

THE TRANSPARENCY OF MEDIA OWNERSHIP IN THE EUROPEAN UNION AND NEIGHBOURING STATES

Report on a project by Access Info Europe and the Open Society Program on Independent Journalism

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1. INTRODUCTION

This report is based on a survey of media ownership transparency rules in 20 European Union (EU) and neighbouring states commissioned by the Open Society Media Program in 2011 and carried out by Access Info Europe in 2012.² The survey has been designed to inform current debates about the roles of states and regional and international organizations in supporting freedom of expression and media pluralism.³

The countries represented in the survey are: Austria, Azerbaijan, Bulgaria, Croatia, Cyprus, Georgia, Germany, Iceland, Italy, Latvia, Luxembourg, Macedonia, Morocco, the Netherlands, Norway, Romania, Spain, Switzerland, Turkey, and the UK. They thus include 12 EU Member States, three candidates for membership, three European Free Trade Area states, and three members of the European Neighbourhood Policy.

1 Both University of Edinburgh. December 2012, revised September 2014. We wish to thank not only the country experts for their detailed and thoughtful responses to the challenging questionnaires, which formed the basis for this report, but also Beata Klimkiewicz (Jagiellonian University, Cracow) and Alison Harcourt (University of Exeter, UK) for their valuable and perceptive comments on initial drafts of the survey and questionnaires. Special thanks are due to Mark Thompson at the OSF and to Helen Darbshire and Fiona Harrison at Access Info Europe, who offered insightful comments on this paper and prepared a helpful policy brief on the survey data, available at: http://www.ifex.org/moldova/2012/11/22/transparency_of_media_ownership_in_europe.pdf.

2 See <http://www.opensocietyfoundations.org/about/programs/media-program> and <http://www.access-info.org>

3 See, in particular, the report by the Centre for Media Pluralism and Media Freedom, *European Union Competencies in Respect of Media Pluralism and Media Freedom*, EUI RSCAS PP, 2013/01, and specific discussion of media transparency in R. Craufurd Smith and Y. Stolte, 'The European Union and Media Ownership Transparency: the Scope for Regulatory Intervention', June 2010, available at: <http://mediapolicy.org/wp-content/uploads/the-european-union-media-ownership-transparency.pdf>.

With the exception of Morocco, the states surveyed are all members of the Council of Europe and signatories to the 1950 European Convention on Human Rights and Fundamental Freedoms (ECHR). They vary considerably not only in geography, demographic size and economic wealth but also in their constitutional, political, social and cultural traditions. They thus constitute a representative range of countries from which conclusions regarding the state of media ownership transparency across Europe and beyond can be drawn.

The report starts with a summary of key findings and recommendations. It then discusses the main international law standards and guidelines relevant to the field. The main body of the report analyses the survey data regarding the five areas identified below, noting particular examples of good or problematic practice. It concludes with an overview of the experts' recommendations for further action or investigation.

Research Methodology

The survey was broken down into five discrete sections, which examined the existence of:

- ▶ **constitutional provisions** relating to media ownership transparency;
- ▶ media-specific provisions requiring the **disclosure of ownership details to public bodies**;
- ▶ media-specific provisions requiring the **disclosure of ownership details directly to the public**;
- ▶ non-media specific transparency requirements, in particular **disclosure rules relating to company ownership**;
- ▶ **other sources** of media ownership information.

A final section asked whether further action to enhance the transparency of media ownership was considered desirable at the domestic and/or European levels, focusing on the role of the European Union and the Council of Europe.

Experts in each country were asked to complete a questionnaire about the legal rules and regulations in place, and about their effectiveness in practice. Initial results were collated during autumn 2012, with a number of subsequent updates.

2. KEY FINDINGS

- 2.1 Media ownership transparency**, though rarely recognised as a value in its own right in domestic or international charters and conventions, nevertheless **underpins a number of constitutional guarantees and individual rights**, notably freedom of expression and a functioning, inclusive, democratic process. Without ownership transparency it is also difficult for states to promote media plurality, itself essential for the realisation of freedom of expression.⁴

Despite the importance of media ownership transparency for both the individual and the state, only two of the surveyed countries—Italy and Romania—address media transparency directly in their constitutions but in both cases the focus is on transparency of financial sources not ownership. In the Turkish Constitution the state is empowered to require information as a precondition to publication. **None of these constitutions therefore impose an express positive obligation on the state to ensure that the public has access to information on media ownership.** Although the Constitution of Norway does not expressly refer to media ownership transparency, Norwegian media ownership rules, which do provide for ownership transparency, refer back to the provisions on freedom of expression in article 100 of the Constitution. These impose on the state a positive duty to create conditions that “facilitate open and enlightened public discourse”, thus underlining the link between freedom of expression and media ownership transparency.

- 2.2** The failure of the existing regimes to provide citizens with adequate information on media ownership is not, in itself, a cause for criticism, in that the applicable measures **have often been established with other regulatory objectives in mind**, for instance to provide information to media regulators, as opposed to citizens, or for company law purposes. In many of the countries surveyed, **freedom of information legislation provides an important basis for requesting information from media regulators and other public bodies** and is itself required by international law.⁵ Media ownership transparency is frequently, therefore, a fortuitous and largely unintended by-product of a range of other, at best loosely related, measures.
- 2.3** The survey indicates that in the majority of countries studied the absence or limited nature of media specific or general disclosure provisions means that citizens are unable to **establish who owns or controls the media operating in their country.**
- i) **Concerning disclosure to a public body, coverage of the various media sectors is extremely variable.** Seven countries require data to be supplied solely in relation to the broadcast sector, and only Croatia, Iceland, Italy, Latvia and Norway have provisions relating to the broadcast, print and online sectors. There is considerable variation not only in the nature of the required information but also as to the type of body to whom the information is to be provided, its powers and funding. Although such information may in principle be available to the public, administrative difficulties or financial costs often render it in practice inaccessible.

4 See application no. 38433/09, *Centro Europa 7 S.R.L and Di Stefano v. Italy*, judgment 7 June 2012, at para.133 and discussion of individual rights and media ownership transparency in section 4 below.

5 See for discussion of the international law basis for a right of access to information held by public bodies the recent ruling by the European Court of Human Rights in application no. 48135/06, *Youth Initiative for Human Rights v Serbia*, 25 June 2013.

