



**The formation and implementation of  
national media policies in Europe and their  
relationship to democratic society and media  
freedom and independence:  
A theoretical and analytical frame for the  
MEDIADDEM project**

Dia Anagnostou (ELIAMEP), Rachael Craufurd Smith  
(UEDIN) and Evangelia Psychogiopoulou (ELIAMEP)

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## **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 will investigate the configuration of media policies in the aforementioned countries and will examine 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, will be thoroughly discussed and analysed.

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## Information about the authors

**Dia Anagnostou** is Lecturer of Politics in the Department of Balkan, Slavic and Oriental Studies in Macedonia University of Thessaloniki, and senior research fellow at the Hellenic Foundation for European and Foreign Policy (ELIAMEP). She has held research positions at Princeton University and the Robert Schuman Centre for Advanced Studies at the European University Institute in Florence. Dia Anagnostou has been awarded a Marie Curie Fellowship to work on a book project entitled 'Civil Society and the Mobilisation of European Human Rights: Minorities and Immigrants in the Strasbourg Court' (for 2010-2012). Her articles have appeared on West European Politics, Southeast European Politics, International Journal of Human Rights and European Public Law, among others. Dia Anagnostou has recently co-edited the book 'The European Court of Human Rights and the Rights of Marginalised Individuals and Minorities in National Context' (Martinus Nijhoff Publishers, 2010). She is also editor and co-author of the book 'Domesticating the European Court of Human Rights: Implementation, Legal Mobilisation and Policy Change' (Philadelphia: University of Pennsylvania Press, 2010, forthcoming).

**Rachael Craufurd Smith** is a Senior Lecturer at the University of Edinburgh. Before becoming an academic, she gained considerable experience working both in private legal practice and as an adviser on media law and policy for the BBC. She teaches media law at both undergraduate and postgraduate levels and supervises a range of PhD research students working in the media field. Rachael Craufurd Smith has written widely on the impact of constitutional guarantees, fundamental rights, and international and domestic laws on media pluralism and diversity. More recently, her research has focused on the impact of convergence on established domestic regulatory regimes and the evolving relationship between individuals and the mass media. She is a member of the Europa Institute and Co-director of the AHRC Script Centre, based in the School of Law of the University of Edinburgh. She is also an editor of *The Journal of Media Law*, launched by Hart Publishing in 2009 to provide scholarly and critical analysis of media law developments.

**Evangelia Psychogiopoulou** is a lawyer and research fellow at the Hellenic Foundation for European and Foreign Policy (ELIAMEP). A graduate from the Faculty of Law of the Kapodistrian University of Athens, she holds a DEA in EU Law from Paris I University, a Master of Research in Law and a PhD in Law from the European University Institute. Her areas of focus are EU cultural and media policies and human rights protection. In October 2006, she joined ELIAMEP and worked for the EU-funded JURISTRAS research project ([www.juristras.eliamep.gr](http://www.juristras.eliamep.gr)). She has also held research and management positions at the Academy of European Law (Florence, Italy), the Directorate General Education and Culture of the European Commission and UNESCO. She is presently the coordinator of MEDIADDEM. Her recent publications include 'The Integration of Cultural Considerations in EU Law and Policies' (Martinus Nijhoff Publishers 2008) and 'The European Court of Human Rights and the Rights of Marginalised Individuals and Minorities in National Context' (Martinus Nijhoff Publishers 2010, co-edited with Dia Anagnostou).

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**1. Introduction**

A broad consensus around the idea that the media are vital for the workings of democratic systems highlights their significance as a social value. The study of the media on such a premise has formed the object of extensive analysis. Citizens can play an active role in the political process and take advantage of opportunities generated for political participation and civic engagement if they have access to accurate and impartial information from a variety of sources. This allows them to gain a thorough understanding of public affairs and to exchange views and opinions about them. By nurturing (ideally) a broadly informed citizenry, the media is also seen to prompt the government to be responsive to the people, and to contribute to government accountability and control, thereby sustaining democracy. The media have thus a central role to play in the functioning of democracy, even if it is not necessarily positive or always conducive to the latter.

Beyond the media's presumed service to democracy, the justification for regulatory intervention in the field of the media has formed the object of considerable analysis by legal scholars, political scientists and academics specialising in media studies. The economic value of the media sector has led many to argue that media policy is essentially an "industrial" policy, aimed at ensuring the conditions necessary for increased competitiveness of the sector at the national and/or international level. Attention has also been drawn to "market failures" inherent in media activity that require corrective action. For instance, media operators tend towards strategic alliances and oligopolistic behaviour, with the aim to offset the unpredictability of public taste and its effects on their economic viability. The need to counterbalance this inclination of the media towards concentration has been particularly highlighted as an argument in support of regulatory intervention.

Earlier studies probing into the relationship between media and democratic politics focused on the micro-level, and were concerned with the individual-level effects of political communication: how do the media influence political attitudes and behaviour? Another set of studies took a macro-level perspective and examined the structure of media systems, the patterns of government regulation, media ownership or media content, among others, and how these affect politics and the distribution of political power. Falling within the latter genre of studies, the MEDIADEM project specifically focuses on the formation and implementation of media policies, particularly those aimed at fostering a free and independent media. It explores media policies across fourteen European countries and their consequences for citizenship participation and democratic politics. What factors contribute to the formation of media policies and what accounts for their differences across countries? Are media policies implemented in practice, and to what extent do they promote free and independent media?

At the outset, it must be emphasised that media policy, like many other areas of state policy, is not a disinterested process. Though it is often driven by technological innovation, it is never solely technologically determined. Rules and norms are not adopted and applied through bureaucratic, technical procedures, responsive to technological innovation. Technological change and the enticing economic prospects it may yield offer opportunities for policy reform, yet decision-making for the policy approach to take is shaped by a series of competing interests that seek to inscribe their values and objectives on the policy agenda and the way media policy is eventually conducted. This is especially true for those facets of media policy that are concerned directly or indirectly with the development of free and independent media. Media freedom and independence, often purported as one of the primary objectives of state media policy, albeit poorly defined and even less poorly attained, testifies to the multiplicity and complexity of processes through which mechanisms to promote it (or conversely constrain it) are developed and put into practice.

The purpose of this theoretical report is to clarify and discuss basic concepts and analytical issues upon which MEDIADEM research is based and pursued. The report conceptualises media policy in the face of rapid technological changes and discusses its relationship to democracy, as well as its nature and scope. It inquires into the ways media policy is steered, shaped and applied, and explores the factors that can exert an influence throughout the process. The analysis then moves to the issue of media freedom and independence, which is identified as a distinct area for the study of media policy formulation and implementation. The report explores the concept of media freedom and independence and examines the present practice and potential of regulation in the field. The final section outlines five issue areas, considered to be crucial for the protection and promotion of an enabling environment for free and independent media: a) the protection of freedom of speech and information in law and in practice; b) the formulation and implementation of legal rules targeting the structure of the media market; c) the adoption and implementation of legal norms and incentive measures for the composition and diversification of media content; d) professional standards and ethics for the journalist profession; and e) media literacy initiatives. These are the issue areas that will guide empirical research in the fourteen countries that are covered by the project: Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, Germany, Greece, Italy, Romania, Slovakia, Spain, Turkey and the UK.

## **2. Media policy in the context of a democratic society**

MEDIADEM conceptualises media policy formulation and implementation as an intrinsically political and intensely contested process, which simultaneously involves national, European and international dynamics. In this regard, it departs from narrow single-discipline approaches that take a perspective of the media as a market or are confined to the legal and normative rules regulating it. It instead employs an interdisciplinary approach that places legal rules and their application in their political and social context.

As a fundamentally political and conflict-ridden process, media policy-making involves competing political and corporate interests that seek to impose particular values and priorities on how the media should be structured and should operate, contending as much for material advantages as for ideological legitimation. Political

actors and interest groups with distinct and competing preferences respond to and act within particular structural contexts defined by technological, economic, institutional, political and societal parameters. In this regard, this project departs from a conception of policy formulation as a disinterested process involving neutral problem-solving issues and driven by technological progress and its intrinsic technocratic and economic imperatives.<sup>1</sup> Given the fact that technological advancements have at different points in time vastly expanded the possibilities of spreading information and communicating with large audiences, the field of media policy is especially prone to be viewed as a technical and economic matter.

Like in few other fields of study, scholarly analyses of media policy are percolated by a pervasive tendency to blur empirical with normative issues, namely the inquiry about what *is* with claims regarding what *ought to be*. For instance, empirical analysis about the changing extent and nature of market forces and economic imperatives in shaping media policy is often implicitly underpinned or it easily shifts into a discussion about whether such forces and imperatives should be dominant. Furthermore, analysis of the policy effectiveness of all media and communication policy is suffused, even if implicitly, by normative expectations of the media's role in society, which are ultimately founded upon different strands of democratic theory.<sup>2</sup> While academic scholarship can hardly ever be a fully value-free enterprise, nonetheless it is necessary to acknowledge its underlying normative assumptions, and to distinguish them as explicitly as possible from the empirical questions in the study of media and the forces shaping them.

Since the 1990s, the prevalent way of thinking about regulating the media in terms of a social service paradigm and its anticipating democratising role, has shifted to a set of ideas and practices that treat it as a market-driven enterprise predominantly shaped by economic and technological imperatives from the 1980s onwards.<sup>3</sup> Such a paradigmatic shift has in fact been underway, and it has formed a new context of ideas and practices, within which media policy formulation and regulation are set to take place. However, such a shift must be carefully and consistently treated as a predominant ideological and discursive frame magnified by rapid technological advancements, rather than as a new reality that is necessarily displacing the pre-existing state of things. In the context of distinct national political and regulatory traditions, it influences in a variable fashion the ways in which policy-makers, industrialists, various interest groups and citizens think about and act in relation to media systems, policies, and forms of public intervention across countries.

More recently, in depicting the passage of contemporary media into a new “communications policy paradigm”, scholarly analyses tend to juxtapose the primacy of treating individuals as consumers as opposed to citizens. They also tend to view the norms that permeate the media more as “communicative” and less political or cultural.<sup>4</sup> Yet, instead of juxtaposing the presumably economic imperatives of the new

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<sup>1</sup> For a strong critique of media policy as a purportedly disinterested and technologically-driven process, see Des Freedman, *The politics of media policy* (2008), pp. 1-6.

<sup>2</sup> Christina S. Drale, “Communication media in a democratic society”, 9 *Communication Law and Policy* (2004) 213. See also James Curran, “Mediations of Democracy”, in James Curran and Michael Gurevitch (eds), *Mass Media and Society* (2005), p. 122.

<sup>3</sup> Jan van Cuilenburg and Denis McQuail, “Media policy paradigm shifts – Towards a new communications policy paradigm”, 18 *European Journal of Communication* (2003) 181, at pp. 197-198.

<sup>4</sup> *Ibid.*, p. 198.

paradigm to the social service function and democratising role of the media in a presumably bygone era, social science research must probe into the ways in which the social role of the media and its service to the public interest are re-defined. The actual role of the state and non-state institutions across countries, the divergent degree and nature of public intervention and the various forms of regulation, as well as the changing ideas that underpin these with regard to the social and civic purpose of the media, are empirical questions. Even if we take for granted that under emerging conditions, policy has generally to follow the logic of the marketplace, technology and the wishes of consumers<sup>5</sup> rather than pursue its distinct social goals, this should not mislead us into thinking that there are no conflicting interests, norms and values at stake. In sum, if such a logic has become a privileged discourse in the justification of decision-makers, it far from denotes an apolitical, neutral or conflict-free process determining media policy.

The conflation of the discourse that attributes inherent economic rationales and technological imperatives to the media, with the actual factors and pressures that shape decision-making in this sector (often inadvertent on the part of researchers) has created a great deal of ambivalence, if not confusion, regarding the notion of media freedom. As John Corner rightly observes, media freedom is routinely invoked to indicate “a desirable absence of constraint on the media industries themselves, rather than ... the desirable conditions for members of a democratic public to access a range of information and to encounter and express a range of views.”<sup>6</sup> To be sure, this negative view that sees media freedom as the absence of any kind of involvement and constraints on the part of the state, has been subject to a great deal of criticisms that make a compelling case regarding the need for various forms of regulatory intervention in the media, even on plain economic grounds.<sup>7</sup> What is essential to underline here is that without denying the dominance that economic ideas of *laissez-faire* bear upon the contemporary processes of media decision-making, it is still unwarranted to take the media out of society and to deny or ignore the social practices and political relations that both shape it and are in turn affected by it.

Processes of policy implementation that follow the adoption of norms and rules regulating the media, and deal with their application in the broad sense similarly need to be placed in context. Once decisions on the course of media policy have been reached and goals and regulatory instruments identified, the attention is directed towards putting such decisions into practice and ensuring that policy delivers the desired results. Academic studies of media policy and regulation have paid less attention to this stage of media policy. Moreover, they have largely been based on the assumption that the rules and regulations introduced will be applied with due respect to their original intent, and that monitoring organs, including the courts, will ensure their enforcement.

Turning policy into practice, however, is not an automatic or unhindered process. Indeed, the relevant legal norms and national policies are not always implemented, or they may be widely ignored in some cases and in some countries. A common feature in a number of countries under study, particularly in central-east Europe and in southern Europe is the pervasive contrast between what has been

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<sup>5</sup> Van Cuilenburg and McQuail, at p. 200.

