

**Giuseppe Abbamonte**

**Hungarian Media Conglomerate**

**EP Committee on Culture & Education, 20<sup>th</sup> February 2019**

## 1. Context

### Creation of the media conglomerate

On 28 November 2018, more than a dozen media owners declared the donation and transfer of 476 media outlets to the Central European Press and Media Foundation (KESMA). The operation is an unprecedented form of consolidation in the news media field. The media outlets include news websites, newspapers, television channels and radio stations, tabloids and sports newspapers, numerous magazines and all county newspapers. Taken together, these media outlets represent about half of the Hungarian media market making KESMA one of the biggest media holdings in the EU and certainly the biggest in Central Europe. The foundation's

The deal will place most leading private Hungarian media outlets under the control of this single, government-friendly entity.

By means of a government decree 229/2018 (XII. 5), both the Hungarian Media Council and the Hungarian Competition Authority have been excluded from scrutiny of the merger on the ground that the operation is of “national strategic importance”. The Hungarian Civil Liberties Union (TASZ), Hungary's largest human rights NGO, has sued the competition authority for failing to examine the merger.

### Highlights from the Media Pluralism Monitor 2017, report for Hungary

Prior to the creation of KESMA, the report for Hungary already highlighted medium, high or very high risk levels for a number of relevant media pluralism indicators (see below).

- i) **Media ownership concentration** in which structural deficiencies in the law and the lack of a genuinely independent regulator were flagged. Under the indicator dealing with **cross-media concentration of ownership** the MPM states that due to the current political structure and culture, identical government-friendly media content is produced by many media outlets owned by different business entities.
- ii) **Commercial and owner influence over editorial content** wherein the fact that state advertising has been heavily exploited by the Hungarian

government to reward pro-government media outlets and starve non-governmental ones was flagged.

- iii) **Political independence of the media** [redacted] refers to the fact that politicians and political parties exert direct and indirect influence and control over media via proxies, straw men and oligarchs and that Fidesz already controls commercial TV and radio, primarily through a network of indirect ownership and economic levers, such as advertising expenditure.
- iv) **State regulation of resources and support to media sector** [redacted] which flags the lack of fair rules and transparency on distribution of state advertising.

## 2. Detailed Q&A

### 1. Are the outlets public or private? Press or broadcasting? How many?

All 476 media outlets involved in the transaction are private. They include all types of media: television, radio and press (offline and online).

Specifically, the donations concern two national television channels (Hír TV, Echo TV), almost all national commercial radio stations and regional radio stations, national political newspaper (Magyar Idők), all regional and local newspapers, the second largest tabloid, the largest sports newspaper, political weeklies (Figyelő and Szabad Föld), the only widely distributed free newspaper (Lokál) as well as the largest online news portal (Origo.hu) and several other news portals. The full list of the media outlets is available [here](#), is summarised [here](#) and visualised [here](#) (the infographic needs to be set to show the situation after 28 November 2018).

Only a very small number of media outlets under government influence were left out, most notably TV2, the country's second-largest TV station, [redacted]

[redacted] Only three daily newspapers<sup>1</sup> are not involved in this merger.

### 2. What is the holding controlling the new conglomerate? Is it a public or private company?

KESMA is a not-for-profit [redacted] foundation as provided by TITLE XXII of the Hungarian Civil Code.

KESMA is controlled by the government. [redacted]

The transaction transforms these 476 media outlets into a centrally organised second plank of [redacted] media in Hungary (alongside public service media), which will be financed

<sup>1</sup> The leftwing Népszava, pro-government Magyar Hírlap and Blikk tabloid newspaper

to a large extent by public funds via state advertising

For example, the Public Service Broadcaster got fined by the National Election Commission in March 2018 for not giving any air time to opposition parties. The public television then decided to give a total of 5 minutes to each opposition party ahead of the national elections.

### **3. Were some of these companies expropriated? Was the merger ordered by law?**

The 476 media outlets were transferred, within a couple of hours on 28 November 2018, for free in a series of private transaction by their owners, under the Hungarian Civil Code.

