What Can Be Done? Digital Media Policy Options for Strengthening European Democracy

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Acknowledgements

Executive Summary

In this report, we identify some policy options available for the European Commission and for European Union member states should they wish to create a more enabling environment for independent professional journalism going forward. Many of these options are relevant far beyond Europe and demonstrate what democratic digital media policy could look like.

We argue that, to thrive, independent professional journalism needs *freedom, funding*, and a *future*. To enable this, media policy needs (a) to protect journalists and media from threats to their independence and to freedom of expression, (b) to provide a level playing field and support for a sustainable business of news, and (c) to be oriented towards the digital, mobile, and platform-dominated future that people are demonstrably embracing – not towards defending the broadcast and print-dominated past.

The three preconditions come in order of priority.

- Without *freedom*, no amount of funding or investment in the future will ensure *independent* professional journalism. Given the established threats to free expression and media freedom in some European Union member states, it is clear that these issues have to be addressed first in these countries before any other measures can find long-term success. Of the options we review in the report, addressing the implementation gap between what elected officials have committed to on paper and what governments do in practice, especially around protecting free expression, media freedom, the protection of journalists, and genuine independence for public service media and media regulators, will be the first step. The second step could be to link access to EU funds to performance in an annual rule of law review that includes a focus on free expression and media freedom.

- Without *funding*, independent *professional* journalism will wither away. Given the rapid decline of legacy businesses, this funding will have to come from a combination of a new, digital, business of news and various forms of public support, including for independent public-service media and non-profit media. Although private-sector news media have represented the majority of investment in journalism in the past, in most cases will continue to do so in the future, and are essential for providing a diverse range of outlets, the risk of market failure, especially among some local and niche audiences, is significant. Of the options we have reviewed, the three most promising policy responses are: (a) the reform and potential expansion of existing forms of support for private-sector media so they better support the digital future of journalism, and not just its offline past; (b) a recognition of the role that genuinely independent, adequately funded, public-service media operating across all platforms can have (provided they have a clear role and remit, and avoid crowding out private competitors); and (c) rapid reform to ease the creation and funding of non-profit news media.

- Without a *future* for independent professional journalism, we risk leaving European democracy worse than we inherited it. Forging that future is primarily a task for the profession and the industry itself, a task premised on developing forms of journalism, media formats, and products that people find genuinely compelling and valuable. We have already begun to see some impressive and creative efforts, even as the pressures both reporters and news media businesses face are intense. But policymakers can play a role as well. Of the options we have reviewed, three stand out: (a) making sure that all active in the digital marketplace compete on a level playing field; (b) providing public funding for

innovation in journalism and news media to help with the transition; and (c) securing a more accountable, intelligible, and transparent platform-mediated environment through the promotion of multi-stakeholder oversight mechanisms, media literacy projects, and data access for independent research.

We have not identified a silver bullet, and indeed, we do not believe there are any. Those looking for an easy solution will not find it; but that does not mean that there are no options. The steps we discuss here do not represent a one-size-fits-all model (subsidies for media would arguably be counter-productive and illegitimate in countries with low press freedom, high levels of corruption, and problems of media capture). But we hope they can command broad political support to create a more enabling environment for independent professional journalism while limiting the risk of regulatory uncertainty and of further politicising the media.

To make a real difference, policymakers need to move beyond the tendency to address the issues facing independent professional journalism indirectly or through fragmented and piecemeal steps, and consider adopting a more holistic approach focused on taking a number of steps that together can help create an environment where independent professional journalism can succeed. Doing that will not be easy, and they will not be cheap, but the options we identify here are primarily about holding individual governments to the commitments they have made through Article 2 of the Treaty on European Union as well as their broader commitments under international human rights law, and the policies we discuss would be cheaper than what the European Union already spends on subsidising agriculture, or its member states on subsidising fossil fuels. Given the European Union's budget of more than €160bn, and member states' combined public expenditure of more than €7 trillion, funding this is essentially a question of political priorities.

The report identifies a number of real policy choices that elected officials can pursue, at both the European level and at the member state level, all of which have the potential to make a meaningful difference and help create a more enabling environment for independent professional journalism across the continent while minimising the room for political interference with the media. We hope it can serve as a useful starting point for a discussion of the role of media policy in European democracy (and beyond) going forward and thus help ensure we develop twenty-first-century media policies for a twenty-first-century media environment.

1. Introduction: Media Policy at a Critical Juncture

Incoming European Commission President Ursula von der Leyen has rightly identified 'a new push for European democracy' as among the most important future priorities for the European Union and its member states (European Commission 2019). Europe has long been a beacon of democracy and freedom but has suffered troubling problems on both fronts in recent years.

Independent professional journalism plays an important role in democracy, but it faces a number of important challenges that threaten that role and, by extension, threaten European democracy. If journalism is undermined, it will leave European citizens less able to play an active and informed part in the political process and European democracies less resilient to internal and external threats.

In this report, we identify some policy options available for the European Commission and for European Union member states should they wish to create a more enabling environment for independent professional journalism going forward. Media policy – pursued within the framework of international human rights law – can play a crucial role in ensuring that this environment enables independent professional journalism, the kind of journalism that, at its best, can help keep people informed, facilitates public debate, and holds power to account.

To make a real difference, policymakers need to move beyond the tendency to address the issues facing independent professional journalism indirectly, or through fragmented and piecemeal steps, and consider adopting a more holistic approach focused on creating an environment where independent professional journalism can succeed. We hope this report can serve as a useful starting point for such an effort. As Commissioner Margrethe Vestager has noted, 'It's quite important to discuss fast and listen quick because there is a limit as to how much time we have available.'[1]

A Shifting Information Environment

Recent years have seen a transformation in how people use media and get their news, with the rapid move to a more digital, mobile, and platform-dominated media environment. By 2018, the share of EU-28 households with internet access had risen to 89%, almost 30 percentage points higher than in 2008 (Eurostat 2019). These digital technologies have already, as the United Nations, Organization for Security and Co-operation in Europe, Organization of American States, and African Commission on Human and Peoples' Rights special rapporteurs on free expression recently noted in a joint declaration, made significant contributions to expanding global communications and to people everywhere being able to access information and ideas, and to speak and be heard (Kaye et al. 2019). They have also been accompanied with growing problems of misinformation and online harassment, potentially problematic large-scale data collection, and strong tendencies towards winner-takes-most markets.

Home broadband access, smartphone use, and reliance on smart speakers and other internet-connected personal assistants are all on the rise. And among Europeans with internet access, online news, whether accessed directly from media or indirectly via platforms like search engines, social media, and messaging applications, is now one of the most widely used and important sources of information about public affairs (Newman et al. 2019). This digital, portable,

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1   https://www.ft.com/content/24635a5c-fa4f-11e9-a354-36acbbb0d9b6

personalised, and data-intensive media environment is fundamentally different from the broadcast- and print-dominated past. It has given citizens easy and often free access to an unprecedented diversity of news (Newman et al. 2019) and important opportunities to express themselves, discuss, and act in concert (Bennett and Segerberg 2013), but it has also challenged the business models that historically supported investment in news (Nielsen 2016). Even as billions of euros of advertising are moving from offline to online – often spent with US-based technology companies like Facebook and Google – revenues among domestic incumbent legacy media are declining. On average, European newspaper industry revenues have declined by about €2.5m every day of the Juncker Commission's term, from €39bn in 2015 to an estimated €33bn for 2019.[2]

But even as individual users have rushed to embrace digital media, a few large US-based platform companies have grown to enormous size, advertisers have shifted their investment to follow audiences online, and journalists and publishers have worked hard to adapt to a changing environment, many aspects of media policy remain essentially unchanged, leaving both new as well as long-standing challenges unaddressed. This means that some growing and important parts of our media environment operate in regulatory vacuums and other, established, media policies are subject to 'policy drift', where the effectiveness of policies changes not because of deliberate reform, but because of shifting conditions on the ground (Nielsen 2014).

We find ourselves at a critical juncture, where digital media policy has not kept pace with digital media reality. Yesterday's broadcast and print media policies are not always fit for purpose in an increasingly digital, mobile, and platform-dominated media environment. The last years we have seen at the EU and member state level an incrementalist and piecemeal policy approach to revolutionary change, with the result that reality has changed much faster than policy. If policymakers want to create an enabling environment for independent professional journalism, this needs to change. The question is – what can be done?

What Can Be Done in Europe?

In identifying some policy options available for the European Commission and for European Union member states, should they wish to take a more holistic approach to create a more enabling environment for independent professional journalism going forward, we start from the following three premises:

1. To thrive, independent professional journalism needs *freedom, funding*, and a *future*. To enable this, media policy needs (a) to protect journalists and media from threats to their independence and their freedom of expression, (b) to provide a level playing field for a sustainable business of news (and address market failures where they exist, without infringing on editorial independence), and (c) to be oriented towards the digital, mobile, and platform-dominated future that people are demonstrably embracing – not towards defending the broadcast - and print-dominated past.

2. An enabling environment for independent professional journalism is in part about developing suitable media policy, but it is also about minimising the room for political interference with the media and overarching problems of regulatory uncertainty. This is in most cases best achieved by pursuing media policies that (a) protect the independence of both media and media regulators, (b) command broad political support, and (c) can be expected to provide a stable and predictable legal and regulatory environment going

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2 Authors' calculation from data from the World Association of News Media.

forward. The World Association of Newspapers and News Publishers, for example, identifies political instability and regulatory uncertainty as one of the greatest risks publishers face (Nel and Milburn-Curtis 2017).

3. The choices that media policymakers make will matter greatly, just as they have historically done in enabling private publishers in print and creating public-service media in broadcasting. The future of independent professional journalism will be shaped by the choices of audiences, advertisers, publishers, and platforms, but policymakers can, should they wish, play an active and important role, just as opting for inaction will have real consequences.

We focus on the Europe Union here for several reasons.

First, incoming European Commission President von der Leyen has clearly indicated that democracy is a key priority for the European Union (as it should be for all member states as per Article 2 of the Treaty on European Union and more broadly their commitment to the International Covenant on Civil and Political Rights and similar treaties). With a willingness to act, as well as an (imperfect) tradition of liberal democracy, a combined population of more than half a billion, and one of the largest economies in the world, Europe is intrinsically important.

Second, as the United States remains paralysed by partisanship and as the Chinese government aggressively pursues its own distinct approach to digital media based on very different values, the European Union is increasingly emerging as a global policy entrepreneur on digital issues, with influence that resounds far afield. As the UN Special Rapporteur on freedom of opinion and expression David Kaye has repeatedly pointed out, from the more active informal and formal regulation of online content to more robust competition and data protection policies, Europe will de facto regulate the global internet (Kaye 2019). As policymakers all over the world look to Europe for inspiration, this is a unique opportunity for the European Union and its member states to show leadership and demonstrate what truly democratic digital media policies can look like.