<sup>6</sup> John Corner, “Freedom, rights and regulations”, 26 *Media, Culture and Society* (2004) 893, at p. 893.

<sup>7</sup> See for instance the book by C. Edwin Baker, *Media, markets and democracy* (2002), particularly chapters 3 and 4.

envisaged by policy-makers and the actual state of the media market, a phenomenon that has been aptly called “savage deregulation”.<sup>8</sup> Carrying out policy decisions regularly needs to cope with a series of socio-political and economic pitfalls that arise at the stage of implementation, diverting from the original aims of the policy-makers. Judicial stance has also a bearing on the interpretation of rules and thus the policy outcome. From this perspective, it becomes clear that implementation is not a disinterested, value-free process but an inherently complex phase of media policy. There is indeed nothing inevitable, straightforward or purely technical in the application of the rules devised to regulate the media sector.

### **3. The nature and scope of media policy**

In recent years, media policy has become an increasingly elusive policy field to demarcate. Accounting for this have mainly been processes of technological convergence, evidenced in the blurring of market boundaries between previously distinct industry sectors due to technological innovation, and consequently between the services these sectors provide and the platforms they use to deliver them. Initially conceived as a process fostering the ability of networks to carry similar kinds of services and the transformation of such different consumer devices as telephone, television and computers into alike products,<sup>9</sup> convergence has proved to be a more complex and sophisticated venture.<sup>10</sup> Its effects have been multi-faceted and multi-dimensional, extending to market convergence and the convergence of platforms, devices and services. This has raised serious questions about the delineation of the domain of contemporary media policy, and in particular the extent to which it can be treated separately from the field of communications more broadly.

For decades, media policy has been mainly conceived as the policy that aims to shape the conduct of the mass media, essentially press and broadcasting, as media of “public communication”. Often used interchangeably with the term “mass communication policy”, media policy has been dissociated in academic literature and policy practice from telecommunications policy. The latter has been traditionally understood to be concerned with telecommunication networks as carriers of “private communication” between individuals. State intervention in these two policy areas has displayed different characteristics and variation in the degree of intensity. It has been driven by different policy rationales and has sought to attain diverse policy objectives, though in both cases, in the pursuit of the “public interest”, a notion subject to varying interpretations.

Technological innovation has brought together previously distinct industry sectors, inducing operators to enter each other’s territory. Digitalisation, in particular, has triggered a series of market developments that disrupted the distinction that was commonly drawn between a telecommunications and a mass media policy perspective. Players of the telecommunications industry entered the broadcasting

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<sup>8</sup> Daniel C. Hallin and Paolo Mancini, *Comparing media systems – Three models of media politics* (2000), pp. 58-59.

<sup>9</sup> European Commission, Green Paper on the convergence of the telecommunications, media and information technology sectors, and the implications for regulation: Towards an integrated approach, COM(1997) 623.

<sup>10</sup> Monica Ariño and Carles Llorens, “Back to the future: New media, same principles? Convergence regulation revisited”, in David Ward (ed.), *The European Union and the culture industries: Regulation and the public interest* (2008), p. 125.

market (for instance through IPTV services or the development of audiovisual services for mobile telephones) whilst the printed press and traditional broadcasters extended their activities in fixed and mobile networks, enriching them with the provision of additional services. Nowadays, it has become an everyday reality to access audio, data and visual services in an integrated or non-integrated form through a multiplicity of networks and via use of multi-functional devices. In fact, the impact of the operators' revised market strategies has gone beyond the blurring of markets and increased competition. Convergence is delivering a multitude of new innovative services, better service quality, interactivity, and quite importantly, substantial changes in communication styles and models that blend "public" and "private" forms of communication. Consumers are placed at the centre of these changes. Not only are they faced with an array of networks, services and products to choose from; they have also become participants in the process. New technologies have facilitated the proliferation of so-called "user-generated" services, namely "bottom-up" content services with users directly engaging in the production and distribution of content.

In such a context, the technological field within which media policy operates has broadened, if not altered. The classic inclination to restrict media policy to the mass media and the processes through which communication takes place from one point to many points has been put to the test. New technologies have shaken media policy's traditional tenets by allowing narrowcasting and point-to-point communication. This has prompted many scholars to argue for policy convergence and the dismantling of the traditional policy separation between media and telecommunications.<sup>11</sup>

The picture has been further complicated by the gradual appeal that the term "information society" has gained in policy discourse and the formulation of targeted action to foster economic, social and cultural change by focusing on the role of information in the economy and society. Despite the absence of a single theoretical framework for reaching a good understanding of what the term information society and its various components (i.e. knowledge society, digital society, e-society and creative society) actually stand for,<sup>12</sup> the media, together with information and communication technologies, were seen as key drivers of growth and social development. Accordingly, they acquired a privileged position in information society policy thinking and became the object of intense policy debate. Another diffused label has been that of "information policy", understood as all law and regulation dealing with an information production chain and including information creation, processing, flows and use.<sup>13</sup>

Notwithstanding its apparent convergence with broader processes of communication and information diffusion, the delineation of the field of contemporary media policy is of pragmatic importance for policy-makers, legislators and regulators which need to be aware of its limits. It is also an important legal, and in fact constitutional, issue, given the implications it entails for the protection of freedom of expression and other fundamental freedoms and rights, such as the right to

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<sup>11</sup> See Jan van Cuilenburg and Paul Slaa, "From media policy towards a national communications policy: Broadening the scope", 8 *European Journal of Communication* (1993) 149; and Van Cuilenburg and McQuail, at p. 181.

<sup>12</sup> Nicholas Garnham, "The information society debate revisited", in James Curran and Michael Gurevitch (eds) above, p. 287.

<sup>13</sup> Sandra Braman, "Where has media policy gone? Defining the field in the twenty-first century", 9 *Communication Law and Policy* (2004) 153.

information. Media policy has traditionally been founded on safeguarding free speech and the freedom to hold, receive and impart information and ideas. Embodying central democratic and social values, free speech and the right to information have been explicitly protected in Western democracies by means of domestic constitutional law and parliamentary acts, and have served to shape media policy discourse. Identifying the issue area of contemporary media policy is thus closely linked to protecting fundamental rights and civil freedoms.

Despite variation in analysis and points of theoretical departure, it is generally agreed that media policy is concerned with the conduct of media systems.<sup>14</sup> Particular market structures and media practices are identified as desirable and are promoted. Media policy thus deals with the organisation of media markets and media performance. It favours specific market configurations and seeks to advance particular types of media behaviour in a complex and increasingly diverse media environment, where various media with different functions and connecting to different segments of society co-exist.

This project is interested in the media as an institution specifically in the context of a democratic society. As it is discussed earlier in this report, media policy is closely linked to and has consequences for the functioning of democracy. With this premise, this project centres on those processes of media policy formulation and implementation that promote democratic media, focusing specifically on aspects of media freedom and independence, as will be explained further below. The objective of the MEDIADDEM research is not to examine media policy in the broad sense but to carve a distinct media policy domain that specifically seeks to create an enabling environment for the media to perform as agents of information and debate that facilitate the functioning of democracy. From this perspective, media policy should be conceived as the whole range of discourses and policy tools that are employed to shape the media in a way that promotes their role as facilitators of communication through which public discourse is produced. The focus is thus more on the *public role* the media can play, that of mediating the public, including on how the media's role as such is transformed by new technological advancements. It is less interested in other functions of the media, such as entertainment or private communication (important as these may be).

In other words, MEDIADDEM is interested in the constitutive role of the media, as explained by Sandra Braman, that of structurally shaping society by enabling the public to engage in its production and reproduction.<sup>15</sup> Accordingly, the project is not restricted to the examination of those policies that concern the traditional mass media. It also extends to the policies that target new forms of public communication, including the internet as a medium of public communication, in so far as these have a direct or indirect bearing on societal discourse and the political participation of citizens. Moreover, highly debated topics pertaining to infrastructure (i.e. roll-out of broadband, allocation of spectrum resources, net neutrality, etc) are of interest to the extent they condition and/or transform the ability of the media to act as platforms and carriers of public discourse.

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<sup>14</sup> Nicholas Garnham, "Media policy", in Adam Briggs and Paul Cobley (eds), *The media: An introduction* (1998), p. 210; and Freedman (2008) above, pp. 10-15.

<sup>15</sup> Braman, at pp. 179-181.

#### 4. Media policy: actors, venues and processes

Media policy, as expounded in a burgeoning literature on the subject, is shaped by a multiplicity of actors and institutional structures, besides the state, that interconnect and interact among each other in various venues and through various processes in order to organise the media system. In Des Freedman's formulation, media policy refers to the "formal as well as informal strategies, underpinned by specific interests, values and goals that shape the emergence of mechanisms designed to structure the direction of and behaviour in particularly media environments".<sup>16</sup> Policy tools then encompass legal norms and rules that are deployed on the media (for example, regarding ownership, licensing or the imposition of public service remit obligations), and state distribution of resources (through subsidies, tax exemptions, etc). They also include other forms of public intervention, such as supporting actions and programmes (for instance with a view to promoting media literacy or audiovisual production), as well as monitoring of the media performed by specifically mandated authorities, all designed to bring about normative and behavioural change.<sup>17</sup>

The term "global media policy" has become increasingly used to reflect and explain the plurality of processes, formal and informal, where actors with different degrees of power and autonomy, intervene in dispersed policy venues to shape the media market and media conduct.<sup>18</sup> The variety of stakeholders that play a role in defining values, norms and tools for media policy, coupled with the recognition of both visible and invisible, express and latent policy mechanisms,<sup>19</sup> has prompted others to suggest a shift in terminology from "media policy" to "media governance".<sup>20</sup> Besides recognition of the fact that policies concerning the media are formulated at different levels of government – the European and international, national, and sub-national – the concept of governance is also intended to convey the fact that the state might no longer be the pre-eminent actor. The state makes and implements policy alongside a variety of other public, semi-public and private actors.

Media policy may also involve forms of public intervention, which are not necessarily media specific, but which produce effects for the organisation and performance of the media.<sup>21</sup> Legislation regarding access to public documents is probably the most common example of "hidden" or "covert" media policy. Acts and statutes about access to public documents and information are generally not specifically concerned with the media. They do not identify or list the media and media professionals among their beneficiaries. And yet, they constitute one of the

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<sup>16</sup> Freedman (2008) above, p. 17.

<sup>17</sup> Mark Considine, *Making public policy* (2006), p. 15.

<sup>18</sup> Marc Raboy, *Global media policy in the new millennium* (2002), and Marc Raboy and Claudia Padovani, "Mapping global media policy: Concepts, frameworks, methods", 3 *Communication, Culture and Critique* (2010) 150.

<sup>19</sup> Braman above, at pp. 164-166.

<sup>20</sup> Manuel Puppis, "Media governance: A new concept for the analysis of media policy and regulation", 3 *Communication, Culture and Critique* (2010) 134, Manuel Puppis, "National media regulation in the era of free trade: The role of global media governance", 23 *European Journal of Communication* (2008) 405, Michael Latzer, "Regulatory choices in communication governance", 32 *Communications* (2007) 399, Cees J. Hamelink and Kaarle Nordenstreng, "Towards democratic media governance", in Els De Bens (ed.), *Media between culture and commerce: Changing media, changing Europe* (2007), vol. 4, p. 225, Sean Ó Siochrú and Bruce Girard with Amy Mahan, *Global media governance: A beginners' guide* (2002), and Denis McQuail, "The current state of media governance in Europe", in Georgios Terzis (ed.), *European media governance: National and regional dimensions* (2007), p. 17.

<sup>21</sup> Braman above, at pp. 164-165.

principal pieces of legislative intervention that may influence their workings. On the one hand, they can facilitate the gathering of information by creating structured channels for the media to obtain information from public authorities and thus support investigative journalism. On the other hand, they can substantially constrain media activity: grounds for withholding access to information are commonly incorporated in such acts in order to protect national security, public safety, international relations, military intelligence, business secrets, privacy, etc.

Media policy is clearly broader than statutory media regulation. Whereas regulation primarily refers to the adoption of legal rules and norms to govern the media, the concept of media policy encompasses the full array of actors involved and the processes leading to the adoption of binding and non-binding instruments. It comprises as much the formal mechanisms of policy formulation (of which regulatory instruments are a part) as the informal ones (such as lobbying and advocacy by different interest groups). Informal policy-making, in particular, is more difficult to discern, precisely because of its non-formal character. However, the fact that policy decisions are regularly taken outside proper decision-making channels, in corridors, unofficial lunches and dinners rather than in formal meeting rooms and during official work hours, cannot be overlooked. Lobbying can be highly influential. The frequent unreported conversations between politicians and corporate lobbyists are a clear case of informal policy-making where consensus is built and agreements are reached with no consideration of democratic procedural safeguards.

Media policy is also about the implementation of the policy decisions taken and embedded in statutory law or other policy tools. When the direction, objectives and means of media policy have been officially decided, the process moves on to the concrete efforts deployed to attain the goals identified and make use of the policy instruments chosen for policy to work. The energies and resources directed to translating policy decisions into practice comprise the media policy cycle's implementation phase. Implementation is a crucial stage in the policy chain, as it very much conditions whether policies can make a difference and deliver the desired results. Bad policies can yield bad results but good policies can also lead to failure if no steps are taken to ensure effective implementation.

