

Towards the democratic regulation of European media and communication

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1. INTRODUCTION

In the last twenty years, the media and communication landscape in Europe has transformed dramatically. Digitalisation and computerisation of information have resulted in the convergence of the areas of media production and consumption which had traditionally followed different economic and regulatory paths. The commercial logic of the print media stood in contrast to other functional logics, such as the universal service principle of telephony and the public service principle of broadcasting. The result has been a long period of regulatory adjustment as different logics have clashed both in national and European wide regulatory regimes. The commercial logic appears now to emerge as a winner, promoting a neo-liberal regulatory framework.

At the same time the ambitious project of European integration, started after WWII, appears to have run out of steam. Even the European Union itself speaks of a legitimacy crisis in its documents. One of the remedies that has been proposed is the improvement of European media and communication policies and the development of the European public sphere. It is hoped that increasing public inlets and ways for citizens to participate in public debate in European issues would promote more support for the EU and European integration process.

The basic argument in this article is that the commercial logic followed in the European media and communication regulatory policies is in contradiction with the aim to open up and strengthen the European public sphere. It is my view that the basis of the EU media and communication policies should be re-defined, and for this purpose I will propose an approach to European media and communication regulation, which is based on the concept of citizens' communication rights. Initially,

I call my approach a **proposal for a democratic regulatory framework for European media and communication.**

2. THE MEDIA AND COMMUNICATION POLICIES OF THE EUROPEAN UNION

In the early summer of 2005, the European Constitution was rejected by French and Dutch voters. The reactions of the European heads of states displayed a state of shock: *'Europe is not in a state of crisis – it's in a state of profound crisis'*, the then-president of European Union, Luxemburg's prime minister Jean-Claude Juncker is reported to have said in June 2005¹. As the process of European Constitution was effectively halted, the European Commission declared a period of reflection in June 2006, which was to be used for an extensive and wide scale public consultation about the future of Europe². The period was officially declared over in January 2007, but without any clear outcome³.

A major emphasis during this period of reflection was paid to improving the communication and PR-activities of the Commission, as several central documents from that period show. These include:

- Action Plan to improve communicating Europe (20 July 2005)⁴;
- Plan-D for Democracy, Dialogue and Debate (13 October 2005)⁵;
- White Paper on a European Communication Policy (1 February 2006)⁶; and
- Period of Reflection and the Plan D (10 May 2006)⁷.

In the following, I will study three policy areas that appear to be either directly or indirectly initiated and affected as a result of the period of reflection more closely: a) the improvement of the European Commission's communication and PR-work; b) the emphasis on media pluralism in Europe; and c) the promotion of the European public sphere.

2.1. *Improving the European Commission's PR-work*

A lot of emphasis in the documents mentioned above is put on the reform of the communication and PR-activities of the European Commission. The basic message is that the reason for the recent crisis of the European Union does not lie in the EU policies but in their ineffective communication to the European public at large. Obstacles that have been in the way of effective communication include especially the following three:

- The Commission's communication activities are criticised as being insufficiently coordinated and planned; the messages were not linked to citizens' interests and needs, but instead, *'current campaigns focus on the political elite and media and fail to portray the benefits and consequences for day-to-day life in a direct and understandable manner'*; and the strategies were focused more on financing campaigns than developing dialogue and communication⁸.
- Constant tensions between the European Commission and the member states have been negatively reflected in the public debate: *'Ending the blame-game, both by Member States and the European institutions, is an important change that must take place'*⁹.
- The media has not played its part in promoting the European agenda and vice versa. The media coverage of European issues *'remains limited and fragmented'*: between the reporting of major events such as European Council meetings there are periods when *'there is no comprehensive cover of EU affairs'*. Regional and local newspapers *'generally give little space to European issues'*. In television and radio, *'time devoted to political information and to European issues is squeezed still further and competition for "television space" has increased'*¹⁰.

