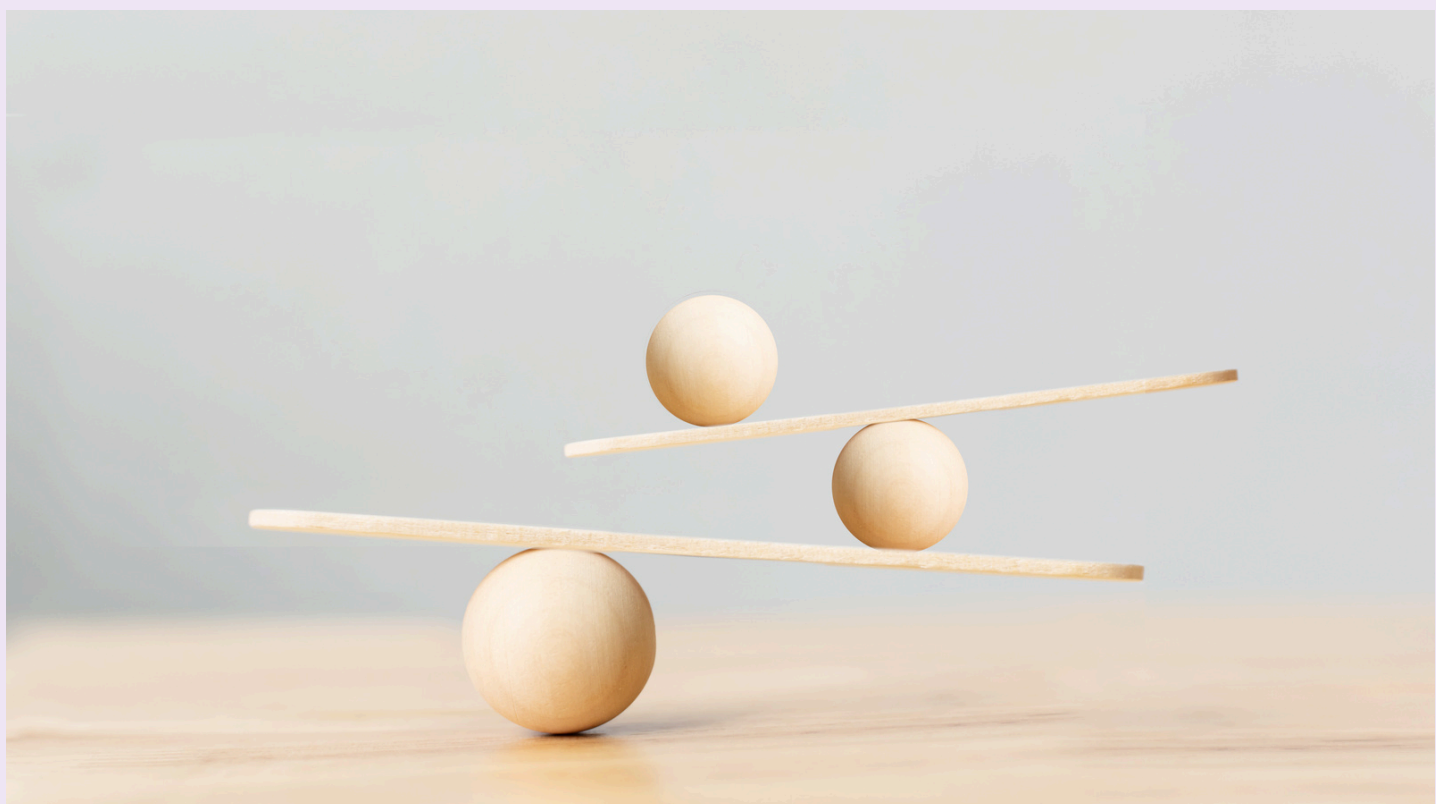# A Balancing Act:
EU Media Regulation,
Co-Regulation and
Self-Regulation in the Digital Age

By Minna Aslama Horowitz

2024

Project Brief

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.

Disclaimer:

Author

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Editors: Marius Dragomir and Judit Szakács

Published by

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.

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Executive summary

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

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].

[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.
[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.
[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].

[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.
[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.
[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.

[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/2010/13/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 Madiega. (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.

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.

[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.