Hungary's largest

transferred all their media outlets to the Foundation in a coordinated move – without any compensation. The combined value of the 476 media outlets is hard to estimate with precision (but certainly above 90 Million EUR according to Hungarian G7). They generated 180 Million EUR turnover (around 16% of the whole Hungarian media market) and above 25 Million EUR profit in 2017

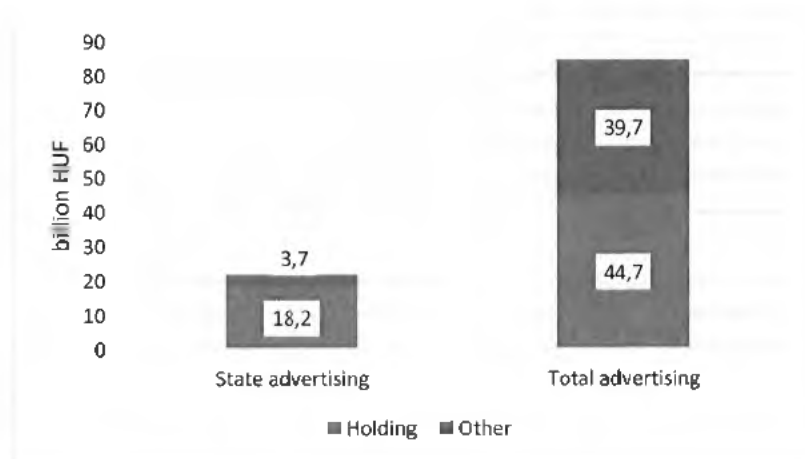
### **4. What is the likely impact of the transaction on media pluralism in Hungary? What is the market position of the conglomerate? Which are its main competitors?**

KESMA will be the market leader in print media and radio, and will even own the largest online portfolio. In the TV market, RTL Klub still leads. However, with its six TV channels KESMA will clearly dominate among domestic broadcasters. This is aggravated by the direct government control of the Hungarian public service broadcaster.

With the exception of RTL Klub and some smaller print magazines and radio stations, independent media in Hungary has been pushed to the internet. In that context a particularly worrisome development is that a large news site - Index.hu - was taken over

Currently the site is not part of KESMA.

*Shares of advertising revenue received by KESMA media outlets and other market players (2017)*



### **3. MEP reactions**

On 6 December 2018, the Commission received a letter (addressed to 4 Commissioners) authored by MEP Petra Kammerevert in which she referred to “The latest and very alarming developments in Hungary, i.e. the approval of the creation of the so-called Central European Press and Media Foundation”. She describes this operation as “A serious attack on the pluralism of the media in Hungary [which] requires a clear and immediate reaction by the Commission”. She adds, “As media freedom and pluralism lie at the intersection of competition law, state aid, market regulation (the four freedoms of EU), media and cultural policies, and last but not least fundamental rights and democracy, I consider this merger should be of particular concern...” The Commission also received two PQs (from MEPs Ujhelyi and Niedermüller) on the matter.

Taken together, the letter and PQs ask the Commission whether:

- i) It is monitoring the developments,
- ii) The creation of the foundation is in line with EU law and values,
- iii) The Commission intends to act against this threat to media pluralism,
- iv) The Commission has a position on the exclusion, by government decree, of the Media Council and Competition Authority from scrutiny of the deal.

### **4. Commission reaction so far and internal discussions (DG CNECT, COMP, JUST)**

The Commission has replied to both Ms Kammerevert's letter and has prepared replies to the PQs essentially saying that it is aware of the creation of the conglomerate and that the Media Council and Competition Authority appear to have been excluded from scrutiny of the merger. In his reply to Ms Kammerevert on behalf of the Commission, FVP Timmermans referred to the fact that the issue had been brought up under the point on the rule of law in Hungary at the General Affairs Council of 11 December where the FVP had referred to the creation of KESMA as "another worrying development". In these replies the Commission stated that it would continue to monitor the situation and examine the issue.

## 5. LTTs

- The Commission is concerned about any developments which put media freedom and pluralism in the EU at risk. In line with the Charter of Fundamental Rights, the Commission will do everything within its competence to ensure respect for media freedom and pluralism.
- The Commission is aware of the dynamics which have led to the creation, in Hungary, of the foundation known as KESMA (Central European Press and Media Foundation).
- It is also aware of the fact that both the Hungarian Media Council (i.e. the independent regulator) as well as the Hungarian Competition Authority have been excluded from scrutiny of the operation by government decree which has declared the merger to be of "national strategic interest".
- As First-Vice President Frans Timmermans stated on several occasions, the Commission considers the creation of KESMA to be a "worrying development".
- Our services are carrying out an analysis of the creation of KESMA and the fact that both the Hungarian Media Council and the Hungarian Competition Authority appear to have been excluded from scrutiny.

