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Increasing transparency of media ownership

Rapporteur: Ms Gülsün Bilgehan, Turkey, Socialist Group

Background report

The Unbearable Lightness of Media Ownership Transparency

Peggy Valcke¹, 24 September 2014

This report has been prepared at the request of the Parliamentary Assembly of the Council of Europe. It addresses the following questions:

- Why is transparency of media ownership important; what are the dangers of non-transparency?
- Which international/European/EU standards exist (or are planned by the EU)?
- What are the elements of such transparency (for print media, broadcasting, Internet media)?
- What is the current practice in Europe (some good and problematic examples in CoE member States)?
- What should parliaments in Europe do to improve the situation?

Throughout the report, the abbreviation 'TMO' is used to refer to transparency in media ownership.

1. The Undeniable Importance of Transparency in Media Ownership (TMO)

1.1. TMO: The Key to Media Pluralism and Democracy

From the ancient Greek, we inherited the term, and the concept, of 'demokratia' (democracy), a political system in which the common people ('demos') set the rules ('kratos'). The Athenian democratic system as introduced by Cleisthenes in 507 B.C. was comprised of three separate institutions made up of (male) citizens and with separate powers.² The notion of 'people power' continues to be a foundation for many governments today and a system of 'checks and balances' is still inherent in modern democracies. Since Charles Montesquieu coined the term in *The Spirit of the Laws* (1748), political power is in many states

¹ Professor of Law at KU Leuven, research director at iMinds-ICRI/CIR; Part-time Professor European University Institute (RSCAS – CMPF); Visiting Professor University of Tilburg. The author is grateful to Rachael Craufurd Smith and Yolande Stolte of the University of Edinburgh for giving a sneak preview of their insightful upcoming report on TMO for the Open Society Program on Independent Journalism and Access Info Europe, and to Mark Thompson at the OSF for the perceptive comments on an initial version of this report. Any errors remaining our own.

² The *ekklesia* or assembly, the key governing body that made decisions about war, foreign policy and laws by majority vote; the *boulè* or senate house, a council of representatives from the ten Athenian tribes; and the *dikasteria*, the popular courts in which citizens argued cases before a group of lottery-selected jurors.

separated among a legislature, an executive, and a judiciary, which limit each other and hold each other reciprocally responsible. The objective is to reduce the power that a single individual or body of government can exercise and minimize abuse of power, corruption, and oppression.

An educated, enlightened and informed population is one of the surest ways of promoting the health of a democracy.

(Nelson Mandela)

Democracy, or rule by the people, requires an informed citizenry. To obtain relevant information, citizens today rely heavily, if not almost exclusively, on the media. It is considered as the media's role to act as the custodian of the public interest and as a watchdog on the actions of government. The media monitor the political process to ensure that political players do not abuse the democratic process and they inform the citizens so they can make responsible, informed choices on social, political and personal affairs.

In other words, political power is being held accountable by the media - "the Fourth Estate". And in turn, the media are being held accountable by the public,

in order to reduce the risk of corruption of media power by economic or political powers. Journalists regularly critique and challenge each other's work. And in most countries, the consumer has many media choices and can reject those whose standards fall short.

But how can the public make that choice if they cannot ascertain who provides the information on which they rely? How can citizens evaluate the reliability and trustworthiness of the message if the identity of the media owner is obscure? How can journalists work properly if they do not know who ultimately controls the company they work for?

"Communication – understood as a lively and civilised debate among citizens – is the lifeblood of democracy. The media are its veins and arteries. Information they provide should be comprehensive, diverse, critical, reliable, fair and trustworthy."

(Margot Wallström, former Vice President of the European Commission for Institutional Relations and Communication Strategy)

It follows logically from the foregoing that media ownership transparency is an essential prerequisite for the proper functioning of democracies. Even though transparency is not mentioned explicitly in international human rights charters, it is clear that a meaningful exercise of the freedom of expression and the right to receive and impart information, as recognized in Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the ECHR, and Article 11 of the EU Charter of Fundamental Rights, requires it.

Genuine freedom of expression also presupposes the existence of a variety of media sources and a diversity of media ownership, as a necessary but not sufficient condition for media pluralism. For many years now, States have adopted – and have been urged to do so by the Council of Europe in several recommendations – measures to preserve the pluralistic character of their media landscape. Such measures prevent, amongst others, that one or a small group of individuals or companies gain excessive control over those media that influence public opinion and political debate. The European Court of Human Rights expressly confirmed in *Centro Europa 7* that, at least in the sensitive audiovisual context, States are under a positive obligation by virtue of Article 10 ECHR to "put in place an appropriate legislative and administrative framework to guarantee effective pluralism".³ To monitor, track, and—where necessary and appropriate—take action against concentrations of media power, it is imperative that relevant actors have adequate information about media ownership structures.

So, whereas media pluralism has been beautifully phrased by Miklós Haraszti as "*the key that unlocks the door of freedom of information and freedom of speech*",⁴ media ownership transparency can, in turn, be considered ***the key that unlocks media pluralism***.

³ Application no. 38433/09, *Centro Europa 7 S.R.L and Di Stefano v. Italy*, judgment 7 June 2012, para. 134.

⁴ Miklós Haraszti (2011). Media Pluralism and Human Rights - Issue Discussion Paper prepared for the Council of Europe's Commissioner for Human Rights, Strasbourg, 6 December 2011, CommDH(2011)43, available from <https://wcd.coe.int/ViewDoc.jsp?id=1881589>.

The availability of accurate and up-to-date information about media ownership is an essential attribute of a democratic and pluralist media system. Market power cannot be understood or assessed – or effectively regulated – if media authorities and citizens do not know who owns the media in their society. Excessive media concentrations cannot be addressed – or even be identified – unless ownership is fully disclosed.

Public knowledge of owners' identities helps to ensure that abuses of media power can be assessed, publicised, openly debated, and even prevented. It ensures that people can be accurately informed about the interests and influences behind the news presented for their consumption, and that media markets can operate fairly and efficiently, especially towards new entrants. Media regulators and the public need, then, to have access to information about who owns – and therefore is able to influence – media outlets.

(Mark Thompson, OSF)

1.2. International Recognition of TMO's Key Role

The need for increased media ownership transparency has in recent years been recognized by a growing number of political bodies, civil society organizations, NGO's, journalists' associations, regulators and academics. It was the **Council of Europe's** Committee of Ministers who has led the way in drawing attention to the importance of media ownership transparency and urging member states to ensure that "Members of the public [...] have access on an equitable and impartial basis to certain basic information on the media so as to enable them to form an opinion on the value to be given to information, ideas and opinions disseminated by the media" (1994) and to "adopt any regulatory and financial measures called for in order to guarantee media transparency" (2007).⁵

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".⁶ Discussing media pluralism in a changing media landscape, Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, concluded in 2011 that "[t]here must be transparency of media ownership."⁷ And last year, the Parliamentary Assembly of the Council of Europe passed a new resolution on *The State of media freedom in Europe* in which it highlights:

"The Assembly regrets that media ownership is not made transparent in all member States and asks them to adopt the necessary provisions to this end. Lack of transparency is typically used to hide political or commercial interests in controlling major media companies. The Assembly calls on member States to take proper action for ensuring media transparency and pluralism and promoting journalistic standards."

⁵ Council of Europe, Recommendation No. R(94)13 of the Committee of Ministers to member states on measures to promote media transparency, 22 November 1994; Council of Europe, Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content, 31 January 2007. Recommendation (2007)2 reaffirmed that member states "should adapt" the regulatory frameworks and "adopt any regulatory and financial measures called for in order to guarantee media transparency". A similar recommendation was made in the Ministers' [2007 Declaration on protecting the role of the media in democracy in the context of media concentration](#) and also its [Recommendation CM/Rec\(2011/7\) on a new notion of media](#) reaffirmed that "[r]egulatory measures may be required with a view to guaranteeing full transparency of media ownership."

⁶ Council of Europe, Resolution 1636 (2008) of the Parliamentary Assembly on Indicators for media in a democracy, 3 October 2008 (at 8.18).

⁷ Thomas Hammarberg et al., "Human rights and a changing media landscape", Strasbourg: Council of Europe Publishing, December 2011.

At the level of the **European Union**, the European Parliament has frequently expressed its concern at the lack of transparency in media ownership in Europe, and called on the Commission and the Member States to take initiatives in this field.⁸ The importance of transparency of media ownership and of funding sources as being a key element in guaranteeing media freedom and pluralism, has been recognized in the Council conclusions on media freedom and pluralism in the digital environment of November 2013.⁹ In May 2014, the Council stated that the EU will “Support actions by third countries to improve transparency of media ownership”.¹⁰

The Independent Study on Indicators for Media Pluralism, carried out at the request of the European Commission in 2008-2009 included “regulatory safeguards for transparency of ownership and/or control” towards the public, on the one hand, and towards the relevant authority, on the other hand, as key indicators to assess risks for media pluralism.¹¹ The European Commission’s High-level Group on Media Freedom and Pluralism identified the lack of media ownership transparency and opacity of funding sources as a challenge for media freedom and pluralism in Europe.¹² And an important aspect in the campaign of the European Citizens’ Initiative for Media Pluralism dealt notably with media ownership and transparency, and the prevention of conflicts of interest with political office.¹³

The **OSCE Representative on Freedom of the Media** has equally urged member states on several occasions to respect transparency of media ownership.¹⁴ A growing body of **academic** publications and studies, as well as surveys by **NGOs**, draw specific attention to the issue¹⁵ – such as the recent study by Access Info Europe and the Open Society Program on Independent Journalism (OSPIJ), formerly the Media Program, which examined the availability of ownership information in 19 European countries (plus Morocco) in 2012.¹⁶ The study culminated into “Ten Recommendations for Transparency of Media Ownership” which were presented at the Council of Europe Conference of Ministers responsible for Media and Information Society in Belgrade, Serbia, in November 2013, and which will be discussed in more detail in the last section of this report.¹⁷

In other words, there seems to be a fairly broad consensus amongst European organisations that transparency of media ownership is essential for media pluralism and democracy.

2. The Unbearable Lightness of Current International Standards

A number of standards for media ownership transparency have been developed at various levels in previous years. Although these are indisputably laudable initiatives, the instruments in which they are enshrined are

⁸ Most recently in its Resolution of 21 May 2013 on the EU Charter: standard settings for media freedom across the EU. See e.g. also European Parliament resolution of 25 September 2008 on concentration and pluralism in the media in the European Union.

