

Case study report

Does media policy promote media freedom and
independence?
The case of Denmark

Rasmus Helles, Henrik Søndergaard and Ida Toft

University of Copenhagen (UCPH)

December 2011

Project profile

MEDIADEM is a European research project which seeks to understand and explain the factors that promote or conversely prevent the development of policies supporting free and independent media. The project combines a country-based study in Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, Germany, Greece, Italy, Romania, Slovakia, Spain, Turkey and the UK with a comparative analysis across media sectors and various types of media services. It investigates the configuration of media policies in the aforementioned countries and examines the opportunities and challenges generated by new media services for media freedom and independence. Moreover, external pressures on the design and implementation of state media policies, stemming from the European Union and the Council of Europe, are thoroughly discussed and analysed.

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

Project duration: April 2010 - March 2013

EU funding: approx. 2.65 million Euro

Grant agreement: FP7-SSH-2009-A no. 244365

Copyright © 2011
All rights reserved

Disclaimer

The information expressed in this document is the sole responsibility of the authors and does not necessarily reflect the views of the European Commission.

Information about the authors

Rasmus Helles holds a PhD in Media Studies at the University of Copenhagen and is an Assistant Professor at the Department of Media, Cognition and Communication at the University of Copenhagen. He has participated in the research project MODINET (Media and democracy in the network society). He works in media sociology, in particular the sociology of new and network media, media use and democracy. He has published a number of articles on digital media, online communication and medium theory.

Henrik Søndergaard holds a PhD in Media Studies from the University of Copenhagen as well as a Master's degree in Literature. He is Associate Professor at the Department of Media, Cognition and Communication. Moreover, he is appointed a member of the Radio and Television Board, the Danish Independent Regulatory Authority for radio and television. He has been Head of the Danish Association of Media Researchers and Head of the Council for Public Service Broadcasting. He has participated in several research projects, i.e. MODINET (Media and democracy in the network society), Global Media Cultures and Programming within Nordic Public Service Broadcasting. He has published extensively on Danish and Scandinavian broadcasting systems, on media regulation and media policy as well as media history and audience research. His main focus has been on public service broadcasting and programming strategies within public service media.

Ida Toft is a candidate in information technology from the IT University of Copenhagen, and also holds a degree in Public Administration from University of Roskilde. She has been associated with the MEDIADEM project as a research assistant and has participated in various research projects at University of Copenhagen.

TABLE OF CONTENTS

Executive summary	5
1. Introduction	6
2. Actors and values of media policy	8
3. The structure of the media market.....	18
4. Composition and diversity of media content.....	35
5. The journalist profession	49
6. Media literacy and transparency.....	54
7. Conclusion.....	59
8. References	62
9. List of interviews.....	66

Executive summary

Danish media policy is predominantly based on consensus among the political parties and reflects a strong political will to sustain Danish media content, media pluralism and independence. Due to the small size of the Danish media market, the media subsidy system is vital to achieving these ends. For many years, public service broadcasters have been the dominant players within radio and television, while the printed press has received substantial subsidies in order to fulfil its democratic role. A truly dual media system in which public and private media coexist has evolved gradually, but during the last ten to 15 years the delicate balance within the dual system has been upset.

Technological developments, in particular the digitisation of most types of media and distribution, have presented a direct challenge, not least to the printed press, as advertising revenues have declined and the number of subscribers has decreased substantially. The press is facing a financial crisis that requires new forms of public subsidy. The spread of the Internet has also led to a blurring of boundaries between media markets that were formerly completely separated. This development has, in particular, put public service broadcasters under pressure, as they are increasingly accused of distorting competition in ways that make it hard for the private media to survive – and even harder for new media to get access to the market.

The changing media structure requires adjustment of media regulation, not least with regard to the media subsidy system, but also in terms of the regulation of public service media. While many of the new regulatory initiatives are addressing particular issues in the Danish media sector, they are increasingly inspired by broader tendencies within EU media policy, not least with regard to the development of the regulation of State aid, as well as the implementation of the European Convention on Human Rights in Danish legislation and case law regarding the media and freedom of expression.

Danish media policy is basically marked by the tension between the wish to sustain and stimulate pluralism in media content and at the organisational level; and the wish to have independent media capable of fulfilling their key democratic role in society. Pluralism and independence are not contradictory to each other, yet it remains a constant challenge to achieve both within the scope of practical regulation.

1. Introduction

1.1 Freedom of expression and information

Freedom of expression, and the need for free and independent media, is a central characteristic of Danish society and also of Danish media policy and regulation.

Freedom of expression is widely held to be essential to the legitimacy of public democratic debate, and as such is widely held to be a fundamental ideal of Danish democracy. Freedom of expression has a long history in Danish society and features explicitly in the first Danish Constitution from 1849 (see section 2).

The long history and the stable and consolidated nature of Danish democracy also mean that the existing legal limitations to freedom of expression are seldom the topic of public debate, let alone the introduction of new laws aimed at limiting freedom of expression. The so-called cartoon crisis following the publication of cartoons portraying the Prophet Muhammad in the Danish daily newspaper *Jyllands-Posten* in 2005 sparked a public debate that in some part touched upon the freedom of expression. The central theme, however, was not State censorship of the media, but self-censorship on the part of commentators and other participants in the public debate, who allegedly abstained from expressing their true opinion on matters concerning immigration and the Islamic faith out of fear of retaliation against them. The legal scope for the newspaper to actually publish the cartoons has never been sincerely doubted.

The absence of severe and persistent challenges to the right of free expression means that, while freedom of expression has a central role in the complex of laws concerning the liability for statements made in public debates, and as such also in laws concerning the basic regulation of the media, it plays a lesser role in the normal media policy debates.

The Danish media is not only subject to regulatory action derived from a fundamental concern for the freedom of expression. Other values, most notably the concern for *pluralism of media and of content*, also play a central role in the formulation of media policy and the development of new regulatory initiatives. Even if pluralism does not enjoy the same level of constitutional and legal safeguard as freedom of expression, it would be a mistake to disregard the importance of this ideal, which in many cases is a stronger and more explicit concern in the development of Danish media policy. In the context of a small media market, such as the Danish one, the relationship between pluralism and freedom of expression is complex. On the one hand, support for pluralism is the expression of a fundamental concern for democracy, as it creates and sustains a media landscape with more opportunities for different voices to be heard. On the other hand, the concrete institutional arrangements that follow from the implementation of pluralistic policy initiatives may be seen to limit freedom of expression, i.e. by making it harder for new media to gain entry to the market. The tension between these two dimensions of media policy is outlined in the chapters below.

1.2 An apparent paradox: Media independence and media policy in Denmark

Pluralism and freedom of expression are intertwined in the context of concrete policy developments, but in order to judge their individual influence on the conditions for media freedom and independence it is necessary to understand some basic contextual

parameters of Danish society and culture: the small size of the country and the homogenous and egalitarian nature of the Scandinavian welfare state. Taken together, these two factors have had a profound influence on the specific historical path along which the Danish media and media regulation has developed.

The small size of the country (with a population of about 5.5 million), and the equivalently limited use of the Danish language, makes the market for Danish media products very small; so small, in fact, that it would be unable to support anything but a highly monopolised media sector. A key reason that pluralism has come to play such an important role in Danish media policy and regulation is related to the small size of the country. In an increasingly globalised media culture, no-one in the political system truly believes that the market is capable of providing the required level of media plurality. Therefore a strong consensus around a strong and broad role for the State to promote pluralism in the media market has developed.

One consequence of this is the strong commitment to public service broadcasting [PSB]. More than half of all television viewing in Denmark is of PSB channels, and more than 75% of radio listening concerns channels operated by Danmarks Radio [DR], the original PSB (Danmarks Radio, 2011). Even though PSBs have been challenged in recent years by political initiatives aimed at enhancing opportunities for commercial television and radio, PSBs still enjoy widespread political and popular support.

Another consequence is the development of an extended system of media support. The desire to ensure plurality extends beyond the demands for content variation typically made of PSBs. Plurality is also sought at the level of media organisations in the private sector. The Danish newspaper industry was never particularly lucrative, and in the last decades has deteriorated further (Minke, 2008, Minke, 2009). All Danish newspapers depend on public support for their viability.

Even though the press has historically been regulated to a far smaller degree than the State-owned and/or State-controlled PSBs, in part because it is held to embody true independence from the State in a more explicit way, it is in fact highly dependent on it. In practice, virtually all Danish news media—public and private alike—depend on the State for their continued existence (Søndergaard and Helles, forthcoming).

1.3 Hotspots of media regulation and media independence

The strong economic dependence of almost all media on the State - paradoxically created to ensure diversity -has created an additional layer of media policy and regulation that needs to be critically examined with regard to its implications for media independence. This is especially true because the regulatory basis for the allocation of media support in the private sector, and the media platforms available to both private and public media players, have been subject to strong pressure from digitisation. In the following sections we discuss these developments from different angles. In chapter two we discuss the legal framework and policy process regarding freedom of expression. In chapter three we discuss the structural regulation of the media market, and in chapter four we discuss content regulation. In both chapters three and four we consider the relationship between the demands for diversity and for media independence. In chapter five we look at the autonomy and working conditions for journalists, and in chapter six we consider transparency and media literacy.

2. Actors and values of media policy

2.1 The legal framework for freedom of expression

2.1.1 The Constitution

The Danish Constitution explicitly mentions freedom of expression in Section 77, which states that everyone is entitled to make their thoughts public in print, writing or speech, and that ‘[...]Censorship and other preventive measures shall never again be introduced’.¹ Section 77 also specifies that the exercise of the right to freedom of expression is subject to legal review by the courts (see also Frøbert, 1975: 63). Legal scholarship on constitutional law has since argued that some provisions concerning the material right to freedom of expression can be derived from other sections of the Constitution, especially Sections 13 and 31 concerning ministerial responsibility, and the principle of political representation, respectively (Germer, 1973: 36ff.).

Although the strength of the constitutional provisions for freedom of expression can be debated at a theoretical level, the importance of freedom of expression as a central value in the legal system is underlined by the explicit reference made to it in a number of other acts, i.e. in Section 2(2) of the Act on Processing of Personal Data.² Since all other laws must observe constitutional provisions, this means that no law can be passed that curtails the constitutional guarantee of freedom from censorship.

In addition to the constitutional provisions for free speech, Denmark has ratified the UN’s Universal Declaration of Human Rights and the European Convention on Human Rights [ECHR]. Furthermore, ECHR was declared Danish law in 1992.³ This meant that the material protection of freedom of expression gained a (more) positive definition in Danish law. The influence of ECHR and the case law of the European Court of Human Rights (ECtHR) has been extensive, and according to Mortensen (2003: 304), it must today be considered the primary legal basis for libel cases in Danish law (see also section 2.1.4).

Section 118 of the Penal Code⁴ protects the right to free expression by penalising attempts to ‘[...] influence public affairs, or cause disruption of social order, with imprisonment up to 12 years’.

2.1.2 Restrictions to freedom of expression

The protection of freedom of expression in Danish law is not absolute, cf. how Section 77 specifies that utterances may be the subject of later trials, sanctioning (together with Section 3) the introduction of laws that impose limits on free expression. Material freedom of expression is not protected, and as such the legal foundation for the regulation of free expression follows the same principles as laid down in ECHR (Koch, 2009: 332), in the sense that human rights are exercised under legal liability, balanced against the rights of others.

¹ The Constitution (Act no. 169 of 5 June 1953), available at: <https://www.retsinformation.dk/forms/R0710.aspx?id=45902> (date accessed 10 October 2011).

² The Act on Processing of Personal Data (Act no. 429 of 31 May 2000), available at: <https://www.retsinformation.dk/forms/r0710.aspx?id=828> (date accessed 10 October 2011).

³ Act on the European Convention on Human Rights (Act no. 250 of 29 April 1992), available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=59378> (date accessed 10 October 2011).

⁴ The Penal Code (Consolidation Act no. 1062 of 17 November 2011), available at: <https://www.retsinformation.dk/forms/r0710.aspx?id=138671> (date accessed 24 December 2011).

Danish law specifies restrictions to freedom of expression in a number of areas. In addition to the provisions covering State secrets in chapter 12, chapter 27 of the Penal Code deals with privacy. Several sections of the Penal Code restrict freedom of expression: hateful utterances based on ‘race, colour, national or ethnic origin, belief or sexual orientation’ are penalised under Section 266b (the so-called racism section); attempts to incite violence or vandalism under Section 266a; and threats under Section 266. Blasphemy for whoever ‘publicly ridicules or insults any in this country legally existing religious communities’ dogmas or worship [...]’ is covered under Section 140; and defamation under Sections 267-274. Public prosecutors can bring charges under Sections 140, 266, 266a and 266b at their own initiative, while the other sections require participation of those affected.

The media generally enjoys very extensive protection of the right to free expression with regard to the aforementioned sections, especially with regard to privacy. However, attempts to restrict the rights of the media and journalists do occur, although the scope has widened in recent years (see section 2.1.4).

2.1.3 The Media liability act

In addition to the general protection of freedom of expression, a number of legal provisions exist that explicitly seek to regulate the way the mass media can exercise the right to freedom of expression. Press law includes a system for attributing responsibility in disputes concerning media content via a statutory regulator, and also extends certain rights of expression and information to the media and journalists.

The primary law in this area is the Media liability act [MLA],⁵ which applies to all publishers of so-called periodical publications (newspapers and magazines), as well as radio and television broadcasters. Online media may be included under the Act if they register as media with the Press Council, via a simple form. In contrast to periodical publications and electronic broadcasters, they are not automatically regulated by MLA.

MLA stipulates that the responsibility for media content resides with the journalist(s) who produce it and the editor who sanctions its publication. The role of editor must be attributed to an identifiable person, and his/her identity clearly stated in every publication. This ensures the transparent attribution of responsibility for content.

Media regulated by MLA enjoy a number of rights aimed at facilitating the work of the media and their democratic role in society.

- MLA grants media professionals the right to protect their sources by granting them impunity⁶ if they refuse to reveal their sources in court. As online media only need to register with the Press Council to fall under the provisions of

⁵ The Media liability act (Act no. 348 of 6 June 1991, last amended in Consolidation Act no. 85 of 9 February 1998), available at: <https://www.retsinformation.dk/forms/r0710.aspx?id=86861> (date accessed 10 October 2011).

⁶ Section 172 of the Administration of Justice Act (Consolidation Act no. 404 of 21 April 2010), available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=138875&exp=1> (date accessed 10 October 2011).

MLA, this exemption from the general duty to give evidence⁷ is also available to them.

- MLA also grants the media certain rights with respect to gathering and storing personal information, for as long as it is part of their journalistic research. This is via the Act on the Information Databases of Mass Media.⁸ This makes it legal for journalists and the media to store certain personal information about other parties in electronic databases, something that is otherwise quite strictly regulated under the Act on Processing of Personal Data.⁹
- The media that are recognised under MLA also have extended rights to access case files from trials, including the right to see files in cases in which they are not themselves a part, and to use restricted information (names, case details) for research, although not for publication. Under some conditions, journalists may also attend judicial acts that are otherwise closed to the public (for details, see Jørgensen, 2007: 264ff).

2.1.4 The influence of ECHR and ECtHR case law on media regulation

ECtHR case law has had a strong influence on the state of the law vis-à-vis freedom of expression in Denmark, not least with regard to defamation.

Before and after the Jersild case

The *Jersild v. Denmark*¹⁰ case signalled a substantial increase in the influence of ECHR on Danish case law concerning freedom of expression (see Mortensen, 2003: 304ff). Before that, especially privacy law granted quite extensive protection in relation to media content. With the *Jersild v. Denmark* case, courts began to incorporate aspects of ECtHR case law on freedom of expression in their rulings.

The pre-existing regulation of freedom of expression was based on a general right to free expression and a number of laws specifying restrictions to this right (see p. 8). The incorporation of ECHR has primarily increased the weight placed on the protection of the media's role as 'public watchdog'. Several cases indicate the increased importance placed on ECtHR case law. An illustrative example is the case¹¹ concerning the garden of a Danish politician. The case centred on the right of a journalist to enter the politician's private property to cover an illegal demonstration taking place there (activists digging up the garden as a symbolic protest). The final verdict (by the Danish Supreme Court) explicitly cites ECtHR's *Jersild* judgement in the decision to sanction the journalists' presence in the private garden (the time, place and manner of speech). The case is relevant because it quite closely resembles another case¹² from just seven years before, but leads to the opposite verdict, thereby overruling existing national case law with reference to ECtHR case law.

⁷ Section 168 of the Administration of Justice Act (Consolidation Act no. 404 of 21 April 2010).

⁸ Act no. 430 of 1 June 1994, available at:

<https://www.retsinformation.dk/Forms/R0710.aspx?id=59461> (date accessed 19 August 2011).

⁹ Act no. 429 of 31 May 2000, available at: <http://retsinformation.w0.dk/Forms/R0710.aspx?id=828> (date accessed 18 August 2011).

¹⁰ ECtHR, *Jersild v. Denmark* (no. 15890/89), 9 September 1993.

¹¹ UfR 1994.988 H.

¹² UfR 1987.934H.

Implementation of a new state of law via case law?

It is important to note the extent to which ECtHR case law has gained importance in relation to national law. Mortensen (2003: 340ff.) explicitly points out that the rulings of the ECtHR have effectively superseded existing national legislation in terms of their relative weight in rulings on freedom of expression.

One important consequence has been the increased protection of freedom of expression, since Danish courts' interpretation of ECtHR rulings indicates that they prioritise freedom of expression higher, not least in relation to privacy and defamation. Rulings still cite relevant Danish law (i.e. the Penal Code), but ECtHR case law is clearly the defining standard.

Another consequence of this, which serves to illustrate the degree to which ECtHR case law supersedes the (so far unchanged) older, national laws, is that it has become increasingly difficult to determine the state of the law in this area. The boundaries for freedom of expression have been extended, but the courts' use of ECtHR case law is not based on a systematic approach, in practice making it difficult to determine the legality of a given use of freedom of expression in advance (Mortensen, 2003: 341-342).

2.2 Media independence and media liability in practice

Several of the aforementioned legal provisions have direct consequences for media independence in practice. From a general and comparative perspective, the Danish media enjoy an extremely high degree of independence and protection vis-à-vis provisions for/restrictions to freedom of expression. Danish courts generally protect the right to free expression, especially in relation to public debate and public figures. In cases concerning liability for racist (or similar) utterances conveyed via the media (especially following the *Jersild v. Denmark* case) the media are not themselves held liable, but rather the people making the utterance; Danish courts have implemented ECtHR case law to a very high degree.

With respect to liability in the areas where the media enjoy special privileges under MLA, the courts generally privilege media independence, and by extension also freedom of expression, over other concerns, i.e. with regard to the protection of sources. Cases are brought against the media and journalists in attempts to force journalists or the media into revealing sources or, in a few instances, handing over unedited tapes or notes. Such cases have been relatively rare, but in recent years a number of important cases have occurred that are related to Danish participation in the wars in Iraq and Afghanistan (see section 4.6).

