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# **MEDIA INFLUENCE MATRIX: ROMANIA**

## **Government, Politics and Regulation**

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# About CMDS

The Center for Media, Data and Society (CMDS) is a research center for the study of media, communication, and information policy and its impact on society and practice. Founded in 2004 as the Center for Media and Communication Studies, CMDS is part of Central European University's School of Public Policy and serves as a focal point for an international network of acclaimed scholars, research institutions and activists.

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## LEGAL OVERVIEW

Romania's media and communication content is regulated through several laws. The Audiovisual Law no 502 of 2002 defines the main types of content, actors and activities in the broadcast industry. It has since been amended several times.

Romania does not have a press law per se. The written press and online content are an unregulated field, but they are subject to a series of regulations enshrined in the penal and civil codes. Censorship is forbidden in Romania, but content can be regulated through the interventions of several institutions that promote and guarantee respect for human rights and punish hate speech and discriminatory practices.

In addition, codes of conduct adopted by professional organizations are in place. Hate speech is not protected under Romanian law and the right to rectify and react is guaranteed for individuals who have been subjected by broadcasters to "inexact portrayals or information"[1] Source protection is also guaranteed by law[2], but it comes with the responsibility to provide accurate information. Courts can ask for sources to be revealed if matters of national security and public order demand it or if the resolution of a legal case demands it when all other options have been exhausted. Defamation, libel and slander were decriminalized in Romania through an amendment to the Penal Code that was adopted in 2009, but entered into force in 2014.

Today, they are not considered criminal offenses. However, defamation, libel and

slander are regulated through the Civil Code, which acknowledges the right to personal dignity and public image, allowing people who feel libeled to ask for financial compensation.

In a nutshell, Romania has a media law framework that is compatible with European Union (EU) legislation and that, in theory, creates an enabling environment for independent journalism. However, there are major policy issues that shape the everyday practice of journalism as well as a few unrelated laws that have an impact on the labor conditions for journalists.

Media regulation is almost exclusively shaped by state bodies such as parliamentary committees, state-administered regulators and, occasionally, initiatives launched by MPs who usually have little to no expertise in the field. Associations of journalists and civil society groups usually react to already adopted laws and policies, but they only seldom have managed to push through media regulations and policies. On the other hand, they have played a major role in the country's media policy by preventing on numerous occasions legislation deemed to be harmful for journalists from being adopted. Civil society groups have been also actively involved in monitoring the legislative and regulatory developments.

Nevertheless, faced with a dearth of human and financial resources, civil society groups have not managed to push for a serious debate or long-term strategy to create a safe and productive environment for journalism.[3]

[1] Audiovisual Law no 504/2002, further amended, available online (in Romanian) at [http://www.cna.ro/IMG/pdf/LEGEA\\_AUDIOVIZUALULUI\\_nr.\\_504\\_din\\_2002\\_CU\\_MODIFICARILE\\_LA\\_ZI\\_IUNIE\\_2019.pdf](http://www.cna.ro/IMG/pdf/LEGEA_AUDIOVIZUALULUI_nr._504_din_2002_CU_MODIFICARILE_LA_ZI_IUNIE_2019.pdf) (accessed on 23 June 2019).

[2] Source protection is guaranteed by the Audiovisual Law, by the law regulating the Agerpres news agency (Law no 19/2003) and the law regulating the public television and radio broadcasters (Law no 41/1994). Romania is also a signatory of the European Convention on Human Rights (ECHR), which guarantees source protection for journalists. Although there is no "press law" as such that would guarantee the same source protection for the print and online media, the international conventions Romania is a signatory of should (in theory) protect all forms of journalism.

[3] Ioana Avadani, Propunere de politici pentru o presă liberă și independentă în România (Proposal for policies for a free and independent press in Romania), 2012, Hertie School of Governance, available online at: <https://www.eliamep.gr/wp-content/uploads/2012/11/Romania.pdf> (accessed on 6 June 2019); see also (in Romanian), Monica Cercelescu, Libertatea presei vs. libertatea de exprimare a avocatului. Limite comune și specifice (Freedom of the Press vs the lawyer's freedom of expression. Common and specific limits), 2015, available online at: <https://www.juridice.ro/412841/libertatea-presei-vs-libertatea-de-exprimare-a-avocatului-limite-comune-si-specifice.html> (accessed on 6 June 2019).

A landmark event for the professionalization in journalism in Romania was the adoption of the Deontological Code by the Convention of Media Organizations (COM) in 2004. Established in 2002, COM was at the time an alliance of 40 or so professional media organizations and individuals including owners, media outlets and professional associations. The Code consists of principles, rights and obligations that journalists are supposed to follow in doing their work. It recognizes journalism as a public interest profession, stating that journalists have the right to refuse to carry out tasks that conflict with their values. Although such internal codes of conduct are important in shaping the professional identity of journalists and a vital instrument to build trust, lack of influential professional associations in the area hinder their implementation. It is believed that some journalists follow the Code's rules, but the community of journalists needs to enforce the Code as a professional practice to see some impact.