- ii) Thirteen countries require certain categories of media organisation to provide ownership details directly to the public but in only one of the countries surveyed (Croatia) was the regime on its own considered effective in revealing the true state of media ownership. Amendments to the Austrian Media Law in late 2011 make it possible, in law at least, to find out who owns all types of media via disclosure to the public. New rules in Georgia were thought too recent to assess. The provisions in the remaining countries were considered insufficient for a variety of reasons, including lack of enforcement, inadequate oversight and minimal requirements. In a significant number of countries, only the owner's name or the name of the media service provided has to be disclosed, together with basic management details.
- iii) Even where more extensive information is required to be submitted, in many instances the records are incomplete or difficult or costly for ordinary individuals to access, collate or understand. There are frequently different regimes for different media sectors so that sources are fragmented, while details of indirect or beneficial shareholdings, holdings in related companies and affiliated interests, and potential political or commercial influences are frequently not disclosed.
- iv) The size of shareholding at which disclosure requirements become operative varies from country to country, ranging from 5 and 10 percent for Norway and Romania and up to 49 percent in Austria in relation to the broadcast sector. These thresholds are often set for reasons other than ownership transparency, for instance to assist in enforcement of ownership limits, but it should be noted that thresholds as high as 49 percent are inadequate for ownership transparency purposes.
- v) To obtain the required information, it is often necessary to make use of different databases, organized on very different lines, and to carry out multiple searches to establish indirect holdings or links between different companies. Greater consistency in the data stored and a co-ordinated approach to storage in the various national and international databases would facilitate interoperability. Consideration should thus be given to how resources can be used to build an easily searchable network
- vi) The problem is exacerbated where the individual wishes to obtain information on media holdings in more than one country. There is **considerable variation across the countries surveyed regarding the information to be disclosed**, for example as to the type of media organization covered or the size of shareholding that triggers disclosure.
- vii) In certain countries, such as the United Kingdom, **conflict of interest rules** provide useful additional information regarding links between politicians and public officials and the media.

2.4 Experts in 17 of the 20 countries considered that further action was needed at the domestic level to enhance media ownership transparency and address the existing gaps in disclosure.

2.5 Legislative initiatives were not considered politically realistic in a number of countries, and certain experts emphasised **the important role that non-governmental, civil society and academic organizations, commercial operators, and trade and professional bodies can play** in supporting and enhancing media ownership transparency and media literacy. Relevant examples include the Romanian *Mediaindex*, run by the Centre for Independent Journalism, and the introduction by the Swiss Press Council of transparency guidelines for their members.

- 2.6** Experts in 18 of the countries also favoured action at the European level, though one should be conscious that a number of political considerations could be at play here. Views differed as to the respective merits of action by the Council of Europe and by the European Union. A majority of experts variously supported the reinforcement of existing Council of Europe guidelines, possibly in the form of a Convention; the introduction of an EU directive; and the development of a comprehensive Europe-wide database on ownership. A small minority expressed the view that scope for action at the domestic level should be fully explored before a decision is taken to pursue additional European initiatives.
- 2.7.** Certain experts noted the importance of **addressing transparency issues in the context of the European Neighbourhood Policy** and the desirability of non-binding EU guidelines for countries granted Advanced Status.

3. AUTHORS' RECOMMENDATIONS IN LIGHT OF THE SURVEY RESPONSES

- 3.1 Judicial and legislative bodies should be encouraged to expressly **recognise the links between freedom of expression, media plurality and a functioning democracy, on the one hand, and media ownership transparency, on the other**, as Norway has done in relation to freedom of expression.
- 3.2 Steps should be taken to **adopt freedom of information legislation** in those states that have yet to do so (Spain, Luxembourg and Cyprus) in line with international guidelines.
- 3.3 Given the importance of media ownership transparency in furthering freedom of expression and democratic government **states should review their existing rules and introduce the necessary measures to ensure that information on media ownership is disclosed and made available in an accessible form to the public.**
- 3.4 Both substantive and procedural issues should be taken into account when framing future media ownership transparency provisions:
- i) **Substantively, individuals should be able to obtain information on media operators active in a particular country, whether print, broadcast, or online, foreign or domestic.** The exact reach of the measures, however, requires careful further consideration. Countries such as Croatia apply disclosure requirements broadly to all “media publishers” and has found the scale of data submitted challenging, while Latvia requires data to be provided regarding all “mass media”, which is defined widely to cover newspapers, magazines, newsletters and other periodicals (published not less than once every three months and with a print run of more than 100 copies). Limiting disclosure requirements along the lines adopted in Latvia to organisations that, for example, are commercial outfits, that publish on a regular basis, involve multiple authors and exercise editorial oversight over the content could help to focus attention on those sources that are currently most influential. Consideration should also be given to whether online intermediaries, because of their capacity to select or rank information, should also be brought within the disclosure requirements.⁶ Concerns over state influence, particularly regarding the printed press, can in part be addressed by ensuring that the provision of information is not linked to licensing procedures or content controls.

To fully understand who effectively owns or controls these media organizations it is also necessary for the following types of information to be disclosed: **indirect and beneficial holdings, affiliated interests, linked holdings in other companies, and potentially significant commercial or political influences, for instance from public advertising or donations.** Thresholds for disclosure should not be set at too high a level and the information provided should be regularly updated.

6 For discussion of digital intermediaries in relation to ownership controls see R. Foster, *News Plurality in a Digital World*, Reuters Institute for the Study of Journalism, 2012.

ii) **From a procedural perspective, a number of options are possible. Perhaps the simplest approach is to require media organisations themselves to publish information on an accessible website, with details of the site and links prominently displayed or indicated in the organisation’s publications or transmissions.** This imposes much of the cost on the industry itself. Standardised requirements as to the content and layout should be established to facilitate comparability. **Alternatively, or in addition, the provision of a consolidated, readily accessible and searchable online database by an independent body offers a number of attractions.** Norway and Germany offer good examples of informative and accessible online resources. **Organisations charged with collecting such information should have adequate resources to perform their tasks effectively and should be institutionally independent from government influence.** Any charges levied on the public for access should be kept to a minimum and proportionate. The use of a private professional and business body, as in Croatia, is worth considering, though runs the risk of industry capture. **In all instances, databases should be kept up-to-date and disclosure requirements should be backed by effective oversight and appropriate sanctions.**

3.5 In order to facilitate cross-country comparisons and render administrative obligations less onerous for firms operating in multiple countries, a more consistent approach should be adopted to the data collected. **States, regulatory bodies, and relevant civil society organizations should co-ordinate and exchange examples of good practice with a view to gradually establishing concrete standards relating to media ownership transparency.** These should build on the categories identified in the Committee of Ministers’ (2007)² Recommendation on media pluralism and the diversity of media content (see 4 below), and the substantive and procedural factors identified at 3.5 and 3.6 above. Co-ordination should take place both within countries, where there may be devolved powers and often different regulators, and across countries. **If a systematic approach to collecting and recording information were to be adopted across countries, this would facilitate interconnection among the various domestic databases.**

3.6 Though media ownership transparency is a ‘latent’ constitutional value, in certain contexts it can inhibit rather than enhance the exercise of freedom of expression and political engagement. Certain owner/publishers, for instance political bloggers, may require protection from disclosure. For this reason, **appropriate exceptions must be maintained to allow individuals to express themselves anonymously.** Limiting the scope of the provisions to commercial, multi-author services could reduce the risk of individual expression being chilled in this way (see 3.4.i above).

3.7 States should introduce measures, if not already in force, **requiring politicians and public officials to declare any interest** they may have in media organizations.

