

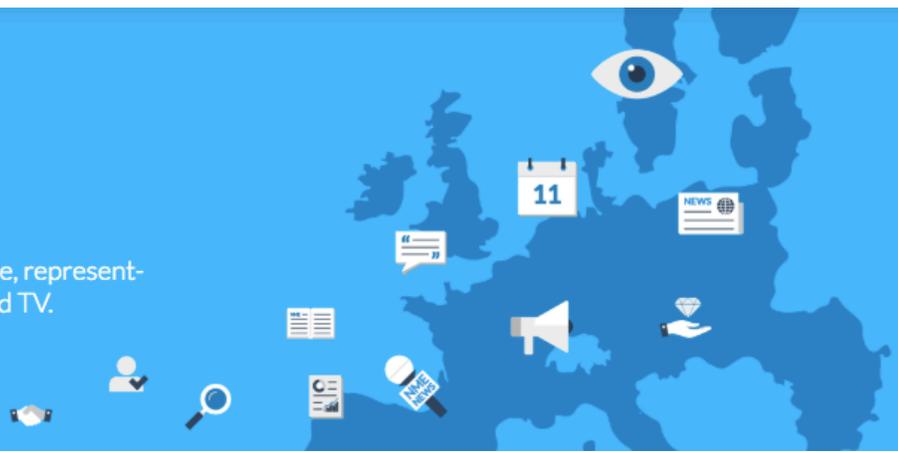
# NEWS MEDIA EUROPE

## Safeguarding the Economic Sustainability of Europe's News Media Ecosystem

July 2018

### News Media Europe

The voice of the progressive news media industry in Europe, representing over 2200 news brands, online and in print, on radio and TV.



# NEWS MEDIA EUROPE

News Media Europe (NME) is a registered trade association under the EU Transparency Register. NME represents the interests of the European news media industry to the European institutions.

More information about NME's policy positions, press releases and other activities is available at [www.newsmediaeurope.eu](http://www.newsmediaeurope.eu) and on Twitter @newsmediaEU.

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# NEWS MEDIA EUROPE

## Safeguarding the Economic Sustainability of Europe's News Media Ecosystem

July 2018

*News Media Europe represents the progressive news media industry in Europe – over 2200 media companies including newspapers, radio, tv and internet. NME is committed to maintaining and promoting the freedom of the press, to upholding and enhancing the freedom to publish, and to championing news brands, which are one of the most vital parts of Europe's creative industries.*

### 10 Recommended actions for the European Commission

1. The EU as guardian of fundamental rights
  2. Leveling the playing field: online platforms
  3. Leveling the playing field: public service broadcasters
  4. EU competition law for a more digital and data-driven future
  5. Collective bargaining rights: news media united in diversity
  6. Copyright and its enforcement
  7. On the question of EU state aid guidelines for news media
  8. News distribution and universal service obligations: a fundamental rights perspective
  9. Funding opportunities: encouraging cluster and network effects and increasing innovation support
  10. Sharing the benefits of media literacy
-

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## Foreword

Over the past decades, the most prominent feature of the European news media landscape has been its relentless and successful contribution to building, strengthening and safeguarding democracy in Europe. It is this precise overarching purpose and social mandate which drives the industry values which define it.

However, the European news media industry is now at a crossroads, where it finds that the integrity of those values could be compromised. While journalism generates tremendous economic, social and political value for citizens, and society as a whole, the economic sustainability of the industry is called into question as it faces increasingly difficult economic and political times.

Preserving a healthy news media industry requires economic sustainability and by the same token independence from the state. It logically follows that while some degree of support by public authorities can be appropriate, especially in difficult times, that the core focus of any comprehensive policy framework in support of the sector should proactively seek to promote the economic sustainability of the industry.

This report is the product of several months of investigation and surveying of the industry by News Media Europe. The report aims to present the views of the European news media industry on actions that the 2019-2024 European Commission could take to safeguard the economic sustainability of the sector, going beyond EU policy measures that are currently debated in Brussels and beyond mere calls for more sustainability.

In doing so, News Media Europe identifies the underlying causes of the present crisis of business model facing the industry, and proposes EU policy solutions, both in terms of process and substance, which are complemented by a nuanced understanding of the political, economic and social priorities of the European Union, and of its legal order.

It is the hope of News Media Europe that this report will form the basis for further substantive discussion in EU policy circles about how to create a meaningful policy framework within which to safeguard the sustainability of the European news media industry under the 2019-2024 European Commission, as a matter of political priority.

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## Executive Summary

This report examines policy measures that the 2019-2024 European Commission could take to support the European news media industry. The report takes a long-term approach, looking beyond EU policy solutions that are currently being debated. It is primarily concerned with how EU policies could make the industry more economically sustainable, and by the same token help it to independently fulfil its social mandate as a public watchdog and producer of high quality, professional, and reliable news content.

The report initially examines the current challenges faced by the news media industry in Europe. It questions the sustainability and desirability of the status quo in the industry, looking at a range of issues including the wider and increasingly difficult economic and political conditions under which the industry operates.

It is argued that the industry requires a more successful insertion in Europe's Digital Single Market to thrive, and that the industry status quo has been aggravated by elements of the EU regulatory apparatus which have not been able to keep up with changing economic realities, notably in the field of competition. Addressing this, and ongoing threats to media freedom, is urgently required to ensure the successful transition of the news media industry to a more digital and sustainable future.

Accordingly, we give recognition and acknowledge the significant potential benefits of more proactive EU policy intervention under the 2019-2024 European Commission. The reasons for this are multiple and include shared challenges across Member State for industry to monetise online content, to support a successful, inclusive insertion in the Digital Single Market, and common problems as regards disinformation, threats to media freedom and independence, and the need for competition tools that are adapted to a more digital, data-driven economy.

The report suggests a number of guiding principles that EU policy makers should follow. They include the need to preserve news media independence, to follow a market-based approach which would seek to enhance the economic sustainability of the industry and at the same time guarantee its independence, allowing high quality, professional journalism and the fight against disinformation to thrive.

It is emphasised that while some positive steps have been taken so-far to support the industry under the Digital Single Market, that the measures taken and proposed therein are necessary but not sufficient to reverse a number of concerning trends in the industry which require further attention at EU-level.

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The report demonstrates the breadth of EU policies relevant to the news media sector is significant, making a case for a more holistic, self-reinforcing policy framework for the EU's policy approach to the sector. It then elaborates on how this could be reflected in terms of policy process under the 2019-2024 European Commission, notably by way of introducing a key pillar dedicated to the sustainability of European news media, such as "Better News for EU Citizens", under the succeeding flagship initiative to the Digital Single Market.

We also recommend introducing an internal consultation structure that goes beyond standard inter-service consultations, carrying out a public consultation exercise to gather direct feedback on the state of the industry and creating a dedicated expert group to discuss measures to enhance the economic sustainability of the industry.

The main section of the report then identifies and presents ten different policy suggestions based on the feedback gathered from news media industry associations at Member State-level. We summarise them through a summary table included further below. The policy actions discussed are included because they carry significant industry consensus regarding their potential benefits in creating a more economically sustainable environment for producers of professional news content. Some policy actions are also discussed because an open, clear policy dialogue is lacking on certain issues that carry important implications for the business model of the industry.

The report in itself is an acknowledgement that there is no silver bullet that can help solve all of the challenges faced by the industry as regards the economic sustainability of producing quality, professional news content. It is the hope of News Media Europe that this report will form the basis for further substantive policy discussions in relevant EU policy circles about what the 2019-2024 European Commission could do to support the sector, as a matter of political priority.

The report was prepared over the course of several months and is based on broad and in-depth industry feedback gathered through consultations and interviews. The views presented in the report were subsequently discussed by industry representatives in an inclusive format and backed as a starting point to foster further constructive policy debates about what the EU could do to support the industry. The report is in that sense representative of the views held by the European news media industry.

A summary of all the ten policy recommendations made throughout this report is included below.

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ACTION	OBJECTIVE	JUSTIFICATION	INSTRUMENT
<p><b>1. The EU as guardian of fundamental rights</b></p>	<p>Safeguard media freedom and independence, the role of news media in society and freedom of expression.</p>	<p>In several Member States, media freedom and independence are under systemic threat and being curbed. There is a risk that this will not only continue and aggravate, but also spread to other Member States. This threatens democracy and the business model of news media.</p>	<p>Explore further use of infringement procedures, the possibility of a “name and shame” exercise, conduct more promotion of fundamental rights, and consider other instruments available.</p>
<p><b>2. Leveling the playing field: online platforms</b></p>	<p>Ensure that online platforms competing in the same markets as news media companies do so on the same terms.</p>	<p>Platforms currently compete on different terms as regards taxation, market behaviour in the data economy, responsibility for content distributed, and consumer protection.</p>	<p>Review regulatory scope in EU legislations to reflect the fact that platforms and news media compete in the same markets.</p>
<p><b>3. Leveling the playing field: public service broadcasters</b></p>	<p>Ensure that public service broadcasters compete on fair terms with private news media.</p>	<p>Crowding out the European private news media undermines the general interest basis on which state intervention is justified. News media is often crowded out by public service broadcasters when the market is already serviced adequately.</p>	<p>Review the state aid guidelines for public service broadcasters and ensure the strict application of existing due diligence rules by Member States.</p>
<p><b>4. EU competition law for a more digital and data-driven future</b></p>	<p>Review the EU competition framework to ensure that the European Commission is able to effectively fulfil its oversight and enforcement mandate.</p>	<p>The current competition framework is unable to keep up with structural changes in the digital economy. As new business models emerge and the lines between markets become blurred, current anti-trust tools and market definitions need updating.</p>	<p>Modernise competition rules and, especially anti-trust tools, and strengthen the preventive arm of the EU competition authority.</p>
<p><b>5. Collective bargaining rights: news media united in diversity</b></p>	<p>Create fair bargaining conditions between news media and online platforms.</p>	<p>While online platforms operate in a highly concentrated market, the news media market is fragmented. This creates an unfair bargaining power dynamic which needs to be addressed to achieve fair market outcomes.</p>	<p>Adopt a Regulation introducing a block exemption for the news media sector from the general anti-trust rules.</p>

