



EUROPEAN POLICY BRIEF



European Media Policies Revisited: Valuing and Reclaiming Free and Independent Media in Contemporary Democratic Systems

Policy implications of MEDIADDEM, an EU-funded research project on media policies in 14 countries for media freedom and independence

Ongoing project

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INTRODUCTION

Lately there has been much discussion about media policy and regulation. The increasingly converged media environment, the challenges it creates for media policy and regulation, and the impact of regulatory processes beyond the state have received significant attention. However, there has been less debate regarding the degree to which our contemporary media are free and independent, and the policy processes and instruments that can generally support free and independent media.

Research carried out in the framework of the MEDIADDEM project investigates the configuration of state media policies that target or conversely constrain the development of free and independent media. The project examines the complex array of policy approaches and the regulatory instruments that govern the media in 12 EU countries (**Belgium, Bulgaria, Denmark, Estonia, Finland, Germany, Greece, Italy, Romania, Slovakia, Spain and the UK**) and two EU candidate countries (**Croatia and Turkey**), exploring their effects for media freedom and independence.

Regulation and its design are placed in the domestic socio-political context while external regulatory pressures deriving from the action of the European Union and the Council of Europe in particular, are also analysed in detail. The aim is to identify those policy processes and tools that best promote media freedom and independence.

This first policy brief forms part of MEDIADDEM's policy brief series. It contains key observations on how to understand 'free and independent' media and puts forward policy recommendations for their promotion.

The views expressed in this document are the sole responsibility of the authors and do not necessarily reflect the views of the European Commission.

KEY OBSERVATIONS

Free and independent media: An elusive definition

Despite the fact that free and independent media are considered to be a cornerstone of contemporary democracy, it is notoriously difficult to define what characteristics render them free and independent. While media freedom and independence are generally understood to be premised on reducing, or altogether eliminating, state control, private forms of constraint on media operation are similarly problematic for the realisation of these objectives.

Understanding free and independent media requires a move away from simplistic categorisations that see, on the one hand, state influence as inherently stifling and, on the other, market driven media to be free and independent. A media service may be independent in the sense of being autonomous from state control, yet still offer partial, biased or inaccurate information. Alternatively, a media service that is under state direction may be established with a clear remit to carry out and offer impartial reporting.

Media freedom

Liberal conceptions of media freedom focus on editorial freedom from government influence. This is in line with the scope of protection traditionally afforded freedom of expression and information in the main international charters of human rights, such as Article 19 of the International Covenant on Civil and Political Rights or Article 10 of the European Convention on Human Rights (ECHR).

These provisions, especially when supported by independent judicial oversight, as in the case of Article 10 ECHR, offer media professionals (i.e. media owners, editors and journalists) significant guarantees against state censorship and control.

These guarantees are similarly important to the growing number of civil society organisations, companies and private individuals who take advantage of modern communications systems, such as the Internet, to publish information and opinions, often on a global basis.

More recently, the European Court of Human Rights has emphasised that states may also be required to take positive measures to curtail the influence of powerful economic or political groups in order to promote a diverse and plural communications environment (see, for example, the case of *Manole and Others v Moldova*, app. no. 13936/02). **This entails that neither the media, nor those individuals who own or work for the media, enjoy an absolute right to freedom of expression.**

In countries where 'press freedom' is constitutionally affirmed and protected, courts have similarly held that press freedom can both require, as well as preclude, state intervention. According to domestic judiciaries, the extent of legitimate state intervention is strictly limited to the pursuit of the public interest in a functioning democracy and a restricted category of general interest objectives, such as the protection of minors. To fulfil its democratic and social remit the media need to perform a number of informational, deliberative and educational functions, which can be subject to varying interpretations depending on local conditions.

Media independence

Independent media can be understood as those media that are free from external direction or constraint regarding editorial policy decisions.

Most contemporary media are subject to various constraints affecting their editorial freedom, and are hence subject to relations of 'dependence'.

These constraints on media independence generally arise as a result of:

- the structure of the media industry and media ownership
- the media's continuous demand for finance and information
- regulatory norms and rules that determine what the media can publish.