3.8 **Professional and trade associations working in the media field should be encouraged to develop media ownership transparency rules for their members.** These could extend beyond the provision of ownership data to cover issues such as the disclosure of potential conflicts of interest, major donors or sources of finance, and an explanation of the organization’s editorial line, as is the case in Austria. Further consideration should be given to how the work of professional and other independent organizations operating in the field to enhance media ownership transparency and literacy can be supported.

- 3.9 The **Council of Europe and European Union should further co-ordinate their activities to enhance media ownership transparency in Europe**. Action should be taken to assist domestic co-ordination (in line with 3.5 above). In addition, consideration should be given to the **adoption of a Council of Europe Convention or EU Directive on media ownership transparency**, designed to clarify, and ensure compliance with, certain basic standards. To enhance transparency at the European level the **development of a European-wide database** should also be explored, possibly building on the information already being recorded by the European Audiovisual Observatory and including both print and online media.
- 3.10 The European Union should promote the value of media ownership transparency not only in its relations with countries participating in the Neighbourhood Programme but also internally, in relation to existing Member States.

4. MEDIA OWNERSHIP TRANSPARENCY AND ITS RELATIONSHIP TO INTERNATIONAL HUMAN RIGHTS AND DEMOCRATIC GOVERNMENT

Media ownership transparency is not mentioned in key international human rights charters, but it is an essential prerequisite for the meaningful exercise of freedom of expression and the right to receive and impart information recognized in Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the ECHR, and Article 11.1 of the EU Charter of Fundamental Rights (CFR). Article 11.2 CFR specifically calls for the freedom *and pluralism* of the media to be respected.

Freedom of expression and the right to receive information are central for the proper functioning of democracies. All Council of Europe and EU states have committed themselves to respecting democratic standards as a condition of membership, with democracy identified as a foundational value of the European Union in article 2 of the Treaty on European Union (TEU). Freedom of expression and access to information enable individuals to make informed decisions on social, political and personal affairs.⁷

For these political and personal ends to be realized, the public need to be able to ascertain who provides the information on which they rely. Media owners, for political or commercial reasons, may seek to suppress or emphasise certain information, and knowledge as to the identity of the messenger can assist individuals in evaluating the reliability of the message. It also enables them to make informed choices as to the sources they wish to use.

Media ownership transparency is also essential for the introduction of effective measures to promote media plurality. The European Court of Human Rights has held that, at least in the sensitive audiovisual context, the state is subject by virtue of Article 10 ECHR to a *positive* obligation to “put in place an appropriate legislative and administrative framework to guarantee effective pluralism”.⁸ Such measures are in part required to prevent one or a small group of individuals or companies gaining excessive control over those media that influence public opinion and political debate. In order to take action against such concentrations of media power it is necessary to know who actually owns the media.

Guidance as to what media ownership transparency might actually entail has been provided in non-binding Council of Europe resolutions and recommendations, of which the Committee of Ministers’ Recommendation R(94) 13 on *Measures to Promote Media Transparency* and Recommendation (2007)2 on *Media Pluralism and the Diversity of Media Content* are the most detailed.⁹ The 2007 Recommendation, which is not limited to the audiovisual sector, calls, in particular, for the public to have access to:

7 For discussion of the underlying rationales, see E.M. Barendt, *Freedom of Speech* (Oxford, 2005, 2nd edn), chapters I and XII.

8 Application no. 38433/09, *Centro Europa 7 S.R.L and Di Stefano v. Italy*, judgment 7 June 2012, para. 134.

9 Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content, adopted 31 January 2007.

- ▶ information concerning the persons or bodies participating in the structure of the media and on the nature and the extent of the respective participation of these persons or bodies in the structure concerned and, where possible, the ultimate beneficiaries of this participation;
- ▶ information on the nature and the extent of the interests held by the above persons and bodies in other media or in media enterprises, even in other economic sectors;
- ▶ information on other persons or bodies likely to exercise a significant influence on the programming policy or editorial policy;
- ▶ information regarding the support measures granted to the media;
- ▶ information on the procedure applied regarding the right of reply and complaint.¹⁰

The 2007 Recommendation also calls on Member States to “prompt the media to take any measures that could allow the public to make its own analysis of information, ideas and opinions expressed in the media” (*ibid*). The subsequent 2008 Parliamentary Assembly Resolution 1636 on *Indicators for Media in Democracy* similarly states that “media ownership and economic influence over media must be made transparent”.¹¹ These recommendations are, however, non-binding.

In the context of the EU, the competence of the Union to legislate for media pluralism and media ownership transparency is controversial.¹² Even if the EU does have competence in this regard, it is also necessary to consider whether the Member States are ultimately better placed to address these concerns, in line with the principle of subsidiarity in Article 5 of the Treaty on European Union. The Commission has, however, introduced a number of measures to enhance our understanding of media pluralism, notably the Media Pluralism Monitor, and, as noted above, without access to information on ownership structures, a proper assessment of whether there are indeed problems in this field is impossible.¹³ One of the risk factors for media plurality identified in the Monitor is the absence of media ownership transparency.¹⁴

More fundamentally, European citizens need to be able to establish who own the media which they rely on to inform their political choices, whether this be at the domestic or European level. Transparency as a value is in fact deeply rooted in the EU’s ‘DNA’, as evidenced by its commitment in the commercial, as opposed to political, context to ensuring effective labelling and the provision of consumer information.¹⁵

¹⁰ Rec (2007) 2, n.5 above, at III.

¹¹ Resolution 1636 (2008), Indicators for media in a democracy, at 8.18.

¹² See, for example, discussion the papers cited at footnote 3 above.

¹³ Independent Study on Indicators for Media Pluralism in the Member States—Towards a Risk-Based Approach, available at: http://ec.europa.eu/information_society/media_taskforce/pluralism/study/index_en.htm

¹⁴ *Ibid.* no.107.

¹⁵ Consider, for example, the role of labelling in the classic *Cassis de Dijon* case, case 120/78, *Rewe-Zentrale AG v Bundesmonopolverwaltung für Branntwein* [1979] ECR 649.

The rights and standards identified above underline the importance of media ownership transparency. Transparency underpins the democratic process; it enables **citizens** to evaluate the quality of information provided by the media in an increasingly complex environment and thus to make **better informed political as well as personal decisions**. It also enables states to take effective action to prevent the concentration of undue power and influence through extensive media ownership. Transparency of media ownership and the sources of media funding more generally, for instance, state subsidies or advertising, also help to illuminate potential state influence or control over the media as well as media influence on political parties or state bodies.

Finally, it should be noted that states may impose ownership transparency requirements in order to render state control or censorship more effective. The wider context of these regulations, in particular the independence of any regulatory bodies involved in collecting or monitoring ownership information, needs therefore to be taken into account. Information, as ever, can be put to harmful as well as beneficial ends.