In addition to media legislation and self-regulation, journalists who live and work in Romania have been seriously affected by changes in the labor legislation that were passed in 2011. The changes effectively abolished the journalists' right to negotiate a collective labor contract as media was no longer recognized as a standalone industry. The sector was merged with culture

into a new legal category that became known as the "media and culture industry" covering a wide range of professions from singers to actors to dancers to journalists and printing house employees. The 2011 legal provisions that led to these changes were criticized by many of these groups because they have very different priorities and interests.

Finally, regulation of data protection and access to information policies has a significant impact on journalists' everyday work. Access to public information is guaranteed by the Romanian legislation, but, in practice, state institutions are slow to adopt good practices such as regularly publishing data and reports on their websites. Obtaining public information is hindered by bureaucracy and, often, the authorities' reluctance to share public data. In fact, some of the legal provisions that would normally help journalists get access to information to properly do their job have been used against them. Romanian data protection legislation, which transposes new EU legal provisions collected in the General Data Protection Regulation (GDPR) [4] has been used in one high-profile corruption case to ask journalists to reveal their sources.[5]

Overall, despite a fairly permissive and adequate legal framework, institutional practices and implementation of the law have serious negative consequences for Romanian journalism.

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[4] Regulation (EU) 2016/679 of the European Parliament and of the Council, the European Union's ('EU') new General Data Protection Regulation ('GDPR'), regulates the processing by an individual, a company or an organization of personal data relating to individuals in the EU. Additional information is available online at [https://ec.europa.eu/info/law/law-topic/data-protection/reform/what-does-general-data-protection-regulation-gdpr-govern\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/reform/what-does-general-data-protection-regulation-gdpr-govern_en) (accessed on 15 June 2019).

[5] The author refers here to a raid conducted by the National Data Protection Agency against an investigative journalism initiative (RISE Project) whose journalists published a series of reports about the businesses of the (then) Social Democrat leader, Liviu Dragnea, the de facto most influential person in Romania's political power until recently. A discussion about the relation with the GDPR is available at <https://www.theatlantic.com/ideas/archive/2019/06/europes-gdpr-elevated-privacy-over-press-freedom/590845/> (accessed on 15 June 2019).

# REGULATORY AUTHORITIES

## Operational aspects

### Broadcast Media and Frequency Spectrum

#### The National Audiovisual Council (*Consiliul Național al Audiovizualului, CNA*)

##### *Remit and Tasks*

The National Audiovisual Council (Consiliul Național al Audiovizualului, CNA) is the main regulatory body for television and radio in Romania. CNA's main responsibilities, as stated in a publicly available list of tasks,[6] are to monitor how broadcasters comply with existing legal provisions, to promote media literacy and education and to ensure market competitiveness and fairness.



The CNA also regulates the radio frequency spectrum and is tasked with licensing television and radio broadcasters.

Licenses for audiovisual operators are given for a nine-year period. In the license application process, the Council verifies whether the applicants comply with a series of licensing requirements, both technical and organizational, put forward in the law. Among other things, the CNA has to ensure the applicants for broadcast licenses do not have any debts to the state and do not hold a monopoly.[7]

##### *Board Composition*

The Council is accountable to Parliament. Its eleven members are appointed by the two chambers of Parliament (three appointments by the Senate and three by the Chamber of Deputies), the President (2), and the Government (3). Each member serves a six-year term.

Members of the Council should, in theory, have expertise in the field, as they must understand legislation, implement regulations and decide on complex issues such as freedom of expression and privacy rights. Since its creation in 1994, the CNA has been staffed with people coming mostly from the fields of arts and culture, and less with journalists and media or legal experts.[8] Political appointments are customary and a battle for political representation takes place when new members are appointed.

[6] More information available on CNA's website at <http://www.cna.ro/-Consiliul-.html> (accessed on 15 June 2019).

[7] Exceptions include cases when the state allows delayed payment (in installments) or debt relief.

[8] Raluca Petre, *Media Regulatory Bodies in Romania; the limits of institutional change, Models for Journalism and Communication*, 2010, Are Docendi, Bucharest, pp 290-298.

The current Council does have a few members who identify themselves as journalists and writers and is led by a newly appointed president (Maria Monica Gubernat)[9] who has a post-graduate degree in media and communication studies. Members of the Council are obliged by law to be politically independent (meaning that they should not be affiliated with a party or serve political functions). However, most of them have long political careers behind them, which they pause once they are appointed in the CNA.

Out of the 11 members of the Council (including its president), one is a media expert, two are former journalists, two are practicing writers and journalists, two have technical experience in media or regulation, three had mostly political careers, and one is a psychologist.

#### List of CNA members, June 2019[10]

- Maria Monica Gubernat (PhD in media and communication studies, elected CNA president in April 2019)
- Radu Călin Cristea (literary critic)
- Răsvan Popescu (writer, film critic, journalist)
- Radu Herjeu (journalist and writer)
- Gabriel Tufeanu (technical experience in television)
- Nicolaie Bălașa (writer, former CNA inspector for 20 years)
- Ramona Sorescu (executive director, Realitatea TV, new member)
- Orsolya Borsos (worked for the Ministry of European Funds, new mandate since December 2018)
- Alexandru Kocsis (child protection, psychology)
- Cristina Pocora (political career with the National Liberal Party (PNL), proposed by the Presidency)
- Dorina Rusu (political career with the PNL, journalist)

#### *Funding*

The Council, which is funded with public money, has seen a steady increase in its budget since 2013.

