

Implementation record of the Speak Up! conclusions (2011)

This paper summarises the current state of play in following-up on the conclusions of the first *Speak Up!* Conference that took place in May 2011. It assesses both the progress made by the enlargement countries and the steps taken by the Commission in implementing the conclusions.

I. Progress achieved by the enlargement countries

a) Implementation of the European Convention on Human Rights, notably article 10 on media freedom.

This point refers to improving **judicial practices** in the enlargement countries and bringing them in line with the practice of the European Court of Human Rights. In the context of the Commission's political push for decriminalisation of defamation, training seminars were carried out in some countries (the former Yugoslav Republic of Macedonia, Montenegro). A comprehensive (EUR 2.8 million) training programme financed by IPA and implemented by the Council of Europe will be launched in Turkey this year. To achieve a critical change in court practices and irreversible results, these activities are to be continued and expanded to other countries over the coming years.

b) Prosecution of those who have attacked or threatened journalists (in an attempt to restrict press freedom and investigative journalism).

Although reported cases of **violence** (including intimidation) against journalists have fallen slightly in 2011, this trend slowed down in 2012¹. The threat of violence is still a factor leading to self-censorship in the region. Authorities need to be more vigorous in investigating both new cases and those from the past. There have been only limited results to report in this regard. A positive step has been taken in Serbia, where the authorities have taken the initiative of forming a commission with the task to investigate into the unfinished cases of violence against media representatives

c) Strengthening the legal framework, through a review of legislation which affects the media's ability to report freely, including anti-terrorism laws, and

d) Revision of defamation laws and its decriminalisation; to guard against defamation is acceptable, criminalisation is not.

Decriminalisation of defamation is an important indicator of the country's readiness to safeguard freedom of expression. While this is not covered by any acquis, a high number of defamation cases against journalists in courts indicate the misuse of

¹ A thorough, country-by-country situation will be reported in October – in the annual Enlargement Package by the Commission

judiciary and is a political problem for an accession country. Since the first *Speak Up!* Conference, there has been significant progress. Montenegro, the former Yugoslav Republic of Macedonia and Serbia have recently decriminalised defamation. Bosnia and Herzegovina had decriminalised it already in 2002. Albania partially decriminalised it. While in Croatia it remains a criminal offence, this is not a considerable issue due to the absence of relevant defamation cases in the courts.² Turkey has addressed the most problematic laws restricting freedom of expression: the Antiterrorism Law and the Law on Penal Procedure. Defamation remains to be addressed.

e) Transparency of media ownership and limits to media concentration to secure media pluralism.

Transposition of the Audio-visual Media Services Directive is the basis for regulating the broadcasting sector³ in the EU and the benchmark against which progress in the enlargement countries is assessed with regards to the issues of impartiality and independence of enforcement authorities. Bosnia and Herzegovina, Albania, Montenegro and Turkey have transposed the directive. In the former Yugoslav Republic of Macedonia, the draft law is currently in public consultation. In Serbia, the draft law is to be finalised and submitted to the Parliament in June. Kosovo* has not made progress on the issue. An assessment of transposition and implementation is ongoing in the context of the preparation of the Commission's Progress Reports to be published in October 2013.

f) Independence of media and media market regulators.

A crucial role for the proper functioning of the market belongs to the enforcement institutions, the **media market regulators**. In most enlargement countries, the Regulatory Agencies are still not performing well. Political independence remains a problem. It is to be noted however, that activities of the regulator in the former Yugoslav Republic of Macedonia are encouraging.

g) Independence of public broadcasters both politically and financially.

The independence of public service broadcasters (PSB) is best ensured by financial security (i.e. clear-cut budgets) and transparent regulations for appointing board members (i.e. no political interference). Up until now, there is no effective subscription fee collecting system in place in the Western Balkans. As a result, PSB are dependent on the politically decided annual state budgets. The approach used in Montenegro (where 1.2% of the state budget goes automatically to PSB) is closest to

² Only five EU member states have taken out defamation and libel from their Penal Codes. But as none of the others show a high number of relevant court cases, this is not problematic.

