This article reflects on the notion of media pluralism and the forms of its protection. It first offers a definition of pluralism drawn from recent proposals developed in the field of media studies. It then turns to an analysis of pluralism regulation taking Italy as a case study, Italy being the subject of a ruling by the Court of Justice of the European Union (ECJ) because it had disavowed the deterministic approach prevalent at the European level. The limitations of this approach are analysed with reference to the digital ecosystem, describing how the role of online platforms with respect to information pluralism is more multifaceted than it appears in mainstream narratives. Lastly, this article offers proposals to reconcile the prevailing scholarly theories in the field with the approach that has emerged from the legislation in order to bring the asset protected by pluralism – information – back to the focus of attention.

A DEFINITION OF PLURALISM

Notwithstanding a common understanding of the notion of pluralism, a definition is lacking in the legislation of most European countries. Not even the European Media Freedom Act (EMFA), the most recent attempt to regulate pluralism at the EU level, proposes a definition. It does, however, address its two traditionally accepted components – pluralism understood as a market arrangement and pluralism understood as a plurality of voices.

In search of a definition of pluralism, it is useful to refer to the proposal that comes from Raeijmaekers and Maeseele in a 2015 article entitled ‘Media, pluralism and democracy: What’s in a name?’ The authors pin down two criteria identifying media pluralism. The first lies in the ‘consensus/conflict’ distinction. In the so-called ‘affirmative’ media theories, the role of media is evaluated by their ability to represent and reproduce social consensus and the dominant socio-political order. These theories are characterised by the absence of critique of the status quo and by the tension towards reconciliation of dissent. Other theories, such as ‘critical media studies’, share a socio-centric approach and believe that media should be able to represent the structural inequalities and discriminations, the power conflicts and asymmetries of contemporary society.

The second distinction underlined by Raeijmaekers and Maeseele is ‘diversity/pluralism’. Diversity understands plurality as pre-existing media representations, a variation of society that is empirically observable. Pluralism refers to a contingent and embedded ideological variation, that is, to a diversity of opinions about and visions of society. While ‘diversity’ is a descriptive concept, ‘pluralism’ can be understood as a social value.

Cross-referencing the two criteria of consensus/conflict and diversity/pluralism, four different notions of media pluralism emerge. Depending on which one is referred to, assessments of the conditions that favour or harm pluralism and the role of the media will vary.

For the purposes of this contribution, it is useful to analyse only two of the notions proposed, both of which are based on the pole ‘diversity’. ‘Affirmative diversity’ refers to the idea of media as a ‘marketplace of ideas’ or a mirror of society. The media are expected to faithfully represent social heterogeneity. In this view, pluralism is ensured by a balanced and unbiased representation of social diversity, for instance, in terms of actors, issues and viewpoints.

The understanding of pluralism as ‘critical diversity’ focuses on the neutral and truthful representation of pre-existing social diversity too. However, in line with critical media studies, the ‘critical diversity’ approach stimulates contestation and questions the existing social order, assuming that this is characterised by economic power imbalances. Therefore, instead of focusing solely on media content, the concern here ‘lays mainly with the commercial interests and mechanisms of media organisations and the routines of media practitioners, and how these determine the level of diversity within media coverage’. The critical diversity approach to pluralism pays special attention to the economic dimensions of media, that is, their dimension as (cultural) industries. Subsequently, diversity of media content is interpreted as the result of a competitive mediascape, which is in turn understood as the presence of media outlets of different ownership. This is considered a
necessary and sufficient condition for ensuring media pluralism.

What should be stressed is that firstly, this approach is characterised by economic determinism and secondly, despite being only one of many possible approaches, it has become prominent. In Italy and in Europe, the safeguard of media and information pluralism has developed mainly from a competition law perspective and has always rested on the implicit equation that concentration and pluralism – however one understands it – are inversely proportional. There is no automatism, though. As Karpinnen notes, ‘increased competition in the media market can lead to greater diversity of media content as well as further homogenization.’ The limitations of the competition approach become even more evident in the digital ecosystem when considering the relationship between publishers and platforms. Let us now consider the legislation, with reference to the Italian case.

