

NEWS MEDIA EUROPE

Case studies on the Media Freedom Act (March 2022)

a) Preserving effective self-regulation

Self-regulation is polyform, in substance and in format, and dependent on countries' traditions. The diversity of industry codes within this context would make it difficult – and inappropriate – to consider EU harmonisation. Here are some examples.

Belgium (Flanders)

Self-regulation is enforced by three different bodies, including i) the Council for Journalism (Raad voor de Journalistiek) which handles self-regulation of the Flemish press and welcomes complaints from the public, and ii) the Communication Center (Communicatie Centrum), which organises self-regulation of advertising, together with the Jury of Ethical Practices in Advertising (JEP); iii) the Social Charter for the Media Sector (2019), an agreement signed by 40 media organisations, which sets industry commitments on topics such as internships, intellectual property, appropriate remuneration, online news media, and more. Despite its non-binding character, the Charter carries significant weight for industry practices.

Czech Republic

In the Czech Republic, self-regulation emanates from a single body. The Council for Radio and Television Broadcasting (RRTV) is the only self-regulatory body for private media. Yet, there is a gap for printed and digital news, which raises a number of ethical issues.

Denmark

The system is formalised by the [Danish Press Council](#), established in 1992 under the Media Liability Act. Pursuant by law and chaired by a Supreme Court judge. The Press Council's decisions are based on Press Ethical Rules adopted by the press publishers' association Danske Medier and the Union of Journalists.

Finland

The [Council for Mass Media](#) (CMM) is a self-regulating committee established in 1968 by publishers and journalists in the field of mass communication such as press, television, radio, mobile and print. The CMM's task is to interpret good professional practices and defend the freedom of speech and publication. Media professionals affiliated to the CMM commit to upholding the ethical principles of the profession.

The great majority of the Finnish media have signed the CMM's Basic Agreement, whereby the CMM can directly handle any complaints that concern them. The CMM can even initiate an investigation in cases of an alleged serious breach. Yet the CMM does not have legal powers.

Ireland

Self-regulation is split between two different bodies: the [Press Council of Ireland and the Office of the Press Ombudsman](#). While the Press Ombudsman represents citizens' first point of contact for any complaint, the Press Council acts like an appeal body in case of unsuccessful mediation or arbitration.

NEWS MEDIA EUROPE

Both bodies are funded by the industry - primarily the national news publishers (approximately by 88%) – decisions are made based on a Code of Practice, which all member publications adhere to.

Both bodies function well, although recourse to the courts is still too frequent with a strong culture of complainants pursuing legal action due to the high levels of awards that follow from Ireland's outdated and prohibitively constraining defamation laws. We remain highly concerned about defamation suits that cost the industry millions every year in legal fees, awards and settlements, a problem that we further develop in our report on SLAPP suits against press publishers (December 2021)¹.

The Netherlands

The Press Council, which is funded by the media sector itself, organises the self-regulation of media content. The Press Council deals with complaints in relation to journalistic reporting. The rulings are not legally binding but are recognised by the industry and have a practical impact on journalistic practices. Coordination at EU level already exists through the Alliance of Independent Press Councils in Europe ([AIPCE](#)).

Sweden

Swedish publishers have a well-established and respected system of self-regulation without elements of "co-regulation". The system is watertight to any governmental rule to preserve media freedom and ethics based on industry and cultural traditions.

b) Preventing State interference

Combatting state interference is one of the most business-critical issues for our membership and must be the MFA's priority. We are alarmed by the situation in several Member States, in particular in Central and Eastern Europe, not least in **Hungary** where the violation of the rule of law and basic democratic principles is making it impossible for private and opposition media to operate, leading to a steady decline of independent media.

The Hungarian case

Increasing state capture: media ownership in Hungary is centralised in the hands of the government, either directly or through pro-government investors². State capture is organised in three layers: public spending goes to state-owned television (first layer), KESMA-owned media³ (second layer) and to supposedly independent media in fact connected to pro-Fidesz officials. The national news agency, Magyar Távirati Iroda (MTI), is now also controlled by the government, meaning that news at the very source is not editorially independent and controlled by the state. Concretely, the views of opposition politicians are either ignored or, during election campaigns, presented in a negative light.