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ACTION	OBJECTIVE	JUSTIFICATION	INSTRUMENT
<p><b>6. Copyright and its enforcement</b></p>	<p>Ensure a more accessible, legally certain and robust copyright regime to protect producers of news content.</p>	<p>Targeted reviews of the Intellectual Property Rights Enforcement Directive (IPRED) and the Database Directive could make copyright more effective and accessible, and the introduction of a publishers' right will require additional measures to ensure a uniform, consistent application.</p>	<p>Review the IPRED, review the Database Directive, and make use of all procedural instruments available to ensure a uniform application of a publishers' right</p>
<p><b>7. On the question of EU state aid guidelines for news media</b></p>	<p>Carefully consider the key principles that should guide the potential creation of EU state aid guidelines for news media.</p>	<p>Should the European Commission consider adopting state aid guidelines for news media, they should be non-discriminatory, targeted and limited in scope.</p>	<p>Guidelines that take into account media independence and national contexts.</p>
<p><b>8. News distribution and universal service obligations: a fundamental rights perspective</b></p>	<p>Encourage Member States to do more to support news media through distribution and give better due consideration for fundamental rights when defining universal service obligations.</p>	<p>Industry feedback clearly shows that Member States could do much more to support it through better postal services and more discussions as regards the design and implementation of the Directive impacts on fundamental rights should form the basis for further discussions.</p>	<p>Review of the Postal Services Directive and encourage more discussions with Member States based on a fundamental rights perspective.</p>
<p><b>9. Funding opportunities: encouraging cluster and network effects and increasing innovation support</b></p>	<p>Support the development of networks, centres of excellence, and the availability of funding for innovation.</p>	<p>To foster sustainability and innovation, more can be done to encourage the exchange of best practice, the digital transition of the industry, the formation of industrial clusters, and to support innovation in news media.</p>	<p>European Commission programmes, sponsored platforms, events and financial instruments under Horizon Europe.</p>
<p><b>10. Sharing the benefits of media literacy</b></p>	<p>Strengthen media literacy skills in European citizens to promote more critical engagement with news content.</p>	<p>Media literacy should be promoted to encourage the informed democratic participation and constructive civil engagement in society. This has become a pressing issue in light of the increasing spread of online disinformation.</p>	<p>European Commission programmes, sponsored events and financial instruments under the cross-sectoral budget line within the Creative Europe programme.</p>

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## 1. News Media in Europe: the status quo

Free and independent news media are the cornerstone of European democracy. The proper functioning of the news media sector is intrinsically linked to the public interest of European citizens because it fosters and safeguards democracy. By virtue of its existence, news media ensures that a plurality of voices and opinions is represented in public debate. In addition, news media also exerts an important influence on the quality of public debate, which in turn feeds back into the process of democratisation in Europe.

News media exercise the right to freedom of expression, enshrined in the Treaty on European Union (TEU) by virtue of its existence under Article 11 of the Charter of Fundamental Rights of the European Union (ECHR), and ensure that the voices of social, economic and political actors are heard in the public sphere. News media exercise, and enable further exercise of, fundamental rights to freedom of expression and to access information.

Beyond this, the industry has also proved to be a force for good in several other ways. Notably, this is reflected in the pioneering role of the new media industry in the field of media literacy. In this context, the industry has played a leading, pivotal role by sustaining targeted efforts, and innovating new methods, to promote media literacy in vulnerable segments of society.

As such, news media is often referred to as “the fourth estate”, because its role as a public watchdog is so central to the strengthening democracy, accountability, good governance, and human development. Without free news media, there can be no public sphere, informed citizens, and therefore no democracy. At the same time, there is an inherent conflict between the media and politics. A natural tension between the two has always existed and is a necessary and positive democratic stimulus.

While there is robust consensus about the democratic role and mandate of news media in any vibrant society, the news media industry in Europe faces increasingly difficult economic and political conditions in which to operate. As a consequence, it has also become increasingly difficult for news media to uphold its special democratic mandate in society. This not only undermines the economic potential of Europe, but also risks creating a democratic deficit and, by the same token, weakening existing institutions.

News publishers, especially, are facing difficult economic industry conditions. Over the past decade, the industry in the EU has undergone a worrying and sharp decline in

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revenues and in the number of active professionals. European news brands now face a business model crisis, a development which has been widely documented. The disruptive risk to the continued production of professional news content grows in tandem with the more demanding business climate, at a time when such content is more needed than ever to counter online disinformation.

While this trend is not specific to the EU, it remains nonetheless an urgent matter. As industry revenues have plummeted year-on-year, market forces have come to play an increasingly important role in editorial decisions. This has had important structural effects on the new media industry and on the production of news content.

In the adversity of challenging industry conditions, European news media are resolved to secure a more digital and sustainable future, but the results of this transition have been mixed so far. Indeed, this has not prevented smaller news outlets, especially local and regional ones, from going out of business. This has major consequences for democracy building and strengthening, particularly at local-level, and can be identified as a force that is conducive to the erosion of trust in certain institutions.

Furthermore, the successful introduction of paywalls and subscription business models has largely been limited overall. The development of the internet ecosystem over the past two decades has created expectations amongst readers that news can and should in many cases be accessed without the need to make a financial commitment, partly due to the extensive presence of public service broadcasters and of their online news content offerings. The significant unwillingness of internet users to pay for news online is well documented and poses a fundamental problem of value exchange.

While news media companies are faced with difficult economic conditions, they are still by large creating significant value for society as a whole and generate important positive social and democratic spillovers. This is however not reflected in the financial performance of news media, which creates a fundamental paradox associated with the decline of news brands in Europe. Namely, that news brands are reaching greater audiences than ever before while also making smaller profits.

Large audiences are now reached through online platforms, which generate gigantic revenues based on a combination of, on the one hand, user engagement, and on the other, intellectual property, much of which belongs to news media. This understanding of value creation in social platforms is already shared by the European Commission.

The inability of present regulatory frameworks to attribute value creation to news media in this context has caused significant damage to the European news brands over the past

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decade. News media create significant value for online platforms, but only reap marginal benefits. This is an example of the challenge facing regulators in keeping pace with the transformation of economic activity in a more digital and data-driven economy.

Further to the economic hardships of the industry, the freedom and independence of news media in the EU are increasingly coming under threat. Independent experts and institutions have identified several Member States where freedom of expression and the plurality of the media landscape are under serious threat. It is impossible for news media to play its desired role in democratic society when this occurs, and there is little that news media can do in the adversity of government power in the form of indirect control and censorship.

In such cases, the free and independent news media lose their social value as a democratic system of checks and balances, and external intervention by independent and supranational bodies becomes warranted to enforce the rule of law.

It is equally concerning that Europe is also witnessing a worrying increase in the vilification of the news media industry, a concern echoed as part of the debate on disinformation, and in direct attacks on media freedom, with the intimidation and assassination of journalists.

Another growing concern which needs to be addressed relates to the quality of public debate in Europe and the role of news media thereof. Many private and public actors alike, including an increasing number of Member States, are concerned that the quality of public debate is deteriorating.

This poses a fundamental democratic problem as citizens are ultimately responsible for holding governments to account by exercising their rights and yet, they cannot fulfil this function if they are not well-informed. Private and public bodies are therefore both reflecting on how this can be systematically addressed to avoid an erosion of democratic values in European society.

## 2. Why action at EU-level is desirable

News Media Europe is of the view that the EU can and should provide for an environment that allows for the safeguarding of the economic sustainability of the European news media landscape. If current trends and the status quo remain unaddressed, there is a clear and pronounced risk that a number of severe consequences for media

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independence and democracy building, for combatting disinformation, as well as for economic activity, will materialise and prove very difficult to reverse.

Europe is now at a crossroads where it can choose to prevent severe damage to its news media ecosystem, or to cure it a later stage. The latter will be a much more difficult and cumbersome exercise. Action at EU-level is therefore desirable, while also taking note of the fact that the challenges faced by the industry follow a similar pattern across Member States. Ultimately, the EU also has a democratic dimension which needs to be safeguarded, especially at times when the rule of law is coming increasingly under threat in several Member States, a concern voiced by the present European Commission on numerous occasions since the beginning of its mandate.

Overall, News Media Europe notes that EU intervention is desirable on several grounds. These include, but are not limited to, first, EU competence in enforcing fundamental rights related to freedom of expression and access to information in the European Commission's mandated role as guardian of the Treaties. Second, a shared difficulty across Member States in coping with the decline in the print business and subsequent difficulties involved in successfully monetising online content, as well as a shared reliance of the industry on a successful insertion in the Digital Single Market to overcome current challenges. Third, shared industry concerns about unfair competition over which the EU has exclusive competence by means of oversight and enforcement powers. Fourth, and lastly, the unprecedented spread of disinformation taking place on an international scale and at Union-level that requires a commensurate response by the EU as a whole.