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[9] Maria Monica Gubernat's position had to be formally validated by the Parliament at the time of writing.

[10] Iulia Bunea, "CNA, raport de activitate 2018. Kanal D, cel mai amendat post generalist. Realitatea TV, cea mai sancționată televiziune de știri" (CNA activity report 2018. Kanal D the most fined generalist TV channel. Realitatea TV the most fined news channel), *Paginademediam.ro*, 5 April 2019, available online at <https://www.paginademediam.ro/2019/04/cna-raport-de-activitate-2018> (accessed on 6 June 2019); see also the CNA's website, available online at <http://www.cna.ro/-Consiliul-.html> (accessed on 15 June 2019).



## The regulator's accounts

### The CNA budget

		2013	2014	2015	2016	2017	2018
Income	'000 RON	8,299	8,491	8,347	9,765	9,486	11,001
	'000 €	1,881	1,912	1,879	2,174	2,080	2,365
Expenditure	'000 RON	8,268	8,426	8,283	9,765	9,432	10,889
	'000 €	1,874	1,897	1,865	2,174	2,068	2,341

\*The yearly average exchange rate of the Romanian National Bank (BNR) was used to calculate Euro figures in this report.

Source: CNA annual reports

## The National Authority for Management and Regulation in Communications of Romania (*Autoritatea Națională pentru Administrare și Reglementare în Comunicații, ANCOM*)

### *Remit and Tasks*

ANCOM is an autonomous authority under the control of Parliament. The institution monitors electronic communication in Romania, overseeing all communication markets (including internet, radio frequency spectrum, telephone and postal services) and the infrastructure that supports these services. In addition to these tasks, ANCOM also has regulatory and consultative responsibilities.

### *Board Composition*

The president and the two vice-presidents of ANCOM are appointed by Parliament. The authority has over 600 employees.

The current leadership of ANCOM consists of President Sorin Grindeanu (an IT engineer, former Prime Minister) and Vice Presidents Eduard Lovin (an ANCOM expert with 10+ years in the institution) and Bogdan Iana (an ANCOM expert with 20+ years in the institution).

Mr Grindeanu, the current ANCOM president, is a former Prime Minister from the Social Democratic Party (PSD). He was removed from that position through a no-confidence motion in June 2017 after a series of conflicts with the party's then president, Liviu Dragnea.

### *Funding*

ANCOM is not funded by public money, but from fees that it collects for use and management of frequencies as well as taxes for telephone number allocation. ANCOM had a budget excess in 2017, which it proposed to use to develop internet infrastructure for the “digitally excluded”.<sup>[11]</sup>

[11] Adrian Vasilache, “Proiect de OUG: Arbitrul telecom va putea aloca până la 500 milioane de lei din excedentul din 2017 pentru proiecte care să dezvolte comunicațiile electronice din România” (NGO project: the telecom watchdog will be able to allocate up to RON 500m from its 2017 excess budget for projects aimed at developing electronic communication in Romania), HotNews.ro, 2 July 2018, available online at <https://economie.hotnews.ro/stiri-telecom-22542492-proiect-oug-arbitrul-telecom-putea-aloca-500-milioane-lei-din-excedentul-din-2017-pentru-proiecte-care-dezvolte-comunica-iile-electronice-din-romnia.htm> (accessed on 6 June 2019)

## The regulator's accounts

### ANCOM budget and expenditures

		2013	2014	2015	2016	2017	2018
Income	'000 RON	369,256	421,464	388,405	452,541	464,865	n/a
	'000 €	83,731	94,924	86,504	99,241	99,970	n/a
Expenditure	'000 RON	207,112	157,333	160,036	161,782	172,743	n/a
	'000 €	46,964	35,435	36,044	36,031	37,882	n/a

n/a: not available

Source: ANCOM annual reports

## Print Media Regulators

Print and online media are unregulated in Romania, but their content can be subject to various unrelated laws such as legislation that protects minorities from hate speech, laws on discrimination and incitement to violence as well as legislation that protects the right to privacy, dignity and public image.

## Internet Regulators



Online content is not regulated in Romania. ANCOM, the country's telecom regulator, is in charge of regulating the internet, but its responsibilities are mostly limited to technical issues.

Debates in the public sphere about the need to regulate online content, especially fake news and its impact on the electoral process, have been heating up recently. There is resistance to such initiatives from a few civil society organizations that see any attempt to regulate speech as a potential tool that political and business elites can use to persecute journalists. Most recently an action by Facebook against fake accounts present on its platform sparked a debate about how much space a privately held, commercially funded company like Facebook can have to regulate free speech.

The broadcast watchdog, CNA has a mandate to sanction television and radio stations in cases when they deliberately spread fake information, but it has no mandate over the print and online media.

## Data Protection Regulators

### The National Supervisory Authority for Personal Data Processing (*Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, ANSPDCP*)

#### *Remit and Tasks*

As a national authority, ANSPDCP is under the control of the Senate (the upper house of Romania's Parliament). The ANSPDCP's president has a status similar to a state secretary.

The authority monitors the implementation of national and international legislation, approves and proposes legislation, and monitors the activity of data-carrying operators. It manages and oversees the implementation of the GDPR, which in 2018 was its most challenging task.

