

News Media Europe's contribution to the European Commission public consultation on the European Democracy Action Plan

Brussels, 15 September 2020,

News Media Europe represents the progressive news media industry in Europe – over 2,500 media companies including newspapers, radio, television and internet. News Media Europe is committed to maintaining and promoting the freedom of the press, to upholding and enhancing the freedom to publish, and to championing the news brands, which are one of the most vital parts of Europe's creative industries.

News Media Europe welcomes the opportunity to share views on the creation of a European Democracy Action Plan. We are fully committed to helping EU institutions strengthen the resilience of our democracies through recommendations on two of the main topics of the consultation: “Strengthening media freedom and media pluralism” and “Tackling Disinformation”. This submission complements our earlier feedback on the Roadmap.

1. Strengthening media freedom and media pluralism

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, free from undue political interference.

A survey of the European news media industry that we conducted in 2018¹ indicates that the state of media freedom continues to be the most important concern for the news media, despite the serious and ongoing economic difficulties. News media are consistently concerned that the troubling state of media freedom and independence in certain Member States may spread to other Member States, posing a direct and existential threat to their business models alongside democratic norms and values.

We note that while it is important to respect national competences, it is equally important to acknowledge shared competences where they in fact exist as per the Treaties. 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. Below, we explore several themes which we believe should inform the European Commission in its future initiatives.

1.1 Safety of news professionals

The safety of journalists and all other news professionals in the performance of their duty is of paramount importance. We are deeply concerned about the growing risks

¹ News Media Europe (2018) Report “Safeguarding the Economic Sustainability of Europe's News Media Ecosystem”: <http://www.newsmediaeurope.eu/news/nme-releases-report-on-future-of-eu-media-policy-safeguarding-the-economic-sustainability-of-europes-news-media-ecosystem/>

NEWS MEDIA EUROPE

that news professionals are exposed to as a result of their professional occupation, both when they report on the ground and during otherwise private hours. Both physical and psychological violence against news professionals are on the rise in Europe. They are emerging under various forms such as physical aggression, harassment, cyberbullying, intimidation, and abusive legal proceedings through defamation laws, also known as “Strategic Lawsuits Against Public Participation” (SLAPPs).

SLAPPs pose a major threat for European democracies as they in essence seek to shut down dissident opinions and impede public debate by keeping journalistic findings away from public view. A number of high-profile SLAPP cases have emerged over recent years, and in particular that of Maltese journalist Daphne Caruana Galizia who was murdered with 47 SLAPPs pending against her, many of which remain ongoing posthumously to the dismay of the journalistic community.

In addition, SLAPPs also represent an important drain on the often-limited resources that news media organisations have at their disposal. Certain forms of journalism inherently attract more SLAPPs by their very nature, meaning that some news media companies can be accordingly more exposed than others to such problems and consequently have to regularly invest more resources in legal defence, while the associated costs can be very important.

The prevalence of SLAPPs is clearly more severe in some countries than others², but in principle poses a cross-border threat to all jurisdictions. The basic protection for journalists across the EU and candidate countries, including the protection against SLAPPs, reaches an average medium risk rate according to the findings of the Media Pluralism Monitor 2020³. Hence, we think that a firm and coordinated response from the EU is needed.

Financial support and legal aid to journalists as well as small and medium-sized media organisations facing SLAPP lawsuits is definitely helpful. Introducing EU-wide anti-SLAPP measures with the aim of preventing these lawsuits in the first place is also required. For instance, the Brussels I (recast) and Rome II Regulations should be reviewed to make abusive lawsuits more difficult, at least in cases where journalists and media organisations are being the targets of repeated defamation lawsuits.

Repeated lawsuits indicate that legal proceedings are brought as an intimidation tool, and the competent jurisdiction should then become that of the defendant. Harmonised EU rules recognising and defining SLAPPs could also help identify abusive lawsuits and have them dismissed at an early stage. If defamation claims are deemed to be admissible, an EU-wide transparency register could help media freedom initiatives by identifying abusive claimants and media professionals that are targeted. All in all, coordination and harmonisation at EU level should aim for highest level of protection of press freedom.

