



Study on media plurality and diversity online

Written by
Centre for Media Pluralism and Media Freedom (CMPF), European University Institute
CiTiP (Centre for Information Technology and Intellectual Property) of KU Leuven
Institute for Information Law of the University of Amsterdam (IViR/UvA)
Vrije Universiteit Brussels (Studies in Media, Innovation and Technology, VUB- SMIT)

Internal identification

Contract number: LC-01637953

VIGIE number: 2020-825

EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

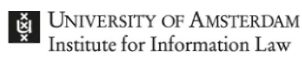
Directorate I - Media Policy

Unit I.1 – Audiovisual Media Services Policy

Contact: CNECT-I1 @ec.europa.eu

European Commission

B-1049 Brussels



***EUROPE DIRECT is a service to help you find answers
to your questions about the European Union***

Freephone number (*):
00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you)

LEGAL NOTICE

This document has been prepared for the European Commission however it reflects the views only of the authors, and the European Commission is not liable for any consequence stemming from the reuse of this publication. The Commission does not guarantee the accuracy of the data included in this study. More information on the European Union is available on the Internet (<http://www.europa.eu>).

PDF ISBN: 978-92-76-51323-0 doi:10.2759/529019 KK-07-22-202-EN-N

Manuscript completed in May 2022

1st edition

The European Commission is not liable for any consequence stemming from the reuse of this publication.
Luxembourg: Publications Office of the European Union, 2022

© European Union, 2022



The reuse policy of European Commission documents is implemented by the Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents (OJ L 330, 14.12.2011, p. 39). Except otherwise noted, the reuse of this document is authorised under a Creative Commons Attribution 4.0 International (CC-BY 4.0) licence (<https://creativecommons.org/licenses/by/4.0/>). This means that reuse is allowed provided appropriate credit is given and any changes are indicated.

For any use or reproduction of elements that are not owned by the European Union, permission may need to be sought directly from the respective rightholders.

Authors of the Study

For the Centre on Media Pluralism and Media Freedom (CMPF- EUI):

Pier Luigi Parcu (Project Director)
Elda Brogi (leader of Chapter B4)
Sofia Verza (Project Coordinator)
Danielle Da Costa Leite Borges
Roberta Carlini
Matteo Trevisan

CMPF external collaborators:

Damian Tambini (leader A3)
Eleonora Maria Mazzoli
Beata Klimkiewicz
Sally Broughton Micova
Brankica Petković
Maria Alessandra Rossi
Maria Luisa Stasi

For CiTiP (Centre for Information Technology and Intellectual Property) of KU Leuven:

Peggy Valcke (leader of Chapter A1 and A2)
Ingrid Lambrecht

With contributions of: Noémie Krack, Emine Ozge Yildirim

For the Institute for Information Law of the University of Amsterdam (IViR/UvA):

Kristina Irion (leader of the Introductory Chapter and Chapter B2)
Ronan Fahy
Daphne Idiz
Arlette Meiring
Theresa Seipp
Joost Poort

With contributions of: Natali Helberger

For Vrije Universiteit Brussels (Studies in Media, Innovation and Technology, VUB- SMIT):

Heritiana Ranaivoson (leader of Chapter B1 and B3)
Adelaida Afilipoaie
Nino Domazetovikj

With contributions of: Tim Raats

Abstract

The Study on Media Plurality and Diversity Online investigates the value of safeguarding media pluralism and diversity online, focusing on (i) the prominence and discoverability of general interest content and services, and on (ii) market plurality and the concentration of economic resources. With a focus on Europe, the project is funded by a tender from the European Commission to produce a study on Media Plurality and Diversity Online and involves four partner universities: CMPF (EUI); CiTiP (Centre for Information Technology and Intellectual Property) of KU Leuven; the Institute for Information Law of the University of Amsterdam (IViR/UvA); imec-SMIT-Vrije Universiteit Brussel. The purpose of the assignment was to describe, analyse and evaluate the existing regulatory and business practices in the two areas mentioned above, and finally to elaborate some policy recommendations. Data were collected from the database of the Media Pluralism Monitor (CMPF) and through desk research, online consultations and interviews with stakeholders. The contractor was able to call on a network of national experts across the Member States to support this work.

Résumé

L'étude sur la pluralité et la diversité des médias en ligne analyse l'importance de préserver le pluralisme et la diversité des médias en ligne, en se concentrant sur (i) la visibilité et la repérabilité des contenus et des services d'intérêt général et sur (ii) la pluralité de marché et la concentration des ressources économiques. Le projet, axé sur l'Europe, est financé au moyen d'un appel d'offre de la Commission européenne et vise à réaliser une étude sur la pluralité et la diversité des médias en ligne, en impliquant quatre universités partenaires: CMPF (Institut universitaire européen); CiTiP (Centre for Information Technology and Intellectual Property) de KU Leuven; Institute for Information Law de l'Université de Amsterdam (IViR/UvA); imec-SMIT de la rijke Universiteit Brussel. La présente mission a pour objet de décrire, d'analyser et d'évaluer les pratiques réglementaires et commerciales existantes dans les deux secteurs mentionnés ci-dessus, et d'élaborer des recommandations politiques. Les données ont été collectées à partir de la base de données du Media Pluralism Monitor (CMPF) et par le biais de recherches documentaires, de consultations en ligne et d'interviews avec les parties prenantes. Le contractant a pu faire appel, dans l'ensemble des États membres, à un réseau d'experts nationaux apportant leur soutien à ce travail.

Study on media plurality and diversity online

TABLE OF CONTENTS

Executive summary	i
<i>Résumé analytique</i>	<i>vi</i>
Introductory chapter. Outlining the value of safeguarding media pluralism and diversity to Member States, the EU and the relevant competences	1
1. <i>Introduction</i>	2
2. <i>Notions and definitions of media</i>	3
3. <i>Importance of media pluralism and diversity</i>	18
4. <i>Relevant EU and Member State competences</i>	30
5. <i>Conclusions</i>	40
Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services	45
1. <i>Introduction</i>	46
2. <i>Mapping of industry practices with explanatory cases</i>	49
3. <i>Mapping of legislative measures across Europe</i>	86
Chapter A2. An assessment of the effectiveness of measures related to prominence and the findability/discoverability of general interest content and services	95
1. <i>Introduction</i>	96
2. <i>Assessing and mapping exposure diversity: challenges, measures, metrics, methods and effects</i>	102
3. <i>Case study assessments of measures to increase the prominence of content</i>	116
4. <i>Concluding remarks</i>	152
Chapter A3. Options for policy intervention	157
1. <i>Introduction</i>	158
2. <i>Policy objectives: clarifying objectives and rationales for interventions</i>	159
3. <i>A typology of legislative measures</i>	161
4. <i>Policy Toolkit for New Prominence Regimes</i>	164
5. <i>Policy Options: Prominence Regimes</i>	177
6. <i>Conclusions: The prioritisation of general interest content and media pluralism</i>	189
7. <i>Methodologies</i>	192
Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality	202
1. <i>Introduction</i>	203
2. <i>Media ownership rules</i>	206
3. <i>Media mergers: notifications and assessments</i>	212
4. <i>Restrictions relating to capital control</i>	219
5. <i>Rules on the disclosure and reporting of media ownership</i>	224
6. <i>Financial reporting obligations</i>	229
7. <i>Public incentives to media pluralism</i>	231
8. <i>Special rules for the advertising sector</i>	236
9. <i>Interventions by national authorities that affect competition among media actors</i>	239

Study on media plurality and diversity online

10. Data gathering methods for assessing media concentration	242
11. Conclusion.....	245
Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data.....	248
1. Introduction.....	249
2. Distribution of advertising revenues	250
3. Assess the impact of the current distribution of advertisement revenues.....	273
4. Access to and the intensity of use of consumer data and its contribution to value creation.....	279
5. Indications of resilience: the evolution of non-advertising reliant business models.....	299
6. The distribution of advertising revenues, access to consumer data and their impact on media plurality.....	313
7. Conclusions.....	314
Chapter B3. Assessment of effectiveness of measures and methods concerning market concentration in the media sectors	318
1. Introduction.....	319
2. The relationship between media concentration regulation and market concentration: an exploratory data analysis.....	320
3. Case studies.....	328
4. Conclusions.....	365
Chapter B4. Methodologies for measuring media plurality and options for policy intervention	368
1. Introduction.....	369
2. Methodologies for measuring media plurality.....	370
3. Transparency	376
4. Market power.....	383
5. The sustainability of media markets.....	394
6. Conclusion.....	405
List of references.....	410

LIST OF FIGURES AND TABLES

Table I.1: Definitions of media actors and other actors in the media ecosystem	17
Figure I. 1: Countries with freer economies have a freer press	28
Figure I. 2: Press freedom and perceived corruption across EU Member States	29
Figure A1. 1. Illustrative value chain of the online audiovisual media industry: *focus on its distribution segment	54
Figure A1. 2. Global smart TV household penetration by region	56
Figure A1.3. Hypothetical user's journey, and what data is collected by whom	58
Table A1. 1. Summary overview of content prioritisation measures for Smart TVs	59
Figure A1.4. Freeview EPG, geolocated in England	61
Figure A1.5. Universal Guide of Samsung's Smart TV, aggregating content from Samsung TV+ services, linear channels and the apps that are present on the smart TV, geolocated in England	62
Figure A1. 6. Smart TV's homepage	64
Figure A1.7. Examples of different apps' prominence listing, shown on the home screen	65
Figure A1.8. Examples of remote controls and their hardware shortcut buttons	67
Figure A1.9. Examples of Netflix's homepage	70
Figure A1.10. Examples of Amazon Video Prime's homepage	71
Table A1. 2. Summary overview (smartphones)	74
Table A1. 3. Overview of key factors feeding Google Search's ranking and sorting algorithms	76
Figure A1. 11. Screenshots of the first page results from a Google Search on "COVID-19"	79
Figure A1. 12. Illustration of a search engine results page	80
Figure A1. 13. Total scores for the category "social networking and blogs" analysed by RDR 2020	81
Figure A1. 14. RDR 2020 ranking of indicator F.12: Algorithmic content curation, recommendation, and/or ranking systems. The selected digital platform companies are ranked based on whether they clearly disclose how content online is curated, ranked or recommended on their services and UIs.	82
Table A1. 4. Overview of the four steps used to prioritise content in Facebook's News Feed algorithm	83
Table A2. 1. Summary overview of the relevant academic literature	108
Table A3. 1. A typology of prominence measures	162
Table A3. 2. Examples of public value criteria for AVM services, news and journalistic organisations	170
Table A3. 3. Examples of indicators and measurements for prominence	175
Table A3. 4. Examples of indicators and measurements for the diversity of exposure	176
Table A3.5. Example of the interview topic guide and questions	195
Table A3.6 Example of the interview topic guide and questions	198
Figure B1.1. Distribution of measurement methods in terms of the object of the measurement	244
Figure B.2.1. Advertising expenditure, traditional and digital, Worldwide, 2011-2020	254
Figure B.2.2. Advertising expenditure, traditional and digital, worldwide (forecasts)	255
Figure B.2.3. Advertising expenditure, traditional and digital, EU + UK, 2010-2021	256
Figure B.2.4. Advertising spending by medium in EU + UK, 2010-2021	257

Figure B.2.5. Advertising expenditure by medium in EU + UK, % of total, 2010-2021	258
Figure B.2.6. Total advertising spending in the EU + UK by countries	259
Figure B.2.7. Digital advertising spending in the EU + UK by countries	259
Figure B.2.8. Digital advertising expenditure by format in Europe	262
Figure B.2.9. Newspaper's advertising revenues (USD millions) print vs digital - worldwide	263
Figure B.2.10. Expenditure on different types of digital advertising in the UK in 2019	264
Figure B.2.11. EU28 TV advertising, online advertising, online video advertising and broadcaster video-on-demand advertising revenues	265
Figure B.2.12. Share of digital advertising revenues, by company, worldwide, 2021	266
Table B2.1. Existence of the legislation providing fair and transparent rules on the distribution of state advertising in the EU Member States	269
Table B2.2. The role of state advertising in national media markets	272
Table B2.3. Distribution of state advertising to media outlets in practice	272
Figure B.2.13. The audiovisual market in EU 28 (EUR millions)	274
Figure B.2.14. The audiovisual services revenues in EU28 (EUR millions)	275
Figure B.2.15. Press circulation and advertising revenue (USD millions) - worldwide	276
Figure B.2.16. Newspapers' circulation and advertising revenues (USD millions) - print and digital, worldwide	277
Figure B.2.17. Newspapers average daily unit circulation in Europe	277
Figure B.2.18. Newspaper circulation and advertising revenues (USD millions) in Europe	278
Table B2. 4. Categories of consumer data	279
Table B2.5. Selected business models and their characteristics	280
Table B2.6. Business models' value-creation from consumer data	296
Figure B3.1. Correlation between the CR4 in EU countries in 2018 and 2020	324
Figure B3.2. Dendrogram of the hierarchical cluster analysis for the TV sector	326
Table B3.1 - Summary of separate assessment and ministry override in the countries under focus	337

Executive summary

The Study on Media Plurality and Diversity Online investigates media pluralism and diversity online in Europe, focusing on (i) the prominence and discoverability of general interest content and services, and on (ii) market plurality and the concentration of economic resources.

The purpose of the assignment was to describe, analyse and evaluate the existing regulatory and business practices in the two areas mentioned above, and finally to propose some policy recommendations for EU and Member States' (MSs) action.

Outlining the value of safeguarding media pluralism and diversity to Member States and the EU and the relevant competences

The introductory part of this study outlines the importance of media pluralism and diversity to the EU and its Member States. In this regard, it adopts a three-part approach to this task, addressing (a) the notions and definitions of media; (b) the importance of media pluralism and diversity; and (c) the relevant EU and Member State competences.

This Study embraces the broad notion of “media” that has been adopted under the auspices of the Council of European Recommendation CM/Rec (2018) of the Committee of Ministers to the Member States on Media Pluralism and the Transparency of Media Ownership, from 7th March, 2018, according to which online media is defined as a “wide range of actors involved in the production and dissemination of media content online and any other intermediaries and auxiliary services which, through their control of the distribution of media content online, or of editorial-like judgments about content, they link to or carry, have an impact on the media markets and media pluralism”.

Moreover, this Study distinguishes media actors from other actors in the media ecosystem which contribute to the functioning or accessing of media, but do not or should not exercise editorial control and are thus not to be considered media. These other actors in the media ecosystem, such as, among others, online platforms and social media, are increasingly influential over the production, distribution and consumption of media which is why they ought to be considered in conjunction with media plurality online.

Also, the Study reiterates the importance of media plurality for the fulfilment of fundamental rights and the functioning of contemporary liberal democratic societies. Traditionally, the understanding of media plurality used to be primarily focused on facilitating a diverse supply of media content, through the dimensions of internal and external pluralism. Besides, the notion of “exposure diversity” with its focus on the receiving end of media plurality online is becoming a central concern. In this regard, the notion of “expression on matters of public interest” becomes quite crucial for media plurality.

Finally, this Study embraces a holistic definition of media plurality and a holistic policy approach, which considers the Member States and the EU, within its competences, to be the ultimate guarantors of media plurality, and recognizes the importance of collaborative efforts in regulation and self-regulation.

Prominence and findability/discoverability of general interest content and services

Part A of this Study consists of three interlinked research tasks: a mapping exercise of legislative and non-legislative measures related to prominence and discoverability/findability of general interest content (Chapter A1), a critical evaluation of the effectiveness of these legislative measures through

case studies and evidence review (Chapter A2), and a set of policy recommendations informed by the previous research (Chapter A3).

Chapter A1 provides a better understanding of both current industry practices as well as existing policy and regulatory frameworks that can influence content prioritisation measures in today's online audiovisual environment. Firstly, it presents a **mapping of non-legislative measures**, i.e. industry practices, internal guidelines, content policies and standards that are currently shaping how content is curated and prioritised online. This mapping focused on the relevant segment of the online audiovisual media industry in order to exemplify how different content prioritisation measures enter into play at different levels and to investigate the level of control and decision-making power of different actors. It should be noted that given the increasing fragmentation of this industry segment and the growing number of gateways to content and information online, there is no one-size-fits-all approach to content prioritisation. Other factors can influence these processes, such as the technological architecture of the devices and services investigated, the commercial negotiations and market relations between the industry actors involved, the different levels of users' agency, and the relevant regulatory and policy frameworks.

Secondly, Chapter A1 also discusses how the relevant regulatory and policy framework may influence what content is prioritised to end-users. To do so, the study mapped **legislative measures of prominence of media content** at national level across Europe. The mapping shows that existing measures can be largely reduced to three different types: implementations of Articles 7a and 13 of the Audiovisual Media Services Directive (2018) and of Article 62 of the European Electronic Communications Code (2018). At the same time, notions of prominence, findability or discoverability of content are emerging as public policy objectives at the national, European, and international level, even though legislators' attempts to define these notions are limited, and still lead to definitional confusion.

Building on the aforementioned mapping, the study continues with a more in-depth analysis of the perceived effectiveness of legislative measures related to prominence and the findability/discoverability of general interest content and services, and their relations to diversity of exposure (Chapter A2). To do so, the study firstly, provides a state-of-the-art evidence review and meta-analysis of existing academic literature and relevant industry initiatives to map current measurement frameworks and indicators used to assess the effectiveness of prominence and diversity of exposure measures. Secondly, it critically evaluates the implementation and perceived impacts of five types of prominence rules: prominence on electronic programme guides (EPGs) and logical channel numbering (LCN); prominence of general interest content on media platforms; prominence of PSM's services on both EPGs and media platforms; prominence of European works; and prominence of news and journalistic content on digital intermediary services. This section finally argues that the relationship between prominence rules, media pluralism and diversity is particularly relevant for those new legislative measures that are aimed at ensuring access, distribution and higher visibility to a specific category of services that are internally pluralistic.

Policy recommendations

Informed by the previous findings and insights, part A concludes in Chapter A3 with policy recommendations for European policy makers and Member States on how to develop transparent and account prominence regimes that can cater for the ongoing changes in the media landscape and address the potential impacts of content prioritisation practices, while carefully considering the potential implications for freedom of expression, media pluralism, diversity, privacy and human autonomy (including the right to informational self-determination). To do so, firstly, the study outlines a **policy toolkit**, providing guiding principles and practical advice to address the core questions of *why, what, where, who* and *how* regulators and policymakers could create new prominence and

discoverability/findability rules, while reflecting on the advantages and limitations of such regulatory interventions. Secondly, the study provides an overview of the different **policy options in this area, covering statutory, co- and self-regulatory options**. The scope of this final Section reflects the EU competences in this area, and is mainly focused on two areas of intervention, namely audiovisual media services regulation, and new regulatory avenues for digital intermediary services.

Market plurality and the concentration of economic resources

Part B of the Study deals with external pluralism and media sustainability in the media ecosystem, with particular attention to online media. It consists of four tasks: mapping and assessment of the rules regarding and methods to measure market concentration in the media sector (Chapters B1 and B3), overview of the online advertising market and its impact on the media sector, with a focus on the access to, and the intensity of the use of consumer data (Chapter B2), conclusions and options for policy intervention (Chapter B4).

In view of promoting media pluralism, many EU Member States have rules aiming at limiting media concentration. These (media-specific) rules aiming at fostering media pluralism are complementary to general competition law, notably antitrust and merger control.

The mapping exercise performed in Chapter B1 evidenced that:

- Not all MSs envisage media ownership rules. When available, these provisions are mainly implemented through limitations on media reach.
- With regards to media mergers, a system of separate assessment or a system of ministerial override can be found in almost half of the MSs, while it is noticed that the lower thresholds and multipliers are not widely used.
- Regarding restrictions concerning capital control, most MSs provide measures that limit or even prohibit foreign ownership or control of media organisations. Moreover, a large majority of MSs provide restrictions in ownership or control by certain categories of actors (e.g., politicians) in order to avoid conflicts of interest.
- All MSs have rules on disclosure and reporting of media ownership, although transparency requirements are not always linked to media-specific laws or media pluralism objectives. A disparity in the access to information between public authorities and the public is detected for the majority of the MSs.
- Most MSs provide measures imposing transparency of media companies' financial information, mainly on these companies' turnover.
- Regarding public incentives to media pluralism, there does not seem to be a preference among MSs for either direct or indirect subsidies. The sector receiving the most funding is the press.
- Most Member States provide measures concerning state advertising. These measures are usually putting emphasis on either transparency or fairness of allocation criteria. Nonetheless, only a few MSs provide disclosure or reporting requirements for actors involved in advertising, or restrictions of control on media companies for these actors.
- The majority of data gathering methods for assessing media concentration are focused on measuring audience and its concentration. No authority makes use of a method to measure cross-media concentration.

More generally, **Member States' approaches to media ownership and concentration have in common that they are predominantly geared towards traditional media**: they do not yet

recognize the concentration of economic resources at the different layers of the value chain. When online media are mentioned, it is often unclear which services exactly are concerned (e.g., usually the measures refer to on-demand services). Moreover, the Study outlines that media pluralism is not usually an explicit objective of the measures concerning concentration in media markets in the EU Member States. Not least, there are differences between EU Member States regarding how pluralism is defined, when it is defined at all.

Based on the results of the mapping, Chapter B3 assesses the effectiveness of the measures tackling the concentration of economic resources in the media markets through an exploratory data analysis and six case studies.

With regards to the data analysis, it is noted that the lack of comprehensive data sources on EU media markets is an important obstacle to a better understanding of the EU media landscape. A first notable result is the lack of any statistically significant correlation between the number of measures adopted in one country and the degree of concentration in the TV and radio sectors. While for the press and online media markets, an inverse correlation between measures of regulation and indicators of concentration was found, hinting at the fact that more regulation tends to go hand in hand with lower concentration in these sectors.

Moreover, the exploratory data analysis and the case studies developed in this section clearly suggests the existence of a significant fragmentation across media markets of EU Member States.

Chapter B2 of the Study provides a detailed snapshot of the distribution of advertising revenues, both online and offline, between media actors and other actors in the media ecosystem. This feeds an analysis of the impact of the current distribution of advertising revenues on the economic viability of European media actors, including a brief outlook on the likely evolution in the coming 5-10 years. The consolidated data for the EU countries and the UK confirms the worldwide trend of advertising revenues shifting to digital, ultimately overtaking traditional advertising expenditure. Moreover, it is outlined that State-funded advertising can distort media markets, especially in EU Member States where they are a significant source of revenue.

Secondly, Chapter B2 maps the access to and the intensity of the use of consumer data in the media sector. It is outlined that for most media actors in the online media sector, the access to consumer data is an essential element of competition and value creation, however this access is highly imbalanced and in favour of major platforms. Moreover, micro-targeted advertising may conflict with consumers' data protection rights and the right to receive information. Pay or consent models or contextual advertising may be viable alternatives.

Finally, in this section the Study introduces and assesses media resilience through a string of non-advertising reliant business models, outlining that policy initiatives aiming at long-term resilience need to consider the many factors that affect a revenue model's sustainability. Revenue generated from content and mixed revenue models offer the most long-term sustainability and higher degree of independence.

Policy recommendations

The Study (Chapter B4) calls for an EU action to promote a diversity of content and sources in the publicly available media offer, guaranteeing the right "to receive and impart information and ideas" under Art. 11 of the Charter of Fundamental Rights of the EU. Also, the Study claims that a EU-level harmonisation of some regulatory elements is necessary for a good functioning of the internal market, especially in light of the new technological developments. Other instruments than merger rules and media ownership limitations are increasingly relevant, which derive from various sources, including for example the 2019 Directive on Copyright and Related Rights in the Digital Single Market (DSM Directive).

EU intervention in the field is primarily based on its competences conferred under Article 114 TFEU, which allows the EU to pass legislation and to harmonise the conditions for economic activities across Member States and ensure the functioning of the internal media market. As the requirements for disclosing information are currently not harmonised among different types of media actors, policy interventions to enhance media ownership transparency shall be justified under this legal basis. Moreover, in order to avoid distorting effects of divergent national laws in assessing mergers and media concentration differently, a principle-based definition at the EU-level of what is meant by public interest test (which, when run by NRAs, could be considered a "media pluralism test") and what is understood and considered as 'media pluralism' shall be harmonised within the EU.

Other policy suggestions concern rules on public funding, public subsidies, as well as state advertising. In particular, public subsidies and state advertising may be regulated by the EU, as abuse of public funding and investments may create barriers to enter the internal market. Traditionally, public support to the media was the domain of Member States. Recently, the European Commission decided to play a more active role in this field, announcing a variety of instruments that provide direct financial support to the media (European Media and Audiovisual Action Plan, 2020). In this Study, an EU fund for media pluralism is suggested. Such a fund would finance original and independent journalistic programs and initiatives, develop innovation in the production and dissemination of public-interest news, and sustain start-ups created by journalists.

Furthermore, the EU may further expand its function in supporting and coordinating Member State action in dealing with media ownership through institutional support provided by ERGA as well as through data and information collection and sharing. Particularly in the assessment of mergers, the EU may act based upon its supporting, coordinating, and supplementing role in providing an EU-wide vehicle for inter-agency collaboration and knowledge exchange between media authorities.

The enactment of autonomous domestic legislations should also be welcomed, to the extent it would help in enhancing the understanding and effectiveness of certain measures and that it would respect the fundamental rights recognised at the EU level, as well as not endanger the internal market.

In addition to economic considerations, EU level and MSs' measures should however also explicitly be directed at safeguarding media pluralism and diversity in the media ecosystem at large. For the creation of a new set of rules with relevance for the media sector, a complex balancing assessment of the purpose of protection and the implications for fundamental rights is necessary.

Finally, the 2019 Directive on Copyright and Related Rights in the Digital Single Market (DSM Directive) grants publishers direct copyright over "online use of their press publications by information society service providers", with exceptions for hyperlinks, "legitimate private and non-commercial use of press publications by individual users" and individual words or very short extracts of a press publication. It is too early to evaluate the overall impact of the Directive, which at the time of writing has been implemented in 12 MSs; however, in light of the first and preliminary findings of

this Study, it is noted that, without external transparency about the fees negotiated and paid, the effectiveness of this new instrument will be hard to assess.

New regulatory frameworks

The EU has negotiated a new Digital Services Act Package, consisting of the Digital Services Act (DSA) and the Digital Markets Act (DMA), which are both based on Article 114 TFEU. The regulatory goals are the **creation of legal certainty and the filling of regulatory gaps, as well as the harmonisation of the EU legal landscape**, in order to create a safer and more open digital space in which the rights of users of digital services are protected. It further aims to create a level-playing field that enables a fair competition, innovation and growth within the European Single Market. The planned European Media Freedom Act (EMFA) builds on the AVMSD and lays down further rules with the goal to **eliminating barriers to the establishment and operation of media services** and to **establish a common framework for advancing the internal market in the media sector**, with a view to safeguarding media freedom and pluralism in that market. These regulatory instruments should be complementary, thus **they should be mutually fine-tuned**, with a view to tackling the issues and potentialities in the media sector from both an economic and democratic perspective. In their current shape, for example, the DMA and the DSA, once adopted and in force, will create ex ante regulation for digital gatekeeper services and very large online platforms, however, media actors will be treated like any other online business users.

Résumé analytique

L'étude sur la pluralité et la diversité des médias en ligne analyse le pluralisme et la diversité des médias en ligne en Europe, en se concentrant sur (i) **la visibilité et la repérabilité des contenus et des services d'intérêt général** et sur (ii) **la pluralité de marché et la concentration des ressources économiques**.

La présente mission a pour objet de décrire, d'analyser et d'évaluer les pratiques réglementaires et commerciales existantes dans les deux secteurs mentionnés ci-dessus, et d'élaborer des recommandations pour l'action de l'UE et des États membres.

Présentation sur l'importance de préserver le pluralisme et la diversité des médias pour les États membres et l'UE et sur leurs compétences en la matière

La partie introductive de cette étude décrit l'importance du pluralisme et de la diversité des médias pour l'UE et pour ses États membres. À cet égard, l'étude adopte une approche en trois volets, en abordant (a) **les notions et les définitions de médias** ; (b) **l'importance du pluralisme et de la diversité des médias** ; et (c) **les compétences de l'UE et de ses États membres** en la matière.

L'étude intègre la notion assez large de « médias », adoptées le 7 mars 2018 sous les auspices de la Recommandation CM/Rec (2018) du Comité des ministres du Conseil de l'Europe aux États membres sur le pluralisme des médias et la transparence de la propriété des médias, qui définit les médias en ligne comme « un large éventail d'acteurs qui participent à la production et à la diffusion de contenus médiatiques en ligne et tous les autres intermédiaires et services auxiliaires qui, par le contrôle qu'ils exercent sur la diffusion des contenus médiatiques en ligne ou des jugements de type éditorial au sujet des contenus qu'ils diffusent ou vers lesquels ils renvoient, ont une influence sur les marchés et le pluralisme des médias ».

De plus, cette étude **distingue les médias des autres acteurs dans l'écosystème des médias** qui contribuent au fonctionnement et à l'accès aux médias, mais qui n'exercent ou qui ne devraient pas exercer un contrôle éditorial et qui, par conséquent ne sont pas considérés comme des acteurs

médiatiques. Ces autres acteurs actifs dans l'écosystème des médias, tels que, entre autres, les plateformes en ligne et les réseaux sociaux, sont de plus en plus influents dans la production, la distribution et la consommation de produits médiatiques, et c'est pourquoi ils devraient être considérés conjointement avec la pluralité des médias en ligne.

En outre, l'étude réaffirme l'importance du pluralisme des médias pour l'exercice des droits fondamentaux et pour le fonctionnement des sociétés démocratiques libérales contemporaines. Traditionnellement, la compréhension du pluralisme des médias se concentrait sur la facilitation de l'offre de contenus médiatique, à travers les dimensions du pluralisme interne et externe. Encore, la notion de « diversité d'exposition », centrée sur les destinataires du pluralisme des médias en ligne, dévient une préoccupation majeure. À cet égard, la notion d'« expression sur des questions d'intérêt public » est devenue déterminante pour le pluralisme des médias.

Enfin, cette étude s'intéresse à une définition holistique du pluralisme des médias et à une approche holistique des politiques selon lesquelles, les États membres et l'UE, dans le cadre de ses compétences, sont les garants ultimes du pluralisme des médias et qui reconnaît l'importance des efforts de collaboration en matière de réglementation et d'autorégulation.

Visibilité et repérabilité des contenus et des services d'intérêt général

Le volet A de cette étude est composé de trois travaux de recherche étroitement liés : un inventaire des mesures législatives et non législatives relatives à la repérabilité des contenus d'intérêt général (Chapitre A1) ; une évaluation critique de l'efficacité de ces mesures législatives par le biais d'études de cas et l'examen des données (Chapitre A2) ; un ensemble de recommandations reposant sur la recherche précédente (Chapitre A3).

Le Chapitre A1 permet de mieux comprendre les pratiques courantes de l'industrie et les cadres politiques et réglementaires existants pouvant influencer les mesures de hiérarchisation des contenus au sein du présent environnement audiovisuel en ligne. Premièrement, le chapitre présente **un inventaire des mesures non législatives**, telles que les pratiques de l'industrie, les lignes directrices internes, les politiques et les standards concernant les contenus, qui déterminent la façon dont les contenus sont organisés et classés en ligne. Cet inventaire portait sur le segment de l'industrie des médias audiovisuels en ligne pour montrer comment les différentes mesures de hiérarchisation des contenus agissent à différents niveaux et pour analyser le degré de contrôle et de pouvoir décisionnel des acteurs. Compte tenu de la fragmentation croissante de ce segment de l'industrie et de la quantité croissante de possibilité d'accès aux contenus et aux informations en ligne, il convient d'observer qu'il n'existe pas d'approche unique à la hiérarchisation des contenus, et qu'il y a d'autres facteurs capables d'influencer ces processus, tels que l'architecture technologique des dispositifs et des services analysés, les négociations commerciales et les relations de marché entre les acteurs de l'industrie impliqués, les différents niveaux de la capacité d'action des utilisateurs, et les cadres politiques et réglementaires pertinents.

Deuxièmement, le Chapitre A1 explique comment les cadres politiques et réglementaires pertinents peuvent influencer la hiérarchisation des contenus pour les utilisateurs finaux. À cet effet, l'étude décrit les **mesures législatives concernant la visibilité du contenu médiatique** au niveau national dans toute l'Europe. La description montre que les mesures existantes peuvent être largement réduites à trois types différents : l'application des articles 7a et 13 de la directive Services de médias audiovisuels (2018) et de l'article 62 du Code des communications électroniques européen (2018). En même temps, les notions de visibilité et de repérabilité des contenus font leur apparition en tant qu'objectifs de politique publique au niveau national, européen et international, bien que les tentatives des législateurs de définir ces notions soient limitées et induisent à la confusion.

