

Press freedom in the EU

Legal framework and challenges

SUMMARY

Freedom of expression and information, as well as the freedom of the press, which provides the most powerful platform for the first two, contribute significantly to the formation of public opinion, thus allowing people to make informed choices in their political decisions. These freedoms are therefore essential for democracy, which is one of the fundamental values common to all Member States, on which the European Union is founded (Article 2 TEU). Within the EU legal framework, press freedom is a fundamental right established in the EU Charter of Fundamental Rights, with its provision closely resembling that on press freedom in the European Convention on Human Rights.

At EU level media freedom was long dealt with purely relative to the Single Market, and thus from a rather economic point of view. However, the Court of Justice of the EU (CJEU), for its part, started to see the importance of media pluralism very early, not only for the free movement of services across the EU but also in order to ensure a pluralism in views. The Court's rulings underlined the importance of media pluralism and media freedom not only for the internal market but also for democracy in the EU.

The European Parliament has repeatedly advocated press freedom and media pluralism in the EU and abroad. It has recently addressed the issue of the effectiveness of press freedom as an EU fundamental right and an objective EU value, in view of the scarce possibility for the EU institutions to act to enforce respect for EU fundamental rights and values by Member States.



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In 1993, the United Nations named 3 May as annual [World Press Freedom Day](#). The [themes](#) for the 2015 World Press Freedom Day are independent and quality journalism, gender and media, and digital safety for journalists and their sources.

Press freedom and democracy

The freedom of expression and information, together with freedom of the press, which affords the first two their most powerful platform, contribute significantly to the formation of public opinion, thereby enabling people to make informed choices in their political decisions. Freedom of expression and press freedom are therefore essential for democracy, which is one of the fundamental values common to all Member States, on which the European Union is founded (Article 2 TEU). Moreover, in providing information on the performance of public authorities, media also play an important role as a 'watchdog' over public power, for which they need to be free from any dominant political or state influence.

Freedom of press has a two-fold character. On one side it provides people active in journalism with an individual right to inform and to express opinions. On the other, press freedom gives the press guarantees appropriate to an institution inherent to the democratic process. This utmost significance of press freedom for the democratic functioning of society, making it a **fundamental constitutional value**, leads to very high requirements before any restrictions can be imposed on the freedom of the press by the public authorities. This does not mean, however, that press freedom has automatic prevalence over other conflicting interests, which might be data protection, the right to privacy, reputation, criminal justice, or others. Rather, any conflicting interest must be balanced allowing the unfolding as far as possible of both press freedom and **other conflicting rights** and legitimate interests, albeit taking into account the significance of freedom of expression and press freedom for democracy.

The function of press freedom as a guarantor of democracy does not mean however that only publications dealing with political matters are protected by the right, as contributors to the public debate and thus to democracy. Rather, any journalistic products enjoy this protection, including the 'tabloid press'. However, the higher the contribution of the journalistic product to the formation of public opinion on matters of relevance for society, the bigger the weight attributed to freedom of the press against other legitimate interests.

A debate on matters of public concern in a democratic society presupposes the existence of divergent opinions standing for the different competing political options between which citizens can freely choose. Therefore press freedom should be characterised by ideological, cultural, social and political pluralism. The more pluralist the media landscape and the more different points of view are provided in communication, the bigger is the legitimising effect media have on the political process. In this respect, while media pluralism is understood as independence of media from private control – thus avoiding media concentration under the ownership of a small number of media companies – press freedom is related to the lack of state monopoly or state intrusion.¹

In addition to the 'negative' or 'defensive' liberty against state intrusion, press freedom also imposes a **positive obligation** on public authorities to promote and guarantee this freedom and to defend it from unjustified and unproportional restrictions, not only against public bodies but also in horizontal relationships between private actors.

International protection of press freedom

Freedom of expression and of information are established as human rights in several international instruments such as the [Universal Declaration of Human Rights](#) (Article 19), and the [UN International Covenant on Civil and Political Rights](#) (Article 19). Besides, several international organisations provide regular reports on media freedom, for instance the [OSCE Representative on Freedom of the Media](#).