- I thank the Parliament's Culture and Education Committee for having organised this timely discussion and I look forward to hearing the members' analysis of this important and sensitive matter.

**Contact:**



## 6. Background

### VP Timmermans' intervention at the EP Plenary on 30 January 2019

VP Timmermans updated the European Parliament on the situation in Hungary and the actions undertaken by the Commission to address the issues of Rule of Law and Media Pluralism.

Specifically, he mentioned the recent merger of over 400 media outlets in one holding; controlled by a board affiliated with the governing Party, referring to the fact that the situation is aggravated by the government's subsequent decision to exempt this merger from scrutiny by the competition authority and the media regulatory authority.

VP Timmermans announced that the Commission will continue monitoring the situation in Hungary in addition to pursuing ongoing infringement procedures.

### PQ 6152/2018 and the Commission's *draft* reply

Question for written answer E-006152/2018

to the European Commission

Rule 130

Péter Niedermüller (S&D)

Subject: Media regulations in Hungary

A gigantic, government-affiliated, right-wing media empire has been established in Hungary in recent days under the name of Central European Press and Media Foundation. Ten publishing offices, all supporting the government without exception, joined the foundation immediately after its foundation. These companies essentially cover the entire Hungarian media and provide a clear monopoly for the foundation. The companies affiliated within the foundation had a total revenue of more than HUF 60 billion with the help of state advertising last year and generated a profit of more than HUF 8 billion. The establishment of the foundation should have been authorised, in principle, by the Hungarian Competition Authority. However, the Hungarian Prime Minister declared yesterday that the foundation had national strategic importance, which may, consequently, not be investigated by the Hungarian Competition Authority.

1. Is the establishment of a foundation of such a size, covering the entire media market, in line with the European Union's relevant regulations?
2. What does the European Union intend to do against the restriction of media pluralism to such an extent in one of its Member States?
3. Is the procedure where the government prevents the investigation of a foundation by the Hungarian Competition Authority in a Prime Minister's decree in line with the European Union's competition laws?

E-006152/2018

Answer given by Ms Gabriel

on behalf of the European Commission

([d.m.yyyy])

The Commission is aware of the creation, in Hungary, of the Central European Press and Media Foundation (KESMA), the concentration of over 400 media outlets and of the fact that the Hungarian Competition Authority and the Hungarian Media Council appear to have been excluded from scrutiny of the operation by government decree which declares the operation to be of “national strategic importance in the public interest”.

DG COMP:

On the basis of the available information, the creation of KESMA itself, as well as the concentration of the media outlets referred to in the question, fall outside the Commission's jurisdiction under the EU Merger Regulation.

Where the behaviour or practices of KESMA affect trade between the Member States, EU competition rules may apply, including the rules that prevent companies holding a dominant position from excluding others from the market or discriminating against other market players. Additional information would be necessary to assess whether KESMA holds a dominant position in some media markets, and whether its practices could fall under Article 102 TFEU and/or, possibly, Article 101 TFEU.

DG CNECT:

In relation to the exclusion of the Hungarian Media Council from scrutiny of the operation, the Commission refers to Articles 30(1) and (2) of newly adopted Directive 2018/1808<sup>[1]</sup> which establish that Member States shall ensure that national audiovisual regulatory authorities are functionally independent of their respective governments and shall ensure that they shall exercise their powers in accordance with the objectives of the Directive, including upholding media pluralism and the promotion of competition. Member States have 21 months to transpose this directive.