5. MEDIA OWNERSHIP TRANSPARENCY AND DOMESTIC CONSTITUTIONS

Three groups of constitutional provisions are relevant to media ownership transparency: provisions directly addressing (an aspect of) media ownership transparency; general provisions concerning freedom of speech; and provisions on access to public information. Of the 20 countries surveyed only three, Italy, Romania and Turkey, have constitutional provisions that relate to media transparency, though both the Italian and the Romanian provisions are solely concerned with the disclosure of *financial sources* not ownership details directly. The Italian Constitution states at article 21 that “[t]he law may introduce general provisions for the disclosure of financial sources of periodical publications”, while article 30(5) of the Romanian Constitution states that “[t]he law may impose upon the mass media the obligation to make public their financing source”.

The disclosure of financial information does not in itself ensure transparency of ownership and the value of these provisions for media ownership transparency will depend on how broadly they are interpreted, for instance to include shareholdings. More general in nature is article 29 of the Turkish Constitution, which states that “[t]o publish a periodical it shall suffice to submit the information and documents prescribed by law to the competent authority designated by law”, which leaves scope to ask for different types of information to be disclosed, and ownership information is currently required under article 4 of the Turkish Press Law.

These constitutional provisions are also different in terms of their reach. While the Romanian provision addresses the mass media in general, both the Turkish and Italian constitutional provisions relate solely to the press, though in the case of Italy this provision has seemingly been extended to the broadcast media by the Constitutional Court.¹⁶

Guarantees of freedom of speech and access to information are more widely recognised in the constitutions of the countries studied. While these are often very general in nature, their potential to serve as the basis for media ownership transparency legislation is illustrated by the example of Norway. Article 100 of the Norwegian Constitution, which concerns freedom of speech, states that: “[i]t is the responsibility of the authorities of the State to create conditions that facilitate open and enlightened public discourse.” While this in itself does not explicitly mention ownership transparency, the Norwegian Media Ownership Act, which does provide for media ownership transparency, refers directly to this obligation in the constitution.

Certain constitutional provisions, such as the Turkish provision noted above, are more concerned with the disclosure of information to the government or other relevant authority than disclosure to the public.¹⁷ This may, however, still lead to information being made available to the public if the authorities in turn grant wider access to the information they collect. The right to access information, as in the new Moroccan Constitution of

16 Constitutional Court (Italy), Decision No. 826 of 1988, available at: www.giurcost.org/decisioni/1988/o826s-88.html.

17 See also art 21(5) of the Italian Constitution.

2011, becomes very relevant here and freedom of information legislation is the basis for access to ownership data in many of the countries surveyed.

Most of the provisions discussed in this context do not create directly enforceable individual rights, but recognition in these provisions of key values is important in itself. The actual effect of the provisions is also influenced by the language used. While the Romanian and Italian constitutions provide a right to impose disclosure of financial information on certain media organizations, they do not require the state to do so, they simply provide the option. The Norwegian provision, however, uses stronger language which states that the State is *responsible* for facilitating “open and enlightened public discourse”, thus imposing a positive obligation. The latter type of provision will be more valuable to the public as it does not leave it to the state to choose whether or not to take action in this field. This is well illustrated by the situation in Romania, where although the constitution provides the right to impose an obligation on the mass media to disclose their sources of finance, the parliament has never enacted legislation to this effect.

6. MEDIA-SPECIFIC DISCLOSURE REQUIREMENTS: DISCLOSURE OF OWNERSHIP INFORMATION TO A PUBLIC BODY

There is considerable variation across the countries studied regarding the extent of mandated disclosure to public bodies and the effectiveness of the different regimes. Certain countries, such as Georgia and Croatia, have recently passed legislation in this field, which should improve ownership transparency in the long term, though the legislation in Georgia has not gone as far as some had hoped by, for instance, extending the conflict of interest rules to family members.

All the countries included in the OSF study require broadcasting organizations to disclose ownership details to a public body, in many instances a dedicated media authority. This usually takes place at the time of application for a broadcasting licence with holders of such licences then required to notify the authority concerned of subsequent changes within a set, often quite short, time.

Given the sensitivity that exists regarding state regulation of the printed press and the internet, seven countries limit reporting requirements to the broadcast sector (Austria, Georgia, Germany, Macedonia, Romania, Switzerland, and the UK). A further five require ownership details to be provided in relation to the broadcast, print and online sectors (Croatia, Iceland, Italy, Latvia and Norway), while five have rules relating to the print and broadcast sectors (Azerbaijan, Cyprus, Bulgaria, Morocco and Turkey), and three to broadcast and certain online services (Netherlands, Spain and Luxembourg).

Care needs to be taken in interpreting the data on online services because of the loose way in which the word 'broadcasting' is sometimes used. Thus, the Austrian report refers to on-demand services, which are characteristically provided online, under the heading 'broadcasting', and there is a similar reference in the Bulgarian response. Where clearly specified, as in the Netherlands report, the online services may be quite limited in scope, with—in this case—only linear, as opposed to on-demand, online services covered. **A central question for the purposes of this survey is whether the information provided to public bodies is comprehensive, accurate and readily accessible to the public.**

Notification here serves two main purposes, firstly, to provide basic information concerning the name and contact details of the media organization, such as its address and the names of key management personnel or legal representatives. These tend to be standard requirements and although they may assist in enabling further searches for information from other sources, such as company registers, they do not, on their own, provide sufficient ownership information.

Secondly, to provide the public body with the information it needs to assess whether domestic ownership limits or prohibitions are being complied with.

Since these rules vary significantly from one country to another the degree of disclosure also varies significantly and is thus of variable utility. A number of countries, such as Croatia, Italy, Norway and Romania have, however, established detailed disclosure requirements that appear designed to directly promote transparency in the

media sector. In Spain the proposed regulatory body, the State Council for Audiovisual Media, which for political and economic reasons has not been established, is explicitly required by statute “to ensure a competitive and transparent audiovisual market” (art.47.1, law 7/2010, 31 March, on Audiovisual Communication).

It is apparent from the above that, in the vast majority of countries considered, the ownership information provided to public bodies is inadequate, either in terms of the sectors covered or in the degree of detail. Some of the reasons for the limited effectiveness of these measures are discussed below, together with selected examples of good practice.

i) *Which media organizations are covered by reporting requirements?*

As noted above, not all countries subject all three media sectors to notification requirements, creating a patchwork of databases across Europe. Among the most far reaching is Croatia, which obliges disclosure by “media publishers”, defined as “any natural or legal person who publishes its material through the media and participates in public information, regardless of the technical means by which its editorial programme content is published, transmitted or made accessible to the public” (unofficial translation).

The development of online audiovisual and text services has undoubtedly complicated the situation further. Some countries, such as the Netherlands, distinguish between linear online services that are required to provide information to the Dutch Media Authority and on-demand services that are not. In some instances additional clarification as to the services covered by the reporting requirements is required. In Bulgaria and Latvia, for example, the extent to which online media are covered remains unclear.

