ORIGINAL ARTICLE

DOI: 10.51480/1899-5101.18.1(39).671

A Values-based Union Worthy of the Name in the Digital Era? The Trajectory of EU Media Law and Policy

Evangelia Psychogiopoulou
ORCID: 0000-0002-5326-6772
University of the Peloponnese, Hellenic Foundation for European and Foreign Policy, Greece

Anna Kandyla
ORCID: 0009-0001-3327-4177
Ministry of National Economy and Finance, Hellenic Foundation for European and Foreign Policy, Greece

Abstract: Article 2 of the Treaty on European Union (TEU) lays down the values which form the foundations of the EU: respect for human dignity, freedom, democracy, equality and the rule of law, along with respect for human rights. Although the EU does not have a general competence to legislate in the field of fundamental rights, it has been active since the Treaty of Lisbon in developing initiatives which relate to freedom of expression, freedom of information and the role of the media regarding both. This article examines the gradual expansion of this activity and maps the relevant instruments and initiatives, focusing in particular on EU legislative acts and other policy measures that relate directly or indirectly to the media. This expansion, it argues, appears to owe much to the growing emphasis placed by the EU institutions on the Union values, along with digitalisation and processes of platformisation that have had a marked bearing on EU policy, hinting at a broader digital governance project.

Keywords: EU values; freedom of expression; media pluralism; Digital Services Act; European Media Freedom Act; European Democracy Action Plan; digitalisation.

INTRODUCTION

Pursuant to Article 2 of the Treaty on European Union (TEU), the European Union (hereafter the EU) is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are considered to be common to the Member States, in a society in which pluralism,

non-discrimination, tolerance and justice prevail. The Union value of respect for human rights is further articulated in the rights, freedoms and principles enshrined in the Charter of Fundamental Rights of the EU (the CFR), which enjoys the same legal value as the Treaties.[1] Specifically, Article 11(1) CFR enshrines freedom of expression, which also includes "the freedom to hold opinions and to receive and impart information and ideas", while Article 11(2) CFR affirms that the freedom and pluralism of the media shall be respected. Significantly, pursuant to Article 3(1) TEU, the EU's mission includes promoting its values, and thus promoting fundamental rights, including free speech and the freedom to receive and impart information, along with media freedom and pluralism. This is also an aim of the EU's institutional framework, as stated in Article 13(1) TEU.

Although the EU does not have a general competence to legislate in the field of its common values,[2] nor a specific rule-making competence in the field of the media, it has been active since the Treaty of Lisbon in developing initiatives which relate to freedom of expression, freedom of information, and the role of the media in regard to both, and media freedom and pluralism. This article studies the nature and evolution of the EU activity in question, exploring its characteristics and the ways it has developed. It examines the gradual expansion of EU action and maps relevant instruments and initiatives, focusing in particular on EU legislative acts and other policy measures that relate directly or indirectly to the media. This expansion, the article argues, appears to owe much to the growing importance of the EU's values within its legal order. The emphasis the EU institutions now place on the values laid down in Article 2 TEU appears to have markedly influenced the ways in which EU rule- and policy-making address the media. Moving beyond market-building measures like the Audiovisual Media Services Directive (AVMSD) and piecemeal initiatives that refer to the media in the framework of EU policies on, for instance, data protection or copyright, recent measures demonstrate the EU's willingness to tackle *core* challenges facing the media, specifically from media freedom and pluralism angles. Digitalisation and the challenges that processes of platformisation have posed for the functioning of the media also appear to have played a role, heightening focus on the values that must underpin the EU legal and policy framework vis-a-vis the media. From

1 See Art. 6(1) TEU.

2 The provisions of the Treaty on the Functioning of the European Union (TFEU) on competences do not mention the values of Art. 2 TEU. This entails that the EU can only act on them by exercising the competences it has been *expressly* assigned. Note that the TFEU provisions on competences do not mention fundamental rights either, and the CFR explains in Article 51(2) that it does not establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties. Note, however, that the TFEU provides specific legal bases for EU legislation on certain fundamental rights-related areas. See for instance Art. 16 TFEU on the right to the protection of personal data and Article 19 TFEU on non-discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

this perspective, digital technologies, platformisation and the EU endorsement of a values-oriented policy paradigm made EU policy for the media sector *grow*. The media were placed in a wider context – that of digital governance, while the values-based legal and policy debate that took place from the late 2010s diversified the themes and objectives which EU action for the media should be addressing.

This article is structured as follows. The analysis starts with a discussion of EU values and the place of fundamental rights therein, with due attention to the EU commitment, enshrined in the CFR, to safeguard freedom of expression and respect the freedom and pluralism of the media. Then, it examines the emergence and progressive expansion that followed the Treaty of Lisbon, of the EU media and media-related interventions, backed by explicit references to freedom of expression, media pluralism and the EU's values. The article continues with a discussion of new initiatives after 2019 that followed the publication of the European Democracy Action Plan (EDAP), the Media and Audiovisual Action Plan (MAAP) and the Union's digital transformation priorities and plans, culminating in the newly adopted European Media Freedom Act (EMFA). Some concluding remarks on the shape of the EU's media policy and its evolution towards a broader digital governance project sum up the article.

EU VALUES, FREEDOM OF EXPRESSION AND THE MEDIA

EU values were originally laid out in the TEU with the Treaty of Amsterdam and were subsequently set forth in what became Article 2 TEU with the Treaty of Lisbon. Article 2 TEU reflects the Member States' *agreement* on the values that guide their cooperation, meaning that whenever common rules are enacted at EU level, *all* Member States will respect them precisely because the foundations of the rules enacted are held in common (Dawson & de Witte, 2022: 177). From this perspective, Article 2 TEU is centrally concerned with the process of European integration and its *effectiveness*. While Article 2 TEU speaks of values, its elements – democracy, the rule of law and fundamental rights – can be construed as having the value of core legal principles of EU law (Kochenov 2017: 11).[3] Seen in this light, Article 2 TEU sends a powerful message to the EU institutions. Given that the EU is founded on the common values of Article 2 TEU, EU law (and policy) cannot act to the detriment of those values and secondly, it needs to positively promote them. Article 2 TEU also makes clear to Member States that to the extent that the EU is based on the common values of Article 2 TEU, it cannot leave violations of its common values at the Member State level unaddressed. This finds concrete expression in several tools established by the

[3] For analyses of Art. 2 TEU see indicatively Pech (2010), Piris (2010, 71–111) and Wouters (2020).

EU to defend its values, including the preventive and sanctioning mechanisms set out in Article 7 TEU (Kochenov, 2021; Pech, 2020). The infringement procedure that gives the European Commission the power to take legal action against a Member State that is failing to respect its obligations under EU law[4] can also be used to enforce EU values (Spieker, 2023; Scheppele, Kochenov & Grabowska-Moroz 2020). However, it has yet to be settled whether or not Article 2 TEU can be directly enforced (Bonelli & Claes, 2023).

The foundational character of EU values enshrined in Article 2 TEU emphasises the EU's commitment to the protection and promotion of fundamental rights, including freedom of expression, which Article 11 CFR specifically protects in asserting that everyone has the right to that freedom (Woods, 2022). This right includes the freedom to hold opinions and both "receive and impart information and ideas without interference by public authority and regardless of frontiers".[5] Further, Article 11(2) CFR stipulates that the freedom and pluralism of the media shall be respected. Article 11 CFR is closely related to Article 10 (freedom of expression) of the European Convention on Human Rights (ECHR), to which all EU Member States are signatories. Article 52(3) CFR provides that the EU shall ensure that the meaning and scope of those CFR rights, which correspond to the ECHR rights shall be the same as those guaranteed by the ECHR, though the EU may provide more extensive protection (Peers & Prechal 2021).[6]

As is typical with charters of rights and other similar documents, the CFR guarantees the protection of fundamental rights, including the protection of freedom of expression, by setting negative and positive obligations (de Schutter, 2016: 24). Negative obligations take the form of a duty of non-interference in the exercise of the rights concerned. For their part, positive duties require the adoption of measures to ensure effective exercise of the protected rights; they entail duties of action to contribute to the fulfilment of fundamental rights. Pursuant to Article 51(1) CFR, the EU institutions and the Member States when they act within the scope of EU law[7] shall respect the rights of the CFR, observe its principles and promote their application in accordance with their respective powers and respecting the limits of the EU's powers as these are conferred on it in the Treaties. As such, the CFR recognises a negative obligation incumbent

4 See Art. 258 TFEU.

5 See Art. 11(1) CFR.

6 Concerning Article 52(3) CFR, see also Psychogiopoulou (2022). Note that Article 6(2) TEU further proclaims the accession of the EU to the ECHR (Lock, 2012), though this has not yet come to pass.