Cases against journalists also cover other areas, such as when journalists commit crimes in order to demonstrate system failures, for example to show that it is possible to get a passport issued in another person's name. These are discussed in section 4.6.

2.3 Freedom of expression and regulatory practice

The Press Council [*Pressenævnet*]

Cases concerning freedom of expression are regularly brought before Danish courts, especially concerning the way the media handle the privacy of public figures

(politicians, people from showbiz, etc.), as well as cases about defamatory utterances made public via the media. All media content is, in principle, subject to the general legal clauses of the Penal Code regarding defamation, racism, blasphemy, etc. In addition to these general rules, a separate system for regulation of media content exists. The system handles a separate set of disputes concerning media content, with regard to the ethical reporting of news (i.e. the right to reply, etc.). The regulatory instrument for handling these disputes is the Press Council [PC]. In practice, there is some overlap between the issues to be handled by the PC and the issues subject to the Penal Code (i.e. on defamation), but the PC does not rule on violations of anything other than the ethical rules for the press, which consist of a general set of guidelines and the 'case law' of the PC itself (Andersen, 2006: 37). All traditional mass media (newspapers, radio and television) fall under the remit of the PC, including online media that have registered with the PC.

The PC is an independent, public body, the existence of which is stipulated in section 7 of MLA. Since both the existence and the composition of the tribunal are laid down in MLA, the PC must formally be considered a co-regulatory body (several members are stipulated to be representatives of the journalist profession and of media managers/editors (for details, see Søndergaard and Helles, 2010: 21f)). In practice, however, the system has strong elements of self-regulation, since the central task of the PC is to ensure that good press ethics are upheld. The task itself is specified in MLA, but the precise content of the ethical rules is not. The meaning of 'good press ethics' is stipulated as a set of general guidelines in the 1990 report of the Commission on Media Liability, and reprinted in annex three of MLA (Jørgensen, 2010: 49). These guidelines clearly specify that a) good media ethics must take the fundamental importance of freedom of expression into account, so as not to limit the media's opportunity to perform their democratic role; and b) the exact nature of 'good media ethics' is a compromise between the general guidelines and existing editorial standards, as represented via industry members of the PC (Jørgensen, 2010: 49-50). This clearly has a strong component of self-regulation, and also underlines the cautious approach by the State, in terms of interfering with the media. The PC does not have the power to issue fines, but can force media found to have violated the rules to publish a correction, and can also make declarations that censure media found to have violated good press ethics.

The rulings of the PC are not subject to subsequent legal review, but cases brought before the PC can be raised as separate cases before the courts, for example as defamation cases or civil lawsuits.

In a historical context, the PC is also the result of more than 30 years of negotiation between media owners, journalists and the State, which served both principled (introducing self-regulation in the press), and practical requirements (keeping the caseload following a sharply rising supply of media content away from the courts) (Andersen, 2006). This historical perspective, coupled with the general regulatory culture of the Danish civil service, indicates that in terms of media independence the PC should be considered a self-regulatory entity. The activity of the PC is debated relatively frequently. In recent years, the main topic of debate has been whether or not the enforcement measures of the PC are strong enough to ensure the rights of those affected by unethical press coverage. Recent policy debates have suggested that measures should mandate that corrections be published in the same location as the offending story, which has been met with strong reactions from the media, claiming such interference as a violation of press independence. In any case, it

seems clear that the activities of the PC cannot be seen as a limitation to media independence.

The Radio and Television Council

Radio and television is mostly regulated by the independent regulatory authority, the Radio and Television Council, whose tasks are defined in the *Radio and Television Act*, chapter 7.¹³ The Council functions as described in Announcement regarding Procedures for the Radio and Television Council.¹⁴

The Council has a number of assignments (Banke et al., 2004), including to comment on how the PSBs fulfil their obligations and decide whether new services proposed by DR and the TV 2 regional stations can be accepted on the basis of a public value and market impact test. The Council also supervises TV 2/Denmark after it was transformed into a limited company. Moreover, the Council handles tenders and issues licences for the distribution of digital programmes, licences for digital terrestrial television, for nationwide radio channels and for local radio channels, and permits for satellite or cable television channels. The Council also grants subsidies for non-commercial local radio and non-commercial television in MUX 1. Moreover, the Council takes decisions on questions regarding the placement, identification and number of commercials and in cases regarding sponsorship and product placement.

The invention of an independent regulatory authority, instead of letting the ministries take care of regulation, is relatively new in Denmark. The Radio and Television Council emerged in 2001 for several reasons, which probably included the need to emphasise regulation's political independence as regulation increasingly became involved in tenders and licensing. The independence of the Council is a major characteristic, which is emphasised by the fact that the Council's decisions cannot be appealed to other administrative authorities. The Minister of Culture appoints the members of the Council, but they do not refer to the minister in any sense. The members represent various types of expertise, with the exception of a representative of a body of listeners' and viewers' associations. The principle of using experts rather than representatives is based on the need to have sufficient knowledge to make decisions within an increasingly complex area, and also to maintain independence in relation to the political system (including the ministries), as well as the media industry.

When it comes to the media, the independence of the regulatory authorities is considered to be important. Independent regulation based on legal norms contributes to media independence in as far as the regulator rejects attempts at political pressure and pressure from the media industry. The members of the Radio and Television Council also stress the importance of independence,¹⁵ and the Council appears to be generally respected by the media and within government. Attempts from third parties

¹³ The Radio and Television Act (Consolidation Act no. 988 of 6 October 2011), available at: <https://www.retsinformation.dk/forms/R0710.aspx?id=138757> (date accessed 9 December 2011).

¹⁴ BEK 199, 09/03/211.

¹⁵ Interview with Michael Christiansen, the Chairman of the Radio and Television Council, by Henrik Søndergaard, Copenhagen 22 September 2011; and interview with member of the Council Jan Schanz Chrisensen, by Henrik Søndergaard, Copenhagen 29 September 2011.

to intervene in the decisions made by the Council are rare,¹⁶ although in principle the Council can make decisions that do not match with what the government probably would have wanted. In principle, the independence of the Radio and Television Council might be compromised by the fact that the secretariat that services the Council and prepares the files is an agency of the Ministry of Culture. The civil servants working for the Radio and Television Council also work for the Ministry of Culture. Even though this might affect the independence of the Council, it presents the advantage that the civil servants are well informed about political issues.

The Radio and Television Council is certainly aware that its decisions can have an impact on the freedom of expression,¹⁷ and the Council is generally careful when it comes to closing down radio or television stations that break the law, as this represents a very radical measure with regard to freedom of expression. Although the Radio and Television Council has the authority to withdraw radio and television licences, it only uses this power in cases where media legislation has been violated in several instances.

The Boards of DR and TV 2

The public service broadcasters DR, TV 2/Denmark and the regional TV 2 stations are independent organisations that operate without political interference. The government (the Minister of Culture) cannot instruct the public broadcasters, and can only exert influence via the public service contracts (distribution permit regarding TV 2/Denmark); via the appointment of the members of the boards of these institutions; and via the assignment of their finances (licence fees regarding DR and the regional TV 2 stations, and subscription fees regarding TV 2/Denmark). The Boards play a very important role with regard to the independence of the public broadcasters, as they are responsible for the fulfilment of the requirements of public service contracts. Each year they are required to draft a report regarding the PSBs' programmes that is submitted to the Radio and Television Council. The Boards are also responsible for appointing the management of the PSBs. Within DR and TV 2, they also appoint the internal media ombudsman.

The Board of DR has generally been more disputed than the boards of the regional TV 2 stations and TV 2/Denmark, probably because the Board of DR is slightly more political in its nature than the other boards. The Minister of Culture appoints the members of the Board of TV 2, who are required to represent a number of professional qualities. The members of the Board of DR are also required to hold professional expertise, but as they are partly appointed by the political parties in Parliament the Board is to some extent oriented more towards the political system, even though politicians may not be appointed to the Board. For years it has been discussed whether or not the political parties should have this access to appoint members of the Board of DR, since this would make the Board less politically independent, but on the other hand would serve as a guarantee against more direct government influence.

¹⁶ Interview with Christian Scherfig, the Chairman of the Radio and Television Council, by Henrik Søndergaard, Copenhagen 22 September 2011.

¹⁷ Interview with Christian Scherfig, Chairman of the Radio and Television Council, by Henrik Søndergaard, Copenhagen, 10 October 2011.

One of the challenges regarding the Board of DR has been to define the responsibilities of the Board in relation to DR's management (Nissen, 2007). The Radio and Television Act states that the Board of DR holds the overall responsibility for DR's programmes, while the director general is responsible for the day-to-day DR programmes. However, it is disputed whether the Board also has the right to discuss particular programmes, as this is regarded to be very sensitive when it comes to independence. The relationship between the Board and the management has also been debated, partly because the Board is very much dependent on the information it receives from the management, so that it can be difficult for the Board to have an independent view of DR's operations. The current Chairman of the Board of DR considers the close relationship between management and the Board to be important, as it guarantees the information required for the Board to operate professionally.¹⁸

The relationship between the government and the Boards of the PSBs is a sensitive issue, as in principle any such contact should be avoided, in order to prevent political interference. A former director general has described how a former Chairman of the Board of DR was closely allied with the then Minister of Culture (Nissen, 2007). The current Chairman of the Board emphasises that there is no contact between himself and the Minister of Culture and considers the independence from politics to be vital to maintaining DR's role as an independent institution.¹⁹ It is, however, important to note that the appointment of the Chairman is the sole responsibility of the Minister of Culture, and this, of course, opens an opportunity for political influence. Once the Chairman is appointed the opportunities for government influence are limited, as the refusal of influence is then a matter of the personal integrity of the members of the Board. This again points to the importance of the appointment of the members of the Board. No matter how carefully members are appointed, however, there is a risk of some of them misusing their position in order to raise party political issues or personal idiosyncrasies.

The government can also influence the PSBs via their finances. For many years, the determination of the level of licence fees has been a key steering instrument for the government. The funding via licence fees is part of the public service contracts, which are based on four-year political agreements. It is, however, not only the overall amount of licence fee money that is assigned in the media agreements, but also the funding of a number of particular programme tasks. This means that the politicians involved in the formulation of the public service contracts do have a very direct influence on various elements of the programmes. This is, of course, not unproblematic from a media independence perspective, as it limits the PSBs' editorial independence (for example the allocation of a certain amount of money for a specific programme).²⁰

¹⁸ Interview with Chairman of the Board of DR, Michael Christiansen, by Henrik Søndergaard, Copenhagen 09.06.2011.

¹⁹ Ibid.

²⁰ For instance, the political parties behind the current media agreement gave DR a substantive amount of money earmarked for the production of a drama series on Danish history Kulturministeriet 2010b. Fokus på kvalitet og mangfoldighed. Mediepolitisk aftale for 2011-2014. København: Kulturministeriet.

Data protection

The Danish Data Protection Agency [DPA] is the supervisory authority with regard to personal information, including the registration, storage and communication of personal information. The DPA acts on the basis of the Act on Processing of Personal Data,²¹ which grants extensive protection to citizens with regard to personal information, including the publication of photographs of identifiable individuals, defamatory utterances made in private, etc. The DPA is important with respect to the discussion of freedom of expression, especially with regard to online media.

As stated in section 2.1, the media that fall under MLA have extended privileges when it comes to storing information for the purposes of journalistic research, just as the media traditionally enjoy an extensive right to free expression in public debates.

The online media must register with the PC in order to obtain legal status with reference to MLA. This poses problems both for them and for freelancers working on their own, unless they have an agreement with a recognised media during their research. The problem is that until the time of registration the publication of material online falls under the Personal Data Act, which is quite restrictive. Since the practice of registering with the PC is not yet widespread in the online community, people (for example someone assuming the role of citizen journalist) will be subject to the more restrictive provisions of the Personal Data Act. Section 2 of the Personal Data Act states that the rules regarding freedom of expression supersede the rules of the Personal Data Act. This is also reflected in the rulings of the DPA, which show that online utterances with a wider public relevance are allowed, even if they violate the normal provisions of the Personal Data Act (for example publishing certain private information about someone without their consent online, etc.) (Jørgensen, 2007: 63-65).

Failure to register with the PC, however, may put freelancers, online media and citizen journalists at a distinct disadvantage, especially with regard to their electronic storage of research data that includes personal information, and their liability if they wish to protect sources.

2.4 The influence of new media on media policy

The possibility for online media to register with the PC, as described above, represents a key way in which the regulatory framework for the media has been extended to include new media. This development means that an important goal of the establishment of the PC in the 1990s, namely to extend the ethical system for the press to all media types, has been upheld, even if the practice is not yet widespread in the online world.

Another, more profound, influence of digitisation has been the challenge to the media support system. The old system primarily used metrics based on sales and distribution as the basis for allocating support - a system which everybody today acknowledges is obsolete. The search for a replacement has involved proposals for systems based on content-based metrics, and although this suggestion (see section 3.3.2) was rejected, it is clear that the advent of digitisation has created a whole series

²¹ Act no. 429 of 31 May 2000, available at: <http://retsinformation.w0.dk/Forms/R0710.aspx?id=828> (date accessed 18 August 2011).

of new dilemmas, which invariably involve questions about media independence in crucial ways.

3. The structure of the media market

As stated in chapters one and two, concern for the diversity of media and content is a key policy driver in Danish media policy. Without strong public support for the media, the small market for Danish-language media would in all likelihood be monopolised by very few, strong players. This would lead a small circle of people to have a politically unacceptable level of control over public debate and cultural life in general. This is a fact that is clearly recognised in media policy, and its prevention is often explicated as a clear goal of structural regulatory policy, together with a concern for the need for Danish-language media content as a key element in developing and maintaining social cohesion. Due to the strong significance of media support, some of the most critical and far-reaching decisions regarding media independence made under the Danish media policy therefore belong in the area of structural regulation. Also, in the Danish system legislators have significant influence on the entire media market via their control of PSBs (see section 3.1.2). Since both elements (the activities of PSBs and the system for allocating media support) are presently undergoing important changes as a consequence of digitisation, new regulatory structures are being forged which are not necessarily neutral with respect to media independence. Digitisation has meant that previously separate sectors of the media market have come into much closer contact, establishing new tensions, for example between the online media run by private newspapers and the websites of PSBs. These tensions also emerge as specific topics in the media policy debate.

The rest of this chapter is devoted to an explication of the dynamics that influence current policy developments. The chapter begins with a presentation of the normal media policy cycle, and discusses the opportunities for the different stakeholders to be heard and to influence the process. The most recent media policy agreement is applied as an example to examine the relative influence of the different stakeholders. The following section focuses on the process of re-designing the support system for the press, and the particular types of problems this poses in terms of media independence. The last section of the chapter reveals the significance of competition law for the media sector, and uses the EU trials and trials brought by competitors against the PSB TV2 as examples of the influence of EU law on structural regulation.

3.1 The policy process

3.1.1 Mainstream media policy

PSBs play a central role in the Danish media market; they account for most of the time spent on radio and television use (about 75% and 65%, respectively), and therefore also command a central position in the Danes' overall media consumption patterns (Schrøder, 2010). This, in turn, means that the regulation of PSBs has a direct effect on the market opportunities (or lack thereof) for private media operators. As a result of digitisation and the spread of the Internet, new types of stakeholders are becoming more dependent on the regulation of PSBs than they were before. Changes in the remit of PSBs no longer solely affect private broadcasters. Since PSBs began publishing news online, newspapers have become more dependent on the regulation of PSB activities. The influence of media regulation not only affects existing market segments, but also the perspectives for developing new services and business areas, for example in the case of newspaper houses that seek to compensate for circulation

losses by transforming themselves into media houses that publish printed news, television and radio online.

The tightly knit character of the small Danish media market is not new, and the interest in the regulation of PSBs goes back many years. The historical development of mainstream media policy debates reflects the concern for the division of the market between public and private media. Right-wing politicians and the industry have traditionally argued for PSBs to be allocated a narrower role, while the centre-left parties and PSBs have sought to resist attempts to restrict PSBs, arguing, among other things, that the quality of PSB content is better than could be provided by the free market (a view which finds some support in research, see Curran et al., 2009). It is important to note, however, that even if right-wing politicians are in some ways opposed to large PSBs, so far the overall consensus has been in favour of retaining an extensive PSB presence in the market. On the other hand, another strand of media policy development has been aimed at deregulation, not least in the areas of advertising and the regulation of local media.

3.1.2 The normal media policy cycle

Media policy is the responsibility of the Minister of Culture, who formally initiates negotiations and proposes legislation and regulatory statutes in the media field.

Media policy agreements

Since the 1990s, the media policy process has been structured around the so-called media policy agreements (*medieaftaler*), which are concluded by the political parties in government (historically, Danish governments have mostly been multi-party coalitions, often relying on parties outside government for their parliamentary majority). The policy agreements (which are used across various regulatory domains) concerning the media have often been broadly based, and have also included parties from the opposition.

The media policy agreements lay down policy goals for four-year periods. They cover the overall direction of media policy and specify reforms to the media system that must be initiated or completed during the agreement period. They also specify (changes to) the guidelines for PSBs and the level of funding they shall be allocated via the media licence fee system (for details, see Søndergaard and Helles, 2010: 11).

Agreements are binding for the parties involved, also across elections, unless the parties behind an agreement can no longer muster a parliamentary majority between them, in which case a new agreement may be negotiated. If changes are required to be made to a current agreement, the negotiation of a supplementary agreement (*tillægsaftale*) is required.

The rationale behind the agreement system, which is informal and depends on the willingness of the political parties to honour it, is to stabilise the political decision-making process in complex regulatory domains, and to signal to stakeholders (in this case the media) what their working conditions will most likely be for the foreseeable future. An important element of the informal norms of the agreement system is that agreements include the agreement text (Frandsen, 2008: 127), as well as the laws that are based on it and the documents used in the negotiations. This gives agreements a

comprehensive character, and often makes the negotiation of supplementary agreements difficult.

The agreements are generally considered useful in the media area, since they make it possible to achieve a more comprehensive overview of the entire policy area in a complex and technologically dependent context. This enables policy-makers to avoid (some of the) unforeseen consequences of regulation that would apply if the different regulatory sub-domains were dealt with independently. Agreements are sometimes criticised on the basis of the informal nature of the system, which means that negotiations are seldom open to the public.

3.1.3 The influence of various stakeholders

The negotiation of a new agreement typically begins about one year before the existing agreement ends. Various organised stakeholders in the media field (media organisations, industrial organisation and NGOs) present their ideas for the coming agreement, requirements for reforms, etc. The stakeholders with most clout arrange conferences and publish booklets and reports aimed at the political parties and opinion-makers in order to influence the agenda-setting process. Some stakeholders manage to set up informal meetings with the policy spokespersons of (some of) the political parties and/or the Minister of Culture. Sometimes the Minister of Culture invites stakeholders to meetings or public hearings in order to gain a more comprehensive overview of the situation, especially if more extensive reforms are to be adopted.