THE LIMITS OF PLURALISM AS COMPETITION AND THE ROLE OF PLATFORMS IN NEWS ACCESS

Until December 2021, the protection of pluralism in Italy was entrusted to TUSMAR (Testo Unico dei Servizi dei Media Audiovisivi e Radiofonici). Established in 2005, it introduced Agcom’s control on agreements and concentrations between companies as well as on the revenue thresholds that could be achieved by the operators in the markets included in the so-called ‘Integrated Communications System’ (SIC). However, in 2020 the ECJ expressly declared that this provision was contrary to EU law, on the grounds that merely exceeding certain thresholds automatically constituted an infringement of pluralism and, conversely, below this threshold pluralism was safe.

Nevertheless, the approach of economic determinism also remains in the TUSMA (Testo Unico sui Servizi dei Media Audiovisivi) adopted in November 2021. The law entrusts the protection of pluralism to the assessment by Agcom of ‘positions of significant market power that are detrimental to pluralism in the Integrated Communications System’ (Article 51). In addition to that, some changes to the list of markets forming the SIC are introduced. These changes do not appear to be sufficient to overcome the critical issues noted by the ECJ in its judgment, which considers revenues that derive from heterogeneous markets, which have little to do with information, to be misleading. An example is the online advertising market, which is now included in the SIC, even though advertising, online or offline, is not an issue of pluralism as commercials and banners are not information sources! The advertising market is nonetheless included among the relevant markets by TUSMA. This is because it contributes to determining the value of the SIC expressed in terms of operators’ revenues, which is the basis for determining their market shares and the possible exceeding of concentration thresholds which results – now only potentially rather than automatically – in a violation of pluralism.

Certainly, advertising is part of the information value chain and a central element of the news business. It is not an accident that the 2021 Media Pluralism Monitor identifies as a critical aspect of the digital environment the fact that platforms drain advertising resources (66 per cent is distributed among the three major tech firms, Google, Amazon and Facebook, with the remaining third divided among publishers). In fact, it is the competition between Big Tech and traditional publishers for advertising revenue, user attention and data, even through fake news, that is the main argument made by those who advocate an antitrust approach to counter the damage to democratic processes in data-driven markets.

However, in market assessments oriented to information pluralism, advertising should
be considered in relation to news content only. If, for example, a platform grows through the collection of online advertising revenue associated with pornographic services, there is no harm to pluralism. However if only one news outlet collected 100 per cent of online advertising revenue, this would be a symptom to be taken into account when assessing the health of information pluralism, since all available financial resources would benefit only that one news outlet.

At the same time, the role of platforms in information pluralism cannot be interpreted simplistically as a ‘cannibalisation’ of advertising revenues by platforms. News aggregators, search engines, social media and other online services play a significant role in providing access to a plurality of news content produced by third parties, including local and little-known sources.

The news services of online platforms benefit pluralism but also provide the traditional media with an important showcase, enabling them to secure a significant share of users’ attention. Elaboration of public data dating back to 2018 reveals that platforms represent the ‘front page’ of all newspapers for about 54 per cent of readers. For newspapers, it is possible to estimate an upper limit of revenues from traffic redirected by algorithms at about 500 million euros (valuing 54 per cent of information access from platforms). From this it can be calculated that it is press publishers who benefit from platforms rather than the other way around: news content represents for the latter 3-4 per cent of the content monetised through online advertising revenues – less than 100 million euros (4 per cent of total revenues).

