Media Ownership transparency (2014)
	Soft-Hard	-Pilot implementation of updated MPM in 9 countries (2013-2014) -ERGA (2014) -Political pressure of the Commissioner Kroes exercised over Hungarian government (2011-2012)

Source: Elaborated by the authors.

Table 1: EC soft-regulatory actions.

the soft-hard initiatives are minimum, we have observed that soft and soft-medium initiatives, with no immediate results, have contributed to gradually building the two soft-hard actions.

Pointing to the *awareness* side built by the soft-regulatory actions, these have increased the awareness to protect media freedom between the EC, the EP, industry and civil society. The high participation in the consultations launched by Commissioner Kroes is evidence of increased awareness on the issue and on the will to participate and give opinions in order to influence the debate.

It is true that there is a substantial gap of initiatives between 2007 and 2011: between the launch of the 'three-step approach' on pluralism and the launch of new consultations in 2011. Nevertheless, taking into account the focus of this article on soft-regulatory measures, this initial soft-regulatory strategy opened the debate for media freedom at the EU level, even if we only find studies related to media freedom and pluralism for the period 2007–2011. These reports were commissioned to different research institutes and universities in order to analyse the value of co-regulatory measures, the independence of national regulators for the audio-visual media and the indicators for media pluralism. After the gap (2011), the HLGMFP and CMPF are groups that discuss the situation of media freedoms on a much general vision, looking at different issues affecting media policy in the European Union, with the situation of journalists in the European Union, the situation of public broadcasting, media concentrations and media economics. The CMPF policy report was looking for legal solutions to protecting media freedom and media pluralism at the EU level. If 2013 was the year of consultations on the previous studies, 2014 was the year of actions: ERGA was established.

It is true that looking at the continuum on the initiatives and actions of the EC the results are quite minimal. However, it could see a slightly more pro-active policy evolution. The starting point of discussions during Reding's period included action words like 'encouraging the developments' (Reding 2007a) of freedom of expression, providing the tools for self-evaluation like the

INDIREG report and the MPM tool, or there was 'a wide gap between what the Commission can legally enforce' (Kroes 2012b) and what is expected to do, and 'no rush to regulation' (Kroes 2012c), moving on to discourses including statements like 'self- and co-regulatory models can be attractive alternatives to traditional regulation' (EC 2007c) and 'freedom of speech is a fundamental value and the EU has a duty to ensure it is safeguarded' (Kroes 2013a). The move has been made from encouragements and by promoting self-regulatory studies to asking how EC can protect media freedoms: 'This question of how we safeguard fundamental freedoms like media freedom and pluralism is not an easy one to answer: but it is vitally important and it is not going to go away' (Kroes 2013). Kroes tried to answer it through small hard-policy actions (ERGA and political pressure on Hungary) rather than soft-policy measures.

Another soft-medium regulatory EC action was to start a debate on media ownership transparency (Seminar on media transparency, EC 2014b). Transparency does not change the state of media, or improve the independence of media from economic and political pressures like some participants to the EC seminar on media transparency noted (EC 2014b). It is true that mere existence of data in the public domain does not change a situation in a Member State, but without this data the debate cannot start or continue. Even if actions like ERGA and a possible collaboration with CMPF 'to enhance the overall transparency and information that is provided by the NRAs through the exchange of best practice and the establishment of minimum standards' (Parcu et al. 2014: 62) could increase the value of best practice guidelines on transparency, Member States could not feel bound by it. A hard-regulation action is needed to pass to a more effective media policy on media ownership transparency. Therefore, a next step could be basic EU media ownership transparency requirements to improve media pluralism. However, this policy action would imply the application of hard-regulatory measures rather than soft-hard regulations. In the end, hard-regulation actions are needed for an effective protection of media freedoms.

