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## Declaration of the participants in the Conference “Media Freedom and Pluralism”

# Media freedom in Europe: Code Red

In 1997 the UNESCO Sofia Declaration for a free and pluralistic media was a zealous call for progress in a context where the advent of new information and communication technology was considered a new boon for pluralism, economic and social development, democracy and peace. Now, 21 years later, independent media in Europe has experienced unprecedented pressure. The combination of different factors, such as: the murders of journalists and physical threats against them, increasing political and institutional pressure, repressive legislation targeting the media, disruptive technologies and the financial crisis have put the existence of the free media in a number of EU countries at risk.

Free access to diverse information and opinion is not only a basic human right, but is essential for citizens to participate in a democratic society. It is the basic framework allowing people to hold those in power accountable, to help limit crimes and corruption - key factors for ensuring the existence of a functioning democracy.

The establishment of controlled media is the first step to public governance models known as "mild dictatorships" or "captured state" which creates serious threats to the normal functioning of democracy, not only for the respective countries, but for the whole European Union.

Recent events in several of the EU member states clearly violate national and international law when it comes to protecting media freedom, namely the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human

Rights and the Charter of Fundamental Rights of the European Union (EU). EU and the Council of Europe have established legal procedures for protecting freedom of expression in the Court of Justice of the European Union and the European Court of Human Rights. Nevertheless these structures are sometimes insufficient to uphold and enforce the fundamental European values and their constitutional traditions.

## **EU Budget and Rule of Law**

On May 2, 2018, the European Commission proposed a budget for the 2021-2027 period and drew up battle plan to punish countries which it claims have violated the EU's core values. The plan ties European Union funding to the rule of law but is far too limited and does not mention the freedom of the press. Specifically, the Commission is proposing a new mechanism to protect the EU budget from financial risks linked to generalized deficiencies regarding the rule of law in member states. The new proposed tools would allow the Union to suspend, reduce or restrict access to EU funding in a manner proportionate to the nature, gravity and scope of the rule of law deficiencies. Such a decision would be proposed by the Commission and adopted by the Council through reverse qualified majority voting, making it all but impossible for one or two countries to block punitive measures. The proposal was expected and made in reaction to Poland, the first and only country so far subject to the "rule of law" mechanism as the Commission observed systemic behaviour putting democracy at risk. Hungary is also on the Commission's radar, where democratic conditions have deteriorated following continued efforts to institutionalize its "illiberal democracy". Poland and Bulgaria, the countries holding the EU presidency, were among the first countries to react negatively of the proposed new regulation.

## **Murders and physical threats**

The erosion of the European democratic model, a trend visible in recent years, is ongoing and becoming more and more worrying. The region has been shaken by two murders and by threats to investigative reporters as well as unprecedented verbal attacks on the media. The traditionally safe environment for journalists in Europe has begun to deteriorate. Two murders over the span of five months, the first in Malta and the second in Slovakia, indicate a worrying decline for the continent's democracies. In Malta, journalist and blogger Daphne Caruana Galizia's targeted car bomb death lifted the veil on the judicial harassment and intimidation to which journalists are routinely subjected in the island state. Caruana Galizia had been threatened for years and at the time of her death was the target of 42 civil suits and five criminal cases. Slovakia is still reeling from the murder of a 27-year-old investigative reporter who had been covering corruption and the mafia. In April, Italian law enforcement agencies foiled the Mafia's plans to kill an Italian journalist Paolo Borrrometti. He would have been the third journalist executed in Europe in 7 months.

All applicant member states from the Western Balkan and Turkey continue to face great challenges when it comes to safety issues. Continued requests for no to impunity and "zero-tolerance" for physical attacks against journalists reflected in the latest progress reports. The recent shooting of Vijesti journalist Olivera Lakić, who was shot in the leg outside her home on 8 May 2018, in Podgorica shows the brutality of such attacks.