#### *Board Composition*

As in the case of other regulators in Romania, the leadership of the data authority lacks expertise and experience in the field that it manages. Although regulations require the president and the vice-president of the data authority to have at least ten years of experience in a relevant field, in reality, its high-ranking managers were appointed mainly on political grounds, specifically thanks to their political loyalty to the PSD.

Both ANSPDCP leaders worked as councilors for various prominent party members and have not previously worked in any position that would qualify them to lead the country's data protection watchdog. Moreover, the ANSPDCP's president Ancuța Gianina Opre is enmeshed in an ongoing corruption investigation that was launched in 2017, targeting activities related to her position in the National Authority for Restitution of Properties (*Autoritatea Națională pentru Restituirea Proprietăților, ANRP*), the institution in charge of returning properties confiscated by the communist regime before 1989 and compensating people for losing those properties to the communists.

#### **Leadership of the ANSPDCP, June 2019**

- Ancuța Gianina Opre – President (political career in PSD, former councilor of PSD Prime Minister Mircea Geoană)
- Mirela Nistoroiu – Vice-president

#### *Funding*

The budget of the ANSPDCP has increased between 2013 and 2017 to some €1m. In 2017, it was more or less the same as in the previous year.

## The regulator's accounts

### ANSPDCP budget and expenditure, 2013-2017

		2013	2014	2015	2016	2017
Total income	'000 RON	2.894	2.945	2.949	4.851	4.585
	'000 EUR	656	663	656	1.092	1.005
Expenditure	'000 RON	2.853	2.885	2.868	4.767	4.287
	'000 EUR	646	649	645	1.061	921

Source: ANSPDCP annual reports

## Other Institutions with Regulatory Powers

### Ministry of Communications and Information Society (*Ministerul Comunicațiilor și Societății Informaționale*)

The ministry at the time of writing was headed by Alexandru Petrescu, a former member of the PSD, who used to be the head of the Romanian Post. Also a former minister for economy who was proposed to become director for ANCOM, he has a background in business administration and heads an institution largely focused on internet and communication technology and infrastructure that guarantees a well-functioning electronic communication in Romania. A quick look at the ministry's strategy and recent projects shows activities in the fields of cyber security, work aimed at bridging the digital divide in Romania, and introduction of better communication technology in the country.

The ministry has been absent from debates on freedom of the press, access to information or free speech. Its mandate is mostly focused on technology and infrastructure and in such a capacity it can influence people's access to information. Especially by addressing issues of access to new media and technology among marginalized groups, the ministry is in the position to shape media practices. However, its overemphasis on infrastructure development leaves a question mark on its capacity to address the social and economic causes of the digital divide in Romania.

### Parliamentary Committees

Committees are parliamentary bodies formed in the Chamber of Deputies, the lower house of Parliament. They do not have decision-making power but are entitled to propose and review legislation, having a consultative role and the right to monitor the activity of Parliament in their area of expertise. Nonetheless, members of these committees are not appointed based on their expertise. These committees rather reflect the political composition of Parliament.

Two parliamentary committees have influence in the media.

**The Committee for Culture, Arts and Mass Media** is responsible for media affairs and also culture and the arts, as the name suggests. The committee has 15 members, with its current leadership consisting of a former priest, an economist, a lawyer and a politician.

#### Leadership of culture, arts and mass media committee

President:

- Gigel-Sorinel Știrbu (former priest, studies in theology and history, representative of the National Liberal Party, PNL)

Vice Presidents:

- Dragoș-Petruț Bârlădeanu (economist, former councilor of Vrancea, PSD)
- Damian Florea (politician, PSD)
- Adriana Diana Tușa (lawyer, politician, PSD)

At a quick glance, the activity of the committee mainly consists of incendiary public statements, usually in the form of political attacks, orchestrated by its president, against the governing party and some of its members. The committee meets once a week and debates themes ranging from the establishment of museums to organization of cultural events and the structure of the Romanian Academy to access to information policy to abusive practices inside the public service broadcasters and the use of mobile applications by state authorities.

**The Committee for Technology and Communication** has a much more focused technical area of expertise. It also has 15 members and meets on a weekly basis. It is less vocal publicly, focusing on topics primarily related to communication infrastructure. The committee does have a software engineer as president, however, the rest of its leadership lack expertise in the field covered by the committee. The vice-presidents of the committee are a former professional boxer, a civil engineer and a representative of national minorities hardly known by the public.

#### Leadership of the Committee for Technology and Communication

President:

- Cătălin Drulă (software engineer, Union Save Romania, USR)

Vice Presidents:

- Vasile Cîtea (former boxer, PSD)
- Ionela Viorela Dobrică (construction engineer, PSD)
- Mariana-Venera Popescu (representative of minorities)

**The National Council for Combating Discrimination** (*Consiliul Național pentru Combaterea Discriminării*, CNCD) is not a media regulator. However, it does have the power to influence media content. Its mandate is to protect groups vulnerable to discrimination and to impose sanctions, usually fines, on discrimination perpetrators. As it covers media, it complements in some ways the work of the CNA[12] on radio and television programs. Unlike CNA, however, the CNCD also oversees the print and online media.