In such a sensitive field as the media is, given the implications it entails for democratic discourse and public debate, it is surprising that there has been so far no comprehensive attempt to examine the way in which media policies are actually applied. Certainly, there has been a significant number of studies inquiring into the various means employed to regulate the media (focusing mainly on broadcasting, since regulation of the printed press has for the most part been in the hands of the industry). Much consideration has also been given as to whether "traditional" regulatory techniques remain valid and pertinent in the increasingly converged and integrated media environment. However, there is a lack of systematic research into the realisation of the defined policy objectives and the actual use of the policy instruments devised to govern the media. This gap could be meaningfully filled by studying in detail the functions of the bodies that are entrusted with administering, monitoring and enforcing policy, their operation and interaction.

#### 4.1. Media policy formulation

Policy-making in the field of the media has progressively become an increasingly complex, multi-layered and multi-spatial process. Not only are the rules being changed due to the blurring of boundaries between distinct policy sectors but the way in which the rules are devised is also being radically transformed. The number of *actors* that participate in the configuration of media policies and the *venues* where media policies are formed have increased impressively. Both state and non-state actors contribute different understandings and knowledge, through their interaction, in the framing of the media policy agenda and the shaping of the principles and rules that govern the policy-making process.<sup>22</sup> Next to governmental bodies and state ministries, independent regulatory authorities, private corporations, civil society organisations (i.e. working in the field of human rights and media freedom), standard setting entities, media associations, trade unions but also individuals with an interest in the areas and topics dealt with (i.e. media professionals, scholars and researchers) seek to leave their imprint on the policy discourse. Competing interests represented by different policy actors and organised interests become subject to negotiation, re-negotiation, conciliation and often conflict at the points of institutional interaction.

Clearly, there is no easy correlation between the number of actors involved in decision-making and the eventual decisions that are taken. The growing variety of participants in the field of media policy does not provide an indication as to the power and influence they actually enjoy. Certain policy participants possess enormous financial and other resources that substantially increase their ability to exercise leverage over policy formation.

Private corporate interests, in particular, can exert an overwhelming influence on policy decisions and direct policy analysis. First of all, they typically dispose of expert resources, which enable them to pursue their interests through government. Scientific evidence has progressively become a prerequisite for media policy development and public officials often rely on the media for the provision of statistics and data, given the lack of resources, time and expertise to produce the information themselves. Major media groups and operators are able to provide such material, either because they have it already or because they can easily call upon it, and formulate policy options and scenarios on its basis. Equally important is the ability of the media to affect the climate of policy debate through their own reporting. The positive or negative coverage of major media policy reforms under way can substantially affect their successful conclusion. Media organisations are often keen to see the enactment of particular laws or the undertaking of particular deregulatory action. The way of reporting on such issues can constrain state authorities to take (or refrain from taking) action. Fear of unfavourable coverage and electoral politics can coerce authorities to go with the media's demands. It seems indeed that media policy initiatives can be pursued or abandoned on account of their attractiveness or aversion in the media.

Conversely, most civil society initiatives do not enjoy the same capacity to influence the government, even if channels to consult and engage citizens are created with a view to enhancing the quality and legitimacy of policies. Civil society movements are often limited by lack of funds and problems of sustainability and

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<sup>22</sup> See Mike Feintuck and Chris Varney, *Media regulation, public interest and the law* (2006), chapter 6.

representativeness. This does not mean that there cannot be successful interventions but it does mean that substantial and sustained policy influence might be limited to those who can routinely meet its costs. Instances where participatory policy arrangements produced the opposite result of what they purported to achieve are not missing anyway. There are many examples of public consultations that were launched only for the citizens to discover that their efforts to provide feedback and participate in the policy-making process were ignored or had no impact on the decisions reached.<sup>23</sup> In short, institutional arrangements for media policy-making can favour structured and competitive debate but also build on uneven power relations that allow small decision-making elites to determine the course to take, despite the seeming diversity of the actors involved.

In addition to the increase in the number of policy participants and the relative strong or weak power they enjoy, the venues of media policy-making have also significantly grown. State-based institutional arrangements have been supplemented by supra-national settings that create a new set of both pressures and opportunities for the configuration of national media policies. At the international level, the International Telecommunications Union (ITU), the World Trade Organisation (WTO), the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and the Organisation for Economic Cooperation and Development (OECD) increasingly engage with and transform the institutional dynamics for the shaping of the structure and performance of the media, though admittedly to various degrees. At a regional level, both the European Union and the Council of Europe (CoE) play an increasingly important role in the field of the media. Although the European Union is not granted specific powers to regulate the communications sector in the Treaty on the Functioning of the European Union, it has extensive powers to facilitate cross border trade in goods and services and can address anti-competitive practices and market consolidation through its general competition and merger control rules. The European Court of Human Rights (ECtHR) acts to ensure compliance with fundamental human rights whilst other bodies of the CoE engage in standard setting.

The proliferation of actors and venues for the conduct of media policies has a direct impact on the actual *processes* through which national media policies are steered. A first distinction can be drawn between vertical modes of policy formulation and horizontal arrangements. The former focus on state-based policy-making and its interplay with supra-national and sub-national media policy-making processes. Horizontal arrangements refer to state regulation as well as processes of self- and co-regulation,<sup>24</sup> which imply media regulation by state actors, non-state actors and by

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<sup>23</sup> To illustrate, in 2003, the US Federal Communications Commission (FCC) refused to take seriously 23 million submissions, whose vast majority, if not all, opposed the loosening of ownership rules on the basis that the comments received were biased, lacked expertise and were simplistic. See Freedman (2008) above, pp. 92 and 102-103.

<sup>24</sup> Self- and co-regulation have received extensive academic attention. For a useful overview, see Julia Black, "Constitutionalising self-regulation:", 59 *Modern Law Review* (1996) 24 and by the same author, "Decentring self-regulation: Understanding the role of regulation and self-regulation in a 'post-regulatory' world", 54 *Current Legal Problems* (2001) 103, Carmen Palzer, "Co-regulation of the media in Europe: European provisions for the establishment of co-regulation frameworks", 6 *IRIS plus* (2002) 2, Tarlach McGonagle, "Co-regulation of the media in Europe: The potential for practice of an intangible idea", 10 *IRIS plus* (2002) 2, Hans Bredow Institut and Institute of European Media Law, *Study on co-regulation measures in the media sector*, Final report, 2006, available at: <http://www.hans-bredow-institut.de/en/node/877> (last visited on 28/10/2010), and Damiam Tambini, Danilo Leonardi and Christopher Marsden, *Codifying cyberspace - Communications self-regulation in the age of Internet convergence* (2008). See also Organisation for Security and Cooperation in Europe, The

state and non-state actors respectively. Self-regulation has been defined as the “large number of practices, common rules, codes of conduct and voluntary agreements which economic actors, social players, NGOs and organised groups establish themselves on a voluntary basis in order to regulate and organise their activities”.<sup>25</sup> In the media field, self-regulation sets rules and standards for media conduct at industry level. The responsibility of regulation is placed on the media themselves. Through their representative associations or other bodies and organs created for that purpose, the media regulate their operation and engage in both rule-setting and enforcement.<sup>26</sup> No state influence whatsoever occurs. Co-regulation (or regulated self-regulation) is based on a system of mixed regulatory responsibility, shared by state and non-state organs. It is neither “pure” self-regulation, nor traditional “command-and-control” state regulation. Rather it rests on a combination of state and industry regulation, which make take a variety of forms in the pursuit of public policy goals, extending to rule-making, the enforcement of rules or both.

Whereas state regulation, co-regulation and self-regulation are essentially collective forms of media policy-making, attention should also be ascribed to what has been termed in literature as *individualised self-regulation*, *self-organisation* or *organisational media governance*.<sup>27</sup> Contrary to processes of policy formulation that concern all media organisations in a given segment of the market, individualised self-regulation denotes the norms that are developed at the level of single media organisations. Individual companies often set out rules to observe in their daily activity and create internal mechanisms for their enforcement. Many news organisations in the countries covered by MEDIADEM have adopted professional and ethical standards, either in the form of codes of conduct or editorial guidelines, and have established control mechanisms to ensure compliance (i.e. internal ombudsmen, disciplinary procedures, ethical audits, consultation with users, etc). Individualised self-regulation can be the initiative of sole media operators or take place within the context of self-regulation, co-regulation or statutory regulation. Codes of conduct that are adopted by the industry as a collective form of self-regulation may require media operators to individually design their own editorial guidelines and guarantee their observance. Moreover, public service broadcasters, whose public service remit is commonly defined at state level, can be mandated to prepare codes of conduct for their everyday editorial practice and create internal mechanisms for control. In most instances, the state will ultimately have to control such control.

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Representative on Freedom of the Media, *The media self-regulation guidebook* (2008), available at: [http://www.osce.org/publications/rfm/2008/04/30697\\_1117\\_en.pdf](http://www.osce.org/publications/rfm/2008/04/30697_1117_en.pdf) (last visited on 28/10/2010).

<sup>25</sup> European Commission, “Action plan: Simplifying and improving the regulatory environment”, COM(2002) 278 final, p. 11.

<sup>26</sup> Note that third parties or the broader public can also be involved in the process. To give an example, the Council for Mass Media, which was established by publishers and journalists in Finland in order to act as a self-regulatory body for the mass media, does not comprise only members with expertise in the field of the media but also members who represent the public. These may not be employees or board members of any media entity and are elected by the Council itself. It is further possible to point to other types of “community” or industry-based regulation at the international level, such as the system of domain name allocation operated by ICANN (see in this respect Andrew Murray and Colin Scott, “Controlling the new media: Hybrid responses to new forms of power”, 65 *Modern Law Review* (2002) 421). Given the increasingly international nature of the communications environment many self-regulatory bodies, such as INHOPE (<https://www.inhope.org/>), the international association of internet hotlines, are now co-operating at an international level.

<sup>27</sup> See Puppis (2010) above, at p. 141.

The multiplicity of venues in which an increasing plurality of policy actors intervenes and the variety of processes through which these actors interact render the study of contemporary media policies an extremely complex exercise. MEDIADEM engages in the study of the dynamics of media policy-making, with due attention to the actors, venues and processes through which media policies develop in different European countries. It examines who the policy participants are, what interests they represent, the degree of authority and power they enjoy, the levels at which they operate, and the way in which they negotiate and influence the shaping of media policy decisions. This is necessary in order to gain a better understanding of the nature and content of the decisions taken, as well as of their underlying logic and rationale. The thematic field on which the analysis focuses is, as explained further below, that of media freedom and independence, encompassing the regulatory tools and policy instruments that either promote or curtail the development of free and independent media behaviour.

Courts, both at the national and European level, can also be important actors in media policy-making, albeit they are not traditionally regarded as such kind of actors. Undoubtedly, the main function of judges is to authoritatively interpret legal texts, besides determining facts. Pertaining to the media, in large numbers of cases that they review, courts are called to examine claims of freedom of expression and balance such rights against other kinds of rights, such as the right to privacy and respect for one's personality, among others. At the same time, they also engage in policy-making, a function that is most controversial and frequently critiqued, as it is seen to overstep the traditional division of powers and to intrude into the realms of the government and legislature. In contemporary Europe, the work of governments and parliaments in policy-making is arguably shaped to a substantial degree by an expanding web of constitutional and human rights norms, as well as judicial constraints, emanating both from the national and the European level.<sup>28</sup>

Judges both make and implement policy in the course of routinely enforcing legal norms and provisions. In the blurred boundaries between applying and interpreting the law, judicial arguments can have a substantial influence in supporting or challenging decisions made by policy-makers, as well as in promoting, or conversely undermining, the implementation of particular laws.<sup>29</sup> For instance, in the case of Austria, a string of adverse judgments upholding freedom of expression in the media by the ECtHR were catalytic in dismantling state monopoly of broadcasting in the 1980s and 1990s. National courts are instrumental actors in the implementation of European law and human rights norms, including those concerning freedom of expression in the media.<sup>30</sup> Yet, both in making and in enforcing public policy through their interpretation of the law, courts, even empowered ones like the US Supreme Court, are arguably constrained actors in a political system because they lack the power to enforce their decisions. They can be effective instigators of policy reform

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<sup>28</sup> Alec Stone Sweet, *Governing with judges – Constitutional politics in Europe* (2000), pp. 1-2.

<sup>29</sup> There is a large literature on the subject from the disciplines of public law but also political science, especially in the US context. See for instance, Malcolm M. Feeley and Edward L. Rubin, *Judicial policy-making – How the courts reformed America's prisons* (1998).

<sup>30</sup> See Dia Anagnostou, "Untangling the domestic impact of the European Court of Human Rights: National courts, governments and civil society", in Dia Anagnostou (ed.), *Domesticating the ECtHR: Institutions, mobilization and policy reform* (2011, forthcoming).

only when there is ample support from legislative and executive officials to their rulings, as well as significant public support for the latter.<sup>31</sup>

#### **4.2. Media policy implementation**

While state statutory law and other policy tools, such as subsidy schemes, codify the policy decisions that have been reached at the stage of policy formulation, subsequent choices are needed to attain the desired results. Funding must be allocated, institutional arrangements made, and procedural rules adopted. Policy implementation usually relies on civil servants and administrative officials, who are called upon to implement the policies devised and which may operate at different levels of government (national, regional or local). The usual form chosen for administering policy, irrespective of sector, is through the designation of a specific ministry or department to take the necessary implementing actions. State officials are empowered to do so but they can also be joined by other administering entities. These may include independent bodies assigned with policy administration tasks, commissions and tribunals mandated to perform quasi-judicial functions and semi- or quasi-autonomous non-governmental organisations (quangos), amongst others. Courts ultimately control the administration and enforce the rules, though as mentioned above, they often “make” policy and trigger policy reform through their interpretation of the law.