Constraints thus arise exogenously but also endogenously on account of the way the media industry functions.

Media ownership

One of the most direct forms of influence over what the media report is exercised by those media owners who define the editorial line and general orientation of their media outlets.

Certain media owners are more likely to take an interventionist stance than others. The following types of media owner merit particular attention in this respect:

- the state
- companies and individuals with wide-ranging interests, including in non-media goods and services
- partisan bodies (i.e. political or religious organisations).

When in possession of media outlets, these proprietors have substantial potential to use them in order to further their political, economic or other interests. Negative stories that could harm such interests can be suppressed, whereas positive coverage can be artificially incorporated into the services provided. This challenges the capacity of the media to:

- offer varied and accurate information
- facilitate debate among citizens on matters of public interest
- perform the 'watchdog' function by investigating the action of public bodies, powerful corporations and individuals alike.

Moreover, the influence that media owners can exert over what is reported need not require constant hands on management. Through targeted editorial and managerial appointments, proprietors can avert the need for day to day direction, with employees (editors and journalists) making decisions in line with what they believe their employers would want, thus engaging in self-censorship.

Finance

Media outlets are economic players that require finance to operate.

Media finance can take the form of:

- **state aid**
- **advertising and sponsorship**
- **donations**
- **individual subscriptions.**

All modes of finance create a sense of loyalty to those providing the funding (even where any control over editorial freedom is expressly precluded in law) and can therefore influence coverage.

State funding can be based on licence fees, direct grants, state advertising and benefits in kind, such as the use of frequencies or facilities. Such assistance can affect the recipients' commitment to investigating and reporting on government action.

Advertising and sponsorship can influence media reporting on the specific companies that provide the funding and their products. They can also condition the general orientation of the media services provided. Since many individuals look to the media primarily for entertainment, advertisers and sponsors can exert pressure on the media they finance to prioritise entertainment and content with wide appeal, to the detriment of media services focusing on matters of public interest.

Donations can also affect editorial decisions. Donations by corporations and individuals can influence how media companies report on the firms and individuals that provide their income.

Philanthropic donations may in principle insulate the media from the constraints associated with other modes of finance but cannot totally eradicate pressures on editorial content. The degree of such pressures will depend on the size of donations provided, their duration, the extent to which donations are spread across many media outlets or concentrated among specific companies, and whether there is any expectation of further funding.

Reliance on **individual subscriptions** can similarly influence the editorial line. Consumers show a predisposition to subscribe to those media outlets and services that largely conform to their own beliefs and ideas, at least where news, as opposed to entertainment or other types of content, is seen as an important component. This creates pressure on the media to respond to existing political allegiances within society, which may lead to services polarising around a limited range of perspectives in an attempt to secure a wide subscription base.

The need for information

Another form of media dependency arises from the media's constant need for new information. **Those who control access to novel information, notably governments, public bodies and their press officers, can exert considerable influence over what is being reported. They can also influence the timing of reporting and the way in which it takes place.**

As a result, there can be a significant disjuncture between what citizens need to know in order to debate public policies and make informed choices about their governors and the type of information that the information gatekeepers consider to be 'newsworthy'.

With journalists and media professionals increasingly under pressure to provide material for both online and traditional print and broadcasting services, there is less time to research stories, engage in investigative journalism and conduct careful fact checking. **The media are becoming increasingly dependent on press releases, information available online and recycled agency material.**

Legal constraints

States control what the media publish through a variety of laws that seek to strike a balance between journalistic freedom, access to information and other public interest objectives. Such laws and regulations commonly relate to national security, public order, the protection of privacy and family life, defamation and libel, the protection of morals and children, hate speech and contempt of court.

Legal constraints on media coverage can also be the result of co-regulation, adopted in the pursuit of public interest objectives.

Rules that originate in self-regulatory processes are usually introduced in order to protect the reputation, professional ethos and interests of the industry concerned. Accordingly, they tend to focus on consumer protection issues. Where however they are negotiated and adopted in the shadow of potential state regulation, they may seek to address a wider range of public concerns, and hence result in additional constraints on media coverage.