Third, Europe's internal diversity underlines the importance of approaching media policy on the basis of a realistic recognition of governments' variable commitments to fundamental human rights, and their variable levels of institutional integrity. Just as we cannot assume that all users are always acting in good faith, and should not assume that all platforms or publishers are always acting in good faith, we cannot assume that all policymakers are always acting in good faith. In countries with limited media freedom, policies supporting established media risk supporting wholly or partially captured media at the expense of more independent outlets. In countries where citizens believe the public sector is corrupt, policies supporting the media – whether private or public – risk being seen as illegitimate, selective support for media with the right political connections. Scores from Reporters Without Borders' annual Press Freedom Index can illustrate the variation across Europe in terms of media freedom, and scores from Transparency International's Corruption Perceptions Index can illustrate variation in the perceived levels of public sector corruption, and they provide a powerful reminder that almost 90 million citizens across the European Union live in member states with significant media freedom problems.

Press freedom and perceived corruption across EU member states
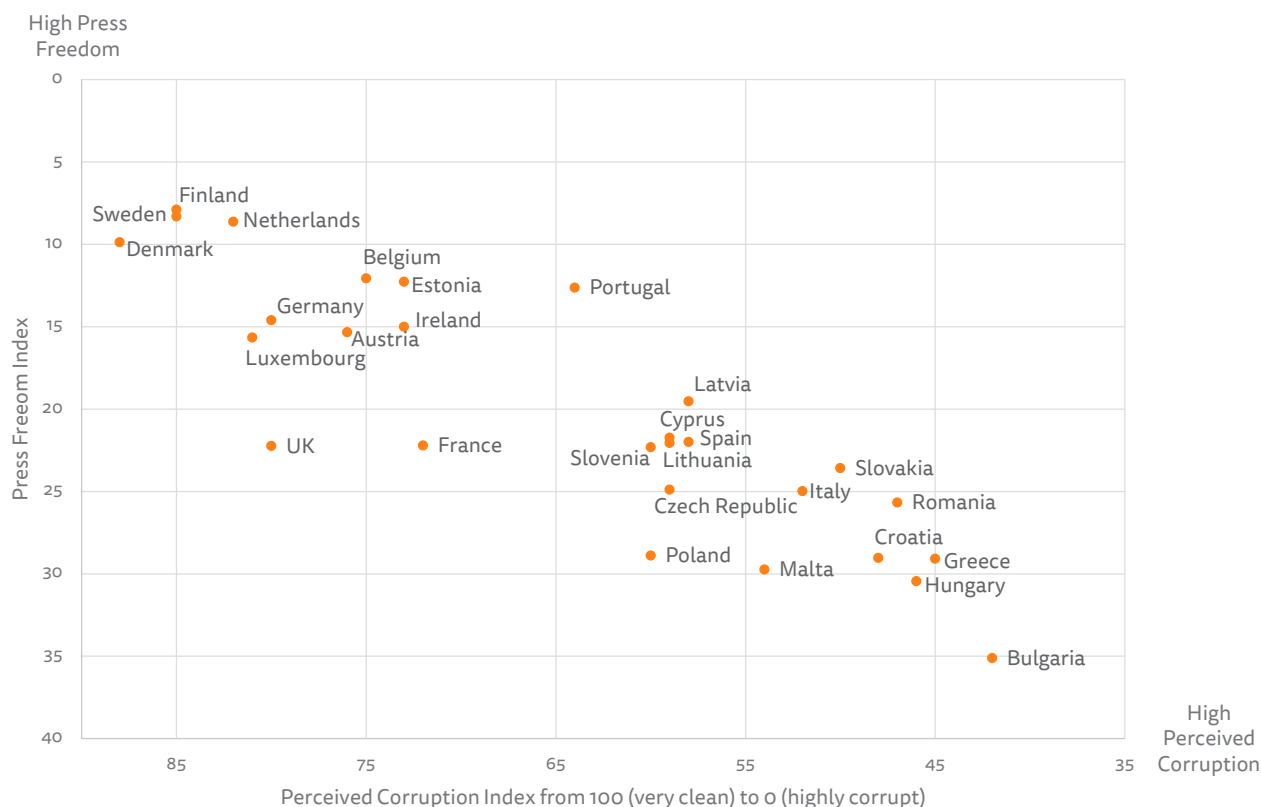
Fourth, Europe is full of inspiring examples of how independent professional journalism can empower the public and enrich our increasingly digital, mobile, and platform-dominated media environment. These range from the success of digital-born news media (running the gamut from MediaPart in France to Dennik N in Slovakia) to the impressive digital transformations undergone by many different legacy news media (including newspapers like *Dagens Nyheter* in Sweden and public-service media like the BBC in the UK). Entirely new non-profit initiatives, such as Correctiv in Germany or the First Draft orchestrated fact-checking partnership Crosscheck, have illustrated creative solutions to developing challenges like information verification in newsrooms. Others have paved the way towards new forms of digitally enabled, collaborative investigative journalism that brought us major stories like the Panama Papers.

But Europe also illustrates many of the challenges to independent professional journalism today. As the Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists (2019) have pointed out, media freedom in Europe is more fragile now than at any time since the end of the Cold War. Several member states have dropped precipitously in press freedom rankings, including Hungary (especially since 2012), Poland (especially since 2015), and others. Furthermore, private publishers are facing significant pressures on their business, with rapidly declining offline revenues and limited growth in online revenues, and public-service media are under pressure in several member states, with funding cuts in some (like Denmark and the Netherlands), and their independence undermined in others (like Greece, Hungary, and Poland).

Policymakers today can do much to enable and protect independent professional journalism, just as previous generations of policymakers demonstrated their commitment to protecting freedom of expression and media freedom by helping private publishers build sustainable businesses

around news, and by supporting independent public-service media. Elected officials can protect freedom of expression and free media, they can pass policies and forms of regulation that enable independent professional journalism, and they have access to very considerable financial resources should they decide to invest in public support for journalism. The European Union's budget commitments in 2018 amounted to €160.1bn, considerably more than the total global revenues of Google or Facebook that year.[3] At €58.8bn in 2018, the common agricultural policy (CAP) alone is a bigger investment of EU resources than the budget of all European public-service media combined (just over €30bn in 2018).[4] The total fossil fuel subsidies across EU member states – which the most recent estimates put at around €55bn per year – also far exceed the public resources committed to supporting independent professional journalism.[5] The combined public expenditure of all the EU member states was €7,283bn in 2018. Even a tiny fraction of these public resources could help European journalism and news media adapt to a digital age.

We hope this report can help identify some of the different options policymakers have to ensure that media policy serves the future of independent professional journalism as a cornerstone to our EU democracies at least as well as it has served the past. We consider four important areas of traditional and new media policy where policymakers have options available that can help create a more enabling environment for independent professional journalism:

1. Free expression and media freedom;

2. Disinformation and online harms;

3. Competition and data protection;

4. News media policy.

In the European Union, some of these issues call for action at the European level (e.g. competition within the digital single market), whereas others require action at the member state level (as member states retain the main responsibility for culture and most areas of media policy). Elected officials and authorities at the European and the national level can act to support and supplement each other.

All of these areas are complex and involve many different considerations, and journalism is not equally central to all of them. We do not seek to be exhaustive here; instead, we seek to simply identify some of the specific options under each policy area that could be pursued – we hope with broad-based political support – and thus create a stable and more enabling environment for independent professional journalism to thrive in Europe in the future, strengthening European democracy and empowering European citizens.

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3 These budget figures are drawn from the EU Commission's press releases (https://europa.eu/rapid/press-release_IP-18-6381_en.htm) as well as the line-by-line budget available at https://eur-lex.europa.eu/budget/www/index-en.htm. Data on Google and Facebook's revenues from companies' annual reports.
4 Data on public-service media funding are drawn from the European Broadcasting Union. CAP data are drawn from https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance_en
5 Fossil fuel subsidies are drawn from the latest EU Commission estimates (made in 2019, looking at the period between 2014 and 2016), cited in https://www.odi.org/publications/11430-fossil-fuel-subsidies-draft-eu-national-energy-and-climate-plans

2. Free Expression and Media Freedom

Context

Freedom is the most fundamental precondition for independent professional journalism, but there has been a troubling decline in media freedom in Europe in recent years, and free expression faces a growing number of challenges that policymakers have yet to respond to.

The threats to free expression and media freedom are many and multiplying. They include:

- Journalists facing threats, harassment, legal persecution, and physical violence.

- The erosion or disregard of legal protections for independent professional journalists.

- Explicit attacks on journalists and the news media by political leaders, including heads of government and other prominent officials in several member states.

- New challenges online, including large-scale harassment, especially of female journalists, and opaque content moderation practices with little independent oversight, due process, or transparency.

- Media capture where private-sector media are brought under political control.

- Restrictions on the independence of public-service media.

These issues represent existential threats to millions of Europeans' fundamental right to freely receive and impart information.

The most troubling problems include: the impunity with which investigative journalists Daphne Caruana Galizia and Ján Kuciak were murdered while investigating political corruption and organised crime; the search and seizure of information from the Czech investigative journalist Pavla Holcová and the Italian investigative journalist Salvo Palazzolo; and the effective state capture of private and public media in several EU member states (Dragomir 2018; Partner Organisations 2019).

Beyond this, free expression advocates have become deeply concerned by a number of developing policy initiatives pursued in areas that include counter-terrorism, copyright, online harms, and surveillance (Désir 2018; Kaye et al. 2019; Voices for Action 2019). For example, free expression is at risk when governments pass counter-terrorism laws that use imprecise and unclear passages criminalising the 'glorification' of terrorism and its 'provocation', as seen in, for example, France and the UK (Amnesty International 2018). In some cases, like Poland, the executive branch has become empowered to block websites without court orders (Rydzak 2016). At the European level the picture does not look much better, as the Union's own Directive on Combating Terrorism has a vague definition of terrorism that risks negative consequences for free expression, particularly online, and could have a range of downstream impacts, such as on the right to public protest and demonstration (Human Rights Watch 2016). We also see legislative moves by several EU member states, including France, Poland, and the UK, seeking more extensive powers for mass surveillance, with serious possible ramifications not just for the general public, but also potentially undermining the right (and ability) of journalists to protect confidential sources (Oldroyd 2018).

