

## **P5\_TA(2004)0373**

### **Freedom of expression and information**

#### **European Parliament resolution on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights) (2003/2237(INI))**

*The European Parliament,*

- having regard to the motion for a resolution by:  
  
Sylviane H. Ainardi and 37 others on the risk of a serious breach of the fundamental rights of freedom of expression and of information in Italy (B5-0363/2003),
- having regard to Article 10 of the European Convention on Human Rights and Article 11 of the Charter of Fundamental Rights of the European Union,
- having regard to Articles 6 and 7 of the Treaty on European Union and Articles 22, 43, 49, 83, 87, 95 and 151 of the EC Treaty,
- having regard to its resolutions of 20 November 2002 on media concentration<sup>1</sup>, of 13 November 2001 on the Commission communication Services of General Interest in Europe<sup>2</sup>, of 4 October 2001 on the third report of the Commission to the Council, the European Parliament and the Economic and Social Committee on the application of Directive 89/552/EEC<sup>3</sup> and of 4 September 2003 on the situation situation as regards fundamental rights in the European Union (2002)<sup>4</sup>,
- having regard to the judgments of the Court of Justice of the European Communities<sup>5</sup> and the European Court of Human Rights<sup>6</sup>,

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<sup>1</sup> OJ C 25 E, 29.1.2004, p. 205.

<sup>2</sup> OJ C 140 E, 13.6.2002, p. 153.

<sup>3</sup> OJ C 87 E, 11.4.2002, p. 221.

<sup>4</sup> P5\_TA(2003)0376.

<sup>5</sup> Judgment of 26 June 1997 in Case C-368/95 *Familiapress* [1997] ECR I-3689 and judgment of 25 July 1991 in Case C-353/89 *Commission v Netherlands* [1991] ECR I-4069.

<sup>6</sup> *Informationsverein Lentia v Austria* (1993) and *Demuth v Switzerland* (2002).

- having regard to the recommendations and resolutions of the Council of Europe in this field<sup>1</sup>,
- having regard to the Commission Communication on the future of European regulatory audiovisual policy (COM(2003) 784), the Green Paper on services of general interest (COM(2003) 270), the Report on the implementation of the EU electronic communications regulatory package (COM(2003) 715) and Fourth Report on the application of Directive 89/552/EEC 'Television without Frontiers' (COM(2002) 778),
- having regard to the Protocol on the system of public broadcasting in the Member States and the Communication of the Commission of 15 November 2001 on the application of State aid rules to public service broadcasting<sup>2</sup>,
- having regard to the report of the European Union Network of Independent Experts on Fundamental Rights (2003), the Reporters Without Borders' annual reports and specific report on 'Conflict of interests in the media: the Italian anomaly' (2003), the reports of the European Federation of Journalists on 'European media ownership' (2003) and 'Crisis in Italian media: how poor politics and flawed legislation put journalism under pressure' (2003) and the figures on concentration in the Italian television and advertising market published inter alia by the Communications Regulatory Authority,
- having regard to the preliminary study of the European Institute for the Media on "the information of the citizen in the EU: obligations for the media and the Institutions concerning the citizen's right to be fully and objectively informed",
- having regard to the public seminar held in the European Parliament on 19 February 2004 on 'Threats to Pluralism - The need for measures at the European level ',
- having regard to Petition 356/2003 by Federico Orlando and three co-signatories (Italian), on behalf of the 'Articolo 21 liberi di' association, on the implementation of Article 7 of the Treaty on European Union regarding the protection of freedom of information in Italy;
- having regard to Rules 48 and 163 of its Rules of Procedure,
- having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Legal Affairs and the Internal Market, the Committee on Culture, Youth, Education, the Media and Sport and the Committee on Constitutional Affairs (A5-0230/2004),

***Right to freedom of expression and information - the right to a free and pluralist media***

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<sup>1</sup> Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting, Resolution (74) 26 on the right of reply - position of the individual in relation to the press, Recommendation No. R (94) 13 on measures to promote media transparency, Recommendation No. R (99) 1 on measures to promote media pluralism, Recommendation 1589 (2003) on freedom of expression in the media in Europe and Recommendation 1641 (2004) on public service broadcasting.

<sup>2</sup> OJ C 320, 15.11.2001, p. 5.