7 Article 51(1) CFR mentions that the CFRprovisions are addressed to "the Member States only when they are implementing Union law". Åkerberg Fransson (Case C-617/10, EU:C:2013:105) and other rulings of the CJEU have interpreted the notion of 'implementing' EU law as 'acting within the scope' of EU law (Ward, 2021).

on the EU institutions and the Member States when they act within the scope of EU law to respect the CFR rights and to observe the CFR principles, plus a positive duty to promote the application of the CFR rights and principles in accordance with the principle of conferral.[8] In fact, to the extent that the CFR requires the EU institutions – and the Member States when they act within the scope of EU law – to also promote the application of the rights and principles thereof "in accordance with their respective powers", Article 51(1) CFR creates a horizontal duty to mainstream fundamental rights and principles in the exercise of the EU's competences (de Witte, 2014). In consequence, the realisation of fundamental rights in the legal order of the EU translates into a commitment to take action to promote freedom of expression across the many areas of the EU's activity (including areas such as the internal market) on condition that this promotion takes place within the boundaries imposed by the powers attributed to the EU in the policy field concerned. The CFR similarly empowers the EU institutions to promote respect for the freedom and pluralism of the media under the same conditions.

EU INSTRUMENTS AND THE MEDIA: SETTING THE SCENE

The lack of a specific rule-making competence in the field of the media has not prevented the EU from adopting media-related legislation. Already in the pre-Maastricht era, the EU based its intervention in the media sector with the Television Without Frontiers Directive (TWFD) (Council of the European Communities, 1989) on the objective of establishing the (then) common market in broadcasting media. Crucially, considerations related to freedom of expression and the media's role in promoting it were also present in the TWFD. Gradually, these considerations started to occupy more space and be linked to the EU common values, enshrined in Article 2 TEU by the Treaty of Lisbon. This section traces this development not only in the revised AVMSD (European Parliament and Council, 2018), but also in EU rules which address issues relevant to the operation of the media, especially in light of technological developments and a rapidly transforming and converging media landscape, such as data protection and copyright. Further, it showcases how the EU attention to these issues has materialised in other EU instruments which are not concerned with the regulation of the media at EU level in the strict sense, such as those concerned with funding and with the monitoring of the rule of law in the Member States.

[8] See Art. 5(1)-(2) TEU.

LEGAL INSTRUMENTS ADDRESSING THE MEDIA

EU legislation directly addressing the media dates to the adoption of the TWFD in 1989. The TWFD laid down the minimum rules needed to guarantee freedom of transmission in broadcasting for the creation of a "common programme production and distribution market and to establish conditions of fair competition without prejudice to the public interest role to be discharged by the television broadcasting services".[9] At the same time, the TWFD put forward free speech considerations enabled by the approximation of Member States' laws and regulations for the establishment and functioning of the common market. More specifically, the TWFD recognised that the free provision of services in the field of broadcasting and the distribution of television services is "a specific manifestation […] of a more general principle, namely the freedom of expression".[10] Moreover, the TWFD set forth the seminal 'country of origin' principle, which sought to facilitate the free provision of broadcasting services by ensuring that only the Member State of establishment has jurisdiction over any broadcasting operator. In this context, the TWFD dealt specifically with the issue of hate speech as a form of expression that could not benefit from protection.[11] In particular, the TWFD sought to curb hate speech in broadcasting by requiring Member States to ensure that broadcasts made by operators under their jurisdiction "do not contain any incitement to hatred on grounds of race, sex, religion or nationality".[12] The rule was retained in amendments to the Directive made in response to technological developments and media convergence, all the way through to the AVMSD of 2010, when it was rendered applicable to all audiovisual media services including both traditional broadcasting and non-linear services (European Parliament & Council, 2010).[13] The AVMSD also allowed Member States to derogate from the freedom of reception of retransmissions in their territory of audiovisual media services from other Member States in order to fight incitement to hatred.[14]

The revised AVMSD (European Parliament & Council, 2018) aligned its hate speech prohibition provision with the grounds used to define the offence of racist and xenophobic hate speech, as these were laid down in Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law (Council of the European Union, 2008).[15]

---

9 See recital 3 of the TWFD.

10 See recital 8 of the TWFD.

11 On the relation, and the balance to be struck, between free speech and hate speech, see indicatively Howard (2019) and Inglezakis (2017).

12 See Art. 22 of the TWFD.

13 See Art. 6 of the 2010 AVMSD.

14 See Art. 3(2) and (4) of the 2010 AVMSD.

15 See Art. 1(1)(a) of Council Framework Decision 2008/913/JHA, which requires Member States to criminalize public incitement to violence or hatred directed against a group of persons

The revised AVMSD also extended the list of grounds (Psychogiopoulou, 2024). Thus, Article 6(1)(a) AVMSD now mandates Member States to ensure 'by appropriate means' that audiovisual media services provided under their jurisdiction do not contain "any incitement to violence or hatred against a group of persons or a member of a group" based on any of the grounds referred to in Article 21 CFR. These grounds are: sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. Article 6(2) AVMSD specifies that the measures must be necessary, proportionate and respect freedom of speech and other rights enshrined in the CFR. The revised AVMSD also creates requirements with regard to curbing hate speech online for video-sharing platforms (VSPs).[16] Pursuant to Article 28(b)(1), Member States shall ensure that VSPs under their jurisdiction take appropriate measures to protect the public from all kinds of content containing incitement to violence or hatred. Article 28(b)(3) provides an indicative list of measures that Member States may adopt, which includes the establishment of conditions, mechanisms and systems aimed at both ensuring that users do not share illegal content and encouraging users to flag or control their own exposure to such content. The AVMSD also encourages VSPs to self-regulate, stipulating that they "take stricter measures on a voluntary basis in accordance with Union law, respecting the freedom of expression and information and media pluralism".[17] This echoes earlier efforts to strengthen operators' fight against hate speech online, which resulted in the 2016 Code of conduct on countering illegal hate speech online (European Commission, 2016a). The Code, which the Commission agreed with major digital intermediaries, affirmed the need to defend the right to freedom of expression, and encouraged action to ensure that online hate speech is dealt with expeditiously upon receipt of a valid notification.[18]

---

or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin.

16 A VSP is defined as a commercial service addressed at the public: of which a principal purpose, dissociable section or essential functionality is devoted to the provision of programmes and/or user-generated videos for which the VSP provider has no editorial responsibility towards the general public, and which are intended to inform, entertain or educate; which is made available by electronic communication networks; and whose organization is determined by the VSP provider, including by automatic means or algorithms, in particular by displaying, tagging and sequencing. See Art. 1(a)(aa) of the revised AVMSD.

17 Recital 49 of the revised AVMSD.

18 Parties to the Code committed in particular to reviewing the majority of flagged content in less than 24 hours and to removing or disabling access to it, if required. Compliance should be regularly reviewed through a structured process of periodic monitoring involving a host of civil society organizations across the Union and through self-reporting by signatories to the Commission. For a discussion, see Quintel and Ullrich (2020).

The right to freedom of expression is also directly addressed in the provisions of the revised AVMSD pertaining to audiovisual media ownership transparency. Indeed, recital 15 of the revised AVMSD asserts the direct connection between ownership transparency and freedom of expression – as "a cornerstone of democratic systems",[19] and recital 16 adds that users have "a legitimate interest" in knowing who is responsible for the content of audiovisual media services, especially because of "the impact of those services on the way people form opinions".[20] Affirming that Member States should ensure that users have easy and direct access to information about media service providers "in order to strengthen freedom of expression, and, by extension to promote media pluralism",[21] the revised AVMSD stipulates in Article 5(2) that Member States may adopt legislation requiring media service providers under their jurisdiction to make "accessible information concerning their ownership structure, including the beneficial owners".[22] This provision cannot create a harmonised legal framework across the EU, because not only it is optional but also it does not specify the kinds of legal rules that Member States may adopt (Cole & Etteldorf, 2021: 18). Nonetheless, the freedom of expression and media pluralism reasoning employed to introduce these requirements enhances the visibility of the fundamental rights and common values dimension of EU audiovisual media regulation. Furthermore, the revised AVMSD incorporates independence requirements for national media regulators, noting the key role they have to play in ensuring respect for media pluralism.[23] In particular, it calls on Member States to ensure that their media regulatory bodies "are legally distinct from the government and functionally independent of their respective governments and of any other public or private body" and that they "exercise their powers impartially and transparently".[24] Member States are also required to define in law the competences and powers of the national regulatory authorities.[25] They are also mandated to establish transparent, non-discriminatory and independent procedures for the appointment and dismissal of the heads of national regulatory authorities (or the members of the collegiate body that fulfils the media regulatory function).[26]

[19] Recital 15 of the revised AVMSD.
[20] Recital 16 of the revised AVMSD.
[21] Recital 16 of the revised AVMSD.
[22] Art. 5(2) of the revised AVMSD.
[23] Recital 53 and Art. 30(2) of the revised AVMSD.
[24] Art. 30(1) and (2) of the revised AVMSD.
[25] Art. 30(3) of the revised AVMSD.
[26] Art. 30(5) of the revised AVMSD.