The solution, as suggested in the documents, is rather obvious: the Commission's communication work must be improved, it should become more professional, more resources should be allocated and new methods and new technologies must be applied. All this is aimed at listening to and meeting the needs and aspirations of European citizens: *'The European Commission is therefore proposing a fundamentally new approach – a decisive move away from one-way communication to reinforced dialogue, from an institution-centred to a citizen-centred communication, from a Brussels-based to a more decentralised approach'*¹¹.

2.2. More emphasis on media pluralism in Europe

As stated above, according to the White Paper in 2006, one of the reasons for the lack of popular support has been the negative exposure of European issues in the media which has resulted to the bad image of the EU. The recent interest in media pluralism in Europe can be perceived as an attempt to answer to these concerns. In January 2007 the European Commission announced a *'three-step approach'* to media pluralism. According to this approach *'the notion of media pluralism is much broader than media ownership; it covers access to varied information so citizens can*

*form opinions without being influenced by one dominant source. Citizens also need transparent mechanisms that guarantee that the media are seen as genuinely independent'*¹².

This is a new approach for two reasons. Earlier, the Commission has been reluctant to discuss the issues related to media pluralism, as it is closely related to questions of media ownership and media concentration. Although these issues are in the era of satellite-television and internet increasingly transnational in character, they have traditionally been left to the realm of national legislation. The second reason, related to the former, is that the authorities in general are traditionally reluctant to regulate the printed media as it easily leads into accusations of curbing the freedom of the press.

It is not clear where the three-step approach will be leading. The first step was the publication of Commission's working paper in January 2007, which sets the basis for the discussion.¹³ The main aim seems to be to establish empirical indicators that can be used in measuring the level of pluralism in EU member countries. For this purpose, as a second step, i.e. a major independent study, is being commissioned. The third step will be the establishment of the indicators on the basis of a wide scale consultation process.¹⁴ No clear indication is presented, however, how these indicators will be used, or what measures would follow as a result of the consultation.

2.3. Promoting the European public sphere

Although the main thrust of the documents presented above appears to originate from many modern PR- and corporate communication manuals, they also include elements that go much further and indicate a deeper understanding of the crises that the EU faces. The White Paper on a European Communication Policy (2006) discusses in certain length the necessity and the prospects to create a European public sphere, which is referred to, among others, with such attributes as inclusiveness, diversity and participation.¹⁵ The development of the idea of the European public sphere is restricted almost exclusively to the White Paper, however, as in other documents it is only referred to once or twice, without explaining or contextualising it further.

This attempt to bring not only a Habermasian vocabulary, but also normative-theoretical insights of deliberative democracy into the debate on European communication policy is not accidental but deliberate. That is further underlined by several public presentations of the European Commission's vice president Margot Wallström, who is also the commis-

sioner for Institutional Relations and Communication. Echoing closely some interventions in the academic debate on the prospects for the European public sphere (see e.g. Risse, 2003; van de Steeg, 2002), she stated in January 2007: *'It would be very important, from the "public sphere" perspective, that issues of common interest – for example energy, security, climate change, social Europe – are discussed more or less at the same time, by people across the European Union, and possibly within a common framework of values'* (Wallström, 2007).

In the same speech, she also joined the debate on communication rights, central to the ideals of deliberative democracy. In defining the values and principles that should guide the EU's communication activities, the starting point *'can only be the citizens and their democratic rights'*, which she listed as follows:

- *'The right to full and fair information about decisions that affect their lives, wherever they are taken;*
- *The right to hear and compare different opinions and points of views;*
- *The right to debate issues of common interest;*
- *The right to express their views and to be heard'* (Wallström, 2007).

Unfortunately, Margot Wallström's has been a rather lonely voice among the commissioners. After the publication of the White Paper in February 2006, the concept has appeared only occasionally in the EU documents, and even then it was without any wider democratic-normative framework.