¹<http://www.newsmediaeurope.eu/issues/report-on-the-impact-of-strategic-lawsuits-against-public-participation-slapps-on-the-news-media-sector/>

² <https://ipi.media/one-hungarian-media-monster-to-rule-them-all/>

³ The pro-government KESMA Foundation controls more than 500 media outlets including press, radios and tv channels.

NEWS MEDIA EUROPE

Economic suffocation of private media: The impact on private media is devastating as brands are reluctant to advertise in independent media outlets due to fear of government retaliation, usually taking the form of enquiries by the tax office. The limited advertising revenues independent media generate help to stay afloat, but not to make profits. Subscription revenues are also insufficient to compensate for limited advertising revenues since the wide public and free offering does not incentivise readers to turn to private subscriptions in the absence of a culture of paying for news found in other countries (eg. Scandinavia). Companies are therefore forced to lay off journalists and staff to survive, even if this comes at the expense of editorial production.

Hindered newspaper printing and delivery: The printing and distribution of newspapers have become more and more difficult. Printing takes place in a few facilities across Hungary with specialised machinery. Yet, such facilities are controlled by the government, directly and indirectly, and refuse to make their installations available to certain news outlets based on their editorial choices. As a result, some companies are forced to print their newspapers abroad and to import printed copies to Hungary on a daily basis. In addition, the public postal office also stopped delivering newspapers, a business officially considered no longer profitable. As a result, independent media have attempted to create their own delivery system. Yet, in order to deliver country-wide, private media are required to contract with KESMA's own delivery service, Medialog. Not only would the delivery be expensive, but the data of newspaper subscribers would also need to be transferred to KESMA.

Threat to democratic debate and exacerbated social divide: Content coordination throughout the pro-government media conglomerate KESMA has led to an overwhelming dominance of state narrative. This is not only problematic from a competitiveness point of view, but also from a social and democratic angle. On the one hand, media centralisation means that readers mostly receive one-sided, biased information and are not given the opportunity to exercise critical judgement. On the other hand, media centralisation creates a social divide between pro-government readers (mostly from the provinces and rural areas) and opposition readers having access to independent online publications (mostly in Budapest). Ultimately, media centralisation presents the risk of exacerbating the social divide between different geographies, social categories and age groups, instead of facilitating the exchange of ideas and democratic debates. We remain extremely concerned about unbalanced media coverage as Hungary is entering a campaigning period for the parliamentary elections in April 2022.

Informational exclusion of private media: There is an increasing concern in Hungary that independent journalists are denied accreditation to press conferences or simply not given the floor for questions during public events to the extent that policy events have become dialogues between the government and its own media. Moreover, journalists struggle to access data from public authorities, which face no sanction for failure to comply with journalists' or citizens' requests under freedom of information rights. What is more, the introduction of the anti-LGBTQ law⁴ now also limits editorial freedom by restricting reporting on subjects such as gender identity or gay prides.

⁴ ["Hungary's anti-LGBTQ law breaches international rights standards – European rights body says"](#), Reuters, 14 December 2021

NEWS MEDIA EUROPE

Political influence and intimidation: Our membership also reports attempts by politicians to influence news content, for instance through defamation and legal threats (SLAPPs) or attempts to establish unethical relationships with journalists or editors. News Media Europe [published](#) a set of 10 recommendations against SLAPPs and the intimidation of journalists that complement our position on the Media Freedom Act⁵.

Other types of risks

Risks of state interference are present in numerous Member States. We call for greater transparency measures.

Access to public documents and answering journalists' requests: Refusal to grant journalists public information prevents journalists from performing their job and ultimately threatens media freedom, a trend we notice in times of crisis. In **Sweden**, changes to the law that governs access to public documents restricted press publishers' access to public interest information during the pandemic. The same concern arose in **the Netherlands** where the government took significantly more time than permitted under the Freedom of Information Act to answer journalists' questions. Dutch judges recently condemned the Ministry of Health for its poor management of journalists' Covid-19 requests.

Discriminatory practices: In **Denmark**, the government intends to propose legislation whereby media companies that receive public funding must put in place specific labour agreements between press publishers, media workers and sub-contractors. This presents an unnecessary layer compared to existing and well-functioning unions' agreements. Press publishers oppose the proposal on the grounds that funding allocation would become discriminatory. The debate is taking place late March 2022.

c) Consolidation in the interest of innovation and media pluralism

In **the Netherlands**, the two largest media groups hold 90% of the newspaper market. The Temporary Media Concentrations Act was repealed in 2011 to allow viable media houses to take over smaller news outlets, which could no longer survive on their own, and to sustain media pluralism⁶. The Dutch news media market is characterised by a plethora of high-quality news media titles that are able to compete and innovate to the benefit of the Dutch consumer. This does not mean that the media is not subject to competition rules. The **Dutch Competition Act** applies, putting any merger or acquisition under strict investigation and binding conditions.