En s'appuyant sur la description susmentionnée, l'étude poursuit avec **une analyse plus détaillée de l'efficacité perçue des mesures législatives relatives à la visibilité et à la réparabilité des contenus et des services d'intérêt général**, et de leurs relations avec la diversité d'exposition (Chapitre A2). En premier lieu, pour ce faire, l'étude fournit un examen des données et une méta-analyse des publications académiques existantes et des initiatives sectorielles pertinentes de pointe afin d'identifier les cadres de mesure et les indicateurs actuels utilisés pour évaluer l'efficacité de la visibilité et de la diversité des mesures d'exposition. En deuxième lieu, l'étude **fait une évaluation critique de la mise en œuvre et de l'impact perçu de cinq types de règles de visibilité**: la visibilité des Guides électroniques des programmes (EPG) et la numérotation des chaînes logiques (LCN); la visibilité des contenus d'intérêt général sur les plateformes médiatiques; la visibilité des services concernant les médias de service public pour les EPG et les plateformes médiatiques; la visibilité des œuvres européennes; et la visibilité du contenu journalistique et à caractère informatif sur les services d'intermédiaires numériques. Cette section soutient, enfin, que la relation existante entre les règles de visibilité, le pluralisme et la diversité des médias revêt une importance particulière pour les nouvelles mesures législatives visant à assurer l'accès, la distribution et une plus grande visibilité à une catégorie spécifique de services pluralistes.

Recommandations

En se basant sur les constatations et les observations précédentes, le volet A se termine, au Chapitre A3, par des recommandations, destinées aux décideurs politiques européens et aux États membres, sur la façon de mettre au point des régimes de visibilité transparente et responsable capables de s'adapter aux changements continus dans le paysage médiatique et de faire face aux effets potentiels des pratiques de hiérarchisation des contenus. Et cela, tout en considérant attentivement les implications éventuelles pour la liberté d'expression, le pluralisme des médias, la diversité, la confidentialité et l'autonomie individuelle (y compris le droit à l'autodétermination d'information). À cet effet, l'étude expose, premièrement, les grandes lignes d'un **ensemble de politiques**, en établissant des principes directeurs et des conseils pratiques pour répondre aux questions fondamentales « pourquoi », « quoi », « où », « qui » et « comment » les organismes de réglementation et les décideurs politiques peuvent créer des règles nouvelles de visibilité et de réparabilité, tout en réfléchissant sur les avantages et les limitations de ces interventions réglementaires. Deuxièmement, l'étude fournit un aperçu des **différentes options politiques dans ce secteur, incluant des options statutaires, de co-réglementation et d'autorégulation**. La portée de cette dernière section fait état des compétences de l'UE dans ce secteur, et se concentre, en particulier, sur deux domaines d'intervention, notamment la régulation des médias audiovisuels et les nouvelles voies législatives pour les services d'intermédiaires numériques.

Pluralité de marché et concentration des ressources économiques

Le volet B de cette étude porte sur le pluralisme externe et la durabilité des médias dans l'environnement numérique des médias. Il se compose de quatre tâches : L'inventaire et l'évaluation des mesures et des méthodes concernant la concentration du marché dans les secteurs des médias (Chapitre B1 et B3) ; un aperçu du marché de la publicité en ligne et de son impact sur l'industrie des médias, avec un accent sur l'accès et l'intensité d'utilisation des données des consommateurs (Chapitre B2); les conclusions et les options en matière d'interventions politiques (Chapitre B4).

En vue de la promotion du pluralisme des médias, plusieurs États membres de l'UE possèdent des règles visant à limiter la concentration des médias. Ces règles (spécifiques aux médias) visant à promouvoir le pluralisme des médias sont complémentaires du droit général en matière de concurrence, notamment les règles en matière d'ententes et de positions dominantes et celles relatives aux concentrations.

L'inventaire réalisé au sein du Chapitre B1 souligne que:

- Les États membres n'envisagent pas tous des **règles de propriété des médias**. Lorsqu'elles sont disponibles, ces dispositions sont principalement mises en œuvre par des limitations à la couverture médiatique.
- Quant à la fusion des médias, il est possible d'identifier, chez chacun des États membres, un système d'évaluation séparée et un système de permission ministérielle, alors qu'il a été remarqué que l'utilisation de seuils moins élevés et/ou de multiplicateurs n'est pas très répandue.
- Quant aux restrictions concernant le contrôle du capital, la plupart des États membres prévoient des mesures qui limitent ou qui empêchent le contrôle des médias par des intérêts étrangers. De plus, la grande majorité des États membres appliquent des restrictions à la propriété ou au contrôle de la part de certaines catégories d'acteurs (par exemple, les hommes et les femmes politiques), afin d'éviter tout conflit d'intérêts.
- Tous les États membres disposent de règles concernant la divulgation et la déclaration de la propriété des médias, bien que les exigences de transparence ne soient pas toujours liées à des lois spécifiques aux médias ou à des objectifs en termes de pluralisme des médias. Dans la plupart des États membres, l'on observe également un déséquilibre incontestable pour ce qui est de la réglementation dans les secteurs médiatiques, parallèlement à une disparité concernant l'accès à l'information entre les autorités publiques et le public.
- La majorité des États membres possèdent des mesures imposant la transparence des informations financières (tout particulièrement par rapport aux chiffres d'affaires) des sociétés médiatiques.
- Pour ce qui est des aides publiques au pluralisme des médias, il ne semble pas qu'il y ait une préférence, parmi les États membres, pour des subventions directes ou indirectes. Le secteur qui reçoit la plupart des financements est celui de la presse (subventions directes et indirectes).
- La majorité des États membres disposent de mesures concernant la publicité d'État. Ces mesures mettent généralement l'accent sur la transparence ou sur l'équité. Néanmoins, seuls quelques États membres précisent les exigences en termes de divulgation ou de déclaration pour les acteurs impliqués dans le secteur de la publicité, ou les restrictions sur le contrôle, de la part de ces acteurs, des sociétés médiatiques.
- La plupart des méthodes de collecte de données pour l'évaluation de la concentration des médias mettent l'accent sur la mesure de l'audience ou de la concentration d'audience.

De manière plus générale, **les approches des États membres à la propriété et à la concentration des médias sont toutes caractérisées par le fait d'être orientées essentiellement vers les médias traditionnels** : ces approches ne reconnaissent pas encore la concentration des ressources économiques aux différents niveaux de la chaîne de valeur. Quand on parle de médias en lignes, il est souvent difficile de savoir quels sont les services concernés (par exemple, généralement les mesures se rapportent aux services sur demande). De plus, l'étude affirme que le pluralisme des médias n'est pas, en général, un objectif spécifique des mesures concernant la concentration dans les marchés des médias dans les États membres de l'UE. Notamment, il existe des différences parmi les États membres de l'UE quant à la manière de définir le pluralisme, s'il est défini.

Sur la base des résultats de l'inventaire, le Chapitre B3 évalue l'efficacité des mesures contre la concentration des ressources économiques dans les marchés des médias, à travers une analyse

explicative des données et six études de cas, concernant plusieurs types de mesures relatives à la concentration des médias.

Pour ce qui est de l'analyse des données, il convient de noter que le manque de sources de données détaillées sur les marchés des médias au sein de l'UE représente un obstacle important à une meilleure compréhension du paysage médiatique de l'UE. Un premier résultat important concerne le manque d'une corrélation statistiquement significative entre le nombre de mesures adoptées dans un Pays et le niveau de concentration dans les secteurs de la télévision et de la radio. Tandis que pour les marchés de la presse et des médias en ligne il existe une corrélation inverse entre les mesures de réglementation et les indicateurs de concentration. Cela laisse entendre qu'une réglementation plus forte tend à aller de paire avec une concentration plus faible dans ces secteurs.

De plus, l'analyse explicative des données et les études de cas mises au point dans cette section suggèrent l'existence d'une fragmentation significative parmi les marchés des médias des États membres de l'UE.

Le Chapitre B2 de cette étude fournit un aperçu détaillé de la distribution des recettes publicitaires, en ligne et hors ligne, entre les acteurs des médias et d'autres acteurs dans l'écosystème des médias. Cela alimente une analyse de l'impact de la distribution actuelle des recettes publicitaires sur la viabilité économique des médias européens, y compris un bref aperçu de l'évolution probable dans les 5-10 années prochaines. Les données consolidées des pays de l'UE et du Royaume-Uni confirment la tendance mondiale des recettes publicitaires se déplaçant vers le numérique, en dépassant les dépenses publicitaires traditionnelles. En outre, il est précisé que la publicité financée par l'État peut fausser les marchés des médias, en particulier au sein des États membres de l'UE, où ils représentent une source importante de revenus.

Ensuite, le Chapitre B2 schématise l'accès et l'intensité d'utilisation des données des consommateurs dans le secteur des médias. Il est à noter que pour la plupart des médias dans le secteur des médias en ligne, l'accès aux données des consommateurs représente un élément essentiel en termes de concurrence et de création de valeur. Cependant, cet accès est fortement déséquilibré et en faveur des plateformes principales. De plus, la publicité très ciblée pourrait entrer en conflit avec le droit à la protection des données des consommateurs et avec le droit de recevoir des informations. Les modèles de paiement ou de consentement, ou bien la publicité contextuelle peuvent représenter des alternatives viables.

Enfin, dans cette section, l'étude présente et analyse la résilience des médias à travers une série de modèles commerciaux dépendants non publicitaires, soulignant que les initiatives d'actions visant à la résilience à long terme doivent considérer tous les facteurs qui influencent la durabilité des modèles de recettes. Les recettes générées par les contenus et par les modèles de recettes mixtes offrent le plus de durabilité à long terme.

Recommandations

L'étude (Chapitre B4) plaide en faveur d'un plan d'action de l'UE afin de promouvoir la diversité des contenus et des sources dans l'offre médiatique accessible au public, en assurant le droit de « recevoir ou de communiquer des informations ou des idées » conformément à l'article 11 de la Charte des droits fondamentaux de l'UE. En outre, l'étude soutient aussi que l'harmonisation, au niveau de l'UE, de certaines réglementations est nécessaire pour le bon fonctionnement du marché intérieur, spécialement à la lumière des nouveaux développements technologiques. D'autres instruments que les règles en matière de concentration et les limitations à la propriété des médias sont de plus en plus importants. Cela découle de plusieurs sources, y compris, par exemple, la Directive (UE) 2019 sur le droit d'auteur et les droits voisins.

L'intervention de l'UE dans ce domaine repose principalement sur ses compétences qui lui ont été conférées par l'article 114 du TFUE, qui permet à l'UE d'adopter des lois, d'harmoniser la concurrence et d'assurer la fonction du marché des médias. Étant donné que les dispositions en matière d'informations à fournir ne sont pas harmonisées parmi les différents types de médias à l'heure actuelle, les interventions politiques visant à augmenter la transparence sur la propriété des médias devraient être justifiées par la compétence de l'UE d'harmoniser les obligations de transparence au sein de l'UE afin d'éviter toute distorsion de concurrence et tout comportement anti-concurrentiel dans le marché intérieur. De plus, afin d'éviter tout effet de distorsion des lois nationales divergentes dans une évaluation différente des fusions et de la concentration des médias, l'on devrait harmoniser, au niveau de l'UE, une définition, basée sur des principes, de la notion de test de l'intérêt public (qui pourrait être considéré comme un « test du pluralisme des médias » lorsqu'il est exécuté par les ARN) et de ce que l'on entend par et que l'on considère comme « pluralisme des médias ».

D'autres propositions de politiques concernent les règles du financement public, des subventions publiques et des annonces publiques. En particulier, les subventions publiques et les annonces publiques peuvent être réglementées par l'UE, étant donné que le mauvais usage des fonds publics et des investissements pourrait entraver l'accès au marché intérieur. Habituellement, le soutien public était l'apanage des États membres. Récemment, la Commission européenne a décidé de jouer un rôle plus actif dans ce domaine, en annonçant plusieurs outils visant à fournir un appui financier direct aux médias (Plan d'action européen pour les médias et l'audiovisuel, 2020). Cette étude propose un fonds européen pour le pluralisme des médias. Ce fonds permettrait de financer des émissions et des initiatives à contenu journalistique originales et indépendantes, de développer l'innovation dans la production et dans la diffusion d'informations d'intérêt public, et de supporter la création de start-up par les journalistes.

En outre, l'UE pourrait élargir davantage son rôle dans le support et la coordination de l'action des États membres en matière de propriété des médias à travers un support institutionnel fourni par ERGA, mais aussi à travers la collecte et le partage de données et d'informations. En particulier, pour ce qui est de l'analyse des fusions, l'UE pourrait agir sur la base de son rôle de support, de coordination et de complément en fournissant un outil de collaboration interinstitutions et d'échanges de connaissance entre les autorités médiatiques au niveau de l'UE.

Il convient aussi d'envisager la promulgation de lois internes autonomes, dans la mesure où cela contribuerait à mieux comprendre et à augmenter l'efficacité de certaines mesures, et respecterait les droits fondamentaux reconnus au niveau de l'UE, sans menacer le marché intérieur.

En plus des considérations économiques, les mesures au niveau de l'UE et de ses États membres devraient viser aussi de manière directe à protéger le pluralisme et la diversité des médias dans l'écosystème médiatique en général. Afin de concevoir des nouvelles règles concernant le secteur des médias, il est nécessaire de mettre au point une évaluation pondérée complexe de la finalité de la protection et des répercussions pour les droits fondamentaux.

Enfin, la Directive sur le droit d'auteur (2019) dans le marché unique numérique accorde aux éditeurs un droit d'auteur direct sur "l'utilisation en ligne de leurs publications de presse par les prestataires de services de la société de l'information", avec des exceptions pour les hyperliens, "l'utilisation privée et non commerciale légitime des publications de presse par des utilisateurs individuels" et des mots isolés ou de très courts extraits d'une publication de presse. Il est trop tôt pour évaluer l'impact global de la directive qui, au moment de la rédaction du présent rapport, a été mise en œuvre dans 12 États membres; cependant, à la lumière des premiers résultats préliminaires de cette étude, il est à noter que, sans transparence externe sur les frais négociés et payés, l'efficacité de ce nouvel instrument sera difficile à évaluer.

Nouveaux cadres réglementaires

L'UE a négocié un nouveau paquet de mesures sur les services numériques, composé de la Législation sur les services numériques et de la Législation sur les marchés numériques, qui s'appuient toutes les deux sur l'article 114 du TFUE. Les objectifs réglementaires sont l'établissement de la sécurité juridique et le comblement des lacunes des réglementations, tout comme l'harmonisation du cadre juridique de l'UE, afin de créer un espace numérique plus sûr et plus ouvert, où les droits des utilisateurs sont protégés. Un autre objectif est d'établir des règles équitables qui garantissent une concurrence loyale, l'innovation et la croissance au sein du marché unique européen. La future législation européenne sur la liberté des médias s'appuie sur la directive Services de médias audiovisuels et définit des règles supplémentaires dans le but d'éliminer les obstacles à l'établissement et au fonctionnement des services des médias et d'établir un cadre commun pour assurer le progrès du marché intérieur dans le secteur des médias, compte tenu de la protection de la liberté et du pluralisme des médias dans le secteur-même. Ces instruments réglementaires devraient être complémentaires, en s'améliorant mutuellement, afin d'aborder les problématiques et les potentialités du secteur des médias d'un point de vue économique et démocratique. Dans leur forme actuelle, par exemple, une fois adoptées et en vigueur, la Législation sur les services numériques et la Législation sur les marchés numériques permettront de créer des réglementations ex ante pour des services numériques des contrôleurs d'accès et pour des grandes plateformes en ligne. Cependant, les médias seront traités comme tout autre utilisateur en ligne.

Introductory chapter. Outlining the value of safeguarding media pluralism and diversity to Member States, the EU and the relevant competences

Authors: Kristina Irion, Ronan Fahy, Theresa Seipp, Brankica Petković, Elda Brogi

Reviewer: Beata Klimkiewicz

With contributions by: Damian Tambini, Sally Broughton Micova, Joost Poort, Maria Luisa Stasi

1. Introduction

The purpose of this Chapter is to lay the foundations for this Study on media plurality and diversity online. In this regard, the Chapter will adopt a three-part approach, namely, outlining: (a) the notions and definitions of media; (b) the importance of media pluralism and diversity; and (c) the relevant EU and Member State competences.

First, and crucially, this Chapter will begin by examining the definitions and notions of media, including the online media. The Study will draw upon existing policy and definitions from two European jurisdictions: the Council of Europe and the European Union. As will be shown, the work of the Council of Europe on the notion of media, in particular, Recommendation CM/Rec (2011)7 of the Committee of Ministers, on a new notion of media, will be of crucial importance.¹ Importantly, media encompasses offline (print, broadcast) and online media, and both notions should be understood broadly. The new notion of the media, it will be argued, provides a suitable definitional framework for the rest of the study that recognizes the whole range of the actors that are involved in the online media ecosystem.

Second, this chapter will then outline the value and importance of media pluralism and diversity for the EU and Member States, from a democratic perspective, but also from the perspective of the functioning of the internal market. The research team will draw upon existing research, policy and standard-setting instruments, fundamental rights law, and EU law. In this regard, media pluralism is guaranteed under Article 11 of the Charter of Fundamental Rights of the European Union, and Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights. Indeed, Member States have a positive obligation to put in place an appropriate legislative framework to guarantee effective pluralism.

Third, and finally, this chapter will outline the relevant competencies of both the EU and the Member States in the field of media pluralism and diversity, including the improvement of the functioning of the internal market. The research team will draw upon current research and scholarship, and EU law, including the principles of conferral, subsidiarity and proportionality. In this regard, the last part of the chapter will provide an overview of the Court of Justice of the European Union (CJEU) case law on EU and Member State competences, and will seek to draw conclusions from this jurisprudence for the context of policy interventions that relate to media pluralism.

¹ Recommendation CM/Rec(2011)7 of the Committee of Ministers to the Member States. *On a New Notion of Media*. Council of Europe. 21 September 2011.
[https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Rec\(2011\)7](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Rec(2011)7) accessed on May 27, 2022.

The box below highlights the central findings of this chapter:

CENTRAL FINDINGS: An EU law approach to media pluralism and diversity online

- This Section introduces a broad notion of the media following a Recommendation of the Council of Europe.² This definition helpfully distinguishes media actors from other actors in the media ecosystem which contribute to the functioning or accessing of media, but do not or should not exercise editorial control and are thus not to be considered media.
- This Section explains that media pluralism is a multi-faceted notion that has to be adapted to the online media environment to better recognize “*exposure diversity*” and the role of “*general interest content*”.
- Media pluralism is an enduring normative principle for the fulfilment of fundamental rights and the functioning of contemporary democratic societies that requires as much protection in today’s digital media systems as it used to in the traditional offline media environment.
- The Section argues that a free media that caters for pluralistic opinions and viewpoints is closely intertwined with healthy and resilient economies. The condition of media pluralism can directly and indirectly support the attainment of the functioning of the EU internal market and vice versa.

2. Notions and definitions of media

Essential preliminary issues, when examining media pluralism and diversity, are to understand the notion of “media” and to set out what such a notion encompasses. As such, the purpose of this opening section is to provide a brief overview of the various notions and definitions of media, including print, broadcast, online media, and other actors, and to build upon these notions to provide a reference framework for considering the notion of media in the rest of the study. Importantly, the section builds upon the considerable research that has already been undertaken on the notions of media and media pluralism,³ and focuses, in particular, on providing an overview of the legal and policy conceptions of the media in the European legal frameworks. In this regard, the section begins with the important standard-setting instruments of the Council of Europe, and the case law of the European Court of Human Rights, on the notions of media. Second, the definitions of media and related concepts in EU law are then examined, including EU legislation, and the case law of the Court of Justice of the European Union. Finally, the section ends with a range of principles for a definitional framework when considering the notion of media in relation to media pluralism and diversity, and defines the scope of this Study on media plurality and diversity online.

² Recommendation CM/Rec (2018)1 of the Committee of Ministers to the Member States. *On Media Pluralism and the Transparency of Media Ownership*. Council of Europe. 7 March, 2018, at Appendix Guidelines on media pluralism and transparency of media ownership.

³ See, for example, Damian Tambini, *Media Freedom* (Polity Press, 2021); Elda Brogi, “The media pluralism monitor: Conceptualizing media pluralism for the online environment” (2020) *Profesional de la información*, 29(5), <https://doi.org/10.3145/epi.2020.sep.29>; Bleyer-Simon et al., *Monitoring Media Pluralism in the Digital Era*, Centre for Media Pluralism and Media Freedom (EUI, 2021); Jan Oster, “*Media Freedom as a Fundamental Right*” (Cambridge University Press, 2015); and Nyakas et al, *Internal Media Plurality in Audiovisual Media Services in the EU: ERGA Report* (ERGA, 2018).

2.1 Council of Europe

As the European Commissioner for Human Rights has emphasised, the Council of Europe has historically provided “powerful and detailed elaboration” on the notions of media, media freedom, media pluralism and diversity.⁴ As such, when examining the notion of media, it is helpful to first begin with the Council of Europe’s work, in particular, the standard-setting instruments from the Council of Europe’s Committee of Ministers on the definition of media. Crucially, the recommendations of the Committee of Ministers are routinely relied upon by the European Court of Human Rights when it interprets the European Convention on Human Rights, including its case law relating to the media, media freedom, and media pluralism.⁵ Indeed, the Court of Justice of the European Union has also cited the recommendations of the Committee of Ministers in its case law.⁶

Standard-setting instruments on the notion of media

Helpfully, over the last two decades, the Council of Europe’s Committee of Ministers has adopted a number of important recommendations on the notions of the media and related concepts, including the press, broadcasting, public service media, journalism, media pluralism and media freedom. Notably, early recommendations on media pluralism and transparency lacked specific definitions of media. Crucially, the Committee of Ministers began adopting specific notions and definitions of media, which have expanded as the media ecosystem has evolved. For example, in its 2004 Recommendation on the Right of Reply in the New Media Environment, the Committee of Ministers adopted a notably succinct definition of a “medium”, as being “any means of communication for the periodic dissemination to the public of edited information, whether on-line or off-line”, giving the examples of newspapers, periodicals, radio, television, and “web-based news services”.⁷ The definition thus took a technology-neutral approach, but ensured that the definition was centred on the information being (a) periodically published and (b) edited.

Then, in its 2007 Recommendation on Measures Concerning Media Coverage of Election Campaigns, the Committee of Ministers adopted a more substantive definition of media as being “those responsible for the periodic creation of information and content and its dissemination over which there is editorial responsibility, irrespective of the means and technology used for delivery, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public”.⁸ Further examples of media were given, including print media (newspapers and periodicals); and media disseminated over electronic communication networks, such as broadcast media (and other linear audiovisual media services), online news-services (online editions of newspapers and newsletters) and non-linear audiovisual media services (on-demand television). Notably, this expanded definition of media focused on certain criteria, namely: (a) editorial

⁴ Commissioner for Human Rights. *Media Pluralism and Human Rights*. CommDH (2011)43. 6 December, 2011, p.8.

⁵ See, for example, *Delfi AS v. Estonia* [GC], Application no. 64569/09, 16 June, 2015, Para. 113. See Tarlach McGonagle, “The Council of Europe and Internet Intermediaries: A Case Study of Tentative Posturing”, in Jørgensen (Ed.), *Human Rights in the Age of Platforms* (MIT Press, 2019).

⁶ For recent examples, see, Joined Cases C-924/19 PPU and C-925/19 PPU, *Judgment of the Court (Grand Chamber) of 14 May, 2020, FMS and Others v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*. Court of Justice of the European Union. Para. 218; and Case C-622/17, *Opinion of Advocate General Saugmandsgaard Øe, 28 February, 2019, Baltic Media Alliance Ltd v. Lietuvos radijo ir televizijos komisija*. Court of Justice of the European Union. Para. 44.

⁷ Recommendation Rec(2004)16 of the Committee of Ministers to Member States. *On the Right of Reply in the New Media Environment*. Council of Europe. 15 December, 2004, at Preamble.

⁸ Recommendation CM/Rec(2007)15 of the Committee of Ministers to Member States. *On Measures Concerning Media Coverage of Election Campaigns*. Council of Europe. 7 November, 2007, at Preamble.

responsibility, (b) intention for reception by a “significant proportion” of the general public; and (c) having a “clear impact” on a “significant proportion” of the general public.

While these early recommendations from the Committee of Ministers contained substantive definitions of media, it was not until a seminal recommendation was adopted in 2011 that the Committee of Ministers devoted a recommendation exclusively to setting out a “new notion of media”.⁹ First, the Recommendation sets out that the media ecosystem encompasses “all actors and factors whose interaction allows the media to function and to fulfil their role in society”.¹⁰ Notably, various online intermediaries and auxiliaries were now “essential” for the media’s outreach and individuals’ access to media. Indeed, these intermediaries, such as platforms, have become “essential pathfinders” to information, “gatekeepers”, and may have an “active role” in the mass communication editorial process.¹¹ Given these developments, the Committee of Ministers recommended that media policy must adopt a “new notion” of media, one in which all actors who operate within the media ecosystem should be offered a policy framework which guarantees an appropriate level of protection and provides a clear indication of their duties and responsibilities, with the policy response being “*graduated and differentiated*” based on the part media services play in the content production and dissemination processes.¹² Importantly, given the breadth of this definition of media, it does not follow that all of the actors that fall within the definition should be subject to the same policy responses. The Recommendation expressly stated that a “*graduated and differentiated response*” should be applied to all actors, having regard to the actor’s “*specific functions in the media process*” and the “*potential impact and significance in ensuring or enhancing good governance in a democratic society*”.¹³

Crucially, the Committee of Ministers recommended that Member States adopt a “broad notion” of media, comprised of “*all actors involved in the production and dissemination, to potentially large numbers of people, of content (for example, information, analysis, comment, opinion, education, culture, art and entertainment, in text, audio, visual, audiovisual, or other form) and applications which are designed to facilitate interactive mass communication (for example, social networks) or other content-based large-scale interactive experiences (for example, online games), while retaining (in all these cases) editorial control or oversight of the contents*”.¹⁴ Importantly, the criterion of “*impact*”, which was mentioned in earlier definitions, was absent, but the criteria of editorial control remains, complemented by the concept of “oversight” over content. Notably, the “*facilitation*” of interactive mass communication now becomes part of the definition of media.

Helpfully, the Recommendation sets out a framework comprising six criteria on how to identify media, and media activities, in the media ecosystem: (1) intent to act as media; (2) having the purpose and underlying objectives of media, including the “*provision or dissemination of content to a broad public and the provision of a space for different interactive experiences*”;¹⁵ (3) editorial control, including an editorial process, and the “*existence of staff for editorial processes*” will also be a “*reliable indicator of editorial control or oversight*”;¹⁶ (4) adhering to professional standards; (5) seeking “*outreach and dissemination*”, where media has traditionally been defined as “*mediated public communication*”

⁹ Recommendation CM/Rec(2011)7 of the Committee of Ministers to Member States. *On a New Notion of Media*. Council of Europe. 21 September, 2011.

¹⁰ *Ibid.*, Para. 5.

¹¹ *Ibid.*, Para. 6.

¹² *Ibid.*, Para. 7.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*, at Appendix, Para. 23.

¹⁶ *Ibid.*, at Appendix, Para. 34.

addressed to a large audience and open to all”;¹⁷ and, (6) satisfying public expectation, where individuals expect that media to be “available”, and “broadly accessible”, (including paid-for services).¹⁸ Crucially, not all of these criteria carry equal weight, and the absence of certain criteria, such as criterion 2 (purpose), criterion 3 (editorial control) or criterion 5 (outreach and dissemination) would “tend to disqualify a service from being regarded as media”. However, certain criteria may not be met, such as criterion 1 (intent) or criterion 6 (public expectation), but “should not automatically disqualify a service being considered media”. Further, a provider of an intermediary or auxiliary service that contributes to the functioning or accessing of media, but that does not, or should not itself, exercise editorial control, and that therefore has limited or no editorial responsibility, should not be considered to be media.¹⁹ The notable influence of the Recommendation on a new notion of media is further evidenced by the Committee of Ministers approving this broad notion of media in its most recent (2018) Recommendation on Media Pluralism and Transparency of Media Ownership. Notably, the Committee of Ministers decided to focus on “online media”, defining them as a “wide range of actors involved in the production and dissemination of media content online and any other intermediaries and auxiliary services which, through their control of distribution of media content online or editorial-like judgments about content they link to or carry, have an impact on the media markets and media pluralism”.²⁰ Of particular importance is the definition’s inclusion of “impact” on media markets and media pluralism. Further, the inclusion of “editorial-like judgments” by intermediaries is also consistent with another Recommendation, which was adopted in 2018, on the roles and responsibilities of internet intermediaries, which similarly emphasised that intermediaries may moderate and rank content, and “may thereby exert forms of control which influence users’ access to information online in ways comparable to media, or they may perform other functions that resemble those of publishers”²¹ (see Valcke (2019)).

In addition, and in line with the new notion of media, it was reiterated that media content not only includes news and current affairs, but also cultural, educational, entertainment, and local content.²² Finally, it is also helpful to note that, in 2021, the Council of Europe’s Committee of Experts on Media Environment and Reform adopted a recommendation on principles for media and communication governance, which also utilised the new notion of “media”.²³ It also emphasised how “heavily dependent” media have become on platforms, and, because of the “similarities and differences between media and platforms”, the “differentiated approach” to media policy was needed.²⁴ The notion and definition of media have gradually evolved over the past two decades, with a broad notion of media becoming the benchmark for Council of Europe standard-setting instruments, which takes account of many different actors in the media ecosystem. In this regard, a final helpful point is that the notion of journalism has also evolved along a similar trajectory. For example, an early Committee of Ministers’ Recommendation on the right of journalists not to disclose their sources of information,

¹⁷ Ibid., at Appendix, Para. 43.

¹⁸ Ibid., at Appendix, Para. 50.

¹⁹ Ibid., at Appendix, Para. 17.

²⁰ Recommendation CM/Rec (2018)1 of the Committee of Ministers to Member States. *On Media Pluralism and Transparency of Media Ownership*. Council of Europe. 7 March, 2018, at Appendix.

²¹ Recommendation CM/Rec (2018)2 of the Committee of Ministers to Member States. *On the Roles and Responsibilities of Internet Intermediaries*. Council of Europe. 7 March, 2018, at Para. 5.

²² Ibid., at Preamble, Para. 4. It is also important to note that the influential Media Pluralism Monitor is limited to news and current affairs.

²³ Council of Europe. (2022). Recommendation CM/Rec (2022) 11 of the Committee of Ministers to Member States on principles for media and communication governance. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a61712, accessed on May 27, 2022.

²⁴ Ibid.

defined a “journalist” as “any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication”.²⁵ However, in the later, 2016, Recommendation on the Protection of Journalism and the Safety of Journalists and Other Media Actors, it was reiterated that the definition of media actors has “expanded”, due to “new forms of media in the digital age”, and includes other “media actors” who “contribute to public debate and who perform journalistic activities or fulfil public watchdog functions”.²⁶

In this regard, the notions of expression on matters of public interest, and public interest content, become quite crucial, and an important Council of Europe study has put forward a helpful definitional framework for public interest content (“Public interest content is a normative definition of media and information content that is produced by organisations or providers that strive to achieve wider social objectives” (Mazzoli & Tambini, 2021, 12-17).²⁷

Finally, this broad notion of journalism also reflects developments in international freedom of expression standards, where the UN Human Rights Committee has stated that “[j]ournalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere”.²⁸

European Court of Human Rights

When considering the definition of media, it is also very helpful to refer to the case law of the European Court of Human Rights (ECtHR) when interpreting Article 10 of the European Convention on Human Rights (ECHR), which guarantees the right to freedom of expression.²⁹ Notably, the Court has confirmed that Article 10 ECHR also guarantees the right to freedom of the media,³⁰ and has delivered numerous judgments on online news portals, news websites, online news archives, and the role of online platforms in the media ecosystem. Importantly, the Court of Justice of the European Union (CJEU) also refers to ECtHR case law when interpreting fundamental rights. In a 2019 judgement, the CJEU expressly confirmed that Article 11 of the EU Charter of Fundamental Rights, which guarantees freedom of expression, media freedom and pluralism, should be given the “same meaning and the same scope” as Article 10 ECHR, “as interpreted by the case-law of the European Court of Human Rights”.³¹

In this regard, and building upon the considerable scholarship on Article 10 ECHR, a number of principles from the ECtHR’s case law are informative in relation to the notion of media (Voorhoof & McGonagle 2021). First, it is important to note that the Court has recently addressed the question of

²⁵ Recommendation No. R (2000) 7 of the Committee of Ministers to Member States. *On the Right of Journalists not to Disclose their Sources of Information*. Council of Europe. 8 March, 2000, at Appendix.