3. EUROPEAN PUBLIC SPHERE AND CITIZENS' COMMUNICATION RIGHTS

The emphasis in the EU documents on the European public sphere does not come from nowhere. In the last ten years or so, it has been a subject of increasing interest in European social and political research.¹⁶ A number of projects are additionally funded by national research funds.¹⁷ Defying oversimplification, the main thrust of the projects mentioned above can be described by the words of the subtopic '7.1.1. Towards a European Public Sphere' in the EU's FP 6th's Specific Programme 'Integrating and Strengthening the European Research Area'.¹⁸ In the call text the aim of the research is indicated as: *'The objective is to provide integrated perspectives on the roles of different social and political actors and assess their contributions towards the articulation of diverse public communicative spaces in Europe, as components of the broader public sphere'*¹⁹.

Even if some reference is given in the text to the study of the role of media policy and media economy in relation to the conditions for the European public sphere, these issues are weakly articulated²⁰. What seems to be missing both from the FP6 call and the research projects presented above are approaches that would concern the role of the EU's media and communication policy more directly, i.e. the challenges that the development of a European public sphere poses to the European-wide regulatory framework of media and communication.

3.1. *Citizens' communication rights*

In what follows, I will take Margaret Wallström's statements concerning the European public sphere and citizens' rights as my starting point. I will not discuss the theoretical-conceptual basis behind the ideal of the public sphere, as this is a subject of another debate (see e.g. Nieminen, 2006). Here I will adopt - along with Wallström's speech and the formulation in the FP6 call - the EPS as a normative goal that represents an attempt for a more democratic Europe.

I will instead focus on the concept of citizens' democratic rights, which were central in Wallström's speech. I will, however, go one step further than her formulation. In my interpretation, she was not speaking of citizen's rights in general, but of rights that can more precisely be called communication rights: *'The right to full and fair information... The right to hear and compare different opinions... The right to debate issues of common interest... The right to express their views and to be heard'* (Wallström, 2007). Following Wallström's argumentation, the implementation of these rights is a condition for the realisation of the European public sphere.

Obviously there have to be different means to realise these rights in practice. Some of them have to do with the function of public administration, some of them with the political system more generally. I will restrict my study here only to the role of the media, and my question is: how can we make the European media system serve citizens' communication rights better?

Although the concept of communication rights has been a part of academic vocabulary for some time now, it does not appear to have been developed very systematically. Most often the concept has been discussed in reference to the late UNESCO's New World Communication and Information Order (NWICO) as well as to the more recent World Summit on the Information Society (WSIS) (Hamelink, 2003; Padovani,

2004; Servaes and Carpentier, 2005; Mueller, Brenden and Pagé, 2007). In recent years there have also been increasing attempts for an analytical definition of what constitutes communication rights, or – as the issue has also been approached – the right to communication (Birdsall and Rasmussen, 2000; Birdsall and McIver Jr, 2002; Statement on Communication Rights, 2003; Birdsall, Rasmussen and McIver Jr, 2003; McIver, Rasmussen and Birdsall, 2004; Cammaerts and Carpentier, 2007; Hicks, 2007; Padovani, 2007).

Although communication rights have not been internationally codified and they do not have legal status as such, many scholars argue that all their essential elements have been confirmed many times by the international community in international treaties and conventions by the UN and its organisations²¹, the Council of Europe²² and by the European Union²³. In sum, communication rights can be divided in four main categories (see also CRIS, 2005; Nieminen, Aslama and Pantti, 2006; Morning and Nieminen, 2006; Wallström, 2006):

- 1/ the right to information, which concerns the claim for facticity and accuracy of public representations;
- 2/ the right to orientation, which concerns the plurality and diversity of opinions that are publicly offered or available;
- 3/ the right to social and cultural communality, which refers to the availability of a rich variety of cultural representations, including those of both art and entertainment; and
- 4/ the right to self-expression, which includes access to channels and platforms where citizens can make themselves heard and seen, and also listened to.