More broadly, in a number of member states, defamation still carries a risk of imprisonment, running counter to the case-law of the European Court of Human Rights (Council of Europe n.d.). Journalists continue to be sued by heads of state, government officials, and politicians

for defamation, perhaps most visibly illustrated by the more than 30 defamation lawsuits still pending in Malta against murdered journalist Daphne Caruana Galizia (AFP 2019). Criminal defamation laws continue to be used against the media with some regularity, especially in parts of Central and Southern Europe, and several Western European states sanction defamation more harshly if the victim is a public official (Griffen 2017: 31–3). A number of countries still punish insult or defamation of the state (or state bodies such as parliaments, governments, and public authorities), just as some still have special legal protection for foreign heads of state (and sometimes officials) on the statute books (Griffen 2017).

On the other hand, the new whistleblower protection framework, passed by the European Parliament in April and formally adopted by the Council in October, is an important step towards providing more coherent legal protections for crucial sources that enable particularly important forms of public-interest and investigative journalism on unlawful behaviour in the public, private, or not-for-profit sectors.[6] As an OECD (n.d.) study has noted, whistleblower protection is essential to encourage the reporting of misconduct, fraud, and corruption, and public-interest disclosure needs to be encouraged and protected. Whistleblower protection mechanisms (WPMs) play a critical role in combating corruption in both the private and the public sector, so it is important that the EU ensures that all member states transpose both the letter and the spirit of the new directive into national law and work to expand whistleblower protection more broadly. The directive is primarily focused on breaches of EU law but also makes clear that member states may go beyond this when implementing the new rules. More broadly, the whistleblower protection framework underlines the importance of strengthening legal protections and the opportunity of public-interest defences when whistleblowers and journalists publicise sensitive public-interest information, especially in an environment where, among others, the Donald Trump administration in the United States is actively trying to criminalise the things journalists regularly do as they receive and publish true information given to them by sources or whistleblowers.

Other free expression issues have emerged with the growing use of social media and other networked forums for political debate and discussion. Online harassment, abuse, and xenophobia have increasingly been used to marginalise visible minorities and to diminish the political participation and power of women – in particular, evidence from the UK has suggested that the amount of online abuse directed towards female politicians grew considerably between 2015 and 2017 (Gorrell et al. 2018). Various policy proposals have emerged to regulate forms of online content, including hate speech, online abuse, and disinformation, as well as child abuse imagery, terrorist propaganda, and other forms of illegal material. These vary in their approach and point of emphasis, from the duty of care outlined in the UK Department of Digital, Media, Culture, and Sport's 'Online Harms' framework, the co-regulatory and voluntary approach outlined in the Code of Practice on Disinformation enacted by the European Commission, and the statutory network enforcement provisions enacted in the German 'NetzDG'. However, critics maintain that these legislative initiatives have failed to adequately take freedom of expression into consideration and may not even genuinely tackle the problem at hand (Heldt 2019; Schulz 2018).

It is notable that many vocal critics of platform companies' policies and practices – such as the global free expression organisation Article 19, or David Kaye, the UN Special Rapporteur on Freedom of Expression – have invested significant political capital into their visions of an alternative, freedom-of-expression-respecting, model for online content governance. Concerned by the emergence of a status quo where companies have been forced to make important decisions about the public value or legal status of specific types of speech, effectively bypassing the courts and putting them in charge of interpreting and applying national laws, these advocates

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6 http://www.europarl.europa.eu/doceo/document/A-8-2018-0398-AM-155-155_EN.pdf

have outlined various possible voluntary commitments, principles, and institutional oversight arrangements as a possible better way forward (Article 19 2018; Kaye 2019).

Ideally, a mechanism of multi-stakeholder oversight, transparency, and accountability would help collaboratively develop rules for moderating user-generated content at scale and at speed that may be consistent with international human rights law and that do not interfere with the right of individuals to enjoy their own freedom of expression (Global Forum for Media Development 2019). Various possible informal models have been proposed, from Article 19's 'press council' inspired notion of Social Media Councils, to the approach that Facebook has been exploring through its content 'Oversight Body' (Douek 2019b; Gorwa 2019). While meaningful policy innovation in this space could go a long way to help make platform companies more transparent, accountable, and human-rights compliant (Kaye 2018), there are a number of obstacles that impede progress in the near term, ranging from the political (e.g. participants' poor experience with previous multi-stakeholder venues) to the technical (e.g. scale, speed). Such oversight bodies would also help prepare us for a future in which courts may well establish – as the German Federal Constitutional Court has done, in a preliminary ruling requiring Facebook to reinstate the page of a far-right party – that where private actors provide the infrastructure and forums necessary for individuals to communicate their ideas, and especially where this role was previously assumed by the state (e.g. through state monopolies on postal services and telecommunications), it can be argued that the requirements of fundamental rights on private actors might well be equally exacting, and indistinguishable from those of the state (Theil 2019).

Scale is a particularly difficult challenge, and policymakers find themselves facing a paradox: on one hand, it is increasingly clear that the proliferation of certain forms of content – such as mass shooting videos or child abuse imagery – has necessitated the use of automated systems to remove them. Recent regulatory frameworks tend to push platforms towards the increased use of automated monitoring, filtering, and takedown systems, either directly or indirectly (for instance, by setting very tight timelines for content takedowns). On the other hand, however, these automated systems also create a host of due process, accountability, and transparency issues (Duarte et al. 2017; York and McSherry 2019). Their overall impact on the speech of platform users is still poorly understood, and it is likely that the effects of certain forms of automated moderation systems – such as matching systems that use hash functions to compare user-uploaded material against previously identified instances of banned content – are quite different from predictive systems that use statistical techniques that try to identify unique forms of content in a unique context (Gorwa et al. forthcoming).

Recent work has documented how certain kinds of predictive systems, especially those used to detect and flag hate speech, translate problematic assumptions embedded in their training data into racial discrimination against users who use certain language. For example, models trained on several of the most widely used hate-speech datasets are up to twice as likely to label tweets by self-identified African Americans as toxic (Sap et al. 2019). Other leading systems – such as the Perspective API developed by Google Jigsaw – when released into the wild immediately demonstrate examples of over- and under-zealous toxicity predictions (Binns et al. 2017). For example, users experimenting with Perspective, which has been used to moderate comments by newspapers, including the *New York Times* and the discussion platform Disqus, showed that it classified the single comment 'Arabs' as 63% toxic, while the phrase 'I love führer' was only 3% toxic (Sinders 2017). When deployed at scale, such predictive systems are certain to result in the eventual suppression of numerous instances of legitimate expression (Li and Williams 2018). It is highly concerning that some political actors are actively encouraging expanded use of

these demonstrably problematic technologies in vital public-interest areas like free expression. Policymakers need to avoid 'technochauvinism' (Broussard 2018), the belief that technological solutions are always the right ones.

Higher standards of due process, transparency, and oversight – as recently recommended by the High Level Expert Group on Artificial Intelligence (2019) – should also be necessary for automated systems for the removal of online content (York and McSherry 2019). Firms should implement the commitments enshrined in the Ruggie Principles on Business and Human Rights, and undertake regular independent algorithmic impact assessments as well as general human rights assessments, with the results disclosed to the public. Some type of regulatory commitment will likely be needed to get the ball rolling and to ensure that adherence to these principles is enforced. David Kaye (2018) provides a framework for what policymakers could try to encourage: (1) decentralised content moderation decision-making through multi-stakeholder councils either at the level of individual platform companies or across the industry, (2) increased transparency, in terms of decisions, rule-making, and access to data for independent assessment and evaluation, and (3) industry-wide oversight, for example, by the kind of social media council proposed by Article 19 and others – all with an explicit recognition of international human rights law as the framework within which content moderation should take place.

Beyond these issues of the legal and digital framework for independent professional journalism, Europe also increasingly faces institutional threats to free expression and media freedom. In some parts of the European Union, news organisations are subject to 'media capture,' where they are under the control of vested interests (whether commercial and/or political) which use them strategically to advance and defend their parochial interests (Schiffrin 2017).

Media are particularly vulnerable to capture in situations where the regulatory framework is weak, their finances are under pressure, and private and/or political interests are thus able to acquire media or influence them through the strategic use of advertisements rewarding pliant media and punishing independent reporting. These problems are often compounded by market concentration, lack of pluralism, and opaque and sometimes problematic forms of ownership.

The Center for Media, Data and Society (CMDS) at the Central European University has identified the four main components of media capture (Dragomir 2019):

1. Regulatory capture (when the government takes control of the regulatory process and undermines the independence of media regulators and competition authorities, gaining leverage over media and the ability to reward and/or punish media).

2. Control of public-service media (where nominally independent organisations in practice operate as state media, under tight government control through governance structures and funding arrangements that do not protect independence).

3. Use of state financing as a control tool (where public funding for state-administered media, direct subsidies, and, perhaps most insidiously, state advertising are used to control and influence media).

4. Ownership takeover (where previously independent news media are taken over directly by political actors or indirectly through politically aligned private owners and are sometimes collected in larger conglomerates controlled by wealthy political supporters).

As Marius Dragomir has noted, these problems are not confined to smaller and poorer countries in Central and Eastern Europe, but exist to varying degrees elsewhere too. 'Even in Spain,' he writes

> *a vibrant and diverse media market, alliances of businesses and government neutered the media's autonomy to cover relevant topics. Government control of RTVE, the country's public broadcaster, coupled with outstanding debts owed by media companies to the large banking groups in Spain, led to widespread self-censorship among journalists in the mainstream media. (Dragomir 2019: 7)*

Recent years have seen an emerging trend of threats to the independence of public-service media and their regulatory bodies, even in European Union member states (Muižnieks 2017). Problems include allegations of direct censorship, abrupt changes of staff, including executives, for political reasons, and the co-optation of nominally independent media regulators by governments or other dominant political forces. In Poland, hundreds of public media journalists have been dismissed, demoted, or reassigned, or resigned in protest, after a 2016 reform of public-service media that put public television and radio under the direct control of the government and restricted the constitutional role of the existing media regulator (Mong 2018).

Policy responses to media capture would include guaranteeing the independence of media regulators and competition authorities, transparency of media ownership, and limits on cross-media ownership, as well as regulation of state advertising (Schiffrin n.d.). Of course, where policy and regulation are parts of the instruments that domestic political actors use to control and capture media, these guarantees are unlikely to come from the member state level, at least in countries where the problems are particularly pronounced, and may require some form of EU-level response.

Policy Suggestions

Policymakers wishing to address these problems have several options available, including:

- Recognising the positive obligation, established by the European Court of Human Rights, that states must carry out effective investigations following the killing or disappearance of a journalist.

- Using Article 7 of the Treaty of the European Union to investigate and sanction serious breaches of the fundamental rights and values that the EU (per Article 2) is founded on.