Latvia requires data to be provided regarding all “mass media”, which is defined widely to cover newspapers, magazines, newsletters and other periodicals (published not less than once every three months and with a print run of more than 100 copies), as well as electronic mass media and providers of news agency information and audiovisual recordings intended for public dissemination. As indicated, there remains some uncertainty over the coverage of online media, though internet sites have the option of registering as a mass media service and thus being subject to the reporting requirements. Since voluntary registration can increase the risk of liability for published material it has not generally been pursued in practice but this form of voluntary registration, particularly if accompanied by financial or other legal advantages, could be an interesting means of broadening the field covered by disclosure requirements.

An important consideration is whether both domestic and foreign media are covered by reporting requirements. Only if the rules apply to all media operating in the country will citizens have access to the information they need to make informed choices about the media they use and be able to evaluate the information they receive. In this respect, the Austrian example is particularly interesting in that only providers of broadcast services established in Austria are covered by the disclosure requirements.

ii) *To whom must disclosure be made?*

Disclosure, particularly regarding audiovisual services, is in many of the countries surveyed to be made to a public media authority, but there are instances of disclosure being required to a specific ministry, such

as the Ministry of Culture in Bulgaria or Ministry of Justice in Azerbaijan regarding print publications. In Morocco, press details must be provided to the Prosecutor of the County Court and, for audiovisual services, to the High Authority for Audiovisual Communications; in Turkey, to the Office of the local Chief Prosecutor. As indicated above, where public bodies have discretion to authorise media services, their independence from political or commercial interest is of paramount importance. Any links between media authorities and the executive should thus be reviewed.

An interesting example is provided by Croatia, where disclosure was previously made to a state body, the Croatian Competition Authority. In 2011, oversight was transferred to an independent professional and business organization, the Croatian Chamber of the Economy (CCE), operating at arm's length from government. As noted further below, effective monitoring of ownership is a resource intensive activity and it is important that where supervision is passed to an independent body that body has the administrative and financial capabilities to carry out its tasks.

Out-sourcing should not be seen simply as an opportunity for the government to cut costs. The Croatian example also underlines the importance of adopting a coherent approach to disclosure, in that ownership information has also to be reported to the Electronic Media Authority, an independent public authority, creating unnecessary duplication and administrative costs.

iii) *What is required to be disclosed?*

The type of information that media organizations—and, in some cases, those with interests in such organizations—are required to disclose is potentially extensive. It can, for example, extend to details of shareholders and the size of their holdings in the media company; the interests of individuals affiliated to those with interests in a media organization, such as family members; indirect or beneficial interests in the media organization; interests held by the media organization in other companies; sources of revenue; and details of political or other affiliations of the owners. It is worth noting that not all media organizations are companies, the Catholic foundation Lux Veritatis, for example, operates the Radio Marja network in Poland, and details of interests in these non-profit making associations, foundations or partnerships may also be required.

A number of countries included in the survey, notably, Austria, Croatia, Georgia, Germany, Norway, Romania, and Switzerland, require information to be disclosed across the majority of these areas in the media sectors they cover, though the exact nature of the provisions in each country vary. Norway and Romania, for example, require disclosure of shareholdings of 5 percent and 10 percent or more respectively, while Austria focuses on much higher shareholdings in the broadcast sector of 49 per cent, with further thresholds for multiple media holdings, because these are relevant for its foreign ownership and concentration limits. Such high disclosure triggers are of less assistance for transparency purposes. Even in these countries, information is not required in all categories. In both Austria and Croatia, for example, information on the holdings of affiliates or interests by the media company in other non-media businesses is not required.

In order to understand who really owns a specific media organization it will usually be necessary to look behind the front-line shareholdings and consider indirect and sometimes beneficial shareholdings, where the real owner may not be disclosed at all. Just over half the countries surveyed do seek to obtain

information on holdings of this type. In Morocco, there are no media companies traded on the Moroccan stock exchange and shares cannot be held on behalf of another in a private company, thus excluding in principle beneficial ownership, while Macedonia expressly prohibits proxy or secret shareholdings in a broadcasting company.

Countries such as Croatia, Latvia, and Georgia instead specifically require the disclosure of beneficial interests. In Latvia, for example, there is an obligation to notify beneficial holdings of more than 25 percent. Italy, which has quite extensive disclosure requirements, also requires disclosure of certain controlling and beneficial interests. The real challenge here will thus often be to establish whether the information provided is correct. With beneficial holdings the object will often be to hide the real owner for commercial or political reasons and it is thus to be expected that such information will not readily be divulged.

Around half of the countries surveyed require interests held by a media organization in other companies, notably media companies, to be disclosed. Romania, for example, requires both applicants for an audiovisual licence and each associate or shareholder with more than 20 percent of the company's social capital or voting rights to declare the precise nature of their interests in other audiovisual companies, while Switzerland requires "substantial holdings" in other companies to be revealed.

Only the UK requires disclosure of political or religious affiliations in order to establish eligibility for the award of a broadcasting licence, though Romania notes the existence of detailed conflicts of interest legislation that requires holders of public office to declare direct or indirect interests in media organizations. This information is accessible to the public. Georgia prohibits public servants from holding broadcasting licences, though not interests in such licences. It is possible that other countries have similar conflicts of interest legislation, which, because it is targeted at politicians or public officials was not picked up in the questionnaires.

Revenue figures are generally disclosed through annual accounts, but these often fail to indicate the relative importance, and thus potential influence of, specific revenue sources. In Georgia, it was suggested that the new broadcasting law should require broadcasters to prepare their financial accounts and audit reports in line with the International Financial Reporting Standards, which emphasise such attributes as relevance, faithful representation, verifiability, timeliness and comprehensibility. This proposal was not taken forward but is worth considering in those countries that are not members of the European Union, which requires compliance by EU listed companies.

In a difficult economic climate media operators may increasingly rely on public funding, particularly in relatively small markets, or become dependent on one or two key sources of commercial revenues. This underlines the importance of access to information regarding public advertising revenues and funding from external political or other sources. Croatia requires media organizations to provide data on advertisers or marketing agencies which have furnished more than 10 percent of their annual marketing profits. Macedonia requires disclosure of those persons who generate a much higher figure of over 30 percent of the advertising or other commercial revenues of a broadcaster in a given year. This requirement forms part of detailed rules regarding the disclosure of affiliated organizations or individuals.

Many countries do not address affiliated holdings and the Macedonian example is thus of particular interest in this respect. Recent legislation passed in Austria (125th Federal Act—MedKF-TG of 2011)

requires public authorities as well as state-owned companies to disclose the total amount paid to each media organization, including foundations and other non-corporate bodies, on a quarterly basis.

The survey data thus reveals that the exact information to be disclosed to public authorities is extremely variable across the countries.

In one country, Georgia, the relevant rules were considered too recent for their effectiveness to be assessed. **In only two countries, Croatia and Norway, does the information to be disclosed appear capable of providing sufficient ownership information across the broadcast, print and online sectors. And even here—as noted further below—maintaining the reliability and completeness of data remains a challenge.**

iv) *How accessible is the information to the public?*

The survey also asked about the effectiveness of the disclosure regime. Although the information covered in this section is to be provided to a public body or bodies, in the majority of countries the information can in principle also be accessed by the public, either because the public body is required to provide, or voluntarily makes, the information available, or because the information can be accessed using freedom of information legislation.