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]:

Figure 1. Dimensions of the EU's media-focused and media-adjacent policies[29]
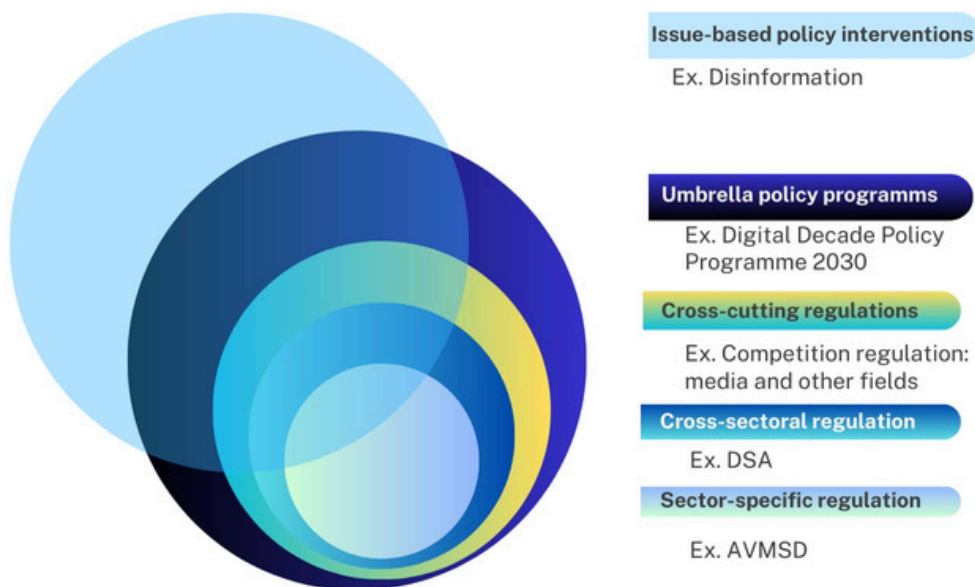
[26] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Digital Compass: the European way for the Digital Decade COM/2021/118 final https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52021DC0118.
[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.
[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

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].

[30] Charter of Fundamental Rights of the European Union. In force. 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. 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].

[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/o; 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; see Art. 21.
[39] DDirective (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].

[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.

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[48]. 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[49]. 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[50] 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.

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.

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

[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.

Figure 2. Some regulatory approaches to legacy media and their intersections
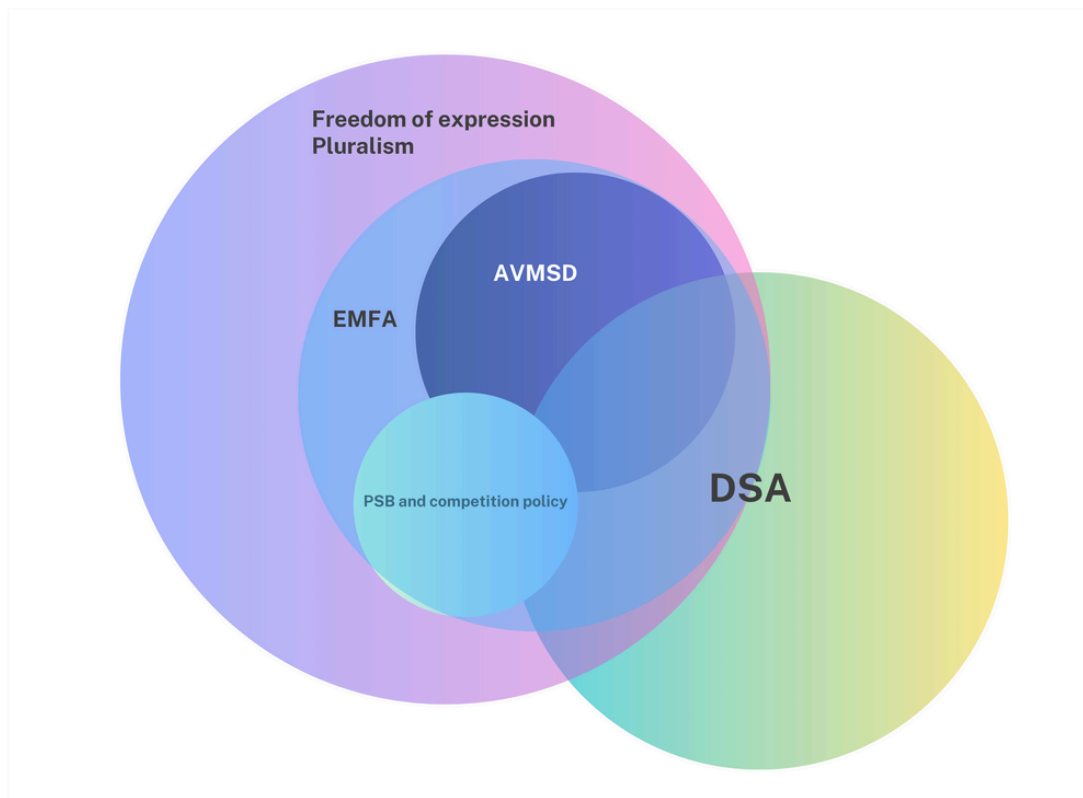
[59] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Text with EEA relevance.) PE/51/2019/REV/1 http://data.europa.eu/eli/dir/2019/790/oj.

[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 marketText 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

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.

[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.