The online environment

Online media services presently encompass the online media services of public service and commercial print and broadcast media, an array of information services provided in online form only, and more or less decentralised information services stemming from the initiative of civil society organisations, partisan groups, individuals and 'citizen journalists', among others. The nature and intensity of editorial constraint varies with the type of service.

Those online public service media that are mainly or exclusively financed by public funds will be relatively free from commercial pressures, yet nevertheless run the risk of being exposed to government influence.

Commercial services generally enjoy a degree of insulation from government influence but, as with their offline counterparts, are often directed by specific political or corporate interests.

Non-commercial information websites and services may be subject to little influence from corporate or government interests (in fact, some expressly mention that they seek to be free of external patronage). However, they encounter various financial and other resource pressures.

Legal constraints introduced to further public interest objectives also vary depending on the type of online service involved. The imposition of such constraints actually presupposes a comprehensive policy strategy on behalf of states, co-regulators or

self-regulatory bodies for online media services. In many European countries, there is uncertainty about the legal regime applicable in the online environment, in part because of the diversity of information services that are accessible in this context.

RECOMMENDATIONS FOR POLICY-MAKERS

The challenge for policy-makers

Despite widespread assertions of ‘media freedom’ and ‘media independence’, our contemporary media are largely dependent. Dependence on finance and information, coupled with constraints deriving from media ownership structures and the way in which the media industry operates, render the media prone to patronage and direction. Consequently, media outlets often serve as vehicles through which powerful groups, individuals and corporate bodies pursue their private, commercial or political interests.

Promoting and realising media freedom and independence requires careful attention by policy-makers. Free and independent media do not stem a priori from particular structural configurations (state intervention v. market liberalisation). In an environment freed from state ownership and direct control, state intervention remains essential to redress market and democratic failures. Less centralised regulatory processes can also contribute to correcting deficiencies and introducing counter-forces within the system.

At the same time, it is plain that access to finance, organisational stability and a broad consumer base are precisely what render most of the mainstream media viable. If commercially funded media produce services that fail to respond to the needs of their sponsors, these sponsors will simply move their funds elsewhere.

From this perspective, a media market that exhibits a combination of different forms and intensities of dependency and none at all is preferable to one that, by seeking to remove dependencies altogether, jeopardises the media’s viability.

Thus, the principal challenge for policy-makers is to:

- identify the various constraints that affect traditional and new media, notably in relation to editorial and journalistic autonomy and the ability to publish
- establish where such constraints operate against the public interest
- mitigate their negative effects where they cannot realistically be removed, and
- in all cases, make them more transparent.

How to support the development of free and independent media?

Research in the framework of the MEDIADEM project has identified three lines of policy action, apt to support the development of free and independent media:

- introducing and maintaining a legally enabling environment
- promoting professional standards and journalistic ethics
- strengthening media literacy.

In each instance, it is necessary to consider who is best placed to take action: the state, media organisations, journalists, civil society, citizens or a combination of the foregoing.

A legally enabling environment

A legally enabling environment must:

- contain the excessive influence that the state, particular individuals, powerful groups or corporations exert over particular segments of the media market, mainstream media goods and services, and access to communication networks, facilities and key content
- make media ownership structures, sources of finance and possible links with partisan groups more transparent
- ensure that there are concrete opportunities for the expression of alternative voices and public dialogue, including through the encouragement and broad uptake of new media services and support for material of public interest
- establish and/or preserve media services with a specific remit to be 'impartial', paying due attention to their means of financing and modes of governance and operation
- encourage and facilitate access to information
- ensure that the media are not physically prevented from attending, and reporting on, matters of public interest
- ensure that actions regarding matters such as defamation, source disclosure, and national security are not used to chill speech of genuine public interest and that pre-trial procedures, injunctions and punitive remedies do not similarly operate to deter legitimate speech
- ensure that regulatory bodies are independent and insulated from inappropriate state and industry influence.