LEGAL INSTRUMENTS OF RELEVANCE TO THE MEDIA

Whereas EU regulation of the media has been limited to audiovisual media services with the AVMSD at its heart, references to EU values and fundamental rights, and in particular to freedom of expression and pluralism of the media, are also to be found in other pieces of EU internal market law. One area of the EU's internal market legislation where free speech standards have been fleshed out is EU law on copyright and related rights. Copyright enjoys protection under Article 17(2) CFR. Yet, copyright and related rights establish exclusive rights for right-holders over the use of their protected works or other subject matter (such as sound recordings, audiovisual works, broadcasts, etc.) which may interfere with the exercise of fundamental rights, and in particular freedom of expression (Izyumenko, 2016; Mylly, 2015). Thus, the protection afforded to copyright in the EU is not absolute and must be weighed against other fundamental rights and interests, including freedom of expression.[27]

Directive 2001/29 EC – the Copyright Directive – has harmonised a set of exclusive rights for authors, performers, producers and broadcasters, but it has also introduced exceptions and limitations to these rights with the express purpose of safeguarding "a fair balance of rights and interests" (European Parliament & Council, 2001). The system of exceptions established with regard to the right of reproduction[28] and the rights of communication and making available to the public[29] covers exceptions that have been specifically devised to facilitate freedom of both expression and of the press (Cabrera Blázquez et al., 2017).[30] However, being optional, they leave Member States a great degree of discretion, as to whether or not to introduce them into their national legal orders (Guibault, 2010). In more detail, Article 5(3)(c) of the Copyright Directive allows Member States to introduce exceptions and limitations for the "use of works or other subject matter in connection with the reporting of current events". Usage is justified by the informatory purpose and subject to conditions. The Directive also allows the "reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject matter of the same character, in cases where such use is not expressly reserved", provided that the source, including the author's name, is indicated.[31]

Other exceptions or limitations that accommodate free speech considerations and can be relevant for the media include those relating to "quotations

[27] On this, see CJEU, Case C-469/17 Funke Medien NRW, ECLI:EU:C:2019:623; and Case C-516/17 Spiegel Online, ECLI:EU:C:2019:625.
[28] Art. 2 of the Copyright Directive.
[29] Art. 3 of the Copyright Directive.
[30] Art. 5(1) of the Copyright Directive.
[31] Art. 5(3)(c) of the Copyright Directive.

for purposes such as criticism or review",[32] "caricature, parody or pastiche"[33], and "the use of political speeches".[34] Significantly, Directive 2019/790 on copyright and related rights in the digital single market (the DSM Directive) seeks to modernise copyright law due to technological developments and digitalisation.[35] The DSM Directive renders mandatory the optional exceptions for "quotation, criticism, review" and "caricature, parody or pastiche" in favour of users who upload and make available user-generated content on online content-sharing services (European Parliament & Council, 2019a).

Another area of EU internal market law that features considerations related to freedom of expression, particularly through the media, is EU legislation setting forth harmonised measures for the protection of people who disclose breaches of EU rules, i.e. the EU Whistleblower Directive (European Parliament & Council, 2019b).[36] The Directive asserts that persons who report information about such breaches obtained during their work-related activities are making use of their right to freedom of expression and refers directly to relevant case law of the ECtHR and the Recommendation of the Council of Europe on the Protection of Whistleblowers (Council of Europe, 2014).[37] In line with the Recommendation's principles,[38] the Directive then follows the typical three-tiered approach for reporting wrongdoing, which protects those who disclose, as a last resort, directly to the public, via the media (Vandekerckhove, 2022: 7). Thus, public disclosures are protected, provided that the whistleblower first reported through internal channels within an organisation, and then externally to an outside authority, or directly through external channels but with no appropriate action taken in response within a specified timeframe[39]. Otherwise, direct public disclosures may still be protected in case of an imminent or manifest danger to the public interest, when there is a risk of retaliation or the prospect of the breach being effectively addressed is low due to the particularities of the case.[40]

---

32 Art. 5(3)(d) of the Copyright Directive.

33 Art. 5(3)(k) of the Copyright Directive.

34 Art. 5(3)(f) of the Copyright Directive.

35 See recital 2 of the DSM Directive.

36 Besides Article 114 (approximation of laws for the establishment and functioning of the internal market), the legal bases of the Whistleblower Directive include: Article 16 (protection of personal data), Article 43(2) (common agricultural policy/common fisheries policy), Article 50 and Article 53(1) (freedom of establishment), Articles 91 and 100 (transport), Article 168(4) (public health), Article 169 (consumer protection), Article 192(1) (environment) and Article 325(4) (combatting fraud) TFEU, as well as Article 31 of the Treaty establishing the European Atomic Energy Community (health protection).

37 Recital 31 of the Whistleblower Directive.

38 Recital 31 of the Whistleblower Directive.

39 Art. 15(1) of the Whistleblower Directive.

40 Art. 15(1) of the Whistleblower Directive.

Freedom of expression considerations in connection with the operation of the media can also be found in EU personal data regulation. Article 16 TFEU is the legal basis that specifically allows for the introduction of rules on the protection of personal data and their free movement and forms the basis of the General Data Protection Regulation (GDPR) (European Parliament & Council, 2016). The GDPR regulates potential conflicts between, on the one hand, the right to privacy and personal data protection, both of which are enshrined in the CFR (Article 7 and 8 respectively), and, on the other, freedom of expression and information. The broad definition of personal data used accounts for such potential conflicts: according to Article 4(1) of the GDPR, personal data means "any information relating to an identified or identifiable natural person". In consequence, the processing of personal information for a news report focusing on one or more individuals comes within the scope of application of the EU data protection rules. One of the GDPR provisions which is directly related to the exercise of the right to freedom of expression and the role of the media in democratic societies is Article 85, which is often referred to as the 'journalistic exemption' (Erdos, 2021). Article 85(1) provides that "Member States shall by law reconcile the right to the protection of personal data […] with the right to freedom of expression and information, including processing for journalistic purposes […]". Article 85(2) states that the processing of personal data for journalistic purposes shall be subject to exemptions or derogations, that Member States provide, from certain provisions of the GDPR,[41] if this is necessary to reconcile the right to protection of personal data with freedom of expression and information. Significantly, recital 153 of the GDPR stipulates that exemptions or derogations "should apply in particular to the processing of personal data in the audiovisual field and in news archives and press libraries". It adds that "in order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly". Thus, although the GDPR refrains from defining journalistic activity, it calls for a wide interpretation of the notion of journalism.[42]

A second GDPR provision that directly relates to freedom of expression, particularly in the context of digitalisation, is the one regulating the 'right to be forgotten' as an instance of the right to the protection of personal data. The right to be forgotten, which finds protection under Article 17 of the GDPR,

[41] Article 85(2) of the GDPR refers to the following chapters of the GDPR: Chapter II (principles), Chapter III (rights of the data subject), Chapter IV (controller and processor), Chapter V (transfer of personal data to third countries or international organisations), Chapter VI (independent supervisory authorities), Chapter VII (cooperation and consistency) and Chapter IX (specific data processing situations).

[42] Article 85(3) of the GDPR requires Member States to notify the Commission without delay of any exemptions or derogations adopted pursuant to Article 85.

entitles individuals to obtain the erasure of personal data when they are no longer required in relation to the purposes for which they were collected or otherwise processed. At the same time, the GDPR addresses potential conflicts between the right to be forgotten and journalistic free speech, which may stem from the availability of personal information in online news archives (Ausloos, 2020).[43] It includes a provision which provides a specific exemption to the right to be forgotten to the benefit of free speech, stipulating that it shall not apply to the extent that the processing of personal data is necessary for freedom of expression to be exercised or for archiving purposes in the public interest.[44]

OTHER POLICY INITIATIVES ADDRESSING THE MEDIA

EU instruments that relate to freedom of expression, media pluralism and the common values on which the EU is founded are not limited to EU law. First, there is EU funding. For example, the EU has a long record of supporting the audiovisual media sector through financial support measures. From the MEDIA programme in 1990 (Council of the European Communities, 1990) up to the Creative Europe programme, which was established in 2014, encompassing one cultural, one media and one cross-sectoral sub-programme (European Parliament and Council, 2014), the EU channelled substantive funds to support audiovisual works and the career development and training of audiovisual media professionals. But whereas the objectives of earlier support programmes were mainly industrial and concerned with boosting the competitiveness of the sector, a wider set of objectives, also related to the promotion of EU values, have gradually gained traction (Psychogiopoulou et al., 2024: 83–110). It is indicative that the 2014 Creative Europe programme expressly acknowledged the role of the cultural and creative sectors, including the media, as "an important platform for freedom of expression".[45] Moreover, since the entry into force of the Treaty of Lisbon, the EU has developed several funding instruments that directly address free speech and media pluralism. For instance, the EU programme for research has begun funding collaborative research projects on such issues.[46] Also, the EU started (co-)financing research and advocacy institutions such as the Centre for Media Pluralism and Media Freedom (CMPF) at the European University Institute[47] and the European Centre for Press and Media Freedom (ECPMF).[48]

---

43 See recital 65 of the GDPR.

44 See Art. 17(3)(a) and (d) of the GDPR.

45 See recital 4 of the 2014 Creative Europe programme.

46 See, for instance, the MEDIADEM and MediaACT projects at https://cordis.europa.eu/project/id/244365 and https://cordis.europa.eu/project/id/244147 respectively.

47 See https://cmpf.eui.eu/.

48 See https://www.ecpmf.eu/.

The CMPF was established in 2011 and engages in comparative monitoring of Member States and other European countries through the Media Pluralism Monitor (MPM), a tool designed to assess features in national legal and media systems that may hinder media freedom and media pluralism.[49] The ECPMF was founded in 2015 and monitors press and media freedom violations. It also provides advocacy for journalists.