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[12] The two institutions cooperate in cases of discrimination and hate speech. For example, CNA regularly sends cases to CNCD for review.

In 2018, CNCD reviewed 74 cases of speech that qualified as attacks on “human dignity,” out of which 48 were carried out in the media (both traditional and online media). The CNCD’s decisions are accompanied by warnings or fines. All the journalists investigated by CNCD received fines (17 in total), according to ActiveWatch, a Bucharest-based media freedom watchdog.[13] Given the speed with which CNCD solved cases involving the governing party (PSD) and the outcomes that are usually favorable to PSD, ActiveWatch suspected CNCD of political bias.

## Decision-Making Process

### Key Decision-Makers in Regulation & Policymaking

Although the media system is dominated by private enterprises, the legislation is almost solely dictated by the state.[14] The institutions that have the mandate to propose policy and legislation in the field are the National Audiovisual Council (CNA), the National Authority for Management and Regulation in Communications of Romania (ANCOM), the parliamentary committees responsible for mass media and technology, and individual MPs who can propose legislation. The civil society organizations have on occasion a consultative role and the labor and employers’ organizations have some leverage too, but in recent years they have had a rather reactive than an active role.

Two characteristics of the Romanian media policy and regulatory field are notable. One is that the legal framework is in theory enabling journalists to perform their job efficiently. However at the policy and practice level, principles guaranteed in legislation are not respected. The second is that there is a serious lack of expertise in the regulatory bodies that results in a lack of strategy in managing the field. These two problems allow for a rather ad hoc decision-making process. The fact that there are no serious battles to be fought over legislation means that traditional bodies that would engage in policymaking are not engaged systematically in the process. The fight over institutional practices is a trench warfare that engages actors in smaller, but constant battles.

Thus, it is difficult to identify individuals with long-term planning and strategy in their media policy approach. Some do shape media policy by not performing their tasks and allowing their institutions to be used as instruments in political battles.

#### CNA

**Maria Monica Gubernat**, the president of the CNA, has a PhD in media and communication studies. She has been a member of the Council since 2012, appointed by the PSD. She has a long history of membership in the party, working for the PSD electoral campaign as early as 2000.



Source: CNA

[13] For more details, see Raportul anual cu privire la discursul intolerant și instigator la ură (Annual report on intolerance and hate speech), ActiveWatch, June 2019, available online at <https://activewatch.ro/ro/antidiscriminare/publicatii/raportul-anual-cu-privire-la-discursul-intolerant-si-instigator-la-ura> (accessed on 23 June 2019).

[14] Ioana Avadani, Propunere de politici, cit.



Source: CNA

**Nicolaie Bălașa-Sorescu** is the vice-president of the Council. He has a PhD in philosophy. Mr Bălașa-Sorescu has been working for the Council since 1995. Although it might seem unfair to hold two recently appointed council members accountable for their institution's failures, both Ms Gubernat and Mr Bălașa-Sorescu have been in the Council for long enough to share some of this responsibility. The CNA has been in the spotlight repeatedly for failing to perform either by postponing or not making difficult decisions, by not actively intervening in stopping harmful legislation and by not taking the lead in the regulatory process.

### The Committee for Culture, Arts and Mass Media

A priest-turned-politician, member of the National Liberal Party (PNL), **Gigel Sorinel Știrbu** is the president of the committee. He has a PhD in history and also attended courses at the National Defense University and in diplomacy. He had a one-year mandate (2013-2014) as culture minister. He is known for his vituperative attacks on PSD, the governing party. He has more expertise and experience in the arts and culture fields than in the media. In the past couple of years, he has proposed legislation that, among other things, would make Romanian language programs more accessible to hearing impaired<sup>[15]</sup> and shed transparency on copyrighted material.<sup>[16]</sup> He called on the CNA to be more active in monitoring abuses during the May 2019 European election campaign. Mr Știrbu's role is important as all legislative initiatives in the media are first assessed by his committee.



Source: Romanian Parliament

### The National Supervisory Authority for Personal Data Processing



Source: actual24.ro

Both **Ancuța Gianina Opre** (president, on the left) and **Mirela Nistoroiu** (vice-president, on the right) of the data protection authority have been political appointments with connections to the PSD. Their lack of expertise in the field of data protection at a time when their institution is supposed to manage the implementation of the GDPR, a major piece of EU law, raises serious concerns. The two allowed their institution to be used by the former PSD leader Liviu Dragnea in a case of intimidation of journalists investigating alleged acts of corruption. Mr Dragnea, one day after the EU

elections, was put behind bars following a lengthy corruption-related lawsuit. The use of EU legislation against independent journalists, which outraged the journalism community in Romania and abroad, was aimed to send a message to other valiant journalists. An institution whose mission is to monitor how privacy-related issues are respected can't get itself involved in political vendettas. On the long run, the lack of expertise and competence in the data authority is a serious threat to press freedom.



Source: dpo-net.ro

[15] See the text of the amendment (in Romanian) at [http://www.cdep.ro/pls/proiecte/docs/2018/cd089\\_18.pdf](http://www.cdep.ro/pls/proiecte/docs/2018/cd089_18.pdf) (accessed on 15 June 2019).

[16] See the text of the amendment (in Romanian) at <http://www.cdep.ro/proiecte/2019/000/60/8/se71.pdf> (accessed on 15 June 2019).