DG COMP:

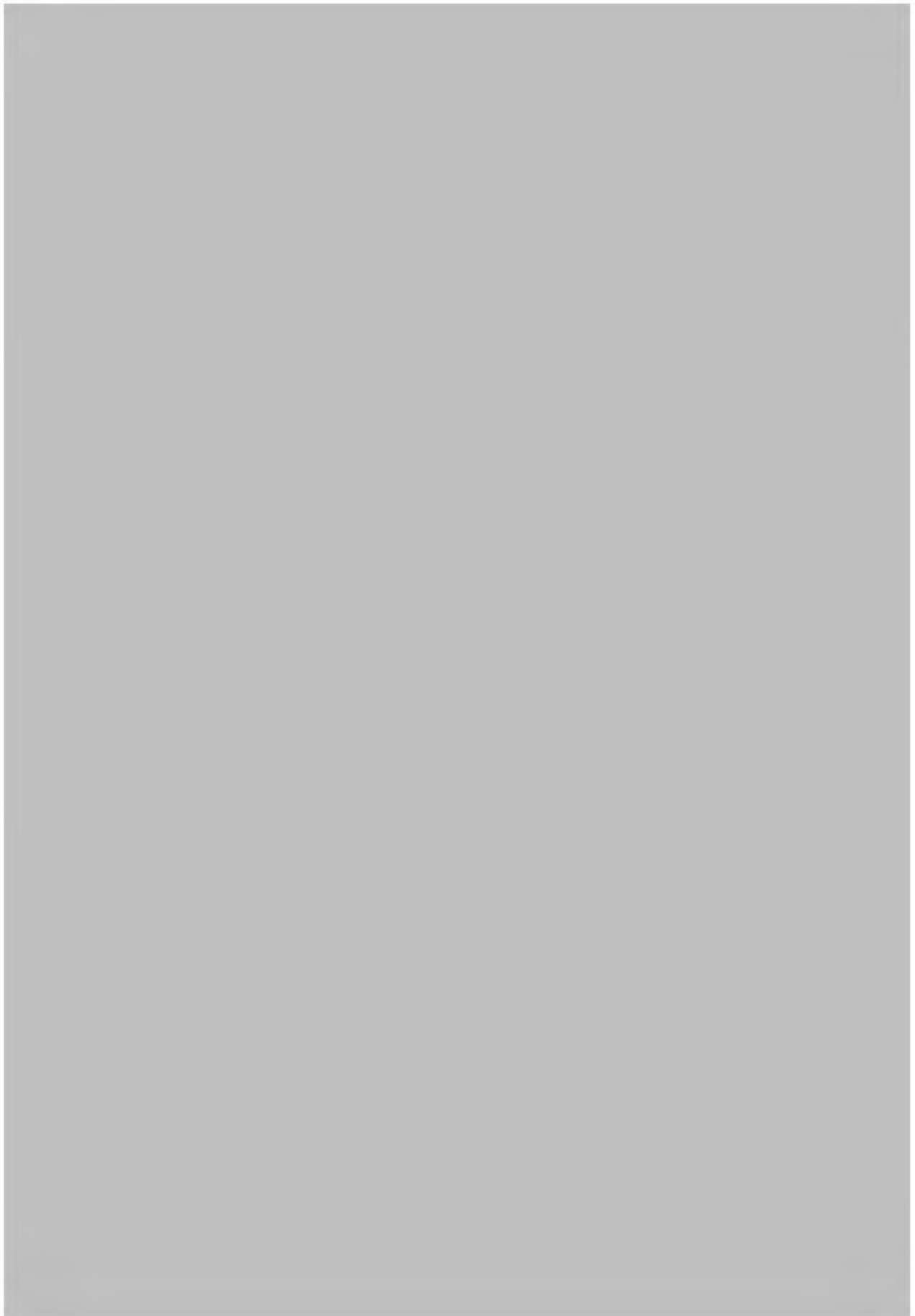
It is not contrary to EU law that national merger regimes allow national authorities to take into account public interest considerations when reviewing mergers. Other than Hungary, twelve Member States provide for this possibility in their respective merger control regimes, under different conditions and procedures.

The Commission will continue to monitor the situation.

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<sup>[1]</sup> Directive 2018/1808 of 14 November 2018 amending Directive 2010/13 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities





**Excerpts from the Opinion of the CULT Committee to the Sargentini Report**

Rapporteur for the opinion: Petra Kammerevert (Initiative - Rule 45 of the Rules of Procedure)

**PROPOSALS**

[...]

**Media policy**

7. Is of the opinion that the Commission, when reviewing the media legislation of 2010, was not thorough enough and failed to take into consideration the values set out in Article 2 TFEU; recalls that in June 2015 the Venice Commission published its opinion on media legislation in Hungary, where it stated that several issues require revision as a priority, if the Hungarian authorities wish not only to improve the situation with regard to media freedom in the country, but also to change the public perception of media freedom.

