

COMMISSION OF THE EUROPEAN COMMUNITIES

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PLURALISM AND MEDIA CONCENTRATION

IN THE INTERNAL MARKET

An assessment of the need for Community action

Commission Green Paper

NOTICE TO THE READER.

On a number of occasions, the European Parliament has requested that the Commission should propose measures aiming to safeguard pluralism in view of mergers and acquisitions taking place within the media sectors. The questions arising as to the necessity and timeliness of such possible actions are both complex and sensitive requiring, prior to taking a final decision, the wide canvassing of views from interested parties as well as the initiation of a public debate. To these ends the Commission has decided to propose this Green paper.

The Green paper analyses the need for action and considers potential options. The Commission has not committed itself to any of these options to date and would be willing to consider others that might arise.

In addition to the views of the European Parliament and competent national authorities, the Commission seeks to receive the opinions of all interested parties and particularly the European organisations representing television broadcasters, radio broadcasters, publishers, journalists, audio-visual creative artists, audio-visual producers, satellite distributors, cable distributors and advertisers.

The Commission plans to invite these European trade organisations to a hearing on this issue in the spring of next year.

Written comments should be submitted before the hearing and mailed to the following address:

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S U M M A R Y

The purpose of the Green Paper is to present an initial assessment of the need for Community action concerning concentration in the media (Television, radio, press) together with the different approaches which the Commission might adopt once it has consulted the parties concerned.

In recent years, Parliament has expressed its concern about this question on several occasions, in particular in its resolutions of 15 February 1990 and 16 September 1992, which call on the Commission to propose regulatory measures so as to restrict concentration in the media and safeguard pluralism.

In the light of the Community's objectives and powers, the results of this look into the need for action can be summarized as follows:

1. Protection of pluralism as such is primarily a matter for the Member States. In working towards its objectives and exercising its powers, the Community must, however, ensure that its own activities and those for which it has competence do not adversely affect pluralism. In this respect with regard solely to the objective of safeguarding pluralism, there would not appear to be any need for action at Community level, since national mechanisms for protecting pluralism can be applied to situations with a Community dimension. Thus, should a broadcaster established in another Member State genuinely circumvent legislation on pluralism, the Member State of reception could, subject to observing the conditions laid down in the case law of the Court of Justice, restrict the free movement of such broadcasts. Similarly, where a merger declared to be compatible with the common market under the Merger Control Regulation is harmful to pluralism, the Member State would still be able to take appropriate measures to ensure that pluralism is protected.

2. This capacity of the Member States to safeguard pluralism through a national regulatory framework for mergers may, however, lead to interference within the area without frontiers consisting of the Community. Since the mid-1980s, laws on media ownership have been introduced and are developing in divergent ways. Such laws on pluralism, which consist in particular in limiting maximum holdings in media companies and in preventing cumulative control of, or holdings in, several media companies at once, must be distinguished from the discriminatory restrictions which limit ownership by foreigners and which are therefore incompatible with the Treaty.

3. Disparities between national measures aiming to safeguard pluralism may, at least potentially, impact upon the functioning of this area without frontiers :

- a Member State could possibly restrict the free movement of broadcasts in the event of genuine circumvention of one of these laws;
- the establishment of media companies in another Member State could be limited;
- restrictions and distortions of competition are introduced;
- uncertainty in the law, harmful to the competitiveness of companies, could result from diverging views on what constitutes circumvention;
- such laws limit access to the activities and to the ownership of the media, when access should be facilitated so as to permit the establishment of the single market and secure the competitiveness of media companies which pluralism requires.

4. The restrictions on ownership at the root of these effects are not, as such, incompatible with Community law. They are not discriminatory and pursue a public-interest objective associated with freedom of expression.

5. Restrictions on media ownership cannot be replaced just by applying general competition law and in particular, at Community level, the Merger Control Regulation. The latter can prevent mergers which adversely affect pluralism only in so far as they also affect competition, which is not always the case.

6. In the light of this analysis, there are three different options among which the Commission may choose and on which the Commission would like to know the opinions of the parties concerned:

- (i) taking no action;
- (ii) proposing a recommendation to enhance transparency;
- (iii) proposing the harmonization of national restrictions on media ownership by
 - (a) a Council Directive, or
 - (b) a Council regulation, or
 - (c) a directive or a regulation together with an independent committee.

The Commission does not currently have a particular preference for, any one of these options and leaves open the possibility for other eventual alternatives. It wishes to know the views of interested parties on these options as well as on the questions posed in this Green paper which are summarised below:

QUESTION 1

The Commission would welcome the views of interested parties regarding the needs for action, and in particular on:

- any cases where the Community dimension of media activity has meant that restrictions on media ownership imposed for the purpose of maintaining pluralism have become ineffective, for example because they are circumvented or because of transparency problems;

- the existence of restrictions or restrictive effects other than those identified above;

- practical instances where ownership restrictions have actually impeded the activity of economic operators in the sector;

- the sectors and activities which are especially affected by restrictions on ownership (for example, is the press subject to restrictive effects not only in respect of multimedia aspects but also in respect of monomedia aspects?).

QUESTION 2

The Commission would welcome the views of interested parties on whether the needs identified are of sufficient importance, in the light of Community objectives, to require action in the media industry and, if so, when such action should be taken.

QUESTION 3

The Commission would welcome the views of interested parties on the effectiveness, in the light of Community objectives, of action which would be taken solely at Member State level.

QUESTION 4

The Commission would welcome the views of interested parties on the content of a possible harmonization instrument as envisaged above, and in particular on the two variants for its scope, on the use of the real audience as a basis for setting thresholds, on the demarcation of distribution areas, on any other possible references, and on ways of defining the concept of controller.

QUESTION 5

The Commission would welcome the views of interested parties on the desirability of action to promote transparency which would be separate from a harmonization instrument.

QUESTION 6

The Commission would welcome the views of interested parties on the desirability of setting up a body with competence for media concentration.

QUESTION 7

The Commission would welcome the views of interested parties on each of these foreseeable options.