- A. whereas a free and pluralist media is an essential requirement for the full respect of the right of freedom of expression and information, and the case-law of the European Court of Human Rights affirms the obligation of states to protect and, where necessary, to take measures to ensure pluralism in the media,
- B. whereas “..‘political’ pluralism is about the need, in the interests of democracy, for a range of political opinions and viewpoints to be expressed in the media. Democracy would be threatened if any single voice, with the power to propagate a single viewpoint, were to become too dominant’, and “‘cultural’ pluralism is about the need for a variety of cultures, reflecting the diversity within society, to find expression in the media. Cultural diversity and social cohesion may be threatened unless the cultures and values of all groupings within society (for example those sharing a particular language, race, or creed) are reflected in the media,”<sup>1</sup>
- C. whereas political and cultural pluralism within the media presupposes that it is also possible to express a wide range of political opinions, theories and positions in cultural, arts, university and school circles,
- D. whereas a free and pluralist media reinforces the principle of democracy on which the Union is founded (Article 6 of the EU Treaty) and is essential in the European Union, where citizens have the right to stand and vote in municipal and European elections in a Member State of which they are not a national,
- E. whereas, pursuant to Article 151(4) of the EC Treaty, the European Community must take into account in its action respect for and promotion of the diversity of its cultures,
- F. whereas the protection of human rights has become a priority objective of the European Union pursuant to Articles 6 and 7 of the EU Treaty, with the adoption of the Charter of Fundamental Rights, the approval of the Copenhagen criteria for the accession countries, the strengthening of the provisions on European citizenship, the development of an area of freedom, security and justice, the promotion of transparency and privacy, and the prevention of discrimination, and Article II-11(2) of the draft Constitution drawn up by the European Convention provides for the incorporation of the Charter of Fundamental Rights into the Constitution of the European Union,
- G. whereas the European Convention states in Article I-2 of its draft Constitution that pluralism is a fundamental value of the European Union and that the preservation of cultural diversity is enshrined in Article I-3(3) thereof as an objective of the European Union,
- 1. Considers that where the Member States fail, either because they are not able, or are not willing, to take adequate measures, the EU has a political, moral and legal obligation to ensure within its fields of competence that the rights of EU citizens to a free and pluralist media are respected, in particular, due to the lack of recourse of the Community courts by individuals in the case of an absence of pluralism in the media;

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<sup>1</sup> Gillian Doyle (2003): Media Ownership: the economics and politics of concentration in the UK and European media. London: Sage. p 12.

2. Regrets the current fragmentation of the EU regulatory situation as regards the media and stresses that the European Union should use its competences (in relation to audiovisual policy, competition policy, telecommunications policy, state aid, public service obligations, citizens rights) to specify the minimum conditions to be respected by the Member States to ensure an adequate level of pluralism;

### *Audiovisual (and media) policy*

3. Notes that the audiovisual and media sectors are central areas for economic growth and for the realisation of the Lisbon agenda, but that concentration of ownership - often of a cross-border nature - and restrictions on market access limit the potential of European industry and that therefore the protection of media pluralism is essential for the harmonious development of the audiovisual and media sectors, although smaller and specific markets may not have the economic basis for supporting more than one player;
4. Reaffirms the validity of the principles underlying Directive 89/552/EEC<sup>1</sup> including free movement of European television broadcasts, free access to important events, promotion of independent European and recently produced works, protection of minors and public order, protection of consumers through clearly recognisable and transparent advertising and the right of reply, which are the basic pillars ensuring freedom of expression and information;
5. Underlines that radio and television broadcasting are complex and constantly evolving, and that the organisation of these services is different in all Member States according to cultural traditions and geographical conditions;
6. Stresses that the concept of the media is undergoing a redefinition through convergence, interoperability, and globalisation; considers that technological convergence and the increase in supply through internet, digital, satellite, cable and other means should not however result in 'convergence' of content; consumer choice and pluralism of content is the key issue, more so than pluralism of ownership or supply;
7. Notes that digital media will not automatically guarantee greater choice, because the same media companies that already dominate the national and global media markets also control the dominant content portals on the Internet, and since the promotion of digital and technical literacy are strategic issues for the development of lasting media pluralism, and expresses concern about the switching off of the analogue frequencies in some parts of the Union;
8. Points out once again that European legislation in the audiovisual sector does not take due account of the transmission of the same or similar content by different means of transmission and that therefore, information society services, with the exception of television and radio, are subject, regardless of their content, to the Directive 2000/31/EC<sup>2</sup>;
9. Calls, therefore, once again for a fundamental overhaul of the current legal framework in order to produce a framework package for audiovisual content with different levels of

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<sup>1</sup> OJ L 298, 17.10.1989, p.23

<sup>2</sup> OJ L 178, 17.7.2000, p. 1.

regulation depending on the relevance of the contents in terms of opinion forming, while maintaining the 'minimum requirements' nature of the Directive;

10. Notes the role of the local and regional media in promoting pluralism of sources of information and protecting the diversity of language and culture and the specific task for public broadcasting in this area where commercial media cannot fulfil this role for economic reasons (the markets are too small);
11. Deplores the fact that the protection of pluralism is no longer included among the priorities of the Commission's strategic communications on the audiovisual sector, nor does it even appear as one of the subjects to be dealt with under the revision of the television without frontiers directive;
12. Recognises that the variety of models for regulating the media markets developed by the Member States reflect their different political, cultural and social needs, but is nonetheless concerned that strongly divergent approaches could create obstacles for the free provision of audiovisual and media services in the EU;
13. Regrets that the Contact Committee established under the television without frontiers is mostly composed of representatives of the national government ministries and not by members of independent media regulatory authorities;
14. Welcomes the establishment in some Member States of a media ownership authority with the duty of monitoring the ownership of the media and the power to undertake own-initiative investigations; stresses that such authorities should also monitor compliance with the law, equal access to the media for the various social, cultural and political players and the objectivity and accuracy of the information supplied;
15. Notes that diversity of media ownership and competition between operators is not sufficient to ensure pluralism of media content and that the increased use of press agencies results in the same headlines and content;
16. Considers that pluralism in the EU is threatened by the control of the media by political bodies or persons and by certain commercial organisations, such as advertising agencies, and that, as a general principle, the national, regional or local government should not abuse its position by influencing the media and that, furthermore, even stricter safeguards should be provided for where a member of the government has specific interests in the media;
17. Recalls that the Green Paper examined possible provisions to prevent such conflicts of interests, including rules to disqualify persons who may not become media operators, and rules for the transfer of interests or changes in the 'controller' of the media operator;
18. Considers that, as far as the public is concerned, the principle of pluralism can and must be observed by each and every broadcaster, with due respect for the independence and professionalism of operators and opinion-formers; with this in mind, reaffirms the importance of editorial statutes designed to prevent interference in information content by owners or shareholders or outside agencies such as governments;