⁹ Council conclusions and of the representatives of the Governments of the Member States, meeting within the Council, on media freedom and pluralism in the digital environment, Brussels, 25 - 26 November 2013; http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/139725.pdf.

¹⁰ Council of the European Union, EU Human Rights Guidelines on Freedom of Expression Online and Offline, Foreign Affairs Council Meeting, Brussels, 12 May 2014; http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142549.pdf

¹¹ KU Leuven – ICRI, Jönköping International Business School – MMTC, Central European University – CMCS, Ernst & Young Consultancy Belgium (2009). Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach (Final Report and Annexes: User Guide, MPM, Country Reports, prepared for the European Commission), Brussels: European Commission, July 2009, <http://ec.europa.eu/digital-agenda/en/independent-study-indicators-media-pluralism> (‘EU MPM Study’).

¹² High Level Group on Media Freedom and Pluralism, Report on “A free and pluralistic media to sustain European democracy”, January 2013.

¹³ See <http://www.mediainitiative.eu/>.

¹⁴ See e.g. <http://www.osce.org/fom/74939>; <http://www.osce.org/odhr/elections/90339> and http://www.b92.net/eng/news/society-article.php?yyyy=2012&mm=09&dd=20&nav_id=82290.

¹⁵ See, for instance: B. Petković (ed.) (2014). *Media Integrity Matters – Reclaiming Public Service Values in Media and Journalism*, Ljubljana: Peace Institute; also available from <http://mediaobservatory.net/radar/media-integrity-matters-%E2%80%93-new-book-see-media-observatory>; Y. Stolte and R. Craufurd Smith (2010). The European Union and media ownership transparency: the scope for regulatory intervention. Report for the Open Society Foundations, 23 p.; MediaAct - Media Accountability and Transparency in Europe (FP7 project, 2010-2013), <http://www.mediaact.eu/>; MEDIADEM – European Media Policies Revisited: Valuing & Reclaiming Free and Independent Media in Contemporary Democratic Systems (FP7 project, 2010-2013), <http://www.mediadem.eliamep.gr/>; MDCEE – Media and Democracy in Central and Eastern Europe (ERC project, 2009-2013), <http://mde.politics.ox.ac.uk/>; Mapping Digital Media – Project funded by the Open Society Foundations, <http://www.opensocietyfoundations.org/projects/mapping-digital-media>; as well as the aforementioned EU MPM Study (see above, note 11).

¹⁶ Available from <http://www.access-info.org/en/media-transparency>.

¹⁷ http://www.access-info.org/documents/Access_Docs/TMO_Recommendations_05_November_2013.pdf.

usually **non-binding or have limited utility**. At the level of the **Council of Europe**, three instruments are of particular interest: the European Convention on Transfrontier Television and 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.

Article 6 of the **European Convention on Transfrontier Television** lays down the obligation to provide information about broadcasters, including "*the composition of the capital*" and "*the nature, purpose and mode of financing of the programme service*", while Article 10bis provides for a general engagement of the Parties to "*endeavour to avoid that programme services transmitted or retransmitted by a broadcaster or any other legal or natural persons within their jurisdiction (...) endanger media pluralism*". The problem with these provisions is that the latter, Article 10bis, does not further specify on what such "endeavour" entails, leaving a large margin of discretion to the member states. The first one, Article 6, imposes the information obligation on the competent authorities of the member state in which the broadcaster is established ("transmitting Party") and simply seems to assume that broadcasters are under a duty to provide such information to the competent authority in the first place. As recent studies have shown, there is very often a problem with the existing national rules on company and media ownership which do not permit to know who the real or beneficial owners of the media are. The obligation in Article 6 is also very limited in scope: only broadcasters in the traditional sense are covered, and there is no mentioning about transparency towards the public.

Further guidance as to what media ownership transparency might actually entail has been provided by 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 relevant. These two recommendations offer more detailed guidelines as to which measures member states should include in their domestic legislation in order to guarantee or promote access by the public to information on the media, on the one hand, and to facilitate exchange of information on media transparency between national authorities, on the other hand. Contrary to the European Convention on Transfrontier Television, these recommendations are not limited to the audiovisual sector. Recommendation R(94) 13 distinguishes between specific measures to guarantee media transparency in the broadcasting sector and measures for transparency in the press sector. It makes clear that, in the audiovisual sector, disclosure of information should take place not only at the moment of granting broadcasting licences, but also following the grant of the licence. It identifies three categories of information which may be subject to disclosure:

- information concerning persons or bodies participating in the structure which is to operate the service, and on the nature and the extent of their respective participation;
- information on the nature and the extent of the interests held by these persons in other media or in media enterprises, or even in other economic sectors;
- information on others persons or bodies likely to exercise a significant influence on the programming policy.

For press undertakings, R(94) 13 adds two sets of information to be disclosed: firstly, information on statements of editorial policy or political orientation of newspapers and publications, and secondly, information concerning financial results and distribution figures.

Under the header 'media transparency', Recommendation CM/Rec(2007)2 refers to the same three categories of information – information on shareholders, information on cross-shareholdings, and information on other influences – but clarifies that information on shareholders should include "**where possible, the ultimate beneficiaries**". The Recommendation also mentions information regarding the support measures granted to the media and information on the procedure applied regarding the right of reply and complaint. It is worth noting that Recommendation CM/Rec(2007)2 not only calls on member states to ensure that the public have access to these types of information on existing media outlets. It also urges them to "prompt the media to take any measures which could allow the public to make its own analysis of information, ideas and opinions expressed in the media".

These recommendations are, however, non-binding.

In the framework of the **European Union**, a legal information obligation for audiovisual media service providers has been introduced at the moment of the revision of the Television without Frontiers Directive in 2007.¹⁸ The current Audiovisual Media Services Directive stresses in recital 45 that "because of the specific

¹⁸ Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, (2007) OJ L332/27, amended by European Parliament and Council Directives 97/36/EC and 2007/65/EC, (1997) OJ L 202/60, resp. (2007) OJ L332/27.

nature of audiovisual media services, especially the impact of these services on the way people form their opinions, it is **essential for users to know exactly who is responsible for the content of these services**” and considers it “therefore important for Member States to ensure that users have easy and direct access at any time to information about the media service provider”.¹⁹ Despite this seemingly strong commitment to transparency, the actual wording of the relevant provision is much weaker: Article 5 only prescribes that audiovisual media service providers shall make easily, directly and permanently accessible to the recipients of a service at least the following information:

- (a) the name of the media service provider;
- (b) the geographical address at which the media service provider is established;
- (c) the details of the media service provider, including its electronic mail address or website, which allow it to be contacted rapidly in a direct and effective manner;
- (d) where applicable, the competent regulatory or supervisory bodies.

A similar provision can be found in the E-Commerce Directive of 2000 for providers of information society services,²⁰ which in its turn resembles earlier and current information obligations imposed in the context of consumer protection laws.²¹ Such obligations to provide certain information – especially the identity and contact details of the provider – prior to delivering the service or good have as their goal to enable the consumer to contact the provider quickly and communicate with him efficiently in case of typical consumer conflicts (late or no delivery, discrepancies between the good delivered and the goods ordered, incorrect price, etc.). But they merely allow the customer to find out about the company’s name, address and contact details, and not “to know exactly who is responsible for the content of these services”. This contrasts with the acclaimed importance of this information in the light of the impact of audiovisual services on the way people form their opinions, as the Audiovisual Media Services Directive itself states.

Admittedly, the competence of the European Union to legislate for media pluralism and media ownership transparency is considered controversial,²² which likely explains why the European legislator did not introduce more stringent obligations in the Audiovisual Media Services Directive in 2007. In its Resolution of 21 May 2013, the European Parliament called on the Commission to include in the evaluation and revision of the AVMSD also provisions on transparency on media ownership, concentration, and conflict of interest rules to prevent undue influence on the media by political and economic forces,²³ but it remains to be seen what further steps will follow. Whereas the Council of the EU recognized the importance of media ownership transparency at its meeting of 26 November 2013, it considers it the task of the Member States to take appropriate measures to achieve genuine transparency of media ownership, and only invites the Commission to “strengthen, through non-legislative actions, cooperation between Member States’ audiovisual regulatory authorities and promote best practice as regards the transparency of media ownership”.²⁴

However, it should be noted that the European Union has adopted – or is in the process of adopting – other measures, also outside the context of the media sector, which are conducive to increasing transparency about media power structures. We can, for instance, think of the **Financial Transparency Directive** which contains rules to ensure that financial relations between public authorities and public undertakings are transparent and that undertakings that enjoy exclusive or special rights maintain separate accounts in order not to distort competition.²⁵ Also the Commission’s **Communications on the application of state aid rules**

¹⁹ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), (2010) OJ L95/1.

²⁰ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), (2000) OJ L178/1.

²¹ See for instance Articles 5 and 6 of the Consumer Rights Directive (Directive 2011/83/EU of 25 October 2011 on consumer rights) and Article 4 of the old Distance Selling Directive (Directive 97/7/EC of 20 May 1997 on the protection of consumers in respect of distance contracts, repealed by the Consumer Rights Directive).

²² See, for instance: Y. Stolte and R. Craufurd Smith, mentioned above (n. 15); R. Craufurd Smith, “Rethinking European Union competence in the field of media ownership: the internal market, fundamental rights and European citizenship”, *European Law Review* 2004, 29(5), 652-672; P. Valcke, “A European Risk Barometer for Media Pluralism: Why assess damage, when you can map risk?”, *Journal of Information Policy*, 2011 (1), 185-216; Centre for Media Pluralism and Media Freedom, “European Union Competencies in Respect of Media Pluralism and Media Freedom”, RSCAS Policy Paper 2013/1, February 2013, <http://cmpf.eui.eu/publications/index.aspx>.

²³ Resolution of 21 May 2013 on the EU Charter: standard settings for media freedom across the EU.

²⁴ See above.

²⁵ Directive 2006/111/EC on the transparency of financial relations between member states and public undertakings as

on public service broadcasting (PSB) from 2001 and 2009 are relevant from the perspective of media transparency. Although non-binding, these communications set out the Commission's interpretation of what is required by virtue of (binding) EU competition rules in terms of transparency about the PSB's remit, its finances and cost allocation and independent supervision over PSB's funding and spending.