Professional standards and journalistic ethics

In order to raise professional standards and promote journalistic ethics, action must:

- ensure better training of journalists, with due emphasis on research, access to reliable and multiple sourcing, fact checking and the acquisition of investigative reporting skills
- strengthen professional integrity, ensure continuous commitment to accuracy and fairness and reinforce the ability of journalists to mobilise against threats to editorial freedom
- promote ethics, accountability and good practice in reporting
- secure satisfactory working conditions for journalists in both an online and offline environment
- mitigate dependencies that may develop between journalists, editors and media owners as a result of employment relations
- raise awareness of, and address, the challenges and opportunities that the increasingly integrated media environment presents for journalistic work.

Opportunities for non-professional publishers and 'citizen journalists' to conform to established ethical standards, or at least to indicate the standards with which they undertake to comply, must also be encouraged.

Media literacy

Media literacy initiatives can make a precious contribution to building public support for free and independent media and engaging citizens in the process of counterbalancing abuses on the part of the media.

Media literacy measures must:

- help citizens gain a better awareness of the strengths and limitations of particular media and media services
 - enable citizens to make informed choices about the media services they choose and the weight to afford to the information they receive.
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An integrated approach

Promoting free and independent media requires an integrated approach. Meaningful policy results can only be achieved through holistic action that addresses all three policy axes simultaneously. Supporting rules and norms are as critical as professional development and readiness to uphold journalistic values. Similarly important is the development of an empowered citizenry that is aware of the significance of quality journalism and able to critically judge the media services available in all their complexity.

A mainstreaming exercise

Promoting free and independent media also necessitates a collaborative approach. Nowadays, state-based structures for media policy-making have been supplemented by supranational structures that play an increasingly important role in the field of the media.

At the international level, mention should be made of the International Telecommunications Union, the World Trade Organisation and the United Nations Educational, Scientific and Cultural Organisation as particularly pertinent examples.

At a regional level, both the European Union and the Council of Europe engage in, and contribute to, shaping the rules that regulate the media.

Media freedom and independence must be taken on board in these international and regional policy settings as a concrete objective to be respected and, where possible, positively promoted. It must be integrated in their activities and receive serious attention in the development of actions that have or may produce media implications. Such a mainstreaming exercise could substantially strengthen the efforts deployed at the national level to realise media freedom and independence.

RESEARCH PARAMETERS

Objectives of the research

MEDIADEM is an EU-funded research project on media policies for free and independent media.

The project seeks to:

- understand the nature of media freedom and independence
- explore the formulation and implementation of media policies in 14 European states and identify the factors that exert an influence throughout the process
- identify the full array of the policy processes and regulatory models and instruments that support media freedom and independence
- evaluate and explain variable patterns of media policy-making from a cross-country and cross-media comparative perspective in order to identify best practices for the promotion of free and independent media
- engage directly with policy-makers, the media community and civil society in order to reflect on appropriate policy responses to the challenge of realising media freedom and independence
- develop concrete policy recommendations for policy-makers, the European Union and the Council of Europe regarding the development of policies that foster free and independent media.

Scientific approach/ methodology

To obtain meaningful research results regarding how media freedom and independence can be promoted in Europe, MEDIADEM adopts an interdisciplinary approach which lies at the crossroads of legal research, media studies and political science.

The project combines theoretical with empirical analysis and adopts a broad European perspective. Our country cases cover both EU Member States and EU candidate countries. They include: **Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, Germany, Greece, Italy, Romania, Slovakia, Spain, Turkey and the UK**. The selection of these countries testifies to the diversity of European media policy-making and reflects the multiplicity of regulatory, co-regulatory and self-regulatory approaches followed or in need to realise media freedom and independence.

The project's work plan consists of a compilation and in-depth analysis of legal documents, government reports, policy papers, case law, broader academic literature and semi-structured interviews with various state and non state actors involved in media policy-making. The latter include state ministries, regulatory bodies and agencies, media operators, journalists and their representative associations, and civil society organisations, among others.

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