

# Freedom of Expression in Europe

Insights on EU regulations and policies impacting  
media and journalism



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# Project Brief

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This publication is within the project entitled "**Media Reform to Enhance Freedom of Expression in Lebanon**", implemented by Maharat Foundation, Legal Agenda and the Media and Journalism Research Center (MJRC) with the support of the Delegation of the European Union to Lebanon.

The project aims at enhancing Freedom of Expression in Lebanon through the promotion of media law reform as a priority on the national agenda and improvement of the environment for media coverage on the transparency and accountability of elections process.

The project supports the publication of background papers produced by Maharat Foundation on the local Lebanese context and by MJRC on the European standards and best fit recommendations for Lebanon.

The papers cover 6 main themes:  
Protection of journalists and their sources, Associations of journalists, Decriminalization, Incentives, Innovation, and Regulation, co-regulation and self-regulation opportunities for the media.



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## Published by

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### Media and Journalism Research Center (MJRC)

[MJRC](#) is an independent media research and policy think tank that seeks to improve the quality of media policymaking and the state of independent media and journalism through research, knowledge sharing and financial support. The center's main areas of research are regulation and policy, media ownership and funding, and the links between tech companies, politics and journalism.

### Maharat Foundation

[Maharat Foundation](#) is a women-led freedom of expression organization based in Beirut dedicated to campaigns grounded in research and strengthening connections between journalists, academics, and policy makers. It advances and enables freedom of expression, quality information debate and advocates for information integrity online and offline. Maharat promotes innovation and engages the journalistic community and change agents within Lebanon and the wider, MENA region to promote inclusive narratives and debates and to counter misinformation, disinformation, and harmful content.

### Editors:

**Marius Dragomir and Judit Szakács**

# Preface

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By Marius Dragomir

This publication is a compilation of six studies written by experts as part of a project aimed at supporting media reform in Lebanon. The studies analyze experiences from Europe in various areas and topics, with the purpose of providing inspiration to media policymakers and experts in Lebanon. Throughout the book, there are references to other media contexts and direct recommendations for media reform in Lebanon. However, beyond this specific goal, the book stands as a cohesive analysis of the latest trends in important areas affecting freedom of expression in Europe.

In recent years, Europe has introduced many pioneering policies in the media and communication spheres, which have been followed, cited, or adopted elsewhere. The studies in this book aim to analyze the intentions behind these regulatory and legal practices and their relevance to other countries and regions. The experts who authored the studies also take a critical approach, discussing both the failures and the necessity behind these laws and the problems they aim to address.

This collection of expert analyses can thus serve as a reference for anyone looking to understand the latest trends in topics including regulation, co-regulation, and self-regulation in the European media landscape, the modernization of media laws prompted by digital realities, the importance of decriminalizing defamation, the protection of journalists and journalistic sources, and an account of startups engaged in public interest journalism across Europe.

Taken together, this collection of papers offers timely insights into relevant issues related to freedom of expression in Europe. As part of a media development project, these studies also serve as a knowledge resource, offering practical insights into what practices can be realistically transferred to other regions to improve media reform.

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# A Balancing Act: EU Media Regulation, Co-Regulation and Self-Regulation in the Digital Age

By Minna Aslama Horowitz

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## Executive summary

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This paper examines key legacy media-related EU regulation in the context of digitalization and its relation to statutory regulation, co-regulation, and self-regulation in the EU Member States. The paper focuses on several key principles, as well as concrete regulations such as the AVMSD and competition regulation on public service broadcasting. It then discusses principal concepts and good practices of co- and self-governance and offers several examples, including the protection of minors and disinformation.

This overview shows that the EU media policies, including regulation, are an ongoing balancing act between protecting values vis-à-vis promoting a functioning, thriving, and innovative single market within the EU. Another balancing act relates to the quest for EU-wide harmonization versus the subsidiary clause that reserves a degree of independence to the Member States. The demands of digitization, both its regulation and the policies in the Member States, often result in another balancing act between the traditions of sectoral regulation versus the multimedia digital realities that may involve national and global actors.

Still, a broader unifying trend can be seen in policy discourses framing policy decisions. Policy conversations have in recent years focused explicitly on citizen-centric solutions, especially their communication and digital rights. As for co- and self-regulation, there is no typical European model, but different reiterations of the practices are highly encouraged. Additionally, in innovating or planning policies, multi-stakeholder consultations and related practices are common.

The EU can offer some **baselines** for formulating media policies and regulations that combine democratic values with sustainable, robust media markets. For co-regulation to be effective, a widely accepted goal can unify different stakeholders and be supported by the public, thus creating a basis for finding an effective model for co-regulation. In the digital age, all regulation should be coupled with related media and digital literacy.

# 1. Regulatory framework for the media in the EU: a complex construct in the digital age

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Media policies, including *media-related* and *media-adjacent* regulation, are in the European Union (EU) grounded in a variety of principles. Fundamentally, they are informed by the core tenets of the Treaty of the European Union (TEU), such as the preservation of human dignity and rights, promotion of democracy, and fostering of pluralism[1]. At the same time, the TEU emphasizes the importance of establishing a well-functioning internal market[2]. Both of these basic principles are present in the media-focused policies of the EU. The implementation of the policies, including any regulatory measures, also needs to follow the Treaty on the Functioning of the European Union (TFEU)[3]. These are called primary laws, whereas laws derived from the treaties are secondary laws.

The treaties are supported by several types of legal acts that concern the Member States in different ways[4]. For example, *Regulations* are to be implemented across the Union, *Directives* set goals but allow Member States to design their legislation to reach them, and the EU can also give non-binding *Recommendations* and express *Opinions*.

EU-level legal acts can include EU-led or national co-regulation with stakeholders and voluntary codes of conduct. Many countries within the EU and elsewhere have long traditions, for instance, in industry-led rules for journalistic ethical conduct, both nationally and in coordination with similar bodies across national borders[5].

Consequently, the pursuit of EU-wide harmonization of policies, on the one hand, and the autonomy of member states, on the other, create diverse demands for EU-wide media regulation, national implementation, Member States' own regulation, and media co- or self-regulation. The rapid advancement of digitization, which has expanded the purview of media policy, contributes to a complex amalgamation of policies[6].

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[1] Consolidated version of the Treaty on European Union Title I. Common provisions, Article 2 [https://eur-lex.europa.eu/eli/treaty/teu\\_2012/art\\_2/oj](https://eur-lex.europa.eu/eli/treaty/teu_2012/art_2/oj).

[2] Consolidated version of the Treaty on European Union - TITLE I: COMMON PROVISIONS - Article 3 (ex Article 2 TEU) 12008M003 - EN - EUR-Lex.

[3] Consolidated version of the Treaty on the Functioning of the European Union, 26.10.2012, Official EN Journal of the European Union C 326/49; Art. 106.2. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>.

[4] See, for example, European Union. (n.d.). Types of legislation. [https://european-union.europa.eu/institutions-law-budget/law/types-legislation\\_en](https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en).

[5] Judith Pies. (2024). How Associations of Journalists Protect Press Freedom in Europe. Tallinn/London/Santiago de Compostela: Media and Journalism Research Center (MJRC).

[6] Stephan Dreyer, Rike Heyer, Theresa Josephine Seipp, & Wolfgang Schulz. (2020). The European communication (dis)order: mapping the media-relevant European legislative acts and identification of dependencies, interface areas and conflicts. Arbeitspapiere des Hans-Bredow-Instituts, 52. Hamburg: Leibniz-Institut für Medienforschung, Hans-Bredow-Institut (HBI). DOI: <https://doi.org/10.21241/ssoar.71719>.

## Basic framework for legacy media

Legacy media – here meaning the press and broadcasting – have a long regulatory history in the EU. The core media policy approach by the EU has traditionally been understood in four basic ways of implementation[7]:

1. The harmonization of rules applied to audiovisual media services, as part of the Audiovisual Media Services Directive (AVMSD, the latest review of which was conducted in 2018), to achieve a) an internal market in audiovisual media services, including technical standardization while b) safeguarding public interest objectives, such as safety, diversity, quality, and citizens' competence (media literacy) as well as ensuring distribution of European audiovisual content[8].
2. Cross-sectoral competition policy that applies to a variety of fields, from agriculture to tourism. Regarding media, the main area of competition regulation pertains to the state-aid rules[9].
3. Media-specific programs to stimulate the production and distribution of audiovisual media services; currently the MEDIA section of the Creative program (2021- 2027)[10].
4. The EU's policies toward external stakeholders to defend European cultural and economic interests in international fora (e.g., in the United Nations United Nations Educational, Scientific and Cultural Organization, UNESCO) [11].

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[7] See, for example, Karen Donders, Jan Loisen, & Caroline Pauwels. (2014). Introduction: European Media Policy as a Complex Maze of Actors, Regulatory Instruments and Interests. In K. Donders, J. Loisen, & C. Pauwels (Eds.), *The Handbook of European Media Policy*. London: Palgrave Macmillan. .DOI: [https://doi.org/10.1057/9781137032195\\_1](https://doi.org/10.1057/9781137032195_1).

[8] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities. PE/33/2018/REV/1. <http://data.europa.eu/eli/dir/2018/1808/oj>. See also: Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (Codified version) (Text with EEA relevance). <http://data.europa.eu/eli/dir/2010/13/oj>.

[9] European Commission. (n.d.). Competition Policy. Legislation (Media). [https://competition-policy.ec.europa.eu/sectors/media/legislation\\_en](https://competition-policy.ec.europa.eu/sectors/media/legislation_en).

[10] European Commission. (2023). Shaping Europe's Digital Future. Creative Europe MEDIA Programme. <https://digital-strategy.ec.europa.eu/en/policies/creative-europe-media>.

[11] See, for example, European Commission. (n.d.). Culture and Creativity. International cultural relations. <https://culture.ec.europa.eu/policies/international-cultural-relations#:~:text=The%20EU%27s%20external%20strategy%20for%20culture>.

## Impacts of digitization

The four-dimensional approach by the EU to media policy and regulation as one of its tools may seem relatively straightforward. However, digitization has made the basic framework of policy implementation in the EU significantly more complex. As demonstrated in a recent study on media-relevant legislative acts, the media-specific EU legal framework relates to various other sectoral and general legal instruments that also cover companies in the media and communications sectors. The complexity is such that the authors of the aforementioned policy study call the situation “The European communication (dis)order[12].”

This means that (a) given the pervasiveness of digital technologies in many facets of our lives and (b) due to the role of global actors offering digital goods and services across national and regional (e.g., EU) borders, recent regulatory measures in the EU span horizontally across fields and (media) sectors. For example, digitization has, to a great extent, altered the ways in which copyrights are understood and regulated, resulting in 13 directives and two different regulations[13]. Another example is the General Data Protection Regulation (GDPR)[14], which applies to the legacy media sector and other services that handle personal data. In addition, the EU’s Artificial Intelligence (AI) Act was adopted by the European Parliament in March 2024[15]. The Act is intended to be a horizontal regulatory instrument; that is, it focuses on mitigating risks that AI as a technology may bring[16]. That way, the regulation will pertain to many fields, ranging from the car industry to the newsrooms using AI in their reporting.

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[12] Stephan Dreyer, Rike Heyer, Theresa Josephine Seipp, & Wolfgang Schulz. et al. (2020). The European communication (dis)order..., cit.

[13] See European Commission. (2024). Shaping Europe’s Digital Future. The EU copyright legislation. <https://digital-strategy.ec.europa.eu/en/policies/copyright-legislation>.

[14] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) <http://data.europa.eu/eli/dir/2016/679/oj>; Consolidated text: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance). <http://data.europa.eu/eli/reg/2016/679/2016-05-04>

[15] European Parliament. (2024). Artificial Intelligence Act: MEPs adopt landmark law. <https://www.europarl.europa.eu/news/en/press-room/20240308IPR19015/artificial-intelligence-act-meps-adopt-landmark-law>.

[16] See, for example, Tambiama Madiaga. (2024). Artificial intelligence act. Briefing. European Parliamentary Research Service. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698792/EPRS\\_BRI\(2021\)698792\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698792/EPRS_BRI(2021)698792_EN.pdf).

In addition, the prominence of global online platforms in the field of communication has, in recent years, raised questions about what de facto constitutes “media” --and what the related rights (e.g., related to freedom) and responsibilities (e.g., liability related to content published) should be. In U.S. legislation (the so-called Section 230[17]) platforms are protected from civil liability. The EU has taken a significantly different regulatory approach to platforms with its recent Digital Services Act Package (Digital Markets Act[18] and Digital Services Act[19]).

Parallel to these developments, to respond to digitization in the legacy media sector specifically, the EU has also updated its audiovisual regulation in the AVMSD. In addition, it adopted the European Media Freedom Act (EMFA) in March 2024[20] to support the role of national media systems, including independent media such as public service media (PSM) and journalists’ rights[21].

Media regulation is also adjacent to policy developments that relate to specific issues, such as media literacy activities and skills development frameworks[22] as a part of the European Pillar of Social Rights[23]. Similarly, the problem of “fake news” and other forms of disinformation, amplified by digitization, are addressed on many fronts, guided by a multistakeholder policy program designed by a High-level Expert Group (HLEG) in 2018[24]. The overarching policy initiative here is the European Democracy Action Plan (2019-2024), which seeks to protect elections, strengthen media freedom, and curb disinformation in the EU[25]. The media sector is, unsurprisingly, directly connected to this Action Plan, as it offers an umbrella context to EMFA.

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[17] 47 U.S. Code § 230 - Protection for private blocking and screening of offensive material, see for example, Cornell Law School, Legal Information Institute. (n.d.). U.S. Code. <https://www.law.cornell.edu/uscode/text/47/230>.

[18] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (Text with EEA relevance) PE/17/2022/REV/1. <http://data.europa.eu/eli/reg/2022/1925/oj>.

[19] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance) PE/30/2022/REV/1 <http://data.europa.eu/eli/reg/2022/2065/oj>.

[20] European Council. (2024). European Media Freedom Act: Council adopts new rules to protect journalists and media providers. <https://www.consilium.europa.eu/en/press/press-releases/2024/03/26/european-media-freedom-act-council-adopts-new-rules-to-protect-journalists-and-media-providers/>.

[21] See more details about these new legislative initiatives in Krisztina Rozgonyi. (2024). How to Modernize Media Laws to Cope With Digital Change. Tallinn/London/Santiago de Compostela: Media and Journalism Research Center (MJRC).

[22] For example, the so-called DigComp 2.2 framework. See European Commission. (n.d.). Employment, Social Affairs and Inclusion. Digital Competences Framework (DigComp 2.2) update published. <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=10193&furtherNews=yes>.

[23] European Commission. (n.d.). Employment, Social Affairs and Inclusion. European Pillar of Social Rights. Building a fairer and more inclusive Union. <https://ec.europa.eu/social/main.jsp?catId=1226&langId=en>.

[24] European Commission. (2018). A multi-dimensional approach to disinformation. Report of the independent High level Group on fake news and online disinformation. Brussels: Directorate-General for Communication Networks, Content and Technology. <https://digital-strategy.ec.europa.eu/en/library/final-report-high-level-expert-group-fake-news-and-online-disinformation>.

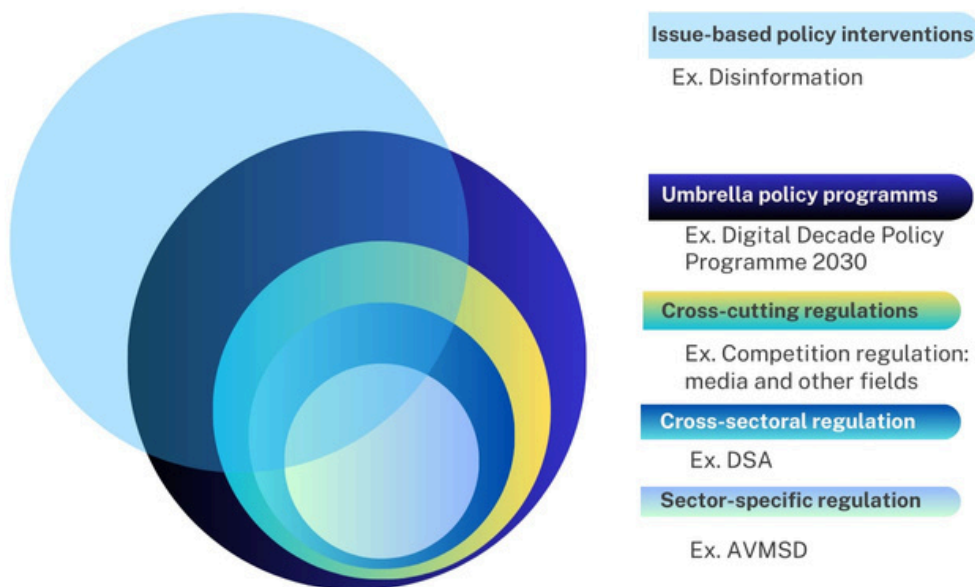
[25] European Commission. (n.d.). Protecting democracy. [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/european-democracy-action-plan\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/european-democracy-action-plan_en).

Recent regulatory initiatives regarding media and digitization fall under the EU's overall policy, the so-called Digital Decade Policy Programme 2030. It is designed to guide the EU's digital transformation, with the focus on (and targets for): (a) digitalization of public services (government); (b) secure and sustainable digital infrastructures; (c) digital transformation and innovation of businesses; and (d) digital skills for citizens. The vision and targets for the digital decade are highlighted in the 2030 Digital Compass[26].

The Programme 2030 is supported by a set of “European values” as indicated in the 2022 European Declaration on Digital Rights and Principles for the Digital Decade: (a) human-centric digital transformation; (b) solidarity and inclusion through connectivity, education, working conditions and access to digital public services; (c) importance of freedom of choice and a fair digital environment; (d) support for citizens’ participation in the digital public space; (e) safety, security and empowerment in the digital environment, in particular for young people; and (f) sustainability in the digital era[27].

With some examples, this many-dimensional regulatory context in the EU for media is depicted in Figure 1[28]:

### Dimensions of the EU’s media-focused and media-adjacent policies[29]



[26] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Digital Compass: the European way for the Digital Decade COM/2021/118 final <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52021DC0118>.

[27] European Declaration on Digital Rights and Principles for the Digital Decade 2023/C 23/01. [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC\\_2023\\_023\\_R\\_0001](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC_2023_023_R_0001).

[28] Modified and extended from Stephan Dreyer, Rike Heyer, Theresa Josephine Seipp, & Wolfgang Schulz, The European communication (dis)order..., cit.

[29] Here, the choice of terminology—*policy* instead of regulation—is a conscious choice to highlight that various broader policy streams create a regulatory context and can impact the media sector while not always resulting in media-specific regulation.

This paper focuses on the multi-stakeholder approaches to media regulation, that is, the complex interplay between the EU regulations, the role of the Member States, and non-state actors, as follows. Firstly, the context of the EU regulation central to the *media sector* today is explained. The overview is followed by a discussion on *stakeholders* of co- and self-regulation, including two examples from the Union. The complexities of regulation in the EU are then illustrated with a case of an urgent and many-sided, media-related regulatory challenge: How to create policies that curb disinformation? In the conclusion section, the paper summarizes some current trends and suggests some recommendations for good practices of media regulation in the digital age.



## 2. Dimension of media: EU regulation on the legacy media sector

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While digitization has brought about major regulatory innovations affecting a variety of fields or regulations that impact the media as a field of business, some core regulations are key specifically to the *legacy media sector*. On the one hand, the question is about the fundamental principles of freedom of expression, on the other hand, the proper functioning of the (media) markets. This kind of regulation includes cross-cutting, cross-sectoral and sector-specific laws and policies. Both of these tenets can be seen to relate to the principle of media plurality; in terms of diversity of content (freely expressed opinions and voices) and in terms of diverse types of media with diverse ownership (that contributes to plurality in the level of media structures).

### Fundamental issues: press freedom and media pluralism

Press freedom is aligned with the core principles of the Treaty of the European Union (TEU) and established in the EU Charter of Fundamental Rights[30]. They pertain to both the press and the audiovisual sector. In practice, the case law of the European Court of Human Rights (ECHR), the Court of Justice of the European Union (CJEU), and the national constitutional courts of Member States ensure the practice of this right, together with national self-regulatory bodies such as national media councils and journalism associations, and their international collaborative bodies[31]. It is important to note that the question is not only about the freedom of content but also structural factors that might hamper the ability of the press to function freely, such as undue political or economic pressures.

While media pluralism is another central principle for the EU, a legal definition of media pluralism does not exist. Still, national constitutional courts and the European Court of Human Rights (ECHR) have traditionally established a link between media pluralism and the human right of free speech. As can be noted from the discussion below, the EU's media regulation includes measures to foster media pluralism. Still, it should be noted that media pluralism remains a complex concept that “has been interpreted in varying ways in different times, geographies, contexts, and policy circles,” also due to varying contexts in the Member States[32].

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[30] Charter of Fundamental Rights of the European Union. In force. [http://data.europa.eu/eli/treaty/char\\_2012/oj](http://data.europa.eu/eli/treaty/char_2012/oj); see Art. 11: “Freedom of expression and information: 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers; 2. The freedom and pluralism of the media shall be respected.” See also Rozgonyi, How to Modernize Media Laws to Cope With Digital Change..., cit.

[31] For details, see also Pies, How Associations of Journalists Protect Press Freedom in Europe..., cit., and Rozgonyi, How to Modernize Media Laws to Cope With Digital Change..., cit.

[32] Peggy Valcke. (2014). Challenges of Regulating Media Pluralism in the European Union: The Potential of Risk-Based Regulation. *Quaderns del CAC* 38, vol. XV (1), 25-35. [https://www.cac.cat/sites/default/files/2019-01/Q38\\_valcke\\_EN.pdf](https://www.cac.cat/sites/default/files/2019-01/Q38_valcke_EN.pdf). See also Rozgonyi, How to Modernize Media Laws to Cope With Digital Change..., cit.



## Audiovisual media (AVMSD)

As noted previously, digitization has made the divisions in the legacy media sector increasingly complex. For instance, newspapers create video content online, podcasts are streamed in video-sharing platforms, and broadcasters include not only audio and video but text-based content for their websites. Most legacy media outlets use global social media platforms. Nevertheless, while the printed press as legacy media in the EU is not subjected to sector-specific regulation, the audiovisual sector in the EU is governed by the Treaty on the Functioning of the European Union (TFEU), on the promotion of European cultures and on competition[33] and regulated under the Audiovisual Media Services Directive (AVMSD)[34]. This focus reflects, in part, the central role that has been ascribed to broadcast media in reflecting and disseminating European values[35]. The key elements of the AVMSD include (a) the definition of such services; (b) European content stipulations; (c) ensuring safety and special accessibility; (d) regulation of advertising; (e) protection of minors; (f) ownership transparency; and (g) the role of national media regulators.

### Definitions

Audiovisual media services are understood as providing a variety of content to the general public under the editorial responsibility of a particular media service provider (Chapter I). After the revision of 2018, this means that the AVMSD applies to all distribution technologies from terrestrial to cable, satellite, mobile networks, and the internet. Included are also video-sharing platforms even when they do not bear editorial responsibility--and, under certain provisions, even if they are not situated within the EU[36].

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[33] Consolidated version of the Treaty of the Functioning of the European Union, 26.10.2012, Official EN Journal of the European Union C 326/49, Art. 167 and Art.173.

[34] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities. PE/33/2018/REV/1. <http://data.europa.eu/eli/dir/2018/1808/oj>  
For details on the modernization of the regulation, see also Rozgonyi, How to Modernize Media Laws to Cope With Digital Change..., cit.

[35] See, for example, the view of the European Parliament from 2014: European Parliament recommendation to the Council, the Commission and the European External Action Service of 2 April 2014 on the role of broadcasting media in projecting the EU and its values (2013/2187(INI)).

[36] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities. PE/33/2018/REV/1. <http://data.europa.eu/eli/dir/2018/1808/oj>; Chapter IXA, Art. 28a.

## European content

One of the key features of the AVMSD is to ensure the availability of European audiovisual content. It stipulates that, with the exception of certain programming categories like sports events, a majority of broadcasting time should be allocated to European works. In addition, media organizations in the Member States providing on-demand audiovisual media services should offer “at least a 30% share of European works in their catalogs and ensure prominence of those works[37].”

## Safety and accessibility

Apart from supporting European content, the AVMSD seeks to protect audiences of audiovisual content in several ways. The regulation stipulates that the Member States must ensure the absence of any incitement to hatred based on race, sex, religion, or nationality, as also expressed in the Charter of Fundamental Rights[38]. Similarly, any terrorist provocations are prohibited. The AVMSD also prompts Member States to request service providers under this regulation to promote and develop ways of access to persons with disabilities.

## Advertising

Regulating advertising is one of the key, classic forms of media regulation. In the AVMSD, the principle is that editorial and “commercial communications” can be clearly distinguished from one another. The content of commercial communications must adhere to the rules described above—respect human dignity, including no discrimination—but also avoid promoting behaviors that would be dangerous to health or the environment. No tobacco and prescription drug advertising is allowed, and alcohol advertising is restricted to some extent. Minors are especially protected. Product placement is allowed, with some restrictions, including no direct prompt to buy and no product placements of tobacco or prescription medicines[39]. These activities, or any sponsorships should not impede the independence of the audiovisual service provider[40].

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[37] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, *cit.*, Art. 13.1.

[38] Charter of Fundamental Rights of the European Union. In force. [http://data.europa.eu/eli/treaty/char\\_2012/oj](http://data.europa.eu/eli/treaty/char_2012/oj); see Art. 21.

[39] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, *cit.*, Art., 9, 11.

[40] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (Codified version) (Text with EEA relevance). <http://data.europa.eu/eli/dir/2010/13/oj>, Art. 10, advertising and teleshopping also 19-26.

## Protection of minors

Protection of minors is an overarching theme in the AVMSD and is specifically stated in Art. 27[41]. In addition, it is also discussed, for instance, in Art. 6a: Media service providers need to create a system to inform audiences about content that could be harmful to minors. Especially for online content, this is challenging, and such measures may result in service providers gathering data on minors. Therefore, in alignment with the GDPR, the AVMSD mandates that such data cannot be used for commercial purposes[42].

## Ownership transparency

Transparency is one of the key principles of the EU and the AVMSD defines it for the audiovisual media sector[43]. This has been seen as an important principle because of the potential impact of ownership on media content. In its current reiteration, the AVMSD stipulates that the Member States “may adopt legislative measures providing that (...) media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners[44].”

## The role of the Member States

The EU through the general provisions of the AVMSD (Chapter II) Member States to support rather than limit audiovisual services in their jurisdictions. This goes for the content created in their country and in any other EU country. Here, the principle of freedom of expression and press/media freedom is clear, and exceptions are few. For example, a Member State can restrict the reception of certain content, such as incitement to hatred, which may not be banned in its country of origin but violates its own laws. Possible restrictions pertain differently to TV (linear) content and to on-demand content. For TV broadcasts, this means serious violations against human dignity or children; for on-demand content, additional restrictions include a grave risk to other aspects of public policy, health or security, or consumers[45].

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[41] For more details, see, for example, Maria Luchian. (2020). How does the AVMSD protect children? Protecting children in the online and social media age—4 of 4 insights. London: TaylorWessing. <https://www.taylorwessing.com/en/interface/2020/protecting-children-in-the-online-and-social-media-age/how-does-the-the-AVMSD-protect-children>.

[42] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, cit., Chapter IXA, Art. 28b.

[43] For a detailed analysis of EU regulatory framework of transparency, and media ownership transparency regulation in selected countries, see: Alexandros Antoniou, Amedeo Arena, Mark D. Cole, Christina Etteldorf, Roderick Flynn, et al. (2021). Transparency of media ownership. Strasbourg: European Audiovisual Observatory. <https://rm.coe.int/iris-special-2021-02en-transparency-of-media-ownership/1680a57bf0>.

[44] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, cit., Art. 5a.

[45] For a comparative outline on admissible restrictions on linear and on-demand content, see also, for example, European Commission. (2022). Shaping Europe's Digital Future. General Principles of the AVMSD. <https://digital-strategy.ec.europa.eu/en/policies/general-principles-the-AVMSD>.

It is understood in the AVMSD that Member States have differing media systems. They can create more detailed rules for their national audiovisual media sector as long as they are in compliance with the EU law. It is also noted in the original 2010 version of the AVMSD, and reiterated in the 2018 revision, that the Member States should nationally encourage regulatory initiatives that involve stakeholders in drafting, implementing, and monitoring concrete measures (*see Section 3 in this paper*).

### Regulators in the Member States (NRAs)

In the AVMSD, several specific requirements are set for regulatory bodies and authorities of the Member States (national regulatory authorities, NRAs). First, each member state should have at least one independent NRA, and it is up to them whether NRAs deal with multiple sectors or are sector-specific.

While the Member States have some say about the form and the breadth of the sectoral remit of their NRAs, there are three essential features that the NRAs should exhibit: independence, accountability, and quality of conduct. It is clearly stated that NRAs should be fully independent either from any public body or a commercial organization: they can be held accountable but not instructed[46]. The AVMSD also stipulates that the Member States ensure accountability mechanisms, as well as competencies and resources of their NRAs, by defining them in law.

A study of selected European NRAs notes that political independence can manifest in many aspects, ranging from the NRA described in national legislation as being independent, and its appointees being independent, to the independence of the agency finances. Accountability can be achieved with multiple measures, including features such as defined regulatory objectives, reasoned decisions, and procedural rules that are all explained to stakeholders. Regular reporting including publicly available data and regular performance evaluation of the NRA are also among the ways to ensure accountability. While the quality of NRAs is highly dependent on the specific context and remit of the NRA, and also on how stakeholders view the role and actions of the regulator, the study further suggests that robust independence and accountability measures by the NRAs can effectively co-exist and contribute to better quality outcomes. Therefore regulators should push for greater independence and accountability in the light of the positive effects on perceived quality. Among other recommendations, the study notes stakeholders should collaborate with NRAs to together push for greater accountability[47].

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[46] On the independence of NRAs in the EU—opportunities, challenges, and practices—see Kristina Irion. (2019). The independence of media regulatory authorities in Europe. Strasbourg: European Audiovisual Observatory. <https://rm.coe.int/the-independence-of-media-regulatory-authorities-in-europe/168097e504>.

[47] Chris Hanretty, Pierre Larouche, & Andreas Reindl. (2012). Independence, accountability and perceived quality of regulators A CERRE Study. Brussels: Centre on Regulation in Europe. [https://cerre.eu/wp-content/uploads/2012/03/120306\\_IndependenceAccountabilityPerceivedQualityofNRAs.pdf](https://cerre.eu/wp-content/uploads/2012/03/120306_IndependenceAccountabilityPerceivedQualityofNRAs.pdf).

While the role of NRAs depends significantly on the national media system in question, typically, they are in charge of granting broadcasting licenses, monitoring programs' compliance with legal obligations, as well as adopting codes of practices and regulations, especially in the fields within the AVMSD: safety and accessibility, pluralism in content and transparency of ownership, advertising, and protection of minors.

The NRAs must also gather and share information needed to implement the AVMSD with one another and the EU. Presently (spring 2024), they can do so with the coordinating help of the European Regulators Group for Audiovisual Media Services (ERGA), a body established in 2014 and strengthened with the 2018 revision of the Directive<sup>[48]</sup>. This body will be replaced by the European Board for Media Services that has a similar coordinating mandate but that will connect AVMSD-related regulatory issues with other new regulations (see below: DSA, EMFA).

## Competition regulation: state aid and public service broadcasting

The counterpart of the fundamental values is the core principle of a well-functioning internal market, including the media sector. Specifically, the EU regulates state aid for public service broadcasting (PSB). Traditionally, PSBs have been national Western European institutions that, with public funding, have provided information, education, and entertainment content accessible for everyone, with guidelines such as universality of contents and services, independence, and quality of content<sup>[49]</sup>. While the main regulation of the audiovisual sector resides with the AVMSD, the role of (partly or fully) publicly funded broadcast media has historically been central to the national media systems in the EU. The Amsterdam Protocol on Public Service Broadcasting<sup>[50]</sup> solidifies a special role for PSB as an exception to the general ban on state aid in EU law.

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[48] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, *cit.*, Art. 30 b.

[49] See, for example, Council of Europe. (n.d.). Public Service Media. <https://coe.int/en/web/freedom-expression/public-service-media>.

[50] Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Protocol annexed to the Treaty of the European Community - Protocol on the system of public broadcasting in the Member States. [http://data.europa.eu/eli/treaty/ams/pro\\_9/sign](http://data.europa.eu/eli/treaty/ams/pro_9/sign).

The Amsterdam Protocol entails three key aspects of public broadcasting and state aid: (a) PSB is an exception as a media organization; (b) the media organization needs to be a broadcaster with a specific remit; and (c) public funding cannot distort competition to the extent that it is detrimental to the common interest. The Protocol stipulates that the prohibition of state aid does not apply to public service broadcasting and also contains a requirement to define what public service broadcasting entails. We can talk about public service broadcasting if the funding is granted to a broadcasting organization, the funding is conditional on a public service remit, and the remit is defined and organized by each Member State.

However, as stated above, public funding cannot affect trading conditions and competition in the national media market to an extent that is contrary to the common interest. These rules recognize that public service broadcasting serves a key function regarding freedom of expression. At the same time, the role of the mixed media market, including commercial broadcasters, is central to preserving values such as pluralism[51]. However, as the rules also allow for a wide margin of appreciation for the Member States, the role of PSBs and their funding models (e.g., budget funding or license fee) and governance models vary greatly from country to country in the EU[52].

## Online content beyond editorial media (DSA)

The AVMSD regulates editorial audiovisual services and video-sharing platforms essentially to protect audiences, for instance, against content presenting discrimination or content harmful to minors. The Digital Services Act (DSA)[53] is a horizontal, cross-sectoral regulation that targets intermediaries, including the big global online platforms (Very Large Online Platforms, VLOPs) – whether these intermediaries are based in the EU or not. The DSA extends beyond media content to goods and services available online. In its scope, the AVMSD stipulates that the form of content dissemination – “traditional” or online – does not matter. To this, the DSA adds that audience-users have new mechanisms to counter illegal content, that is, any information that does not comply with any EU or Member State law. While the so-called DSA Package has various implications for media services that fall under the AVMSD[54], regarding content regulation specifically, the DSA matters to legacy media as many media organizations have a presence on intermediary platforms, such as social media. The DSA has its own Digital Service Coordinators in the Member States (who may or may not be the same as the NRAs). They will coordinate their work via an EU-wide body.

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[51] Communication from the Commission on the application of State aid rules to public service broadcasting (Text with EEA relevance) OJ C 257, 27.10.2009. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52009XC1027%2801%29>.

[52] Note that public service broadcasting is nowadays often referred to as public service media (PSM) by many stakeholders, including the Council of Europe and the European Broadcasting Union. The term has not (yet) been widely used in the EU, and the digital mandate of public service broadcasting is not specified by any EU regulation.

[53] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance) PE/30/2022/REV/1 <http://data.europa.eu/eli/reg/2022/2065/oj>; for details about these new legislative initiatives in the paper on Modernization and Innovation of regulation.

[54] DSA and DMA; see, for example, Mark Cole (2021). Overview of the impact of the proposed EU Digital Services Act Package on broadcasting in Europe. Saarbrücken: Institute of European Media Law. [https://emr-sb.de/wp-content/uploads/2021/06/EMR\\_Legal-Issue-Paper-DSA-DMA-and-Broadcasting\\_Summary.pdf](https://emr-sb.de/wp-content/uploads/2021/06/EMR_Legal-Issue-Paper-DSA-DMA-and-Broadcasting_Summary.pdf).

## Regulatory innovation on national media (EMFA)[55]

With the European Media Freedom Act, media regulation returns to the core view of the important role of national media for the EU. The rationale mentions, specifically, the need for a common approach that fosters an internal market for media in the EU but builds on the AVMSD and complements the DSA Package, as well as other EU media-related policies, to unify “the fragmented national regulatory approaches related to media freedom and pluralism and editorial independence[56].” The EMFA wants to ensure that the Member States approach media pluralism and independence similarly, to support efforts that protect users from harmful and illegal content, to protect journalists and editorial freedom from interference, and to promote a fairer internal market by harmonizing audience measurement methodologies. The concrete measures include the establishment of the European Board for Media Services. As noted, the Board will replace ERGA and act as a coordinating body for, among other things, consistent application of specific parts of the European Media Freedom Act and of the AVMSD; provide expertise in various aspects of media regulation, including market concentration; as well as facilitate cooperation, as defined in DSA, between media service providers and VLOPs[57].

While it has elicited some criticism from the industry and academia, including the warning that any regulation should not forget the role of global platforms in supporting or diminishing media pluralism in Europe[58], the EMFA can be seen as a key component in recognizing the role of legacy media and independent journalism in the EU’s “Digital Decade” toward 2030.

The above overview of the EU regulation regarding and around legacy media has mainly focused on the ways in which the EU approaches the principles of press freedom and media pluralism from the perspective of setting some frameworks that offer *protection* to audience-users (see Figure 2).

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[55] At the time of writing of this report (April 2024), the European Media Freedom Act has been approved by the European Parliament but has not yet been formally adopted into law. See, for example., Mared Gwyn Jones. (2024). EU Parliament votes to protect media freedom and limit spying on reporters. 13 March 2023. Euronews. <https://www.euronews.com/my-europe/2024/03/13/eu-parliament-votes-to-protect-media-freedom-and-limit-spying-on-reporters>

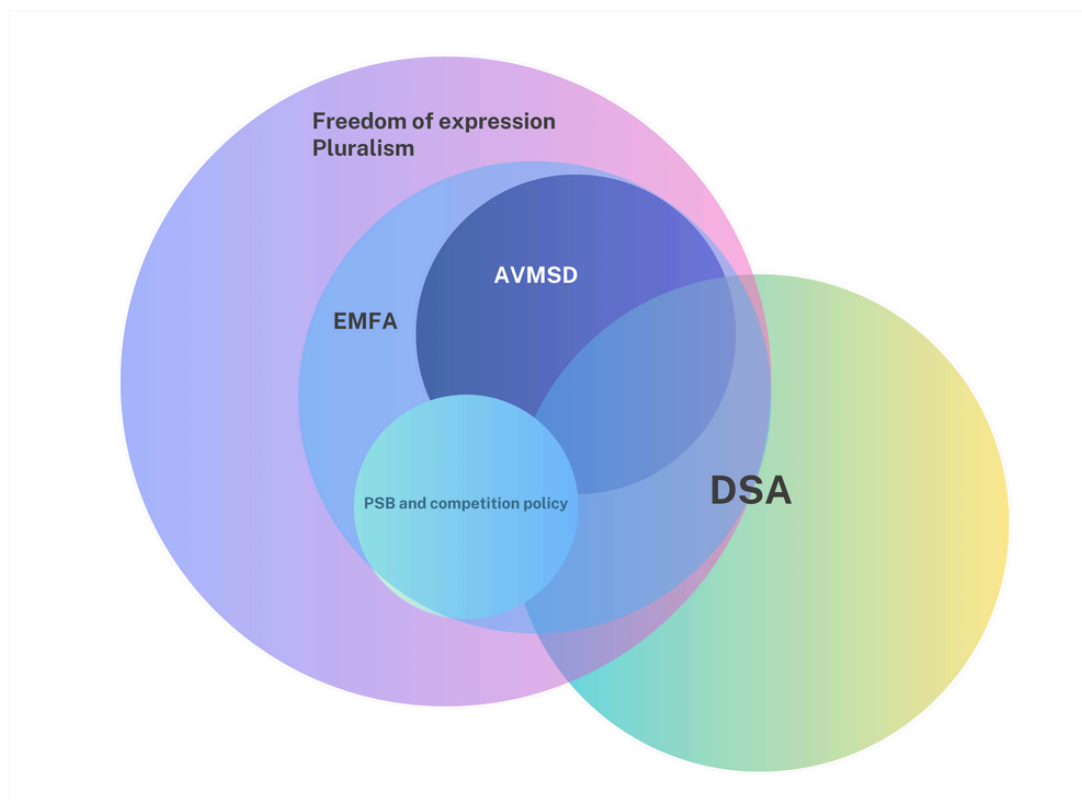
[56] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU COM/2022/457 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0457>, 2. Legal basis, subsidiarity and proportionality.

[57] European Commission. (2023). Questions and Answers: European Media Freedom Act. [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_22\\_5505](https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_5505)

[58] Council of Europe (2022). The proposal for a European Media Freedom Act. <https://rm.coe.int/note-emfa/1680a9af14>.

The EU's media policies also include a recently updated copyright legislation[59] and legislation allowing cross-border portability of contents and services[60] to respond to the challenges of the single market of the digital era as well as several support and funding mechanisms for the industry, and policies to foster media literacy[61]. One of the recent initiatives is the Media and Audiovisual Action Plan (MAAP) that is intended to support the industry in the aftermath of the COVID-19 pandemic[62]. These measures highlight, again, that the EU views a robust, diverse legacy media as a central segment of the Union and of the Member States.

## Regulatory approaches to legacy media and their intersections



[59] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Text with EEA relevance.) PE/51/2019/REV/1 <http://data.europa.eu/eli/dir/2019/790/oj>.

[60] Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market Text with EEA relevance. OJ L 168, 30.6.2017. <http://data.europa.eu/eli/reg/2017/1128/oj>.

[61] See also Katarzyna Anna Iskra. (2023). Audiovisual and Media Policy. Factsheets on the European Union. <https://www.europarl.europa.eu/factsheets/en/sheet/138/audiovisual-and-media-policy>.

[62] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Europe's Media in the Digital Decade: An Action Plan to Support Recovery and Transformation. 3.12.2020. COM(2020) 784 final.



### 3. Dimension of actors: EU, Member States, co-regulation and self-regulation

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#### Dimensions of governance, dimensions of regulation

The overview of the EU-level media regulation illustrates the complexities of the field of “media” in the digital age, but also the complexities in the interplay between the EU-level regulation and independence of the Member States. In addition, even in the legacy media sector, there are numerous stakeholders involved, engaged in different forms of regulatory activities.

The terms co-regulation and self-regulation are used with different meanings in different contexts[63]. For the purpose of this paper, regulation by the EU and/or the Member States is called statutory regulation. Self-regulation, in contrast, is voluntary. It means that non-state stakeholders, whether industries, businesses, or civil society organizations, create and enforce standards and guidelines amongst themselves and enforce them. Co-regulation represents collaboration, a shared responsibility between industry and regulator(s), and can take many forms. Co-regulation should allow for the possibility of state intervention to ensure that the aims of regulation are met.

