



ASSEMBLEIA DA REPÚBLICA

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RELATÓRIO Nº 81

Lisboa, 29/10/2013

ÂMBITO: ASSEMBLEIA PARLAMENTAR DO CONSELHO DA EUROPA (APCE)

LOCAL: BRUXELAS

PARTIDA: 22 de Setembro de 2013

REGRESSO: 24 de Setembro de 2013

OBJECTIVO: Participação na conferência sobre “Transparency of Media Ownership” (APCE)

Na minha condição de presidente da Comissão Parlamentar para a Ética, a Cidadania e a Comunicação, da Assembleia da República, participei numa conferência subordinada ao tema “Transparency of Media Ownership”, organizada pela Open Society Media Program & Access Info Europe e pela Subcomissão dos Media e da Sociedade da Informação, da Assembleia Parlamentar do Conselho da Europa.

Esta conferência realizou-se em Bruxelas, a 24 de Setembro de 2013, e fui orador convidado para intervir no 3º painel, dedicado ao “Papel dos Parlamentos”, tendo pronunciado **uma intervenção** que figura como Anexo 1 do presente relatório.

Antes disso, **fiz uma intervenção** no debate do 2º painel, designado “Securing Transparency of Media Ownership”, em que chamei a atenção para a necessidade de não ser esquecida a dimensão local e regional destas questões.

No Anexo 2, consta o Programa da conferência, e no Anexo 3, figura o documento de conclusões: “Ten recommendations on transparency of media ownership”.

Assembleia da República, 29 de Outubro de 2013

José Mendes Bota

ANEXO 1

Speech by Mr. Mendes Bota, president of the Assembly of the Republic’s Committee on Ethics, Citizenship and Communication, for the conference on “Transparency of media ownership”, organized by the Council of Europe Parliamentary Assembly’s Media and Information Society Subcommittee Panel 3: “Transparency and social media ownership – the role of parliaments” Brussels, 24 September 2013



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“SITUATION IN PORTUGAL”

Ladies and Gentlemen,

Not for anything we call the freedom of the press and the right to free information the **“oxygen of democracy”**.

Portugal knows all too well what it means to live deprived of that oxygen, having suffered that asphyxia during fifty years of the Estado Novo’s fascist regime, with a press gagged by preliminary censorship, a monolithic vision and the persecution of newspapers and journalists who dared reporting a reality other than the official truth, or even issue an opinion that might threaten the pillars of the existing power then.

From that point of view, Portugal survived decades of a thin air environment, without that oxygen a people requires to freely form and manifest its opinion. Instead of transparency, only a heavy opacity...

Times have changed. Portugal went on to live and cohabit with a free and plural press since the Carnation Revolution, in 1974.

It is a whole learning process that comes with the maturation of democracy itself. It won’t always mean the desired linear evolution towards an increasingly perfect state.

It is a process composed of advances and fallbacks, often with erroneous interpretations of the real meaning of concepts such as freedom of expression, transparency, access to information...

The conscience that we’re dealing with a mighty power – the notorious Fourth Power – has frequently led to abuse, attempts to instrumentalize it, obscure control games, undue and illegitimate uses.

The truth – and we all know it – is that, in the wrong hands, whether it’s for political, ideological, economic or any other motivations, this Fourth Power may have a devastating effect – in manipulation, conformism, numbness, obscurantism, callousness before the corruption phenomenon and the absence of ethical codes and transparency undermining the pillars of society.

These deviations, these temptations, these deflections can only be prevented, averted and stopped through an ever more conscious society, ever more participating, ever more democratic.

When it comes to Media ownership – and having a clear idea that this is a dynamic topic and therefore open for debate – Portugal has managed to erect a solid legal structure, comprehensive and effective, that seeks to ensure real transparency in the media’s universe.

It must be said, however, for truth’s sake, that the Portuguese political sides find themselves divided regarding this interpretation.

The center-right majority, currently in power, finds that the present legislation, -- moreover, quite recent –, provides a frame of parameters and answers suiting and effective in guaranteeing a free and transparent exercise by the media – namely in terms of ownership.

The parties on the left, find it necessary to reinforce the means of controlling the media’s ownership, having been submitted already during the current Term, initiated in 2011, several legislative initiatives thwarted by the parliamentary majority.