³ Print media markets are national in character, lack largely a trans-border – “European” dimension and thereof fall outside the European regulation.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

Commission recommendations. The Turkish PSB TRT does not experience financial problems, but the political appointment of board members is still an issue.

In order to support the difficult reform of PSB, the Commission concluded a Memorandum of Understanding on a Partnership with the European Broadcasting Union (EBU) in 2012. Implementation of the first IPA multi-beneficiary assistance programme with EBU has started. Further assistance is under consideration.

h) How best to promote quality reporting while ensuring and respecting the freedom of the media, and

i) Establishment of guidelines on ethics in journalism (ethical code) and increasing the professionalism of journalists.

To date, there is no functional media self-regulation in place in the Western Balkans and the weakness of journalistic outputs remains an issue.⁴

There is a need for the Commission to strengthen **journalist organisations** as a horizontal basis for the upcoming self-regulation. The adoption of the Media Development Strategy in 2011 in Serbia, as well as the media freedom roundtable supported by the High Level Accession Dialogue (HLAD) in the former Yugoslav Republic of Macedonia were possible because journalist professional organisations in these countries made a respectable effort to perform their proper functions.

Since the last conference, an IPA-funded project implemented by UNESCO on promoting media self-accountability was launched in 2012. The project is helping raise awareness on professional standards, but faces limits due to the fragmentation and political polarisation of the media community in countries of the Western Balkans.

j) Regional cooperation between journalist organisations, self-regulatory bodies and watchdog NGOs to share best practices and expertise and establish solidarity between them.

Various forms of regional cooperation are in place, many encouraged and financed by the Commission, e.g. a four-year Partnership Framework Agreement signed in November 2011 with the regional media association network South East Europe Media Observatory, led by the Peace Institute in Ljubljana. This network of established media organisations will conduct research and advocacy related to the structural problems affecting the performance of independent and sustainable media in the region. The partnership will also be used to enhance consultation and develop knowledge within civil society on matters related to media and freedom of expression.

⁴ An exception is the Press Council in BiH; this is largely due to the fact that its activities receive a strong support by the German government.

II. Actions carried out by the European Commission

- **Ensure that freedom of expression is a priority in the EU accession process at all levels:**
 - a. **Use agreements and structured dialogues with the enlargement countries to monitor developments, identify priorities and support government efforts to reach European standards.**

Freedom of expression issues are prominent in the political dialogue with each country (under the SAAs), specifically in the subcommittees covering Chapters 10 and 23, where a regular annual stocktaking is carried out. To strengthen the political message to the governments, media freedom was addressed in the framework of the HLAD in the case of the former Yugoslav Republic of Macedonia. In Albania, a high level policy seminar (with ministerial participation) was conducted and policy conclusions on media freedom priorities were agreed.

- b. **Strengthen co-operation with the relevant international and regional organisations - in particular the Council of Europe and the OSCE - and other bilateral donors both in headquarters and on the ground.**

The cooperation on Human Rights issues with the Council of Europe (CoE) takes place on the basis of the Memorandum of Understanding from 2007 and the *Strategic Priorities* from 2012. It takes the form of practical assistance programmes implemented by CoE on behalf of the Commission (e.g. the Judiciary training programme in Turkey mentioned above) and of coordinated political demarches in the capitals (e.g. demarche on the draft Broadcasting Law in Albania). Even closer cooperation between DG Enlargement and CoE is considered.

DG Enlargement maintains close contacts with the Office of the OSCE Freedom of Expression Representative, including in the context of political messages on media issues in the enlargement countries.

- c. **The EU Delegations in the candidate and potential candidate countries will continue and intensify the dialogue with the governments and journalists and their associations.**

Over last two years the EU Delegations in the Enlargement countries have closely engaged with the media community and its organisations. They have closely followed and supported media community-Government dialogues (e.g. in Belgrade and Skopje) on media freedom issues, relevant draft laws etc. TAIEX experts have frequently provided advice on these laws or participated in awareness raising activities about media freedom related EU laws and practices. Annually, the Delegations consult thoroughly with media organisations, think tanks in the context of the preparation of Progress Reports.

d. Emphasise freedom of expression in its annual progress reports, as well as in the recommendations of the Strategy Paper.

