Speaking up: old and new challenges for freedom of expression

This submission to the European Commission conference on freedom of expression in the Western Balkans and Turkey draws on the experience of the Open Society Foundations (OSF) in promoting independent, plural and transparent media, as well as freedom of expression and information. Several challenges faced by media in the Western Balkans are presented below which represent the main concerns expressed by OSF programmes working on media issues. Leadership at European Union (EU) level on media pluralism and transparency of ownership is essential for ensuring commitment to agreed standards within EU Member States, the Western Balkan region and beyond.

Overview

Freedom of expression and of the media is generally guaranteed by a legal framework in the Western Balkans. However, the interference of political and business interests and subsequent pressures on journalists and media outlets challenge these freedoms and the independence of the media. Examples range from governments purchasing political party coverage with state funding, to politically connected owners and editors pressurising their editorial and journalist staff. This politicisation of the media is accompanied by a lack of transparency in media ownership and funding. Editorial decisions are often influenced by political or business allegiances, or the financial pressures on media outlets and journalists encourage self-censorship, thereby limiting their professional integrity.

A study carried out by the Open Society Media Programme on the effect of the financial crisis on media in 18 post-communist countries found that media organisations have lost between 30 to 60 percent of their income.[1] Many have been forced to adopt cost-saving measures, including reduced volume, staff layoffs, reduced investigative reporting, and cuts in international and provincial coverage. Several media markets have experienced a flight of foreign investors and bankruptcies of independent outlets. These crisis-related constraints and ownership changes have caused an overall drop in the quality of news delivery to citizens. Overall, media content has become shallower, more entertainment-centered, increasingly isolationist, more prone to political and business influences and lacking in investigative bite.

OSF notes the tendency of candidate countries to take their lead on media regulation from the legal models of EU Member States, irrespective of the model's position on media freedom and independence. The media law put forward by the Hungarian government in 2010, and the lack of stakeholder consultation in its preparation, has inspired some countries in the Western Balkans to take a more restrictive and non-participatory approach to legislation.

Therefore, a more comprehensive response by the European Commission on the basis of Articles 2 and 6 of the Lisbon Treaty, the Charter of Fundamental Rights and the Audiovisual Media Services Directive would remind the region that European values and standards must be incorporated into the legislative process. In the context of national electoral processes often tainted by undue pressure on or purchase of media coverage, the Hungarian case has done harm to the progress towards freedom of expression and media freedom in South Eastern Europe.

---

[1] To explore the impact of the crisis on independent media and accountability journalism, OSF carried out a study in 18 post-communist countries heavily hit by the crisis: Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Czech Republic, Estonia, Hungary, Kyrgyzstan, Latvia, Lithuania, Macedonia, Moldova, Montenegro, Poland, Romania, Serbia, Slovakia, and Ukraine: http://www.soros.org/initiatives/media/articles_publications/publications/financial-crisis-media-20091201

The Commission monitoring of the implementation of the amendments to the Hungarian law and developments in other Member States and the announced establishment of a multi-stakeholder group to be charged with examining possible measures on media pluralism and independence are welcome steps. Renewed commitment to the Media Pluralism Monitor would also be a positive indicator in itself.

Within the OSF network the following cross-cutting issues were raised as areas for attention:

Transparency of ownership: political and business interests and the criminalisation of media ownership

The lack of transparency of media ownership prevents citizens and in some countries, even regulators from being able to know who owns or controls media outlets. Apart from a neglected recommendation by the Council of Europe there are no international standards on this issue, and national practices vary greatly. This makes it very difficult to implement laws against media concentration. At the same time, the infiltration of organised crime in media ownership has further exacerbated this problem, particularly in Eastern Europe.[2]

A Europe-wide initiative to promote better ownership transparency would be particularly helpful in addressing this problem. Commissioner Neelie Kroes's suggested multi-stakeholder group on media may offer the possibility of renewed debate and practical measures that will foster the transparency of media ownership.

The following steps by the European Commission and Members States would greatly improve transparency of ownership:

➢ Develop and adopt non-binding EU guidelines on transparency of media ownership;
➢ Adopt a binding EU directive establishing media ownership transparency standards;
➢ Establish a comprehensive EU media ownership database;
➢ Support journalist and civil society training on how to investigate and address transparency of media ownership issues, and especially the financial aspects of media-government relations;[3]
➢ Promote further discussions on conflict of interest laws and the use of freedom of information laws as a tool to increase transparency in ownership structures.

Politicisation of the media in policy and practice

Politicisation of both the passage and the implementation of media laws, as well as government interference, is an increasing problem. Negative trends across Europe, within both EU-Member States as well as aspiring members, include the practice of introducing media regulation without consultations and public debate; legal requirements for "politically balanced coverage" by the media; appointment of media executives loyal to political groups in power; and the use of labour laws to punish media professionals who oppose controversial media regulation.

Similar concerns over lack of independence continue to plague public service broadcasters. Despite immense levels of support from donor agencies over two decades, the transformation of state broadcasters in Central and Eastern Europe has generally not led to the establishment of genuine public service broadcasters. The selection of governors and appointment of senior managers continue to be highly politicised; funding continues to be inadequate and politicised; and output continues to be captured by special interests. The net

---

[2]See for example the report of Reporters Without Borders supported by the Open Society Foundations Media Program: http://en.rsf.org/muscling-in-on-the-media-a-24-02-2011,39608.html.
[3] The Open Society Foundation Media Program is supporting a project to map the availability/accessibility of information on ownership in 20 countries: http://www.soros.org/initiatives/media.

results are ratings that continue to slide and the reduction of quality news, and informed and independent analysis.