Certain countries, including Georgia and Turkey, also require information to be published by the media organizations concerned on their websites. In Luxembourg, however, there is no freedom of information legislation and there is no provision specifying a right of access, though access is in practice provided on request. In Morocco, freedom of information legislation has still to be adopted in line with provisions in the new Constitution of 2011. Even where freedom of information legislation is available, however, reliance on it may, as the UK expert notes, be perceived by individuals to be unduly cumbersome, bureaucratic or even confrontational.

In terms of the ability of the authorities to ensure timely and accurate information, this will depend in part on the resources made available to the organisation and its powers of investigation and sanction, which vary considerably. Although most countries require changes to relevant shareholdings to be notified on a rolling basis, to ensure information is kept up-to-date and some, such as Norway, require annual reports, the complete accuracy of the records cannot be guaranteed. In particular, beneficial owners are unlikely to be willing to reveal full details of their holdings and in countries such as Georgia, where certain broadcasters, especially those controlled by the government, have proved reluctant to divulge relevant information in the past, the effectiveness of the new regime has yet to be established. In terms of public access to the data, this can be impeded by a lack of clarity in the presentation of the data, administrative technicalities and the payment of unduly onerous fees.

Imposing reporting requirements on both the media organization and shareholders, as is the practice in countries such as Romania, may help to improve the accuracy and timeliness of the data as should the guarantee of adequate resources and administrative back-up for the regulatory bodies concerned.

In the Croatian context, for example, real concerns were voiced over the capacity of the Croatian Chamber of the Economy to effectively carry out its tasks, with reporting obligations extending across all the media sectors—comprising, in the print sector alone, around 3,000 publications. This underlines the importance of an integrated approach on the part of those organizations that record such

information and co-operation among civil society and other interest groups to help monitor the accuracy of official data.

The application of random checks backed by sanctions for the initial failure to report, or update, data, or the provision of inaccurate/false information, can also improve the overall quality of recorded data. Sanctions, which vary from fines, imprisonment or the withdrawal of operating licences, vary considerably across the countries surveyed and are not universally available. Fines range in size from €20 to €1 million (Spain) and are generally imposed on the media organization but may also be imposed, as in Croatia, on a responsible person within the organization, which acts as an additional deterrent.

For a variety of reasons, however, relatively few cases of fines or other sanctions have been reported. This causes concern in some countries. It may be because the relevant authorities are not familiar with their duties, a possibility discussed in the Bulgarian context; a lack of sufficient resources to check data; an unwillingness to challenge organizations with political or other powerful affiliations; and, more positively, in some countries a generally good record of compliance. The procedures for imposing fines may also be cumbersome, which acts as a disincentive to commence proceedings.

In terms of accessibility, there are also considerable variations. Luxembourg still retains hard copies of the data supplied and although access to the copies is as a matter of practice allowed, the absence of specific rules in the area means that important aspects, for instance the right to take copies and any consequent charges, remain unclear. In certain countries, including Austria, Luxembourg and Spain, it is considered difficult for an ordinary member of the public to locate or decipher the available information because of the format or nature of the records, which are designed for other purposes.

Online, searchable websites clearly render the data much more accessible. Countries such as Norway, with its Medieregisteret, and Germany offer good examples. In Germany, the state media authorities publish an annual list of nationwide commercial services, their broadcasters, and parties with participating interests. This information is also collated on the website of the KEK, the independent Commission on Concentration of the Media. The KEK additionally publishes annual reports that are available free on request and widely distributed to the media, politicians, universities, libraries and other relevant institutions.

The KEK database depicts very clearly the relationship between the various holdings in the media organizations covered and could serve as a useful template for countries that have still to adopt, or are in the process of modifying, such databases. In a number of countries, access to information is in practice obstructed by administrative delays and a lack of political commitment to transparency.

Use of available databases thus varies from country to country depending on accessibility, the existence of other sources, and public awareness and confidence in the handling of requests. In a significant number of countries it is, however, apparent that such databases are used by the public and valued, in particular, by the media itself when covering media related issues. Use by the media was particularly noted in Bulgaria, Latvia, Germany, the Netherlands, and Norway, with Croatia also indicating recourse by civil society and educational organizations as well as parliamentary committees.

In conclusion, certain countries, such as Norway and Croatia, do require print, broadcast and online media organizations operating in their country to report extensive ownership information to a public or other designated body. This information is then made available to the public in an accessible form. In many instances, however, the information relates to *only one or two media sectors*; is *incomplete*, particularly in relation to beneficial or affiliated interests and potential financial influences; or is, in practical terms, *inaccessible*.

Although the various regimes provide many instances of good practice that can be drawn on in developing a more effective transparency regime, they have in most cases been **introduced for purposes other than enhancing media ownership transparency—an objective that benefits only indirectly, if at all**. The requirement to report, in some instances, to different bodies and the very different thresholds employed by the regimes, for instance with regard to shareholdings, also creates real difficulties for anyone attempting to obtain a picture of developments across a number of countries. This indicates that **a more uniform and co-ordinated approach to data collection is highly desirable**.

7. MEDIA-SPECIFIC RULES REQUIRING DISCLOSURE DIRECTLY TO THE PUBLIC

The requirement for ownership details to be posted on a media organization's website or detailed in a public register is a potentially highly effective mechanism for disclosing information to the public. It is also one method by which the deficiencies in the reporting regimes discussed above can be remedied. Although disclosure here is less likely to be determined by regulatory objectives such as the control of media concentrations, it may be imposed for consumer protection purposes and as a result will be limited in scope. **Thirteen of the countries in the survey require direct disclosure in this way, though in only four countries (Austria, Croatia, Luxembourg and Turkey) are reporting requirements applicable across all three media sectors.**

The Austrian and Croatian rules are particularly interesting in this respect. The Croatian rules apply to both foreign and domestic media, requiring details to be posted in the Official Gazette, freely available online, and made available by the media publisher to the public through the media, a mechanism that is not further specified. Information is to be provided on an annual basis. Details regarding the size of shareholdings, beneficial and indirect interests and certain rather general financial and audience related data must also be disclosed.

Sanctions for non-disclosure can be imposed, though have not yet been put into force because of the relative newness of the legislation. Although there remains some uncertainty as to which organization should supervise compliance with certain of these provisions, a consequence of Croatia's complicated dual disclosure regime, the regime does establish a potentially effective system through which the public can ascertain who owns the media organizations operating in their country.

The Austrian regime is also ambitious in seeking to improve ownership transparency across all three media sectors. It requires annual reporting adjacent to the masthead of a printed paper, on the website of electronic media, and on a readily accessible teletext page or in the Official Gazette of the *Weiner Zeitung* for broadcast services. Apart from ownership details, it also requires an explanation of the basic editorial line adopted by the paper or audiovisual service concerned.