Taken together, these reasons make for a compelling case in justifying action to be taken at EU-level, while retaining full respect of the principles of subsidiarity and proportionality. While the equilibrium between EU and national competence is a difficult one in the field of news media, it is essential to ensure that EU competence is not overlooked or undermined where it in fact exists, where provided for under the Treaties.

## **3. Unlocking the potential of the EU news media ecosystem**

Bearing in mind issues of problem scope and definition, News Media Europe identifies four major considerations and guiding principles that the European Commission should find helpful in exploring and evaluating policy options to unlock the potential of the EU news media ecosystem, both as an economic actor and as a democratic enabler.

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First, the news media industry can only thrive and fulfil its social mandate when fundamental rights and values associated with freedom of expression and access to information are respected. Media freedom and independence are at the core of the business model of the industry, and any set of circumstances that does not guarantee respect for these fundamental rights and values impedes on the well-being of the industry.

The EU needs to be prepared to put in place policy safeguards to ensure that media freedom and independence are respected, if the policy and legal frameworks in Member States proves insufficient, dysfunctional or subject to systemic abuse. It is not simply the news media industry which is at stake, but democracy itself.

Second, it is essential to acknowledge the real character of news media as a private, business-oriented sector that operates on market terms. It follows that while news is a public good, as it serves the public interest, that news media in itself is not. As such, news media can only play its role if it becomes economically sustainable and self-sufficient.

Any diverging set of circumstances would imply reliance on public funds as means of funding, and hence the state, which would compromise the independence and integrity of news. Economic sustainability and self-sufficiency of the industry are therefore pre-conditions for news media to play its desired role in society as a democratic enabler.

Improving the quality of public debate and combatting disinformation by means of professional news media should therefore ensure that market incentives are correctly aligned with these objectives. It is also imperative in light of these shared concerns that news media should have sufficient resources to invest in high-quality, professional journalistic production and content. Yet, this cannot happen while revenues, employed professionals, and the diversity of available news media outlets, are in constant decline. Editorial decisions are made accordingly, and policy makers need to consider the causal relationship between news production and the market forces that inform business decisions.

Third, there needs to be a clear understanding that while the European Commission has taken positive steps to improve the business environment of the news media industry through the creation of a Digital Single Market, that policy measures adopted in that framework are not sufficient to reverse the trends of declining revenues and of active professionals in the news media industry, and of mass closure in smaller news media outlets at local- and regional-level.

The consequences of this are bleak when considering what the future may hold if such trends are not reversed. This is not about making the industry more profitable, but about

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putting a halt to its declining revenues in the first place. Journalism and high-quality content requires investments which in turn requires profits. The pattern of decline across revenues, active outlets, and plurality of the media needs strong impetus in one form or another to be stopped, before some of the consequences become too difficult to reverse.

Fourth, the difficulties faced by the news media industry should not necessarily be interpreted as a case of market failure. The news media industry continues to produce high quality news content in various formats, which is its core business. At the same time, the intrinsic value of quality news has not changed. What has changed, however, are the distribution and advertising mechanisms that underpin the economic model of the industry, notably in such a way that the frameworks for intellectual property rights and competition have not been able to keep pace with.

At the same time, it is true that a number of coinciding challenges have emerged for the industry, and it is also clear that they have already taken a heavy toll on it. Such factors include the rise of platforms, changing patterns of news consumption and consumer willingness to pay for news content, the occurrence of a financial and economic crisis, and an industry failure to adapt its business model and to innovate sufficiently.

In light of all the developments described above, there is consensus that while the news media industry requires more proactive intervention than in the past, actions envisaged in the framework of the EU policy cycle under the 2019-2024 European Commission as regards news media should be based on the understanding that media freedom and media independence need to be respected, that the news media industry needs to continue to be treated as private economic actors, and that more economically sustainable industry conditions are needed.

## **4. Reconciling self-regulation for news media with policy interventions**

In addition to the guiding principles laid under Section 3, it is also important to include a note on the issue of self-regulation of the news media sector. This issue is a more recurrent theme in Member States, where the core regulatory competence lies, but is nonetheless important to raise in view of potential legislation in coming years as regards multiple aspects of the business model of news media companies.

The news media industry has long-standing, proud and effective tradition of self-regulation which runs to the very core of the values that are upheld by the industry and of

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its business models. Without self-regulation, often supported by Media Councils, which guarantee the fundamental independence of the sector and its ability to carry out its social mandate in full accountability, responsibility and transparency, news media companies and the integrity of their work would be compromised.

News media have developed self-regulatory mechanisms that are independent from government interference and are designed to uphold the quality of the media. These can take the forms of ethics codes, complaints commissions and ombudsmen. Such initiatives can be supported through expert advice, training, roundtables and guides.

## 5. Key EU policies for the news media sector

The set of EU policies which currently top the news media sector policy agenda is wide ranging, as Table 1 further below illustrates. As the industry largely relies on its successful and inclusive insertion in the Digital Single Market to overcome current challenges, the European Commission's DG CNECT occupies a prominent position on the industry's agenda.

However, news media are also extensively reliant on the ability of its news professionals to conduct their work without undue government interference and on being able to trade and monetise online content under fair commercial terms and through a better level playing field. Their work carried out by DG JUST and DG COMP is therefore equally important.

News Media Europe therefore encourages the European Commission services to incorporate in its policy making processes which affect the news media sector a holistic approach that considers the combined effect of EU measures. This would help avoid formulating and reviewing policies in isolation from each other. It is essential that policies affecting news media are not only consistent, but also mutually reinforcing insofar as possible.

Due to the nature of the news media industry, regulatory measures that affect it fall under a number of different policy areas with different directorates in charge. The impact of this decentralisation could be minimised by putting in place a structure in place, whether formal or informal, within which to evaluate policy choices, gather wider feedback, and discuss multidimensional assessments. Such feedback structures should look to go beyond standard inter-service consultations and take on a more permanent character.

**Table 1: Overview of key EU policies for the news media industry**

DG CNECT	DG JUST	DG COMP	DG EAC	DG TAXUD	DG GROW
<ul style="list-style-type: none"> <li>• Copyright</li> <li>• ePrivacy</li> <li>• AVMSD</li> <li>• Geo-blocking</li> <li>• Fake news</li> <li>• Media pluralism</li> <li>• Platform-to-Business Relations</li> <li>• eCommerce</li> </ul>	<ul style="list-style-type: none"> <li>• Fundamental rights</li> <li>• GDPR</li> <li>• Whistleblower protection</li> <li>• Gender equality</li> <li>• Illegal content and take down</li> </ul>	<ul style="list-style-type: none"> <li>• Merger Regulation</li> <li>• Antitrust Regulation</li> <li>• State Aid guidelines for broadcasters</li> <li>• Antitrust and state aid decisions</li> </ul>	<ul style="list-style-type: none"> <li>• Media literacy</li> <li>• Erasmus+ programme</li> </ul>	<ul style="list-style-type: none"> <li>• ePublications VAT</li> <li>• VAT Directive</li> <li>• Fair digital taxation</li> <li>• CCCTB</li> </ul>	<ul style="list-style-type: none"> <li>• IPR enforcement</li> <li>• SME framework</li> <li>• Startup Europe</li> </ul>

*NB. Policies are not ranked in any particular order of importance but are rather representative of the breadth of existing policies relevant to the news media industry.*

## 6. Suggested policy process under the new European Commission

As the mandate of the present European Commission will come to an end in 2019, the incoming Commission offers a good opportunity to take proactive action to safeguard the economic sustainability of Europe’s news media landscape, and that of news publishers in particular.

While news media throughout Europe are fundamental to the functioning of democracy, the status quo of European news media, described under Section 1, is clearly unsustainable and will produce highly undesirable consequences for the EU as a whole, and action at EU-level is therefore warranted, as explained under Section 2, bearing in mind the principles that should guide any future policy approach undertaken by the EU, elaborated under Sections 3 and 4. Under Section 5, the breadth of policy issues of relevance to Europe’s news media were presented.

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Under the present Section 6, News Media Europe would like to suggest how the next European Commission could support Europe's news media industry, by way of creating a comprehensive policy process and development framework. News Media Europe believes that this would be the best starting point for effective EU action in support of the industry. In practice, this should translate into a recognition of the present challenges faced by the sector, and of the overall risk they pose to European society.

Therefore, a commensurate and proactive response that acknowledges this would seek to include a line of action under one of the future key pillars of the "Digital Single Market 2.0" under the next European Commission, with a clear focus on delivering a better, more sustainable and effective news ecosystem to Europe's citizens. For the purpose of this document, News Media Europe will refer to this as the "Better News for EU Citizens" initiative.

The Better News for EU Citizens initiative could serve as a starting point for the European Commission to incorporate key guiding principles in developing proactive policies to support Europe's news media sector, especially the understanding that industry economic sustainability and self-sufficiency should form the basis and be the central tenet for any form of policy intervention, whether direct or indirect. By the same token, this would provide a unique opportunity to revise and rationalise existing policies into a more coherent, self-reinforcing policy framework that promotes a holistic approach to policy making for Europe's news media ecosystem.

News Media Europe would actively encourage the next European Commission, and even the present one, to carry out a public consultation on the state of news media in Europe, to develop a comprehensive understanding of the challenges faced by the sector as a whole. It is crucial that the European Commission is able to gather views not only from larger players, but also from small and medium enterprises operating in the industry, to better inform any future action in the field. Such a public consultation approach would also entail the benefit of promoting brainstorming in policy, industry, think tank, and academic circles ahead of future policy choices. In that sense, this would be helpful in kick-starting such a new policy push.