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One must say that the impact of the new information technologies has forced us to be permanently on alert in this field, so as to prevent the emergence of new gray areas and no-man's-land in a matter that concerns us all. This seems to me to be, without a doubt, one of the main challenges legislators will face in the short term, with a decisive role befalling on national parliaments.

National legal frame

Protecting the freedom of the Press is one of the main prerogatives of any Democratic state, secured first and foremost by the Constitution of the Portuguese Republic, in articles 38 and 39, which foresee the disclosure of ownership and financing means for all social media entities.

To that effect, and because one aims at safeguarding the independence of Media before powers political and economic, the objection to the concentration of corporations holders of generalist information organs, and disclosing the chain behind social media ownership, the Register of Periodical Publications was created for journalistic corporations, news agencies, radio operators and television operators (Statutory Decree no. 8/99, June 9th, rectified by the Rectification Declaration no. 7/2008 from 27 February and by the Statutory Decree no. 2/2009 from 27 January).

This Register has the objective of proving the Media legal status, ensuring the transparency of their ownership and guaranteeing the legal protection of periodical publications and the branding of radio and television stations, reinforcing as well, through this, the important constitutional desideratum that the right to information represents.

This register is carried out by the ERC, Regulation Entity for the Media, established by Law no. 53/2005, November 8th, whose members of the Regulation Board are elected by the Assembly of the Republic, and whose role, among others, is to ensure the free exercise of the right to inform and the freedom of the Press.

It is up to it as well to prevent the non-concentration of ownership on entities pursuing Media activities, with a view to safeguard plurality and diversity, safe from prejudice against the capacities lawfully assigned to the Competition Authority by Law no. 18/2003, July 11th, ammended by laws: 46/2011, June 24th, 52/2008, August 28th, and by Decrees no.: 18/2008, January 29th, and 219/2006, November 2nd, later revoked by **Law no. 19/2012, August 8th.**

The set of bills that, in its essence, regulate the media sector in Portugal, is composed of the following:

The Television Law – 8/2011 on 11 April, which regulates the access to the activity of televising and its practice, including provisions regarding the exercise of the activity of network operator for the distribution by cable, and the Publicity Code.

The Radio Law – 54/2010 on 24 December

The Press Law – 2/99 on 13 January, with several amendments, the one now into force being **Law no. 19/2012 on 8 May.**

As it is plain to see, this constitutes a recent juridical framework, designed and approved in the years of 2011 and 2012, and this has served as the main argument for the parliamentary majority to refuse altering these bills even before they're given time to consolidate their effects.

This does not mean the shunning of reflection on questions such as:



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- The safeguard of editorial independence before political and economic powers;
- The reinforcement of the regulating entity's capacities;
- The reinforcement on identifying and disclosing social shareholders surpassing certain levels;
- The imposition of the exclusivity principle for corporations owning general information Media, thus preventing promiscuity with other economic activities;

Theme's alignment within the European Union scope

We share the same respect for pluralism in the Media currently under appreciation by the European bodies, especially from the 90's onwards, with the European Parliament having alerted, namely through **25 September 2008 Resolution** over the concentration and pluralism in the European Union's Media, among other aspects, to the implications of the concentrated ownership in the media system. Experience has shown that unrestricted ownership concentration puts at risk plurality and cultural diversity, and that a system solely based on the market's free competition cannot of itself ensure plurality in the social media organs.

Within the recommendations stated in this Resolution, the European Parliament encourages "the disclosure of ownership for all communication entities, in order to contribute for a greater transparency regarding the purposes and identity of the broadcasting or editorial organism" and urges the Commission to "commit to the promotion of a stable legal frame which can guarantee a high level of plurality protection in all member-states".

Bearing in mind the EU's commitment to respect the right to freedom of speech and information, and plurality in the Media, assumed in conformity with provisions under **article 11 of the Charter of Fundamental Rights of the European Union**, it rests on the European Commission the task of following the evolution in Media, namely concerning concentrations and their impact over liberties in the internal market and information pluralism.

In this context, the Commission promoted in 2007 several initiatives with a view to sparkle a debate over the situation regarding plurality in the European Union's member-states' Media entities. These included the preparation, by the Commission's services, of a Work Document (SEC/2007/32) analysing the national situations relative to the various aspects associated with the concept of pluralism, including information over national rules for ownership of Media and various regulating models of all 27 member-states at the time.