Whereas until the 1970s, the implementation phase of public policy was deemed to be unproblematic and an essentially bureaucratic process, academic thinking gradually evolved, as studies showed that implementation was not achieving the expected results. First and second-generation theories of policy implementation, founded on a “top-down” and “bottom-up” approach respectively, provided useful insight into the processes considered appropriate to match policy intent with policy practice.<sup>32</sup> Whereas top-down analysis placed emphasis on the original wishes of the policy-makers, bottom-up studies centred on the actions of those involved in implementation, their skills and commitment. The focus of third generation theories moved onto the choice of implementing instruments, pointing to oversight mechanisms (based on persuasion and/or coercion) and the relationship between administrators and policy-makers, where the latter become dependent on the former for the pursuit of their interests.<sup>33</sup> Analysis has stressed the implications of institutional arrangements for the success of policy implementation. It has also highlighted the importance of taking the challenge of implementation into account at earlier stages of the policy process, in order to ensure a better match between policy goals and the mechanisms required for their actual attainment.

Implementation is certainly complex. The actors participating in it carry their own values and interests, which influences the policy outcome. Institutional conflict is not rare. Differences in approach and administrative practice, coupled with the pursuit of different institutional agendas can create friction between the various implementing bodies and agencies, hamper collaboration and ultimately undermine implementation. The clarity of the policy decisions reached is also important. Being the result of

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<sup>31</sup> This argument of the “constrained court” as a policy actor was developed in the influential study by Gerald Rosenberg, *The hollow hope: Can courts bring about social change?* (1991).

<sup>32</sup> For a detailed analysis, see Michael Howlett, M. Ramesh and Anthony Perl, *Studying public policy: Policy cycles and policy subsystems* (2009), p. 164.

<sup>33</sup> *Ibid.*, p. 165.

negotiation and bargaining, policy decisions sometimes lack precision and offer vague guidance for implementation. Policy decisions that break with previous policy and require implementing bodies to change their habits and working practices can also complicate implementation. A new government may also trigger changes in the way state policy is administered, without bringing changes to the policy itself and the goals it seeks to attain. Politicians coming to power regularly seek to alter implementation practices, whilst keeping the same regulations in force.

Administrative discretion is a crucial point to keep in mind. Bureaucrats and civil servants usually enjoy a wide margin of discretion on how to carry out the government's policy. Such discretion may serve to re-open discussion on the policy choices that were made, especially by those unsatisfied with them. Implementation can thus be used to contest what has been agreed upon, and restrict or contain the effects of regulation, if not outright evade them. The choice between different implementing avenues that is often incumbent on public agencies makes them prone to pressure. Scarcity of resources can also hamper implementation, especially when this proves a long-term exercise requiring sustainable resources.

In the field of media policy, institutional arrangements for the conduct of policy vary considerably in European countries. There is indeed a multiplicity of organs and bodies assigned with the task of implementing the policy decisions that are laid down in media laws and regulations or other policy instruments. Regarding regulation, in particular, the multi-faceted process of media policy formulation complicates the picture, as implementation is not only concerned with the application of statutory laws but also with the application of those norms defined through co-regulatory and self-regulatory processes. Media policy generally comes under the competence of national ministries of culture; electronic communications are placed under the purview of other national ministries, such as the Ministry of Transport and Communication in Finland or the Ministry of Infrastructure, Transport and Networks in Greece. There are also "integrated" ministries, bringing media and electronic communications under the same roof, like the Ministry of Economic Development in Italy or the Ministry of Industry in Spain.

Most countries have then one or more media-specific independent regulators (i.e. the State Council on Audiovisual Media in Spain, the Council of Electronic Media in Bulgaria or the Danish Radio and Television Tribunal), which are required to apply the rules and commonly enjoy supervision and monitoring tasks. In Germany, state private broadcasting is under the responsibility of fourteen independent public bodies, the so-called State Media Authorities, which also maintain a joint body, the Association of State Media Authorities. The Regulatory Affairs Commission, in turn, deals with the supervision of national broadcasters. In Belgium, three different organs operate: the Conseil Supérieur de l'Audiovisuel for the French Community, the Vlaamse Regulator voor de Media for the Flemish Community and the Medienrat for the German-speaking Community. "Mixed" bodies or "super regulators", inspired by technological convergence, have also been established, such as the Office for Communications in the UK and the Italian Communications Authority, which deal both with electronic communications and the media. This "integrated" model contrasts with the practice of other countries that keep media and electronic communications under the competence of different bodies and organs. Institutional arrangements for the application and monitoring of rules concerning public service media also display variation and testify to a complex institutional mix of bodies that supervise the application of self-regulatory, co-regulatory and/or

statutory rules. Most countries have also a specialised competition commission or tribunal, which may be required to apply specific rules when operating in the media context, as well as bodies dealing with issues concerning data protection and access to public documents and information.

At the same time, there exists a variety of entities, stemming from the media industry itself, that implement codes of conduct and ethical standards on an essentially self-regulatory basis. This is clearly the case for the press, which has been traditionally left to regulate itself, but also for the electronic media. Associations of publishers, journalists and other media professionals also implement voluntary codes regulating the activities of their members by assigning their application and monitoring to specific bodies created for that purpose. In addition, many media operators have developed their own professional guidelines, either because they are mandated to do so or out of their own initiative, and have entrusted their supervision to internal organs.

The complexity of the institutional framework makes the study of implementation of media policy an intriguing and challenging exercise. MEDIADDEM shall investigate in detail how these bodies are organised, how they operate and how they apply policy. In addition to mapping the actors involved in media policy implementation in each country covered by the project, the analysis will examine their performance, paying due attention to formal safeguards for their independence (when available), funding arrangements and resources, the powers of action they enjoy, and the problems and pressures they encounter, if any, in their everyday practice. Bearing in mind the distinction previously drawn as regards vertical, “top-down” modes of policy formulation and horizontal regulatory arrangements, the analysis will centre on the implementation of the rules that are embedded in statutory, co-regulatory and self-regulatory instruments, as well as individualised self-regulation, when this stems from public policy-making processes. Individualised self-regulation that derives from the initiative of sole operators will not be dealt with, since this would substantially expand the field of MEDIADDEM research.

## **5. National media policy: what factors influence its making and operation?**

A central issue that pervades much of the relevant literature and the discussions in it is the extent to which economic and market pressures predominantly drive the policy decisions that public officials and governments make regarding the structure and operation of the media. Since the 1980s and the 1990s, the rise of neo-liberal ideas and the increasing pressures for the state to withdraw from and privatise various sectors of the economy, have also fundamentally impacted upon the media. The emergence of commercial broadcasting undermined the monopoly of public broadcasting, which prevailed in most of post-war Europe, and challenged its underlying social purpose and rationale. Technological advancements and the rise of the “new media” with the introduction of cable and transfrontier satellite transmissions were catalytic in this regard. They eroded the basis for the “scarcity of frequencies” argument, making it possible to circumvent national level regulation. In addition, globalisation and the extensive mobility of capital have further undermined pre-existing forms of national regulation of the media.

Policy ideas regarding the market as a more efficient and neutral regulator than the state in an increasingly globalised world and ideas advancing a more

economic perspective against the public service ethos have undoubtedly gained a premium in contemporary media and policy environments. At the same time, such ideas and transnational economic pressures do not determine national media policy. Instead, they set the context against which governmental, state and non-state actors engage in policy making processes and make decisions on how the media is to be governed. Whether under the previous public service paradigm or subsequently, the new one defined by pressures for deregulation, studies have shown that national policies have manifested a great deal of variation, instead of exhibiting substantial convergence in accordance with particular neo-liberal, economic or ideological imperatives. National policies pertaining to public service broadcasting, which was consonant with broader social market ideas to economic development that prevailed after the war in Europe, significantly varied across states. Similarly, while deregulation pressures have been exerted across Europe, European states have responded in markedly different ways, with responses ranging from embracing radical marketisation (i.e. France, Italy) to opting for more constrained forms of deregulation like Germany, for instance.<sup>34</sup>

Not only do broader economic pressures and technological imperatives elicit variable national policies across states, but they also prompt different responses from political parties and governments within each country. For instance, while the Labour government in the UK in the 1990s and 2000s assumed a clearly deregulatory stance and shifted towards a more friendly accommodation with large media corporations, at the same time, its policy substantially diverged from that of the conservative government. It distinctly did so by simultaneously affirming Labour's commitment to public service broadcasting with an expansive notion of public interest, even as it pushed the BBC to operate more efficiently as if it were in the private sector.<sup>35</sup> In sum, broader economic pressures and technological advancements do not directly shape national media policies. Instead, they define the context within which national governments, dominant political forces and various non-state actors (re)define their preferences and interests and adopt policies among a number of alternatives.

Inquiring into national variation in various aspects of the media, a number of studies attribute them to the political and economic structures of states. While not specifically probing into the formation of media policy, the study by Peter Humphreys explored the impact of political structure. It specifically examined the extent to which state power is weak and diffused as opposed to strong and concentrated, and its consequences for the degree to which media pluralism is guaranteed.<sup>36</sup> The diffusion as opposed to the concentration of state power was assessed in reference to structural characteristics such as the extent to which a political system leads to consensual as opposed to majoritarian governments; the latter are arguably likely to be more executive-dominated and prone to greater interference with publicly-owned media. The degree of diffusion or concentration of state power was also assessed in reference to the liberal, statist or corporatist structure of representation of the main social interests. For instance, a liberal state like the UK is weak in so far as it possesses a relatively non-political civil service and strong institutions of civil society. It is contrasted with the French state regarded as strong due to its centralised structure and its strong tradition of dirigisme and public intervention in the economy. Further

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<sup>34</sup> Peter J. Humphreys, *Mass media and media policy in Western Europe* (1996), pp. 300-301.

<sup>35</sup> David Hesmondhalgh, "Media and cultural policy as public policy", 11 *International Journal of Cultural Policy* (2005) 95, at pp. 102-103.

<sup>36</sup> Humphreys above, pp. 11-14.

affecting the dispersion of state power are the territorial structures of each state that can be unitary, decentralised or federal.

Some of the above features of political and state power were later incorporated in the influential study by Daniel C. Hallin and Paolo Mancini that explores comparatively the factors and conditions that have given rise to different media systems across Europe and in North America. In particular, they characterise national media systems in reference to three ideal types that are differentiated along political-geographic lines: the liberal (UK, U.S. and Canada), democratic corporatist (northern continental Europe), and the polarised pluralist model (the Mediterranean countries of south Europe).<sup>37</sup> In comparing the structure of media markets, the relations between the media and political parties, the nature and degree of journalistic professionalism and the role of state intervention, the authors argue that differences stem from the distinct historical trajectories of national political institutions. Particularly important in this regard are the distinct relations between the state with societal interests and civil society (pluralist, corporatist), the nature of democracy (liberal or welfare state), as well as the nature of government and the extent to which it is majoritarian or consensual.

While it substantially draws from the abovementioned studies that explore the manifold connections between political systems and different aspects of the media, MEDIADEM is specifically interested in the formulation and implementation of policies concerning the media. The research, in which it engages, is founded on the assumption that the legal norms, regulatory instruments and state policies that national governments adopt with regard for instance to ownership of the media, licensing or regulation of media content among others, cannot be attributed to structural features of their political or economic systems. Instead, they are mainly products of specific policy processes taking place in distinct institutional settings. In this sense, MEDIADEM seeks to analyse media policy from an *institutionalist* perspective.

Under the rubric of “new institutionalism” as distinct from the old one, such a perspective arose since the 1980s as a critique both of structural accounts focusing on characteristics of the political or economic structures, but also of the behaviouralist approaches that prevailed in political science in the 1960s. Behaviouralism had attributed policies to the attitudes and preferences of individual and collective actors without, however, explaining why interest groups exerted different degrees of power in different countries. The behaviouralist approach was reflected in liberal pluralism, which emerged in US political science analysis of public policy and was subsequently taken up and developed in the UK. Liberal pluralism placed emphasis on the creation and openness of multiple access points for the participation of a wide range of actors in policy-making. Policy formation was seen as a competitive arena in which different interests vie for influence but in which no single voice dominates due to institutional arrangements that favour consensual policies through deliberation. In response to criticisms that highlighted the overpowering influence exercised by particular interest groups with excessive financial and political power, pluralists did not deny that there are inequalities in the distribution of power among the actors involved. At the same time, they dwelt upon its dispersion and noted the absence of absolute control by any single category of policy participants and interest groups.

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<sup>37</sup> Hallin and Mancini above.