Following a public consultation exercise, the European Commission could equally consider conducting an ex-post impact assessment of the 2014-2019 European Commission regulations affecting news media, bearing in mind the results of the consultation. By the time when this could take place, a number of relevant and agreed proposals will already be requiring reviews and evaluations by the services of the

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European Commission, so this would be a good opportunity to make the most of this exercise in view of ensuring that the relevant processes feed into new policy priorities.

To maximise the benefits of these approaches, another recommended course of action would be to create an expert advisory group to advise the European Commission on the sustainability and development of the European news media ecosystem. The various EU institutions have over time created a number of different expert groups, committees, working parties, etc. focused on various related issues such as media pluralism, fake news and online disinformation, audiovisual media services, media literacy.

All these discussion formats regularly conclude and call for greater economic sustainability of news media, albeit without taking the further step of identifying or discussing in greater depth how this can be achieved. The same can be said of some of the ongoing debates within the framework of the UNESCO (United Nations Educational, Scientific and Cultural Organization) and the OECD (Organisation for Economic Co-operation and Development).

It follows from this that creating a policy discussion group concerned with the sustainability of the news media ecosystem would be a constructive step that the European Commission could take to bridge the divide between political discourse and policy making.

## **Policy Recommendations:**

- **Create a key pillar, such as “Better News for EU Citizens”, under the initiative succeeding to the Digital Single Market, looking to improve the economic sustainability of the news media industry;**
- **Carry out a public consultation on the state of the news media industry to inform policy making;**
- **Set up an expert group to discuss measures to improve the economic sustainability of the news media industry;**
- **Introduce a more structured, holistic and self-reinforcing policy development to look at the news media industry, going beyond standard inter-service consultations.**

## 7. Policy options for the new European Commission

Section 7 of this report presents the preferred EU policy options supported by News Media Europe to unlock the potential of the European news media ecosystem, both as an economic actor and as a democratic enabler, under the 2019-2024 European Commission. The key policy options that deserve further consideration, based on the interview and survey process carried out by News Media Europe across its membership, are presented and discussed.

The policy options presented follow from two recurring, horizontal themes that emerged very clearly during our policy discussions with industry, and which have become in themselves the guiding principles that have informed this report. They are the respect for fundamental rights as regards freedom of expression and access to information, and the need to create an even level playing field, especially as regards certain online platforms and public service broadcasters.

The policy options presented relate to various policy fields and look beyond measures that are currently being negotiated to support the industry. Therefore, there is no discussion on the publisher's right, currently discussed in the framework of the review of the Copyright Directive 2016/0280(COD), the reduced VAT rates for electronic publications 2016/0374(CNS), currently pending unanimous approval by Member States in Council, and the independence of audiovisual regulatory authorities, under the review of the Audiovisual Media Services Directive 2016/0151(COD).

News Media Europe notes that this is without prejudice to the importance of these measures which we fully support as the first logical steps in supporting the economic sustainability of the European news media industry. Instead, the policy measures discussed here include, but are not limited to, other actions that could notably be taken in the fields of media freedom, competition, copyright, and funding.

There are notably several dimensions that inform our discussion on competition issues. On one hand, there is the urgent need to create a level playing field with online platforms and public service broadcasters, and on the other, it also becoming increasingly important to reflect on how, and under what specific conditions, state aid and other types of grants could prove to be desirable policy instruments to support the industry.

## 7.1 The EU as guardian of fundamental rights

News Media Europe believes that the EU can, and absolutely should, take proactive steps, by way of infringement procedures against Member States if necessary, to preserve freedom of expression and media independence in the Union. The business model of news media relies on its ability to exercise freedom of expression under conditions that are free from undue political interference.

News media consistently cite the concern that the situation as regards the deeply troubling state of media freedom and independence in certain Member States may come to be seen as normal and institutionalised and spread to other Member States. Businesses increasingly see limitations placed by certain governments on the capacity of the news media sector to operate freely as a direct threat to their business model in their home Member State. More importantly, this is also a direct threat to democracy.

This problem can be more pronounced and dangerous in cases where the state exercises indirect control, for example by controlling the advertising revenues on which the sector relies, and when it is effectively able to pick winners and losers on the basis of political partisanship through such measures, or to exploit loopholes in existing legal frameworks, such as in state aid, whether through direct or indirect measures, to political ends.

It is the understanding of News Media Europe that the EU has moral and market obligations, enshrined in the Treaties, to use its full powers to put an end to such practices in Member States, however difficult this may prove on the basis of what is realistically achievable in political and legal terms. The current state of impunity should not, and cannot, be left unaddressed in the wake of systemic abuses of power.

Based on the Treaties, News Media Europe believes that the EU has a shared competence with its Member States in the field of freedom of expression and media independence. While the balance is delicate, as provided for in the Treaties, it exists and should therefore be used to the benefit of citizens. We note that while it is important to respect national competences, it is equally important to acknowledge shared competences where they in fact exist, even if such competences may have so far been ignored due to political priorities. Naturally, any action in this field needs to be weighed carefully and with great care as the risk of upsetting the delicate balance between freedom of expression and media regulation is always present, especially as national systems are so diverse.

News Media Europe sees no space for concessions with Member States when the integrity of freedom of expression, media independence, democracy, and the rule of law,

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are being compromised. Bearing this in mind, News Media Europe sees four potential courses of actions for the European Commission to take in preserving freedom of expression and media pluralism in the EU.

As a first option, the European Commission could intervene by way of initiating infringement procedures against Member States where fundamental rights and values related to freedom of expression, such as media freedom and independence, are under systemic threat and being curbed. This would also be consistent with other Union policies, and in fact would likely reinforce them. In this regard, we note that the European Commission has initiated infringement procedures against several Member States where the integrity of the rule of law is being compromised. Where relevant, this should be complemented by measures to ensure a vibrant news media environment.

As a second option, the European Commission could support other mechanisms that can provide a sufficient incentive for Member States to act in the interest of fundamental values of the Union. Notably, News Media Europe supports making the availability of EU funds for Member States, such as regional, structural and cohesion funds, conditional on the unequivocal respect for the rule of law and EU fundamental rights and values. Again, withholding EU funds from Member States should by no means be seen as a “solution” to the underlying problems that lead to such situations, but rather as a necessary backstop policy instrument. News Media Europe therefore supports the current proposal to integrate such an instrument in the Multiannual Financial Framework Regulation.

In taking such action in practice, News Media Europe would caution the European Commission in establishing a regulatory and mechanical link between monitoring exercises in the field of media pluralism and the suspension of EU funds. Hardwiring these monitoring exercises into the regulatory framework would create too much dependence on their assessments for the European Commission. Much in the same way that there are drawbacks to relying on executive bodies, others also exist when relying on independent bodies.

As a third option, the European Commission could consider carrying out a “name and shame” exercise as is the case under the European Semester mechanism for economic coordination. The publication of figures as regards the state of the media could be envisaged, albeit with no process follow-up or analysis as is the case under the European Semester, where there is a broader context of economic convergence that follows suit.

Figures and statistics about the state of freedom of expression and media independence should be objective, simple, and not subject to interpretation. Rather, publishing such figures should create a positive environment for dialogue about some of the issues that

these figures may convey and act as an early warning signal. Such figures could, for example, help with a number of difficult questions in some Member States as regards, for example, advertising expenditure by Member States in the news media sector as means of exerting political control and influence.

As a fourth option, the European Commission should consider carrying out more promotional and communication activities as regards the rule of law and EU fundamental rights and values. This could be construed as a supply-side policy, which would support the ongoing efforts of various actors, including private partnerships, civil society, and academia, in mobilising more awareness of citizens of fundamental rights and values. This would complement ongoing and targeted efforts at defending the rule of law in Member States.

Of the four options presented, the European Commission should envisage using a combination of these to achieve meaningful outcomes.

## **Policy Recommendations:**

- **Launch infringement procedures against Member States where fundamental rights and values related to freedom of expression are under systemic threat or being curbed;**
- **Make EU funds conditional on respecting the rule of law and EU fundamental rights and values;**
- **Force Member States to publish figures about media freedom and independence and carry out a “name and shame” exercise;**
- **Fund activities to promote fundamental rights and values in Member States where such rights and values are at risk.**

## **7.2 Leveling the playing field: online platforms**

There is a continued and growing concern about the lack of a level playing field with online platforms. In a nutshell, the news media industry is concerned that it is competing in some of the same markets as certain platforms, but on different terms, resulting in a situation of unfair competition.

The relationship between news media and certain platforms has indeed become increasingly difficult, if not even more, as certain platforms not only act as intermediaries, but also increasingly as competitors in the news and advertising markets. The business

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model of platforms often creates value based on a combination of intellectual property from third parties, in the form of digital content, and of user engagement. Such digital content, often in the form of online news, is commercialised by means of selling advertisement space.

At the same time, as consumers increasingly access news content through platforms, the economic centre of gravity of the advertisement industry has shifted towards certain platforms. This leaves news media companies in a difficult position as they continue to produce news content and to bear the costs thereof. However, this is no longer reflected in their financial performance.

Distributing news through platforms, however, is often no longer a choice per se as certain platforms have become the gateway to reaching news audiences online. In fact, the news media industry is reaching greater audiences than ever before through platforms, despite their poor economic returns.

In addition, we note that certain platforms have also engaged in more direct competition with news media organisations by launching news-related products and services on the market. This includes, but is not limited to, news aggregators, publishing tools, advertisement tools, customer relationship tools, and in some cases, news content.