²⁶ Recommendation CM/Rec(2016)4 of the Committee of Ministers to Member States on the Protection of Journalism and the Safety of Journalists and Other Media Actors. Council of Europe. 13 April, 2016, at Para. 4.

²⁷ See also, below, how EU law has now introduced the related notion of “content of general interest”.

²⁸ Human Rights Committee, *General Comment No. 34 - Article 19: Freedoms of Opinion and Expression*, CCPR/C/GC/34, 12 September, 2011, Para. 44. See also Deuze and Witschge, “Beyond Journalism: Theorising the Transformation of Journalism” (2018) *Journalism*, Vol. 19(2), pp.165-181.

²⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November, 1950, ETS No.005.

³⁰ See, for example, *OOO Regnum v. Russia*, Application no. 22649/08, 8 September, 2020, Para. 67.

³¹ See, Case C-345/17, *Judgment of the Court (Second Chamber) of 14 February, 2019 Sergejs Buivids v. Datu valsts inspekcija*. Court of Justice of the European Union. 9, Para. 65.

whether the heightened level of media freedom protection, under Article 10 ECHR, that is enjoyed by the traditional media should extend to new online media actors. Crucially, in a unanimous 2020 judgement, the Court found that an online news outlet was entitled to protection of the right to media freedom under Article 10 ECHR. Notably, the Court confirmed that, because of the “*advent of new information technology*”, the guarantees of media freedom must be “*expanded*” to the “*new electronic media*”.³² The Court also confirmed that it considers that the electronic media play a similar and vital role to that of the traditional media, as “*public watchdogs*” in a democratic society.³³

Second, this extension of media freedom protections to online media is also evident in *Magyar Jeti Zrt v. Hungary*,³⁴ where the question for the Court was whether imposing objective liability on an Internet news portal, over a hyperlink in a news article, was consistent with Article 10 ECHR. The Court especially took into account that the Internet news portal was “*professionally run, publishes some seventy-five articles on a wide range of topics every day, and attracts a daily readership of about 250,000*”,³⁵ and found that the principles of media freedom should be applied. Indeed, the Court applied the seminal Article 10 ECHR principle that “*punishment of a journalist for assisting in the dissemination of statements*”, made by others, would “*seriously hamper the contribution of the press to discussion of matters of public interest*”,³⁶ and found that imposing objective liability on a news portal for hyperlinking to content, violated Article 10 ECHR.

Third, the Court has also been increasingly taking into account the important role of online platforms in the media ecosystem, in particular, the role of platforms in the dissemination of traditional media content and in facilitating citizen journalism online. Indeed, the Court has explicitly recognized that YouTube is “*undoubtedly an important means of exercising the freedom to receive and impart information and ideas*”, a place where “*political content ignored by the traditional media*” is shared, and that fosters the “*emergence of citizen journalism*”.³⁷

Fourth, it must be highlighted that the Court has explicitly approved, and applied, the definitional framework of the Committee of Ministers’ Recommendation on a notion of new media. In the landmark *Delfi AS v. Estonia* judgement,³⁸ which was delivered by the 17-judge Grand Chamber, the Court approved the “*differentiated and graduated approach*”, as applied to an “*Internet news portal*”, holding that “*each actor whose services are identified as media, or as an intermediary or auxiliary activity, benefit from both the appropriate form (differentiated) and the appropriate level (graduated) of protection*”.³⁹ It is worthy of note that the Court held that, because of the “*particular nature of the Internet*”, the “*duties and responsibilities*” that are applicable on an Internet news portal “*may differ to some degree*” from traditional publishers in relation to third-party content.⁴⁰

Fifth, the Court has long had regard to the potential impact of a medium as an “*important factor*” in determining the duties and responsibilities of various media, and in distinguishing between various media.⁴¹ In this regard, the Court recognizes that audiovisual media have a “*much more immediate and powerful effect than the print media*”, because audiovisual media have the “*means of conveying*

³² *OOO Regnum v. Russia*, Application no. 22649/08, 8 September, 2020, Para. 60.

³³ *OOO Regnum v. Russia*, Application no. 22649/08, 8 September, 2020, Para. 61.

³⁴ *Magyar Jeti Zrt v. Hungary*, Application no. 11257/16, 4 December, 2018.

³⁵ *Ibid.*, Para. 70.

³⁶ *Ibid.*, Para. 80.

³⁷ *Cengiz and Others v. Turkey*, Applications nos. 48226/10 and 14027/11, 1 December, 2015, Para. 52.

³⁸ *Delfi AS v. Estonia* [GC], Application no. 64569/09, 16 June, 2015.

³⁹ *Delfi AS v. Estonia* [GC], Application no. 64569/09, 16 June, 2015, Para. 113.

⁴⁰ *Ibid.*

⁴¹ *Ringier Axel Springer Slovakia, a.s. v. Slovakia* (no. 4), Application no. 26826/16, Para. 38.

through images meanings which the print media are not able to impart".⁴² Further, in relation to the online environment, the Court has taken into account that the "risk of harm" that is posed by online content to human rights is "certainly higher than that posed by the press".⁴³ However, the Court also accepted that the potential impact of various online media differ, noting that the impact of information "released online with a small readership", such as "online followership on social-media platforms", and a statement published on "mainstream or highly visited web pages", may differ.⁴⁴

Finally, the Court has expressly recognised that certain bloggers and "popular users" of social media may be considered to come within the notion of "public watchdogs", under Article 10 ECHR, and to exercise a role of "similar importance to that of the press", and that this thus means that they are "warranting similar protection under the Convention as that afforded to the press".⁴⁵ This was confirmed by the Grand Chamber in 2016, and was recently reaffirmed by a unanimous Court in 2020.⁴⁶ This view is consistent with the functional notion of journalism mentioned above, and the Court specifically ties the potential protection of bloggers and well-known social media users to the role that these watchdogs play in "enhancing the public's access to news" and matters of public concern, or public interest.⁴⁷

2.2 European Union

A further helpful legal framework for understanding the notions of media and related concepts is EU law, in particular, the various definitions of media actors in EU legislation and CJEU case law. Notably, EU law is increasingly expanding the notions of media, press and journalism, and, indeed, the CJEU has expressly held that notions relating to freedom of expression, such as journalism, must be interpreted "broadly".⁴⁸

EU legislation

At the outset, it must be recognised that the EU operationalizes definitions that are relevant to the media for regulatory purposes, which are often narrowly defined in light of the regulatory objective. As such, the first relevant piece of EU legislation was the 1989 Television without Frontiers Directive. It dealt exclusively with television broadcasting, which was defined as "transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public".⁴⁹ However, EU law has demonstrated a trajectory of media definitions that correspond to the state of technology and market realities, especially the Audiovisual Media Services Directive, which replaced the Television without Frontiers Directive and was most recently amended in 2018.⁵⁰ The 2010 AVMS Directive contained a lengthy definition of an audiovisual media

⁴² Ibid.

⁴³ *Delfi AS v. Estonia* [GC], Application no. 64569/09, 16 June, 2015, Para. 133.

⁴⁴ *Kilin v. Russia*, Application no. 10271/12, 11 May, 2021, Para. 78.

⁴⁵ *Magyar Helsinki Bizottság v. Hungary* [GC], Application no. 18030/11, 8 November, 2016, Para. 168. See also, Michael Schudson, *Why Democracies Need an Unlovable Press* (Polity Press, 2018).

⁴⁶ *Centre for Democracy and the Rule of Law v. Ukraine*, Application no. 10090/16, 26 March, 2020, Para. 87.

⁴⁷ Ibid.

⁴⁸ Case C-73/07, *Judgment of the Court (Grand Chamber) of 16 December 2008, Tietosuojavaltuutettu v Satakunnan Markkinapörssi Oy and Satamedia Oy*. The Court of Justice of the European Union. Para. 56.

⁴⁹ Directive 89/552/EEC. *On the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Pursuit of Television Broadcasting Activities*, Article 1(a).

⁵⁰ Directive 2010/13/EU. *On the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Provision of Audiovisual Media Services*; and Directive (EU) 2018/1808, amending Directive 2010/13/EU. *On the Coordination of Certain Provisions Laid Down by*

service, which is a service [as defined by Articles 56 and 57 TFEU] “under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes, in order to inform, entertain or educate, to the general public by electronic communications networks”.⁵¹ Further, the concept of a “programme” was also given a specific definition, as “a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and the form and content of which are comparable to the form and content of television broadcasting”.⁵² While the concept of “editorial responsibility” was defined as the “exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services”.⁵³

The AVMS Directive 2010 was thus rooted in the idea that the definition of an audiovisual media service should only cover audiovisual media services which are “mass media”, which meant that they were “intended for reception by, and which could have a clear impact on, a significant proportion of the general public”.⁵⁴ Further, the Directive mentioned that it “should not cover electronic versions of newspapers and magazines”,⁵⁵ and should not include “activities which are primarily non-economic and which are not in competition with television broadcasting”.⁵⁶ Of course, this does not mean that the press is not media, but relates to the regulatory objective and scope of the AVMSD to exclusively cover audiovisual media services in the internal market. Crucially, the notion of “mass media” that is contained in the AVMS Directive, very much reflects the definition of media contained in the 2007 Recommendation of the Council of Europe’s Committee of Ministers, which, as mentioned above, included the criterion of information “intended for reception by, and which could have a clear impact on, a significant proportion of the general public”.⁵⁷

The 2018 amendments to the AVMS Directive, in particular, introduced far-reaching changes to the definitions, and extended the application of the AVMS Directive to certain social media.⁵⁸ According to the Recitals, certain social media services, such as video-sharing platforms, “need to be included in the scope” of the AVMS Directive, because “they compete for the same audiences and revenues as audiovisual media services”.⁵⁹ Indeed, the Recitals emphasised that social media have become an “important medium” for sharing information, including: “providing access to programmes and user-generated videos”, and they have “considerable impact”, by facilitating the “possibility for users to shape and influence the opinions of other users”.⁶⁰

As such, the 2018 Directive introduced a new definition of an audiovisual media service, namely, a service where the “principal purpose of the service or a dissociable section thereof is devoted to providing programmes, under the editorial responsibility of a media service provider, to the general public, in order to inform, entertain or educate, by means of electronic communications networks”.⁶¹

Law, Regulation or Administrative Action in Member States Concerning the Provision of Audiovisual Media Services (Audiovisual Media Services Directive) in View of Changing Market Realities.

⁵¹ AVMS Directive 2010, Article 1(a)(i).

⁵² Ibid., Article 1(b).

⁵³ Ibid., Article 1(c).

⁵⁴ Ibid., Recital 21.

⁵⁵ AVMS Directive 2010, Recital 28.

⁵⁶ AVMS Directive 2010, Recital 21.

⁵⁷ Recommendation CM/Rec(2007)15 of the Committee of Ministers to Member States. *On Measures Concerning Media Coverage of Election Campaigns*. Council of Europe. 7 November, 2007, at Preamble.

⁵⁸ Directive (EU) 2018/1808, Recital 5

⁵⁹ Directive (EU) 2018/1808, Recital 4.

⁶⁰ Ibid.

⁶¹ Directive (EU) 2018/1808, Article 1.

A major change was thus the inclusion of a “*dissociable section thereof*”. Crucially, the Directive included a definition of video-sharing platforms, specifically, a service where the “*principal purpose of the service or of a dissociable section thereof, or an essential functionality of the service, is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks ... and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing*”.⁶² The intermediary services may not have editorial responsibility but do have “*organisational responsibility*” that stems from the organisation, ranking and moderation of content (see also, Valcke (2019)). Finally, Article 7a also includes a provision that Member States may take measures to ensure the prominence of “*audiovisual media services of general interest*”.⁶³ As the European Regulators Group for Audiovisual Media Services (ERGA) has noted, no definition of audiovisual media services of general interest is contained in the AVMSD, although Recital 25 states that Member States may impose obligations to ensure the prominence of “*content of general interest*” under the “general interest” objectives defined, e.g., media pluralism, freedom of expression and cultural diversity.⁶⁴

A second piece of EU legislation that can be helpful when considering the notion of media is the 2019 DSM Directive,⁶⁵ which laid down new rules in the field of copyright. That is, the DSM Directive included new rules on the legal protection of press publications, because of licensing difficulties that the publishers were experiencing over the online re-use of press publications by new online services. The Directive specifically links the issue to media pluralism, noting that a “*free and pluralist press is essential to ensure quality journalism and citizens' access to information*”.⁶⁶ In this regard, Article 2(4) provides the following definition of press publication: a collection composed mainly of literary works of a journalistic nature, but which can also include other works or other subject matter, and which: (a) constitutes an individual item within a periodical or regularly updated publication under a single title, such as a newspaper, or a general or special interest magazine; (b) has the purpose of providing the general public with information that is related to news or other topics; and (c) is published in any media under the initiative, editorial responsibility and control of a service provider.⁶⁷

Notably, Recital 56 states that the concept of press publication should only cover “*journalistic publications, published in any media*”, and these include daily newspapers, weekly or monthly magazines of general or special interest, including subscription-based magazines, and news websites. However, press publication protection should not apply to “*websites, such as blogs, that provide information as part of an activity that is not carried out under the initiative, editorial responsibility and control of a service provider, such as a news publisher*”.⁶⁸ The concept of the press in the DSM Directive is thus limited. Similarly, the 2019 Online SatCab Directive is limited to radio programmes and certain television programmes (news and current affairs programmes or own-production programmes); with the purpose of the Directive being to make it easier for broadcasters to make certain television programmes on their online services available across borders; and to allow retransmission operators to obtain more easily licences for the television and radio channels they

⁶² Ibid., Article 1.

⁶³ Ibid., Article 7a.

⁶⁴ Ibid., Recital 25. See, European Regulators Group for Audiovisual Media Services. *Overview Document in Relation to Article 7a of the Audiovisual Media Services Directive*. ERGA, 2021, p. 16.

⁶⁵ Directive (EU) 2019/790. *On Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC*. European Parliament and Council.

⁶⁶ Ibid., Recital 54.

⁶⁷ Ibid., Article 2(4).

⁶⁸ Ibid., Recital 56.

retransmit.⁶⁹ However, these directives customise definitions for the purpose of regulation, and do not aim to provide an exhaustive definition of all media.

Third, it is also important to take note of the General Data Protection Regulation (GDPR),⁷⁰ which contains an important provision relating to the media and journalism. Article 85 provides that Member States must, by law, reconcile the right to the protection of personal data, with the right to freedom of expression, including processing for “journalistic purposes”.⁷¹ Further, Member States must provide for exemptions and derogations from the various provisions of the GDPR for data processing carried out for “*journalistic purposes*”.⁷² Notably, no definition of journalistic purposes is contained in the GDPR. However, Recital 153 does mention that Article 85 “*should apply in particular to the processing of personal data in the audiovisual field and in news archives and press libraries*”.⁷³ Further, it is also expressly stated in the Recitals that “*it is necessary to interpret notions relating to [freedom of expression], such as journalism, broadly*.”⁷⁴ Finally, it should be emphasised that the wording of Article 85 GDPR is broader than that of the previous Data Protection Directive, which only provided for exemptions and derogations for the processing of personal data that is “*carried out solely for journalistic purposes*” (emphasis added).⁷⁵

Court of Justice of the European Union

In addition to EU legislation, the CJEU has also delivered a series of judgments on the notion of media, journalism and related concepts. The first judgement to mention is *Tietosuoja- ja valtuutettu v Satakunnan Markkinapörssi Oy and Satamedia Oy*,⁷⁶ which concerned the interpretation of “*journalistic purposes*” under the previous Data Protection Directive. The issue for the Court was whether two Finnish companies that collected publicly available tax data, and published it in a regional newspaper, also allowing mobile phone users to receive data published in the newspaper through a text message service, came within the notion of processing data “*solely for journalistic purposes*”.

Crucially, the Court laid down a number of important principles. First, the Court emphasised that “[i]n order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary, first, to interpret notions relating to that freedom, such as journalism, broadly”.⁷⁷ Second, the Court, taking a particularly broad approach, held that the exemptions and derogations apply not only to media undertakings, “but also to every person engaged in journalism”.⁷⁸ Indeed, account had to be taken of the evolution and proliferation of methods of communication, and the medium used to transmit the data, “*whether it be classic in nature, such as paper or radio waves, or electronic, such as the internet, is not determinative*” as to whether an activity is solely for

⁶⁹ Directive (EU) 2019/789. *Laying Down Rules on the Exercise of Copyright and Related Rights Applicable to Certain Online Transmissions of Broadcasting Organisations and Retransmissions of Television and Radio Programmes, and Amending Council Directive 93/83/EEC*. European Parliament and Council. Article 3(1)

⁷⁰ Regulation (EU) 2016/679. *On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)*. European Parliament and Council.

⁷¹ *Ibid.*, Article 85(1).

⁷² *Ibid.*, Article 85(2).

⁷³ *Ibid.*, Recital 153.

⁷⁴ *Ibid.*

⁷⁵ Directive 95/46/EC. *On the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data*. European Parliament and Council. Article 9. See also, Cappello M. (ed.), *Journalism and Media Privilege*, IRIS Special (European Audiovisual Observatory, 2017).

⁷⁶ Case C-73/07, *Judgment of the Court (Grand Chamber) of 16th December, 2008, Tietosuoja- ja valtuutettu v Satakunnan Markkinapörssi Oy and Satamedia Oy*. The Court of Justice of the European Union.

⁷⁷ *Ibid.*, Para. 56.

⁷⁸ *Ibid.*, Para. 58.

journalistic purposes.⁷⁹ In succinct language, the Court held that activities may be classed as “*journalistic activities*” if “*their object is the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them*”.⁸⁰

The above approach by the CJEU was again evident in a notable judgement from 2019, on the notion of journalistic purposes. The case was *Sergejs Buivids v. Datu valsts inspekcija*,⁸¹ and concerned an individual who had recorded his interaction with the police in a Latvian police station and had uploaded the video to YouTube. The domestic courts found that the recording did not come within the journalistic-purposes exception under the Data Protection Directive, one of the reasons being because the video “*did not show current events relevant to society or dishonest conduct on the part of the police officers*”.⁸² Notably, the CJEU first held that just because the individual was not a professional journalist, meant that it “*does not appear to be capable of excluding the possibility*” that the recording of the video and its publication on YouTube “*may come within the scope*” of *journalistic purposes provision*.⁸³ Further, uploading a video to YouTube “*cannot in itself preclude the classification of that processing of personal data as having been carried out solely for journalistic purposes*”, with the Court applying one of the *Satamedia* principles: that the medium is not determinative.⁸⁴ Finally, it was for the domestic courts to determine whether the sole purpose of the video “*was the disclosure to the public of information, opinions or ideas*”,⁸⁵ and could take into consideration the individual’s view that the video was uploaded to “*draw to the attention of society to alleged police malpractice*”.⁸⁶ As such, the Court placed importance on the intention of the individual in assessing whether this was published for journalistic purposes.

Moving away from data protection legislation, the third judgement that is informative concerns the interpretation of the 2010 AVMS Directive, and whether a video section of an online newspaper’s website could come within the definition of an “*audiovisual media service*”. However, it must be borne in mind that the Court was not considering the notion of media as a whole, but media that fell within the confines of the AVMS Directive. The case was *New Media Online GmbH v. Bundeskommunikationssenat*,⁸⁷ and the Court laid down a number of notable principles for interpreting the AVMS Directive in relation to online media. First, the Court held that the concept of “*programme*”, under Article 1(1)(b) of the AVMS Directive 2010, must be interpreted as “*including, under the subdomain of a website of a newspaper, the provision of videos of short duration consisting of local news bulletins, sports and entertainment clips*”.⁸⁸ The Court took into account that the videos, “*like a television broadcast programme*”, are “*aimed at a mass audience and are likely to have a clear impact on that audience within the meaning of Recital 21 to AVMS Directive 2010*”; and the concept of “*programme*” under Article 1 “*does not contain any requirement relating to the length*”.⁸⁹

In addition, the Court also laid down principles on how to interpret “*principal purpose*” in the definition of “*audiovisual media service*”, under the AVMS Directive 2010, especially in relation to an online

⁷⁹ Ibid., Para. 60.

⁸⁰ Ibid. Para. 61.

⁸¹ Case C-345/17, *Judgment of the Court (Second Chamber) of 14th February, 2019, Sergejs Buivids v. Datu valsts inspekcija*. The Court of Justice of the European Union.

⁸² Ibid., Para. 21.

⁸³ Ibid., Para. 55.

⁸⁴ Ibid., Para. 59.

⁸⁵ Ibid.,

⁸⁶ Ibid., Para. 60.

⁸⁷ Case C-347/14, *Judgment of the Court (Second Chamber) of 21st October, 2015, New Media Online GmbH*. The Court of Justice of the European Union.

⁸⁸ Ibid., Para. 24.

⁸⁹ Ibid., Para. 20.

newspaper. In this regard, the Court held that, if the service offered in the video subdomain has *“form and content which is independent of that of the written press articles”* of an online newspaper, then that service falls within the scope of the AVMSD Directive.⁹⁰ However, if the video service is *“indissociably complementary to the journalistic activity of that publisher, in particular as a result of the links between the audiovisual offer and the offer in text form”*, it will not fall within the scope of the Directive. The Court thus held that the *“assessment of the principal purpose of a service making videos available offered in the electronic version of a newspaper must focus on whether that service as such has content and form which is independent of that of the journalistic activity of the operator of the website at issue and is not merely an indissociable complement to that activity”*.⁹¹

2.3 Evolution of the notion and definitions of media

From the foregoing overview of the European legal and policy frameworks, a number of important points are evident on the evolution of the notion and definitions of media. First, under Council of Europe standards, the notion of media has evolved from a strict definitional approach (*“periodic creation of information and content, and its dissemination over which there is editorial responsibility, irrespective of the means and technology used for delivery, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public”*), which is rooted in the central elements of (a) periodic creation, (b) editorial responsibility, (c) intention for reception, and (d) impact on a significant proportion of the general public.

Now Council of Europe standards have moved towards a considerably broader notion of media (all of the actors involved in the production and dissemination, to potentially large numbers of people, of content (e.g., information, analysis, comment, opinion, education, culture, art and entertainment) and applications which are designed to facilitate interactive mass communication or other content-based large-scale interactive experiences, while retaining editorial control or oversight of the contents), using six criteria to identify media actors: (i) intent to act as media, (ii) have purpose and underlying objectives of the media, (iii) editorial control, (iv) adhere to professional standards, (v) seek outreach and dissemination, and (vi) satisfy public expectation. Crucially, this broad notion of media is built to facilitate a differentiated and graduated approach to media policy, in which each actor whose services are identified as media, or as an intermediary or auxiliary activity, benefit from both the appropriate form (differentiated) and the appropriate level (graduated) of protection and responsibility. The media ecosystem thus now comprises media actors and other actors, from a definitional perspective.

Second, the notion of journalism has also evolved within a similar definitional framework, under European and international human rights standards, where journalism is given a functional definition, and comprises journalists and other media actors who fulfil public watchdog roles in a democratic society. Notably, and as mentioned above, a broad notion of journalism is also adopted by the CJEU, while the ECtHR has recognized that influential bloggers and social media users may come within the notion of public watchdogs, thus warranting similar protection to that afforded to the media.

Third, the notion of media freedom is also following a similar trajectory, with the ECtHR explicitly extending the protections of media freedom to new online media actors, including online news portals, news websites and online news archives. Indeed, the ECtHR has explicitly adopted the definitional framework of the Committee of Ministers on a new notion of media, with its consequent

⁹⁰ Ibid., Para. 21.

⁹¹ Ibid., Para. 38.

differentiated and graduated approach to regulation. Notably, from a definitional perspective, the ECtHR still places strong emphasis on the impact of various media (whether print, broadcast or online) when considering the applicable duties and responsibilities to which different media may be subject.

Fourth, in terms of EU legislation and the notion of media, it must be borne in mind that some definitions contained in EU legislation are very much sector-specific. In this regard, the definitions of audiovisual media services, under the AVMS Directive, press publications, under the DSM Directive, and television programmes, under the Online SatCab Directive, are quite strict. Indeed, the AVMS Directive specifically excludes online news media, while the DSM Directive includes online news media. However, leaving aside the sector-specific aspects of these various definitions, certain criteria do cut across the legislation, namely, (a) editorial responsibility, (b) periodic publication, and (c) impact on a significant proportion of the general public. As mentioned earlier, this reflects the earlier Council of Europe standards, and the stricter definition of media (periodic creation of information and content and its dissemination, over which there is editorial responsibility, irrespective of the means and technology used for delivery, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public). On the other hand, it must also be recognized that the scope of the AVMS Directive has now been expanded to video-sharing platforms that provide programmes or user-generated videos to the public, in order to inform, entertain or educate, and the organisation of this content is determined by the platforms, including algorithmically. Indeed, this broad notion is also reflected in the GDPR, which contains a very open notion of journalism, and which is expressly required to be interpreted broadly. Indeed, there does seem to be some alignment emerging between EU law and Council of Europe standards, with the scope of the EU law regulation of various components of the notion of media, and the underlying infrastructure of electronic communication, broadening. However, it must be emphasised again, that EU law, in relation to the notion of media, is very much sector specific, and Council of Europe standard-setting on the notion of media seems to be a preferable framework within which to consider the notion of media, generally.

Finally, the CJEU has adopted an explicitly broad and functional definition of journalistic activities, namely where the objective is disclosure to the public of information, opinions or ideas, irrespective of the medium, which is used to transmit them, including online. Indeed, the Court adopted the important principle that it is necessary to interpret notions related to freedom of expression, such as journalism, broadly. Applying this principle, the Court has also held that uploading a video onto an online platform may come within the definition of journalistic activities, including by taking into account the uploader's intention to disclose information, opinions or ideas to the public. This judgement complements the ECtHR, holding that platforms such as YouTube facilitate citizen journalism.

2.4 Definitions and scope of the Study

The final question that arises is the notion and definition of media that should be utilised for the purposes of this Study, and what specific media actors, and other actors in the online media ecosystem, come within the scope of the Study. From the overview, above, of the main European legal and policy instruments on the notion of media, it seems that **the most appropriate definitional**

framework for this Study is that adopted by the Council of Europe’s Committee of Ministers on a new notion of media.⁹²

It is a deliberately broad notion of media: it includes all of the actors involved in the production and dissemination, to potentially large numbers of people, of content (e.g., information, analysis, comment, opinion, education, culture, art and entertainment), and applications which are designed to facilitate interactive mass communication, or other content-based large-scale interactive experiences, while retaining editorial control or oversight of the contents; it uses six criteria to identify media actors and other actors:

1. intent to act as media,
2. have purpose and underlying objectives of media (such as, provide space for public debate, influence public opinion, devote content to matters of public interest),
3. editorial control,
4. adhere to professional standards, standards for content production, and accountability
5. seek outreach and dissemination, and
6. satisfy public expectations.

Another notable advantage of this definition is that it incorporates two interpretative criteria, namely, to have the “*purpose and underlying objectives of media*”, as well as adherence to “*professional standards*”. These criteria make it possible to appraise whether actors in the media are indeed acting in the public interest and serving democracy, and, in doing so, adhere to good practices and professional standards (e.g., truthfulness, responsibility, freedom of expression and of the media, equality, fairness, and journalistic independence), including the accountability of media. This serves as a safeguard against the abuse of media freedom and journalistic privileges in a democratic society by actors that purport to be media, but without serving the public interest.

Crucially, and most helpfully, this broad notion of media is built to facilitate a differentiated and graduated approach to media policy, where each actor whose services are identified as media, or as an intermediary or auxiliary service, benefit from both the appropriate form (differentiated) and the appropriate level (graduated) of protection and responsibility.

The influential nature of this definition is evidenced by it being relied upon with approval by the European Court of Human Rights, including by its 17-judge Grand Chamber, and, as recently as 2021,⁹³ the European Commission’s High Level Group on Media Freedom and Pluralism,⁹⁴ and Advocate General Øe of the Court of Justice of the European Union.⁹⁵ Indeed, it was formulated to

⁹² Recommendation CM/Rec(2011)7 of the Committee of Ministers to Member States. *On a New Notion of Media*. Council of Europe. 21 September 2011.

⁹³ See, *Delfi AS v. Estonia* [GC], Application no. 64569/09, 16 June, 2015, Para. 113. See also, *Magyar Jeti Zrt v. Hungary*, Application no. 11257/16, 4 December, 2018, at Para. 27; and *OOO Informatsionnoye Agentstvo Tambov-Info v. Russia*, Application no. 43351/12, 18 May, 2021, at Para. 51.

⁹⁴ High Level Group on Media Freedom and Pluralism (2013). *A Free and Pluralistic Media to Sustain European Democracy*. European Commission, p. 11. See also, Council of Europe’s Committee of Experts on Media Environment and Reform, Recommendation CM/Rec (2022) 11 of the Committee of Ministers to Member States on principles for media and communication governance. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a61712, accessed on May 27, 2022.

⁹⁵ Case C-622/17, *Opinion of Advocate General of 28 February, 2019, Baltic Media Alliance Ltd v. Lietuvos radijo ir televizijos komisija*, Para. 44.

stand the test of time, and, as mentioned above, it was used in the most recent 2018 Committee of Ministers Recommendation on Media Pluralism and Transparency of Media Ownership.

Applying this definitional framework, it is proposed to first identify clear-cut media actors that come within the scope of this Study; then to identify those borderline media actors who may come within the definition when the framework is applied on a case-by-case basis, and actors who may be public watchdogs warranting similar protection to that afforded to the media, that of the media; and, finally, those actors who are not media actors, but who are actors within the online media ecosystem (see the following Table).

Table I.1: Definitions of media actors and other actors in the media ecosystem

Media actors	intent to act as media; have purpose and underlying objectives of media; editorial control; adhere to professional standards; seek outreach and dissemination, and satisfy public expectation
<ul style="list-style-type: none"> ● Print media (e.g., newspapers and periodicals) ● Broadcast media (e.g., radio, television, public service media, local, regional, and non-profit community broadcasting) ● Non-linear audiovisual media (e.g., video-on-demand) ● Online newspapers, news websites, online news portals, online news archives ● Publishers (print and online) ● Professional journalists 	
Other media actors and public watchdogs reporting on matters of public interest	others who contribute to public debate and who perform journalistic activities or fulfil public watchdog functions
<ul style="list-style-type: none"> ● Bloggers ● NGOs ● Citizen journalists ● Whistleblowers ● Well-known social media users ● Podcasters 	
Other actors, intermediary and auxiliary services, in the media ecosystem	intermediary or auxiliary services which contribute to the functioning or accessing of a media, but do not or should not exercise editorial control, and therefore have limited or no editorial responsibility, may not be considered to be media
<ul style="list-style-type: none"> ● Electronic communications networks and services (e.g., content delivery networks, hosting services) ● Intermediary services (e.g., search engines, social media, video-sharing platforms) ● Communication devices' manufacturers (e.g., Smart TVs, mobile devices, digital home assistants) ● Advertisers and advertising agencies 	

Against the backdrop of the broad definition of the media that is laid out above, the scope of this study is mainly focused on “online media”, although, for helpful comparative purposes, aspects of the study do examine offline media. As such, this Study utilises the definition of online media that

has been adopted by the Council of Europe's Committee of Ministers, defining it as a *"wide range of actors involved in the production and dissemination of media content online and any other intermediaries and auxiliary services which, through their control of distribution of media content online or editorial-like judgments about content they link to or carry, have an impact on the media markets and media pluralism"*.⁹⁶ The scope of the Study being "online media", Part A of the study will focus on the prominence, findability, and discoverability of general interest content; while Part B of will focus on measures concerning the concentration of economic resources to ensure media pluralism.