The second step involves the formulation of an agreement proposal, which is prepared by the Ministry of Culture, and confirmed by the media policy spokespersons of the government parties. The proposal forms the basis for negotiations and, in order to make negotiations run more smoothly, is not normally released to the public.

The third step comprises the actual negotiations between the Minister of Culture and the spokespersons from the political parties. The negotiations are normally kept secret, in order to minimise outside pressure, although participants may confer with outside stakeholders during the negotiations (Frandsen, 2008: 49ff.). The most important aspect of the negotiation process is the number of parties that participate in the entire process and the final agreement. Due to the complicated nature of the media field, and also in part due to the general political culture in Denmark, governments normally seek to achieve consensus on an agreement, although historically this has not always been possible (Frandsen, 2006: 182ff.).

The core elements of the media agreement negotiations are normally the negotiation of new public service contracts (see also section 4.5) for the PSBs: DR and the regional stations under TV 2. The contracts are the cornerstone of the political steering of PSBs, and stipulate relatively detailed requirements regarding programmes and content. As mentioned above, the contracts also specify the level of funding that will be made available via the media licence fee.

Once an agreement has been concluded the necessary legislation is drafted or reforms are implemented via bylaws. In preparing the legal reforms, draft proposals are presented to the parties to the agreement so as to ensure consensus on the formulation of the legal acts vis-à-vis the goals set out in the agreement. Before a bill is presented in parliament, it is subject to public hearing, in order to take stakeholders'

possible objections into consideration. When the current media law was last revised in 2010 more than 100 responses were sent in by a variety of stakeholders.

When legal acts are part of detailed agreements, as it is often the case with media agreements, the process of consultation and public debate seldom leads to substantial revisions, since the agreement text specifies the intent and content of the reforms in a relatively detailed way. In view of the agreement negotiation process, new bills are guaranteed a majority in parliament, so that even though public consultation is often part of the legislative process, substantial changes to the bill are rare at this level.

If the negotiations concern topics that require further investigation before a decision can be made, the agreement can prescribe initiatives for further investigation. This was the case when a committee was set up to formulate ideas for new ways of regulating State subsidies to the press (see also section 3.3).

3.1.4 How influence is achieved

The initial agenda-setting process leading up to an agreement process is the central phase during which at least five groups of stakeholders (in addition to the political parties) typically seek influence: the media themselves, media business organisations, media workers' organisations, NGOs and general business organisations (for details, see Søndergaard and Helles, 2010: 15ff). Media researchers generally do not have any great influence on media policy in Denmark.

Although the precise level of influence that is gained by central stakeholders is difficult to determine, our interviews suggest²² that it is much easier for strong stakeholders to influence the process. This means that, among the media, DR and TV2 have significant influence, together with the Confederation of Danish Industry (DI), the Danish Newspaper Publishers' Organisation and the Danish Union of Journalists. Examples of less influential stakeholders are the Association of Film Directors and the New Public Service Council (*Det Ny Public Service Råd*), a policy-oriented NGO that defends the preservation of strong public service broadcasting.

From a comparative perspective, the type of influence that strong players exert must be weighed against the low tolerance of corruption and clandestine decision-making that characterises Scandinavian societies (see Transparency International, 2010). Although strong networks of interests and contacts obviously exist between the political elite and senior media professionals, there is very little tolerance for trading of positive news coverage in exchange for influence on the policy process. In 2002 the CEO and editor-in-chief of the right-of-centre newspaper *Berlingske Tidende*, Karsten Madsen, wrote several letters to the then newly appointed Prime Minister, Anders Fogh Rasmussen, declaring his enthusiastic support for the new government, and his willingness to defend government policy. (The editor was himself a member of the same party as the new Prime Minister.) The story erupted into a minor scandal not least, presumably, because it revealed how close the relationship between political commentators and politicians may be - something that cannot easily be deduced from reading political commentary (Kjær, 2003).

²² Interview with Michael Christiansen, Chairman of the Board of DR, by Henrik Søndergaard, Copenhagen 09.06.2011 and interview with Søs Holmdal, consultant at DR, by Henrik Søndergaard, Copenhagen 09.06.2011.

Another important observation from the interviews is that influence is not only exerted via the statement of interests and ideas, but also via the supply of information. The media field is technologically and organisationally complex, and often the spokespersons from the political parties are not media experts, and do not stay in the post long enough to accumulate experience. The process can be described as a form of exchange whereby information on media matters is traded for influence on the policy process (see also Frankel and Højbjerg, 2010).

3.1.5 The 2010 media agreement

Not all attempts at gaining influence are made public, and the combined effect of these attempts is hard to determine. Frandsen (Frandsen, 2008: 49ff) states that personal relationships and trust are important, but also maintains that the exchange of information is an important element. In the latter respect, organisational stakeholders with direct access to business information and expertise have a clear advantage. Although the content of stakeholders' publications obviously reflects particular viewpoints and interests, the general quality of information is high and a useful element in the negotiations.

As a means to gauge their level of influence, the content of materials published by major stakeholders prior to the 2010 media agreement has been compared to the major policy outcomes of the agreement.

Four policy dimensions emerge as central:

1. The role of DR on new platforms, the idea of a value test of new services, the amount of outsourcing of programme production and the size of licence fee funding.
2. The continued existence and size of the public service fund to finance the outsourcing of the production of certain types of programmes for commercial channels.
3. The organisation of radio channels.
4. The much debated issue of rearranging the press subsidy system.

Not all of the stakeholders deal with these issues, but most of them do, and in the final negotiations these topics did constitute the main issues. The question regarding the press subsidy system was not dealt with in detail, as it was decided to make further investigations before taking a decision.

Regarding DR and the definition of public service broadcasting, there were two different positions among the stakeholders. DR and TV 2 defended their role as PSBs, yet while TV 2 primarily argued for sufficient funding and more liberal regulation in terms of product placement and advertisement, DR stressed the need to operate more freely on different media platforms and to benefit from an increase in licence fees. DR and public service broadcasting was supported by the media user associations and by the Danish Union of Journalists, but also by film producers and the parties forming the opposition in parliament at the time. A number of stakeholders, in particular the Confederation of Danish Industry (DI) and the right-of-centre Liberal Party (*Venstre*), argued in favour of restricting the scope of public service broadcasting; for the introduction of a new public value and market impact assessment; for a narrow definition of the public service remit; and for outsourcing DR's programme production to private companies.

Compared to the actual result of the agreement, however, it is clear that even though the stakeholders with close political ties to the right-of-centre parties in government made very specific and ideologically compatible suggestions, the resulting media policy agreement did not match them particularly well. The establishment of a new licence-fee funded, but privately run, radio station (which eventually became the Radio 24Syv [24Seven] station) was agreed (see section 3.2.3). Even more surprisingly, the renewed contract between DR and the State prescribed that the station continue to pursue public service activities across various platforms, including by publishing content such as news and entertainment online. This latter fact is consistent with the two hypotheses stated above, namely: 1) that the commitment to pluralism runs deep and across the political spectrum (and is manifested as support for PSB); and its corollary 2) that PSBs are normally allowed stronger influence on the negotiation of media agreements than most other stakeholders. The only element to show that the agreement originated from a right-of-centre government was the introduction of a public-service-value test of new initiatives. The fact that the centre-left government coalition that took office in September 2011 has so far chosen to maintain the agreement without major alterations, even though the parliamentary majority has shifted, and they are not themselves part of the agreement, also signals the relative political neutrality of the deal.

3.2 Media ownership structures in Denmark

3.2.1 The printed press

Denmark differs from other Scandinavian countries in that it has three major national dailies, rather than just one. Berlingske Media publishes *Berlingske*,²³ and JP/Politikens Hus publishes *Politiken* and *Jyllands-Posten*. The two companies also each publish a national tabloid paper: *BT* (Berlingske Media) and *Ekstra Bladet* (JP/Politiken). The extensive system of media support obviously plays a large role in this. The global financial crisis of 2008, which succeeded a period of hard struggle for market shares during the 1990s and 2000s (dubbed ‘The Newspaper War’ Minke, 2008), would have cost several titles their lives, had it not been for State money.

Historically, ownership has been national and quite diverse, with many papers being run as family businesses or dedicated foundations or consortia – delivering ‘[...] public service for private money’ (Lund, 2001). Mecom now owns the largest company, Berlingske Media, while JP/Politikens is jointly owned by a foundation. A number of smaller, regional media organisations publish regional and local papers around the country, some of which have dominant shares of local newspaper circulation. The decentralised ownership structure, coupled with the strong regard for publicist values (i.e. editorial independence), which pervades the newspaper industry in Denmark, has historically been in favour of independent reporting and media independence generally.

In terms of ownership, the most important event in recent history was the 2003 merger between Jyllands-Posten A/S and Politikens Hus, the second and third largest newspaper houses at the time. Due to the two newspapers’ very different target groups, the move led to the consolidation of a large share of the market for national

²³ Until 2011 the paper was called *Berlingske Tidende*.

dailies. As a logical (if surprising) consequence of events in the newspaper war, the merger was just one example of a series of mergers and acquisitions, primarily of local and regional papers, by the two national giants. The result has been a strong increase in ownership concentration. This has taken place in a newspaper market that historically has been characterised by a relatively high degree of pluralism in ownership, in a regulatory environment with no special regulation of media ownership (see section 3.4). Concerns have been raised as to whether this poses a problem in terms of editorial independence, but so far no substantial research has been done on the issue. In debates it is often pointed out, however, that even if concentration is growing, the majority of newspapers are still owned by dedicated foundations and consortia. This is assumed to diminish the threat of interference with editorial decisions based on corporate interests, as the core values of owners are essentially the same as those of editors and journalists (but see section 3.3.4 for a discussion of potential problems regarding access to the market).

Despite recent changes in ownership, no newspaper mergers or acquisitions have so far been the subject of review by the Danish Competition and Consumer Authority (*Konkurrence- og Forbrugerstyrelsen*). This is because the market diversity has been deemed to be sufficient, and probably also because the market of a local paper is defined as being different from that of a major national paper wishing to buy it.²⁴ It has been argued, however, that a take-over between the two giants would have to be reviewed by the competition authorities, and that this might result in negative or only partial acceptance of the merger, requiring parts of the resulting company to be sold off (Mediawatch, 2011).

3.2.2 Television

Television in Denmark has a dual or mixed structure, since public service channels coexist with a number of commercial broadcasters. Originally, television emerged as an extension of radio, and from 1951 to 1988 the public service broadcaster, DR, had a *de facto* monopoly on nationwide television broadcasting. In 1988, DR was supplemented by a new public service broadcaster, TV 2/Denmark, and by a number of regional public service stations (TV 2 regional stations). Commercial television emerged slowly from 1988 onwards, run mainly by two companies, Viasat and SBS, both of which operate under British licences. At the beginning Viasat's channels (TV 3 and 3+) were fully funded by advertising, but during the last decade they have become more dependent on subscription fees. SBS' television channels are also funded by a mix of subscription fees and advertising (Søndergaard and Helles, 2010: 10).

DR operates six public service television channels, while TV 2 has one public service channel (TV 2) and five other channels. The regional TV 2 stations transmit some of their programmes in the TV 2/Denmark schedule, but each regional station also operates a regional channel of its own. Viasat runs three Danish channels and seven film channels of its own and distributes a huge number of other channels via satellite, while SBS has four channels. TV 2/Denmark and Viasat together own a sports channel (TV 2 Sport).

²⁴ Interview with anonymous competition authority civil servant by Rasmus Helles, 21 August 2011.

Besides the ‘big four’ (DR, TV 2, Viasat and SBS), there are only few other players, among them Canal 9, which is owned by Bonnier. They all have a relatively marginal position in the market. Taken together, Viasat and SBS held a market share of 17% in 2010, while DR and TV 2 together held a market share of 67% (Danmarks Radio, 2011). The Danish television media market does not show a particularly high level of concentration, but at the same time, the dominant players’ positions are so firm that it might be difficult for newcomers to get established.

One of the striking features of Danish television is that only the public broadcasters (DR and TV 2) are actually Danish, since Viasat and SBS both operate from London in order to avoid the relatively strict Danish regulation. This means that SBS and Viasat are not subject to Danish jurisdiction with regard to the Media liability act, but also in terms of the regulation of advertising. This gives them a financial advantage compared to TV 2. The Radio and Television Council has sought to investigate how the question of jurisdiction can be solved (Radio- og TV-nævnet, 2011a). In 2010, it asked the British regulatory authority Ofcom to investigate whether Viasat and SBS should be regarded as Danish channels, since they broadcast Danish programmes that address a Danish audience. In accordance with the Audiovisual Media Services Directive (AVMS), Ofcom concluded that the Danish channels are under British jurisdiction, as the broadcasters have offices in the UK and editorial decisions are taken there. Both Viasat and SBS have refused to accept a request from the Danish Radio and Television Council to voluntarily follow the Danish advertising rules concerning advertising breaks. The conclusion is that the Danish authorities cannot do anything in this case, although it is frustrating from a regulatory perspective.²⁵

3.2.3 Radio

The television market is dominated by public media, and this is even more true of the radio market, since DR’s four FM radio channels (2010) hold a firm market position. In 2010, DR had a 75% (Danmarks Radio, 2011) market share, while commercial radio stations only held marginal shares. The biggest of the commercial channels, Nova FM, held only a 5% market share, which clearly shows a high level of concentration on the radio market. Another private FM channel is Radio 100 FM, which was closed down in 2010, when a new channel, PopFM, took over. In November 2011, a new public service channel, Radio 24Syv, began to broadcast on one of the frequencies previously used by DR. As Radio 24Syv is a talk channel funded by licence fees it will not affect the balance between public and commercial radio, although it is assumed to slightly reduce DR’s market share.

One of the interesting things concerning radio ownership is the amount of cross-ownership: all major radio stations are owned by larger media companies. Radio 24Syv is thus owned partly by the big newspaper company, Berlingske Medier. The same company owns PopFM together with SBS, while SBS together with TV 2 owns Nova FM. So far, none of the major newspaper companies are involved in broadcasting. This situation could change if TV 2 were to be sold to a private company, although it is still very uncertain whether this will happen (cf. section 3.4.1).

²⁵ Interview with Christian Scherfig, Chairman of the Radio and Television Council, by Henrik Søndargaard 10 October 2011.

3.2.4 The television distribution market

During the last decades it has become obvious that the structure of television distribution has a strong impact on media independence and on the freedom of expression, since distribution networks control access to the television audience. Historically, the distribution of radio and television was a matter for the public service broadcaster (DR), but since the 1980s cable and satellite distribution networks have emerged, and today the television distribution market is divided mainly between four companies: YouSee (which is by far the biggest) operates cable networks, and Stofa also runs cable networks, while Canal Digital and Viasat are the major operators of satellite distribution networks. In order to increase competition within the television distribution sector, in 2007 the government decided to give a licence to yet another company, in order to run a digital terrestrial network. In 2008, the Swedish company Boxer was appointed to run a digital terrestrial network that was to be ready for launch when the analogue television network was closed down in 2009. The public service broadcasters run the free digital terrestrial network, Digi-TV, which distributes DR's channels, the regional TV 2 channels, the Parliament channel and the non-commercial channels in Mux 1 (i.e. local television).

The market for television distribution has recently been analysed by the Danish Competition and Consumer Authority, and the political parties behind the current media policy agreement have expressed the need for customers to be able to select the channels they wish to receive in a more flexible way. In its analysis, the Competition and Consumer Authority (Konkurrence- og Forbrugerstyrelsen, 2011a) came to the conclusion that free choice of individual television channels is unlikely to result from the market itself, but requires legislation. So far, no decision has been taken, but YouSee, as the major operator, has warned that any new regulation that allows for individual choice of channels will increase costs²⁶ and thus work contrary to the intentions of the politicians behind the media policy agreement.

An important regulatory tool regarding the public's access to television channels is the 'must-carry rules' that state which channels television distribution networks are required to distribute (Jakobsen, 2004: 188). From 2012, four of DR's channels (DR1, DR2, DR Ramasjang (a children's channel) and DR K), the regional TV 2 channels and a parliamentary channel have 'must-carry' privileges, while the most popular Danish public service channel, TV 2/Denmark, is no longer a 'must-carry' channel, as it is now partly financed by subscription fees. The reason that TV 2 has lost its 'must-carry' position is that TV 2 is now funded by subscription fees, and can therefore only be distributed to viewers that wish to subscribe to it. If TV 2 were to uphold its former 'must-carry' privilege, it would by default force all viewers to be subscribers, which would be difficult to defend. 'Must-carry' rules are not generally related to the issue of media independence, although they naturally guarantee that public service channels are not excluded from the Danish distribution networks. The major purpose of the 'must-carry' rules is to avoid excluding anyone from licence-fee funded public service channels.

The distribution networks are mainly commercial companies and, apart from Boxer, the commercial networks do not have any cultural obligations with regard to channel diversity. When Boxer gained its operation licence, it was part of the tender requirements that it fulfilled certain obligations regarding channel packaging and

²⁶ Interview with Nils Breining, Director of YouSee, Copenhagen, 30 September 2011.

diversity of channels. As the dominant player, YouSee voluntarily seeks to take certain cultural considerations into account, as the company favours particular channels (Danish language channels, neighbouring country channels, etc.).²⁷ Due to its size as a dominant player, YouSee has a huge influence on which Danish subscription channels will have a chance of surviving financially in the Danish television market. If a channel is accepted by the management of YouSee for inclusion in YouSee's most popular programme packages, it is guaranteed a high and stable income, which is usually decisive to these particular channels' existence. YouSee's role as a 'gatekeeper' that decides which channels can be distributed in particular programme packages has an obvious impact on media independence, since channels that are financially dependent on subscription fees have to adapt to what the distribution company finds most convenient. The distribution capacity for the most attractive programme packages is, however, limited, and the distribution company has to take a decision on which channels are to be included. In a number of instances YouSee has been involved in negotiations with television stations that wish to launch new channels and have made their own wishes clear regarding which types of channels would be most attractive for the network to distribute.

3.2.5 New media

The Internet is a chaotic and diverse place which offers many different types of content, but in terms of *media content* of the kind that is focal to this report (i.e. news and debate), the portion of the Internet used by Danes is in fact relatively small. The online counterparts of the traditional media players (newspapers and PSBs) draw most of the traffic (Helles, forthcoming). Only few sites (for example altinget.dk and dk-nyt.dk) have managed to establish and sustain a viable online production of news based on journalistic criteria. The central players in the existing landscape of online news production so far reside in traditional media houses. One reason for this might be that the level of journalistic professionalism that users have grown accustomed to is difficult to achieve; something often overlooked in debates about citizen journalism. Another very concrete reason is that media support has not been available for online media initiatives so far, putting them at a distinct disadvantage with regard to market entry and competition with the online production of established media houses. This problem exemplifies the tension between the support for pluralism (embodied in the support system for the press) and the general issue of media independence described in the introductory chapter of this report.