An effective protection of press freedom and freedom of expression is provided within the framework of the Council of Europe, in particular in Article 10 of the [European Convention on Human Rights](#) (ECHR), on freedom of expression. The ECHR is, besides the common constitutional traditions of EU Member States, a source of EU fundamental rights which constitute general principles of EU law (Article 6(3) TEU) to be observed in all EU action. Although the Convention establishes only a minimum standard of human rights protection, which can be exceeded by the contracting parties, the European Court of Human Rights (ECtHR) has set a high standard of protection for freedom of expression and of the press, against which even countries with long-standing constitutional and fundamental rights traditions have to measure themselves.

The freedom of expression and press freedom are not established in the ECHR as absolute rights, meaning that they may be restricted if the restrictive measure pursues a legitimate objective and is necessary in a democratic society, i.e. does not interfere with freedom of expression or press freedom more than is necessary in order to achieve the objective pursued (**proportionality test**).² Furthermore, for press freedom, the Convention establishes a specific possible restriction: a licensing regime for broadcasting, television and cinema enterprises (Article 10(1) ECHR, third sentence).

Since the landmark ruling in the [Sunday Times v. the UK](#) case from 1979, the ECtHR has delivered a comprehensive jurisprudence on violations of Article 10 ECHR, protecting critical political reporting as well as investigative journalism, confirming the protection of journalistic sources and of whistle-blowers and stressing the 'chilling effect' of criminal sanctions on journalistic activities reporting on misconducts of public authorities.³ The ECtHR has, however, also strengthened the **right to privacy** and to family life against journalistic reporting aimed at satisfying the mere curiosity of the audience.⁴

Press freedom as an EU fundamental right

While for a long time media freedom was dealt with at EU level in relation to the Single Market, and thus from a rather economic point of view, the Court of Justice of the EU (CJEU) started very early to see the importance of media pluralism not only for the **free movement of services** across the EU but also in order to ensure a pluralism in views.⁵ It accounted expressly for the importance of media pluralism and media freedom not only for the internal market but also for **democracy in the EU**. Hence the CJEU interpreted EU legal provisions in the light of EU fundamental rights being general principles of EU law long before the entry into force of the [EU Charter of Fundamental Rights](#), which has Treaty status and thus binding effect since December

Freedom of service and press freedom

The 2010 [Audiovisual Media Services Directive](#) codified amendments to the previous Television without Frontiers Directive. It provides minimum harmonisation of national rules on audiovisual media with particular relevance to commercial communications. The Directive also establishes that Member States need to prohibit hate speech and speech injurious to minors in audiovisual services. The CJEU held in the [Mesopotamia Broadcast case](#) that the regulation of media by the Directive supposes a restriction on the freedom of expression and is therefore to be interpreted restrictively.

2009 (Article 6(1) TEU). The freedom of expression and of information and the press freedom are established as fundamental rights in Article 11 of the Charter:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The freedom and pluralism of the media shall be respected."

The rights under Article 11 of the Charter correspond to those of Article 10 ECHR.⁶

What is protected under freedom of the press?

The case law of the ECtHR, the CJEU and the national constitutional courts of Member States has set the standard for protection of freedom of expression and information, as well as of press freedom in the EU.

Freedom of the press seeks on one hand to protect the content delivered by the press and on the other to ensure that structural questions do not render the exercise of the functions of the press impossible or too difficult. Such structural issues may be in the form of legal requirements or other circumstances, such as administrative obstacles to the media, including excessive registration, licensing and accreditation requirements; unjustified denial of access to information held by government agencies; harassment, intimidation, incarceration and physical attacks, including murder, of members of the press; restrictions on media pluralism, especially in broadcasting, through undue governmental control and pressure over broadcasters or favouritism toward state-owned media.⁷

The 'press'