Figure 3. Dimensions of media governance[65]
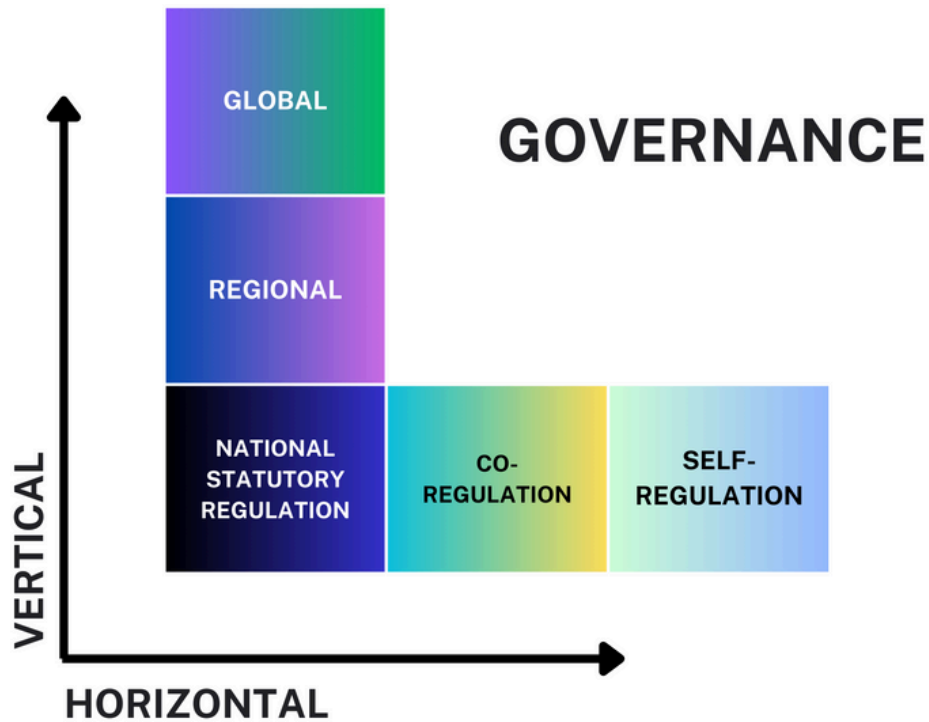
These different types of regulation have their strengths and weaknesses. Normally, statutory regulation requires significant preparations both in resources and time, and may take a long time to amend when changes are needed. Co- and self-regulation may be more flexible but more challenging to enforce 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]."

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[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.

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/.

Figure 4. 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.

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.

[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. Túñez-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.

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.

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[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.
[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.
[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

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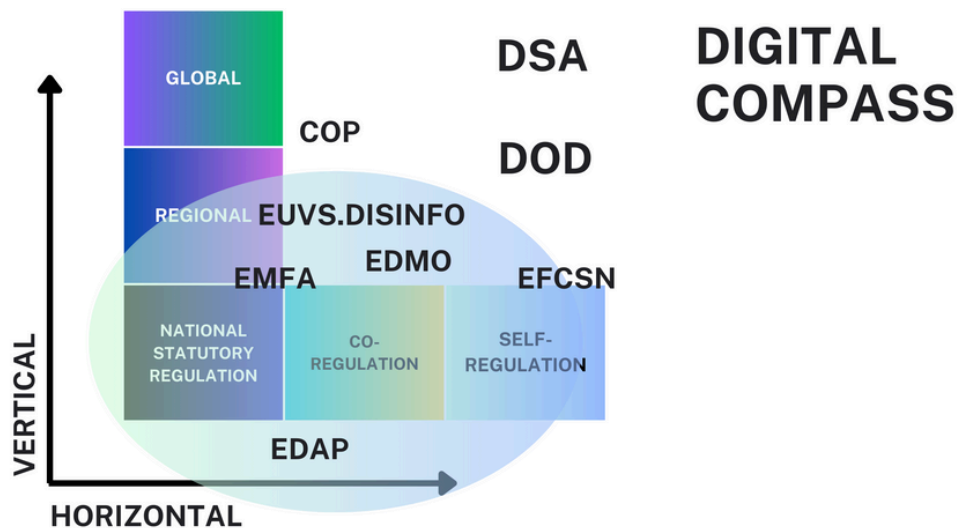
Key:
COP: The Code of Practice on Disinformation
Digital Compass: EU's digital targets for the digital decade
DOD: The Defense of Democracy Package
DSA: The Digital Services Act
EDAP: European Democracy Action Plan
EDMO: The European Digital Media Observatory
EFCSN: The European Fact-checking Standards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

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[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

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.

[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.
[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].

[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.
[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.

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.

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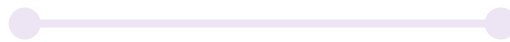
[122] DigComp 2.2: The Digital Competence Framework for Citizens - With new examples of knowledge, skills and attitudes. https://publications.jrc.ec.europa.eu/repository/handle/JRC128415.

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