## Transparency of Decision-Making in Media Regulation

Transparency in decision-making is ensured through several mechanisms that allow journalists and their professional organizations to reach out to legislators. The sessions of the parliamentary committees responsible for media-related matters are open and their agendas and reports are published online. Occasionally, these committees invite professional organizations and representatives of civil society groups to meetings and consultations.

The National Audiovisual Council (CNA) also holds public meetings. Like all state bodies in Romania, CNA has to make public its yearly activity and financial reports.

But in spite of all these efforts to make information available to journalists and the general public, although information about emerging laws is available, legislation that impacts media practice is adopted without much foresight. The problem seems to be lack of access (by experts and civil society) to the legislative process rather than transparency.

Transparency alone does not solve accountability-related problems and unequal power relations in the field, especially if transparency is ensured post-factum, after media legislation is proposed, debated and approved. Access to meetings of parliamentary committees is vital for journalists to hold MPs accountable, but it's not sufficient to influence the legislative process. Nominations for these committees are public, but intervention in the lawmaking process is again out of reach for journalism associations or civil society organizations. (*See Impact of Regulators on News Media and Journalism in this report*)

## Impact of Regulators on News Media and Journalism

Access to information legislation is vital for journalists as it allows them to hold state actors accountable. Romania adopted in 2001 legislation<sup>[17]</sup> that allows citizens to ask public institutions to release information about their financial situation, institutional decisions and activities, among other things. The requests are sent to a designated department within the state institutions and must be answered within ten working days (for what is considered a standard request) and within up to 30 days for more complex requests (for example, when the request implies data aggregation). However, in practice, the lack of proper access to information is prevalent and was signaled by news organizations<sup>[18]</sup> and NGOs,<sup>[19]</sup> being on the priority list of the government led by Dacian Julien Cioloș between November 2015 and January 2017.<sup>[20]</sup> It has since been abandoned by the current government.

[17] Law no 544/2011 on the Free Access to Information for the General Public, published on 12 October 2001, available online <http://legislatie.just.ro/Public/DetaliuDocument/31413> (accessed on 15 June 2019).

[18] Simina Codruta, "Statul opac. Cum refuză autoritățile din România accesul la informații publice" (The Opaque State. How Romanian authorities refuse access to public information), Pressone, 31 January 2016, available online at <https://pressone.ro/statul-opac-cum-refuza-autoritatile-din-romania-accesul-la-informatii-publice/> (accessed on 6 June 2019).

[19] Ioana Pelehatăi, "7 pentru 544: La ce e bună legea accesului la informații de interes public?" (7 for 544: What is the access to information law good for?), Scena9, 4 July 2017, available online here: <https://www.scena9.ro/article/544-legea-accesului-la-informatii-de-interes-public> (accessed on 6 June 2019).

[20] See the press release (in Romanian) about the establishment of the Ministry for Public Consultation and Civic Dialogue dated 2015, which lists better access to public information as one of its priorities, available online at <http://gov.ro/ro/guvernul/sedinte-guvern/guvernul-a-decis-infintarea-ministerului-pentru-consultare-publica-i-dialog-civic> (accessed on 15 June 2019).



The major problem in the implementation of the access to information law is the slow processing of requests either because of the lack of resources in most state institutions (lack of personnel is often cited by those who complain) or for political reasons (when various state bodies purposely withhold information that would damage the image of certain political actors or institutions).[21]

New developments after 2015, in particular Romania's decision to join the Open Government Partnership[22], a global platform of governments and NGOs that promotes open government, are likely to lead to improvements. By joining the partnership, Romania committed to regularly publishing datasets of public information, promoting open access to data at local level (municipalities and city councils), and allowing for access to information in minority languages.[23] However, efforts to achieve these goals have not been consistent in the years after 2015. The poor state of various online platforms developed for these purposes (that are shabbily designed, unresponsive or not working at all) including the finance ministry website[24] (that collects data about public spending) or the government's data centralization portal[25] bear testimony to that.

Moreover, recent attempts to change the legislation to make it more restrictive when it comes to the type of data available for requests is concerning.[26] Claiming that requests for datasets are too complex for public clerks to process, the Ministry of Public Consultation and Social Dialog announced in 2017 that the Government was seeking to modify the access to information laws.[27]

Freedom of expression is guaranteed by the Constitution in Romania and is protected and regulated internally through a number of laws (including the Audiovisual Law and the Penal and Civil Codes) and through various international treaties like the Universal Declaration of Human Rights (UDHR) that Romania signed. Such legal provisions are important as issues such as defamation, libel and slander have recently surfaced back to the public debate after some high-level politicians such as Liviu Dragnea, the former leader of the governing Social Democratic Party (PSD), brought back to life legal proposals that would increase fines for "discriminatory speech" and "intolerance." [28] Mr Dragnea also revived ideas to adopt legislation that would punish insults brought to the Romanian people and country. In the end, the legal proposal on "discriminatory speech" was sent back for review to committees in the lower chamber of the Parliament whereas the ideas to introduce legal provisions to punish those who insult Romanians fizzled out.