- Considering a new annual rule of law review of all EU member states (to supplement existing Article 7 procedure) to identify, document, and publicise any backsliding from the norms and values all member states are committed to via the Treaty, with freedom of expression and media freedom as key parts of this review. Outcomes could be tied to the implementation of the draft law passed by the European Parliament, so that member states who do not protect free expression and media freedom risk suspension of EU funds (thus avoiding the reliance on qualified majorities and unanimity in Article 7 proceedings) (Pech and Scheppele 2017).

- Addressing the 'implementation gap' that exists between the numerous dedicated resolutions adopted by the Council of Europe and various UN bodies, starting with the recommendations on the protection of journalism and safety of journalists and other media actors.[7]

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7 CM/Rec(2016)4[1] of the Committee of Ministers to Member States on the protection of journalism and safety of journalists and other media actors, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415d9

- Reviewing existing defamation laws to ensure alignment with ECHR case-law, and providing clear and explicit public-interest defences and protections for independent professional journalists in counter-terrorism, online harms, and surveillance laws.

- Ensuring that private companies moderating online speech at scale: (a) embrace multi-stakeholder collaboration, including with civil society; (b) provide increased transparency; (c) are subject to human-rights compliant oversight; and (d) moderate speech within the framework of international human rights.

- Protecting private media from capture through regulation of state advertising, and ownership, through greater transparency in both of these areas, and by protecting the independence of relevant regulators, including by ensuring that media regulators are independent, operate transparently, are accountable to the public, demonstrate respect for the principle of limited scope of regulation, and provide appropriate oversight of private actors.

- Protecting the independence of public-service media by ensuring that both governance and funding have actual autonomy from both government and legislative bodies.

- Considering action at the European level when individual member states fail to protect private media from capture or reduce public-service media to de facto state media.

3. Disinformation and Online Harms

Context

It is clear that the same digital media and online platforms that provide easy access to an abundance of information, and allow more and more people to express themselves and take part in public debate, have also been used and abused to spread many different kinds of disinformation by different actors and for different purposes. The challenges include:

- Information operations by foreign states.

- For-profit false and fabricated content masquerading as news.

- Domestic political actors, media organisations, and individual citizens spreading misleading and sometimes false material.

- The amplification of some of these problems by algorithms or various forms of online advertising that can allow potentially harmful information to spread at unprecedented speed and scale.

- Wider problems of online harms, including both illegal and legal but potentially problematic and harmful behaviour and content.

The kinds of disinformation, misinformation, and other problematic online content and behaviour documented during the Brexit referendum, the 2016 US election, and some other subsequent elections have rightly been identified by the European Commission as a major challenge for Europe (Viola 2019). Millions of Europeans are deeply concerned about the credibility, trustworthiness, and veracity of much of the information they rely on, especially online, and this represents a threat to our democracies.

The European Commission has defined disinformation as 'verifiably false or misleading information created, presented, and disseminated for economic gain or to intentionally deceive the public',[8] and for simplicity's sake we will use the term as a heading for the wider range of issues that include disinformation, misinformation, and malinformation, propagated by a range of different actors ranging from foreign governments, domestic politicians and media, to citizens (Wardle and Derakhshan 2017). The issues surrounding disinformation are tied in with the wider agenda of what the UK government has called 'online harms', covering clearly illegal activities, such as spreading terrorist content, child abuse imagery, revenge pornography, hate crimes, harassment, and the sale of illegal goods, but also potentially harmful behaviour that has a less clear legal definition, such as cyber-bullying, online harassment, and the spread of disinformation.

The EU Action Plan against disinformation represents a first step at the European level – working in tandem with steps taken by some member states – to address problems around disinformation, most specifically the problems that concern content and behaviour that is legal under EU or national law (so not election interference, terrorism, child abuse imagery, hate speech, and the like).[9] But it is clear that there is much more to be done. The challenge is that the problems in this space are many and complex, not documented or understood in a systematic fashion, and often involve legal (even when disturbing, offensive, and shocking) forms of expression that are not necessarily even easily identifiable as outright false or fabricated. For example, as a report prepared by First Draft noted about the UK 2017 General Election,

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8   https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0236
9   https://ec.europa.eu/digital-single-market/en/news/action-plan-against-disinformation

> *the most misleading content didn't come from newly created websites or automated accounts created to push disinformation. Instead, misinformation in the UK election came from misleading headlines, graphics and statistics from the mainstream press, political parties and hyper-partisan websites. (Busby et al. 2017)*

Any interventions in the disinformation space have to recognise that domestic media and domestic politicians are often part of some disinformation problems – and, importantly, the public recognises this and frequently expresses the same level of concern over what they see as political propaganda and poor journalism as they do over false and fabricated content (Newman et al. 2018).

These complexities, coupled with the politically sensitive nature of intervening in a space that concerns public debate and involves fundamental rights, led the EU High Level Group on online disinformation to embrace the position also taken by a number of digital rights organisations: that interventions targeted at potentially problematic but often legal content and behaviour should (a) operate within a fundamental rights framework, and (b) avoid interventions targeted directly at content or expression, especially when those interventions are designed by the executive branch and other public authorities (High Level Expert Group on Fake News and Online Disinformation 2018). While Article 10 of the European Convention on Human Rights allows for various speech restrictions, those restrictions must meet the classic three-part test, where interferences with freedom of expression are legitimate only if they (a) are prescribed by law; (b) pursue a legitimate aim; and (c) are proportional and necessary in a democratic society. The European Court of Human Rights has ruled that the right to freedom of expression is not limited solely to truthful information, suggesting that the veracity of content alone may not be a sufficient justification for some approaches to countering disinformation.[10] Refusing to directly regulate content (apart from when it is illegal) may seem cautious, but policymakers in fact have many options for making very significant interventions in this space.

First, there is considerable scope for expanding and improving the collaborative approach to combating disinformation by involving all relevant stakeholders (public authorities, platform companies, private news media, public-service media, and civil society groups, including fact-checkers, media literacy groups, and researchers). To deal with the arguably most troubling forms of disinformation – those that involve foreign information operations aiming to undermine the integrity of elections and the democratic process – there is an urgent need for an official coordinating body to enable collaboration between private companies and democratic governments, allowing them to work together to identify and thwart foreign information operations.[11]

More broadly, while slow and uneven, the co-regulatory approach that the European Commission has effectively leveraged for other problems in the broad area of online harms, like child internet safety (see Livingstone et al. 2013), can also be pushed beyond the current landscape of codes of conduct for online hate speech and disinformation (Gorwa 2019). The most important role for policymakers here is to incentivise collaboration and ensure that performance and progress can be independently monitored, allowing for good behaviour to be recognised and rewarded, and for those who shirk their responsibilities to be identified and singled out.[12] Collaborations are

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10 See e.g. ECtHR 6 Sept. 2005, CASE OF SALOV v. UKRAINE (Application no. 65518/01).
11 As proposed here: https://www.washingtonpost.com/opinions/2019/11/15/heres-how-russia-will-attack-election-were-still-not-ready/
12 Such oversight could be self-regulatory, as with newspapers, co-regulatory, as with press councils in some countries, or involve the creation of new, independent regulators as suggested by the Digital Culture, Media, and Sports Select Committee's final report on disinformation and 'fake news'. Whether self-regulatory or otherwise, such oversight bodies need involvement from across all relevant stakeholders, a governance structure that ensures their independence from both government and individual companies, and the ability to access data, actively investigate issues, act against problems, and be accessible to the public. See e.g. https://www. parliament.uk/business/committees/committees-a-z/commons-select/digital-culture-media-and-sport-committee/news/fake-news-report-published-17-19/

already underway, however imperfect they may be, on issues ranging from countering information operations and fact-checking political statements and viral messages to sharing best practices for responding to disinformation in different contexts. These have included projects orchestrated by non-profits like First Draft, as well as media organisations, such as the BBC-led Trusted News Initiative involving many publishers and some major platform companies.

Such collaborations orchestrated in part by public authorities formed a key part of Sweden's effort to fight disinformation in recent elections, coordinated by the Swedish Civil Contingencies Agency. Rather than directly trying to ban or remove false or potentially harmful content, they instead sought to enhance social resilience and awareness, to 'ensure that factual public information can be quickly and effectively communicated even under disruptive conditions, as well as identify, analyse and confront influencing operations'.[13] (The effort seems to have been broadly effective in containing foreign interference, but the elections were nonetheless accompanied by a large volume of what many observers saw as problematic information produced by some domestic politicians, partisan media, and their supporters – though in such cases, the difference between disturbing, offensive, and shocking but fundamentally tolerable forms of political discourse and outright misinformation is contested and hard to draw.[14])

Co-regulatory approaches involving many stakeholders with different interests can be frustratingly slow, and joint responses will often fall short of what any one group would ideally want, but it is hard to see how a problem as complex as disinformation can be addressed through unilateral government action without significant collateral damage. Evolved forms of self- and co-regulation, such as transparency mechanisms and commitments from firms to act more proactively in certain areas, can incentivise additional action but they are unlikely to change the fundamental structure of the digital media ecosystem. This realisation has led to growing calls for statutory regulation to impose binding commitments and hold intermediaries legally liable for all content they host, in a way comparable to publishers' liability. But, as pointed out by David Kaye, the UN special rapporteur on free expression, and many others, changes to liability frameworks that leave platforms with the responsibility to make judgements on the legality of specific types of speech can be detrimental to fundamental communication freedom rights,[15] and may also have knock-on effects, such as establishing increased dependency on firms (Helberger et al. 2018) or further entrenching dominant platforms that have the resources to meet regulatory demands, unlike small companies and new entrants.

Second, while slow, expensive, and limited in scope, significant investment in media literacy for citizens of all ages is also likely to be a key part of increasing societal resilience to various kinds of disinformation. Here, the Open Society Institute has documented very wide variation in the overall levels of media literacy in different EU member states, and it has shown how much room for improvement there is in terms of ensuring that all European citizens are equipped to navigate digital media and make the most of the opportunities they afford (Lessenski 2018). It is not enough to designate 'media literacy weeks' or the like; to make a meaningful difference, media literacy has to be a central part of education (as it already is in some countries) and significant resources will have to be invested in media literacy for adults, as a growing body of research suggests that older people may be both more exposed to disinformation and more likely to share it (Guess et al. 2019). For media and information literacy to be effective, it must be pursued across teacher training curricula, school curricula, and beyond, and it will require significant investment and ongoing evaluation and evolution.