² Politico article, 25 August 2020: <https://www.politico.eu/article/a-new-threat-to-press-journalism-freedom-in-eu-lawsuits/>

³ Media Pluralism Monitor 2020 executive summary: <https://cmpf.eui.eu/mpm2020-executive-summary/>

NEWS MEDIA EUROPE

1.2 Media independence

News Media Europe stresses the importance of a free and independent media for a well-functioning democracy. Two very important conditions that are necessary to achieve media independence are the financial sustainability and the editorial independence of news media.

1.2.1 Financial sustainability and economic independence

News reporting in a democratic space must be free from external pressures, be they political or commercial. It is therefore crucial that the notion of financial sustainability of media business models, including through fair competition, are openly recognised as preconditions for the sector to fulfil its role and effectively contribute to a vibrant democratic life.

Without autonomous revenues, self-sufficiency and growth perspectives, media offerings suffer, with heavy consequences on the quality of the democratic debate. So, while the present consultation does not address this question, it is difficult in practice to separate it from other issues relating to media freedom because it is the foremost basic determinant of whether news media can act independently.

Europe's news media ecosystem faces extremely difficult economic conditions that have only intensified during the COVID19 crisis. Paradoxically, while private media companies are reaching greater audiences than ever before, they are also experiencing decreasing revenues. Moreover, as quality journalism is expensive to produce and media companies have to continuously invest in new technologies to reach their audiences, there is a need to ensure that they can achieve a return on their investments.

Ensuring fair competition on the merits with tech giants on the one hand, but also public service broadcasters on the other, is necessary to remedy this situation. Tech giants have severely disrupted media markets in ways that raise important questions from the perspective of competition law. We elaborate on this point more comprehensively in our submission to the Digital Services Act public consultation where we provide an in-depth overview of the challenges faced by the media in digital markets⁴. Accordingly, we issue important policy recommendations to ensure a fairer and more inclusive European Digital Single Market.

When it comes to public broadcasters, their free offerings can easily disrupt the fragile market equilibrium to the detriment of private media through the use of vast State resources. A more balanced approach to the activities of public broadcasters, who compete with private media based on completely different parameters than private media, is therefore essential for a healthy media sector and for journalism. Specifically, it is important that the remit of activity of public broadcasters does not exacerbate competition in segments that are already being adequately served to avoid crowding out the market.

⁴ News Media Europe's submission to the European Commission public consultation on the Digital Services Act Package and the New Competition Tool: <http://www.newsmediaeurope.eu/wp-content/uploads/2020/09/News-Media-Europe-DSA-and-NCT-submission-04.09.2020.pdf>

1.2.2 Editorial independence

In addition to financial sustainability, editorial independence guarantees the proper exercise of media freedom. Furthermore, editorial independence gives great indication of the quality of a democratic system and of the ability of news organisations to report facts in a reliable and objective manner. It is crucial to have editorial independence and integrity in place so that journalism may bring analytical and critical added value to citizens. In addition, it is equally essential that the press does not shy away from voicing controversial opinions and inconvenient truths.

It is therefore important that the European Democracy Action Plan addresses editorial independence both from a political point of view, as well as from a financial point of view. As we describe later in this document as well, safeguarding the sustainability of the press, and therefore ensuring that it is under as little financial pressure as possible, is key to promoting a healthy and pluralistic European news media ecosystem.

In our view, a quality and pluralistic media landscape is one that can best represent and accommodate for the social, intellectual and political diversity for citizens, not one that only speaks to a narrow segment of the population. Therefore, a well-functioning democracy is one where all citizens have access to reliable information reported from different angles, editorial lines and registers. This is even more important in times of elections, both to secure political engagement and participation, which directly impacts on political inclusiveness.

This brings us to our pledge for an inclusive media as an element for increased democratic participation. Modern media is not based on citizens passively consuming news, but rather commenting it. In our view, news media plays an increasingly essential social function by not only communicating accurate and reliable information, but also fostering debates around it. In fact, press publishers have (partially or totally) shifted online to allow readers and viewers to react live and interact with journalists and society at large. Hence inclusive media, with the right digital capabilities and enabling environment, is key to encourage citizens to play an active role in our democracy.