3.3 Media support

Media support takes several forms in Denmark. The system has developed over many years (Lund and Lindskow, 2011), and involves both direct and indirect support arrangements.

²⁷ Ibid.

3.3.1 The existing system of media support for the press

Just as the traditional television and radio licence was changed to a media licence²⁸ in the light of technological developments, the spread of the Internet has also led regulators to realise the need for a reform of the support system for private media. The aim is to arrive at a (more) platform-independent model for the allocation of support.

The existing media support system allocates about €206m²⁹ per year to print media (all data in this section from Rambøll Management, 2009: 3ff). There are two types of support, each with a number of allocation systems:

Indirect support:

- Print media are exempt from VAT. The precise value of this arrangement is debated (Sepstrup, 2011), but is in any case substantial (the Danish VAT rate is 25%). It is estimated that the State loses about €147m per year due to the exemption.
- There are exemptions for the print media in competition law (Section 6(2)-(2):³⁰ they are allowed to have fixed prices) and in consumer law (Section 6(2)-(7):³¹ they are allowed to make unsolicited phone calls to consumers, to promote subscriptions). The value of these exemptions cannot be estimated precisely, but is not trivial.

An important aspect is that both elements are only available to the print media, which is especially relevant for the VAT exemption, since it represents a substantial value and a competitive advantage for newspapers compared to online-only media.

Direct support:

Direct support includes a number of different mechanisms for allocating various types of support to the print media. The systems below are those that concern news media. Magazine support systems are excluded.

- **Distribution support:** In 2007 the value of distribution support was €52.7m, including magazine support. Distribution support is allocated according to circulation up to a maximum of 7.2m annual copies via subscription (copies beyond this limit cannot receive support). Support may not exceed one third of the total costs associated with the distribution of copies. Distribution support is regulated under the Act on support for the distribution of newspapers.³² Support must be applied for, and is allocated by a co-regulatory, independent board, of which the chairman is appointed by the Minister of Culture and must

²⁸ The media licence covers networked computers capable of streaming online content, cf. Søndergaard, H. & Helles, R. 2010. Background information report. Media policies and regulatory practices in a selected set of European countries, the EU and the Council of Europe: The case of Denmark. Athens: Mediadem.

²⁹ 2007 prices.

³⁰ The Competition Act (Consolidation Act no. 972 of 13 August 2010), available at: <https://www.retsinformation.dk/forms/r0710.aspx?id=132775> (date accessed 3 May 2011).

³¹ Act on consumer agreements (Act no. 451 of 9 June 2004), available at: <https://www.retsinformation.dk/forms/r0710.aspx?id=1843> (date accessed 3 May 2011).

³² Act on support for the distribution of newspapers (Act no. 570 of 9 June 2007), available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=12009> (date accessed 7 July 2011).

be a lawyer. One member must have expertise in business economics, and the Danish Newspaper Publishers' Association, the Danish Union of Journalists and the Association of the Danish Specialised Press each nominate one of the remaining three members.

- The Newspaper Board (*Dagbladsnævnet*) supports the founding of new newspapers, the reorganisation of newspapers in financial difficulties, and the restructuring of newspapers in immediate danger of failing. The 2007 budget was €1.8m, including magazines. The Newspaper Board is regulated under the Act on the Newspaper Board,³³ which is a co-regulatory, independent body under the Ministry of Culture. The Board used to be appointed by the Prime Minister, but was subject to a change of jurisdiction after September 2011, so that the next Board will be appointed by the Minister of Culture. The chairman must be a lawyer with 'considerable expertise in administrative law and have widely recognized professional qualifications. The Chairman shall have no permanent attachment to the State government.' (Section 14). One member is appointed by the Danish Growth Council (a public trade promotion body), and another member by the Danish Council for Independent Research (Humanities). The Danish Newspaper Publishers' Association and the Danish Union of Journalists each appoint one of the last two members.
- Support for newspapers in the Danish-German border region (see section 6.2.2). The 2007 budget was €5.1m.

The composition of the Newspaper Board and the board for distribution support reflects the emphasis on independence, as well as a wish to end some of the problems that characterised the support scheme it replaced, which was based on a mix of private and public funding. The old system was troublesome, especially in relation to the administrative procedures involved in the evaluation of applications, which had to be relatively detailed, but also due to the fact that these administrative procedures were handled by a board with members from competing papers. An important aspect of the regulation by the Newspaper Board is that support is focused on the print media, and support for online activities can only be given insofar as they are a minor aspect of a print medium (*Dagbladsnævnet*, 2009: 8ff).

Media independence and the existing support system

In the existing system, the majority of support (VAT exemption and distribution support) is granted automatically with each copy distributed and sold. In effect, this extends support to any newspaper that can attract readers, narrowing the scope for political interference with editorial independence by leaving the decision to extend support to a given medium to its buyers. While close to ideal from an independence point of view, the system is obviously obsolete due to the ever-tighter integration of different sectors of the media market. It can also be seen to obstruct opportunities for new media based on other platforms, such as the Internet, to gain entry to the market.

³³ Act on the Newspaper Board (Act no. 576 of 24 June 2005), available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=20989> (date accessed 26 October 2011).

3.3.2 The re-regulation of press support

The first step towards the re-regulation of the media support system was the commissioning and completion of an independent review of the entire media support system (Rambøll Management, 2009). The suggested scenario for an integrated system with a platform-neutral support model was rejected politically, apparently due to the (perceived) negative implications of the proposed mechanism for the review of the extent to which newspapers fulfilled the criteria set for receiving support. The report suggested that support should be allocated via boards that should use some form of review of media content as an instrument for allocation of support, i.e. whether the content of a given medium (print or online) fitted certain (broad) criteria for journalistic quality. The Minister of Culture explicitly stated that the solution was ‘[...] against his democratic instincts’ (Lenler, 2011), reflecting a widespread aversion against the potential for censorship that is implicit in regulatory bodies tasked with evaluating the content of the free press.

The second step was the establishment of a new working group tasked with the responsibility for defining new models for a revised system of media support. The work resulted in a report (Dyremose, 2011) that made the central recommendation that support be shifted from the distribution to the production of news. In the current system, about a third of all support to the press is given as grants proportional to the number of copies distributed. In the proposed model, these funds would be transformed into support for journalists’ salaries. It is also suggested to keep the VAT exemption in place for newspaper production.

Looking back at the existing support system, it is clear that this shift from distribution to production support retains a number of positive media independence features originating from the old system, thereby avoiding the creation of boards that might be used as censorship devices. The shift to support for editorial expenses based on relatively broad assessment criteria retains independence and avoids opening up opportunities for political interference. It also has the potential to ease the constraints on market entry imposed by the old, platform-specific system, although the extent to which these potentials can be realised is subject to debate: a number of concerns have been voiced in relation to the newly proposed system for media support. Some have pointed out that the new system may lead to increased market concentration, as it will give the major players in the market a larger share of support funds if the scheme is introduced in the form it has been proposed. It has also been argued that since the stipulated system operates with a minimum editorial staff size of 5 full time employees, it discriminates against smaller media and monopolises support around larger media. In a recent hearing answer, the Competition and Consumer Authority has voiced concerns that the proposed model may lead to greater concentration in the media market (Konkurrence- og Forbrugerstyrelsen, 2011b).

3.3.3 Newspapers: production without readers

From a democratic point of view, the new model also tackles the perhaps most pressing problem, namely the fact that, although newspapers are rapidly losing ground to other types of media, the newspapers still supply as much as 71% of all original news content (Lund and Willig, 2009a). The majority of journalists still work in media houses whose finances still depend on the size of the editions sold, as well as advertising as an important part of their revenue (Minke, 2009: 20). Other media feed

off the output of the newsrooms of the established newspapers. As the newspapers are increasingly struggling, society may gradually be losing its supply of news. While it certainly remains debatable whether the proposed model allocates enough support to new media, the switch to a model that support journalistic production, rather than distribution, begins to solve difficult problems.

The transformation of media support to a less platform-specific model will invariably be controversial, since it involves shifting funds between players in the media market. A key risk, obviously, is that some of the established media houses might not survive the transition. At the same time, it is unknown whether the new recipients of support will be able to assume their role, or - more importantly - perform some other, equally valuable function, for example the production of local news in small, rural areas.

3.3.4 Media support between pluralism and freedom of expression

The process surrounding the (re-)negotiation of the media support system has a number of characteristics that are relevant to the main theme of this report. The system is explicitly designed to strengthen pluralism in the media sector, and thus exemplifies one of the core values of Danish media policy.

From a different perspective, it also sheds light on the other dimension, which concerns the freedom of expression. On the one hand, the appointment of committees, public hearings, etc. display a level of transparency and public negotiation of results. On the other hand, and perhaps more importantly, the rejection of the first report on media support undoubtedly reflects a real concern, at the political level, regarding the independence of the press. The same members of the political class who stood to benefit from the creation of a system that could potentially give them serious leverage over news media, by giving them control over content-based assessment criteria, rejected the system out of 'democratic instinct'. They explicitly requested the development of an allocation mechanism based on more objective criteria. This illustrates the fundamental concern for freedom of expression at the political level.

3.4 The influence of competition law on media development

In this section we will discuss the impact of competition law on Danish media policy, and take a closer look at the role played by European competition regulation with regard to Danish television, in particular the plan to privatise TV 2. Competition regulation has an important role to play in endeavours to avoid unlimited media concentration and to ensure that a number of players operate in the market. The aim of competition law is, however, not to ensure media pluralism, but to guarantee that the market operates efficiently, to the benefit to society and consumers. There is no notion of freedom of expression in the Competition Act, which underpins how competition is solely perceived as an economic issue. Nevertheless, on a number of occasions competition law has imposed restrictions on mergers that would have reduced media pluralism. In 2007, for instance, the Competition and Consumer Authority set conditions for accepting a joint venture between TV 2 and Viasat regarding a new sports channel (TV 2 sport).³⁴ As another example, in 2011 the

³⁴Available at: <http://www.kfst.dk/service-menu/publikationer/publikationsarkiv/konkurrenceny/>

Competition and Consumer Authority refused to accept the cable network Sofa's take-over of Canal Digital's cable-TV business.³⁵ The reason for the refusal was that such a merger would reduce competition within the market for cable TV, but it could be argued that a merger between Stofa and parts of Canal Digital would have increased competition, as Sofa would have been better able to compete with the dominant player, YouSee.

As already mentioned, there is no regulation of media ownership under Danish law. However, a number of *ad hoc* media policy decisions have involved a political wish to avoid media concentration. When, for example, an operator of the digital terrestrial television network was selected by tender, the precondition was set that companies involved in broadcasting could not apply. When a licence for nationwide radio was put out to tender in 2011, it was decided that DR could not participate.

In the absence of ownership regulation, competition law and regulation are very important to media development and to some extent also to media politics. The Danish Competition and Consumer Authority is responsible for the executive administration of the Competition Act, while the Competition Council rules in major cases. The Competition Act covers the media, but generally treats them in the same way as any other business. As the Chairman of the Competition Council has stated in an interview, the Council does not include ideological or cultural policy considerations when it considers the media.³⁶ Regarding the media, the Competition Council has issued several rulings concerning major mergers between media companies, the misuse of dominant positions, and other developments that jeopardise free and fair competition. The Competition and Consumer Authority publishes various analyses of the level of competition within various sectors of the Danish market, including the market for sports programmes, the television market (Konkurrencestyrelsen, 2006: 203ff), and the market for cable and satellite television (Konkurrence- og Forbrugerstyrelsen, 2011a). Some of these analyses include suggestions for media policy reforms as a means of improving competition, but the recommendations are not always implemented, partly because the Competition and Consumer Authority usually ignores culture policy considerations. However, as the number of commercial media has increased, the regulation of the market has become more relevant. This also applies to the increased use of tender procedures for the licensing of new radio channels; and it is clear that competition considerations hold a prominent position in the new public value tests to be used for the regulation of public service broadcasting (cf. chapter 4).

One noteworthy tendency arising from the growing importance of market efficiency and competition within media policy is that regulation based on vaguely defined cultural aims seems increasingly inappropriate, since efficient market regulation requires more detailed and more clearly defined objectives. This is one of the reasons that the Danish Competition and Consumer Authority wants the government to have a clearer definition of PSB.

konkurrenzenyt-2007/konkurrenzenyt-nr-2-april-2007/etablering-af-tv2-sport/ (date accessed 27 January 2012).

³⁵ Available at: <http://www.kfst.dk/index.php?id=30249> (date accessed 27 January 2012).

³⁶ Interview with Jan Schanz Christensen, Chairman of the Competition Council, by Henrik Søndergaard, 29 September 2011.

3.4.1 TV 2 and EU regulation

EU competition legislation, and the European Commission's rules regarding State aid for public service broadcasting, have had an enormous impact not only on Danish media development (Mortensen, 2008), but also on the way in which current media policy has evolved. For more than ten years, TV 2 has been one of the most controversial issues of Danish media policy. In 2002, a parliamentary majority decided to privatise TV 2 as soon as possible, but had to realise that such privatisation was far more complicated than foreseen because two London-based broadcasters operating in Denmark (Viasat and SBS) had already in 2000 complained about TV 2 to the European Commission, arguing that TV 2 had received illegal State aid and that the public service mandate was not properly defined. In 2003, the Danish government realised that the State aid issue pending before the Commission would make it impossible to sell TV 2, because no one could know whether TV 2 would be forced to pay back the State aid. On this basis, the government decided to temporarily cancel the privatisation.

In parallel to the complaint to the Commission, in 2000 SBS made a complaint to the Danish Competition and Consumer Authority accusing TV 2 of misusing its dominant position in the advertising market. In 2011, after a number of hearings, the Danish Supreme Court found that TV 2 guilty had violated the competition law. TV 2 is now involved in a High Court actions in which Viasat is demanding very high damages. The proceedings have not been completed, but if TV 2 loses the case, it could be forced to pay more than €50m to Viasat.

In 2004 the European Commission, referring to its *Communication on the application of State aid rules to public service broadcasting* (European Commission, 2001), concluded that TV 2's public service remit was properly defined, but that the station had been overcompensated and therefore had to pay back more than €80m.³⁷ Neither the Danish State nor TV 2 accepted the Commission's ruling. They brought it to the Court of Justice of the European Union, which in 2008 annulled the original decision. In 2011, the Commission issued a new ruling this time stating that TV 2 had not violated European competition law.³⁸ After the original plan to privatise TV 2 was cancelled in 2003, TV 2 ran into serious financial difficulties and had to ask the Commission for approval to receive a State loan by presenting a restructuring plan that, in the long run, would make TV 2 financially stable. The result is that, from 2012, TV 2 will be partly funded by subscription fees as a supplement to its advertising revenue, but at the price of relinquishing its privileged position as a 'must-carry' channel.

Looking at the TV 2 case, it can be noted how European competition law has not only blocked the Danish government's plans to privatise TV 2, but also had a huge influence on the various steps taken by the Danish State to enable TV 2 to survive financially. This is shown by the fact that both the recapitalisation and the reconstruction of the company have been closely coordinated with the Commission. Another important lesson from this case is that the Commission has actually approved the relatively broad definition of the public service mandate, and in this respect the

³⁷ Commission decision of 19 May 2004 on measures implemented by Denmark for TV 2/Denmark, OJ 2006/L 85.

³⁸ State aid: Commission approves aid for Danish public service broadcaster TV2, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/497&type=HTML> (date accessed 27 January 2012).

outcome of the case can be seen as the support of public service media with diverse programming obligations.

So far, the political decision to privatise TV 2 has not been implemented, which clearly demonstrates how European legislation has an impact on national media policy. The conflict between the Danish State and the European Commission can also be seen as a process by which the Danish State came to realise the failures of the past, notably the failure to notify TV 2 to the Commission before it was launched, in line with the treaty requirement. The Amsterdam Treaty, article 88 (3) creates a duty for member states to notify new aid schemes in advance of their implementation, and not to implement such schemes if the Commission disapproves of them.

3.4.2 The broader impact of the EU on Danish media regulation

While the many problems and legal actions regarding TV 2 can be seen as a conflict between national media legislation and European regulation, most requirements stemming from the EU regarding media regulation are endorsed without much debate. The Television without Frontiers Directive has been implemented into Danish law as required, and most of it has been adopted as Danish law relatively easily (Jakobsen, 2004: 280ff). The same applies to the Audiovisual Media Service Directive that was recently implemented in Danish legislation. One of the more problematic principles of the directive concerns jurisdiction, as it gives broadcasters scope to avoid Danish regulation. So far, the Danish regulators have not been able to take further action on the problems it raises with regard to fair competition between TV 2 on the one hand, and the Viasat and SBS channels on the other hand, which profit from being broadcast from the UK.

The tendency to establish independent regulators, instead of direct government control, can also be viewed as an element of the adjustment to EU principles. The Danish Radio and Television Council is an obvious example of such an independent regulatory body. The manner in which public service broadcasting is regulated (via contracts, auditing and public value tests) is also inspired by EU regulation. Generally, EU media policies are in line with a broader tendency to regard the media as part of the market, rather than as being exclusively related to cultural policy.

4. Composition and diversity of media content

Diversity of media output depends on many different factors, but generally the size of a given market and the number of regulatory restraints and/or incentives are important. Even though the Danish media market is particularly small, the diversity of media output is remarkable. There are two public service broadcasters (running more than ten TV-channels), regional and local television stations, six nationwide radio channels and still seven nationwide newspapers. During the last twenty years the online media have expanded dramatically, and almost all 'old' media have their own websites. For a country consisting of five million people, the media is very diverse, although media concentration and mergers have reduced the number of media outlets.

Diversity has primarily expanded within broadcast media, notably television, but also radio, primarily due to the new distribution networks (cable and satellite) established in the 1980s and 1990s, and the advent of digital platforms in the 2000s. Although the proliferation of television channels has not led to a dramatic increase in content diversity, since many channels focus on the same types of programmes (American TV shows and movies), a more plural and diverse television system has emerged (cf. Søndergaard and Helles, 2010). The same could be argued when it comes to radio, although obviously fewer nationwide radio channels are in operation. On the other hand, the number of different newspapers has declined, as well as the numbers sold.

Media subsidies and public media are central elements in the media market, as we have shown. However, the way in which the media system is regulated with regard to media content has a great impact on the nature of the available media supply.

Content regulation is usually seen as one of the strongest types of media regulation, as it relates directly to the nature of the media output, whereas structural regulation has a far more indirect and often less predictable effect on media products. When dealing with content regulation it is relevant to distinguish between *positive* content regulation that stimulates a particular kind of content (for instance impartial news or quality drama); and *negative* content regulation that is aimed at protecting the public from particular types of content (for instance violence or pornography). The main reason for imposing content requirements on the media is the assumption that the media will only produce certain kinds of required content if they are forced to do so. In the same way, undesired content presumably cannot be avoided without legislation.