The problem is, however, that although these rights have been internationally agreed and confirmed many times, it has not been possible to collect them into a unified framework and adopt them as a part of international law. It is not because there has been lack of attempts: both the NWICO process in the 1970's and the WSIS in the early 2000's were examples of this. Both of these processes also clearly show the difficulties of having communication rights universally recognised, and they also make visible the reasons why this has not been successful (see e.g. World Press Freedom Committee, 1981; Irani, 1998; Sussman, 2001). The result is that there is no coherent international regulatory framework or institutional structure whose responsibility it would be to oversee the execution of citizens' communication rights. There are some monitoring agencies (for example, European Audiovisual Observatory, European Institute for the Media, Institute of European Media Law, and EU Monitoring and

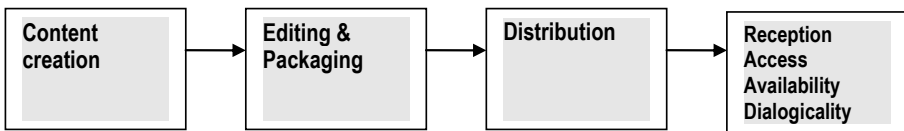
Advocacy Program of the Open Society Institute) and several civic organisations (for example, Communication Rights in Information Society CRIS, The Campaign for Press and Broadcasting Freedom, and Campaign for the Freedom of Information), but there is no single legal instrument to guarantee the deployment of these rights.

3.2. *Towards a democratic regulatory framework*

What would the communication rights perspective, outlined above, mean from the point of view of the European media and communication regulatory framework? One way of assessing the realisation of communication rights should obviously be to measure the media performance, that is, to ask to what degree the 'end product' does fulfil citizens' communication rights. However, by studying only media publicity we do not get very far: all fundamental decisions concerning access, availability and dialogue are made before the 'end product' phase of the media process. We need more tools in order to get beyond the media publicity and to have a better reach in terms of the decisive moments in media production. For this purpose, the value chain analysis can offer us some tools (see Fine, 2003; Dale and Simonian, 2005).

In a simplified version, the basic value chain model for the media industry is comprised of four basic elements: content creation; editing and packaging; distribution; and reception (the terms may differ according to their usage) (see Figure 1).

Figure 1: Value-chain model of media production



In each phase of the value chain, crucial decisions are made that affect the so-called end product (a television programme, a newspaper, a website). From our normative point of view, all these decisions have an impact to how the final media contents meet the criteria of citizens' communication rights. Today, all the phases of the media value chain are regulated through different pieces of legislation. Mostly this is the work of national level of regulation, but increasingly the media is regulated on European (EU) and also on a global (WTO, ICANN, ITU) levels (see Ó

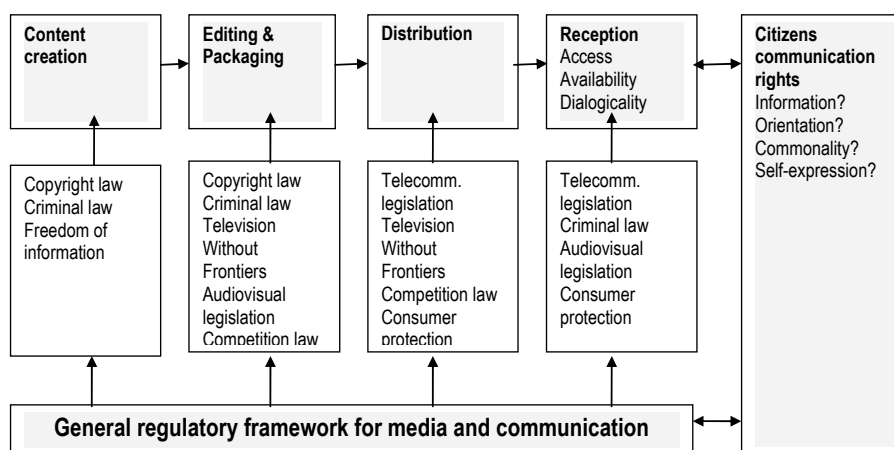
Siochrú, Cirard and Mahan, 2002; Dupagne, 2003). More practically, this means e.g. that

- in the phase of content creation, not only national legislation but more and more international contracts and conventions regulate the interpretation of copyright;
- the phase of editing and packaging is regulated through several different legislative regimes: copyright law, criminal law (e.g. libel, indecency, secrecy), and competition law;
- the phase of distribution is regulated by audiovisual and telecommunication directives of the European Union.