## **Economic sustainability**

Independence of media and free journalism is only possible if media companies are economically independent and financially sustainable. In the 21 century, press publishers remain the principal investors in journalistic content and have multiplied efforts and investment to offer the latest innovative digital services to readers across Europe and in the rest of the world. These accomplishments have proven fruitful as press titles are reaching an unprecedented high number of readers. This success merely confirms that the future of the press is not only digital but also filled with opportunities to expand the readership of newspaper and magazine publications.

Unfortunately, over the last decade a significant part of the economic base of independent media has eroded. Media companies have experienced a double shock of business cycle and business model crisis. The recovery from the global financial crisis in Europe was too slow and too costly and it coincided with the media business model crisis. Also, the emergence of digital platforms and global digital giants like Google and Facebook has exacerbated the un-level playing field between intermediaries and investors and creators of content, namely press publishers. In spite of growing appetite for news articles and editorials, the monetization of such content is proving challenging as pre-digital copyright and VAT laws are inept at protecting investment sources and market power as well as vast log-in environments are giving major platforms the lion's share of advertising revenues. To illustrate this state of affairs, the Interactive Advertising Bureau's figures from 2016 show that 89% of the online advertising expenditure went to Google and Facebook, leaving the remaining 11% to all other digital players. Additionally, a multitude of EU policy proposals surrounding the digital sphere are threatening to multiply burdensome and unfair legal and administrative procedures, with proposals such as E-privacy advantaging the strongest technological players while hampering smaller players that are dependent on cookies and complex third party collaboration to be part of the data-driven economy.

In many EU countries economic hardship that media companies were experiencing led directly to concentration of political control over media and increased dependence on government funding. In certain cases the ruling political elites are using government and EU funds to support loyal media and to manipulate public opinion. In those countries public TV and radio have also lost independence or are under increasing political pressure. In practical terms, these processes resulted in large parts from the media market being under the control of ruling politicians and their supporters for the purpose of propaganda, while exerting severe attacks against what was left from independent media. The ultimate "goal" of having unaccountable power is close to be achieved in some EU member States.

## **Code Red Media Freedom Countries in Europe**

### **Poland**

Nothing seems to be able to stop Law and Justice, the national-conservative party that won the October 2015 general election, from pushing on with its plan to radically reform Poland as it sees fit, taking no account of those who think differently. Press freedom is one of its project's main victims. The public media have been formally renamed "national media" and have been transformed into government propaganda mouthpieces. Their new leaders tolerate neither

opposition nor neutrality from employees and fire those who refuse to comply. Investigative journalist Tomasz Piatek was threatened with imprisonment for criticizing the defense minister's links with the Russian intelligence services and had to wait many months before the charges were finally lifted. The broadcasting council, now under the government's thumb, tried to impose a record fine on TVN, a privately-owned TV channel, for showing anti-government messages in its coverage of a wave of protests in December 2016. The fine was finally rescinded under international pressure. To those who urge moderation, the government always responds with the same arguments based on an ideology that tolerates no dissent.

## **Hungary**

Businessmen with close ties to Prime Minister Viktor Orbán's party, Fidesz, not only managed to acquire new media outlets in 2017 but also to replace foreign media companies that had invested in Hungary's media. Their biggest success was getting control of the last three regional daily newspapers in the summer. Nevertheless, the Hungarian media landscape is still varied, and both print and online outlets do not hesitate to publish investigative coverage of alleged corruption involving top Fidesz and government officials. Two media bubbles co-exist in Hungary. One, created by pro-government and pro-Fidesz media outlets, is obsessed with migration, the "defence of Hungary and its borders" and its hate campaign against the Hungarian-American billionaire philanthropist George Soros. The other is focused on finding corruption scandals. The survival of media outlets critical of the government is due largely to former Orbán donor Lajos Simicska, who broke publicly with the prime minister in February 2015 and continues to fund a media empire originally created to support Fidesz. The government and its business allies now have their sights turned on two media outlets in particular, the leading commercial TV channel RTL Klub and the leading political news website Index.hu. Both are critical of the government.