The second recent area of EU action that taps directly into issues relating to EU values, freedom of expression and media pluralism is the rule of law framework established by the Commission in 2014 (European Commission, 2014). The framework seeks to ensure that the EU values enshrined in Article 2 TEU are observed by resolving threats, particularly as regards the rule of law in Member States, before the conditions that could trigger the application of Article 7 TEU are met. Where there are clear indications of a systemic threat to the rule of law in a Member State, the rule of law framework sets in motion a structured dialogue procedure between the Commission and the Member State concerned with finding a solution to the problems identified. Within this framework, the Commission initiated an assessment of the rule of law in Poland following reforms implemented by the Polish government concerning the independence of public service media (PSM). The assessment culminated in a Commission Opinion on the rule of law in Poland in June 2016 (European Commission, 2016b). The dialogue that followed did not prove effective, however, and the Commission continued to issue Recommendations for the Member State to remedy the situation (2016c; 2017; 2018a). Later on, to avoid such pitfalls and prevent rule of law deficiencies in Member States, the Commission decided to systematise the evaluation of the state of the rule of law in the Member States through the Rule of Law Mechanism (RoLM) (Holtz-Bacha, 2023). The RoLM establishes an annual structured dialogue process between the EU institutions and the Member States which feeds into and continues after the Rule of Law Report (RLR), which is published by the Commission and maps important developments in four core areas in the Member States, including media pluralism (European Commission, 2019).

FREE SPEECH, MEDIA FREEDOM AND PLURALISM: A FRESH IMPETUS

Ursula von de Leyen's (2019) political guidelines for the European Commission 2019–2024, 'A Union that strives for more', were firmly rooted in EU values. The Commission President proclaimed the intention of proposing a European Democracy Action Plan (EDAP) for "a new push for European democracy" (von

[49] See https://cmpf.eui.eu/media-pluralism-monitor/.

der Leyen, 2019: 20). Published in December 2020, the EDAP set an ambitious tone from a media perspective (European Commission, 2020a). Strengthening the EU's democratic resilience was intrinsically linked to supporting media freedom and pluralism and countering disinformation. Among other measures, the Commission announced the future adoption of a Recommendation on the safety of journalists which takes into account the challenges of the online environment; action to fight strategic lawsuits against public participation (SLAPPs) aimed at intimidating and silencing public watchdogs, including journalists; and a multi-faceted agenda designed to address disinformation, covering a strengthened EU toolbox encompassing *inter alia* tools against foreign information manipulation and interference (FIMI), support for the promotion of professional ethics and standards in journalism, and media literacy. Other measures were about support for media pluralism through measures for the transparent and fair allocation of state advertising and establishing a Media Ownership Monitor. The gradual delivery of the set of measures proposed should "ensure that Europe has a stronger democratic underpinning", in full respect for EU values (European Commission, 2020a: 26).

Adopted in December 2020, the Media and Audiovisual Action Plan (MAAP) (European Commission, 2020b) also endorsed an EU values discourse. Focused on the economic recovery and competitiveness of the media sector, the Commission portrayed the MAAP as a strategy, which complemented the EDAP primarily in order to support sector resilience and accelerate its transformation with regard to the twin transitions of climate change and digitalisation. The importance of the latter was underlined in particular from the perspective of fostering EU values and helping the sector meet societal needs. The values dimension was further embedded in EU action for "a Europe fit for the digital age". The Commission 2020 Communication 'Shaping Europe Digital Future' promised "a European way to digital transformation", emphasising respect for and enhancement of the Union values (European Commission, 2020c). In this context, adopting new rules and modernising the legal framework to deepen the digital single market and define the responsibilities and obligations of providers of digital services, including online platforms, came under the rubric of initiatives for "an open, democratic and sustainable society", along with the EDAP and the MAAP (European Commission, 2020c: 12).

In the wake of the EDAP, the MAAP and the Commission plans setting out the EU's digital transformation strategy, efforts at the EU level to bolster freedom of expression, media freedom and media pluralism intensified. For starters, funding for the media acquired a clear EU-values-oriented dimension. The Creative Europe programme (2021–2027) (European Parliament and Council,

2021) now expressly refers to EU values,[50] and provides funding to projects defending media freedom and pluralism[51] in recognition that news media should be supported with a view to achieving "a free, diverse and pluralistic media environment".[52] The EU research and innovation programmes now also regularly support projects focused on wide-ranging media-related and free speech topics,[53] along with pilot projects,[54] whereas a broad range of EU programmes have been mobilised to offer dedicated funding: the Citizens, Equality, Rights and Values programme, the Erasmus+ programme and Digital Europe, to name a few.[55] At the same time, an EU values discourse has accompanied and permeated legislative and policy measures, which have brought core issues regarding free speech, media freedom and media pluralism in the digital age centre stage. Measures devised to offer protection to journalists, combat hate speech and disinformation, and protect media freedom and media pluralism, with due account taken of the digital transformation of the media space, are illustrative and discussed in more detail below.

PROTECTING JOURNALISTS

In 2021, the Commission presented its first-ever Recommendation on strengthening the safety of journalists and other media professionals (European Commission, 2021) on the basis of Article 292 TFEU, which enables the adoption of recommendations at EU level. The Recommendation refers to the obligation of the EU and its Member States to respect media freedom and pluralism and invites the Member States to adopt measures aimed at empowering, and ensuring the protection and safety of, journalists. These range from effectively prosecuting criminal acts and preventing threats and attacks against journalists to specific measures aimed at digital empowerment and ensuring journalists' online safety.

In 2022, the Commission published its proposal for a Directive protecting journalists and human rights defenders from SLAPPs (European Commission, 2022a; Milewska, 2023). This led to Directive 2024/1069 on protecting persons

[50] See recital 2 of the Creative Europe programme (2021–2027).

[51] See the Creative Europe 2022 call, Defending media freedom and pluralism (https://digital-strategy.ec.europa.eu/en/news/commission-launches-eu41-million-call-monitor-and-defend-media-freedom-and-pluralism).

[52] See recital 22 of the Creative Europe programme (2021–2027). See also Annex 1, Section III on cross-cutting actions supporting the news media sector.

[53] See https://digital-strategy.ec.europa.eu/en/library/horizon-2020-projects-media-and-social-media-related-topics. See also the MEDIADELCOM project, https://www.mediadelcom.eu/

[54] See for instance the Euromedia Ownership Monitor (https://media-ownership.eu/), the Local Media for Democracy project (https://digital-strategy.ec.europa.eu/en/news/local-media-democracy-project-will-support-local-media-eu-news-deserts), and the European Festival of Journalism and Media Information Literacy (https://www.eui.eu/news-hub?id=european-festival-of-journalism-and-media-literacy-organised-by-seven-partners).

[55] For more information see European Commission (2023: 25, Annex).

who engage in public participation from manifestly unfounded claims and abusive court proceedings (European Parliament and Council, 2024a; Maoli, 2024), which are defined as "proceedings which are not brought to genuinely assert or exercise a right, but have as their main purpose the prevention, restriction or penalisation of public participation, frequently exploiting an imbalance of power between the parties, and which pursue unfounded claims".[56] The Directive, which is based on Article 81(2)(f) TFEU (judicial cooperation in civil matters), makes express mention of EU values,[57] freedom of expression and information,[58] and media freedom and pluralism.[59] The Directive covers SLAPPs employed in civil matters with cross-border implications targeting natural or legal persons (i.e. journalists and media organisations) because of their engagement in public life, which is understood as "the making of any statement or the carrying out of any activity […] in the exercise of the right to freedom of expression and information", and any preparatory, supporting or assisting action, on matters of public interest.[60] The Directive enables judges to make several important actions. They can swiftly dismiss manifestly unfounded lawsuits;[61] and require the claimant to provide financial security for the estimated costs of the proceedings as a precautionary measure to ensure the effects of a final decision finding abuse of procedure.[62] They can order the claimant to bear the costs of abusive proceedings, including the costs of the defendant's legal representation;[63] and impose penalties to dissuade abusive proceedings.[64] The Member States shall also ensure that national legislation allows domestic courts and tribunals to accept that associations, organisations, trade unions and other entities may support the defendant or provide information in the proceedings.[65] They shall further take steps to offer protection against manifestly unfounded or abusive third-country judgments[66] and remain free to introduce or maintain more protective provisions, including more effective procedural safeguards relating to freedom of expression and information.[67] The Directive highlights the need for "a robust system of safeguards and protection to enable investigative journalists to fulfil their crucial role as watchdogs on matters of public interest, without

56 Art. 4(3) of Directive 2024/1069.
57 Recital 2 of Directive 2024/1069.
58 Recitals 3, 4 and 7 of Directive 2024/1069.
59 Recitals 5 and 8 of Directive 2024/1069.
60 Art. 4(1) of Directive 2024/1069.
61 Art. 11 of Directive 2024/1069.
62 Recital 36 and Art. 10 of Directive 2024/1069.
63 Art. 14 of Directive 2024/1069.
64 Art. 15 of Directive 2024/1069.
65 Art. 9 of Directive 2024/1069.
66 Arts 16–17 of Directive 2024/1069.
67 Art. 3(1) of Directive 2024/1069.

fear of punishment for searching for the truth and informing the public".[68] It is supplemented by a Commission Recommendation encouraging Member States to adopt similar rules regarding domestic SLAPPs in all proceedings, not only civil matters (European Commission, 2022b). The Recommendation also calls on Member States to take additional measures to fight SLAPPs, including training and awareness-raising.

