Briefing Note for the CONT Hearing on:

"The Role of Investigative Journalism to Uncover Fraud and Corruption in Europe"

The Committee on Budgetary Control has organised a public hearing with the aim of getting a better understanding of how investigative journalism can help to uncover cases of fraud and corruption within Member States, which is of particular concern to the CONT Committee due to potential cases of fraud within EU funds. The hearing was scheduled out of concern for declining levels of press freedom in Central Europe, in this context it is important to discuss the vital role that a free media fulfils in society. This briefing will provide a background on the role of investigative journalists before moving on to discuss the role that they play in uncovering fraud and corruption in Europe. It will then discuss the decline of press freedom in Central Europe before analysing different policies that could be used to protect investigative journalists.

1. The Role of Investigative journalists

Defining investigative journalism is more difficult than it may seem, how does it distinguish itself from regular journalism? The Vereniging van Onderzoeksjournalisten (VVOJ herein, Dutch-Flemish association of investigative reporters) defines it as "Critical and in-depth journalism. Journalism that does not merely pass on news that is already there but creates news that would have not have been there without the journalist's intervention. This may happen by creating new facts, but also by interpreting or connecting already known information in a new way"[1]. The VVOJ also distinguishes between three types of investigative journalism, which may overlap[2]:

- Revealing Scandals, Tracing infringements of laws, rules or morals by companies, organisations or persons.
- Assessing governments', companies' and other organisations' policies or actions.
- Describing social, economic, political and cultural trends, to trace changes in society.

Therefore, it can be said that the role of investigative journalism is not to report the news as it emerges, but rather to find newsworthy stories that are not yet in the public domain. It is not their role to report on news stories of fraud and corruption but rather to try to discover fraudulent and corrupt activities that are hidden from view. They therefore play a watchdog role in society by calling out such illicit activities and bringing them, not only to the attention of the public, but often to the attention of law enforcement and regulatory authorities[3]. This involves 'doggedly pursuing and reporting on malpractices and wrongdoing. Such reporting is all about making public stories that powerful forces would prefer to keep secret'[4].

2. Impact of Investigative Journalism Uncovering Fraud & Corruption in the EU

Investigative journalism has had a profound impact on revealing cases of corruption and fraud in Europe. In order to uncover fraud and corruption, investigative journalists may use a variety of sources from whistle-blowers to data obtained via freedom of information. Some high profile cases include the

[1]https://www.europarl.europa.eu/document/activities/cont/201210/20121002ATT52809/20121002ATT52809EN.pdf
[2]https://www.europarl.europa.eu/document/activities/cont/201210/20121002ATT52809/20121002ATT52809EN.pdf
[3]https://www.europarl.europa.eu/document/activities/cont/201210/20121002ATT52809/20121002ATT52809EN.pdf
[4] https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655187/IPOL_STU(2020)655187_EN.pdf

Panama Papers and Paradise Papers. This section will outline examples of some high-profile cases in which investigative journalism has been central to the detection of fraud and corruption in Europe.

One such case is from 2018 when the RISE Project from Romania and BIVOL Bulgaria teamed up to investigate the misuse of EU funds in their respective countries[5]. The purpose of the investigations was to unravel a complex network of transnational criminal organisations and reveal how they gain access to public funds. The project uncovered a network of public officials, consultants and executives who took advantage of a lack of public oversight on projects that were funded by the EU[6]. During this investigation, journalists were detained and documents were destroyed as those responsible tried to hide their illicit activities[7]. Despite the best attempts of those involved, journalists continued to publish stories on these cases of fraud and corruption, contributing to the protection of the EU's and its citizens financial interests. In the 2018 edition of the European Commission's annual Cooperation and Verification Mechanism report on Bulgaria, they wrote "Serious risks of corruption in public procurement continue to be a concern in regard to Bulgaria. Recent revelations by investigative journalists concerning possible massive frauds targeting procurement in EU funded programmes are currently being investigated by law enforcement"[8].