Another particularly interesting development at EU level relates to the ongoing revision of the existing **anti-money laundering legislation** in Europe.²⁶ Last year, the European Commission adopted two proposals to update and improve existing EU rules designed to protect the financial system against money laundering and the financing of terrorism.²⁷ In first reading, the European Parliament voted (with an overwhelming majority) in favour of the establishment of **public beneficial ownership registers** by Member States. The amendments introduced by Parliament require Member States to establish public central registers that list information on the ultimate beneficial owners of all sorts of legal arrangements, including companies, foundations, holdings and trusts. These registers would be interconnected across the EU and would be "*publicly available ... online to all persons in an open and secure data format, in line with data protection rules*".

'Beneficial owner' is defined as any natural person (or persons) who ultimately owns or controls the customer [of the credit or financial institution concerned] and/or the natural person on whose behalf a transaction or activity is being conducted. In the case of corporate entities, the beneficial owner shall at least include the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings. In the case of foundations or trusts the beneficial owner shall at least include the natural person(s) who exercises control over 25 % or more of the property of the legal entity or arrangement concerned. The future EU Anti-Money Laundering Directive, as amended by Parliament, would require that a shareholding of 25 % plus one share is in any case considered as evidence of ownership or control, but would leave scope for Member States to decide that a lower percentage may be evidence of ownership or control.

In addition, banks and financial institutions will also need to take more rigorous customer identification and verification measures in relation to domestic 'politically-exposed persons' and not only those residing in another Member State or in a third country (as is the case under the current Third Anti-Money Laundering Directive). Politically-exposed persons are people at a higher than usual risk of corruption due to the political positions they hold. Domestic politically-exposed persons are those who are or have been "entrusted by the member state with prominent public functions", such as heads of state, members of government, supreme court judges, members of parliaments, and senior members of the administrative, management or supervisory bodies of State owned enterprises. In case of high-risk business relationships with such persons, additional measures should be put in place, e.g. to establish the source of wealth and source of funds involved.

In other words, according to the Parliament, a legal obligation for companies and trusts – including in the media sector – to disclose their real or "beneficial" owners should apply throughout the EU and the public should have access to public registers providing information on these owners. Applauded by some,²⁸ the proposals also provoked criticism and concerns about "unintended consequences for citizens' privacy in all member states".²⁹ The Council adopted its common position on 18 June 2014 but did not endorse public disclosure of beneficial ownership information.³⁰ According to the European Commission's press release of

well as on financial transparency within certain undertakings, OJ L 318/17, 17.11.2006.

²⁶ Directive 2005/60/EC on preventing the use of the financial system for money laundering and financing terrorism (3rd Anti-Money Laundering Directive) – seeks to protect credit and financial institutions against these risks; and Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds – makes fund transfers more transparent, thereby helping law enforcement authorities to track down terrorists and criminals.

²⁷ European Commission, Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, 5 February 2013, COM/2013/045 final, 2013/0025 (COD); and Proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds, 5 February 2013, COM(2013) 44 final, 2013/0024 (COD); see http://ec.europa.eu/internal_market/financial-crime/legislation/index_en.htm.

²⁸ See, for instance: <http://www.access-info.org/business-transparency/542-european-parliament-amld-vote>.

²⁹ See, for instance, <http://www.lawsociety.org.uk/advice/articles/fourth-money-laundering-directive-update/>.

³⁰ Council Common Position of 13 June 2014 on the Proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds, 10971/14 - 2013/0024 (COD); Council Common Position of 13 June 2014 on the Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, 10970/14 - 2013/0025 (COD); adopted by the Permanent Representatives' Committee on 18 June 2014 (texts available from <http://register.consilium.europa.eu/>).

the same date, trilogue negotiations will be held this autumn under the Italian EU Presidency. It remains to be seen what the final outcome will be and what impact this may have on the media sector.³¹

3. The Unavoidable Building Blocks of TMO

In general, we can distinguish between two types of disclosure requirements: on the one hand, rules that aim to ensure transparency **towards regulatory authorities** (indirect disclosure), and on the other hand, rules that aim to ensure transparency **towards the public** (direct disclosure). The first category can be further subdivided into **media-specific** disclosure requirements, which can be found in media laws, and **non-media specific** transparency requirements, which are usually laid down in general company laws and/or conflicts of interest legislation targeted at politicians and/or public officials.

As stated above, transparency towards regulatory authorities is important to enable them to fulfil their duties; in the case of media regulators this is usually to monitor media pluralism and ensure compliance with media-specific anti-concentration rules. Where media regulators have the task not only to gather such information, but also to make it publicly accessible (or where they do so on a voluntary basis), this is hugely beneficial to increased ownership transparency towards the public (citizens, public watchdog bodies, academics...), especially in systems without direct disclosure requirements.

But also transparency towards the public is vital, more specifically to enable members of the public to form an opinion on the value which they should give to the information, ideas and opinions disseminated by the media.³²

To develop a coherent legal framework for ownership transparency (or to assess existing ones), it is imperative to consider the following aspects which are inspired on the checklist developed by Craufurd Smith and Stolte for OSPIJ and Access Info Europe.³³

3.1. Building Block 1: The Addressees - Which Media Organizations Are Subject To Disclosure Obligations?

In order to have complete insight into who controls or influences the provision of news and information, the **starting point** should be that all relevant media sectors – print, broadcasting, online – are covered without any important exceptions.

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.
(Rachael Craufurd Smith & Yolande Stolte)

However, to avoid any undue burden on small independent media outlets, minimize the risk of chilling effects on freedom of expression and keep the workload for regulatory authorities reasonable, a **'de minimis' regime** should be considered. This could come under the form of an exemption of certain categories of media providers – for instance non-profit community media, outlets with very limited audience/revenue shares or with revenues below a certain threshold, or single-authored media (operated by individuals). Or, disclosure requirements could be limited to certain categories of media organisations, such as those that pursue economic activities; publish on a regular basis; reach certain circulation / distribution / revenue thresholds; involve multiple authors and exercise editorial oversight over the content (as is the case, for example, in Latvia and Iceland).

Another 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. Extending disclosure requirements to foreign companies may

³¹ European Commission Statement/14/197, "Anti-Money Laundering: Commissioner Barnier welcomes progress in Council", 18 June 2014; http://europa.eu/rapid/press-release_STATEMENT-14-197_en.pdf.

³² See Council of Europe Recommendation R (94) 13, mentioned above.

³³ Rachael Craufurd Smith and Yolande Stolte, "The Transparency of Media Ownership in the European Union and Neighbouring States" - Report on a project by the Open Society Program on Independent Journalism and Access Info Europe, September 2014 (in publication).

be difficult in practice to enforce. Better cooperation between media authorities and linking national databases in Europe can overcome such problems.

Consideration should be given to whether online intermediaries, because of their capacity to select or rank information, should also be brought within the disclosure requirements.³⁴

3.2. Building Block 2: The Beneficiaries - To Whom Must Disclosure Be Made?

The ideal scenario combines **direct and indirect** disclosure requirements to ensure maximum transparency. Having only direct disclosure obligations in place entails the risk that information provided is too technical in nature and difficult to understand for the general public. This problem can be overcome under a system of indirect disclosure requirements, whereby media regulators gather relevant data and make those available in a meaningful way to the public (e.g. by identifying cross-links between media owners, visualizing data in clear graphs or schemes). Admittedly, this requires an independent and well-performing regulatory body with sufficient resources and staff – a condition which may not be fulfilled in all countries (yet). Therefore, to enable the public (in particular journalists or watchdog organizations) to carry out also their own research, independently from, or in addition to, the media regulator's analysis, it is important that they can also have direct access to ownership data. It should not be forgotten, that also where the media regulator is the beneficiary of the reporting requirements (i.e. the instance to which disclosure has to be made), it should be the public which is to be considered the ultimate beneficiary. In other words, the data received by the media regulator should serve the purpose of illuminating the public on media influences, but not any (hidden) political (or commercial) agendas (see below).

Direct disclosure rules could, more specifically, entail that media organizations are obliged to publish certain information about their ownership structure in the media they distribute, on their website, and/or in the Official Gazette of the country.

Indirect disclosure rules can be media-specific or non-media specific, as mentioned before. In the first case, media organizations are under a duty to provide certain information to the media regulatory authority. Very often, this will be at the moment of applying for a licence or of notifying the service, but it is crucial that this information is also **updated** at regular intervals (and hence, that media organizations are, for instance, subject to an annual reporting obligation, or at least to an obligation to report any changes in ownership structure or key management staff within a certain time frame, e.g. ten working days).

Whereas such obligations are already quite common in the broadcasting sector, this is not, or much less, the case for printed press and the internet given the sensitivity that exists regarding state regulation of these sectors. In the light of the growing convergence between text and audiovisual media, it can however be justified that certain legal obligations – like transparency requirements – apply equally to all media sectors.

It should be stressed, though, that it is of the utmost importance to formulate reporting obligations in a careful way, so they **do not lead to any form of interference with editorial policy or to censorship** by those bodies to whom information should be reported. This implies, for instance, that, on the one hand, sanctions for non-compliance with reporting obligations can be put at such levels that they have a deterring effect, but not at such levels that they can undermine the financial stability of a media organization. It also implies, on the other hand, that guarantees are built in into the system to prevent misuses or abuses by the regulatory body of ownership data provided (e.g. by using the data for other purposes than foreseen by law; by not respecting confidentiality of certain sensitive data; by transferring data to unauthorized third parties).

In the case of non-media specific disclosure rules, companies are by virtue of general EU³⁵ or domestic company laws under a duty to disclose details (in an official

[S]tates 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.

(Rachael Craufurd Smith & Yolande Stolte)

³⁴ R. Craufurd Smith and Y. Stolte (2014), see above (n.33), at p.6, with reference to R. Foster, *News Plurality in a Digital World*, Reuters Institute for the Study of Journalism, 2012.

³⁵ For an overview of the various EU Company Law and Anti-Money Laundering Directives, see: http://ec.europa.eu/internal_market/company/official/index_en.htm.

register, the national official gazette, or certain business documents) about their constitutive documents and authorized representatives, statements of the capital subscribed, annual accounts and balance sheets, operating results, etc. While these rules can provide valuable insights into company ownership (and hence contribute to media ownership transparency), it is commonly understood – as demonstrated by the recent TMO Study of Access Info and OSPIJ (see below) – that they, in themselves, provide insufficient information regarding who effectively owns and ultimately controls media organizations. 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.³⁶ Also, their utility for the public is often limited, because the data is often collated in a way that is inaccessible to the public.