HATE SPEECH, DISINFORMATION AND THE DIGITAL SERVICES ACT

The Digital Services Act (DSA), the cornerstone of the EU's digital strategy, seeks to create a safer, more accountable and trustworthy online environment (Heldt, 2022; Husovec, 2024; Turillazzi et al., 2023). The DSA, grounded on the internal market legal basis of Article 114 TFEU (measures for the approximation of Member States' laws which have as their object the establishment and functioning of the internal market) was adopted in 2022 (European Parliament and Council, 2022). The DSA lays down harmonised rules on the provision of digital intermediary services, acknowledging that the "[r]esponsible and diligent behaviour by providers of intermediary services is essential for […] allowing Union citizens and other persons to exercise […] the freedom of expression and information".[69] The DSA casts a wide regulatory net: it applies to providers who offer intermediary services in the EU,[70] irrespective of their place of establishment,[71] encompassing providers of hosting services[72] and in particular online platforms,[73] very large online platforms (VLOPs) and very large online search engines (VLOSEs).[74]

A fundamental component of the EU's approach to digital governance, the DSA goes to great lengths to tackle illegal content online, including hate speech,[75]

---

68 Recital 10 of Directive 2024/1069.

69 See recital 3 of the DSA.

70 Defined as all providers offering mere conduit, caching and hosting services (Art. 3(g) of the DSA).

71 Art. 2(1) DSA.

72 Defined as the providers of a service that consists of the storage of information provided by, and at the request of, a recipient of the service (see Art. 3 (g)(iii) of the DSA).

73 Defined as the providers of a hosting service which, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service which, for objective and technical reasons, cannot be used without that other service, where the integration of the feature or functionality into the other service is not a means to circumvent the applicability of the DSA (see Art. 3(i) of the DSA).

74 Defined as online platforms and online search engines with at least 45 million monthly active users within the Union, or designated as VLOPs or VLOSEs by the Commission. See Art. 33(3) of the DSA.

75 Recital 12 of the DSA.

and makes provision for the imposition on operators of various transparency, reporting and due diligence obligations following a graduated approach.[76] Providers of hosting services also need to put in place easy to access and user-friendly notice-and-action mechanisms regarding plausible illegal content on their service,[77] and issue clear and specific statements to affected users explaining the reasons for any measures taken on grounds of illegality or incompatibility with their terms and conditions.[78] Online platforms are additionally required to take technical and organisational measures to ensure that notices submitted by trusted flaggers, namely entities with particular expertise in tackling illegal content in a diligent, accurate and objective manner,[79] are given priority and are processed and decided upon without delay.[80] Other arrangements that online platforms must make pertain to internal systems for handling complaints against decisions taken on grounds of illegality or incompatibility with own terms and conditions,[81] as well as to certified out-of-court dispute procedures.[82]

The DSA also requires VLOPs and VLOSEs to identify, analyse and assess any 'systemic risks' stemming from the design or functioning of their service, or from the use made of their services, at least once a year.[83] Systemic risks may involve the dissemination of illegal content,[84] and thus cover hate speech. They may also relate to the negative effects – actual or foreseeable – of the service on the exercise of fundamental rights, including freedom of expression and information, media freedom and pluralism,[85] and civic discourse.[86] Such risks may arise from the design of the recommender and other algorithmic systems used by VLOPs and VLOSEs, the applicable terms and conditions and their enforcement, operators' content moderation schemes, the misuse of their service through the submission of abusive notices or other methods for silencing speech, etc.[87] When assessing systemic risks, operators should consider how their services are used to disseminate or amplify misleading or deceptive content, including disinformation,[88] and the identification of systemic risks should entail the adoption of proportionate

[76] Arts 14, 15, 24 and 42 of the DSA.
[77] Art. 16 of the DSA.
[78] Art. 17 of the DSA.
[79] Art. 22 of the DSA.
[80] Art. 22 of the DSA.
[81] Art. 20 of the DSA.
[82] Art. 21 of the DSA.
[83] Art. 34(1) of the DSA.
[84] Art. 34(1)(a) of the DSA.
[85] Art. 34(1)(b) of the DSA.
[86] Art. 43(1)(c) of the DSA.
[87] Recital 81 and Art. 34(2) of the DSA.
[88] Recital 84 of the DSA.

and effective mitigation measures, with particular consideration paid to their impact on fundamental rights.[89]

The DSA confirms and, importantly, expands the regulatory approach followed by the revised AVMSD. When the latter brought VSPs within its scope, ending a long debate on whether or not VSPs should be treated as media, it made them accountable for the measures they take to protect the public from hate speech and other illegal content on their services rather than holding them directly responsible for it in the way that providers of audiovisual media services are (Broughton Micova and Kukliš, 2023). This procedural accountability regulatory model employed by the revised AVMSD, coupled with the emphasis it places on the active user (Kukliš, 2021) – who needs to flag and report illegal content but also, as a creator of online content, enjoys protection and bears responsibility for it – laid the groundwork for the forthcoming platform regulation. Indeed, the DSA embraces and elaborates on procedural accountability as the regulatory method for defining the responsibilities of digital intermediaries, and also places a significant regulatory onus on the users of digital intermediaries' services.

At the same time, the DSA seeks to be at the forefront of the fight against both hate speech and disinformation (Pentney and McGonagle, 2021). Whereas the revised AVMSD addressed harmful content with reference primarily to protecting minors,[90] the DSA understands online harms as comprising disinformation and the societal risks it brings and regulates online platforms, in particular VLOPs and VLOSEs, on this front. Moreover, in those Member States whose national legislation considers disinformation as illegal, the DSA opens the way for all digital intermediaries to combat it, since it defines illegal content as any information that "is not in compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law".[91]

In recent years, disinformation has moved centre stage in regulatory debates concerning free speech, democratic debate and the open confrontation of ideas in society (High-Level Group on Fake News and Online Disinformation, 2018; Pollicino, 2023; Terzis et al., 2021; Wardle and Derakhshan, 2017), with the EU enriching the debate with a FIMI angle, too (European Commission, 2023: Annex). The DSA does not define disinformation, but according to the EDAP, disinformation amounts to "false or misleading content that is spread with an intention to deceive or secure economic or political gain and which may cause public harm" (European Commission, 2020a: 18). Disinformation is considered to "[hamper] the ability of citizens to take informed decisions" and to "impair

[89] Art. 35 of the DSA.
[90] See Art. 6a(1) and (3) and Art. 28b(3) of the revised AVMSD.
[91] See Art. 1 point (h) of the DSA.

freedom of expression" (European Commission, 2018b). It interferes with the right to receive and impart (accurate) information but disinformation laws which are overly broad also raise questions with regard especially to the degree of limits on free speech that are constitutionally acceptable. In 2018, representatives of major online platforms, tech companies and the advertising industry signed the Code of practice on disinformation, with the support of the Commission, and committed thereby to take specific action to limit the spread of disinformation (Chase, 2019; Monti, 2020). As announced in the EDAP, the Code was strengthened in 2022 by the inclusion of a broader set of commitments and measures to counter the dissemination of advertising which contains disinformation, to increase the transparency of political advertising, to ensure the integrity of services by dealing with issues such as fake accounts, online bots, 'deep fakes', etc., to help users detect disinformation, and to support research into disinformation. Underscoring the delicate balance that must be struck between action against disinformation and the protection of free speech (European Commission, 2022c: Preamble, para. c), the Code now brings together major and emerging and specialised online platforms, the advertising industry, tech companies, fact checkers, research bodies and civil society organisations with expertise in disinformation. Together with the Code of conduct on countering illegal hate speech online, which has also been revised in 2024, it can play an important role in operationalising the provisions of the DSA. This is because the DSA encourages the drawing up of voluntary codes of conduct at the EU level as a means to support its implementation,[92] and identifies risk mitigation measures against both illegal content and threats to society and democracy, including disinformation, as areas that warrant consideration through self- and co-regulatory instruments.[93] In fact, the DSA refers expressly to both the Code of conduct on countering illegal hate speech online and the Code of practice on disinformation.[94]

THE EUROPEAN MEDIA FREEDOM ACT

Though not expressly referred to in the EDAP, Regulation 2024/1083 establishing a common framework for media services in the internal market, the European Media Freedom Act (EMFA), also forms part of the EU's efforts to bolster its values and support media freedom and media pluralism in the digital era (European Parliament and Council, 2024b). Heralded as a response to Europe's need for a law safeguarding media independence (von der Leyen, 2021), the Commission's EMFA proposal, which was presented in September

[92] Art. 45 of the DSA.
[93] Recital 104 and Art. 35(1)(h), in conjunction with Art. 45 of the DSA.
[94] Recitals 87 and 106 of the DSA.