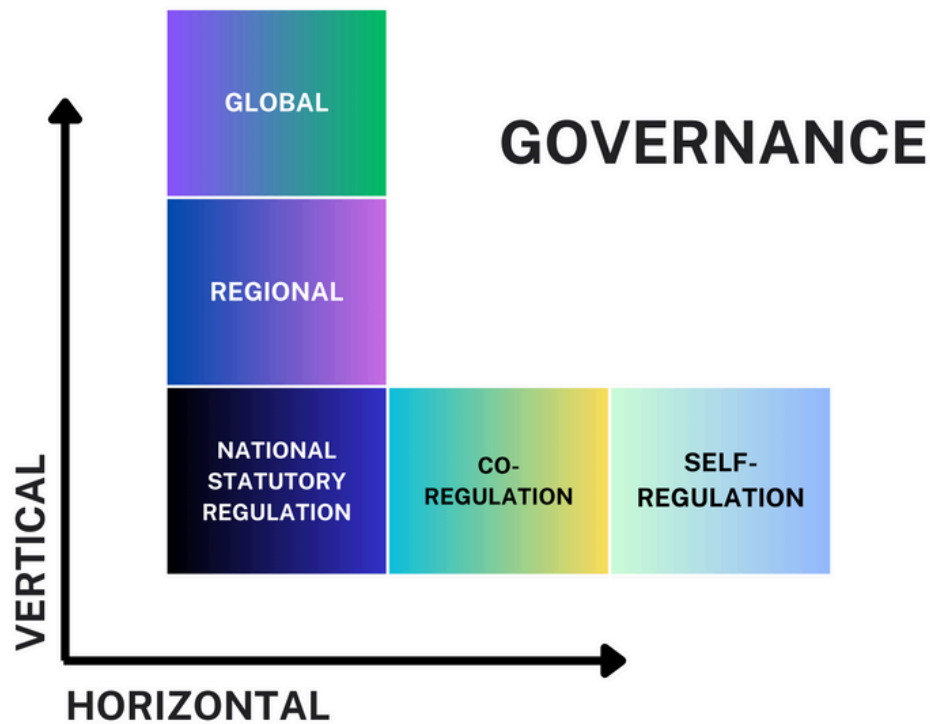
The two dimensions of regulatory contexts and actors in statutory, co-, and self-regulation can be labeled together as governance – an umbrella term that “covers all means by which the mass media are limited, directed, encouraged, managed, or called into account, ranging from the most binding laws to (...) self-chosen disciplines[64].” Figure 3. visualizes these dimensions as vertical and horizontal in media governance. Some regulatory measures can be considered global, as for instance, the DSA that concerns also those actors not based in the EU if they have operations in the EU. The regulatory initiatives of the EU, for the most part, cover that region (with some exceptions; for example, some decisions may concern only a certain Member State/s). Co- and self-regulation are considered horizontal governance, that is, within a country. While many self-governance initiatives such as codes of ethics may be discussed and (partly) harmonized within international umbrella associations or related advocacy organizations, implementing regulatory measures is in principle country-specific, and co-regulation is organized between the national regulatory authority or body and the stakeholder/s.

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[63] Council of Europe. (2021). Content moderation. Best practices towards effective legal and procedural frameworks for self-regulatory and co-regulatory mechanisms of content moderation. Guidance note. <https://rm.coe.int/content-moderation-en/1680a2cc18>.

[64] Kari Karppinen, & Hallvard Moe. (2013). A critique of “media governance”. Communication and Media Policy in the Era of the Internet. In M. Löblich & S. Pfaff-Rüdiger (Eds.), Communication and Media Policy in the Era of the Internet. Baden-Baden: Nomos. DOI: [doi.org/10.5771/9783845243214-69](https://doi.org/10.5771/9783845243214-69).

## Dimensions of media governance[65]



These different types of regulation have their strengths and weaknesses. Normally, statutory regulation requires significant preparations both in resources and time, and may take a long time to amend when changes are needed. Co- and self-regulation may be more flexible but more challenging to enforce and monitor. The communications regulator of the UK, Ofcom, has posited that forms of self- and co-regulation are better viewed as part of a continuum and that pure self-regulatory schemes in the field of media are rare. “Statutory involvement is rarely completely absent from a regulatory solution, but may range from informal pressure, to light co-regulation, to engagement in implementing schemes, through to more extensive forms of coregulation where only some aspects of the solution are delegated to industry[66].”

[65] Based on Jean-Francois Furnémont, & Tanja Kerševan Smokvina. (2017). European Co-Regulation Practices in the Media. Comparative analysis and recommendations with a focus on the situation in Serbia. Wagner Hatfield - MeGi. <https://rm.coe.int/european-co-regulation-practices-in-the-media/16808c9c74>; Manuel Puppis. (2011). Communication Policy Research: Theoretical and Methodological Challenges. Invited Lecture at the Graduate Colloquium, College of Communications, Pennsylvania State University.

[66] Office of Communications (Ofcom). (2008). Identifying appropriate regulatory solutions: principles for analysing self- and co-regulation. Statement. [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0019/46144/statement.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0019/46144/statement.pdf).

## Principles of good co- and self-regulation

In its Opinion of 2015, the European Economic and Social Committee sets several general principles for co- and self-regulation. These include the following: regulations must comply with EU and international law; they must be designed in consultation with and represent the parties concerned; they must support public interest and be transparent and public; there must be judicial control and appropriate, trustworthy monitoring mechanisms in place, measures must be in place to ensure that regulations are effective, including a system of fines or other penalties; there must be periodic reviews for any legislative or other changes; clear identification of financing sources; and finally non-applicability in certain situations, for example, when the definition of fundamental rights is at stake[67].

As noted, the 2018 revision of the AVMSD includes the notion that stakeholders should be more involved in the regulatory process through self- and co-regulation. The Member States are encouraged to foster co- and self-regulation, and the general stipulations follow the 2015 Opinion: such efforts must be broadly accepted by stakeholders, they must be unambiguous, and they must go through transparent and regular monitoring and evaluation, including effective and proportionate sanctions. If necessary, self-regulation can be fostered through codes that include multiple stakeholders in addition to media service providers, video-sharing platforms, or organizations representing them[68].

Co- and self-regulation is mentioned in the aims of the AVMSD regarding the protection of minors, commercial communications, and the protection of the general public from harmful and hateful content[69]. The implementation of self- and co-regulation, however, can differ significantly from Member State to Member State, depending on political and economic contexts, legislative structures and legal histories, the role of various national media, industry and professional organizations, their relationships, resources, and so on. The following examples highlight some practices, successes, and challenges, especially vis-à-vis digital development, as well as national differences.

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[67] Opinion of the European Economic and Social Committee on Self-regulation and Co-regulation in the Community legislative framework, loc. cit (fn.6), paragraph 1.7. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014IE4850&rid=3>; see also the discussion in Amedeo Arena, Mark D. Cole, Jan Henrich, Bernardo Herman, Pascal Kamina et. al. (2019). Self- and Co-regulation in the new AVMSD. European Audiovisual Observatory. Strasbourg: European Audiovisual Observatory. <https://rm.coe.int/iris-special-2019-2-self-and-co-regulation-in-the-new-avmsd/1680992dc2>.

[68] See Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, *cit.*, Art. 4a.

[69] See detailed discussion in Amedeo Arena, Mark D. Cole, Jan Henrich, Bernardo Herman, Pascal Kamina et. al (2019). Self- and Co-regulation..., *cit.*

## Examples

### Press freedom

In the field of media policy, self- and co-regulation are typical in *journalistic practices and ethics*. Journalism codes of ethics are often defined within professional associations and/or by self-governance bodies such as media/press councils. Since press freedom is a foundational principle of the EU's approach to media policy and regulation, press councils have been a key "partner" in supporting that principle[70]. Still, practices around the EU also reflect national contexts and foci: while the core principles seem similar in most countries, for instance, Belgium has separate press councils and codes for Flanders and the French-speaking part of the country, and Spain has three separate codes, as does France. The code of Finland includes an annex that addresses the ethics related to online commentary on news websites. A survey on press councils reveals that most see their impact as the publicly recognized watchdog for trustworthy journalism. However, even within Europe, the councils see their challenges differently. Some fear increasing political pressure, others financing and resource challenges, and some the role of digital disinformation challenging their work[71].

The Alliance of Independent Press Councils of Europe (AIPCE) has been an umbrella organization fostering not only EU but wider European models of media self-regulation through its network. It has engaged in developing the work of the councils in the digital age through activities that seek to discuss the inclusion of "non-institutional" online journalists into the scope of ethical standards and how the council can align the journalistic self-regulatory frameworks with new regulations brought about with digitalization[72]. The recent developments at the Alliance also highlight how possible contextual challenges and geopolitical issues can impact ethical considerations and efforts to coordinate and harmonize self-regulation. Due to the war in Ukraine, several member countries left the Alliance early on in protest of Russia remaining a member, and finally in September 2023, Russia was voted out of the Alliance[73].

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[70] See a detailed discussion on the role of self-regulation and journalism in Judith Pies. (2024). How Associations of Journalists Protect Press Freedom in Europe, *cit*.

[71] For more detail, see Press Councils EU. (n.d.). Future.: <https://www.presscouncils.eu/comparative-data-on-media-councils/about-the-organizations/future/>.

[72] See, Muriel Hanot (Ed), Anna Vidal (coord.) (2022). The Media Councils Debates. Facing the Challenges of the Digital Age. Brussels: AADJ/CDJ. <https://www.lecdj.be/wp-content/uploads/MCDA-Facing-the-Challenges-of-the-Digital-Age.pdf>.

[73] AIPCE Motion on membership status of Russian Press Collegium. Press release. (2023). <https://www.presscouncils.eu/aipce-motion-on-membership-status-of-russian-press-collegium/>.

## Audiovisual media (AVMSD): protecting minors

While co- and self-regulation are practices encouraged under the AVMSD in several fields, the *protection of minors* is a significant, overarching part of the Directive and often includes co-regulatory implementation mechanisms within the Member States.

Traditionally, the mechanisms have been (a) content information, such as age ratings or content descriptors; (b) restriction of minors' access by scheduling content to late hours, and (c) restriction of minors' access through technical mechanisms[74]. Implementing measures such as scheduling becomes more complex when the question is about video-on-demand.

In most EU Member States, the protection of minors is enforced through statutory regulation. Still, the implementation differs. For example, some Member States include labeling in the statutory regulation, while others have labeling as a way of co-regulation when implementing regulation. Yet others do not have an obligatory labeling system[75]. A detailed analysis of AVMSD-relevant co- and self-regulation in eight Member States[76] concludes that instruments of co-regulation exist in almost all cases concerning the protection of minors. A clear distinction between Member States is that some have a strong tradition of self- and co-regulation and others feature a highly centralized media regulation.

An often-mentioned exemplary co-regulatory practice[77] is the Dutch labeling system Kijkwijzer[78]. The system has been developed by NICAM (Netherlands Institute for the Classification of Audiovisual Media), a non-governmental organization established by the Dutch audiovisual sector with cooperation from the government. NICAM serves as a self-regulatory body in the Dutch co-regulatory system for the protection of minors. For audiences, the Kijkwijzer ratings are meant as a tool to empower them. In public spaces, however, the ratings follow a statutory regulation (Art. 240a of the Criminal Code) that prohibits viewing according to age limitations.

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[74] Amedeo Arena, Mark D. Cole, Jan Henrich, Bernardo Herman, Pascal KaminaAmadeo Arena et. al (2019). Self- and Co-regulation..., cit.

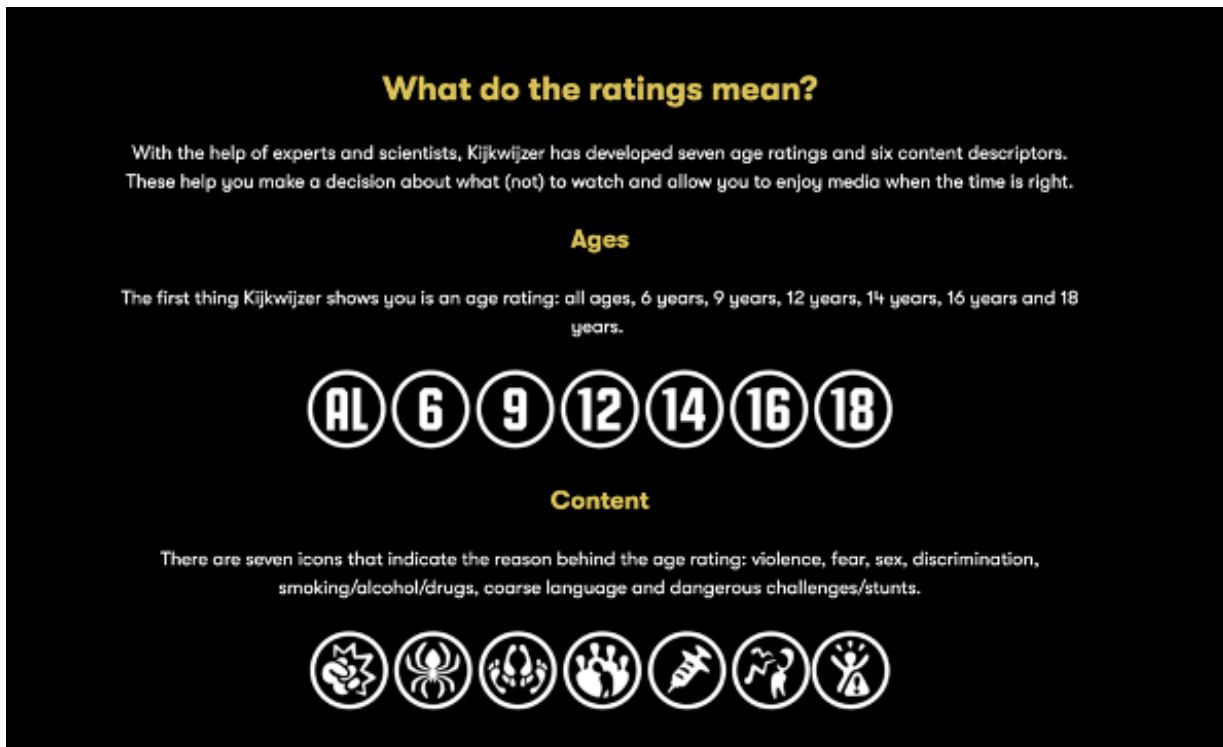
[75] ERGA. (2017). Protection of Minors in the Audiovisual Media Services: Trends & Practices (ERGA report). <https://erga-online.eu/wp-content/uploads/2016/10/ERGA-PoM-Report-2017-wordpress.pdf>.

[76] Amedeo Arena, Mark D. Cole, Jan Henrich, Bernardo Herman, Pascal KaminaAmadeo Arena et. al (2019). Self- and Co-regulation..., cit. See also: Council of Europe (2019). Media Regulatory Authorities and Protection of Minors. <https://edoc.coe.int/en/media/7925-media-regulatory-authorities-and-protection-of-minors.html>.

[77] See both Amedeo Arena, Mark D. Cole, Jan Henrich, Bernardo Herman, Pascal KaminaAmadeo Arena et. al (2019). Self- and Co-regulation..., cit. and ERGA (2017). Protection of..., cit.

[78] See <https://www.kijkwijzer.nl/en/>.

## Kijkwijzer content classification[79]



In addition to the ratings of audiovisual content, Kijkwijzer advises audiences on game ratings based on the Pan European Game Information, a European video game content rating system[80]. It also offers information for the use of parental control in television and video-on-demand, games, and social media[81].

The principles of good co-regulation are met here: All Dutch broadcasters participate in the measure as members of NICAM (the membership is not mandatory but benefits them). Monitoring and evaluation strategies are in place. If an audience member disagrees with a Kijkwijzer rating, they can file a complaint with NICAM. NICAM controls the quality of its members' classifications structurally and through random checks. The Dutch media authority, the CvdM (Commissariaat voor de Media), in turn, evaluates the work of NICAM yearly by assessing whether the classification checks by NICAM are appropriate. The CvdM reports its findings and conclusions to the State Secretary for Education, Culture, and Science, who is responsible for media affairs.

[79] See <https://www.kijkwijzer.nl/en/about-kijkwijzer/>.

[80] See <https://www.kijkwijzer.nl/en/tools/games/pegi-age-ratings/>.

[81] <https://www.kijkwijzer.nl/en/tools/parental-controls/>.

While the above example highlights opportunities in content rating, digitization complicates the protection of minors. Audiovisual content is highly popular among the youth, and today it is created and disseminated online on various platforms by professional media organizations, professional online content creators and regular users. The AVMSD can only regulate a limited field. As a report by ERGA posits emphatically, “the issue of protective measures within the audiovisual media services is just a part of the bigger question of protecting children in the digital environment[82].” In 2022, the EU set a new strategy for a better internet for kids based on consultations with children, parents, teachers, Member States, ICT and media industry, civil society, academics, and international organizations (known as Better Internet for Kids, or BIK+)[83]. The strategy seeks to (a) protect children from harmful and illegal online content, conduct, contact, and consumer risks and to improve their well-being; (b) empower children to acquire the necessary skills and competencies; and (c) foster active participation and giving children a say in the digital environment. The strategy envisions international multi-stakeholder collaboration to implement its goals[84].

The AVMSD stipulates that Member States are to report on media literacy[85] and accordingly, some regulatory bodies have included the field of media literacy and digital safety in their purview. For example, the Finnish National Audiovisual Institute (KAVI)[86], a central governmental agency under the Ministry of Education and Culture, is not only responsible for ratings but has a legal duty to promote media education. KAVI coordinates the implementation of Finnish national media education and media literacy policy and collaborates with non-governmental organizations in strategic media education planning, also offering pedagogical tools and resources. KAVI also coordinates the Finnish Safer Internet Centre (FISIC), co-funded by the European Commission and implemented in cooperation with two Finnish non-governmental organizations. The Centre aims to promote media literacy, media education, and a safer media environment for children, according to the BIK+ strategy[87].

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[82] ERGA (2017). Protection..., *cit.*

[83] European Commission. (2023). Shaping Europe’s Digital Future. A European Strategy for a better internet for kids (BIK+).<https://digital-strategy.ec.europa.eu/en/policies/strategy-better-internet-kids>

[84] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Digital Decade for children and youth: the new European strategy for a better internet for kids (BIK+) COM/2022/212 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2022:212:FIN>.

[85] See Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, *cit.*, Art. 33a.

[86] See <https://kavi.fi/en/>.

[87] It should be noted that the DSA will also strengthen the protection of minors. See, for example, DG Connect. (2023). Digital Services Act. Protection of minors. [https://ec.europa.eu/newsroom/repository/document/2023-38/BIK\\_code\\_special\\_group\\_\\_1st\\_meeting\\_\\_DSA\\_presentation\\_24Rwu5DYRGG2pTYA8jHbcYErg\\_98458.pdf](https://ec.europa.eu/newsroom/repository/document/2023-38/BIK_code_special_group__1st_meeting__DSA_presentation_24Rwu5DYRGG2pTYA8jHbcYErg_98458.pdf).

## Public service broadcasting

The role of public broadcasting in the Member States is “directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism[88].” The remit of public service broadcasters is often regulated in national law due to their funding model. They are also often key players in creating, commissioning, and distributing domestic and European content. Still, their national regulation may be vague; they do not have a specific EU-designated digital mandate, and it often remains within their purview to set more detailed criteria for their operations and decide, for instance, how to react to new technologies and whether or how to be present on online platforms to fulfill their role in providing media pluralism. Since these organizations are national and, in most EU countries, one organization represents the nation or a region, much of the standard-setting happens internationally.

The members of the European Broadcasting Union (EBU), an advocacy organization for public broadcasting that includes the EU PSBs as well as some other broadcasters, agreed on public service values and editorial principles in 2012. The core values include universality, independence, excellence, diversity, accountability, and innovation. A set of Editorial Principles derived from these principles requires public service media (PSM) journalists to be impartial and independent, fair and respectful, accurate and relevant, and connected and accountable[89]. The EBU also discusses technological standards and, among other things, guidelines for AI in the context of public media.

While these efforts are commendable from the perspective of knowledge exchange, the criteria of self-regulation are not met here. There are no shared monitoring and accountability mechanisms for PSBs following the basic value and editorial standards. This could be considered a missed opportunity regarding the EU primary and secondary laws. Instead, PSBs report on their activities and use of funding for the state as the funder.

Still, specifically, the lack of EU-level PSB policies regarding digitization has led to member-state-level conflicts in the national markets. Commercial competitors in several Member States have complained to the EU Competition Department that PSB have an undue advantage in their national media markets and their digital remits should be restricted. Similarly, the lack of guidance on PSB governance by the EU has created, in some cases, a situation where PSBs are “captured” by political power and used as propaganda tools[90].

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[88] Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Protocol annexed to the Treaty of the European Community - Protocol on the system of public broadcasting in the Member States. [http://data.europa.eu/eli/treaty/ams/pro\\_9/sign](http://data.europa.eu/eli/treaty/ams/pro_9/sign).

[89] European Broadcasting Union. (2014). Public Service Values, Editorial Principles and Guidelines. <https://www.ebu.ch/guides/public-service-values-editorial-principles>. *Note that public service broadcasting is nowadays often referred to as public service media (PSM) by many stakeholders, including the Council of Europe and the European Broadcasting Union. The term has not (yet) been widely used in the EU, and the digital mandate of public service broadcasting is not specified by any EU regulation.*

[90] See, for example, Marius Dragomir, & Minna Aslama Horowitz. (2021). Media Capture and Its Contexts: Developing a Comparative Framework for Public Service Media. In M. Túniz-López, F. Campos-Freire, & M. Rodríguez-Castro (Eds.), *The Values of Public Service Media in the Internet Society*. London: Palgrave MacMillan. DOI: [https://doi.org/10.1007/978-3-030-56466-7\\_12](https://doi.org/10.1007/978-3-030-56466-7_12).



## Disinformation as a regulatory challenge

Regulatory challenges involving the legacy media sector can be overarching and many-sided; global, regional, and national, involving multiple fields and stakeholders. The EU's battle against disinformation is a case in point, involving both strategic communications and security concerns, the role of national media in the member states, challenges and opportunities of detecting and curbing online disinformation in global platforms, media literacy competencies of citizens, and so on.

Disinformation is a severe problem for democracy in that it erodes public trust in societies, knowledge institutions, and among citizens themselves. In these times of European “polycrisis[91],” “infodemic[92]” and “information warfare” made powerful with “computational propaganda[93],” significant policy measures by the EU are not surprising. The challenge is the complex nature of the problem. As defined by the European Commission Joint Research Centre, the narrow approach to disinformation focuses on verifiably false information. Fact-checking can expose false news items and identify the sources of these articles. This form is easy to identify and can be countered by hiring fact-checkers, tagging suspicious posts, removing false news posts, and so on. The broad approach to disinformation beyond false content, then, pertains to deliberate attempts at distortion of news to promote ideologies, confuse, create polarization, as well as disinformation for the purpose of earning money but not to harm. While much of this can be politically motivated, these attempts can take the form of clickbait practices and the intentional filtering of news for commercial purposes to attract particular audiences. This approach is harder to empirically study and verify, and pertains to the economic models of news markets and variations in the quality of news[94].

Due to the proliferation of disinformation in the past decade, the EU has taken a string of measures to address disinformation, including the creation of EU vs Disinfo, a platform[95] whose task is to detect and react to disinformation campaigns that have the potential to destabilize the Union or its Member States. The European Commission followed suit with a bevy of recommendations aimed at protecting the integrity and fairness of European elections. The High-Level Expert Group (HLEG) on Disinformation was formed with representatives from not only the EU and the Member States but also online platforms, independent fact-checkers, and academia.

[91] Jonathan Zeitlin, Francesco Nicoli, & Brigid Laffan. (2019). Introduction: the European Union beyond the polycrisis? Integration and politicization in an age of shifting cleavages. *Journal of European Public Policy*, 26:7. DOI: <https://doi.org/10.1080/13501763.2019.1619803>.

[92] World Health Organization. (n.d.). Infodemic. [https://www.who.int/health-topics/infodemic#tab=tab\\_1](https://www.who.int/health-topics/infodemic#tab=tab_1).

[93] See, for example, Rory Clarke, & Balazs Gyimesi. (2017). Digging up facts about fake news: The Computational Propaganda Project. OECD Yearbook. Organization for Economic Cooperation and Development. <https://web.archive.oecd.org/2017-05-15/436300-digging-up-facts-about-fake-news-the-computational-propaganda-project.htm>.

[94] Bertin Martens, Luis Aguiar Wicht, Maria Estrella Gomes-Herrera, & Frank Muller-Langer. (2018). The digital transformation of news media and the rise of disinformation and fake news. JRC Digital Economy Working Paper 2018-02. Seville: European Commission Joint Research Centre. [https://joint-research-centre.ec.europa.eu/reports-and-technical-documentation/digital-transformation-news-media-and-rise-disinformation-and-fake-news\\_en](https://joint-research-centre.ec.europa.eu/reports-and-technical-documentation/digital-transformation-news-media-and-rise-disinformation-and-fake-news_en).

[95] See <https://euvsdisinfo.eu/>.

In 2018, the HLEG recommended a five-tier programme, highlighting the multidimensionality of the problem. The EU and the Member States should (a) demand and enhance the transparency of online news, involving an adequate and privacy-compliant sharing of data about the systems that enable their circulation online; (b) they should promote media and information literacy as well as (c) develop tools for empowering users and journalists; they should also (d) safeguard the diversity and sustainability of the European news media ecosystem and (e) promote research on the impact of disinformation in Europe.

The EU Member States joined forces in setting up an Action Plan against Disinformation[96] in line with their national defense and security strategies. The EU also spawned an initiative that led to the adopting of the Code of Practice on Disinformation (CoP)[97], a self-regulatory guide and reporting mechanism that puts forward requirements targeting tech platforms, the online advertisement industry and the fact-checking community, among others. Other initiatives aimed at combating disinformation launched by the EU include the Social Observatory for Disinformation and Social Media Analysis (SOMA, 2018-2021) aimed to bring together researchers, fact-checkers and media organizations, and the European Digital Media Observatory (EDMO)[98] launched in June 2020 to ensure closer coordination amongst fact-checking organizations, the academic community, media practitioners and teachers with tech companies and national authorities.

Still, from the perspective of the Member States, these efforts have had a varied impact. Different national contexts are facing different forms of disinformation challenges, and are equipped in different ways to resist disinformation. One oft-cited study on Europe and the US concluded that the political environment and news consumption are essential considerations in terms of resilience against disinformation. Polarization and populist politics diminish trust in legacy journalism and prompt social media as a news source, hence exposing audiences more easily to disinformation. Also, the national media market size matters. For instance, in smaller markets, public service media may have a significant role in providing trusted information[99]. In some countries in the EU, the legacy media, even the public broadcaster, could be the disseminator of disinformation[100].

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[96] European Commission (2018). HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Action Plan against Disinformation. Brussels, 5.12.2018 JOIN(2018) 36 final.

[97] European Commission. 2024. Shaping Europe's Digital Future. The 2022 Code of Practice on Disinformation. <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>.

[98] See <https://edmo.eu/>.

[99] Edda Humprecht, Frank Esser, & Peter van Aelst. (2020). Resilience to Online Disinformation: A Framework for Cross-National Comparative Research. *The International Journal of Press/Politics*, 25(3). DOI: <https://doi.org/10.1177/1940161219900126>.

[100] Minna Aslama Horowitz, & Marius Dragomir. (2024). Epistemic Violators: Disinformation in Central and Eastern Europe In M. Aslama Horowitz, H. Nieminen, K. Lehtisaari, A. D'Arma (Eds.), *Epistemic Rights in the Era of Digital Disruption. Global Transformations in Media and Communication Research - A Palgrave and IAMCR Series*. London: Palgrave Macmillan. DOI: [https://doi.org/10.1007/978-3-031-45976-4\\_11](https://doi.org/10.1007/978-3-031-45976-4_11)

Some Member States decided on strong measures, so-called “fake news” laws. While this regulatory practice was more common outside of the EU, related regulation was introduced in Denmark (2019), Greece (2021), France (2018) and Hungary (2020). The fear with such an approach is that it would hamper press freedom[101]. Another approach is journalistic, legacy media self-regulation, including content that would not only flag but directly address disinformation and educate audiences about it. In fact, not the EU but the Council of Europe, in its Resolution 2255 (2019)[102] set related tasks for public broadcasters, including quality and innovative communication practices, specialized programmes containing analyses and comments regarding disinformation, programming that stimulates critical thinking among audiences, targeted online communication with young people, and projects and collaborations addressing the information disorder with other PSB organizations and national stakeholders. This resolution has never been taken as a formal self-regulatory tool by the European PSB, however.

The Member States also differ in their capacities in terms of media and digital literacy on the one hand and detection of online disinformation[103] on the other hand. For instance, the Nordic EU countries Denmark, Finland and Sweden excel in resilience to disinformation, primarily due to media literacy policies and efforts by various stakeholders, including their PSB organizations. However, until recently, their fact-checking activities have been modest, and their organizations have been small with very limited resources. In contrast, for instance, Germany, Italy, and Spain have for some time hosted active fact-checking groups. The role of independent fact-checkers in the EU and in Europe at large has grown significantly in recent years. This is also evident in the recent establishment of the self-regulatory Code of Standards under the European Fact-checking Standards Network (EFCSN) [104].

In the 2020s, the EU is rapidly embracing a new set of policy measures (see Figure 5). It became clear that the self-regulatory Code of Practice on Disinformation had not produced the desired impact, so it was revised in 2022 and informed the reporting requirements of the DSA. The European policy narrative has shifted from combating disinformation to building resilience against it. The European Democracy Action Plan (EDAP, 2020)[105] is an overarching plan to strengthen the *resilience* of democracies across the EU. It is in line with the broader strategy, outlined in the 2030 Digital Compass, setting the pathway for EDAP, that notes that Europe’s approach to the digital economy includes “ensuring the security and resilience of its digital ecosystem and supply chains[106].”

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[101] See, Gabriella Lim, & Samantha Bradshaw. (2023). Chilling Legislation: Tracking the Impact of “Fake News” Laws on Press Freedom Internationally. Washington: Center for International Media Assistance (CIMA). <https://www.cima.ned.org/publication/chilling-legislation/>

[102] Council of Europe (2019). Public service media in the context of disinformation and propaganda. Resolution 2255 (2019). <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=25406&lang=en>.

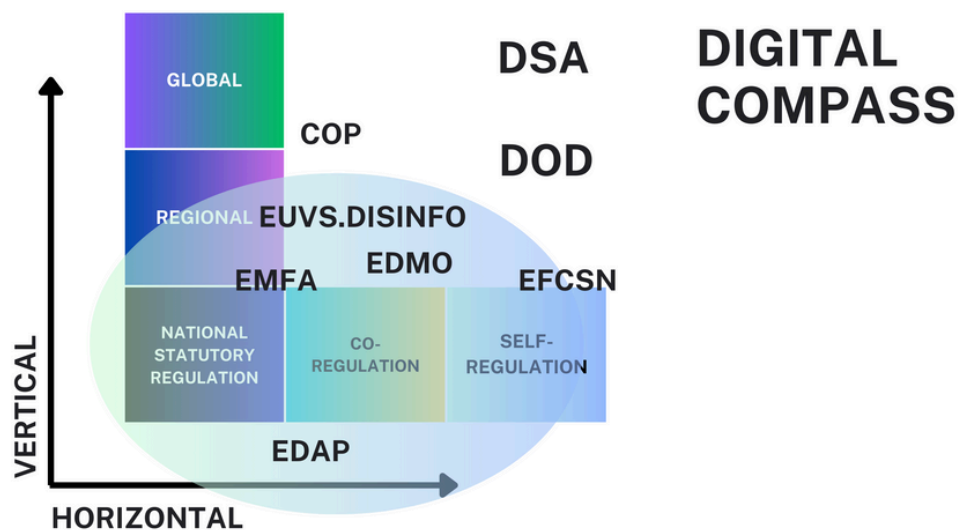
[103] See, for example, Marin Lessenski. (2022). How It Started, How It is Going: Media Literacy Index 2022. Sofia: Open Society Institute Sofia. <https://osis.bg/?p=4243&lang=en>.

[104] European Fact-Checking Standards Network. (n.d.) Code of Standards. <https://efcsn.com/code-of-standards/>.

[105] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European democracy action plan COM/2020/790 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A790%3AFIN&qid=1607079662423>.

[106] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Digital Compass: the European way for the Digital Decade COM/2021/118 final <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52021DC0118>.

While EDAP reiterates traditional policy benchmarks, including single market and successful businesses, European values, skilled citizens, and a robust civil society, the compass is an open response to the platform power and related challenges amplified during the pandemic. It mentions a variety of policy initiatives from data regulation to the new Digital Services Act package. It envisions a vast array of innovative digital projects and developments by 2030 to ensure European economic success and overall resilience as a region. This new resilience narrative also underpins European debates on disinformation and other related challenges, including various strategies against online harms, and the legacy media-focused EMFA[107]. In its 2023 work program, the European Commission has agreed on an overarching Defense of Democracy Package (DoD) that, among other things, seeks to combat disinformation and support media freedom and pluralism[108].



**Key:**

- COP: The Code of Practice on Disinformation
- Digital Compass: EU's digital targets for the digital decade
- DOD: The Defense of Democracy Package
- DSA: The Digital Services Act
- EDAP: European Democracy Action Plan
- EDMO: The European Digital Media Observatory
- EFCSN: The European Fact-checking Standards Network
- EMFA: The European Media Freedom Act
- EU vs Disinfo: Online platform

[107] Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0457>.

[108] European Parliament. (2024). Legislative Train Schedule. Defense of democracy package, including an initiative on the protection of the EU democratic sphere from covert foreign influence. <https://www.europarl.europa.eu/legislative-train/spotlight-JD%2023-24/file-defence-of-democracy-package>.

Yet another example reveals how challenging the layers of regulation in vertical and horizontal dimensions are in today's complex media landscape. It is the debate between Elon Musk and the EU around the rampant disinformation on X (formerly Twitter) about the violence in the Middle East, with the EU noting the need for (and the current lack of) DSA compliance[109].



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[109] Gabby Miller. EU Regulator Challenges Musk as Falsehoods Flourish On X Amid Israel-Hamas War. 11 October 2023. Tech Policy Press. <https://techpolicy.press/eu-regulator-challenges-musk-as-falsehoods-flourish-on-x-amid-israel-hamas-war/>.

## 4. Conclusions and recommendations: regulation, rights and media freedom

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### Conclusions: key features and trends in EU regulation, co- and self-regulation

The above overview of some of the key legacy media-related regulatory highlights several features and trends.

- **Balancing (sometimes) conflicting aims.** This brief overview has highlighted how the EU media policies, including regulation, are an ongoing balancing act between protecting *values* and its citizens' *rights* (pluralism, democracy, human dignity, and so on) and a functioning, thriving, and innovative *single market* within the EU. Sometimes these aims go hand-in-hand, as is expected with the DSA; sometimes, they may clash, as is the case with public service media.
- **Variety of contexts.** A recent assessment of media-focused and -related regulations in the EU notes the quest for *harmonization* versus the *subsidiary clause* that reserves a degree of independence to the Member States. While in theory sharing similar core values, the Member States represent differing social, political, economic, and cultural contexts, which, in turn, is reflected in national media policies and regulations[110]. This also impacts the manner in which (and the resources with which) regulation can be implemented.
- **Digitization and cross-sectoral regulation.** While the EU has continuously been updating its media policies to correspond to the demands of digitization, both its own regulation and the policies in the Member States often still struggle with finding a balance between the traditions of sectoral regulation (regarding the press, broadcasting, audiovisual) versus the *multimedia* digital realities that may also involve national and global actors. The recent efforts have been cross-sectoral. The DSA has been called “the Constitution of the Internet”[111] in that it is not limited only to digital service providers based in the EU and, especially because it is a cross-sectoral effort in *provider liability*, including in its scope a wide range of intermediaries from internet access providers, online search engines, hosting services to marketplaces, app stores, and social media platforms. Similarly, the EMFA entails numerous instruments that concern the field of the *media in a broad sense*, ranging from the protection of journalists to the standardization of audience measurements.

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[110] Stephan Dreyer, Rike Heyer, Theresa Josephine Seipp, & Wolfgang Schulz. et al. (2020). 'The European communication (dis)order...', cit.

[111] For example, Asha Allen. The EU's Opaque Policy-Making Has Never Been Clearer. 29 April 2022. Wired. <https://www.wired.com/story/eu-opaque-policy-making-dsa/>.

- **The focus on citizens' needs and rights.** While this text has concentrated on concrete and specific regulatory measures, a broader trend can be seen in policy discourses framing policy decisions: policy conversations have in recent years focused explicitly on *citizen-centric solutions*, especially their communication and digital rights.

Either as a legal approach or as a moral discursive strategy, the rights-based approach is typically presented in a general sense as a counterforce that protects individuals against illegitimate forms of power, including both state and corporate domination. The notion of communication rights can refer not only to existing, legally binding norms but also more broadly to normative principles against which real-world developments are assessed. Besides the actions of states, the realization of communication rights is now increasingly affected by the actions of global platforms and other multinational corporations, activists, and users[112].

From an EU citizens' perspective, a rights-based approach seems important. A 2021 Eurobarometer survey of the European Commission found that more than eight in ten respondents think that it would be useful for the European Commission to define and promote a common European vision of digital rights and principles[113]. A need to emphasize a rights-based approach—one that can be founded on established human rights principles and be applied in different contexts—can be seen in the recent policy initiatives of the EU. This approach is explicitly stated in the 2022 European Declaration of Digital Rights and Principles, a document first of its kind in the world.

The focus on citizens-audiences-consumers is also evident regarding the media sector from the perspective of the media markets. The recent analysis of the European media markets by the EU Commission notes, unsurprisingly, that both intellectual property and technological innovations are key to the success of the field, but that the field should engage in audience-driven strategies for the basis of their business models[114].

The explicit reiteration of rights and the emphasis on democracy are not surprising in the light that the EU has had to come to terms with the need to create rapid and long-term policy solutions for the context of the “polycrisis[115],” including environmental and health crises, the Ukrainian war, and various political and economic disruptions. Rapid digitization in all fields of life, coupled with communication and media-related problems such as hate speech and disinformation, and the increasing digital competence gaps based, among other things, on age, education, income, require strengthening these value bases to complement the EU's wide and far-reaching digitization strategies.

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[112] Marko Ala-Fossi, Anette Alén-Savikko, Jockum Hildén, Minna Aslama Horowitz, Johanna Jääsaari, et al. (2019). Operationalising communication rights: The case of a 'digital welfare state'. *Internet Policy Review*, 8(1). DOI: 10.14763/2019.1.1389 <https://policyreview.info/articles/analysis/operationalising-communication-rights-case-digital-welfare-state>.

[113] European Commission (2021). Eurobarometer: Europeans show support for digital principles. [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_6462](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_6462).

[114] European Commission (2023). COMMISSION STAFF WORKING DOCUMENT European Media Industry Outlook. Brussels, 17.5.2023 SWD(2023) 150 final. <https://data.consilium.europa.eu/doc/document/ST-9621-2023-INIT/en/pdf>.

[115] See, for example, In polycrisis world, Europe gains from sharing emergency supplies and tapping expertise. 19 April 2023. *Horizon: the EU Research and Innovation Magazine*. <https://ec.europa.eu/research-and-innovation/en/horizon-magazine/polycrisis-world-europe-gains-sharing-emergency-supplies-and-tapping-expertise>.

- **Continuing practices of multistakeholderism, co- and self-regulation.** Self-regulatory practices in journalism are a widely spread phenomenon in the EU. It is also clearly expressed in the AVMSD that the EU encourages co- and self-regulation. However, as one report on co- and self-regulation in Europe states, there is *no typical European model* of co-regulation and self-regulation. Indeed, context matters: practices that function well in some political contexts can even hinder regulatory aims in others. The report suggests that a widely accepted goal, such as the protection of minors, could be a theme that would best unify different stakeholders and be supported by the public, thus creating a basis for finding an effective model for co-regulation[116].

One trend is, however, clear in innovating or planning policies, including statutory, co-, and self-regulation: multistakeholder consultations and related practices. This has for decades been the model of the Internet Governance Forum[117] of the United Nations due to the wide impact of the Internet for most sectors in today's world. The Forum brings together representatives of states, industry, academia, and civil society. In the EU, open consultations and High-Level Expert Groups are some forms of such practices.

Multistakeholderism is also related to the principle of evidence-based policymaking, that is, involving significant research and scientific advisors in the policy process. This is another feature often highlighted in the EU policy activities[118]. Similarly, the EU stresses the importance of transparency of its processes for its citizens as one of its core principles[119].

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[116] Jean-Francois Furnémont, & Tanja Kerševan Smokvina. (2017). European..., cit.

[117] See <https://www.intgovforum.org/en>.

[118] European Commission. (2022). EU Science Hub. Evidence-informed policymaking: a new document to foster discussion on a better use of scientific knowledge in policy. [https://joint-research-centre.ec.europa.eu/jrc-news-and-updates/evidence-informed-policymaking-new-document-foster-discussion-better-use-scientific-knowledge-policy-2022-10-26\\_en](https://joint-research-centre.ec.europa.eu/jrc-news-and-updates/evidence-informed-policymaking-new-document-foster-discussion-better-use-scientific-knowledge-policy-2022-10-26_en).

[119] See, for example, European Union. (n.d.) Access to information. [https://european-union.europa.eu/principles-countries-history/principles-and-values/access-information\\_en#:~:text=Transparency%20is%20one%20of%20the,out%20in%20the%20EU%20treaties](https://european-union.europa.eu/principles-countries-history/principles-and-values/access-information_en#:~:text=Transparency%20is%20one%20of%20the,out%20in%20the%20EU%20treaties).



## Recommendations

The value and rights-based foundation, and the single market, position the EU as a significant actor vis-à-vis global platforms and as an innovator of significant policy solutions. Still, the EU policies, even regulations around legacy media, are highly complex. Adding to the complexity are the diverse characteristics of its Member States and the diverse ways they implement regulations.

- As is evident in this overview, the EU can offer some **baselines** for formulating media policies and regulations, but in terms of implementation, no size fits all. The baselines include key ideals of a robust and diverse media system nationally, and respect for human dignity (possibly through protective measures) while protecting the diversity and sustainability of the media system.
- One central baseline, or benchmark, is the **citizen-centric** approach. In today's complex and global media environment, if citizens do not feel connected to national/local media, they find alternatives in global platforms and closed groups.
- Without **co- and self-regulation**, these kinds of benchmarks are hard to achieve. The aforementioned report suggests that a widely accepted goal, such as the protection of minors, could be a theme that would best unify different stakeholders and be supported by the public, thus creating a basis for finding an effective model for co-regulation[120].
- Related to the above is the **independence** of the authority monitoring and assessing regulation, be it a national regulatory authority (NRA) or a self-regulatory body. This does not only enforce compliance but also ensures the public's trust in protections and in the quality of regulation.
- **Cross-sectoral** thinking is necessary in policy innovation in the digital age. Different fields link to and can support one another. One example is a recent set of policy recommendations by the Nordic Council of Ministers to complement the Nordic national regulatory approach to the Digital Services Act. It includes, among other things, measures ranging from the recognition that the Nordic democratic values need protection from the global platform power to support for digital innovations by public service media, exchanges in media literacy pedagogy and materials, shared expert group on AI development, annual comparative monitoring of the Nordic communication landscapes, and new innovations for citizen participation and digital debates[121]. While these are not all regulatory measures, they illustrate the various dimensions democratic public communication and media pluralism require in the digital age.

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[120] Jean-Francois Furnémont, & Tanja Kerševan Smokvina. (2017). European..., cit.