3.3. Building Block 3: The Data - What Is Required To Be Disclosed?

The starting point should be that the amount and type of data required should be relevant, appropriate, adequate and proportionate to the aim pursued, which is to detect undue forms of control or influence on media and to enable citizens to evaluate the quality of information provided by the media so they can make better informed political as well as personal decisions. It is obvious that **identification and contact information**, as currently requested by the Audiovisual Media Services Directive, is far from sufficient to achieve this goal.

A first step to know who is controlling a particular media outlet, is to have data on the **ownership structure** of the organization that has editorial responsibility: who is participating in the structure, who is holding shares – and in what percentage? It is important here to **set disclosure limits at an appropriate level**. Whereas it may make not much sense to require data on minor shareholders, thresholds for disclosure should not be set at too high a level either. In Luxembourg, for example, 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. The **threshold of 5%**, as suggested by Access Info Europe in their “Ten Recommendations for Transparency of Media Ownership”,³⁷ seems appropriate from the perspective of detecting significant influences on media outlets.

In order to understand who really owns a media organization it will often be necessary to look behind the front-line shareholdings and consider **indirect shareholdings, as well as beneficial shareholdings** where the real owner may not be disclosed at all.³⁸ Even where the law requires information about beneficial owners, it can be a challenge 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.³⁹

In addition, to grasp the full picture, it is also important to have insight into:

- **affiliated interests** (i.e. interests in media outlets held by individuals affiliated to the owner, in particular family members);
- **linked holdings or cross-holdings in other companies** (i.e. information on the nature and the extent of the interests held by media owners in other media organizations, or even in other economic sectors).

In order to understand in greater detail not just who owns but also who controls the media (**transparency of influence**), it is imperative to have also details about other persons or bodies likely to exercise a significant influence on the editorial policy. One category are persons who take up key positions in the company (senior management, for example directors, key executive officers, the managing editor). Another category are sponsors; **financial data**, in particular information about **the sources of media funding**, can reveal potentially significant commercial or political influences (via state subsidies, advertising or donations), as well as media influence on political parties or state bodies.

In addition, it has been argued that disclosure requirements should also cover political or religious affiliations in order to help illuminate potential influences on the programming policy or editorial policy (or vice versa, media influence on political parties or state bodies). This could be realized either through requiring disclosure of such affiliations to establish eligibility for the award of broadcasting licences (as is the case in the United

³⁶ R. Craufurd Smith and Y. Stolte (2014), see above (n.33), at p.24.

³⁷ See above, n.17 and below, section 5.

³⁸ R. Craufurd Smith and Y. Stolte (2014), see above (n.33), at p.16.

³⁹ *Ibid.*

Kingdom), or under the form of measures requiring politicians and public officials to declare any interest they may have in media organizations.

One might also consider obliging media outlets to provide an explanation of the basic editorial line adopted by the paper or audiovisual service concerned, which is for instance the case under the Austrian regime (see below).

3.4. Building Block 4: The Format - How Accessible Is The Information To The Public?

Accessibility is not only a matter of **availability** of the information, but also of **reducing its level of complexity**. Economic data are often very technical and not easy to grasp by non-experts. It is therefore advisable to consider also procedural aspects when framing media ownership transparency provisions.

As stated before, under direct disclosure rules, media organisations can be required to publish information in their own publications or transmissions, or on an accessible website (with details of the site and links prominently displayed or indicated in their media products), or in the country's Official Gazette. In all cases, it is advisable to establish standardized requirements as to the content and layout, in order to facilitate comparability.

Alternatively, or – as explained before – preferably in addition, the media regulatory authority should consolidate the data it gathers by virtue of media-specific reporting requirements and make that information available to the public in an easy manner, at no or minimum charges. Administrative difficulties or financial costs may deter the public from accessing the information and should therefore be avoided. One option for the regulator could be to publish regular reports, providing data, statistics and/or analysis; another, even better, option would be to provide readily accessible and searchable **online databases**. In the following section, a number of good examples of informative and accessible online resources provided by media authorities in Europe are listed.

It should be stressed again that organisations charged with collecting and sharing ownership data should have adequate resources to perform their tasks effectively and should be institutionally independent from government influence. Where multiple bodies are tasked to gather ownership data (e.g. the media regulator and the Chamber of Commerce, like in Croatia, or several co-existing media regulators, like in Belgium), **collaboration** should be considered for two reasons: firstly, to avoid unnecessary duplication and administrative costs, and secondly, to avoid that information becomes scattered over different databases, organized on different lines, which would require the public to carry out multiple searches.

3.5. Building Block 5: The Carrot & The Stick - How Effective Is The Disclosure Regime?

To ensure that information is comprehensive, accurate and readily accessible to the public, in other words that disclosure is effective, databases should be kept up-to-date and disclosure requirements should be backed by **effective oversight and appropriate sanctions**. 'Appropriate', as stressed before, means that sanctions for non-compliance with reporting obligations should not have a chilling effect on freedom of expression. Putting sanctions at a deterring level without entailing the risk of undermining the financial stability of a media organization, implies that its size and revenue are taken into account in determining penalties.

Imposing reporting requirements on both the media organization and shareholders, as is the practice in countries such as Romania, may also help to improve the accuracy and timeliness of the data and may help to overcome the problem of beneficial owners that are unknown.

4. The Unenchanted Story of TMO in Europe

4.1. Shortcomings and Gaps

A number of recent comparative studies have taken a closer look at existing disclosure requirements in European states,⁴⁰ the most recent one (to our knowledge) being the media integrity research conducted between July 2013 and February 2014 as part of the regional project South East European Media Observatory. The study covered five countries in South East Europe: Albania, Bosnia and Herzegovina, Croatia, "the former Yugoslav Republic of Macedonia" and Serbia (all Council of Europe members). With regard to media ownership transparency the research findings paint a grim picture of the situation in those

⁴⁰ See above, n. 15

countries, despite a number of laudable initiatives in recent years to increase transparency and combat political instrumentalisation of the media.⁴¹

“The absence of the market, a strong dependence on the financial flows involving the state, vague regulation on unlawful concentration, hidden ownership and intransparent trading in media shares led to a growing media’s dependence on the state, or rather political parties and their agendas, in all the countries covered by this analysis. Instead of serving the public interest, strengthening democracy and democratic institutions, the media remained entrapped in the web of intransparent clientelistic relations.”

“The online media that were promoted as a mechanism for ensuring pluralism of voices on the media market, have proved to be the most intransparent in their operation; many among them operate under the patronage of business-political groups and are funded with the money of suspicious origin.”

(Sandra B. Hrvatin and Brankica Petković)

A systematic survey that specifically focused on transparency in media ownership was carried out by the Open Society Program on Independent Journalism and Access Info Europe in 2012 (hereafter: “TMO Study”).⁴² The study looked at media-specific regulations and company laws in 19 Council of Europe countries in different parts of Europe (plus Morocco) to assess the extent to which data on ownership of media outlets is available to the public (directly or via the regulator).

The conclusion was that in more than half of the countries surveyed, the existing rules on company and media ownership do not permit members of the public to know who the real or beneficial owners of the media are, and in the majority of countries the legal framework fails to ensure public access to information about the owners of print or online media.⁴³

Despite recent initiatives towards greater transparency in the media sector in a number of countries, the research found that in most countries ***key information about media ownership is not collected, either by media regulators or through disclosures required under company law.*** Very often, there is no obligation to disclose details of ***indirect or beneficial shareholdings***, holdings in related companies and ***affiliated interests***, and potential political or commercial influences, or, companies are only obliged to disclose shareholdings above a certain ***threshold*** (rendering it difficult or impossible to assess the degree of control and impact of all shareholders involved).⁴⁴ The rules may also not, or only partly, apply to ***foreign companies*** (as in ***Switzerland, Austria or Georgia***⁴⁵), or, where they do apply, there can be difficulties in enforcement.

⁴¹ S.B. Hrvatin and B. Petković, “Regional Overview” in B. Petković (ed.) (2014). *Media Integrity Matters*, see above, n. 15, at p.27.

⁴² The research findings are available from <http://www.access-info.org/en/media-transparency>. They have been presented to the Council of Europe’s Steering Committee on Media and Information Society (CDMSI) on 25 April 2013 (<http://www.coe.int/t/dghl/standardsetting/media/cdmsi/ACCESS%20INFO%20EUROPE%20Presentation%20CDMSI%20Strasbourg%2025April%202013.pdf>) and were discussed at a seminar in Brussels on 24 September 2013 jointly organized by The Open Society Program on Independent Journalism (formerly Open Society Media Program) and Access Info Europe with the participation of the Council of Europe, the European Commission, the European Parliament and the OSCE.

⁴³ See: Access Info and Open Society Program on Independent Journalism (formerly Open Society Media Program), *Transparency of Media Ownership in Europe: A report for the High-Level Group on Media Freedom and Pluralism*, 22 October 2012; http://www.access-info.org/documents/2012_10_22_Transparency_of_Media_Ownership_in_Europe_AIE_OSMP.pdf.

⁴⁴ Also, these thresholds are often set for reasons other than ownership transparency, for instance to assist in enforcement of foreign ownership and concentration limits, and are therefore inadequate for ownership transparency purposes. In Austria, for instance, shareholdings have to be disclosed only to the extent necessary for the Austrian Communications Authority to determine whether the media organization is (indirectly) controlled by a non-EU/EEA citizen/company and whether the limits to the concentration of media ownership are observed. The relevant thresholds set out in the law are 49%, 30%, and 25%, thus any shareholding below 25% is not disclosed; L. Feiler, TMO Study - Country Report Austria, <http://www.access-info.org/en/component/content/article/448>, at p.4.

⁴⁵ It should be noted, though, that by virtue of Article 37, paragraph 1, of the Law on Broadcasting of December 2004 a broadcasting licence may only be held by a citizen of Georgia or a natural person or legal entity resident in Georgia.

The country expert for **Iceland**, for instance, noted, that “[a]lthough explicit and public disclosure of the immediate ownership of media organisations is required, the basic information required to establish ownership is not required (beneficial ownership, those with indirect control or significant control, size of shareholding), thus it is not possible to trace ownership further. This means that the use of **shell companies**⁴⁶ can provide effective cover for the identities of the ultimate owners of a media organisation. This is mitigated by company registries, but only partly” since also under company law “[t]he information [required] is not detailed enough – it does not include the basic information on indirect control, significant interest or beneficial ownership which is required to establish ownership.”⁴⁷ Several other country experts made very similar remarks (e.g. for Azerbaijan⁴⁸).