We should highlight, as well, the elaboration of an independent study, with the purpose of defining and testing objective indicators, among which is included the ownership factor in the Media, in order to evaluate plurality in the European Union's Media.

The reach of the plurality concept in the Media as is referred by the Commission on this working document cannot be reduced to the issue of these organs' ownership concentration; other questions arise regarding the public radio broadcast service, political power, economic competition, cultural diversity, development of new technologies, and transparency, as well as the working conditions for journalists in the European Union.

The public Radio Broadcast systems should possess the necessary resources and instruments in order to safeguard their effective independence against political pressures and market forces.



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Also within the **Digital Agenda's** scope, and bearing in mind the national legislations of member-states and their identification to common issues or concerns in this field, a report was prepared containing recommendations with an aim to ensure the compliance, protection, support and promotion of both freedom and pluralism in Europe's social media.

Finally, it's of the essence to mention **Directive 2010/13/UE**, of the European Parliament and the Council, from 10 March 2010, relative to the coordination of certain legislative, regulation and administrative provisions of the member-states regarding the services offering from the television media. In it, are also included several provisions promoting pluralism.

Regulation (EC) no. 139/2004 from the Council, on 20 January 2004, regarding the corporation concentration control, allows member-states to apply, in conformity with article 21, additional control measures with a view to protect plurality within the social media.

However, some voices bear in mind that the introduction by numerous EU member-states of excessively restrictive rules in terms of Media ownership might stifle the competitiveness levels of European businesses in the global market and increase the leverage of non-European media groups.

It is my conviction that a pluralist Media system constitutes a fundamental premise for the preservation of the European society's democratic model.

The ownership concentration of the Media system leads to a scenario prone to the monopolizing of the publicity market, erects barriers to the arrival of new players in the market, and may also lead to the standardization of media contents.

It is of the utmost importance that regulation over concentration in Media is extended to the production of programs, electronic channels and access and publishing mechanisms of contents on the Internet, as well as search engines.

We must take under consideration that the evolution of the Media system is ever more profit-oriented, and may jeopardize values, codes of conduct, etc.

It is increasingly important to independently supervise Media on a national level. This supervision must be effective, clear, transparent and settled on high standards.

Therefore, and in conclusion, the right of competition must be interconnected with the rights of the Media, and it must fall on every member-state to procure a balance between both and a regulation that suits them.

ANEXO 2

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TRANSPARENCY OF MEDIA OWNERSHIP | ACCESS INFO EUROPE & OPEN SOCIETY MEDIA PROGRAM | SEPTEMBER 2013

CONFERENCE ON

**TRANSPARENCY OF
MEDIA OWNERSHIP**

ORGANISED BY

Open Society Media Program & Access Info Europe

IN CO-OPERATION WITH THE



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Sub-Committee on Media and Information Society and the Parliamentary Projects Support Division of the Parliamentary Assembly of the Council of Europe (PACE) Brussels, 24 September 2013

(Hotel Thon EU, 75 Rue de la Loi/Wetstraat)

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SOCIETY MEDIA PROGRAM | SEPTEMBER 2013

AGENDA

9:00–9:30 **WELCOME**

- **Mark Thompson**, Open Society Foundations
- **Gülsün Bilgehan**, PACE Committee—Rapporteur and Author of Motion on Increasing Media Transparency in Europe

9:30 –10:00 **PRESENTATION OF FINDINGS**

- **Fiona Harrison**, Access Info Europe

presentation of Access Info and Open Society Media Program research in 20 countries and the draft recommendations arising from it

10:00–11:00 **PANEL 1: Challenges, Best Practices, and Recommendations**

Moderator

- **Susan Treadwell**, Open Society Initiative for Europe

Statements by

- **Alexander Kashumov**, Access to Information Programme, Bulgaria
- **Peggy Valcke**, Professor of Media Law, University of Leuven, Belgium
- **Andris Mellakauls**, Chair of Council of Europe Steering Committee on Media and the Information Society / Ministry of Culture, Latvia

11:00–11:30 *Coffee and snacks*

11:30–13:00 **PANEL 2: Securing Transparency of Media Ownership—Policy Options**

Moderator

- **Helen Darbishire**, Executive Director of Access Info Europe

Statements by

- **Gülsün Bilgehan**, PACE Committee—Rapporteur and Author of Motion on Increasing Media Transparency in Europe
- **Renate Weber** MEP, ALDE Group—Rapporteur for the Report on the “EU Charter: standard setting for media freedom across the EU”
- **Lorena Boix-Alonso**, Head of Unit Converging media and content, DG CONNECT