In seeking to explain cross-national differences in various policy areas despite common challenges and pressures emanating from the international level, new institutionalism shifted the focus of analyses away from the broad structures but also away from the micro-level behaviour of political actors. It instead focused on intermediate-level institutions such as corporatist arrangements, policy networks linking economic groups to the state bureaucracy, and party structures among others, to explore the role they play in shaping the incentives and constraints of political actors in different national contexts.<sup>38</sup> Its thrust is not so much the kinds of variables that it examines, as it is the analytical focus on middle range institutions. Such a focus has allowed researchers to centre on the strategic interactions among actors and the ways in which their interests and preferences have been influenced by political and economic institutions. Different variants of institutionalism have placed emphasis on historical trajectories, or the self-interested behaviour of political actors (rational choice). The intermediate level of analyses is most appropriate if we consider the substantial increase in the number of actors that participate in media policy-making, but also of venues, in which relevant decisions are made, over the past few decades. From the perspective of new institutionalism analyses of policy formation have highlighted the role of non state actors in policy development by referring to “issue networks”, “advocacy coalitions”, “policy communities”, and “policy networks”.<sup>39</sup>

Applying an institutional approach to the study of media policy processes in the US and the UK, Des Freedman argues that such processes have increasingly been characterised by an increasing and volatile number of stakeholders and participants.<sup>40</sup> They include civil servants, private and public lobbyists, regulators, individual citizens, politicians and academics, among others. Despite such expansion, however, processes of media policy-making have not become more pluralist with regard to the leverage and decisive influence that is brought to bear upon the ultimate choices and decisions. These remain very much confined to a limited circle of actors from the corporate world and business interests, which enjoy especially intimate and largely opaque connections with governments and policy-makers. Their dominance is further bolstered by the lack of public involvement and the limited parliamentary scrutiny over relevant legislative and policy proposals.<sup>41</sup> Others, however, attribute to the process of media policy-making a certain degree of autonomy. While acknowledging “structured inequality in the balance between different social forces”, they argue that it is misleading to see it as being captive of particular powerful and corporate

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<sup>38</sup> For an overview of new institutionalism and its different strands see, Kathleen Thelen and Sven Steinmo, “Historical institutionalism in comparative politics”, in Sven Steinmo, Kathleen Thelen and Frank Longstreth (eds), *Structuring politics* (1992). See also the collection of studies in Walter W. Powell and Paul J. DiMaggio (eds), *The new institutionalism in organizational analysis* (1991).

<sup>39</sup> Hugh Hecl, “Issue networks and the executive establishment”, in Anthony King (ed.), *The new American political system* (1978), Jack Walker, “Introduction: Policy communities as a global phenomena”, 29 *Governance* (1989) 1, Grant Jordan, “Sub-governments, policy communities and networks: Refilling the old bottle?”, 2 *Journal of Theoretical Politics* (1990) 319, Paul Sabatier and Hank Jenkins-Smith (eds), *Policy change and learning; An advocacy coalition approach* (1993), Grant Jordan and William A. Maloney, “Accounting for sub-governments: Explaining the persistence of policy communities”, 29 *Administration and Society* (1997) 557, R.A.W. Rhodes, *Understanding governance: Policy networks, governance, reflexivity and accountability* (1997), Tanja Borzel, “Organising Babylon - On the different conceptions of policy networks”, 76 *Public Administration* (1998) 253.

<sup>40</sup> Des Freedman, “Dynamics of power in contemporary media policy-making”, 28 *Media, Culture and Society* (2006) 907, at pp. 913-914.

<sup>41</sup> *Ibid.*, at pp. 916-918.

interests.<sup>42</sup> A central question then is the extent corporate interests have a decisive influence in shaping media policy. As a corollary to it, how autonomous are governments and policy makers vis-à-vis the influence exerted by powerful economic interests? Furthermore, to what extent do public-private networks escape transparency and accountability?

In studying the formation and implementation of media policies in different national contexts, it is necessary to explore not only the formal processes and institutions, but to also probe into the informal interactions that take place, which are closely linked to the transparency of the policy-making process. Those responsible for media policy may perform their duties behind “closed doors”, through informal channels or by favouring openness and accountability. Making material related to policy formation (i.e. reports, research, analysis, etc) publicly available, providing explanations as to why the policy debate is structured the way it is and giving reasons for specific media policy outcomes are signs of a transparent process. Conversely, the provision of limited or no information on the policies conducted, the rules and norms introduced and the policy rationale that led to their adoption denotes processes that remain largely out of reach for the members of the public. Certainly, transparency is complex in its realisation. It requires time, effort and resources, and often presupposes an informed citizenry which can make sense of the information provided. And yet, it is essential for democratic politics. Public scrutiny of government policies is a fundamental aspect of representative democracy; the latter cannot function properly in the absence of the former.

Studies on policy-making have paid much less attention to the implementation of laws and policies, often reflecting an inherent, albeit misleading assumption, that policy decisions and legal rules are automatically put to practice. Yet, implementation, namely the efforts of national authorities to administer public policies in accordance to legal rules and constitutional or human rights norms, involves complex and politically contested processes that do not necessarily lead to effective application in practice. Effectiveness can be understood as the efficacy of a given policy or regulation to manage or resolve the political problem and/or social conflict, which an existing law or provision aimed to address.<sup>43</sup> Policy implementation varies greatly depending on the issue area involved and the actors who are assigned competence for it. The extent to which legal rules and policy decisions are enforced, at the very least depends on support by executive and administrative authorities, but also by dominant political actors and parties.

## **6. Media policies for media freedom and independence**

In any sector, in order to understand and explain the particular decisions and policies made, it is necessary to depict the macro-contextual structures and processes, against which policy intervention is pursued. Secondly, the broad circle of actors and institutions that are involved in media policy formulation and implementation must be drawn. From an institutionalist perspective, policy analysis focuses attention at the middle-level institutions, as opposed to larger structures or, conversely, to individual actors, as it was previously discussed. Quite importantly, however, the issues at stake

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<sup>42</sup> Hesmondhalgh above, at p. 97.

<sup>43</sup> Jürgen Neyer and Dieter Worlf, “The analysis of compliance with international rules: Definitions, variables, and methodology”, in Michael Zürn and Christian Joerges (eds), *Law and governance in Postnational Europe* (2005), p. 40, at pp. 41-42.

also need to be defined and delineated. A thematic area or topic needs to be introduced, which constitutes the “entry point” for policy-making, though it might reflect different ways of thinking about how the media should be regulated in this respect. The thematic issue area of interest to MEDIADEM is that of media freedom and independence. Research carried out in the framework of the project aspires to investigate the configuration of state media policies that directly or indirectly target the development of free and independent media (or conversely hamper their emergence and consolidation). The aim is to identify what policy processes and what policy tools and instruments stemming from and applied through such processes are supportive of media freedom and independence.

In spite of the fact that free and independent media are a cornerstone of contemporary democracy, it is notoriously difficult to define what characteristics render it free and independent in a way that is not normatively-laden. While earlier on freedom and independence were understood to be premised on reducing or altogether eliminating state ownership and control, subsequently due or undue influence and pressure exerted by private or corporate owners or other social groups as much raise questions about the degree to which the media that are released from state supervision are in fact free and independent. Elusive as the definition of free and independent media may be, it is undoubtedly linked to the extent to which it is unfettered and reasonably autonomous from state control, and from dominant economic and political interests; and by the diversity of views that can be expressed through it. Guaranteeing media freedom and independence, however, cannot be seen to a priori stem from particular structural configurations (i.e. state intervention versus market liberalisation).

In light of the complexity and shifting nature of the media landscape and the forces that shape it, it is clear that understanding free and independent media has moved away from the simplifying antinomy between the presumed stifling effects of state control on the one hand, and the assumption that market-driven media can ensure freedom and independence, on the other. Indeed, while state control may thwart media freedom, regulatory action appears to be essential for the establishment and consolidation of a free and independent media environment. Still, regulatory intervention is a necessary but not sufficient condition to determine the operation of free and independent media. What are the other non-legal factors that influence the degree and nature of media freedom and independence?

### **6.1 Free and independent media: some initial distinctions**

The Council of Europe Parliamentary Assembly stated in 2001 that “free and independent media are an essential indicator of the democratic maturity of a society”.<sup>44</sup> But what do we mean by “free and independent” and should we expect all media, however broadly defined, to share these characteristics? The Concise Oxford Dictionary includes in its definition of “independent”: “not depending on authority or control”; “self-governing”; “not depending on another person for one’s opinion or livelihood”; “unwillingness to be under an obligation to others”; and “not supported by public funds”.<sup>45</sup> These conceptions focus on the practical reality of freedom from

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<sup>44</sup> Council of Europe Parliamentary Assembly, Recommendation 1506 (2001), Freedom of expression and information of the media in Europe, 24/4/2001, para. 1.

<sup>45</sup> Clarendon Press, Oxford, eighth ed. 1990.

external direction and control, as well as on a particular state of mind or professional ethos that rejects such control. Both of these aspects are important for media independence.

An initial distinction should be made between independence on the one hand and unbiased or impartial reporting and accuracy on the other.<sup>46</sup> A media service may be independent in the sense of being free from external direction and control, yet still offer one-sided, even inaccurate, information. Journalists may have their own particular biases or feel unconstrained by professional standards of accuracy. Alternatively, a service that is totally dependent on one or a number of private or public benefactors may be established with a clear remit to carry out independent reporting. Many public service broadcasters are state funded, yet are expected to provide unbiased and accurate reporting.

Liberal conceptions of freedom and independence focus on editorial freedom from government influence and reject state intervention designed to curtail the influence of private property or promote opportunities for particular groups or individuals to access the media marketplace.<sup>47</sup> At first glance this would seem to be broadly in line with the scope afforded to freedom of expression and information in the main international charters of human rights, such as Article 19 of the International Covenant on Civil and Political Rights or Article 10 of the European Convention on Human Rights. Although these rights extend to corporations<sup>48</sup> and offer journalists, editors and proprietors significant procedural and substantive guarantees against state censorship and control, they have only limited purchase in relation to private forms of constraint, such as the control that proprietors exercise over editors, or the influence that advertisers or the audience exert over particular media services.<sup>49</sup> On only a few occasions have they been interpreted as imposing positive obligations on the state to intervene to redress private constraints or market failures.<sup>50</sup>

The term “press freedom” may thus be used to indicate the special recognition that courts and governments afford the media in democratic societies, necessitating particularly compelling reasons for any form of restraint, particularly prior restraints on publication.<sup>51</sup> The ECtHR has noted on a number of occasions that “the most careful scrutiny...is called for when...the measures taken...by the national authorities are capable of discouraging the participation of the media in debates over matters of legitimate public concern”.<sup>52</sup> It is also possible to identify certain legal rights and

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<sup>46</sup> Chris Frost, *Journalism, ethics and regulation* (2007), chapter 5, and Ivor Gaber, “Three cheers for subjectivity: Or the crumbling of the seven pillars of journalistic wisdom”, 14 *Communications Law* (2009) 150.

<sup>47</sup> See Mark S. Fowler and Daniel L. Brenner, “A marketplace approach to broadcast regulation”, 60 *Texas Law Review* (1981-1982) 207, and David Kelley and Roger Donway, “Liberalism and free speech”, in Judith Lichtenberg (ed.), *Democracy and the mass media* (1990), p. 66.

<sup>48</sup> *Autronic Ag v Switzerland* (1990) 12 EHRR 485, para. 47.

<sup>49</sup> For discussion see Andrew Nicol, Gavin Millar and Andrew Sharland, *Media law and human rights* (2009), pp. 20-21.

<sup>50</sup> See, for example, *Fuentes Bobo v Spain* (2000) 31 EHRR 1115. In *Appleby v UK* (2003) 37 EHRR 38 the ECtHR held that where private property was being deployed to prevent “any effective exercise of freedom of expression” it would “not exclude” the possibility of imposing positive obligations on a state to redress the situation (para. 47).

<sup>51</sup> On the relationship between freedom of expression and press freedom see Eric Barendt, *Freedom of speech* (2005), second ed., chapter XII.

<sup>52</sup> Application no. 73604/01, *Monnat v Switzerland* (2010) 51 EHRR 34, para. 58, upholding the right of a journalist to produce a “subjective” current affairs programme on Switzerland’s role in World War Two.

immunities afforded those who engage in public, as opposed to private, communication. Thus, the press may be allowed to attend certain judicial or other proceedings from which the public is excluded, or afforded protection from defamation proceedings where it has engaged in responsible reporting.<sup>53</sup>

Nevertheless, the ECtHR has held that freedom of expression may legitimately be *curtailed* by the state in order to realise the public interest in maintaining a diverse and plural communications environment.<sup>54</sup> The Charter of Fundamental Rights of the European Union similarly emphasises the importance of respect for media freedom and pluralism in Article 11(2). On this view, neither the press as an institution, nor those individuals who own or work for the press, enjoy an absolute right to freedom of expression. The term “press freedom” can thus be misleading, in that the press may be subjected to a greater degree of state control than private individuals. This instrumental view of press freedom, which focuses on the public interest rather than the rights of media owners or journalists, is reflected in the work of Judith Lichtenberg, who argues that “[u]nlike freedom of speech, to certain aspects of which our commitment must be unconditional, freedom of the press should be contingent on the degree to which it promotes certain values at the core of our interest in freedom of expression generally.”<sup>55</sup>

In countries such as Germany, where press freedom receives constitutional recognition, courts have held that press freedom can both necessitate, as well as preclude, state intervention.<sup>56</sup> From an instrumental perspective, state intervention to promote media diversity or afford access to minority groups can be seen as setting the parameters to press freedom, rather than curtailing it. But the extent of legitimate intervention is strictly limited to the pursuit of the public interest in a functioning democracy. The public interest here encompasses a number of distinct informational, educational, representational, deliberative, and investigative aspects. Thus, the press is expected to provide accurate, wide-ranging information on current events and matters of public interest, as well as contextual information and opinions designed to facilitate independent evaluation by the public of those matters. Those who adopt a pluralist perspective emphasise the role of the press in reflecting all significant interests in society, as well as the provision of space for those interests to represent themselves. They call for particular attention to be paid to those who would otherwise be excluded from the media through lack of resources or because they pose a challenge to certain established interests. In terms of its deliberative function, the press facilitates debate among citizens on matters of public interest through the creation of fora where opinions can be exchanged and ideas tested. Finally, the press can act as the metaphorical “watchdog”, investigating the actions not only of public bodies but also powerful corporations and individuals.<sup>57</sup>

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<sup>53</sup> See, for example, the UK case of *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127.