It is therefore all the more important for news media that a fair level playing field is established. One issue which is consistently cited by the news media industry as a major source of frustration and unfairness in ensuring a level playing field between news media and platforms is taxation.

It seems, effectively, that while news media companies pay their fair share of taxes, not only in accordance with the existing regulatory framework for permanent establishments and profit allocation, but also in line with the spirit of the law, that platforms are systemically and aggressively abusing fiscal frameworks within the EU. This problem needs to be addressed as a matter of priority, not only to ensure compliance with moral and legal obligations, but also to create fair conditions for competition.

As a principle, the news media industry believes that the European Commission should aim to address fair taxation in the digital economy by accounting for where value is created, and accordingly for where taxes should be paid, whenever firms fail to trigger a permanent establishment or to operate a permanent establishment in line with the spirit of the law. News Media Europe therefore calls on the Commission to ensure that the scope of the proposed interim tax measures is exclusively limited to, and effectively

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captures, business models that currently benefit from undue tax advantages due to the de facto absence of a permanent establishment.

In this respect, News Media Europe takes note the recent proposals of the European Commission as regards the fair taxation of the digital economy, but strongly regrets that some news media companies are captured in the scope of the proposal for a Directive on the Common System of a Digital Services Tax 2018/0073 (CNS), seemingly as collateral damage, at a time when the sector is undergoing a fragile transition to a more digital and sustainable future.

Another regulatory area where the level playing field between news media and online platforms is cause for concern includes notably data access and data sharing. In other words, we see growing concerns as regards an emergent and growing relationship of dependency that is developing between news media companies and certain platforms to act as intermediaries or distribution channels for news content. This is largely a result of the dominant position of certain platforms in the data economy but can also be traced to the way in which certain platforms abuse data protection regulatory frameworks through their dominant position to further consolidate their positions in the market.

As regards the application of recent data protection rules under the General Data Protection Regulation (EU) 2016/679, news media are concerned that platforms are not abiding by the spirit of the law insofar as some platforms already seem to be using their dominant position in the market to impose unfair contractual terms on news media companies using their services.

Specifically, concerns are raised as regards the making available of services on which news media rely heavily dependent on the acceptance of personal data protection terms and conditions which, by means of data ownership and right of use, would see the dominant position of certain platforms in the data economy being further consolidated to the detriment of online news media.

Furthermore, certain platforms also seek to shift the legal liability for personal data protection infringements towards news media companies. There are therefore strong, justified concerns that an abuse of dominance is taking place and is likely to continue if action is not taken by the European Commission.

News Media Europe takes note of the discussion of liability of social media platforms for the content on their networks. In light of this discussion, we would like to distinguish between editorial responsibility, as we know it in the creation and distribution of news content, and accountability for content that is merely passed on through social media. It

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is our clear standpoint that social media should not be undertaking any editing of content on their networks, or responsibility thereof, as this could harm freedom of expression.

This is not to say that platforms should not be held accountable, especially with regards to their participation in the fight against illegal content, hate speech and disinformation. As the European Commission diligently notes, transparency, trustworthiness and accountability must be prerequisites for the online ecosystem. This implies accountability on behalf of platforms as opposed to editorial responsibility. In addition, we note that such accountability becomes even more important when we discuss market with few key players.

On the issue of algorithms, News Media Europe takes note of important and emerging discussions surrounding the potential for in-built regulatory tools and solutions within the algorithms used by platforms, and of recent suggestions as regards algorithmic auditing as a useful policy tool, for multiple purposes. The news industry is mainly concerned about algorithmic transparency and accountability given the prominent role of certain online platforms in distributing news content, which calls for a greater degree of responsibility through transparency to ensure that freedom of expression is not being compromised.

Other areas where the level playing field can be improved include the general application of competition rules (see Section 7.4), the lack of liability as regards EU consumer protection, illegal content, hate speech and fake news. As for the latter four elements, News Media Europe notes recent developments and actions taken by the European Commission with hope that the envisaged measures will be effective.

## **Policy Recommendations:**

- **Ensure that platforms pay their fair share of taxes;**
- **Ensure that platforms do not abuse the new data protection framework to strengthen their position in the market;**
- **Ensure that platforms are accountable for the content they distribute and that editorial liability only applies when content is produced;**
- **Ensure that, overall, platforms effectively compete on the same terms as news media.**

## 7.3 Leveling the playing field: public service broadcasters

As regards public service broadcasters, News Media Europe's survey and research showed strong industry concerns about the status quo across different Member States as regards the growing activities of public service broadcasters. There is a pronounced fear that public service broadcasters in some Member States are crowding out the private sector to an extent that is contrary to the common interest that is supposed to justify the state funding which they are granted to fulfill their mandate.

To be clear, News Media Europe and its members acknowledge the role of public service broadcasters as the welfare benefits of state funded media are very important to ensure a pluralistic news media landscape, whenever market forces alone do not provide for this. The issue of concern relates to the remit of activities of public service broadcasters when it disregards that very principle or in other words, when there is no longer a justification for state funding because the market is being adequately served.

While defining the remit of activities of public service broadcasters is a national competence and is therefore a matter for Member States alone to define, industry feedback shows that the lack of precise definition by Member States as to the mandate and remit of activities of public service broadcasters is likely to be partially responsible for the unnecessary diversification of their activities, which is causing harm to the private sector by crowding it out to an extent that is contrary to the common interest. In some cases, there are also strong concerns about the implementation of, or disregard for, a clear remit of activities as defined in the mandate of public service broadcasters.

It is clear that in several Member States, beyond ongoing concerns as to whether the funding or state aid levels for public service broadcasters are in certain cases too high, that public service broadcasters are encroaching on market segments that are already adequately served by private news media. In many Member States, this point can be substantiated with reference to the entertainment and sports licensing markets, where public service broadcasters typically have a significant economic footprint even though the market is already being served by private actors. Private news media are also concerned that in their respective Member States, public broadcasters are competing for written and online news offerings, and in other licensing markets, when they are not mandated to do so, or competing for advertising revenue, when this is hardly justifiable.

News Media Europe therefore recommends that the European Commission reviews its Guidelines on the application of State aid rules to public service broadcasting (2009/C 257/01) to introduce more detailed and granular requirements as to the process of

definition of the mandate, remit and entrustment by Member States, which would improve the level playing field for private news media.

In addition, we believe that the European Commission should seriously consider forcing Member States to introduce an obligatory ex-ante assessment and activity test to be carried out by national competition authorities within the framework of the Amsterdam Test, when significant changes to the programming or to the mandate of public service broadcasters are foreseen. This would ensure that such changes do not distort the market to an extent that is contrary to the common interest and would guarantee input from an impartial expert body. This can be seen as best practice and is already the regulatory standard applied in several Member States. Where relevant insofar as trade between Member States may be affected, the European Commission should also itself carry out such due diligence.

Furthermore, we also ask that the European Commission services consider conducting a more thorough examination process as regards its role in checking the definition of the public service remit for manifest errors and also, specifically, as regards the effective supervision of the distortive market effects in the fulfilment of the public service obligations. We believe that this combined set of measures would allow for a better level playing field for European news media.

## **Policy Recommendations:**

- **Review the state aid guidelines for public service broadcasters to ensure that balanced rules are in place when state aid is used to fund press-like content**
- **Ensure that Member States provide a precise definition of the public service broadcasting mandate through more granular reporting requirements;**
- **Introduce an obligatory ex-ante test to be conducted by national competition authorities and possibly the European Commission if relevant, whenever significant programming changes are foreseen or when the mandate of public service broadcasters undergoes significant changes;**
- **Conduct a more thorough examination and supervision of the distortive market effects in the fulfilment of the public service mandate by the European Commission.**

## 7.4 EU competition law needs new tools for a more digital and data-driven future

The emergence of certain online platforms has over the past decade put into question the fitness of current competition tools at the disposal of both EU and Member State competition authorities for the digital age. In many ways, current thinking about competition and the application of tools that derive from such thinking, notably as regards anti-trust issues, has undermined the sustainable development of the news media industry and made its successful insertion in the Digital Single Market and transition to a more digital and sustainable future more uncertain.

Insofar as anti-trust tools are concerned, it is clear from the point of view of News Media Europe that they are unfit for purposes in an increasing number of cases. The mere fact that the various cases against giant platforms are so difficult to compile, take half a decade to put together, and that findings of dominance are difficult to prove in certain cases, all point towards that same conclusion. This is, of course, without prejudice to the difficult task that DG COMP faces in carrying out its mandate. Yet, the need for more agile instruments in the field of competition has never been so pronounced.

Anti-trust issues are complicated by the nature of such online platforms, who operate in markets with very strong and natural tendencies towards market concentration where market definitions become increasingly blurred. News Media Europe believes that this on its own warrants further intervention than is currently taking place, for example by increasing the use of ex-ante tests before new products are rolled out on the market by dominant players.

Further to this, we also acknowledge the increasingly important question of whether certain platforms, or elements thereof, need to be treated as public utilities, and if so, to what extent. This is both true from a general public interest perspective, and from a perspective concerned with the preservation of freedom of express as a fundamental right.

All these measures should form part of the preventive arm of the European Commission strategy to ensure an even level playing field in the Digital Single Market. However, while such measures are necessary, they are not sufficient to guarantee fair conditions for competition. Certain platforms are effectively able to dictate the terms on which content may appear on a platform, and an entity with the power to dictate the terms of distribution of news also has the power to dictate the content of news.