19. Welcomes the forthcoming Commission study into the impact of control measures on the markets in television advertising but remains concerned about the relationship between advertising and pluralism in the media as large media companies have an advantage in obtaining more advertising;
20. Stresses expressly that cultural and audiovisual services are not services in the conventional sense and should therefore not be the subject of liberalisation negotiations under international trade agreements, e.g. in the context of GATS;
21. Welcomes the proposal put forward by the European Convention in Article III-217 of its draft Constitution concerning decision-making in connection with the negotiation and conclusion of agreements in the field of trade in cultural and audiovisual services;

### ***Public-service broadcasting***

22. Notes the fundamental changes over the last twenty years in the environment in which public-service broadcasters operate owing to competition by the international and commercial media and to technological change;
23. Notes that to promote cultural diversity in the digital age, it is important that public service broadcasting content reaches audiences through as many distribution networks and systems as possible; it is therefore crucial for public-service broadcasters to develop new media services; also notes that the Amsterdam Protocol reserves for Member States the power of defining the mission of public service broadcasters and that the abovementioned Commission Communication of 15 November 2001 states that 'the public service remit might include certain services that are not "programmes" in the traditional sense, such as on-line information services, to the extent that while taking into account the development and diversification of activities in the digital age, they are addressing the same democratic, social and cultural needs of the society in question';
24. Stresses therefore that the concept of public-service broadcasting is evolving in the converging information society; in addition to traditional television and radio broadcasting the development of new media services is becoming increasingly important in order to fulfil their remit to provide pluralistic content;
25. Emphasises the importance of media pluralism for promoting cultural, social and political diversity, and notes, in particular, the duty of the public-sector broadcaster to provide the public with a high-quality service which ensures access to diverse, accurate, objective, neutral and reliable information, culture and content in order to guarantee credibility, pluralism, identity, participation and cultural innovation, as recognised furthermore, by the Protocol on public broadcasting annexed to the Amsterdam Treaty;
26. Stresses the need to ensure that, in all the Member States, the public broadcaster is fully independent and free from interference so that public funding is not used to maintain in power, or to limit criticism of, the government-in-office and that, in the event of interference from the national government, there is recourse to the courts or an independent adjudicator;
27. Notes that although both the Commission communication and the Almark judgment provide criteria for the compatibility of public funding to public broadcasting, they do not

require Member States to ensure adequate funding for public service broadcasters; considers in this connection that the obligation on members of the public to pay a licence fee to support public service broadcasters can be meaningful only if those broadcasters play the specific role of providing the public with diverse, accurate, objective, comprehensive and high-quality information on social, political and institutional issues; notes with concern that the current trend is, on the contrary, towards a deterioration in quality and in content and that the payment of the licence fee for public-service broadcasters is in danger of serving merely to distort the market, owing to the competitive advantage which public-service broadcasters have over the commercial media, which deliver substantially the same content and quality of information;

28. Notes the Commission's investigation into the Dutch State's financing of Dutch public-service broadcasters into whether the Dutch State has provided the public-service broadcasters with more funding than necessary to finance the public service and whether the beneficiaries of the public funds used these excess public funds to cross-subsidise their non-public service commercial activities, and notes the previous investigations into the funding of the public service broadcasters in Italy, Spain and Denmark;
29. Welcomes the use in some Member States of obligations requiring cable operators to carry public service channels and the reservation of some digital transmission capacity for public service operators;

### ***Commercial media***

30. Welcomes the contribution of commercial media to innovation, economic growth and pluralism, but notes that the increase in the concentration of the media, including multimedia multinationals and cross-border ownership, threatens media pluralism;
31. Notes that, although the Commission investigates the most significant mergers under the EU Merger Regulation, it does not specifically examine the effect of the merger on pluralism and that approved mergers may still be examined and blocked on the grounds of pluralism by the Member States;
32. Considers that even medium-sized media mergers can have significant effects on pluralism and that media mergers should systematically be subject to an examination of the effect on pluralism either by a competition authority or a separate authority as suggested by the OECD, without compromising editorial and publishers' freedom through governmental or regulatory intervention;
33. Notes the diversity of methods for determining the degree of horizontal concentration in the media (audience-share; licence holder-share; revenue share/frequency limitation and the capital share/broadcasting), and the degree of vertical integration and 'diagonal or cross' concentration in the media;
34. Expresses its concern at the fact that, in some Member States, operators already have exclusive control over access to their output and the viewers through proprietary systems (creation of 'bottlenecks') and other operators or users are excluded ('gate-keeper position');