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13 https://www.poynter.org/ifcn/anti-misinformation-actions/#sweden
14 https://www.bloomberg.com/opinion/articles/2018-11-15/fake-news-roiled-sweden-s-elections-but-it-was-homegrown
15 See e.g. David Kaye's comments on the NetzDG: https://netzpolitik.org/2017/un-sonderberichterstatter-
     netzwerkdurchsetzungsgesetz-verstoesst-gegen-menschenrechte/

Third, to develop credible and effective policy responses to disinformation, there is an urgent need for more independent, evidence-based research. While there is no doubt that there are many and serious problems of disinformation, we still know little about the scale and scope in different countries, the actual effects of disinformation, and the effectiveness of various possible policy interventions. As four members of the High Level Expert Group wrote in 2018:

> *While disinformation is clearly a problem, its scale and impact, associated agents and infrastructures of amplification have not been adequately investigated or examined. Without that evidence base, concrete interventions – beyond additional research and continued support for educational initiatives, provided they are clearly evaluated – should not be implemented.[16]*

This problem persists. While more than two years has passed since the European Commission first issued its call for members of an independent High Level Group on disinformation, and almost a year has passed since the Action Plan was announced, we still have very little up-to-date, systematic, evidence-based work on disinformation problems across Europe. This makes it very hard to understand the problem, respond effectively to it, or indeed determine whether progress is being made, as it may be in the United States, for example, where one study published in 2018 found 'a sizable drop in the proportion of Americans who were exposed to fake news websites [since 2016]'; the authors describe that their 'data also indicate that consumption of these sites continues to be concentrated among a small subset of Americans with strong preferences for ideological media, especially those with the most conservative media diets' (Guess et al. 2018: 19). Are things getting better in Europe? The self-assessment reports by the signatories of the Code of Practice against disinformation suggest all companies feel they are making progress, and the European Commission has also announced it feels that its actions are making a positive difference.[17] But without independent analysis, it is hard to tell. There simply is no comparable research in any European country that we are aware of, and the near-total absence of independent evidence means evidence-based policy-making is almost impossible, as policymakers will have to rely on testimony from private companies or advocacy groups. In the long run, in is unsustainable for public authorities and private companies to be allowed to mark their own homework in such an important area with no independent oversight.

Finally, a note of caution. Outside of Europe, laws passed in Australia and Singapore have raised concerns for freedom of expression and digital rights advocates by applying a broad set of liabilities to a poorly defined set of online intermediaries (Douek 2019a; Schuldt 2019). When policies promise to take action against malicious, false or misleading, and potentially harmful content and behaviour, the burden of evidence required to establish intent (malicious), veracity (false), fairness (misleading), and/or effect (harmful) should be high, and the problems to be addressed clearly defined and ideally specified in law. The UK and Swedish examples mentioned above underline that some domestic politicians, media, and citizens are part of some disinformation problems.[18] Clumsy interventions against these kinds of challenges could put both citizens' right to free expression and media freedom at risk. It is a mistake to assume that various social ills – ranging from the verifiable problem of child abuse imagery to murkier concepts like disinformation, to polarised political debate, or empirically unsubstantiated concerns about 'screen time addiction' – can be categorised together as 'online harms' merely by virtue of them having an online component. As Victoria Nash (2019: 19) writes,

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16 https://medium.com/@hlegresponse/six-key-points-from-the-eu-commissions-new-report-on-disinformation-1a4ccc98cb1c
17 E.g. 'Our actions, including the setting-up of election networks at national and European level, helped in protecting our democracy from attempts at manipulation.' https://ec.europa.eu/commission/presscorner/detail/en/ip_19_2914
18 The domestic side of disinformation problems also extends into the problem that political advertising online is poorly regulated in many countries, an issue that goes beyond our scope in this report.

the idea that a single effective and proportionate regulatory approach could be designed in such a way as to tackle every one of these matters is highly presumptuous and neglects the wide array of complex social factors underpinning the production, sharing and engagement of such content.

While the emerging landscape of platform regulation is fragmented and complex, and there may be important overlaps between some emerging policy areas that should benefit from increased coordination (e.g. data protection and competition), policymakers should be careful of bundling disinformation-related measures with measures meant to combat content that is actually illegal rather than merely problematic (Tambini 2019).

Policy Suggestions

Policymakers wishing to address these problems have several options available, including:

- Clearly distinguishing between responses to illegal behaviours and forms of content (election interference, terrorism, child sex abuse, hate speech, and the like) and broader problems of different kinds of disinformation which, while problematic and potentially harmful, are often legal and protected by the right to free expression.

- Avoiding direct forms of content regulation based on broad and amorphous definitions of terms like 'fake news', especially when underpinned by assumptions about the intent ('malicious'), veracity ('false or misleading'), and/or effect ('potentially harmful') of specific types of content that are extraordinarily hard to establish in practice. Safeguards for fundamental communications rights should be built into both internal and external oversight mechanisms to ensure due process and the opportunity to appeal.

- Incentivising collaborative responses to address different disinformation problems, bringing together public authorities, platform companies, private news media, public-service media, and civil society actors.

- Encouraging the development of self-regulatory, co-regulatory, or independent regulatory bodies that can oversee these efforts, have greater data access, can analyse performance, and issue guidance, for example, linked to the model of an 'Independent Platform Agency' outlined by the LSE Truth, Trust, Technology Commission (2018) or by means of academic oversight in collaboration with independent regulators, such as the oversight of media regulators in ERGA on the self-regulatory Code of Practice on disinformation as envisaged in the EC tender for the 'European Digital Media Observatory' (2019/1087).

- Increasing funding for research that studies the impact of various kinds of disinformation across the EU, either by setting up dedicated research centres or by creating grants that can support existing ones. A possibility could be to do both, and provide for EU-wide coordination by following up on the initial announcement of a planned 'European Digital Media Observatory' that can secure data access and coordinate best practices for researchers.

- Investing in independent media literacy efforts to promote media and information literacy to counter disinformation and help users navigate the digital media environment.

- Furthering societal resilience against disinformation and online harms within the EU by ensuring a future-proof diverse media landscape – pledging significant financial support for independent news media, fact-, and source-checking (see Chapter 5). Ideally, these, as with media literacy efforts, should emphasise independent initiatives, and be free from potential interference from public authorities or from technology companies.

4. Competition and Data Protection

Context

The move to a digital media environment has fundamentally altered the way news is accessed and has led to media use being ever more closely intertwined with a wider data economy where data is generated, stored, processed, exchanged, and distributed in ever-expanding and evolving ways. As Crémer et al. (2019: 12) note in their report on competition policy in the digital era, 'many of these changes have greatly benefited European citizens', particularly when it comes to accessing news and information. As they continue, 'the accessibility of information has greatly increased – not least thanks to the emergence of new information intermediaries ... Consumer choice has increased [and] the distribution of cultural goods and news has become much easier.'

But it is also clear that the move to digital media, and the growing data economy, has profoundly disrupted incumbent industries, challenged the existing business of news, and presented fundamental challenges for both data protection and privacy. The increasingly intertwined areas of data protection, privacy, and competition are large and complex, raising issues for citizens, industry, and policymakers. We will not try to engage with all of them here, but simply identify some developments that are particularly salient for independent professional journalism in particular, including:

- Emerging concerns that implementation of the General Data Protection Regulation (GDPR) could be used in bad faith by some actors to undermine investigative reporting.

- Uncertainty around the future of the digital advertising sector amidst its investigation and possible sanction by Data Protection Authorities (DPAs).

- The need for clearer digital competition enforcement and policy to ensure a level playing field and vibrant competitive digital single market.

While the GDPR has legally enshrined data rights and led to a number of major benefits for ordinary citizens seeking to better control and understand how third parties process their personal data, there have been a few troubling incidents that suggest that the GDPR could be used strategically in certain countries to stifle valuable investigative journalism. Although Article 85 of the GDPR has a journalism exception, which makes clear that member states must 'reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including processing for journalistic purposes', this Article is one of roughly three dozen articles with derogations, which allow member states to be flexible in their exact implementation.

In a notable case, Romania's implementation of GDPR (passed in July 2018 as Law No. 190) significantly narrowed down the Article 85 journalism exemption.[19] In November, after publishing a scoop about an alleged corruption scandal involving one of the country's highest profile politicians, a Romanian digital journalism start-up received notice from the Romanian DPA seeking to obtain information that could be used to reveal their sources.[20] A group of digital rights and freedom of expression organisations have since written an open letter to the European Data Protection

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19 The revised language only allows for a journalism exemption 'provided that it refers to personal data that were expressly made public by the data subject or which are strictly related to the quality of public person of the data subject or the public character of the facts that person is involved in'. Public interest journalism is of course often interested in personal data that some data subjects do not expressly make public, or wish to be public.

20 See e.g. https://www.liberties.eu/en/news/politicians-in-romania-use-gdpr-to-intimidate-journalists/16384

Board (EDPB) and the European Commission seeking clarity on the case,[21] but guidance from the Commission or the EDPB is clearly more broadly needed. In a related case in the UK, lawyers representing a British businessman have invoked data protection laws when writing to at least three newspapers, demanding they 'block or erase' data that he believes are inaccurate. As the solicitor and Index on Censorship trustee Mark Stephens noted at the time, 'This would set a very dangerous precedent if he won' – using data protection law to limit inquiry and coverage by independent news media.[22]

Digital advertising is another area of considerable uncertainty. Over the past year, a notable area of focus for data protection authorities has been the digital advertising technology (adtech) market, following a series of complaints about real-time bidding (RTB) filed in multiple member states.[23] Academic and civil society investigation into this ecosystem has raised serious concerns about how sensitive 'special category data' (e.g. profiles including political affiliations and medical conditions) are effectively 'broadcast' to hundreds of third parties under the current complicated RTB ecosystem, which is overseen by standards-setting actors that include both individual companies like Google and entities like the Internet Advertising Bureau.[24]

Following a consultation with advertisers, researchers, and civil society, the UK's DPA published a report outlining the preliminary findings from their investigation. The Information Commissioner's Office has been cautious about imposing major fines or outlining a binding decision, instead merely announcing a consultation period and possible future industry review (ICO 2019). The French DPA (CNIL) is also becoming more active on adtech, having made it one of its major priorities for 2019/2020, and stating that it will offer companies a 12-month grace period to begin complying with new guidelines issued over the summer. Beyond data protection authorities, the French and German competition authorities have also investigated online advertising, looking at the relationship between data and competition issues.

Given the practices documented so far, it appears increasingly inevitable that some kind of adtech reform is on the horizon.[25] The primary focus of this should be to ensure effective data protection and effective competition in a market currently dominated by a few US-based technology companies, but it is important that the possible knock-on effects for the news industry are at least considered. Online advertising represents well over half of the digital revenues of European newspapers, and most titles are heavily intertwined with third-party adtech vendors large and small (Libert et al. 2018).