In principle, content regulation can be seen as potentially harmful to freedom of expression and media independence, as the State obviously exercises some kind of control of media content. However, content regulation may also be regarded as a precondition for the media's cultural and democratic role. In a small country like Denmark, content regulation is of utmost importance, as it guarantees a *diversity* of media output that far exceeds what an unregulated market could deliver. This means that content regulation in Denmark is engaged more with positive requirements of media output than with negative regulation, since only positive regulation leads to diversity, while negative regulation cannot but restrict the scope of output.

Although the potential risk of reducing media independence and freedom of expression cannot be eliminated, the way in which regulation and control is conducted is aimed at reducing the possible harm it may cause. As will be discussed later, the use of independent regulators to handle content regulation diminishes direct State

interference. The way in which the media regulate themselves also makes a contribution.

4.1 Types of content regulation

The press and print media in general are not subject to any kind of content regulation. Content requirements are only found with regard to broadcast media and are seen as one of the defining characteristics of being a PSB. The most important articulation of content requirements within Danish media legislation is found in the Radio and Television Broadcasting Act, section 10. Here it is stated that: ‘The overall public service operations via television, radio, the Internet and the like guarantee the Danish population a broad range of programmes and services including news coverage, enlightenment, education, art and entertainment. The supply of programmes and services shall aim at quality, versatility and pluralism. Within programmes decisive emphasis should be put on guaranteeing freedom of expression and freedom of information. Regarding the dissemination of information emphasis should be put on factuality and impartiality. The overall programming shall guarantee access for the population to important social information and debate. Moreover, particular emphasis has to be put on Danish language and culture. The overall programming shall reflect the scope of cultural and art production, and offer programmes, that reflect the diversity of cultural interests within the Danish society.’³⁹

The content requirements described in the Act give a broad definition of what is meant by public service media as far as content is concerned, but also in relation to their social and cultural role. It is important to note the specific reference to freedom of expression and freedom of information, which are seen as a programming aim of utmost importance.

The requirements are, however, applied differently within the various media. There are thus three different kinds of content regulation in the Danish media system. Firstly, the PSBs (DR, TV2/Denmark and the regional TV 2 stations) are regulated by a public service contract or a broadcasting permit (TV 2/Denmark), which contains comprehensive, detailed content requirements. Secondly, two nationwide (or almost nationwide) privately owned radio channels are regulated via concessions in which certain requirements regarding content are included (Radio24Syv and Nova FM). Finally, local radio and television are subject to content obligations in as far as the broadcasters promised to deliver a particular kind of programming when they applied for a licence.

Among the public service broadcasters, DR is subject by far to the most comprehensive content requirements, as its public service contract (Kulturministeriet, 2010a) includes a huge number of requirements concerning different genres, programmes for specific target groups and event programme quotas for news and the production of television drama. The Radio and Television Broadcasting Act also addresses the content of DR’s programmes and specifies requirements concerning impartiality and balance in news reporting. With regard to TV 2/Denmark, content regulation is formulated in much the same way as in DR’s public service contract, but in the form of a broadcasting permit (licence) which stipulates a number of content

³⁹ The Radio and Television Broadcasting Act (Consolidation Act no. 988 of 6 October 2011), available at: <https://www.retsinformation.dk/forms/R0710.aspx?id=138757> (date accessed 27 January 2012).

obligations that are required be fulfilled.⁴⁰ TV 2 is subject to fewer content requirements than DR, for example no obligations regarding educational programming or programmes for minorities.

Content regulation of the regional TV 2 stations reflects the fact that these stations are primarily obliged to produce regional news, but they are also subject to requirements regarding impartiality and quality in news production.

Among the radio stations granted a concession, Radio24Syv is of particular interest, since the regulation of its content is very detailed and comprehensive. The reason is that Radio24Syv is financed by licence fees, which entails precisely defined content obligations in order to comply with EU State aid regulation. The requirements formulated in the permit granted (Radio- og TV-nævnet, 2011b) concern the amount of new and current affairs programmes, cultural programmes, the amount of Danish music to be played, etc. The content obligations in relation to Nova FM (Radio- og TV-nævnet, 2006) relate solely to news programmes and current affairs magazine programmes in terms of their amount and quality (impartiality, editorial independence). The sixth FM-channel, Pop FM, does not have nationwide coverage and is not required to fulfil any content requirements.

The content regulation of local radio and television has gradually been reduced during the last two decades. However, as the number of radio and television frequencies is limited, licences for local radio and television are assigned in accordance with the principle of versatility. The individual radio or television channel applying for a licence does not have to fulfil any requirements regarding diversity or versatility, but when the Radio and Television Council decides which channels are to have a licence within a given geographical area it considers how the area in question can achieve the widest range of channels.⁴¹ In principle, there are no specific content requirements for local radio and television, but due to the licensing form based on tenders, content can be important if there are more applicants than licences. Geographical areas where only few channels apply for licences, and in which there will thus be no competition for licences, will not be subject to any content regulation.

The overall purpose of the content regulation of PSB and of radio channels with some public service obligations is to increase diversity and pluralism in overall programming. Both diversity and pluralism are regarded as prerequisites for the media to fulfil their cultural and democratic role. This clearly shows that broadcasting, and in particular public service broadcasting, is still seen as a vital part of Danish cultural policy, and that the political wish to create media diversity and pluralism is at least as important as the wish to guarantee media independence.

The important role of the media when it comes to news reporting and the stimulation of public debate is primarily reflected in the requirements for PSBs to be impartial and fair in their news and current affairs programmes. PSBs may not represent any opinion on controversial issues, and any journalist working for a PSB may not express his or her personal opinion on politically sensitive matters. The

⁴⁰ Available at: http://www.kulturministeriet.dk/Documents/Kulturpolitik/medier/TV2/ændret_public_servicetilladelse_TV2.pdf (date accessed 27 January 2012).

⁴¹ Announcement on non-commercial television in MUX 1 (Announcement no. 539 of 11 June 2011), available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=125501> (date accessed 27 January 2012), and Announcement on local radio (Announcement no. 881 of 17 September 2009), available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=126145> (date accessed 27 January 2012).

element of content regulation that concerns pluralism and diversity entails that particular programmes may be biased (although not news broadcasts), and that versatility should be achieved in overall programming. This principle, which since the early 1970s has been sanctioned within Danish public service media, is not undisputed, but so far has guaranteed the opportunity to broadcast politically controversial programmes (Banke et al., 2004: 49f). This is because it represents an important precondition for the breadth and pluralism of programming.

When it comes to programmes relating to general elections and referendums, tighter regulation of balance and impartiality are activated, since all parties participating in a general election have the right to a self-produced party political broadcast (Banke et al., 2004: 53f).

4.2 Media independence and content regulation

In a small language area like Denmark the need for diversity will have some influence on media independence, and the two principles are to some extent in conflict with each other. The media policy goal, then, is to find a balance between freedom and diversity. In order to show how difficult the task of finding such a balance is, we will briefly discuss the main characteristics of the public service contracts that today constitute the main tool for content regulation.

The idea behind steering public service broadcasting via a ‘contract’, instead of by-laws, is to make more explicit and visible to the audience (the licence fee payers) what can be expected from the broadcasters. The contract makes it easier for the audience to evaluate the broadcaster, and also forces the broadcaster to seek more seriously to fulfil what is required of it. Moreover, the public service contracts can be seen as an extension of the principles of New Public Management (NPM) into the realm of the media. In theory, NPM gives the institutions a certain degree of freedom to define their own goals, but at the same time introduces a controlling mechanism, as the institutions have to be accountable. However, in the case of the Danish public service contracts, there has been a tendency towards firmer and more detailed regulation, which means that the government, which in the final analysis draws up the contracts, is engaging relatively directly in programming. The more areas of programming that are included in the contracts, the less is left to the broadcasters to decide, and this cannot but restrict their independence. A former director general of DR regards this tendency with great scepticism. He sees it as an attack on the editorial independence of the broadcaster and thus as a threat to the broadcaster to fulfil its role as a public service.⁴² However, the contracts also present some advantages in relation to media independence, because when they are implemented, they clearly define not only the limitations of what can be broadcast, but also its scope. In other words, they offer the PSB a certain degree of protection against daily interference from politicians, especially since the fulfilment of the contract is evaluated on an annual basis.

In terms of programmes, the contracts can lead to a loss of flexibility, as the resources allocated to the various types of programmes cannot be changed due to unplanned circumstances without breaking the contract. This means that excessively

⁴² Interview with Christian Nissen, former director general of DR, by Henrik Søndergaard and Rasmus Helles, Copenhagen 20 September 2011.

detailed and comprehensive contracts can lead to a loss of independence and to an institutional orientation towards performance indicators, rather than public needs (Søndergaard, 2010). The dilemma of contract-based management is even more obvious when we consider the radio channel granted a concession and paid for by licence fees. Radio 24Syv is so tightly regulated that only one company wanted to apply for the concession when it was announced in 2011. The many obligations that had to be fulfilled made it too unattractive for most of the existing media. The government's argument was, however, that the detailed requirements were needed in order to comply with EU rules regarding public service and State aid. In other words, to ensure a precise definition of the public service remit and the proportionality between funding and programme obligations.

Both the contract-based management of PSB and the invention of Radio24Syv provide evidence that the politicians wish to gain influence over the media. The media – in particular the broadcast media – are politically so important that few, if any, politicians really want them to be totally independent. Contract-based management allows politicians to have their say, but does not mean that independence is relinquished, and that politicians can form the public media as they wish. There is a common understanding among politicians and within the government that media independence is something that must be taken seriously. Although politicians might dream of controlling the media, there is a political and administrative culture that prevents open attempts to undermine media independence.

Positive content regulation is not only based on specific Danish legislation, since television and on-demand services must also fulfil European requirements as a consequence of the Audiovisual Media Service Directive, for example concerning the protection of children and the ratio of European programmes.

Another dimension of positive content regulation is explicitly related to editorial independence. Regarding DR and TV 2, the Radio and Television Broadcasting Act, section 10, requires that freedom of expression and information be of utmost importance, and consequently, as stated in the remarks to the bill, the institutions are obliged to reject any attempt from third parties to put pressure on the programmes. This is an explicit articulation of what is meant by 'media independence' within a public media institution.

The obligation to reject any interference from third parties, notably from politicians and members of government, is not established without reason, as politicians and ministers have on several occasions sought to put the public media under pressure. One particular case is worth mentioning, since it clearly demonstrates how a minister misused his political power to intervene in an independent media institution. Former director general of DR, Christian Nissen, has described how, in 2003, the then Minister of Culture, via the chairman of the Board of DR, threatened DR to take a more positive stance in its coverage of the Iraq war, in which Denmark was involved (Nissen, 2007: 210). DR resisted the political pressure, but the episode nevertheless shows how politicians, under particular circumstances (for example a war) might ignore the arm's length principle that formally applies to the governance of DR. The Radio and Television Broadcasting Act makes it clear that DR is an independent public institution, and that the government has no legal right to interfere with its operation.

It is difficult to find evidence of pressure of this kind, since it is not often made public. However, the current Chairman of the Board of DR, Michael Christiansen,

stated in an interview⁴³ that he works to safeguard the independence of DR, and therefore does not have any formal or informal contact with the Minister of Culture.

4.3 Restrictions on freedom of expression

Negative content regulation clearly leads to limitations to freedom of expression, and therefore media regulation is very careful with this type of limitation. Nevertheless, a number of rules are aimed at avoiding unwanted content in the media, and this is regarded as a prerequisite for the protection of individuals from the media. Legislation against libel and rules that protect against discrimination are important here, but also rules that protect minors.

There is plenty of evidence that the rules to protect children have negative affects on media freedom, since the rules aimed at preventing children from harmful programmes impose restrictions on broadcasters' scheduling. In Denmark, this issue has primarily been discussed in relation to television drama with violent content, and the Radio and Television Council has taken steps to establish a clearer understanding of what it considers to be 'harmful to children' and how to evaluate violent media content. Since 1997 the Media Council for Children and Young People has classified cinema films and DVDs in order to protect children. The classification has shown that a number of the television dramas originally broadcast by DR and TV 2 in primetime were unsuitable for children under 16 years of age.⁴⁴

While positive content regulation primarily addresses public service media, negative regulation, including consumer protection, is applied to all Danish media. Nevertheless, the rules are often more restrictive for the broadcast media than the press, primarily because these media are believed to be more suggestive. Besides regulation aimed at protecting children, there are rules to prevent undue economic and political influence on media content. In order to avoid private companies' manipulation of public opinion, the sponsoring of news programmes is prohibited, and commercials must be clearly identified so that the media user can distinguish editorial content from commercial messages. Hidden advertising is illegal, as it is considered to be even more manipulative than any other commercial communication. The strict Danish legislation regarding television advertising also prohibits advertising during programme breaks, as this is seen as particularly harmful to editorial independence.

The same type of strict regulation applies to political propaganda. Political advertising on television is illegal, and only local radio, print media and online may accommodate political advertisements. Marketing legislation includes a number of rules regarding good marketing practices, which also apply to radio and television. However, when it comes to advertising on Danish radio and television, there are stricter rules not only with regard to the products that may be advertised, but also concerning discrimination on grounds of race and gender, as well as social responsibility.

Restrictions to the content of commercials and advertisements do not affect freedom of expression in any serious way, but they naturally impose certain

⁴³ Interview with Michael Christiansen, Chairman of the Board of DR, by Henrik Søndergaard, Copenhagen 6 September 2011.

⁴⁴ Internal document presented to the Radio and Television Council (2010).

limitations on media independence, as they determine the types of (commercial) content that may not be displayed. While there is not much debate concerning the legitimacy of restricting commercial content, the rules against discrimination and the rules concerning privacy and defamation are far more controversial. Here there is no difference between the broadcast media and the rest of the media, since the Media liability act sets the rules for the media sector overall.

4.4 Self-regulation, the Press Council and media ombudsmen

Ethical rules regarding media content play an important role in content regulation in Denmark, primarily through the work of the Press Council, which handles complaints concerning the content of all Danish media. The Press Council operates as an independent body, and the members of the Council are appointed by the Ministry of Justice. The Press Council functions as a self-regulating body without interference from the government. Generally, content regulation is performed in accordance with the Guidelines for Press Ethics, which only impose limits on the freedom of expression when news stories break the ethical rules. The way in which the Press Council operates is generally regarded as important to guaranteeing the freedom of expression; it is independent from the State and from vested interests.

While the content of the Guidelines for Press Ethics is not disputed at all, probably because the guidelines reflect professional standards of journalism, there has recently been public debate concerning the relative weakness of the Press Council. Since the Press Council cannot impose fines on the media that break the rules, it is argued that many media do not take the Press Council seriously. Sometimes it is more profitable to break the rules than to follow them, and few media users will ever be aware that their newspaper or television channel lost a case before the Council. A number of political parties appear to have reached agreement on a bill that will empower the Press Council to impose fines and require that lost cases are made far more visible and published.

Although the Guidelines for Press Ethics apply to the broadcast media, during the last decade the two major public broadcasters, DR and TV 2, have developed a self-regulatory practice on the basis of their own, more comprehensive, ethical standards, in order to reduce complaints and improve professionalism more generally. A new invention is the introduction of a media ombudsman in DR in 2004 and in TV 2 in 2008. DR's ombudsman was originally established at DR's own initiative, but became regulated by law in 2007. A nationwide newspaper *Politiken* also has an ombudsman, but since this is a private company, it does not raise questions regarding media independence in the same way as in the case of DR and TV 2. The function of DR's ombudsman has been analysed by Annegrethe Skovbjerg (Skovbjerg), who has pointed out that the ombudsmen were put in place as a result of major violations of the ethical standards, first by DR and later by TV 2. She also shows some of the difficulties emerging from the establishment of ombudsmen, for instance their double role as the advocate of the audience while at the same time still being part of the media company. Nevertheless, the media ombudsmen appear to have contributed to keeping the State at a distance when it comes to control of media content. Politicians generally do not like complaints about the media, and as the media ombudsmen can reduce the number of complaints that go to the Press Council, or even to court, the

mechanism is regarded as successful.⁴⁵ The kind of control and criticism that the media ombudsmen are supposed to conduct is strengthened by the fact that they are not employed by management, but by the boards of the institutions. Although management has very little to say about the ombudsmen, they are sometimes accused of being too uncritical and protective of their respective institutions.

The media ombudsmen represent what is usually labelled as self-regulation, and in particular self-regulation that develops from within the media themselves as an answer to particular regulatory problems. As already mentioned, DR and TV 2 established their media ombudsmen when they lost credibility due to bad journalism. The value of self-regulation regarding media ethics, when it comes to guaranteeing media independence, is not very clear, but it seems that the ombudsmen are becoming more respected within the media system. At the same time, they probably constitute an important defence against stricter State regulation, which might tempt politicians.

Self-regulation is, however, rare when it comes to content regulation, and is usually related to various types of user protection, rather than to improving diversity. When it comes to consumer protection and, in particular, the regulation of advertising content within particular sectors, self-regulation is an important part of the regulatory system. The regulation of commercials for alcohol, for instance, is based on self-regulation, as the Alcohol Advertising Board⁴⁶ imposes self-regulation regarding the content and placement of commercials for alcoholic beverages. The board consists of representatives of the industry, public relations and advertising companies, as well as the Consumer Ombudsman. Likewise, commercials for soft drinks are regulated via self-regulation undertaken by the Soft Drinks Advertising Board.⁴⁷ Moreover, the Forum for Food Advertising⁴⁸ performs self-regulation of commercials for unhealthy food directed to children. A common feature of these bodies is that they are based on a codex negotiated by the industries themselves, without any State involvement.

Within the Danish media system a number of new self-regulatory inventions have been made, notably the media ombudsmen, but they have obviously not replaced State regulation – but rather supplemented it. However, the growth of new media outside the traditional content regulatory regime that is concerned with cultural politics, diversity and choice, means that self-regulation is expanding, albeit gradually.

The emergence of digital media is regarded as a challenge not only to content regulation, but also to any kind of medium-specific regulation, as the different media converge. It seems, however, that as the tendency towards deregulation has not covered issues pertaining to content, content regulation still plays a major role within the broadcast media. The idea that the future development of media convergence will not only make media-specific regulation impossible, but also seriously challenge any kind of content regulation, has been part of the media policy debate for more than a decade (cf. Kulturministeriet et al., 2001). So far, the view that the regulatory norms governing telecommunications and the Internet will automatically spread to broadcast media has turned out to be wrong. The two areas are converging, but the political

⁴⁵ More detailed information on the media ombudsmen of DR and TV 2 can be found on the two institutions' web pages.

⁴⁶ <http://www.alkoholreklameraevn.dk> (date accessed 27 January 2012).

⁴⁷ <http://www.laeskedrikreklameraevn.dk> (date accessed 27 January 2012).

⁴⁸ <http://kodeksforfoedevarer.di.dk> (date accessed 27 January 2012).

project to regulate radio and television as public services, rather than as market commodities, still remains.