The system has, however, a number of limitations. Once again, its application to foreign owners is limited. Foreign media are only covered where they are "completely or almost exclusively" distributed in Austria. Whether an organization is treated as being "foreign" appears to be determined by the place of registration. Companies established in other EU countries or further abroad will not, therefore, be required to directly provide ownership information—unless their services are primarily focused on Austria. Similar exclusions also apply to foreign state publications and publications of the Austrian legislature and public authorities. As a result, ownership information is generally only available to the Austrian public through this means in relation to domestic media.

Austrian legislation does, nevertheless, set out extensive requirements for disclosure to the public. Thus, the names of those directly or indirectly interested in a media company must be revealed, with an indication of their respective property interest, investment, shareholding and voting ratios. Trusts and forms of 'silent participation' must be disclosed. Individuals with such interests must also reveal whether they have interests in other media organisations.

In Luxembourg, disclosure is only required in relation to direct or indirect shareholdings of over 25 percent, so that where there are four owners each with a 24 percent holding their identity would not be disclosed. These two examples underline the importance of setting disclosure limits at an appropriate level.

A number of other countries, including Romania and Bulgaria, have introduced regimes that can assist the public in tracking media ownership in specific sectors, particularly in co-ordination with other available databases.

In relation to only one of the countries surveyed, namely Croatia, did the relevant expert consider the regime on its own to be effective in revealing the true state of media ownership. The comparatively extensive rules introduced in Georgia had not been in force for a sufficient length of time to enable their impact to be properly assessed. The problems identified in the remaining countries include lack of enforcement, inadequate oversight and minimal requirements. In Luxembourg, criminal sanctions are imposed for non-disclosure, which may ultimately impede enforcement. In a significant number of countries only the owner's name, or merely the name of the media service provided, has to be disclosed, together with basic management details.

In conclusion, although direct disclosure to the public by the media organizations themselves is a potentially effective mechanism for providing information, it is apparent that, with a few notable exceptions, the various regimes currently in operation do not perform this function. While they may provide sufficient information to enable consumers to contact the media organization concerned regarding, for example, programme complaints, in only one of the 20 countries were the rules considered adequate to meet citizens' interests in media ownership transparency.

Although there is scope to build on examples such as the Croatian one, it is questionable whether such disclosure on its own would suffice. This is because information is by its nature dissipated across the individual providers (unless also collated in some form, for instance in an official journal as in Austria and Croatia).

8. NON-MEDIA SPECIFIC TRANSPARENCY REQUIREMENTS

Domestic and EU competition rules, such as the EU merger regulation,¹⁸ can indirectly enhance media ownership transparency, through the information collected to enforce these regulations. This data is unlikely, however, to provide the public with a clear picture of media ownership given the intermittent nature of reporting. Company law, at both EU and domestic levels, can provide greater ownership transparency—for example, through rules requiring the disclosure of major shareholdings in companies over a certain size.¹⁹

While these rules can provide valuable insights into company ownership, their utility for the public is often limited. This is because, once again, their primary aim is not media ownership transparency and the data is often collated in a way that is inaccessible to the public. The rules may also not apply to foreign companies, thus providing no indication of the ownership of foreign owned companies. Where they do apply, there can be difficulties in enforcement. Furthermore, even where major shareholdings are disclosed, there is often no requirement to disclose beneficial ownership, thus providing no real indication of who actually controls a company.

All the countries surveyed, except Morocco, require some form of disclosure of company ownership, though the types of companies required to disclose information and the information to be disclosed vary considerably. Generally, where required, the information to be disclosed includes the name and nationality of the owners; address; shareholdings (above a certain percentage); founding capital, and so forth. Several countries such as the Netherlands and the UK also require annual accounts to be filed, providing a more detailed insight into the companies concerned.

Nearly all the countries surveyed require changes to the data to be registered shortly after the changes occur.²⁰ In Spain, however, there is no set time limit within which changes must be registered, which has resulted in registered information being significantly out-of-date in many cases. Failure to disclose the required information generally leads to punitive fines of varying amounts, and providing false information is considered a criminal offence in many countries, such as Norway and Croatia. In most countries, failure to supply data or supplying insufficient data also leads to the invalidation of registration and possible loss of voting rights connected to shareholdings, which are powerful incentives to supply the required information.

Not all countries apply the same set of rules to both foreign and domestic countries. Bulgaria does not require foreign companies to register their details on the company register as it does for domestic companies. A similar situation can be found in Georgia. In other countries, the rules only partly apply to foreign companies, as in Switzerland, where the rules contained in the Swiss Code of Obligations do not apply to foreign companies.

18 Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, (2004) OJ L24/1-22.

19 Commission Directive 2007/14/EC, laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, (2007) OJ L69/27.

20 Exact periods vary.

Another issue flagged up by the survey is that disclosure requirements vary considerably for different types of companies. As a result, the available data on media companies, which can take different forms, can appear incoherent and difficult for the public to understand. Public companies in Austria and Croatia, for example, only require registration and ownership information disclosure if the company has one sole shareholder, not where there are multiple shareholders.

A similar problem is experienced in Germany, where there are significant differences in disclosure requirements between public and private limited companies. In several countries, registration and disclosure of ownership information are not required at all for certain types of companies. In Turkey, for example, only joint stock companies have to disclose information to the trade registry, though this covers all broadcast media at present. Overall, the results show clearly that general company law in itself provides **insufficient information regarding who effectively owns and ultimately controls media organizations**. Of the 20 countries surveyed, only the Romanian expert indicated that it would be possible for the public to find out who the true owners of media companies happen to be, though it would be complicated and time-consuming. Moreover, without verification of the information provided, backed by effective enforcement, the required information may simply not be available.

The most cited concern is **the lack of an obligation to disclose beneficial ownership, which makes it impossible to ascertain who really controls media companies**, even where records provide clear and easily understood information. Another concern, often cited, is that the information made available is technical in nature and difficult to understand. Comparative data to help place the information in context are not provided. This is largely due to the nature of company law and the purposes for which information is collected and made accessible. While for some provisions transparency is the key aim, this is intended for business purposes and not specifically to improve media ownership transparency, where other concerns are at play. **General company law does not, therefore, seek to enhance media ownership transparency, and in itself is incapable of doing so.**

9. OTHER SOURCES OF MEDIA OWNERSHIP INFORMATION

Across the countries surveyed, several organizations provide media ownership information to the public, either because they are charged to do so by legislation or do so on their own accord. (Some of these bodies are mentioned in 5 above.)

In Italy, the Communications Regulatory Authority (AGCOM) is charged with publishing and presenting an annual report to parliament, describing, among other things, the main stakeholders and market shares across all media markets, though the main focus is to provide an indication of state implementation of media pluralism, rather than to enhance transparency. Similarly, the Norwegian Media Authority and German KEK publish valuable online resources, and the latter also widely distributes annual reports.