While DPAs have been moving cautiously thus far, reforms that involve less-invasive behavioural advertising (and perhaps increased contextual advertising), while protecting the privacy of many Europeans, could also impact the already difficult digital business of news publishers. For example, the industry association News Media Europe (2018b: 1) has stressed that the goal in the ongoing reform of the EU ePrivacy directive should be to '[ensure] privacy without undermining legitimate business models and media pluralism'. This illustrates the trade-offs that policymakers face and the possible knock-ons for private-sector news media – who account for most investment in journalism across Europe – of action in an area like data protection and privacy. Some premium publishers may welcome changes – the *New York Times*, for example, blocked all open-exchange ad

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21 https://www.apti.ro/sites/default/files/ApTI%20and%20PI%20letter%20to%20EDPB%20-%20RISE%20Project.pdf
22 https://www.telegraph.co.uk/news/2018/02/15/max-mosley-using-data-protection-law-gag-media/
23 https://techcrunch.com/2019/05/20/gdpr-adtech-complaints-keep-stacking-up-in-europe/
24 https://www.economist.com/briefing/2019/03/23/europes-gdpr-offers-privacy-groups-new-ways-to-challenge-adtech
25 And beyond this, a move beyond the focus on consent and individual rights that characterise much data protection and privacy regulation currently, towards e.g. a framework that gives people rights to stipulate how their data are used without requiring them to take ownership of it themselves, and recognises how 'networked privacy' raises issues that are hard to address solely through an individual approach, see e.g. https://www.technologyreview.com/s/612588/its-time-for-a-bill-of-data-rights/

buying on its European pages in favour of direct sales when GDPR took effect, and reported that its digital advertising revenues continued to grow.[26] Whether other publishers would see the same if they renounced potentially problematic adtech is an open question. One empirical analysis conducted in the United States suggested that using online behavioural advertising increased a publisher's digital advertising revenues by about 4% (Marotta et al. 2019). Publishers with different business models and degrees of overall robustness will face the possibility of such a reduction in their digital advertising revenue with varying degrees of confidence.

The broader issue of how policymakers and regulators can ensure competition in the digital single market is increasingly important and increasingly intensely debated. Many parts of the online economy have very strong winner-takes-most dynamics. The various products and services offered by Google and Facebook account for a large share of the time people spend online in Europe, both companies are collecting vast amounts of data, and they capture a large share of Europe's rapidly growing digital advertising market, just as other US-based technology companies like Amazon, Apple, and Microsoft play a large role in other parts of the digital economy in Europe. News media have many and complex relations with these companies, competing with them for attention and advertising, even as they also often rely on them for various forms of technology (ad sales, analytics, cloud services, and more) and actively seek to reach audiences via their products and services. For example, as of early November 2019, the analytics company Parse.ly estimated that 55% of online publishers' traffic comes direct and through internal referrals, 24% from search (mostly Google), 13% from social (mostly Facebook), and 8% from other external sources including various aggregators.[27]

Let us stress again that we do not seek to provide an exhaustive overview of this large, complex, and wide-ranging debate, or all the many different options available, but simply to identify a few key points important for the future of independent professional journalism. Put most simply, the bottom line is this: the purpose of competition law and competition regulation is to protect competition. It is not to protect individual incumbents or legacy businesses, and while a competitive digital single market will benefit European citizens and consumers, and benefit companies who are able to compete effectively online, it is not clear that these important objectives in themselves will have a material positive impact on the business of news specifically. Policies and regulations that may help ensure that the Swedish music streaming service Spotify and the German e-commerce company Zalando compete on a level playing field with competitors from outside Europe, or enable the emergence of European champions akin to firms like Naver in South Korea or Naspers in South Africa, will not necessarily make independent professional journalism a more lucrative and stable business.

Consider the recommendations made in some of the most important policy reports in this area. Both the Crémer et al. report, prepared for DG Competition, and the 'Unlocking Digital Competition' report, prepared for the UK government by Jason Furman et al. (2019), advocate a number of measures to ensure competition in various digital markets, including, among other things: recommendations around data access, portability, and multihoming/interoperability; increased focus on data and non-price competition in competition enforcement; greater scrutiny of mergers and acquisitions, including considering data collection and other issues that may not raise traditional red flags; and greater coordination across European competition authorities and data protection authorities on competition matters, especially in situations where there are dominant players who may both be the market and be in the market. Both reports argue that there is no need to reinvent the wheel, and that existing frameworks provide a sound and flexible

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26 https://digiday.com/media/gumgumtest-new-york-times-gdpr-cut-off-ad-exchanges-europe-ad-revenue/
27 https://www.parse.ly/resources/data-studies/referrer-dashboard

basis for protecting competition in the digital era, and that, with some adaptation and refinement, adapting and enforcing existing policies could ensure a competitive and well-functioning digital market.

They also, however, recognise that both platform businesses and publishing businesses exhibit many winner-takes-most dynamics, including economies of scale, network effects, and data network effects. As the authors of a recent Centre for Regulation in Europe report note, 'there are legitimate concerns that media pluralism may be reduced if the larger players benefit, while smaller ones such as local or minority media face greater obstacles to reaching audiences and/or advertisers' (Streel et al. 2019: 29). That is why a consensus is building that competition authorities increasingly need to adopt a wider view of consumer harm than simply price at the point of consumption and also consider potential upstream harm in multi-sided markets, as well as the dynamic consequences over time (Ezrachi and Reyna 2019).

One promising possible development pertains to the transparency of digital markets and the ability for organisations in the digital media ecosystem to better understand the playing field they operate on. The EU regulation on platform-to-business relations ('Fairness P2B'),which will affect a wide range of online marketplaces, booking sites, app stores, and other platforms, will mandate a variety of transparency rules once it goes into effect in the summer of 2020.[28] The development of such guidelines or codes of practice has been recommended in several reports, including by the European consumer organisation BEUC (Ezrachi and Reyna 2019) and the Furman report.

More clarity will have to be provided by business-facing platforms into their algorithmic ranking parameters (including outlining how a platform's own products may be advantaged), and when they will be making major changes to terms of service. This could be important for news organisations: for example, those which have apps on app stores, should, theoretically, be able to see more criteria around how app stores are ranking them, and those who rely on search engines and social media for their reach might be able to better understand the impact of product changes made by platform companies.

While the regulation likely does not apply to the platform-to-consumer environments that also have a major effect on journalism, such as aggregators (e.g. Google News) and feed-based social networks (e.g. Facebook Newsfeed), it could still provide a first step for increasing the intelligibility and explainability of certain algorithmic systems – a significant focus of recent scholarship in fair and transparent machine learning (Mittelstadt et al. 2019) – for citizens and policymakers. Ideally, it could help ensure that platform policy changes (such as tweaks to recommender systems or ranking systems) are clearly thought through and communicated, reducing the likelihood of collateral damage from arbitrary changes, like what some news publishers in Slovakia experienced when they lost two-thirds of their reach on Facebook during a product test in 2017.[29]

Across most of these areas, more informed policymaking and more effective competition enforcement will also require greater access to relevant data and investment in greater analytical capacity in the relevant authorities, including the ability to sand-box test algorithms and conduct experiments (Ezrachi and Reyna 2019; Streel et al. 2019), similar to the broader points made above about some form of oversight to ensure greater data access, intelligibility, and transparency.

These various recommendations will take many years to develop, in some cases legislate, and to implement. Hopefully they will help provide a more competitive digital economy, helping the best

28 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018PC0238
29 https://medium.com/@filip_struharik/biggest-drop-in-organic-reach-weve-ever-seen-b2239323413

companies succeed, provide for more mutually beneficial relationships between platforms and third-party complementors like publishers, and serve European users better by ensuring a more intelligible and transparent environment. But while potentially good for both the digital single market overall and for consumers, they are unlikely on their own to deliver significantly more investment in independent professional journalism. Initiatives like data portability and increased multihoming/interoperability, or closer scrutiny of mergers and acquisitions, may make for a more competitive platform market – but publishers are not running platform businesses. Better B2B relations between platforms and complementors such as publishers, and more oversight of data collection and B2B practices by dominant players, may help publishers at the margins, but it is hard to see how they prima facie will fundamentally change the business of news in a digital era.

Policy Suggestions

Policymakers seeking to push these challenges forward have several options available, including:

- Issuing guidance on the journalism exemption in GDPR Article 85, and clearly reiterating the application of the European Union Charter of Fundamental Rights and the European Convention on Human Rights.

- Funding EU-level research on the adtech ecosystem, and possible privacy-preserving ways forward, with a particular focus on helping smaller publishers identify alternative/ supplementary revenue sources.

- More broadly ensuring that relevant authorities have access to data and greater analytical capabilities to be able to assess possible harm both downstream and upstream and act in an evidence-based and timely way.

- Continuing to pursue measures related to the transparency and fairness of online marketplaces, continuing to develop dispute-resolution mechanisms and avenues for affected parties to pursue recourse.

- Acknowledging that digital policy measures (including new forms of data protection and competition enforcement), while important issues in themselves, could have various unintended consequences and knock-on effects for journalism and are not in themselves likely to significantly increase investment in independent professional journalism, underlining the need for a holistic news media policy in parallel with steps taken in the data protection and competition space (the issue we turn to next).

5. News Media Policy

Context

Media policy covers a wide range of different issues and concerns, including public-interest objectives tied to democratic, social, and cultural needs, and is central to creating and maintaining an enabling environment for independent professional journalism, especially when it comes to funding investment in news production. EU member states already have a complex set of media policies in place, encompassing various levels of media regulation, support for private-sector media, and public-service media. The role of the European Union has primarily been around the protection of fundamental rights, the creation of a single market (e.g. in audiovisual services and digital content and services), and a growing number of ancillary policies around media literacy, media pluralism, competition, and media support. The EU's policy in this area has thus developed in close collaboration with member states on the basis of the principle of subsidiarity, where the primary responsibility for cultural policy rests at the member state level (Donders 2012).

The major challenges for European media policy that directly concern the future of independent professional journalism include:

- Responding to the massive structural shift of resources from print and increasingly broadcast into digital media, which has led to significant reductions in news production investment (Nielsen 2016). While direct and indirect public support for private-sector news publishers can help incentivise investment, existing arrangements are all too often still tied to declining print platforms and biased against digital media (News Media Europe 2018a).

- Ensuring that public-service media are genuinely independent, have a clear role and remit with appropriate funding, and have the ability to serve the public. While public-service media provide a major opportunity to provide public value and ensure a baseline investment in independent professional journalism, these conditions are often not in place.

- Helping non-profit media – which can provide an important voice – thrive is another important channel for investment in independent professional journalism. In many member states it remains hard to register non-profit media, and most European countries do not provide clear incentives for charitable and foundation support for independent professional journalism.

- Making it more accessible, easier, and cheaper by providing better access to open (public) data in machine-readable formats, and providing funding for innovation and training through the kinds of industrial policy programmes already in place for many other cultural industries at both the EU and the member state level.