[121] Nordic Council of Ministers. (2023). A Nordic approach to democratic debate in the age of Big Tech. Recommendations from the Nordic Think Tank for Tech and Democracy. DOI: <http://dx.doi.org/10.6027/nord2023-004>.

- Although not directly in the scope of this paper, it is evident that in the digital age, regulation needs to be coupled with **media and digital literacy**. Media literacy is mentioned in EU discussions on media policy and quite broadly mentioned in the Audiovisual Media Services Directive, as well as included in the Code of Practice on Disinformation. It is, however, a broader EU policy theme that intersects with the frameworks for digital skills, especially the DigComp 2.2 Digital Competences Framework[122]. Literacy is also a field that can, and often does, bring together different stakeholders, from regulators to broadcasters and the press, to schools, to civil society organizations. An overview of all media and digital information literacy policies and best practices could be an informative next step in re-thinking media policies in the digital era.



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[122] DigComp 2.2: The Digital Competence Framework for Citizens - With new examples of knowledge, skills and attitudes. <https://publications.jrc.ec.europa.eu/repository/handle/JRC128415>.

# How to Modernize Media Laws to Cope With Digital Change

By Krisztina Rozgonyi

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## Executive summary

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Modernizing media-relevant laws, including copyright law and data protection regulations, is a crucial response to the rapid digitalization of media content and the rise of online global distribution via various platforms. In the EU context, we could witness a fundamental turn of the policy from a liberal economic perspective to a constitution-oriented approach, with a leading role of the Court of Justice of the European Union, aimed at opposing platform powers. Digital constitutionalism in the EU has delivered significant regulatory solutions to protect fundamental rights and democratic values while balancing the need for technological advancement.

*In regulating online platforms concerning media content (i), the policy objective of the EU was to make online platform service providers take more responsibility for the content they host and their effects on society. Also, there was a clear need for a level playing field for digital services, ensuring responsible online platform behavior and fostering transparency and fairness. Furthermore, the EU was committed to advocating for the application of human rights and the promotion of unhindered, uncensored and non-discriminatory access to online services for all, according to international legal standards. The two central pieces of EU legislation that regulate online platforms' directly relevant content are the Revised AVMSD and the DSA. In the Revised AVMSD, the EU extended the scope of the rules applicable to Video Sharing Platforms within the well-defined areas of protecting minors against harmful content online, combating hate speech and public provocation to commit terrorist offenses, and, in parallel, has put great emphasis on ensuring that national regulators – who are overseeing the application of the new rules – were to act as independent, professional and accountable public actors. The DSA is a remarkable piece of legislation and regulation of online platforms for the possible advancement of media content providers and journalists, with utmost relevance to platforms' requirements on transparency and accountability.*

*Copyright in the digital era (ii) was an area of serious contestation in the EU, and the new Copyright Directive (CDSMD) introduced a framework for digitally updated copyright protection and for the liability for online content-sharing service providers (platforms). The new right for press publishers was provided to foster quality journalism vis-a-vis online platforms. Meanwhile, the policy objective of the so-called 'upload-filters clause' was to oblige online platforms to conclude license agreements about copyright in user-generated content with major copyright holders; however, the new rules were heavily criticized as incentives for online censorship and possible restrictions of the right to information. The EU debates should warn Lebanese policy-makers and legislators about careful considerations on the impact of copyright as a potential barrier to the freedom of expression.*

*Safeguarding media freedom and pluralism* (iii) is an emerging area for new legislation in the EU, particularly regarding the draft *European Media Freedom Act (EMFA)*, which proposed a new set of rules and mechanisms promoting media pluralism and independence across the EU. The EMFA proposal is currently being discussed in the European Parliament. At the same time, the underlying considerations on the need for new legal and regulatory safeguards *ensuring editorial independence, the transparency of media ownership and enhancing the independence of national media regulatory authorities are relevant to the Lebanese context. Furthermore, the Lebanese stakeholders should consider the newly proposed legal responses to the rise of Strategic Lawsuits Against Public Participation (SLAPPs).*

*Data protection and privacy online* (iv) in the EU entered a new legislative era with the rise of massive personal data processing by online digital platforms. The General Data Protection Regulation (GDPR) aims to foster transparency and accountability in data processing and protect *individual rights to privacy* vis-à-vis datafication and platformization. However, new privacy and personal data protection rules must be carefully balanced concerning their impact on freedom of expression; thus, appropriate and well-tailored exemptions for journalistic privileges must accompany the legal modernization process.

In sum, the recent and current period of EU legislation in the areas of *(i) Regulating online media content and platforms, (ii) Copyright in the digital era, (iii) Safeguarding media freedom and pluralism, and (iv) Data protection and privacy* are offering essential and meaningful insights into the various aspects but also tensions about the modernization of the law, which Lebanese policy-makers and legislators should consider. Importantly, protecting fundamental freedoms online should be balanced with other legitimate public policy objectives, with utmost care at setting the boundaries of state intervention.

# 1. Introduction

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The modernization of media law, including copyright law and data protection regulations, has been prompted by the rapid digitization of media content and the fast-growing tech platforms that altered the process of content distribution online. As technology alters how we consume and share content, legal frameworks need to be adapted to address the challenges and opportunities triggered by these changes. The fundamental transformation of digital content production and dissemination via online platforms has enabled media content to be accessed and distributed globally without frontiers, yet it significantly limited the states' ability to achieve policy objectives under their jurisdiction. All these challenges require an update of media laws to ensure that citizens' and creators' rights are protected and that legal jurisdiction in the digital realm is clearly defined.

Similarly, as the rise of user-generated content on online platforms has blurred the lines between content creation and consumption, laws and regulations need to be modernized to achieve the right balance between protecting copyright holders' interests and accommodating legitimate use of content without endangering freedom of expression. Thus, traditional copyright laws, which were designed for a pre-digital era and may not adequately address the challenges of digital content distribution, need to be updated. Modernization of these laws should spur innovation and support development of sustainable business models while ensuring fair compensation of copyright holders and preventing monopolistic or restricting practices.

Data protection and privacy regulations gained new momentum with the digitization of information consumption. As tech platforms collect and process vast amounts of user data, legal provisions are needed to safeguard user privacy, prevent data breaches, and ensure that personal information is handled responsibly, holding tech platforms accountable for their data processing practices.

In all these areas, (i) regulation of online media content and platforms, (ii) copyright in the digital era, (iii) safeguarding media freedom and pluralism, and (iv) data protection and privacy, modernization of legislation and accompanying regulations should align with the international legal standards on freedom of expression by carefully balancing legitimate claims of individuals and other rightsholders, and public policy objectives.

In practical terms, modernized laws should ensure that individuals have access to diverse and high-quality content while respecting their rights to freedom of expression, access to information, and privacy. They should also protect the public from harmful forms of communication, such as disinformation.

## 2. Context: International legal standards on freedom of expression and media freedom as a base for the modernization of media laws

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Media-related laws are not modernized in a vacuum but in the context of international legal standards on freedom of expression and media freedom. According to these standards, freedom of opinion and expression are fundamental rights of every human and indispensable for individual dignity and fulfillment. They constitute essential foundations for democracy, the rule of law, peace, stability, sustainable and inclusive development, and participation in public affairs. States have the obligations to respect, protect and promote the rights to freedom of opinion and expression. All offline human rights, communication rights in particular, must be protected online.[123]

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) includes the main provisions on the right to freedom of expression. This right applies to forms of expression regardless of the medium through which they are made, including digital platforms and online channels of distribution. The right to freedom of expression also includes the right to “impart”, “seek” and “receive” information.

Hence, freedom of expression enables everyone to contribute to the public sphere and access a wide range of information and viewpoints. These aspects of the right underpin policy concepts such as media pluralism and media diversity as well as the right to access information, highly relevant in the digital context. International standards on audiovisual communication (see the General Comment No. 34., concerning Article 19 of the ICCPR)[124] emphasize that media regulation should be nuanced and proportionate, according to the nature of each media segment, digital and online media content included.

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[123] U.N. Human Rights Council 'Resolution L13 – The Promotion, Protection and Enjoyment of Human Rights on the Internet', 6 July 2012.

[124] General Comment No. 34 concerning Article 19 of the ICCPR adopted on 29 June 2011, by the UN Human Rights Committee, states the following (para 39):

“States parties should ensure that legislative and administrative frameworks for the regulation of the mass media are consistent with the provisions of paragraph 3.92 Regulatory systems should take into account the differences between the print and broadcast sectors and the internet, while also noting the manner in which various media converge. ... States parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations. The criteria for the application of such conditions and licence fees should be reasonable and objective, clear, transparent, non-discriminatory and otherwise in compliance with the Covenant. Licensing regimes for broadcasting via media with limited capacity, such as audiovisual terrestrial and satellite services should provide for an equitable allocation of access and frequencies between public, commercial and community broadcasters. It is recommended that States parties that have not already done so should establish an independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses.”

Paragraph 40 of the same document also establishes that “The State should not have monopoly control over the media and should promote plurality of the media. Consequently, States parties should take appropriate action, consistent with the Covenant, to prevent undue media dominance or concentration by privately controlled media groups in monopolistic situations that may be harmful to a diversity of sources and views.”

In Europe, freedom of expression and information are protected by Article 10 of the European Convention on Human Rights (ECHR),<sup>[125]</sup> the flagship treaty for protecting human rights. It states that it is the role and the responsibility of each state to guarantee such freedoms and ensure media pluralism according to positive and negative obligations put forward by the article. The positive obligation is to create a communication environment that supports the free flow of information and ideas in society to allow free and independent media to flourish. As for the negative obligations, the right requires states not to interfere with exercising the right to seek, receive and impart information and ideas, except as permitted under international law. Restrictions on the exercise of freedom of expression may not jeopardize the right itself. The U.N. Human Rights Committee has repeatedly underscored that the relation between the right and the restriction, and between the norm and the exception, must not be reversed.<sup>[126]</sup> Notably, any such restrictions must pass the so-called three-part cumulative test.<sup>[127]</sup>

The modernization of media-related laws and regulations in Europe, particularly in the EU, is a balancing act between the state's positive and negative obligations in ensuring freedom of expression and an enabling environment.

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[125] Article 10 ECHR reads as follows: "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises; 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

[126] See CCPR/C/21/Rev.1/Add.9, paras. 11 – 16.

[127] 1. They must be provided for by law, transparent and accessible to everyone (principle of legal certainty, predictability and transparency). 2. They must pursue one of the purposes set out in article 19.3 ICCPR, i.e., to protect the rights or reputations of others; to protect national security, public order or public health or morals (principle of legitimacy). 3. They must be proven necessary, as the least restrictive means required, and commensurate with the purported aim (principles of necessity and proportionality).



### 3. Overview of the latest legal provisions and attempts to regulate digital communications that affect media and journalism in Europe

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The innovations in information and communications technologies have not only created new opportunities for individuals to impart and disseminate information, but have also brought about new challenges. Social media platforms in particular have transformed all aspects of freedom of expression. Imparting information and the exposure of individuals to information have quantitatively exploded in recent years; however, the growing phenomenon of “filter bubbles”[128] might hinder qualitative diversity.[129] Meanwhile, content dissemination on a large scale allowed for increased participation of citizens in the public sphere but also boosted the threats stemming from online disinformation, specifically endangering the right to free elections.[130] At the same time, the media industry and news organizations have also become heavily reliant on social media platforms[131] and needed to adapt to the digital transformations of their news production and dissemination processes that fundamentally altered the traditional routines in the journalistic profession.[132]

These unprecedented changes had to be reflected in the overall legal provisions on protecting human rights, particularly freedom of expression and privacy as protection online is as important as protection offline. In sum, the general standards regarding the balance between freedom of expression and privacy in Europe had to be reconsidered in light of the specific manifestations of individual autonomy as well as of the different interactions that took place in the digital, platformized environment, including the access to, and use of, social media by journalists and media actors.[133]

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[128] Eli Pariser. (2011). *The Filter Bubble: What the Internet Is Hiding From You*. London: Penguin.

[129] Balázs Bodó, Natali Helberger, Sarah Eskens, & Judith Möller. (2019). Interested in Diversity. *Digital Journalism*, 7(2), 206–229. DOI: <https://doi.org/10.1080/21670811.2018.1521292>

[130] Krisztina Rozgonyi. (2020). Disinformation Online: Potential Legal and Regulatory Ramifications to the Right to Free Elections – Policy Position Paper. In F. Loizides, M. Winckler, U. Chatterjee, J. Abdelnour-Nocera, & A. Parmaxi (Eds.), *Human Computer Interaction and Emerging Technologies: Adjunct Proceedings from the INTERACT 2019 Workshops*. Ubiquity Press, 57–66. DOI: <https://doi.org/10.18573/book3>

[131] Reuters Institute for the Study of Journalism (RISJ). (2022). *Reuters Institute Digital News Report 2022*. Oxford: Reuters Institute for the Study of Journalism. [https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2022-06/Digital\\_News-Report\\_2022.pdf](https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2022-06/Digital_News-Report_2022.pdf)

[132] Reuters Institute for the Study of Journalism (RISJ). (2023). *Journalism, Media, and Technology Trends and Predictions*. [https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2023-01/Journalism\\_media\\_and\\_technology\\_trends\\_and\\_predictions\\_2023.pdf](https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2023-01/Journalism_media_and_technology_trends_and_predictions_2023.pdf).

[133] Joan Barata Mir. *Freedom of Expression and Privacy on Social Media: the Blurred Line Between the Private and the Public Sphere*. 1 August 2023. MediaLaws. <https://www.medialaws.eu/freedom-of-expression-and-privacy-on-social-media-the-blurred-line-between-the-private-and-the-public-sphere/>.

The EU is bound and committed to respect, protect and promote the freedom of opinion and expression as guided by the relevant provisions of the Treaty of the European Union (TEU) and the EU Charter of Fundamental Rights as well as in line with their international and European human rights obligations,[134] guided by the universality, indivisibility, inter-relatedness and interdependence of all human rights, whether civil, political, economic, social or cultural.[135] However, although the EU's media law rests as much on economic as on human rights foundations, the primary legal framework in which it operates is commercially driven and follows the rules on free movement and fair competition.[136] That being said, the economic and human rights frameworks of the EU media law are coherent.[137]

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[134] Articles 2, 6, 21, 49 of TEU and articles 7, 8, 10, 11, 22 of the EU Charter of Fundamental Rights.

[135] EU External Action. (2021). EU guidelines on freedom of expression online and offline. [https://www.eeas.europa.eu/sites/default/files/09\\_hr\\_guidelines\\_expression\\_en.pdf](https://www.eeas.europa.eu/sites/default/files/09_hr_guidelines_expression_en.pdf).

[136] Perry Keller. (2011). The Media in European and International Human Rights Law. In P. Keller (Ed.), *European and International Media Law: Liberal Democracy, Trade, and the New Media*. Oxford: Oxford University Press. DOI: <https://doi.org/10.1093/acprof:oso/9780198268550.003.0007>.

[137] Keller. (2011). *The Media in European...*, cit.

## 4. Summary of key policy debates on regulating digital online communication in the EU

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The digital transformation of communication and the media has challenged the law in several aspects, particularly with respect to protecting individuals' fundamental rights, such as freedom of expression, privacy, and data protection. The traditional legal mechanisms of the state to protect its citizens, such as those stipulated in constitutional law, have been endangered by the tendency of private transnational corporations[138] operating in the digital environment, primarily tech platforms, to perform quasi-public functions in the transnational context, which brought them in competition with public actors.

“From a constitutional law perspective, the notion of power has traditionally been vested in public authorities; a new form of (digital) private power has now arisen due to the massive capability of organizing content and processing data. Therefore, the primary challenge involves not only the role of public actors in regulating the digital environment but also, more importantly, the ‘talent of constitutional law’ to react against the threats to fundamental rights and the rise of private powers, whose nature is much more global than local.”[139] These unprecedented changes gave rise to a new phase of European constitutionalism (i.e., digital constitutionalism).[140] In the EU context, a fundamental turn of the policy from a liberal economic perspective to a constitution-oriented approach could be witnessed,[141] especially in content and data, with the Court of Justice of the European Union taking a leading role and aimed at opposing platforms' power. Arguably, digital constitutionalism in the EU has delivered “regulatory solutions to protect fundamental rights and democratic values” and promoted “the European model as a sustainable constitutional environment for the development of artificial intelligence technologies in the global context.”[142]

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[138] Matthias C. Kettemann (2020). *The Normative Order of the Internet: A Theory of Rule and Regulation Online*. Oxford, New York: Oxford University Press. DOI: <https://doi.org/10.1093/oso/9780198865995.001.0001>

[139] Giovanni De Gregorio. (2021). The Rise of Digital Constitutionalism in the European Union. *International Journal of Constitutional Law*, 19(1), 41–70. DOI: <https://doi.org/10.1093/icon/moab001>.

[140] Dennis Redeker, Lex Gill, & Urs Gasser. (2018). Towards digital constitutionalism? Mapping attempts to craft an Internet Bill of Rights. *International Communication Gazette*, 80(4), 302-319. DOI: <https://doi.org/10.1177/17480485187571>

[141] Edoardo Celeste. (2019). Digital Constitutionalism: A New Systematic Theorisation. *International Review of Law, Computers & Technology*, 33(1), 76–99. DOI: <https://doi.org/10.1080/13600869.2019.1562604>

[142] De Gregorio, *The Rise of Digital Constitutionalism...*, cit., p. 67, 70.

The latest regulatory proposals from the European Commission, on topics such as the regulation of online media content concerning hate speech and the protection of minors, viral spreading of fake news on social media and the fight against copyright infringement on video-sharing platforms have spawned heated debates among stakeholders. Real tension emerged between the responsibility of tech companies for illegal, harmful or misleading content hosted on their social media platforms and the role of the judiciary and state authorities within the newly emerging regulatory chains.[143]

It was first the revision of the Audiovisual Media Services Directive (AVMSD) in 2018[144] that made ground-breaking steps towards regulating online media content platform services. At the time, European audiences were in shock by how the 2016 United States elections and the United Kingdom Brexit referendum were influenced by hate speech and dis/misinformation, and policy-makers across Europe were keen to see new regulations of content platform services.[145]

Meanwhile, European audiovisual industries became eager to level the playing field as they competed with US-based tech giants for sources of income and increasingly fragmented audiences.[146] In response, the then newly adopted AVMSD for the first time held Video Sharing Platforms (VSP) responsible for protecting users and adhering to advertising standards.

One year later, the Directive on Copyright in the Digital Single Market (CDSMD) [147] put an end to the regulatory impunity of internet intermediaries such as Online Content-Sharing Service Providers.[148] The relatively safe harbor they had enjoyed since 2010 under the liability exemptions of the EU E-Commerce Directive[149] for third-party content, which generally freed them from the obligation to monitor such content, thus came to an end. The underlying concepts were similar in that they sought greater responsibility for online platforms for illegal and harmful user-generated content. The Commission's goal was to promote co-regulatory and self-regulatory solutions to level the "playing field for comparable digital services" while expecting "responsible behavior of online platforms to protect core values." [150]

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[143] Krisztina Rozgonyi (2018). A New Model for Media Regulation, *Intermedia* 46(1), 18–23., p. 66.

[144] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, OJ L 303, 28.11.2018, pp. 69–92.

[145] Krisztina Rozgonyi and Sally Broughton Micova. (2021). Editorial. *Journal of Digital Media & Policy* 12(3), 337–44. DOI: [https://doi.org/10.1386/jdmp\\_00069\\_2](https://doi.org/10.1386/jdmp_00069_2).

[146] Sally Broughton Micova, Felix Hempel, & Sabine Jacques. (2018). Protecting Europe's Content Production from US Giants. *Journal of Media Law* 10(2), 219–43. DOI: <https://doi.org/10.1080/17577632.2019.1579296>

[147] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, OJ L 130, 17.5.2019, p. 92–125.

[148] CDSMD, Article 17

[149] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17.7.2000, p. 1–16.

[150] Commission Recommendation of 1.3.2018 on measures to effectively tackle illegal content online.

Since then, the EU has progressively moved forward with legal, regulatory and policy measures aimed to respond to digital threats such as misinformation, the unethical exploitation of information asymmetry through advanced technological capabilities, lack of transparency and accountability, and risks to freedom of expression. It has put much emphasis on developing Europe-wide ethical standards, particularly on tackling disinformation,[151] and offered co-regulatory mechanisms through the Code of Practice on Disinformation (2018 and 2022).[152]

Most recently, the Digital Markets Act (DMA)[153] and the Digital Services Act (DSA) [154] were adopted in 2022, two pieces of legislation designed to counter platforms' power through "hard law" provisions.

In the following sections, this paper will provide an overview of the EU's latest and ongoing efforts to modernize media-related laws and regulations in the following areas:

- (i) Regulating media content on online platforms
- (ii) Copyright in the digital era
- (iii) Safeguarding media freedom and pluralism, and
- (iv) Data protection and privacy

The analysis is focused on the new areas and issues introduced by these initiatives, which can be seen as part of the EU's response to "the challenges to human dignity in an algorithmic society." [155]

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[151] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Tackling online disinformation: a European Approach, COM/2018/236 final.

[152] See at: <https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation>.

[153] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265, 12.10.2022, p. 1–66.

[154] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27.10.2022, p. 1–102.

[155] Giovanni De Gregorio. (2022). Digital Constitutionalism in Europe: Reframing Rights and Powers in the Algorithmic Society. Cambridge Studies in European Law and Policy. Cambridge: Cambridge University Press. DOI: <https://doi.org/10.1017/9781009071215>

## 5. Modernization of the EU's media-related legal frameworks

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### 5.1 Regulating media content on online platforms

The EU's policy objective in its latest media-related laws and regulations is to make online platform service providers take more responsibility for the content they host and their impact on society. The Communication on Online Platforms<sup>[156]</sup> sets out the policy principles guiding the EU's actions according to the economic agenda of the Digital Single Market. It emphasizes the need for a level playing field for digital services, ensuring online platforms' responsible behavior and fostering trust, transparency and fairness. Furthermore, as part of these efforts, the EU has claimed that it is committed to advocating for the application of human rights, including the right to freedom of opinion and expression and the promotion of unhindered, uncensored and non-discriminatory access to online services for all, under international law.<sup>[157]</sup> Two central pieces of EU legislation regulating online platforms are directly relevant to media content: the Revised AVMSD and the DSA.

#### 5.1.1 The Audiovisual Media Services Directive (AVMSD)

The AVMSD, first adopted in 2010, is the centerpiece of media policy in the EU. Over the multiple revisions during the last two decades, the scope of the AVMSD has been extended, to cover first on-demand audiovisual services and, most recently, in 2018, Video-Sharing Platforms (VSPs) that disseminate user-generated content.

The Revised AVMSD aimed explicitly at:

- (1) creating a level playing field for emerging audiovisual media and providing rules to shape technological developments;
- (2) preserving cultural diversity and investments in European content;
- (3) protecting users against hatred and children from online harms while regulating online platforms; and
- (4) safeguarding media pluralism and guaranteeing the independence of national media regulators.

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<sup>[156]</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Online Platforms and the Digital Single Market Opportunities and Challenges for Europe, COM/2016/0288 final.

<sup>[157]</sup> EU External Action. EU guidelines on freedom of expression online and offline.

Regarding VSPs, the focus was on protecting minors against harmful content online, combating hate speech and public provocation to commit terrorist offenses on the internet. According to the new provisions, VSPs must comply with a series of obligations including preventing minors' exposure to harmful content and ensuring that users are not exposed to unlawful content.[158] The Revised AVMSD introduced an obligation for VSPs to include measures to protect users within their terms of service. Thus, the onus is primarily on the VSP providers to implement rules to achieve the objectives of the AVMSD, under the oversight of the national regulators. [159]

The national media regulators are required to enforce the new obligations. This regulatory oversight should be a "systemic type of regulation,"[160] focused on procedures and processes. There is no expectation from media regulators to focus on individual content items; their task is to only assess the measures VSPs are taking. That means that the AVMSD does not invest regulators with investigative powers or impose transparency or access requirements on VSPs.

The Revised AVMSD represents a new approach to content regulation, which can be characterized as a systemic approach, under a minimum harmonization regime, with distinct transparency rules and with the active user seen as a regulatory actor.[161]

On the other hand, the Revised AVMSD introduced a new set of rules aimed to safeguard the independence of media regulators. According to the EU's guiding principles, regulators are in theory presumed to be appropriately insulated against political and commercial influences and can thus best perform their duties in the public interest. Therefore, the EU strives for all public authorities that exercise formal regulatory powers over the media to be protected against interference, particularly of a political or economic nature, including through the appointment of the members of the regulatory authority invested with decision-making power, a process that should be transparent, allow for public input and not be controlled by any particular group of interests. Through this newly introduced set of obligations (Article 30), the Revised AVMSD has stepped up its expectations on the EU national governments to ensure, through their respective legislation, both *de jure* and *de facto* independence of their national regulator and its accountability towards the public.

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[158] According to Article 28b (1) of the AVMSD, national legislation should introduce rules to hold VSPs responsible for ensuring any VSPs under their jurisdiction put in place appropriate measures to protect: minors from harmful content (which may impair their physical, mental or moral development), access to which shall be restricted; the general public from programs, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union; the general public from programs, user-generated videos and audiovisual commercial communications containing content which is a criminal offense under European Union law (for example provocation to commit a terrorist offense or offenses concerning child pornography).

[159] Art. 28b (3) contains the set of measures on VSPs that each EU country has to introduce in the national legislation: (a) including and applying in the terms and conditions of the VSP services the requirements for protections; (b) including and applying in the terms and conditions of the VSP services the requirements for audiovisual commercial communications that are not managed by the VSP providers; (c) having functionality for users to indicate whether videos contain commercial communication; (d) establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag to the VSP provider the content falling within one of the protected areas described in the previous section; (e) establishing and operating systems through which VSP providers explain to users what effect has been given to the reporting and flagging referred to in point (d); (f) establishing and operating age verification systems for users concerning content which may impair the development of minors; (g) establishing and operating easy-to-use systems allowing users to rate the content; (h) providing for parental control systems that are under the control of the end-user concerning content which may impair the development of minors; (i) establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the video-sharing platform provider about the implementation of the measures referred to in points (d) to (h); (j) providing effective media literacy measures and tools and raising users' awareness of those measures and tools.

[160] Lubos Kuklis. (2019). Video-Sharing Platforms In AVMSD-A New Kind Of Content Regulation.n Forthcoming, Research Handbook on EU Media Law and Policy. Cheltenham: Edward Elgar Publishing DOI: <https://doi.org/10.2139/ssrn.3527512>.

[161] Kuklis. (2019). Video-Sharing Platforms..., cit.

## 5.1.2 The Digital Services Act (DSA)

Another response of the EU to the growing power of online platforms was the adoption of the Digital Services Act (DSA) package, which aimed to “create a safer digital space where the fundamental rights of users are protected and to establish a level playing field for businesses.”[162] The DSA and its sister regulation, the Digital Markets Act (DMA), adopted by the European Parliament in 2022, started to apply incrementally, with full enforcement required by February 17, 2024.

The DSA created a uniform regulatory framework for intermediary service providers,[163] including online platforms, directly applicable across the EU. The DSA does not impose any additional rules specific to media content or its dissemination online, apart from the provision stipulating that what is illegal offline should also be illegal online and thus not be made available. However, the DSA introduces mechanisms to counter the availability of illegal content online, safeguards for online users whose content is removed or restricted by an online intermediary, and wide-ranging transparency requirements applicable on online platforms, including those related to content moderation and recommender systems. In essence, the DSA sets asymmetric obligations on different types of intermediaries depending on the nature of their service, reach, and societal impact. The bigger and more socially significant a service is, the more stringent obligations it must fulfill.

Consequently, the most prominent players in the market, the so-called very large online platforms (VLOPs) and very large online search engines (VLOSEs), must comply with all the rules, including the most far-reaching ones. By contrast, less consequential service providers (e.g., small and microservices) must only comply with the essential and more general obligations. Notably, the supervision and enforcement of the DSA rules will be shared between the European Commission and the EU national governments, with assistance from a new European Board for Digital Services, whereas VLOPs and VLOSEs will be directly regulated by the Commission.

Even though the DSA is not media-specific legislation, it puts forward several provisions that can affect the relations between media outlets and online platforms. [164] The direct relevance of the DSA to media-related content and services is the requirement on online platforms to take more responsibility regarding illegal information offered on their services. The DSA also lays out a set of key transparency requirements on the terms and conditions and recommender systems employed by platforms to control the availability and findability of content. Furthermore, the DSA establishes enforceable rights for users to challenge platforms, particularly when their content is removed or otherwise restricted. The most media-content relevant provisions of the DSA are the following:[165]

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[162] See the DSA text at <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>.

[163] According to Article 3 (g) of the DSA, the definition of an “intermediary service” refers to “mere conduit”, to “caching” and to “hosting” services, which includes the provision of services on online platforms, such as social media and similar others.

[164] See the EBU (2023) Digital Services Act-A Handbook for Public Service Media.

[165] Based on The Digital Services Act and the Implications for News Media and Journalistic Content (Part 1)’ by the DSA Observatory at: <https://dsa-observatory.eu/2022/09/29/digital-services-act-implications-for-news-media-journalistic-content-part-1/>.



## a. Protection for the integrity of news media and journalistic content

According to Article 14 of the DSA, the providers of intermediary services, i.e., online platforms, “shall include information on any restrictions that they impose about the use of their service in respect of the information supplied by the recipients of the service, in their terms and conditions.” Furthermore, they are required to “act in a diligent, objective and proportionate manner in applying and enforcing (such) restrictions,” with due regard to ... “the fundamental rights of the recipients of the service, such as the freedom of expression, freedom and pluralism of the media, and other fundamental rights and freedoms.”

Under this provision, platforms must inform their users, including media outlets using platforms to disseminate news content, about possible restrictions based on their terms of service. While platforms could previously moderate (journalistic) content in a non-transparent manner, once the DSA’s provisions on VLOPs and VLOSEs are introduced, platforms will have to act transparently and in a non-discriminatory manner when applying any content moderation measures, which mainly affect the availability, visibility, and accessibility of content, such as demotion, demonetisation, disabling of access to, or removal thereof. These transparency obligations should alleviate the problem of media content availability online.

## b. Risk assessment based on media pluralism objectives

The DSA pursues a so-called risk-based approach towards regulating platforms. In particular, VLOPs and VLOSEs will have to comply with strict risk assessment requirements (Article 34) and risk mitigation measures (Article 35), and provide for independent auditing on compliance (Article 37). Significantly, these risks are specifically related to media content. Therefore, risk assessments should entail “any actual or foreseeable negative effects for the exercise of fundamental rights”, in particular, freedom of expression and information (including freedom and pluralism of the media) (Article 34(1)(b)) but also “any actual or foreseeable negative effects on civic discourse” (Article 34(1)(b) and (c)). Therefore, VLOPs and VLOSEs are expected to identify such risks, carry out risk assessments, and “put in place reasonable, proportionate and effective mitigation measures tailored to the specific systemic risks.” After the complete application of the DSA, the European Commission will monitor and, if necessary, enforce compliance with the new requirements.

### c. Platforms' Positive Obligation on Tackling Disinformation

The DSA's policy objectives specifically refer to "ensuring a safe, predictable and trusted online environment, addressing the dissemination of illegal content online and the societal risks that the dissemination of disinformation or other content may generate" (Recital 8). Moreover, the DSA emphasizes the risk that "manipulative techniques can negatively impact entire groups and amplify societal harms, for example, by contributing to disinformation campaigns or by discriminating against certain groups" (Recital 69). Therefore, once VLOPs and VLOSEs prepare their risk assessments and mitigation strategies required by the law, they must pay particular attention to how their services disseminate or amplify misleading or deceptive content, including disinformation (Recital 84). This positive obligation vis-à-vis platforms will likely prompt online platforms to advance specific risk mitigation measures, such as the prioritization of media content, and adjust their algorithmic systems to promote media freedom. [166]

## 5.2 Copyright in the digital era

Copyright is at the heart of freedom of expression, both as an enabler and an obstacle to the enjoyment of the right to freedom of expression. The relation between copyright law and freedom of expression remains ambiguous. On the one hand, "copyright law protects the free expression of creators by ensuring that they reap the benefits of their work" allowing artists "to express themselves without worrying about the potential reproduction of their words, art or music." On the other hand, "copyright law restricts the form of expression by forbidding the free use of copyrighted materials," [167] and potentially collides with the right to information. With the advent of digital content production and dissemination, this conflict has highlighted several normative issues of copyright enforcement but also questioned the fundamental, and to some extent moral pillars of intellectual property protection in light of digital content abundance. Thus, copyright could become a major obstacle for the media in fulfilling its democratic role in society if the legislation did not provide for robust exceptions from and limitations on the licensed use of protected works for the benefits for the media and journalistic activities.

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[166] The Digital Services Act, cit.

[167] Alexandra Couto. (2008). Copyright and Freedom of Expression: A Philosophical Ma., In A. Gosseries, A. Marciano, & A. Stroul (Eds.), *Intellectual Property and Theories of Justice*. London: Palgrave Macmillan UK 160–87. DOI: [https://doi.org/10.1057/978-0-230-58239-2\\_9](https://doi.org/10.1057/978-0-230-58239-2_9).

The EU copyright law, which consists of 13 directives and two regulations, harmonizing the essential rights of authors, performers, producers and the media, and reflecting the international legal framework,[168] also faces some controversy. It became apparent that EU copyright law does not accommodate the needs of new forms of media players that rely on digital technology to discover, gather and analyze information from online sources and to inform the public via digital channels. Therefore, in 2019, the EU for the first time in almost 20 years introduced a new framework for copyright protection in the digital era, specifically covering the liability for online content-sharing service providers (platforms). The new Copyright Directive (CDSMD)[169] is also to be interpreted as a significant element of the rise of digital constitutionalism in the EU[170] and an attempt to counter platforms' power while ensuring users' and copyright holders' rights. Two specific provisions of the CDSMD are relevant for the modernization of media-related legislation, namely the protection of press publications in the use of online content (Article 15) and the rules on the use of protected content by online content-sharing service providers (Article 17).

The newly introduced right for press publishers (ancillary copyright for press publishers; Article 15) was aimed to foster plural, independent and quality journalism in the publishers' competition with online platforms and to "increase their legal certainty, strengthen their bargaining position and have a positive impact on their ability to license content and enforce the rights on their press publications" (Explanatory Memorandum to the CDSMD).

The rationale of the new rules was the power imbalances and the difficulties that press publishers faced when seeking to license the use of their publications and prevent unauthorized uses by online platforms. Thus, the CDSMD presented the newly introduced press publishers' right as a form of support for a "free and pluralist press" in its function "to ensure quality journalism and citizens' access to information" (Recital 54) and to allow for better licensing of press content, asserting that the "organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged" (Recital 55).

The underlying assumption was that by generating additional revenues for the publishers of news content, their business model could be beefed up, which in turn would safeguard quality journalism, and their role in a democratic society. In essence, the new legal provisions ensure that platforms enter into licensing agreements with news publishers nailing down the conditions for the publication of their news content. Moreover, the new right ensures that publishers receive compensation when their content is used as short summaries and headlines.

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[168] Many of the EU directives reflect Member States' obligations under the Berne Convention and the Rome Convention, as well as the obligations of the EU and its Member States under the World Trade Organisation 'TRIPS' Agreement and the two 1996 World Intellectual Property Organisation (WIPO) Internet Treaties (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty). In the last years the EU has signed two other WIPO Treaties: the Beijing Treaty on the Protection of Audiovisual Performances and the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or otherwise Print Disabled.

[169] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.

[170] De Gregorio, *The Rise of Digital Constitutionalism in the European Union*, cit.

Currently, EU Member States are in the process of implementing and enforcing the new right;<sup>[171]</sup> hence, it is too early to draw a conclusion as to whether the legislative provision has achieved the stated policy objectives and whether copyright law is a suitable solution for the protection of media freedom and pluralism. During the summer of 2023, Google announced that it had signed agreements with publishers of all sizes, publisher associations and collecting societies, covering over 1,500 publications across 15 countries.<sup>[172]</sup>

The other provision relevant for the media introduced by the CDSMD is Article 17, known as the “upload-filters clause,” the directive’s most debated new provision. Article 17 stipulates that disseminating user-generated content by online content-sharing service providers (OCSSPs, i.e., platforms) is considered an “act of communication to the public or making it available to the public” under EU copyright law. Thus, platforms are legally required to obtain authorization from the rightsholders for such uses of copyrighted works, for instance, by concluding a licensing agreement.

“If no authorisation is granted, online content-sharing service providers shall be liable for unauthorised acts of communication to the public” unless they have “demonstrated that they made best efforts to obtain an authorisation, in accordance with high industry standards of professional diligence, and any event, acted expeditiously, upon receiving a sufficiently substantiated notice from the rightsholders, to disable access to, or to remove the notified works from their websites, and made best efforts to prevent their future uploads”.<sup>[173]</sup>

The policy aim of the CDSMD is to oblige online platforms, particularly YouTube, to conclude license agreements with major copyright holders (such as the music industry) and collective rights management organizations (CMOs). However, the key dilemma that emerged is that platforms’ primary liability for user-generated content massively increases their legal risks, forcing them to actively check all content before publication and block the content they consider illegal. They do that, in practice, via the use of “upload filters,” which, some experts argue, can be an incentive for online censorship and a possible restriction of the right to information. In other words, it is argued that Article 17 of the CDSMD had created a potential conflict between the obligation of platforms to do their “best efforts” to prevent infringements of exclusive rights and their duty not to harm the freedom of expression and the right to information of users.<sup>[174]</sup>

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[171] See in Italy, Resolution no. 3/23/CONS of 19 January 2023, of the Italian Communications Authority (AGCOM), a first step in protecting copyright and related rights in the digital single market envisaged by Directive 2019/790 (and in particular in Article 15), approved the Regulation on fair compensation.

[172] Google. (2023). Google licenses content from news publishers under the EU Copyright Directive. Author: Sulina Connal. <https://blog.google/around-the-globe/google-europe/google-licenses-content-from-news-publishers-under-the-eu-copyright-directive/>

[173] Article 17 (4) CDSMD.

[174] Article 17(7) CDSMD.

To support national governments in implementing and enforcing the new legal provisions, the European Commission provided a non-binding Guidance<sup>[175]</sup> for harmonization purposes. The Guidance states that for platforms to comply with their best-efforts obligation under Article 17(4), they must agree on concluding licenses that are “offered on fair terms” and maintain “a reasonable balance between the parties.” The Guidance adds a minimum threshold of the obligation on platforms to engage proactively with rightsholders that can be easily identified and located, notably those with broad catalogs (e.g., CMOs). Some scholars have also evaluated the compatibility of upload filters with human rights principles and legal standards, recommending that for Article 17 to be a human rights-compliant response, upload filters must be explicitly targeted at online infringement of copyright on a commercial scale.<sup>[176]</sup>

### 5.3 Safeguarding media freedom and pluralism

Media freedom and pluralism have come under attack in recent years all over the world,<sup>[177]</sup> including in the EU. Media pluralism is usually evaluated through a three-dimensional lens: plurality of sources for news and information (1); accessibility, availability and affordability of the physical infrastructure of communication (2); and the diversity of perspectives and opinions (3). In the EU, the first and the third aspects are most at risk.

The latest Media Pluralism Monitor report, an EU-financed assessment of the state of media pluralism in the EU, found that no European country is risk-free in terms of media pluralism.<sup>[178]</sup> In its Rule of Law Mechanism,<sup>[179]</sup> the EU also included a section on media freedom and pluralism where it analyzes media regulatory authorities, transparency of media ownership, government interference and the framework for protecting journalists. Since 2020, with the publication of its first Rule of Law report,<sup>[180]</sup> the EU has continuously monitored and assessed the rule of law situation, focusing on the justice system, the anti-corruption framework, media pluralism, and other institutional checks and balances.

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[175] Communication from the Commission to the European Parliament and the Council Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market, COM(2021) 288 final. The Guidance is a 27-page document that is divided into seven sections: Introduction (I); a specific copyright authorization and liability regime (II); Service providers covered (III); art. 17(1) and (2) authorizations (IV); art. 17(4) specific liability mechanisms (V); safeguards for legitimate uses of content and complaint and redress mechanisms (VI); and transparency and information obligations (VII).

[176] Felipe Romero Moreno. (2020). “Upload Filters” and Human Rights: Implementing Article 17 of the Directive on Copyright in the Digital Single Market. *International Review of Law, Computers & Technology* 34(2), 153–82. DOI: <https://doi.org/10.1080/13600869.2020.1733760>

[177] UNESCO. (2022). *World Trends in Freedom of Expression and Media Development: Global Report 2021/2022*. <https://www.unesco.org/reports/world-media-trends/2021/en>

[178] European University Institute, Konrad Bleyer-Simon, Elda Brogi, Roberta Carlini, Iva Nenadić, et al. (2023). *Monitoring media pluralism in the digital era : application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2022*. Centre for Media Pluralism and Media Freedom, European University Institute. , DOI: <https://doi.org/10.2870/087286>

[179] See more at [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism\\_en#:text=rule%20of%20law-,What%20is%20the%20rule%20of%20law%20mechanism%3F,on%20the%20rule%20of%20law.](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en#:text=rule%20of%20law-,What%20is%20the%20rule%20of%20law%20mechanism%3F,on%20the%20rule%20of%20law.)

[180] See more at [https://ec.europa.eu/info/publications/2020-rule-law-report-communication-and-country-chapters\\_en](https://ec.europa.eu/info/publications/2020-rule-law-report-communication-and-country-chapters_en).

In response to the growing concerns about the worsening state of media freedom and pluralism, in December 2022, the EU proposed a new Regulation, known as European Media Freedom Act (EMFA), now available as a draft.[181] It introduces safeguards against political interference in editorial decisions and against state-mandated surveillance, with a focus on the independence and stable funding of public service media and on the transparency of media ownership and of the allocation of state advertising. The proposed EMFA builds on the revised Audiovisual Media Services Directive (see above), introducing a new set of rules and mechanisms that aim to promote media pluralism and independence across the EU.

Its main pillars are:

- Declaration of the rights of recipients of media services (Article 3) for a plurality of news and current affairs content, produced with respect for editorial freedom
- Promulgation of the rights of media service providers (Article 4) for effective editorial freedom and the protection of journalistic sources, including solid safeguards against the use of spyware against media, journalists and their families
- Legislative, EU-wide safeguards for the independent functioning of public service media providers (Article 5)[182]
- Meaningful provision on enhancing media ownership transparency (Article 6) [183]
- Additional safeguards and compliance, as well as accountability mechanisms for the independence of national regulators (Article 7)
- Protection of media content online and specifically on very large online platforms (Article 17)[184]
- New user right to the customisation of audiovisual media offer (Article 19)[185]
- New safeguards on the transparent and fair allocation of economic resources (Section 6), including audience measurement (Article 23)[186] and the transparent allocation of state advertising (Article 24).[187]

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[181] Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU, COM/2022/457 final.