35. Stresses that open, interoperable application programme interfaces (APIs) are of key significance in ensuring a free flow of information and freedom of choice for users and points to the provision contained in Article 18 of Directive 2002/21/EC<sup>1</sup> calling for extensive interoperability in digital television;
36. Regrets the fact that the Commission has not taken up Parliament's calls and proposals for the timely definition of and support for interoperability;
37. Calls on the Commission, in order to avoid laying down a mandatory standard for digital television, to inform Member States of which measures are legally allowed to assist the migration to an open interoperable standard and to define the criteria it will use to determine whether interoperability and freedom of choice for users have been established before it submits its report by 25 July 2004, pursuant to Article 18(3) of Directive 2002/21/EC, on the achievement of interoperability and freedom of choice for users in the Member States;
38. Points with concern to the increasing influence of electronic programme guides (EPGs), the bundling of programmes and Internet search engines on opinion forming and the trend towards vertical and horizontal cross-border concentrations in this field;
39. Stresses that the question of media pluralism involves, in addition to matters relating to ownership, matters relating to content and the public's right to receive objective and comprehensive information, which requires in particular that the various social, cultural and political players have equal and non-discriminatory access to the media;

#### ***Preliminary analysis by the European Parliament***

40. Stresses the importance of the reasons behind the European Parliament's initiative concerning the risks of violation in the European Union, and especially in Italy, of freedom of expression and information, which reflect widespread concern across European public opinion about the phenomena of media concentration and conflicts of interest;
41. Welcomes the preliminary study carried out by the European Institute for the Media within the context of a larger study: 'the information of the citizen in the EU: obligations for the media and the Institutions concerning the citizen's right to be fully and objectively informed' which examines a core number of countries including larger Member States, smaller Member States and examples from Scandinavia, southern Europe and eastern Europe to give an overview of different systems reflecting different traditions of media use, and looks forward to the final study, due in June, which will contain final comparative conclusions based on the situation on all 25 current and new Member States and complete recommendations;
42. Notes that in each of the eight countries examined (France, Germany, Ireland, Italy, Netherlands, Poland, Sweden, and United Kingdom) there are issues which require further investigation, and looks forward to the full study so that comparison can be made between all the Member States;

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<sup>1</sup> OJ L 108, 24.4.2002, p. 33.

43. Notes furthermore, on the basis of detailed investigations already carried out by independent agencies, including within the European Union, which have prompted a large number of statements by international organisations, national authorities and the European Parliament itself that have been ignored by the Italian Government, that there could be a risk of breaches of the right to freedom of expression and information in Italy;
44. Notes, on the basis of its preliminary investigation into whether pluralism is adequately protected, that there are sufficient concerns to warrant a detailed examination of the situation by the Commission followed by the submission of appropriate legislative proposals;
45. Considers that the report of the European Institute for the Media provides a basis for an annual report on pluralism examining the level of concentration on the supply side, (horizontal, vertical and cross-ownership), including the distribution of advertising resources, editorial independence, diversity of content (internal and external) and demand, i.e. public preferences;

### *Situation in the Member States*

46. Notes that during 2002 in France:
  - there were several violations of press freedom (e.g. the destruction of the print-run of a new free daily by the Unions, and of journalists being under pressure from the police);
  - the French courts often rule against journalists in cases of libel as a result of the country's outdated defamation legislation and the protection of confidential sources; and
  - the ECHR ruled that a Paris Appeals Court violated Article 10 of the European Convention on Human Rights;<sup>1</sup>
47. Notes that in Ireland:
  - in the context of updating the defamation law, the National Newspapers of Ireland submitted a proposal for an establishment of an independent Press Council and Press Ombudsman but that the Legal Advisory Group is seeking a statutory model consisting of Government appointees who would draw up their own Code of Standards and have complete power of the courts to enforce those codes,
  - there is no level playing field due to the payment of VAT on Irish newspapers but no VAT on the UK newspapers, which have approximately 25% of the Irish market,
  - Independent Newspapers have a seemingly dominant position in the Irish market (reported variously as 50 - 80%) and the competition authority has concluded that there is sufficient editorial diversity and, thus, media pluralism is not threatened;
48. Notes that in Germany:

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<sup>1</sup> Colombani and others, judgment of 25 June 2002.

- the Federal Constitutional Court found that surveillance of telecommunications (i.e. the tracing of journalists' phone calls) did not constitute a breach of constitutional liberties as provided for in Articles 10 and 19 of the Basic Law, which guarantee confidentiality of information,
- a legislative proposal introduced by the Bundesrat in September 2003 and intended to afford individuals better protection against unauthorised photographing would punish infringements with prison sentences of up to two years or equivalent fines,
- there is no law ensuring access to documents of public authorities at the national (i.e. federal) level and that only four of the federal states have enacted such legislation;