To conclude, strengthening media freedom and pluralism requires the European Democracy Action Plan to offer the right environment for private media to play its social function and to respect its remit and mission. In addition, News Media Europe cautions against systems that promote certain content over others based on arbitrary quality assumptions. Introducing policies, based on the above recommendations, for a free, independent, plural and inclusive media will enhance the quality of the media environment.

1.2.3 Media independence from the State

The independence of the media needs to be ensured, not only against different economic and political forces, but also against the government in place and by extension the State itself, alongside its institutions. This institutional dimension to media independence is becoming particularly important at a time when democratic values and the rule of law are increasingly coming under threat across Europe.

Public broadcasters have in recent years experienced an increase in political interference with their activities. In some countries, the public broadcaster has unfortunately already become a propaganda instrument and government mouthpiece, while in others power struggles for continued independence are ongoing. This extremely concerning and even alarming for private media companies who are well aware that when political forces attempt to capture the public broadcaster, this is typically a precursor to attempts to capture the private media sector.

It is perhaps even more concerning to observe that the threats to the institutional independence of public broadcasters is also a problem faced by media regulators, who may themselves struggle to achieve sufficient independence. Here we wish to note that enforcement of provisions in the revised Audiovisual Media Services Directive concerning the independence of media regulators will be important to address this trend.

Where the State attempts to capture the private media sector, we note that the use of government advertising funds is the cause of important concerns. It is indeed in many instances completely legitimate and a positive initiative for States to communicate with citizens. The use of government advertising however becomes highly problematic when it is used to gain control of private media by building economic leverage.

There is a clear pattern of misuse of government advertising in several Member States, whereby pro-government outlets receiving such government funding while others that are more critical do not and face a host of other difficulties. This practice completely undermines the role of independent media in fostering a healthy democratic debate and therefore needs to stop.

1.3 Transparency and media ownership

News Media Europe fully supports transparency of media ownership to the extent that it can bring trust and genuine resilience of our democratic systems. However, we question whether legislation is needed further to already existing EU transparency requirements.

The recently updated Audiovisual Media Services (AVMS) Directive already includes an obligation for media service providers to make transparently available key information on ownership, e.g. name, address of establishment, contact details, jurisdiction and competent regulatory authorities (Article 5.1). In addition, media companies may already be subject to national measures requiring information concerning ownership structures, including on beneficial owners, with due respect for the privacy and other fundamental rights of beneficial owners (Article 5.2).

We support full transparency over ownership structures, which is part of our credibility as a free and independent media. The news media already complies with these transparency obligations, as most Member States already have in place reporting and transparency rules on the ownership of media companies.

NEWS MEDIA EUROPE

In fact, amongst the sixteen National Regulatory Authorities (NRAs) that commented Article 5 of the AVMS Directive⁵, “only a few identified implementation issues mostly because comparable measures are already in force at national level”. Comments also show that: “Most of the Member States are already eligible to impose fines. However, some NRAs expressed the opinion that no specific rules need to be foreseen as part of the transposition of the new Directive.” We agree that existing EU and national rules are sufficient and fit for the purpose of imposing transparency requirements.

1.4 Competitiveness imperative and consolidation

We think that possible “ownership limitations of commercial actors” as mentioned in the consultation constitute an unnecessary measure that could even harm the news media sector. We caution against ownership restrictions that could hamper necessary consolidation to stay competitive or even simply survive in the current marketplace.

Consolidation has proved necessary over the last decades for the media to compete with tech giants, by creating economies of scale and scope and other efficiencies, supporting the diversification of media activities, and increasing digital innovation capabilities. The acquisition of small media outlets by bigger groups has even proved to bring positive social effects, including:

- Allowing readers to keep a source of information that is relevant and close to them, at local or regional levels. For instance, Helsingør Dagblad, a Danish local newspaper, was acquired by Jysk Fynske Media group in April 2020. The group also bought the local newspaper Nordsjælland and eight weekly newspapers in the Northern metropolitan area from North Media A/S⁶. Without such acquisition, these titles would have simply disappeared, and readers would have lost local sources of information.
- Fostering media plurality by keeping titles afloat. Again, in Denmark, JP/Politikens Hus is a group that publishes various daily newspapers, some liberal, some conservative and also tabloids. This is an example of diversity within one media group that has strategically chosen to offer different titles with different editors in chief to reach different audiences.
- Offering an alternative to publicly owned media and maintaining a competitive market with a free press.