[182] Where public service media exist, their funding should be adequate and stable to ensure editorial independence. The head and the governing board of public service media will have to be appointed in a transparent, open and non-discriminatory manner. Public service media providers shall provide a plurality of information and opinions, in an impartial manner, in accordance with their public service mission.

[183] Media service providers will have to ensure transparency of ownership by publicly disclosing such information and take measures with a view to guaranteeing the independence of individual editorial decisions.

[184] Building on the DSA, the EMFA put forward additional safeguards against the unjustified removal of media content produced according to professional standards. In cases not involving systemic risks such as disinformation, very large online platforms that intend to take down certain legal media content considered to be contrary to the platform's policies will have to inform the media service providers about the reasons before such takedown takes effect. Any complaints lodged by media service providers will have to be processed with priority by those platforms.

[185] The EMFA proposes to introduce a right of customisation of the media offer on devices and interfaces, such as connected TVs, enabling users to change the default settings to reflect their own preferences.

[186] Audience measurement systems and methodologies shall comply with principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination and verifiability.

[187] The EMFA is to establish new requirements for the allocation of state advertising to media so that it is transparent and non-discriminatory.

The other area of concern related to journalism in the EU are the deteriorating professional conditions for journalists,[188] particularly physical attacks; increasing online harassment; and the rising number of Strategic Lawsuits Against Public Participation (SLAPPs, a particular form of harassment used primarily against journalists and human rights defenders to prevent, inhibit or penalize speaking up on issues of public interest.

The EU has expressed its commitment to “promoting and protecting the freedom of opinion and expression worldwide, condemning the increasing level of intimidation and violence that journalists, media actors and other individuals face in many countries across the world for exercising the right to freedom of opinion and expression online and offline.” The EU called on states to “take active steps to prevent violence and promote a safe environment for journalists and other media actors, enabling them to carry out their work independently, without undue interference or fear of violence or persecution.”[189]

The European Commission published in 2022 a Proposal for a Directive on strategic lawsuits against public participation (SLAPP).[190] The proposed directive is to provide courts and targets of SLAPPs with the tools to fight back against manifestly unfounded or abusive court proceedings. The proposed safeguards will apply in civil matters with cross-border implications. At the time of writing, the proposed SLAPP Directive was discussed by the European Parliament. It is primed to be presented for negotiations between the EU co-legislators.[191]

## 5.4 Data protection, privacy online and the media

“Freedom of expression and privacy are mutually reinforcing rights – all the more so in the digital age.” ... “At the same time, one person’s right to freedom of expression may influence someone else’s right to privacy and vice versa. Digital technologies exacerbate this tension. Whilst they have been central to the facilitation of the exercise of freedom of expression and the sharing of information, digital technologies have also greatly increased the opportunity for violations of the right to privacy on a scale not previously imaginable. In particular, digital technologies present serious challenges to enforcing the right to privacy and related rights because personal information can be collected and made available across borders on an unprecedented scale and at minimal cost for both companies and states. At the same time, the application of data protection laws and other measures to protect the right to privacy can have a disproportionate impact on the legitimate exercise of freedom of expression”.[192]

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[188] CMPF, Media Pluralism Monitor (MPM), 2023, cit.

[189] EU External Action, EU guidelines on freedom of expression online and offline.

[190] Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”); COM/2022/177 final.

[191] See the EU Legislation in Progress at

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS\\_BRI\(2022\)733668\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS_BRI(2022)733668_EN.pdf).

[192] Article 19. (2017). The Global Principles on Protection of Freedom of Expression and Privacy.

<https://www.article19.org/resources/the-global-principles-on-protection-of-freedom-of-expression-and-privacy/>

These inherent tensions between freedom of expression and the right to privacy, including personal data protection, also surface in the EU legislation. The EU has explicitly warned that the right to freedom of expression, the right to privacy and the protection of personal data “may suffer violations as a result of unlawful or arbitrary surveillance, interception of communications or collection of personal data, in particular when carried out on a mass scale.”[193] It expressed its commitment to promote “measures for the protection of the right to privacy and data protection including by calling on and supporting third countries to bring their relevant national legislation regarding transparency and proportionality of government access to personal data in conformity with international human rights law, where applicable.”[194]

Data protection has been recognised as a fundamental right in the EU.[195] With the adoption of Directive 95/46/EC (Data Protection Directive),[196] the EU embarked on regulating the processing of personal data as a response to the challenges that emerged in the internet age, particularly the increase of data usage and processing spurred by digital technologies. The Data Protection Directive provided for the free movement of data within the EU, emphasizing the economic approach of the EU policy while also guaranteeing the fundamental rights of EU citizens. However, since online platforms increasingly rely on automated decision-making technologies to moderate online content and capture users’ attention, their massive use of personal data is a key component of their power.[197] To address this issue, the EU switched to a more proactive approach to the protection of personal data by introducing positive obligations in the General Data Protection Regulation (GDPR),[198] whose main aim was to foster a degree of transparency and accountability in data processing.

The GDPR introduced regulatory requirements for the processing of personal data, including the collection, analysis, storage, and other processing activities. Under the GDPR, organizations must have a legal basis when they process personal data, and they must adhere to specific retention periods, conduct various assessments, facilitate individual rights, maintain a documented record of processing activities, and report data breaches, among other obligations introduced by the regulation. Two provisions in the GDPR are most relevant to the modernisation of media-related legislation: (1) protection of individuals’ rights to privacy in the context of datafication and platformization and (2) reporting by journalists and the media acting as watchdogs of public interest in democratic conditions.

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[193] EU External Action, EU guidelines on freedom of expression online and offline.

[194] EU External Action, EU guides..., cit.

[195] Article 8, Protection of personal data of the EU Charter of Fundamental Rights.

[196] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data OJ L 281, 23.11.1995, p. 31–50.

[197] Damian Tambini and Martin Moore. (2018). *Digital Dominance: The Power of Google, Amazon, Facebook, and Apple*. New York, NY, USA: Oxford University Press.

[198] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) OJ L 119, 4.5.2016, p. 1–88.



When it comes to individuals' rights, the GDPR's focus is on "personal data", which is defined as "any information relating to an identified or identifiable natural person ("data subject"), whereby this relation can be direct or indirect." [199] As long as data relates to a data subject, the GDPR applies automatically and regulates the processing thereof. Media reporting must also protect data subjects, either as subjects of news reporting or involved in the reporting process in any other way, and comply with the GDPR. The controller of the data handling is the journalist and the media outlet that determines the purposes (e.g., publication) and medium (e.g., channel and platform of publishing) for processing personal data.[200]

Furthermore, the GDPR strictly regulates the principles of personal data processing, requiring the controller to ensure that the personal data is processed lawfully, fairly and in a transparent manner and collected only for specified, explicit and legitimate purposes ("purpose limitation"); limited to what is necessary for such purposes ("data minimisation"); and kept up to date ("accuracy").[201]

The most relevant GDPR provision for media is the right to erasure, better known as the right to be forgotten.[202] In a notable case involving Google Spain,[203] which was decided under the Data Protection Directive but on similar legal grounds as enshrined in the GDPR, the issues of accurate and relevant journalistic reporting were considered by the European Court of Justice to be at odds with the rights of individuals, the subjects of news reporting, to protection of their data. The right to be forgotten turned out to be central to how individuals' control over media publishing and in potential conflict with freedom of expression and journalistic freedoms. This right can be invoked by individuals to prevent publication or to have content about themselves (as data subjects) removed in case of a breach of their data protection right.

In the case involving Google Spain, a Spanish citizen requested the tech company Google to remove or conceal certain information about him from the search results, information that was lawfully published in a newspaper several years earlier. The European Court of Justice considered the competing legal claims and decided that the individuals' rights to privacy and data protection were "overriding" both the economic interest of Google in processing the data as well as the interest of the public in having access to the information since no "preponderant" public interest was demonstrated in the case by the media outlet.

Notably, the European Court of Justice played a crucial role in setting the EU's protection standards and enforcing fundamental rights enshrined in the EU Charter of Fundamental Rights. Google Spain was the first case law in the EU showing an attempt by the judiciary to fight the power of online platforms.

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[199] GDPR, Article 4(1).

[200] GDPR, Article 4(7).

[201] GDPR, Article 5.

[202] GDPR, Article 17.

[203] Case C-131/12, Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González, ECLI:EU:C:2014:317 (May 13, 2014).

The perspective of journalists' and the media in reporting, acting as watchdogs in a democracy, is most clearly covered through the journalism-related exemption from the GDPR rules on data processing and freedom of expression and information. [204] The exemption was not a new concept in EU data protection legislation. The Data Protection Directive included a similar provision, "updated" to some extent in the GDPR.

According to the journalistic exemption, national legislators within the EU were obliged to reconcile the right to data protection with freedom of expression and information, mainly when personal data was processed for journalistic purposes, and provide for necessary and legitimate exceptions. These rules were tailored to situations whereby the data controller, the journalist or the media outlet, reasonably assumes that a publication would be in the public interest. Leaving the journalistic exemption to be regulated by national legislators and enforced by national authorities and the judiciary led to the proliferation of divergent, not-aligned national regulatory approaches.[205]

For non-EU countries, it is equally relevant to closely study the application of the GDPR, namely its territorial scope.[206] The GDPR applies to processing personal data related to activities run by organizations, including media outlets, from the EU, regardless of whether the processing occurs there. At the same time, the GDPR also applies to processing personal data by organizations not established in the EU if the media company offers goods and services to data subjects located in the EU or monitors their behavior.

"The consequence of such a rule is twofold. On the one hand, this provision involves jurisdiction. The GDPR's territorial scope of application overrides the doctrine of establishment developed by CJEU case law since even those entities not established in the EU will be subject to the GDPR. On the other hand, the primary consequence of such an extension of territoriality is to extend EU constitutional values to the global context".[207]

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[204] GDPR, Article 85.

[205] Natalija Bitiukova. The GDPR's Journalistic Exemption and its Side Effects: GDPR anniversary – what does it mean for the media?. June 16, 2023, VerfBlog, <https://verfassungsblog.de/the-gdprs-journalistic-exemption-and-its-side-effects/>. DOI: 10.17176/20230616-111120-0.

[206] GDPR, Article 3.

[207] De Gregorio, *The Rise of Digital Constitutionalism in the European Union*, cit.

## 6. Conclusions

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The recent and ongoing legal developments in the EU legislation in the areas of regulating online media content and platforms, copyright in the digital era, safeguarding media freedom and pluralism, and data protection and privacy are offering key insights into the various aspects and even tensions that non-EU countries should consider when modernizing their media law (see the Lebanon-focused brief accompanying this report).

With the advent of digitization and platformization, whose impact is felt globally, legislators and regulators had to keep pace by addressing the challenges brought about by these trends when it comes to fundamental human rights and policy objectives. A decade ago, digitization promised “more freedoms” on all communication levels. Yet, we can see now that such potential can only be harnessed if digitization is protected through adequate safeguards.

The rise of modern digital constitutionalism in the EU was one of the major legalistic responses to the growing concerns regarding the technology-driven power amassed by platforms, “transnational corporations operating in the digital environment to perform quasi-public functions on a global scale,” which has been challenging fundamental rights and democratic values.[208]

This article has summarized the key underlying assumptions and considerations of EU legal acts, highlighting the positive impact that these laws and regulations have or can have on freedom of expression and media independence in the digital space and warning about a potential negative impact, which might further limit fundamental freedoms.

Attempts at modernizing media law have to consider the corresponding international standards on freedom of expression against the tenet that what is protected offline should enjoy the same level of protection online. The role of the state, the EU and the national legislators was analyzed in the framework of those standards, which also emphasized the limits of state intervention.

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[208] De Gregorio, *The Rise of Digital Constitutionalism in the European Union*, cit.

## 7. Recommendations for media reform in Lebanon

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Since the Lebanese Constitution guarantees freedom of expression in a similar manner as in Europe,[209] the modernization of the law in Lebanon, including the Publication Law and the TV and Radio Broadcasting Law, should adhere to international standards and take stock of the ongoing legal arguments and debates around revamping the legislative framework to make it fit for the digital era.

The DSA can be considered a remarkable piece of legislation and regulation of online platforms that can potentially advance the interests of media content providers and journalists; however, the DSA is far from solving all the problems of quality media due to the large power exerted by platforms in the digital communication space. For Lebanon's media sector, the DSA's requirements on platforms' transparency and accountability are of utmost relevance as they provide a systemic, risk-based regulatory approach towards online intermediaries.

On a different note, the impact of the newly introduced EU legal provisions on the availability of copyrighted content, with fair remuneration of rightsholders on the one hand, and the freedom of expression of users of online content-sharing platforms on the other is not known yet since the implementation in the EU countries is now ongoing. However, Lebanese policymakers and legislators should consider future legal developments in this area.

Copyright is a delicate matter that can affect freedom of expression and the media through its impact on access to and use of information. Copyright erects communication barriers, usually through exclusive rights, whereas exceptions from and limitations to such rights could help strike the right balance between competing claims. That being said, copyright should not be used as a barrier to the activities of journalists related to retrieving information material that they have access to. Such access should be weighed also against the public interest and not exclusively against the proprietary interests of rightsholders. Thus, well-targeted exceptions and limitations are crucial regulatory tools to ensure the free access of the media and users to the public sphere, which should not be endangered in any way by technical protection measures. Copyright is also central to shaping a digital constitutional framework for access to information and, therefore, must be considered a critical instrument of media freedom.

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[209] Article 13 of the Lebanese Constitution stipulates that "The freedom of opinion, expression through speech and writing, the freedom of the press, the freedom of assembly, and the freedom of association, are all guaranteed within the scope of the law."

When it comes to personal data protection, the EU regulation is highly relevant to journalistic activities and media reporting. With regards to data protection, Lebanese stakeholders should strive to ensure among other things a balance between protecting individuals' right to privacy while allowing for journalistic privileges in the form of exceptions from, and limitations to, the right to privacy, to ensure public interest is well served.

Finally, the EMFA proposal, expected to be adopted in October 2023,[210] is of utmost relevance for the Lebanese context mainly because of the process underlying the proposal, including the important issue of activating media pluralism tests within the EU. Yet, assessing the impact of media market concentrations on media pluralism and editorial independence is highly recommended in Lebanon before any steps towards the modernization of the law in Lebanon are made to duly justify any future laws and regulations. Lebanese policymakers should thus follow and study the progress closely and consider the necessity of similar legal safeguards of Lebanese journalists' safety and protection.

In conclusion, using the EU experience in modernizing the media law, including both its advances and shortcomings, the following recommendations for the Lebanese lawmakers and policymakers should be considered:

(i) Regulating online media content and platforms should focus on well-defined areas such as the protection of minors against harmful content online, combating hate speech online, and requirements on platforms for transparency and accountability. In parallel, emphasis should be put on ensuring that national regulators, which oversee the application of the new rules, act as independent, professional and accountable public actors;

(ii) Copyright in the digital era should carefully balance protection of rightsholders and the impact of copyright as a barrier to the freedom of expression;

(iii) Safeguarding media freedom and pluralism should take advantage of new legal and regulatory instruments ensuring editorial independence, the transparency of media ownership and the independence of national media regulatory authorities;

(iv) Data protection and privacy in the digital era must ensure the protection of individual privacy and balance such legal provisions with appropriate and well-tailored exemptions for journalistic privileges.

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[210] See the Legislative Train Schedule at <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-european-media-freedom-act>.

# Decriminalization of Defamation in the Context of Free Speech: A European Perspective

By Andrei Richter

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# 1. Introduction

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A report recently published by the international NGO Human Rights Watch (HRW), “There is a Price to Pay”<sup>[211]</sup> elaborates how Lebanon’s criminal defamation laws have been used against journalists, activists, and other citizens who wrote about corruption by public officials, reported misconduct by security agencies, criticized the current political and economic situation or exposed abuse against vulnerable populations.

Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which Lebanon ratified in 1972, provides that “everyone shall have the right to freedom of expression.” Still, the ICCPR allows national law to introduce certain restrictions to this freedom in the pursuit of protection of “reputations of others,” “but these shall only be such as are provided by law and are necessary” for the aim.<sup>[212]</sup> Moreover, Article 17 of the ICCPR states that no one shall be subjected to “unlawful attacks on his honor and reputation.”

The Constitution of Lebanon (Art. 13) guarantees, “within the scope of the law,” freedom of opinion, expression through speech and writing, and the freedom of the press.<sup>[213]</sup>

The Lebanese Penal Code limits, through the provisions of defamation, slander (tham) and libel (qadh) (Articles 383 to 389), the freedom to criticize civil servants and public bodies.<sup>[214]</sup> It specifically criminalizes defamation against public officials with imprisonment for up to one year. It also authorizes imprisonment for up to two years for insulting the national president, foreign heads of state and ambassadors, the national flag and national emblem. Similar norms are provided by the national Publications Law (1962) and the latest draft Media Law (2022).<sup>[215]</sup>

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[211] Human Rights Watch. (2019). “There is a Price to Pay”: The Criminalization of Peaceful Speech in Lebanon <https://www.hrw.org/report/2019/11/15/there-price-pay/criminalization-peaceful-speech-lebanon>. (in English or العربية)

[212] International Covenant on Civil and Political Rights (1966), Article 19, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

[213] Constitution of Lebanon (in English), [https://www.constituteproject.org/constitution/Lebanon\\_2004](https://www.constituteproject.org/constitution/Lebanon_2004)

[214] See: [https://www.ilo.org/dyn/natlex/natlex4.listResults?](https://www.ilo.org/dyn/natlex/natlex4.listResults?p_lang=en&p_country=LBN&p_count=115&p_classification=01.04&p_classcount=3)

[p\\_lang=en&p\\_country=LBN&p\\_count=115&p\\_classification=01.04&p\\_classcount=3](https://www.ilo.org/dyn/natlex/natlex4.listResults?p_lang=en&p_country=LBN&p_count=115&p_classification=01.04&p_classcount=3)

[215] UNESCO. (2023). Towards media law reform in Lebanon, <https://www.unesco.org/en/articles/towards-media-law-reform-lebanon?hub=776>; UNESCO. (2022). Analysis of the July 2021 Draft Media Law prepared by the Parliament of Lebanon. Author: Toby Mendel. pp. 29-30.

[https://articles.unesco.org/sites/default/files/medias/fichiers/2023/05/Analysis%20of%20Draft%20Lebanon%20Media%20Law-En\\_Sept2022.pdf](https://articles.unesco.org/sites/default/files/medias/fichiers/2023/05/Analysis%20of%20Draft%20Lebanon%20Media%20Law-En_Sept2022.pdf)

In its concluding observations on Lebanon's latest, third periodic review on 2018, May 9, the UN Human Rights Committee expressed concern about "the criminalization of defamation, insult, criticism of public officials and blasphemy, which can be punished with imprisonment." It recommended that Lebanon decriminalizes insult and criticism of public officials, as well as considers the complete decriminalization of defamation and, "in any case, countenance the application of criminal law only in the most serious cases", keeping in mind that imprisonment is never an appropriate penalty for defamation.[216]

The European Union Election Observation Mission at the Parliamentary Elections in Lebanon on May 15, 2022 also recommended to "suppress imprisonment penalties for defamation, libel." [217]

Hallin and Mancini (2004) claim that at the current stage of world history "national differentiation of media systems is clearly diminishing." [218] They provide examples of European Union countries where this trend is particularly evident. Such convergence of media systems is apparently based on growing uniformity of regulation. Key regulatory parameters of media activity, such as limits of governmental interference, protection of privacy, as well as the right of reply, protection of children and support of European content in broadcasting are uniform in the EU.

This harmonization trend is also apparent in other regional and international communities. [219] It means that international agreements have a particularly important role to play. Indeed, modern principles and concepts of media regulation are typically implemented in international conventions on human rights. These agreements reflect the current scholarly debate as much as a political compromise that can be achieved in relation to the scope of civil and political rights, their importance, aim and implementation.

This review intends to explore the main international trends related to the use of criminal defamation legislation and its impact on journalists and media freedom, as well as the best practices in Europe.

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[216] United Nations Human Rights Committee. (2018). Concluding observations on the third periodic report of Lebanon. <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhst0EqMtyqQ%2BAVhHZipQtX7YCIXY%2BNLLw9Rz7B7DByyVaC60%2B1n%2BtiD%2F0TvvppjSXeM3q43F5g5aAG58UffTRjtRD4JA%2BK9D9FANv2759gxx>.

[217] European Union Election Observation Mission Lebanon 2022. EU EOM Lebanon 2022 Final report., [https://www.eeas.europa.eu/eom-lebanon-2022/eu-eom-lebanon-2022-final-report\\_en?s=4575](https://www.eeas.europa.eu/eom-lebanon-2022/eu-eom-lebanon-2022-final-report_en?s=4575)

[218] Daniel Hallin & Paolo Mancini. (2004). Comparing Media Systems: Three Models of Media and Politics. Cambridge: Cambridge University Press. DOI: <https://doi.org/10.1017/CBO9780511790867> p. 13.

[219] See: UNESCO. (2023). A Steady Path Forward: UNESCO 2022 Report on Public Access to Information (SDG 16.10.2). Paris: UNESCO. <https://unesdoc.unesco.org/ark:/48223/pf0000385479>, p. 37.



## 2. Balancing freedom of the media and protection of reputation: International and European standards

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Our starting point is that freedom of the media is “a systemic concept, which implies that with the technical facilities to do so, individuals can circulate their thoughts and opinions among a number of people that is sufficiently large to satisfy their desire to take part in public dialogue and have a say in politics and decisions on matters of public interest.”[220] It also means that individuals can circulate and obtain information on current affairs without hindrance.

Freedom of the media is part of the rights of freedom of expression and freedom of information. In fact, some researchers believe that “freedom of the media” is an alternative term for “freedom of expression.”[221] Like freedom of expression, freedom of the media is not absolute. The need to protect it is not “a cast-iron defense” of journalists: like everyone, they should obey “the ordinary criminal law.” On the other hand, a violation of the law by media professionals in the line of duty should not be considered without taking into account the need to protect media freedom.

Article 17 of the ICCPR affords protection to personal honor and reputation. It relates to both a negative obligation of the state to abstain from arbitrary interference in the exercise of the right to private and family life and a positive obligation to ensure effective respect for private life, in particular the right to protection of one’s reputation. The right to protection of one’s reputation is usually considered in Europe as part of the right to respect for private life. The UN member states are under an obligation to provide adequate legislation to that end. Provision must also be made for everyone to be able to effectively protect themselves against any unlawful attacks that do occur and to have an effective remedy against those responsible.[222]

While the media must act as a public watchdog, there is a natural tension between, on the one hand, the public interest in openness and transparency and, on the other hand, the interest in the protection of reputation. Yet, the structure of these two conflicting provisions is such as to permit a proportionality-based approach to be taken to reconcile the protected rights.

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[220] Andrei Richter. (2020). Threats to freedom of the press. In M. Monshipouri (Ed.), *Why Human Rights Still Matter in Contemporary Global Affairs*. London: Routledge. DOI: <https://doi.org/10.4324/9781003022909>

[221] Andrea Calderado, & Alina Dobreva. (2013). Framing and Measuring Media Pluralism and Media Freedom Across Social and Political Contexts. In *European Union Competencies in Respect of Media Pluralism and Media Freedom*. Robert Schuman Centre for Advanced Studies. RSCAS Policy Paper 2013/01. Fiesole, Italy: European University Institute.

[222] General comment No. 16: Article 17 (Right to privacy), U.N. Human Rights Committee, 32nd session, 1988, para 11, see: <https://www.ohchr.org/en/treaty-bodies/ccpr/general-comments>

In the past years, a significant consensus has emerged among intergovernmental organizations on the interplay between the fundamental human rights on the use of freedom of expression and on protection of one's honor and reputation. In defamation cases the protection of one's reputation must be weighed against the wider public interest in ensuring that people are able to speak and write freely, uninhibited by the prospect of being sued for damages should they be mistaken or misinformed.

This proportionality-based approach is achieved through the provision of paragraph 3 of Article 19 ICCPR that prescribes any restrictions on freedom of expression to meet the requirements of:

- a) **Legality:** the restriction has to be “prescribed by law.” The law has to be adequately accessible and foreseeable, that is, “formulated with sufficient precision to enable the citizen to regulate his conduct.”[223] There must be “a measure of legal protection in domestic law against arbitrary interference by public authorities with the rights safeguarded by the Convention.”[224]
- b) **Legitimacy:** the restriction has to pursue a legitimate aim. The exhaustive list of such legitimate aims is provided in Article 19(3) ICCPR.
- c) **Necessity in a democratic society:** the restriction has to respond to “a clear, pressing and specific social need”[225] and be “proportionate to the legitimate aim pursued.”[226]

## 2.1. UN Human Rights Committee

The UN Human Rights Committee (UNHRC), the body of independent experts that monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR) by its States parties, provides general comments which interpret the meaning of the human rights listed in the ICCPR.

Adopted in 2011, General Comment No 34 (GC34) interprets the practice of implementation of Article 19 of the ICCPR in the national law and policy.

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[223] ECtHR, *Sunday Times v. United Kingdom*, Application No. 6538/74, 26 April 1979, par. 49

[224] ECtHR, *Malone v. the United Kingdom*, Application No. 8691/79, 2 August 1984, par. 67.

[225] ECtHR, *Vajnai v. Hungary*, Application No. 33629/06, 8 July 2008, par. 51.

[226] ECtHR, *Parti Nationaliste Basque – Organisation Régionale d'Ipirralde v. France*, Application No. 71251/01, 7 September 2007, par. 45. See also, General Comment 34 on Article 19: Freedoms of opinion and expression, Human Rights Committee (2011), paras. 22 and 34.

Based on the considerations made during the periodic reports submitted by the United Kingdom, Italy, North Macedonia, and Kuwait, the UN Human Rights Committee said in the document, that all states “should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.”[227]

The UNHRC said that:

*“defamation laws must be crafted with care to ensure that they comply with paragraph 3 [of Article 19 ICCPR], and that they do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to avoid excessively punitive measures and penalties... It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others.”[228]*

There is also a General Comment on article 17 of the ICCPR (GC17), adopted in 1988. Unfortunately, it does not shed light as to the limits of “effective remedy against those responsible” for defamation.[229]

## 2.2. International rapporteurs

Representatives of regional intergovernmental bodies, namely the United Nations (UN) Special Rapporteur on the Protection and Promotion of Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, have been even more straightforward in their opposition to criminal defamation laws.

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[227] General comment No. 34: Article 19: Freedoms of opinion and expression, U.N. Human Rights Committee, 102nd session, 29 July 2011, para 47, [www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf)

[228] OSCE. (2016). Press release: Criminal defamation laws protecting foreign heads of states undermine media’s role as public watchdog, OSCE Representative says, issuing recommendations. <https://www.osce.org/fom/246556>

[229] General comment No. 16: Article 17 (Right to privacy), U.N. Human Rights Committee, 32nd session, 1988, para 11, see: <https://www.ohchr.org/en/treaty-bodies/ccpr/general-comments>

Year after year they have insisted that states should “abolish any criminal defamation laws and replace them, where necessary, with appropriate civil defamation laws,”[230] as well as “repeal any defamation or lèse-majesté laws which provide special protection to or provide for greater penalties for statements directed at heads of State or government, politicians or officials.”[231]

In 2002, they stated, “Criminal defamation is not a justifiable restriction on freedom of expression.”[232] In 2010, they declared criminal defamation one of the ten key threats to freedom of expression in the coming decade.[233]

There are also specific cases when the intergovernmental organizations join forces against criminalization of defamation in particular jurisdictions.[234]

## 2.3. OSCE Representative on Freedom of the Media

The OSCE Representative on Freedom of the Media (RFOM) observes media-related developments in all 57 OSCE participating states. She/he provides early warning on violations of freedom of expression and media freedom, and promotes full compliance with the OSCE media freedom commitments.

“To promote the abolition of all criminal defamation laws” has been “a strong position and consistent policy of the RFOM Office ever since it was established in 1998.”[235] In the words of the first RFOM, Freimut Duve, the aim is to be able to “finally proclaim that the OSCE has become a family of not only declared democracies but also actual democracies, where freedom of expression is no longer curtailed by outdated and restrictive laws that prevent the media from doing what it does best: acting as society’s watchdog.” He made this statement in 2003 when his Office held a conference entitled, “What Can Be Done to Decriminalize Libel and Repeal Insult Laws.”[236]

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[230] OSCE. (2021). 2021 Joint Declaration on Politicians and Public Officials and Freedom of Expression. [https://www.osce.org/files/f/documents/9/4/501697\\_0.pdf](https://www.osce.org/files/f/documents/9/4/501697_0.pdf)

[231] OSCE. (2021). Joint Declaration..., cit.

[232] OSCE. (2002). Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression. <https://www.osce.org/files/f/documents/8/f/39838.pdf>

[233] Joint Declaration on Media Independence and Diversity in the Digital Age. 2 May 2018. <https://www.osce.org/files/f/documents/1/e/379351.pdf>; OSCE. (2010). Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom of Expression in the Next Decade. <https://www.osce.org/files/f/documents/d/e/41439.pdf>

[234] Joint UN, OSCE, CoE and EU in BiH statement regarding the Republika Srpska Criminal Code amendments re-criminalizing defamation, Sarajevo, 20 July 2023, <https://www.osce.org/mission-to-bosnia-and-herzegovina/548938>

[235] OSCE Representative on Freedom of the Media. (2016). Communiqué No.5/2016. Communiqué by the OSCE Representative on Freedom of the Media on criminal defamation laws protecting foreign heads of state. 14 June. <https://www.osce.org/files/f/documents/3/3/246521.pdf>

[236] Freimut Duve. (2004). Let Us Work Together to Get Criminal Libel Laws Abolished. In A. Karlsreiter and H. Vuokko (Eds.). (2004). Ending the Chilling Effect: Working to Repeal Criminal Libel and Insult Laws. Proceedings of the Round Table What Can Be Done to Decriminalize Libel and Repeal Insult Laws Paris, 24-25 November 2003. Vienna: OSCE: Office of the Representative on Freedom of the Media, p. 21, <https://www.osce.org/files/f/documents/2/3/13573.pdf>

A modern set of maxims, reflecting the RFOM position, was expressed in a special 2016 Communiqué. It underlined that “media freedom and pluralism depend on the freedom of journalists to report on and criticize all, including the ... public officials. Not only do the press and other media have the task of imparting such information and ideas, the public also has a right to receive them. Were it otherwise, the media would be unable to play its vital role of ‘public watchdog.’”[237]

The Representative made statements that: “criminal defamation provisions protecting heads of foreign states infringe on the media's right to report on issues of public interest.”[238]

*“While heads of state, including heads of foreign states, are certainly entitled to have their reputation protected, the requirements of that protection have to be weighed against the interests of open discussion of political issues. Therefore, exceptions to the right to freedom of expression must be interpreted narrowly. To confer a special legal status on public figures, shielding them from criticism solely because of their function or status and irrespective of whether the criticism is warranted, provides them with a special privilege that cannot be reconciled with democratic practice.”[239]*

## 2.4. Venice Commission of the Council of Europe

The European Commission for Democracy through Law, better known as the Venice Commission as it meets in Venice, is the Council of Europe’s advisory body on constitutional matters. The role of the Venice Commission is to provide legal advice to its member states and, in particular, to help states wishing to bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law.

The Venice Commission in a number of its opinions for different states recommends an abolishment of imprisonment as a sanction for defamation. [240]

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[237] OSCE Representative on Freedom of the Media. (2016). Communiqué No.5/2016..., cit.

[238] OSCE Representative on Freedom of the Media. (2016). Criminal defamation laws protecting foreign heads of states undermine media’s role as public watchdog, OSCE Representative says, issuing recommendations. Press release, 14 June. <https://www.osce.org/fom/246556>

[239] OSCE Representative on the Freedom of the Media. (2016) Communiqué No.5/2016..., cit. .

[240] These opinions include, European Commission for Democracy through Law (Venice Commission), Opinion on the Legislation Pertaining to the Protection against Defamation of the Republic of Azerbaijan, 14 October 2013, CDL-AD(2013)024, §40 and §57, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)024-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)024-e); European Commission for Democracy through Law (Venice Commission), Opinion on the legislation on defamation of Italy, CDL-AD(2013)038, §29 and §59, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)038-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)038-e); 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, 22 June 2015, CDL-AD(2015)015, §38, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)015-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)015-e).

In its 2016 opinion on some provisions of the Criminal Code of Türkiye, the Commission concluded that the only solution to avoid further violations of the freedom of expression in the country is “to completely repeal” the provisions on defamation of the president.[241]

In its Opinion on the legislation pertaining to the protection against defamation of the Republic of Azerbaijan, the Venice Commission indicated that if the criminal provision on “discreditation or humiliation of the honour and dignity of the Head of the Azerbaijani State” was maintained, imprisonment as a sanction should be confined to exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in cases of hate speech or incitement to violence.[242]

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[241] European Commission for Democracy through Law (Venice Commission). (2016). Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey, 15 March 2016, CDL-AD(2016)002, §126, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)002-e).

[242] European Commission for Democracy through Law (Venice Commission), Opinion the Legislation Pertaining to the Protection against Defamation of the Republic of Azerbaijan, 14 October 2013, CDL-AD(2013)024, §50 and §51, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)024-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)024-e).

## 3. Case law of the European Court of Human Rights

### 3.1. General approach

The European Court of Human Rights (ECtHR) has very rich case law on the interpretation and application of Article 10 (“Freedom of Expression”) of the European Convention on Human Rights.[243] What exactly does the Court say about criminal defamation?

It should be noted that the ECtHR has never upheld a prison sentence for defamation. In the very few cases when it has upheld criminal defamation convictions, the ECtHR pointed out that the sanctions were modest and hence met the requirement of proportionality.[244]

In multiple cases the ECtHR refers to the danger of a “chilling effect”, and its impact when it finds interference with media and journalists unjustified.

In *Kaperzyski v. Poland* the ECtHR emphasized that it

*“must exercise caution when the measures taken or sanctions imposed by the national authorities are such as to dissuade the press from taking part in a discussion of matters of legitimate public concern .... The chilling effect that the fear of criminal sanctions has on the exercise of journalistic freedom of expression is evident. ... This effect, which works to the detriment of society as a whole, is likewise a factor which goes to the proportionality, and thus the justification, of the sanctions imposed on media professionals.”*[245]

In the judgment on *Cumpana and Mazare v. Romania*, the ECtHR held that a “classic case of defamation of an individual in the context of a debate on a matter of legitimate public interest presents no justification whatsoever for the imposition of a prison sentence.”[246]

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[243] Article 10 (“Freedom of expression”) stipulates:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” See: Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR), Rome, 4.XI.1950, [https://www.echr.coe.int/documents/d/echr/convention\\_ENG](https://www.echr.coe.int/documents/d/echr/convention_ENG).

[244] Toby Mendel. (2004). Criminal defamation and libel in the OSCE region. In A. Karlsreiter and H. Vuokko (Eds.), OSCE Representative on Freedom of the Media: Ending the Chilling Effect: Working to Repeal Criminal Libel and Insult Laws. Proceedings of the Round Table “What Can Be Done to Decriminalize Libel and Repeal Insult Laws,” Paris, 24-25 November 2003, p. 32.

[245] ECtHR, *Kaperzyski v. Poland*, 3 April 2012, Case No. 43206/07.

[246] No. 33348/96, 17 December 2004, para. 106.

Since the Cumpăna case, the ECtHR on several occasions held that whenever the defamatory statements concern a matter of public interest, prison sentences for defamation cannot be justified under freedom of expression.[247] Dirk Voorhoof, the most prominent author on the interpretation of freedom of expression by the ECtHR, notes in this regard, “This rule against prison sentences includes pardoned, suspended, or conditional sentences, effectively removing from European legislatures and courts the ability to impose such sentences in defamation cases to be situated in public debate or political expression.”[248]

The ECtHR jurisprudence traditionally follows the logic that freedom of expression prevails in cases of insult or defamation of heads of state, presidents or high-ranking politicians.

For example, it has repeatedly assessed the relevant provisions of the Criminal Code of Türkiye.[249] There were a number of criminal cases opened in the country following the declaration of the state of emergency after the attempted military coup in 2016, whereas the ECtHR saw no evidence demonstrating that the criminal proceedings against the applicants to the ECtHR were indeed linked to the necessities of the emergency rule. In those cases, it found violations of Article 10 of the ECHR due to the failure by Türkiye to meet the requirement of “necessity in a democratic society.”

In the case of Artun and GÜvener v. Türkiye, the ECtHR held that conferring a privilege or special protection to heads of state, shielding them from criticism solely on account of their function or status, cannot be reconciled with modern practice and political conceptions.[250]

In another example, the ruling of the ECtHR in the case of Vedat Şorli v Türkiye concluded that criminal proceedings resulting in the application of the provision that criminalizes the insult of the president is incompatible with freedom of expression.

*“The domestic courts based their decisions on Article 299 of the Criminal Code, which affords a higher degree of protection to the President of the Republic than to other persons-protected by the ordinary rules on defamation with regard to the disclosure of information or opinions concerning them, and laid down heavier penalties for persons who made defamatory statements.”*[251] *“In that connection,” the ECtHR stated, “affording increased protection by means of a special law on insult would not, as a rule, be in keeping with the spirit of the Convention or with a State’s interest in protecting the reputation of its head of State.”*[252]

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[247] ECtHR 18 December 2008, Case No. 35877/04, Mahmudov and Agazade v. Azerbaijan; ECtHR 22 April 2010, Case No. 40984/07, Fattulayev v. Azerbaijan; ECtHR 6 July 2010, Case No. 37751/07, Mariapori v. Finland; ECtHR 31 May 2011, Case No. 9559/06, Šabanovi v. Montenegro and Serbia and ECtHR 24 September 2013, Case No. 43612/02, Belpietro v. Italy. See also ECtHR 8 October 2013, Case No. 30210/06, Ricci v. Italy.

[248] Dirk Voorhoof. (2015). Freedom of Expression, Media and Journalism under the European Human Rights System: Characteristics, Developments and Challenges. In Peter Molnar (Ed.), Free Speech and Censorship Around the Globe. Budapest, New York: CEU Press. DOI: <https://doi.org/10.1515/9789633860571-007>, p. 69.

[249] See, for instance, ECtHR, Incal v. Turkey, Application No. 22678/93, 9 June 1998; Pakdemirli v. Turkey, Application No. 35839/97, 22 February 2005; Sirin v. Turkey, Application No. 47328/99, 15 March 2005; Artun and GÜvener v. Turkey, Application No 75510/01, 26 June 2007; Siz v. Turkey, Application no. 895/02, 26 May 2005.

[250] ECtHR, Artun and GÜvener v. Turkey, Application No. 75510/01, 26 June 2007.

[251] ECtHR, Vedat Şorli v. Turkey, Application No.42048/19, 19.10.2021, <https://hudoc.echr.coe.int/fre?i=002-13439>

[252] ECtHR, Vedat Şorli v. Turkey, ..., cit.



In this case, the ECtHR again noted that:

*“while it was entirely legitimate for persons representing the institutions of the State, as guarantors of the institutional public order, to be protected by the competent authorities, the dominant position of those institutions required the authorities to display restraint in resorting to criminal proceedings.”*[253]

There had been nothing in the circumstances of the case, the ECtHR said, to justify the applicant’s

*“placement in police custody, the order for his pre-trial detention or the imposition of a criminal sanction, despite the fact that delivery of the judgment imposing a prison term had been suspended. Such a sanction, by its very nature, inevitably had a chilling effect on the willingness of the person concerned to express his or her views on matters of public interest, especially in view of the effects of conviction.”*[254]

In *Tuşalp v. Turkey* the ECtHR reiterated that offensive language, in this case criticizing the prime minister, “may fall outside the protection of freedom of expression if it amounts to wanton denigration, for example where the sole intent of the offensive statement is to insult.”[255] But “the use of vulgar phrases in itself is not decisive in the assessment of an offensive expression as it may well serve merely stylistic purposes. ... Style constitutes part of communication as a form of expression and is as such protected together with the content of the expression.”[256] In addition, the ECtHR observed that there was nothing in the case to indicate that *Tuşalp*’s articles affected the prime minister’s political career or his professional and private life.

The Court came to the conclusion that

*“the domestic courts failed to establish convincingly any pressing social need for putting the Prime Minister’s personality rights above the journalist’s rights and the general interest in promoting the freedom of the press where issues of public interest are concerned.”*[257]

Thus, in the ECtHR’s view, “the protection of the reputation of the head of State or Government cannot serve as justification for affording the person privileged status or special protection vis-à-vis the right to convey information and opinions concerning him/her.”[258]

These decisions follow the logic that the ECtHR held in the now classic case of *Lingens v. Austria*: “the limits of acceptable criticism are [...] wider as regards a politician as such than as regards a private individual.”[259]

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[253] ECtHR, *Vedat Şorli v. Turkey*, ..., cit.

[254] ECtHR, *Vedat Şorli v. Turkey*, ..., cit.

[255] ECtHR 21 February 2012, Case Nos. 32131/08 and 41617/08, *Tuşalp v. Turkey*. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-109189%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-109189%22]})

[256] ECtHR 21 February 2012, Case Nos. 32131/08 and 41617/08, *Tuşalp v. Turkey*..., cit.

[257] ECtHR 21 February 2012, Case Nos. 32131/08 and 41617/08, *TuşalpTualp v. Turkey*..., cit.

[258] ECtHR. (2023). Protection of reputation. Factsheet. [https://www.echr.coe.int/documents/d/echr/fs\\_reputation\\_eng](https://www.echr.coe.int/documents/d/echr/fs_reputation_eng)

[259] ECtHR 8 July 1986. *Lingens v Austria*. Application no. 9815/82. <https://hudoc.echr.coe.int/fre?i=001-57523>

## 3.2. Case law of the European Court of Human Rights: Fatullayev v Azerbaijan

These pertinent issues are discussed in the case of Fatullayev v Azerbaijan that led to a judgment of the European Court of Human Rights in 2010[260] and again in 2022[261] (Azerbaijan is a member of the Council of Europe, and thus subject to the ECtHR's jurisdiction).

At the time of the events to be described below, Mr. Eynulla Fatullayev, 30, was the founder and editor-in-chief of the Russian-language weekly newspaper Realny Azerbaijan (which can be translated as “Real-life Azerbaijan”), published in Baku, the country's capital. The newspaper was popular for its investigations and frequent criticism of the state authorities and various officials. Some of them, including the interior minister and Members of the Parliament, have repeatedly demanded initiation of criminal defamation cases and filed civil defamation lawsuits against him.

Azerbaijan is one of the eight post-Soviet states (out of 15) that opted to keep criminal defamation in the national Penal Codes, as was a tradition of the Soviet criminal laws.[262] Despite the promises publicly made by the national authorities to decriminalize defamation, even including a relevant commitment in the National Programme for Action to Raise Effectiveness of Protection of Human Rights and Freedom, decreed by President Ilham Aliyev in 2011, this legacy of the Soviet times is firmly in place today.[263]

As a result of a criminal defamation trial, Fatullayev was found, in 2006, guilty of slandering a member of the government and sentenced to two years of suspended imprisonment.

In addition, Fatullayev was severely beaten in the street, his father was kidnapped, and the ransom note demanded that Fatullayev should close his publications. Both he and other editorial staff repeatedly received threatening phone calls in connection with the published or forthcoming articles.