4.5 New regulations of public service broadcasting: Public value test and Public Service Fund

Developments concerning public service broadcasting are of major importance in a media system in which PSBs hold a dominant position. Regarding media freedom and independence in particular, two new features of Danish media politics should be mentioned, namely the emergence of a fund to subsidise ‘public service programmes’ broadcast on commercial television channels, and the introduction of a new procedure for the launch of new services by PSBs.

The Public Service Fund established in 2007 and funded by licence fee money basically subsidises drama and documentary programmes to be broadcast on commercial television channels. In 2011, the Public Service Fund was modified in order that particular radio programmes could also receive funds.⁴⁹ To some extent, the fund increases diversity, as commercial broadcasters, on this basis, can afford to broadcast the type of programmes that they would not otherwise have produced, and because a number of independent production companies are involved. On the other hand, the Public Service Fund only supports particular types of programmes (drama, documentaries etc.), which do not represent the breadth and diversity that are a distinctive feature of public service broadcasting. Moreover, decisions on the allocation of subsidies are not made in the same way as editorial decisions within a broadcasting institution. The shift from supporting particular media institutions to supporting particular programmes represents a tendency whereby the State gains more control over media content.

Perhaps the most important development concerning the regulation of public service broadcasting is the invention of a public value test (implemented in 2007) and a supplementary market impact test (implemented in 2011), which must both be passed before DR can launch a new service (a new channel, new online services, etc.). The reason for the test system was to prevent DR from becoming too dominant a player within the media market. As a result, the press and online media operators have, for obvious reasons, been very eager to apply such a system.

The test system is in line with the guidelines published in the *Communication from the Commission on the application of State aid rules to public service broadcasting* (European Commission, 2009).⁵⁰ As stated in section 84: ‘Member States shall consider, by means of a prior evaluation procedure based on an open public consultation, whether significant new audiovisual services envisaged by public service broadcasters meet the requirements of the Amsterdam Protocol, i.e. whether they serve the democratic, social and cultural needs of the society, while duly taking into account its potential effects on trading conditions and competition.’ In Danish

⁴⁹ Announcement concerning subsidies for Danish public service radio and TV (Public service fund), (Announcement no. 1042 10 November 2011), available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=139100> (date accessed 27 January 2012).

⁵⁰ Available at: http://ec.europa.eu/competition/state_aid/legislation/broadcasting_communication_en.pdf (date accessed 29 January 2012).

media law, the test system is described⁵¹ as a two-step procedure. Before the launch of a new service, DR has to receive a permit from the Radio and Television Council, and in order to receive such a permit, the proposed service must pass both a public value test that shows how the new service fulfils cultural, social and democratic needs; and a market impact test that makes it clear how the new service will affect the media market. The Radio and Television Council must – after a public hearing – weigh the two tests against each other in order to conclude whether or not the new service can be approved. Although no new service has been tested on the basis of this double test system so far, it is clear that the system presents both advantages and drawbacks with regard to freedom of expression and media independence. One of the advantages is that a new service, once the Radio and Television Council has approved it, will be legitimised in a more undisputable way than would otherwise have been achieved. This official sanctioning enhances DR's independence vis-à-vis the market. On the other hand, the new permit procedure does function like a kind of censorship, since a particular media service (with more or less well-defined content) has to pass a number of tests and evaluations *before* it is launched. As stated by the media law expert Oluf Jørgensen, this is problematic, as it goes against the Danish legislation that prohibits censorship (Jørgensen, 2008: 284f). Whilst it is too early to draw any conclusions about how the Radio and Television Council will handle the public value test with regard to freedom of expression, it is unlikely that the Council will ignore this aspect.

4.6 Cases concerning media content and freedom of expression

Perhaps one of the most important Danish cases is the legal action against the Kurdish television channel ROJ-TV that is established in Denmark and has a licence (a registration) to broadcast by satellite (Radio- og TV-nævnet, 2012). The Turkish government regards ROJ-TV as part of the militant Kurdish organisation PKK and requested the Radio and Television Council, which supervises the channel, to withdraw its licence. The Council examined the case three times, and on each occasion it concluded that the programmes broadcast by ROJ-TV were not illegal, as they did not incite hatred (cf. section 6, 3 of the Announcement regarding programming based on registration and on-demand audiovisual programming, 2010). However, the Danish authorities decided to initiate proceedings against ROJ-TV regarding terrorism. The City Court has recently issued its ruling, which upholds that ROJ-TV has been funded by a terrorist organisation (PKK) and that it is guilty of distributing terrorist propaganda, which is illegal under Danish criminal law. The conclusion is based on the Court's analyses of several hours of television programmes. These are, however, *not* the same programmes as were examined by the Radio and Television Council. In fact, the Council has not yet had the opportunity to evaluate these programmes. The Court imposed a fine on ROJ-TV, but did not withdraw its licence. Critics of the Turkish government regard the trial against ROJ-TV as an attempt to violate the freedom of speech, whereas the Turkish authorities simply regard ROJ-TV as a criminal organisation. The case has also been dealt with by the Court of Justice of the European Union (the proceedings were initiated by Germany) (see also Psychogiopoulou, 2011).

⁵¹ Announcement on sanction of new services of DR and the regional TV 2 stations (Announcement no. 198 of 9 March 2011), available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=136134> (date accessed 27 January 2012).

4.6.1 Domestic case law

The courts do not play a major role in Danish media regulation, and case law in matters related to the media and journalism does not have a significant impact on media policy. Nevertheless, a number of criminal law cases before Danish courts show how case law has developed with regard to freedom of expression.

The most important aspects of criminal law regarding freedom of expression are the sections concerning privacy (section 264), defamation (section 266) and libel (section 267). Although a number of criminal cases have been brought against journalists under these sections, the cases do not demonstrate a clear pattern, since individual circumstances usually play an important role. Case law has evolved, however, and demonstrates a tendency to weigh freedom of expression and the role of the press as a public watchdog higher than the protection of privacy and honour. As stated in chapter 2, the *Jersild v. Denmark* case before the ECtHR signalled a turning point regarding the influence of ECHR on Danish case law on freedom of expression.

The incorporation of ECHR does not, however, mean that the laws specifying the restrictions to the freedom of expression have lost their force.

Cases regarding the protection of privacy show that concern for privacy is balanced against the public interest. In a case against two tabloids (*BT* and *Ekstra Bladet*) and a magazine (*Se og Hør*) that published a story about the impending separation of a couple known from the media, the press was found guilty of the unjustified publication of private information (B-953-07), even though the couple involved was well known by the general public. In another case where a magazine (*Se og Hør*) published an article and photographs about a drowning accident in a private home, the City Court found the journalist and photographer guilty of violation of privacy, because the child's family had not given permission to the journalist and photographer to report the accident.⁵²

Regarding defamation, most cases concern racist statements in the media. Section 266b of the Penal Code concerns defamation in relation to ethnicity, gender, sexual orientation and religion. The importance of this law, called the 'racism section', is that it is seen by some right-wing politicians as a restriction on freedom of speech, notably the freedom to discuss Muslim immigration, and they therefore want the law to be revised. Most of the rulings by Danish courts regarding section 266b deal with hate speech concerning Muslims. One case against the leader of a political party, *Fremskridtspartiet*, who commented on Muslims in a TV programme, ended in the Supreme Court. The politician was found guilty of infringement of section 266b. In its conclusion the Supreme Court pointed to the importance of the freedom of expression, but stated that this does not justify insult and defamation, and the court found the politician guilty.⁵³ In 2011, the High Court convicted an author of defamatory statements (regarding Muslims) in an interview published on an Internet forum. The author was acquitted in the City Court, but the High Court found that the consideration of freedom of expression was not sufficient to overrule the consideration of defamation.⁵⁴

Another important case concerns the newspaper *Jyllands-Posten* that published a series of cartoons of the Prophet Mohammed that led to the Cartoon Crisis in 2006.

⁵² SS 7.02539/02.

⁵³ UfR 2000.2234H.

⁵⁴ UfR 2000.2234H.

The public prosecutor concluded that there was no reason to prosecute *Jylland-Posten* for violation of section 266b of the Penal Code, but a group of Muslim associations decided to bring a libel action. The City Court, and later the High Court, concluded that *Jyllands-Posten* was not guilty of libel because the cartoons did not directly offend any of the associations involved.⁵⁵

Regarding libel, journalists have particular rights that are aimed at protecting freedom of expression. The Danish courts have underlined that the press can legally quote libels by other parties, as long as the libel concerns issues in society and the libelled persons have been given the right to reply. The press can also legally publish accusations based on journalistic research, if the research lives up to the usual standards. A central case regarding libel and the role of journalist is the so called 'Pedal-Ove case' from 1998, where two journalists from DR were found guilty of libel after a TV documentary in which they accused a particular police officer of abuse of power. The Supreme Court concluded that the journalists did not just pass on the involved person's statements, which would have been legal, but made their own unjustified statements.⁵⁶ The decision by the High Court was later brought to ECtHR which found that the conviction did not infringe freedom of speech.⁵⁷

Recently (2011), DR has been convicted for libel at the High Court in a case somewhat similar to the aforementioned. In a TV documentary entitled 'When the doctor knows best' two journalists accused a doctor at a hospital of mistreatment of his patients, resulting in a patient's death. The court concluded that the journalists did not merely pass on the statements of patients and experts, but made their own statements, and the content of the statements was incorrect.⁵⁸

Although the media and journalists enjoy extended privileges in terms of protection of their sources, coverage and the debate involving public and political figures in particular, there are cases involving media conduct and the specific limitations to their work that are brought before the courts. Cases involving areas where particular legal provisions to limit the freedom of expression exist (for example privacy) are dealt with below. This section covers a selection of cases involving the activities of the media and journalists that have been tried under the Penal Code.

Undercover and activist journalism

A number of cases from the past decade illustrate how courts weigh consideration of the special role of the media in relation to actions that are prohibited under the Penal Code.

One group of cases concerns cases where journalists have deliberately and demonstratively committed different types of criminal offence, for example to show how easy it is to purchase illegal weapons.⁵⁹

⁵⁵ UfR 2008.2302V.

⁵⁶ UfR 1999.122H.

⁵⁷ ECtHR, Pedersen and Baadsgaard v. Denmark (no. 49017/99), 12.17.2004.

⁵⁸ B 121900M –JBJ.

⁵⁹ Unpublished ruling, cited from Rigsadvokaten 2009. Domme i sager mod journalister. RA-2007-609-0006. København: Rigsadvokaten.

A review of the cases indicates that public interest in such cases is seldom enough to secure acquittal. Although the media and journalists often invoke the right to free expression and ECHR, in many cases they have been found guilty anyway.

A number of recent cases involve journalists' use of forged identity papers, or the attainment of such papers from authorities by deception.

In one case⁶⁰ two journalists had switched identity papers, and one of them had also borrowed papers from five friends. They then used these papers to vote by post in the 2004 election to the European Parliament. Both were found guilty and given suspended prison sentences and community service. The ruling explicitly considers the provisions in section 10 of ECHR, but finds that even though the story has a significant news value, the serious nature of the offence (unlawfully participating in an election, Section 117 of the Penal Code) outweighs the provisions in ECHR.

In a similar case⁶¹ a journalist forged a friend's signature on a form in order to get a replacement copy of the friend's driver's licence, which was falsely claimed to have been lost. In the same case, another journalist had a passport issued with his own photograph but in a friend's name, by borrowing the friend's national health service identity card. The rulings of both the district and the high court found the journalists guilty. In the ruling of the high court it is specified that the story could have been told without the criminal acts being committed, and (importantly) that the fact that such a story would have generated less public attention is immaterial.

A general pattern from the rulings concerning various aspects of activist or undercover journalism seems to be that the public interest in the content of the stories is taken into consideration by the courts, but that a line is drawn when offences appear to function as a dramatic element in the telling of the story.

Publication of confidential information

Another set of cases concern the publication of confidential information. One case⁶² involved a newspaper's printing of documents leaked from the Danish Defence Intelligence Service (DDIS). The documents were leaked to the newspaper by a DDIS employee, who had been convicted⁶³ of this prior to the charges being brought against the paper. The leaked documents were part of a risk assessment of Iraq, and among other things concerned the issue of whether Iraq had weapons of mass destruction or not. This issue was a key element of the debate concerning Denmark's possible participation in the invasion of Iraq. The newspaper and the journalists were charged with passing on confidential information (Section 152d of the Penal Code and Section 10(3) and (13) of MLA), but were acquitted. The ruling cites Section 152e of the Penal Code, which specifies that passing on confidential information can be legal if a person is 'acting in the legitimate exercise of obvious public interest or for his own or others' interests.' The ruling refers to Article 10 of ECHR in its assessment of whether Section 152e can be applied, and finds that there was a legitimate public interest in the

⁶⁰ Unpublished ruling, cited from *ibid*.

⁶¹ UfR 2008.1055 Ø.

⁶² Unpublished ruling, cited from Rigsadvokaten 2009. Domme i sager mod journalister. RA-2007-609-0006. København: Rigsadvokaten.

⁶³ UfR 2006.65 Ø.

information at the time, and that this outweighed the need to keep the information secret.

5. The journalist profession

5.1 High level of professionalism through education

The journalist profession in Denmark has a comparatively high level of professionalism and integrity, which in no small part is due to the Danish School of Media and Journalism (*Journalisthøjskolen*), which has offered professional journalism training, based on both theory and practice, since the late 1950s. Since the late 1990s, two universities (Roskilde University and University of Southern Denmark) have also offered degree programmes in journalism.

A degree in journalism is not a prerequisite for working as a journalist, and it is possible to become a member of the Danish Union of Journalists by working for a medium recognised by the Union, or by working as a freelance journalist for a minimum of three months (Dansk Journalistforbund, 2009, §2).

The relatively homogenous and well-established nature of the journalist profession has also led to a high sense of professional integrity among journalists, and to a strong ethos vis-à-vis their role as watchdogs in relation to the political system (Hjarvard, 2008: 78). As described below, there are a number of structural changes, not least stemming from technological developments, that have challenged the ability of journalists to exercise this role. In general, however, journalists' attitude is pervaded by publicist ideals (for an detailed investigation of the role of ideals in journalists' work, see Schultz, 2006).

In the following sections, we will outline some of the regulatory and professional structures which enable and constrain journalists' working conditions in Denmark.

5.2 Journalists and the political class

5.2.1 The public administration act

The Public Administration Act⁶⁴ [PAA] is a central legal provision that sets out important structural conditions for the work of the journalist. It specifies rights of access to documents, and as such regulates how public administrators can act when they function as gatekeepers between processes in public administration and journalists.

In its present form, the Act makes provision for access to documents. The principle behind the right to access is positive in the sense that all public records must be made available on request, unless there are important reasons against this (for example professional secrets, personal data). PAA (Section 4) also states explicitly that an authority can give access to more documentation than requested, unless special restrictions apply.

The regulatory basis for the right to access is based not only on PAA, but also on a number of other acts covering particular areas (for example the Environmental Act, and the Act on Administrative Practices in Public Administration, etc.). For the purpose of the present discussion, we will not provide a detailed overview, but discuss developments and regulation in the case of PAA.

⁶⁴ The Public Administration Act (Act no. 572 of 19 December 1985), available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=59474> (date accessed 18 September 2011).

The practice of access under the present Act has been criticised by (among others) journalists, who accuse various administrative organs of stalling and of granting access to partial files, or of denying access based on very narrow interpretations of PAA.

All decisions regarding rights of access may be brought before the Parliamentary Ombudsman, who (under Section 2 in the Ombudsman Act⁶⁵) has the authority to recommend that cases be re-evaluated. The Ombudsman has issued many rulings regarding the relationship between the media and the right of access,⁶⁶ and has had occasion to underline the need for a broad interpretation of the positive principle of access to information (and the restrictions in a more narrow sense) on several counts (Jørgensen, 2007: 67).

5.2.2 Revision of PAA

A commission for the revision of PAA was appointed in 2002 and published its report in 2009. The report suggested a number of changes and additions to the existing provisions, especially that the definition of the internal documents of a public body should include documents circulating between ministers and members of parliament in connection with negotiations, for example as part of the preparation of new laws. According to some parties, this would severely limit the usefulness of the right of access, as the public would not be able to see files before negotiations had ended and had effectively secured a majority vote.⁶⁷

The revision was strongly criticised from many sides (for example in Valuer and Rugaard, 2010), and the decision to adopt the new, in some cases more restrictive, Act was postponed in the spring of 2011. The most probable reason was that the government did not wish the much-criticised Act to be adopted by a narrow parliamentary majority, as the Danish tradition is for 'heavy' decisions to be taken by a broad majority, which would not be the case with this revision.

Although it is not clear whether the only reason to refrain from adopting the Act was the criticism received and the prospect of a narrow majority, the process surrounding the revision (both the political negotiation and the public debate) demonstrates the serious view taken of the freedom of information at the political level.

5.3 Journalists' autonomy in principle and in practice

Protection under good media ethics

Denmark does not have a law protecting journalistic integrity. However, the guidelines for good media ethics, which are an annex to MLA and part of the legal basis for the Press Council (see section 2.1.3), specify the following key elements, which were introduced at the specific request of the Journalists' Union (cf. Andersen,

⁶⁵ The Ombudsman Act (Act no. 473 of 12 June 1996), available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=81597> (date accessed 21 September 2011).

⁶⁶ 88 cases since 2005 and January 2012, according to the list at: <http://www.update.dk/cfje/lovbasen.nsf/Afgoerelser?OpenView&RestrictToCategory=20zAktindsigt>.

⁶⁷ See: http://www.aabenhedstinget.dk/?page_id=365.

2006: 35): the definition of the ‘non-information principle’ and the reference to journalists’ right not to be instructed to breach the principles of good press ethics.

The non-information principle means that it is considered a breach of good press ethics to withhold important information or stories on other grounds than good press ethics. If a journalist discovers important news, editors break good press ethics if they decide not to print the story on irrelevant grounds, for example if it involves the owners of the newspaper.

The other important principle states that it is against good press ethics to force journalists to write stories which are in breach of good press ethics, for example to base stories on sources known to be unreliable, etc.

The practice of journalistic integrity

In anonymous interviews with media professionals⁶⁸ from the journalist and editorial level at Danish newspapers, the two aforementioned principles proved to be somewhat negotiable in practice rather than in absolute terms, not least because the Press Council solely has the power to criticise, and not to fine or otherwise impose sanctions on the media found to be in violation of good press ethics. Another reason that the principles only have a rather restricted importance was claimed to be the small journalist community in Denmark. For example, if you openly accuse your editor of breaching good press ethics, this might label you as a disloyal employee.

Danish press history does contain examples of journalists standing up to their editors and owners. The most famous is the 1999 example from *Berlingske Tidende*, where the newspaper published a story suggesting that the father of one of its major shareholders, Mærsk McKinney Møller, had been involved in trading arms and munitions with the occupying German forces during the Second World War. Prior to the publication of the story, the then editor-in-chief of the newspaper, Peter Wivel, had attempted to reject the story, claiming that it was based on rumours (Minke, 2008: 115ff.). The journalists protested and accused the editor of breaching journalistic principles, and their pressure subsequently led the newspaper to publish the story.

