

# COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL  
AND THE EUROPEAN PARLIAMENT

**FOLLOW-UP TO THE CONSULTATION PROCESS RELATING TO THE  
GREEN PAPER ON "PLURALISM AND MEDIA CONCENTRATION  
IN THE INTERNAL MARKET - AN ASSESSMENT OF THE NEED  
FOR COMMUNITY ACTION"**

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Summary of the Green Paper

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Economic and Social Committee opinion of 22 September 1993

Information sheet on the disparities between national rules on media ownership

## RESUMÉ

1. At the request of the European Parliament and some of the interests concerned, in January 1993 the Commission asked all interested parties to participate in a wide-ranging consultation process on the basis of the Green Paper on "Pluralism and media concentration in the Internal Market - an assessment of the need for Community action". Now, more than a year later, the time has come to engage in a preliminary stock-taking exercise. This is happening at a turning point in the history of the media sector in Europe and will contribute towards implementation of the Commission's policy of promoting the information society, for which the associated imperatives were set out in the White Paper on Growth, competitiveness and employment. In this respect the present communication is an initial response to the report by the High Level Group ("Bangemann Group") set up by the European Council to put forward proposals on the information society. That report highlights among other things the detrimental effects on the Internal Market of the disparities between national rules on media ownership.
2. The purpose of the consultations on the Green Paper was to provide the Commission with the information it needs if it is to adopt a position on the sensitive issue of the need for Community rules on media ownership. The Green Paper had identified a number of obstacles to the proper functioning of the Internal Market caused by disparities between national rules on ownership of the media (television, radio and the press). The purpose of these national rules is to maintain pluralism by limiting access to media ownership by a single person, in particular by preventing cumulative control of, or holdings in, several media companies at once. The Green Paper showed that these disparities bring with them the risk of restrictions on the free movement of media services between Member States and on the freedom of establishment of media companies, considerable legal uncertainty, and restrictions - or distortions of competition. It concluded by proposing three options, although the Commission did not express any preference for any one of them at that stage. Option I consists in taking no action at Union level; Option II is a recommendation aimed at facilitating the exchange of information between Member States in the interests of transparency of media ownership; and Option III consists in harmonizing national restrictions on media ownership.
3. During the consultation process, which lasted over a year, opinions were received from the European Parliament and the Economic and Social Committee, both of which came out in favour of Option III. The Member States were consulted and they stressed the lack of any difficulties which might have justified Option II.

4. The consultations afforded the opportunity above all of gathering comments from the interests concerned, including both individual operators and the associations representing them at European level. The consultations developed a momentum of their own: the rate at which people made contact or sent in written comments remained steady and positions evolved over time. The replies to a complementary questionnaire sent out last summer revealed a change in the attitude of the interests concerned. Opinions may still be divided, but a majority of operators are now against the status quo (Option I) and in favour of a change in the existing regulatory framework governing media ownership. Positions are, on the other hand, even more divergent or less explicit on the question of the level (European or national) at which such a change should occur.

5. This general situation seems to be due to a number of factors:

Among the obstacles to the Internal Market identified in the Green Paper, the consultations revealed, more particularly, that the lack of legal certainty stemming from the current regulatory patchwork was a disincentive to investing in European media. This limits the opportunities for media companies to make the most of the growth potential of the Internal Market, and hence to play a more active part in promoting pluralism.

The new political and economic environment of the "information society", the importance of which was stressed in the Commission's White Paper on Growth, competitiveness and employment, has added a further dimension to the drawbacks caused by the lack, at Union level, of a common set of rules on media ownership. Globalization of the media industry and the new information technologies require that maximum use be made of the freedoms of the Internal Market in order to facilitate the transformation of this sector into a European industry which is both competitive and modern and which can perform to the full its essential role in the working of our democracies. This is why the introduction of a regulatory framework geared to the information society is one of the priority objectives of the White Paper, and why the High Level Group's report stresses the importance of a European approach to ending the patchwork of national rules on media ownership.

In order to adapt to this new environment, national laws on media ownership will evolve, and indeed are already evolving, in some Member States. Globalization and the development of the new information technologies are revealing a number of shortcomings in national laws on media ownership and necessitate their amendment. The prospect of such national legislative activity, uncoordinated at Union level, is likely to accentuate the damaging effects on the Internal Market of the disparities between national rules, foremost among which is fragmentation of the market.