Another media policy objective is the implementation of basic EU standards for media freedoms according to the EP's resolution in this direction (EP 2013). This could be addressed in provisions to ensure media freedom from economic and political influences. A soft-regulatory action could assure the independence of audio-visual national regulatory agencies through the support that is given to ERGA and its actions. However, the road has not been easy. The lengthy debate on the independence of the audio-visual national regulators started with the draft proposal for the AVMSD in 2007 and the failure to include a strong proposal in the AVMSD. Later, two commissioned groups of experts (HLGMFP 2013; CMPF 2013) acknowledged the need of such a group of audio-visual NRAs, and a public consultation on this matter was made. In the end, the soft-regulatory strategy of the EC and Commissioner Kroes' team gave the final push that helped the creation of the ERGA group. Consequentially, the EC had the power to bring these NRAs together and offer them a platform for collaboration and participation in the media policy construction, even if only on a voluntary basis.

V. CONCLUSIONS

What made the EC 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 these past years, especially with the case in

Hungary. The EC was unable to ensure the independence of a media regulatory agency in a Member State and a media law aimed to protect media freedoms. The consequence was a shortage in media pluralism and media freedom. The only tools used by the EC were political pressure and the support of the European Parliament (EP 2011) and civil society.

The ERGA group is a small but effective attempt to try to minimize this kind of situation, helping the EU citizens with a better protection of media freedom and giving more knowledge to the EC regarding media pluralism and media freedom in different Member States and providing it with more policy tools to act. In short, ERGA, as well as the MPM application, is a novel initiative based on soft regulation with the possibility of having a coordinated, voluntary action that could translate also into media pluralism protection at the EU level more than any previous initiative. However, the soft-regulatory measures have potential to support the statutory initiatives, but not too many have been put into practice. The only action resulting from discussions initiated by the EC is the creation of the ERGA.

Most of the evidence indicates that the EU's political environment does not head for fresh statutory changes but to a much open discussion and implementation on soft-regulatory mechanisms. On the background of a constant rejection for more than two decades from the Member States of any EU statutory implication when media pluralism and media freedom are concerned, the discussion and implementation of some 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 to eliminate the situations of applying 'on-the go' solutions.

REFERENCES

Centre for Media Pluralism and Media Freedom (CMPF) (2013), 'European Union Competencies in Respect of Media Pluralism and Media Freedom', Florence: European University Institute/Robert Schuman Centre for Advanced Studies. RSCAS PP 2013/01.

Cini, M. (2011), 'The soft law approach: Commission rule-making in the EU's state aid regime', *Journal of European Public Policy*, 8: 2, pp. 192–207.

Craufurd Smith, R. (2004), 'Rethinking European Union competence in the field of media ownership: The internal market, fundamental rights and European citizenship', *European Law Review*, 29: 5, pp. 652–72.

D'Haenens, L., Mansell, R. and Sarikakis, K. (2010), 'Editor's introduction', *Communication, Culture & Critique*, 3: 2, pp. 131–33.

European Broadcasting Union (EBU) (2013), 'Response to the public consultation of the European Commission on the Independence of Audiovisual Regulatory Bodies', http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=2445. Accessed 12 July 2013.

European Commission (EC) (2001), 'European Governance – A White Paper', COM(2001) 428 final, European Commission, Brussels.

—— (2005), 'Proposal for a Directive of the European parliament and of the Council amending Council Directive 89/552/EEC', COM (2005) 646 final, European Commission, Brussels.

—— (2007b), 'Press release Media pluralism: Commission stresses need for transparency, freedom and diversity in Europe's media landscape', IP/07/52, Brussels, 16 January.

—— (2007c), 'Commission study points the way forward for better regulation of new media and the digital economy', Press release, IP/07/138, Brussels, 6 February.

—— (2010), '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 (Audiovisual Media Service Directive) (codified version)', O.J. [2010] L95/1.

—— (2011a), 'Press release Digital Agenda: High-level group to discuss freedom and pluralism of the media across the EU', 11/10/2011, IP/11/1173, European Commission, Brussels.

—— (2011b), 'Press release Digital Agenda: Commission awards €600,000 for new Centre for Media Pluralism and Media Freedom', 7/11/2011, IP/11/1307, European Commission, Brussels.

—— (2013a), 'Green Paper Preparing for a Fully Converged Audiovisual World. COM', (2013) 231 final, European Commission, Brussels.

—— (2013b), 'Public Consultation on the Independent Report from the High level group on Media freedom and pluralism', http://ec.europa.eu/newsroom/document.cfm?action=display&doc_id=4403. Accessed 24 March 2013.