Freedom of the press does not protect only printed publications but also products and emissions of audiovisual communication media, such as television. A more controversial question is whether online content enjoys protection under press freedom. While this is the case for the online editions of traditional media, and also for internet journalistic publications, the classification as 'press' of blogs, and – more generally – non-professional journalistic activities, which nevertheless aim to contribute to the formation of public opinion, is problematic. Such activities are in any case protected by freedom of expression and information,⁸ with some suggesting a broad understanding in the sense of a 'freedom of communication'.⁹

Freedom of expression vs freedom of information

While freedom of information refers to the allegation of facts that can be right or wrong, freedom of expression covers value judgments and other opinions that are not susceptible to be proved true.¹⁰ As a consequence, whilst **allegations of facts** enjoy protection only if they are the truth, or due diligence has at least been undertaken to establish their truthfulness before they were divulged, **value judgments** are covered by the freedom of expression. The sole limits to the latter are those against defamation, hate speech or incitement to violence – limits to the freedom of expression necessary to protect human dignity, pluralism and tolerance in a democratic society.¹¹

The other aspect of press freedom and freedom of expression is the right of the audience to be informed, with states having to guarantee media pluralism,¹² so that citizens have access to 'impartial and accurate information and a range of opinion and comment, reflecting inter alia the diversity of political outlook within the country'.¹³

Safeguards to press freedom

In order for media to be able to perform their duty as public 'watchdog', several safeguards are in place such as protection of journalists' sources, since otherwise sources might be deterred from providing information to the press.¹⁴ Furthermore, access to public documents is of particular importance for journalistic activities, with the state's information monopoly over information sources possibly having the effect of censorship.¹⁵

Media pluralism

Concentration of media ownership has been identified as a concern in terms of media pluralism, for example by the [High-level Group on Media Freedom and Pluralism](#). Moreover, the preamble of the Audiovisual Media Services Directive (AVMSD – recitals 8 and 94) stresses the need for Member States to prevent any actions which create dominant positions or restrict pluralism, and to enable independent regulatory bodies to carry out their work transparently and impartially. No binding measures obliging Member States to take action against media concentration have so far been adopted, however.¹⁶

Parliament's position

The European Parliament has repeatedly called on the Commission (most recently in [May 2013](#)) to propose concrete measures to safeguard media pluralism, including a legislative framework for media ownership rules introducing minimum standards for Member States. It expresses concern at the lack of transparency in media ownership in Europe, and called on the Commission and Member States to require media to submit – to national media authorities, company registers and the public – accurate and up-to-date ownership information so as to allow identification of the beneficial and ultimate owners and co-owners of media outlets. It suggested developing the [Mavise database](#), which contains TV and on-demand audiovisual companies in the EU into a Single European Register, in order to identify excessive media concentration.

High-level Group on Media Freedom and Pluralism

In 2011, the Commission set up an independent expert group, the High Level Group on Media Freedom and Pluralism (HLG). It is chaired by the former President of Latvia, Vaira Vīķe-Freiberga. The other members are Herta Däubler-Gmelin (former German Federal Justice Minister), Luís Miguel Poiares Pessoa Maduro (former Advocate-General at the CJEU) and journalist, Ben Hammersley. The Group presented its [final report](#) in January 2013, with 30 recommendations.

The HLG pointed out that the main responsibility for maintaining media freedom and pluralism lies with the Member States, but suggested that the EU should be

Internal and external media pluralism

While internal pluralism refers to pluralism within a particular media organisation, external pluralism refers to the media landscape as a whole, for example in terms of the number of different media providers in a country. Internal pluralism does not mean that journalists need to be absolutely free in the exercise of their work, with it being widely accepted that media can have an editorial line (see [final report](#) of the High Level Group on Media Freedom and Pluralism, pp. 12-13).

Media Pluralism Monitor 2014

The Centre for Media Pluralism and Media Freedom at the European University Institute updated the [Media Pluralism Monitor](#) (MPM), developed first in 2009 with funding from the European Parliament and the Commission. The [pilot test of the MPM](#) included nine Member States: Belgium, Bulgaria, Denmark, Estonia, France, Greece, Hungary, Italy and the UK.