The impact of platforms is especially evident in certain social categories and themes. If ‘older’ social media, such as Facebook, are divesting from news content and focusing on reels and entertainment, one in four young Americans get their information through TikTok, even on the war in Ukraine. It’s worth noting that social networks, as well as search engines, are often vehicles that direct users to the websites of the broadcasters and newspapers that represent the main source of information in many countries. For instance, the topmost visited Italian websites are precisely those of major news agencies and newspapers (Repubblica, Corriere della Sera, ANSA) with about 500 million visits each month and one billion page views.

This is not to downplay the critical aspects of the role played by platforms in the light of pluralism. Since platforms do not produce their own content but disseminate that produced by third parties, the main concern is about the moderation activity that stems from their business model and the role of algorithms in this activity. Information and advertising are treated equally in this regard: algorithms direct to users only the news that is most interesting to them based on their preferences. Algorithms personalise the services offered, selecting news content and its order on web pages and search results. It’s believed that this can harm the completeness of information that is received by users (and therefore informed public opinion) because the algorithms get to know users and propose information that is interesting to them, exploiting selective attention and confirmation bias. In this way, it is argued, we will never be exposed to different opinions or have the chance to compare them, to the detriment of information pluralism. As the expression ‘hype machine’ by Sinan Aral recalls, the integrated ecosystem constituted by social media is a marketplace of persuasion in which companies and politics compete for attention through digital marketing techniques that, via social media, can maximize the ability to emotionally hook the audience.

Looking at data on distribution and profits, it is crucial to debunk the oversimplified and polarised narrative around ‘fair remuneration’ measures recently introduced in several countries, Italy included. This narrative casts platforms in the role of economic predators and press publishers in the role of those which are preyed upon. In fact, as we have seen, their relationship is mutually beneficial, at least in economic terms. However, it is important to stress that revenues, per se, are a poor indicator of the health of information pluralism, or at least a non-exhaustive and sometimes even misleading one.

This is because pluralism is, by definition, a ‘market failure’; that is, a goal which cannot be achieved by competition alone. For newspapers, it is possible to estimate an upper limit of revenues from traffic redirected by algorithms at about 500 million euros (valuing 54 per cent of information access from platforms). From this it can be calculated that it is press publishers who benefit from platforms rather than the other way around: news content represents for the latter 3-4 per cent of the content monetised through online advertising revenues – less than 100 million euros (4 per cent of total revenues).

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This is because pluralism is, by definition, a ‘market failure’; that is, a goal which cannot be achieved by competition alone, nor by limiting the degree of market concentration. Going back to Raeijmaekers and Maeselee’s classification, the weaknesses of the critical diversity notion of pluralism, linking the diversity of media content to the presence of media outlets of different ownership, now appear more evident: even a competitive context could harm pluralism if all the media outlets were to favour only a few social actors and viewpoints, to the detriment of social heterogeneity. On the other hand, and paradoxically, a monopolistic context could ensure pluralistic conditions if news media were able to give access to a plurality of opinion-bearers of different backgrounds and cultural orientations.

"Pluralism is, by definition, a ‘market failure’; that is, a goal which cannot be achieved by competition alone."
CONCLUSIONS AND PROPOSALS

The Italian TUSMA decree sets out an attempt to safeguard pluralism that no longer relies on a purely competition law approach, but takes into account plurality of content. For example, pluralism is understood as ‘openness to different political, social, cultural and religious opinions and tendencies’. In addition, for the first time, pluralism is addressed in relation to the specific domain of news and information. (This would seem to go without saying, in the context of the protection of information pluralism, and yet the former TUSMAR did not make a single mention of news, current affairs or other journalism genres.)

In the text there is also mention of ‘user access, according to criteria of non-discrimination, to a wide variety of information and content offered by a plurality of national, local and other EU Member State outlets’, ‘plurality of editorial lines’ and even more recently, the ‘principle of specialty’ states that TUSMA prevails over the European Electronic Communications Code (EECC) ‘in view of the objectives of protecting pluralism’. This is an implicit admission that competition, which is protected by the the EECC, is not alone capable of ensuring an adequate level of pluralism.