As we move towards a more digital, mobile, and platform-dominated media environment, the news media that policies in this area are meant to enable continue to change rapidly. This is an important challenge, because declining broadcast and especially print media continue to provide the vast majority of investment in news (Nielsen 2016), and many public-service media remain primarily public-service broadcasters, even as audiences increasingly move online, undermining the provision of public service for younger people who prefer digital media to television and radio (Schulz et al. 2019).

The situation varies from country to country, and no directly comparable data are available, but data from the UK can illustrate the general picture. In terms of investment in independent professional journalism, research carried out for the media regulator Ofcom estimated that 65%

of all investment in news came from newspaper companies in 2012, followed by 21% from the licence-fee-funded BBC, 10% from commercially funded broadcasters, and just 1% from purely digital players (Mediatique 2012). Equally strikingly, the research found that while newspaper publishers on average invest 23% of revenues in news production, the figure (including public service providers) is just 13% for radio, 4% for television, and 2% for digital. Even in a country like the UK with a tradition of strong and well-funded public-service media, the overwhelming majority of investment in independent professional journalism thus comes from the private sector, especially from newspaper companies. This means that the massive shift of resources out of print and into digital – driven by audiences' and advertisers' preferences – will have immense consequences for investment in independent professional journalism across Europe. By our estimate, total revenues in the European newspaper industry have declined by more than €4.5bn over the last five years, with a consequent estimated decline of €1bn in terms of investment in news production.[30] If the industry does not find a sustainable business model for news provision, there is a serious risk of market failure, with consequences for media diversity and for the provision of news to local and niche audiences.

In terms of audience engagement, television and radio are still important and widely used sources of news, but European citizens are very rapidly moving to digital media. Younger audiences especially rely overwhelmingly on online sources of news, including the websites of newspapers, broadcasters, and digital-born news media, as well as the platform companies that provide search, social media, and messaging services that people use to access news. In 2019, 42% of people in the UK reported that television was their main source of news, and 41% identified online, but for those under 35, online was far more widely used than television (Newman et al. 2019). Overall, the BBC in early 2019 still accounted for 63% of all radio listening in the UK, and 31% of all linear scheduled television viewing, but just 1.5% of all time spent with digital media (Schulz et al., 2019). (By comparison, Google's various products and services made up 22% of all time spent with digital media, and Facebook's 14%. All news providers combined accounted for about 3%.)

Across Europe, we see examples of policies that respond to these emerging challenges for both private-sector and public-service media. Denmark provides a good example of how individual member states are free to develop policies that support private-sector news media both online and offline and incentivise their investment in independent professional journalism, deploying four strategies.

First, Denmark provides a general indirect subsidy for all private-sector news providers through a VAT exemption for all print and digital news providers, given that they fulfil a few conditions.[31] The indirect cost in foregone tax revenue is estimated at about €40m annually (315m DKK).[32] Second, private-sector news providers (similarly defined) can apply for a general direct subsidy designed to underpin editorial production, provided they have a named responsible editor/publisher and employ at least three full-time journalists. The production subsidy is tied to the documented editorial investment of the publisher in question and is capped to avoid a situation where the majority of the subsidy goes to the biggest publishers. In 2019, 68 different private sector news providers received direct support, worth a total of nearly €50m (370m DKK). Third, private-sector news providers can apply for innovation support, to either launch new media or develop new experimental initiatives, from a fund with an annual budget of approximately €2.5m (20m DKK), where the applicant has to provide 60% of the funding and can apply for 40% matching funds.

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30 Authors' calculation, data from the World Association of Newspapers and News Publishers.
31 Eligible organisations are deemed to appeal to a general audience and contain original current affairs coverage of a broad range of issues, publishing a majority of editorial content that is not predominantly audio or video.
32 Estimates from https://em.dk/media/9696/05-17-erhvervsfremme-og-stoette.pdf and https://prodstoragehoeringspo.blob.core.windows.net/f9e82064-b5ea-4a16-b957-c14c10b9aaae/Resum%C3%A9.pdf

Fourth, private-sector news providers can, in exceptional circumstances, apply for direct support to handle urgent liquidity problems and enable a restructuring to avoid a news provider shutting down. (This support has been available since 2006 but has never been provided in the few cases where publishers have applied.)

The total indirect and direct public support for private-sector news media in Denmark thus amounts to just over €90m a year, or €16 per capita. (By comparison, the media licence funding public-service media in Denmark is currently €257 annually per household, for a total public servicing funding of over €600m a year, about €110 per capita.)

The Danish case is based on the subsidiary principle, and it illustrates an ambitious and platform-neutral approach to incentivise private-sector news providers to invest in independent professional journalism. It both rewards success and aims to avoid simply supporting large incumbents at the expense of new entrants and smaller providers serving local and niche audiences. As the package relies on state aid measures, it has been evaluated by the European Commission to ensure it serves legitimate public-interest goals and does not distort competition in the single market. The Commission approved the arrangement in 2013, with then Competition Commissioner Joaquin Almunia holding up the Danish scheme as 'an excellent example' of how media pluralism and the dissemination of high-quality news 'can be safeguarded in a way that fully takes into account the increasing importance of digital access to information' without unduly distorting competition in the internal market.[33]

With this clear indication from the Commission that member states are free to develop media policies that provide indirect and direct support for private-sector news providers' investment in independent professional journalism, and the October 2018 reform of the VAT Directive to explicitly allow for VAT reductions or exemptions for digital news (in line with long-standing exemptions in many member states for printed news), it is clear that EU member states are free to support the private-sector news providers that play such a crucial role in investing in independent professional journalism. Other forms of support are available in some countries beyond the forms of indirect, direct, and innovation support discussed above, such as funds where individual journalists or media organisations can apply for money to finance specific investigations or pieces of journalism (akin to the support provided by arts councils and research councils in many countries). While these provide an interesting model, the question remains whether such arrangements can find a balance between accountability, efficiency, and independence, and whether they can scale or will inevitably remain small supplements. But at scale, a European counterpart to the innovation funds offered in Denmark could help the profession and the industry adapt to a digital age.

The combination of indirect and direct, general and targeted subsidies offered in some member states demonstrates that policymakers are able to offer support for private-sector news providers. It also underlines the importance of doing so in a way that is designed to avoid simply propping up incumbents with outdated business models at the expense of new entrants, and the moral hazard of offering public support to companies that (a) have sometimes failed to adapt and (b) sometimes are run by asset strippers or politically problematic owners.

Beyond providing indirect and direct subsidies for private-sector news providers, independent public-service media can also be an important part of the provision of independent professional journalism (in addition to their other objectives). The European Commission has time and again recognised public-service provision as a legitimate public-interest objective and approved many

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33 https://europa.eu/rapid/press-release_IP-13-1121_en.htm

forms of governance and funding for public-service media provided that they have: a clear and precise definition of the public-service remit; proper supervision of their public-service mandate; clear separation between public-service activities and any commercial activities; and an appropriate level of funding for the public service they are tasked with providing (Donders 2012). All these conditions should help them enable the provision of public service with proper oversight and minimal distortion of the market.

Where they are genuinely independent of government, and operate with appropriate levels of funding and oversight, public-service media demonstrably contribute to the provision of independent professional journalism. Not only are genuinely independent public-service media often the most widely used and most broadly trusted news providers in many European countries, research has also demonstrated how they contribute to a more informed, and more equally informed, public (Aalberg and Curran 2012). Provided the remit is precisely defined, and the operations of public-service media are effectively overseen, the widespread concern that public-service news provision crowds out private-sector providers has not been supported by the existing research (Fletcher and Nielsen 2017). While this important and legitimate concern demands constant monitoring to avoid unintended consequences, as recognised by the widespread adoption of public-service value tests to assess the public value of public-service media initiatives against the likely market impact, it is important that genuinely independent public-service media are able to deliver public service where the public is, including online. Although this remains an issue of considerable controversy in some member states where other actors have lobbied to confine public service to broadcasting, inaction may only further exacerbate the very real risk that public-service media become a service funded by everyone but enjoyed primarily by older people fond of television and broadcast. The absence of the effective digital provision of public-service news is an existential threat to the ability of public-service media to deliver on their mission and to the legitimacy of the enterprise as a whole (Schulz et al. 2019).

Public-service media primarily operate by producing and publishing public-service content through their own channels and a growing number of off-site platforms, but there are other ways in which public-service media can enhance a whole media environment – interesting ideas including the placement of public-service-media-funded journalists in local private-sector media (as in the BBC's Local Democracy Reporting Service), the possibility that public-service media could operate platforms open for other publishers as an alternative to commercial platforms, and the idea that public-service media could make all their news available under a creative commons licence or some similar arrangement where others could make use of it.

Beyond private-sector news media and public-service media, the two historical institutional pillars of European journalism, non-profit journalism is growing increasingly important across the continent. The non-profit news sector is not as large in the EU as in the United States, where one recent report estimated that an average of more than €300m has been provided annually in journalism and media-related grants in recent years (Nisbet et al. 2018). But a number of European, national, and local non-profits do important and often innovative work, including fact-checking, investigative journalism, collaborative journalism, data journalism, and much more. Despite their impressive work, the urgent public need they often serve, and the fact that European charitable foundations spend about €60bn annually, very little charitable funding flows to journalism in Europe (Breen 2018). Despite having a larger population and a comparably sized economy, one recent study of non-profit journalism globally found that 'more than 90 per cent of grant money flows to US-based organisations, with some 6 per cent of funds allocated to Europe', pointing out that the vast majority of foundations engaging in the sector are based in the US (Scott et al., 2019: 1).

Organisations like the Journalism Funders Forum are working with foundations and journalists to try to secure more effective and impactful funding of journalism in Europe, which has involved new thinking both among funders and among journalists embracing non-profit models. But there is also an underexplored policy dimension to this conversation: in many European Union member states, journalism is not recognised as a charitable cause, and non-profit news organisations have sometimes struggled to secure charitable status (or been discouraged by the prospect of even seeking such status in the first place). Confronted with long-established legal frameworks that do not include journalistic activities within the concept of 'charitable status', would-be non-profit news organisations thus face significant delays and uncertainties during the process of obtaining tax-exempt status (Picard et al. 2016). Given that many foundations have statutes that mean they cannot fund non-charitable activities, or need to steer clear of activities that could be construed as being political (including some forms of journalism), this is a clear barrier to a potentially invaluable source of funding (Karstens 2018). This is particularly problematic for innovative and important new areas of journalistic activity like fact-checking and source verification, often primarily pursued by small, new non-profit news organisations. Policy reform easing the creation of non-profit news organisations, the recognition of public-interest journalism as a charitable activity, and the provision of the concomitant tax incentives to prospective individual and institutional donors would go a long way to help non-profit journalism grow in Europe. It could also help facilitate the creation of the international public-interest media fund to support independent professional journalism that Nishant Lalwani (2019), the director for independent media at the Luminate, has called for.