In **Denmark**, competition merger controls apply, rules which are not specific to media companies. The Danish market is characterised by high concentration within four main groups that account for more than three quarters of total circulation. Concentration rules are flexible, allowing the media to

⁵ [Report on the impact of strategic lawsuits against public participation \(SLAPPs\) on the news media sector](#) , News Media Europe, December 2021

⁶ Under the former **Temporary Law on Media Concentrations (2007)**, a company was not allowed to detain more than 35 percent of the daily newspaper market, nor could it detain more than 90% of two or three of the following markets combined: daily newspaper, television or radio markets (in this case, the joint markets add up to 300 percent). Initially enacted to safeguard media pluralism, the rules turned out counterproductive. Large media companies were not allowed to take over outlets that were suffering financially, resulting in the disappearing of smaller titles. The law was repealed in 2011.

NEWS MEDIA EUROPE

consolidate, build strong business models and manage many titles. For instance, [Elsinore](#), a small newspaper, was acquired by the Danish media group “Jysk Fynske Media” in April 2020. The group also bought the local newspaper Nordsjælland and eight weekly newspapers from [North Media A/S](#)⁷. Keeping these small titles afloat would not have been possible without flexible concentration rules. It is fair to say that without consolidation, many Danish local and regional titles would have disappeared. In this case, concentration allowed for:

- Readers to keep a source of information that is relevant and close to them;
- Providing an alternative to publicly owned media and ensuring a free and competitive market;
- Helping press publishers to stay competitive against tech giants and resist international market pressure;
- Creating economies of scale and efficiencies, diversification of activities, support for innovation and uptake of new technologies (e.g. use of data and artificial intelligence).

d) Editorial independence safeguards

In **Belgium**, editorial independence is protected under statutory law (the Media Decree) which requires protection at company level in an editorial statute. More broadly, the freedom of press is guaranteed under the Belgian Constitution (art. 25⁸).

In **Denmark**, editorial independence is guaranteed under three different bases:

- i) **Rules for editorial responsibility:** the Danish [Media Liability Act \(MLA\)](#) provides that the editor in chief is solely responsible for content and publication decisions. Authors and/or editors are liable under criminal law for the content they produce, meaning that media companies bear no direct responsibility for editorial content. Such strict liability rules guarantee editorial independence as they prevent undue influence from the commercial side (management, advertisers, etc.) over the editorial side.
- ii) **Rules on the protection of journalistic sources** in the [Administration of Justice Act](#) (court procedures) also contribute to strong editorial independence safeguards.
- iii) **Self-regulation:** the Press Council’s [Press Ethical Rules](#) provide that there must be a clear distinction between advertising and editorial content decisions (Section B.4).

As an illustration, in a case opposing the police and JP Politiken Hus about the publication of secret services’ information, the Danish Supreme Court (2 November 2017) ruled that an injunction should be filed against the editor-in-chief, who is “the person authorised to make the final decisions concerning the content of the publication”, according to the Media Liability Act Section 3(2). As a result, the company management which received the injunction could not implement the court’s order, since the commercial side can never interfere with the editorial line.

⁷ North Media A/S itself comes from the merger of a number of small newspapers in Northern Denmark in the late 1990s into “North Yug Media”, which became a successful media company in Denmark.

⁸ “The printing press is free; censorship can never be introduced [...]”

NEWS MEDIA EUROPE

In **Norway**, editorial independence is guaranteed under both statutory law (Media Liability Act 2020) and the industry agreement between the editors' association and the press publishers' association (MBL). In **Sweden**, the special the Press Freedom Act and the Freedom of Expression Act provide that the editor is solely responsible for the editorial line and publications.

Other jurisdictions rely purely on self-regulation and industry collective agreements. In **Ireland**, media organisations rely on their own editorial codes of conduct and the Press Council's Code of Practice to safeguard editorial independence.