Shortly before the serious problems started for him and the publication, Fatullayev traveled, in 2005, as a journalist to Nagorno-Karabakh, which went under the control of Armenian forces following an armed conflict in 1991-94.

This was a rare case of an Azerbaijani citizen visiting the region, since there was virtually no travel across the separation line or contact between the nationals of the two countries. During his trip, Fatullayev met and talked with some local officials, as well as with ordinary people. He wrote up his experiences in an article entitled “The Karabakh Diary,” published in his weekly, Realny Azerbaijan.

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[260] See Fatullayev v. Azerbaijan, European Court of Human Rights, 40984/07, Apr. 22, 2010, <https://hudoc.echr.coe.int/fre?i=001-98401>.

[261] See Fatullayev v. Azerbaijan (no. 2), European Court of Human Rights, 32734/11, Apr. 7, 2022, <https://hudoc.echr.coe.int/fre?i=001-216685>.

[262] Andrei Richter. (2019). Gesetze und Strategien zur Medienfreiheit im postsowjetischen Raum, Religion & Society in East and West (RGOW), Zürich, 2, pp. 20-23.

[263] See OSCE Representative on the Freedom of the Media. OSCE media freedom representative concerned about increasing pressure on media in Azerbaijan following online defamation provisions press release. 15 May 2013. <https://www.osce.org/fom/101513>

## “The Karabakh Diary”

Written in the form of a travelogue about what the author saw during his trip, the story conveyed the content of his conversations with the locals. It included the controversial topic of a bloodshed that took place in the Karabakh settlement of Khojali on February 26, 1992, a turning point in the history of the conflict.

In Azerbaijan, by a decree of then-President Heydar Aliyev,[264] what happened in Khojali was formally considered as an episode in the genocide of the peaceful Azeri population by Armenians.[265] According to the Azerbaijani official history, on that day Armenian armed forces, with the help of the Soviet army, killed hundreds of unarmed people from Khojali.

In “The Karabakh Diary,” the journalist recalled that, a few years before his trip in 2005, refugees from Khojali living in the Azerbaijani town of Naftalan, told him the following: on the eve of the assault on the encircled Khojali, Armenians repeatedly warned the Azerbaijani civilians about the coming offensive with the help of loudspeakers, calling on them to leave through a safe corridor along the Kar-Kar river. According to these refugees, they used the safe passage and were not shot at. At the same time, some paramilitaries from the militia of the Popular Front of Azerbaijan (PFA) who were defending Khojali, abandoned their positions, joined the civilians, but for reasons unknown crossed the Kar-Kar and led some of the refugees towards the village of Nakhichevanik, which at that time was controlled by armed Armenians. Fatullayev recalled this story in his article, as during the trip to Karabakh it was confirmed by a local official, an ethnic Armenian. Comparing the two stories, Fatullayev asserted: “Apparently, the PFA battalions were not so much striving to save the civilian population of Khojali as to shed even more blood in their plan to have [then President of Azerbaijan Ayaz] Mutalibov overthrown.”[266]

## AzeriTriColor

More than a year after the publication of “The Karabakh Diary” in December 2006 and in January 2007, Fatullayev posted a number of comments on a popular Internet forum, AzeriTriColor (<http://www.atc.az>). They were posted in a forum thread dedicated to controversies in the content of “The Karabakh Diary”. Responding to several questions from forum participants, Fatullayev wrote, in particular, the following:

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[264] He is the father of his successor, current President Ilham Aliyev.

[265] “О геноциде азербайджанцев” (“On the genocide of Azeris”), Decree of the President of the Azerbaijani Republic, Mar. 26, 1998, [https://genocide.preslib.az/ru\\_sl3.html](https://genocide.preslib.az/ru_sl3.html).

[266] Карабахский дневник (The Karabakh Diary). See its text (in Russian): <http://nv.am/karabahskij-dnevnik-azerbajdzhanskogo-zhurnalista/>.

*“I have visited this town [Naftalan] where I have spoken to hundreds (I repeat, hundreds) of refugees who insisted that there had been a corridor and that they had remained alive owing to this corridor ...*

*You see, it was wartime and there was a front line... Of course, Armenians were killing [the civilians], but some of the Khojali residents had been fired upon by our own [troops]... Whether it was done intentionally or not is to be determined by investigators. ...*

*[They were killed] not by [some] mysterious [shooters], but by provocateurs from the NFA battalions. ... [The corpses] had been mutilated by our own. ...”[267]*

In response to his comments, a campaign against Eynulla Fatullayev started in a number of Azerbaijani media, peaking with the demands to disclose his ties with Armenia and to strip him of his citizenship.

Next, a civil defamation lawsuit was filed by the head of a local NGO for the relief of refugees from Nagorno-Karabakh[268] against the Realny Azerbaijan weekly and Fatullayev on the grounds of dissemination of information discrediting the relatives of the victims of the tragedy, veterans, soldiers of the National Army of Azerbaijan and the entire Azerbaijani people. The district court redressed the grievances, by ordering the publication of a refutation in the weekly and on AzeriTriColor, as well as compensation for moral damages in the amount of approximately €17,000, which were supposed to be spent on improving the conditions of the refugees residing in Naftalan.

Somewhat later, a group of refugees and former militants who participated in the battle of Khojali and whose interests were represented by the same head of the Refugees Protection Center, filed an application to open a criminal case against Fatullayev to the same district court. They demanded that he be found guilty of insulting and slandering Azerbaijani soldiers. The same judge who considered the civil lawsuit found Fatullayev guilty of criminal defamation, aggravated by the accusations of individuals of a grave or extremely grievous offense, and sentenced him to two and a half years imprisonment.

### “The Aliyevs Go to War”

A month before this verdict of two and a half years imprisonment was passed, Realny Azerbaijan published Fatullayev’s analytical article “The Aliyevs Go to War,” on a completely different topic than Nagorno-Karabakh.

In it, the author expressed the opinion that in order to retain power, the national government was seeking support from the U.S. in exchange for facilitating a likely American aggression against Iran. The author believed that by openly supporting the anti-Iranian campaign, Azerbaijan should prepare for a long war that would lead to widespread destruction and human casualties.

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[267] Fatullayev v. Azerbaijan, supra note 40 at 13.

[268] Center for the Protection of Refugees and Displaced Persons

He wrote that according to information from sources “close to official Paris” (the French Government), the Iranian Air Force and hundreds of missiles would strike targets in Azerbaijan. A long list of such targets was published as well, which included oil platforms and terminals, government buildings and a number of large business centers that housed offices of foreign companies. The author said that it would be better for Azerbaijan to remain neutral in the brewing conflict, also because its Talysh minority, which is ethnically, geographically and linguistically close to the Iranians, would not support the war.[269]

The Ministry of National Security opened a criminal investigation into this publication under a Penal Code article penalizing the making of a terrorist threat.

(Three months later, Fatullayev, still imprisoned for criminal defamation and now facing terrorist charges, was further accused of tax evasion on the grounds that he did not properly declare his personal income as the newspaper editor.)

Testimonies of eight employees of foreign companies were submitted at the trial on charges of intimidating the population with a terrorist threat. They testified that, having received by e-mail and read the article “The Aliyevs Go to War,” they felt disturbed, anxious and frightened. The court concluded that the publication was intended to sow panic among the population. It also found that in his article the author threatened to destroy public property and bring death to people in order to force the Government to abandon political decisions called for by the national interests.[270] In October 2007, it found Fatullayev guilty on all counts and convicted him of making a terrorist threat, inciting ethnic hatred and tax evasion.

The cumulative sentence, taking into account the partial absorption of penalties, amounted to eight and a half years imprisonment. When passing the verdict, the court stated that, taking into account previous conviction on criminal defamation, the journalist was a repeat offender, and qualified this as an aggravating circumstance. The court also ordered 23 computers and the memory disks that had been seized as material evidence in the editorial office of Realny Azerbaijan, to be confiscated in favor of the state. By that time, the weekly could no longer be published and, hence, it folded.

Having lost all possible appeals, Fatullayev filed through his lawyers an application to the European Court of Human Rights (ECtHR), considering, in particular, that the national authorities had violated his right to freedom of expression. The ECtHR handed down its judgment three years later.

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[269] Fatullayev v. Azerbaijan, *supra* note 40 at 27.

[270] Fatullayev v. Azerbaijan, *supra* note 40 at 41.

## Judgment of the European Court of Human Rights

The ECtHR carefully studied the articles published in Realny Azerbaijan and online. It found that the state interference with the applicant's (Fatullayev's) right to freedom of expression was based on the law – the Penal Code. Inevitably, however, the question arose as to whether the restrictive measures taken against him were necessary in a democratic society, which is an important condition for restricting free speech under European law.

Necessity implies that there is a pressing social need for the restriction and that the restriction is proportionate. This latter implies, at a minimum, that the least intrusive measures available for effectively addressing the problem must be employed, as opposed to any measures which more seriously limit the right to freedom of expression.

Examining this component of Azerbaijan's possible violation of Article 10 of the European Convention on Human Rights, the ECtHR found that Fatullayev's articles and comments in print and online dealt with the "matters of general interest."<sup>[271]</sup>

The ECtHR noted that to seek historical truth is an integral part of freedom of expression, while "it is essential in a democratic society that a debate on the causes of acts of particular gravity which may amount to war crimes or crimes against humanity should be able to take place freely."<sup>[272]</sup>

The ECtHR also noted that Fatullayev's allegations obviously did not implicate all the Azerbaijani military or all Azerbaijani armed formations that took part in the hostilities in this area, or even all the defenders of Khojali who participated in this battle. Secondly, they did not contain accusations against specific individuals – there were no names or any other clarifying information provided.<sup>[273]</sup>

In view of the foregoing, the ECtHR found that while "The Karabakh Diary" might have contained certain exaggerated or provocative statements, the author did not overstep the limits of journalistic freedom in fulfilling his duty to disseminate information on topics of general interest. The statements on the internet forum did not defame the specific persons. Under the circumstances, it concluded that the arguments given by the domestic courts in support of their judgments could not be considered relevant and sufficient, and therefore, the recognition of Fatullayev as guilty of criminal defamation did not meet a "pressing social need."<sup>[274]</sup>

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[271] Fatullayev v. Azerbaijan, supra note 40 at 87.

[272] Fatullayev v. Azerbaijan, supra note 40 at 87.

[273] Fatullayev v. Azerbaijan, supra note 40 at 99.

[274] Fatullayev v. Azerbaijan, supra note 40 at 100.

But even if the intervention had met such a need, there would be problems with regard to compliance with the requirement that the punishment be proportionate to the offense. In earlier cases, the ECtHR had already generally found that investigative journalists tend to refrain from publishing sensitive topics if they risk being sentenced to imprisonment for criminal defamation. Fear of such punishment inevitably has a chilling effect on the freedom of expression of journalists.[275]

Recalling that Fatullayev was sentenced to imprisonment in addition to the judicial punishment for the same statements in the civil process, the ECtHR did not dispute that sentencing is in principle a matter for national courts. But at the same time, it noted that the choice of imprisonment as a penalty for a media offense is compatible with the freedom of expression of journalists only in exceptional circumstances, namely when other fundamental rights are seriously infringed, as, for example, in cases of inciting hatred or incitement to violence. [276]

The ECtHR considered that the circumstances of the criminal case in the article “The Karabakh Diary” and the comments on AzeriTriColor did not give grounds for sentencing the applicant to imprisonment.

With regard to the “The Aliyevs go to war” case, the ECtHR recalled that, in accordance with Article 10, paragraph 2 of the ECHR, the scope for the possible restriction of speech on political topics or discussions on issues of public interest is rather narrow. The ECtHR has repeatedly pointed out that the boundaries of “permissible criticism” in relation to public authorities are wider than in relation to ordinary citizens or even individual politicians. Moreover, the dominant position held by the authorities obliges them to exercise restraint in bringing criminal cases, even when they have to deal with unfounded attacks and criticism from opponents, especially when there are other ways to respond to them.[277]

Again, if the publication cannot be considered an incitement to violence or an incitement to ethnic hatred, then the authorities may not, on the grounds of maintaining public order and security, restrict the public’s right to receive information on topics of general interest. The mere fact that Fatullayev discussed the social and economic situation in the areas populated by an ethnic minority of Talyshs and voiced an opinion about possible political tension in those areas cannot be considered as incitement to ethnic hostility.[278]

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[275] Fatullayev v. Azerbaijan, *supra* note 40 at 101-102.

[276] Fatullayev v. Azerbaijan, *supra* note 40 at 103-104.

[277] Fatullayev v. Azerbaijan, *supra* note 40 at 116.

[278] *Fatullayev v. Azerbaijan*, *supra* note 40 at 116, 126.

The circumstances of the case convinced the ECtHR that there were no grounds for the domestic courts to issue a sentence of imprisonment. The applicant's conviction did not meet a pressing social need, it was blatantly disproportionate to the legitimate aims put forward. It followed that the interference was not necessary in a democratic society.[279]

Analyzing the content of the article "The Aliyevs Go to War," the ECtHR noted that the publication of a list of possible targets on the territory of Azerbaijan did not in itself increase or decrease the chances of hypothetical aggression from Iran. Moreover, the authorities never made any allegations that, by publishing this list, the applicant disclosed any state secrets or harmed the country's defense capability. The ECtHR stated that the list is an expression of opinion, and any opinion about future events inherently involves a high degree of uncertainty. The feasibility or impracticability of the scenarios proposed by the applicant to the ECtHR was the subject of public discussion, and every reasonable reader could be expected to understand that the words about the possible course of a future war were hypothetical.[280]

Taking into account the circumstances of the case, the ECtHR recognized the assessment of the domestic courts that Fatullayev threatened the state with terrorist acts as completely unfounded. It pointed out that the applicant, as a journalist and a private individual, clearly had no ability to influence any of the hypothetical events discussed in the article, and could not control any decision of the Iranian authorities to attack objects on the territory of Azerbaijan. He did not endorse or incite a possible attack. The purpose of writing the article was to inform the public on possible consequences of the country's foreign policy and, more specifically, to question the decision to support the "anti-Iranian" resolution of the UN Security Council. However, the ECtHR found nothing in the article to suggest that the applicant's allegations were aimed at intimidating or "pressuring" the Azerbaijani Government by illegal means. In its opinion, in this case the domestic courts had arbitrarily applied the rules of criminal law on terrorism.[281]

As a result, the European Court of Human Rights found in *Fatullayev v. Azerbaijan* that the domestic courts had overstepped the existing margin of appreciation in applying restrictions on discussions of topics of public interest, and that the criminal conviction violated Article 10 of the Convention on the Protection of Human Rights. It held that the respondent State had an obligation to secure the applicant's immediate release. The court also awarded Fatullayev 25,000 Euros in compensation for non-pecuniary damages.[282]

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[279] *Fatullayev v. Azerbaijan*, supra note 40. at 102-105, 128-131.

[280] *Fatullayev v. Azerbaijan*, supra note 40 at 117-120.

[281] *Fatullayev v. Azerbaijan*, supra note 40 at 121-124.

[282] *Fatullayev v. Azerbaijan*, supra note 40



### 3.3. Case law of the European Court of Human Rights: *Colombani v France*

This particular case demonstrates the ECtHR's logic behind it finding the convictions of journalists for the offense of insulting a foreign head of state a violation of the ECHR.

In the context of the examination of Morocco's application for membership of the European Union, a report on drug production and trafficking in that country was drawn up at the request of the European Commission. The first version of the report mentioned the names of persons involved in drug trafficking, while the second version edited the names out. This toned-down version of the initial report was published and discussed in the French weekly newspaper *Le Monde*.

The original version remained confidential for a certain time, then began to circulate. Almost two years later, *Le Monde* reviewed it in an article under the headline (as a teaser on the front page): "Morocco: leading world hashish exporter", with the subtitle "A confidential report casts doubt on King Hassan II's entourage." The article itself was published on page 2 under the headline "A confidential report implicates the Moroccan Government in hashish trafficking". Following a complaint by the King of Morocco, criminal proceedings were brought against the first applicant, publishing director (the editor-in-chief) of *Le Monde*, and the author of the article, the second applicant, for insulting a foreign head of state.

They were acquitted at first instance on the grounds, inter alia, that the journalist had acted in good faith, pursuing a legitimate aim. They were, however, found guilty of insulting a foreign head of state on appeal, on the basis of Article 36 of the French law of July 29, 1881 On freedom of the press. This offense, which only applies in the event of a personal attack on a foreign head of state, is subject to specific legal rules which, unlike those governing defamation, place the burden of proving malicious intent on the plaintiff but do not allow the defense of truthfulness (*exceptio veritatis*) to be put forward as an exonerating factor. The court of appeal sentenced each of the applicants to a fine, ordered them to pay symbolic damages to King Hassan II and to pay costs, and ordered the newspaper to issue a press release publishing the details of the conviction.

The court of appeal criticized them for malicious intent towards the royal entourage, for accusing the king of duplicity and hypocrisy, for failing to check that the content of the report was accurate, and for lacking good faith. They were also criticized for not having attempted to ascertain whether the report was still relevant at the time when the article was published and for having failed to consult the Moroccan authorities about the report, since they had failed to mention a white paper on this subject published by the Moroccan authorities *after* the initial version of the report had been submitted. The Court of Cassation upheld the decision.

The ECtHR found that the interference was “prescribed by law,” pursuing the legitimate aim of protecting the reputation or rights of others. There remained the question of whether the interference was “necessary in a democratic society.” When the press contributes to public debate on issues giving rise to legitimate concern, it should in theory be able to rely on official reports without having to carry out independent research. In the case, the information provided by the applicants was of legitimate public interest and they acted in good faith in supplying precise and credible information based on an official report whose accuracy did not require checking on their part. The grounds relied on by the domestic courts to convict the applicants were therefore unconvincing.

Under domestic law, the offense of insulting a foreign head of state, unlike the ordinary offense of defamation, did not provide for any exemption from criminal liability in the event of the truth of the allegations being proved. The unavailability of the defense of truthfulness constituted an excessive measure for protecting a person’s reputation and rights, even if that person was a head of state or government. The ordinary offense of defamation, which was proportionate to the aim pursued, was sufficient to protect any head of state from attacks on his honor or reputation.

On the other hand, the offense provided for under Article 36 of the freedom of the press law tended to confer on heads of state a status going beyond the general law and shielding them from criticism on the sole grounds of their function or status, without taking any account of the interest that lay in the criticism. This special protection afforded to foreign heads of state under the law, which gave them an inordinate privilege at variance with current political practices and ideas, did not satisfy any “overriding social need”. Even though the reasons put forward by the respondent state were relevant, they were not sufficient to prove that the interference complained of was “necessary in a democratic society,” notwithstanding the national authorities’ margin of appreciation.[283]

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[283] Based on the legal summary of the judgment *Colombani and Others v. France*, 25.6.2002, <https://hudoc.echr.coe.int/?i=002-5314>.

## 4. National law and practice

A study on the state of criminal defamation in the OSCE region of 57 states, conducted recently by the International Press Institute (IPI)[284] and commissioned by the OSCE Representative on Freedom of the Media, has brought the following peculiar results (see Fig. 1).[285]

**Table 1. Criminal law on defamation in 57 states of the OSCE**

Provisions in criminal law	Number of countries
Criminal defamation and insult	42
Increased protection for public officials under general defamation and insult law	9
Other special law on insult to public officials	15
Criminal defamation of the head of state	24
Criminal defamation of the state (excluding laws on state symbols)	16
Criminal defamation of state bodies/state institutions	16
Criminal defamation of foreign heads of state (excluding laws on state symbols)	18
Criminal defamation (insult) of foreign states	7
Criminal blasphemy/religious insult	22

[284] Scott Griffen. (2017). Defamation and Insult Laws in the OSCE Region: A Comparative Study. Commissioned by the OSCE Representative on Freedom of the Media. Vienna: International Press Institute.

[285] Based on the data from Griffen (2017) (see previous note).

The picture with regards to recent legal development in the OSCE region is mixed. Despite the trend towards decriminalization or introducing lighter penalties, there are still too many countries where defamation is not only a criminal offense but also subject to prison sanctions. However, in most cases, the relevant penal provisions are reportedly not or rarely enforced.[286]

On the one hand, criminal defamation and insult laws have been repealed in nearly a dozen states since 2009, and there has been incremental progress in other areas such as blasphemy. On the other, several states have strengthened criminal defamation laws or reintroduced them altogether, such as the Russian Federation or Croatia. International outcry has helped prevent problematic new measures in states such as Italy and Albania, but failed in Bosnia and Herzegovina. Incipient government efforts to counter online “hate speech” and cyberbullying have included proposals to strengthen elements of criminal defamation laws which may present a challenge for the future. High courts have sent mixed signals when it comes to criminal defamation and freedom of expression. The European Court of Human Rights (ECtHR) has had a limited influence in encouraging legal reforms in line with the Court’s standards.[287]

There is an increasing recognition both in the jurisprudence of regional human rights courts, as well as many national legislations and practices, of the need to abolish or limit the scope of criminal defamation laws.

*“In Germany, although the Penal Code provides for the offense of defamation of the president, in 2000, the Federal Constitutional Court stated that even harsh political criticism, however unjust, does not constitute such an offense, and the provision is rarely, if ever, used. In the Netherlands, although it remains a crime to intentionally insult the king and certain members of the royal family, the most recent conviction for this offense dates back to the 1960s. A similar situation exists in Belgium, Greece, Portugal, Romania or Spain. In still other countries, such as Poland and Italy, although the criminal provision on defamation of the head of state has been applied occasionally, the courts have restricted penalties to a fine. In France, the Press Freedom Law mentioned above was amended in 2000 to remove the option of imprisonment.”[288]*

Various jurisdictions recognize that providing special protection for public officials creates a discrepancy with the legal principle that officials should tolerate more, not less, criticism, a principle that has repeatedly been endorsed by the European Court of Human Rights and other standard-setting bodies. Still existing special protection may take a variety of forms, including the involvement of public prosecutors in court cases, higher penalties for defaming certain officials, or different standards as to what constitutes defamation in relation to these officials.

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[286] Council of Europe Information Society Department. (2012). Study on the alignment of laws and practices concerning defamation with the relevant case-law of the European Court of Human Rights on freedom of expression, particularly with regard to the principle of proportionality. CDMSI(2012)Misc11Rev, <https://rm.coe.int/study-on-the-alignment-of-laws-and-practices-concerning-alignment-of-1/16804915c5>

[287] Scott Griffen. (2017). Defamation..., cit., p. 6.

[288] European Commission for Democracy through Law (Venice Commission). (2016). Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey..., cit.

In his comments on the existing situation with the criminal law on defamation in democratic Europe the then head of Reporters Without Frontiers once said:

*“...when authorities say in effect, “Don’t worry, you know no one goes to jail these days for libel and that no elected official today would sue someone for an insult, so why all this debate?” can we really accept that answer? I don’t think so. In my opinion, we cannot accept that argument for two reasons: First, I believe democracies must set an example. Second, the mere existence of these laws in the law codes of democratic countries is systematically misused by countries that are not democratic as an excuse for not reforming their libel laws.”[289]*

Or, to use the words of an OSCE diplomat from a Central Asian country: “Maybe they will use their criminal libel legislation tomorrow. We are using it today.”[290]

The RFOM recognized that

*“criminal defamation laws, meant to protect honor and dignity from untrue or other kinds of libelous statements exist in many of the OSCE participating States. These archaic laws have been a common means of legal pressure on the media. Regardless of whether latent or actively applied, criminal defamation laws are generally used to protect the powerful from criticism. The threat can lead to self-censorship.”[291]*

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[289] Robert Menard,(2003). Democracies Must Set an Example. In A. Karlsreiter and H. Vuokko (Eds). Ending the Chilling Effect: Working to Repeal Criminal Libel and Insult Laws. Proceedings of the Round Table “What Can Be Done to Decriminalize Libel and Repeal Insult Laws,,” Paris, 24-25 November 2003. Vienna: OSCE: Office of the Representative on Freedom of the Media, p. 14.

[290] Op. cit., p. 20.

[291] OSCE Representative on Freedom of the Media. (2016). Communiqué No.5/2016....., cit.

## 5. Legal arguments for decriminalization

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We have analyzed the legal arguments for decriminalization, such as those provided by the NGO ARTICLE 19 based on legal research and discussions[292] and reinterpreted them in the context of the situation in Lebanon.

1. The first argument is that the criminalization of a particular activity implies a clear **state interference**.

Indeed, criminal defamation law was rooted in authoritarianism and autocracy, in intolerance of dissenting views and opinions, and in distrust of public opinion. It was justified as a way of keeping the masses in their place and in peace (under control), by suppressing information about rulers that might incite unrest or rebellion.

Usually, criminal law is reserved for harmful behavior which exceptionally disturbs the community's sense of security. It seems evident that personal misrepresentation does not fall in here, and should therefore be not subject to penal control. This probably accounts for the limited number of prosecutions and the near disuse of private criminal defamation legislation in democracies.

Criminal defamation prosecutions have evolved into a surrogate for civil lawsuits. Yet they are not an appropriate forum for redressing damage to reputation, because they aim at retribution rather than compensation to the victim, the latter being available through civil litigation.

2. The second argument is that the use of criminal defamation laws to maintain **public order** or to protect other public interests is no longer appropriate.

Historically, criminal libel was believed to be an essential weapon to avert breaches of the peace – through fights, dueling or self-appointed law enforcement – by those who sought compensation for affronts to their reputation. The purpose of the ancient laws was mainly to promote peaceful means of redress in a society characterized by constant threats to public order.

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[292] ARTICLE 19. (2017). Defining Defamation: Principles on Freedom of Expression and Protection of Reputation. London, p. 10, [https://www.article19.org/data/files/medialibrary/38641/Defamation-Principles-\(online\)-.pdf](https://www.article19.org/data/files/medialibrary/38641/Defamation-Principles-(online)-.pdf)

The public order rationale for criminal defamation laws is no longer relevant. Although dueling is no longer a realistic threat, yet most countries retain criminal libel laws on their books under a variety of pretexts.

In this context, defamation laws should neither be used to protect the “reputation” of objects, such as state symbols, flags or national insignia; nor should they be used to protect the “reputation” of the state or nation as such. The only justification for a defamation law is its genuine purpose and demonstrable effect of protecting reputations of individuals against injury that lowers the esteem in which they are generally held, and that exposes them to public ridicule or hatred, or causes them to be shunned or avoided.[293]

3. The third argument is that criminal defamation is generally **abused by the powerful** to limit criticism, even in countries where it is generally applied in a moderate fashion.

It is public officials who most frequently use criminal defamation laws, including through the use of state resources or assistance from the state, to bring cases, though these laws aim at a fundamentally personal nature of protection of one’s reputation.

The report on Lebanon by the HRW noted the increasing use of criminal defamation laws by powerful national individuals, such as politicians, prominent business people, high ranking civil servants, etc. According to HRW, the resulting threat of arrest, interrogation, and criminal sanctions have had a chilling effect on free speech in Lebanon. Many of the individuals interviewed by Human Rights Watch reported self-censoring after their often-intimidating experiences resulting from defamation lawsuits.[294]

Those who have received their power from the people, and exert their power in the name of the people, must be held accountable to their people.

Preventing journalists from working freely means that ordinary citizens cannot scrutinize the people in power and that there is no need for people in power to observe transparency in their conduct of public affairs. During elections and electoral campaigns, defamation laws can easily be abused to prevent the open discussion of candidates.

Journalists who fear retribution are inclined to engage in self-censorship. That, in turn, discourages the public debate on political issues, which is the lifeblood of any democracy. This, of course, is exactly the effect that governments in jurisdictions that continue to retain and utilize criminal libel want to achieve.

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[293] ARTICLE 19. (2004). Memorandum on Albanian Defamation Law by ARTICLE 19 Global Campaign for Free Expression, Commissioned by the Representative on Freedom of the Media of the OSCE. September. <https://www.osce.org/files/f/documents/1/0/29581.pdf>.

[294] Human Rights Watch. (2019). “There is a Price...”, cit.

4. The fourth argument is that the criminalization of a particular activity has a **chilling effect on free speech.**

As discussed above, the report by the HRW noted that the use of criminal defamation laws has had a chilling effect on free speech in Lebanon, with many of their interviewees reporting self-censorship after facing defamation lawsuits. Others noted the increasing use of criminal defamation laws has created a hostile environment in Lebanon for free speech and deterred others from writing freely. Seeing fellow citizens facing possible prison time or trials in military court for complaining about performance of various authorities, corruption, or security service misconduct, some interviewees told the HRW that they took notice and were less likely to draw attention to such problems themselves, undermining effective governance and a vibrant civil society.[295]

The report noted that although “few individuals have served prison time in Lebanon on defamation charges, those subject to criminal prosecution have told Human Rights Watch about the negative impact of simply facing criminal investigations and trials.”[296]

*“Defendants in criminal defamation cases interviewed by Human Rights Watch endured a number of difficult consequences as a result of the charges against them. Some were forced into self-imposed exile for fear of arrest or harassment upon return to Lebanon, causing stress and hardship to themselves and their families. Others endured professional consequences as a result of the claims against them including reporting being unfairly dismissed from their job. Many do not hear from the prosecution for long periods of time, leaving them confused as to whether the cases against them were still active or not. The fines and other sanctions resulting from the criminal process have also had a significant financial impact on many defendants and the publications they work for.”[297]*

Thus, the sanctions that flow from criminal defamation constitute a profound threat to freedom of expression and to the free flow of information. The threat of harsh criminal sanctions, especially imprisonment, as well as of suspended prison sentences, or any other form of deprivation of liberty, “suspension of the right to express oneself through any particular form of media, or to practice journalism or any other profession,”[298] or excessive fines exert a profound chilling effect, including for the journalists. The professional ramifications of criminal defamation for the media actors include declining safety in carrying out the job and thus declining quality of the media.

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[295] Human Rights Watch. (2019). “There is a Price...”, cit.

[296] Human Rights Watch. (2019). “There is a Price...”, cit.

[297] Human Rights Watch. (2019). “There is a Price...”, cit.

[298] ARTICLE 19. (2017). Defining..., cit.



5. The fifth argument is that criminal defamation stifles debate on issues of **public interest**.

The report published by the Human Rights Watch observes that the Lebanese lawyers who have defended individuals in defamation cases, as well as free speech experts, say that because judges in the Publications Court are not well versed on international free speech standards, they apply the law literally, and are sometimes unable to effectively balance the public interest in the criticism of public officials with the right of an individual to protect their dignity.[299]

The protection of expressions that are of public interest is an essential requirement of a democratic society, deserving the highest guarantees. Nevertheless, statements of public interest are difficult to frame in a strict category as matters that may have an impact on society and on the general welfare of the population may be hard to identify beforehand. By listing some topics but not others judges may be encouraged to limit the categories of public interest speech. It is important to recognize that the categories of public interest speech are not closed ones, and, moreover, that it is not the topic that determines the scope of protection but rather the nature/content of the speech in the particular case.[300]

This “nature” generally amounts to the contribution to a public political debate. As was held by the ECtHR,

*“a fundamental distinction needs to be made between reporting facts – even controversial ones – capable of contributing to a debate in a democratic society relating to politicians in the exercise of their functions, for example, and reporting details of the private life of an individual who ... does not exercise official functions. While in the former case the press exercises its vital role of ‘watchdog’ in a democracy by contributing to ‘imparting information and ideas on matters of public interest ...’, it does not do so in the latter case.”*[301]

6. The sixth argument is that **non-criminal sanctions** in redressing any harm to individuals’ reputations – and even alternative dispute resolution mechanisms – are adequate.

The experience of countries around the world where criminal defamation laws no longer exist or have fallen into disuse demonstrates clearly that civil defamation laws, along with a variety of self-regulatory and other remedies, suffice perfectly as a means for addressing the problem of harm to reputation. Given that civil defamation laws are clearly less intrusive than criminal defamation laws, criminal defamation laws cannot be justified, since they represent a restriction on freedom of expression.[302]

One of the remedies is self-regulation, whereby the media revises its statement and prints an apology or a correction. When something is said or published that is factually incorrect, correcting it quickly limits the harm done to the greatest extent possible.

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[299] Human Rights Watch. (2019). “There is a Price...”, cit.

[300] See: European Commission for Democracy through Law (Venice Commission), Opinion the Legislation Pertaining to the Protection against Defamation of the Republic of Azerbaijan..., cit.

[301] ECtHR, Van Hannover v. Germany, Application no. 59320/00, judgment of 24 September 2004, § 63

[302] Toby Mendel. (2004)., “ Criminal defamation...”, cit.

## 6. Conclusions and recommendations

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The report on Lebanon by the HRW noted that for a variety of reasons criminal defamation laws are increasingly seen as inconsistent with the conditions set forth in the ICCPR. “Even where they are inspired by legislators’ genuine desire to encourage people to responsibly exercise their freedom of expression, criminal defamation laws pose a particularly significant risk of violating the principles of legality, proportionality, and necessity”[303] and represent a breach of the right to freedom of opinion, expression through speech and writing, and the freedom of the press – all guaranteed by the Constitution of Lebanon.

A number of studies conducted by Maharat Foundation during the 2020-2022 period also point to the need for the Lebanese State to prioritize decriminalizing defamation and insult.[304]

Hence, seeking a fair balance between the protection of individuals’ reputation and the freedom to receive or impart information, alongside the proportionality principle, are key requirements for legislators and judges in addressing cases of defamation, including on the internet.

In this regard, the sanctions under the Criminal Code of Lebanon are too severe to be proportionate due to their potentially chilling effect, the potential impact of a criminal record on the individual concerned and the fact that they leave room for court decisions that potentially lead to deprivation of liberty. Even the mere threat of punishment for defamation with the possibility of a criminal penalty such as imprisonment is sufficient to cause such an effect, restraining freedom of speech. Under no circumstances should defamation law in Lebanon provide a special protection for domestic or foreign heads of state or government, public officials, whatever their rank or status. At the very least, this offense should be limited to the most serious forms of verbal attacks against heads of states while at the same time restricting the range of sanctions to those not involving imprisonment.[305]

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[303] Human Rights Watch. (2019). “There is a Price...”, cit. .

[304] See Global Forum for Media Development, Maharat Foundation, Samir Kassir Foundation, UNESCO IPDC. (2003). Consultation on media viability in Lebanon. Report. Beirut, pp. 5, 8, 9, 14.

<https://docs.google.com/document/d/1dLnZmLkS8ybiPBCz26K7MhwENo7r5m7j/edit>

[305] European Commission for Democracy through Law (Venice Commission). (2016). Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey..., cit.

## Further Reading

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- OSCE Representative on Freedom of the Media. (2016). Communiqué No.5/2016. Communiqué by the OSCE Representative on Freedom of the Media on criminal defamation laws protecting foreign heads of state. 14 June. <https://www.osce.org/files/f/documents/3/3/246521.pdf>
- Global Forum for Media Development, Maharat Foundation, Samir Kassir Foundation, UNESCO IPDC. (2003). Consultation on media viability in Lebanon. Report. Global Forum for Media Development, Maharat Foundation, Samir Kassir Foundation, UNESCO IPDC, June 2003. Beirut., Lebanon <https://docs.google.com/document/d/1dLnZmLkS8ybiPBCz26K7MhwENo7r5m7j/edit>
- Council of Europe. (2003). Defamation and Freedom of Expression: Selected documents. Strasbourg: Council of Europe, Media Division, Directorate General of Human Rights. <https://rm.coe.int/1680483b2d>
- ARTICLE 19. (2017). Defining Defamation: Principles on Freedom of Expression and Protection of Reputation. London.: ARTICLE 19, 2017, - p. 10, [https://www.article19.org/data/files/medialibrary/38641/Defamation-Principles-\(online\)-.pdf](https://www.article19.org/data/files/medialibrary/38641/Defamation-Principles-(online)-.pdf)
- Scott Griffen. (2017). Defamation and Insult Laws in the OSCE Region: A Comparative Study Commissioned by the OSCE Representative on Freedom of the Media. Vienna: International Press Institute.
- Jane E. Kirtley. (2004), Criminal Defamation: An “Instrument of Destruction”. In A. Karlsreiter and H. Vuokko (Eds). Ending the Chilling Effect: Working to Repeal Criminal Libel and Insult Laws. Proceedings of the Round Table “What Can Be Done to Decriminalize Libel and Repeal Insult Laws,.” Paris, 24-25 November 2003. Vienna: OSCE: Office of the Representative on Freedom of the Media. pp. 89-101, <https://www.osce.org/files/f/documents/2/3/13573.pdf>.
- Robert Menard. (2003). Democracies Must Set an Example. In A. Karlsreiter and H. Vuokko (Eds). Ending the Chilling Effect: Working to Repeal Criminal Libel and Insult Laws. Proceedings of the Round Table “What Can Be Done to Decriminalize Libel and Repeal Insult Laws,.” Paris, 24-25 November 2003. Vienna: OSCE: Office of the Representative on Freedom of the Media, <https://www.osce.org/files/f/documents/2/3/13573.pdf>
- Toby Mendel (2004). “Criminal defamation and libel in the OSCE region”. In A. Karlsreiter and H. Vuokko (Eds.): OSCE Representative on Freedom of the Media: Ending the Chilling Effect: Working to Repeal Criminal Libel and Insult Laws. Proceedings of the Round Table “What Can Be Done to Decriminalize Libel and Repeal Insult Laws,.” Paris, 24-25 November 2003. Vienna: OSCE: Office of the Representative on Freedom of the Media. <https://www.osce.org/files/f/documents/2/3/13573.pdf>

- Ana Karlsreiter and Hanna Vuokko (Eds.). (2004). Ending the Chilling Effect: Working to Repeal Criminal Libel and Insult Laws. Proceedings of the Round Table “What Can Be Done to Decriminalize Libel and Repeal Insult Laws.” Paris, 24-25 November 2003. Vienna: OSCE: Office of the Representative on Freedom of the Media.  
<https://www.osce.org/files/f/documents/2/3/13573.pdf>.
  - United Nations Human Rights Council. (2011). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 16 May.  
[https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)
  - Council of Europe Information Society Department. (2012). Study on the alignment of laws and practices concerning defamation with the relevant case-law of the European Court of Human Rights on freedom of expression, particularly with regard to the principle of proportionality., Council of Europe, Information Society Department, CDMSI(2012)Misc11Rev,  
<https://rm.coe.int/study-on-the-alignment-of-laws-and-practices-concerning-alignment-of-1/16804915c5>.
  - Human Rights Watch. (2019). “There is a Price to Pay””: The Criminalization of Peaceful Speech in Lebanon, Human Rights Watch, 15 November 2019, see in English or العربية: <https://www.hrw.org/report/2019/11/15/there-price-pay/criminalization-peaceful-speech-lebanon>. (in English or العربية)
  - Dirk Voorhoof. (2015). Freedom of Expression, Media and Journalism under the European Human Rights System: Characteristics, Developments and Challenges. In P. Molnar (Ed.), Free Speech and Censorship Around the Globe. Budapest-New York: CEU Press.
  - Ruth Walden. (2000). Insult Laws: An Insult to Press Freedom. A World Press Freedom Committee Study of More Than 90 Countries and Territories”World Press Freedom Committee, Rex Rand Fund.
  - Elena Yanchukova. (2003). Criminal Defamation and Insult Laws: An Infringement on the Freedom of Expression in European and Post-Communist Jurisdictions. 41 Colum. J. Transnat’l L. 861.
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# Protection of Journalists and Journalistic Sources in Europe

By Judith Pies

Judith Pies holds a PhD in communication science from the University of Erfurt. She has been working as a professor of digital and international journalism at the Hochschule der Medien Stuttgart, the University of Dortmund and the Bundeswehr University Munich since 2015. Pies has long-standing experience in academic research, teaching, journalism and management of international media projects. In 2018, she founded the organization Media | Competence | International, which offers international media consultancy and training in media literacy.

# Executive summary

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This research paper refers to four forms of risks against which the protection of journalists and their sources in Europe is essential for press freedom: physical, psychological, digital, and financial. It uses data from the Safety of Journalists Platform, which collects alerts on attacks on journalists' safety in member states of the Council of Europe, to identify recent developments and fields of concerns. The number of alerts increased in the EU from 2019 until 2021 in all categories and has stagnated on a high level after the end of COVID-19 pandemic restrictions. While the number of journalists killed and cases of impunity is comparably low, the number of attacks on journalists during protests and demonstrations went up. The same is true for harassment and intimidation, with so-called Strategic Lawsuits against Public Participation (SLAPP cases) becoming more and more relevant.

Coming from this analysis of the status quo, the paper proposes several legal provisions and recommendations from international and EU institutions to enhance the safety of journalists. Among them are:

- the UN Human Rights Council Resolution on the Safety of Journalists, which encourages states to create a safe environment for journalists, refrain from intimidating media, and establish mechanisms for data collection on threats and attacks against journalists.
- the Council of Europe Campaign for the Safety of Journalists, which aims to raise awareness and stimulate action on safety issues, urging governments to protect journalists by setting up national remedies and action plans.
- the European Media Freedom Act (EMFA), proposing rules to protect media pluralism and independence, including among others a ban on the use of spyware against journalists and a prohibition to force journalists to disclose sources or confidential communications.
- the EU Directive on Strategic Lawsuits Against Public Participation (SLAPP), which recommends that member states should implement anti-SLAPP laws for expedited dismissal of abusive lawsuits.
- the Whistleblower Protection Directive, which establishes a framework to protect individuals reporting breaches of EU law, with provisions for confidentiality, prohibition of retaliation, and establishment of reporting channels.

The research concludes that the protection of journalists and their sources in Europe is a complex issue, with a range of factors at play. It emphasizes the importance of freedom of expression, as enshrined in Article 11 of the EU Charter of Fundamental Rights, and the need for robust legal frameworks to live up to this fundamental right.

# 1. Overview of attacks on journalists in the European Union

At the core of journalists' rights in the EU is the fundamental principle of freedom of expression, enshrined in Article 11 of the EU Charter of Fundamental Rights.[306] This provision guarantees the right to freedom of expression and information, including freedom of the press and other media. Press freedom, also mentioned by the UN under Article 19 of the Universal Declaration of Human Rights[307], is an essential component of democratic societies in Europe, ensuring the availability of diverse and independent media voices.

Journalists in the EU have all rights that every citizen in the EU enjoys. This includes under Article 3 of the EU Charter of Fundamental Rights the right to physical and mental integrity. Due to their professional role of watching persons and institutions in power, of revealing information that is meant to stay opaque and their professional public exposure, journalists face specific risks. Slavtcheva-Petkova and colleagues define situations as (highly) risky “if journalists face (existential) threats to themselves as individuals and institutional actors and to the viability and sustainability of journalism as an institution making a meaningful and vital contribution to social life.”[308] Hence they distinguish four forms of risks: physical, psychological, digital and financial.[309]

A number of organizations all over the globe monitor such (high) risk situations and reveal attacks on journalists and media organizations. They include Reporters Without Borders (RSF)[310], the Committee to Protect Journalists (CPJ)[311] or UNESCO, which observes, among other things, the killing of journalists worldwide.[312] In Lebanon, SKeyes collects and publishes information about violations of press freedom in the region.[313]

[306] Article 11 of the EU Charter of Fundamental Rights states: 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas. 2. The freedom and pluralism of the media shall be respected. (cf. Charter of Fundamental Rights of the European Union ((2000/C 364/01). [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf))

[307] Article 19 of the Universal Declaration of Human Rights states: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

[308] Vera Slavtcheva-Petkova, Jyotika Ramaprasad, Nina Springer, Sallie Hughes, Thomas Hanitzsch, Basyouni Hamada, Abit Hoxha, & Nina Steindl. (2023). Conceptualizing Journalists' Safety around the Globe. *Digital Journalism*, 11(7), 1211-1229, DOI: 10.1080/21670811.2022.2162429

[309] Slavtcheva-Petkova et al. (2023). Conceptualizing Journalists' Safety...,cit.