49. Notes that in Poland:

- the publishing company Agora, which owns the top-selling daily newspaper and 20 local radio stations and 11 magazines, allegedly 'was asked to pay a bribe for "lobbying" to achieve a more favourable media law allowing the publisher to acquire a private television station',
- it is estimated that foreign investment in the print media covers 40% of the sector, and that this poses problems for journalistic freedoms with foreign publishers creating less-favourable working conditions than for their own companies, which discourages professionalism,<sup>1</sup>
- there is a restriction of internal freedom of the press within Article 10 of the Press law, which stipulates that a journalist must obey and follow the general principles of his/her publisher,
- there are currently no provisions (and no apparent plans to introduce provisions) in Polish media law regarding media concentration and the protection of pluralism;

50. Notes that in the Netherlands:

- there is a high level of concentration in both the television and press sectors where the three main suppliers control at least 85 % of the market and that, although the Netherlands has the highest penetration of cable TV services in Europe, this market is also dominated by three major cable operators,

51. Notes that in Sweden:

- the media are characterised by a fairly high degree of cross-media ownership, interlocking ownership structures between major players in the audiovisual field

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<sup>1</sup> It should however be noted that several foreign companies operating in Poland, namely the Norwegian Orkla-group and the Springer-Verlag Group 'have voluntarily introduced internal rules to protect their writing staff from outside pressure and to separate managerial and editorial responsibilities'(OSCE).

and cooperation agreements between the press and broadcasting industry where companies in both sectors are controlled by the same group; and that

- an investigation into the special conditions prevailing in the press markets has been criticised, as a study of the newspaper industry in isolation from other media would be inadequate under current market conditions;

52. Notes that in the United Kingdom:

- there is intense debate following the Hutton Report into the circumstances surrounding the death of scientist and Government advisor, David Kelly, the criticism by the public-service broadcaster of the reasons put forward by the government for the war in Iraq, the resignation of the Director-General and the Chairman of the Board of Governors and the potential ramifications for the practice of investigative journalism and, separately, there is much debate concerning the review of the BBC's Charter and Agreement, which is considered a model for other systems;

53. Notes, as regards Spain, that:

- the employees of the Spanish public television channel TVE published a report denouncing the unprofessional practices used to foster unbalanced, biased or manipulated provision of information between 28 February 2003 and 5 March 2003 on the military intervention in Iraq and taking the view that the channel focused on the position of those in favour of military intervention and ignored that of those advocating the continuation of the inspections and opposing the use of military force<sup>1</sup>;
- there is as yet no independent media regulatory authority;
- in its 2003 annual report (containing 2002 data) the Reporters Without Borders NGO expressed concern at ETA terrorist threats and attacks against journalists in the Basque Country (three explosive devices targeted at journalists were deactivated during the year) and those against a Madrid newspaper, perpetrated by an Italian anarchist group; the organisation also denounced the obstacles encountered by journalists seeking to report on the banning of the Batasuna party and the Prestige environmental disaster,
- government pressure on the public-service broadcaster TVE resulted in blatant distortion and ignoring of the facts regarding responsibility for the appalling terrorist attacks of 11 March 2004;

54. Recognises that the accession countries have made substantial progress in adopting the acquis, but is concerned that some accession countries, having little or no tradition of independent media, face particular challenges in relation to ensuring pluralism in the media, and doubts that these countries will recognise media pluralism as a priority and take adequate action to promote it;

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<sup>1</sup> Reported by ABC on 11 March 2003.

## *Situation in Italy*

55. Notes that the level of concentration of the television market in Italy is currently the highest within Europe and that while Italian television offers twelve national channels and ten to fifteen regional and local channels, the market is characterised by the duopoly between RAI and MEDIASET where both operators together account for almost 90% of the total audience share and collect 96.8% of advertising resources, as against 88% for Germany, 82% for the United Kingdom, 77% for France and 58% for Spain;
56. Notes that the Mediaset group is the largest private television and communications group in Italy and one of the largest in the world and controls (inter alia) television networks (RTI S.p.A.) and advertising franchise holders (Publitalia '80), both of which have been formally found to hold a dominant position in breach of national law (Law 247/97) by the Communications Regulatory Authority (decision 226/03)<sup>1</sup>;
57. Notes that one of the sectors in which the conflict of interests is most obvious is advertising, given that in 2001 the Mediaset group was in receipt of two thirds of television advertising resources, amounting to a total of EUR 2 500 million, and that the main Italian companies have transferred much of their investment in advertising from printed matter to the Mediaset networks and from Rai to Mediaset<sup>2</sup>;
58. Notes that the President of the Italian Council of Ministers has not resolved his conflict of interests as he had explicitly pledged, but on the contrary has increased his controlling shareholding in the company Mediaset (from 48.639% to 51.023%), thereby drastically reducing his own net debt through a marked increase in advertising revenue to the

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<sup>1</sup> The Mediaset group controls:

- television networks (Canale 5, Italia 1 and Rete 4 in Italy and the Telecinco group in Spain
- satellite television (coming under Mediadigit) and terrestrial digital television networks,
- advertising concerns (Publitalia '80 in Italy and Publiespaña in Spain),
- companies with a link to television broadcasting (Videotime, RTI Music, Elettronica Industriale, Mediavideo),
- companies producing and distributing television products (Mediatrade, Finsimac, Olympia),
- a fixed telephony company (Albacom),
- an Internet portal (Jumpy S.p.A.),
- a cinema distribution company (Medusa, which controls the retailer Blockbusters),
- investment and financial services groups (Mediaset Investment in Luxembourg and Trefinance),
- an insurance company (Mediolanum),
- a construction company (Edilnord 2000),
- a football team (AC Milan),
- the Arnoldo Mondadori Editore publishing house, which includes Italy's largest publisher of books and a wide range of magazines,
- the 'Il Giornale' newspaper and the 'Il Foglio' newspaper.

