



Neelie Kroes  
Vice President of the European Commission  
Commissioner for Digital Agenda

Brussels, 30 March 2011  
Our Ref.: B1059

Dear Commissioner,

**Subject: Concerns over the threat to the right to freedom of expression in Hungary**

In a briefing we released this month, we expressed our misgivings about Hungary's new media laws and their impact on the right to freedom of expression (the Press & Media Act and the Act on Media Services & Mass Media were adopted in September and December 2010 and amended by the Hungarian Parliament in March this year). The Commission's role has been crucial in prompting the Hungarian Government to change the laws to bring them into line with EU rules. Following the Commission's intervention, the Hungarian Parliament recently amended its legislation, introducing some of the changes for which the Commission called.

Despite the changes, we believe that the new laws retain serious flaws which may infringe freedom of expression in Hungary. Further revision is necessary to ensure that the new legislation meets EU and international human rights standards.

- The new laws retain a system of media regulation which allows the Government to impose restrictions on content based on vague concepts (including 'public morality', 'balanced reporting' and 'public interest') which do not come under the legitimate purposes outlined by international law
- The Hungarian law retains provisions which penalise non-compliance, despite the ECHR's finding that even relatively small fines might amount to censorship
- Retention of compulsory registration for all media is another source of concern. Although a media provider may now, post-amendment, launch an operation without registering, this is merely a provisional exemption, and it must still register later. Such a system threatens to create a legal, administrative and potentially political barrier to entry for new content providers (a possibility the OSCE has repeatedly highlighted), potentially threatening freedom of expression
- The new laws still fail to offer sufficient guarantees of independence for the National Media and Infocommunications Authority (NMHH). The manner in which the president and Media Council members (two organs which with the Bureau comprise the NMHH) are appointed seems insufficiently robust and may not ensure pluralism. The Hungarian Government has completely failed to tackle concerns which the OSCE, the Council of Europe and several national and international NGOs have raised about the NMHH's draconian powers, its excessively long term of office and, especially, its political composition

We believe changing the legislation to purge the appointment procedure of political influence is essential to achieving real independence for the Authority, thereby offering stronger guarantees that the system will not interfere with internationally-protected human rights.

Ensuring full compliance with European and international human rights standards is particularly symbolic while Hungary holds the EU presidency and should offer a virtuous example in protecting and enforcing human rights standards in the EU.

We share the view expressed by the European Parliament in its resolution of 10 March 2011, that the Hungarian Government should take further measures to bring the laws into line with the letter and spirit of the EU Treaties, the EU Charter of Fundamental Rights and the European Convention on Human Rights (ECHR).

We therefore call on the Commission to carry out a more thorough assessment of the Hungarian media laws' consistency with EU law and principles. We particularly urge the Commission further to investigate the Hungarian laws' compliance with the EU Charter of Fundamental Rights whose Article 11 lists the freedom of expression and information among the EU's core founding values and strongly to encourage Hungary to ensure the legislation complies with principles enshrined in the Charter.

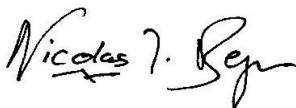
We also believe it essential to address the issue in cooperation with other EU institutions and Directorates General. We particularly believe it would be beneficial to work closely with Mrs Reding and DG Justice, Citizenship & Fundamental Rights. Coordinated action between the two DGs would make the Commission's approach more effective and would stress, by involving the DG responsible for protecting fundamental rights in the EU and implementing the Charter of Fundamental Rights, the central role the Charter ought to play in assessing the Hungarian laws' compliance (and that of any other law which threatens freedom of expression) with EU legislation.

This example highlights existing gaps in EU legislation and it is important, as the European Parliament stresses, to reflect on the possible need for new EU legislation on media freedom, pluralism and independent governance, to outline minimum standards which all member states must respect in national law to guarantee and promote freedom of information and media pluralism, which remain a great concern in several countries.

A strong Commission line and intense EU-level follow-up on this issue would give EU countries clear guidelines on guaranteeing the right to freedom of expression. It would also demonstrate the Commission's commitment to promoting respect for a core EU value. As the Commission prepares to release its first annual report on effective application of the Charter of Fundamental Rights, this would also send a timely signal that the Commission is poised to protect and promote rights detailed in the Charter.

We look forward to hearing from you further on this issue.

Yours sincerely,



Nicolas J. Beger  
Director

CC. Viviane Reding, Vice-President of the European Commission, Commissioner for Justice, Fundamental Rights and Citizenship.