<sup>54</sup> *Informationsverein Lentia and others v Austria* (1993) 17 EHRR 93.

<sup>55</sup> Judith Lichtenberg, “Foundations and limits of the freedom of the press”, in Judith Lichtenberg (ed.) above, p. 102, at pp. 104-105.

<sup>56</sup> Article 5 of the German Basic Law (1949). See the Third and Fourth Television cases at 57 BVerfGE 295, 320 (1981) and 73 BVerfGE 118, 152 (1986) respectively.

<sup>57</sup> See, for example, Rodney Benson, “Futures of the news: International considerations and further reflections”, in Natalie Fenton (ed.), *New media, old news - Journalism and democracy in the digital age* (2010), p. 187, Steven Barnett, “Journalism, democracy and the public interest: Rethinking media pluralism for the digital age”, Reuters Institute for the Study of Journalism working paper, September 2009, and James Curran, “Rethinking the media as a public sphere”, in Peter Dahlgren and Colin Sparks (eds), *Communication and citizenship: Journalism and the public sphere* (1991), p. 27.

All of these functions will be subverted where external influences lead the press to ignore particular events or interests, suppress information, or transmit biased, misleading and inaccurate reports. In such circumstances the press operates to further its own institutional interests or the interests of those who own, or are connected to, the media, rather than the distinct public interest.

### **6.1.1 Ownership, finance and the quest for information**

In the media context, dependency on another for “one’s opinion or livelihood” arises as a result of ownership structures and the need for finance and information. Possibly the most direct form of influence over what the media report is exercised by media owners who can determine the editorial line and general orientation of their products. This need not, however, require hands on management, in that judicious editorial or managerial appointments can obviate the need for day to day direction, with employees making decisions in line with what they believe their proprietor would want. Self-censorship of this type is difficult to detect and can extend generally throughout the body of journalists, conscious of their dependent employment relationship.

Certain types of owner are more likely to take an interventionist stance than others. Partisan bodies, for example, such as political or religious organisations, usually obtain media interests specifically to further their opinions or beliefs. Ownership by the state or major corporations with wide-ranging interests also raises particular concerns about the capacity of the press to perform its “watchdog” function. Where a proprietor has interests in other goods or services, negative stories that could harm those interests may be suppressed or positive coverage artificially incorporated into the news reports. The decision by the publisher Harper Collins not to publish the memoirs of Chris Patten, the last British governor of Hong Kong, is often cited as an example of such behaviour. Harper Collins is owned by News Corporation, which, at the time, was seeking to develop its satellite television services in China and was thus concerned to avoid offending the Chinese government.<sup>58</sup>

An individual’s capacity to influence a media company may depend not only on the extent of their ownership but also on the behaviour of other shareholders and the existence of linked holdings. Where ownership of a company is widely dispersed, for example, it will be necessary for shareholders to forge strategic alliances if they are to exert much control. On the other hand, it is possible for an individual to have a material influence on a company’s policy with only a relatively small shareholding, where the other shareholders are relatively disengaged or where associates and family members also have stakes in the company.

Nor is it just owners of major newspapers or television channels who determine the range of media goods and services that are offered to the public. Those who own key distribution networks or software applications, such as conditional access systems, newspaper outlets, or cable and satellite systems, can also determine which communications services or goods find their way to the public.

The other major source of influence derives from those who finance the media or from the nature of the financing mechanism itself. Finance can take the form of

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<sup>58</sup> David Croteau and William Hoynes, *The business of media, corporate media and the public interest*, (2006), second ed., pp. 181-182, and, more generally, see C. Edwin Baker, *Media concentration and democracy - Why ownership matters* (2007), pp. 37-44.

sponsorship and advertising; individual subscriptions; donations by charities, corporations or individuals; and state aid. State funding, whether through direct grants or state advertising, can bring into question the ability of the media to investigate the failures of public bodies. Although philanthropic donations, such as the recent Gates Foundation sponsorship of the *Guardian* newspaper in the UK designed to support coverage of development issues, can help to insulate the media from the pressures associated with commercial or state funding, they inevitably create a sense of loyalty to the donor and his or her interests even where they explicitly exclude, as in the Gates example, any control over editorial direction.<sup>59</sup> Here, too, the degree of influence will vary depending on the size of the donation, its duration or whether there is any expectation of further funds. It will also vary depending on the extent to which donations are spread across many individuals, as is the case with public radio and television stations in the United States, or concentrated among a few major companies or individuals.

Reliance on sponsorship and advertising can influence how the media report on the specific companies and their products that provide their income.<sup>60</sup> It also has a less transparent influence on the general orientation of the reports or programmes that are “wrapped around” the commercial communications. Where advertisers wish to target a mass audience, pressure will be exerted on media companies to expand their consumer base and, consequently, offer content that is best able to attract readers or viewers. Many individuals look to the media primarily for entertainment and diversion and have limited interest in services that pursue an overtly “educational” agenda or address concerns only distantly related to their immediate circumstances.<sup>61</sup>

Consumers are also predisposed to regard reports that conform to their own prior beliefs to be of higher quality than those that do not.<sup>62</sup> This creates an incentive for firms to slant their coverage to accord with the beliefs of significant consumer segments in order to build a reputation for quality. Partisan media will equally have an incentive to suppress information inconsistent with their consumers’ beliefs, particularly where there is limited risk of this suppression being revealed. Where consumers do not cross-check with other sources or engage in wider discussion on the events of the day, they will not “make up” the missing information, leading to “electoral mistakes”.<sup>63</sup> There may thus be a significant disjuncture between what in democratic terms it would be desirable for citizens to know and what the media considers to be “newsworthy”.

A final form of dependency arises from the media’s insatiable demand for new and novel information. Those who control access to topical information, notably governments and their press officers, exert considerable influence over what the media report and when and how they report it.<sup>64</sup> Freedom of information legislation can go a considerable way to addressing these constraints, though it will often be

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<sup>59</sup> Robert Fortner, “The web grows wider: Gates Foundation partnerships with the Guardian and ABC News further complicate global health coverage”, *The Observatory, Columbia Journalism Review*, 8 October 2010.

<sup>60</sup> Baker (2007) above, pp. 38-39.

<sup>61</sup> For discussion of what makes an event “newsworthy” see Frost above, chapter 2, and Andrew Monck and Mike Hanley, *Can you trust the media?* (2008), pp. 95-106.

<sup>62</sup> Matthew Gentzkow and Jesse M. Shapiro, “Media bias and reputation”, 114 *Journal of Political Economy* (2006) 280.

<sup>63</sup> See Dan Bernhardt, Stefan Krasa and Matthias Polborn, “Political polarization and the electoral effects of media bias”, 92 *Journal of Public Economics* (2008) 1092.

<sup>64</sup> See, for example, Monck and Hanley above, pp. 123-133.

impossible for the media to obtain time-sensitive information by independent means or to do so at a realistic cost in a competitive environment. With journalists increasingly under pressure to provide copy for a range of print and audiovisual services, their dependence on press releases and online information rather than individual contacts appears to be increasing.<sup>65</sup>

### **6.1.2 Regulatory and legal constraints**

Another conception of “independence”, noted above, is “not depending on authority or control”. Apart from the constraints that arise endogenously from the way in which the industry is structured and financed, state and co-regulatory regimes all impose exogenous constraints on what is covered by the press. Because self-regulatory regimes are generally introduced to protect the reputation of the industry concerned, they tend to focus on consumer protection issues. Where, however, self-regulatory regimes are negotiated in the shadow of potential state regulation they may seek to address a wider range of public concerns. The state also directly controls what the media publish through an array of more or less draconian laws relating, for example, to defamation, hate speech, privacy, national security and contempt of court.

### **6.2 Freedom and independence: relative attributes**

With the expansion in the communications sector made possible by the internet, freedom and independence are, more so than they have ever been, relative attributes. The “media” now encompass not only large multinational firms, providing high cost newspapers and television services, but also an array of civil society organisations, and individuals or “citizen journalists”, who, either on their own account or in collaboration with others, publish and engage in dialogue at relatively little cost over the internet. The constraints on these media differ significantly both in nature and degree of intensity. Thus, licence fee funded public service media enjoy a degree of insulation from commercial pressures, though it may be more exposed to government influence. Commercial media may be largely free from government direction but heavily influenced by specific political or corporate interests. The amateur radio station or lone blogger on the other hand may be subject to very little external constraint, not being restricted by employment relations or dependent on third party patronage.

Internet services themselves vary widely in terms of their dependence on commercial or external patronage. They range from decentralised, networked services such as “Indymedia”, which relies on small contributions from users and explicitly seeks to be free from government or corporate influence, to commercially funded online versions of established newspapers and websites financed by political or other partisan groups.<sup>66</sup> And although the internet offers an important forum for the expression of alternative or previously side-lined voices, as well as scope for

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<sup>65</sup> See, for example, Aeron Davis, “Politics, journalism and new media: Virtual iron cages in the new culture of capitalism”, in Fenton (ed.) above, p. 121, and Nick Davies, *Flat earth news* (2008), pp. 198-202.

<sup>66</sup> Stuart Allan, *Online news* (2006), pp. 121-142. Indymedia states on its homepage that it is “a collective of independent media organizations and hundreds of journalists offering grassroots, non-corporate coverage. Indymedia is a democratic media outlet for the creation of radical, accurate, and passionate tellings of truth”. Though independent, its reports may thus be subjective.

considered, in-depth coverage not generally accommodated within rolling news services, financial and time pressures limit what many small scale internet publishers can achieve.<sup>67</sup> A key task is thus to assess what these alternative services add to the existing complex media ecology and whether the positive contributions they can make to democratic government are being compromised by internal or external constraints.

### **6.3 Is independence a realistic or even appropriate goal?**

This leads to the question whether “press freedom” and “independence” are not only realistic objectives but also ones that should be pursued in all contexts. Access to private finance, a degree of organisational stability and direction exercised through corporate structures and employment relations, and a broad consumer base are precisely what make most of the mainstream media viable. If commercially funded media produce services that fail to respond to the interests of their sponsors, those sponsors will, quite simply, move their funds elsewhere. This suggests that we need to think carefully about the potential benefits and challenges posed by our largely dependent media. A market that exhibits different forms of dependency and none may be preferable to one that seeks to remove external influence altogether. Partisan, opinionated services can, for example, offer a wider range of committed, in-depth reports than those included in “balanced” or “impartial” services provided by the public sector.<sup>68</sup> As the 1947 Hutchins Report on *A Free and Responsible Press* noted “[t]o demand that [the press] be free from pressures which might warp its utterance would be to demand that society should be empty of contending forces and beliefs”.<sup>69</sup> The challenge, therefore, is to identify these pressures, establish where they operate against the public interest and, where they cannot realistically be removed, act to mitigate or counterbalance their negative effects and, in all cases, make them more transparent.

### **6.4 Independence in principle and practice**

One might conclude from the above that, despite widespread assertions of “press freedom”, the media are primarily vehicles through which powerful groups, individuals, and corporate bodies pursue their own private and commercial interests.

Yet even writers such as Edward Herman and Noam Chomsky, who famously endorsed a “propaganda” model of the media in their book *Manufacturing Consent*, noted the potential for counter-forces to be at work within the system and, with the development of the internet, there is arguably greater scope for such forces today.<sup>70</sup> We need, therefore, to examine carefully the various constraints that affect both

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<sup>67</sup> Nick Couldry, “New online news sources and writer-gatherers”, in Fenton (ed.) above, p. 138. See also Allan above, pp. 166-167.

<sup>68</sup> See Kari Karpinnen, “Against naive pluralism in media politics: On the implications of the radical pluralist approach to the public sphere”, *29 Media, Culture and Society* (2007) 495. Note, however, the concerns regarding suppression and misinformation discussed in Gentzkow and Shapiro above and Bernhardt, Krasa and Polborn above.

<sup>69</sup> The Commission on Freedom of the Press, Robert M Hutchins (Chair), University of Chicago Press (1947), p. 18.

<sup>70</sup> Edward Herman and Noam Chomsky, *Manufacturing Consent, The Political Economy of the Mass Media*, first published by Random House, New York, 1988, reprinted by Vintage, London 1994. See in particular pp. 303-307.

established and new media and to consider how those constraints impact on the various democratic functions we look to those media to perform.<sup>71</sup>

The US Center for International Media Assistance has identified eight factors that can support the development of independent media: a legally enabling environment; adequate funding; sustainability; professional development; higher education; media literacy; the development of new media; and monitoring and evaluation.<sup>72</sup> In each instance it is necessary to consider who is best placed to take action to help realise these objectives – the state, media organisations, journalists, civil society organisations, citizens or a combination of the foregoing.