3. Importance of media pluralism and diversity

While it is widely agreed amongst academics, in the courts, and among policymakers that media pluralism is a democratic value, an enabler of other fundamental rights, essential to the integrity of the democratic discourse and procedures, the definition of media pluralism is quite debated and is influenced by different political, economic, and legal contexts, by the academic or political approach used, and by market and technological developments. The concept of media pluralism can be elaborated upon based on different meanings, which range from the *"marketplace of ideas"* of economic and political liberalism, to a definition functional of the notion of the "public sphere". According to the latter notion, which has become a feature of the European debate on this topic, vs. the more liberal and market-oriented approach of the USA, media pluralism is associated with the definition of deliberative democracy, and implies that citizens have access to a wide array of information as a precondition for their best participation in the democratic debate. Moreover, the democratic culture is broader than a concern with democratic deliberation or democratic self-government, and it encompasses also individual freedom, cultural participation and mutual influence (Balkin, 2004). Pluralism and integration are two basic functions of the media in a democratic society, according to Karppinen (2007): in this sense, media are seen to be a central tool in creating a common culture and a shared arena for public debate.

3.1 Media pluralism a multi-faceted notion

From the outset, media pluralism is a multi-faceted notion which has been discussed at length in both the academic literature and in international policy documents.⁹⁷ This section introduces certain facets that are relevant to this Study. Two basic values of pluralism are important in democracies – the deliberative and the representative (Klimkiewicz 2019). Media pluralism also manifests through *"internal"* and *"external"* media diversity. Furthermore, *"exposure to diversity" is a fairly recent facet of media pluralism that has emerged in response to the abundance of digital media content.*

i. Deliberative pluralism

The deliberative value of diversity is not only about a variety of information, and a diversity of opinions and world views, but it is also about the creation of public opinion that ultimately validates different perspectives on matters of public interests. This would imply the acknowledgement of the importance of political pluralism, e.g., during electoral periods, ensuring that all the candidates and parties have equal and fair media access conditions, in order to guarantee a fair electoral campaign, and that the voters receive information from all the parties competing in the elections.

⁹⁶ Recommendation CM/Rec (2018)1 of the Committee of Ministers to Member States. *On Media Pluralism and Transparency of Media Ownership*. Council of Europe. 7 March, 2018, at Appendix

⁹⁷ See, for an overview, Section 3.2.

ii. Representative pluralism

The representative value of diversity, on the other hand, refers to the ability to reflect, in an open manner, various social actors, groups, their needs and interests, and also fundamental views on social and political reality (Klimkiewicz 2019). This would imply the recognition of cultural and geographical diversity. In this sense, the media can be seen as spaces for the integration of various social and cultural experiences, including those of minority groups. It also reflects one of the normative prerequisites of public service media, whose remit is to serve societies in their entirety, as well as to provide plural information in the public interest.

iii. Internal pluralism

Internal, or content-related, diversity, refers to a variety of content, viewpoints, social representations and experiences that are provided by a single media outlet. It has been widely applied, mostly in policymaking, and mostly from the perspective of both content and market supply, *vis à vis* the position of the user. This concept is also closely linked to the remit of public service broadcasting, which once enjoyed a monopolistic position, of: being the only operator in the media market, and thus having the obligation to provide plural information so as to serve the public interest. Nowadays, in mixed media systems (commercial and public service media), it is a concept that is particularly relevant when measuring the diversity of content that is offered in media markets that are either oligopolistic or monopolistic. Internal pluralism *“consists of representation requirements within media companies’ management and/or workforce. Such rules oblige media companies to reflect the various political, ideological, or social groups in the composition of their management boards and/or staff. It should be noted that these usually only apply to public service broadcasters. In some countries similar rules apply to private broadcasters that fulfill a public service mission, like regional TV stations”* (Valcke, 2011).

iv. External pluralism

The notion of external pluralism refers, instead, to the structure of the media market, including the diversity of media ownership, streams of funding, but may also reflect various operational functions of the media (e.g., non-profit, public service, commercial). External pluralism is a useful concept with which to measure the market power, or the number, of media owners, media companies or channels: the higher the number of media outlets in each market, considering the technical resources available (especially spectrum), the better it is for the possibility of bringing diverse viewpoints into the public debate. In other words, structural diversity seems to be closely related to performance, and to particular structural conditions of media systems, that are more likely to foster the production of a diverse content quality (Votmer 2000).

For many years, and for many authors, media pluralism has meant just (external) pluralism of ownership, where concentration in the media market, or even a potential concentration in a market that naturally evolves towards oligopoly or monopoly, has been seen as the greatest risk to the democratic debate, by potentially limiting the diversity of voices offered by the market itself. External diversity has so far been more widely adopted by European policymakers (Valcke 2009). Focusing the policy efforts on external market pluralism is indeed relevant, but does not constitute a condition that is sufficient to achieve effective pluralism in each national context.⁹⁸

⁹⁸ As mentioned by the European Commission *“Media pluralism is a concept that embraces a number of aspects, such as diversity of ownership, variety in the sources of information and in the range of contents available in the different Member States. For many analysts or observers, media pluralism has come to mean,*

With the paramount shifts in a global communication environment, considerations about external media pluralism need to take into account, in addition to media ownership, also such qualities as communicative power, transparency versus opaqueness, and conflict of interests. Traditional media companies specialising in news journalism are being sold to national or transnational business oligarchs with a great deal of political influence (Dragomir 2019), and states, or state-owned companies, are stepping more significantly into some national media markets (Schiffrin 2017). Importantly, new investment flows change media ownership patterns, Russia, China and other authoritarian regimes have financed media enterprises and information initiatives to manipulate, distort and censor the global information environment (Lucas, 2020).

v. Exposure diversity

As Helberger et al. (2014) state, “an aspect that has been less prominent in traditional diversity policies is ... diversity of exposure”, a notion that has been coined by Napoli (2011). Exposure diversity refers to the extent to which audiences are exposed to, and therefore find, discover, and consume, a diverse array of content. Until recently, a common assumption among policy-makers and researchers has been that increasing the diversity of content promotes diversity of exposure, and, in many ways, this presumption is fundamental to the underlying normative rationales for promoting source and content diversity in the first place, considering exposure diversity as automatically following from this. However, scholars of selective exposure have argued that this is not usually the case; on the contrary, given an abundance of choice, users might tend to be exposed, more or less voluntarily, to less diverse content. New forms of scarcity - on the side of the media user - have emerged. This could imply new measures to ensure the diversity of exposure and media pluralism through rules that ensure the prominence or discoverability of content that is of (public) interest.

Moreover, exposure diversity is mediated by content moderation, ranking and recommendation systems, which increasingly affects information choices for the platform’s users (Helberger, Karpinnen & D’Acunto, 2018). In an online environment, which is increasingly relying on personalised news recommenders, there is a concern that citizens are exposed mainly to content which reinforces or confirms their previously formed views (so-called “filter bubbles” or “echo-chambers”) (Pariser, 2011)⁹⁹. The issues like partisan selective exposure; like-minded communities; fragmented audiences; growing media and political polarisation, suggest that current public spheres lose the common communication ground and drift towards fragmentation and sharp divisions that cut into societies across ideological, political and cultural lines.

The concern is also the possibility that while they are progressively less exposed to content that is of general public interest, this polarises their opinions and the audience(s) are over exposed to

almost exclusively, plurality of ownership. Concentration of ownership, it is feared, may result in a skewed public discourse where certain viewpoints are excluded or underrepresented. Further, because some viewpoints are represented while others are marginalized, abuse of political power can occur through the lobbying of powerful interest groups—whether these are political, commercial, or other” (European Commission, DG Information Society and Media, 2007, p. 5).

⁹⁹ Some authors challenge the “filter bubble” theory and claim that there is insufficient empirical research, or that the exposure diversity is enhanced in the online environment, see, for example Zuiderveen Borgesius, F. J. & Trilling, D. & Möller, J. & Bodó, B. & de Vreese, C. H. & Helberger, N. (2016). *Should we worry about filter bubbles?*. Internet Policy Review, 5(1). <https://doi.org/10.14763/2016.1.401>.

content that amounts to disinformation.¹⁰⁰ Exposure to different voices is a matter of how the algorithms can be designed to expose the citizen to diverse content, and, in particular, to “public interest” content, and not just to popular or personalised content (Mazzoli & Tambini, 2020). Bias and discrimination may also occur in data-supported algorithmic decisions and in algorithmic content curation systems. Bias in algorithms may stem from historical/structural inequalities, and may have a disparate impact on communities (OSCE, 2021).

vi. Re-conceptualising media pluralism for the online environment

Abundance of information, whether produced by professionals or generated by the users, was, for a few years, surrounded by an optimistic feeling in regard to the potential of new technologies to allow cheap and universal systems to disseminate any kind of information, with consequent benefits for freedom of speech, expression and information. The evolution of the digital media environment has sparked global “confusion and contestation at the most fundamental level about media freedom” (Tambini, 2021) which would also apply to media plurality. Yet, media pluralism requires as much protection in today’s digital media systems as in the analogue and offline media age. Media pluralism is challenged by the technological development that heavily impacted upon the structure of the media market and the habits of the users. No aspect or component of media pluralism, indeed, remains unaffected by new media and technology developments (Jakubowicz, 2015).

In particular, according to Dahlgren (2009), the role of traditional journalism in democracy has been altered and reduced. Journalism, in these changing circumstances, appears to be “demoralised” and “powerless”. Traditional business models for the sustainability of professional journalism are collapsing, and the situation of journalists is deteriorating. There is an urgent need to reaffirm the social functions of media and journalism, and the importance of preserving quality journalism, otherwise, with new technologies, the significance of media in the process of democratic participation and governance will continue to decline, and other communication functions and institutions will take their place (Picard, 2008).

A point at issue is the gatekeeper role of online platforms that play a role in the media ecosystem by publishing, disseminating and promoting news and other media content; and platforms have been recognised as enabling access to a “growing range of information from diverse sources”.¹⁰¹ However, those leading online platforms affect the media markets and their revenues, competing for advertising money and, therefore, hindering news media viability. The issue of the funding of content production, thinking of sources to fund journalism in this new market structure, and analysing the role and future of media as an industrial sector, that is strictly intertwined with the existence of online platforms themselves. Parcu (2019) connects the evident deterioration of the democratic debate and the high risk of the manipulation of the electoral processes with the increasing concentration of economic resources into just a few gigantic online platforms/media, and the spreading of the disinformation that is favoured by the available technological instruments.

Finally, communicative abundance and information overload create conditions in which it is necessary to reconsider the value of pluralism. Recent developments, and the pandemic crisis, saw

¹⁰⁰ It must be noted, nonetheless, that in a hybrid media ecosystem, casual exposure to different content remains a likely possibility.

¹⁰¹ Recommendation CM/Rec(2018)1 of the Committee of Ministers to Member States. *On Media Pluralism and Transparency of Media Ownership*. Council of Europe. Adopted by the Committee of Ministers on 7 March 2018. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13 accessed on May 27, 2022.

a growing cacophony of voices reinforced, and an inconsistency of information that resulted in confusion and uncertainty among media users (Smith & Wanless, 2020; Bermingham, 2020). Pluralism as diversity thus needs to be supported by the “common and shared communicative ground”. On the one hand, media pluralism helps to preserve an openness for competing opinions and a representative diversity of voices. On the other, there is also a need for a shared “background knowledge” that would imply some common agreement on some of the unquestionable principles (non-negotiables) of democracy and human rights (Klimkiewicz, 2021).

3.2 Value of media plurality from a human rights and democratic perspective

Freedom of expression, freedom of the media and media pluralism, in all its facets, are cornerstones of contemporary democracies. They are instruments to ensure a peaceful debate and provide the basis for other fundamental rights, such as the right to vote. Freedom of expression, media freedom and media pluralism are preconditions for citizens’ participation in public affairs, for free elections and for exercising the accountability of power holders.

Media pluralism is vital for democracy in order to ensure that citizens have access to a variety of information sources and voices, allowing them to form opinions without the undue influence of one dominant opinion-forming power.¹⁰² Given Europe’s history, and the memories of the dangers of totalitarianism and authoritarianism, maintaining and preserving the democratic function of the media is a special responsibility.¹⁰³

Media pluralism, in particular, is widely recognised as a precondition of contemporary democracies. Albeit those national constitutions and most international human rights conventions do not usually directly refer to the notion of media pluralism, national constitutional courts and the European Court of Human Rights (ECtHR) consider and interpret media pluralism as a corollary of the fundamental rights of freedom of expression, as guaranteed by European national constitutions, by the European Convention on Human Rights (Art. 10). The respect for the pluralism of the media is, however, inscribed in Art 11(2) of the Charter of Fundamental Rights of the European Union and, as a cross-cutting principle, media pluralism should inform EU actions (Cavaliere 2012). Most recently, media pluralism is a relevant element for the monitoring of the rule of law situation in the EU Member States.¹⁰⁴

i. European Union policy documents

Dating back to the early 1990, the European Commission has a long tradition of problematizing media pluralism in the Member States, such as flagging media concentration and political influence, among others.¹⁰⁵ The ensuing debate on the need for Community action in this field remained

¹⁰² EU Media Futures Forum. *Final Report – September 2012, ‘Report for European Commission Vice-President Neelie Kroes’*.

¹⁰³ High Level Group on Media Freedom and Pluralism (2013). *A free and pluralistic media to sustain European democracy*. European Commission, p. 10.

¹⁰⁴ 2021 and 2020 Rule of Law Report, European Commission: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report/2021-rule-law-report-communication-and-country-chapters_en; https://ec.europa.eu/info/publications/2020-rule-law-report-communication-and-country-chapters_en.

¹⁰⁵ European Commission (1992). *Pluralism and Media Concentration in the Internal Market: An Assessment of the Need for Community Action*. Brussels, 23 December, 1992.

inconclusive, to date.¹⁰⁶ In one of its staff working documents, the European Commission defined the ensuring of media pluralism as “all measures that ensure citizens' access to a variety of information sources, opinions, voices etc., in order to form their opinion without the undue influence of one dominant opinion forming power.”¹⁰⁷

The High Level Group on Media Freedom and Pluralism, established by the European Commission in 2011, recommended an EU mechanism for the monitoring of media freedom and media pluralism on the national level, and regular reporting about risks in any part of the EU.¹⁰⁸ Its 2013 report “A Free and Pluralistic Media to Sustain European Democracy” recommends the assigning of that task to the EU Fundamental Rights Agency, or the establishment of an independent monitoring centre, ideally, as part of academia.¹⁰⁹ The report also concluded that the EU should be considered competent to act to protect media freedom and pluralism at the State level, in order to guarantee the substance of the rights granted by the Treaties to EU citizens, in particular, the rights of free movement and representative democracy. “*The link between media freedom and pluralism and EU democracy, in particular, justifies a more extensive competence of the EU with respect to these fundamental rights than to others enshrined in the Charter of Fundamental Rights*”¹¹⁰ The High Level Group's report underlines that the concept of media pluralism implies offering a wide range of different views and opinions, and reflecting the diversity of a country's population, in which the concept of pluralism embraces both cultural and linguistic pluralism, geographic diversity and the needs of minorities. Protection of local cultures (national, regional) and Europe's cultural diversity are seen by the High Level Group on Media Freedom and Pluralism as a key.¹¹¹

The rights to freedom of expression and freedom of opinion, as fundamental human rights and indispensable conditions for the full development of individuals and their active participation in a democratic society, are emphasised also in the Resolution on Media Pluralism and Media Freedom in the European Union, adopted by the European Parliament in 2018.¹¹² Media freedom, pluralism and independence are recognised in the document as crucial components of the right to freedom of expression. The Resolution also underlines the right to inform and the right to be informed as the core basic democratic values on which the European Union is founded, specifying the importance of pluralistic, independent and trustworthy media as the guardians and monitors of democracy and the rule of law. The essential role of media freedom and media pluralism for democracy in the European Union has recently been emphasised in the European Democracy Action Plan (2020),¹¹³ which

¹⁰⁶ Communication from the Commission to Parliament and Council. *Follow-up to the Consultation Process Relating to the Green Paper on 'Pluralism and Media Concentration in the Internal Market - An Assessment of the Need for Community Action'*. European Commission COM (94) 353 Final, 5 October, 1994.

¹⁰⁷ Commission Staff Working Document. *Media Pluralism in the Member States of the European Union*. European Commission SEC(2007) 32, p.5. https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/media_pluralism_swp_en.pdf accessed on May 27, 2022.

¹⁰⁸ High Level Group on Media Freedom and Pluralism (2013). *A free and pluralistic media to sustain European democracy*. European Commission, p.5. https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/hlg/hlg_final_report.pdf accessed on May 27, 2022.

¹⁰⁹ Ibid.

¹¹⁰ Ibid, p. 3.

¹¹¹ Ibid, p. 12.

¹¹² Recommendation No. R (99) 1 of the Committee of Ministers to Member States. *On Measures to Promote Media Pluralism*. Council of Europe. *Adopted on 19 January, 1999*. Available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804fa377 accessed on May 27, 2022.

¹¹³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *On the European democracy action plan*. European

specifies the importance of free and pluralistic media for holding power to account and helping citizens to make informed decisions. This means upholding the freedom of information and the freedom of expression in line with the Charter of Fundamental Rights, enabling meaningful participation in pluralistic democratic debate by providing the public with reliable information, and by allowing everyone to express their views freely. Challenges arising from the digital transformation of democracies, including difficulties in maintaining the integrity of elections, ensuring a free and plural media, and protecting the democratic process from disinformation and other forms of manipulation, are particularly addressed in this document.

Sustainability, pluralism and the trustworthiness of media systems in the EU Member States have recently also been set as the main elements of the current media policy context in the Council of the European Union's conclusions on safeguarding a free and pluralistic media system.¹¹⁴ The Council has therefore invited the EU Member States to provide an adequate and independent framework for the economic sustainability of the media, including by the use of state aid. Furthermore, the Member States are invited to evaluate and develop national measures to assess and safeguard media pluralism, while the European Commission is invited to further monitor media pluralism and to identify potential risks, and to adopt measures to “*achieve social, cultural and democratic goals*”, fostering a holistic policy perspective. Safeguarding a trustworthy media system is elaborated as being an important element in the current EU media policy context, in order to address the threat of disinformation to democratic processes, public health and societies.

Since 2020, the value of media freedom and media pluralism for democracy in the European Union has particularly been reflected in the Annual Rule of Law Reports, where media pluralism has been assessed as one of four key pillars for the rule of law, and where findings of the Media Pluralism Monitor are used as an important source.

ii. Council of Europe - Standards for media pluralism, human rights and democracy

Understanding that media pluralism and diversity are essential to the functioning of a democratic society is among the guiding principles of a plethora of the Council of Europe's standard-setting documents. In 1954, the Council of Europe had already invited the Member Governments to encourage the exchange of programmes and production by their national television services so as to promote knowledge of the cultural, economic and political life, in order to foster the European idea.¹¹⁵ The idea is further reflected in the initiative for building a European audiovisual area to reflect the diversity of European culture and to create equal opportunities for the benefit of audiovisual producers operating in countries and regions with low audiovisual output, or with a limited geographical and linguistic coverage. The 1989 European Convention on Transfrontier Television embodied the idea, with the Parties committed “*in the spirit of cooperation and mutual assistance*” to avoid programme services being transmitted or retransmitted and thus endangering media pluralism.¹¹⁶

Commission COM(2020) 790 final. 3 December 2020. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0790&from=EN> accessed on May 27, 2022.

¹¹⁴ Council Conclusions 2020/C 422/08. *On safeguarding a free and pluralistic media system*. Council of the European Union. 7 December 2020, paras. 14, 26. [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XG1207\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XG1207(01)&from=EN) accessed on May 27, 2022.

¹¹⁵ Resolution (54) 11. *Use of Television as a Medium for Securing the Support of the General Public for the European Idea*. Council of Europe. Adopted by the Committee of Ministers on 3 July, 1954. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680645b44> accessed on May 27, 2022.

¹¹⁶ European Convention. *On Transfrontier Television, Strasbourg, 5.V.1989, Article 10bis*. Council of Europe (1989). <https://rm.coe.int/168007b0d8> accessed on May 27, 2022.

In 1999, the Committee of Ministers adopted a Recommendation that was solely dedicated to measures to promote media pluralism.¹¹⁷ The Recommendation does not provide a definition of the notion of media pluralism, but it offers several dimensions of media pluralism: (i) the importance for individuals to have access to pluralistic media content, in particular, as regards information; (ii) that the media, and, in particular, the public service broadcasting sector, should enable different groups and interests in society — including linguistic, social, economic, cultural or political minorities — to express themselves; (iii) that the existence of a multiplicity of autonomous and independent media outlets, at the national, regional and local levels, generally enhances pluralism and democracy; and (iv) that the political and cultural diversity of media types and contents is central to media pluralism. The Recommendation calls on States to promote political and cultural pluralism by developing their media policy in line with Article 10 of the European Convention on Human Rights, which guarantees freedom of expression and information, and due respect for the principle of the independence of the media.

The importance of media pluralism and the transparency of media ownership for safeguarding public debate in democratic societies has been underlined in numerous decisions of the Council of Europe's Committee of Ministers. Requirements for media transparency were strongly connected to media pluralism, particularly in the 1994 Recommendation of the Committee of Ministers, which recognised that “*media transparency is necessary to enable members of the public to form an opinion on the value which they should give to the information, ideas and opinions disseminated by the media*” and that “*media concentrations at the national and international levels can have not only positive but also harmful effects on media pluralism and diversity which may justify action by governments*”.¹¹⁸ In 2007, media pluralism and diversity of content were the subject of the Recommendation of the Committee of Ministers to Member States, Recommending Measures to Support Structural Pluralism of the Media (Regulation of Media Ownership, Role of Public Service Media, fair access to electronic communication networks), as well as measures to support the diversity of media content and to promote media transparency.¹¹⁹

In 2018, the standard-setting framework for the promotion of media pluralism and the transparency of media ownership was further developed, so as “*to deal with ongoing technological, financial, regulatory and other changes in the media sector in Europe*”.¹²⁰ The Recommendation CM/Rec(2018)1 of the Committee of Ministers to Member States on Media Pluralism and Transparency of Media Ownership reflects concerns for media pluralism in the circumstances of ongoing digital transformation, in which “*Internet intermediaries have acquired increasing control over the flow, availability, findability and accessibility of information and other content online*”.¹²¹ The

¹¹⁷ Recommendation No. R (99) 1 of the Committee of Ministers to Member States. *On Measures to Promote Media Pluralism*. Council of Europe. Adopted on 19 January, 1999. Available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804fa377 accessed on May 27, 2022.

¹¹⁸ Recommendation No. R (94) 13 of the Committee of Ministers to Member States. *On Measures to Promote Media Transparency*. Council of Europe. Adopted by the Committee of Ministers on 22 November 1994. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680645b44> accessed on May 27, 2022.

¹¹⁹ Recommendation CM/Rec(2007)2 of the Committee of Ministers to Member States. *On Media Pluralism and Diversity of Media Content*. Council of Europe. Adopted by the Committee of Ministers on 31 January 2007. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d6be3 accessed on May 27, 2022.

¹²⁰ The Recommendation CM/Rec(2018)1 of the Committee of Ministers to Member States. *On Media Pluralism and Transparency of Media Ownership*. Council of Europe. Adopted by the Committee of Ministers on 7 March 2018. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680790e13 accessed on May 27, 2022.

¹²¹ *Ibid.*

Recommendation includes detailed guidelines underlining that States are the ultimate guarantors of media pluralism and, as such, have a positive obligation to put in place an appropriate legislative and policy framework, but also to ensure that there is regular independent monitoring and evaluation of the state of media pluralism in their jurisdictions, and to address the risks identified. The role of the States in adopting regulatory and policy measures to promote the availability, findability and accessibility of the broadest possible diversity of media content, as well as the representation of the whole diversity of society in the media, is also emphasised.

The concerns for protecting human rights and the democratic value of media pluralism in the ongoing digital transformation are reflected in several other recent Council of Europe standard-setting documents, including those addressing the roles and responsibilities of internet intermediaries, and on the human rights impacts of algorithmic systems. The 2018 Recommendation on the Roles and Responsibilities of Internet Intermediaries, particularly emphasised that “*by enhancing the public’s ability to seek, receive and impart information without interference and regardless of frontiers, the internet plays a particularly important role with respect to the right to freedom of expression*”.¹²² Recognizing that a wide, diverse and rapidly evolving range of players, who are commonly referred to as “*internet intermediaries*”, offer and perform a variety of functions and services that are relevant to human rights and democracy, the Committee of Ministers underlines the Member States’ positive obligations to protect human rights and to create a safe and enabling environment to allow everyone to participate in the public debate and to express their opinions and ideas without fear. The concerns related to disinformation campaigns online, which are designed specifically to sow mistrust and confusion and to sharpen existing divisions in society, have also been addressed.

Media pluralism and its value for democracy and human rights in the digital age are also threatened by the risks to the sustainability of quality journalism, as highlighted in a 2019 Declaration on the Financial Sustainability of Quality Journalism in the Digital Age¹²³. While recognising that a democratic society requires citizens to participate in public decision-making, and that such citizens’ capacities depend on their access to relevant and credible information from diverse sources, the Declaration underlines that quality journalism seeks to provide accurate and reliable information that complies with the principles of fairness, independence and transparency, public accountability and humanity. As such, quality journalism should be acknowledged as a public good, serving an important democratic function: “Quality journalism extends the range of diverse, credible, interesting and timely information available to the public and counteracts propaganda, misinformation and disinformation proliferating on social media in particular.”¹²⁴

The democratic and human rights perspective of protecting and promoting media pluralism, and essential standard-setting in this field, is reflected not only in the Council of Europe’s Committee of Ministers’ documents and decisions, but also in the work and decisions of the European Court of Human Rights, the Commissioner for Human Rights and the European Commission for Democracy Through Law (Venice Commission).¹²⁵

¹²² Recommendation CM/Rec(2018)2 of the Committee of Ministers to Member States. *On the Roles and Responsibilities of Internet Intermediaries*. Council of Europe. Adopted by the Committee of Ministers on 7 March 2018. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680790e14 accessed on May 27, 2022.

¹²³ Declaration by the Committee of Ministers. *On the Financial Sustainability of Quality Journalism in the Digital Age*. Council of Europe. Adopted by the Committee of Ministers on 13 February 2019. https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168092dd4d accessed on May 27, 2022.

¹²⁴ Ibid.

¹²⁵ Compilation of Venice Commission Opinions and Reports Concerning Freedom of Expression and Media, Strasbourg, 7 July 2020. [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)008-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)008-e) accessed on May 27, 2022.

iii. UNESCO - Interrelation of media pluralism and cultural diversity

The value of media pluralism in enhancing cultural diversity is reinforced by the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which was ratified by the European Union in 2006.¹²⁶ The Convention reaffirmed that freedom of thought, expression and information, as well as the diversity of the media, enable cultural expressions to flourish within societies.

According to the Convention, 'cultural diversity' refers to the manifold ways in which the cultures of groups and societies find expression (Article 4). Among the measures that are aimed at protecting and promoting the diversity of cultural expressions which the parties to the convention may adopt, are "the measures aimed at enhancing diversity of the media, including public service broadcasting" (Article 6). In 2015, the operational guidelines on the implementation of the Convention in the digital environment were published.¹²⁷

The European Union instruments that contribute to cultural diversity include legislation and actions in the field of audiovisual and media policy, and in the field of electronic communications. However, as Irion and Valcke (2014) emphasised, "the EU presides the economic tenets of audiovisual and online services in the internal market and on the other hand, it has only marginal competences as regards the cultural and democratic functions of the media" (pp. 75-90). They remind us of the complex and interlocked distribution of competences, which must be borne in mind for a proper understanding of the role of the EU in promoting cultural diversity in the audiovisual and online sectors.

iv. OSCE - Media pluralism value for democracy, peace and security

Freedom of expression, media freedom and media pluralism, and their values to democracy, are essentially connected to preserving peace in Europe. The Organisation for Security and Cooperation in Europe (OSCE), incorporates an institution, e.g., the Representative on Freedom of the Media¹²⁸ that, with its early-warning role, also including in its role the dialogue on EU enlargement and EU Eastern neighbourhood countries, contributes to the European framework by protecting the values of media pluralism for democracy and human rights. Moreover, the OSCE's monitoring of elections, which is carried out by the Office for Democratic Institutions and Human Rights,¹²⁹ importantly assesses media freedom and media pluralism in elections by using a long-term, comprehensive and credible election observation methodology.

¹²⁶ UNESCO (2005). *The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, Paris, 20 October 2005. <https://en.unesco.org/creativity/sites/creativity/files/passeport-convention2005-web2.pdf> accessed on May 27, 2022.

¹²⁷ UNESCO (2017). *Operational guidelines on the implementation of the Convention in the digital environment, approved by the Conference of Parties to the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions at its sixth session*, Paris, 12-15 June 2017. https://en.unesco.org/creativity/sites/creativity/files/sessions/digital_operational_guidelines_en.pdf accessed on May 27, 2022.

¹²⁸ OSCE Representative on the Freedom of the Media, <https://www.osce.org/representative-on-freedom-of-media> accessed on May 27, 2022.

¹²⁹ OSCE Office for Democratic Institutions and Human Rights, <https://www.osce.org/odihr> accessed on May 27, 2022.

3.3 The value of media plurality from the perspective of the functioning of the internal market

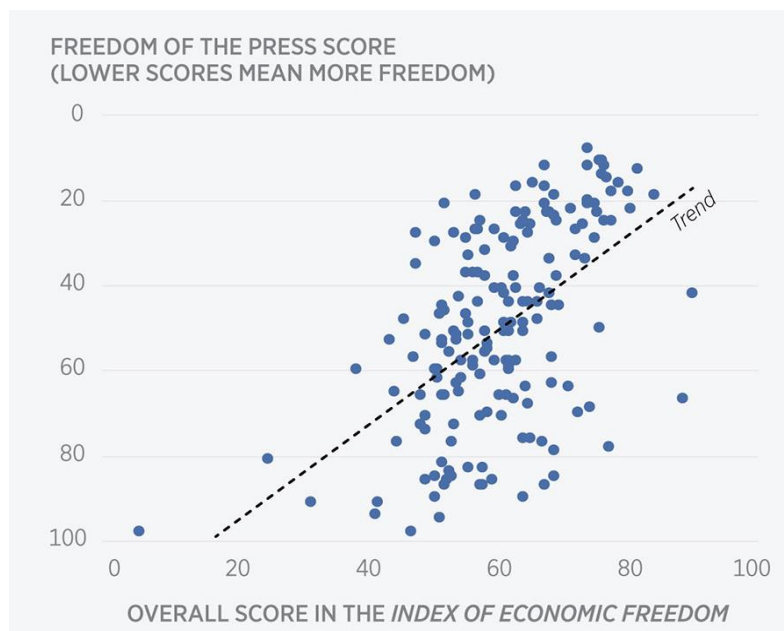
The internal market is the central engine of economic integration within the EU. Pursuant to Article 26 TFEU, “the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.” The following paragraphs explore how the condition of media pluralism may have both direct and indirect effects on the functioning of the EU Single Market and *vice versa*. EU law experts recognize the enduring tensions between the economic and the social dimensions of the internal market (Craig & De Búrca, 2015, 634). This section, by contrast, unravels and tests arguments that serve to underpin the value of media pluralism from the perspective of the functioning of the internal market.

This section will start by collecting evidence of media freedom’s association with economic freedom, the investment climate and corruption. The evidence supports the argument that the inextricable linkages between media freedom and economic freedom underpin EU economic integration, and that media freedom can be considered a key ingredient for healthy and resilient economies.

i. Media freedom and economic freedom

Research suggests that “economic freedom and press freedom are closely intertwined” (Kim & Tyrell, 2018). The Heritage Foundation’s 2018 Index of Economic Freedom finds a strong correlation between a nation’s press freedom and its economic freedom, although empirical evidence on the direction of the causality between the two is inconclusive. It is important to note that the strength of the relationship between the two freedoms is twice as strong in low- or lower-middle-income countries as it is in the highest-income countries (Brookes & Dér, 2018).