2022 (Brogi et al., 2023; Cole & Etteldorf, 2023; European Commission, 2022d), adopted an internal market viewpoint to bring together an array of issues considered important for free and pluralistic media, using Article 114 TFEU as its legal basis (Cantero Gamito, 2023). Using plain internal market language, the proposal set out to address "the fragmented national regulatory approaches related to media freedom and pluralism and editorial independence", as well as to "ensure the optimal functioning of the internal market for media services" and "prevent the emergence of future obstacles to the operation of media service providers across the EU".[95] The Commission's proposal was accompanied by a Commission Recommendation detailing good practices media companies can employ to promote editorial independence along with recommendations concerning ways in which media ownership transparency can be increased for media companies and Member States (European Commission, 2022e).

The EMFA maintains the obstacles logic of internal market legislation and points to both insufficient integration in the internal market for media services and to market failures that digitalisation has accentuated.[96] Different national rules and approaches to media pluralism and editorial independence are considered to hamper free movement, undermining the ability of media players in different sectors – the audiovisual, radio and press sectors – to operate and expand across borders.[97] According to the EMFA, discriminatory or protectionist national measures can disincentivise cross-border investment and market entry, but the divergence of Member States' measures and procedures that support media pluralism can also lead to additional costs and legal uncertainty.[98] Against this background, the EMFA underlines the necessity of harmonising certain aspects of national rules related to media pluralism and editorial independence, and doing so in ways that guarantee high standards for the operation of the internal market for media services,[99] which also needs to be seen in the light of digitalisation and the challenges it poses. The EMFA openly declares that global online platforms now act as gateways to media content and that their business models tend to disintermediate access to media services and amplify polarising content and disinformation.[100] It also considers online platforms, as providers of online advertising, to have diverted financial resources from the media sector, affecting its financial sustainability and, consequently, the diversity of content on offer,[101] recognising, too, that media undertakings, especially smaller ones in the radio

[95] See the Explanatory Memorandum to the EMFA proposal, part 2.
[96] See recital 4 of the EMFA.
[97] Recitals 4 and 5 of the EMFA.
[98] Recital 5 of the EMFA.
[99] Recital 7 of the EMFA.
[100] Recital 4 of the EMFA.
[101] Recital 4 of the EMFA.

and press sectors, cannot compete with the online platforms on a level playing field.[102] Insufficient tools for cooperation between national regulatory authorities are also seen as problematic, enabling media players that systematically engage in disinformation or information manipulation and interference to abuse the internal market.[103]

In such a context, the EU values paradigm becomes particularly pronounced and imbues the EMFA internal market rationale. The EMFA proudly proclaims its purpose to be securing a well-functioning internal market for media services, an essential feature of which is the protection of media freedom and media pluralism "as two of the main pillars of democracy and of the rule of law".[104] According to the EMFA, recipients of media services in the Union should "be able to enjoy pluralistic media content produced in accordance with editorial freedom",[105] and the Member States should "respect the right to a plurality of media content and contribute to an enabling media environment",[106] which is in line, as noted, with the provisions of the CFR, in particular the right to receive and impart information and the requirement to respect media freedom and media pluralism.[107]

In more detail, the EMFA requires Member States to "respect the right of recipients of media services to have access to a plurality of editorially independent media content and ensure that framework conditions are in place […] to safeguard that right, to the benefit of free and democratic discourse".[108] It lays down rules obliging Member States to respect the editorial freedom and independence of media service providers, to improve the protection of journalistic sources,[109] to refrain from deploying intrusive surveillance software in any material, digital device, machine or tool used by media service providers, their editorial staff and any persons with a regular or professional relationship with them,[110] and to ensure the independent functioning of PSM.[111] The latter rests on requirements for transparent, open, effective and non-discriminatory appointment procedures, along with guarantees of adequate and sustainable financing for PSM.[112] The EMFA also makes arrangements to protect media content against

[102] Recital 6 of the EMFA.
[103] Recital 6 of the EMFA.
[104] Recital 2 of the EMFA.
[105] See recital 8 of the EMFA.
[106] Recital 8 of the EMFA.
[107] Recital 8 of the EMFA.
[108] Art. 3 of the EMFA.
[109] Art. 4 of the EMFA.
[110] Art. 4 of the EMFA.
[111] Art. 5 of the EMFA.
[112] Art. 5 of the EMFA.

unjustified removal by VLOPs,[113] requires media service providers to guarantee the transparency of their ownership,[114] and mandates the provision of substantive and procedural rules at the Member State level for the assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence.[115] Moreover, it lays down requirements for systems and methodologies designed to measure audience,[116] which can affect advertising revenue, and provides for the transparent and non-discriminatory allocation of state advertising and supply or service contracts to media service providers and online platforms.[117] It further transforms the European Regulators Group for Audiovisual Media Services (ERGA), established by the AVMSD, into a new European Board for Media Services (EBMS)[118] charged with promoting the effective and consistent application of the rules introduced and the AVMSD.[119] The EBMS is fully independent[120] and serves as the collective body of independent national media regulators.

With such content, the EMFA sheds light on the multi-pronged nature of Article 114 TFEU as an internal market legal basis. Not all Member States were convinced by it, however, and Hungary has challenged it before the Court of Justice of the EU (CJEU).[121] The preparatory work done in the Council Audiovisual and Media Working Party reflected the difficulties inherent in the adoption of the EMFA (Council of the European Union, 2022; 2023a). Although the Member States agreed on 21 June 2023 on the Council mandate for subsequent negotiations with the European Parliament, they also emphasised that, besides maintaining the ambition and objectives of the Commission proposal, future negotiations should ensure that "the new law is consistent with existing EU legislation, respects national competences in this area, and strikes the right balance between the necessary harmonisation and respect for national differences" (Council of the European Union, 2023b).

Should Hungary's referral prove admissible, it will of course be up to the CJEU to determine what falls within the competence of the Union and what rests with Member States. For sure, the incorporation of non-economic public interest concerns and objectives in internal market legislation has long been possible, covering the protection of fundamental rights and the elaboration of protective standards, provided that the use of the internal market legal bases could

[113] Arts 18 and 19 of the EMFA.
[114] Art. 6 of the EMFA.
[115] Art. 22 of the EMFA.
[116] Art. 24 of the EMFA.
[117] Art. 25 of the EMFA.
[118] Art. 8 of the EMFA.
[119] Art. 12 of the EMFA.
[120] Art. 9 of the EMFA.
[121] See C-486/24, Hungary v Parliament and Council (case in progress) and Politico (2024).

be justified (de Witte, 2006; 2014). The EMFA addresses a wide set of contemporary challenges from an EU values perspective in an internal market context and it is intrinsically linked to the MPM and the EU RoLM, which are both concerned with threats, risks and impediments to free speech, media freedom and media pluralism. Indeed, the explanatory memorandum that accompanied the EMFA proposal referred in detail to the annual RLRs and the MPM findings that inform it (European Commission, 2022d). Seen in this light, the EMFA signals (and confirms) the potential of Article 114 TFEU to serve as a basis for internal market legislation which is not only about the free provision of services. The EMFA does not limit itself to ensuring the free provision of media services, but seeks the unimpeded provision of free, independent and pluralistic media services and hence the good functioning of the internal market for media services, understood as a values-based internal market that fosters free speech, media freedom and media pluralism in various ways. From this perspective, the EMFA also significantly expands the issues which media regulation at EU level concerns itself with.

CONCLUSION

In the mid-1990s, a former commissioner for the internal market Mario Monti sought to address the protection of media pluralism through media ownership regulation at EU level (Harcourt, 2005: 81–84). The Commission submitted two consecutive proposals, neither of which moved forward, primarily because of a claimed lack of competence by the then European Community. The EU's media regulation moved ahead slowly after that. The legal debate surrounding competences (Craufurd Smith, 2004) and the political opposition to enacting common rules on media freedom and media pluralism have weakened attempts at regulation in the past. Indeed, with its market-building rationale, the AVMSD was for a long time the main regulatory instrument which addressed the media as such. Gradually, and especially after the Treaty of Lisbon, the EU has enacted several media-related measures, increasingly citing the EU's common values – and in particular freedom of expression, media freedom and media pluralism – for doing so. Still, this activity did not coalesce into a coherent media policy. This is because relevant provisions were scattered through laws and instruments dealing with a broad range of issues that related to the media – from data protection to copyright and whistleblowing – but did not *directly* address them.

Since 2019, EU policy discourse has been marked by a sharp focus on the EU common values – a response to the challenges facing democracy in certain Member States – which seems to have facilitated a more concerted approach to media policy. Moving away from fragmented initiatives, major policy

documents of the Commission, in particular the EDAP, have signalled a change in the way the media should be regulated at EU level. The EMFA addresses *core* challenges relating to media freedom and media pluralism. It seeks to tackle and brings together a range of issues which are centrally connected to freedom of expression and the role and operation of the media in a democratic society. It therefore marks a break from the piecemeal approaches that have dealt in the past with issues more peripheral to the media. It is true that Article 114 TFEU is still the legal basis used, and the usual internal market rhetoric about trade barriers and distortions hampering the functioning of the internal market is still present. However, these barriers and distortions now derive from Member States' divergent treatment of, specifically, media freedom and media pluralism. As originally noted by the Commission in its EMFA proposal, either because the Member States lack specific rules or because the existing rules vary, fragmented national safeguards for media freedom and pluralism translate into internal market barriers, distortions of competitive conditions and, ultimately, an uneven playing field, hampering media service providers' ability to use the internal market to its full potential and to properly fulfil their societal role to inform. This suggests a heightened sensitivity to a values-based internal market and the recognition that obstacles to the free movement of media services are not only market-, but also values-related. The EMFA puts free speech, media freedom and media pluralism policy considerations centre stage.