13:00 *Buffet lunch*

14:30–16:00 **PANEL 3: Transparency of Media Ownership—The Role of Parliaments**

Moderator

- **Gvozden Flego**, Rapporteur of the PACE Committee on Culture, Science, Education and Media, Member of the Croatian National Assembly

Statements by the Chairs of national parliamentary committees

- **José Mendes Bota**, Chair of the Committee on Ethics, Citizenship and Media, Assembly of the Republic of Portugal
- **Mykola Kniazhytsky**, Chair of the Sub-committee on Broadcasting, Verkhovna Rada of Ukraine
- **Chiril Lucinschi**, Chair of the Committee on Culture, Education, Research, Youth,



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Sports and Media, Parliament of the Republic of Moldova

- **Jasen Mesic**, Chair of the Committee on Information and Media, Parliament of Croatia
- **Marija Obradovic**, Deputy Head of the Culture and Information Committee of the National Assembly of Serbia
- **John Whittingdale**, OBE, Chair of the Select Committee on Culture, Media and Sport, House of Commons of the United Kingdom

DISCUSSION

16:00–16:30 *Coffee break*

16:30–18:00 **PANEL 4: Transparency of Media Ownership—Views from the Media**

Moderator

- **Gülsün Bilgehan**, PACE Committee—Rapporteur and Author of Motion on Increasing Media Transparency in Europe

Statements by

- **Marc Gruber**, Director, European Federation of Journalists
- **Francine Cunningham**, Executive Director, European Newspaper Publishers Association
- **Ross Biggam**, Director General, Association of Commercial Television in Europe
- **Jean-François Furnémont**, Chair of the European Platform of Regulatory Authorities

DISCUSSION

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CONCLUSIONS

- **Gülsün Bilgehan**, PACE Committee—Rapporteur and Author of Motion on Increasing Media Transparency in Europe
- **Helen Darbishire**, Executive Director, Access Info Europe

18:00 *End of the Conference*

ANEXO 3

TEN RECOMMENDATIONS ON TRANSPARENCY OF MEDIA OWNERSHIP

These recommendations set out the structure for ensuring transparency of media ownership. They are based on research into the law and practice in 20 countries surveyed by Access Info Europe and the Open Society Media Program.

The recommendations require that a mandatory legal framework for transparency of media ownership be put in place in each country and that it apply to broadcast, print and comparable online media. These entities should all be required to submit sufficient information to a national media authority to allow identification of their beneficial and ultimate owners, back to natural persons. This information should be available to the public in an accessible format free of charge and should be published in a regularly updated and centralised database.



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The aim of the recommendations is not to promote one particular legal model or structure that should be implemented in all countries but rather to promote an outcome, namely that the public and regulators are able to find out who owns and controls the media in their countries.

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RECOMMENDATIONS

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 regulator 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 specified 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 specified 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.

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 regulator.

2. Information is findable and free:

Ownership information should be clearly signposted and easily accessible on the website of the 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 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.



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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 expansion of 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 the media company:

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 in a religious organisation, or employment as a public official;

Family affiliations (including a definition of “affiliation”) between any owners.

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

Sources of revenue. To facilitate this, media companies should be required to prepare their financial accounts and audit reports in accordance with the International Financial Reporting Standards (IFRS) and in sufficient detail to be able to identify possible sources of influence over editorial content;

Management, for example directors (of a company), key executive officers, managing editor;

Details of relative voting weights where 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 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 where appropriate. 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 media regulator which already oversees registration of broadcast media should be mandated and adequately resourced to effectively 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 must be sufficient in the national context to incentivise disclosure, taking into account the range of resources which media companies have, and should be calculated proportionately.

The appointment, mandate, function and powers of the oversight body shall be designed to ensure that it is independent of government. The laws governing the application of



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the sanctions must ensure that they cannot be abused for political purposes and must provide media with effective and rapid appeal mechanisms.

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

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 (e.g. teletext).

The media authority or regulator should also be required to publish this information in a centralized 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 EU/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) is compiled and made available to other government regulators and the public.