In relation to a legally enabling environment, state action may be required not only to contain the excessive influence that particular individuals or corporations exert over certain sections of the media, but also to ensure that there are concrete opportunities for the expression of alternative voices and public dialogue. The internet now performs a crucial role in creating such opportunities. As Guardian reporter Owen Gibson has noted, “when you can see opposing views at the click of a mouse, controlling a nation’s perception of a conflict becomes a lot more difficult”.<sup>73</sup> Any measures, whether private or public, that could constrain the capacity of the internet to accommodate these voices in the future, whether enhanced internet service provider liability or the abandonment of the principle of net neutrality, consequently require the most careful scrutiny.<sup>74</sup> State action can also play an important role in facilitating access to information.

Given the propensity for partisan media to suppress or distort information, a case can also be made for the maintenance or creation of media services with a specific remit to be “impartial”.<sup>75</sup> Such organisations, particularly when able to attract a sufficiently large consumer base, may help to address the concerns of those who, like Cass Sunstein, envisage the development of an increasingly polarised society, with individuals accessing only information that accords with their pre-existing world view.<sup>76</sup> State financed media can offer alternatives to the commercial sector, providing a location where fundamental questions about the nature of the state and its constituent communities can be explored.<sup>77</sup> To reduce the risk of government or state suppression of particular viewpoints, attention must, however, be given to methods of financing, the way in which key personnel are appointed, and the organisation’s mode of operation.

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<sup>71</sup> For analysis of various “pathologies” that prevent effective political deliberation see Jürgen Habermas, “Political communication in media society: Does democracy still enjoy an epistemic dimension? The impact of normative theory on empirical research”, 16 *Communication Theory* (2006) 411.

<sup>72</sup> The US Center for National Media Assistance, National Endowment for Democracy, Empowering independent media, US efforts to foster free and independent news around the world, Inaugural Report 2008, available at: [www.ned.org/cima/CIMA-Empowering\\_Independent\\_Media.pdf](http://www.ned.org/cima/CIMA-Empowering_Independent_Media.pdf) (last visited on 28/10/2010).

<sup>73</sup> Quoted by Allan above, p. 105.

<sup>74</sup> Freedom House, *2010 Report on freedom of the press* notes the tendency of governments with an authoritarian bent not only to consolidate control over traditional media but also to “encroach on the comparatively free environment of the internet” (report available at: <http://www.freedomhouse.org>, last visited on 28/10/2010).

<sup>75</sup> For critical evaluation of “media objectivity” see Frost above, pp. 71-74, and Gaber above, who argues that journalists should focus on recognising and responding to their own subjectivity.

<sup>76</sup> Cass Sunstein, *Republic.com 2.0* (2007).

<sup>77</sup> For discussion, see Karpinnen above, particularly at p. 504.

But industry and educational establishments can also play an important role in promoting journalistic standards and professional ethics. In particular, media companies and the journalists who work for them, even when under financial pressure, need to show a continuing commitment to accuracy and fairness.<sup>78</sup> Cass Sunstein has also argued that those who publish information or opinions should be prepared to at least indicate the existence of additional facts or opposing lines of thought and where those might be accessed.<sup>79</sup>

Industry, educational establishments, civil society organisations, and individual journalists are equally well placed to enhance media literacy. But media literacy will be of little value if individuals do not have the information they need to judge the quality and origins of the information they access. This imposes obligations on individual journalists and editors to be clear about the nature of the material that they publish. As the UK Press Complaints Commission Editor's Code of Conduct states "[t]he press while free to be partisan must distinguish clearly between comment, conjecture and fact". It also imposes obligations on media organisations themselves to provide information about their ownership structure and mode of finance. Media organisations are themselves best placed to provide this information but, given the costs entailed and commercial sensitivities, are unlikely to do so without state intervention. Atomised information of this type may, however, be difficult for the public to evaluate and a case can be made for the establishment of a separate body tasked with collating information, providing relevant statistics and identifying important market trends. Certain civil society organisations already go some way to perform these monitoring functions as do a number of state agencies, such as Ofcom in the UK, which provides regular statistics relating to the audiovisual sector. Higher education institutions, with their varied economic, political science, and legal expertise, can also play a valuable role in evaluating the state of the media in society. Although initiatives of this latter type do not directly address the dependent relationships that exist throughout the various media sectors, in illuminating the nature of those relationships and providing a broader perspective on them, they enable individuals to make informed choices about which media services to access and what weight to afford the information they obtain from those they do.

## **7. Regulatory toolkit for free and independent media**

Before turning to examine the various regulatory options that can be pursued to support free and independent media it is necessary to consider what is meant by "regulation". Julia Black identifies three different conceptions that appear in the main textbooks.<sup>80</sup> The first comprises rules promulgated by government, with accompanying mechanisms for monitoring and enforcement, frequently through a specialist agency. The second covers all forms of direct state intervention in the economy. The third conception is considerably broader, embracing "all mechanisms

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<sup>78</sup> Gaber above.

<sup>79</sup> Sunstein (2007) above, pp. 208-209.

<sup>80</sup> Julia Black, "Critical reflections on regulation", Working Paper published by the Centre for Analysis of Risk and Regulation at the LSE (2002) 1. See also Robert Baldwin and Martin Cave, *Understanding regulation - Theory, strategy and practice* (1999), and Feintuck and Varney above.

of social control or influence affecting all aspects of behaviour from whatever source, whether they are intentional or not”.<sup>81</sup>

The first two definitions make reference to a specific source, government and the state, while the second also focuses on a specific field of intervention, the economy. The final formulation is more interested in the element of constraint, and is broad enough to cover a wide range of cultural and social norms. Thus, market forces and professional codes of conduct would not be covered by the first two conceptions but would be by the latter. Andrew Murray and Colin Scott refer to controls of this type as “competition based” and “community-based” respectively.<sup>82</sup> The third definition can also accommodate “architectural” controls that result from environmental, in particular network or software, design.<sup>83</sup> Since all these forms of control are potentially of interest in the media context we adopt this broad approach, despite its analytical limitations.<sup>84</sup>

When discussing regulation it may be helpful to draw a distinction between “regime context” and “regime content”. Regime context concerns the backdrop and operating environment in which regulation takes place, for instance, the prevailing economic conditions or the way in which the public perceive and use specific media. Regime content covers the policies and values enshrined in regulation together with the organisations that shape these policies and their mode of operation, attitudes and beliefs.<sup>85</sup> Consideration of these aspects may help to focus attention not only on the interaction between different actors but also on their respective capacities to promote and to resist change.<sup>86</sup> In order to understand the present practice and potential of regulation in the pursuit of media freedom and independence it is necessary to consider the various forms that regulation can take; and how regulation can be evaluated. These two issues are considered briefly in turn below.

## 7.1 Regulatory design

Regulation involves elements of information gathering, standard setting and behaviour modification. Whether regulatory intervention is considered necessary in the first place will be affected by certain underlying perspectives or principles held by the regulatory body. Because of the risk of unforeseen consequences and potential damage to existing commercial relations, most regulatory bodies adopt the principle that regulation should be a matter of last resort and the minimum necessary to achieve a given objective.<sup>87</sup> This may lead the regulator to rely on forms of regulation that are

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<sup>81</sup> Black (2002) above, p. 8. Julia Black also identifies a further, instrumental, notion of regulation, namely, “the sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly identified outcome or outcomes, which may involve mechanisms of standard setting, information-gathering and behaviour modification” (see p. 20). Though broad, this definition does not cover, unlike the third above, forms of social control or influence that are not intended or designed to have a particular outcome.

<sup>82</sup> Murray and Scott above.

<sup>83</sup> See Lawrence Lessig, *Code and other laws of cyberspace* (1999).

<sup>84</sup> Black (2002) above, p. 8.

<sup>85</sup> See Christopher Hood, Henry Rothstein and Robert Baldwin, *The government of risk - Understanding risk regulation regimes* (2001), p. 13.

<sup>86</sup> See also the idea of the “regulatory space” applied to the media context by Lesley Hitchens, *Broadcasting pluralism and diversity, A comparative study of policy and regulation* (2006), pp. 60-61.

<sup>87</sup> Thus, the Commission in its 1999 Communication on principles and guidelines for the Community’s audiovisual policy in the digital age, COM(1999) 657, endorsed the principle that regulation should be the minimum to meet the specified objectives (see pp. 9-10).

less interventionist and possibly also those that are less transparent, such as regulation by the market or through environmental design. Many regulators now employ regulatory impact assessments, and these frequently incorporate some form of cost-benefit analysis, allowing intervention only where the expected benefits appear likely to exceed the costs.<sup>88</sup> Where action or inaction could lead to significant damage being caused to important individual or public interests, the regulator may adopt a “precautionary principle”, abstaining or intervening even though there is scientific uncertainty as to the level of risk.<sup>89</sup> This principle has primarily been employed in the health care and environmental fields but could potentially be employed in the media context where market failure could have serious ramifications for the democratic process, yet cause and effect and the exact extent of risk is difficult to assess.<sup>90</sup>

As already mentioned, regulation is frequently categorised according to whether it takes one of three more or less “decentered” forms: state regulation, co-regulation and self-regulation. Each offers certain regulatory advantages and disadvantages. State regulation, backed by the information gathering and enforcement capabilities of the state, can be highly effective, broadly accountable and democratically legitimate. State intervention is often, however, expensive and state agencies are prone to “capture” by the industry they regulate.<sup>91</sup>

Self-regulation carried out by industry or a particular community may be more sensitive to the interests of that community and display greater awareness of the realities on the ground. The costs here will be devolved to the industry rather than the state. But self-regulatory systems frequently operate to further the commercial interests of the industry being regulated rather than those of consumers or citizens. And although self-regulatory systems may adopt similar “command-and-control” techniques to those employed by the state, participants retain the option to exit the regime, and enforcement is often weak. Self-regulatory bodies may also have limited democratic legitimacy, with restricted lay or external representation on their standard setting or adjudicatory bodies and poor accountability.

As noted, there are other forms of private ordering that, because of their atomised and diffuse nature, would be classified as regulation only under the third of the definitions specified above. These include the use of employment terms to control journalistic output or the application of property rights to control access to networks

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<sup>88</sup> See, for example, European Commission Communication, “Third strategic review of better regulation in the European Union”, COM(2009) 15, pp. 6-8. Such an approach is also reflected in the “public value test” endorsed by the European Commission as a mechanism for reviewing the appropriateness of state aid for the broadcasting sector. See European Commission, Communication on the application of the state aid rules to public service broadcasting (2009), para. 88, available at: [http://ec.europa.eu/competition/state\\_aid/legislation/broadcasting\\_communication\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/broadcasting_communication_en.pdf) (last visited on 28/10/2010).

<sup>89</sup> For discussion, see the European Commission Communication, On the precautionary principle, COM(2000) 1, and, for critical evaluation of the principle’s potential regulatory uses, Cass Sunstein, “The paralysing principle: Does the precautionary principle point us in any helpful direction?”, *Regulation*, Winter 2002-2003, p. 32.

<sup>90</sup> In the UK, the Court of Appeal in the case of *British Sky Broadcasting Plc, Virgin Media Inc v The Competition Commission, The Secretary of State for Business Enterprise and Regulatory Reform* [2010] EWCA Civ 2, considered whether media plurality considerations appended to the UK competition regime should be interpreted in a way that would be more restrictive of media concentrations given the potential risk to democracy if pluralism were not protected (see in particular para. 103). Ultimately, the Court did not follow the approach of the Competition Appeal Tribunal in this regard.

<sup>91</sup> Baldwin and Cave above, p. 20.

and essential facilities. Similarly, contractual terms and “red flags” are used by service providers such as Youtube, to limit what their users can publish.<sup>92</sup> Private ordering of this type may be deployed to promote democratic goals but in many instances it is used to protect commercial interests by restricting expression or third party access.

There is no one agreed definition of co-regulation but its main characteristics are relatively clear. Co-regulation occurs where industry or representative groups play a role in realising a particular policy objective, either through standard setting, assisting with enforcement, or engaging in supportive ancillary measures. Unlike self-regulation, however, these activities take place within a legal framework, under which the state establishes key objectives, deadlines, and methods of implementation or enforcement. The state may also establish relevant sanctions.<sup>93</sup> Where it appears that the co-regulator is failing to realise the specified objectives, the state may step in and take control. It is questionable whether more limited, but nevertheless important, links between self-regulatory bodies and the state should be covered by the term.<sup>94</sup> Co-regulation seeks to capitalise on the advantages and avoid some of the disadvantages of state and self-regulatory systems. Though still drawing on the responsiveness and flexibility of self-regulatory systems, state involvement can serve to clarify objectives and ensure that attention is focused on public, as opposed to industry, interests. Enhanced public accountability is also built into co-regulatory schemes. Although co-regulatory systems will usually require state funding to ensure that they are effective and sustainable in the long term, these potential advantages have resulted in co-regulatory systems being employed in the media field, particularly in relation to new media services.<sup>95</sup>

Whether it is the state, a self- or co-regulatory body that is to intervene, there will be a range of more or less intrusive techniques that it can use to realise its objectives.<sup>96</sup> Where it wishes to modify behaviour it can set standards, with sanctions for non compliance, along classic “command-and-control” lines. Alternatively, it might afford the target industry more flexibility by imposing tradable obligations or employ incentives, such as subsidies or free spectrum to tempt compliant behaviour. Disclosure requirements can be used to shame operators into remedial action or to provide the public with information that can be used to inform their future media choices. The award of franchises, usually by a public body, will be an effective way to influence behaviour, particularly when licences are time limited and renewable. Adoption of a licensing system also enables the licensor to influence the size of, and level of competition in, a particular market. Where it is thought necessary the regulator may take direct action by, for example, creating an independent media

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<sup>92</sup> See the Youtube contractual conditions at: <http://www.youtube.com/t/terms>.