An example that is currently under investigation by journalists is public procurement in Romania, Hungary and Poland during the Covid-19 pandemic. The project is a collaboration between Romanian transparency watchdog Funky Citizens, its data journalism platform Buletin de Bucureşti, independent Hungarian news portal 444.hu, Hungarian anti-corruption group K-Monitor and Polish civic tech group ePaństwo[9]. In Romania, the team examined spending of €1.5 million of EU recovery funds by the Hospital and Medical Service Administration in Bucharest after an emergency presidential decree removed financial limits on direct purchases.[10] The administration made most of its purchases of medical supplies behind closed doors, the investigation found. Companies contracted to provide hospitals with ventilators and COVID-19 PCR tests, for example, often lacked experience or were politically connected[11]. The team also investigated more than €4.8 million spent by the Balş Institute in Bucharest, a hospital on the frontline of the fight against coronavirus[12]. Dutchmed, the company that

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[5] https://www.investigativejournalismforeu.net/projects/misuse-of-eu-funds-in-romania-and-bulgaria/
[6] https://www.investigativejournalismforeu.net/projects/misuse-of-eu-funds-in-romania-and-bulgaria/
[7] https://www.investigativejournalismforeu.net/projects/misuse-of-eu-funds-in-romania-and-bulgaria/
[8] https://www.investigativejournalismforeu.net/projects/misuse-of-eu-funds-in-romania-and-bulgaria/
[9] https://www.investigativejournalismforeu.net/projects/eu-cash-in-a-crisis/
[10] https://www.investigativejournalismforeu.net/projects/eu-cash-in-a-crisis/
[11] https://www.investigativejournalismforeu.net/projects/eu-cash-in-a-crisis/
[12] https://www.investigativejournalismforeu.net/projects/eu-cash-in-a-crisis/

supplied medical equipment to the institute received almost half a million euros in contracts signed behind closed doors and without negotiation, the team reveals[13]. Several years ago, Dutchmed's owner was accused of bribing health ministry employees to get contracts[14].

These are just a couple of examples of the impact that investigative journalism has had on the uncovering of fraud and corruption in Europe in the past few years.

3. Decline of and Threats to Press Freedom in Central Europe

Due to the nature of their work, investigative journalists face many obstacles and dangers while trying to carry out their work. This may come in different forms such as structural/legal barriers to accessing information or even go as far as the threat or use of violence in an attempt to stymie the investigation. This section will first outline some of the methods that are used to prevent investigative journalist from doing their jobs and will then examine the media environments of Hungary as an example of a Central European country where there are concerns about the independence of the press.

Freedom of the press is a fundamental human right, which is crucial for the protection of democratic principles, and is recognised as such by Article 19 of the UN Declaration of Human Rights and Article 10 of the European Convention on Human Rights[15]. Often these rights are undermined using violent methods to silence investigative journalists. According to a survey carried out by the Foreign Policy Centre as part of the 'Unsafe for Scrutiny Project, 71% of investigative journalists who responded reported "threats and/or harassment while working on investigations into financial crime and corruption"[16]. According to The Platform to Promote the Protection of Journalism and Safety of Journalists, across the Council of Europe region there are currently 78 journalists in detention[17]. Since the launch of the platform in 2015 there have been 1281 alerts for threats to media freedom, 46 journalists killed and 26 cases of impunity for murder[18].

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[13] https://www.investigativejournalismforeu.net/projects/eu-cash-in-a-crisis/
[14] https://www.investigativejournalismforeu.net/projects/eu-cash-in-a-crisis/
[15] https://www.oecd.org/corruption/anti-bribery/The-role-of-media-and-investigative-journalism-in-combating-corruption.pdf
[16] https://fpc.org.uk/wp-content/uploads/2020/11/Unsafe-for-Scrutiny-November-2020.pdf
[17] https://fom.coe.int/en/alerte?typeData=4&time=1655129522260
[18] https://fom.coe.int/en/alerte?typeData=4&time=1655129522260

Another barrier, which threatens the ability of investigative journalists to do their jobs, are Strategic Lawsuits Against Public Participation (SLAPPs). SLAPPs pose a serious threat to the ability of journalists to inform the public and contribute to public debate[19]. A widely accepted definition of a SLAPP comes from Pring and Canan, 'according to them, a SLAPP has to primarily "involve communications made to influence a governmental action or outcome, which, secondarily, resulted in (a) a civil complaint or counterclaim (b) filed against nongovernment individuals or organizations (NGOs) on (c) a substantive issue of some public interest or social significance".

A SLAPP is thus designed purely for suppressing political opposition and effectively reducing future public participation, which distinguishes it from an everyday retaliatory lawsuit'[20]. Generally, the focus of the SLAPP is to silence critical debate rather than for the plaintiff to actually aim for a win[21]. The impact that a SLAPP can have varies from country to country depending on different factors such as legal costs, the elasticity of laws and the existence of safeguards[22]. A fundamental aspect of SLAPPs is the inequality of resources between the plaintiff and the target, which leads to an imbalance of power in favour of the plaintiff[23].