## **Bulgaria**

Over the past years, media freedom in Bulgaria has been deteriorating at alarming rates. According to the World Press Freedom Index, Bulgaria has dropped 75 positions over the past 12 years - ranking #36 in 2006 and #111 in 2018. There have been increasing political pressure and a growing number of physical threats against investigative journalists, publishers and independent media. The main instrument of exerting pressure is the concentration of media ownership, the economical dependencies and other forms of political control over the majority of the media space and monopoly over media distribution channels. The model also includes strong influence over the government, prosecution and judiciary power, as well as the capturing of most of the independent regulators. All of the above forms a huge political and business conglomerate led by an acting politician, magistrate and media and business owner - MP of MRF (Movement for Rights and Freedoms) Delyan Peevski.

For over eight years during the last decade, Bulgaria has been governed by GERB and their leader and three mandate Prime Minister - Boyko Borissov, who has enjoyed the comfort of Peevski's controlled media circles. PM Borissov not only consistently refuses to admit there is a threat to media freedom, but plays a key role in increasing Mr. Peevski's access to public resources, while also providing him with additional institutional instruments of repression, including tailor made pieces of legislation, used against independent media.

## **Malta**

The past year, 2017, was marked by the car bomb murder in October of Daphne Caruana Galizia, an anti-corruption journalist who had exposed the underbelly of local politics and had indirectly caused early general elections to be held in June 2017. She had for years been under growing pressure, fuelled by the popularity of her Running Commentary blog, her work on the local ramifications of the Panama Papers scandal, and other issues. At the time of her death, she was the target of 42 civil defamation actions and five criminal defamation proceedings. She had also been the repeated target of threats and other forms of harassment. The judicial harassment was a classic example of SLAPPs (strategic lawsuits against public participation), lawsuits in which powerful plaintiffs try to use fear of massive legal defense costs to silence outspoken critics. Under threat from leading personalities or business groups, independent media outlets have been forced to surrender and to remove stories from their websites.

## **Slovakia**

Investigative reporter Ján Kuciak's murder in February 2018 triggered an unprecedented political earthquake in Slovakia and sent shockwaves through the international community. Kuciak had been doing research for the Aktuality.sk website on alleged links between the Italian mafia and Smer-SD (the left-populist party that heads the ruling coalition), and the alleged embezzlement of EU funds. In an unfinished article published after his death, he accused Prime Minister Robert Fico of direct involvement. The culture and interior ministers were forced to resign and—after major street protests—Fico himself had to follow suit. Like other Slovak politicians, Fico was given to virulent attacks on the media. In November 2016, he described journalists as “filthy anti-Slovak prostitutes” and accused them of trying to damage Slovakia's EU presidency when asked about alleged procurement irregularities linked to the presidency. In the absence of strong institutions that could protect them, Slovakia's journalists are increasingly exposed to all kinds of harassment, intimidation, and abuse. Kuciak's murder has revived questions about the unexplained disappearances of two journalists, one in 2008 and the other in 2015, and has put the issue of journalists' safety back on the agenda. In recent years, Slovak media that were previously owned by leading international media companies have been acquired by local oligarchs whose main business interests lie outside journalism. RTVS, the public radio and TV broadcaster that had become a symbol of journalistic integrity in recent years, is now also threatened. Its director-general since August 2017 suspended the country's only investigative TV program after it ran a story critical of a junior party in the ruling coalition to which he is linked. The right of reply to critical media coverage that politicians were granted by a 2007 media law was limited in a 2011 amendment, but defamation is still punishable by up to eight years in prison under a criminal code provision that politicians continue to use to bring complaints against individual journalists and media outlets.