Options for the European Commission for promoting greater independence and pluralism of media institutions:

➢ Promote and implement common standards on media independence and pluralism, drawing on the Commission's Media Pluralism Monitor;[4]
➢ Support an open debate over public service broadcasting models in young democracies;
➢ Require candidate countries to achieve genuine reforms in public service broadcasting, as part of their adaptation to EU standards and norms and in line with Council of Europe standards;
➢ Encourage and support funding schemes to allow private broadcasters to produce public service programming.

Independence of media regulators

A lack of independence of media regulators has been exacerbated by the process of digitisation, resulting in mergers between traditional broadcasting regulatory bodies and telecom regulators without sufficient guidelines on the division of labour and effective co-regulation.

➢ The European Commission should insist on guarantees to the independence of regulatory bodies as a means to better ensure the independence of both the existing and emerging regulatory framework.

Challenges stemming from internet governance

Internet intermediaries have offered great improvements in the free flow of information and ideas and it is suggested that the reason for this has been the legal protection of intermediaries (such as Internet Service Providers and website hosts) from liability for third party content and regulations through existing legal frameworks. Imposing liability on internet intermediaries for third-party-content and obliging them to police online content and behaviour may seriously affect freedom of expression.

The right to privacy and the protection of personal data and freedom of expression are mutually reinforcing, yet a study commissioned by the European Commission notes increased threats to privacy and the protection of personal data through online activity.[5]

The following options will help ensure better protection for freedom of expression and privacy:

➢ Further efforts could be made to gather and analyse current practices in applying legal frameworks to the internet, such as those supported by the OSCE;[6]
➢ EU and domestic regulations can aim to guarantee improved security for online communication without needing to control it;
➢ Regulations that provide guarantees to ensure that intermediaries are not held liable for third-party content;

---

[4] "Independent Study on Indicators for Media Pluralism in the Member States - Towards a Risk-Based Approach":http://ec.europa.eu/information_society/media_taskforce/pluralism/study/index_en.htm.
[5] "Study on the economic benefits of privacy enhancing technologies", London Economics July, 2010:http://ec.europa.eu/justice/policies/privacy/docs/studies/final_report_pets_16_07_10_en.pdf cited in "A comprehensive approach on personal data protection in the European Union, Commission Communication COM (2010) 609 final, 4 November 2010.
[6] For example, see: "Questionnaire for OSCE field presences and OSCE participating States", from the OSCE's Representative on Freedom of the Media: http://www.osce.org/fom/71399.

- The adoption and implementation of clear laws on the purpose of data collection: who is allowed to access it, the length of storage, etc.
- Ensure oversight mechanisms and effective recourse to justice, as well as a strong and independent data protection authority which understands the challenge of new technologies;
- The Commission and other regional institutions may wish to consider support for collaborative efforts involving internet and freedom of expression activists, governments and corporations to analyse and consider means to address new threats to freedom of expression online. The UN Special Rapporteur for Freedom of Expression will propose guidelines for internet freedom in his upcoming report to the UN Human Rights Council in June, based on extensive global consultations.
- TAIEX[7] could be used, alongside other Commission instruments, to build the capacity and expertise of civil society and media on internet governance and data protection issues.

Investigative journalism: emergence of new topics and platforms

Internet and online platforms create new opportunities for investigative journalism through offering more mechanisms for enhanced cross-border reporting and using new data collection tools to improve reporting. However, new funding models that could ensure the sustainability of emerging investigative journalism bodies have yet to emerge.

- Support from the Commission for innovative structures and networks would encourage further experimentation in this sector (through funding investigations, including with public money, under independent structures). The European Fund for Investigative Journalism provides one working model of how to achieve this.

Professionalisation and self-regulation

One observer has noted "a crisis of the journalistic profession, which is accompanied by a rapid decline in journalistic standards" in the Western Balkans is reflected in tabloid and sensationalist writing.[8]

A recent report, commissioned through the International Federation of Journalists by Council of Europe Commissioner for Human Rights, Thomas Hammarberg, recommends that issues of professionalism and ethical journalism should be promoted and managed through self-regulatory bodies, rather than by legal oversight.[9] While the processes of digitisation and convergence have put into question the need for different models of self-regulation for print and broadcast media, new systems of less complex forms of peer review (such as Ombudsmen and readers' editors) may need to be considered.

Options for the European Commission and other regional organisations for promoting the professionalisation and self-regulation of media:

- Monitor labour relations in the media sector, and provide political and financial support for strengthening Unions;
- Providing opportunities to the media industry to explore new and emerging means of self-regulation;

---

[7] The European Commission Technical Assistance and Information Exchange instrument (TAIEX)'s main tasks are described as providing short-term assistance and advice on the approximation of EU legislation with the national legislation and on the subsequent administration, implementation and enforcement of such legislation; providing "peer-to-peer" assistance by public experts from EU Member States (MS) to partners and stakeholders; gathering and making available information; providing database tools for facilitating and monitoring the approximation progress as well as to identify further assistance needs.

[8] Remzi Lani, "Balkan media: lost in transition?", in *Professional Journalism Self-Regulation and New Media, Old Dilemmas in South East Europe and Turkey*, UNESCO, Paris 2011.

[9] See: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751753

➢ Help build capacity of civil society to monitor and critic government policy over digitisation, including through TAEIX;
➢ Support training of journalists, judges and civil servants on media issues.

April 2011

Contact at Open Society Institute – Brussels:
 Ann Isabelle von Lingen
Tel:+32 2 505 46 44,
Email: annisabelle.vonlingen@osi-eu.org