The annual Progress Reports from 2011 and 2012 contain comprehensive references to the situation of freedom of expression in each enlargement country. The Strategy Paper sets media freedom issues as a high priority. The December Council Conclusions on the Enlargement underlined the importance of media freedom.

e. Give further consideration to freedom of expression issues within Chapter 23 (*Fundamental rights and Freedoms*) of accession talks.

Media freedom was considered during the screening of Ch.10 (Information Society and Media) and of Ch.23 (Judiciary and Fundamental Rights) with Montenegro. Media freedom will have to be adequately presented in the Action Plan that is currently under preparation for Ch.23.

f. Enhance consultations with national and regional media organisations, civil society organisations and other non-governmental actors from the enlargement countries.

The regional and national media organisations, media freedom watchdogs and think-tanks are invited to Brussels for consultations on preparing draft progress reports (notably, the part on the Political criteria). The Commission turns for advice to regional media organisations when planning activities of financial and technical assistance to media.

- **Set up a dedicated financial and technical assistance programme ("Freedom of expression and media programme") whose aim will be to support implementation of the key principles of freedom of expression and media in close association with partners in the media sector, civil society and other relevant stakeholders.**

A Media Component was established within the *Civil Society Facility*. In a few cases where political priorities required a prompt deployment of assistance programmes (e.g. cooperation programme with EBU), funds were allocated by a Commission decision in the form of a direct multi-beneficiary grant.

To streamline further IPA assistance to media, a study analysing critical issues with media freedom in Enlargement countries was finalized by the end of 2012. The study provide a comprehensive set of recommendation on how to improve support to media freedom and accountability in Public Service Broadcasting, through media self-regulation and judicial practices.

These funds will address the specific needs of the different stakeholders' groups. Needs suggested by the Conference include:

- a. Grants to facilitate networking, by dissemination of best practices, regional cooperation and solidarity**

b. Assistance to develop advocacy and lobbying capacities of journalist organisations and watchdog NGOs

In 2011 a four year partnership agreement was signed with the regional media association network South East Europe Media Observatory (the leading partner being the Ljubljana Peace Institute).

c. Long term advice and support by the counterparts in the EU to, notably, self-regulatory bodies and media market regulators

A 3 year IPA project on promoting media self-accountability and awareness of professional standards is being implemented by UNESCO in collaboration with local media associations (2012-2014). The initiative brings together different media stakeholders to agree on mechanisms of self-regulation in order to improve standards and accountability. The project is also providing research and consultation on how to restrict on-line hate speech.

An additional call for proposals will be launched in May 2013 targeting long term capacity development to improve the governance in media, including labour standards, professional ethics and media industrial relations. The programme will enable media associations to work within a regional partnership programme over a period of four years

d. Continuous legal training for journalists, prosecutors and judges

A large project (EUR 2.8 million) for training judiciary on media freedom related issues will be launched in Turkey this year. It is prepared in cooperation with CoE. In the other countries, training activities for judges and prosecutors were stepped up in the context of decriminalising defamation (e.g. the former Yugoslav Republic of Macedonia, Montenegro). The training will obtain a comprehensive and sustained character in cooperation with CoE.

e. Support the tradition of the journalist inquiry and creation of training opportunities for a new generation of investigative journalists.

2011 a grant contract was awarded to the Balkan Investigative Reporters Network to promote investigative reporting. The multi-language, multimedia programme which involves daily updated news reports and analysis for the Transitional Justice section on the Balkan Insight web page (<http://www.balkaninsight.com/en/page/balkan-transitional-justice-home>), plus radio and television productions, fills a crucial gap in a region where media reporting on transitional justice is often biased, ethnically divided, unprofessional or hostage to political and economic pressure. There were at least 4,000 republications of BIRN Transitional Justice articles by local media outlets across the region.

A concrete step taken to promote and protect qualitative investigative journalism is the initiative to establish an EU award scheme covering all the enlargement countries in the Western Balkans and Turkey. The call for proposals is launched in May 2013. One to three journalists will be awarded annually in each country during the years 2014-2016. Local award juries will be appointed and propose the winning candidates to the EU delegations justified by agreed award criteria.