[310] Reporters Without Borders (RSF) monitors press freedom and publishes an annual report on the situation of press freedom worldwide. To evaluate the status, several criteria are used, among them “safety” including bodily harm (including murder, violence, arrest, detention and abduction); psychological or emotional distress that could result from intimidation, coercion, harassment, surveillance, doxing (publication of personal information with malicious intent), degrading or hateful speech, smears and other threats targeting journalists or their loved-ones; professional harm resulting from, for example, the loss of one's job, the confiscation or professional equipment, or the ransacking of installations. See Reporters Without Borders. (2022). Methodology. <https://rsf.org/en/index-methodologie-2022>.

[311] The CPJ documents attacks on the press worldwide and advocates for press freedom particularly to ensure that justice prevails when journalists are imprisoned or killed. CPJ also provides safety and security information and rapid response assistance. See Committee to Protect Journalists.(n.d.) What We Do. <https://cpj.org/about/>

[312] UNESCO. (n.d.). Observatory of Killed Journalists. <https://www.unesco.org/en/safety-journalists/observatory?hub=687>

[313] SKeyes is part of the Samir Kassir Foundation and, among other activities, monitors press freedom attacks in the Levant, provides legal support to journalists and intellectuals facing prosecution, and financial and moral support to jailed journalists and intellectuals. See SKeyes Center for Media and Cultural Freedom. (n.d.). <https://www.skeyesmedia.org/en/Home>

For Europe, the Council of Europe's Safety of Journalists Platform compiles and disseminates information on "serious concerns about media freedom and safety of journalists in Council of Europe member states, as guaranteed by Art. 10 of the European Convention on Human Rights." [314] The platform publishes alerts that cooperating organizations and associations of journalists in the member states as well as international NGOs report to them. It started its work in 2015 as a background information and early warning provider for the Council of Europe. It categorizes its alerts as follows:

- **Attacks on the physical safety and integrity of journalists:** Killings; abductions; threats and acts of violence against the physical integrity of journalists, their family members and other media actors; attacks against journalists' sources because of their cooperation with journalists or media.
- **Detention and imprisonment of journalists:** Arbitrary, unwarranted or politically motivated arrests, detention and imprisonment of journalists and other media actors.
- **Harassment and intimidation of journalists:**
  - **Harassment** of journalists and other media institutions or actors; violence or interference causing damage or destruction of journalists' equipment or other property; punitive or vindictive exercise of investigatory tax or administrative powers; arbitrary denial of access for journalistic coverage; threats to journalists' privacy, threats to employment status, psychological abuse, bullying, online harassment and cyber-bullying;
  - **Judicial intimidation:** Opportunistic, arbitrary or vexatious use of legislation, including defamation, anti-terrorism, national security, hooliganism or anti-extremism laws; issuing bogus or fabricated charges;
  - **Political intimidation:** Including hate speech and use by public figures of abusive or demeaning language against journalists or media outlets;
  - **Other forms of intimidation and harassment.**
- **Impunity:** Failures to promptly, independently and effectively investigate and seek to prosecute crimes and offenses against journalists and other media institutions or actors.
- **Other acts having chilling effects on media freedom:** Acts having chilling effects on media freedom including restrictive legislation encroaching on media freedom. [315]

As the Safety of Journalists Platform has collected alerts in an individually searchable database since 2015, it is a good source to draw a picture of the situation of journalists' safety in Europe. For the following analysis, the author created a quantitative data set, in which alerts on the platform in EU member states in the years 2019-2023 are displayed. In addition, alerts from individual countries in particular areas of concern were chosen for an in-depth analysis.

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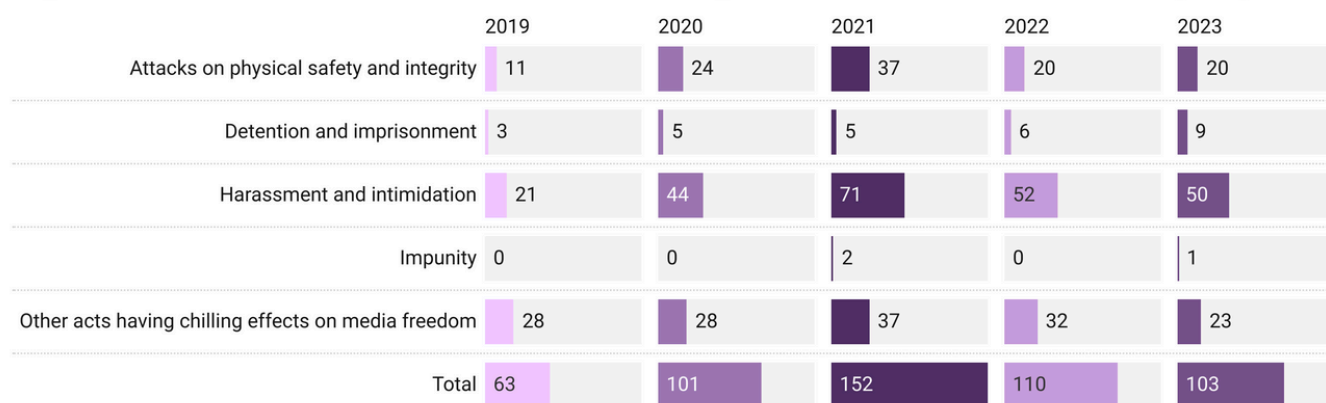
[314] Safety of Journalists-Platform. (n. d.): Who we are. <https://fom.coe.int/en/apropos>. Apart from collecting alerts, the platform highlights the work carried out by the Council of Europe in the field of media, such as texts prepared by the Parliamentary Assembly, standards adopted by the Committee of Ministers, and the relevant case law of the European Court of Human Rights.

[315] See Safety of Journalists-Platform: alerts <https://fom.coe.int/en/alerte>.



The following chart gives an overview of the situation in European Union member states in the last five years (2019-2023). It shows that the number of alerts increased from 2019 until 2021 in all categories. Harassment and intimidation, attacks on physical safety and integrity as well as other forms of acts having a chilling effect on media freedom went up during the COVID-19 pandemic years 2020 and 2021. Since then, they have been decreasing again, but are still higher than before the pandemic in 2019. Compared to European countries outside the EU like Turkey, the Russian Federation or Azerbaijan, the number of detained or imprisoned journalists is still low, although detention and imprisonment went up from 3 in 2019 to 9 in 2023. The number of alerts referring to impunity is very low and mentioned only sporadically, two cases in 2021 and one in 2023.

**Figure 1. Number of alerts in different categories in EU member states per year**



Source: Own elaboration from data retrieved from Safety of Journalists Platform • Created with Datawrapper

Figure 2 displays the number of attacks on journalists' safety in each EU member state categorizing the form of attack according to the Safety of Journalists Platform's classification. More than 30 alerts between 2019 and 2023 were reported for Spain, Poland, Italy, Greece and France; between 20 and 30 for the Netherlands, Germany, Croatia, Bulgaria and Belgium. It is worth noting that the data are collected from collaborating organizations. In some countries, such organizations are more active than in others. Furthermore, the number of alerts on attacks on the safety of journalists is only one aspect in measuring press freedom in Europe. Hence, the ranking here does not necessarily correspond with overall press freedom rankings like the one from Reporters Without Borders.[316]

[316] As mentioned above, Reporters Without Borders uses a variety of criteria. Safety is only one among others.

**Figure 2. Number of different forms of attacks on journalists' safety in EU countries**

	Attacks on physical safety and integrity	Detention and imprisonment	Harassment and intimidation	Impunity	Other acts having chilling effects on media freedom	Total
Austria	3	0	7	0	0	10
Belgium	2	2	13	0	8	25
Bulgaria	7	0	17	0	6	30
Croatia	2	0	17	0	4	23
Cyprus	1	0	3	1	0	5
Czech Republic	0	0	3	0	7	10
Denmark	0	0	2	0	0	2
Estonia	0	0	1	0	3	4
Finland	0	1	3	0	2	6
France	28	5	35	0	28	96
Germany	9	1	6	0	4	20
Greece	15	6	14	2	13	50
Hungary	0	0	5	0	14	19
Ireland	0	0	3	0	1	4
Italy	18	0	27	0	10	55
Latvia	0	0	0	0	3	3
Lithuania	0	0	0	0	0	0
Luxembourg	0	0	1	0	0	1
Malta	0	0	7	0	6	13
Netherlands	7	3	6	0	4	20
Poland	3	5	26	0	12	46
Portugal	1	0	3	0	1	5
Romania	2	0	9	0	1	12
Slovak Republic	1	0	7	0	6	14
Slovenia	1	0	10	0	5	16
Spain	9	4	9	0	9	31
Sweden	3	1	3	0	1	8
<b>Total</b>	<b>112</b>	<b>28</b>	<b>237</b>	<b>3</b>	<b>148</b>	<b>528</b>

Source: Own elaboration from data retrieved from Safety of Journalists Platform • Created with Datawrapper

## 1.1 Attacks on physical safety and integrity

In the last five years, three journalists were killed in EU member states due to their work as journalists: Lyra McKee in 2019 while covering a riot in Northern Ireland (at that time still part of the EU), Peter de Vries 2021 in the Netherlands and Giorgos Karaivaz 2021 in Greece.[317] While Peter de Vries' murderers have been prosecuted, the investigation into Karaivaz' murder is still ongoing at the time of writing in January 2024. The two cases represent positive and negative examples of how judiciary and security forces act to hold perpetrators accountable.

Peter De Vries was gunned down on an Amsterdam street on July 6, 2021, shortly after leaving a TV studio where he had appeared as a guest on a program. The 64-year-old died in hospital nine days after he was shot.[318] De Vries was a crime reporter who had covered high-profile criminal investigations, and had received death threats in 2019 over his coverage of the killing of a teenager in Rotterdam. Seven days after de Vries died in hospital, the police arrested two men. They have been charged with de Vries' murder, and prosecutors are seeking a life sentence for them. The trial against nine other suspects in the murder of de Vries started on January 23, 2024, with the court expected to deliver its verdict in June 2024.[319] In the case of de Vries it is noteworthy that all witnesses and the prosecutor stay anonymous.[320] This is one of the recommendations of the Council of Europe to protect the safety of judges, prosecutors, lawyers and witnesses when working on cases of journalists' murders.[321]

[317] Two well-known cases, the assassinations of Daphne Caruana Galizia in 2017 in Malta and Jan Kuciak in 2018 in Slovakia, happened before the period analyzed.

[318] Agence France-Presse in the Hague. Nine men to be tried for murder of Dutch crime reporter Peter R de Vries. 30 November 2023. The Guardian. <https://www.theguardian.com/world/2023/nov/30/nine-men-to-be-tried-for-of-dutch-reporter-peter-r-de-vries>; Caitlin Danaher, & Rose Roobeek. Group suspected of killing Dutch crime reporter also wanted to kidnap PM Mark Rutte, witness says. 19 January 2024. CNN World. <https://edition.cnn.com/2024/01/19/europe/mark-rutte-peter-de-vries-intl/index.html>

[319] Agence France-Presse in the Hague. Nine men..., cit.

[320] Prozessbeginn im Mordfall Peter R. de Vries - Alle 88 Zeugen bleiben anonym, die Namen der Staatsanwälte dürfen nicht genannt werden (Trial begins in the murder case of Peter R. de Vries - All 88 witnesses remain anonymous, the names of the prosecutors cannot be mentioned). Der Spiegel. <https://www.spiegel.de/panorama/justiz/niederlande-prozessbeginn-im-mordfall-peter-r-de-vries-ich-war-nur-der-fahrer-a-f6526673-be8b-495b-92c5-1484c5188b71>.

[321] Other indicators for an effective investigation to avoid impunity are: "adequacy; independence; thoroughness; promptness; openness to public scrutiny/accessibility to the victims or their families. Practical/operational requirements to stem impunity are put in place: specialised investigation units with expertise in international human rights are established; independence and impartiality of the judiciary is ensured; the safety of judges, prosecutors, lawyers and witnesses is safeguarded; legislation is reviewed with a view to introduce aggravated penalties, removal of limitation periods for the prosecution of and limiting amnesties and pardons for crimes involving ill treatment by state agents, crimes against freedom of expression and for obstruction of justice. Where investigations and prosecutions do not result in bringing to justice the perpetrators, special judicial or non-judicial inquiries / inquiries by independent specialised bodies are carried out. For more details and practical implications." Council of Europe Campaign for the Safety of Journalists. (n.d.). Effective investigation. Stemming impunity. <https://www.coe.int/en/web/freedom-expression/effective-investigation-stemming-impunity#%2272490634%22:%22:%2272490649%22:%22>[1]

While in the case of De Vries, judiciary and security forces played a constructive role in holding perpetrators accountable, the judiciary and security forces in Greece have been criticized for their slow progress in the case of the killing of Giorgos Karaivaz. He was known for his coverage of organized crime and corrupt police officers, and he had received death threats prior to his assassination. He was gunned down by two men on a scooter outside his home in Athens on 9 April 2021.[322] Despite the Greek government's assertion that it is doing everything to shed light on the case, little progress has been made in the investigation two years after the incident.[323] In April 2023, the Greek authorities announced the arrests of two suspects in connection with the murder of Karaivaz. However, Human Rights Watch and Reporters Without Borders critically noted that full accountability for the murder requires that *all* those responsible be brought to justice.[324] The Greek judiciary and security forces' handling of the case has been part of broader concerns about the rule of law, media freedom, and government surveillance in Greece.[325]

Apart from deadly attacks, public events such as rallies and protests, in particular demonstrations against measures to combat the COVID-19 pandemic, were the backdrop for most of the recorded physical attacks on journalists during 2019- 2023. Incidents of violence on reporters and media crew members were reported involving protesters in Croatia, France, Germany, Greece, Italy, Spain, the Netherlands, and also involving police and security forces. This is because many media workers stopped displaying their company logo/press identification while reporting in the field to avoid attacks from protesters, which made it more difficult for security forces to identify them as press.[326]

## 1.2 Detention and imprisonment

In the period 2019-2023, no journalist was imprisoned in any EU member state, but 28 were detained or held in custody: in Belgium (2), Finland (1), France (5), Germany (1), Greece (6), the Netherlands (3), Poland (5), Spain (4), and Sweden (1).[327] Spanish journalist Pablo González as of July, 2023 had been in pre-trial detention in Poland without any evidence of the allegations against him being made public since February 2022. He was arrested by Polish authorities and charged with espionage. In most of the cases, custody lasted only for a few hours, occasionally for days.

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[322] Greece: First arrests made over 2021 murder of journalist Giorgos Karaivaz. 3 May 2023. International Press Institute (IPI). <https://ipi.media/greece-first-arrests-made-over-2021-murder-of-journalist-giorgos-karaivaz/>

[323] Liam Scott. As Elections Loom in Greece, Press Freedom on Back Burner. 19 May 2023. Voice of America. <https://www.voanews.com/a/as-elections-loom-in-greece-press-freedom-on-back-burner-/7100841.html>

[324] Human Rights Watch. (2023). Greece: Events of 2023. <https://www.hrw.org/world-report/2024/country-chapters/greece>

[325] European Parliament Committee on Civil Liberties, Justice and Home Affairs. (2023). Draft Report on the Commission's 2023 Rule of Law report (2023/2113(INI)). Rapporteur: Sophia in 't Veld. [https://www.europarl.europa.eu/doceo/document/LIBE-PR-754695\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/LIBE-PR-754695_EN.pdf)

[326] Analysis of alerts on attacks on physical safety and integrity in EU member states in 2019-2023 drawn from the database of alerts by the Safety of Journalists Plattform. <https://fom.coe.int/en/alerte>

[327] A note on terminology: imprisonment is the long-term confinement after a conviction; detention is a temporary measure used when someone is suspected of illegal activity; custody involves restriction of movement, often as part of the arrest process.

Three countries stand out when it comes to detentions: Greece, Poland and France. Many incidents in which journalists were arrested were investigations at borders, for example investigating pushbacks at the Greece border or the border police's action at the Polish-Belarus border. In addition to borders, demonstrations and protests are places where journalists in the EU have been arrested, leading to Council of Europe alerts on detention and imprisonment. In many cases security forces claimed that journalists had had no press card or signs of identifying them as press or that they just had not recognized them as journalists. This is why, security forces said, they suspected the journalists of being part of illegal forms of protests, such as blocking trafficways or entering premises without permission. In most cases, video or audio material later revealed that journalists could have been identified as journalists. In some cases, to justify the journalists' detention, the police subsequently accused journalists of allegedly ignoring their orders, violating the bodily integrity of police officers or assaulting police officers. In all cases, our analysis shows that these allegations were found unjustified by police internal investigations.

Even though journalists were not detained for a long period and allegations were ultimately found unjustified, these arrests undermine the freedom to inform and be informed as this freedom requires the presence of journalists, with or without the press card, in demonstrations or protests, for example. This is why article 5 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights, obliges states not only to avoid violating the right to liberty and security, but also to take proactive measures to protect individuals from unlawful deprivation of liberty. This article aims to prevent arbitrary or unjust detentions, and thus requires domestic laws to align with the Convention's principles, such as the rule of law, legal certainty, proportionality, and protection from arbitrariness. For deprivation of liberty to be lawful, it must be clearly defined in domestic law, which should be predictable in its application, allowing individuals to foresee the consequences of their actions with reasonable accuracy. Upon arrest, "individuals must be promptly informed in a language [they] understand about the reasons for their arrest and any charges against [them]."[328] They must also be brought before a judge quickly, be entitled to a timely trial or release pending trial, and have the right to challenge the lawfulness of their detention in court. If someone is detained in violation of Article 5, they are entitled to compensation.[329]



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[328] Council of Europe Safety of Journalists Platform. (2020). Thematic Factsheet: Custody, Detention and Imprisonment of Journalists. <https://rm.coe.int/fiche-thematique-detention-15september-2021/1680a3dc40>

[329] Find more detailed recommended standards as well as case law of the European Court of Human Rights in the Council of Europe Safety of Journalists Platform. (2020). Thematic factsheet..., cit.

**Figure 3. Overview detentions**

	<b>Detention and imprisonment 2019-2023</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
Austria	0	0	0	0	0	0
Belgium	2	1	0	0	1	0
Bulgaria	0	0	0	0	0	0
Croatia	0	0	0	0	0	0
Cyprus	0	0	0	0	0	0
Czech Republic	0	0	0	0	0	0
Denmark	0	0	0	0	0	0
Estonia	0	0	0	0	0	0
Finland	1	0	0	0	0	1
France	5	0	3	0	0	2
Germany	1	0	0	1	0	0
Greece	6	0	1	1	2	2
Hungary	0	0	0	0	0	0
Ireland	0	0	0	0	0	0
Italy	0	0	0	0	0	0
Latvia	0	0	0	0	0	0
Lithuania	0	0	0	0	0	0
Luxembourg	0	0	0	0	0	0
Malta	0	0	0	0	0	0
Netherlands	3	1	0	1	0	1
Poland	5	0	1	2	1	1
Portugal	0	0	0	0	0	0
Romania	0	0	0	0	0	0
Slovak Republic	0	0	0	0	0	0
Slovenia	0	0	0	0	0	0
Spain	4	1	0	1	0	2
Sweden	1	0	0	0	1	0
<b>Total</b>	<b>28</b>	<b>3</b>	<b>5</b>	<b>6</b>	<b>5</b>	<b>9</b>

Source: Own elaboration from data retrieved from Safety of Journalists Platform • Created with Datawrapper

## 1.3 Harassment and intimidation

Threats of legal actions or (online) harassment were among the incidents that triggered many alerts on the Safety of Journalists' Platform in the years 2019-2023. The peak was in 2021, when 71 cases of harassment and intimidation were reported. Although the number sank to 50 in 2023, it is still high, and certain forms of harassment and intimidation that emerged in the years before are still prevalent. The most striking forms as highlighted in press freedom reports are strategic lawsuits against public participation (SLAPP), smear campaigns and (online) harassment.[330] All can have a “chilling effect on journalists and media workers. They can cause significant psychological harm and may also represent a risk to the physical security of the victims, who may turn to self-censorship to avoid being targeted.”[331] In addition, SLAPP cases aim to discourage media and journalists from reporting on topics interesting to the public and are designed to “intimidate and harass the target, especially through the prospect of burdensome legal costs. Even if they are not won in court, these judicial proceedings may have already reached their objective, which is to intimidate and to financially cripple and emotionally exhaust journalists.”[332]

Gazeta Wyborcza in Poland and Index.hr in Croatia each faced around 65 active defamation lawsuits in 2021. This is why media organizations, journalists' associations and NGOs have been alarmed. Lobbying to put the issue on the political agenda in member states and on the EU level, they formed the Coalition against SLAPPs in Europe (CASE). This coalition collects cases, advocates for addressing the issue legally, lists the most notorious figures using SLAPP in their gallery of shame, [333] and offers information on where to get help.[334]

## 1.4 Impunity

Impunity in reference to killings of journalists triggered three alerts in the analyzed period 2019-2023. One case refers to Kutlu Adalı, a Turkish Cypriot journalist killed in 1996, the second to journalist and broadcaster Sokratis Giolias killed in Greece in 2010 and the third to the television reporter Giorgos Karaivaz killed in Greece in 2021.

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[330] Council of Europe Safety of Journalists' Platform. (2022). Defending Press Freedom in Times of Tension and Conflict. Annual Report by the partner organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists. Brussels: Council of Europe. <https://rm.coe.int/platform-protection-of-journalists-annual-report-2022/1680a64fel>; Council of Europe Safety of Journalists Platform. (2023). Thematic Factsheet: Media Coverage of Protests and Demonstrations. <https://rm.coe.int/factsheet-media-coverage-of-protests-and-demonstrations/1680acc392>

[331] Council of Europe Safety of Journalists' Platform. (2022). Defending..., cit.

[332] Council of Europe Safety of Journalists' Platform. (2022). Defending..., cit.

[333] Coalition against SLAPPs in Europe (CASE). (n.d.) Gallery of Shame. <https://www.the-case.eu/gallery-of-shame/>

[334] Coalition against SLAPPs in Europe (CASE). (n.d.) Get Help. <https://www.the-case.eu/get-help/>

There are two more infamous cases of impunity in EU member states that date back to the years 2018 and 2017, when the Slovak journalist Ján Kuciak and the Maltese journalist Daphne Caruana Galizia were killed. Until the time of writing in January 2024, none or not all persons allegedly involved in their murder have been convicted.[335]

These cases are similar in that high-ranking politicians have been suspected to be involved in the murders or in the investigations the journalists had been working on. In other cases of killing journalists, such as the murder of Peter de Vries in the Netherlands in 2021, judiciary and security forces “promptly, independently and effectively investigated and sought to prosecute crimes and offences.” This satisfies the recommendations spelled out in the Council of Europe’s Recommendations for “Effective investigation. Stemming impunity.”[336]

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[335] Media Freedom Rapid Response. (2023). Greece: Impunity continues two years after murder of journalist Giorgos Karaivaz. <https://www.mfrr.eu/greece-impunity-continues-two-years-after-murder-of-journalist-giorgos-karaivaz/>

[336] Council of Europe Campaign for the Safety of Journalists. (n.d.). Effective..., cit.



## 2. Legal recommendations on the protection of journalists

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### 2.1 International recommendations and provisions

The safety of journalists has been a serious concern for the profession in many regions of the world, for many decades.[337] In 2012, the UN proposed an Action plan on the Safety of journalists. The plan sets principles for cooperation and practical actions for the safety of journalists, and calls on states to set up mechanisms for the prevention and punishment of attacks on journalists.[338] It informed resolution A/HRC/RES/39/6, adopted by the Human Rights Council on 27 September 2018 urging:

- political leaders and authorities to refrain from intimidating or threatening the media, which undermines trust in journalism (Point 8)
- states to prevent violence against journalists by creating a safe environment for them to work independently, condemning violence against them, and establishing mechanisms for collecting data on threats and attacks against journalists (Point 9)
- states to ensure their laws do not limit the ability of journalists to work independently and without undue interference (Point 10)
- states to ensure measures to combat terrorism and preserve national security do not arbitrarily hinder the work and safety of journalists (Point 11)
- states to protect the confidentiality of journalists' sources, including whistleblowers (Point 13)
- states to tackle gender-based discrimination against women journalists, both online and offline (Point 15)

Additionally, the resolution

- emphasizes the importance of encryption and anonymity tools for journalists in the digital age (Point 14)
- encourages states to use the International Day to End Impunity for Crimes against Journalists to raise awareness about the safety of journalists (Point 16)
- recognizes media organizations for their role in providing safety training and guidance to journalists (Point 17)
- stresses the need for better international cooperation to ensure the safety of journalists and invites states to share information on the status of investigations into attacks against journalists (Points 19, 21)[339]

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[337] See the reports by Reporters Without Borders since 1998.

[338] UNESCO. (2012). UN Plan of Action on the Safety of Journalists and the Issue of Impunity. <https://en.unesco.org/un-plan-action-safety-journalists>

[339] United Nations General Assembly. (2018). Resolution A/HRC/RES/39/6, adopted by the Human Rights Council on 27 September 2018 (in Arabic). <https://digitallibrary.un.org/record/1649998?ln=ar>

As the analysis of alerts on the Safety of Journalists Platform demonstrates, the COVID-19 pandemic has once again underlined the importance of safety of journalists in Europe. The increase of killings of journalists in recent years and the war in Ukraine have further increased public recognition of the issue.

Only recently, in October 2023 did the Council of Europe start its own Campaign for the Safety of Journalists. It aims to raise awareness, stimulate effective action on pressing issues, and ultimately increase the safety of journalists and other media actors in the countries of the Council of Europe. In order to reach this goal, it encourages governments to protect journalists by setting up effective remedies at the national level to address threats to journalists and to enact and implement national action plans.[340] Recommendations by the Council of Europe emphasize the state's obligations to protect the safety and security of journalists and other media actors, ensuring their ability to exercise their fundamental rights without fear of violence or intimidation, for example. They include the following provisions:

- The State must guarantee the safety and physical integrity of everyone within its jurisdiction, including the positive obligation to take appropriate steps to safeguard lives (20).
- The State should put in place effective criminal law provisions and law enforcement machinery to secure the right to life and prevent criminal acts, with attention to the vulnerable position of journalists (21).
- Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights, requiring policing operations to be sufficiently regulated and defined by a legal and administrative framework (22).
- The procedural dimension involves a positive obligation on the State to carry out effective, independent, and prompt investigations into alleged unlawful killings or ill-treatment, with a view to prosecuting the perpetrators and bringing them to justice (23).
- The absence of effective measures leads to a culture of impunity, tolerating abuses and crimes against journalists and other media actors (24).
- The State has an obligation to guarantee the substantive liberty of everyone within its jurisdiction, ensuring that journalists and other media actors are not subjected to arbitrary arrest, unlawful detention, or enforced disappearance (25).
- The State should not unduly restrict the free movement of journalists and other media actors, including cross-border movement and access to particular areas, as such mobility and access are important for news and information-gathering purposes (26).
- The effectiveness of a system of protection may be influenced by contextual factors, but relevant State obligations apply in crisis or conflict situations, subject to international human rights law (27).
- Ensuring the safety and security of journalists and other media actors is a precondition for their effective participation in public debate, requiring States to protect them against intimidation, threats, and violence irrespective of their source (28).[341]

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[340] Council of Europe Campaign for the Safety of Journalists. (n.d.). Journalists Matter : Council of Europe Campaign for the Safety of Journalists. <https://www.coe.int/en/web/freedom-expression/safety-of-journalists-campaign>

[341] Council of Europe. (2016). Recommendations of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors. Adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers' Deputies. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016806415d9#\\_ftnl](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415d9#_ftnl)

## 2.2 Recommendations and provisions on the protection of journalists in the EU

There are different ways of dealing with the problem of attacks on journalists depending on the type of attack. EU institutions provide directives or recommendations. National governments are responsible for implementing EU directives and regulations and for transposing them into national law. If national law seems to disrespect the European Convention on Human Rights, cases can be brought to the European Court of Human Rights. Examples in which national courts ruled against journalists, but were taken up by judgment of the European Court of Human Rights can be found in the court's database<sup>[342]</sup> and on the Council of Europe's website.<sup>[343]</sup> The following paragraphs will give an overview of some of the most relevant EU provisions and recommendations to foster the safety of journalists.

The European Media Freedom Act (EMFA) builds on the Commission's rule of law reports<sup>[344]</sup> and the revised Audiovisual Media Services Directive<sup>[345]</sup>, which provides for EU-wide coordination of national legislation for audiovisual media. Additionally, it refers to the Digital Services Act (DSA) and the Digital Markets Act (DMA)<sup>[346]</sup>, as well as the 2022 Code of Practice on Disinformation.<sup>[347]</sup> It is a proposed set of rules aimed at protecting media pluralism and independence in the EU in a more general way.<sup>[348]</sup> It focuses on regulating government funding of media outlets, preventing domestic political pressure on journalists, and imposing pluralism tests and transparent state advertising, for example. The European Media Freedom Act contains several provisions aimed at ensuring the safety of journalists.

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[342] HUDOC Database on case-law by the European Court on Human Rights. <http://hudoc.echr.coe.int/eng#%7B%22documentcollectionid%22:%22GRANDCHAMBER%22,%22CHAMBER%22%7D>

[343] The Council of Europe publishes a selection of cases with reference to freedom of expression and press freedom. See Council of Europe. (n.d.). Impact of the European Convention on Human Rights. Freedom of expression. <https://www.coe.int/en/web/impact-convention-human-rights/freedom-of-speech>

[344] The Rule of law report annually monitors significant developments relating to the rule of law in all EU Member States. See European Commission. (n.d.). Rule of law mechanism. [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en)

[345] European Commission. (2024). Revision of the Audiovisual Media Services Directive (AVMSD). <https://digital-strategy.ec.europa.eu/en/policies/revision-avmsd>

[346] European Commission. (2024). The Digital services Act package. <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>

[347] European Commission. (2022). The 2022 Code of Practice on Disinformation. <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>

[348] For more information on the EMFA, see Krisztina Rozgonyi. (2024). How to Modernize Media Laws to Cope With Digital Change. Tallinn/London/Santiago de Compostela: Media and Journalism Research Center (MJRC). <https://journalismresearch.org/2024/01/how-to-modernize-media-laws-to-cope-with-digital-change/>

These provisions include:

- Protection against interference: Member states are required to protect media from political, economic, or private interference. This includes interference in the editorial decisions of media outlets.
- Ban on the use of spyware: The Act prohibits the use of spyware against journalists. This provision is aimed at preventing unauthorized access to encrypted content on their devices or forcing them to disclose their sources.
- Protection of sources: Member states are prohibited from forcing journalists to disclose their sources or confidential communications.
- Safeguards against surveillance: The Act includes safeguards against government surveillance. This includes the need to obtain prior authorization from an independent judicial authority before any sanction, search and seizure, access to encrypted data, or use of surveillance technologies.
- Transparency about media ownership: The Act requires all media to be transparent about their ownership. This provision is aimed at ensuring the independence of the media.[349]

The European Parliament passed the legislation in March 2024 before the European Parliamentary Elections in June 2024,[350] after which it will be enforceable in EU courts, with the potential for heavy fines on governments that infringe on press freedom. The Act is seen as long overdue, but there are concerns about the national implementations and the need for more binding rules to achieve its objectives.

In addition to the EMFA, members of the European Parliament have discussed a series of resolutions since 2018 calling for EU action against legal harassment of journalists, media outlets and activists, particularly strategic lawsuits against public participation (SLAPP). The European Commission drafted the Directive on Strategic Lawsuits Against Public Participation, on which finally in late 2023 a political agreement was reached. Among the recommendations for the member states are:

- Implement anti-SLAPP laws that allow for the expedited dismissal of lawsuits that target individuals or groups for their public participation.
- Legal cost shifting: Establish measures to shift the legal costs to the party bringing the abusive lawsuit if the lawsuit is dismissed under anti-SLAPP laws.
- Early dismissal mechanisms: Introduce mechanisms for the early dismissal of lawsuits that are deemed to be manifestly unfounded or abusive, preventing prolonged legal proceedings and financial burden on the defendants.
- Sanctions for abusive litigants: Impose sanctions on individuals or entities found to be engaging in abusive litigation, deterring them from using the legal system to silence public participation.
- Public interest defense: Strengthen the legal recognition of the public interest defense, allowing individuals and organizations to defend themselves against abusive lawsuits by demonstrating that their actions were in the public interest. [351]

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[349] The German media outlet Netzpolitik.org has published the post-Trilogue meeting version of the EMFA as of December 15th, 2023. See Leonhard Pitz. European Media Freedom Act. EU einigt sich beim Hacken von Journalist:innen (European Media Freedom Act. EU agreed on hacking journalists). 12 December 2023. Netzpolitik. <https://netzpolitik.org/2023/european-media-freedom-act-eu-einigt-sich-beim-hacken-von-journalistinnen/>

[350] See the Legislative Train Schedule at <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-europeandemocracy/file-european-media-freedom-act>

[351] European Commission. (2022). Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation") COM/2022/177 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0177>

In some EU countries, including Italy, Sweden and the Netherlands, National Action Plans for the Safety of Journalists have been already initiated. Sweden has set up national contact points and allocated additional human and financial resources to support journalists and better investigate hate crimes. In the Netherlands, the 'PersVeilig' protocol, aimed at reducing threats, violence and aggression against journalists, was concluded between the public prosecution service, the police, the Society of Editors-in-Chief and the Association of Journalists. Only recently, its funding and capacity were increased. Additionally, a new law to criminalize doxing was passed. In Italy, a Coordination Centre dealing with acts against journalists was set up.

Legal provisions need to be placed into a wider context. In the EU, the protection of journalists involves a combination of legal frameworks, media organizations' commitment, and civil society engagement. Media organizations, both public and private, play a role in fostering safety of journalists. Furthermore, journalism associations and civil society organizations actively advocate for the protection of journalists and their rights. They provide legal assistance, monitor and report on violations, and contribute to the development of policies that enhance the safety of journalists. To elaborate on that would go beyond the scope of this report.

## 3. Overview of legal debates on protection of journalistic sources

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The legal debates on the protection of journalistic sources focus mainly on three topics: the right to refuse to give evidence, the protection of whistleblowers and the prohibition of spying on journalists. All three have been an issue of concern in EU countries in recent years. In France, in 2023 several journalists had their homes or computers searched by security forces to get access to information on their sources.[352] In Greece and Hungary, it was revealed in 2022 that the state had used Pegasus and other surveillance spyware to spy on journalists' work. [353] Such practices undermine the trust in confidentiality potential sources and whistleblowers have if they talk to journalists.

### 3.1 Right to refuse to give evidence

The right to refuse to give evidence for journalists in EU countries is not an absolute right and varies across jurisdictions. In general, witnesses, including journalists, are obliged to testify when summoned to court. However, under certain circumstances, journalists can invoke the right to refuse to give evidence, particularly when it comes to protecting their sources. This source protection arises from the European Convention on Human Rights. The implementation of this right varies from country to country in the EU. It is generally balanced against the social importance of establishing the truth in legal proceedings, with certain protections in place for journalistic sources.

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[352] Reporters Without Borders demands the overhaul of France's law on confidentiality of journalists' sources because of these incidents. French laws include a clause for "overriding requirements in the public interest," a concept that is extremely vague and allows investigators to abuse their investigative powers in order to identify journalists' sources or prevent journalists from revealing information in the public interest. See Reporters Without Borders. (2023). RSF demands overhaul of France's law on confidentiality of journalists' sources. <https://rsf.org/en/rsf-demands-overhaul-frances-law-confidentiality-journalists-sources>

[353] European Parliament. (2022). Report of the European Parliament of the investigation of alleged contraventions and maladministration in the application of Union law in relation to the use of Pegasus and equivalent surveillance spyware. [https://www.europarl.europa.eu/doceo/document/A-9-2023-0189\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2023-0189_EN.html)

According to the Guide on Article 10 of the European Convention on Human Rights by the European Court of Human Rights, the two legitimate aims most frequently relied on to justify interference with the protection of sources are “national security” and “to prevent the disclosure of information received in confidence.” “The prevention of disorder,” “the prevention of crime” and “protection of the rights of others” have also been relied on in several cases.[354] In cases concerning the protection of journalistic sources, the Court frequently refers to Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information, adopted by the Committee of Ministers of the Council of Europe on 8 March 2000. [355] Recommendations are spelled out in seven Principles (for details, please refer to the original document):

1. Right of non-disclosure of journalists: Domestic laws should provide clear protection for journalists' right not to disclose information identifying a source. This is in accordance with Article 10 of the European Convention on Human Rights..
2. Right of non-disclosure of other persons: Other individuals who acquire knowledge of information identifying a source through their professional relations with journalists should also be protected.
3. Limits to the right of non-disclosure: The right of journalists not to disclose information identifying a source should not be subject to other restrictions than those mentioned in Article 10, paragraph 2 of the Convention. Disclosure should only be ordered if there is an overriding requirement in the public interest and if circumstances are of a sufficiently vital and serious nature.
4. Alternative evidence to journalists' sources: In legal proceedings against a journalist on grounds of an alleged infringement of the honor or reputation of a person, authorities should consider all available evidence and may not require the disclosure of information identifying a source by the journalist.
5. Conditions concerning disclosures: Only persons or public authorities with a direct legitimate interest in the disclosure should introduce a motion or request for initiating any action aimed at the disclosure of information identifying a source. Journalists should be informed of their right not to disclose information identifying a source as well as the limits of this right before a disclosure is requested.
6. Interception of communication, surveillance, and judicial search and seizure: Measures such as interception orders or actions concerning communication or correspondence of journalists or their employers, surveillance orders or actions concerning journalists, their contacts or their employers, or search or seizure orders or actions concerning the private or business premises, belongings or correspondence of journalists or their employers or personal data related to their professional work should not be applied if their purpose is to circumvent the right of journalists not to disclose information identifying a source.
7. Protection against self-incrimination: The principles established in the document should not limit national laws on the protection against self-incrimination in criminal proceedings. Journalists should enjoy such protection with regard to the disclosure of information identifying a source.[356]

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[354] The European Court of Human Rights. (2022). Guide on Article 10 of the European Convention on Human Rights. Freedom of Expression. <https://rm.coe.int/guide-on-article-10-freedom-of-expression-eng/native/1680ad61d6>

[355] For a detailed overview on Court rulings that refer to the ECHR Guide on Article 10 see The European Court of Human Rights. (2022). Guide on Article 10 of the European Convention on Human Rights. Freedom of Expression. <https://rm.coe.int/guide-on-article-10-freedom-of-expression-eng/native/1680ad61d6>, particularly paragraphs 6-8.

[356] Committee of Ministers of the Council of Europe. (2000). Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information, adopted on 8 March 2000. <https://rm.coe.int/16805e2fd2>

## 3.2 Whistleblower protection

Even though in recent years, journalists in Europe have become victims themselves while investigating corruption, those who reveal and expose information (sources) also face high risks of retaliation, ranging from being demoted to being brought to court, losing their jobs and economic stability and having their good names sullied. Therefore, the protection of journalistic sources is crucial for investigative journalism and maintaining confidentiality is necessary for sources to come forward without fear of reprisal. This fear of suffering retaliation has a chilling effect on potential whistleblowers and hence limits journalists to report in environments where pressure is put on potential sources.

Recognizing their significance, the EU has developed the Whistleblower Protection Directive, which provides comprehensive protections for whistleblowers, including those in journalistic activities. This directive aims to safeguard whistleblowers from retaliation and provide avenues for reporting violations of EU law, further enhancing the ability of journalists to uncover and report on matters of public interest.

The EU Whistleblower Directive (2019/1937) is a legal framework established by the European Union to protect individuals who report breaches of Union law. The directive was adopted on October 23, 2019 and member states had until December 17, 2021 to transpose it into their national laws.

Key provisions of the directive include:

1. Establishment of reporting channels: The directive mandates the creation of easily accessible reporting channels within organizations.
2. Confidentiality and prohibition of retaliation: The directive emphasizes the obligation to maintain the confidentiality of whistleblowers and prohibits retaliation against individuals who report breaches.
3. Expanded scope of whistleblowers: The directive significantly extends the protection to a wider range of individuals. A whistleblower is a person “who reports (within the organization concerned or to an outside authority) or discloses (to the public) information on a wrongdoing obtained in a work-related context, helps prevent damage and detect threat or harm to the public interest that may otherwise remain hidden.”<sup>[357]</sup>

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[357] European Commission. (n.d.). Protection for whistleblowers. European Commission initiatives on the protection of persons reporting on breaches of Union law. [https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/protection-whistleblowers\\_en](https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/protection-whistleblowers_en)



4. Internal reporting provisions: The directive encourages whistleblowers to report breaches internally, provided they believe their report will be handled appropriately. Legal entities within the private and public sector with 50 or more employees must establish internal reporting channels.
5. Protection for facilitators: The directive also applies to facilitators, defined as third parties who are connected with the reporting persons and who could suffer retaliation, as well as legal entities that the reporting persons own.
6. Sanctions: The directive includes details on sanctions for companies that obstruct the reporting of concerns or attempt to obstruct them, fail to keep the identity of the whistleblower confidential, or take retaliatory measures against whistleblowers.[358]

### 3.3 Provisions prohibiting spying on journalists

Another issue concerning the protection of journalistic sources is the spying on journalists particularly through digital means. There have been concerns about some EU member states seeking to legalize spying on journalists, which has been strongly condemned by organizations such as the European Federation of Journalists.[359]

The European Media Freedom Act (EMFA) mentioned above, also includes provisions aimed at protecting journalists from the use of spyware. The Act bans the use of spyware against journalists, except in strictly defined cases. These exceptions are permitted on a case-by-case basis for overriding reasons of public interest, subject to authorization by a judicial authority. To use intrusive surveillance software against journalists, it must be justified for investigations of serious crimes punishable by a custodial sentence. Even in these cases, surveillance measures must be regularly reviewed by the judiciary. The use of spyware may only be justified as a ‘last resort’ measure, and if ordered by an independent authority. However, the Act has faced resistance from some EU member states, which have requested a “national security” exemption to justify the use of spyware. Journalism associations and civil society organizations have criticized that.[360] For the final version, negotiators settled on saying, “Member States’ responsibilities as laid down in the Treaty on European Union and the Treaty on the Functioning of the European Union are respected.” These treaties state that the EU respects the general functions of the state and the national security interests.[361]

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[358] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1937>

[359] European Federation of Journalists. EMFA: seven EU member states want to legalize spying on journalists. 13 December 2023. <https://europeanjournalists.org/blog/2023/12/12/emfa-seven-eu-member-states-want-to-legalise-spying-on-journalists/>

[360] Committee to Protect Journalists. (2023). CPJ to EU: The time to act on spyware is now. <https://cpj.org/2023/12/eu-the-time-to-act-on-spyware-is-now/>

[361] Leonhard Pitz. European Media Freedom Act..., cit. <https://netzpolitik.org/2023/european-media-freedom-act-eu-einigt-sich-beim-hacken-von-journalistinnen/>

## 4. Conclusions and recommendations

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The overview of developments concerning the safety of journalists in the EU has demonstrated that recent legal debates within the EU are inevitable. Protecting journalists from risks like being attacked, detained, harassed or intimidated is part of the right to free expression as enshrined in Article 11 of the EU Charter of Fundamental Rights.