8. Considers that the media law of 2010 with its insufficient cross-ownership rules resulted in a distorted and imbalanced media market; stresses that the Hungarian market has become more concentrated, plenty of independent local stations disappeared and the previously flourishing segment of community radios has also been losing out; believes that it is necessary to strengthen the transparency of media ownership, especially if the media outlet has been receiving public funds.

9. Is of the opinion that media council (into which all the members could be delegated only by the governing party since 2010) actively helped the restructuring of the radio market in order to satisfy the prevailing political needs; is outraged by the fact that the media council has failed to guarantee even the minimum level of balance in the media.

10. Emphasises that state advertising spending disproportionately favours certain media enterprises over others; points out that state spending was higher in 2017 than ever before and state advertisements are typically awarded to media that are loyal to the government, which are predominantly controlled

11. Recalls that in May 2017, the Parliament of Hungary adopted a law raising the country's advertising tax from 5,3 % to 7,5 %, which raises worries about possible pressure on the remaining independent media in the country; is concerned that political party advertising is only allowed in public and private media if it is free of charge, which has raised concerns in terms of limiting access to information, since private media may not be willing to broadcast free advertising; believes that it is necessary to ensure that public advertising contracts are concluded with all media in a fair and transparent manner;

12. Emphasises that the so-called public media broadcaster (MTVA), which includes all public radio and television stations, uncritically disseminates the government's messages and, in particular, continuously reflects the anti-refugee or campaigns carried out by the government; stresses that the public television station M1 as a 24-hour news channel

offers more possibilities than previously for propaganda and for transmitting the messages of the government;

13. Points out that the public media broadcaster does not comply with transparency requirements, provides no publicly accessible information for tracking the spending of public funds and, unlike many European public broadcasters, has no annual report, and that it is not known how it defines or discharges public service responsibilities;

14. Recalls that media freedom and pluralism are fundamental rights enshrined in Article 11 of the Charter of Fundamental Rights of the European Union and constitute the essential foundations of democratic societies; urges, therefore, the Hungarian government to guarantee media freedom and pluralism as a key value of the Union;

15. Stresses, with reference to the 'Democracy Index 2017', published recently by the Economist Intelligence Unit (EIU), and to the 2018 World Press Freedom Index by Reporters Without Borders that, as a result of State intervention and increased State control, media freedom and pluralism have been a source of major concern in Hungary in the past years; expresses its concerns, in that connection, over the sale and subsequent closure of Népszabadság, one of the oldest and most prestigious newspapers in Hungary;

16. Stresses that journalists of independent media are often seriously hindered while doing their job, media outlets are regularly banned from entering the Parliament building and spaces are restricted in the Parliament for journalists to ask and interview politicians;

17. Is concerned that the Hungarian government, after Hungary's last independent regional newspapers were taken over by [REDACTED] has recently further extended its control over the media, with media concentration in Hungary reaching an unprecedented and grotesque level according to 'Reporters Without Borders'; believes that it is necessary to strengthen the transparency of media ownership, especially if the entrepreneur has been awarded public contracts;

18. Regrets that the pro-government news website 888.hu recently published a black list of journalists working for foreign media, who are described as foreign propagandists [REDACTED] and that this clearly runs counter to the principle of media freedom;

[...]

**Excerpt from the Sargentini Report – reasoned proposal under Article 7(1) TEU**

[...]

**Freedom of expression**

(27) On 22 June 2015 the Venice Commission adopted its Opinion on Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, which called for several changes to the Press Act and the Media Act, in particular concerning the definition of "illegal media content", the disclosure of journalistic sources and sanctions on media outlets. Similar concerns had been expressed in the analysis commissioned by the [REDACTED] the OSCE [REDACTED] in February 2011, by the previous Council of Europe's [REDACTED] in [REDACTED] opinion on Hungary's media legislation in light of Council of Europe standards on freedom of the media of 25 February 2011, as well as by Council of Europe [REDACTED] on Hungarian media legislation in their expertise of 11 May 2012. In his statement of 29 January 2013, the Council of Europe's [REDACTED] welcomed the fact that discussions in the field of media have led to several important changes. Nevertheless, the remaining concerns were reiterated by the Council of Europe's [REDACTED] in the report following [REDACTED] visit to Hungary, which was published on 16 December 2014. [REDACTED] also mentioned the issues of concentration of media ownership and self-censorship and indicated that the legal framework criminalising defamation should be repealed.