This is a welcome move in the fight for democracy across the EU (Tambini, 2022) and one that has also been incentivised by digitalisation and the challenges it has posed vis-a-vis the operation of the media. The provision of media services in the EU has been markedly affected by online platforms, which amount to prominent online advertisers and act as gateways to news and information. The pressures which platformisation has imposed on the operation of the media have shed light on the inefficiencies of customary EU media regulation (Brogi and Parcu, 2014), underscoring the need to define, operationalise and safeguard the role of the media in a democratic society, at EU level, within the powers attributed to the Union. From this perspective, EU media regulation is not just about creating a level playing field through upholding the principles of the internal market, i.e. free competition and equal treatment. It now also addresses a broader set of issues, advancing a qualified understanding of what a well-functioning internal market of media services is: namely one in which the integrity of the European information space is guaranteed and the importance of the media for the functioning of our democratic societies, besides the economy is acknowledged and upheld.

This reveals a widened EU media policy: that is, one that seeks to cater to topics that had not hitherto been addressed at EU level, ranging from editorial freedom and the independence of PSM to methods for assessing media

market concentrations. But while the EMFA significantly expands the issues which media regulation at EU level now addresses, the values-based regulatory paradigm also transcends the regulation of digital intermediaries. Here, too, much regulatory effort now goes into ensuring the integrity of the European information space where free speech and the right to seek and impart information and ideas are taken seriously in the digital realm. The regulatory model may differ – it is mostly based on procedural and organisational accountability with enhanced user agency – but the underlying premise is the same: ensuring a values-based internal market of digital intermediary services in which the approximation of Member States' rules concurrently seeks to create an enabling environment for the exercise of free speech and for the right to information in a digital setting. This approach underpins the DSA and the regulation of VSPs in the revised AVMSD, and is also reflected in efforts directed at the co- (and self-) regulation of digital players.

Evidently then, media and digital intermediary services are now embedded in a wider digital governance project which purports to address technological transformation and societal change in ways that are rooted in Europe's common values. This is a complex regulatory project, which raises significant challenges for implementation because it involves multiple themes and a broad set of actors with different interests that have to be balanced. It will require targeted efforts to turn what has been agreed upon into practice, and a cooperative approach to address the different sets of interests at stake. Success, therefore, lies not only in creating a framework (or multiple frameworks); it also requires that the rules introduced be put coherently to work in ways that uphold the Union's values.

ACKNOWLEDGEMENTS

The Mediadelcom project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No. 101004811. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union's Horizon 2020 research and innovation programme, neither the European Union nor the granting authority can be held responsible for them.

REFERENCES

Ausloos, J. (2020). *The right to erasure in EU data protection law.* Oxford University Press.

Bonelli, M., and M. Claes, M. (2023). Crossing the Rubicon? The Commission's use of Article 2 TEU in the infringement action on LGBTIQ+ rights in Hungary. *Maastricht Journal of European and Comparative Law,* 30(*1*) 3–14.

Brogi., E., Borges, D., Carlini, R., Nenadic, I., Bleyer-Simon, K., Kermer, J., Reviglio, U., Trevisan, M. and Verza, S. (2023). The European Media Freedom Act: Media freedom, freedom of expression and pluralism. Study requested by the LIBE Committee.

Brogi, E. and Parcu, P.L. (2014). Evolving regulation for media freedom and pluralism in the European Union. *Utilities Policy*, 31, 256–265.

Broughton Micova, S., and Kukliš, Ľ. (2023). Responsibilities of video-sharing platforms and their users. In H. Ranaivoson, S. Broughton Micova and T. Raats (Eds). *European audiovisual policy in transition* (77–92). Routledge.

Cabrera Blázquez F.J., Cappello, M. Fontaine G., and Valais. S. (2017). Exceptions and limitations to copyright. IRIS Plus. European Audiovisual Observatory. https://rm.coe.int/168078348b.

Cantero Gamito, M. (2023). The European Media Freedom Act (EMFA) as meta-regulation. Computer Law & Security Review 48, DOI: 10.1016/j.clsr.2023.105799.

Chase, P.H. (2019). The EU Code of Practice on Disinformation: The difficulty of regulating a nebulous problem. https://www.ivir.nl/publicaties/download/EU_Code_Practice_Disinformation_ Aug_2019.pdf.

Cole, M.D., and Etteldorf, C. (2023). European Media Freedom Act Background Analysis. Study requested by the CULT Committee. Policy Department for Structural and Cohesion Policies, Directorate-General for Internal Policies. PE 733.129 – April 2023.

Cole, M.D., and Etteldorf, C. (2021). Secondary law provisions on media ownership. In M. Cappello (ed.), *Transparency of media ownership* (17–30). IRIS Special. European Audiovisual Observatory.

Council of Europe (2014). *Recommendation on the protection of whistleblowers*. https://www.coe.int/en/web/youth/-/recommendation-on-the-protection-of-whistleblowers.

Council of the European Communities (1990). Council Decision 90/685/EEC of 21 December 1990, concerning the implementation of an action programme to promote the development of the European audiovisual industry (MEDIA, 1991 to 1995). (1990) OJ L 380.

Council of the European Communities (1989). Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities. (1989) OJ L 298.

Council of the European Union (2023a). Regulation on the European Media Freedom Act – Progress report 8679/1/23. https://data.consilium.europa.eu/doc/document/ST-8679–2023-REV-1/en/pdf.

Council of the European Union (2023b). *European Media Freedom Act: Council secures mandate for negotiations* [Press release]. https://www.consilium.europa.eu/en/press/press-releases/2023/06/21/european-media-freedom-act-council-secures-mandate-for-negotiations/.

Council of the European Union (2022). Regulation establishing the European Media Freedom Act. Progress report 14440/22. https://data.consilium.europa.eu/doc/document/ST-14440–2022-INIT/en/pdf.

Council of the European Union (2008). Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (2008). OJ L 328/55.

Craufurd Smith, R. (2004). Rethinking European Union competence in the field of media ownership: The internal market, fundamental rights and European citizenship. *European Law Review*, 29(5), 652–672.

Dawson, M. & de Witte, F. (2022). *EU law and governance*. Cambridge University Press.

Erdos D. (2021). Special, personal and broad expression: Exploring freedom of expression norms under the General Data Protection Regulation. *Yearbook of European Law*, 40(1), 398–430.

European Commission (2024). The Code of conduct on countering illegal hate speech online +. https://digital-strategy.ec.europa.eu/en/library/code-conduct-countering-illegal-hate-speech-online.

European Commission (2023). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Defence of Democracy. COM(2023) 630 final.

European Commission (2022a). Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"). COM(2022) 177 final.

European Commission (2022b). Recommendation (EU) 2022/758 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation'). (2022) OJ L 138/30.

European Commission (2022c). The strengthened code of practice on disinformation. https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation.

European Commission (2022d). 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.

European Commission (2022e). Commission Recommendation (EU) 2022/1634 of 16 September 2022 on internal safeguards for editorial independence and ownership transparency in the media sector. (2022) OJ L 245/56.

European Commission (2021). Recommendation (EU) 2021/1534 on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union. (2021) OJ L 331/8.

European Commission (2020a). Communication 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.

European Commission (2020b). Europe's Media in the Digital Decade: An Action Plan to Support Recovery and Transformation. COM(2020) 784.

European Commission (2020c). Shaping Europe's Digital Future. COM(2020) 67.

European Commission (2019). Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. Strengthening the rule of law within the Union. A blueprint for action. COM(2019) 343 final.

European Commission (2018a). Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Tackling online disinformation: A European approach. COM(2018) 236 final.

European Commission (2018b). Recommendation (EU) 2018/103 regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374, (EU) 2017/146 and (EU) 2017/1520. (2018) OJ L 17/50.

European Commission (2017). Recommendation (EU) 2017/1520 regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374 and (EU) 2017/146. (2017) OJ L 17/19.

European Commission (2016a). Code of Conduct on Countering Illegal Hate Speech Online. https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en. Accessed 24 Sept 2023.

European Commission (2016b). Commission Opinion on the Rule of Law in Poland and the Rule of Law Framework: Questions & Answers. https://ec.europa.eu/commission/presscorner/detail/en/MEMO_16_2017.

European Commission (2016c). Recommendation (EU) 2016/1374 regarding the rule of law in Poland. (2016) OJ L 217/53.

European Commission (2014). Communication from the Commission on a new EU Framework to strengthen the Rule of Law. COM(2014) 158 final.

European Parliament and Council (2024a). Directive 2024/1069 of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (Strategic lawsuits against public participation). (2024) OJ L 2024/1069.

European Parliament and Council (2024b). Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act). (2024) OJ L 2024/1083.

European Parliament and Council (2022). Regulation (EU) 2022/2065 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act). (2022) OJ L 277/1.

European Parliament and Council (2021). Regulation (EU) 2021/818 establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013. (2021) OJ L 189/34.