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The feedback received by News Media Europe on this issue is very clear: in most cases it is simply impossible to even bring the platforms to the table due to the enormous difference in bargaining power. It is therefore the view of News Media Europe that the position of economic strength of certain platforms enables them to prevent effective competition being maintained in the relevant markets by giving them the power to behave to an appreciable extent independently of its competitors, customers and ultimately of consumers.

By virtue of the serious political, economic, social, technological, and democratic questions that are raised by this issue, the debate of whether, and if so to what extent and how, certain platforms should be treated as a public utility, becomes all the more pressing. News Media Europe notes in this respect that the European Commission should therefore consider how to best initiate such a debate, potentially by way of a white paper or an open debate event.

With such concerns in mind, News Media Europe fully supports the initiative of the European Commission to appoint a panel of special advisers to counsel it on the future challenges of digitisation for competition policy. It is imperative that this discussion is given more impetus as matter of priority.

## **Policy Recommendations:**

- **Reflect and consider how to future-proof competition instruments on dominance and abuse of dominance in light of online platforms;**
- **Review the ongoing relevance of the market definitions used;**
- **Strengthen the preventive arm of competition through the use of ex-ante tests before news products and services by dominant platforms are rolled out in the market;**
- **Encourage an open dialogue about the future of competition policy, and consider whether, and if so to what extent, certain platforms should be treated as public utilities, and implications for competition policy.**

## 7.5 Collective bargaining rights: news media united in diversity

A solution to the inability of news media companies to even bring certain large platforms to the negotiating table is becoming increasingly urgent as the news media industry remains in economic decline. News Media Europe believes that providing news media companies with the means to collectively bargain with dominant online platforms the terms and conditions of content distribution could be a way forward.

The possibility to collectively bargain could serve the purpose of negotiating licensing rights for digital content and of having more control over the distribution conditions, which would strengthen the industry bargaining position in relation to online platforms, leading to fairer outcomes based on market dynamics. The negotiations could also entail the terms of selling advertising space and purchasing of distribution services and would strengthen the economic sustainability of news media.

The policy research and survey exercise conducted by News Media Europe clearly showed that this policy option is widely seen as one of the most interesting tools that could allow the creation of a better level playing field with large online platforms, with the benefits of having a direct impact on their ability to better monetise online content on the basis of their intellectual property rights.

The idea of introducing collective bargaining rights to news media is in fact not new. This practice currently exists in Germany, where news media is granted such liberty to preserve the sector's competitiveness and support its unique social mandate. This practice has also existed in the past in several Member States. In addition, this type of policy is now also being discussed in the United States, following a proposal tabled in Congress.

In Germany, the 9<sup>th</sup> Amendment Bill to the Act Against Restraints of Competition entered into force in June 2017. New amendments thereof included inter alia an exemption from cartel rules for certain forms of cooperation between publishers of newspapers and magazines, provided that the coverage is limited to Germany and does not include editorial work, as per Section 30 paragraph 2(b) of the Amendment Bill.

The rationale was to secure the competitiveness of news brands by way of allowing certain types of cooperation on issues such as price agreements for advertisement, sale, production and distribution. The new law also entails that companies may apply for prior approval by the national competition authority before engaging in such cooperation.

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In the United States, a legislative proposal called the Journalism Competition and Preservation Act of 2018 seeks to allow news media companies to collectively negotiate with certain large platforms on the prices of advertisement revenues, based on the understanding that news media is a key sector for the well-being of democracy.

The proposal suggests that economic sustainability needs to be proactively preserved given that news media companies simply do not have the scale to bargain with such internet giants and to obtain meaningful concessions. In legal terms, the ability to conduct such collective bargaining would require a temporary safe harbour from United States anti-trust laws.

This is also not the first time such a policy is being considered in the United States as a Newspaper Preservation Act was also adopted in 1970, providing a partial exemption to anti-trust laws by allowing newspapers to improve productivity by sharing printing and distribution costs. The Journalism Competition and Preservation Act of 2018 will be discussed in the framework of the United States Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, one of six subcommittees within the Senate Judiciary Committee.

In the case of Germany, the question for EU policy makers emerges as to whether this is compatible under all circumstances with Article 101 TFEU, which would continue to apply to newspapers and magazines provided that the agreements that are concluded within the framework of the exemptions provided for under the German Amendment Bill have a cross-border effect. Therefore, it is conceivable that action at Member State-level to strengthen the collective bargaining position of the news media sector may require complementary action at EU-level to ensure compatibility with Union law.

News Media Europe believes that in the process of providing the economic sustainability of the European free and democratic news media, that collective bargaining instruments, understood as concerted practices within the meaning of competition law, may generate objective economic, social, political and cultural benefits that outweigh by far the negative effects of the restriction of competition. A central purpose of the competition law is to promote and protect open markets, including those for free and diverse news media ecosystem.

News Media Europe believes that if the application of the competition rules is done in such a manner that conflicts with their purpose, that this consequently represents an issue that can and should be addressed. This is enshrined in Article 101 (3) TFEU which

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acknowledges that such conflicts may arise and provides for the possibility to exempt such agreements from the prohibition of Article 101 (1) TFEU.

This would require an exemption from EU anti-trust legislation by way of a Regulation on the application of Article 101 (3) of the Treaty of the functioning of the European Union to certain categories of agreements regarding news media. Regulation (EEC) No 2821/71 empowers the Commission to apply Article 101 (3) of the Treaty on the Functioning of the European Union by regulation to certain categories of agreements, decisions and concerted practices falling within the scope of Article 101 (1) of the Treaty which have as their object the research and development of products, technologies or processes up to the stage of industrial application, and exploitation of the results, including provisions regarding intellectual property rights, for example.

This would allow Member States that wish to support the sustainability and competitiveness of their news media sector, to support the news media sector efforts to cooperate with one another in order to effectively provide for collective bargaining rights for their industry with full legal certainty.

## **Policy Recommendations:**

- **Introduce a block exemption by way of a Regulation for the news media industry from EU anti-trust legislation to provide it with the ability to collectively bargain licensing rights, advertisement selling, distribution arrangements, and printing and purchasing of input thereof.**

## **7.6 Copyright and its enforcement**

The European news media industry relies heavily on copyright and related rights to monetise its content and to secure a business climate that ensures that it can fulfill its role as public watchdog. Copyright, especially, has become essential due to the deep transformation of the news media market in light of technological developments. Copyright is the sole legal instrument that safeguards the investments of the news media sector in providing news content to European citizens.

As a result of the survey and interview exercise of News Media Europe, feedback shows that the Intellectual Property Enforcement Directive (IPRED) has proved a reliable legal instrument to enforce copyright, especially in the case of large-scale copyright

infringements. We therefore also welcome the recent efforts of the European Commission in providing guidance on certain aspects of IPRED. In this context, while we remain aware that the purpose of the IPRED is to provide a minimum set of standard measures, we must underline that in what has become a borderless market for the news media sector, stronger and more robust copyright tools are still warranted.

We would therefore suggest that the efforts of the European Commission in monitoring the implementation guidelines remain consistent, as one of the main shortcomings of the IPRED is that it has not been uniformly interpreted in Member States. We therefore recommend a more active and centralised exchange of best practices, especially with a view to improving ways of tackling small-scale infringements.

News Media Europe would further encourage Member States to ensure the specialisation of judges in intellectual property and intellectual property-related enforcement matters, as well as the initiative of the European Commission to facilitate the wider use of alternative dispute resolution mechanisms to settle intellectual property disputes. We would point out that due to the difficult economic conditions, a very limited number of news media companies can afford to bear the high legal costs that intellectual property infringements lawsuits entail. We therefore believe that more can and should be done to promote due diligence in supply chains to combat copyright infringement.

Furthermore, News Media Europe believes that industry-led initiatives that would fight intellectual property infringements through improved and expanded voluntary agreements between right holders, internet platforms and advertising companies could be seen as a constructive way forward. As a last point on intellectual property infringement issues, we would like to encourage the European Commission to invest more resources in communication strategies to raise the awareness of the public on the risks related to intellectual property infringement.

As for other EU instruments on Copyright that the news media industry relies upon, Directive 96/9/EC on the legal protection of databases, also known as the Database Directive, is also seen as an important legal instrument. We are pleased that after the April 2018 evaluation of the Database Directive the European Commission has decided not to amend it at this stage because of the absence of sufficient evidence to support the revision of the Directive.

Overall, the news industry is satisfied with the current format of the Directive with the mention that, in due course, additional legal clarification is warranted in some aspects of the Directive. News Media Europe understands that the legal rationale of the Database Directive is to protect and further fosters investment in databases. We therefore believe

that a review of the Directive should consider that a separation between companies that “create” the data and companies that “make up” the contents of their data bases creates an unnecessary distinction between companies that are subjected to investment, regardless of the originality aspect of their databases.

Another aspect that could be clarified in the Database Directive is the concept of “substantial investment” as it is well-known that connecting the sui generis right to the concept of “substantial investment” has attracted considerable litigation. We find it quite difficult to attach the question of the protection databases to the question of “substantial” investment as there is no clear assessment of what a substantial investment means in the acquis. This is because the concept of substantial investment will continue to be assessed on a case by case judicial procedure by very different jurisdictions, thus leading to contradictory jurisprudence.

Another policy instrument that is very much seen as desirable by the news media industry is the proposed neighbouring right for press publishers, which is an indispensable legal instrument to promote more economic sustainability, under the proposal for a Directive on Copyright in the Digital Single Market COM(2016)593. The file is still undergoing negotiations, but it appears likely that a neighbouring right for press publishers will become part of the acquis.