There has been a decline in press freedom in a number of European countries over the past few years. One of the countries where this is most evident is Hungary, which was given a score of 2/4 for press freedom by Freedom House[24]. One of the main reasons for this is the monopoly that Orbán, Fidesz and their allies have over the media. The above text box provides an overview from the International Consortium of Investigative Journalists of Orbán's control over the media[25].

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[19] https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655187/IPOL_STU(2020)655187_EN.pdf
[20] https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655187/IPOL_STU(2020)655187_EN.pdf
[21] https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655187/IPOL_STU(2020)655187_EN.pdf
[22] https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655187/IPOL_STU(2020)655187_EN.pdf
[23] https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655187/IPOL_STU(2020)655187_EN.pdf
[24] https://freedomhouse.org/country/hungary/freedom-world/2022
[25] https://www.icij.org/inside-icij/2018/05/heart-hungarys-battle-democracy-journalism/

But it was only upon assuming power after a stunning victory in 2010 that Orbán and Fidesz brought to bear the full extent of their media strategy.

The new government's first major piece of legislation was the landmark Media Law, enacted in 2010. The meticulously prepared law (an English translation, including rebuttals to criticism, runs 189 pages) centralized licensing and regulation under a new panel made up entirely of government allies. It also required media outlets to register with the government, removed legal protection against the disclosure of journalists' sources and threatened significant fines for a range of vaguely worded infractions (e.g. "imbalanced news coverage" and material considered "insulting" to a particular group or "the majority").

The new Media Council would also have definitive say over media mergers, a key element in driving out foreign (and independent) media ownership. While some provisions were rolled back or overturned, most remain in place. The law served as a symbolic marker of the government's determination to dominate the Hungarian media market and served as a powerful tool to do so.

Public broadcasting became a second front in the war on independent media, with the government obliterating any semblance of independence and more than doubling the state broadcasting budget.

Public TV and radio stations were turned into a "propaganda machine" reminiscent of the communist era, according to the respected public interest media research organization, Mérték Media Monitor. "It is very telling that colloquially the term 'state media" is increasingly widely used, even though in the past two decades one was tempted to believe that we would only encounter this notion in history books," the organization observed in a 2015 report.
In a market the size of Hungary, with a population less than 10 million, the government exerts enormous power over the media market. It succeeds both because large companies are reluctant to support news organizations viewed as problematic by the government and through massive direct advertising through various government agencies, such as the lottery and the public transit company.

A business news site, Napi.hu, found that the government was the country's largest media advertiser in 2016, after a 80 percent jump in spending from the previous year. And numerous studies have shown that agencies pumped money to the government allied press as though through a firehose.

At its height, the Fidesz-allied media portfolio included five billboard companies, one national and one Budapest-based commercial radio station, three major daily papers, two weekly magazines, two cable channels and the sprawling public media system with several television and radio channels. Other media outlets fell into line, including TV2, one of two main commercial broadcasters, Batorfy said.

4. Policy Proposals to Help Protect Investigative Journalism

Above there have been many examples of how investigative journalism is under threat from various actors. The above is by no means exhaustive however and journalists face many other threats and obstacles in try to uncover fraud and corruption. This final section will outline some of the policy proposals that have been suggested in the literature.

The first priority for the European Parliament should be to ensure that combatting impunity for the murders and other serious crimes against journalists continue to have the highest political and legal priority[26]. The European Parliament should continue to exert its influence and pressure to ensure that independent investigations are carried out into these serious crimes and that those who have committed such crimes against members of the media are brought to justice[27]. The problem of SLAPPs calls for urgent legislative action at the national and European levels. The European Commission is encouraged to accelerate its work on a comprehensive legislative package to prevent SLAPPs in Europe[28]. This should comprise amendment of the Brussels I Regulation (recast) and Rome II Regulation, as well as the drafting of a dedicated anti-SLAPP EU Directive[29]. Any legislative reform should be carefully aligned with the principles established by the European Court of Human Rights in its case-law on freedom of expression and defamation[30].

'Concentrations of media ownership and a lack of transparency concerning media ownership can threaten media pluralism and the diversity of opinions in public debate. Member States are called upon to fully and effectively implement the Guidelines appended to Recommendation CM/Rec(2018)1 of the Committee of Ministers of the Council of Europe to Member States on media pluralism and transparency of media ownership'[31].

In order to have a properly functioning democratic society, national governments and EU institutions must do more to ensure 'Effective press freedom, open data, access to information and whistleblower protection frameworks are essential to enable free and credible reporting'[32].

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[26] https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655187/IPOL_STU(2020)655187_EN.pdf
[27] https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655187/IPOL_STU(2020)655187_EN.pdf
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[31] https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655187/IPOL_STU(2020)655187_EN.pdf
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