In the Netherlands, the Commissariat for the Media (CvdM) collects and publishes on its website an annual report concerning trends and developments across the different media markets, covering such aspects as media ownership, market shares, and specific issues relating to media pluralism. In the UK, Ofcom is charged with monitoring and enforcing media ownership rules. Ofcom's reports are publicly accessible.

At the European level, the *Mavise* database run by the European Audiovisual Observatory within the legal framework of the Council of Europe provides detailed information on television services and companies operating in Europe.²¹ A stated aim of the database is to enhance transparency and though currently aimed at television services, it could—with appropriate funding—be extended to the printed press and other media services.

In many countries, academics and occasionally NGOs and civil society organizations undertake research and publish on the current state of media ownership in their own, or other, countries. While these can provide valuable snapshots of the media market, they are mostly undertaken *ad hoc*, and do not systematically monitor ownership. The Spanish online *Portal de Comunicación*²² of the Universitat Autònoma de Barcelona is however a good example of a site which monitors the media and provides analysis and statistics to the public.

Similarly, the *Mediaindex* in Romania, run by the Centre for Independent Journalism, was one of the first online databases to include information on media ownership. In the UK, several organizations attempt to track media ownership, though the data they provide is limited. The Newspaper Marketing Agency publishes ownership structures for each UK national newspaper, and MediaUK publishes an exhaustive list of owners and their respective outlets. A number of private commercial organizations collect and sell company information, including on media companies, such as the *Lursoft* database in Latvia.

21 See: <http://mavise.obs.coe.int/>

22 See <http://www.portalcomunicacion.com/index.asp>

Certain media companies voluntarily provide information on their financial sources directly to the public, often through their websites. This is done by *Il Fatto Quotidiano* in Italy, *The Guardian* in the UK, and *DV* in Iceland. In addition, some of the larger media companies, for example, in Iceland, the Netherlands, the UK and Germany, also publish (annual) reports on their websites containing ownership information. Self-reporting is sometimes encouraged by professional or trade organizations.

In Norway, the Norwegian Press Organization's Code of Journalistic Ethics calls for readers/listeners/viewers to be informed of any direct or indirect third-party financing of editorial content, thus encouraging a degree of financial transparency. Similarly, in Switzerland, the Swiss Press Council has produced guidelines for its members, calling for ownership transparency. These guidelines are not enforceable, however; when questions were raised about the beneficial ownership of the *Basler Zeitung*, the Council asked the board of directors to reveal the true ownership of the newspaper. To the best of our knowledge, the company has not yet complied with the ruling.

In conclusion, although certain NGOs, civil society organizations, commercial operators and media organizations collect and publish useful information on media ownership and funding, this varies considerably in scale and quality from one country to another. Self-regulatory provisions established by professional or trade organizations, though establishing important principles, will often not provide sufficient incentives to reveal politically or commercially sensitive information. Information disclosed by these means is not on its own, therefore, sufficiently systematic or extensive to provide an adequate picture of media ownership in Europe and beyond.

10. THE NEED FOR FURTHER ACTION TO ENHANCE MEDIA OWNERSHIP TRANSPARENCY AT NATIONAL, EUROPEAN UNION OR COUNCIL OF EUROPE LEVELS

The country experts were asked a number of questions regarding the need for further action, particularly at the European level, to enhance media ownership transparency. The findings in this section need to be understood in this context, and a number of political factors may have influenced the answers given. Consideration of the findings are, however, explored here as the experts were able to offer a particularly well informed assessment of the state of play in their own countries and put forward a number of interesting suggestions for future reform.

i) *Action at the domestic level.*

All but three of the country experts (for Luxembourg, Norway, and the UK) felt that further action was needed at the domestic level to enhance media ownership transparency. Experts focused on the need for more consistent information to be submitted across all the media sectors, taking into account the development of online services. They also called for supplementary information to be provided, particularly in relation to indirect, beneficial and affiliated interests or potential financial influences, where the domestic regime in question did not extend to such data.

The need for regulatory bodies to be adequately resourced and for information to be accurate, comprehensible, and easily accessible to the public was also emphasised. The Romanian expert noted the importance of effective self-regulation, given the difficulty of agreeing new legislation in this field. Some experts, such as in Turkey, underlined the importance of initiatives to encourage public debate on media ownership, and to enhance media literacy more generally.

ii) *Action at the European level.*

There was extensive support for further action at the European level, and all the experts, except those in the UK and Macedonia, considered that initiatives at the European level would be helpful.

Various views were expressed as to the respective merits of intervention by the EU or Council of Europe. Some experts were wary of EU intervention, while others noted the limited enforcement powers of the Council of Europe and thus saw advantages in EU action. At least one expert felt that the Council of Europe could play a greater role in monitoring compliance with transparency standards and identifying instances where those standards were not being met. The UK expert felt that consideration should be given to whether national initiatives in the field are, or could be, sufficient, before contemplating further action at the European level, in line with the principle of subsidiarity.

The country experts for Azerbaijan, Bulgaria and Luxembourg solely favoured reinforcing the Council of Europe guidelines in the 1994 Recommendation on Transparency of Media Ownership (see 4 above).²³

23 Recommendation No. R(94) 13 of the Committee of Member States on Measures to Promote Media Transparency.

A further 12 experts supported this as one among a number of possible initiatives. If the Recommendation were to be reformulated and updated into a convention, its provisions would become binding on those states that adopted it. Azerbaijan also called for the Council of Europe to provide greater detail regarding the standards to be followed.

Eleven country experts were in favour of a binding EU directive to support media ownership transparency. In particular, it was noted that the EU is currently exploring whether there is scope for further action to enhance media pluralism. Although its competence in the field has been questioned (see 4 above), information on the degree of ownership diversity in Europe's markets would inform this debate.

An initial step could take the form of an initiative to enhance the completeness and consistency of the information recorded at the domestic level. The Icelandic expert noted that such a directive could establish baseline standards while allowing states to go further if they desired. Experts from five countries who favoured a directive (Germany, Iceland, Italy, Latvia and Romania) also favoured a non-binding EU initiative, setting out guidelines for good practice and encouraging further co-operation. The experts from Cyprus and Spain, though not favouring a binding directive, supported non-binding guidelines of this type.

Thirteen experts supported the creation of a comprehensive EU database to supplement domestic initiatives. A number of commentators, however, considered that this could be taken forward either by the EU or the Council of Europe—possibly building, in the latter case, on the existing Mavise database (see 9 above). A centralised database would assist individuals and interested organizations to compare data from different countries and could help to track the ownership of foreign providers of media goods and services. The Icelandic expert noted that were a baseline of common standards to be agreed, interoperability between different regional or national databases could be introduced, and this could potentially dispense with the need for a centralised authority.

Nine country experts favoured other forms of co-ordination and co-operation, with the Spanish expert suggesting “quality certificates” for organizations complying with certain transparency standards. The importance of transparency issues in the context of the European Neighbourhood Programme and the desirability of non-binding EU guidelines for countries granted Advanced Status was also noted.

A coherent approach across all EU fields of activity, both externally and internally, is clearly desirable.