<sup>2</sup> For example, in 2003 Barilla invested 86.8% less in newspaper advertising and spent 20.6% more on adverts on the Mediaset networks and Procter&Gamble 90.5% less in newspaper advertising and 37% more on the Mediaset networks; even a public company like the Wind telephone operator cut its advertising expenditure in newspapers by 55.3% and increased it on Mediaset networks by 10%; furthermore, in 2003 Rai lost 8% of its advertising resources to Mediaset, making for an EUR 80 million loss in earnings. (Source: Corriere della Sera, 24 June 2003).

detriment of competitors' revenues (and ratings) and, above all, of advertising funding for the written press;

59. Regrets the repeated and documented instances of governmental interference, pressure and censorship in respect of the corporate structure and schedules (even as regards satirical programmes) of the RAI public television service, starting with the dismissal of three well-known professionals at the sensational public request of the President of the Italian Council of Ministers in April 2002 - in a context in which an absolute majority of the members of the RAI board of governors and the respective parliamentary control body are members of the governing parties, with this pressure then being extended to other media not under his ownership, leading inter alia to the resignation of the editor of *Corriere della Sera* in May 2003;
60. Notes, therefore, that the Italian system presents an anomaly owing to a unique combination of economic, political and media power in the hands of one man - the current President of the Italian Council of Ministers - and to the fact that the Italian Government is, directly or indirectly, in control of all national television channels;
61. Notes that in Italy the broadcasting system has been operating in extralegal circumstances for decades, as repeatedly recognised by the Constitutional Court, and in the face of which the efforts of the ordinary legislator and the competent institutions have proved ineffective in re-establishing a legal regime; RAI and Mediaset each continue to control three terrestrial analogue television broadcasters, despite the fact that the Constitutional Court in its judgment No 420 of 1994 has ruled it impermissible for one and the same entity to broadcast over 20% of the television programmes transmitted domestically on terrestrial frequencies (i.e. more than two programmes) and has found the regulatory regime under Law No 223/90 to be contrary to the Italian Constitution, despite being a 'transitional regime'; nor did Law No 249/97 (establishing the Communications Guarantee Authority and rules on telecommunication and radio and television systems) abide by the prescriptions of the Constitutional Court which, in its judgment 466/02, declared the constitutional illegitimacy of Article 3(7) thereof, 'insofar as it does not provide for the establishing of a hard-and-fast deadline, in any event not exceeding 31 December 2003, by which the programmes transmitted by broadcasters exceeding the limits referred to in paragraph 6 of Article 3 must be broadcast exclusively via satellite or via cable';
62. Notes that the Italian Constitutional Court declared in November 2002 (Case 466/2002) that the present Italian private television system operating at national level and in analogue mode has grown out of situations of simple de facto occupation of frequencies (operation of installations without concessions and authorisations), and not in relation to any desire for greater pluralism in the distribution of frequencies and proper planning of broadcasting... This de facto situation does not therefore guarantee respect for external pluralism of information, which is an essential requirement laid down by the relevant constitutional case law... In this context, given the continued existence (and aggravation) of the situation which was ruled illegal by Judgment No 420 in 1994 and of networks considered 'surplus' by the 1997 legislature, a final deadline must be set that is absolutely certain, definitive and hence absolutely binding in order to ensure compatibility with constitutional rules; notes that, nonetheless, the deadline for the reform of the audiovisual sector has not been respected and that the law for the reform of the audiovisual sector has

been sent back by the President of the Republic for a new examination by the Parliament due to the non-respect of the principles declared by the Constitutional Court<sup>1</sup>;

63. Notes also that the guidelines laid down for the sole concessionary of public service broadcasting by the Parliamentary committee for the general guidance and supervision of broadcasting services, along with the numerous decisions adopted by the Communications Guarantee Authority (responsible for enforcing laws in the broadcasting sector) certifying breaches of law by broadcasters, are not respected by broadcasters themselves who continue to grant access to the national television medium in an essentially arbitrary manner, even during electoral campaigns;
64. Hopes that the legislative definition contained in the draft act for reform of the audiovisual sector (Article 2, point G of the Gasparri law) of the 'integrated system of communications' as the only relevant market does not conflict with Community competition rules within the meaning of Article 82 of the EC Treaty or with numerous judgments of the Court of Justice<sup>2</sup>, and does not render impossible a clear and firm definition of the reference market;
65. Hopes also that the 'system for assigning frequencies' provided for in the draft Gasparri law does not constitute mere legitimisation of the de facto situation and does not conflict, in particular, with Directive 2002/21/EC, Article 7 of 2002/20/EC<sup>3</sup> or Directive 2002/77/EC<sup>4</sup>, which specify, inter alia, that the assigning of radio frequencies for electronic communication services must be based on objective, transparent, non-discriminatory and proportionate criteria;
66. Highlights its deep concern in relation to the non-application of the law and the non-implementation of the judgments of the Constitutional Court, in violation of the principle of legality and of the rule of law, and at the incapacity to reform the audiovisual sector, as a result of which the right of its citizens to pluralist information has been considerably weakened for decades; a right which is also recognised in the Charter of Fundamental Rights;
67. Is concerned that the situation in Italy could arise in other Member States and the accession countries if a media magnate chose to enter into politics;