Conversely, there are also examples of acquisitions blocked by regulatory authorities, either on competition and market concentration grounds or media plurality grounds, that have resulted in media outlets entering bankruptcy and liquidation without other possible buyers. In such scenarios, the media landscape also suffers as news outlets can disappear altogether.

Therefore, we suggest approaching ownership restriction rules very carefully and leave this decision up to Member States, based on their own market structures and media traditions. Further to this, we note that imposing restrictions on media ownership based on grounds related to media pluralism falls within the competence of Member

⁵ ERGA’s discussion paper to contribute to the consistent implementation of the revised AVMSD: <https://erga-online.eu/wp-content/uploads/2018/11/ERGA-2018-08-SG3-Analysis-and-Discussion-Paper.pdf>

⁶ Press release, 23 April 2020 “Jysk Fynske Media takes over Helsingør Dagblad”: <http://jfmedier.dk/da/nyheder/jysk-fynske-medier-overtager-helsingoer-dagblad/>

States and is not an EU competence. Moreover, we are of the view that this division of competence is appropriate since local regulatory authorities are in a better position to adapt to local market differences which remains essential in an industry that features strong national characteristics and distinctions.

As such, we are concerned that imposing EU ownership restrictions rules to private media and limiting possibilities for consolidation could have serious unintended consequences: the lack of small titles, limited sources of information, less diversity of opinions and additional regulatory burden that could hamper the sustainability of the news media.

2. Tackling disinformation

2.1 Self-regulatory approach and safeguards

There is no clear-cut solution when it comes to disinformation. Both inertia and hard law could have damaging impacts on European democracy, either because of misleading information prospering online or due to risks on putting limits of what constitutes valid speech. So again, a balance must be struck in order to make sure that policies on disinformation genuinely strengthen the resilience of European democracies.

The performance reviews of the Code of Practice on disinformation and fake news and the COVID19 experience have shown that platforms, when left to self-regulate, fall short on expectations to remove fake news or misleading content⁷. Commission Vice-President Jourová recently declared that “the time has come to go beyond self-regulatory measures”⁸. The Commission said that while the Code has provided a useful framework for structured dialogue, “the assessment highlights certain shortcomings mainly due to the Code's self-regulatory nature.”

While we agree that there is much more platforms could do to protect users from harmful content, we would like to point out some important safeguards to put in place when carrying out the work on the Code of Practice.

First, the Code of Practice should continue to focus on online intermediaries and not apply to news publishers that are already subject to effective self-regulations that go well above and beyond the law. It is absolutely crucial that the fight against disinformation is not used as an excuse to regulate publishers' content that is already subject to high journalistic standards and editorial responsibility.

Second, not only should the Code of Practice leave out news publishers from its scope going forward, it should not provide grounds to alter nor remove journalistic content. There is an inherent risk that online intermediaries make arbitrary decisions over what

⁷ “ERGA Report on Disinformation: Assessment of the Implementation of the Code of Practice” (<https://erga-online.eu/wp-content/uploads/2020/05/ERGA-2019-report-published-2020-LQ.pdf>) and “Study for the assessment of the implementation of the Code of Practice” (<https://ec.europa.eu/digital-single-market/en/news/study-assessment-implementation-code-practice-disinformation>), May 2020.

⁸ European Commission press release 10 September 2020 “Disinformation: EU assesses the Code of Practice and publishes platform reports on coronavirus related disinformation”

content is democratically harmful or not. Leaving this definition to platforms' private laws or community standards can bear the risk of removing what is not perceived as "conventional" content even of a journalistic nature such as opinion pieces, criticisms, war images and so on. Hence, this is crucial to preserve media freedom and independence in a democratic society.

Third, the Code should not be used as an opportunity for State control over online intermediaries, neither as a tool to curtail free speech in certain countries with weaker democratic institutions. A large definition of what constitutes "fake news" or "disinformation" could indicate such intention. We would therefore caution against an excessively far-reaching Code of Practice that would diminish freedom of expression online.