(28) In its Opinion of 22 June 2015 on Media Legislation, the Venice Commission acknowledged the efforts of the Hungarian government, over the years, to improve on the original text of the Media Acts, in line with comments from various observers, including the Council of Europe, and positively noted the willingness of the Hungarian authorities to continue the dialogue. Nevertheless, the Venice Commission insisted on the need to change the rules governing the election of the members of the Media Council to ensure fair representation of socially significant political and other groups and that the method of appointment and the position of the Chairperson of the Media Council or the President of the Media Authority should be revisited in order to reduce the concentration of powers and secure political neutrality; the Board of Trustees should also be reformed along those lines. The Venice Commission also recommended the decentralisation of the governance of public service media providers and that the National News Agency not be the exclusive provider of news for public service media providers. Similar concerns had been expressed in the analysis commissioned by the [redacted] the OSCE [redacted] in February 2011, by the previous Council of Europe's [redacted] in [redacted] opinion on Hungary's media legislation in light of Council of Europe standards on freedom of the media of 25 February 2011, as well as by Council of Europe [redacted] on Hungarian media legislation in their expertise of 11 May 2012. In [redacted] statement of 29 January 2013, the Council of Europe's [redacted] welcomed the fact that discussions in the field of media have led to several important changes. Nevertheless, the remaining concerns were reiterated by the Council of Europe's [redacted] in the report following [redacted] visit to Hungary, which was published on 16 December 2014.

(29) On 18 October 2012, the Venice Commission adopted its Opinion on Act CXII of 2011 on Informational Self-Determination and Freedom of Information of Hungary. Despite the overall positive assessment, the Venice Commission identified the need for further improvements. However, following subsequent amendments to that law, the right to access government information has been significantly restricted further. Those amendments were criticised in the analysis commissioned by [redacted] the OSCE [redacted] in March 2016. It indicated that the amounts to be charged for direct costs appear to be entirely reasonable, but the charging for the time of public officials to answer requests is unacceptable. As was acknowledged by the Commission's 2018 country report, the [redacted] and the courts, including the Constitutional Court, have taken a progressive position in transparency-related cases.

(30) In its preliminary findings and conclusions, adopted on 9 April 2018, the limited election observation mission of the OSCE [redacted] for the 2018 Hungarian parliamentary elections stated that access to information as well as the freedoms of the media and association have been restricted, including by recent legal changes and that media coverage of the campaign was extensive, yet highly polarized and lacking critical analysis. The public broadcaster fulfilled its mandate to provide free airtime to contestants, but its newscasts and editorial output clearly favoured the ruling coalition, which is at odds with international standards. Most commercial broadcasters were partisan in their coverage, either for ruling or opposition parties. Online media provided a platform for pluralistic, issue-oriented political debate. It further noted that politicisation of the ownership, coupled with a restrictive legal framework, had a chilling effect on editorial freedom, hindering voters' access to pluralistic information. It also mentioned that the amendments introduced undue restrictions on access to information by broadening the definition of information not subject to disclosure and by increasing the fee for handling information requests.

(31) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns about Hungary's media laws and practices that restrict freedom of opinion and expression. It was concerned that, following successive changes in the law, the current legislative framework does not fully ensure an uncensored and unhindered press. It noted with concern that the Media Council and the Media Authority lack sufficient

independence to perform their functions and have overbroad regulatory and sanctioning powers.

(32) On 13 April 2018, the OSCE [REDACTED] strongly condemned the publication of a list of more than 200 people by a Hungarian media outlet which claimed that over 2 000 people, including those listed by name, are allegedly working to “topple the government”. The list was published by the Hungarian magazine Figyelő on 11 April and includes many journalists and other citizens. On 7 May 2018, the OSCE [REDACTED] expressed major concern over the denial of accreditation to several independent journalists, which prevented them from reporting from the inaugural meeting of Hungary’s new parliament. It was further noted that such an event should not be used as a tool to curb the content of critical reporting and that such a practice sets a bad precedent for the new term of Hungary’s parliament.