A similar uproar among journalists followed the letters written by Karsten Madsen, also while editor at *Berlingske Tidende*, to Prime Minister Anders Fogh Rasmussen, described in section 3.1.4.

5.4 The Danish Union of Journalists

Watchdog role in debates

The Danish Union of Journalists has a long history of playing an active role as a voice for journalists’ wider role in society. It regularly prepares responses to public hearings and participates actively in public debates on the independence of the media and journalists, and freedom of expression.

⁶⁸ Interview with anonymous, head of news, by Rasmus Helles, Copenhagen 22 September 22 2011, and interview with anonymous, newspaper editor, by Rasmus Helles, Copenhagen 22 September 22 2011.

Presence in boards

The authority of the Union to represent journalists' interests is widely recognised, and is also reflected in the role prescribed for journalists in several of the independent, co-regulatory bodies described above: one member of the Press Council is appointed on the basis of a recommendation from the Union, and the same holds true for several other public bodies, including parts of the media support system, for example the Newspaper Board.

The Union was also represented on the latest committee on the revision of the press support system.

Mixed membership

One factor which might impinge on the role of the Union over time is the increasingly diverse membership base: the 2000s has seen a rapid increase in the communication activities of both private and public organisations, which has led to a boom in the employment of journalists outside the classical jobs in the news industry, notably in PR departments and strategic communication units. Although the Union continues to be active and considered to be a legitimate voice for journalists in the classical, publicist sense of the word, the mixing of membership raised concerns with one of the journalists interviewed for the report. The journalist observed that, as more and more members from the PR business joined the Union, it might have to tone down its engagement in matters concerning media independence, since this would run counter to the interests of members engaged in PR.⁶⁹

5.5 Journalists' working conditions

For many years the journalist profession has been considered to be relatively well-paid, and although the truth of this is contested, it seems clear that, given the relatively short course of education (four years at the Danish School of Media and Journalism), journalism is a relatively well-paid profession.

One important distinction needs to be drawn, however, because journalists find many different kinds of employment, not all of which are equally desirable. There is an increasing difference between freelancers with poorer job conditions and journalists with permanent positions at the various newspapers. This is related to the general crisis in the newspaper industry, but also to changes in the types of product that journalists are expected to deliver. The increase in news provided online has also created new roles for journalists, who have to deliver the products of their work in very different conditions (see below and Hartley, 2011). This development is worrying, since the emphasis on rapid production makes it harder to produce well-researched news stories.

Spin and strategic communication

The rapid growth and professionalism of the PR industry has a direct impact on journalists' work, since one key output of strategic communication is ready-to-print

⁶⁹ Interview, anonymous, newspaper journalist # 1, by Rasmus Helles, Copenhagen 20 September 2011.

press releases and information materials (Hartley, 2009). The processing of these kinds of materials need not pose problems (as long as they just save the journalists' time), but coupled with the equally rapid growth in the total output of news (see below), it seems clear that strategic communication is impinging on journalistic independence in a negative way.

An indirect substantiation of this can be found in a recent comparative analysis of the culture of political communication in Denmark (Esmark and Black-Ørsten, 2011). It found that Danish politicians were far more likely than politicians from other countries to consider the leaking of stories to journalists as the best way to get their message out. This indicates a widespread practice of bartering between journalists and politicians for sole coverage of material, and suggests that politicians often have the upper hand in the relationship, since they have information that the journalists want.

5.6 Journalists' role and the new media environment

An important fact about the media market in Denmark, mentioned in section 3.3.3, is that newspapers provide 71% of all original content (Lund and Willig, 2009a). Another important finding from the same research project is that the number of news items circulated in the Danish media has increased dramatically, from 32,000 stories per week in 1999 to 75,000 in 2008, without a similar increase in the number of journalists. The vast majority of this increase is due to a rise in the number of stories copied from other media, and to the publication of identical stories on several platforms by the media. The increased production of stories published for the sake of keeping up the flow has led to a rise in 'so what' stories (Lund and Willig, 2009b), since they often add nothing other than simply retelling events in a journalistic style.

The conditions for new forms of journalism

As already mentioned in section 3.3.1 on media support and in section 2.1.3 on MLA, new media have no access to media support, but easy access to the privileges extended under MLA (for example the protection of sources). The impact of new media on journalism has so far led to the biggest changes within the existing media system. This is because new ways of organising journalism have operated in a climate where audiences have grown used to high-quality journalistic output, and where regulators have so far only made provision for one of the two key elements that need to be in place for the media to work freely and independently in the Danish media market. The first element is the extension of legal provisions for the press secured under MLA, and the other element is access to the media support necessary to gain entry to the market, which as yet is unavailable to web-based media.

6. Media literacy and transparency

Support for initiatives that promote media literacy and access to news for a number of social groups that are prevented from following mainstream media content is part of Danish media policy.

The main policy driver behind these initiatives is a desire to enable members of these groups to participate in democracy, and to exercise their right to free expression. Given that the State plays a major role in defining the media landscape, securing access to the media market for media aimed at disadvantaged groups is of key importance from a media independence point of view. The existence of appropriate and accessible news content, as well as the ability to access it, is key to participation in democracy, also for groups that are prevented from accessing the mainstream media content. It is also important when viewed from the perspective of media pluralism, which forms the other central ideological value of Danish media policy in general.

This section will examine how Danish media policy lends focus to media literacy and transparency, based on interviews with leaders of media initiatives, politicians, NGOs and advisors in State institutions, as well as public State documents. Media literacy is described as ‘the ability to access the media, to understand and critically evaluate different aspects of the media and media content and to create communications in a variety of contexts’ (2009 Recommendation of the European Commission C (2009) 6565). This implies that transparency is an important part of media literacy. The section will thus examine literacy with regard to the transparency of ownership and financial interests, as well as citizens’ opportunities to evaluate the quality of media and news. It will also examine the services provided to citizens with hearing, reading, visual and ICT difficulties, as well as the news services provided to citizens speaking other languages than Danish.

6.1 Transparency

In accordance with the ‘arm’s length principle’, the government is reluctant to take specific initiatives directed towards regulating, evaluating or ensuring media transparency.

Transparency in the media falls under the general rules of transparency of ownership that apply to all companies registered in Denmark. According to the Financial Statements Act (*Årsregnskabsloven*),⁷⁰ in their annual accounts private limited or co-operative companies have to declare all parties with more than 5% ownership of the company’s shares. The annual accounts must also state any ownership of more than 20% of the company’s shares (*ibid.*, Section 71). However, actual shareholdings are only accessible to the public in respect of public limited companies. This Act applies to both direct and indirect ownership.

There is a tradition for open debate regarding ownership of the Danish news media. These debates are initiated and executed by the media industry itself. All large media houses that own the biggest newspapers, online news sites and broadcasting companies make their investments and ownership public via their websites. However,

⁷⁰ The Financial Statements Act (Consolidation Act no. 323 of 11 April 2011), <https://www.retsinformation.dk/Forms/R0710.aspx?id=136726> (date accessed 23 January 2012).

the media providers, for example the major newspapers *Politiken*, *Jyllands-Posten* and *Berlingske*, do not state their benefactors on their own websites. These debates have become popular knowledge, but they are generated and monitored by the media industry itself. For citizens who want to inquire further into the relationships between the media industry and its benefactors, this information is difficult to access, as it requires looking through the companies' annual reports.

The latest version of the Companies Act (*Selskabsloven*)⁷¹ includes an initiative to ensure more openness and transparency of ownership. This initiative includes a plan to create a database of all parties with more than 5% ownership interests in any one company. This database is expected to be launched in 2012-2013, making shareholder information more accessible to the general public.

With regard to citizens' opportunities to evaluate the quality of media production, there is minimal regulation of the media monitored by the Press Council and the Radio and Television Council. The fact that their decisions and evaluations are public and accessible online provides citizens with the opportunity to check and evaluate the media themselves. The Press Council can furthermore order the media entities to publish objectors' or organisations' defence, or the Council's decisions. However, citizens can only make inquiries or complaints to the Press Council if they have been subject to certain either directly or indirect publication.

6.2 Literacy initiatives

6.2.1 New media for disabled citizens

Most news media are based on written or spoken platforms. This section will examine media literacy for citizens with hearing, seeing and reading disabilities, and the attention given to enabling these groups to make informed choices about which media they use, and to evaluate the quality of the information that they receive. Furthermore, since a large part of news media today is based on digital media platforms, this section will examine initiatives and attention to ICT literacy in terms of the ability to access, understand and critically evaluate *digital media*.

In 1993, Parliament ratified the UN principles of equal rights and opportunities for disabled citizens, including a principle for private and public companies to ensure equal opportunities for all citizens, despite handicaps and disabilities (Social- og Integrationsministeriet, 2012). Although the media services offered to citizens with disabilities are not as broad as the services available to other citizens, there is a certain amount of attention from the State and public money to ensuring that citizens with seeing, hearing and reading disabilities have the opportunity to choose from a range of media and media providers.

The DR and TV2 public service contracts require them to provide their services to all citizens, making accessibility an important aspect of their services. Both public service channels devote a fair amount of resources to providing live subtitles, sign language translations and image translations every evening, including two daily live newscasts on DR and one on TV2. Special attention is given to national activities concerning democratic processes, such as elections.

⁷¹ The Company Act (Consolidation Act no. 322 of 11 April 2011), available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=135933> (date accessed 23 January 2012).

Another initiative is Deaf TV (*Døvefilm*), established in 1962.⁷² Deaf TV is an independent organisation with its own board. It is publicly supported under the Finance Act, and its objective is to ‘*contribute to democratic participation, dialogue and understanding*’. It broadcasts news from its own online portal and also produces sign language interpretation of the major news programmes for the public service TV channels: DR and TV 2. DR and TV 2 also collaborate on ensuring services for disabled users. Deaf TV shows how the organisations and interest groups in this field often collaborate and communicate well together. For citizens with reading difficulties, DR offers an online news portal with short news in easily accessible language. The initiative is the result of a study ordered by the Ministry of Culture, which estimates that the proportion of Danish adults with functional reading difficulties is close to 20% of the population (Kulturministeriet, 2003). The report furthermore shows that a considerable percentage have light reading difficulties. The report recommended creating news channels specifically directed towards this group.

In 2008, the online news portal *Ligetil* was launched, with funding from the Ministry of Culture and a private foundation. The online newspaper was first run by the Ritzau news agency, but since 2010 has been part of DR’s public service strategy. The project has not yet established contact with the target group and its promotion has not yet been prioritised, so that the general public as yet has little knowledge of it, and the number of users is small, with less than 50,000 unique users per month. The first evaluation of the initiative is planned within the next year. The news coverage is brief, so that further and more detailed information about context and background relies on other media channels.

Citizens with reading or visual difficulties have the opportunity to use the library Nota (originally called *Blindeinstituttet*).⁷³ Since 1952, Nota has been an independent institution under the Ministry of Culture providing news in the formats of audio books, e-books and Braille books. They also offer to translate text-based documents into sound files. Moreover, the news portal of the National Parliament (*Folketing*) devotes a fair amount of resources to making its news available in written as well as audio-visual format.

The aforementioned initiatives stem from public institutions, or partly publicly-funded initiatives. In accordance with the arm’s length principle, the State is reluctant to adopt detailed legislation concerning the private media industry. Instead, the policy is driven by the idea of inspiring and making it easy and beneficial for new or established NGOs to find solutions that ensure equal rights and opportunities for disabled and other people.

The principle of equal rights and opportunities for disabled and other disadvantaged groups is upheld and executed by a network of decentralised institutions, which are public, private, commercial and non-commercial institutions. This means that the policy regarding disabled citizens acts in concert with a network of non-governmental organisations and interest groups who negotiate on behalf of their respective groups. They also play a role in forming the public debate, as well as informing and consulting politicians.

The Danish Institute for Human Rights (*Institut for Menneskerettigheder*) and the Danish Disability Council (*Det Centrale Handicapråd*) are some of the major

⁷² <http://www.deaftv.dk/> (date accessed 23 January 2012).

⁷³ <http://nota.dk> (date accessed 23 January 2012).

bodies involved in ensuring and evaluating the area of media for disadvantaged groups. Tasks include gathering and conveying information about the circumstances for disabled citizens' access to media content, and informing about the consequences of amendments and other issues regarding equal opportunities for disabled people.

Regarding ICT skills and access to digital media, the government issues an annual series of publications presenting policy initiatives concerning the areas of ICT and telecommunications (IT og Telestyrelsen, 2011). ICT skills and access to ICT and digital media have received attention for some years. Among other things, the focus is on broadband Internet access for all households, training ICT skills in schools and universities, and improving the quality of public and private companies' digital services and communication. The aim of these initiatives is to give citizens access to a wider variety of services.

One of the initiatives that are part of the programme is the Office of IT Competences and Accessibility, which is a department under the Ministry of Science, Technology and Innovation. The office is established to inspire and enhance accessibility in the digital communication provided by public and private companies. The department develops initiatives to enhance citizens' IT competences and provides instructions and publications to private and public companies regarding good access to digital services. The office furthermore orders reports and investigates the consequences of law-making or inadequate and insufficient regulation.

News media are not mentioned as one of the primary considerations behind this effort, but they may be affected too, since an improvement in general ICT literacy may expand the market for online-based news production over time.

6.2.2 Ethnic minority groups

Since 1976, Denmark has been obliged to protect the rights of religious and ethnic minorities in Denmark. The obligation was further detailed in the European Charter for Regional or Minority Language (Council for Europe, 1992), ratified in 1996. Accordingly, the Danish State gives extra support to the newspaper *Der Nordschleswiger* for German minorities in southern Denmark, in order to produce three daily updates on the local radio station Radio Moin.

According to the Act on South Schleswig (*Sydslesvigloven*)⁷⁴ the Danish State supports a range of initiatives to strengthen the historical connection between Denmark and Danish minorities in Germany, including a local newspaper, *Flensborg Avisen*, established in 1869. The newspaper reports daily news from Denmark and Germany, especially from the regions on either side of the border, and topics relevant for the Danish minority in Germany. The total governmental funding makes up 52% of the newspaper's income. Besides this, the newspaper receives distribution support, like most other Danish newspapers. *Der Nordschleswiger* and *Flensborg Avisen* have also received some private support as part of a project to strengthen cross-border ties.

The priority given to the German minority in Denmark is historically motivated and is given because the German minority is not classified as immigrants, but as people who are originally from the area in question. The German minority groups are

⁷⁴ The Act on South Schleswig (Act no. 287 of 29 March 2010), available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=131017> (date accessed 23 January 2012).

estimated to total around 10,000. Other minority groups, such as the Arab or Turkish (including Kurdish) communities, are estimated to number around 65,000 and 55,600, respectively (each representing 1% of the total Danish population). It is part of DR's public service contract to provide news for the four ethnic minority groups in Denmark, i.e. in English, Turkish, Arabic and Somali. This is because informing the entire Danish population, and providing relevant information to ensure democratic processes and debate in society, form part of DR's mission. DR provides an online news portal⁷⁵ with translations of 4-5 selected news items, each of 100-300 words. The news items are selected according to general relevance criteria, as well as their specific relevance for the target groups, and are broadcast on the Internet portal and via teletext once a day. The limited selection and length of the news items give little opportunity for elaboration, details and contextual information, and only allow for limited evaluation and assessment of the information provided. The service has a very low number of viewers, and has often lacked maintenance. There have been periods of several months when some of the languages have been on hold. Overall, the service has been poorly promoted. So far there is no communication or collaboration with local interest groups or the intended users, just as there has been no evaluation of the service so far.

There are a few private initiatives offering Danish news to ethnic groups in their own languages. The Turkish media house Kast Media and the Arab Media House (*Det Arabiske Mediehus*) are two fairly successful media companies, publishing monthly newspapers and providing an online news portal with daily news. Both initiatives were started as privately funded, idealistic projects. They have both succeeded in providing news to the majority of citizens of Turkish and Arab background, many of whom do not otherwise follow Danish news. Kast Media receives no economic support from the State and is financed 100% by advertisements and other activities such as translation services and film screenings. It has unsuccessfully applied for support for establishing operations from the Newspaper Board, and does not fulfil the criteria for receiving any other type of media support from the Danish State. The Arab Media House has received support twice, once for a pre-project (the support covered two thirds of the expenses for seven months) and since then for establishment (the support covered one third of the expenses for a few months).

In comparison to the culture of collaboration which characterises the relationship between governmental and non-governmental organisations for the promotion of the media's accessibility for visual, hearing and reading impaired citizens, the level of support for minority groups is minimal. As the issues concerning these minority languages are relatively new, the media evaluation structure has not yet developed. Further, compared to the precedent of the media support that the Danish-German minorities receive, the level of support for newer minorities and recent immigrants has a short history and is still a matter of public and political debate.

⁷⁵ http://www.dr.dk/Nyheder/Andre_sprog/ (date accessed 23 January 2012).

7. Conclusion

In this report we have focused on a number of changes within the Danish media system that require either new regulation or adjustment to existing regulation. One of the main objectives of media regulation in Denmark is to stimulate media pluralism, in order to let many different voices be heard, and to ensure freedom of expression. Another objective is to ensure the cultural role of the media, which fundamentally entails the continued production of Danish-language media content in an increasingly globalised market. We have underlined that the small size of the Danish media market makes regulation particularly important, not least within broadcasting, where international media operators are playing an increasing role.

The dual media system, consisting of both strong private and public media, is based on a delicate balance between the State and the market. In metaphorical terms, it can be regarded as an ecological system (cf. Dimmick, 2003) in which each individual part is dependent on the others. Due to the small size of the market, the interdependence of the various elements is particularly strong in Denmark, making the system very sensitive to disturbances. Regulatory action, not least in the form of financial support systems and the regulation of PSB activities, thus has the potential to provoke major shifts in the media system. The same applies to new technological developments.

For years, the boundary line between the public and private sector followed the division between broadcast media (radio and television) and the printed press, with the former exclusively as public media and the latter as private. In the late 1980s, the broadcast media became mixed, as commercial radio and television were introduced, and during this process the ecology of the system has gradually shifted, as private media have become increasingly influential.

The current challenges to the balances and functionalities of the media system are fundamentally connected to the convergence between otherwise separated segments of the media sector. The development of new digital media is gradually undermining the financial basis of many existing media, most notably the printed press, but also commercial television. The spread of the Internet has brought previously separate market segments into direct competition, which has put media regulation, as well as media policy-making, under pressure. This has not only rendered part of the existing system obsolete, but parts of the existing system have proved to be detrimental to innovation, as new players find it hard to gain access to the market, for example online media that cannot get access to media support.