—— (2014a), 'Press release: Commission Establishes a European Group for Audiovisual Media Services', 3/2/2014. IP/14/101, European Commission, Brussels.

—— (2014b), 'Seminar: Exchange of best practices on transparency of media ownership', 3 October, Brussels: European Commission.

European Newspaper Publisher Association (ENPA) – European Magazine Media Association (EMMA) (2013), 'Response to the EU public consultation on the independence of audiovisual regulatory bodies '(joint response), http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=2446. Accessed 12 July 2013.

European Parliament (EP) (2011), 'Resolution on media law in Hungary of 10 March 2011', P7_TA(2011)0094, *Official Journal of the European Union*, C199 E: 17, July, pp. 154–57.

—— (2013), 'Resolution on EU Charter: Standards setting for Media Freedom across the EU', 2011/2246(INI), Strasbourg, May.

European Publishers Council (2013), 'Opinion on "The Report of the High Level Group on Media Freedom and Pluralism: A free and pluralistic media to sustain European democracy"', pp. 133–40, http://ec.europa.eu/information_society/newsroom/cf/dae/document.cfm?doc_id=3230. Accessed 12 July 2013.

Gutmann, A. and Thompson, D. (2013), *The Spirit of Compromise: Why Governing Demands It and Campaigning Undermines It*, Princeton: Princeton University Press.

High Level Group on Media Freedom and Media Pluralism (HLGMFP) (2013), 'A free and pluralistic media to sustain European democracy', Brussels, https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/HLG%20Final%20Report.pdf. Accessed 2 February 2013.

INDIREG (2011), 'Final Report. Indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive' (SMART 2009/0001), http://www.indireg.eu/. Accessed 29 May 2012.

Jakubowicz, K. (2010), 'Analysis and assessment of a package of Hungarian Legislation and draft legislation On media and telecommunications',

OSCE, Warsaw, Poland, September, http://www.osce.org/fom/71218?
download=true. Accessed 1 July 2015.

Kroes, N. (2011), 'Answer given by Ms Kroes on behalf of the Commission'
to Parliamentary Questions E-009281/2011, OJ C 154 E, 31/05/2012,
Brussels, 18 November, http://www.europarl.europa.eu/sides/getAllAn-
swers.do?reference=E-2011-009281&language=EN. Accessed 18 April
2012.

—— (2012a), '*The Hungarian Media Environment,* European Parliament Civil
Liberties, Justice and Home Affairs Committee Liberties, Justice and Home
Affairs', SPEECH/12/80, Brussels, 9 February.

—— (2012b), '*Defending media freedom,* European Parliament Seminar on
Media Freedom in the EU Member States', 8 May, SPEECH/12/335/,
Brussels.

—— (2012c), '*Safeguarding Media Pluralism in the EU*, "United in Diversity"
Pan-European Forum on Media Pluralism & New Media', European
Parliament, SPEECH/12/504, Brussels, 27 June.

—— (2013a), '*Safeguarding media freedom and pluralism*, "Media Pluralism
and Freedom in a Connected Europe"', seminar, SPEECH/13/252, Dublin,
22 March.

—— (2013b), 'Speech in front of Plenary European Parliament', Strasbourg,
20 May.

Llorens, C. and Costache, A. M. (2014), 'European Union media policy and
independent regulatory authorities: A new tool to protect European media
pluralism?', *Journal of Information Policy*, 4, pp. 396–420.

Parcu, P. L., Brogi, E. and Dobreva, A. (2014), 'Monitoring Media Pluralism
in Europe – testing and implementation of the Media Pluralism Monitor
2014', Centre for Media Pluralism and Media Freedom, http://cmpf.eui.eu/
Documents/MPM2014-PolicyReport.pdf. Accessed 12 January 2015.

Radaelli, C. M. (2003), *The Open Method of Coordination: A new governance
architecture for the European Union?*, Rapport nr 1, Swedish Institute for
European Policy Studies, Stockholm: EO-print AB.

Reding, V. (2005), 'Better regulation for Europe's media industry: The
Commission's approach', *Audiovisual Conference – Between Culture and
Commerce*, Liverpool, 22 September, SPEECH/05/532.