Figure I. 1: Countries with freer economies have a freer press



Source: *The Heritage Foundation's 2018 Index of Economic Freedom and Freedom House's Freedom of the Press 2017, reproduced from Kim & Tyrell, 2018.*

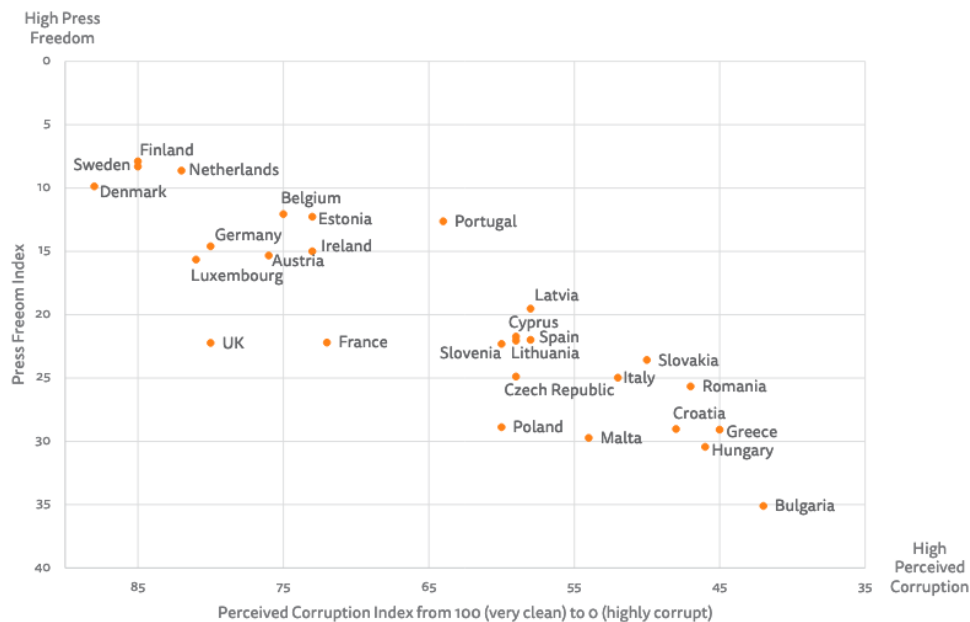
Whether deteriorating media freedom in a given country yields consequences for economic growth and, for instance, investment decisions, is not a straightforward question. Although older research

found empirical evidence for foreign direct investment (FDI) being a significant determinant of media freedom (Dutta & Roy, 2008) the inverse does not hold true, given our current state of knowledge. Besides this, more recent empirical research finds that there is no overall relationship between the amount of FDI that a country attracts and how well it scores for media freedom (Majid, 2021). Nonetheless, the same research finds that Western media companies are more likely to have subsidiaries in countries where media is free (Majid, 2021). It suggests that, in media markets, Western media companies do factor in media freedom in the countries where they invest.

Media freedom and corruption

On the other hand, research has found consistent evidence that freedom of the press can reduce corruption and that the media play a role in the effectiveness of other social accountability mechanisms (UK Department for International Development, 2015). Several quantitative studies find that freedom of the press is strongly correlated with lower levels of corruption (Brunetti & Weder 2003; Camaj, 2013; Chowdhury, 2004). For Europe, researchers have combined the scores from the Reporters Without Borders' annual Press Freedom Index and the scores from Transparency International's Corruption Perceptions Index (see Figure 2 below) (Kleis Nielsen, Gorwa, & de Cock Buning, 2019). While this does not qualify as quantitative evidence of causality, it signifies that there is a correlation between perceived high corruption and lower scores on the press freedom index. Researchers are concerned that "where citizens believe the public sector is corrupt, policies supporting the media – whether private or public – risk being seen as illegitimate, selective support for media with the right political connections" (Kleis Nielsen, Gorwa, & de Cock Buning, 2019). Causality might well work both ways, leading to a vicious interaction between press freedom and corruption.

Figure I. 2: Press freedom and perceived corruption across EU Member States



Source: Reproduced from Kleis Nielsen, Gorwa, & de Cock Buning, 2019

ii. Media freedom and the internal market

From the point of view of the internal market, the level of economic integration that is aspired to may be undermined when a Member State interferes with market processes, including, but not limited to, investments in the media market. As has been argued elsewhere, such interferences create “an unfavourable economic environment for investment” and weakens “the competitiveness of the European economy” (Bárd, Bayer & Carrera, 2016). From this perspective, State interferences in market processes lead to distortions of the investment climate that, indirectly, may “limit the right to free movement of persons, services and establishment” (Bárd, Bayer & Carrera, 2016).

iii. Media plurality and the internal market

In EU Member States with limited media freedom, government support to wholly or partially captured media takes place at the expense of more independent outlets (Kleis Nielsen, Gorwa, & de Cock Buning, 2019). Where, as a result, media outlets cannot sustain themselves, undergo change of ownership, or are driven out of the market, such government policies affect external media plurality. Numerous reports have frequently raised the facts that Hungary and, more recently, Poland, engage in concerted efforts to avert state advertising funds to government-friendly media outlets (Bárd, Bayer & Carrera, 2016). The European Commission’s 2020 Rule of Law Report on Hungary holds that “[s]ignificant amounts of state advertising channelled to pro-government outlets have permitted the Government to exert indirect political influence over the media.” Alternatively, media outlets may adopt an editorial strategy that avoids conflicts with the politicians in power and government policies. In this situation, avoiding controversial issues and political reporting would firstly sacrifice internal plurality and, as a consequence, external plurality.

Politicised media markets can, in turn, affect advertising markets as whole. Qualitative research from Hungary points out that “advertising spending is fundamentally determined by the general reduction in the size of the advertising market and the substantial political polarisation of the ownership structures in the media” (Máriás, Nagy, Polyák & Urbán, 2018). According to this research, multinational corporations and major corporations have to factor in politics in addition to devising effective advertising campaigns (Máriás, Nagy, Polyák & Urbán, 2018). This essentially leaves them with the choice to buy advertisements regardless of politics, to distribute their advertising spending across government-friendly and independent media, or to spend advertising funds exclusively with the pro-government media (Máriás, Nagy, Polyák & Urbán, 2018). Which strategy is picked by which private advertiser depends also on the political saliency of their main activity, but any outcome is no longer driven exclusively by marketing considerations.

4. Relevant EU and Member State competences

This section on EU competences, and the relevant principles, assesses the scope of action within which the EU may regulate. The Treaties do not confer on the EU the competence to deal with media pluralism and diversity. Article 167 of the Treaty on the Functioning of the European Union (TFEU) restricts the EU to only adopting incentive measures and recommendations in order to encourage cooperation between Member States, and to support and supplement their action, expressly excluding taking measures to harmonise Member States’ laws and regulations on matters that are related to culture. Nonetheless, based on the EU’s exclusive competence on competition matters, and the shared competence to harmonise the internal market, various pieces of EU legislation may

affect media pluralism. This section explores the scope of legislative action within the EU competences that relate to media pluralism and diversity.

4.1 EU competences

The scope of the competences of the EU to implement legislation and to regulate is strictly constrained, primarily by the principle of “conferral”, according to which the EU may only act in accordance with the competences that are afforded to it by virtue of the EU Treaties. The EU Treaties, most importantly Article 2 TFEU, confer on the EU either exclusive competence, or shared competence, with the Member States.¹³⁰ In the case of exclusive competence, the EU alone is able to adopt laws, whereas the role of the Member States is limited to applying the law, unless otherwise authorised by the EU to adopt laws themselves. Shared competences enable both the EU and the Member States to pass laws. However, national governments can only do so if the EU has not already proposed legislation. In some areas, the EU is limited to playing a supporting or coordinating role with the Member States, who remain primarily responsible for regulating, in accordance with EU values. The provisions of the Treaties therefore already delineate the areas and scope of EU competences, whose use is confined by the principle of subsidiarity and proportionality.

i. Principle of conferral

As mentioned above, the EU possesses attributed competences, which means that it only has competences to the degree that is conferred by the EU Treaties. The most important provisions in the context of EU competence include Article 4 of the Treaty on the European Union (TEU), which states that competences that are not conferred on the EU remain with the Member States.¹³¹ Further, Article 5 TEU provides for the limits of EU competences as governed by the principle of conferral, according to which the EU shares competences with the Member States to the extent that the subject matter does not relate to a category of exclusive competence, and where the EU is not restricted to supporting, coordinating or supplementing Member State action. This is specifically envisaged in Article 5(2) TEU, which reads as follows: *“Under the principle of conferral, the Union shall only act within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States”*.¹³²

ii. Exclusive competence

Article 2(1) TFEU establishes exclusive competence, which means that the EU can legislate and adopt legally binding acts, while the Member States can only do so if empowered by the EU, or for the implementation of EU acts.¹³³ The subject matter areas in which the EU has exclusive competences are set out in Article 3(1) TFEU, and are limited to, *inter alia*, the establishing of competition rules that are necessary for the functioning of the internal market, a prime focus of EU legislation.¹³⁴ Another aspect of exclusive competence is envisaged in Article 3(2) TFEU, which

¹³⁰ Article 2 Consolidated Version of the Treaty on the Functioning of the European Union (2012) OJ C 326 (TFEU)

¹³¹ Article 4 Consolidated Version of the Treaty on European Union (2008) OJ C115/1 (TEU)

¹³² *Ibid.* Article 5

¹³³ Article 2 Consolidated Version of the Treaty on the Functioning of the European Union (2012) OJ C 326 (TFEU)

¹³⁴ *Ibid.* Article 3

concerns the (conditional) exclusive EU competence to conclude international agreements under certain circumstances, as laid down in the provisions.¹³⁵

Control of mergers within the media market is highly relevant, as concentrated media ownership may hamper the free movement of services within the digital single market as internal and external barriers to enter the market may be created. The High Level Group of Media Freedom and Pluralism recommends that the EU respects cultural aspects within the context of exercising its exclusive competence on matters related to competition. They argue that, for instance, when appraising the impact of an anti-competitive deal on competition for content, not only should the economic arguments, but also the non-economic and cultural arguments be taken into account.¹³⁶ Additionally, from a consumer welfare perspective, a concentration of media (market) power may lead to less diversity and fewer choices for consumers, which may hamper free will. However, EU merger controls that aim to avoid concentrations of (media) market power do not aim to protect media plurality as is understood in European media policy.

iii. Shared competence

The idea of shared competence is embedded in Article 4 TFEU, in line with the principle of conferral.¹³⁷ These “principal areas”, which are set forth in Article 4(2) TFEU, concern matters that are related to the harmonisation of the internal market, social policy, economic, social and territorial cohesion, consumer protection, and so on.¹³⁸ The list of “principal areas” in which shared responsibility applies is not necessarily exhaustive, thus shared responsibility may be seen as the default position, bearing in mind special categories of competence (see, for instance, Article 5 TFEU on the principle of conferral) (Craig & de Búrca, 2015). The basic principle of shared competence is enshrined in Article 2(2) TFEU, which states that “*Member States shall exercise their competence to the extent that the Union has not exercised its competence*”.¹³⁹ Basically, the Member States can take action within the scope or area that the EU has taken action, for instance, where the EU chooses minimum harmonisation. Yet, in addition to that, for matters referred to in Article 4(3) TFEU (research, technological development, and space) and Article 4(4) TFEU (development cooperation and humanitarian aid) the Member States are not prevented from taking legislative action, even if the EU has exercised its competences.¹⁴⁰

Shared responsibility does not imply an equal division of competences, but rather that competence can vary significantly depending on the area of EU law. According to Article 2(6) TFEU, the “*scope of and arrangements for exercising the Union’s competences shall be determined by the provisions of the Treaties relating to each area*”.¹⁴¹ To understand the precise sharing of power in some areas, such as the internal market, consumer protection, social policy and so on, one must thus look at the detailed rules that govern each area. Yet, it is paramount to point out that even in areas that remain

¹³⁵ Ibid. Article 3

¹³⁶ High Level Group on Media Freedom and Pluralism (2013). *A free and pluralistic media to sustain European democracy*. European Commission, p. 4 https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/hlg/hlg_final_report.pdf accessed on May 27, 2022. (Recommendation: “*EU and national competition authorities should take into account the specific value of media pluralism in the enforcement of competition rules.*”); see also Cseres K., Kozak M., (2021) “Media pluralism and (EU) competition law: the urgency to revisit the potential of EU competition law to protect and to reinforce media pluralism in the Member States”; Background Note for conference ‘Media pluralism and (EU) competition law: what role (EU) competition rules play in fostering media pluralism in the Member States?’ on 15th April, 2021, in Amsterdam.

¹³⁷ Ibid. Article 4

¹³⁸ Ibid. Article 4

¹³⁹ Article 2. Consolidated Version of the Treaty on the Functioning of the European Union (2012) OJ C 326 (TFEU)

¹⁴⁰ Ibid. Article 4

¹⁴¹ Ibid. Article 2

within Member State competence, national rules in these areas must be exercised consistently with the four freedoms (goods, people, service, capital) that constitute the core of the internal market or with EU conceptions of citizenship.¹⁴²

iv. Supporting or coordinating role

Besides the exclusive and shared competences, Article 2(5) TFEU allows the EU to take action to support, coordinate, or supplement Member State action, without thereby superseding their competence in these areas, and without entailing the harmonisation of Member States' laws (Schütze, 2006).¹⁴³ Article 167 TFEU states that the EU can only adopt incentive measures and recommendations to encourage cooperation between Member States and to support and supplement their action, excluding the harmonisation of the laws and regulations of the Member States on matters that are related to culture. More specifically, Article 167(4) TFEU states that the *'Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures'*. This can be seen as room for intervention by the EU through *"persuasive soft law"*, in the form of best practices, monitoring, and through *"legal incentive"* measures, to achieve the overall objective of the specific area concerned (Craig & de Búrca, 2015). In that way, the EU can influence Member States' policies to meet the overall objectives and values of the EU, without having competences in a specific policy area. For instance, by virtue of the competences conferred on it by the Treaties, the EU plays a supporting and coordinating role for matters that are related to the cultural sector.

v. Principles of subsidiarity and proportionality

The EU Treaties determine not only the scope of EU competence, but also put principles in place that govern how competences should be exercised. While the principle of conferral relates to the "existence" of competence, the principles of subsidiarity and proportionality are closely related, and concern the "use" of conferred competence. Both principles governing the "use" of competence are embodied in Article 5(3)-(4) TFEU, which states that decisions are retained by Member States if the intervention of the EU is not necessary, and the EU should take action collectively only if the objective of the proposed action cannot be sufficiently achieved by the Member States.¹⁴⁴ The principle of subsidiarity was first introduced in the Maastricht Treaty, and it was contained in the reformed Lisbon Treaty, as well as in the Protocol on the Application of Principles of Subsidiarity and Proportionality to the Treaty and the Protocol on the Role of National Parliaments in the EU.¹⁴⁵ The principle of proportionality further adds that the content and form of EU action shall not exceed what is necessary to achieve the objectives of the Treaties. Accordingly, Impact Assessments conducted by the Commission, with the possibility for feedback from stakeholders, are a significant tool through which to verify the EU's right of action in terms of subsidiarity, to assess the potential economic, social or environmental impacts, as well as the implications for fundamental rights in achieving the objective.¹⁴⁶ It is a way of ensuring the correct application of the principles of subsidiarity and proportionality, in terms of avoiding EU intervention when an issue can be dealt with effectively by

¹⁴² Case C-246/89, *Commission vs United Kingdom*, ECR I-4585, Para. 22-24

¹⁴³ Article 2 Consolidated Version of the Treaty on the Functioning of the European Union (2012) OJ C 326 (TFEU)

¹⁴⁴ Article 5 Consolidated Version of the Treaty on the Functioning of the European Union (2012) OJ C 326 (TFEU)

¹⁴⁵ Protocol (No 2). *On the Application of the Principles of Subsidiarity and Proportionality*. OJ C 115, 9.5.2008, p. 206–209; Protocol (No 1). *On the Role of National Parliaments in the European Union*. OJ C 202, 7.6.2016, pp. 203–205

¹⁴⁶ [Impact assessments | European Commission available at https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/impact-assessments_en](https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/impact-assessments_en)

the Member States, and to ensure that EU action does not exceed what is necessary to achieve the objectives when developing policies (Engel, 2018, 83). National parliaments are also afforded an enhanced role. If a national government considers a legislative proposal not to be in compliance with the principle of subsidiarity, it is required to send a reasoned opinion on why it believes this.

vi. Single, dual and multiple legal bases

According to EU competences, any legal instrument can be adopted on a single or dual legal basis (Engel, 2018, 83). A dual legal basis can be relevant if no single legal basis can be established by the Treaties that would provide sufficient competences. If two or more inseparable objectives are accredited to the proposed measure, a dual legal basis also becomes necessary (Engel, 2018, 83-84). As the Tobacco case by the CJEU reinstates, any EU measure must improve the internal market, even if the instrument is based on another single legal basis, or on a dual legal basis.¹⁴⁷ A dual legal basis can become problematic, as the legislative procedures prescribed vary depending on the legal basis at stake, and on whether or not shared or exclusive competence applies.¹⁴⁸ The CJEU does not reject the use of a dual legal basis and, at times, even considers it necessary. In its Opinion 2/00, the Court accepts the adoption of a dual legal basis “*if it is established that the measure simultaneously pursues several objectives which are inseparably linked without one being secondary and indirect in relation to the other*”.¹⁴⁹ Recent EU legislation has even been built on multiple legal bases, such as the so-called Whistleblower Directive, that affords protection to persons who report breaches of Union law.¹⁵⁰ Any legal instrument that aims to harmonise a specific policy area and does not cause formal procedural difficulties, for instance, if different voting proceedings are required, may have a dual legal basis. Nevertheless, the legal basis should be chosen with the objectives that it aims to achieve in mind, as the “*choice of the legal basis could affect the determination of the content of the contested directive(s)*”.¹⁵¹ The legal basis for a legal instrument must thus be strictly construed, as it predetermines the scope, and approach, as well as the assessment of the risks to the objectives pursued.

4.2 EU competences relevant to media pluralism and diversity

It is crucial to comprehend the limits of EU competences generally in order to be able to determine the possible scope of action for the EU with regard to matters concerning media pluralism. Although media pluralism and diversity are recognised in the EU Charter on Fundamental Rights (CFR), and are interpreted broadly by the CJEU as being an overriding public interest requirement,¹⁵² this does not affect the EU’s competences on the matter as derived from the EU Treaties. Although, since the

¹⁴⁷ Case C-376/98, *Federal Republic of Germany v European Parliament and Council of the European Union. Advertising and Sponsorship of Tobacco Products*, EU:C:2000:544, Para. 83

¹⁴⁸ In the Titanium Dioxide case, the Commission challenged a Council Directive that was adopted on the basis of Article 192 TFEU, instead of on Article 114 TFEU, arguing that the former required merely consultation with the European Parliament (instead of the cooperation procedure) and thus the dual legal basis would undermine the Parliament’s powers; Case C-300/89, 1991, *Commission of the European Communities v Council of the European Communities. Directive on Waste from the Titanium Dioxide Industry*, EU:C:1991:244, Para. 9, 10, 18, 21

¹⁴⁹ Opinion 2/00 (2001) I-09713, Para. 5.

¹⁵⁰ Directive (EU) 2019/1937. *On the Protection of Persons who Report Infringements of Union law*. European Parliament and of the Council. 23 October 2019. OJ L 305, 26.11.2019; is an interesting assessment of the possibility of multiple legal bases with regard to SLAPPs [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694782/IPOL_STU\(2021\)694782_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694782/IPOL_STU(2021)694782_EN.pdf)

¹⁵¹ See Case C-68/86, *United Kingdom of Great Britain and Northern Ireland v Council of the European Communities*, EU:C:1988:85, Para 6.

¹⁵² Case C-148/91, *Veronica Omroep*, ECR I-487, Paras 13-14; Case C-250/06, 2007, *United Pan-Europe Communications Belgium*, ECR I-11135, Para. 48.

Lisbon Treaty, the Charter has the same legal value as the EU Treaties, it shall not in any way extend the competences of the EU as defined in the Treaties (Article 6(1) TEU and Art. 51(2) CFR). According to Article 52(1) CFR, the Charter is binding on the Member States only when they are implementing EU law. Article 11 CFR can thus be interpreted as a “*parameter for the adoption of national acts when they fall under the ‘umbrella’ of EU law, for instance in case of national measures implementing EU Directives, as well as in case of measures which hinder or restrict the fundamental economic freedoms guaranteed by the Treaty*” (Mastroianni, 2011, 6).

Media pluralism, as a non-economic concept, falls within the scope of Member States’ competences on matters that are related to culture and prohibits EU actions in achieving cultural objectives through laws or regulations in the Member States (Irion & Valcke, 2014, 2). The organisation of public service media (PSM) is also protected from any EU interference to preserve Member States’ autonomy, as Protocol No. 29 stresses that the “*system of public service broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and the need to preserve media pluralism*”.¹⁵³ That does not mean that the PSMs are entirely excluded from the scope of EU law, as is evident by the application of the AVMSD and EU competition rules, specifically those on state aid.

What is left is the regulation of media pluralism from an economic perspective, which allows EU action that is based on the guarantee of an internal market for services. The establishment and functioning of the internal market is thus the prime legal basis for all EU media policy measures. Most prominently, the regulation of audiovisual media services is based on the harmonisation of the internal market, and with indirect impacts on media pluralism and diversity.

i. Shared competence for the Establishment and Functioning of the Internal Market

The competences to harmonise the internal market are shared between the EU and the Member States. Generally, the Member States exercise their own competence where the EU does not exercise its own. Matters concerning competition that are relevant to the internal market are, however, exclusively an EU competence. The categorisation of areas in which the EU has exclusive competences, and in which the Member States have no legislative power, or in which both have shared competences, can cause difficulties. Confining strict borderlines between categories and, thus, between exclusive and shared competences is difficult, because some areas may be intertwined, linked, and difficult to demarcate from one another, as demonstrated in the audiovisual media sector.

Article 114 TFEU constitutes the legal basis for EU harmonisation measures in the field of audiovisual media services. The nature of audiovisual services makes it difficult to demarcate the limits of competences, as their activities are of a dual nature, representing a characteristic mix of economic and cultural services, as confirmed by the CJEU in 1974 (Irion & Valcke, 2014, 2). As cultural aspects are part of the Member States’ competence, the EU’s competences with regard to the Audiovisual Media Services Directive (AVMSD) is thus based on its power to coordinate Member State laws so as to bring about the freedom to provide services in the internal market (Articles 51 to 54, and Article 62, TFEU). National regulatory authorities play a decisive role in audiovisual media policy. According to Article 30 AVMSD, such an independent national regulatory authority shall “*exercise their powers impartially and transparently and in accordance with the Directive, in particular, media pluralism, cultural and linguistic diversity, consumer protection, accessibility, non-*

¹⁵³ Protocol (No 29). *On the System of public broadcasting in the Member States*. OJ C 326, 26.10.2012

discrimination, the proper functioning of the internal market and the promotion of fair competition" (Para. 2).

ii. Harnessing Internal Market Competences for Media Plurality

Historically, the EU internal market competence was interpreted rather narrowly, but over the years has increasingly been considered an instrument to achieve goals where the main objective was not directly related to the protection of a competitive market and/or the functioning of the single market (Ariño 2004). As elaborated by Brogi and Gori (2013), there have since been several examples of the EU relying on its internal market competence to regulate media pluralism and enable a level-playing field in the media market, most notably the AVMSD from 2007 and its latest revision in 2018. Irion and Valcke (2015) contend that the competences that the EU could wield from economic integration have shaped Member States' audiovisual policies to a significant extent.

The competence conferred on the EU by Article 114 TFEU does not give the Union legislature "a *general power*" to regulate the internal market.¹⁵⁴ This competence is "*by reference to a criterion of a functional nature, extending laterally to all measures designed to ensure the attainment of the single market*".¹⁵⁵ That competence is limited in the sense that recourse to Article 114 TFEU is "*not justified where the measure has only an incidental effect of harmonising the market conditions within the Union*".¹⁵⁶ Instead, measures under Article 114 TFEU must be "*intended to improve the conditions for the establishment and functioning of the internal market*". Within those limits, the EU thus has competences to adopt measures for the establishment and the functioning of the internal market. Protocol 27 on the Internal Market and Competition, which accompanies the TEU and TFEU, stipulates that the "*internal market as set out in Article 3 of the Treaty on European Union includes a system ensuring that competition is not distorted*" and confirms that the EU has been conferred with the legislative competence to achieve the internal market objective.¹⁵⁷ The Article 114 TFEU legal basis ties in with achieving a high level of consumer protection and maintaining competition conditions in the internal market. In the Vodafone case, the Court considered that the failure to regulate international roaming by Member States led to anticompetitive effects, in the form of high prices for consumers.¹⁵⁸

As applied to the media sector, the EU has the competence conferred to legislate matters that affect the four freedoms, and competition law (Bárd, Bayer & Carrera, 2016). EU legislation concerning the free movement within the single market, including the right to establish media companies, the freedom to provide media services and media-related advertising services and the free movement of journalists, can be relevant to media plurality. To improve the single market, the EU may engage in further harmonisation, especially when it is necessary to attain one of the objectives set out in the Treaties (Bárd, Bayer & Carrera, 2016, 53).

iii. Harmonisation of Member States' national laws

The EU has the competences to harmonise the single market, which may benefit media plurality in the media sector. Article 114 TFEU provides a legal basis to adopt harmonisation measures which

¹⁵⁴ Case C-376/98, *Germany v. Parliament and Council (Tobacco 1)* EU:C:2000:544, Para. 83.

¹⁵⁵ Case C-300/89, *Opinion of Advocate General Tesouro, Commission v. Council (Titanium Dioxide)* EU:C:1991:244, Para. 10.

¹⁵⁶ Case C-209/97, *Commission v. Council ('Cooperation Regulation')* EJA:1999:559, Para. 35.

¹⁵⁷ Protocol (No 27). *On the internal market and competition*. OJ C 115, 9.5.2008

¹⁵⁸ Case C-58/08, *The Queen, on the application of Vodafone Ltd and Others v Secretary of State for Business, Enterprise and Regulatory Reform (Vodafone)* EU:C:2010:321, Para. 38-39

may contribute to mitigate risks to media plurality. Divergent national media laws that deal with the effects of digitalization on the media can pose a barrier to the internal market. To achieve harmonisation, Article 114 TFEU can be relied upon to "*prevent the emergence of future obstacles to trade resulting from multifarious development of national laws*".¹⁵⁹ The EU therefore has competences to harmonise national media laws that are based on its internal market competences as long as such divergences "significantly distort" the internal market, and the EU legal action actually contributes to eliminating that distortion.¹⁶⁰ The AVMSD is an example of the EU taking harmonising measures on audiovisual media services.¹⁶¹ It aims for a consistent application of EU rules among Member States, more transparency and clearer rules for media actors across the EU.¹⁶² The electronic communications sector is another example of the EU's internal market competence as a legal basis for policies that affect media pluralism. As stated in Recital 7 of the Electronic Communications Code: "*The regulation of audiovisual policy and content aims at achieving general interest objectives, such as freedom of expression, media pluralism, impartiality, cultural and linguistic diversity, social inclusion, consumer protection and the protection of minors. The separation between the regulation of electronic communications and the regulation of content does not affect the taking into account of the links existing between them, in particular in order to guarantee media pluralism, cultural diversity and consumer protection.*"¹⁶³ The Electronic Communications Code regulates actors who are active in the online media ecosystem, e.g. infrastructures that carry audiovisual media and/or auxiliary services, such as electronic programming interfaces. Similarly to the AVMSD, shared competences based on harmonisation are used to achieve media related objectives. This may also provide a relevant regulatory gateway for regulating recommendation systems where they affect online media distribution and consumption.

Another relevant legislative development at EU level is the Digital Services Act Package consisting of the Digital Services Act (DSA) and the Digital Markets Act (DMA), which are both based on Article 114 TFEU, and on which the co-legislators reached a political agreement on 24 March¹⁶⁴ and 23 April¹⁶⁵ respectively. The regulatory goals are the creation of legal certainty, as well as the harmonisation of the EU legal landscape, in order to create a safer and more open digital space in which the rights of users of digital services are protected.¹⁶⁶ It further aims to create a level-playing field that enables a fair competition, innovation and growth within the European Single Market.¹⁶⁷ Digital services, information intermediaries and digital platforms increasingly impact on the media

¹⁵⁹ Case C-350/92, *Spain v. Council*, ECR I-1985, Para. 35; Case C-377/98, *Netherlands v. Parliament and Council*, ECR I-7079, paragraph 15; *British American Tobacco (Investments) and Imperial Tobacco*, Para. 61

¹⁶⁰ Case C-376/98, *Judgment of 5 October, 2000, Germany v. Parliament and Council (Tobacco 1)*. The Court of Justice of the European Union. Para. 84, 106

¹⁶¹ Directive 2018/1808 amending Directive 2010/13/EU. *On the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities*. European Parliament and Council of the European Union. 14 November 2018.

¹⁶² *Ibid.*

¹⁶³ Directive (EU) 2018/1972. *Establishing the European Electronic Communications Code (Recast)*. European Parliament and the Council. 11 December 2018. OJ L 321, Recital 7

¹⁶⁴ https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1978

¹⁶⁵ https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2545

¹⁶⁶ Proposal for a Regulation. *On a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC*. European Parliament and of the Council.

Proposal for a Regulation. *On Contestable and Fair Markets in the Digital Sector (Digital Markets Act)*. European Parliament and the Council. <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>

¹⁶⁷ Proposal for a Regulation. *On a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC*. European Parliament and the Council.

Proposal for a Regulation. *On Contestable and Fair Markets in the Digital Sector (Digital Markets Act)*. European Parliament and the Council. <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package> *ibid.*

ecosystem and media pluralism. For instance, as digital platforms increasingly fulfil functions that were traditionally accomplished by the legacy media, particularly in terms of news distribution, audience engagement and technological funding and innovation, the opportunities for competition must be fair. Once in force, both legislations contribute to the attainment of the digital single market in ways that can benefit media pluralism indirectly by enhancing competition in platform-dominated markets.

4.3 Proposals in the literature for new directions in protecting media pluralism and diversity inside EU law

EU legal instruments that are based on Article 114 TFEU, and that aim to regulate the digital economy, often affect the media, online media services, information providers as well as digital platforms, that together form the digital media ecosystem.¹⁶⁸ As general interest objectives, media pluralism and diversity are attached to the legal instruments that are primarily based on the internal market's legal basis. The lack of effectiveness in protecting media pluralism and diversity through economic-focused legal instruments alone is evident, and new directions and proposals should be explored. This subsection looks at the criticisms and proposals in the literature on the EU's role in protecting media pluralism.

Current EU legal instruments in the electronic communications sector that aim to protect media pluralism and diversity are based on the internal market competence under Article 114 TFEU. Legal action that is based on the EU's internal market competence, which affects the media, requires particular consideration that goes beyond economic risks, such as prices, lower output or reduced innovation (Pisarkiewicz & Polo, 2021, 54). When dealing with the media, democracy and public discourse are affected (Pisarkiewicz & Polo, 2021, 54). This is why the EU commits to protecting media pluralism as well as freedom of expression in Article 11 of the Charter and Article 10 ECHR, and the ECtHR also stresses that "*there can be no democracy without pluralism*".¹⁶⁹ The question as to whether or not economic incentives are sufficient to provide pluralistic information, is thus a key issue (Pisarkiewicz & Polo, 2021, 54). Nevertheless, Article 114 TFEU can provide a legal avenue to contribute to the promotion of media pluralism up to a certain degree by removing barriers for media services and journalism as well as media-relevant advertising services.

i. The lack of the effective evaluation of fundamental rights implications

A study assessing the effectiveness of fundamental rights protection in EU Impact Assessments came to relevant conclusions (Dreyer, Heyer, Schulz & Seipp, 2020, 40). The analysis of various legal instruments, based on the internal market's legal basis in the field of media law at the EU level, demonstrate that Impact Assessments, such as those for the AVMSD and the Digital Single Market Directive (DSM), do not sufficiently balance the implications for fundamental rights (Dreyer, Heyer, Schulz & Seipp, 2020, 40-45). Impact Assessments primarily evaluate the economic, environmental and social impacts, and only "whenever relevant" look at the human rights implications.¹⁷⁰ Since the area of media regulation is one with particular relevance to fundamental rights, a complex balancing

¹⁶⁸ See Part 2. of this Study in regard to a more detailed approach to defining 'media'.