The disclosure requirement under the **Austrian Media Act** (§ 25) does not apply to foreign media, unless such media are completely or almost exclusively distributed in Austria (§ 50(1)). Whether a media undertaking is to be considered ‘foreign’ depends – according to the country expert for Austria – solely on the place of the registered office but not on the places of the undertaking’s activities.⁴⁹

The country expert for **Switzerland** pointed out that “[t]he provisions for mandatory disclosure of media ownership are unclear and lacking in detail. For example, it is not clear whether beneficial ownership or those with indirect control / significant interest would be revealed. Swiss law does not go very far in respect of transparency requirements compared to other countries; Swiss legislation is based more on the principle of confidentiality or secrecy.”⁵⁰

Although a large majority of the countries surveyed (thirteen) require certain categories of media organisations to provide ownership details **directly to the public**, many country experts considered the existing provisions insufficient. They listed various reasons for this, including lack of enforcement, inadequate oversight and minimal requirements. 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. Only in one of the countries surveyed, namely **Croatia**, did the country expert consider the disclosure regime *on its own* effective in revealing the true state of media ownership.⁵¹ The rules adopted in **Georgia** in April 2012 for the broadcasting sector were thought too recent to assess.⁵² 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.⁵³

In **Italy**, for instance, only press and online media are required to disclose certain information pursuant to the Press Law of 1947 (which does not cover broadcast media); only very basic information – such as name and address of the publishing and printing company and the name of the Executive Director or Deputy Executive Director – has to be communicated to the public. When asked whether a reasonable, nontechnical individual would be able to ascertain who effectively owns and ultimately controls the media organisation concerned from the information available, the Italian country expert’s responded as follows: “The information provided is too limited and does not include details on the ownership structure, beneficial ownership, size of shareholding, those with indirect control and/or connected companies.”⁵⁴

Other bottlenecks that hinder the provision of a detailed picture of the ownership and influences behind media companies have been identified through the survey:

- **Media regulators are often not empowered or sufficiently resourced** to verify what is reported.

Therefore, foreign media organisations are not eligible to apply for a broadcasting licence. See X., TMO Study - Country Report Georgia, <http://www.access-info.org/en/component/content/article/454>, at p.2 and 8.

⁴⁶ A shell company is one which serves as a vehicle for business transactions without itself having any significant assets.

⁴⁷ X., TMO Study - Country Report Iceland, <http://www.access-info.org/en/component/content/article/455>, at p.4 and 10.

⁴⁸ R. Hajili, TMO Study - Country Report Azerbaijan, <http://www.access-info.org/en/component/content/article/449>, at p.4 and 8.

⁴⁹ L. Feiler, TMO Study - Country Report Austria (see above n. 44), at p.6-7.

⁵⁰ R.H. Weber, TMO Study - Country Report Switzerland, <http://www.access-info.org/en/component/content/article/465>, at p.5.

⁵¹ A. Bilić and T. Jakšić, TMO Study – Country Report Croatia, <http://www.access-info.org/en/component/content/article/451>, at p.23.

⁵² X., TMO Study - Country Report Georgia, see above (n. **Error! Bookmark not defined.**), at p.10.

⁵³ R. Craufurd Smith and Y. Stolte (2014), see above (n.33), at p.4.

⁵⁴ F. Fanucci and B. Brevini, TMO Study - Country Report Italy, <http://www.access-info.org/en/component/content/article/456>, at p.11.

- In a number of countries, there are possible sanctions for non-reporting of information to media regulators and company registers but **not sanctions** for reporting inaccurate information.
- Even in countries where relevant information is in principle available to the public, access to it is in practice obstructed by administrative delays and a lack of political commitment to transparency. Also financial costs (like high fees to obtain certain data) or other practical obstacles (such as non-functioning websites) often **render the information in practice inaccessible**. Data is sometimes incomplete or too difficult for ordinary individuals to collate or understand.
- Different media sectors are frequently subject to **diverging regimes** so that sources are fragmented. In order to obtain the required information, it is then 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.

The study also revealed **considerable variation across the countries surveyed regarding the information to be disclosed**, not only in the nature of the required information (for example as to the type of media organization covered or the size of shareholding that triggers disclosure), but also as to the type of body to whom the information is to be provided, its powers and funding. There is no unified or standard approach to collecting or requiring disclosure to the public of media ownership data, particularly with regard to print and online media.⁵⁵

4.2. Best Practices

The survey did, however, also find **best practice models and examples** of how to ensure transparency of media ownership. The subsequent paragraphs describe these best practices drawn from different countries but structured along the lines of two specific case studies, i.e. **Norway** (whose regime can be considered the most advanced for a number of reasons according to Access Info's report for the High-Level Group on Media Freedom and Pluralism⁵⁶) and **Croatia** (whose legislation is well defined, but where implementation is lacking). A third item looks specifically at self-regulatory and voluntary bottom-up initiatives.

Case Study 1: Norway

Norway is one of the few countries where transparency of the media sector is recognized by its national constitution as a key value, albeit indirectly. By stating that: "*[i]t is the responsibility of the authorities of the State to create conditions that facilitate open and enlightened public discourse*", **Article 100 of the Norwegian Constitution clearly underlines the link between freedom of expression and media ownership transparency**. What is striking, is that it uses rather strong language imposing a positive obligation on the State and not simply providing an option to take action.⁵⁷ The Norwegian Media Ownership Act, which was adopted in 1997 and does provide for ownership transparency, explicitly refers to Article 100 of the Constitution.

A major advantage of the Norwegian Media Ownership Act is that it contains **all relevant provisions on media ownership (including disclosure requirements) in one place**.

*This is obviously a major advantage compared to countries like **Italy** and **Turkey** which have a more complex legal framework with a number of media-specific and company laws containing relevant provisions.*

The Act imposes a duty on all media organisations - **print, broadcast and online** - operating in the country to provide the Media Authority and the Appeals Board for Media Ownership with the information required by these authorities to perform their functions, including to "*contribute to creating greater openness about, awareness or knowledge of ownership in the Norwegian media*" (Article 13)^{58 59}.

⁵⁵ Access Info and Open Society Program on Independent Journalism (formerly Open Society Media Program) (2012), see above, note 43, at p.1.

⁵⁶ Access Info and Open Society Program on Independent Journalism (formerly Open Society Media Program) (2012), see above, note 43, at p.4.

⁵⁷ Contrary to the Italian and Romanian constitutions that do directly address (an aspect of) media ownership transparency (i.e. disclosure of financial sources), but leave it to the state to choose whether or not to take action in this field (Article 21 Italian Constitution: "*The law may introduce general provisions for the disclosure of financial sources of periodical publications*"; Article 30(5) Romanian Constitution: "The law may impose upon the mass media the obligation to make public their financing source."). Despite this constitutional right to impose an obligation on the mass media to disclose their sources of finance, the Bulgarian parliament has never enacted legislation to this effect.

⁵⁸ Article 13 Norwegian Media Ownership Act. The Norwegian Media Authority, *Medietilsynet*, is a government agency which reports to the Ministry of Culture but is independent from the political authorities in monitoring the ownership structure of the Norwegian media and ensuring compliance with the ownership concentration limits; J. Wessel-Aas, TMO

*Given the sensitivity that exists regarding state regulation of the printed press and the internet, several countries limit reporting requirements to the broadcast sector (such as **Austria, Georgia, Germany, “the former Yugoslav Republic of Macedonia”, Romania, Switzerland, and the UK**). Of the twenty countries covered by the Access Info Europe and OSPIJ survey, only five require ownership details to be provided to the competent media authority(-ies) in relation to the broadcast, print and online sectors (**Croatia, Iceland, Italy, Latvia and Norway**). Only in four countries, media-specific rules that require disclosure directly to the public apply across all three sectors (**Austria, Croatia, Luxembourg and Turkey**).⁶⁰*

In practice, ownership information is usually provided to the Media Authority in response to a standing, routine request for annual reports with information required for keeping the public Media Registry updated (see *below*). These general reporting requirements, as implemented by the Media Authority, cover **shareholdings of 5% or more**; do not distinguish between types of shares; and cover also information on interests by owners in other media companies and in non-media companies, information on interests in the media organisation by individuals (e.g. family members) or organisations affiliated to the owner, and management details (such as directors, key executive officers, managing editors).

*As noted above, one of the important pieces of information needed to identify those who own and control the media is the identity of **beneficial owners**. However, the most cited concern by the country experts of the TMO Study is precisely the lack of any obligation to disclose beneficial ownership. For the broadcast media, beneficial ownership is only required to be disclosed to the media authority in six countries and to the companies register in four countries. The print and online media have an even lower obligation to report ownership information; they are often just covered by company law which reveals ownership of all types of company (publicly listed, limited company, etc.) in only four countries studied.⁶¹ This renders it impossible to ascertain who really controls media companies, even where records provide clear and easily understood information.*

Political, religious or other affiliations of the shareholder or owner are usually not requested, nor sources of revenue. However, the law does not prevent the Media Authority to issue such specific requests where relevant.⁶²

*Political, religious or other affiliations are only rarely mentioned in media-specific disclosure requirements. Of the countries covered by the TMO Study, only the **UK** requests disclosure of political or religious affiliations in order to establish eligibility for the award of a broadcasting licence. **Romania** is listed in the global results as “partially” requiring disclosure of such affiliations, given the existence of anti-corruption legislation that contains detailed conflict of interest rules (requiring holders of public office to declare direct or indirect interests in media organizations).⁶³ **Georgia** prohibits certain individuals and entities (such as public officers and political parties) from holding broadcasting licences, though not interests in such licences.⁶⁴ Other countries may have similar conflicts of interest legislation targeted at politicians or public officials, but such rules were not part of the survey.*

*As stated before (subsection 3.3), information regarding (public) **advertising revenues and funding** from external (political or other) sources is hugely important to detect undesirable dependencies of media providers on public funding or on a (too) limited number of key sources of commercial revenues. Such risk is especially imminent in a difficult economic climate.⁶⁵*

Study - Country Report Norway, <http://www.access-info.org/en/component/content/article/462>, at p.1.

⁵⁹ The obligation applies literally to “enterprises which operate daily newspapers, television, radio or electronic media, and to enterprises which as owners exercise an influence on such enterprises” (Article 3), but this also covers periodical media, for instance weekly periodicals (by virtue of administrative practice which is accepted by publishers); *ibid.*, at p.1.