That said, the Code could be improved with the objective of genuinely serving citizens in their exercise of democratic rights. In this regard, the Code could better incentivise platforms to act against content that is intentionally manipulative or misleading, especially when emanating from fake accounts or public figures, without prejudice to political free speech. Hence, we would suggest introducing well-defined key performance indicators and transparency reports evaluated during performance reviews by independent auditors, academia and fact checkers. This suggests that platforms open the data box with independent reviewers for the purpose of assessing progress on the fight against real disinformation. In addition, existing and further signatories should be made more accountable to the public, work with independent fact checkers, and demonetise disinformation by removing their ability to profit from advertising.

Hence the right balance likely lies in improved and targeted soft laws, and genuine incentives towards platforms to act more in line with the public interest. News Media Europe will continue to caution against an interventionist approach that would lead to over-removal of content and limit freedom of expression.

2.2 Fact-checking

Fact-checking user-generated content can be a solution in the fight against disinformation while avoiding over-removal. Yet, a few elements need to be taken into account here.

First, the consultation suggests that fact-checking social media can be performed by journalists whereas we think that journalists' skills and precious time should be spent reporting news to citizens, and not reviewing users' posts.

Second, it is important to preserve the integrity of professional news media content that has already been fact-checked and subject to strict journalistic guidelines. In other words, responsibility should never extend to the review of editorial content to respect media independence and freedom. Nor should platforms' own standards result in the removal or otherwise undermining of the integrity of journalistic content. Our industry already has in place national press complaint systems to deal with concerns associated with professionally edited news content.

NEWS MEDIA EUROPE

Third, fact-checking requires data sharing obligations to allow independent fact-checkers, the research community and regulators to scrutinise with the necessary information at hand, and adapt measures to the evolving reality, but also for journalists to understand and report on the threats to the democratic debates.

2.3 Demonetisation of fake news

The demonetisation of fake news is an important element in this debate. There can be a significant financial incentive to fabricate and disseminate fake news, as content published online can benefit from advertising revenue. Producers of fake news notably compete with trusted media providers for the attention of readers and for advertising revenues.

Hence, we suggest introducing algorithmic transparency rules and a “follow the money approach” on online platforms with scrutiny of ad placements and demonetisation of fake news. Ultimately, this would ensure the distribution of a diversity of opinions and variety of contents online. In particular, online platforms should be subject to accountability rules towards news producers with regards to the monetization and distribution of their content.

2.4 Promotion of professional content and inclusive media

Drawing from the observations of the European Commission in its Joint Communication, free and independent media has been recognised as an “essential service” to provide reliable information and protect citizens during the pandemic⁹. Similarly, the European Democracy Action Plan could integrate the promotion of authoritative content conducive to diluting misinformation on social media. This obligation is linked to algorithmic transparency and making sure, in a functioning democracy, that quality and professional contents attract more user traffic than harmful content.

However, we remain sceptical about the consultation’s proposal to promote “*information from independent media and trustworthy sources on online intermediaries (such as search engines, social media and aggregators)*”. Indeed, access to diverse and reliable content underpins the ability of citizens to stay informed and promoting quality and authoritative content should be seen as one of the key actions that should be taken against disinformation. However, we have severe concerns about the interference of online intermediaries in providing equal access to all news brands to all of society. As certain scoring or grading of content may have algorithmic consequences, it is not unthinkable that certain demographics are cut short of their access to the content they prefer based on an arbitrary quality rating.

⁹ As emphasised by the European Commission Report on the 2019 elections to the European Parliament of 19 June 2020: “Access to digital platforms’ data including by the research community remains insufficient. This can make it difficult for journalists to understand and report on the threats to the democratic debate and hinders efforts by civil society to raise citizens’ awareness and build social resilience” (p.27) https://ec.europa.eu/info/files/com_2020_252_en.pdf_en

¹⁰ European Commission Joint Communication on “Tackling COVID19 Disinformation: Getting the Facts Right”: “The COVID-19 crisis has demonstrated the crucial role of free and independent media as an essential service, providing citizens with reliable, fact-checked information, contributing to saving lives.” (p.11) https://ec.europa.eu/info/sites/info/files/communication-tackling-covid-19-disinformation-getting-facts-right_en.pdf

NEWS MEDIA EUROPE

In this sense, while it is important that the European Democracy Action Plan integrates journalism in its broader strategy, it should also be careful to not discriminate against different types of professional reporting that cater for different audiences who may be altogether excluded from the contemporary information landscape and news cycle. We accordingly disagree with discriminatory practices against tabloids, satirical papers, free newspapers, investigative journals or political opinions against major national or daily titles.