¹⁶⁹ Article 10 Council of Europe. (1952). The European Convention on Human Rights (ECHR) Strasbourg, Directorate of Information.; Article 11 EUROPEAN PARLIAMENT. (2000). Charter of Fundamental Rights of the European Union. [Luxembourg], Office for Official Publications of the European Communities.; *Centro Europa 7 S.R.L. and Di Stefano v. Italy* Application no. 38433/09, 7 June 2012, Para. 129

¹⁷⁰ [Impact Assessments - Trade - European Commission](https://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/impact-assessments/) available at <https://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/impact-assessments/>

assessment of the implications for media freedom, pluralism and diversity should be required (Dreyer, Heyer, Schulz & Seipp, 2020, 40).

ii. EU competition law not suited

In the context of regulating the digital single market, particularly the dominant digital platforms and gatekeepers, it has been argued that competition law is not fit to tackle the fundamental rights' concerns that are at stake (Lynskey, 2017). The EU has exclusive competence to deal with competition matters, which may affect the media market and, thus, media pluralism. However, competition law, as an economic-based legal instrument, targets market power, whereas media power (also referred to as 'opinion power') is of a different nature and has a political dimension (Neuberger, 2018; Helberger, 2020). Competition authorities may be competent to assess the economic effects of mergers and monopolisations, however, it cannot appraise if companies have political power (Aral, 2020, 293). In addition to this, Parcu and Rossi (2021) have pointed out that the impact of platforms on the economy as a whole, and of the distribution of information, are 'macro problems' that require a broader basis than a competition intervention that is, in fact, a 'micro instrument' that operates on a case-by-case basis. While the DMA and the DSA, once in force, will create ex ante regulation for digital gatekeeper services and very large online platforms, the role of the media and media plurality are not specifically recognised and media actors are treated like any other online business.

iii. Merger control and big data

Even when a competition authority that controls mergers and acquisitions in the media market establishes that a digital intermediary has market power, harm to fundamental rights is not assessed within the specified parameters of competition, as seen in the merger decision concerning Facebook and Whatsapp (Lynskey, 2017, 16). Instead, the relevant parameters of competition are price, quality, choice and innovation, to achieve 'consumer welfare'. The role of big data in profiling media users introduces new aspects to consider in merger evaluations, not only from a potential barrier to entry perspective but also from a fundamental rights perspective (Pisarkiewicz & Polo, 2021, 56). Control and access to user data and to user preferences and interests may lead to an uncompetitive media market, where a few digital platforms control the market, and media companies are dependent on platforms and that data, for instance, to advertise.¹⁷¹ This highlights a specific and complex issue, as consumer data is a source not only of economic and market power, but also of media and political power.

4.4 Member States' competences in the field of culture, in addition to positive obligations to guarantee effective pluralism

It is also important to emphasise two further issues that are relevant when discussing competences in the field of media pluralism and diversity: the competences of the EU and Member States in the field of culture; and the positive obligations on Member States to put in place an appropriate legislative framework to guarantee effective pluralism. First, in relation to competences, under Article 6 TFEU, the EU only has the competence to "*carry out actions to support, coordinate or supplement the actions of the Member States*" in the area of "culture".¹⁷² In addition, Article 167 TFEU further teases out EU and Member States' competences in the field of culture, and specifically provides that EU action "*shall be aimed at encouraging cooperation between Member States and, if necessary,*

¹⁷¹ See Chapter B2 of this Study on the access to and the intensity of use of consumer data.

¹⁷² TFEU, Article 6.

supporting and supplementing their action” in the areas of (a) the improvement of the knowledge and dissemination of the culture and history of the European peoples; (b) the conservation and safeguarding of cultural heritage that is of European significance; (c) non-commercial cultural exchanges; and (d) artistic and literary creation, including in the audiovisual sector. Crucially, and as mentioned above, Article 167(5) TFEU provides that EU action, under Article 167, excludes “*any harmonisation of the laws and regulations of the Member States*”.¹⁷³ However, the EU is required, under Article 167(4), to take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures. As the European Commission has stated, Member States thus have an “*exclusive competence on cultural policy*”.¹⁷⁴

The second important issue is that, under Article 10 ECHR, the Member States have a positive obligation to put in place an appropriate legislative and administrative framework in order to guarantee effective media pluralism. This important obligation has been recognised by the ECtHR in its case law, under Article 10 ECHR, including by the Grand Chamber of the Court. Importantly, for over two decades, the ECtHR has held that the State is the “ultimate guarantor” of pluralism, given the fundamental role of freedom of expression in a democratic society.¹⁷⁵ As such, the ECtHR has delivered a series of judgments on media pluralism. For example, in *Manole and Others v. Moldova*, the Court held that the State must ensure, through law and practice, that the public has access, through the audiovisual media, to impartial and accurate information and “*a range of opinion and comment*”, which reflect the “*diversity of political outlook within the country*” and that journalists are not prevented from imparting this information and comment.¹⁷⁶ Indeed, in *Centro Europa 7 S.r.l. and Di Stefano v. Italy*, the ECtHR specifically relied upon a Committee of Ministers’ Recommendation on Media Pluralism and Diversity of Media Content, noting that, in order to promote and protect pluralism and diversity, States should adapt the existing regulatory frameworks, particularly those on media ownership, and adopt any “*regulatory and financial measures called for in order to guarantee media transparency and structural pluralism, as well as diversity of the content distributed*”.¹⁷⁷

It is therefore evident that the ECtHR has laid down particularly detailed obligations on Member States in relation to media pluralism under Article 10 ECHR, and, as mentioned above, the Committee of Ministers has also adopted a series of Recommendations on media pluralism and diversity which flesh out further obligations. In relation to this, it would seem that similar obligations would flow from Article 11 of the EU Charter, and its guarantee of media pluralism, given the CJEU’s express finding that Article 11 should be given the “same meaning and the same scope” as Article 10 ECHR, “as interpreted by the case-law of the European Court of Human Rights”.¹⁷⁸

5. Conclusions

This Study embraces the broad notion of the media that has been adopted under the auspices of the Council of Europe in Recommendation CM/Rec (2011)7 of the Committee of Ministers to the Member States on 21st September, 2011. Utilising said definition online media is defined as a “wide

¹⁷³ TFEU, Article 167(5).

¹⁷⁴ Communication from the Commission to Parliament and Council. *On A New European Agenda for Culture*. European Commission. COM(2018) 267 Final, at p.2.

¹⁷⁵ *Informationsverein Lentia and Others v. Austria*, Application no. 13914/88; 15041/89; 15717/89; 15779/89; 17207/90, 24 November, 1993, Para. 38.

¹⁷⁶ *Manole and Others v. Moldova*, Application no. 13936/02, 17 September, 2009, at Para. 100.

¹⁷⁷ *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], Application no. 38433/09, 7 June, 2012, at Para.134.

¹⁷⁸ See Case C–345/17, *Judgment of the Court (Second Chamber) of 14 February, 2019, Sergejs Buivids v. Datu valsts inspekcija*. The Court of Justice of the European Union. Para. 65.

range of actors involved in the production and dissemination of media content online and any other intermediaries and auxiliary services which, through their control of the distribution of media content online, or of editorial-like judgments about content, they link to or carry, have an impact on the media markets and media pluralism”.¹⁷⁹

Such a broad notion of the media is markedly different to the various definitions of media actors handled in EU legislation that is used to carve out targeted interventions by means of providing definitions for particular media actors in EU sectoral regulation, such as “audiovisual media services” or “video-sharing platforms” in the AVMSD. Nonetheless, the CJEU has equally adopted a broad and functional definition where it had to interpret media-related notions in the context of exceptions and derogations for “journalistic purposes”. This means also EU law recognises a broad notion of the media especially in relation to the protection of the negative freedom of the right to freedom of expression.

This Chapter helpfully distinguishes media actors from other actors in the media ecosystem which contribute to the functioning or accessing of media, but do not or should not exercise editorial control and are thus not to be considered media. These other actors in the media ecosystem, such as, among others, online platforms and social media, are increasingly influential over the production, distribution and consumption of media which is why they ought to be considered in conjunction with media plurality online. Having clarified what media are and who qualifies as media actors, as opposed to other actors in the media ecosystem, this Section then approaches the normative notion of media plurality.

This Chapter reiterates the importance of media plurality for the fulfilment of fundamental rights and the functioning of contemporary liberal democratic societies. Underscored by a review of standard-setting instruments of the Council of Europe, policy documents of the European Union as well as OSCE and UNESCO instruments in addition to the pertinent literature, media plurality must be considered an enduring normative principle of media policy in Europe and beyond. Media plurality requires as much protection in today’s digital media systems as it used to be in the traditional offline media environment.

Traditionally, our understanding of media plurality used to be primarily focused on facilitating a diverse supply of media content. The Section briefly sketches the disruptive effects of the media’s digital transformation, the rise of very large online platforms, and issues with refinancing the production of media content, and in particular journalism and news.¹⁸⁰ Besides, the notion of “*exposure diversity*” with its focus on the receiving end of media plurality online is becoming a central concern. Hereby, self-selection effects of online media users as well as the increasing use of content moderation, rankings and recommendation systems by media actors and/or other actors in the online media ecosystem can impact on the diverse consumption of media content.

In this regard, the notion of “*expression on matters of public interest*” becomes quite crucial for media plurality. “*Public interest content is a normative definition of media and information content that is produced by organisations or providers that strive to achieve wider social objectives*” (Mazzoli & Tambini, 2021, 12-17). The AVMSD holds a provision that Member States may take measures to secure the prominence of audiovisual media services of “*general interest*” but does not provide a

¹⁷⁹ Recommendation CM/Rec (2018)1 of the Committee of Ministers to the Member States. *On Media Pluralism and the Transparency of Media Ownership*. Council of Europe. 7 March, 2018, at Appendix

¹⁸⁰ See Chapter B2 of this Study for an Overview of the distribution of advertising revenues and the access to, and intensity of use of, consumer data.

definition of this notion.¹⁸¹ The EU DSM Directive in the field of copyright recognises the links between “journalistic publications” and media plurality.¹⁸²

Aside from realising fundamental rights and benefiting the quality of democracy, a free media that caters for pluralistic opinions and viewpoints is closely intertwined with healthy and resilient economies. A review of the evidence of media freedom’s association with economic freedom, the investment climate and (perceived) levels of corruption would support this argument. By extension, the condition of media pluralism can have both direct and indirect effects on the functioning of the EU internal market and *vice versa*. In the EU Member States where media is not free and/or captured, by contrast, the free movement of services and investments in media markets and neighbouring markets, such as advertising markets, can be distorted while (perceived) levels of corruption appear to be higher.

The establishment and functioning of the internal market under Article 114 TFEU constitute the main legal basis for all EU media policy measures. While this means that, as a general interest objective, media pluralism has to be approached from an economic angle, this objective has been realised to a certain extent via the harmonisation of the internal market for audiovisual media services. Moreover, EU legislation like the Electronic Communications Code regulates actors who are active in the media ecosystem contributing to the realisation of the objective of media pluralism. The DMA and the DSA, once adopted and in force, will create *ex ante* regulation for digital gatekeeper services and very large online platforms, however, media actors will be treated like any other online business users.

This Study embraces a holistic definition of media plurality and a holistic policy approach, which considers the States and the EU, within its competences, to be the ultimate guarantors of media plurality, and recognizes the importance of collaborative efforts in regulation and self-regulation. The scope of the Study being primarily “online media”, Part A of the study will focus on the prominence, findability, and discoverability of general interest content; while Part B of will focus on measures concerning the concentration of economic resources and the economic viability of media activities with a view to ensure media plurality.

¹⁸¹ See Chapters A1 and A2 of this Study for a mapping of the measures related to the prominence and findability/discoverability of general interest content and services and an assessment of their effectiveness.

¹⁸² Directive (EU) 2019/790, Recital 54.

CENTRAL FINDINGS: An EU law approach to media plurality and diversity online

- This Study embraces a broad notion of the media that has been defined as a “wide range of actors involved in the production and dissemination of media content online and any other intermediaries and auxiliary services which, through their control of the distribution of media content online, or of editorial-like judgments about content, they link to or carry, have an impact on the media markets and media pluralism”.¹⁸³
- This definition helpfully distinguishes media actors from other actors in the media ecosystem which contribute to the functioning or accessing of media, but do not or should not exercise editorial control and are thus not to be considered media.
- Media pluralism is an enduring normative principle for the fulfilment of fundamental rights and the functioning of contemporary democratic societies that requires as much protection in today’s digital media systems as it used to in the traditional offline media environment.
- In the digital media environment media pluralism is as much concerned with a diverse supply as with a diverse consumption of media content. “*Exposure diversity*” refers to the extent to which media consumers are exposed to a diverse array of media content, especially “*expression on matters of public interest*” or “*general interest content*”.
- A free media that caters for pluralistic opinions and viewpoints is closely intertwined with healthy and resilient economies. The condition of media pluralism can directly and indirectly support the attainment of the functioning of the EU internal market and *vice versa*.
- The establishment and functioning of the internal market under Article 114 TFEU constitute the main legal basis for all EU media policy measures. This competence also provides a relevant regulatory gateway for regulating actors who are active in the online media ecosystem that do not have editorial control over media but affect the distribution and consumption of media.
- It is recommended that EU media policy and legislation
 - afford a broad recognition of media actors in addition to providing specific definitions of regulated media actors,
 - continue its independent periodic monitoring of media freedom and pluralism, and
 - seek to collect empirical evidence for the role of media pluralism for the functioning of the internal market.

¹⁸³ Recommendation CM/Rec (2018)1 of the Committee of Ministers to the Member States. *On Media Pluralism and the Transparency of Media Ownership*. Council of Europe. 7 March, 2018, at Appendix

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

Authors: Ingrid Lambrecht, Eleonora Maria Mazzoli

Reviewers: Damian Tambini, Peggy Valcke

With contributions by: Noémie Krack, Emine Ozge Yildirim, Brankica Petković

1. Introduction

1.1 Context of the assignment

To inform current policy and legal developments in the area of the prominence and discoverability of content online, it is firstly pivotal to better understand the current industry practices, emerging issues and the existing regulatory frameworks. To do so, this first chapter will present a mapping of both “non-legislative measures” and legislative measures around content prioritisation online. By non-legislative measure, we intend as industry practices, internal guidelines, content policies and standards (where available) that are currently shaping how content is aggregated, curated and prioritised online. The objective of this part of the study was therefore to understand the role that different market actors play when it comes to deciding on what content and information is made more or less prominent to the final users. By legislative measures, we refer to the relevant regulatory framework that can impact content prioritisation processes online.

This qualitative research is based on a multi-methods data collection process, combining desk research, structured experts interviews and a qualitative survey to gather data and insights on these (a more detailed overview on the methodology can be found in Section 7 of the A3 Chapter). In alignment with the scope of this study and Task 0, the focus of this mapping is on the internet-distributed audiovisual media value chain and, more specifically, on its distribution segment.

These mapping exercises though require a shared understanding and definition of the key concepts discussed here, namely, prominence, discoverability, general interest, public interest and public value services and their content, which will be reached by building on existing literature and the consortium’s research expertise in this area. As a starting point, working definitions have been drawn from previous work in this area (e.g., Mazzoli, 2020) and the study carried out by Research Team members for the Council of Europe’s study (Mazzoli and Tambini, 2020), but they will be further contextualised within the regulatory and policy regimes that are analysed in the study. In this regard, it should be noted that, especially for the notions of general or public interest services or content, the mapping shows that definitions vary widely between and within countries, depending on the context in which the notion is applied.

Firstly, within the aforementioned context, the following working definitions (Mazzoli, 2020; Mazzoli and Tambini, 2020) have been used in this first deliverable to refine the scope of the mapped legislative and non-legislative measures to those affecting the mechanisms of public exposure to content that follow:

- Content prioritisation: the range of design and algorithmic decisions that result in the prominence and discoverability of content
- Prominence: the location of content and services on internet intermediation services that are more or less visible to the final users
- Discoverability: the likelihood of discovery, and the related consumption of content.

Secondly, another key concept for this part of the study concerns the definition of those services that are granted a prominent and easier discover, which can be broadly referred to as public interest services. The notion of public interest services builds on a normative understanding of media and information content that are produced by organisations and/or service providers that strive to achieve

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

wider public and societal objectives, that are best-serving a societal collective and enhancing public values rather than solely pursuing their own private interests and commercial gains. However, one of the working assumptions of this study is that public interest services do not have to be necessarily equated with publicly-funded or public service media (PSM) organisations, since in certain instances also commercially-funded media may also produce content that is considered to be of public interest and contributed to wider public and societal goals.

However, national, regional and international policymakers and regulators are constantly attempting to define and operationalise these normative notions into applicable criteria and assessment frameworks, which can be applied to certain categories of content and actors. Indeed, when mapping the different definitions that are used across European countries, it has emerged that these notions may sometimes be subject to specific sets of criteria that aim to determine whether specific content, or specific services, qualifies as such within a certain regulatory context. For this reason, the notion of general or public interest services/content will be further refined in the context of A2 and A3, in order to develop a more general definition, one which is equipped with practical examples and in-depth case studies. The aforementioned definitions will thus be the foundation on which the work of A2 builds, when assessing the effectiveness of these measures in practice, both those undertaken by media actors and those implemented and enforced by regulators. Finally, findings and insights from both A1 and A2 will then feed into the recommendations of A3 in this area.

More information can be found regarding the different research methods applied in the methodological Section 7 of Chapter A3, and the full overview of the legislative country mapping exercise may be found in Annex A1.

1.2. Structure

The overall objective of this chapter is therefore to map both categories measures used to increase and safeguard the prominence and findability/discoverability of general interest content for the general public. To do so, it will first present the findings in regard to the non-legislative measures, showing the complexity of obtaining the objective in practice. It will then present the findings of past and future regulatory interventions so as to further enable and support this objective.

1.2.1 Mapping of non-legislative measures in Europe

Content prioritisation practices, including decisions on prominence, discoverability/findability of general interest content online, are primarily driven by industry practices, and they vary depending on the services and devices. Based on the EU competences and the scope outlined in Part 0, we will focus, as a starting point, on the industry actors that are covered by the scope of application of the AVMSD and that integrate that with an evidence review of selected technology manufacturers (e.g., smart TV producers), and social media platforms that are identified as being relevant for the prominence and discoverability of content online. Based on past research experiences, we are aware that the level of transparency and accountability of the non-legislative measures of prioritisation systems is rather limited, and it varies significantly between different organisations and their services. Indeed, how discoverability and prominence decisions are taken is often undisclosed, protected by industry trade secrets, as in the case of recommendation systems, or by sensitive commercial negotiations and agreements, as in the case of paid-for prominence placement. Furthermore, mechanisms through which content providers negotiate the access to, discovery and prominence of their content and services on video streaming services (e.g., Netflix, Amazon Prime Video), device interfaces (e.g., Apple TV or Google Chromecast TV) or aggregated video interfaces (e.g., Amazon Fire homepage) are rather different.

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

Nowadays, media markets are experiencing a period of drastic change and development as the penetration and quality of broadband has improved, providing a high-quality distribution platform for audiovisual media services alongside digital terrestrial television (DTT), cable and satellite. Even though significant audience segments thus continue to watch linear television, others consume only internet-distributed services, or a combination of both. Indeed, the increasing availability and popularity of internet-connected devices, from smart TVs to smartphones and tablets, is multiplying users' routes to content. At the same time, the rise of on-demand and streaming services is not only allowing users to have access to a much broader range of content, from both national and international players, but it is profoundly changing the way content is distributed and aggregated through different screens.

Given the complexity and the constantly evolving nature of this area, the study provides a typology and overview tables that exemplify the prioritisation mechanisms of the different types of services and devices that are identified. This typology builds on previous work by the research team members in the Council of Europe's study on "Content Prioritisation uncovered: the discoverability of public interest content online (Mazzoli and Tambini, 2020), and relevant studies that have emerged from the literature review, by advancing such works with a more in-depth discussion of a wider range of industry practices, supported by case studies, examples and visualisations.

More specifically, this first section is structured in three parts addressing key gateways to content and information, respectively, smart TVs, smartphones and smart speakers. For each gateway, the role of different market actors is presented and discussed, alongside examples of the prioritisation measures that take place at the software and hardware level. Finally, the chapter will conclude with closing remarks that will pave the way for discussion on the emerging issues that these measures may raise in relation to the diversity of exposure and the internal plurality of our online media ecosystem, which will be the focus of the following chapters and related policy recommendations.

1.2.2. Mapping of legislative measures in Europe

Promoting the diversity of audiovisual media consumption through positive interventions that could impact how content is prioritised on linear and non-linear services has traditionally been addressed through measures that tackle scarcity at the supply and distribution levels of the media value chain. The former includes measures to promote the production of specific types of content and providers, such as general interest content and European works. The latter mainly refers to must-carry obligations (sometimes coupled with must-offer obligations) and the regulation of so-called digital bottlenecks (conditional access, EPGs). These frameworks though derive from legacy broadcasting systems and primarily apply to linear distribution, while - despite the introduction of organisational duties for video-sharing platform services in the AVMSD 2018 - the online audiovisual media environment is still lacking in prominence rules. In today's online media environment though, new forms of scarcity - on the side of the media user - have emerged, resulting in new measures to ensure diversity of exposure and media pluralism through what we might call prominence or discoverability rules.

At the same time, notions of prominence, findability/discoverability of content online are currently emerging as public policy objectives at the national, European, and international levels. Regulators and policymakers are struggling to understand how discovery and search functions work on internet connected devices, their underlying hardware and software systems. Their attempts to define these notions in regulation are still limited, and existing rules often lead to definitional confusion. These policy debates are addressed in different regulatory frameworks, from audiovisual media and electronic communications regulation, over competition frameworks and electronic commerce law,

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

to codes of standards for disinformation and news. Furthermore, the Council of Europe has also been looking into these issues by publishing its 2018 Recommendation on Media Pluralism and Transparency of Media Ownership, and a Guidance Note on Content Prioritisation, Prominence and Discoverability Online. It stresses that the online environment requires fresh approaches in order to improve exposure to diverse and general interest content for EU citizens.

Within this context, the results that are derived from the non-legislative mapping will reveal that there are a large number of factors at play when assessing the prominence, findability or exposure to general interest content. Not only are there apparent technical challenges to such an objective, but as shown also by the non-legislative mapping, the variety of actors who are exercising a direct or indirect impact on the resulting visibility of content for the end user. This myriad of influences on prominence may lead to further challenges in terms of technical dependencies or problematic market behaviours. Regulatory intervention in this area therefore first requires a thorough understanding of the complexities of these relations between market actors and their impact on the end user's exposure to diverse content. At the same time, past regulatory interventions aimed at safeguarding media pluralism may also constitute an additional factor in assessing the relationships between actors in the traditional media environment. Following the non-legislative mapping, the legislative mapping that follows looks at the different types of regulatory interventions undertaken – or planned – in an attempt to improve the end users' exposure to general interest content, including measures that are applicable to both the offline and online media environments.

As touched upon in Part 0, legislative media pluralism measures come in various forms within Europe. Referring back to the discussion regarding EU competences in Part 0, the competences that are relied upon by European countries to regulate the media are largely guided by differing national regulatory traditions and underlying normative objectives. However, with the impact of the online media environment raising important questions in regard to cross-border impact, and indiscriminately affecting national media environments, countries across Europe appear to be grappling with the best course of action to take in order to safeguard media pluralism for their citizens.

The legislative mapping of this part therefore aims to shed light on the different national approaches to measures relating to prominence and findability/discoverability. The mapping aims to be as comprehensive as possible by: (1) looking at both traditional regulatory interventions that are related to the offline media environment (i.e., must carry and must offer), and novel attempts to regulate the prominence and findability of general interest content in the online environment, and by (2) extending the mapping beyond EU Member States, thus including approaches that are independent of the possible transpositions of the related EU Directives.

2. Mapping of industry practices with explanatory cases

This first mapping of industry practices is focused only on the relevant segment of the online audiovisual media industry in order to exemplify how different content prioritisation measures enter into play at different levels and investigate the level of the control and decision-making power of different actors (See Fig. A1.1, below). Firstly, it should be highlighted that content prioritisation measures, and related decisions on prominence and discoverability, take place on two key levels: 1) at the level of the device's user interface (UI) and its design, which could be considered to be the first gateway to content and information, 2) at the level of services' UI, their different designs, browsing, searching and recommendation systems' functionalities. The responsibility and control over content prioritisation measures varies depending on the role of different industry actors on these two levels. Secondly, it should also be noted that, given the increasing fragmentation of this industry segment and the growing number of gateways to content and information online, there is no one-

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

size-fits-all approach to content prioritisation, and there are a number of factors that can influence these processes. As has indeed been argued by Mazzoli and Tambini (2020), there are at least four factors that influence content prioritisation measures, namely, the technological architecture of the devices and services investigated, the relevant regulatory and policy frameworks, the commercial negotiations and market relations between the industry actors involved, and the different levels of users' agency¹⁸⁴. While this mapping exercise thus aims to provide a broad overview of industry practices, some of the specificities deriving from those factors, will be addressed in the A2 case study analysis.

Overall, from the ongoing review of academic literature, grey literature, and the first sample of interviews, it has emerged that there are no shared guidelines nor are there industry self-regulatory standards, when it comes to the design and implementation of content prioritisation measures and the related prominence and discoverability decisions in the internet-distributed space. At the moment of writing, though, there are industry standards and initiatives which could improve content prioritisation measures on certain services.

The primary example is the Journalism Trust Initiative (JTI). It started as a collaborative standard setting process, according to the guidelines of the European Committee for Standardisation (CEN), led by Reporters Without Borders, and supported by the European Broadcasting Union (EBU), Agence France Presse (AFP), and more than 120 experts and entities. In 2019, it published a reference document, establishing technical standards and professional norms for journalists and media outlets aimed at fostering ethical journalistic practices by intervening at the level of governance and industry practices (JTI 2019). The standards could therefore be seen as an attempt to define "public interest news services" that do not, however, interfere with the editorial and content policies of news media organisations and journalists. As it will be further discussed in A2,¹⁸⁵ these standards concern processes of production and distribution of content, as well as the governance of news media outlet, proposing clauses on transparency and disclosure of ownership and funding; accountability -- both internal and external; responsibility for content, sources; and accuracy (JTI 2019, pp.11-20). This initiative does not, therefore, label, rank or benchmark individual pieces of content, on the contrary, a "quality label", or an imposed hierarchy between types of content is seen as being problematic, because it may be misused, and could potentially be turned into private or public censorship.¹⁸⁶

Secondly, there are some efforts being made that are moving towards advancing common standards among technology manufacturers, the news media and civil society organisations. Firstly, within the context of the industry-led consortium Digital Video Broadcasting (DVB)¹⁸⁷, the AVMS working group is discussing the possibility of developing technical standards, which will facilitate the signalling of specific types of services, such as general or public interest services. The standards will therefore focus on the technical side and will not concern the definition of which services should be prioritised.

Thirdly, various civil society initiatives have emerged in recent years to promote transparency, accountability and fairness that could in turn also improve online content policies of platform organisations and their intermediary services, including search engines and social media platforms. One of the main examples in this area is the Corporate Accountability Index (2020) of Ranking Digital

¹⁸⁴ By users' agency we refer to the different levels of both control that users have on their consumption choices and viewing experiences, as well as their level of literacy and understanding of these processes.

¹⁸⁵ See Chapter A2 of this Study.

¹⁸⁶ These industry standards will be discussed in more details in A2 and A3.

¹⁸⁷ DVB is an industry-led consortium of media and technology companies that work together to design open technical specifications for digital media delivery. For more information, see: <https://dvb.org/>

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

Rights (RDR).¹⁸⁸ In their broader efforts to safeguard the freedom of expression and privacy on the internet, and to promote global standards and incentives for intermediary services, RDR has developed a comprehensive monitoring and assessment tool. This Index uses 58 indicators across three categories — governance, freedom of expression and information, and privacy — to evaluate company commitments, policies, and practices that affect digital rights, including benchmarks for what companies should disclose about their algorithmic systems and targeted advertising practices. Amongst these indicators, and of particular relevance for the purposes of this study, are those applied for their human rights-based impact assessment frameworks for algorithmic systems, and for algorithmic content curation, recommendation, and/or ranking systems, which will be considered in the case studies and the effectiveness discussion of A2.¹⁸⁹

While these examples thus represent interesting initiatives that may encourage good industry practices, they are not approved industry standards and they also raise a number of open questions that need to be addressed, such as: to whom should they apply, and who should benefit from them? Who is best placed to develop and define these criteria? How should they be implemented and monitored? What check-and-balance systems should be put in place to ensure that these criteria are not misused? What unintended consequences might they bring? etc. Overall, as has also been highlighted by Mazzoli and Tambini, such multi-stakeholder initiatives should be extended to include more institutions, relating to a wider range of actors, in collaboration with civil society organisations and international institutions, such as the Council of Europe (2020, pp.47-48). With the right processes in place, perhaps, in time, such institutions may ensure that not only do media organisations respect these standards, but that those intermediary services that have control over content distribution and prioritisation must also comply.

All these questions are still being debated and, at the moment of writing, not only do industry practices still vary widely, depending on the device and services used, but industry actors also disagree on the actual need to develop such standards. Opinions on this point do indeed differ widely. On the one hand, certain content providers claim that shared guidelines on how to define vague notions like “general interest services”, or “public interest services”, may be beneficial, especially for those intermediary services that do not have editorial control, such as video sharing platforms, search engines, or social media platforms. However, other participants have raised concerns about the potentially negative impacts that mandated standards or statutory regulatory interventions may have on media freedom, the freedom of expression, and media independence, if they were to be applied to services that already have editorial control and responsibility, such as video-on-demand services. Furthermore, a general remark that has emerged is that while the benefits of positive content regulation in the traditional broadcasting system are widely accepted and acknowledged, additional regulatory obligations on those organisations that are already heavily regulated may translate into unnecessary burdens, and could also interfere with their ability to innovate, given that the speed of change and innovation in the internet-distributed audiovisual media industry is much higher.

Despite the lack of industry standards, though, this mapping is starting to reveal that there are some shared trends around some of the criteria that are used by certain actors to prioritise and promote content. In particular, it has emerged that, in the absence of regulatory obligations, technology manufacturers tend not to rank content and content providers, but the design of their UI and the

¹⁸⁸ Ranking Digital Rights is a civil society organisation that is focused on protecting the freedom of expression and privacy online, and it regularly works with researchers and experts in the field. For more information, see: <https://rankingdigitalrights.org/about/>

¹⁸⁹ The first one refers to the G4 indicators, and the second one to the F12 indicators of the 2020 Ranking Digital Rights Corporate Accountability Index

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

related prominence decisions are based on commercial negotiations and distribution deals that are carried out at international and/or national level. Indeed, such deals often include prominence clauses that can vary depending on the provider and the device. In addition to the default settings and agreed deals, technology manufacturers also adapt and personalise their UI, awarding prioritised placement and prominence to certain apps and services that are based on different criteria, which include, but are not limited to: a) popularity, based on viewing figures and market trends; b) users' interactions with the service and devices; c) users' consumption habits and viewing patterns (measured both at the individual and aggregated level, based on the types of users' data that is available); and d) users' preferences and settings, which can also be changed by users themselves. In countries where new regulatory obligations for prominence and discoverability online are being introduced, as in Germany¹⁹⁰, technology manufacturers are introducing positive discrimination based on non-commercial criteria, such as public interest and public value considerations, which are, however, determined by the competent regulatory authorities. In other words, they are simply transposing the ranking and prominence systems into their UI and systems by, for instance, introducing a dedicated title for "public value content" on their smart TVs.

When it comes to apps and services themselves, wider differences emerge in the types of criteria that are used to determine which content is made more, or less, prominent and discoverable to the final users. This is also due to the fact that prominence takes place on different levels, and through a more complex set of personalised recommendation systems and UI design features. Personalisation plays a key role in these spaces. While case studies and in-depth examples will be discussed in A2, for the purposes of this mapping we can argue that, in the audiovisual media space, broadcasters, pay-tv operators and platform organisations that offer on-demand and streaming services have used a mix of commercial and public interest criteria to select those services that should be granted prominence. Commercially-oriented factors, though, still appear to be the most influential ones in the decision-making process, and they include, but are not, limited to: a) users' interactions with the service (such as your viewing history and the ratings of other titles); b) users' preferences at aggregate level (based on other services' members/subscribers with similar tastes and preferences on the same service; c) the available information and metadata about the titles, such as their genre, categories, actors, release year, etc.; d) information about viewing patterns and consumption habits (such as the time of day at which users watch something, the duration of their viewing, the devices used to access the services, etc.); e) the recency of the programme. Some of these factors are, to some extent, similar to those used by technology manufactures, but they feed into more sophisticated and personalised UI and recommendation systems.