⁶⁰ R. Craufurd Smith and Y. Stolte (2014), see above (n.33), at p.14 and 21.

⁶¹ F. Harrison (Access Info), Presentation to the Steering Committee on Media and Information Society, 25 April 2013, p.4;

<http://www.coe.int/t/dghl/standardsetting/media/cdmsi/ACCESS%20INFO%20EUROPE%20Presentation%20CDMSI%20Strasbourg%2025April%202013.pdf>.

⁶² Financial transparency is however encouraged through the Code of Journalistic Ethics of the Norwegian Press Organization (of which all the “established” media are member) which calls for readers/listeners/viewers to be informed of any direct or indirect third-party financing of editorial content; *ibid.*, at p.4-5.

⁶³ E. Calistru and C. Vrabie, TMO Study – Country Report Romania, <http://www.access-info.org/en/component/content/article/463>, at p.15.

⁶⁴ X., TMO Study - Country Report Georgia, <http://www.access-info.org/en/component/content/article/454>, at p.1.

⁶⁵ Cf. K. Irion, “Follow the Money! Ownership & Financial Transparency should be a Media Policy Standard”, *LSE Media Policy Project blog*, 30 April 2014; <http://blogs.lse.ac.uk/mediapolicyproject/2014/04/30/follow-the-money-ownership->

A best practice in this area can be found in **Austria**, where the Media Transparency Law of December 2011⁶⁶ 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.⁶⁷

In **Croatia** it is the media publishers themselves who are required to submit annual reports to the Chamber of Economy that must include also financial data for the previous year, like revenues and market shares, as well as data on advertisers or marketing agencies which have furnished more than 10 percent of their annual marketing profits.⁶⁸

Macedonian law requires disclosure of those who can exercise significant influence on the business operation or editorial policy via financial pressure: the rules regarding disclosure of affiliated organizations or individuals list as “related persons” also persons who generate over 30 percent of the advertising or other commercial revenues of a broadcaster in a given year.⁶⁹

The Norwegian Media Authority can also request information on ownership transactions at any time, subject to certain criteria, and can request information from others, as long as the information is relevant to disclosure of facts about media ownership. The Media Ownership Act gives the Media Authority very wide powers to request almost any and all information from “anyone”, which in principle means anyone with relevant information: other public authorities, competitors/contractual partners of the respective media organisation or others.⁷⁰ The law clarifies that tax assessment authorities, other tax authorities and authorities charged with monitoring public regulation of economic activity have to provide information and surrender documents in their possession “notwithstanding the statutory duty of confidentiality that is otherwise incumbent on [these] authorities” (Article 13, para. 4).

Failure to disclose the required information upon a request from the Media Authority, as well as providing false information is considered a criminal offence.⁷¹

In their report based on the TMO Study, Craufurd Smith and Stolte note that 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 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.⁷²

However, they continue by observing that relatively few cases of fines or other sanctions have been reported by the country experts (causing concern in some cases) for a variety of reasons: because the relevant authorities are not familiar with their duties (cf. **Bulgarian** report); 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.⁷³

The Media Authority offers on its own web pages a specific **Media Register** (*Medieregisteret*) to the public.⁷⁴ Also from that perspective, Norway can be seen as a best practice. It was noted before that availability and

[financial-transparency-should-be-a-media-policy-standard/](#).

⁶⁶ 125. Bundesgesetz (125th Federal Act - MedKF-TG) enacting a Bundesverfassungsgesetz über die Transparenz von Medienkooperationen und Werbeaufträgen und Förderungen an Medieninhaber eines periodischen Mediums (Federal Constitutional Act on the transparency of media cooperation, advertising orders and support for owners of periodical media) and amending the *KommAustria-Gesetz* (KommAustria Act), http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01607/fname_237490.pdf.

⁶⁷ L. Feiler, TMO Study - Country Report Austria (see above n. 44), at p.4.

⁶⁸ See below.

⁶⁹ F. Medarski, TMO Study - Country Report “the former Yugoslav Republic of Macedonia”, <http://www.access-info.org/en/component/content/article/459>, at p.4.

⁷⁰ J. Wessel-Aas, TMO Study - Country Report Norway, <http://www.access-info.org/en/component/content/article/462>, at p.2-3.

⁷¹ *Ibid.*, at p.5.

⁷² R. Craufurd Smith and Y. Stolte (2014), see above (n.33), at p.19.

⁷³ *Ibid.*

⁷⁴ <http://www.medietilsynet.no/no/Medieregisteret/>

accessibility of ownership information may not always suffice for the public to know or understand who the real or beneficial owners of the media are. Media authorities play a key role in gathering all relevant data and make the information available to the public in a comprehensible form. **Online, searchable databases**, such as the Norwegian Media Register, clearly render the data much more accessible.

Germany, Belgium and the Netherlands, offer other good examples in this regard.⁷⁵ 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 (in German, with English summaries) that are available free on request and widely distributed to the media, politicians, universities, libraries and other relevant institutions. The Media Monitor in the Netherlands also publishes annual reports with factual data and analysis on the Dutch media landscape, concentration and other trends, as well as incidental research reports focusing on particular issues related to media pluralism. The reports are distributed (in Dutch and a few in English) in paper version and in pdf; in addition to the report, the information is also available online at the website of the Media Authority, Commissariaat voor de Media.⁷⁶ In Belgium, the Flemish Media Regulator publishes annual reports on media concentration (in Dutch, in paper and pdf, available online), whereas the Conseil Supérieur de l'Audiovisuel of the French speaking community offers an online database with the different media groups and media offers on its website.⁷⁷ Both depict very clearly relationships 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.

Case Study 2: Croatia

When it comes to putting a detailed legal framework in place, also **Croatia** comes to the fore as a best practice model compared to other countries that were covered by the TMO Study.⁷⁸ About ten years ago, the country was heavily criticized for its lack of transparency in media ownership, huge scandals, attacks on media owners, and non-respect of the law.⁷⁹ Still today, following the amendments that were introduced in 2011 to the Media Act of 5 May 2004 and the Electronic Media Act of 17 December 2009 with a view of reinforcing ownership transparency of media publishers,⁸⁰ skepticism is voiced about the practical implementation of the legal rules.⁸¹ With this disclaimer in mind, the following paragraphs highlight some of the characteristics of the Croatian law that can be considered a role model.

Like in Norway, the Croatian rules on ownership disclosure cover the **broadcast, print and online sectors** and require extensive information to be reported to the relevant authorities, including information on indirect and beneficial ownership, as well interests in other media companies. **Sanctions** for non-disclosure can be imposed after a written warning.

A first set of disclosure rules can be found in the Croatian Media Act which obliges all media publishers to report annually to the Chamber of Economy ownership data on the one hand, and financial data, like revenues and market shares (including data on advertisers or marketing agencies which have furnished more than 10 percent of their annual marketing profits) on the other hand.⁸² The obligation of disclosure covers any “media publisher”, which is very broadly defined as “any natural or legal person who publishes its

⁷⁵ J.F. Furnémont (EPRA), “Transparency of media ownership: what role for regulators?” Conference on Transparency of Media Ownership in Europe, Access Info and Open Society Media Program, Brussels, 24 September 2013, http://www.epra.org/news_items/transparency-of-media-ownership-what-role-for-regulators.

⁷⁶ <http://www.mediamonitor.nl/english/about-the-mediamonitor/>

⁷⁷ <http://www.vrmrapporten.be/>, respectively <http://www.csa.be/pluralisme>.

⁷⁸ This is confirmed by the Media Integrity research of the South East European Media Observatory; see H. Popović, “Croatia” in B. Petković (ed.) (2014). *Media Integrity Matters*, see above, n. 15, at p.204.

⁷⁹ See, for instance, S. Malović, “Croatia”, in B. Petković (ed.), *Media Ownership and Its Impact on Media Independence and Pluralism*, SEENPM / Peace Institute, Ljubljana, 2004, 119-140.

⁸⁰ The Media Act and Electronic Media Act have been published in the Official Gazette of the Republic of Croatia No. 59/2004, respectively No. 153/2009. The 2011 amendments were published in the Official Gazette of the Republic of Croatia No. 84/2011 and have been in force since July 2011.

⁸¹ See, for instance, SouthEastEuropean Media Observatory, “Croatia: Facts about media legislation”, March 2014, available from <http://mediaobservatory.net/radar/media-integrity-research-croatia> (direct link: [http://mediaobservatory.net/sites/default/files/CROATIA_table_4%20\(3\).pdf](http://mediaobservatory.net/sites/default/files/CROATIA_table_4%20(3).pdf)); or the practical obstacles listed by the country experts for Croatia in the TMO Study, A. Bilić and T. Jakšić: <http://www.access-info.org/en/component/content/article/451>, at p.5-6.

⁸² Article 32, respectively 34 of the Media Act.

contents through the media and participates in public information, regardless of technical means with which its editorial programme contents are published, transmitted or made accessible to the public” – according to the country expert for Croatia perhaps even too broad:⁸³

“Part of the challenge is that the current obligations apply to all media publishers operating in the Republic of Croatia (printed or electronic). For print media alone, this includes approximately 3000 publications of which just 100 (daily press, weekly press and biweekly press) hold around 95% of the overall market share. It might be viable to consider establishing reporting requirements for just these 100 publications and not all 3000 publications.”

As noted before (subsection 3.1), it is advisable to limit disclosure requirements to organizations that are commercial outfits, that publish on a regular basis, that involve multiple authors and exercise editorial oversight over the content – this can reduce the risk of chilling effects on freedom of expression and help to focus attention on those sources that are currently most influential.⁸⁴

In Latvia, for instance, disclosure requirements are limited to “mass media”, which includes print, broadcast and online media, but media in the first category (newspapers, magazines, newsletters and other periodicals) are only covered if they are published not less than once every three months and with a print run of more than 100 copies. Reporting obligations for broadcast media involve only those organisations that pursue an economic activity.