From the point of view of democratic regulation, I am especially interested in such legislative measures that are both *proactive*, that is, aiming at steering action beforehand instead of reacting only afterwards, and *positive*, that is, supporting favourable behaviour instead of just prohibiting non-favourable.

By mapping out different pieces of international and national laws and acts that regulate media and communication in Europe, and by connecting them with the respective phases in the value chain model of the media, we may eventually be able to draw a picture of the European regulatory framework in its wholeness, as the schematic presentation shows (see Figure 2). That would then allow us to make well-informed judgements on the realisation of citizens' communication rights in Europe today²⁴.

Figure 2: The regulatory framework for media and communication



It is, however, true that the legal framework is only one – although the most important – part of the regulatory system. Media and communication are also increasingly regulated by different forms of self- and co-regulatory means – codes of conduct, ethical councils, in-house rules etc., which should also be taken into account²⁵. These self- and co-regulatory means are still mostly national, and there does not seem to have developed any trans-national self-regulatory regime in almost any branch of media and communication, except in the area of marketing and advertising where the International Chamber of Commerce has shown leadership²⁶.

4. CONCLUSIONS

My main argument in this paper has been that if the European Union is serious about achieving an increase in genuine democratic legitimacy, its media and communication policies need a radical change. Today, the media and communication system is an evenly central part of our European democracy as the institutions of representative democracy are – or even more central. European democracy needs a functioning European public sphere, where topics of common interest can be discussed by citizens at the same time, sharing the same information and orientation, in different parts of Europe and in different European languages (see e.g. Risse, 2003). Today no such European public sphere exists. What is needed is a consistent all-European policy to create overall conditions for the public sphere to develop. I call this a policy towards creating a democratic regulatory framework for European media and communication.

I developed the argument in two stages. I firstly discussed the ways the European Commission attempts to use the media and communication policies in solving the EU's present crisis and how it has employed the notion of the European public sphere in its crisis management. In this context, special emphasis was given to the endeavours by commissioner Margot Wallström and her efforts to incorporate the Habermasian sense of the public sphere into the European Commission documents.

Secondly, I outlined a proposal for a new democratic regulatory framework for European media and communication. The proposal is based on the concept of citizens' communication rights, which, although not internationally and officially codified, have been established through international treaties and conventions. These rights consist of four components: rights to information, to orientation, to social and cultural

communality, and to self-expression. The problem is, however, that the actualisation of these rights is dependent on the specific media and communication system, which may or may not be supportive. That is why public regulation is needed to balance and equalise different social interest groups' access to and availability of the media, and to level different barriers to critical public dialogue.

It is not enough, however, to assess the actualisation of communication rights only on the basis of media publicity as it reduces the regulatory means to concern only media contents and media distribution. Crucial decisions affecting the so-called end product (a television programme, a newspaper, a website) are made in all preceding stages of the media production process. All these decisions have an impact to how the final media publicity meets the criteria of citizens' communication rights.

Today, all phases in media production are regulated at least to a certain degree through different legislative or self- and co-regulative means. What I propose is to develop a systematic approach, based on a value-chain model of analysis of media production, which can assist us in creating a comprehensive picture of the present regulatory framework of European media and communication. Basing on this, we could then ask for example:

- How is consistent the European regulatory framework from the normative point of view in general? Do we find contradictory elements that could be used then in our attempt to democratise the framework?
- What normative goals do we find its different components serving today, and how do they relate to citizens' democratic communication rights?
- What kind of regulatory measures at each phase of the value chain would serve citizens' communication rights best?

These questions might also lead us to establish a set of transparent criteria for each phase in the value chain in order to steer and control the media production fulfilling its democratic functions as desired. Another question is what these criteria should be and how they should be enacted.