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<sup>1</sup> See the judgments of the Constitutional Court of 10 July 1974 (Nos 225 and 206) and 28 July 1976 (No 202) on Law No 103 of 14 April 1975 (GURI, 17 April 1975, No 102), the negative opinion from the Constitutional Court, in its judgment of 21 July (No 148), which criticised the lack of anti-trust legislation and the resultant de facto and de jure creation of monopolies and oligopolies. The Constitutional Court, Judgment No 826/88, Judgement of 1994 (No 420, GURI No 51, 14 December 1994) and Judgment 466/2002.

<sup>2</sup> For the characteristics of substitutability of the reference market see the judgments of 21 February 1973 in Case 6/72 *Continental Can* [1973] ECR 215, of 13 February 1979 in Case 85/76 *Hoffman La-Roche* [1979] ECR 461, of 25 October 2001 in Case C-475/99 *Ambulanz Glöckner* [2001] ECR I-8089; for the lack of a sufficient degree of substitutability of the reference market see judgment of 14 February 1978 in Case 27/76 *United Brands* [1978] ECR 207 and judgment of 11 April 1989 in Case 66/86 *Ahmed Saeed* [1989] ECR 803.

<sup>3</sup> OJ L 108, 24.4.2002, p. 21.

<sup>4</sup> OJ L 249, 17.9.2002, p. 21.

68. Regrets that the Italian Parliament has yet to adopt a regulation resolving the conflict of interests of the President of the Italian Council of Ministers, which, it was promised, would take place within the first hundred days of his government;
69. Considers that the adoption of a general reform of the audiovisual sector could be facilitated if it were to contain specific and adequate safeguards to prevent actual or future conflicts of interest in the activities of local, regional or national executive members who have substantial interests in the private audiovisual sector;
70. Hopes, moreover, that the draft Frattini law on conflict of interests will not stop at de facto recognition of the premier's conflict of interests, but will provide for adequate mechanisms to prevent this situation from continuing;
71. Regrets that, if the obligations of the Member States to ensure pluralism in the media had been defined after the 1992 Green Paper on pluralism, the current situation in Italy could possibly have been avoided;

### ***Recommendations***

72. Notes that the European Community already has competence in a number of policy areas and avails itself of policy tools with direct relevance for media pluralism, such as the rules on free access for undertakings to important events in Directive 89/552/EEC, rules on fair, reasonable and non-discriminatory access to APIs and EPGs in Directive 2002/19/EC<sup>1</sup>, on "must-carry" in the Directive 2002/22/EC, on the use of an open API for digital interactive television services and platforms and on the harmonisation of standards in order to achieve full interoperability of digital television at the level of consumers in Directive 2002/21/EC;
73. Stresses that these tools need to be understood as core elements of the Community's policy to safeguard media pluralism and thus need to be applied, interpreted and further developed by the Commission with a view to strengthening these measures in order to combat horizontal and vertical media concentration in traditional as well as in new media markets;
74. Calls, therefore, on the Member States and the Commission to safeguard pluralism in the media and to ensure, in accordance with their powers, that the media in all Member States are free, independent and pluralist;
75. Calls on the Commission to submit a communication on the state of media pluralism in the EU as soon as possible including:
  - (a) a review of existing measures and practices, both in the Member States and at European level, designed to encourage political and cultural pluralism within or between editorial offices, including with regard to content, and promote an analysis of any shortcomings, acknowledging the economic challenges to guaranteeing pluralism on smaller and specific markets such as local or small country regions,

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<sup>1</sup> OJ L 108, 24.4.2002, p. 7.

- (b) a thorough examination of the possibility of action based on its existing competences and its obligations to ensure a high level of protection of human rights,
  - (c) an examination of the measures which should be taken by the Member States and those which should be taken by the European institutions,
  - (d) an examination of the use of appropriate instruments, including the use of non-binding instruments during a first stage which could then lead to binding instruments if insufficient action is taken by the Member States, and
  - (e) a consultation procedure on a possible action plan of measures to be taken at the EU level or by the Member States to ensure an adequate level of pluralism across the European Union;
76. Calls on the Commission to submit a proposal for a directive to safeguard media pluralism in Europe in order to complete the regulatory framework, as requested in its abovementioned resolution of 20 November 2002;
77. Considers that the protection of media diversity should become the priority of EU competition law, and that the dominant position of a media company on the market of a Member State should be considered as an obstacle to media pluralism in the European Union;
78. Emphasises that legislation should be adopted at European level to prohibit political figures or candidates from having major economic interests in the media; considers that legal instruments should be introduced to prevent any conflict of interest; calls on the Commission to submit proposals to ensure that members of government are not able to use their media interests for political purposes;
79. Calls, therefore, on the Commission also to examine the following issues for inclusion in an action plan on measures to promote pluralism in all EU sectors of activity:
- (a) the revision of the television-without-frontiers directive to clarify the obligation of the Member States to promote political and cultural pluralism within or between editorial offices, taking into account the need for a consistent approach across all communications services and media forms;
  - (b) the establishment of EU-wide minimum conditions to ensure that the public service broadcaster is independent and free from interference by the government, as recommended by the Council of Europe;
  - (c) the promotion of political and cultural pluralism in journalism courses so that the views held within society are adequately reflected within or between editorial offices;
  - (d) an obligation on the Member States to make an independent regulator (such as the telecommunications or competition regulator) responsible for monitoring media ownership and equal access and with the power to undertake own-initiative investigations;