The political turmoil triggered by the loss that the governing PSD suffered in the European Parliament elections in May 2019 could, however, affect all these legal developments. Although the vote didn't affect directly the power balance in the Romanian politics, following PSD's steep decline

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[21] ActiveWatch, "Raportul FreeEx (2016-2017)-Libertatea Presei în România" (FreeEx Report 2016-2017-Freedom of the Press in Romania), available online at: <https://activewatch.ro/ro/freeex/publicatii/lansarea-raportului-freeex-2016-2017-libertatea-presei-in-romania> (accessed on 15 April 2019).

[22] See more details at the Open Government Partnership website, at <https://www.opengovpartnership.org/countries/romania> (accessed on 15 June 2019).

[23] ActiveWatch, "Raportul FreeEx (2016-2017)-Libertatea Presei în România," cit.

[24] See more at Transparenta Bugetara (Budget Transparency) website available online at <http://www.transparenta-bugetara.gov.ro/transparenta-bugetara/index.htm> (accessed on 15 June 2019).

[25] See more at: [www.data.gov.ro](http://www.data.gov.ro)

[26] Codruța Simina, Bianca Felseghi, "Guvernul se pregătește să modifice Legea accesului la informațiile publice" (The government prepares to amend the Access to Public Information Law), Pressone, 9 June 2017, available online at <https://pressone.ro/guvernul-se-pregateste-sa-modifice-legea-accesului-la-informatiile-publice/> (accessed on 6 June 2019).

[27] "Petrea: Legea 544 privind accesul la informațiile de interes public va fi modificată într-o dezbatere cu societatea civilă" (Petrea: Law no 544 regarding the free access to public information will be modified after a debate with civil society), Agerpres, 3 April 2017, available online at <https://www.agerpres.ro/politica/2017/04/03/petrea-legea-544-privind-accesul-la-informatiile-de-interes-public-va-fi-modificata-intr-o-dezbatere-cu-societatea-civila-14-28-28> (accessed on 6 June 2019)

[28] See the full text of the proposal (in Romanian) at <http://www.cdep.ro/proiecte/2015/600/40/9/se837.pdf> (accessed on 15 June 2019).

in EU elections to under 25% of the votes from some 46% won in the latest elections in 2016, PSD's very position in the Romanian political life is likely to be shaken. The morning after the conclusion of EU elections, Mr Dragnea was sentenced to three years and six months in prison in one of the many corruption lawsuits he is embroiled in. Within hours, he was already locked up. Until then, the PSD-led Government had pushed hard against the attempts of the Romanian justice to sentence corrupt politicians in PSD in spite of EU's warnings not to interfere with the courts. These political shifts could have an impact, hopefully positive, on media policies.

A law that restricts freedom of the press by encroaching upon the rights of journalists as workers is the Labour Code from 2011, which severely reduced the power of unions to operate and the right of workers to organize and to negotiate collective contracts. A set of newly introduced legal provisions regarding the right of specific professions to negotiate collective contracts affected the media sector, which was merged by the 2011 law with the arts and culture fields.

When the law was passed, media unions formed trade confederations that not only negotiated labor rights and benefits, but also successfully added legal provisions that protected the right of journalists to refuse to sign work that contravenes to their values (what is known as the "conscience clause"). Unions had played an active role in proposing self-regulation mechanisms for journalists such as the Deontological Code adopted in 2004. They also offered to monitor the implementation of the code. However, all these efforts were to no avail as the Labour Law passed in 2011 changed the status of the media sector, practically annulling all collective contracts for journalists.

Therefore, after 2011, media unions had to reorganize and find new institutional frameworks in which to function effectively and have a representative base. Efforts to reorganize and merge with the arts and culture sector took years and mobilized a considerable amount of resources from unions, who, as a result, during this time, were less effective in promoting and defending the rights of their members.[29]

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[29] Interview with Cristinel Godinac, leader of MediaSind, the largest media union in Romania, conducted in person on 25 April 2019.

# INFLUENCERS

## Local Influencers

### Industry Players

Industry players used to have considerable leverage on policymakers (but less on the actual policy) mostly through the Romanian Press Club (Clubul Român de Presă, CRP), a local NGO lobbying for the interests of media owners, and through the political connections of several powerful media moguls such as Adrian Sârbu (founder of Pro TV, a leading commercial channel), Dan Voiculescu (founder of Antena Grup), the late Dinu Patriciu (owner of the publisher Adevărul) and others.

However, the CRP is now mostly absent from the media and many of the media head honchos are either in jail, died or considerably lost their influence. Industry players now operate a lobby group, the Romanian Association for Audiovisual Communication (Asociația Română de Comunicații Audiovizuale, ARCA) that has been mostly focused on advocating against policies and laws on advertising (most recently, they tried to stop regulations of gambling ads).

In conclusion, industry players have not been very vocal about policy and institutional change. However, they have repeatedly tried to use their influence in convincing regulators to allow them to operate in spite of their poor financial health. A notable case is that of Realitatea TV that, although bankrupt, has been in operation for the past seven years. The channel has accumulated debts to the state budget of over €25m. Cozmin Gușă, the owner of the channel, has worked as a political consultant for leaders on both sides of the political spectrum (ranging from Traian Băsescu, a former President representing the Democratic Party (PD) to Dan Mircea Geoană, a former Prime Minister representing PSD), but also a journalist.