A number of recommendations already exist internationally, proposing provisions and legal requirements to protect journalists and their sources. They all emphasize the state's obligation to protect journalists and prevent impunity. To guarantee that on the ground, a detailed and cohesive set of laws and – particularly with respect to avoid impunity - strong rule of law are needed. Such provisions are not restricted to media laws alone, but they fall back on more general laws like the right to assemble, police laws or data protection.

On the supra-national level, the EU has initiated several legal provisions to guarantee journalists protection from physical, psychological, financial and digital risk situations. The most far reaching is the European Media Freedom Act (EMFA) that proposes rules to protect media pluralism and independence, including provisions for the safety of journalists. In addition to the EMFA, the Directive on Strategic Lawsuits Against Public Participation (SLAPP) is of high importance, which recommends member states to implement anti-SLAPP laws for expedited dismissal of abusive lawsuits.

The debate on protecting journalistic sources focuses on the right to refuse to give evidence, the protection of whistleblowers and the prohibition of spying on journalists. While the EMFA includes provisions against the use of spyware on journalists and the right to refuse to reveal sources, the Whistleblower directive focuses on the sources themselves. The Whistleblower Protection Directive establishes a framework to protect individuals reporting breaches of EU law, with provisions for confidentiality, prohibition of retaliation, and establishment of reporting channels.



For contexts outside the EU, the described recommendations and provisions provide an overview and give the ability to dig deeper, where deemed to be necessary. The following resources might help when focusing on a specific risk:

The website of the UN Action Plan provides further material on international legal standards on safety of journalists or guidelines for prosecutors on cases of crimes against journalists, for example. Many more materials can be accessed from here: <https://www.unesco.org/en/safety-journalists/un-plan-action>

The website Safety of Journalists publishes practical and legal tools to protect the safety of journalists focusing on online harassment:  
<https://safetyofjournalists.trust.org/>

Recommendations for “Effective investigation. Stemming impunity” by the Council of Europe Campaign for the Safety of Journalists can be found here:  
[https://www.coe.int/en/web/freedom-expression/effective-investigation-stemming-impunity#{%2272490634%22:\[2\],%2272490649%22:\[1\]}](https://www.coe.int/en/web/freedom-expression/effective-investigation-stemming-impunity#{%2272490634%22:[2],%2272490649%22:[1]})

A toolkit for judicial actors among others concerning safety of journalists available in Arabic, too, can be found here:  
<https://unesdoc.unesco.org/ark:/48223/pf0000378755> (English)  
<https://unesdoc.unesco.org/ark:/48223/pf0000381313> (Arabic)

The Safety of Journalists Platform provides thematic fact sheets, including one on Media Coverage of Protests and Demonstrations here:  
<https://rm.coe.int/factsheet-media-coverage-of-protests-and-demonstrations/1680acc392>

# How Associations of Journalists Protect Press Freedom in Europe

By Judith Pies

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## Executive summary

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This paper delves into the landscape of journalists' associations, focusing on the EU context with implications for the Lebanese media scene.

The central questions of defining who qualifies as a journalist and delineating the relationship between press freedom and state intervention form the center of the analysis. The absence of a uniform European Union-wide definition for journalists prompts an examination of practices in member states, emphasizing the pivotal role of journalists' associations in navigating these uncertainties. The issuance and significance of press cards in identifying journalists are scrutinized. While not mandatory in most EU states, press cards serve as valuable tools for journalists, aiding in interactions with law enforcement, judicial authorities, and event organizers. The criteria for obtaining press cards vary, encompassing factors such as employment status or publication frequency.

The paper also delves into journalists' associations' engagement in self-regulation, emphasizing the advantages of flexibility and responsiveness. Journalistic codes of ethics and participation in press or media councils are explored as mechanisms for maintaining professional standards. The significance of socio-economic rights for journalists within the EU are underscored, particularly in light of economic challenges and the unique status of freelancers.

The socio-economic landscape of journalism, coupled with the diverse activities of journalists' associations, shapes the media landscape in Europe. Challenges such as declining membership and financial constraints within these associations are acknowledged, prompting reflections on collaborative initiatives, regional networks, and international affiliations as potential strategies to address fragmentation and ensure sustained advocacy for journalists' rights.

In conclusion, the paper provides a comprehensive overview of the multifaceted issues referring to journalists' associations in Europe, offering insights for shaping the dynamics of the media landscape in Lebanon and beyond.

# 1. Introduction

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The history of journalism and its professionalization is manifold in Europe, and so is the history of journalists' associations. Today, the right of assembly and association is accepted as a fundamental right within the European Union (EU). What unites all associations is the ongoing struggle with two central questions, also relevant for the current Lebanese context: How to define who a journalist is, what journalism's relation to the state means, and how to ensure press freedom.[362] Accordingly, academic literature often tackles journalists' associations within the process of professionalization of journalism or within the structures of self-regulation against state intervention. This comes with the assumption that "an association [is] to advance professional standards, legitimate the status of the profession, develop collective ideology and support the individual and collective autonomy of the members of the profession." [363]

Digitization has increased the need to tackle these issues in recent years. Bloggers, citizen journalists or other content creators have become central parts of the digital public sphere. In addition to media organizations, digital platforms such as Meta, Google, X (formerly Twitter) or others are determining how journalistic content is distributed. For journalism that means that it not only has to tackle the relation towards the state but also towards new actors of content creation and content distribution. Parallel to that, the media industry has been struggling economically. That has rapidly brought questions of economic and social security back on the agenda of journalists' associations. The COVID-19 pandemic was another factor increasing the need to address this issue.

The first national journalists' associations in Europe were founded in the late 19th century with the aim to raise their members' social and economic status. This is why socio-economic questions have always been on the agenda of most journalists' associations in Europe. Struggles for socio-economic improvement have also diversified the landscape of journalists' associations in many countries. In Germany for example, the two biggest associations in number distinguish themselves from each other by their mission: while the German Journalists Union (DJU)[364] predominantly addresses socio-economic issues, the German Journalists Association (DJV)[365] claims to be a lobbyist for socio-economic and professional issues in journalism.

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[362] Svennok Høyer, & Epp Lauk. (2016). Frames and Contradictions of the Journalistic Profession. In K. Nordenstreng, U. J. Björk, F. Beyersdorf, S. Hoyer & E. Lauk (Eds.), *A History of the International Movement of Journalists. Professionalism Versus Politics*. Houndmills, Basingstoke: Palgrave Macmillan. DOI: <https://doi.org/10.1057/9781137530554>

[363] Epp Lauk, & Kaarle Nordenstreng. (2017). Journalists' Associations as Political Instruments in Central and Eastern Europe. *Media and Communication* 5(3), 67–69. DOI: <https://doi.org/10.17645/mac.v5i3.1177>.

[364] <https://dju.verdi.de/ueber-uns>

[365] <https://www.djv.de/startseite>

In recent times, new associations have been established representing certain groups within journalism (e.g., freelancers or specialized journalists) or campaigning for specific issues (e.g., data journalism, investigative journalism, media ethics). This diversification of the field can also be noticed in Lebanon, where the Alternative Journalists' Association was founded in 2019 and NGOs have been working on issues that had traditionally belonged to the sphere of journalists' associations.

A roundtable discussion in Beirut in July 2023 organized by the Maharat Foundation and Legal Agenda in cooperation with the Media and Journalism Research Center (MJRC) addressed the aforementioned questions. This paper aims to provide answers by summarizing the status quo and current discussions in EU member states on: Who is a journalist? What rights and obligations do journalists have and how do journalists' associations safeguard them? How is the field of journalists' association structured?

The paper is based on academic literature and updated by an analysis of self-descriptions of journalists' associations as well as recommendations and reports submitted to the EU and the European Council.

## 2. Who is a journalist?

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There is no EU wide definition of who a journalist is, either in legal terms or in recommendations by transnational organizations. In the EU, laws make a reference to who is considered a journalist only in France and Belgium. In Belgium, the law defines who may be regarded as a professional journalist as follows: “the person must have engaged in journalism as their main professional activity for two years and exercise this activity on behalf of a general news media outlet.”[366] In France the law says, “anyone whose main, regular and paid occupation is the exercise of their profession in one or several media outlets, daily or periodical publications, or press agencies and who earns most of their income in this way is considered to be a journalist.”[367] One specific feature of the French legislation is to grant full journalist status to freelance journalists (pigistes) in the same way as salaried employees. This is noteworthy because the status of freelance journalists in France differs substantially from that of freelancers in other countries, who are often excluded from collective agreements and from the system of social protection for employees.[368]

“Journalist” is not a protected professional title, either. Italy is an exception. To work as a journalist, individuals must register with the Ordine dei Giornalisti (Order of Journalists). To be accepted, they have to hold a professional qualification recognized by the order, a certain age and experience.[369] Yet, in all other countries of the EU there is no definition to protect the title “journalist.”

The lack of clear-cut definitions derives from the idea of freedom of expression. Everyone has the right to express his/her opinion and to publish it without prior permission. The notion of a public sphere in which everyone – at least theoretically – has the right to reach out to society without a gatekeeper is another normative argument for the openness of the profession. Journalists and their professional organizations in many countries have opposed a binding or regulatory legal definition fearing that the parliament or political authorities would restrict their freedoms. This has led to a constant balancing between keeping the profession open and at the same time safeguarding a minimum of shared norms and practices. Journalists’ associations have been playing a vital role in this balancing process.

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[366] Elvira Drobinski-Weiss. (2018). Report: The status of journalists in Europe. Council of Europe Parliamentary Assembly, Committee on Science, Culture, Education and Media. <https://pace.coe.int/en/files/24287#trace-2>

[367] Elvira Drobinski-Weiss. (2018). Report: The status..., cit.

[368] Elvira Drobinski-Weiss. (2018). Report: The status..., cit.

[369] Roger Blum. (2014). *Lautsprecher & Widersprecher. Ein Ansatz zum Vergleich der Mediensysteme.* (An approach to comparing media systems). Köln: Herbert von Halem; Sergio Splendore. (2018). Italy. In S. Fengler, T. Eberwein, M. Karmasin (Eds.), *The European Handbook of Media Accountability.* London, New York: Routledge.



Despite the lack of a definition, there has been a debate whether laws should distinguish journalists from other publishers, such as citizen reporters, at a time when everyone can publish publicly through blogs or social media. The debate mainly addresses the so-called privileges of journalists. One refers to the right of journalists not to reveal their sources to the police or the court. Courts normally decide on such cases. In recent years, court rulings and regulation efforts in EU member states shifted the focus from the rights of journalists to protect their sources to the rights of the sources to be protected. In the Netherlands for example, in 2018 the Source Protection Act in Criminal Cases provides strengthened protection for the confidentiality of journalists' sources. According to the new law, there is always a preliminary consideration by a judge before the police can have access to a source's data, which is only possible in case of preventing a serious crime.[370] Data privacy laws and whistleblower protections are among the means underpinning this approach (cf. paper on protection for journalists and their sources).

A second privilege is the right to access information from public institutions. In many EU countries, access to information laws include a special ruling on journalists' access to information. This is why identifying as a journalist might become relevant in practice.

## 2.1 Who issues press cards to whom?

Press cards have become a means of identifying journalists; journalists' associations are often the ones issuing them. The right to distribute press cards in EU member states is not in the hand of the state; it is (in most cases) not even in the hand of one particular association. Several associations are equally entitled to issue press cards, though in some countries there have been agreements among associations to issue a "central press card"[371] or to delegate the issuance to an umbrella organization.[372] In most EU member states, the press card does not necessarily define the status of a journalist in practice, as in most cases it is not mandatory to have it. But it has become a useful means for journalists to identify as a journalist, particularly to the police, to judicial authorities or as invitees to press conferences and in similar situations.

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[370] European Federation of Journalists. Netherlands: New 'Source Protection Act' finally enters into force. 4 October 2018. <https://europeanjournalists.org/blog/2018/10/04/netherlands-new-source-protection-act-finally-enters-into-force/>

[371] In Germany, six journalists' and publishers' associations have been accepted by the press council (an independent organization of journalists and publishers) as institutions to issue a central press card. Nevertheless, other organizations are free to issue their own press cards.

[372] In Spain, around 40 associations have agreed that an umbrella organization, the Federation of the Press Associations of Spain (Federación de Asociaciones de la Prensa de España, FAPE) issues press cards.

The most common requirement to get a press card is having a full-time job as a journalist or that at least 50% of one's yearly income is generated from journalism. To prove journalistic work, either journalistic articles, videos, and so forth, or contracts and documents of the income can be submitted to the press card issuing organization. Regularly publishing or broadcasting news to the public is also a fundamental aspect of journalism. EU states typically consider the dissemination of information through traditional media outlets, online platforms, social media, or any other means that reach a significant audience as publishing. In some countries, further criteria are applied. For example, in Belgium and Croatia, the intent of publication matters; people who work in advertising are not accepted to get a press card. Elsewhere, for example in Germany, publishing is expected to be in the public interest. Several EU countries (e.g., Lithuania and Italy) consider educational background and qualifications when determining journalistic status for the press card, but most do not. Completion of journalism studies or relevant courses can be a factor, but some countries prioritize practical experience and professional track record over formal education, or at least accept both equally. In some countries, issuing organizations require the approval of the employer to issue the card (e.g., Lithuania, Portugal, Czech Republic). However, some countries (e.g. Slovakia, Norway) also acknowledge freelance journalists, but often only if they are members of one of the associations issuing the press card. This is why membership in the issuing organizations is often a relevant factor for claiming to be a journalist. Membership of a journalists' association can be an advantage when journalists are sued. In such a case, the courts can justify the journalist's status by the fact that he or she is a member of the association.

It is important to note that the list of factors described above is not exhaustive, and the specific combination of criteria for determining journalistic status for the issuance of press cards may vary among EU member states.[373]

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[373] The European Federation of Journalists links to all its European membership associations and is hence a good starting point to study missions and regulations of journalists' associations in Europe (not only EU). See <https://europeanjournalists.org/members/>.

## 3. Associations and their involvement in safeguarding journalists' rights and obligations

### 3.1 Involvement in self-regulation

Obligations for journalists can be formulated on different levels with different degrees of authority. In EU countries, journalistic activities are regulated by a wide range of instruments including state regulation, co-regulation and self-regulation. Journalists' associations play different roles in these processes. In this paper, only self-regulatory issues will be tackled, for state- and co-regulation (see study on regulation, self-regulation and co-regulation in this project). Compared to state- or co-regulation, there are two major advantages to self-regulation. First, it is more responsive, more flexible and can adapt to the changing circumstances of the media. Second, above all it avoids any kind of direct political interference. This is why self-regulation is particularly relevant for journalists' associations. However, it also requires "a substantial degree of organization and compliance with decisions by all of those concerned (professional organizations, employers' associations, civil society and individual journalists)."[374]

In general, the terms "self-control" or "self-regulation" refer to practices that members of the profession initiate to motivate responsible media performance and monitor journalistic output, building on the absence of state interference.[375] The established forms of self-regulation, in which journalists' associations traditionally have a say, include the formulation of codes of ethics and the involvement in press- or media councils.[376]

Within the realm of media ethics, journalists are free to voluntarily follow the obligations formulated in a code of ethics. Such codes exist on the level of profession but also on the level of media organizations. According to the "Media Councils in the Digital Age" project, the codes commonly mention the following principles: being fair, reporting facts, being independent, being responsible towards society, and respecting internet-specific guidelines. They also regularly include the rights of journalists.[377]

[374] Elvira Drobinski-Weiss. (2018). Report: The status..., cit.

[375] Manuel Puppis. (2009). Organisationen der Medienselbstregulierung: Europäische Presseräte im Vergleich (Organizations of Media Self-Regulation: European Press Councils in Comparison). Cologne, Halem Verlag.; Hans-Bredow-Institut. (2006). Final Report: Study on Co-Regulation Measures in the Media Sector.

[376] The Journal of Media in the Middle East published a special issue on media accountability in the region, in which Ayman Georges Mhanna and Karim Safieddine wrote an article on Lebanon. The Arabic version can be found here: [https://www.qu.edu.qa/static\\_file/qu/conference/jmem2017/Vol/16/JMEM%20Arabic.pdf](https://www.qu.edu.qa/static_file/qu/conference/jmem2017/Vol/16/JMEM%20Arabic.pdf)

[377] English translations of codes of ethics from 45 countries (mostly European) can be found and searched in detail by core principles, countries, changes made or inclusion of aspects relevant to the digital age (e.g., mentioning the use of AI, data reporting, social media materials etc.) on the project's website <https://www.presscouncils.eu/ethical-codes-database/codes/>

While journalists' associations in all EU member states have formulated codes of ethics, not all EU member states have a functioning press council. The countries with a functioning press council include Finland, Sweden, Denmark, Germany, Ireland, Austria, the Netherlands and Luxembourg. In Spain and Belgium press councils exist on a regional instead of a national level. Estonia has two competing institutions. The history, structures and reputation of such councils vary among the states.[378] The press council as a voluntary institution independent of the state to monitor media coverage and journalists' activities has its roots in the Scandinavian countries. The idea behind a press council is to preserve the quality of the media and restore the prestige of the media in the eyes of the public; and at the same time, it shall help protect freedom of speech and the autonomy of the profession. In those countries where press councils exist their structure varies considerably. What they have in common is: (1) a code of ethics forms their normative basis; (2) the public and/or other professionals have the right to complain about any article they consider to run against the code of ethics; (3) a committee that decides over the complaints consists mostly of representatives from the profession and the media industry.[379] Scholars argue that in order to have a real instrument of accountability towards the public press councils should include representatives from the public, too.[380] The measures to sanction misbehavior in the profession range from non-public reprimand to corrections and counter-statements. The factors determining the impact of press councils to ensure compliance with the obligations include visibility in the public, the acceptance of the system by media companies, their cooperation in discussing complaints and the role the council plays in settling issues outside of courts. Experts on self-regulation agree that press councils in Finland, Norway and Sweden seem to be the closest to the ideal of self-regulation and have high prestige within the profession.[381]

In addition to professional organizations, media organizations themselves have a stake in taking care of ensuring journalists' obligations through measures of quality management, for example. These include editorial codes and guidelines, ombudspersons, and other things. The role of journalists' associations here could be to encourage or support media organizations in establishing or improving quality management, for example through programs for fake news detection, material on how to implement and work with an ombudsperson and so on.[382]

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[378] On the website <https://www.presscouncils.eu/comparative-data-on-media-councils/> you find a database of press and media councils in Europe, which can be easily searched and compared for many questions related to the nature of press councils. An academic conclusion of such a comparison can be found in: Tobias Eberwein, Susanne Fengler, Katja Kaufmann, Janis Brinkmann & Matthias Karmasin. (2018). Summary: Measuring media accountability in Europe – and beyond. In: T. Eberwein, S. Fengler, M. Karmasin (Eds.), *The European Handbook of Media Accountability*. London, Routledge.

[379] Tobias Eberwein, Susanne Fengler, Tanja Leppig-Bork, Julia Lönnendonker, Judith Pies. (2011). *Medieninnovationen – Neue Chancen für die Medienselbstkontrolle? Erste Ergebnisse einer international vergleichenden Studie (Media innovations – new opportunities for media self-control? First results of an international comparative study)*. In: J. Wolling, A. Will & C. Schumann (Eds.), *Medieninnovationen. Wie die Medienentwicklungen die Kommunikation in der Gesellschaft verändern (Media innovations. How media developments are changing communication in society)*. Konstanz: UVK.

[380] Claude-Jean Bertrand. (2000). *Media Ethics and Accountability Systems*. Transaction Publisher.

[381] Tobias Eberwein, Susanne Fengler, Katja Kaufmann, Janis Brinkmann, Matthias Karmasin. (2018). Summary: Measuring..., cit.

[382] In Tunisia, ombudspersons have been established in community radios and materials are available in Arabic, for example cf. <https://tu-dortmund.sciebo.de/s/qKjRpFzaEkifN2C>.

## 3.2 Safeguarding and improving journalists' socio-economic rights

The socio-economic situation of journalists plays a pivotal role in upholding the principles of democracy, that is, journalists not having conflicts of interests is important to ensure a free and informed society. Within the European Union, a general framework of rights and protections exists to safeguard workers' socio-economic wellbeing. For journalism, references are made to international labor conventions<sup>[383]</sup> or frameworks on human rights, like to the EU Charter for Fundamental Rights<sup>[384]</sup> or the European Convention on Human Rights.<sup>[385]</sup> Several recommendations exist to support and improve the situation in member states.

In 2019, the European Federation of Journalists published a Charter on journalists' working conditions. The following prerequisites for good working conditions are formulated in 10 articles:<sup>[386]</sup>

1. **Freedom of association** “including the right to form and to join trade unions or professional associations for the protection of his/her interests (as foreseen by the article 11 of ECHR)”
2. **Right to a written contract** “referring to the standards set by the International Labour Organisation”
3. **Right to collective bargaining** including the relations between workers and employers, “in particular terms and conditions of work”
4. **Non discrimination in employment** “based on gender, religion, national origin, race, color or sexual orientation including equal payment”
5. **Right to rest** (paid holidays and limited working hours) **and to disconnect** from professional engagement (emails, internet, social media etc.)
6. **Right to protect journalistic sources** including whistleblower protection
7. **Right to refuse to sign a content** and not to be responsible in court “when the content of his production has been substantially changed by its employer”
8. **Safety and protection**, for example, “through training and awareness-raising for reporting in hostile or danger zones, including targeted support for women staff, to attend first aid training covered by employers and to request employers' actions to monitor and combat forms of online abuse and to have tools to report forms of violence, threats and harassment at work, namely against sexual harassment”
9. **Good governance and ethical standards**
10. **Decent working conditions**, which are “part of the obligations of its employer who must regularly implement all the legal obligations that are related to the employees”

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[383] International Labour Organization <https://www.ilo.org/global/lang--en/index.htm>

[384] EU Charter for Fundamental Rights <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

[385] European Convention on Human Rights (available in Arabic) <https://www.echr.coe.int/european-convention-on-human-rights>

[386] European Federation of Journalists. (2019). The Charter of Journalists' Working Conditions (full document). <https://europeanjournalists.org/blog/2019/02/12/the-charter-on-journalists-working-conditions-full-document/>

Additionally, the EU Commission has formulated recommendations on how to strengthen the safety of journalists and other media professionals. Among other things, the Commission calls for economic and social protection.[387] Such protection includes social insurance, maternal leave, financial backing in the case of prosecution, reasonable working hours, adequate remuneration, and protection against unfair dismissal, and so on.[388]

Yet, the socio-economic situation of journalists in most EU member states is deteriorating due to economic hardships in the media industry. The COVID-19 pandemic has increased economic uncertainty in the media industry after a steep decline in advertising revenues, leading to widespread layoffs and increased pressure on an already challenged industry. Concerns about equal working conditions have increased with hybrid working spaces that, from the employer's perspective, make work more efficient (less working space is needed, travel costs are lower, etc.), but come with exhaustion, blurring boundaries between work time and personal time and challenges around technology and tools, as well as IT security.[389]

The socio-economic situation greatly differs between EU countries, between genders and between different journalistic statuses. For example, journalists in central and eastern Europe get lower pay compared to their western European counterparts, and legal defense for journalists is not necessarily guaranteed by employers.[390] According to an estimate from 2011, more than a third of journalists working in the EU are freelancers or have temporary contracts.[391] In many countries, their status is rather weak compared to those employed and enjoying employees' rights (such as a defined number of vacation days, fixed working hours, working space security) and services (e.g. health care, insurances for unemployment, maternal leave).

Their incomes are mostly lower than those of employed colleagues and they often lack the ability to pay membership fees for associations, legal advice, on-the-job-training, and so on. An increasing number is taking up additional work, such as in PR or corporate communication, while the number of people working as full-time journalists as their main job continues to fall. In Germany, a study revealed that their number decreased from 18,000 in 1993 to 12,000 in 2005 and just 9,600 in 2017.[392]

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[387] European Commission. (2021). Protection, Safety and Empowerment of Journalists Commission Recommendation. Fact Sheet. <https://ec.europa.eu/newsroom/dae/redirection/document/79308>

[388] European Commission. State of the Union: Commission calls on Member States to improve journalists' safety across the EU. 16 September 2021. [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_4632](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_4632)

[389] Federica Cherubini, Nic Newman, Rasmus Kleis Nielsen. (2020). Changing newsrooms 2020: addressing diversity and nurturing talent at a time of unprecedented change. Reuters Digital News Report. <https://reutersinstitute.politics.ox.ac.uk/changing-newsrooms-2020-addressing-diversity-and-nurturing-talent-time-unprecedented-change#header--1>

[390] D. Boshnakova, & D. Dankova, D. (2023). The Media in Eastern Europe. In: S. Papathanassopoulos, & A. Miconi. (Eds.), The Media Systems in Europe. Springer Studies in Media and Political Communication. Springer, Cham. DOI: 10.1007/978-3-031-32216-7\_7

[391] Economisti Associati. (2011). Feasibility study for the preparatory action "ERASMUS for journalists". PART 2 - Statistical Review. Submitted to the EU Commission. [https://ec.europa.eu/information\\_society/media\\_taskforce/doc/mobility/erjo\\_part2\\_report.pdf](https://ec.europa.eu/information_society/media_taskforce/doc/mobility/erjo_part2_report.pdf)

[392] Nina Steindl, Nina, Corinna Lauerer, & Thomas Hanitzsch. (2018). "The future is freelance!" The state of the freelance journalism in Germany. Journalism Research, 1/2018, 25-36. <https://journalistik.online/en/edition-012018-en/the-future-is-freelance/>

This is why in 2018 a report on the status of journalism in Europe to the Council of Europe recommended:

*“Where freelancers are concerned, they could be included within the scope of labour legislation in terms of minimum pay, which would avoid having to consider regular freelancers from the perspective of competition laws. Professional organisations of journalists should adapt to societal changes. The status of journalist should be adaptable, as its essence lies in the tasks and not in the legal definition. One good example is that of Great Britain and the Nordic countries where press cards are granted in relation to the activity and not the definition set out in the labour contract or the collective agreement.”[393]*

Another aspect of socio-economic rights acknowledges the economic value of journalistic endeavors, the intellectual property rights. It addresses the copyright protection for journalists’ works, ensuring that journalists have control over the use and dissemination of their creations. In ongoing debates, journalists’ associations have taken a stand on the issue, but have often failed to consider freelancers sufficiently. In Germany, this was one reason among others why some freelancers quit their membership in the associations.[394]

Journalists’ associations are actively working to improve the situation. They campaign on national and EU level as the above-mentioned Charter by the European Federation of Journalists (EFJ) demonstrates. On a national level, they negotiate for better contract conditions and deals for their members with companies in the areas of transportation, accommodation, technical equipment and so on. They support journalists with information on employees’ rights or make honorarium, incomes or contract conditions transparent. Depending on the (financial) strength of the association, it may offer legal advice, such as the German Journalists’ Association (DJV), which offers support regarding starting a business, checking contracts for freelancers, employment contracts and certificates, support in the event of copyright infringement, fee disputes, collective agreement issues, part-time, parental or maternity leave, maternity and social security matters or tax issues.[395]

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[393] Elvira Dobrinski-Weiss. (2018). Report: The status..., cit.

[394] <https://www.deutschlandfunk.de/70-jahre-deutscher-journalistenverband-auf-der-suche-nach-100.html>

[395] Website of the German Journalists’ Association (Deutscher Journalistenverband, DJV), Services for Members <https://www.djv.de/startseite/service/mitgliederservice/rechtsschutz>

## 4. Journalists' associations: activities and landscape

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There are many types of journalists' associations and trade unions in the EU, operating in different professional, economic and political environments. There are no clear-cut factors grouping countries along media system typology. Distinctions can be found between "strong collective rights (France) or weak collective rights (the United Kingdom), strong representation (Nordic countries) or weak representation (France), legal recognition or social dialogue (France, Italy, Belgium and Germany) and the quasi-absence of social partners (Central Europe)."[396] The structure of the landscape of journalists' associations and unions as well as their activities still refer to how they started in the 19th century: "first as social clubs, then as interest organizations and finally as combined organizations representing both economic demands and professional values."[397]

The functions taken on by unions and professional associations today include:

- representation in media organizations (staff /employee council)
- establishing and running media councils
- media policy lobbyists
- watchdogs of press freedom violations
- initiatives for quality in journalism
- service providers for members, such as legal consultancy, labor protection
- providing or distributing trainings
- networking in the industry, educational sector, civil society organizations and so on.

All these tasks need funding, which is, as it is for media organizations, an increasing challenge. This goes along with decreasing membership, traditionally the main income of journalists' associations. Journalists' associations face the challenge of young people and people working remotely shying away from becoming members. In Germany, for example, the number of members in one of the two biggest associations, DJV, has decreased by 10.000 between 2003 and 2019.[398]

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[396] Elvira Dobrinski-Weiss. (2018). Report: The status..., cit.

[397] Svennik Høyer, & Epp Lauk. (2016). Frames and Contradictions of the Journalistic Profession. In: K. Nordenstreng, U.J. Björk, F. Beyersdorf, S. Hoyer & E. Lauk. (Eds.), A History of the International Movement of Journalists. Professionalism Versus Politics. Houndmills, Basingstoke: Palgrave Macmillan.

[398] Vera Linß. Auf der Suche nach mehr Sexyness. 70 Jahre Deutscher Journalistenverband (Looking for more sexiness: 70 years of German Journalists' Associations). 10 December 2019. Deutschlandfunk. <https://www.deutschlandfunk.de/70-jahre-deutscher-journalistenverband-auf-der-suche-nach-100.html>



Professional associations for journalists in Central and Eastern Europe have fewer members, limited organizational structures, and limited financial resources compared to their western counterparts. In some countries, such as Hungary, the landscape of journalists' associations is particularly fragmented, with multiple associations that may be divided along ideological lines. As described above, Estonia has two competing press councils. This can make it difficult for journalists to come together and advocate for their rights and interests and can also contribute to a lack of cohesion and coherence in the profession.[399] In countries categorized as politically polarized media systems, under which Lebanon could also be grouped, this fragmentation might hinder the establishment of a sound media accountability infrastructure.[400] But there are also some promising ways of dealing with such a fragmentation. In Belgium and Spain, journalists organize on a regional level with regional codes of ethics and media councils; Italian journalists have been trying to counteract their fragmentation with a strong (though not unproblematic in terms of freedom of expression) single association policy. In Germany, after a year-long bargaining between different journalists' associations, six of them agreed to a coalition with regard to the issuance of a central press card.

Journalism itself is becoming increasingly fragmented but at the same time collaborative in practice, for example with investigative journalism networks, and so is the landscape of organizations claiming to represent journalists' interest. Southeast European countries (non-EU members) have gathered in regional coalitions that are also affiliated with international journalists' associations to ensure continuity for their work. Regional coalitions have developed fundraising skills that ensure, to varying extents, a degree of sustainability of their programs. One example is the SafeJournalists network, which brings together various southeast European journalists' associations and trade unions, and which issues alerts and reports about attacks on reporters, informing the international community and other journalists of problems in the region.[401] European umbrella organizations such as the European Federation of Journalists,[402] the European Freelance Assembly[403] or projects such as the Media Councils in the Digital Age project, discussed above, might also work as good starting points for networking and support.

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[399] D. Boshnakova & D. Dankova. (2023). *The Media in Eastern Europe...*, cit.

[400] Susanne Fengler, Tobias Eberwein, Matthias Karmasin, Sandra Barthel, & Dominik Speck. (2022). *Media Accountability: A Global Perspective*. In: S. Fengler, M. Karmasin & T. Eberwein (Eds.), *The Global Handbook of Media Accountability*. London, New York: Routledge.

[401] Center for International Media Assistance. (2021). *United by Challenge: Regional Opportunities to Drive Media Reform in Southeast Europe*. CIMA Digital Report. <https://www.cima.ned.org/publication/united-by-challenge-regional-opportunities-to-drive-media-reform-in-southeast-europe/>

[402] <https://europeanjournalists.org/>

[403] <https://ejc.net/for-funders/programmes/freelance-journalism-assembly>

## 5. Conclusions

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In conclusion, the currents of journalistic associations in the EU reveal a landscape shaped by historical legacies, digital transformations, and economic uncertainties. The resilience of journalists' associations in navigating these currents, while contending with challenges, signifies a commitment to upholding the principles of a free and informed society.

The absence of a standardized EU-wide definition for journalists underscores the openness of the profession in an era where the boundaries of journalistic practice have become fluid, incorporating traditional and non-traditional actors within the digital realm. Nevertheless, journalists' associations try to keep an eye on the access and acceptance to the journalistic field by defining criteria for the issuance of press cards.

At the same time, the goal of preserving autonomy against the state remained. The formulation of codes of ethics and participation in press or media councils stand as a testament to the profession's commitment to upholding rigorous standards and navigating the evolving contours of journalistic responsibility, on the one hand. On the other hand, they use these to prevent too much state interference.

Journalists' socio-economic rights, integral to the preservation of democratic principles, face headwinds in the wake of economic challenges compounded by the COVID-19 pandemic. Despite a framework of international labor conventions and recommendations, socio-economic disparities persist among journalists across EU member states, demanding ongoing advocacy for equitable working conditions to uphold individual economic independence.

The diversification of journalists' associations, reflective of a changing media landscape, introduces both opportunities and challenges. While these associations engage in multifaceted activities, from representation and advocacy to quality initiatives and service provision, they grapple with declining membership and financial constraints. Collaborative endeavors, regional networks, and international affiliations emerge as potential lifelines in addressing fragmentation and sustaining advocacy efforts.

## 6. Recommendations

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The paper offers an overview of good and bad practices in journalists' association in the EU, which could serve as a basis to provide inspiration in the Lebanese context. Based on the analysis in this paper, a few general recommendations can be made:

The question of who a journalist is and who should receive a press card should be a matter for the profession itself, to better guarantee the freedom to inform the public without pressure or influence from the state or other actors of power.

Membership in journalists' associations should be open and feasible to all those working in the field of journalism, especially young people working in journalism and related fields. A division between freelancers and employees or journalists working in traditional media and online media is not advisable, given the blurring boundaries of content creation in the digital era.

A diversification of journalistic associations does not necessarily mean a weakening of the profession. Yet, a distinction between those who own and finance media outlets and those acting as journalists should be kept. Associations active in the field of economic and professional representation of journalists should work together—if not on all aspects, at least where joint coalitions help secure press freedom.

Journalists' associations could seek support and network with associations inside and outside the country and use (internationally) available resources and materials, for example for awareness raising, training,[404] and so on. Collaborations with associations outside the profession, for example for legal advice or technical support could also be helpful in overcoming scarce resources and as a fast extension of necessary skills and competences.

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[404] For freely available training materials see for example, <https://help.elearning.ext.coe.int/>

# Public Interest Journalism Startups in Europe

Trends, Players, Challenges and Incentives

By Attila Mong

Attila Mong is a Hungarian-born journalist, radio broadcaster and columnist with more than 20 years of experience in news and investigative reporting. Now based in Berlin, Attila works as Europe representative of the global press freedom organization, the Committee to Protect Journalists (CPJ) and a consultant on digital innovation projects with the DW Akademie, Germany's leading media development organization. He is a supervisory board member of Atlatszo, a crowdfunded investigative journalism platform in Hungary.

# 1. Introduction

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Over the past decade, public interest news media outlets have faced substantial setbacks due to economic crises, further worsened by the Covid-19 pandemic. News consumption habits have also fundamentally changed, shifting towards online news consumption, driven by technological innovations, including smartphone usage and mobile internet access. Audiences, especially younger demographics show a preference for social media and other digital platforms over traditional news outlets. Consequently, a significant portion of digital advertising revenue is being seized by platforms like Facebook and Google, a trend that has further weakened the industry's outlook.

European news media are adapting to the rapid erosion of traditional journalism's business model by exploring new online strategies. However, despite efforts to strengthen business models, labor-intensive public interest journalism faces increasing challenges in a changing market landscape. Against this backdrop, a fresh wave of innovative media startups has been emerging in Europe. They remain small, many of them operating under some form of non-profit format, but hold a strong commitment to watchdog journalism and are ready to experiment with new journalism formats, revenue streams and business models.

Despite their efforts and the advantages offered by the new digital era, they struggle to reach longer term viability, that is, to fulfill their mission to serve public interest with their journalism and at the same time to sustain themselves financially. Although they often manage to build sizable and dedicated audiences, they grapple with the task of converting this loyal following into paying supporters. Funding, predominantly philanthropic, remains scarce and fragmented. Existing incentives both on the national and EU level often fail to deliver effective support to these outlets with specific needs.

In recent years, there has been a growing awareness among diverse stakeholders that a more concerted effort is needed to dismantle prevailing obstacles and develop new measures and strategies to enhance the broader ecosystem of public interest news media while designing tailored incentives to facilitate the rise of newcomers. Governments, regulatory bodies, public institutions, donors, and media establishments increasingly recognize that they should collectively address these challenges to create an environment in which public interest media can thrive. This is particularly important as recent economic and market developments point to a fragile future for this sector.

## 1.2 Definition and scope of the research

In this paper, we focus on media startups in the European Union and the Western Balkans, and we are interested in ventures that share the following features:

1. **Journalistic in nature:** they are engaged in journalism, concentrating on news and current events, upholding the traditional principles of journalistic practice, and delivering content that users perceive as authentic journalism;[405]
2. **Serving public interest:** they strive to inform the public about crucial societal matters, and are committed to the pursuit of truth, seeking to provide the public with reliable and accurate, balanced and representative information, made by actors independent from vested interests, be they political, corporate, or private. [406] They aim to serve the audiences that have been overlooked by traditional media;[407] and they were founded at least in part to fill the gap left as commercial news organizations retreated from producing public interest journalism;[408]
3. **Startup identity:** distinct from established legacy media entities, they are self-contained and independently owned and operated.[409] [410] New or in early stages of development, they are actively refining their business models, striving for expansion in terms of both reach and revenue, and inching closer to financial sustainability;[411]
4. **Varied scale:** While their scale varies, they share a vision to monetize their work to meet their targeted journalistic goals. Adaptability is key, as they refine their business models progressively. Generally, their annual earnings total less than US\$500,000;[412]
5. **Profit dynamics:** These startups might fall into either the for-profit or non-profit category, with the latter being more common. Often functioning as non-profit or social enterprises, their profits are reinvested into the organization's mission rather than being distributed among owners or shareholders.[413]

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[405] Nicola Bruno, & Rasmus Kleis Nielsen. (2010). *Survival is Success: Journalistic Online Startups in Western Europe*. Oxford: Reuters Institute for the Study of Journalism. <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2017-12/Survival%20is%20Success%20Journalistic%20Online%20Start-Ups%20in%20Western%20Europe.pdf>

[406] Civitates. (n.d.) *Independent public-interest journalism*. <https://civitates-eu.org/independent-public-interest-journalism/>

[407] Vera Penêda. (2022, June 9). *Lessons from the first GNI Startups Lab Europe*. Google Blog. <https://blog.google/outreach-initiatives/entrepreneurs/gni-startups-lab-europe/>

[408] Malte Werner. (2022). *The New Sector: Report on Independent Public Interest Journalism in Europe*. Netzwekr Recherche <https://netzwerkrecherche.org/map/>

[409] Nicola Bruno, & Rasmus Kleis Nielsen. (2010). *Survival...*, cit.

[410] Vera Penêda. (2022, June 9). *Lessons...*, cit.

[411] Google News Initiative. (2022). *Startups Playbook*. <https://newsinitiative.withgoogle.com/digital-growth/startups-playbook/playbook/#ch1sec3>

[412] Google News Initiative. (2022). *Startups Lab Europe Report*. [https://storage.googleapis.com/media-newsinitiative/documents/GNI\\_Startup\\_Lab\\_Europe\\_Report\\_final.pdf](https://storage.googleapis.com/media-newsinitiative/documents/GNI_Startup_Lab_Europe_Report_final.pdf)

[413] Malte Werner. (2022). *The New Sector...*, cit.

## 1.3 Methodology and research questions

This research paper is based on desktop research conducted in July and August 2023 with a review of articles in the trade press and on the websites of European institutions, philanthropic organizations, and startups as well as of publicly accessible research reports, and academic literature. It aims to deliver an overview of the media startup scene in Europe by answering the following research questions (*See Chapter 2*):

1. How have the current trends shaping the news ecosystem evolved over the past few years? (*See section 2.1.*)
2. Who are the notable startups, what main internal and external challenges are they facing and what specific strategies have they harnessed to achieve success? (*See section 2.2*)
3. What examples for resources and incentives are in place to support the growth of news media and its media startup scene in Europe? (*See section 2.3*)

In Chapter 3, the research will present measures in place in Europe that have boosted or could boost the media startup scene. In Chapter 4, we will summarize the latest developments with a focus on how this scene is expected to evolve. Finally, in Chapter 5, we put forward recommendations about good and bad practices and experiences in supporting media startups in Europe, which could provide inspiration to media in other contexts such as Lebanon.

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## 2. Overview of the media startups scene

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### 2.1 Broader trends shaping the European media startup scene

From economic challenges to deteriorating media freedom, to technological advancements and to shifts in consumer behavior, several important trends shape the environment for public interest media startups in Europe which create both opportunities and risks for these initiatives.

**Deteriorating overall economic environment:** Over the past ten years, media outlets have encountered substantial setbacks due to a series of economic crises. These challenges were exacerbated by the economic downturn triggered by the Covid-19 pandemic. As a response to reduced advertising expenditures, media organizations introduced cost-cutting measures, streamlined their operations, and reduced their workforce.[414] Revenue trends show a steady decline for print media, a moderate increase for TV and radio, and a significant upswing for digital news platforms (from €2.5bn in 2016 to €3.7bn in 2021; an increase of 60%). However, the growth in the digital sector falls short of fully offsetting the decline in print (from €22bn to €16.1bn, a drop of 27% from 2016 to 2021). Consequently, there was a substantial drop in total industry employment, from approximately 850,000 employees to around 600,000, reflecting a 30% reduction between 2008 and 2020. Profit margins varied between -3% and 7.5%. [415]

**Technological innovation drives changes in consumption habits:**[416] As European audiences are increasingly turning towards online platforms for accessing news, a key trend is the gradual reduction in news consumption through traditional media outlets. This shift is fueled by several factors:

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[414] Marius Dragomir. (2023). Investing in Facts: How the Business Community Can Support a Healthy Infosphere. Washington: Center for International Media Assistance. <https://www.cima.ned.org/publication/investing-in-facts-how-the-business-community-can-support-a-healthy-infosphere>. DOI: 10.13140/RG.2.2.35796.78722

[415] European Commission. (2023). The European Media Industry Outlook. <https://digital-strategy.ec.europa.eu/en/library/european-media-industry-outlook>

[416] European Commission. (2023). The European Media..., cit.