All of these developments are influencing the changes in media policy that are currently taking place. It is particularly important to the context of this report, and to the overall objectives of the MEDIADEM project, to note that some of these changes are not neutral when it comes to media independence. In the Danish media system, the stewardship of media independence has always been a task that regulators have had to handle explicitly, as no part of the system has ever been truly independent of State regulation and financing.

As we have shown in our analysis, the development of media policy in Denmark reflects the displacements within the media structure, and in particular within the market. The most fundamental challenge, both economically and in terms of the role of the media in democracy, is the crisis in the newspaper market. The business model that has been the cornerstone of the newspaper industry has declined

as the number of subscribers has decreased dramatically over the last ten years. Advertising has increasingly moved away from print media and on to online platforms, where global players such as Google dominate.

The breakdown in the funding mechanism for journalism is central to the relationship between media policy, regulation and independence. It becomes more and more difficult to sustain independent quality journalism when nobody is willing to pay for it. This contributes to the increase of ‘churnalism’, whereby fewer and fewer journalists produce original news content, and journalists increasingly depend on pre-processed material from PR departments, not to mention the dire conditions for investigative journalism. Combined with the technologically induced market convergence, the breakdown in the newspaper business model has also led to an increase in competition between the printed press and the broadcast media, as they now compete for the same audience, and to some extent also for the same advertising revenues. In Denmark, this development has put the public service broadcasters under heavy pressure, as the printed press has begun to regard the existence of public service broadcasting as a threat to their own market. DR and TV 2 have increasingly been accused of causing unfair competition, and the newspaper industry has, with some success, argued that the scope of the public media must be reduced if the private media are to have a chance of survival. One concrete consequence of this is the introduction of public service value tests, which have been adopted politically, but not yet implemented in practice. While this may be seen as a limitation of the independence of PSBs, it should also be seen in the context of the duty for PSBs to pursue online activities, as specified in their contracts.

Overall, the challenge to media policy in Denmark is to achieve a new balance between public and private media, while maintaining the fundamental goals of a pluralistic and independent media system that serves cultural and democratic ends. The most central element in this process of change is, arguably, the restructuring of the regulation of the media subsidy system for the press.

Although the outcome of the reform of the media subsidy system is not yet known, the political debate so far has clearly demonstrated how difficult it is to maintain media independence in a media system that is so heavily dependent on public money in order to fulfil the tasks required by a democratic society. The reform of the media subsidy system is bound to affect the balances within the dual system, since most Danish media are dependent on the subsidy system.

The policy process regarding the re-formulation of the media subsidy system is different in nature to the negotiation of ordinary media policy agreements: all players involved in the process recognise the tectonic shift in the media subsidy system that is about to take place. This also means that the process has more clearly highlighted some of the basic values and dynamics of the cultural and ideological complex underlying media policy-making.

The process has direct implications for understanding the role of *media independence as a political value*. Independence is understood as access to market, and it must be observed that a key policy driver in the process has been the recognition of the inability of new media organisations to gain access, because they have not been able to gain media support. At the same time, independence (understood as editorial independence) has also been central to the process, since a new mechanism for allocation of support will have to be developed. The prospect of developing a mechanism that depends on some kind of content criterion, rather than

the existing mechanism which depends on distribution, has met with little political sympathy so far, and the problems with content-based criteria in terms of independence are also clearly evident. The political rejection of a content-based criterion (whether it was based on real or imagined fears of political interference with the allocation process), shows that media independence does play a central role in political reasoning on media policy, even if the day-to-day media policy is arguably more concerned with pluralism of content.

The process also has implications for an understanding of the *democratic culture* underlying Danish policy-making in general. The process so far has included the production of two independent committee reports, both of which have been subject to several public hearings, and have stimulated public debate far beyond the normal level of public attention given to media policy. While no political decision has been made so far, the process is characterised by a strong will to achieve a broad consensus for the end result. Clearly, the individual elements of the agreement have been contested, just as the policy process also shows how strong players in the field are positioning themselves in new ways in order to gain optimal influence, but fundamentally the process is running in an open and transparent fashion, with an emphasis on allowing the organised voices of different stakeholders to be heard.

Questions regarding freedom of expression and media independence are clearly interwoven with the process of internationalisation of media content and media ownership. Our report points to how international media companies' operations from the UK in particular have an important impact on the television market, since EU media regulation enables them to bypass Danish media law. In this situation, where a significant element of the media quite simply cannot be held accountable under Danish law, EU regulation obviously makes it difficult for Danish media policy to reach its democratic goals.

EU media regulation may in some cases operate counter to democratic ends, but does have positive effects in other areas, as it contributes to safeguarding freedom of expression to an extent that Danish case law previously guaranteed. As we have pointed out, freedom of expression and the role of the media as a 'public watchdog' have been acknowledged more explicitly as a consequence of the implementation of ECHR in Danish legislation. It is interesting that freedom of expression has been so firmly guaranteed in Danish case law that politicians have begun to argue in favour of stricter regulation of privacy law, as it has apparently become too tempting for the media to breach ethical standards.

As we have demonstrated, EU legislation has quite radically changed Danish media policy when it comes to the plans to privatise TV 2, since the pending State aid procedure before the European Commission has forced Denmark to change its policy towards TV 2. Danish regulation of public service broadcasting has also been influenced more generally by the EU regulation of State aid, not least when it comes to defining the remit for PSBs and how they are supervised. Although private broadcasters, and increasingly also the printed press, want to see a far narrower definition of the public service remit, they have so far been unsuccessful. Public service broadcasting continues to be regarded as the cornerstone of Danish media policy, and also of Danish cultural policy.

8. References

- Andersen, M. B. (2006), Fra presseetik til markedsmoral [From press ethics to morals of the market], *Journalistica*, 1, 25
- Banke, L. M., M. Michelsen, & P. Rahbek (eds.) (2004), *Radio- og tv-lovgivning [Radio and television law]* (København: Thomson Gad Jura)
- Council for Europe (1992), European Charter for Regional or Minority Languages. (Strasbourg: Council for Europe)
- Curran, J., S. Iyengar, A.B. Lund & I. Salovaara-Moring, I. (2009), Media system, public knowledge and democracy: A comparative study, *European Journal of Communication*, 24, 52
- Dagbladsnævnet (2009), *Treårig evalueringsrapport [Tri-annual evaluation report]* (København: Dagbladsnævnet)
- Danmarks Radio (2011), *Medieudviklingen 2010 [The media development 2010]* (København: Danmarks Radio)
- Dansk Journalistforbund (2009), Love og vedtægter [Laws and statutes], Dansk Journalistforbund.
- Dimmick, J. W. (2003), *Media competition and coexistence: the theory of the niche*, (Mahwah, N.J., L. Erlbaum Associates)
- Dyremose, H. E. A. (2011), *Demokratistøtte. Fremtidens offentlige mediestøtte [Support for democracy. The future of public support for media]* (København: Styrelsen for Bibliotek og Medier)
- Esmark, A. & M. Black-Ørsten (2011), Et komparativt blik på den politiske kommunikationskultur i Danmark [A comparative view of the culture of political communication in Denmark], *Økonomi og Politik*, 84, 3
- Europaen Commission (2009), Communication from the Commission on the application of State aid rules to public service broadcasting
- Frandsen, A. (2006), *Politik i praksis [Politics in practice]* (København: Jurist- og Økonomforbundets Forlag)
- Frandsen, A. (2008), *Lovgivningsprocessen i praksis [Legislation in practice]*, (København: Jurist- og Økonomforbundets Forlag)
- Frankel, C. & E. Højbjerg (2010), *Public affairs og den politiske virksomhed [Public affairs and political practice]*, in Merkelsen, H. (ed.) *Håndbog i strategisk public relations* (Frederiksberg: Samfundslitteratur)
- Frøbert, K. A. (1975), *Den grundlovssikrede ytringsfrihed [The constitutional freedom of speech]* (Århus: Institut for Presseforskning)
- Germer, P. (1973), *Ytringsfrihedens væsen [The nature of freedom of speech]* (København, Juristforbundets Forlag)
- Hartley, J. M. (2009), *Netjournalistik: Uden saks og klister...[Online journalism: without scissors and glue...]*, in Lund, A. B., I. Willig & M. Black-Ørsten (eds.) *Hvor kommer nyhederne fra? Den journalistiske fødekæde i Danmark før og nu* (Århus: Ajour)

Hartley, J. M. (2011), *Radikalisering af kampzonen: en analyse af netjournalistisk praksis og selvforståelse i spændingsfeltet mellem idealer og publikum* [*The radicalisation of the combat zone: an analysis of online journalists' practice and self image in the field between ideals and audience*] (PhD thesis, Roskilde University)

Helles, R. (forthcoming), What do Danes go for when they go online? A content analysis of web sites in the big head and the long tail of Danes' internet use

Hjarvard, S. (2008), *En verden af medier. Medialiseringen af politik, sprog, religion og leg* [*A world of media. The mediatization of politics, religion and play*] (Kbh.: Samfundslitteratur)

It Og Telestyrelsen (2011), *IT og telepolitisk redegørelse* [*Report on IT and telecommunications policy*]

Jakobsen, S. S. (2004), *Medieret i informationsamfundet* [*Media law in the information society*] (København, Jurist- og Økonomforbundet)

Jørgensen, O. (2007), *Det handler om ytringsfrihed* [*It's about freedom of expression*] (Aarhus, Forlaget Ajour)

Jørgensen, O. (2008), Uafhængighed [Independence], in O., Kruuse, H. N., Skovbjerg, A. & H. Vignal-Schjøth (eds.) *Styring eller frihed? Regulering, etik og kontrol* (Århus: Ajour)

Jørgensen, O. (ed.) (2010), *Medier - love og regler 2010-2011* [*Media - laws and statutes 2010-2011*] (København: Forlaget Ajour)

Kjær, N. K. (2003), *Den politiske landsby: Om Christiansborg, journalisterne og politikerne* [*The political village*] (Århus, Forlaget Ajour)

Koch, H. (2009), Ytringsfrihed, MEN: Respekt, tolerance og social fred [Freedom of expression, BUT: Respect, tolerance and social peace], in: Christoffersen, J. & M.R. Madsen (eds.) *Menneskerettighedsdomstolen - 50 års samspil med dansk ret og politik* (København: Thomson Reuter)

Konkurrence- Og Forbrugerstyrelsen (2011a), *Distribution af tv-kanaler. Konkurrence- og forbrugeranalyse* [*Distribution of tv channels. Competition and consumer analysis*] (København: Konkurrence- og Forbrugerstyrelsen)

Konkurrence- Og Forbrugerstyrelsen (2011b), *Konkurrence- og Forbrugerstyrelsens bemærkninger til Mediestøtteudvalgets analyse af bindende videresalgsspriser for aviser, ugeblade og magasiner* [*Remarks by the Competition and Consumer Authority on the report on the future system of media support*] (København: Konkurrence- og Forbrugerstyrelsen)

Konkurrencestyrelsen 2006, Konkurrenceredegørelse 2006.

Kulturministeriet (2003), *Sprog på spil - Et udspil til en dansk sprogpolitik* [*Language at stake - a proposal for a Danish language policy*]

Kulturministeriet (2010a), *DRs public service-kontrakt for 2011-2014* [DRs public service contract for 2011-2014]

Kulturministeriet (2010b), *Fokus på kvalitet og mangfoldighed. Mediepolitisk aftale for 2011-2014* [*Focus on quality and plurality. Media policy agreement for 2011-2014*]

Kulturministeriet, It- Og Telestyrelsen & Forskningsministeriet (2001), Konvergens i netværkssamfundet.

Lenler, J. (2011), Per Stig svarer igen [Per Stig answers back]. *Politiken*

Lund, A. B. (2001), The Genealogy of News. Researching Journalistic Food-Chains. *Nordicom Review*, 37

Lund, A. B. & K. Lindskow (2011), Offentlig mediestøtte fra postprivilegier til licensforlig [Public support for the media from royal privileges to license agreements]. *Økonomi og Politik*, 84, 46

Lund, A. B. & I. Willig (2009a), Om forskningsprojektet: En nyhedsuge i Danmark 1999-2008 [About the research project: A news week in Denmark 1999-2008], in: Lund, A. B., I. Willig & M. Black-Ørsten (eds.) *Hvor kommer nyhederne fra? Den journalistiske fødekæde i Danmark før og nu* (Århus: Ajour)

Lund, A. B. & I. Willig (2009b), Publicistisk produktion: Sådan gør man nåheder til nyheder [Publicist production: transforming chit-chat into news], in Lund, A. B., I. Willig & M. Black-Ørsten (eds.) *Hvor kommer nyhederne fra? Den journalistiske fødekæde i Danmark før og nu* (Århus: Ajour)

Mediawatch (2011), Fusioner: JP/Pol-opkøb af Berlingske kan være muligt [Fusions: The takeover of Berlingske by JP/Pol may be possible], available at: <http://mediawatch.dk/artikel/fusioner-jppol-opkoeb-af-berlingske-kan-vaere-muligt> [date accessed 27 January 2012]

Minke, K. (2008), Aviskrigen. Dagblade i overlevelseskamp [The newspaper war. Newspapers fighting for survival], *Borgen*

Minke, K. (2009), *Danske Medier [Danish media]* (Copenhagen: Danske Dagblades Forening)

Mortensen, F. (2008), EU og statsstøtte til public service broadcasting 1992-2005 [EU and state aid for public service broadcasting 1992-2005], in Mortensen, F. (ed.) *Public service i netværkssamfundet* (Copenhagen: Vorlaget Samfundslitteratur)

Mortensen, L. V. (2003), *Ytringsfrihedens usikre grænser [The unclear limits to freedom of expression]* (København: Jurist- og Økonomforbundets Forlag)

Nissen, C. S. (2007), *Generalens veje og vildveje [The general's story]* in 10 år i Danmarks Radio (København, Gyldendal)

Psychogiopoulou, E. (2011), Hof van Justitie van de EU, 22 September 2011, zaken C-244/10 en C-245/10, Mesopotamia Broadcast A/S METV en Roj TV A/A tegen Duitsland, Noot. *European Human Rights Cases*, 12, 1857

Radio- Og Tv-Nævnet (2006), *Tilladelse til programvirksomhed på den femte jordbaserede FM-radiokanal (Landskanalen) [Broadcast permit for the fifth terrestrial FM channel]* (København: Radio- og TV-nævnet)

Radio- Og Tv-Nævnet (2011a), *Radio- og TV-nævnets årsberetning 2010 [The Radio and Television Council's Annual Report, 2010]* (København: Radio- og TV-nævnet)

Radio- Og Tv-Nævnet (2011b), *Tilladelse til programvirksomhed på den fjerde jordbaserede FM- radiokanal [Broadcast permit for the fourth terrestrial FM channel]* (København: Radio- og TV-nævnet)

- Radio- Og Tv-Nævnet (2012), Tv-registreringer [Television registrations] *Kulturstyrelsen*, available at: <http://www.bibliotekogmedier.dk/medieomraadet/tv/kabel-satellit-og-internet-tv/tv-registreringer/> [date accessed 23 January 2012]
- Rambøll Management (2009), Udredning af den fremtidige offentlige mediestøtte [Report on the future public support for the media]
- Rigsadvokaten (2009), Domme i sager mod journalister [Rulings in cases against journalists],
- Schrøder, K. (2010), Danskernes brug af nyhedsmedier: et nyt landkort. En pejling af danskernes navigation i nyhedsuniverset [The Danes' use of news media: A new map], *Journalistica*, 8
- Schultz, I. (2006), *Bag nyhederne - værdier, idealer og praksis* [Behind the news - values, ideals and practice] (København, Forlaget Samfundslitteratur)
- Sepstrup, P. (2011), Debat: Den misforståede nulmoms [Debate: The mis-understood VAT exemption], available at: <http://mediawatch.dk/artikel/debat-den-misforstaede-0-moms: Mediawatch>, [date accessed 10.10.2011]
- Skovbjerg, A. (2008), Intern regulering, etik og kontrol [Internal regulation, ethics and control], in Jørgensen, O., H. N. Kruuse, A. Skovbjerg & H. Vignal-Schjøth (eds.) *Styring eller frihed? Regulering, etik og kontrol* (Århus: Ajour)
- Social- Og Integrationsministeriet (2012), Handicappolitiske principper [Principles for policies for disabled citizens], available at: <http://www.sm.dk/temaer/social-omraader/handicap/handicappolitik/Sider/Start.aspx> [date accessed 23 January 2012]
- Søndergaard, H. (2010), Ny viden om public service [New knowledge on Public Service], in Svendsen, E. N. (ed.) *Public service - i praksis og i fremtiden* (Århus: Ajour)
- Søndergaard, H. & R. Helles (2010), Background information report. Media policies and regulatory practices in a selected set of European countries, the EU and the Council of Europe: The case of Denmark, available at: <http://www.mediadem.eliamep.gr/findings/>
- Søndergaard, H. & R. Helles (forthcoming), Danish media policy, in Psychogiopoulou, E. (ed.) *Understanding media policies: A European perspective* (London: Palgrave)
- Transparency International (2010), *Corruption perceptions index 2010* (Berlin: Transparency International)
- Valuer, E. & L. Rugaard (2010), Ministerbetjening - en journalistisk hvidbog [Service to cabinet ministers - a journalistic whitepaper]

9. List of interviews

Anonymous, civil servant at The Competition and Consumer Authority, by Rasmus Helles, Copenhagen 16 September 2011

Anonymous, newspaper journalist # 1, by Rasmus Helles, Copenhagen 20 September 2011

Anonymous, newspaper journalist # 2, by Rasmus Helles, Copenhagen 20 September 2011

Anonymous, head of news, by Rasmus Helles, Copenhagen 22 September 22 2011

Anonymous, newspaper editor, by Rasmus Helles, Copenhagen 22 September 22 2011

Asger Røjle, Head of DR's news in foreign languages, by Ida Toft, Copenhagen 16 August 2011

Bo Wiberg, consultant DR, by Henrik Søndergaard, Copenhagen 6 September 2011

Christian Scherfig, Chairman of the Radio and Television Council, by Henrik Søndergaard, Copenhagen 10 October 2011

Christian S. Nissen, former Director General, DR, by Henrik Søndergaard and Rasmus Helles, Copenhagen 20 September 2011

Frands Mortensen, professor, University of Aarhus, by Henrik Søndergaard, Copenhagen 21 September 2011

Jan Schanz Christensen, Chairman of Competition Council, member of the Radio and Television Council, by Henrik Søndergaard, Copenhagen 29 September 2011

Lars M. Banke, the Ministry of Culture, by Henrik Søndergaard, Copenhagen 8 September 2011

Lars-Peter Melchiorson, Chairman of the Cooperation of Listener and Viewer Associations, member of the Radio and Television Council, by Henrik Søndergaard, Copenhagen 30 August 2011

Michael Christiansen, Chairman of the Board of DR, by Henrik Søndergaard, Copenhagen 6 September 2011

Nidal Abu Arif, Director at the Arab Media House, by Ida Toft, Copenhagen 22 August 2011.