- (e) for the establishment of a European 'Working Party' composed of independent national media regulators (see, for example, the Article 29 data-protection group);
- (f) rules requiring the transparency of the ownership of the media, in particular, in relation to cross-border ownership and for the publication of information on significant interests in the media;
- (g) a requirement that information on media ownership collected in the national markets be sent for comparison to a European-wide body, such as the European Audiovisual Observatory;
- (h) an examination into whether divergent national regulatory models create obstacles in the internal market and whether there is a need for the harmonisation of the national rules restricting the horizontal, vertical and cross ownership of the media to ensure a level playing field and, in particular to ensure an adequate supervision of cross-border ownership;
- (i) an examination of the need to introduce in the EU Merger Regulation a 'pluralism' test and lower thresholds in relation to media mergers, or whether such provisions should be included in the national rules;
- (j) guidelines on the way the Commission is to take public-interest concerns such as pluralism into account when applying competition law to media mergers,
- (k) an examination into whether the advertising market distorts the conditions of competition in the media sector and whether specific controls on the advertising market are needed to ensure equitable conditions of access;
- (l) a review of the 'must carry' obligations in the Member States on telecommunications operators to carry the public service broadcasters, the market trends and whether further measures are needed to promote the distribution of the public service broadcasters;
- (m) the establishment of a general right of EU citizens applicable to all media to reply to inaccurate information, as recommended by the Council of Europe;
- (n) an examination into the need to reserve sufficient digital transmission capacity for public service broadcasters;
- (o) a scientific study on the impact of the new communication technologies and services on media concentration and pluralism;
- (p) a comparative study on national rules relating to political information - in particular in the context of elections and referendums - and equal and non-discriminatory access for different groupings, movements and parties to the media, as well as the identification of best practices in this field to guarantee the right of citizens to information, to be recommended to Member States;
- (q) possible specific measures which should be adopted to assist the development of pluralism in the accession countries;

- (r) the establishment of an independent body in the Member States, such as a Press Council, consisting of external experts, to oversee disputes over reporting by the media and journalists,
  - (s) measures to encourage media organisations to strengthen editorial and journalistic independence and high standards of quality and ethics through editorial statutes or self-regulatory means;
  - (t) the promotion of works councils in media organisations, and in particular, in companies established in the accession countries;
80. Recalls that the Commission's action should, however, be based on the principle of proportionality laid down in Article 5 of the Treaty establishing the European Community, which provides that any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty;
81. Calls for the preparation of an annual report on pluralism which assesses the diversity of the content (internal and external) in relation to the political and cultural preferences of the public, assesses editorial independence, and analyses the impact of concentration of ownership on diversity; and for pluralism in the media to be specifically included in the annual report of the EU network of independent experts on human rights;
82. Calls on the Commission to provide clarification of the Altmark ruling to the broadcasting sector and to prepare a draft directive under the codecision procedure on the conditions for validation of funding;
83. Asserts that any legal or administrative measures instituted by a Member State and affecting the pluralism of the media or the freedom of expression and information, as well as the absence of action by a Member State to protect these fundamental rights could fall within the scope of Article 7(1) or Article 7(2) of the Treaty on European Union;
84. Considers that, where Parliament has political misgivings regarding media diversity and pluralism in one of the Member States, it should have the possibility of independently initiating procedures to investigate the matter before using, as a last resort, its right of initiative under Article 7(1) TEU;
85. Calls for the inclusion of a specific provision in the Constitution for Europe on the need to ensure pluralism in the media;
86. Urges Member States to incorporate in their national constitutions an active duty to promote respect for freedom and diversity of the media, implementing in more detailed form what was laid down in this respect in the Charter of Fundamental Rights of the European Union in December 2000 in Nice; considers that, in order to guarantee that this duty is carried out, an independent court should be empowered to examine legislation and regulations in this field for conformity with the said provisions of the constitution;
87. Invites the Italian Parliament to:

- accelerate its work on the reform of the audiovisual sector in accordance with the recommendations of the Italian constitutional court and the President of the Republic, taking account of the provisions in the Gasparri Bill which are incompatible with Community law, as noted by those authorities;
- to find a genuine and appropriate solution to the problem of a conflict of interest of the President of the Italian Council of Ministers who also directly controls the principal provider of private and, indirectly, public television, the main advertising franchise holder and many other activities connected with the audiovisual and media sector,
- to take measures to ensure the independence of the public service broadcaster;

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88. Instructs its President to forward this resolution to the Council, the Commission, the Council of Europe and the governments and parliaments of the Member States and the accession countries.