To enable the media publisher to fulfil its reporting obligation, the Croatian Media Act prescribes that actual owners of media publishers should inform the media publisher of their existence. If the ownership structure is concealed, the acquisition of the shares will be declared null and void.⁸⁵

Broadcast and online media are also subject to the disclosure rules in the Electronic Media Act. This Act requires data on the ownership structure (i.e. names and permanent residence of persons who **directly, or indirectly** through other legal persons, have stocks or shares in that legal person, as well as data on the percentage of those stocks or shares) to be provided to the Electronic Media Council (the main body of the Electronic Media Agency) at the moment of tendering for a broadcast licence. Any subsequent changes in the ownership structure have to be reported to the Electronic Media Agency (although there is no time limit set for this) and annual updates must be submitted to the Electronic Media Agency by January 31 of every year.⁸⁶ The Electronic Media Agency voluntarily makes certain data (including basic ownership data) from the register of providers of radio and television services (including on-demand media services), of electronic publication services, and non-profit producers of radio and television programmes publicly accessible on its website (<http://www.e-mediji.hr>⁸⁷).

On top of this, and different from Norway, Croatian media publishers are also subject to **direct disclosure obligations**. The Media Act requires them to **inform the public** by publishing their ownership structure in the Official Gazette of the Republic of Croatia, which is freely available online. In addition, a media publisher must provide information on its ownership structure to the public through the media.⁸⁸ Information is to be provided on an annual basis. These rules apply to **both foreign and domestic media**, and require also details regarding the size of shareholdings, **beneficial and indirect interests** and certain rather general financial and audience related data to be disclosed.

Another particularly interesting example with regard to the issues of foreign ownership, beneficial ownership and affiliated interests is Georgia, which, since April 2011, has comparatively extensive rules in place – at least for the broadcasting sector. The amendments introduced to the Law on Broadcasting in 2011 envisaged the full disclosure of ownership structures, including all owners and

⁸³ A. Bilić and T. Jakšić, TMO Study – Country Report Croatia, <http://www.access-info.org/en/component/content/article/451>, at p.6.

⁸⁴ Cf. R. Craufurd Smith and Y. Stolte (2014), see above (n.33), at p.6.

⁸⁵ Article 32, para. 6 of the Media Act.

⁸⁶ Cf. Article 52, para. 1; Article 57, para. 1 and Article 73, para. 5 of the Electronic Media Act.

⁸⁷ Ordinance on the Register of Media Service Providers and Electronic Publications, Official Gazette No. 153/09, available in English at http://www.e-mediji.hr/repository_files/file/398/.

⁸⁸ Cf. Articles 14 and Article 32 of the Media Act.

financial sources. They include a **ban on the ownership of broadcast media by offshore companies**, which forced several television stations to alter their opaque ownership structures.⁸⁹ (Candidate) Broadcast licence holders are also required to present a “declaration of eligibility” to the Georgian National Communications Commission (GNCC) at the moment of applying for a licence or within 10 days following any change of its shareholders, interest holders, management bodies or officers. Such declaration consists, amongst others, of a representation of the fact that neither the applicant nor its **beneficial owners** are individuals or entities that are prohibited from holding a broadcasting licence under Article 37(2) of the Law on Broadcasting and information about ID data of and interests/shares held by beneficial owners.⁹⁰ With regard to **affiliated interests**, the Law on Broadcasting requires licence holders to submit to the GNCC information about any shares or interest in any other licence holder, print media outlet or news agency held by the same licence holder’s shareholders, interest holders, founders, members, management officers, contributors or **family members** of any of the foregoing (Article 61, paragraph 2).

In addition, under the Act on the Right to Access Information, the public can also request direct access to other information that is submitted to the Croatian Chamber of Economy and the Electronic Media Agency.⁹¹

So, despite some warning signs about practical implementation problems and scope for circumvention of the rules, the country expert for Croatia seemed positive that the legal regime *on its own* could be considered effective in revealing the true state of media ownership:⁹²

“[T]hese obligations largely provide sufficient information to establish who the legal or natural persons are that formally (on paper) hold shares in the electronic media organisations operating in the Republic of Croatia (even to a reasonable, nontechnical individual).”

‘Self-Regulatory’ Initiatives

In countries where legislative initiatives were not (yet) seen as politically realistic, non-governmental, civil society and academic organizations, but also commercial operators and trade and professional bodies, can play an important role in supporting and enhancing media ownership transparency. Grassroots initiatives and best practices that have developed **bottom-up** therefore also merit our attention. The *Mediaindex* in **Romania**, for example, which is run by the Centre for Independent Journalism, was one of the first online databases to include information on media ownership. Also the **Spanish** online *Portal de Comunicación*⁹³ of the Universitat Autònoma de Barcelona is a good example of a site which monitors the media and provides analysis and statistics to the public. In “**the former Yugoslav Republic of Macedonia**” the investigative journalism project *MediaPedia* supported by the SEE Media Observatory looked into the hidden ownership networks in which the Macedonian online news media are entrapped.⁹⁴ They also developed an online ownership database (*MediaPedia.mk*) which was released in February 2014 and whose structure is designed in such a way as to bring the information on online news media ownership closer to citizens – who are the owners, what do they own and to whom they are connected?

Examples of private initiatives can be found in the **United Kingdom** where Newsworks (formerly Newspaper Marketing Agency) publishes market data and (basic) ownership structures for each UK national newspaper,

⁸⁹ Article 37, paragraph 2, of the Law on Broadcasting (23 December 2004, Law no. 780, amended in 2011) gives a list of individuals and entities that may not hold a broadcasting licence, which includes legal entities registered in “offshore zones” and legal entities whose shares are directly or indirectly owned by legal entities registered in “offshore zones”. See X., TMO Study - Country Report Georgia, <http://www.access-info.org/en/component/content/article/454>, at p.1; and Freedom House, Freedom of the Press 2013 – Georgia, <http://www.freedomhouse.org/report/freedom-press/2013/georgia>.

⁹⁰ Article 62, paragraph 1 of the Georgian Law on Broadcasting. Article 2(c1) defines “beneficial owner” as “a person who receives or may receive a monetary or any other benefit from a broadcaster’s activities under any statutory or contractual basis and who has no obligation to pass such a benefit to any other person; or, if a beneficial owner is an entity established for idealistic objectives [i.e. a non-for-profit agency], or if an owner is not owned by a person holding a significant interest in it, then a member of its management body”. See X., TMO Study - Country Report Georgia, <http://www.access-info.org/en/component/content/article/454>, at p.3.

⁹¹ Published in the Official Gazette of the Republic of Croatia No. 172/03, 144/10 and 77/2011.

⁹² A. Bilić and T. Jakšić, see above (n. 83), at p.15 and 21.

⁹³ See <http://www.portalcomunicacion.com/index.asp>

⁹⁴ See <http://mediaobservatory.net/news-and-events/mediapediamk%E2%80%9393-online-news-media-ownership>

and media.info (formerly MediaUK) publishes an exhaustive list of owners and their respective outlets.⁹⁵ A number of private commercial organizations collect and sell company information, including on media companies, such as the Lursoft database in **Latvia**.⁹⁶

In their report based on the TMO Study, Craufurd Smith and Stolte also refer to a number of self-regulatory initiatives, whereby media companies voluntarily provide information, or whereby self-reporting is encouraged by professional or trade organizations.⁹⁷ *Il Fatto Quotidiano* in **Italy**, *The Guardian* in the **UK**, and *DV* in **Iceland**, are examples of the first category, providing information on their financial sources directly to the public via their websites. 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. Examples of the second category include the **Norwegian** Press Organization's Code of Journalistic Ethics which 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.⁹⁸ The Swiss Declaration of the Duties and Rights of a Journalist, adopted in 1999 and revised in 2008, mentions explicitly "the right to transparency as to the ownership of the company for which the journalist works" as one of the rights that journalists are entitled to enjoy.⁹⁹ 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.¹⁰⁰ According to the Swiss expert for the TMO Study, as well as Craufurd Smith and Stolte, the company has not yet complied with the ruling.¹⁰¹

Such initiatives by NGOs, civil society organizations, commercial operators and media organizations can provide valuable snapshots of the media market, but the drawback is that they are mostly undertaken ad hoc, and do not systematically monitor ownership. Craufurd Smith and Stolte also note that there are considerable variations in scale and quality from one country to another in the collection and publication of information on media ownership and funding.¹⁰² Self-regulatory provisions established by professional or trade organizations, or by press councils, are equally valuable in that they establish important principles, but they will most often lack binding force and therefore risk to be unable to provide sufficient incentives to reveal politically or commercially sensitive information (as demonstrated by the Swiss *Basler Zeitung* case).

"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."

(Rachael Craufurd Smith & Yolande Stolte)

In other words, countries cannot refer to the existence of such initiatives as an excuse for remaining inactive. The huge discrepancy that seems to exist between strong statements made in favour of media ownership transparency in the context of international organisations, such as the Council of Europe (discussed in subsection 1.2 and section 2), and the blatant lack of legally enforceable (and effectively enforced) safeguards in many countries, may point to a clear case of 'moral hypocrisy'. If media ownership transparency is to become more than a nice slogan, ***national parliaments should put in place a mandatory legal framework for ownership disclosure, as will be discussed in the following section.***

⁹⁵ <http://www.newsworks.org.uk/>, resp. <http://media.info/uk>

⁹⁶ http://www.lursoft.lv/database_of_all_companies_registered_in_Latvia.html

⁹⁷ R. Craufurd Smith and Y. Stolte (2014), see above (n.33), at p.25.

⁹⁸ Available from <http://presserat.ch/>.

⁹⁹ <http://presserat.ch/24350.htm>

¹⁰⁰ Swiss Press Council, Opinion Nr. 34/2011 of 13 July 2011, Publication of Ownership (Arbus Schweiz/«Rettet Basel»/Syndicom/Eugster c. «Basler Zeitung Medien»), <http://presserat.ch/29740.htm>.

¹⁰¹ R.H. Weber, TMO Study - Country Report Switzerland (see above n. 50), at p.14; R. Craufurd Smith and Y. Stolte (2014), see above (n.33), at p.26.

¹⁰² R. Craufurd Smith and Y. Stolte (2014), see above (n.33), at p.26.

5. The Undaunted Actors Needed for Reform

5.1. Three Action Points

The aforementioned TMO study carried out by Access Info and OSPIJ resulted in “Ten Recommendations on Transparency of Media Ownership” (see Annex 1) which currently form the most refined checklist of relevant criteria on TMO and the ideal starting point to discuss action points. The recommendations spell out, inter alia, which categories of information should be provided to media authorities; which thresholds for disclosure are needed; how the information should be collected, and how and where it should be made available. They have been improved by consultation with nearly a hundred civil society activists and media experts, and tested by discussion with European officials and parliamentarians in Brussels, including – very constructively – the Parliamentary Assembly of the Council of Europe.