In addition to the most commonly-used commercial factors, some service providers also take into account more public interest criteria in order to rank and prioritise content, and these include, but are not limited to: a) the percentage of local and national content production and distribution; b) public service mission, measured on the status, funding and remits of services like local and national public media organisations; c) authoritativeness; d) the presence of high quality and diverse content; e) universal reach and distribution. These criteria are particularly used to select specific content and services that feature in dedicated catalogue rows or discovery sections in the interfaces, like national or local dedicated rows. Depending on the service, what the criteria are that are used in different parts of the catalogue's UI can be more, or less, clear, as transparency and explainability levels vary widely. Furthermore, when it comes to specific types of content, namely, news content distributed on intermediary services that do not have editorial control - such as search engines, the social media and video sharing platforms - there are also other public interest criteria that are claimed to be

¹⁹⁰ More information on the relevant legislative measures in Germany is presented in the second part of this mapping.

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

determinant factors in ranking and prioritising content online, such as a high degree of accuracy, fact-checking, reliability, trustworthiness, transparency, accountability to the public, and, more broadly, high professional standards of journalism.

Finally, the idea of transposing the concept of diversity of exposure into prioritisation measures and metrics that, ideally, may broaden users' information and content diets is predominantly emerging among public service media organisations and practices. Indeed, as will be further expanded in A2, some public service media organisations are developing different and innovative approaches to recommendation systems and UI design that combine some of the most common recommender algorithms, such as collaborative filtering and content-based algorithms, with editorially curated suggestions and/or automated "diversified algorithms" (EBU, 2020).¹⁹¹ The combination of these different recommenders is claimed to have the potential to broaden the sources and content to which users are exposed. Examples of how these systems are applied in practice can be found in the UK, with the BBC's recommendation system, which is known as BBC+, and its related R&D initiatives in this area¹⁹², in the Netherlands, with NPO's public interest recommendation system (Harbers et al., 2020; Kapel, 2019; NPO, 2018); in Sweden with Sverige Radio's News Value project (Beckett, 2020; EBU, 2020; Sveriges Radio, 2020).¹⁹³

When it comes to private and commercial providers, instead, from the publicly available data and grey literature, it appears that even though some of them are thinking about notions like general interest, or public interest services, experimentation around the diversity of exposure measures that would bring such content to the surface, are still broadly lacking. However, as has emerged from some of the interviews, some international SVOD providers with particularly advanced recommendation systems and personalisation strategies, are experimenting with news discovery functions that may lead to the exposure of viewers to a wider range of content being offered in their catalogues, including raising users' exposure to European content and original content. To conclude, though, it should be noted that all these experiments, from both public and private operators, are rather new, and are in-progress initiatives, and it is still unclear whether the application of such technical solutions, like diversified algorithms does, in turn, result in a diversity of access and consumption. Indeed, with these initiatives, we are still in the realm of those positive behavioural nudges that are typical of soft-paternalistic approaches (e.g., Burri, 2016; Sunstein, 2015; Thaler and Sunstein, 2008; Thaler et. al, 2013), rather than hard, paternalistic approaches which might lead to manipulatory practices (Yeung 2017). Ultimately, the final decision thus rests - as it should - with the users, and their freedom to decide what to access and consume.

Within this context, the following sections will present a more detailed discussion of the industry's practices and the related prioritisation measures, complemented with visual examples. Examples have been selected both at the device and service level, taking, as a starting point for this mapping, the value chain of the online audiovisual media industry (Fig. A1.1) and its key gateways to content, respectively, smart TVs, smartphones and smart speakers. While the aim is to shed light on how content prioritisation measures work at these different levels, this mapping, however, should not be taken as being exhaustive, and the information that is presented here is based on publicly available data and studies and the qualitative data collection process carried out for this study (Annex C).

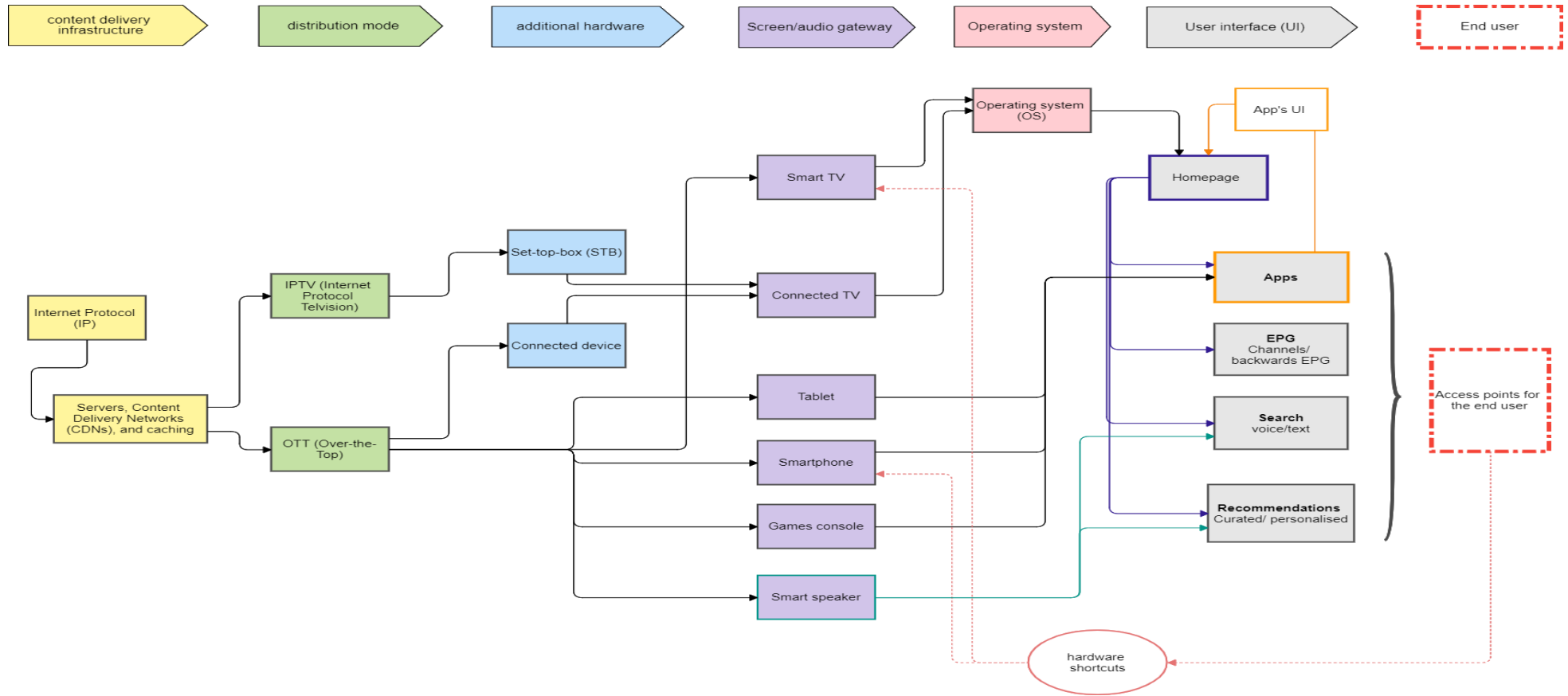
¹⁹¹ See EBU PEACH: <https://peach.ebu.io/products/recommendation-service/>

¹⁹² See BBC's approach to ethical machine learning and AI systems: <https://www.bbc.co.uk/rd/publications/responsible-ai-at-the-bbc-our-machine-learning-engine-principles>

¹⁹³ The EBU PEACH will be further discussed in A2

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

Figure A1. 1. Illustrative value chain of the online audiovisual media industry: focus on its distribution segment (Source: Mazzoli 2021)¹⁹⁴



¹⁹⁴ This graph builds on the MTM's and Ofcom's work in this area (MTM & Ofcom, 2019)

2.1 Smart TVs

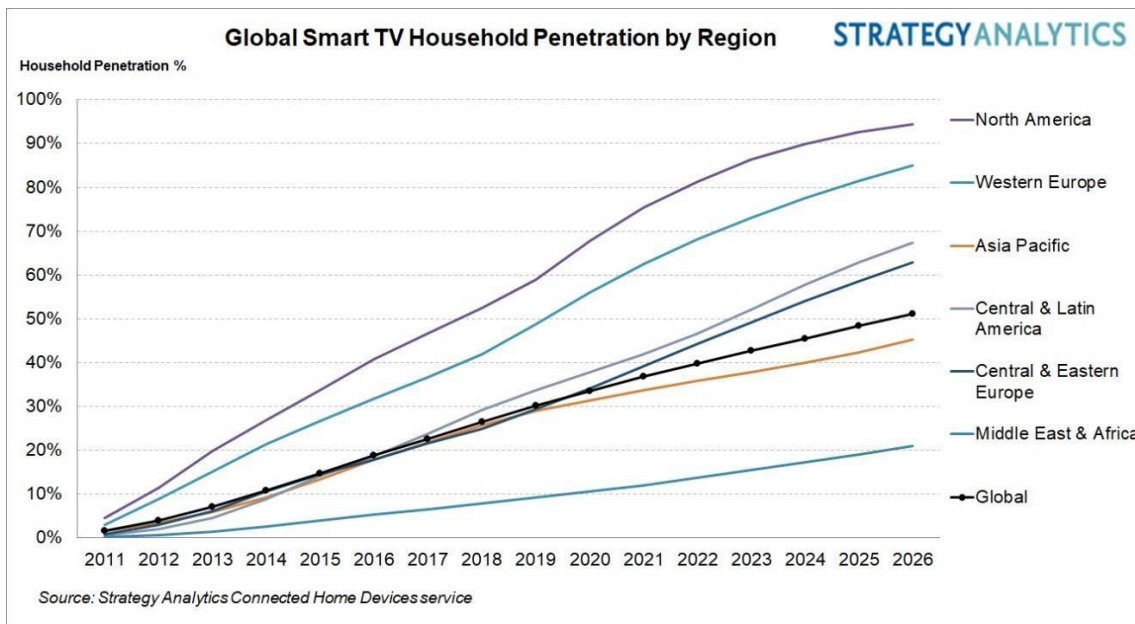
2.1.1 General

Smart TVs function via Over The Top (OTT) content delivery infrastructures, thus, besides the traditional functions of television sets, which are provided through traditional broadcasting media, these devices allow users to stream audiovisual media content (e.g., television to music and radio content) through linear and live channels, as well as through content apps, and allow the viewer to browse the internet and connect with other internet connected devices in the house.¹⁹⁵ It should be noted that, in smart TVs, the operating system is preloaded into the television set's hardware, and it is the system that provides access to apps and other digital content. This, therefore, differentiates them from traditional broadcasting television sets, which primarily act as displays and which cannot be customised. The software applications on smart TVs can indeed be preloaded into the device as default-settings, or can be updated or installed on demand, via an application store or marketplace, similarly to the way that apps are integrated into modern smartphones. Software and hardware providers are not necessarily the same organisations, on the contrary, there can be different combinations depending on whether the hardware provider has vertically integrated along the value chain, and so also offers operating software solutions. This is why, for instance, Amazon, as a vendor, offers both Fire TV as operating software (OS) and Fire TV devices, such as the Fire TV Stick. Similarly, Google Alphabet can sell its Chromecast devices with its Android TV OS integrated into the system, or can separately sell Android TV OS to third-party technology manufacturers, such as Sony, Phillips or Panasonic.

Since the inception of the first “intelligent” television receivers in Japan, in the early 1980s, this field has rapidly developed, but its popularity and affordability started to rise only years later, after the mass acceptance of digital television in the mid-late 2000s, early 2010s. As the market data shows, though, while internet-connected sets are almost the default in many developed markets, like the US and the UK, only 34% of global households had smart TVs by the end of 2020, but this percentage is expected to grow steadily in the next few years (Easton, 2021; Nielsen, 2019) (see Fig. A1.2).

¹⁹⁵ Smart TV should not be confused with Internet TV, IPTV, or streaming television. Internet TV refers to receiving television content over the Internet instead of traditional systems such as terrestrial, cable, and satellite, regardless of how the Internet is delivered.

Figure A1. 2. Global smart TV household penetration by region



Source: Easton 2021

A number of industry actors have also entered this market, from established technology manufacturers, like LG, Samsung, Sony and Phillips, to digital platform organisations, such as Amazon, Apple and Google Alphabet, which have extended their product offer from software to hardware technologies with vertical integration strategies. Consumers can therefore buy a TV set which runs on different types of operating systems, and that can be accessed through a wide variety of devices. Overall, as highlighted in a study conducted by Mediatique for Ofcom (Mediatique, 2020), there are at least three main types of OS, respectively: 1) proprietary systems, such as LG’s webOS, Samsung’s Tizen; 2) third-party systems, such as Android OS, Roku OS; and, 3) hybrid systems, such as Android TV Operator Tier.

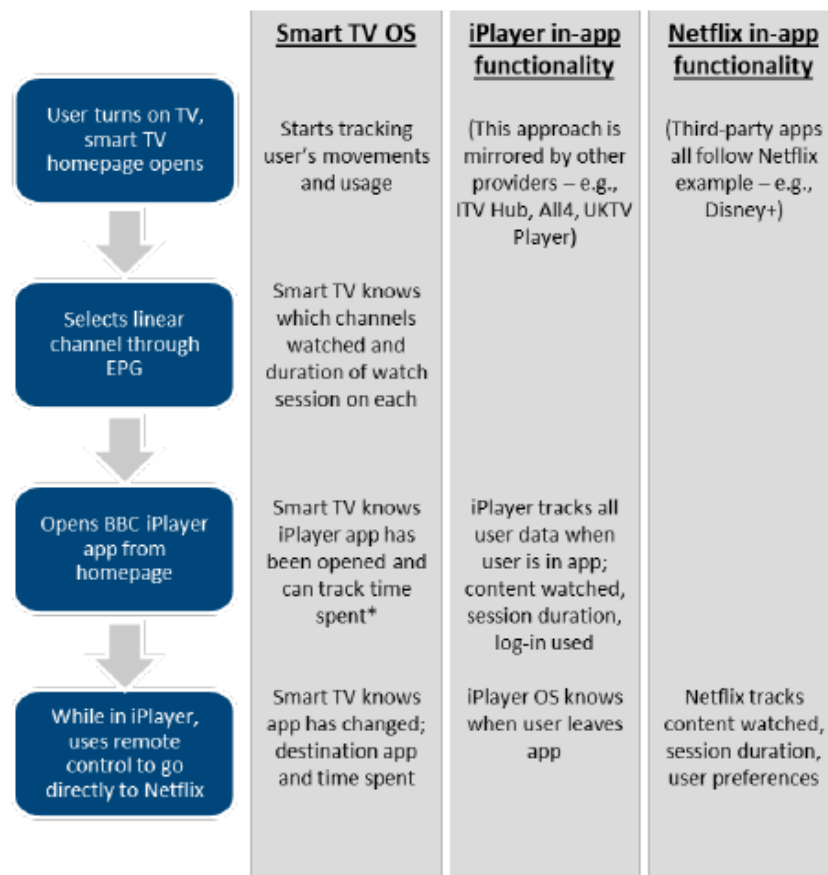
How the control over prominence is divided among different actors therefore also depends therefore on the type of operating system used. The hybrid one, for instance, allows manufacturers greater control over UI customization, but the OS provider still exercises significant control over search, navigation, data capture, access (Mediatique, 2020, p.14). More specifically, in the Android TV Operator Tier, both the TV manufacturer and Android exert control over the user experience (app placement, access, navigation); but decisions on serving advertising on the OS are taken by Google, data is shared with it (Mediatique, 2020, p.14). Content providers, such as PSM organisations, streaming services or commercial broadcasters, will negotiate the presence of their apps and related prominence and data sharing agreements with the ultimate OS provider, either directly or through the technology manufacturers. In this sense, it should be noted that the OS provider, together with the manufacturer, are key to determining prominence arrangements at the level of the home screen (including the search and recommendation areas of the smart tv home screen) and devices. Finally, some of the biggest manufacturers, such as LG, Samsung and Panasonic, often use proprietary OSs, which allow them to have more control over their systems and UI, but this may change in the medium-term, given the cost, and as OS providers adapt to manufacturers’ preferences (particularly UI customisation) (Mediatique, 2020, p.14).

As emerged from the experts’ interviews and literature review, the roles of data and metadata are also pivotal in influencing how apps are displayed and how prominence can be traded off in the negotiation agreements between OS providers and manufacturers, on the one hand, and apps and content providers on the other (e.g., Hesmondhalgh and Lobato, 2019; Johnson, 2020; Mazzoli and

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

Tambini, 2020; Mediatique, 2020; MTM and Ofcom, 2019). As highlighted in the Mediatique study, and argued by several research participants in this study, the ways in which content and apps are displayed on the smart TVs (on the home screen, search results or recommendation areas), heavily depends on the level of metadata integration, the access to offline and online data sources, and the use of automatic content recognition by the manufacturers (Mediatique, 2020, p.14). Even though additional details on data sharing and access deals are a part of the confidential agreements between the market actors, it has emerged that existing deals are contested from both sides of the negotiating table. On the one hand, OS providers and manufacturers are asking for more access to quality metadata from content providers, in order to better display their services and to provide an integrated and smoother customer experience. While there are no particular issues on metadata agreements with global content providers and streaming services, national and local broadcasters appear to be more reluctant to share access to metadata, arguing that it would give a competitive edge to already powerful market actors. Even though it was not possible to draw conclusions on shared European trends, as these agreements are often confidential and change on a country-by-country basis, it has emerged that the level and types of data and metadata that can be accessed by different market actors vary significantly, depending on the users' journey to content (see Fig. A1.3), and the bilateral agreements among market actors, which are often contested.

Figure A1.3. Hypothetical user’s journey, and what data is collected by whom



Source: Mediatique, 2020: 14

Within this framework, we will now map the main content prioritisation measures that take place on smart TVs and that emerge from current industry practice. The table below (see Table A1.1) summarises such measures, differentiating them by each type of access point to content and the information that is present on the different types of users’ interfaces, and provides examples of the market actors that are controlling such access points. The following sections will further expand upon this by presenting a descriptive mapping of these measures.

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

Table A1. 1. Summary overview of content prioritisation measures for Smart TVs

Access points and related users' interfaces	Examples of market actors	Content prioritisation measures
Electronic Program Guide (EPG)	Geolocated device manufacturer's EPG: e.g., LG/Samsung programmes guides	EPG design interface, Channel listings based on geolocation and relevant regulatory framework (e.g., Logical Channel Numbers, where available)
Home screen	Device manufacturer's or software operator's home screen: e.g., LG/Samsung/ Apple TV/Android TV's homepages	Homepage design interface, apps listing and location (based on a mix of default settings, users' own settings, and regular updates that are based on users' consumption habits and apps' usage), search area (text), default channel playing (often the last one that was accessed by the users)
Hardware shortcuts	Device manufacturer's home screen: e.g., LG/Samsung's remote control	Direct buttons to a selected number of content providers, often international providers, such as Netflix, Amazon Prime, Roku etc.
Apps	Content apps vary depending on the business models of the apps' developers. Examples include <ul style="list-style-type: none"> • VoD services of public service media organisations (e.g., BBC iPlayer, Rai Play, ARTE) • VoD services of pay-tv operators (e.g. Sky, Now TV); • SVoD of platform organisations (e.g., Netflix, Amazon Video Prime, YouTube TV premium, Apple TV+), • SvoD of media conglomerates (e.g., Disney +) • Video sharing services of platform organisations (e.g., YouTube) 	Varying depending on the services and the geolocation of the users, but, overall, they could include: promoted titles (generally in a carousel at the top of the home screen); recommendation rows and titles; discovery areas; personalised lists; the catalogue's ranking system and dedicated subcategories (to order different rows, and within the same row), popularity rankings (e.g., "top 10" or "top picks for you" or "popular today"); "up next" features; auto-play functions (for trailers and first episodes); search functions.
Search area	Device manufacturers' TV search area ¹⁹⁶ e.g., LG/Samsun's search area	Users' input area (primarily, text search), adaptable and personalised list of results (texts and images), autocomplete functions
	In-app search area ¹⁹⁷	Users' input area (primarily, text search), adaptable and personalised list of results (texts and images), autocomplete functions
Recommendations area	Device manufacturers' recommendation areas ¹⁹⁸	Recommended titles and apps, based on users' settings and consumption habits
	In-app recommendations ¹⁹⁹	Sophisticated and multi-layered recommendation systems work differently in each app, and they are personalised for each user's profile

¹⁹⁶ The area within the user interface of the smart TV (accessible directly through the remote control)

¹⁹⁷ The search area is accessible within each content and aggregator app (accessible after the users have entered a specific app).

¹⁹⁸ Where present, they refer to Recommendations' functionalities within the user interface of the smart TV (not all device manufacturers provide them).

¹⁹⁹ Recommendation systems and related functionalities are present within each content and aggregator app.

2.1.2 EPGs

Generally, smart TVs receive both broadcast content delivery and through IP delivery, thus, a wide range of content and services can be accessed through these screens. One of the main access points for live content is the Electronic Programme Guide and the related Logical Channel Numbering systems (where implemented, as discussed below). The EPG is an on-screen TV guide that shows scheduled programs in advance for every tuned channel. The most common EPGs can be accessed through the dedicated button on the Remote Control. Once accessed, the EPG displays a separate screen for each stored channel. To access other channels, viewers usually use the RIGHT/LEFT arrows on the remote control, while UP/DOWN arrows are used to highlight the preferred program, and a brief description of the selected program is displayed on the adjoining screen. In general, all free-to-air, Pay-TV and smart TV platforms carry an EPG, but it is less prominent on some of the newer Pay-TV platforms, like Sky Q, while connected devices, which rarely carry linear channels, do not feature EPGs (MTM & Ofcom, 2019, p.19). Alongside the classic EPG, there are also backwards EPGs, which permit users to access recently broadcast, on-demand content through a backward-scrolling EPG, but a smaller number of smart TVs offer this feature (Figure A1. 3).

The impact of the EPG listing in traditional broadcasting services has been demonstrated by a number of studies, as evidence has shown that higher EPG positions (e.g., being in slots 1, 2 or 3 on the guide) could affect viewing reach and audience performances, all other factors being equal (Expert Media Partners, 2018; Klein et al., 2012; Ofcom, 2018). In this regard, the FEH Media Insight Report has also shown that there is generally a sharp decline in reach that occurs between the first and the fifth EPG slots, followed by a more gradual decline from slot 6 onwards (Ofcom, 2018, p.21). Similar observations have been made for IP delivery space (Ofcom, 2018, p.3), however, there is no concrete evidence of the impact that EPGs have in the internet-distributed audiovisual media industry, and this is partially due to the fact that EPGs are just one of the multiple ways through which content is accessed, and they mainly have an impact on live broadcast content on smart TVs, and not on-demand services. Indeed, market studies have shown that the explosion in choice from the content providers and services, is leading to important shifts in viewing habits.

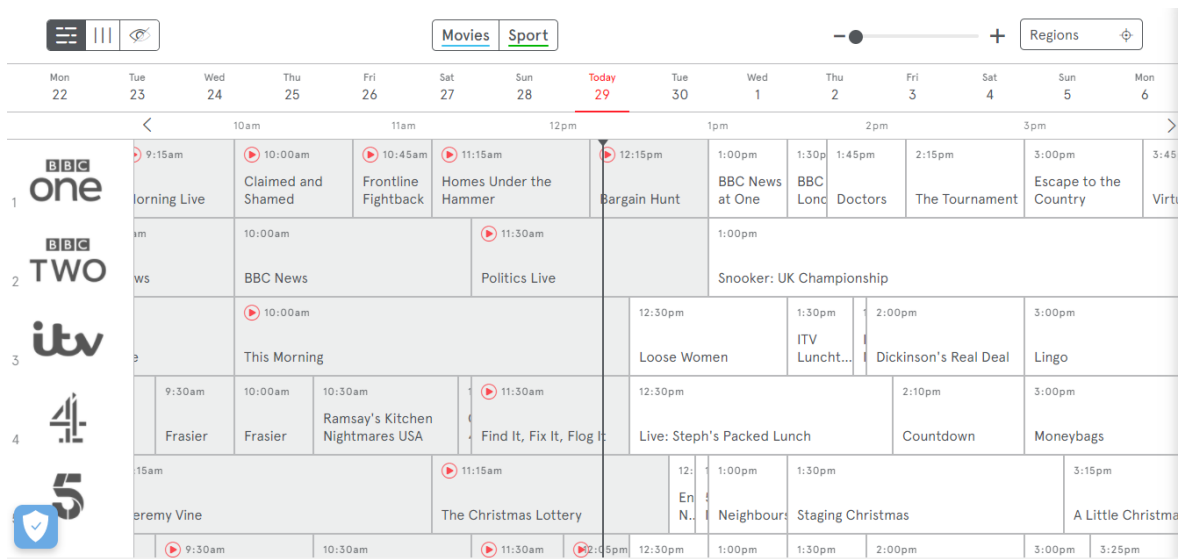
Even though these shifts and their impacts differ from country to country, overall, we might argue that, on the one hand, linear TV content still continues to be a significant portion of TV consumption, and, for those watching it, EPGs remain an important way to access such content. However, audiences are watching less and less scheduled and linear television, and this appears to be a permanent structural trend, especially among young audiences (e.g. Cabrera Blázquez et al. 2021, 2022). As highlighted by the European Audiovisual Observatory, audiences are increasingly going online to consume audiovisual content, and the average daily television viewing per person has continued to decrease, with a decline of 4% over a five-years period (2015-2019), while SVOD services continue to grow at the expenses of national commercial and public service broadcasters (Cabrera Blázquez et al. 2021, p.28-29).²⁰⁰ This trend though was interrupted during the pandemic

²⁰⁰ Data and trends though slightly differ depending on the countries and demographic. Across the EU27 and the UK, 6 countries qualify as mature SVO markets where SVOD services have been adopted by more than 50% of households (Denmark, UK, Sweden, Finland, Germany and Netherlands). This trend is particularly evident in the Nordic countries and the UK. For instance, over the five-year period of 2015 and 2019, in the Nordic countries, where the subscription video on demand (SVOD) market is booming, people generally watched less TV than elsewhere in Europe and viewing figures there decreased faster than in other countries (20% less over five years) (Cabrera Blázquez et al. 2021, p.28-29); but during the pandemic, viewing figures have risen significantly also in these countries (Cabrera Blázquez et al. 2022, p.30). Instead, in the UK across all audio-visual viewing on all devices, in 2019, live TV accounted for 58% of viewing time among all individuals, and for only 34% among 16-34s, with other viewing now accounting for the majority of young people's time (Ofcom 2019, pp.2-3). Furthermore, a rapid catch-up trend has

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

(Cabrera Blázquez et al. 2022, p.30), when linear TV experienced a revival, but it is yet unclear whether this will be just a momentary revival. In addition, time spent watching linear TV has been falling over the last few years, as people are increasingly going online to access a variety of content and information, with an increased adoption of media streaming devices (such as Google’s Chromecast, Amazon’s Fire TV, Roku) and widespread penetration of Smart TVs and available streaming applications in all EU28 households (Grece 2021, p. 28). On top of these consumption changes, both manufacturers and service providers are constantly innovating and providing new ways to access and aggregate content which, *de facto*, bypass existing EPG, such as the “*universal guide function*” of Samsung smart TVs (see Fig. A1.4), and the other functionalities that will be described in the next section

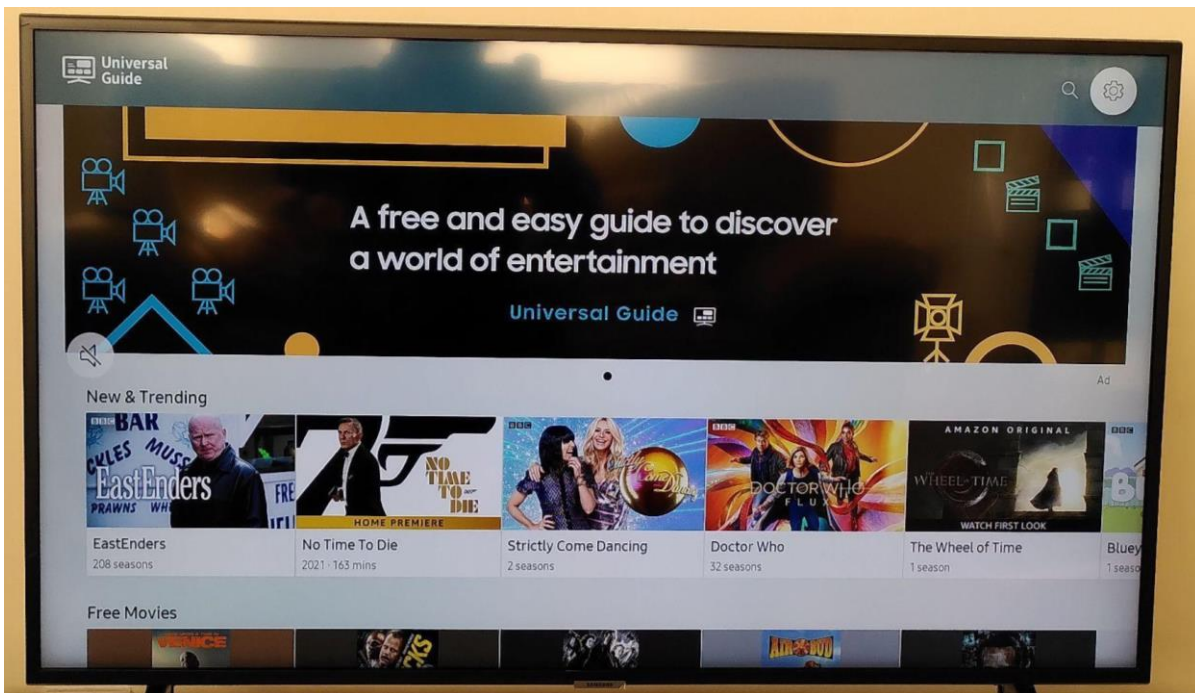
Figure A1.4. Freeview EPG, geolocated in England



Source: research team product testing with Freeview’s UI

been noticed in other 12 countries where SVOD are becoming mainstream in the media consumption of audiences but the uptake is still just at the beginning (Austria, Ireland, Spain, Belgium, Luxembourg, Italy, France, Poland, Portugal, Slovenia, Lithuania and Malta). Finally, there is still room for growth in the remaining countries, where the price advantage of SVOD compared to linear pay tv is weak and the broadband penetration is also lower than in other countries (Slovak Republics, Cyprus, Greece, Estonia, Check Republic, Latvia, Romania, Hungary, Croatia and Bulgaria) (more data and info on Grece, 2021. P. 25).

Figure A1.5. Universal Guide of Samsung's Smart TV, aggregating content from Samsung TV+ services, linear channels and the apps that are present on the smart TV, geolocated in England



Source: research team product testing with Samsung smart TVs.

When it comes to broadcast content on smart TVs, there are examples of established industry standards and guidelines that are followed in most countries. For instance, some countries have established an LCN-Logical Channel Numbering system that gives priority to a list of channels and services, and this is usually established by the national communication and media regulator. Examples of functioning LCN systems can be found in Italy and in the UK, while countries like Germany, for instance, do not have a full-formed and cross-platform LCN systems, causing fragmentation and implementation problems for technology manufacturers. LCN systems do not explicitly refer to, or identify, the services relating to general interest content, but the prominence ordering is usually established by the national sectoral regulator and then implemented by the technology manufacturers and platform services. The smart TV's screen will then display channels according to what is established in each specific country. It should be noted that whilst this is perceived to be an efficient system by the technology manufacturers, there are no common guidelines that are shared among all of the EU Member States, since, at the moment of writing, only some countries in Europe have an LCN system.