So far, past experience has shown that the introduction of a publishers’ right has been highly contested. News Media Europe is therefore concerned that the national implementation will be equally contested in some Member States. With this in mind, we recommend the European Commission adopts additional soft law instruments in the form of interpretative laws to guide national implementing measures.

If the interpretative laws prove to be insufficient, we would suggest that the European Commission resort to instruments such as recommendations, communications and practical guidelines to guide the implementation process. This would be a highly desirable course of action because as a publishers’ right would be an internal market instrument, which warrants a uniform application of the law across Member States.

The proposed neighbouring publishers’ right in the framework of the copyright reform represents a much-needed feature in copyright law and is essential in order to adapt it to the digital world. Yet, its impact on the future economic sustainability of professional news content production and distribution will depend on how its implementation is overseen by the 2019-2024 European Commission. It is important to ensure that it will empower those who invest in the production of content to license it to those who benefit from using it.

## Policy Recommendations:

- Encourage a more active and centralised exchange of best practice to tackle small scale infringements through a review of IPRED;
- Increase efforts to promote due diligence in supply chains to combat copyright infringement;
- Encourage improved and expanded voluntary agreements between right holders, internet platforms and advertising companies to fight copyright infringements;
- Review the Database Directive to remove the unnecessary distinction between companies that “create” data and companies that “make up” the contents of their databases;
- Amend the Database Directive to provide for more legal clarity on the “substantial investment” provision when assessing the sui generis right;
- Make use of all available procedural instruments to ensure a uniform application of the provisions introducing a publishers’ right as an internal market instrument.

## 7.7 On the question of EU state aid guidelines for news media

News Media Europe understands that policy makers, both in the European Commission and the European Parliament, are increasingly of the view that state aid is becoming an increasingly important tool to support Europe’s news media industry. In light of this, the potential creation of EU state aid guidelines is also increasingly being discussed, as the European Commission Communication on tackling online disinformation could suggest, and as noted by the European Parliament in its Own-Initiative Report on Media Freedom and Media Pluralism in the EU. It is therefore important that an open exchange of views on this issue takes place.

News Media Europe agrees that understanding how state aid could support the European news media industry has become an increasingly pressing issue in some Member States. A constructive reaction of the news media industry to such a significant development in EU policy can only be achieved based on the clear understanding that such a framework should seek to address horizontal state aid schemes and establish non-discriminatory

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rules that prevent abuse from Member States, while also fully preserving the flexibility that makes state aid for news media a successful policy in certain Member States.

The interviewing and surveying of News Media Europe's membership shows a pronounced apprehension as regards any form of dependency on state aid. Therefore, the creation of EU state aid guidelines for the news media sector should be very clear and targeted, and, ultimately, limited in scope. The relationship between the independent, free news media and state aid is a difficult one, and always will be, for reasons that speak for themselves. As such, news media has what could be framed as a natural aversion to state aid.

Nevertheless, some Member States have a long-standing tradition of effectively using state aid to support their news media industries. At the same time, in other Member States, the industry operates independently of such aid and on full market terms, and this can also result in desirable outcomes as regards media freedom and media independence. Therefore, no single model of funding for news media is right or wrong, some are simply better suited to their national dynamics than others. Therefore, any sort of guidance should take full account of different national contexts.

To understand why this is the case, the national character of news markets in the EU need to be well understood with a tailored and nuanced approach to each Member State. This is the case, for example, as regards production, distribution and consumption patterns, which are by large the product of the evolution of the national news media ecosystems which have developed in distinct political, economic, social, and institutional contexts. This has ultimately led to different funding models.

For this reason, a rigid and uniform framework for the application of state aid is completely undesirable at EU-level. Instead, any EU-level state aid framework should pursue the overarching objective of providing better conditions in which to provide state aid for Member States who wish to pursue such policies. Such conditions should benefit citizens, industry, Member States, and wider stakeholders alike.

At the same time, any EU state aid framework should also look to curb the ability of Member States to use state aid tools to exert undue control over news media, by laying out clear due diligence and transparency requirements. Successfully achieving this could go a long way in helping the industry in several Member States where the situation as regards freedom of expression and media independence is currently deeply troubling.

Such guidelines should therefore under no circumstance leave any space whatsoever for governments, public authorities, and regulators, to pick winners and losers. Overlooking

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the accommodation of these concerns could result in risks that industry is not willing to take and would also undermine the potential benefits of this policy approach. It could also risk unnecessary market distortions with important implications for democratic processes.

It is therefore crucial that any state aid guidelines are able to identify clear, transparent and objective criteria against which state aid could be applied in Member States. The purpose should be threefold. First, to prevent discriminatory state aid; second, to create a transparent process of distribution of state aid; and third, to facilitate the indiscriminate distribution of, and access to, state aid in Member States.

News Media Europe also calls on the European Commission to ensure that any state aid guidelines aimed at supporting the news media industry should be platform neutral. Specifically, there should be no preferential treatment between different platforms such as online or offline, or different formats, such as written text, audio, or audiovisual. The guidelines should also provide equal treatment for private and public news media alike.

Respecting such a principle-based approach would ensure that market distortions resulting from state aid are kept to a minimum and to an extent that is not contrary to the common interest. This is, however, without prejudice to specific support for the print sector which is undergoing a fragile transition to a more digital future.

News Media Europe has identified several measures which could be appropriate for indirect state aid measures which could accordingly be incorporated in state aid guidelines, should the European Commission choose to explore this policy option further. Such measures of interest include supporting the professional training and upskilling of journalists and newsrooms as well as other initiatives which would support a digital transition, supporting the employment of both younger and older news professionals, support for distribution expenses, support for the development of what could be coined “centres of excellence” in the world of news media.

## **Policy Recommendations:**

- **Adoption of state aid guidelines for news media should support Member States who wish to provide state aid to the sector to support high quality journalism, while also focusing on preventing Member States from using state aid to exert political control over news media, by laying out clear due diligence and transparency requirements, while also preserving the flexibility of existing and successful state aid schemes in Member States.**

## 7.8 News distribution and universal service obligations: a fundamental rights perspective

News Media Europe notes that access to physical network infrastructure and other means of connecting to internet services is sometimes limited in some locations in Europe, and that by virtue of this, newspapers remain a key vehicle through which citizens can stay informed through news content, enabling their democratic participation in society. It is also important to consider that the lack of digital literacy can also in some cases prevent citizens with access to internet to engage with online news content.

The feedback from News Media Europe's membership shows that there are in several Member States strong and growing industry concerns about the deterioration of quality, price, and availability of postal services which are key to sustain efficient operations insofar as the distribution aspect of businesses and their print operations are concerned. Increasingly, we find that questions are being raised as to whether Member States are effectively complying with the Postal Services Directive 97/67/EC, as amended by Directives 2002/39/EC and 2008/6/EC.

Postal services are an area of national competence where a shared competence with the EU has emerged on the basis of the internal market and the ensuing need to create fair conditions for competition. The EU has accordingly sought to create an internal market for postal services and in doing so, the European Commission has introduced the notion of universal postal service obligations as a safeguard in the public interest which Member States are required to respect when regulating and overseeing postal operators.

The Postal Services Directive makes it clear that while a universal service obligation exists, which notably includes a requirement for Member States to ensure that postal services are available at least five days a week, that Member States are only required to guarantee one delivery a week. Member States are also responsible themselves to set the quality of service standards associated with this insofar as national service is concerned. In the Postal Services Directive, no service requirements are established as regards the expediency with which postal items are to be treated within the framework of universal postal obligations.

For many news brands, this poses two problems. First, the time of delivery of publications by postal service providers, even under the universal regime, is too long. This means that publications which follow a more rapid news cycle, or which undergo several publications a week, often become obsolete by the time they arrive at destination when the Member State does not impose high quality universal obligations on its postal operators.

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Combined with high prices charged for postal services, news brands become effectively dissuaded from making use of postal services and lose out on the market.

Second, the lack of regular postal mail delivery in several Member States comes as problematic in light of the industry feedback received by News Media Europe. There is strong industry consensus across the EU that Member States could do much more to support their news media industry through better use of postal services and regulation. Indeed, while universal service, within the generic meaning of the term, is deteriorating across Member States, industry still perceives universal service obligations as one of the best tools that Member States can deploy to support it.

News Media Europe is not contesting the content of the Postal Services Directive, nor its application by Member States, but merely highlighting what is perceived as a problem by news media companies. We would therefore encourage the European Commission to think further about how the concerns of the news media industry could be addressed through the next revision of the Directive.

Nevertheless, News Media Europe would add to the views presented on the issue of universal postal obligations that where there is no regular postal service and access to internet, that the issue of safeguarding the fundamental right of citizens to be able to access information becomes an important issue to consider. It is therefore important for Member States to take into account not only the availability of access to universal postal services, but also to access to physical network infrastructure when determining the standards for universal postal service obligations for national mail.

As such, we encourage the European Commission to consider the joint impact of universal postal services obligation under the Directive, in conjunction with the Universal Service Directive 2002/22/EC amended by 2009/136/EC which forms part of the EU regulatory framework for electronic communications, currently undergoing a framework review under the proposal for a Directive establishing the European Electronic Communications Code 2016/0288(COD).

This is important because the European Electronic Communications Code will play a key role as an enabler of the deployment of high speed physical network infrastructure, and thus allow for more channels of distribution of news content. In addition, we note that the successful deployment of high speed internet across the EU is also key to the development of the future newsroom, where a number of emerging technologies, such as virtual reality, artificial intelligence and distributed ledger technology, will require advanced network infrastructure to support their effective deployment.