European Parliament and Council (2019a). Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. (2019) OJ L 130/92.

European Parliament and Council (2019b). Directive 2019/1937 on the protection of persons who report breaches of Union law. (2019) OJ L 305/17.

European Parliament and Council (2018). Directive (EU) 2018/1808 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. (2018) OJ L 303/69.

European Parliament and Council (2016). Regulation 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). (2016) OJ L 119/1.

European Parliament and Council (2014). Regulation (EU) No 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC. (2014) OJ L 347/221.

European Parliament and Council (2010). 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). (2010) OJ L 95/1.

European Parliament and Council (2001). Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society. (2001) OJ L 167/10.

Guibault, L. (2010). Why cherry-picking never leads to harmonisation: The case of the limitations on copyright under Directive 2001/29/EC. *JIPITEC*, 55(1).

Harcourt, A. (2005). *The European Union and the regulation of media markets*. Manchester University Press.

Heldt, A.P. (2022). EU Digital Services Act: The white hope of intermediary regulation. In: Flew, T., Martin, F.R. (eds.), *Digital Platform Regulation*. Palgrave Global Media Policy and Business. Palgrave Macmillan.

High-Level Group on Fake News and Online Disinformation (2018). *A multi-dimensional approach to disinformation*. https://digital-strategy.ec.europa.eu/en/library/final-report-high-level-expert-group-fake-news-and-online-disinformation.

Holtz-Bacha, C. (2023). Freedom of the media, pluralism, and transparency. European media policy on new paths? *European Journal of Communication,* 39(1), 37–55.

Howard, J.W. (2019). Free speech and hate speech. *Annual Review of Political Science*, 22(1), 93–109.

Husovec, M. (2024). Principles of the Digital Services Act. Oxford University Press.

Inglezakis, I. (2017). The legal regulation of hate speech on the internet. In T-E. Synodinou, P. Jougleux, C. Markou and T. Prastitou (eds), *EU internet law: Regulation and enforcement* (367–383). Springer.

Izyumenko, E. (2016). The freedom of expression contours of copyright in the digital era: A European perspective. *The Journal of World Intellectual Property*, 19 (3–3), 115–130.

Kochenov, D. (2021). Article 7: A commentary on a much talked-about "dead" provision. In A. von Bogdandy, P. Bogdanowicz, I. Canor, C. Grabenwarter, M. Taborowski and M. Schmidt (eds), *Defending checks and balances in EU Member States* (127–154). Springer.

Kochenov, D. (2017). The acquis and its principles: The enforcement of the 'law' vs. the enforcement of 'values' in the European Union. In A. Jakab and D. Kochenov (eds), *The enforcement of EU law and values ensuring Member States' compliance* (9–27). Oxford University Press.

Kukliš, Ľ. (2021). Video-sharing platforms in AVMSD – A new kind of content regulation. In P.L. Parcu & E. Brogi (Eds.), *Research handbook on EU media law and policy* (303–325). Edward Elgar Publishing.

von der Leyen, U. (2021), *2021 State of the Union address by President von der Leyen*. https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_21_4701.

von der Leyen, U. (2019). *Political guidelines for the next European Commission 2019–2024, A Union that strives for more. My agenda for Europe*. Publications Office of the European *Union*. https://data.europa.eu/doi/10.2775/101756.

Lock, T. (2012). Accession of the EU to the ECHR. Who would be responsible in Strasbourg?. In D. Ashiagbor, N. Countouris and I. Lianos (Eds.), *The European Union after the Treaty of Lisbon* (109–135). Cambridge University Press.

Maoli, F. (2024). Strategic lawsuits against public participation and their global relevance. Recent developments and persisting gaps in human rights law and in (EU) PIL. *Freedom, Security & Justice: European Legal Studies*, 2, 289–321.

Milewska, P. (2023, June 15). SLAPPs, Daphne's law, and the future of journalism, *Verfassingsblog.* https://verfassungsblog.de/author/paulina-milewska/.

Monti, M. (2020). The EU code of practice on disinformation and the risk of the privatisation of censorship. In S. Giusti and E. Piras (Eds.), *Democracy and fake news. Information manipulation and post-truth politics* (214–225). Routledge.

Mylly, T. (2015). The constitutionalization of the European legal order: Impact of human rights on intellectual property in the EU. In C. Geiger (ed.), *Research Handbook on human rights and intellectual property* (103–131). Edward Elgar.

Pech, L. (2020). Article 7 TEU: From "nuclear option" to "Sisyphean procedure"? In U. Belavusau and A. Gliszczyńska-Grabias (Eds.), *Constitutionalism under stress* (157–174). Oxford University Press 2020.

Pech, L. (2010). 'A Union founded on the rule of law': Meaning and reality of the rule of law as a constitutional principle of EU law. *European Constitutional Law Review*, 6(3), 359–396.

Peers, S., & Prechal S. (2021). Article 52. In S. Peers, T. Hervey and A. Ward (eds), *The EU Charter of Fundamental Rights: A commentary* (1611–1674). Hart Publishing.

Pentney, K., and McGonagle, T. (2021). From Risk to Reward? The DSA's risk-based approach to disinformation. In M. Cappello (Ed.), *Unravelling the Digital Services Act package* (40–57). European Audiovisual Observatory.

Piris, J-C. (2010*). The Lisbon Treaty. A legal and political analysis.* Cambridge University Press.

Politico (2024). Hungary takes EU to court over media freedom (15 July 2024). https://www.politico.eu/article/hungary-take-eu-court-over-media-freedom-viktor-orban/

Pollicino, O. (2023). *Freedom of speech and the regulation of fake news*. Intersentia.

Psychogiopoulou, E. Vlassis, A., Samaras, A., Comerma, L. and Riga, D. (2024). *Competitiveness in European Law.* Developed by the Horizon Europe project REBOOT (*Reviving, Boosting, Optimising and Transforming European Film Competitiveness – REBOOT*), https://thereboot-project.eu/research.

Psychogiopoulou, E. (2024). The fight against digital hate speech: Disentangling the EU's regulatory approach and hurdles. *German Law Journal*, 25(7), 1182-1196.

Psychogiopoulou, E. (2022). Judicial dialogue and digitalization: CJEU engagement with ECtHR case law and fundamental rights standards in the EU. *Journal of Intellectual Property, Information Technology and E-Commerce Law (JIPITEC)*, 13(2), 145-159.

Quintel T., and Ullrich, T. (2020). Self-regulation of fundamental rights? The EU Code of Conduct on Hate Speech, related initiatives and beyond. In B. Petkova and T. Ojanen (eds), *Fundamental rights protection online. The future regulation of intermediaries* (182–204). Edward Elgar.

Scheppele, K.L., Kochenov, D.V. and Grabowska-Moroz, B. (2020). EU values are law, after all: Enforcing EU values through systemic infringement actions by the European Commission and the Member States of the European Union. *Yearbook of European Law*, 39(1), 3–121.

de Schutter, O. (2016). *The implementation of the Charter of Fundamental Rights in the EU institutional framework. Study for the European Parliament's Committee on Constitutional Affairs*. https://www.europarl.europa.eu/RegData/etudes/STUD/2016/571397/IPOL_STU(2016)571397_EN.pdf.

Spieker, L.D. (2023). *EU values before the Court of Justice: Foundations, potential, risks*. Oxford University Press.

Tambini, D. (2022). The democratic fightback has begun: The European Commission's new European Media Freedom Act. https://blogs.lse.ac.uk/medialse/2022/09/20/the-democratic-fightback-has-begun-the-european-commissions-new-european-media-freedom-act/

Terzis, G., Kloza, D., Kużelewska, E., and Trottier, D. (Eds) (2021). *Disinformation and digital media as a challenge for democracy.* Intersentia.

Turillazzi, A., Taddeo, M., Floridi, L., and Casolari, F. (2023). The Digital Services Act: An analysis of its ethical, legal, and social implications. *Law, Innovation and Technology*, 15(1), 83–106.

Vandekerckhove, W. (2022). Is it freedom? The coming about of the EU Directive on whistleblower protection. *Journal of Business Ethics*, 179, 1–11.

de Witte, B. (2014). Conclusions. Integration clauses: A comparative epilogue. In F. Ippolito, M.E. Bartoloni and M. Condinanzi (Eds.). *The EU and the proliferation of integration principles under the Lisbon Treaty* (181–188). Routledge.

de Witte, B. (2006). Non-market values in internal market legislation. In N.N. Shuibhne (ed.), *Regulating the internal market* (61–86). Edward Elgar

Ward, A. (2021). Article 51. In S. Peers, T. Hervey and A. Ward (eds), *The EU Charter of Fundamental Rights: A commentary* (1553–1610). Hart Publishing.

Wardle, C. and Derakhshan, H. (2017). *Information disorder. Toward an interdisciplinary framework for research and policy making.* Council of Europe report DGI(2017)09.

Woods, L. (2021). Article 11. In S. Peers, T. Hervey and A. Ward (Eds.), *The EU Charter of Fundamental Rights: A commentary* (333–370). Hart Publishing.

Wouters, J. (2020). Revisiting Art. 2 TEU: A true union of values? *European Papers* 5(1) 255–277.