In **the Netherlands**, editorial independence is guaranteed by news titles' own editorial statutes, the basic terms of which are anchored in sectoral collective agreements. Common provisions include i) the definition of independent reporting and examples of conflict of interests ii) the responsibilities and relationships between publishers, chief-editors, deputy-editors, editorial staff and editorial boards iii) conditions for the appointment and resignation of chief editors iv) how the annual budget for the editorial staff is allocated v) and how to handle editorial freedom breaches or cases of undue influence.

The editorial board, elected by the editorial staff, also plays a key role in preserving editorial independence as it is consulted on important decisions affecting the editorial team (e.g. changes in identity of news outlets, size of the editorial staff, partnerships with other news outlets, etc).

In other jurisdictions like **Czech Republic**, no common rule exists for editorial independence safeguards. Yet, the greatest threat for editorial independence is the financial pressure on small, local and independent press publishers, which means that editorial decisions depend on the commercial (advertising) department. Due to lack of sufficient resources, newsrooms run the risk of merely reprinting press releases or news shared by public authorities. So the priority for private media remains to get sufficient (advertising) revenues to invest in quality journalism.

e) Enforcing existing rules on ownership transparency

Transparency requirements over ownership structures already exist in the [Audiovisual Media Services \(AVMS\) Directive](#), Article 5(1) and (2). Before considering new provisions as part of the MFA, existing measures should be properly implemented and enforced at national level.

In Belgium and **the Netherlands**, media companies must register their Ultimate Beneficial Owners (UBOs) with more than 25% of ownership interest via publicly available registers (general laws, e.g. anti-money laundering). Moreover, the independent Media Authority monitors the media market on an annual basis (media specific laws).

In **Ireland**, media companies must register their information (e.g. shareholders) with the Irish Company Registration Office (CRO), which is the general repository for all company filings. Each company must also keep a "Register of Members" and make it available to the public upon inspection or request. In addition, and in accordance with EU Anti Money Laundering provisions, Irish media companies must maintain and file a "Register of Beneficial Ownership" recording "adequate, accurate

NEWS MEDIA EUROPE

and current information” on their beneficial owners (ie. a person who directly or indirectly owns over 25% of the share capital, voting rights, appointment of directors). CRO reports are available to citizens upon request against a nominal fee.

In some countries, public authorities aim to improve enforcement of the rules in place. In the **Czech Republic**, the law⁹ requires that all information available about the beneficial owner should be made public (eg. the state, residence, year and month of birth, citizenship or any other status information). A breach of this obligation involves a fine of up to CZK 500,000. The new government promised to introduce rules to make the media more transparent through for instance the listing of major sponsors and disclosure of financial statements.

f) Promoting a free and transparent market for audience measurement

Our members are generally satisfied with the audience measurement services available to them on the market. Their main concerns however relate to:

- a) **Maintaining a genuinely competitive market for audience measurement** while tackling the market dominance and unfair practices of larger platforms (eg. Google Analytics). For instance, in the **Czech Republic**, media companies receive audience measurement mainly through two operators, Google Analytics and Netmonitor (a paid-service managed by the Association for Internet Development). In **Romania**, Google Analytics remains the most widely used tool. While Google Analytics is extremely useful - as it is a harmonised tool across jurisdictions - it is not perceived as the most transparent and independent service as press publishers are increasingly reliant on Google services from market analysis to content distribution (e.g. Google News, Search, Discover, Showcase).

Private media initiatives have positively contributed to improving audience measurement services. In **Finland**, the largest media houses joined forces – following clearance by competition authorities – to establish a third-party operator to measure audiences and work with advertisers. The Authority perceived this initiative as beneficial for consumers and advertisers. In **Romania**, our member BRAT¹⁰ joined the [International Association of Joint Committees for Media Research](#) which elaborates self-regulation on audience measurement.

- b) **Promoting an inclusive market, with affordable services for small and medium-size publishers.** In **Ireland**, independent measurement for digital audiences has proved problematic, either because the joint industry body (JNRS) only measures print audiences or because the costs of digital audience studies remains significant. Therefore, one key challenge for publishers remains *the cost* of measuring multi-platform audiences in an effective and representative manner.

⁹ The new law “Act No. 37/2021 Coll.” about the registration of beneficial owners entered into force on 3 February 2021

¹⁰ BRAT itself has extensive experience with audience measurement, either when commissioning studies from third parties (e.g. Kantar, Piano, Ipsos, Google Analytics, more) or when collecting advertising data from printed and online newspapers/radios for advertising monitoring and investment purposes.