The media pluralism indicators used in the MPM are grouped around regulatory safeguards for freedom of expression, of information and of press, cultural, political, geographical pluralism, as well as control of media ownership.

Interestingly, almost all of the pilot countries scored as 'high risk' for cross-media ownership concentration (Belgium, Bulgaria, Denmark, Estonia, Italy, and the UK).

considered competent to act to protect media freedom and pluralism at Member State level, to guarantee the substance of the rights of EU citizens granted by the Treaties, in particular the rights of free movement and to representative democracy, in view of the importance of media freedom and pluralism for EU democracy. The Commission held a [public consultation on the HLG report](#), under which a slight majority of 55% of respondents agreed with such an EU competence in the field of media freedom and pluralism.

Furthermore, the HLG called for Member States to ensure that they have independent media councils, with a politically and culturally balanced, and socially diverse, membership, to investigate complaints, check that media organisations have published a code of conduct and have revealed ownership details, and declared conflicts of interest.

Media pluralism and EU competition policy

Within the EU framework, state support for content pluralism in the media would be checked against competition, state aid and free movement rules.¹⁷ In a [2013 resolution](#), Parliament stressed that, despite the use of EU competition policy, concerns remain as to the adequate control of media concentration in cases where large cross-media mergers fall short of turnover thresholds stipulated in EU competition policy. Parliament therefore called on the Commission to assess how existing competition rules relate to the increasing concentration of commercial media in the Member States.

Self-regulation of the media

Given the public function of the media as a 'watchdog' of public authority, the regulation of media activities by the state, as the one to be 'watched', can be problematic. That is why many Member States have a more or less developed self-regulatory framework, with independent press councils or complaints commissions (e.g. [Presserat](#) in Germany, the former Press Complaints Commission in the UK, replaced in 2014 by the [Independent Press Standards Organisation](#), and to a lesser extent the French [Observatoire de la déontologie de l'information](#), created in 2012), composed of representatives of journalists' and editors' associations. Procedures before such self-regulatory bodies are less expensive than lawsuits, are more flexible and benefit from the technical expertise of such bodies.¹⁸ While in some Member States, media voluntarily sign up to the authority of such self-regulatory bodies, in others, self-regulation is required by law (regulated self-regulation or co-regulation).¹⁹

Content-wise, self-regulation is based on codes of conducts for journalistic activities (Editors' Code of Practice in the UK, *Pressekodex* in Germany, *códigos deontológicos* in Spain), which the self-regulatory bodies are supposed to 'enforce' through proactive investigations into journalistic activities and/or through complaints brought by citizens or organisations. Journalistic codes of conduct usually contain guidelines, inter alia, on journalistic diligence in investigating alleged facts, self-rectification, reporting on criminal offences, and in general on protection of fundamental rights such as privacy, private data, image and reputation, often resembling pre-existing legal obligations.

Self-regulatory control mechanisms of journalistic activity suffer chronically from lack of effectiveness, both because codes of conduct often remain below the legal standards as regards protection of individual rights, and because self-regulatory bodies often lack effective sanctioning mechanisms. The *News of the World* telephone-hacking scandal shattered the self-regulation system in the UK – the EU Member State with the longest

tradition of self-regulation. The subsequent [Leveson Inquiry](#) proposed, in November 2012, the establishment of a new, statutory, self-regulating body, the [Press Recognition Panel](#).

The European Parliament as advocate for press freedom

In the EU

In May 2013, Parliament adopted a resolution on the '[EU Charter: standard settings for media freedom across the EU](#)' (rapporteur Renate Weber, ALDE, Romania). Parliament addressed the issue of the effectiveness of press freedom as an EU fundamental right and an objective EU value, in view of the limited possibility for EU institutions to enforce respect for EU fundamental rights and values by Member States, once they have joined the EU ('Copenhagen dilemma').²⁰ In this context, the HLG mentioned above called for the EU Fundamental Rights Agency (FRA) to be entrusted with monitoring the freedom and pluralism of media at national level, and for the European Parliament then to discuss the FRA reports and make suggestions for measures to be taken. The EP underlined in this respect the importance of monitoring and supervising the development of, and changes in, national media legislation and its impact on media freedom, notably in relation to governmental interference.