This brings us to media literacy, another point raised in the consultation. News Media Europe and its members are committed to raising users' awareness around trustworthy and quality content coupled to media literacy. There are numerous initiatives at national level that aim to do exactly that. Feedback from our members suggest that while most efforts focus on fostering news media literacy in classrooms, other parts of society should also benefit from being able to better judge the quality and trustworthiness of content, particularly in the online space.

2.5 Platforms services integrity

We would furthermore like to raise the issue of platforms services integrity, which in our view is closely linked to the issue of the responsibility of online intermediaries and which we develop in our contribution to the Digital Services Act public consultation.

Platforms services can be channels of manipulative techniques, such as spam accounts or fake engagement towards content, with the risk of intensification in times of election to influence or even mislead targeted groups of users. This cannot be in circumstances where citizens must have access to reliable information to exercise their best judgment and voting right.

In our view, platforms should take more responsibility for the manipulative practices taking place on their services and put concrete measures in place to reinforce safety and transparency. This was expressly advised by the High-Level Expert Group on Disinformation set up by the European Commission, saying that "*the questions raised by integrity of elections are therefore similar to those about integrity of information: transparency, reliability, findability and trust*¹¹." Consequently, in order to promote elections integrity, we must start with platforms integrity.

We realise that the solution is not straightforward and different interests must be taken into consideration before enacting targeted regulation on deceptive techniques.

For instance, there is merit considering labelling deceptive content to inform users on why they were targeted and why this content is dangerous. However, platforms should never label content emanating from professional news brands for the purpose of preserving media freedom and integrity. This is absolutely crucial to allow the press to perform its democratic role without interference from social media.

When it comes to verifying accounts, a balance must be struck between individuals' anonymity and verification of identity. Systematic and large-scale checks would

¹¹ Final report of the High Level Expert Group on Fake News and Online Disinformation, 12 March 2018 (p.12) : <https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation>

obviously be disproportionate and against the right to individuals' privacy. Yet we could suggest that verification for public figures whose influence on society justifies taking extra precaution to speech emanating from these accounts. For business accounts, a filtering system based on company registration or certification could help identify real business customers and anticipate risks. Upon discovery of fake accounts, platforms should take proactive steps to close the account, identify the perpetrators and ensure no further engagement occurs via a new identity.

To conclude, stricter EU measures are desirable to improve the integrity of platforms services provided that such measures are not used by platforms to alter nor select professional news content, nor diminish freedom of speech online.

2.6 Political advertising

Finally, the issue of political advertisement has received significant attention in recent years due to growing concerns about disinformation, election interference and large-scale manipulation taking place in the ecosystems of powerful online platforms.

There have been suggestions that the EU should seek to further regulate such advertising, notably based on the understanding that what is illegal offline, should also be illegal online.

Often, however, such political ads that are cause for concern are enabled by the mismanagement of citizens' data by large online platforms, who continue to face little to no accountability for their role and lack of transparency.

It is clear that large online platforms such as those operating as social networks could do much more to ensure that political advertising takes place under sound conditions. This includes but is not limited to transparency for users on why they are seeing certain ads, verifying the identity of advertisers, and revealing how much political advertisers are spending, for instance.

We therefore suggest that possible additional regulation should be targeted and limited in scope so as not to adversely impact editorial media that is already regulated and not the source of the concerns that tend to be raised (e.g. print, journalistic outlets online, radio and tv). In fact, more traditional forms of media such as print and broadcasters are in most EU countries, in one form or another, already covered by relevant legislation and laws that apply to political advertisement, notably through electoral law.

We therefore wish to avoid conflict with or overburdening existing systems that may already be functional, with additional regulation that could have the adverse effect of undermining existing measures or overburdening editorial media.

Contacts:

Wout van Wijk (Executive Director): wout.vanwijk@newsmediaeurope.eu
Aurore Raoux (Policy Advisor): aurore.raoux@newsmediaeurope.eu