<sup>93</sup> For discussion see Hans Bredow Institut and Institute of European Media Law above, Christopher Marsden, “Co-regulation in European media and internet sectors” (2004), available at: [www.selfregulation.info](http://www.selfregulation.info) (last visited on 28/10/2010), Tambini, Leonardi and Marsden above, and European Commission (2002) above, at p. 13.

<sup>94</sup> Consider, for example, the close relationship that exists in many countries between private organisations set up to check for child pornography on the internet and the police.

<sup>95</sup> Consider, for example, the positive discussion of co-regulation in recital 44 of the “Audiovisual Media Services Directive”, 2010/13/EU, OJ L 95, 15/4/2010, p. 1.

<sup>96</sup> See Hitchens (2006), chapter 2; Sunstein (2007), chapter 9; Baldwin and Cave, chapter 4. Particular regulatory techniques will be available only to certain actors. For example, tax incentives and licensing are generally options only for states.

organisation. Finally, it can encourage third parties to contribute to the realisation of public interest objectives by offering tax breaks for charitable donations and may itself support professional training and literacy initiatives.

Regulation in the media sector is often categorised according to whether it targets structural problems or content failings. A third group of measures aims to empower citizens and consumers by enabling them to make informed choices in relation to existing services and does not seek to change the existing environment directly.

Structural regulation is generally designed to ensure a competitive environment. At the same time structural regulation in the media context often pursues democratic goals, being intended to prevent undue influence by particular individuals or companies, enhance wide and representative access, and create spaces where dialogue can take place. Competition rules may thus be modified to incorporate media diversity concerns and ownership rules introduced to restrict the number of media outlets any one entity can own, whether within a specific media sector, across different media sectors, or to constrain vertical integration within a particular industry. Certain individuals or groups, such as political and religious organisations or advertising agencies, may also be prohibited from owning key media outlets because of their perceived partisan outlook. Access rules, such as “must carry” requirements seek to ensure that those who control key networks, services or facilities do not discriminate against others and afford space for alternative services. Licensing policy can similarly be used to prevent undue media consolidation and enhance diversity. For example, specific licences may be reserved for non-profit, minority or community services. As indicated above, the state may itself enter the market by establishing public media organisations charged with meeting a range of public interests, or it may deploy incentive measures, subsidies or tax breaks, to encourage new, alternative media and the development of high capacity transmission networks.

Content regulation is similarly wide ranging, involving not only standard setting but also the application of various incentives and disincentives. Content regulations are sometimes classified according to whether they prohibit the publication of material considered to be harmful or undesirable, a form of negative regulation, or seek to enhance the range of voices and opinions that are afforded expression, positive regulation. In many countries, states have been more willing to regulate the audiovisual media than the printed press, in part because the audiovisual media are assumed to have a greater impact. It is possible to identify a range of measures designed to limit the impact that third parties may have over key content or to ensure the fairness of the democratic process. For example, the ability of advertisers to influence content can be contained by imposing advertising time limits or restrictions on the placement of commercial communications around news and current affairs programmes. To ensure that politicians or political parties do not use their financial wealth to buy excessive airtime, controls can be imposed on political advertising and time allocated to the various candidates prior to an election on a fair and representative basis.

But media owners may also be reluctant to let legitimate voices be heard. They may thus be required to give access to third parties or minority groups that would not otherwise be able to express themselves directly. Alternatively, a more limited “right of reply” can be introduced to cover situations where individuals feel that they have been unfairly treated. Rather than allow space for others to express themselves,

certain sectors of the media may be required to ensure that their news services or reports on controversial issues are “impartial” or “balanced”. Specific quotas or investment obligations can also be set for content, such as news or educational programming, considered to be in the public interest.

Subsidies and other financial incentives have been widely used to promote content diversity. A number of countries, such as Sweden, offer financial aid to the newspaper industry, though funding is more often targeted at the audiovisual sector, in part because of free press sensitivities, but also because of the different economic environment. State aid can be substantial and has raised concerns, particularly in relation to support for public service broadcasters, that it distorts the market and forecloses otherwise viable commercial services.<sup>97</sup> Subsidies are often given, however, precisely to address perceived failures in the commercial sector and to ensure that politically or socially important programmes that might not otherwise be available - coverage of parliamentary proceedings, local news, or educational programmes - are produced.

Disclosure requirements can be used to encourage enhanced coverage of public interest material.<sup>98</sup> More ambitious requirements relating to an organisation’s editorial line; ownership structure; links with specific political, social or religious organisations; and sources of finance would provide individuals with essential information that they need to evaluate the services they access. Media literacy initiatives, if broadly framed, can also help citizens gain a better awareness of the strengths and limitations of particular media, especially given the more complex and varied online environment.

## 7.2 Regulatory evaluation

Considerable work has been done by states, international, and regional bodies to identify how regulatory practices can be improved and rendered, to use current terminology, “smart”.<sup>99</sup> Regulation can be judged according to whether:

- It has clear and legitimate objectives. Clarity is important in that it ensures the regulator operates within defined parameters and enables an ultimate assessment to be made as to whether the regulatory objectives have been realised. Overbroad and poorly defined objectives afford the regulator considerable discretion and can create uncertainty for industry.<sup>100</sup> On the other hand, a broad regulatory remit may facilitate speedy adaptation to technological change and can help ensure that regulation is responsive to new

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<sup>97</sup> For discussion of the EU broadcasting state aid cases see Meike Ridinger, “The public service remit and the new media”, 6 *Iris Plus* (2009) 2, available at: [http://www.obs.coe.int/oea\\_publ/iris/iris\\_plus/](http://www.obs.coe.int/oea_publ/iris/iris_plus/) (last visited on 28/10/2010), and Lukas Repa and Nóra Tosics, “Commission and Germany agree on better control for the use of state aid in the broadcasting sector”, *Competition Policy Newsletter* (2009), available at: [http://ec.europa.eu/competition/publications/cpn/2009\\_1\\_23.pdf](http://ec.europa.eu/competition/publications/cpn/2009_1_23.pdf) (last visited on 28/10/2010).

<sup>98</sup> Sunstein (2007), pp. 195-197

<sup>99</sup> European Commission Communication, Smart regulation in the European Union, COM(2010) 543. Details of the various EU initiatives can be accessed at: [http://ec.europa.eu/governance/better\\_regulation/index\\_en.htm](http://ec.europa.eu/governance/better_regulation/index_en.htm).

<sup>100</sup> “Clarity of objectives” was considered an important component of good regulation in the UK Department of Business, Innovation and Skills report on “Better regulation, better benefits: Getting the balance right”, Main Report, 19 October 2009, available at: <http://www.bis.gov.uk> (last visited on 28/10/2010), at p. 10.

concerns as they arise. Legitimacy can be assessed in terms of process, looking, for instance, to whether relevant stakeholders have been directly involved or consulted during the policy formation process, or on substantive grounds, because, for example, the objectives advance certain constitutional or democratically established values or policies.

- It has a sound evidential base. Before taking action the regulator needs to acquire a good understanding of the regulatory context in which it will be operating.
- Alternative regulatory techniques have been carefully explored prior to action and the likely impact of the chosen regulatory approach evaluated. This may involve a regulatory impact assessment designed to reduce the risk of regulation that is overbroad, disproportionate or could have significant, unforeseen, negative effects. Here, too, interested stakeholders should be directly involved or consulted.
- It is effective in realising its objectives. Whether regulation is effective will depend on a range of factors including, as noted above, the clarity of its objectives and the level of resources available to the regulatory body, together with its expertise, power to offer incentives or impose sanctions, relations with those whose behaviour it seeks to modify, and the general environment in which it operates. Evaluating the effectiveness of a specific regulatory initiative will usually require scientific monitoring and thus sustained financial investment.
- The operations of relevant regulatory bodies are transparent and any rules or standards readily accessible both to those regulated and the public. Moreover, the regulatory body should be formally accountable for its actions, both in relation to standard setting and the way in which those standards are enforced. The appropriate lines of accountability will vary depending on the nature of the regulatory body.

## **8. A research agenda**

MEDIADEM explores media policy in five different domains that are considered to be important for the protection and promotion of media freedom and independence. In these domains, the project takes a comprehensive view of the actors and institutional structures involved, policy approaches, decision-making processes and regulatory tools that shape media policy. It is also interested in the effects of regulation on media conduct, in other words in the actual results that policy delivers.

In the first place, essential for the creation of an enabling environment for free and independent media is the frame of legal norms regarding freedom of speech and information, and the ways in which they are interpreted by domestic and European courts but also by independent regulatory authorities when these are entrusted with quasi-judicial powers. Focusing on this, the first part of the project's research probes into the protection of freedom of speech and information in law and in practice. Is freedom of expression and information, including through the media, explicitly recognised in domestic law and what is the scope of the restrictions placed upon it in relation to defamation, national security, hate speech and privacy, amongst others? What have been the policy arguments that have guided the recognition of such

restrictions in the legal framework and what is the attitude of domestic and European judges and independent regulatory authorities in relevant disputes? What is the scope of the protection that is afforded to the media and what kinds of restrictions are considered legitimate and justified both with regard to traditional and online media? Are there significant points of divergence across states and if yes, how can we explain them?

Secondly, MEDIADEM studies the national laws and policies, as well as the attitude of authorities and independent regulatory bodies with regard to the regulation of the structure of the media market and the establishment of media outlets. Is the domestic legal framework sufficiently equipped to promote a competitive media environment where a diverse mix of media outlets co-exists, and is it meaningfully complemented by the EU competition rules? Has excessive, undue influence by particular individuals, corporations or political interests over particular types of media been contained, if not precluded? What has been the domestic policy debate regarding the introduction of media ownership rules, and licensing arrangements for particular types of media and how are these rules and regulations applied?

The formulation and implementation of structural media regulation has direct consequences for the degree of media concentration in a given market, the availability of spaces for dialogue and the possibilities afforded to particular individuals and groups to gain and exercise influence over the configuration of the market. Media concentration and market entry by large, foreign media conglomerates are some of the trends that seem to characterise many European countries. In the countries covered by the project, to what extent do national norms promote, or conversely mitigate media concentration, and what are the ownership structures that are favoured, including through licensing and spectrum management policies? Has attention been afforded to the introduction of “must-carry” rules and do such rules ensure that alternative media services are offered space in the market? States may also wish to adopt incentive measures in the form of subsidies, tax reductions or other preferential schemes in order to support market entry, or promote the roll out of high capacity broadband networks in order to enhance the ability of the media to reach a broader audience and encourage their diversification. States can also enter the market themselves through public service media that are entrusted with the pursuit of specific public interest goals, whose attainment however requires sufficient funding and governance structures freed from interference. In short, what is the nature of structural regulation in the countries under study, what have been the policy arguments that have steered its formulation and does it effectively cater for public service, private and community media, active at different levels (national, regional, local)?

The third part of the project’s research focuses on the legal norms and incentive measures adopted and implemented in relation to the composition and diversification of media content, both for traditional and new media services. What are the measures that have been introduced in order to promote or obstruct particular types of content in the media and what policy objectives and debates have framed them? Are there any regulatory tools that aim to counteract pressures on media content from advertisers, political parties or other partisan groups, as well as measures that seek to enhance the range of voices and opinions expressed through the media? Is diversity of content actively supported through quotas and subsidies that target the production of news media services and content of socio-political interest, and is newsgathering encouraged? What are the measures that facilitate information provision and access to public documents and information, and are these effectively

applied? Statutory regulation has imposed specific obligations for impartial, accurate and balanced reporting on particular media outlets in many of the countries under review. What has been the policy rationale for such “social responsibility” regulation, are the obligations that are imposed on operators meaningfully monitored and do they result in news reporting that displays the required characteristics? Indeed, what are the practices that media operators have adopted in response to content regulation, as reflected in the monitoring work of regulatory authorities and other bodies entrusted with the supervision of co- or self-regulatory tools, and are there significant points of divergence that can be noted depending on the type of regulation at hand (regulation, co-regulation, self-regulation) within and across states?

The fourth part of MEDIADEM research focuses on the journalist profession, the challenges it faces in an increasingly integrated media environment and compliance with professional standards and ethics. It probes into journalists’ working conditions and the pressures that derive from the latter, as well as from media ownership and media outlets’ specific editorial line on news coverage and reporting. It also examines the introduction of norms regarding professional standards and ethics through regulation, co- or self-regulation, the debates that influenced their formulation and their application by the appropriate monitoring bodies and organs.

The final part of MEDIADEM research pertains to the empowerment of citizens through media literacy initiatives. Has significant attention been given to the issue of media literacy, so as to provide citizens with the necessary abilities and skills to evaluate the quality of the media services and the information they receive? Do domestic authorities, educational establishments, civil society organisations but also the media industry itself take steps to help citizens reach a better understanding of the complex contemporary media ecology and critically judge the media services they choose? The issue is closely associated with transparency requirements imposed on media operators, regarding ownership, editorial line and modes of financing amongst others, in the absence of which even the most “alert” citizens will not be able to make informed choices about the media services to resort to and the weight to ascribe to the information the media provide.

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