—— (2007a), 'The importance of freedom of expression for democratic socie-
ties in the enlarged European Union', press conference on the occasion
of the conclusion of a Framework Agreement between the International
Federation of Journalists and WAZ Mediengruppe, SPEECH/07/478,
Brussels, 9 July.

—— (2007b), 'Liberté d'expression, liberté et pluralisme des médias; Objectifs
et avenir de la politique européenne des médias', 19e forum des médias de
Nordrhein-Westfalen, Cologne, SPEECH/07/406, le 18 juin.

Schulz, W., Held, T., Laudien, A., Hasebrink, U. and Herzog, A. (2006), 'Final
report: Study on co-regulation measures in the media sector', European
Commission, http://ec.europa.eu/archives/information_society/avpolicy/
docs/library/studies/coregul/final_rep_en.pdf, Accessed 29 May 2012.

Shore, C. (2011), '"European Governance" of Governmentality? The European
Commission and the future of democratic government', *European Law
Journal*, 17: 3, pp. 287–303.

Simpson, S. (2013), 'The interactive nature of "soft" and "hard" governance in
the EU Information Society', *Information, Communication & Society*, 16: 6,
pp. 1–19*.*

Snyder, F. (1993), 'Soft law and institutional practice in the European Community', *European University Institute Working paper,* EUI LAW, 1993/5.

Wilson III, L.G. (2008), 'Hard power, soft power, smart power', *The ANNALS of the American Academy of Political and Social Science*, 616: 1, pp. 110–24.

SUGGESTED CITATION

CONTRIBUTOR DETAILS

Dr. Andreea M. Costache, Ph.D. in Communication Content in the Digital Age at Departament de Comunicació Audiovisual i Publicitat, Universitat Autònoma de Barcelona.

Contact: Departament de Comunicació Audiovisual i Publicitat, Edifici I, Despatx 312, Universitat Autònoma de Barcelona, 08193-Bellaterra, Barcelona, Spain.
E-mail: andreeamcostache@gmail.com

Prof. Dr Carles Llorens is professor at Departament de Comunicació Audiovisual i Publicitat, Universitat Autònoma de Barcelona.

Contact: Departament de Comunicació Audiovisual i Publicitat, Edifici I, Despatx 312, Universitat Autònoma de Barcelona, 08193-Bellaterra, Barcelona, Spain.
E-mail: carles.llorens@uab.cat

Intellect
books

publishers of original thinking | www.intellectbooks.com

National Conversations

*Public Service Media and
Cultural Diversity in Europe*

Gavan Titley, Karina Horsti and Gunilla Hultén

Public service broadcasting is in the process of evolving
into 'public service media' as a response to the challenges
of digitalization, intensive competition, and financial
vulnerability. While many commentators regard public
service as being in transition, a central dimension of its
mission – to integrate and unify the nation while respecting
and representing plurality – is being reemphasized and
re-legitimated in a political climate where the politics of
migration and cultural diversity loom large in public debate.
Through a series of thematic chapters and in-depth national
case studies, National Conversations examines the reshaping
of public service media and the concomitant development of
new guiding discourses, policies, and program practices for
addressing difference and lived multiculturalism in Europe.

Gavan Titley *is a lecturer in the School of English, Media and
Theatre Studies at the National University of Ireland, Maynooth.*
Karina Horsti *is a lecturer in the Department of Social Sciences
and Philosophy at the University of Jyväskylä.* *Gunilla Hultén* *is
assistant professor of journalism in the Department of Journalism,
Media and Communication at Stockholm University.*
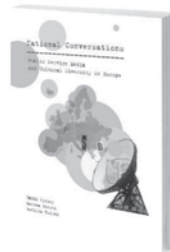
We are here to support your
ideas and get them published.
To send us your new book
or journal proposal, please
download a questionnaire
from www.intellectbooks.com.

To view our catalogue or order
our books and journals visit
www.intellectbooks.com

Intellect, The Mill, Parnall Road,
Fishponds, Bristol, BS16 3JG.

Tel: +44 (0) 117 9589910
Fax: +44 (0) 117 9589911