In essence, the recommendations require three major action points that are to be realized at national level:

- 1° national States should put in place a **clear and precise legal framework** imposing mandatory reporting requirements on **broadcast, print and comparable online media** to allow identification of their **beneficial and ultimate owners**, back to natural persons;
- 2° an **independent body should exercise effective oversight** over these requirements;
- 3° the **public should have access** free of charge to relevant information on media ownership **directly through the media’s websites** and through an **online centralised database** published by the media authority.

With regard to the **first** action point, the recommendations help to prioritise tasks by distinguishing between two sets of disclosure obligations:

- ⇒ on the one hand **“essential disclosure obligations”** which should form the first step to ensure a basic level of transparency of media ownership (cf. recommendation n°1);
- ⇒ and on the other hand **“additional disclosure obligations”**, which aim for instance to ensure transparency of influence and which should form the second step once basic transparency is secured (cf. recommendations n°5 and 6).

The recommendations rightfully stress the importance of requiring disclosure of information not only at one particular moment in time (e.g. at the time of licencing or notification of the media service), but also at regular intervals and in case of changes in ownership. As mentioned before, media ownership transparency laws should not result in censorship or produce any chilling effects on freedom of expression. Disclosure obligations should therefore not be unduly burdensome for a media outlet and should only be imposed on clearly defined categories of media – excluding very small publications and websites with little reach or influence “so as not to confuse media ownership with exercise of freedom of expression” (cf. recommendation n°7).

The **second** action point – effective oversight – is needed to ensure that disclosure requirements do not only look good on paper, but are also complied with in practice (cf. recommendation n°8). Three aspects are of major importance here: the competent body should be independent and adequately resourced; its powers should include sanctions for non-compliance, but these have to be proportionate and cannot be abused for political purposes (moreover, they can never entail any interference in editorial content); media companies should have recourse to effective and rapid appeal mechanisms.

An important task for this body lies in making available a ‘media ownership database’ to the public at large: easily accessible, free of charge, complete and up-to-date, in an open format (cf. recommendations n°2, 3 and 4). Besides this, the **third** action point, i.e. ensuring access to ownership information by the public, also entails direct disclosure requirements for media outlets (obliging them to make ownership information easily accessible on their website) (cf. recommendation n°9).

5.2. The Need To Join Efforts

Nine of Access Info and OSPIJ’s recommendations focus on what national parliaments in Europe can/should do to improve ownership transparency in the media sector, since this is the policy level closest to the ‘field’ and capable of producing the most direct results. But as the realisation of genuine transparency will depend

on a **concerted effort of different stakeholders** at various levels, the tenth recommendation rightfully deals with transnational access and comparability.

The Council of Europe should continue promoting detailed standards in the area of TMO and urging members to implement those standards at national level. The European Union should consider introducing media ownership transparency standards in a legislative instrument in order to create the tools to enforce compliance in EU Member States. These standards should be in accordance with those developed by the Council of Europe and consistency should be ensured with initiatives in other areas, such as anti-money laundering.

As elaborated on in the previous subsection, national parliaments should put in place a detailed legal framework that introduces, or further develops, strong disclosure requirements and that empowers the regulatory body(-ies) to operationalize these requirements.

Regulatory bodies should co-ordinate and exchange examples of good practice – for instance via EPRA or the European Regulators Group for Audiovisual Media Services – with a view to creating a common format for systematic data gathering and registration. A greater consistency in the various domestic databases will enable interconnection between them, render administrative obligations less onerous for firms operating in multiple countries, and facilitate cross-country comparisons.¹⁰³

Relevant non-governmental, civil society and academic organizations, as well as commercial operators and professional bodies should be consulted in this process for two reasons. Firstly, they have often taken important initiatives to enhance media ownership transparency and hence developed valuable experience in this area. Secondly, their role in creating “a culture of transparency” is not to be underestimated.

Finally, one should not forget that installing a sound legal framework is but the first step, albeit a crucial one, on the road to genuine ownership transparency. Equally crucial is the effective implementation of the legal rules – which requires, in addition to bold legislators, also independent and performing regulators, cooperative media organizations, and vigilant civil society watchdogs. Judicial bodies at all levels – European and national – should be encouraged to expressly recognise the links between freedom of expression, media pluralism and a functioning democracy, on the one hand, and media ownership transparency, on the other.¹⁰⁴

In other words, **fostering a genuine culture of transparency is the responsibility of all parties involved**. It cannot be denied, though, that **national parliaments are in the driver’s seat**. They may have a bumpy road ahead of them, but as the saying goes: “A burden shared is a burden halved”. So if national and international actors coordinate their efforts, the burden of ensuring media ownership transparency – which, admittedly, is obviously not light – might not be so unbearable after all.

¹⁰³ Co-ordination should evidently not only take place *across* countries, but also *within* countries, where there may be devolved powers and often different regulators.

¹⁰⁴ R. Craufurd Smith and Y. Stolte (2014), see above (n.33), at p.6.

Annex 1: Extract “[Ten Recommendations on Transparency of Media Ownership](#)”

Access Info Europe & OSPIJ, 4 November 2013

To ensure that the public knows who really owns and influences media outlets, the legal framework of each country should ensure:

1. Transparency of ownership of the media through disclosure to a national media authority and to the public of **essential basic information**, which should include at a minimum:

- ⇒ Name and contact details of the media outlet
- ⇒ Constitutional documents (via a web link to uploaded scans if necessary)
- ⇒ Size of shareholdings over a threshold of 5%
- ⇒ Name and contact details of direct owners with over 5% shareholding
- ⇒ Identity of those with indirect control or a significant interest, over a threshold of 5%
- ⇒ Citizenship/residence status of individuals with over 5% shareholding
- ⇒ Country of domicile of company with over 5% shareholding
- ⇒ Identity of beneficial owners where shares are held on behalf of another, e.g. via brokerage or silent ownership

In addition, in order to identify potential sources of influence over media content, it is essential that media companies be required to publish financial accounts and audit reports prepared in accordance with the highest international standards, and in sufficient detail to identify sources of funding.

Changes in ownership/shareholdings should be reported immediately by the shareholders to the media outlet and within 10 working days by the media outlet to the national media authority.

2. Information is findable and free:

- ⇒ Ownership information should be clearly signposted and easily accessible on the website of the national media authority and/or a central government portal.
- ⇒ Access to ownership information in electronic format should be free of charge. The charge for accessing hard copies of the information should cover only actual delivery costs (e.g. copying costs and postage) and should never be so high as to deter those wishing to obtain the information.
- ⇒ The information disclosed under a media-specific law should, on its own, be sufficient to identify ownership in a centralised database, without the need to cross-reference with other registers, for example the national companies register.

3. Information is regularly updated: New information should be disclosed to a national media authority and on the media organisation’s website:

- ⇒ Within 10 working days of commencement of broadcasting/publishing
 - ⇒ In an annual update
 - ⇒ Within 10 working days of changes in shareholdings/ownership taking effect
- The media authority should update the online register in real time when it updates its own internal database.

4. Data is reusable and in open formats: The national media authority shall ensure that the entire media ownership database is available with no charges that limit reuse and with no restrictions on reuse such as licences or intellectual property provisions.

The media ownership database shall be available wherever possible in an open format, which can be downloaded from the website of the media authority. If there are original documents attached these should be scanned (for example into PDF format), linked to the database, and also be available for downloading.

5. Progressive increase in transparency: Countries which have secured transparency of essential basic information should move towards greater transparency through mandatory disclosure of the following information about owners with over 5% shareholding in media companies:

- ⇒ Interests by those owners in other media companies

- ⇒ Interests by those owners in non-media companies
- ⇒ Positions held by any owner in a political party or employment as a public official
- ⇒ Family affiliations (including a definition of “affiliation”) between any owners.

6. Transparency of influence: In order to understand in greater detail not just who owns but also who controls the media, the following information is also required:

- ⇒ Senior management, for example directors (of a company), key executive officers, managing editor
- ⇒ Details of relative voting weights where these are not equally distributed among shareholders, and minutes of annual general meetings including records of voting.

7. Clear and precise legal framework: Whether the provisions regarding disclosure of media ownership are located in one single law covering print, broadcast and comparable online media or in multiple laws, the reporting processes should not be unduly burdensome for a media outlet and the content of the reporting requirements set out in the different laws should be absolutely clear and not conflict with each other.

Definitions of the categories of media covered by the law should be clear, particularly with regard to print and comparable online media, so as to ensure that media producers are able easily to determine their reporting obligations and to comply with them as required. The definitions should take into account the volume of circulation, to avoid imposing burdensome reporting obligations on very small publications and websites with little reach or influence, and so as not to confuse media ownership with exercise of freedom of expression.

8. Oversight by an independent body: An independent oversight body such as a national media authority which already oversees registration of broadcast media should be mandated and adequately resourced to monitor and ensure compliance with the relevant law(s).

- ⇒ The oversight body should be able to sanction media companies for any failure to fulfil the reporting obligations as well as for reporting false information.
- ⇒ Sanctions for non-compliance should be sufficient in the national context to incentivise disclosure, taking into account the range of resources which media companies have, and calculated proportionately.
- ⇒ The appointment, mandate, function and powers of the oversight body should be designed to ensure its independence from government. The laws governing the application of the sanctions should ensure that they cannot be abused for political purposes and that they provide media with effective and rapid appeal mechanisms.
- ⇒ The powers of the media authority with regard to media ownership transparency should be limited to proportionate sanctions for failure to submit correct ownership information in a timely manner. Under no circumstances should the media authority have any power to interfere in editorial content.

9. Direct disclosure to the public: Media should be required to disclose directly to the public the same information as that submitted to the national media authority.

- ⇒ Ownership information should be clearly signposted and easily accessible on the website. Details of the web page and links should be prominently displayed or indicated in the organisation’s publications or on-screen information systems.

The media authority should also be required to publish this information in a centralised database that is freely accessible to the public.

- ⇒ This information should be permanently available online for free and in an open electronic format. Standardised requirements as to the content and layout should be established by law to ensure the information is comprehensible and to facilitate comparability within and between countries.

10. Transnational Access and Comparability: The European Union and the Council of Europe should complement national transparency of media ownership mechanisms by exploring a system by which data collected at the national level for all three media sectors (broadcast, print and comparable online) would be compiled and made publicly available.