Parliament argued for non-legislative initiatives to be used, such as monitoring, self-regulation and codes of conduct, as well as the activation of Article 7 TEU when appropriate, but pointed also to EU competences to adopt legislative measures to guarantee, protect and promote freedom of expression and information, media freedom and pluralism, 'at least as much as it has in relation to the protection of minors and of human dignity, cultural diversity, citizens' access to information, promotion of the rights of persons with disabilities, consumer protection in relation to commercial communications, and the right of reply, these being general interests covered by the AVMSD'.

Furthermore, Parliament stressed the importance of public-service media, which need to be independent of external pressures and private or political interests, while also offering space for niches that may not be profitable for private media. It also expressed concern over the trend of some Member States to apply budget cuts or scale down the activities of public-service media.

Parliament also pointed to the precarious working conditions of many journalists, and stressed the importance of collective contracts for journalists and of trade union representation of journalists collectively.

In the world

Parliament has also repeatedly addressed restrictions on press freedom beyond the EU's borders, for instance in its 2013 [resolution on the freedom of press and media in the world](#) (rapporteur Marietje Schaake, ALDE, Netherlands). In this context, in January 2015, Parliament [condemned](#) the police raids and arrests of journalists in Turkey in December 2014, and called on the Turkish government to address media freedom issues in the country. Parliament also called for increased attention to be paid to independent media within the framework of Pre-Accession Assistance.

Main references

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Endnotes

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- ² CJEU, [C-368/95](#), *Familiapress* case, para. 24-26.
- ³ Dirk Voorhoof, [The right to freedom of expression and information under the European Human Rights System: towards a more transparent democratic society](#), Centre for Media Pluralism and Media Freedom, EUI, RSCAS 2014/12, pp. 4, 10.
- ⁴ ECtHR, [Caroline von Hannover v. Germany](#) case, 2004.
- ⁵ CJEU, [C-260/89](#), *ERT*, para. 3. The Court held that a Greek broadcasting monopoly was unacceptable not only in the context of the freedom to provide services but also to ensure a range of voices are available to the public.
- ⁶ [Explanatory Note](#) on Article 11 of the EU Charter.
- ⁷ The OSCE Representative on Freedom of the Media, [Why free media matters](#), Factsheet, 2012, p. 3.
- ⁸ See ECtHR, [Yildirim v. Turkey](#) case, 2012.
- ⁹ Advocate General Kokott in the Court of Justice of the EU, case C-37/07, *Satamedia*, para. 38.
- ¹⁰ ECtHR, [Lingens v. Austria](#) case, 1986.
- ¹¹ ECtHR, [Handyside v. UK](#) case, 1976.
- ¹² ECtHR, [Informationsverein Lentia and Others v. Austria](#) case, 1993.
- ¹³ ECtHR, [Manole and Others v. Moldova](#) case, 2009, para. 100.
- ¹⁴ ECtHR, [Goodwin v. UK](#) case, 1996.
- ¹⁵ ECtHR, [TASZ v. Hungary](#) case, 2009.
- ¹⁶ *Ibidem*, para. 57.
- ¹⁷ Lorna Woods, Art. 11 Freedom of expression and information, *The EU Charter of Fundamental Rights. A commentary*, Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds.), 2014, para. 56.
- ¹⁸ Adeline Hulin, [Statutory media self-regulation: beneficial or detrimental for media freedom?](#), *Centre for Media Pluralism and Media Freedom*, EUI, RSCAS 2014/127, p. 3.
- ¹⁹ See on media self-regulation in France, Germany, Italy, Spain, the UK and the US, Juan Carlos Gavara and Josu de Miguel Bárcena (edit.), *La autorregulación de los medios de comunicación como sistema de control*, 2013.
- ²⁰ See to the breach of EU values by EU Member States and the possible sanctions, Eva-Maria Poptcheva, [Member States and the rule of law: dealing with a breach of values](#), EPRS briefing, March 2015.

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