6. Now that the European media industry is at a watershed, and in view of the importance which the Commission, like Parliament, attaches to the maintenance of pluralism, a Community initiative on media ownership might prove to be necessary. If this were to be the case, such an initiative should enable the internal media market to function, and in particular should facilitate the exercise of freedom of establishment for media companies and the free movement of media services in the Union, and at the same time maintain pluralism in the face of certain concentrations. It would provide both a maximum of legal certainty for investments in the media sector and a safety net preventing concentrations which represent a threat to pluralism and which cannot be dealt with under conventional competition-law rules.
7. The Commission will launch a second round of consultation with all the parties concerned having the dual objective of:
  - . rejecting or confirming the need for a Community initiative;
  - . in the event that such an initiative would prove necessary, define its limits

## INTRODUCTION

At the request of the European Parliament<sup>1</sup> and some of the interests concerned, in January 1993 the Commission launched a wide-ranging consultation process on the basis of the Green Paper on "Pluralism and media concentration in the Internal Market - an assessment of the need for Community action"<sup>2</sup>.

By adopting the Green Paper, the Commission sought, at the same time as providing a basis for discussion, to stress the importance which it attaches to preserving pluralism in the frontier-free area which is the Internal Market. The freedoms of the Internal Market cannot be put into practice at the expense of pluralism; on the contrary, their implementation helps to strengthen that market through the opportunities which it gives both citizens and the media.

The purpose of the Green Paper was to assess the need for action at Community level in the light of the disparities between national rules on media ownership. Since the middle of the 1980s all the Member States have introduced rules on media ownership. The purpose of these is to limit operators' freedom in order to and preserve pluralism. Four types of provision can be distinguished:

- Limits on monomedia concentration. These prevent the same person (natural or legal) from controlling or having an interest in several media of the same type at once, e.g. a ban on having more than "x" television stations or more than "x%" of the capital of a second station, if the operator already controls a TV station;
- Limits on multimedia concentration. These prevent a single person from controlling (or having an interest in) several media of different types, e.g. a newspaper company cannot control a television station, or a television station cannot control a radio station;
- Limits on shareholdings in a radio or television company which apply irrespective of *how many other media* are controlled, e.g. in some Member States it is impossible, even for a person who does not own any other media, to hold more than 25% of a television station;
- Limits concerning "disqualified persons". These prohibit certain types of operator or body from holding a radio or television licence or authorization, e.g. some Member States lay down that public bodies, local authorities, religious or political organizations and advertising agencies are "disqualified persons".

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<sup>1</sup> Resolution of 15 February 1990 on media takeovers and mergers, OJ No C 68, 19.3.90, pp. 137-8. Resolution of 16 September 1992 on media concentration and diversity of opinions, OJ No C 284, 2.11.92, p. 44.

<sup>2</sup> COM(92)480 final, 23 December 1992.

Having emphasized that these rules vary widely between Member States (see Annex 7) and having analysed the impact of this diversity on the Community, the Green Paper summed up the analysis of the question of the need for action as follows:<sup>3</sup>

*"In the light of the objectives of the Community and of the analysis carried out here the need for possible Community action can be described as follows:*

1. *The objective of ensuring pluralism, as it is understood and pursued by the Member States, does not as such create a need for Community intervention. The operation of the Community is not in itself a threat to pluralism; quite the reverse, it may have a positive effect on two factors which determine the level of pluralism: the number of broadcasters and newspapers and the diversity of their controllers. Member States have the legal capacity to safeguard pluralism, particularly where there is real circumvention. The only possible sources of difficulty are tension between national authorities regarding the definition of circumvention and questions regarding the transparency of media ownership and control.*
2. *Among the methods used by Member States to safeguard pluralism, the disparity between the anti-concentration rules specific to the media constitutes an obstacle to the functioning of the single media market:  
it may result in restriction of the free movement of services where there is circumvention  
it may result in restrictions on freedom of establishment  
it may produce restrictions on competition  
it may distort competition  
it may cause legal uncertainty regarding the question of circumvention  
it limits access to media activity.  
Any need for action on the part of the Community, then, has more to do with ensuring that the Internal Market functions properly than with maintaining pluralism as such.*
3. *For the present the obstacles are for the most part potential obstacles, because the relevant laws are recent and the strategies adopted by operators are often still national.*
4. *Potential obstacles can be seen mainly in broadcasting, and particularly television broadcasting, which has the highest measure of regulation. The press is affected essentially by multimedia ownership rules rather than monomedia rules.*
5. *The restrictions on media ownership which underlie the obstacles identified are not incompatible with Community law."*

The Green Paper concluded by proposing three options, without the Commission expressing a preference for any one of them at that stage. Option I consists in taking no action at Union level; Option II is a recommendation aimed at facilitating the exchange