More importantly, the prohibition of positions of significant market power detrimental to pluralism no longer refers, generically, only to the ‘market’ but finally also to the specifics of ‘information services’. Non-economic and competitive parameters are introduced for the first time. This creates a new methodological challenge, given the multimedia and convergent nature of most media companies, the multiple vehicles of media content distribution and the different metrics involved.

There are two operations necessary to rethink the protection of this collective good in a way that transcends the economic determinism of the current legislation and develops what the TUSMA has introduced:

1. Bring information back to the centre of the system, by defining clearly not only the term ‘pluralism’, as this article has attempted to do, but also the term ‘information’ itself. In this way we can identify the type of media content and services that are relevant for the purposes of the legislation.

2. Develop reliable methodologies to measure the state of media representation of diversity – that is, to identify criteria, conditions and forms of access of opinion-bearers to the media.

Media and communication theories ascribe to the macro-genre of news and documentaries all those media formats and genres deputed to represent factual reality, and with which the public establishes a ‘contract of truthfulness’, i.e. they expect such products to tell the truth.

‘True’ is to be understood not as opposed to ‘false’ (since truth is a controversial and disputable concept) but as opposed to ‘fake’ in the sense of artifact, or the result of imagination, such as fiction. As well as the wide galaxy of products somewhere between ‘real’ and ‘fictional’, such as factual entertainment, fiction contributes strongly to the social construction of reality by audiences, the shaping of public opinion and collective imaginaries. However, for the purpose of delimiting the object of our analysis, only properly ‘informative content’ – characterised by journalistic sources and correlation with current affairs and public sphere issues, such as politics, economics, finance, culture, society, etc. – are relevant. Examples include newspapers and news broadcasts as well as talk shows and infotainment.

Having clarified what is meant by ‘information’, it becomes necessary to circumscribe the scope of the discipline and identify which information services/content are offered by media companies (online and offline) and online platforms. This is crucial to avoid disproportionate measures that may distort the goal of ensuring complete and effective cultural diversity of information sources.

We come to the second ‘operation’, which is the measurement of the state of media representation of a variety of voices. The idea is that online platforms and media companies (online and offline) should be seen as intermediaries that connect producers of news content with the users of that content (the public). The media company should therefore be called upon to provide in a transparent and non-discriminatory manner the widest access to producers of information content and services with the aim of ensuring the visibility of the full spectrum of cultural diversity in a society. Instead, at present, in many European countries the conditions of access to media companies by opinion-bearers are largely unknown.

The first step is therefore a recognition of the criteria and conditions of access, without which effective measures cannot be developed to guarantee the completeness and diversity of information sources. The motto ‘to know in order to deliberate’ means introducing evidence-based regulation, which will enable sectoral authorities to make decisions based on quantified and verifiable data.

REFERENCES

1 Some of these ideas are to be found in Il pluralismo informativo tra teorie dei media e (limiti della) tutela normativa. Proposte per una evidence-based regulation. Report 2023 dell’Osservatorio sul Giornalismo Digitale, April 2023. bit.ly/3PMJwJ


4 See note 3, p.1050. 5 See note 3, p.1056. 6 Karppinen K (2013). Rethinking Media Pluralism. Fordham University Press, p.4. The Italian regulatory authority in the field of communications – Autorità per le Garanzie nelle Comunicazioni (AGCOM) – has enriched the ‘market’ concept in its decisions, notably in ruling in C-719/18, Vivendi SA, Judgment of the Court (Fifth Chamber) of 5 September 2020, bit.ly/3GfHbH5, 9 Legislative Decree 268/2020, bit.ly/3Sc5Lmm (Note 9, Article 3 (1) now included in the SIC, Sistema Integrato delle Comunicazioni) are daily and periodic press activities, news agencies, electronic publishing via the internet, radio and audiovisual media services, cinema, outdoor advertising, sponsorship and online advertising, bit.ly/2BwRkR.