## **Czech Republic**

It's hard to imagine a president pulling out a gun in front of journalists but that's what Czech President Milos Zeman did at a press conference in October 2017, brandishing a dummy Kalashnikov bearing the inscription “for journalists.” Reelected in January 2018, Zeman has a weakness for this kind of provocation and has repeatedly described journalists as “manure” and “hyenas.” The President and several other political leaders have recently increased their verbal attacks on the independence of public service media, particularly the Czech Television.

There is also concern about several newly-drafted bills that would increase the range of criminal penalties for defamation, especially defamation of the president. The level of media ownership concentration has become critical since new oligarchs began using their fortunes in 2008 to buy newspapers in order to reinforce their influence. One of these oligarchs, Prime Minister Andrej Babis, owns one of the Czech Republic's most influential daily newspapers

## **Serbia and the other Balkan applicant countries**

The lack of progress regarding freedom of expression is increasingly a matter of concern, as it was noted in the latest EC report on Serbia. There are numerous credible reports of verbal, physical attacks and attacks against property of journalists. Legislation on the media is not fully implemented. The adoption of a new strategy for the development of a public information system through inclusive consultation with stakeholders is still pending. The Regulatory Body for Electronic Media is not safeguarding media pluralism. Hate speech and discriminatory terminology is often tolerated in the media and is rarely tackled by regulatory authorities or prosecutors. The Press Council has recorded an increase of breaches of the Journalistic Code of Professional Conduct in print media. Political and economic influences over media result in widespread self-censorship. Statements by high-ranking state officials on the investigative work of journalists have not been conducive to creating an environment where freedom of expression and internet freedom can be exercised without hindrance. Political and economic influence over media continues to be a source of concern. Journalists have little job security and the editorial environment, which favours 'tabloidisation', is not conducive to improving journalistic standards.

Albania, Bosnia & Herzegovina, Kosovo, Republic of Macedonia and Montenegro all face problems when it comes to safety, continued attacks against journalists, impunity, lack of independent public service media, media concentration and lack of professionalism and worsening working conditions.

## **Policy recommendations**

1. Journalists, publishers, NGO's and other key stakeholders must join forces in improving efficiency of using legal protection mechanisms in Court of Justice of the European Union and European Court of Human Rights. One practical idea could be creating a legal expert entity "Media Freedom Advocacy Fund" that assists citizens, journalists, publishers, and media companies in applying international laws against the abuse of power of the local Governments. Such fund could also initiate and support independent international investigations of high profile media pressure cases in EU member states;

2. The European Commission should extend the newly proposed regulation, linking EU funds disbursements not only to rule of law, but also to media freedom in member states and candidates. Apart of rule of law, the commission should also explicitly monitor the compliance of local and EU legislation for violations of human rights, freedom of expression, civil society and functioning of democracy. In countries like Bulgaria, Hungary and Poland, repression against media freedom is most of the time done with perfectly legal institutional instruments created by extraordinary legislation at national level. On May 3, 2018 The European Parliament voted a resolution that the Commission shall work for establishment of an EU mechanism on democracy, the rule of law and fundamental rights, accompanied by independent monitoring mechanisms, which would assess the situation of media freedom and pluralism and any related violations.

3. The media business model is in transition. Economic survival of media companies and independent journalism on smaller markets is very difficult. However, free media is a cornerstone of civil society and functioning of democracy. The EU shall consider free press and freedom of expression as a "public good" and has to develop public mechanisms for its sustainable financing to guarantee its independence. That could include EU funding directly targeted to journalists and media companies in member states, avoiding local Government intermediation;

4. Promote innovation and assist digital transformation of EU media. The EU must develop a more diverse instrumentarium to help bridge technological gaps between European media companies and global platforms. Also, to encourage media entrepreneurship and startups in search of new, sustainable business models and innovative ways of monetization;

5. It must be ensured that the digital sphere is a place where all players can thrive by ensuring a level-playing field and more balance with technological giants and platforms. Also, VAT rates aligned to the ones of the printed press are long overdue. Supporting professional media is essential for the democratic life and enlightenment the European citizen and the only long-term solution to counteracting disinformation.

Sofia,

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