## Policy Recommendations:

- **Review the Postal Services Directive with a view to support the news media industry with better universal service provision;**
- **Encourage Member States to evaluate universal service obligations of postal operators by giving more prominence to a fundamental rights-based approach, notably by considering the combined effect of postal and internet coverage on the right to access to information of citizens.**

## 7.9 Funding opportunities: encouraging cluster and network effects and increasing innovation support

News Media Europe supports initiatives aimed at strengthening network effects and synergies within the European news media ecosystem, for example through the creation of collaborative platforms, as places where new ideas can be generated, and the promotion of industrial clusters, where economies of scale and scope can be achieved, and of centres of excellence, where best practice can be exchanged.

We believe that any such action should follow a number of guiding principles. Participation in collaborative platforms should be open to all news media companies under equal terms, whether small or large, public or private. The focus of such collaborative platforms should be concerned with issues that are directly relevant from the perspective of the private sector, such as the exchange of best practice and of innovative tools at journalistic, editorial, and managerial levels.

In addition, collaborative platforms should be networking-based structures and promote industry partnerships. They should also, in the long-run, aim to promote industrial clusters of, and centres of excellence for, news media in the EU, inter alia by way of facilitating business partnerships, technological centres and private-academic partnerships. The involvement of other actors such as academia should only be supported to the extent that they are directly contributing to relevant debates, while respectfully noting that such platforms should not become a dumping or marketing ground for academic and institutional research.

News Media Europe is very supportive of EU funding opportunities for research and development activities, and innovation in the newsroom more broadly. In this context, we

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would fully support the creation of a dedicated work stream for news media as part of Horizon Europe.

The research and survey exercise of News Media Europe showed very strong support from industry for innovation grants. The main concerns cited as regards such programmes were the lack of awareness as to their existence, the at times excessive levels of bureaucracy involved, and the need for such funds to be distributed and administered directly by the EU, rather than Member States, to avoid Member States exerting political influence on the sector via the use of such innovation grants.

There are many emergent technological and social innovations with useful applications in the field of news reporting. This includes, but is not limited to, the development of new digital interfaces, artificial intelligence in the newsroom, robot journalism, ever growing information communication technologies, distributed ledger technology, including blockchain technology, micropayment and cryptocurrency technologies, new data formats and multi-platform technologies, and virtual reality technology, to name but a few.

News Media Europe therefore sees ample space for a more targeted policy intervention in the field of innovation support. The benefit of such an approach for the EU would thus be twofold. First, to increase support for a critical industry for the well-being of European democracy and citizens, and second, to provide funding opportunities to an economic sector with excellent opportunities for the commercialisation and cross-fertilisation of emerging technologies.

## **Policy Recommendations:**

- **Provide funding and support for the development of centres of excellence for news media to exchange best practice and promote cluster and network effects;**
- **Increase research and development funding under the Horizon Europe programme to foster fertile ground for technological development of news media companies.**

## **7.10 Sharing the benefits of media literacy**

News Media Europe believes that much work remains to be done in the field of media literacy across Member States. Media literacy has been identified on several occasions

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as a key skill that needs to be further fostered amongst European citizens, especially in light of the problem of online disinformation.

From an industry perspective, media literacy not only serves the purpose of equipping citizens with the right knowledge and tools to make informed decisions about information they encounter, but also to better engage with citizens across news platforms. There are therefore significant benefits to investing in media literacy, that extend beyond the problem of online disinformation.

It is worth noting that the news media industry has played a pioneering role in the field of media literacy over the past decades. In this context, the industry has been at the forefront of sustaining targeted efforts to promote media literacy in vulnerable segments of society. This has notably involved the development of innovative methods of promoting media literacy.

Much of the contemporary toolkit used by professionals who seek to share media literacy knowledge and skills are the product of private sector initiatives. In fact, most media literacy efforts, while benefiting from a certain degree of public funding in some cases, remain in the hands of the private sector who has accumulated the right skills and competences.

The dissemination of media literacy knowledge and skills is often coordinated at Member State-level by national associations of news media, such as the organisations that make up the membership of News Media Europe. Feedback from such associations shows that there is a shared understanding that both the private sector and Member States could be doing more.

From the perspective of news media organisations, there are, of course, budget implications as such activities are typically carried out as a gesture towards society. From the perspective of Member States, funding is typically made available to qualified entities and individuals willing to carry out media literacy projects on behalf of the Member State, either in the form of charity funding or of a public procurement contract.

Industry feedback also indicates that the lack of permanent funding for media literacy has acted as a deterrent for certain national news media associations to hire dedicated staff on a permanent basis to provide media literacy services to wider society. This is the case even if such activities are seen as very positive steps for such organisations, not only to be able to give back more to society, but also to develop more capabilities and competences in this critical and knowledge intensive field.

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It is worth noting that, at European-level, there is no existing platform or network for the exchange of best practice in the field of media literacy. There is consensus that this would benefit the media literacy expert community and their efforts.

News Media Europe has, within framework of its own resources, been proactive in attempting to address this issue by providing for a common platform to discuss media literacy. In practice, we have proactively collected information about what is being done by the private sector within Member States. It is apparent that there is willingness and enthusiasm to collaborate and share more on this issue, but that the availability of resources to that end presents a serious constraint.

Additional available funding could allow organisations such as News Media Europe to provide for a dedicated, knowledge web interface, available to both the public and network participants, to access information through a structured database. Such databases could contain information about actions undertaken in each Member States and contact details for further targeted knowledge exchanges. This would also allow more face-to-face meetings and networking opportunities to discuss and further the goal of media literacy.

With this in mind, News Media Europe calls on the European Commission to significantly increase the funding available to media literacy projects within the framework of the budget which will be earmarked under the Creative Europe cross-sectoral programme, under the post-2020 Multiannual Financial Framework.

We also encourage the European Commission to, in due course, engage more with news media associations to understand how its support could fit better within the framework of ongoing efforts led by the private sector and support a more coordinated and informed approach across Europe by supporting the cross-border exchange of knowledge and best practice.

## **Policy Recommendations:**

- **Earmark additional funding and support for the cross-sectoral budget line in the Creative Europe programme, under the post-2020 Multiannual Financial Framework, to increase the reach of ongoing media literacy efforts and to promote the creation of an inclusive platform at European-level to promote networking and the exchange of best practices.**

## 8. Concluding remarks and recommendations

The present report explored ten different policy actions that would create in meaningful ways a more sustainable, fairer and inclusive business environment, and Digital Single Market, for the European news media industry under the 2019-2024 European Commission, while also preserving its freedom and independence. This report is in itself a recognition that there is, effectively, no silver bullet that can solve the multitude of challenges facing the industry.

The report is by the same token also an acknowledgement that there is perceived value in what the EU could do to support its news media industry, by making the production of quality, professional news content an economically sustainable activity, within the full remit of its competences. As argued throughout the report, this should be seen as a first, necessary step towards addressing concerns over disinformation and the quality of public debate.

Some of the ideas presented in the report have not yet been discussed within EU policy circles, because they are new or because they relate to nascent policy debates, while others have been present for a longer period of time. The latter have unfortunately not received sufficient backing in the past due other political priorities, while the underlying issues they reflect have remained unaddressed. It is with a sense of urgency that the industry research and survey exercise which informed this report was carried out.

It is the view of News Media Europe that addressing the status quo of the industry should be a political and legislative priority of the 2019-2024 European Commission. Without a concrete, coordinated set of policy actions, a number of very concerning industry trends highlighted through the report are unlikely to disappear. Ultimately, the discussion about whether the EU should do more, and if so what, should be informed by a shared desire to safeguard our democracies and their integrity.

News Media Europe hopes that the report will form the basis for constructive dialogue on behalf of the industry with EU policy makers and wider stakeholders alike. We stand ready to provide further input, knowledge and feedback, and to take part in wider debates about how to safeguard a free, independent and democratic news media ecosystem.

## 9. Report Methodology

The analysis that forms the basis of this report is the result of an extensive survey and interview process of Executive Directors and Legal Advisers of national news media associations.

Our research framework has been informed by extensive policy discussions with policy stakeholders on the various dimensions covered by the report and by continuous consultation with private news media market participants. The survey collection process was carried out via ad-hoc exchanges of views during the first quarter of 2018, and with a formalised process of semi-structured interviews during the second quarter of 2018.

The aim of our inquiry was to develop a better understanding of industry perceptions on the challenges faced by the sector, and on what types of EU policy interventions would be seen as positive for the sector as a whole, and under what conditions. This was necessary to inform our analysis on suggestions regarding how such EU policy interventions could take form within the EU political and legal order.

As regards the sample representativeness of the sample for the EU news media industry as a whole, the report carried out this surveying and interviewing exercise in the framework of the membership of News Media Europe.

News Media Europe's membership comprises national private news media associations which, by large, represent smaller and larger news media companies alike, the extent to which will vary as a function of national structures for such associations.

Accordingly, News Media Europe represents the news media industry of eleven Member States, including: Belgium (Flanders), Cyprus, Denmark, Estonia, Finland, Hungary, Ireland, the Netherlands, Spain, Sweden, and the United Kingdom. News Media Europe's membership also includes the Norwegian news media industry.

The report was adopted at the News Media Europe Board Meeting in Tallinn Estonia on 24 May 2018 as representative of the view of the European news media industry as regards EU policy intervention in support of the sector.