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Position Paper

MEDIA FREEDOM AND THE GROWTH OF THE EUROPEAN PUBLIC SPHERE

The EU has consistently recognised media freedom and pluralism as fundamental pillars of democratic systems, enshrining these principles in EU binding documents. As far as Enlargement countries are concerned, Commissioner Hahn recently stated that media freedom is an "imperative" and that "without freedom of the media, a country can not be part of the EU".

Despite this, both in Member states and in the countries aspiring to join the EU, media independence and the safety of journalists are often under pressure by means of direct and indirect threats.

Taking a closer look at the situation in EU member states, Freedom House warns that Europe registered the world's second-largest net decline in media freedom since 2004, a deterioration which is second only to Eurasia. Such deterioration can be attributed to the incremental erosion of the legal and economic environments - the product of several trends including the digital evolution as well as negative factors such as the economic crisis and the securitarian turn, that further facilitate the interferences with the ability of journalists to cover the news in person.

Journalists face the abuse of legal actions for defamation, but the EU has no direct power to intervene on member states' national regulations over this matter. Along with the misuse of criminal and civil defamation laws, increased risks for freedom of the media also derive from the abuse of anti-terrorism, anti-extremism, and anti-blasphemy laws, even more so today with the fear of jihadist terrorism spreading across Europe and favouring a climate of witch-hunt against minorities, refugees, and migrants.

Moreover, as shown in the discussions in the European Parliament around the Directive on Trade Secret, restrictions to journalists' access to information of public relevance can be introduced even by means of copyright norms. Evidence of important chilling effects also results from legal issues connected with managing digital broadcasting and online content (comment sections, social media) as well as from the introduction of new laws on the right to be forgotten and the related responsibilities of service providers.

As far as member states are concerned, EU institutions have a limited scope of intervention, as media are mostly regulated at the state level and the EU Charter of Fundamental Rights applies to

Member States only when they are implementing EU law. The Commission can only intervene on media issue when other areas of the EU acquis are concerned (like competition law), monitor the situation, and prompt governments as well as empower domestic actors to work for media freedom and pluralism at home.

On the other hand, in the countries aspiring to join the EU the Commission has been increasing its leverage capacity in the field of media freedom. Moving on from the experience of previous enlargements, media freedom and pluralism enjoy a higher centrality in current negotiations, also thanks to the introduction of new soft-law tools such as the 2013 Guidelines for EU support to media in enlargement countries.

The leverage capacity of the current enlargement policy may certainly be improved, first and foremost by going beyond the current checklist approach to ensure effective implementation and conditions for journalists to remain objective and professional (e.g., independence of public service and regulatory bodies and workers' rights, that are not considered in Progress reports). Furthermore, while Progress Reports assign "homework" for central institutions in candidate countries, this does not diminish the effort to be done at the level of public opinion.

In particular, within the current negotiation processes EU institutions should play a more proactive role in requiring from governments the transparency about the distribution of state advertisements. The selective use of state advertising and the controlled distribution of commercial advertising are indeed among the main tools used to silence the media which are critical and to finance those outlets which "follow the line" acting as mouthpieces of those in power.

Similarly, and fully in accordance with the "fundamentals first" approach to Enlargement policy, Progress reports should more clearly emphasise the direct link between proper implementation of the right to access public information and the respect of the criteria of freedom of the media. In facts, despite most of the countries in the region have good legislation on the topic, these laws are not adequately implemented and the access to public information is constantly at risk.

However insufficient one may consider the criteria set forth in EU conditionality and checklisted in Progress Reports, even this incentive ceases to exist once a country joins the EU, meaning that there is no 'progress report' for member states. The experience with new member states confirms that media freedom tends to be harshly challenged after membership is obtained. At the same time, political pressure, economic hardship, physical attacks against journalists, restrictive legislation and the economic crisis are important challenges to media freedom and pluralism in EU member states too. Threats to media freedom are a shared concern, as Europe is a common information space which needs a free, well-informed, and lively European public sphere to debate common challenges and solutions.

Looking at the whole picture, country-specific problems are paralleled by shared challenges. The media sector is undergoing similar structural changes world-wide that make old arrangements no longer tenable, with old business models becoming outdated due to technological and online developments. Increasing concentration of media ownership leads to oligopolies that undermine media pluralism. Editorial independence is constantly in danger as a consequence of a well-known alliance between political and economic powers that uses opaque methods of distribution of government advertisement as a disciplinary mechanism. This vicious coalition, coupled with worsening labour conditions for journalists, makes censorship redundant, relying instead on self-censorship and the forced erosion of professional standards.

In addition, media freedom, notwithstanding the deluge of declarations, is not a compelling political priority yet, as it very easily slips back in the agenda of EU institutions and European countries when other matters, such as stability and security, are at stake.

Media freedom and journalists' independence are even more severely curtailed when crises arise, as shown by recent developments inside and outside the EU. Indeed, the attempt at seizing independent media in times of crisis is a testimony to the crucial role of media in the democratic process and explains why political and economic powers try to protect their own legitimacy by controlling journalism.

Although it usually garners increased attention only when media freedom is seriously undermined, the erosion of media freedom is a long-term process, resulting from pernicious, often hidden strategies coupling economic and political power. Hence the need for equally long-term strategies to fight back. Most notably, an action plan enabling journalism to break this chain of control is needed in order to create the legal, economic, and social conditions for free and pluralistic media environments.

An essential step in this direction is to improve the working conditions for journalists, also by identifying new business models for quality journalism, as a prerequisite to make them less vulnerable to political pressure in the form of economic blackmailing.

On the other side, journalists also need to regain public trust, an asset which has faded away in these last year because of poor journalistic standards. The erosion of professional standards and the precarisation of journalists are long-term processes, which journalists themselves did not do enough to contrast due to the low degree of unionisation and the weakness of journalists' associations. Finally, there is an urgent need for journalists' education on the fundamentals (e.g. professional ethics or fact-checking) and on new professional tools and challenges (e.g. data journalism or digital security issues).

This is especially (though not exclusively) true for EU candidate countries, where pro-government outlets often orchestrate smear campaigns against prominent civil society actors and independent media. Thus, if the decriminalisation of defamation is a must, it is also urgent to ensure that the judiciary has the required independence, knowledge, and skills to ensure that there is no selective justice in media-related lawsuits and that those enacting smear campaigns, be it trolls or media outlets serving political and economic powers, are adequately sanctioned.

As pointed out by the Safety Net project, there is an urgent need to restore the missing link between the rights of journalists to do their work safely and the right of citizens to receive quality information. A renewed alliance between journalists and citizens is a precondition for future improvements and requires to re-establish awareness of the role media play in a democratic society. This task demands transnational information aimed at raising awareness in the European public opinions about the challenges journalism faces and the mechanisms through which media are seized and controlled - an effort which grassroots and virtuous journalism, joining forces across European borders, can certainly aid. Acting on the demand side, it requires an increased commitment to media literacy, as this can surely help strengthen the audience's ability for critical thinking when consuming and producing information through the media.

Finally, if we agree that a stronger EU competence in the field should emerge, we should work on the side of policy-makers too, both at the domestic and international level, and nurture the debate in the European public sphere on the need to support those actively promoting free and pluralistic media at the European level. An increased public awareness of the watchdog role of the media would be beneficial to this goal as well.