- The increasing use of smartphones and widespread mobile internet access have facilitated the consumption of news virtually anytime and anywhere.
- The evolving online content offers are also shaping consumer preferences; consumers are drawn to the interactive nature of online news content.
- Younger demographics exhibit a preference for partially curated digital sources, with a particular affinity for social media platforms, blogs, YouTube, and similar video-sharing platforms. This group tends to engage less with established news organizations than other age cohorts.

Consequently, news media are operating in the framework of the attention economy. Various forms of content, spanning news, advertising, and entertainment, compete to capture attention in both online and offline spheres. Traditional media entities have expanded their online presence to maintain relevance and cater to citizens. Meanwhile, alternate players like social media platforms also serve as news sources.

**Tech platforms' Influence:**[417] Businesses' reliance on external platforms continues to be a significant trend, coming with both risks and benefits. Online platforms have emerged as crucial catalysts for news consumption and traffic generation toward news media websites. This dynamic potentially enhances revenues, yet on the flip side, it could lead to news media becoming dependent on platforms, their distribution methods (including algorithms), and monetization models. While the advertising market in the EU has grown in recent years, particularly in the online sector, the news media have not benefited from the rapid expansion of internet advertising as it once did. This is due to the significant portion of digital advertising revenue being seized by platforms like Facebook and Google, a trend that has further eroded the news industry's profitability.

**Trust in the media has declined in various European countries:** Starting from the early 2000s, technological advancements have led to a proliferation of media platforms and alternative channels, offering the public more options for sourcing their news. Simultaneously, mainstream media have faced reproach for allegedly not upholding their professional norms, being viewed as inaccurate and biased.[418] The spread of disinformation, the use of clickbait, and increased political polarization have further accelerated the decline in public trust in the media.[419]

**While news holds value for people, they might not be prepared to pay for it.** There is still a general reluctance to pay for access to news content. This divergence between the perceived value of news content and the unwillingness to pay for it poses a significant challenge to the viability of news media organizations. The preference for free news is prevalent among consumers online, driven by the belief that news should be freely accessible or that the quality of free news suffices. Although digital subscriptions represent the most common payment method, they are used by only a fraction of users.[420]

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[417] European Commission. (2023). The European Media..., cit.

[418] Civitates. (n.d.) Independent..., cit.

[419] Marius Dragomir. (2023). Investing in..., cit.

[420] Marius Dragomir. (2023). Investing in..., cit.

**Fractured market with a problem of scalability:** Throughout the continent, media entrepreneurs encounter a fragmented market characterized by diverse languages, cultures, and media environments.[421] As a consequence, news media companies remain focused on national markets, and just a small fraction of them have a presence beyond their domestic markets. While the number of news media companies is high, they tend to be small, and the sector's turnover is mostly driven by large companies, in particular in TV broadcasting. With most news media companies (more than 80-90% depending on the sector) having 10 or fewer employees, the news sector has the highest share of micro enterprises in the EU, which is an indicator of fragmentation, potentially leading to a lack of economies of scale.

**Public interest journalism struggle financially:**[422] [433] The rise of digital technology has over the last decade swiftly eroded journalism's conventional business model reliant on advertising and subscriptions. Given this context, European news media, overall, are trying to explore new ways for viability, particularly in the online realm. These efforts include the exploration of novel business models, fostering community engagement, diversifying revenue streams, presenting bundled content packages, and embracing innovations in news media formats, often powered by Artificial Intelligence (AI). Labor-intensive investigative journalism focused on public interest, historically sustained by profits generated elsewhere within news organizations, has experienced cutbacks across the news industry. Different methods are being employed to strengthen business models, yet many outlets in public interest journalism grapple with financial challenges.

**Media freedom and independence are in decline:**[424] While Europe still stands as the continent providing the highest level of press freedom, reporters face mounting obstacles. The 2019 World Press Freedom Index highlights growing hostility directed at journalists and the media, actively endorsed by political leaders and authoritarian regimes. Over the past decade, some governments have manipulated media landscapes to serve their own political agendas, as the example of Hungary and Poland demonstrate.

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[421] Vera Penêda. (2022, June 9). Lessons..., cit.

[422] Civitates. (n.d.) Independent..., cit.

[423] European Commission. (2023). The European Media..., cit.

[424] Freedom House. (2023). Reviving News Media in an Embattled Europe.

<https://freedomhouse.org/sites/default/files/2023-06/Reviving-News-Media-in-an-Embattled-Europe-DigitalBooklet.pdf>

## 2.2 Key players, main challenges and adopted strategies

In the context discussed earlier, a fresh wave of inventive media startups is emerging in Europe. These startups are strongly committed to both their audience and democracy, driven by their focus on public interest journalism. Their ambition lies in reclaiming journalistic territories, audiences, and approaches that traditional media have overlooked. What sets them apart is their willingness to experiment with new approaches to sustainability and business models.

In this chapter, we will present some notable startups in this field. We will explore the main challenges they face, discussing research wherever it is available and highlighting the strategies the startups have harnessed to move towards viability.

### 2.2.1 Key players in the European public interest media startup scene

As comprehensive research is lacking in the sector of public interest media startups in Europe, it is challenging to gauge the number of enterprises established over the past decade. Nonetheless, analyzing an available and extensive database<sup>[425]</sup> that identifies 80 such ventures across the EU, Switzerland and Western Balkans, some significant trends begin to emerge. (*The Annex includes a list and a brief description of selected actors within the European public interest media startup landscape based on this database and the author's own research*).

- **The industry has experienced swift expansion**, with three-quarters (71%) of the analyzed organizations founded in the past decade. However, this growth trajectory stalled over the last two years due to uncertainties stemming from the pandemic.
- **The media outlets remain small**: the database consists of mostly small to medium-sized newsrooms. Only 18% of the organizations have grown to the point where they employ more than 20 people. 45% employ five to 20 full time staff; 40% of them employ fewer than five people; the most common newsroom size was five to 10 full-time employees. There is no data, however, on the number of freelancers working for the newsrooms.

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[425] Malte Werner. (2022). The New Sector..., cit.

- **Registering as non-profit entities is the most common:** Half of the entries in the database are legally established as non-profit organizations, aligning with the media industry's quest for fresh and viable business models. Considering diminishing advertising revenue and subscription earnings, these startups are venturing into novel avenues for funding, such as seeking philanthropic support (i.e., grants from foundations), which is frequently contingent on holding charitable status.
- **Diversified revenue streams:** These initiatives rely on a variety of revenue streams, with personal donations emerging as the leading source, as 71% reported accessing such funding. Support from foundations ranks second with 66%. Membership fees are employed by 41% of these ventures, while subscriptions and alternative crowdfunding methods are used by 30%. A mere 18% indicated revenue generation from advertising.
- **Emphasis on local and regional coverage:** In the database, 31% of news organizations are actively involved in local or hyperlocal reporting, addressing a void created by the retreat of legacy media from local journalism. Additionally, half of the outlets focus on regional coverage.
- **Editorial focus on watchdog journalism:** Among the surveyed organizations in the database, 70% fulfill their societal role as watchdogs through investigative journalism. This response echoes an industry-wide trend, as legacy media outlets have often pulled back from this domain due to declining ad revenues and subscriptions. Notable in the European context is that half of the participants in the database engage in cross-border investigations—a pioneering approach given the fragmented nature of the European news media market discussed earlier. Some 35% of the media outlets reported focus on data journalism and 23% on fact-checking.
- **Coverage areas:** Politics takes the lead with a majority (88%) of these entities covering the topic. Environmental issues hold the second position, shared by 83% in the sector. Moreover, around two-thirds delve into criminal investigations and the exposure of corrupt practices. Other crucial coverage areas reported include economics (78%) and health (71%).

Among the 80 news outlets cataloged in the aforementioned database, 18 have opted to unite within a self-organized exchange network, the Reference group, [426] currently incubated by the foundation Arena for Journalism in Europe. This network, which boasts 26 members, operates across print media, audio media, and digital platforms.

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[426] Reference, the European Independent Media Circle. (n.d.). Our members. <https://referencecircle.eu/our-members/>

## 2.2.2 Media startups' main challenges and strategies adopted

While the media startups examined in this study benefit from greatly reduced entry barriers in the news sector and the availability of diverse digital tools for content creation, editing, and distribution, they still struggle to reach longer term viability, that is, to fulfill their mission to serve public interest with their journalism and at the same time to sustain themselves financially.[427] This situation is a consequence of a set of external and internal challenges, which often intersect and overlap, as discussed below.

### **Political backlash, politicized market distortion, legal, physical and digital threats**[428] [429]

As previously discussed, a notable portion of emerging public interest media startups adopt a robust watchdog journalism stance in their endeavors.

Paradoxically, as these ventures achieve greater success, they encounter greater difficulties particularly in more restrictive media environments in the EU but also in countries with a good press freedom record. These challenges include:

- Political efforts to preemptively undermine their legitimacy, through disinformation campaigns, smear campaigns, anti-journalist rhetoric, often using captured media as a carrier
- Hostile legislation weakening access to information laws, freedom of information regimes
- Political efforts to undermine their access to international, cross-border philanthropic resources and investments or to use their “foreign” funding to discredit and sideline them
- Politicization of national mechanisms such as allocation of state advertising, which systematically disfavor independent news media startups
- Legal threats, malicious or frivolous SLAPP lawsuits particularly defamation or privacy cases
- Increased physical and digital threats

**Market dominated by big players:** The flip side of the fragmented market described earlier is that the news media market is dominated by large companies which account for most of the sector’s turnover. Research shows that 97.5% of the overall turnover in TV broadcasting, 89.6% in radio broadcasting, and 90.3% in the publishing sector is generated by companies with over 10 employees. Most startups, as demonstrated earlier, have adopted a strategy that, instead of directly challenging incumbent big players, focuses on finding niche approaches (in-depth, fact-checking, investigative journalism) and trying to survive without too much advertising revenue. In several markets in the EU and Western Balkans, startups also compete for audience attention with large media enterprises with opaque ownership structures whose performance and attacks on independent journalism systematically undermine trust in credible media.

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[427] For the definition of media viability, see DW Akademie’s resources (DW Akademie. (n.d.). Media viability. <https://akademie.dw.com/en/media-viability/s-32577>

[428] DW Akademie. (2019). How to fund investigative journalism: Insights from the field and its key donors. Author: Sameer Padania. <https://akademie.dw.com/en/how-to-fund-investigative-journalism/a-55039200>

[429] Committee to Protect Journalists. (2023). Fragile Progress: The struggle for press freedom in the European Union. Authors: Jean-Paul Marthoz and Tom Gibson. <https://cpj.org/reports/2023/04/fragile-progress-the-struggle-for-press-freedom-in-the-european-union/>

**Converting reach into revenue:** Achieving a substantial reach remains a crucial objective for numerous media startups, as it holds significance not only in financial aspects but also in terms of amplifying the impact of their journalism. Although they often achieve this goal by building sizable and dedicated audiences and emphasizing community engagement, they still grapple with the task of translating this loyal following into paying supporters, especially considering the earlier noted reluctance of European users to pay for news. Converting a committed community into a paying audience often presents a formidable hurdle for media startups.[430] [431]

**Limited funding often not aligned with startups' needs:** Even though European media startups demonstrate achievements in audience growth, funding continues to be a primary area of concern. Startups in nations with comparatively smaller populations hold less appeal for the type of venture capital often seen in the American model. Additionally, Europe's philanthropic culture is not comparable to that in the United States. While European foundations and other contributors can offer crucial initial funding for startups, they may not provide the substantial financial support that American philanthropists have historically awarded to sustain similar endeavors.[432]

Some startups, especially those focused on investigative journalism are struggling to raise even seed funding. There is no viable market to tap into, there are no local donors, and the crowdfunding potential is also limited. In many cases, their markets are also captured by vested interests.[433]

In addition to the scarcity of available funds for journalism initiatives in Europe, the sector also suffers from fragmentation. Few funders adopt a comprehensive ecosystem perspective, opting instead to concentrate on specific elements, countries or particular issues. This leads to a fragmented funding landscape, frequently centered around project-based allocations, while startups often require sustained core-funding spanning several years to cover their operations.[434] [435] Numerous entities, particularly those focused on investigative journalism, depend heavily on a small number of key funding sources. These sources consist mainly of philanthropic support, which exposes startups to potential risks arising from donor preferences, shifts in donor priorities or situations where donors allocate funds for specific projects or themes.[436]

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[430] Vera Penêda. (2022, June 9). Lessons..., cit.

[431] Google News Initiatives. (2022). Startups..., cit.

[432] John Dyer. Six Journalism Startups Illustrating the Unique Pressures Driving Media Innovation in Europe. Nieman Report. 10 July 2018. <https://niemanreports.org/articles/six-journalism-startups-illustrating-the-unique-pressures-driving-media-innovation-in-europe/>

[433] DW Akademie. (2019). How to fund..., cit.

[434] Civitates. (n.d.) Independent..., cit.

[435] DW Akademie. (2019). How to fund..., cit.

[436] DW Akademie. (2019). How to fund..., cit.

There are also evident gaps in funding, especially for those outlets that reach a certain level of growth. Unlike the well-established funding ecosystem that exists for the technology startup sector, which includes options like seed funding, angel investors, and venture capital, European grants typically offer relatively modest sums ranging from a few thousand to tens of thousands of euros. Startups often lack a clear pathway to secure funding for the subsequent phases of their expansion.[437]

In several countries, the lack of a tax-exempt, non-profit structure for journalism still hinders the sector from thriving.[438]

**Human resources, talent acquisition:** Producing public interest journalism is distinctly labor-intensive, necessitating highly skilled journalists and technologically adept personnel. Moreover, media outlets must be able to provide sustainable, competitive salaries for this team over the long term. At a time when even major established media organizations find it challenging to maintain competitive wage levels, smaller independent media outlets must navigate methods to either bypass labor regulations or offer significantly lower wages. Under these circumstances, a growing number of skilled professionals may quit, no longer viewing journalism as a sustainable career option.[439]

**Internal organizational development challenges:** The transformation of the news industry outlined above has resulted in the lay-off of numerous experienced journalists. Many of these startups were established by journalist entrepreneurs who recognized a potential opportunity in the digital transformation. However, having editorial expertise and passion does not inherently ensure business success and sustainability. This mismatch has given rise to distinct hurdles stemming from inadequate organizational and business skills. While certain philanthropic endeavors have tried to bridge this capacity gap, the challenge remains.[440]

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[437] Yvonne Leow. Why local journalism needs a funding pipeline. Reynolds Journalism Institute, 18 October 2020. <https://rjionline.org/innovation/why-local-journalism-needs-a-funding-pipeline/> (Note: The article doesn't pertain to Europe but provides a comprehensive overview of the funding cycles that startups require.)

[438] Malte Werner. (2022). The New Sector..., cit.

[439] Freedom House. (2023). Reviving..., cit.

[440] Google News Initiative. (2022). Startups..., cit.

## 2.3 Resources and incentives for the growth of the media startup scene in Europe

In the territory analyzed, comprising the European Union and the Western Balkans, rules and regulations generally do not impose limitations on the establishment of media enterprises or the acquisition of licenses for media operations. While countries have diverse approaches regarding the management of licenses and registration/notification procedures for audiovisual media services,[441] and in some countries there are restrictions on foreign ownership in media,[442] the general approach is unrestrictive towards market entry. The summary below therefore focuses on resources, facilities and incentives which aim to support the growth of public interest media, including startups.

The EU highlights[443] that it has in recent years stepped up its efforts to improve the overall economic environment of news media.

- The EU's 2019 copyright reform serves to protect the financial sustainability of the press by reducing the "value gap" between the profits made by internet platforms and by content creators, encouraging collaboration between these two groups, and creating copyright exceptions for text- and data mining;[444]
- The revised Audiovisual Media Services Directive (AVMSD) is intended to foster a level playing field between broadcasters and online media players;
- The Digital Services Act (DSA) and Digital Markets Act (DMA) aim to make digital markets fairer and more competitive.

### 2.3.1 EU level initiatives

This selective review includes EU level initiatives which directly or indirectly aim to support specifically the news media sector. They are not specifically targeted to support startups; however, these are initiatives that might benefit public interest news media startups by improving their overall environment, market conditions, competitiveness or by providing them access to funding opportunities.

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[441] European Audiovisual Observatory. (2018). Mapping of licensing systems for audiovisual media services in EU-28. <https://rm.coe.int/licensing-mapping-final-report/16808d3c6f>

[442] Elda Brogi, Lisa Ginsborg, Iva Nenadic, Alina Ostling, Pier Luigi Parcu, Mario Viola de Azevedo Cuhna. (2017). Media ownership rules in Europe: a focus on EU Member States' legislation on foreign ownership. Centre for Media Pluralism and Media Freedom (CMPF) Fact Sheet. European University Institute. DOI: <https://doi.org/10.2870/252187>

[443] European Commission. (2022). European Media Freedom Act Impact Assessment. <https://digital-strategy.ec.europa.eu/en/library/european-media-freedom-act-impact-assessment>

[444] European Commission Directorate General Internal Market and Services. (2014). Report on the responses to the Public Consultation on the Review of the EU Copyright Rules. [https://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=60517](https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=60517)



**News Initiative:**[445] the initiative under the European Media and Audiovisual Action Plan[446] looks at the challenges facing the news media industry and seeks to provide a coherent response, bringing together different policy and funding instruments under a common banner.

- **Protecting media freedom and pluralism:**

- **EMFA and recommendations:** In 2021 the European Commission (EC) published a Recommendation on the protection, safety and empowerment of journalists and other media workers[447] and in 2022 a proposal for the European Media Freedom Act,[448] a novel set of rules to protect media pluralism and independence accompanied by a Recommendation to encourage internal safeguards for editorial independence.[449] In 2022, the EC published a Proposal for a Directive on strategic lawsuits against public participation (SLAPP).[450]
- **Press and media councils:** With an available budget of €1 million, the EC also aims to strengthen the position of press and media councils and help with further development of deontological standards.[451]
- **Rapid response mechanism and media ownership monitoring:** With a budget of €4.1m, the EC supports a rapid response mechanism[452] that brings violations of press and media freedom to the forefront, and provides practical help to journalists under threat, including concrete tools such as advice and legal support as well as offering shelter and logistical assistance. The EU also supports a Media Ownership Monitoring System[453] (budget: €500,000), a country-based database containing information on media ownership and a systematic assessment of both relevant legal frameworks and risks to media ownership transparency.
- **Funding media:** After supporting a mapping[454] of news media deserts across the European Union (budget of €1.99m), in 2023 the EC is allocating funding through a facility called Journalism Partnerships to support news media sectors with a special relevance to democracy, such as local and regional media, community media and investigative journalism (budget: €10m) and cross-border collaboration[455] (€7.6m). This giant facility aims to help the sector with testing viable business models, developing business and editorial standards, promoting collaborative content, training and mobility of professionals, and sharing best practices.

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[445] European Commission. (n.d.). The News Initiative. <https://digital-strategy.ec.europa.eu/en/policies/news-initiative>

[446] European Commission. (n.d.). European Media and Audiovisual Action Plan. <https://digital-strategy.ec.europa.eu/en/policies/media-and-audiovisual-action-plan>

[447] European Commission. (2021). Recommendation on the protection, safety and empowerment of journalists. <https://digital-strategy.ec.europa.eu/en/library/recommendation-protection-safety-and-empowerment-journalists>

[448] European Commission. (n.d.). European Media Freedom Act. [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/european-democracy-action-plan/european-media-freedom-act\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/european-democracy-action-plan/european-media-freedom-act_en)

[449] Commission Recommendation of 16.09. 2022 on internal safeguards for editorial independence and ownership transparency in the media sector <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022H1634>

[450] European Commission. (2022). Proposal for a Directive on strategic lawsuits against public participation (SLAPP). [https://commission.europa.eu/document/cdaae121-5e89-45bd-a6c8-e12006ce1f77\\_de](https://commission.europa.eu/document/cdaae121-5e89-45bd-a6c8-e12006ce1f77_de)

[451] European Commission. (2022). Funding & tender opportunities. Single Electronic Data Interchange Area (SEDIA). Press and media councils and professional standards.

<https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/topic-details/crea-cross-2022-mfp-councilsandstandards>

[452] European Commission. (2022). Funding & tender opportunities. Single Electronic Data Interchange Area (SEDIA). Rapid response mechanism. <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/topic-details/crea-cross-2022-mfp-rapidresponse>

[453] European Commission. (2021). Shaping Europe's Digital Future. Call for Proposals: Media Ownership Monitoring System <https://digital-strategy.ec.europa.eu/en/funding/media-ownership-monitoring-system>

[454] European Commission. (2022). Shaping Europe's Digital Future. Call for Proposals: Supporting local and regional news media in face of emerging news deserts. <https://digital-strategy.ec.europa.eu/en/funding/supporting-local-and-regional-news-media-face-emerging-news-deserts>

[455] European Commission. (2021). Shaping Europe's Digital Future. Commission launches first-ever call for journalism partnerships worth €7.6 million. <https://digital-strategy.ec.europa.eu/en/news/commission-launches-first-ever-call-journalism-partnerships-worth-eu76-million>

- **Supporting media innovation**
  - **News media platforms:[456]** Via a call for proposals for news media platforms (budget: €5.98m), support is given to projects that expand the use of tools and deliver news content across multiple media channels. In 2023, a second pilot project will support the setup of a citizen-facing online video platform. The goal is to improve EU citizens' access to trusted information across the EU by setting up and developing European media platform projects.
- **Stimulating media participation**
  - **Online media offer for young audiences:[457]** To enhance young people's access to information, the Commission supports the development of innovative and attractive news projects for young Europeans. Projects produce and distribute thought-provoking content on a daily basis, showing multiple viewpoints, in formats attractive to youth.

## 2.3.2 National initiatives in countries in Europe[458]

This selective overview includes a variety of examples showcasing both direct, indirect and supplementary support mechanisms designed for the press and media sector across several European countries, both EU and non-EU member states. While not exclusively tailored to startups, these initiatives can also benefit startup ventures in the industry.

**Press subsidies and other direct support mechanisms:** In some European countries, the state offers direct funding opportunities for media outlets. While many of these funds support traditional, print press products and their digital transformation, some schemes are open to digital publications, newcomers and startups, including non-profit media. In Austria, for example, there is a state facility in place to prepare media outlets for the future. Norway, Sweden and Denmark offer innovation support for news media, especially where new technologies are used to create editorial impact. France has state funds dedicated to the emergence of new media, innovation and local media. Luxembourg specifically names startups for support in news media. In the Netherlands the state finances innovative projects relating to the press and journalism.

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[456] European Commission. (2022). Shaping Europe's Digital Future. Spotlight on EU-supported European Media Platforms. <https://digital-strategy.ec.europa.eu/en/news/spotlight-eu-supported-european-media-platforms>

[457] European Commission. (2022). Shaping Europe's Digital Future. A European public sphere: a new online media offer for young Europeans <https://digital-strategy.ec.europa.eu/en/funding/european-public-sphere-new-online-media-offer-young-europeans>

[458] News Media Europe. (2022). State aid for the media in Europe. <https://www.newsmediaeurope.eu/wp-content/uploads/2022/04/State-aid-for-the-media-in-Europe-News-Media-Europe-April-2022.pdf>

**Tax breaks and other indirect support mechanisms:** In Germany, indirect subsidies are granted to newspapers in the form of a relief on turnover tax. In France, there are fiscal support measures like communal tax breaks, investment tax breaks, donation tax breaks, subscriber tax breaks and social contribution reliefs for journalists. In several European countries including Greece, Malta, Poland and Hungary, state advertising in media is an important support mechanism; however, these schemes are often criticized by international press freedom groups as arbitrary, non-transparent and favoring media loyal to the government.[459] [460] In Hungary, media outlets that have established a foundation or a nonprofit entity can benefit from a so-called 1% scheme under which taxpayers can donate 1% of their income taxes to a nonprofit organization, including nonprofit media. In Spain, the government set up a youth culture scheme that allocates €400 per beneficiary to purchase culture products including press products and digital subscriptions.

**Reduced value added tax for press:** In 2018, the EU agreed that member states can apply reduced VAT rates or even scrap taxes on electronic books and digital press.[461] Since then, several EU countries have introduced such measures. In a range of European countries, newspapers and digital press benefit from a sharply reduced VAT rate. The VAT rate for the press is 5% in Austria, Croatia, Latvia, Lithuania, Malta, Poland, Romania, Slovakia; 4% in Italy and Spain, 3% in Luxembourg, 2.1% in France, and 2.5% in Switzerland. In other countries the rate is somewhat higher but still reduced from the normal rates: 10% in the Czech Republic, Slovakia and Finland, 9% in Ireland, the Netherlands and Estonia, 7% in Germany, and 6% in Greece, Portugal and Sweden. In Belgium, Norway, the UK and Denmark, a 0% rate is applied to print and digital single-copy sales and subscriptions.

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[459] International Press Institute. (2022). Greece: Transparency authority must comply with court ruling on media advertising campaign, International Press Institute. <https://ipi.media/greece-transparency-authority-must-comply-with-court-ruling-on-media-advertising-campaign/>  
[460] Nicholas Watson. 2 September 2020. Press freedom groups urge EU to act over Hungary media violations. Balkan Insight. <https://balkaninsight.com/2020/09/02/press-freedom-groups-urge-eu-to-act-over-hungary-media-violations/>  
[461] Jorge Valero. Member states approve reduced tax for e-books and digital press. 2 October 2018. Euractiv. <https://www.euractiv.com/section/economy-jobs/news/member-states-approve-reduced-tax-for-e-books-and-digital-press/>

## 3. Ideas for the promotion of media startups in Europe

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The previous chapter discussed a range of significant trends, presenting both opportunities and risks, that influence the landscape for European public interest media, including newcomers to the markets.

In recent years, there has been a growing awareness among diverse stakeholders that a more concerted effort is needed to dismantle prevailing obstacles and develop new measures and strategies to improve the broader ecosystem of public interest news media while designing tailored incentives to facilitate the rise of newcomers. Governments, regulatory bodies, public institutions, donors, and media establishments increasingly recognize that they should collectively address these challenges to create an environment in which public interest media can thrive.

### 3.1 EU planned policy responses

Transitioning from a patchwork of policies, the European Union is currently shifting its focus towards more holistic legislative efforts to confront these challenges. The recently adopted Digital Services Act and the Digital Markets Act aim to create a more secure digital arena, one that safeguards the fundamental rights of users while establishing a level playing field for businesses.[462]

The European Media Freedom Act (EMFA), a draft legislation introduced by the European Commission would complement this framework by fostering regulatory convergence and cooperation, promoting the free provision of quality media services and ensuring the fair and transparent allocation of economic resources in the internal media market.[463] As a targeted response to the challenges faced by public interest news media, it proposes a new set of rules to promote media pluralism, transparency and independence across the EU.[464] Below is a selection of ideas for policy responses from the EMFA that might benefit public interest news media including startups:[465]

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[462] Social Europe. (2023). A European Media Freedom Act worthy of its name? Author: Renate Schroeder. <https://www.socialeurope.eu/a-european-media-freedom-act-worthy-of-its-name>

[463] European Commission. (2022). European Media Freedom Act Impact Assessment..., cit.

[464] European Commission. (n.d.). European Media Freedom Act..., cit.

[465] European Parliamentary Research Service. 2022. European media freedom act briefing. Author: Tarja Laaninen. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/739202/EPRS\\_BRI\(2022\)739202\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/739202/EPRS_BRI(2022)739202_EN.pdf)

- a) Preventing undue interference in editorial decisions: “the regulation would require Member States to respect the effective editorial freedom of media service providers” and improve the protection of journalistic sources. “Media service providers would have to adopt measures to guarantee, once the overall editorial line has been agreed between their owners and editors, the freedom of the editors to take individual decisions in the course of their professional activity.”[466]
- b) Improving the transparency of ownership in media: “media service providers would have to ensure the transparency of ownership by publicly disclosing such information on their websites or another medium that is easily and directly accessible. The proposal would complement the existing framework by, under certain conditions, requiring all media services providing news and current affairs content to provide information on ownership—direct, indirect and beneficial owners—to recipients of media services.”[467]
- c) Better assessing media market concentrations: “the regulation would not prevent or set specific thresholds for media market concentrations; it would however provide a framework for national procedures for assessing market concentrations that could have a significant impact on media pluralism. It would also require that any legislative, regulatory or administrative measure taken by a Member State that could affect the media be duly justified and proportionate.”[468]
- d) Assuring transparent allocation of state advertising: “the rules aim at avoiding undue state influence, by minimizing the risk of misuse of public funding to favor and covertly subsidize certain media outlets that provide government-friendly views. Public authorities (national or regional level, or local governments of territorial entities of more than one million inhabitants) would have to publish information each year on their advertising expenditure on media.”[469]
- e) Creating transparent audience measurement systems: “the act would enhance the transparency and objectivity of audience measurement systems, which have an impact on media advertising prices, in particular online. Complementing the Digital Markets Act, the regulation would require providers of audience measurement tools to give media service providers and advertisers detailed information on the methodology used.”[470]

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[466] European Parliamentary Research Service. 2022. European media..., cit.

[467] European Parliamentary Research Service. 2022. European media..., cit.

[468] European Parliamentary Research Service. 2022. European media..., cit.

[469] European Parliamentary Research Service. 2022. European media..., cit.

[470] European Parliamentary Research Service. 2022. European media..., cit.

## 3.2 Recommendations from NGOs for potential policy responses

In recent years, international institutions,[471] non-governmental organizations,[472] [473] media development entities,[474] along with donors,[475] have put forward basic principles, various strategies, policy recommendations and specific actions to improve the landscape of journalism that serves the public interest, including actions to facilitate the emergence of new players. Here is a compilation of concepts that has been shared in these circles, some of them obviously controversial, but worth mentioning:

**Improving overall business, political and legal environments for startups:** governments should establish robust measures to counteract distortions in the media market and create a diverse set of mechanisms, and indirect and direct subsidies to support public interest journalism, including specifically targeted facilities to support newcomers and startups. Governments should guarantee that any form of assistance provided to public interest media outlets includes safeguards that uphold diversity within the market and ensure editorial autonomy. Moreover, governments should encourage the creation of environments conducive to the flourishing of innovative financial models. The distribution of public subsidies, including state-sponsored advertising, must be based on impartial and unbiased criteria, and must adhere to clearly defined and transparent processes.

**Taking state subsidies and support mechanisms to a new level:** some in this scene, including certain donors, say that journalism serving the public interest is a fundamental public good, and therefore is beyond market logic. They propose fully subsidizing the field, through a form of universal basic income designated for eligible organizations.

**Fostering a culture of ownership transparency, preventing ownership concentration:** media outlets that openly share their ownership details can cultivate higher levels of trust among their audiences. Such transparency helps regulatory bodies curb excessive ownership concentration. Independent regulatory bodies and media establishments should make readily available, easily accessible information concerning media ownership.

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[471] UNESCO. (2022). Journalism is a public good, Freedom of Expression and Media Development, World Trends Global Report 2021/2022. <https://t.ly/pYj9R>

[472] Freedom House. (2023). Reviving..., cit.

[473] Committee to Protect Journalists. (2023). Fragile Progress: The struggle for press freedom in the European Union. Authors: Jean-Paul Marthoz & Tom Gibson. <https://cpj.org/reports/2023/04/fragile-progress-the-struggle-for-press-freedom-in-the-european-union/>

[474] DW Akademie. (2019). How to fund..., cit.

[475] Civitates. (n.d.) Independent..., cit.

**Facilitating non-profit status and crowdfunding:** governments ought to simplify the barriers that currently impede media outlets from obtaining nonprofit status. This adjustment would empower media outlets to accept donations and alleviate their tax obligations. While revenue from audiences will continue to be essential for sustaining media entities, governments should enhance systems that motivate individuals to contribute to the media organizations of their preference. This could encompass strategies like allowing income-tax allocations or providing tax benefits for digital subscription expenses.

**Increasing philanthropic funding and fostering better collaboration of stakeholders:** philanthropy will play a major role in the longer term in funding public interest journalism to ensure not just its survival but its growth. In order to offset the scarcity and the siloed nature of funding, it is important to introduce measures that help funders pool resources and act collaboratively. Examples include multi-stakeholder initiatives, investment coalitions like Pluralis bringing together media companies and foundations, or Civitates, which pools foundations into common action.

**Improving availability and access to multi-year, core funding:** core funding is key to the long-term viability of the field to complement project funds or thematically-tied funds. Core funding provides a measure of stability and flexibility to the grantee—and maximize its independence.

## 4. Conclusions

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The outlook in Europe based on the current trends that shape the overarching business landscape for public interest media outlets, including startups, is pessimistic.[476] In the coming years, these media outlets will have to navigate an environment of instability, set against the backdrop of a post-pandemic economic crisis, aggravated by an ongoing war on the continent and surging living costs for consumers.

In the short term, these market shocks will significantly influence the growth outlook of public interest news media and will further accelerate structural transformations, moving towards an even more digital and mobile-centric landscape with the increasingly growing influence of social media platforms. This continuing shift further intensifies the impact of big tech platforms on journalism formats and business models.

In the longer term, the continuing shift in audience behaviors will define the media outlets' prospects. The consumption of news in traditional media like TV and print is expected to further decline, but news consumption on social media will not offset this drop. In some northern European media markets, publishers managed to somewhat counter this trend, but younger users increasingly prefer accessing news through social media, search engines and mobile aggregators, and show a weaker connection with news brands, using their websites or apps less than earlier generations. This trend is compounded by news avoidance. European users seem less interested in news, and many turn away from news temporarily or permanently. Audiences pay more attention to celebrities, influencers, and social media personalities than journalists.

With the dwindling interest and as increasing cost of living puts household finances under pressure, a sizable portion of the audience prefers freely accessible news. This signals that media outlets might not count on any more growth in subscriptions and crowdfunding. Similar to past trends, a substantial share of digital subscriptions remains concentrated in a handful of high-end national brands, making it a challenging landscape for startups to carve out a foothold.

These trends indicate that startup news outlets which in the past years have been successful in building online reach and converting this reach into subscribers or individual donors are facing a fragile future.

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[476] This chapter is based on trends described in Reuters Institute Digital News Report 2023. Reuters Institute for the Study of Journalism: Reuters Digital News Report 2023.(2023). Authors: Nic Newman with Richard Fletcher, Kirsten Eddy, Craig T. Robertson, and Rasmus Kleis Nielsen. [https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2023-06/Digital\\_News\\_Report\\_2023.pdf](https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2023-06/Digital_News_Report_2023.pdf)



## Recommendations for incentives that could serve as inspiration for initiatives in Lebanon

Using the insights from this research, this section will propose recommendations for incentives which could serve as a source of inspiration for initiatives in different contexts such as in Lebanon.

- **Remove existing barriers to market entry:** promote the formation of new companies, and dismantle existing barriers that hinder the entry of public interest journalism outlets into the market. This entails not only streamlining bureaucratic processes for permits, licenses, and registrations, but also ensuring that these procedures are easily accessible, low-cost, and efficient.
- **Increase ownership transparency, prevent harmful market concentration:** implement regulations which prioritize ownership transparency to increase trust in public interest journalism outlets and utilize competition rules to counteract market concentration, thereby fostering a diverse media landscape and enabling the emergence of new players.
- **Facilitate startups' access to local and international donor funding:** public interest journalism startups should enjoy seamless and unobstructed access to a wide array of funding options from public, private, and non-profit sources. Encourage collaboration among stakeholders such as private companies, foundations, and impact investors so that they can better pool their resources and create multis-takeholder initiatives.
- **Establish direct funding facilities for media startups:** set up public funds dedicated to supporting public interest journalism with independent boards to oversee the allocation of funds, ensuring transparency. Prioritize easy accessibility and flexibility. Core funding should be provided to sustain essential operations, other funding schemes should foster innovation and experimentation, and also be tailored to address the unique organizational development requirements of startups like capacity building in organizational and business proficiencies.
- **Introduce indirect funding avenues:** this could encompass reduced VAT for media products along with social security reliefs or tax breaks. Ensure transparency in the allocation of state advertising and make it accessible to startups. Offer tax deductions for individuals and businesses that donate to or subscribe to recognized public interest journalism outlets.
- **Introduce a tax-exempt and non-profit framework for public interest journalism:** provide tax exemptions and non-profit status to journalism outlets dedicated to public interest to incentivize private donors, businesses, and philanthropic organizations to invest in their work. The non-profit status would shield these outlets from profit-driven motives and undue commercial pressures, ensuring their editorial independence and commitment to serving the public's right to know.

# Annex

## List of notable public interest journalism startups in Europe

Name	Country	Founded	Staff (full-time)	Revenue streams	Legal entity	Scope
A Mensagem	Portugal	2021	5 - 10	Membership Fees, Individual Donations, Philanthropic Support (i.e., grants from foundations)	For-profit Enterprise	Local News
Apache	Belgium	2009	5 - 10	Subscriptions, Individual Donations, Crowdfunding, Government Support/State Funding	Co-operative	Local News, Investigations, Cross Border Journalism
Are we Europe	Netherland, Belgium	2017	10 - 20	Membership Fees, Subscriptions, Philanthropic Support (i.e., grants from foundations), Training/Workshops, Advertisement	Foundation	Cross Border Journalism, Special Interest Topic
Átlátszó Erdély	Romania	2015	3 - 5	Individual Donations, Crowdfunding, Philanthropic Support (i.e., grants from foundations)	Association	Local News, Investigations, Cross Border Journalism
Átlátszó	Hungary	2011	10 - 20	Individual Donations, Crowdfunding, Philanthropic Support (i.e., grants from foundations)	Non-profit limited liability company	Local News, Investigations, Cross Border Journalism
Balkan Investigative Reporting Network	Bosnia and Herzegovina	2005	>20	Subscriptions, Philanthropic Support (i.e., grants from foundations), Government Support/State Funding	Association	Investigations, Cross Border Journalism, Special Interest Topic

Name	Country	Founded	Staff (full-time)	Revenue streams	Legal entity	Scope
Bristol Cable	UK	2014	5 - 10	Membership Fees, Individual Donations, Philanthropic Support (i.e., grants from foundations), Advertisement	Co-operative	Local News, Investigations, Data Journalism
Bureau of Investigative Journalism	UK	2010	10 - 20	Individual Donations, Crowdfunding, Philanthropic Support (i.e., grants from foundations)	Not for profit	Local News, Investigations, Cross Border Journalism
Civio	Spain	2012	5 - 10	Subscriptions, Individual Donations, Philanthropic Support (i.e., grants from foundations), Services	Foundation	Investigations, Data Journalism
Correctiv	Germany	2014	10 - 20	Membership Fees, Individual Donations, Crowdfunding, Philanthropic Support (i.e., grants from foundations), Government Support/State Funding, Services, Training/Workshops	Non-profit	Local News, Investigations, Data Journalism, Cross Border Journalism, Fact Checking
Denik Referendum	Czech Republic	2009	10 - 20	Individual Donations, Crowdfunding, Philanthropic Support (i.e., grants from foundations)	company with limited liability, non-profit	Local News, Investigations
Dennik N	Slovakia	2014	> 20	Subscriptions, Individual Donations, Crowdfunding, Services, Advertisement	For profit enterprise	Investigations, Data Journalism, Fact Checking
Direkt36	Hungary	2015	5 - 10	Membership Fees, Individual Donations, Crowdfunding, Philanthropic Support (i.e., grants from foundations), Services, Training/Workshops	Social Enterprise	Investigations
Disclose	France	2018	5 - 10	Membership Fees, Individual Donations, Philanthropic Support (i.e., grants from foundations)	Association	Investigations, Cross Border Journalism
Divergente	Portugal	2014	3 - 5	Subscriptions, Individual Donations, Philanthropic Support (i.e., grants from foundations)	Cooperative	Investigations, Data Journalism, Cross Border Journalism, Special Interest Topic
Dublin Inquirer	Ireland	2015	3 - 5	Subscriptions	For profit company	Local News, Investigations
El Diario	Spain	2012	n.a.	Membership fees, advertising	Limited liability company owned 70 percent by employees	Local news, investigations
Facta.eu	Italy	2018	1 - 3	Training/Workshops	Association	Data Journalism

Name	Country	Founded	Staff (full-time)	Revenue streams	Legal entity	Scope
Follow the Money	Netherlands	2010	10 - 20	Membership Fees, Individual Donations, Philanthropic Support (i.e., grants from foundations), Government Support/State Funding	Social enterprise	Investigations, Data Journalism
Fumaça	Portugal	2016	5 - 10	Membership Fees, Individual Donations, Crowdfunding,, Philanthropic Support (i.e., grants from foundations), Training/Workshops	Association	Investigations
Hostwriter	Germany	2013	5 - 10	Membership Fees, Individual Donations, Philanthropic Support (i.e., grants from foundations), Training/Workshops	Social enterprise	Cross Border Journalism, Special Interest Topic
Investico	Netherlands	2016	10 - 20	Individual Donations, CrowdfundingPhilanthropic Support (i.e., grants from foundations), Government Support/State Funding, Training/Workshops	Non-profit company	Investigations, Data Journalism, Cross Border Journalism
Investigate Europe	Cross-border across 12 countries registered in Berlin	2016	20	Institutional support, private donations, own earnings	Cooperative	Cross border journalism, investigations
Investigative Reporting Project Italy (IRPI)	Italy	2020	3 - 5	Individual Donations, Crowdfunding, Philanthropic Support (i.e., grants from foundations)	Association	Investigations, Cross Border Journalism
Maldita	Spain	2018	> 20	Individual Donations, Crowdfunding,, Philanthropic Support (i.e., grants from foundations), Government Support/State Funding, Services, Training/Workshops	Foundation	fact-checking
Mediapart	France	2008	> 20	Subscription	Subscriptions	Local News, Investigations, Data Journalism, Cross Border Journalism
Oštro	Croatia	2021	> 3	Membership Fees, Individual Donations, Philanthropic Support (i.e., grants from foundations), Government Support/State Funding, Training/Workshops	Institute	Investigations, Data Journalism, Cross Border Journalism
Oštro	Slovenia	2018	3 - 5	Membership Fees, Individual Donations, Crowdfunding, Philanthropic Support (i.e., grants from foundations), Government Support/State Funding, Training/Workshops	Non-profit institute	Investigations, Data Journalism, Cross Border Journalism, Fact Checking
Reflekt	Switzerland	2019	5 - 10	Membership Fees, Individual Donations, Philanthropic Support (i.e., grants from foundations), Training/Workshops	Association	Investigations, Cross Border Journalism
Reporters United	Greece	2019	> 3	Membership Fees, Individual Donations, Services	Non-profit	Membership Fees, Individual Donations, Services

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