Private-sector news media and public-service media – and perhaps in the future, an increasingly non-profit news media – fund and drive journalism. Policies that incentivise them to invest in independent professional journalism can help enable the provision of news; so can policies that reduce the cost of reporting by enabling more efficient journalistic work. Here, the revision of the Public Sector Information (PSI) Directive could provide part of an overarching framework for government-to-business data sharing that, when transposed to member state national law, should take into account the importance of enabling journalistic work. Across government, public-sector bodies, and public undertakings in various sectors, the directive requires that high-value public datasets must be made available for free in a machine-readable format through an application programming interface (API).

This is just one example of a wider policy that can help journalism even as it also advances other policy objectives such as digitalisation and service modernisation. The broader agenda of transparency and open government provides many examples of steps that could reduce the cost of independent professional journalism by providing, for example, live streams of public meetings, audio and video recordings, and meeting transcripts, enabling journalists to cover important events without necessarily being physically present (Bowles et al. 2013). But all too often, a limitation of wider initiatives of this sort is that governments do not see journalists as the end users of the data. Data releases, even in the best cases, are uneven and slow, and frequently do not meet the actual needs of journalists (Stoneman 2015). Addressing this would build on the often highly imperfect and partial introduction of freedom of information laws, public registers of documents, and the like. There is considerable scope for selective expansion of similar forms of access to cover at least some of the information about private companies and non-profits that regulators hold (already partially available in some countries), which along with helping fund the future of journalism, could also empower a generation of freelance, remote, and independent professional journalists.

Policy Suggestions

Policymakers seeking to push these challenges forward have several options available, including:

- The European Commission issuing guidance to member states on the considerable discretion they enjoy when it comes to offering state aid for private-sector media and/or support for independent public-service media.

- Using Creative Europe, Digital Europe, Horizon Europe, and similar programmes to provide more resources for media innovation and research.

- Instituting indirect and direct forms of support that incentivise investment in news production and innovation in news without giving political actors or public authorities direct leverage over publishers.

- Investing in the public-service media – provided they are genuinely independent, adequately funded, can operate across all platforms, have a clear role and remit, and avoid crowding out private competitors – can make a significant difference for European democracy.

- Recognising that private-sector news media and public-service news media need to be able to compete and coexist, and any interventions that risk distorting their ability to do so – such as requiring third-party platforms to privilege certain designated 'quality' news providers or public-service providers – will undermine this competition and co-existence. (Both News Media Europe (2018a) and the European Broadcasting Union have stressed the need for a fair online platform environment.[34])

- Recognising the legal status of independent professional journalism as a charitable cause, easing the creation of non-profit news media, and incentivising charitable and foundation support for independent professional journalism.

- Making independent professional journalism easier and cheaper by providing greater access to data, recordings, and transcripts (at both the member state and EU institutional level) to better enable reporting.

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34 https://www.ebu.ch/news/2019/10/eu-policies-for-media-and-democracy-ebu-publishes-priorities-1

6. Conclusion

Current developments in European media are full of opportunities for both citizens and businesses, but they are also often fraught with risks. One can remain a cautious optimist about the potential future of the European media ecosystem while not forgetting the challenges that are both with us now and that loom on the horizon. Digital media have been a boon in many ways, and few would wish for a return to a pre-digital media environment, but we must remember that free expression and media freedom are seriously threatened in many parts of Europe, and that emerging digital challenges – and potentially the policy responses to those challenges – risk further eroding citizen rights whilst threatening the pivotal role of journalism in EU democracies. We should be mindful of how developments in the business of news risk undermining the sustainability of private-sector news media and thus the majority of investment in independent professional journalism across the continent.

In this report, we have summarised some of the main issues confronting journalism and news media in Europe and offered some options for policymakers to consider as part of the push for European democracy that incoming European Commission President von der Leyen has heralded. While the report is necessarily not comprehensive or exhaustive, and we do not claim that we – or anyone else – have all the answers; it is time now, as Commissioner Vestager has suggested, to discuss fast and listen quick. Fundamental rights continue to be eroded in several member states, and almost 90 million citizens across the European Union live in countries with significant press freedom problems. Beyond that, the legacy media business that used to fund investment in journalism continues to decline as audiences and advertisers leave behind print and broadcast and go digital. With every day that passes, the revenues of many European news media continue to decline – leading to job cuts, shrinking newsrooms, and titles disappearing.

At the outset of this project, we simply asked, 'what can be done?' We have not identified a silver bullet and, indeed, we do not believe there are any. Those looking for an easy solution will not find it; but that does not mean that there are no options. We have identified a number of real policy choices that elected officials can pursue, at both the European level and the member state level, all of which have the potential to make a meaningful difference and help create a more enabling environment for independent professional journalism across the continent. Many of these options, we believe, would be relevant far beyond Europe and demonstrate what democratic digital media policies could look like.

From the outset, we have suggested it is time to seek a more holistic approach to creating an enabling environment for independent professional journalism in Europe, and that what such an environment needs to provide is *freedom, funding*, and a *future*. The three preconditions come in order of priority.

Without *freedom*, no amount of funding or investment in the future will ensure *independent* professional journalism. Given the established threats to free expression and media freedom in some European Union member states, it is clear that these issues have to be addressed first in these countries before any other measures can find long-term success. Of the options we have reviewed, addressing the implementation gap between what elected officials have committed to on paper and what governments do in practice will be the first step. The second might be to link access to EU funds to performance in an annual rule of law review that includes a focus on free expression and media freedom. (If threats as primal as the murder of journalists and problems as basic as the erosion of fundamental rights and media freedom are not addressed, there is little hope for European democracy in the long term.) A further important step will be to address the

emerging digital challenges that have captured both the public and policy conversation of late in a manner that protects legal forms of expression and behaviour, and to seek interventions that do not put both human rights and media freedom at risk.

Without *funding*, independent *professional* journalism will simply wither away. Given the rapid decline of legacy businesses, this funding will have to come from a combination of a new, digital, business of news and various forms of public support, including for independent public-service media and non-profit media. Although private-sector news media have represented the majority of investment in journalism in the past, and have been essential for providing a diverse range of outlets, the risk of market failure, especially among some local and niche audiences, is significant. Of the options we have reviewed, the three most promising policy responses are: (a) the reform of existing forms of support for private-sector media so they better support the digital future of journalism, and not just its offline past; (b) a recognition of the role that genuinely independent, adequately funded public-service media operating across all platforms can have (provided they have a clear role and remit, and avoid crowding out private competitors); and (c) rapid reform to ease the creation and funding of non-profit news media.

Without a *future* for independent professional journalism, we risk leaving European democracy worse than we inherited it. Forging that future is primarily a task for the profession and the industry itself, a task premised on developing forms of journalism and media formats and products that people find genuinely compelling and valuable. We have already begun to see some impressive and creative efforts, even as the pressures both reporters and news media businesses face are intense. (European journalists have developed many innovative formats for digital journalism in recent years and digital revenues in the European newspaper industry have grown on average 10% year-on-year from 2015 to 2019, even as print revenues declined.[35]) But policymakers can play a role as well. Of the options we have reviewed, three stand out: (a) making sure that all active in the digital marketplace compete on a level playing field; (b) providing public funding for innovation in journalism and news media to help with the transition; and (c) securing a more accountable, intelligible, and transparent platform-mediated environment through the promotion of multi-stakeholder oversight mechanisms, media literacy projects, and data access for academic research.

Even these options will not be easy, and they will not be cheap. But securing the future of our news media is a question that concerns all of Europe, and is an essential part of any push for European democracy in a digital age. Holding governments to account if they ignore the commitments they have made to protecting fundamental rights is hard, but necessary. Rolling out support systems for journalism and news media like those that exist in countries like Denmark may seem expensive in absolute terms, but the cost is but a fraction of the public funds already being spent on subsidising agriculture and fossil fuels. (And perhaps the OECD's new proposed multinational tax framework or a digital sales tax can help provide additional revenue.) So it is possible. And something needs to be done. The Action Plan for Democracy provides an excellent opportunity. It will require significant investment of public resources and a willingness to practise what we preach. The sincerity of policymakers' commitments will be measured by their actions, not their words.

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35 Authors' calculation from data from the World Association of News Media.

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Selected RISJ Publications

BOOKS

Worlds of Journalism: Journalistic Cultures Around the Globe
Thomas Hantizsch et al. (eds) (published with Columbia University Press)

NGOs as Newsmakers: The Changing Landscape of International News
Matthew Powers (published with Columbia University Press)

Global Teamwork: The Rise of Collaboration in Investigative Journalism
Richard Sambrook (ed.)

Something Old, Something New: Digital Media and the Coverage of Climate Change
James Painter et al.

Journalism in an Age of Terror
John Lloyd (published with I.B.Tauris)

The Right to Be Forgotten: Privacy and the Media in the Digital Age
George Brock (published with I.B.Tauris)

The Kidnapping of Journalists: Reporting from High-Risk Conflict Zones
Robert G. Picard and Hannah Storm (published with I.B.Tauris)

Innovators in Digital News
Lucy Kueng (published with I.B.Tauris)

Local Journalism: The Decline of Newspapers and the Rise of Digital Media
Rasmus Kleis Nielsen (ed.) (published with I.B.Tauris)

SELECTED RISJ REPORTS AND FACTSHEETS

Old, Educated, and Politically Diverse: The Audience of Public Service News
Anne Schulz, David A. L. Levy, and Rasmus Kleis Nielsen

What if Scale Breaks Community? Rebooting Audience Engagement When Journalism is Under Fire
Julie Posetti, Felix Simon and Nabeelah Shabbir

Reuters Institute Digital News Report 2019
Nic Newman with Richard Fletcher, Antonis Kalogeropoulos, and Rasmus Kleis Nielsen

Case studies in Collaborative Journalism
Joy Jenkins and Lucas Graves

India Digital News Report
Zeenab Aneez, Taberez Ahmed Neyazi, Antonis Kalogeropoulos, and Rasmus Kleis Nielsen

More Important, But Less Robust? Five Things Everybody Needs to Know about the Future of Journalism
Rasmus Kleis Nielsen and Meera Selva

GLASNOST! Nine Ways Facebook Can Make Itself a Better Forum for Free Speech and Democracy
Timothy Garton Ash, Robert Gorwa, and Danaë Metaxa

Interested but not Engaged: How Europe's Media Cover Brexit
Alexandra Borchardt, Felix M. Simon, and Diego Bironzo

An Industry-Led Debate: How UK Media Cover Artificial Intelligence
J. Scott Brennen, Philip N. Howard, and Rasmus Kleis Nielsen (Factsheet)