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- 6 White Paper on a European Communication Policy Brussels, 1.2.2006. COM(2006) 35 final http://ec.europa.eu/communication_white_paper/doc/white_paper_en.pdf

- 7 Communication from the Commission to the European Council. The Period of reflection and Plan D. Brussels, 10.5.2006 COM(2006) 212 (Provisional version), http://ec.europa.eu/commission_barroso/president/pdf/com_2006_212_en.pdf.
- 8 See EC Action plan 2005; White Paper 2006.
- 9 The Plan D 2005.
- 10 The White Paper 2006.
- 11 The White Paper 2006.
- 12 Media Pluralism 2007.
- 13 Working Document 2007.
- 14 Media Pluralism 2007.
- 15 The White Paper 2006.
- 16 Some of the EU funded projects dealing European public sphere either directly or indirectly are: AIM: Adequate Information Management in Europe; CIDEL: Citizenship and Democratic Legitimacy in Europe; EMEDIATE: Media and Ethics of a European Public Sphere from the Treaty of Rome to the 'War on Terror'; EUROPUB.COM: The Transformation of Political Mobilisation and Communication in European Public Spheres; Eurosphere; IDNET: Europeanisation, Collective Identities, and Public Discourses; RECON: Reconstituting Democracy in Europe; CINEFOGO - Network of Excellence: Civil Society and New Forms of Governance in Europe - the Making of European Citizenship.
- 17 See e.g. European Public Sphere(s): Uniting and Dividing, University of Helsinki (<http://www.valt.helsinki.fi/blogs/eupus/>; downloaded on 26 April 2007); Media, Democracy and European Culture (Europe in Transition) (http://humanist.hum.ku.dk/kalender/2006/oktober/media_/#program; downloaded on 26 April 2007).
- 18 The whole reference would be 'FP6 Specific Programme "Integrating and Strengthening the European Research Area", Priority 7: Citizens and Governance in a knowledge based society. Work Programme 2004 - 2006. Research Area 7: New forms of citizenship and cultural identities. 7.1. Topics for Networks of Excellence and Integrated Projects. 7.1.1. Towards a European public sphere' (ftp://ftp.cordis.europa.eu/pub/fp6/docs/wp/sp1/g_wp_200202_en.pdf; read 26 April 2007).
- 19 FP6 Specific Programme, p. 16.
- 20 In regard to media economy, the reference is the following: *'The role of electronic and print media should be examined in terms of agenda setting and generating debate and controversy in relation to cultural, societal, political and economic matters, with particular emphasis on European issues; the implications of media concentration or variations for the pluralism and integrity of information could be examined in this regard.'* (FP6 Specific Programme, p. 16.)
- 21 For example, on the principle of freedom: Freedom of Expression: Universal Declaration of Human Rights (1948), Article 19; International Covenant on Civil and Political Rights (1966), Article 19; Convention on the Rights of the Child (1989), Article 13; Protection of privacy: Universal Declaration of Human Rights (1948), Article 12; International Covenant on Civil and Political Rights (1966), Article 17; Convention on the Rights of the Child (1989), Article 16. On the principle of inclusiveness: Universal Declaration of Human Rights (1948), Articles 19, 21, 28; International Covenant on Economic, Social and Cultural

Rights (1966), Articles 13, 15; Declaration of the Principles of International Cultural Co-operation (1966), Article IV (4).

On the principle of diversity: International Covenant on Civil and Political Rights (1966), Articles 1 (1), 27.

Universal Declaration on Cultural Diversity (1995), Article 5.

On the principle of participation: Universal Declaration of Human Rights (1948), Articles 21, 27; International Covenant on Civil and Political Rights (1966), Article 25. See also the UNESCO Diversity Convention (2005).

²² See European Convention for the Protection of Human Rights (1950).

²³ See Declaration of the European Union (1998); see also recent EC documents on European communication and media policies: Plan-D (2005); White Paper on European Communication (2006); Media Pluralism (2007).

²⁴ The value chain model of media's regulatory framework is much easier to represent on a national scale than on the scale of the whole EU (see Nieminen, 2006; Moring and Nieminen, 2006).

²⁵ See e.g. Self-regulation of Digital Media 2004; Co/Self-Regulation Bodies 2005.

²⁶ See Consolidated ICC Code 2007.

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