Debt forgiveness has been common in Romania for years. Back in the 2000s, Pro TV was allowed to operate in spite of its mountains of debt to the state in exchange for tempering (and, in the end, neutering) its criticism of the authorities on the channel's news reporting. Such fiscal privileges allowed media companies, for nearly two decades now, to grow and dominate the market. The price these media outlets paid, hardly quantifiable, was a high level of politicization.

### Civil Society

Civil society organizations working on media-related issues have been active since 2002 through an informal network known as the Convention of Media Organizations (COM). With the number of members fluctuating between 20 and 30, depending on who joins or leaves the network, COM meets from time to time to discuss media-related issues. The Convention has been fairly inactive in recent years. The secretariat of the network is staffed by the Center for Independent Journalism (*Centrul pentru Journalism Independent, CJI*) and ActiveWatch, two Bucharest-based NGOs.

The influence of civil society in the legislative process varies depending on the legislature. Civil society organizations, for example, were successful through petitions, media coverage and pressures on MPs in stopping regulations such as legal provisions on defamation proposed in 2016 by Mr Dragnea, or “media vulnerability” (defined by the Supreme Council of National Defense in its

Strategic Plan of 2010 as a threat to national security along with drug traffickers, organized crime and terrorism, which would have allowed authorities to treat journalists as threats). To stop the regulation of “media vulnerability”, pressure from abroad helped. At the invitation of MediaSind, the largest trade union of journalists in Romania, missions of the International Federation of Journalists (IFJ) and the European Federation of Journalists (EFJ) visited Romania, slamming the planned regulations and bringing the matter to the attention of the European Parliament. Under such pressures, the planned provisions were eventually dropped.

Other organizations such as labor unions have been seriously weakened by the new Labour Code passed in 2011. However, MediaSind has been successful in bringing to international attention issues related to media workers’ rights and the increased political pressure on the public service media in Romania. MediaSind, for example, managed to stop a planned merger of the public radio and television with the state-controlled national news agency into one organization, a model imported from the neighboring Hungary of the autocratic government led by Viktor Orban.

Such interventions of civil society successfully preventing legislation that would have badly affected journalists are hopeful. However, looking back at the last ten years of media regulation, the adoption of major laws that dramatically affect the media system and journalistic profession (such as the new Labour Law adopted in 2011, changes in the funding of the public broadcasting company (from a tax-based model to a government-funding one) that makes it more dependent on the state and more vulnerable to political influence, or the failure to adopt laws that would make access to information easier) show that the actors fighting for media freedom and independence are not yet strong enough to successfully battle the state. A major concern is the lack of mechanisms that would allow proper public consultations where the public, including journalists, can contribute proposals for better regulation and policy.

There are many influential journalists and bloggers in Romania, but none with real power and leverage in media policymaking.

## External Influencers

The European Union (EU) is the most powerful influencer in the Romanian media-related policies and regulations. An EU law that has recently had a massive impact on data protection practices in the country is the General Data Protection Regulation (GDPR), which forces all data-collecting entities to inform their clients how their personal data will be collected and obtain their consent to collect and store such information. Data collection legislation has an impact on media organizations as employers (that use personal data of employees) and as companies (that collect data to improve their audience reach). The GDPR does exempt journalists from various legal provisions, allowing them, for example, to protect the identity of their sources and to publish personal data in cases when their articles serve the public interest (for example, financial information about people in a public office).

Ironically, though, the GDPR has so far been used to bring journalists to heel. The data authority in Romania sent a request to RISE Project, an investigative journalism initiative, to disclose their sources following the publication of a series of reports about the illegal business deals of the former Social Democrat leader, Liviu Dragnea. The authority also threatened RISE with a fine of €20,000,

which can hurt an organization mostly funded by philanthropies.[30] In spite of pressures from the EU, which severely condemned the move and warned Romania to abstain from using the regulation in such a manner, the cases hasn't been concluded to date.

A greater influence in Romania's media is likely to come from the European Union Directive on Copyright in the Digital Single Market (known as the Copyright Law) that forces social media and content-sharing platforms to pay for copyrighted material shared on their platforms. The Copyright Law was adopted at EU level in March 2019 and will have to be transposed into national legislation by each EU member state within two years. In theory, provisions in this law would help news organizations be properly compensated by global technology colossuses such as Google and Facebook for content shared on their platforms. But in practice, Google might simply de-index news sites from its searches to avoid paying for copyrighted material, which could cripple many news media whose content would not be found online. Big players such as large news media in Romania might be able to negotiate the level of fees for content with the tech giants; however, smaller news portals fear that they would become (even more) invisible online.

But while the EU is a significant actor in the media-related policy field in Romania, the opposite is not true: Romania has not managed so far to push any media legislation to the EU agenda.[31]

Other pan-European or global organizations, including the Council of Europe, the Organization for Security and Co-operation in Europe (OSCE) or United Nations (UN) bodies, hardly have any influence in the Romanian media.

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[30] A discussion about the relation with the GDPR is available at <https://www.theatlantic.com/ideas/archive/2019/06/europes-gdpr-elevated-privacy-over-press-freedom/590845> (accessed on 15 June 2019).

[31] Ioana Avadani, Propunere de politici, cit.



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