Furthermore, in those countries where there is an established LCN system, such numbering is often questioned and criticised by different industry actors, such as local and regional media, as having a higher LCN (thus being displayed in a lower position on the screen) appears to negatively impact on their audience reach, as viewers are less likely to access their content if compared to those channels that are positioned in the lower numbered slots. However, this negative impact is often hard to quantify, firstly, because LCN is only one of the different factors that may influence audience reach and advertising revenues (European Audiovisual Observatory, 2016, p.63), and, secondly, because it can vary depending on the national context and specificities. In this regard, taking the example of Italy, in 2010 AGCOM adopted a Regulation on the LCN which relied on a combination of prominence for national and local channels, and equal, transparent and non-discriminating conditions in the positioning of all the other channels on the automatic numeration. More specifically, the approved LCN Plan (366/10/CONS), which is attributed to the generalist (ex-analogue) channels: the numbers

1 to 9 (with the public service media's channels, Rai 1, 2 and 3, coming as the first, second and third), while local channels were assigned the numbers from 10 to 19 and 71 to 99. Despite being an established code that has helped to standardise prominence on linear television in Italy, this final code was also the object of numerous criticisms, and it is often questioned by industry actors, who felt unduly discriminated against (European Audiovisual Observatory, 2016, p.65), showing that, even in those countries where LCN prominence is regulated and overseen by an independent regulator, contestations and issues around the established ranking often arise

2.1.3 Home screen

By home screen (or start screen), we refer to the main screen on a device, in this case a smart TV. It is therefore the screen that appears when the TV is switched on by the users. Home screens are not identical, because users can rearrange their applications list as they please, and they also often differ across mobile operating systems and technology manufacturers. Overall, though, almost every smart TV has some form of home screen, which typically displays links to applications, settings, and notifications, together with a live broadcast of a pre-installed channel, or the last programmes/services that were accessed by the user. The purpose of a TV and its home screen is, indeed, to present and bring to the surface the content, in such a way that it is user-friendly. Innovative technology and attractive user interface designs are key to attracting consumers and building a brand-relationship with them. Due to the technical limitations of the user interface design and navigation options (which derives from the fact that there is less possibility to interact with a TV screen, if compared to a PC or smartphone) the TV experience is still rather constrained. Technology manufacturers are constantly working to ensure a smoother interaction and more efficient search functions, which are often revised, updated and innovated on almost a yearly basis. These developments often require constant investments in R&D, and updates to the underlying business models of the manufacturers.

Software solutions often leverage integrated and interoperable hardware offers, which can have lock-in effects for individual providers, and may advantage those vertically integrated providers that offer both software and hardware (see also Mazzoli and Tambini 2020). For example, a smart TV will typically offer the prospect of accessing content via a series of apps on the home screen (Fig. A1.6), whose order may be decided by the TV set manufacturer and/or the provider of the TV set's operating system. The order of apps that appears on the home screen can also be changed and adapted by the users, as they have the power to uninstall default apps that are irrelevant to them, to download and install new ones using the app store that is provided by the smart TV, and to position the downloaded apps in their preferred order. In theory, the potential control that the final users can thus have on such a listing is rather high, but, however, there is no available data on how many users actively change their interfaces, or who simply rely on the pre-installed apps.

Figure A1. 6. Smart TV's homepage



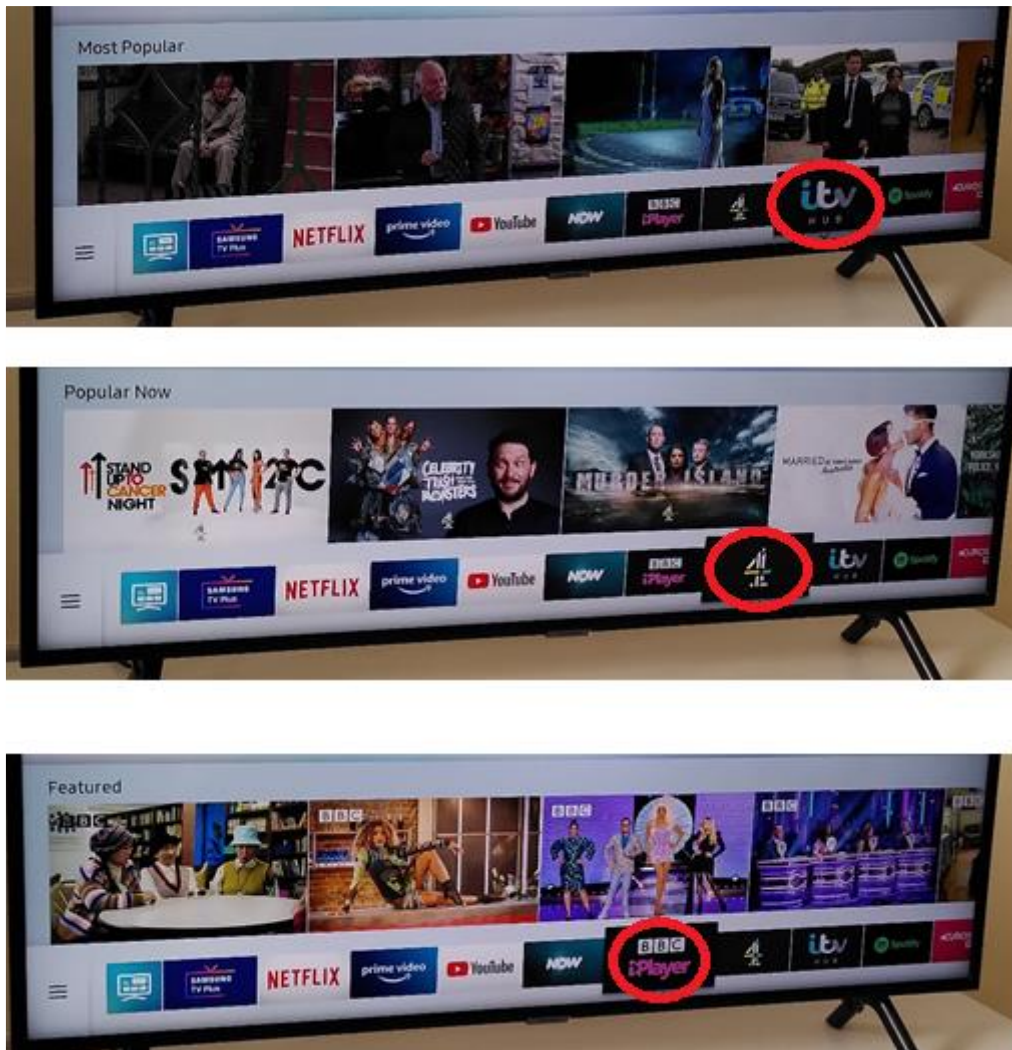
Sources: manufacturers' websites.

Alongside the manual changes that the users can make to such an order, the listing can also be adapted automatically, either by the OS provider or the technology manufacturer, and depending on the users' data and content metadata that is provided by the content providers. More specifically, the manufacturers may decide to include an automatic personalised function on their apps listing, which is adapted based on the most popular apps in a certain country (and this is determined through the collection and analysis of market data) or is based on the individual users' most used app (which is determined through the collection and analysis of users' data), or a combination thereof. Furthermore, certain home screens will provide additional functionalities that increase the findability and discoverability of certain apps, which, however, are heavily dependent on the quality and quantity of the metadata that is shared by the apps and content providers. In general, those apps and content providers that provide a higher level of metadata, are able to increase their control over the ways in which the app is shown to the final users on the home screen listing. Most of the apps, when scrolling down the listing at the top of the home screen, show a selection of programs. The criteria that seem to be used to select those programs that are made prominent include their popularity, viewing trends, and personalised recommended content, probably based on collaborative filtering and previous habits. There are no transparency notices around these criteria, thus, the assumptions are hereby made based on the headings that are provided by the different apps' providers, which are "popular now", "recommended", or "TV shows we think you'll like" (see Fig. A1.7). Additionally, certain providers provide additional features that are based on the additional metadata which is shared with the manufacturers. Netflix, for instance, re-directs users to the last programme, or shows what they accessed through their app, enabling them to play exactly the right episode with one-click, immediately.

The images, below, show how, by clicking different apps, different types of content and programmes are made prominent, and they can be directly accessed by the users with one-click. ITV Hub and All 4 show a collection of their most popular shows; BBC highlights a curated collection of featured programs; YouTube proposes its own recommended content; Netflix proposes a more personalised list, as it is known to provide richer metadata to the smart TV providers, thus, alongside trending programmes, it can directly take the users to the last show they watched; and Prime Video emphasises exclusive Amazon's content and originals, together with a personalised list of content that is based on the users' profiles.

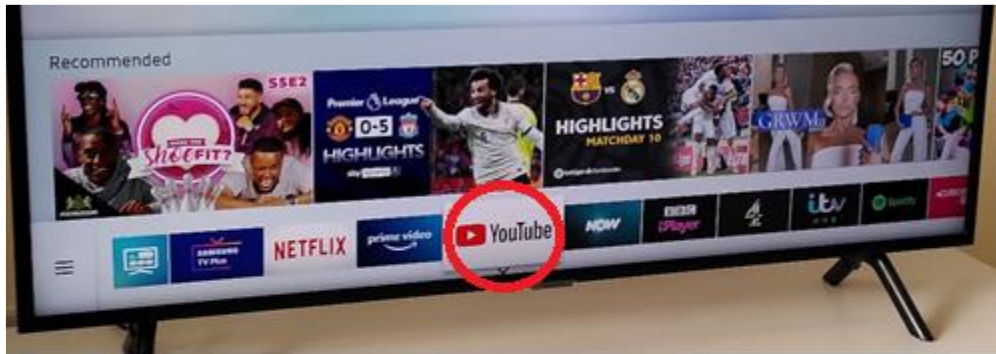
Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

Figure A1.7. Examples of different apps' prominence listing, shown on the home screen²⁰¹



²⁰¹ Each image shows what content and programmes the different apps prioritise on the homepage of a smart TV when the users scroll and click on them (the app that is clicked on is circled in red in each image). As it can be noticed, depending on the app service provider and a diverse range of types of content is showed based on such criteria. For instance, Channel 4 and ITV showcase their popular shows, Netflix allows the users to directly access the latest programme they watched on their app, BBC has a selection of “featured” content and YouTube a personalised list of recommendations. By highlighting such content already on the home page of a smart TV, users can directly access it just with a click of the remote control.

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services



Source: research team product testing with Samsung and LG smart TVs

2.1.4 Hardware shortcuts

In recent years, smart TVs, as well as connected TVs, increasingly present customised remote controls with pre-installed service buttons, which bring the user directly to the homepage of those apps with one click, bypassing all other apps, channels and services. These examples of inter-operable offers from vertically integrated providers, like internet platform organisations, are able to offer a smoother and easier user experience, and faster access to such services. The decision as to which service is pre-installed in the remote control is the result of annual commercial agreements between technology manufacturers and service providers. Given the often global nature of technology manufacturing companies, these deals are commonly carried out on the international level, and they are therefore not customised for the national markets.

In the prominence and discoverability political debate, national content providers and broadcasters, both commercial and public ones, have highlighted that these buttons give a competitive advantage to a handful of services, and that they are not given equal opportunity to participate in these deals. Research participants have, indeed, confirmed that these deals are often carried out on a global

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

scale, and this is also why, most commonly, some of the international providers, like Netflix, Amazon Video Prime and Roku (Fig. A1.8), will have dedicated buttons on remote controls. The criteria used by manufacturers to choose which services have such buttons are therefore primarily commercial, as they evaluate the popularity of the services (measured in terms of market and viewing share, globally); and the cost-effectiveness ratio between producing and distributing such hardware in different markets and maximising the marginal revenues from such sales. Indeed, it was argued that to customise remote controls on a country-by-country basis would entail much higher production costs and longer negotiation processes, if compared to the marginal revenues that manufacturers gain from selling one of the buttons on the remote controls as part of the existing international distribution deals with fewer content providers.

Figure A1.8. Examples of remote controls and their hardware shortcut buttons



Source: manufacturer's website. From left to right: 1) LG AKB75675301 remote control for Smart TV LED 2018; 2) BN59-01315B Remote Control for Samsung 2020 2021 UHD 4K TVs.

2.1.5 TV Apps

Smart TVs (as well as other connected devices that can be attached to the TV set) deliver on-demand and online TV services via apps, making apps a pivotal component of the contemporary audiovisual media ecosystem. As Prof. Catherine Johnson also argues, though, despite this important role, apps rarely feature in the growing body of academic literature on internet-connected and online TV (Johnson, 2020), and they are often neglected in the major recent monographs on internet television also (Evens & Donders, 2018; Johnson, 2019; Lotz, 2017). Apps get three brief indexed mentions in two articles in McDonald and Smith-Rowsey's (2016) edited collection on Netflix (Lindsey, 2016; McDonald, 2016). At the same time, the majority of academic work on apps focuses on mobile devices and neglects the rise of those apps that are delivered and accessed through TV sets. Apps, as a form of 'mundane software' (Morris and Elkins, 2015: 65), have insinuated themselves into our quotidian television viewing habits so seamlessly that their role in our contemporary media ecosystem has been overlooked (Johnson, 2020).

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

The world of apps is extremely diverse and changes continuously. Indeed, nowadays, most content providers, from public service media organisations to pay-tv operators and commercial broadcasters, have dedicated apps that are available for almost every internet-connected device, including smart TVs, connected-TVs, smartphones, tablets, STBs. Games consoles, and other digital media players. Overall, the availability of apps may vary depending on the level of the interoperability of such services; the distribution and digital strategies of different organisations; and the geolocation of the users, since not all services can be offered cross-borders, depending on the relevant regulatory framework (this is particularly the case for local and national providers, such as PSM organisations which have national legal remits. International companies, like Netflix, Amazon Video Prime, or Disney Plus, are usually available in most countries, but their catalogues change also, depending on the geolocation of the device and the users, as distribution deals and copyrights vary (see also Evens and Donders, 2018; Johnson, 2019; Raats et al., 2018).

Overall, apps have great value in the new global platform ecosystem, because they enable the app owner to control the environment within which their content is distributed, the relationship with the viewer, and the collection and exploitation of the viewer's data (Johnson, 2020, p.71). This is also why these environments have been described as "*walled gardens*". Such control takes place once viewers have downloaded and accessed the app. To be accessed in the first place, content providers thus need to negotiate their presence, including the types of prominence and prioritisation levels within the TV user's interface with the technology manufacturers, such as Smart TV manufacturers (Hesmondhalgh & Lotz, 2020; Mazzoli & Tambini, 2020). Furthermore, apps construct spaces online that are tightly managed by the individual, or the organisation which designed them (Gardner and Davis, 2013: 6).

Usually, the app owner controls the design of the interface, the selection and organisation of the content within that interface, and the functionalities that are available to the user, through which it is possible to exert an influence over what programs and movies are watched (Hesmondhalgh & Lotz, 2020; Johnson, 2020). Apps can thus shape the discoverability and prominence of the content that they offer by using different measures that impact upon the interface design, search functionality and editorial and algorithmic recommendations (Johnson, 2019). This control is exercised also thanks to the monitoring and datafication of user behaviour (Johnson, 2019: 135–136; Van Dijck et al., 2018: 33), since apps create programmed environments in which every user interaction can be observed and converted into actionable data, and the data generated from tracking individual user behaviour in real time is not (Johnson, 2020, p.172). In this sense, there is an economics of prominence and discoverability that is at work, with content owners engaging in commercial deals with apps for a position within their interface, recommendations and/or search results, as well as trading access to users' data (Mazzoli & Tambini, 2020; Mediatique, 2020; MTM & Ofcom, 2019).

In this rather complex framework, scholars like Prof. Johnson have attempted to advance a typology of apps to map how prominence and discoverability functions work in an internet-distributed audiovisual media value chain (2020). In her seminal work, Johnson differentiates three main types of apps, respectively: a) **content apps**, which are intended as apps that are designed specifically to deliver television programmes and movies to viewers (e.g., BBC iPlayer, Netflix, Shudder, Virgin TV Go, Hulu); b) discovery apps, an emergent range of apps that is focused specifically on facilitating the discovery of third-party content (e.g., start-ups, like Yidio, Reelgood and JustWatch); and c) aggregator apps, operating not only as a site on which to discover what to watch across a range of apps, but also as a centralised hub through which to view content, both owned and third-party content (Johnson, 2020).

While this first attempt to present a comprehensive typology of TV apps is a useful step towards a better understanding of the role of different actors in making content more, or less, prominent and

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

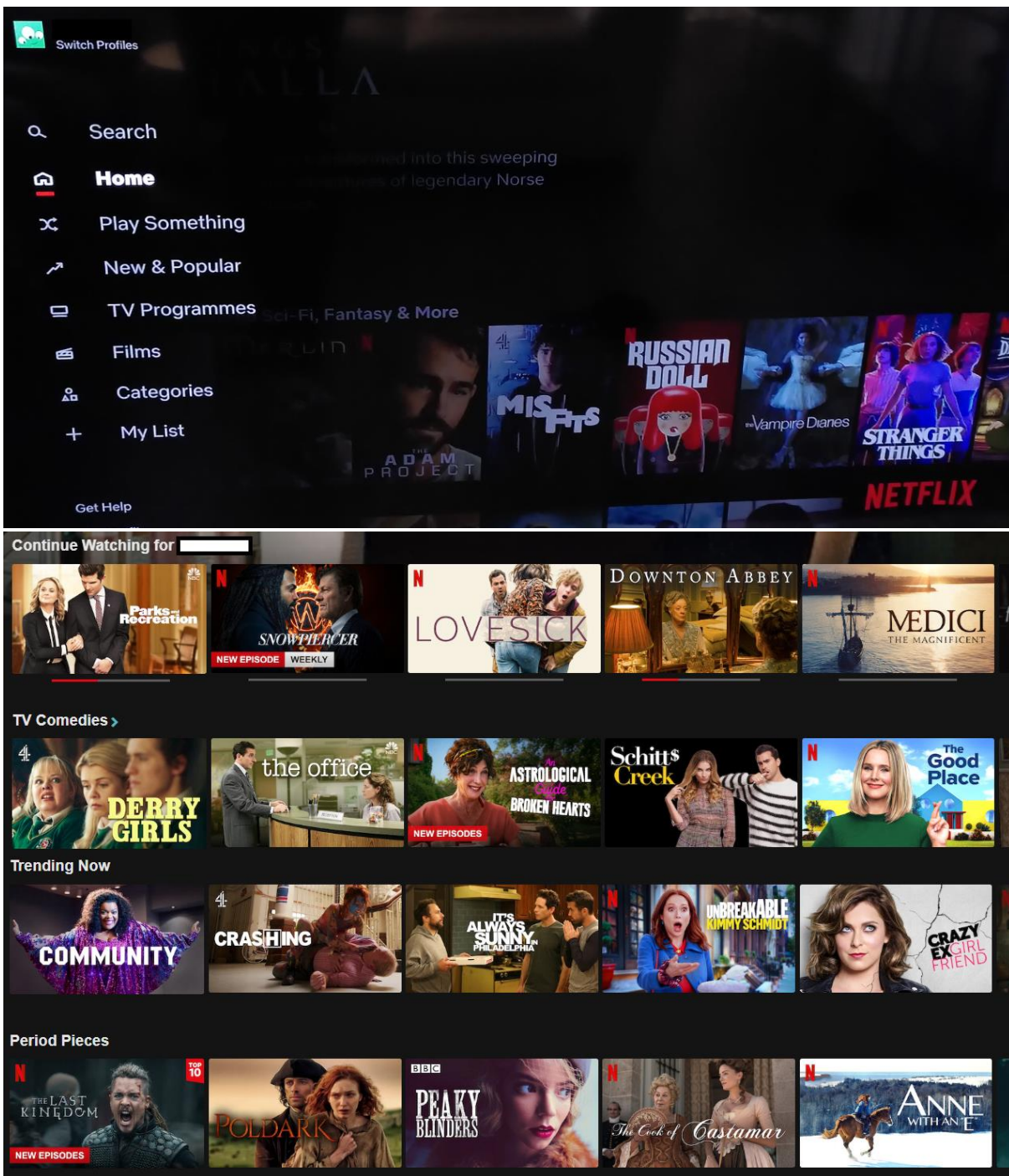
discoverable to users, it lacks, however, a reflection on how the different business models and related commercial negotiations play a role in influencing prioritisation measures. The interviews and the document review have shown that there are differences in the prioritisation measures and criteria that could be linked with the organisations' interests and business models. Whether we are looking at these aspects on an SVOD, or a BVOD, or a video sharing platform, or a social media app, widely changes as their interests and commercial imperatives also vary. Furthermore, due to the speed of change and the constant emergence of new services and apps, there is a risk that similar typologies would rapidly become outdated.

Despite the individual differences and specificities though, through the interviews and mapping exercise we can argue that there are certain prioritisation measures that are often used within TV apps' UI, which include but are not limited to homepage UI design, personalised catalogues listing and related ranking, recommendation systems, search and browsing areas with related ranking, sponsored content, automated "play-next" function. The level of personalisation can vary depending on the organisation, its driving interests, and the sophistication of its recommendation systems. At the same time though, the level of transparency around the functioning of these measures and the criteria used to determine what content is prioritised also widely vary. Netflix for instance, has been improving its transparency notices through publicly available help pages that describe in a user-friendly manner how its personalisation and recommendation systems work.

As explained in Netflix's help-page, "in addition to choosing which titles to include in the rows on the Netflix homepage, Netflix's system also ranks each title within the row, and then ranks the rows themselves, using algorithms and complex systems to provide a personalised experience." (Netflix, 2021) Thus, there are at least three layers of personalization that can impact on what is ultimately prioritised to each user: 1) the choice of row (e.g. continue watching, trending now, award-winning comedies, etc.); 2) which titles appear in the row, and 3) the ranking of those titles (Netflix, 2021). The most strongly recommended rows go to the top, while the most strongly recommended titles start on the left of each row and go right (see Fig. A1.9). While these three layers of personalisation can be also found on other SVOD's services, the design of the overall interface, the ranking systems and the criteria that are prioritised within those processes differ from organisation to organisation. For instance, even though Amazon Video Prime's UI also presents dedicated and personalised catalogues rows and also uses recommendation systems, search and browsing functions, its UI is rather different and the level of transparency around what criteria feed into its prioritisation measures is very limited (see Fig. A1.10).

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

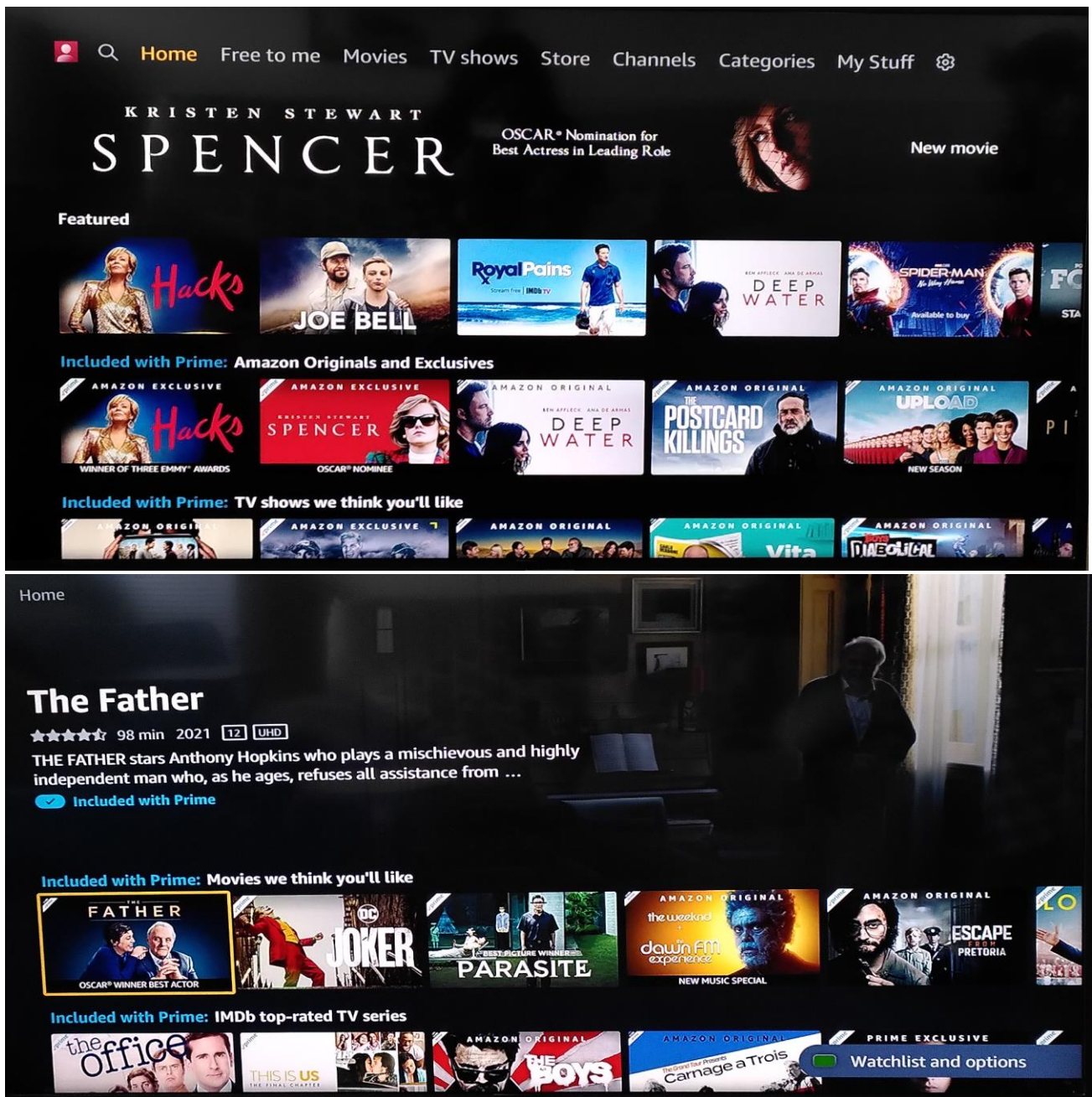
Figure A1.9. Examples of Netflix's homepage



Source: author's product testing, geolocated in England.

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

Figure A1.10. Examples of Amazon Video Prime's homepage



Source: author's product testing, geolocated in England.

While it is beyond the scope of this study to discuss the rich and expanding body of literature around personalisation strategies and recommendation systems on VOD services, through the information box below, we provide a summary of how these prioritisation measures work on Netflix.²⁰²

²⁰² Netflix was chosen as an example worth deepening for three main reasons. Firstly, because the organisation ranks first in the top three SVOD players in the EU, closely followed by Amazon Video Prime (Grece 2021, p. 19); secondly because of data availability, thanks to the ongoing transparency efforts of the company, there are more publicly available information and grey literature about the functioning of its services; thirdly, because it will feature also as an example in the A2 case study, and it was therefore worth clarifying how its prioritisation measures work from a technical perspective in order to inform the analysis and discussion of A2.

Recommendation systems and personalised UI: an industry practice example

Netflix personalises almost every feature of its catalogue and service's UI with the objective to refine its recommendation and predict what could be more relevant for the users among all its titles. Thus, the recommendation system does not only identify the content that could be of interest for the users, but it also aims to optimise the UI design and the homepage layout in order to make such content more visible and easily discoverable/findable by the final users. As explained in the transparency notice of Netflix's help page (2021), the likelihood that a user will watch a particular title in the catalogue is calculated on the basis of a number of factors including: (i) users' interactions with the service (such as viewing history and how users rated other titles), (ii) other members with similar tastes and preferences on the service, and (iii) information about the titles, such as their genre, categories, actors, release year, etc. Other users' data that can feed into the algorithms of the recommendation system to best personalise the service include the time of day users watch content, the devices used, and how long users watch the content and stay on the platform (Netflix 2021). The recommendations system does not use demographic information (such as age or gender). As emerged from the interviews, in addition to its established recommendation systems, Netflix is also testing new "explore algorithms" which are more randomised and could be used to further diversify the recommendation that users receive, and therefore the type of content to which they are exposed.

Furthermore, the software architecture of Netflix enables the system to handle large volumes of data in order to be more responsive to user interactions and make it easy to experiment with new recommendation approaches (Amatriain and Basilico, 2013). As outlined in Netflix's TechBlog, such architecture could be divided in three levels based on different computational processes, respectively offline, nearline and online. Firstly, the offline computation refers to procedures that are performed periodically (e.g. weekly) and require a higher level of computational complexity, such as updating a ranking mode. Secondly, online computation concerns those calculations that are performed in direct response to a user request, for example what to display after observing the user's clicks in the current session. Finally, Nearline refers to calculations carried out in response to a user, but not in real time, for example the reordering of a row of videos can be performed during the user session, but only when the necessary calculation has been completed (Amatriain and Basilico, 2013). In the Netflix architecture, each event generated by user interaction with the system enters specific process queues and is used at the appropriate time by specific algorithms, therefore creating a modern assembly line where any data can be used and transformed in parallel. The combination of its personalisation strategy, recommendation system, and software architecture all contribute to some extent to refine the prioritisation measures and UI's design of Netflix's TV app.

2.2 Smartphones

As was also highlighted in the recent report of the Council of Europe on the prioritisation of content online (Mazzoli & Tambini, 2020), in order to have a fuller picture of how prioritisation and prominence measures work today, it is important to also investigate other types of gateways that are increasingly used in order to access audiovisual media content, especially news content, such as smartphones and tablets. On mobile phones, intermediary services and content aggregators, like search engines and social media platforms, are increasingly becoming key gateways to content (Nielsen, 2017). This is particularly relevant when it comes to news content. Indeed, the 2019 Reuters Institute Digital News Report has shown that, in several countries, smartphones and their mobile apps are becoming the main gateway through which to access news, overtaking television or print in terms of reach for the “first contact with news” (Newman et al., 2019, pp.15–16). This trend is enhanced by the ongoing fragmentation and disaggregation of the news market, which is contributing to the weakening of the brand relationships between readers and specific news sources, especially among people aged 18-24 (the so-called Generation Z), who are more likely to prefer to access news via social media rather than on newspaper and/or television (Newman et al., 2020; 2021).²⁰³

Thus, even though the trend has been slowed down during the COVID-19 pandemic, during which people actually identified television as their main source of trusted news (Newman et al., 2020),²⁰⁴ overall, in the past few years, search engines and social media have become an integral and essential part of how people find and access news all over the world. The networks people use and the way in which social networks showcase news have, however, changed considerably during that time, as existing platforms such as Facebook, Twitter, and YouTube evolved both in terms of how they work and who uses them, and newer networks such as Instagram, Snapchat, and TikTok have grown in importance (Simgé 2021). In addition, even though mainstream news brands and journalists attract most attention around news in both Facebook and Twitter, they are eclipsed by influencers and alternative sources in networks like TikTok, Snapchat, and Instagram (Newman 2021, p.10).²⁰⁵ Furthermore, in the midst of these ongoing developments, data from the latest Digital News Report

²⁰³ While people still think of newspapers as the best destination for local politics, in other areas search engines, internet marketplaces, or social media are now considered better or more convenient. Looking at the UK as one example, newspapers are not even the primary location for information about COVID-19, which has become easily accessed via a data visualisation in Google search results, from a social media feed, or from an official government website, while by contrast, in Norway, local newspapers are seen as the ‘go-to’ source for politics (71%), crime (73%), Coronavirus news (53%), and things to do (46%) (Newman et al. 2021, p. 16-17)

²⁰⁴ Based on the insights provided by the latest Digital News Report (Newman et al. 2021) which has surveyed 46 markets over 6 continents, trust in the news has grown, on average, by six percentage points in the wake of the Coronavirus pandemic – with 44% of their total sample saying they trust most news most of the time. This reverses, to some extent, recent falls in average trust – bringing levels back to those of 2018. However, data and specific trends, though, vary, depending on the national contexts. In a number of countries, especially those with strong and independent public service media, we have seen greater consumption of trusted news brands. Finland for instance remains the country with the highest levels of overall trust (65%), and the USA now has the lowest levels (29%) in our survey. Furthermore, in their analysis of fourteen European countries (e UK, Austria, Belgium, Finland, France, Germany, Ireland, Italy, Netherlands, Norway, Portugal, Spain, Sweden, and Switzerland), they noted that some of the most trusted news organisations – including commercial and public media brands – have retained quite significant extra online audiences in terms of online reach throughout the pandemic, while on average, brands with lower trust scores have done less well by comparison (Newman et. al. 2021, p. 11). This trend is strongest in Sweden, Austria, Ireland, and Norway, a little less so in Finland – perhaps because all big brands are relatively well trusted there (Newman et. al. 2021, p. 11).

²⁰⁵ TikTok now reaches a quarter (24%) of under-35s, with 7% using the platform for news – and a higher penetration in parts of Latin America and Asia (Newman et. al. 2021, p. 10)

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

(Newman et al. 2021, p.9), shows that those who use social media are more likely to say they have been exposed to misinformation about Coronavirus than non-users.²⁰⁶

Within this scenario, investigating how content prioritisation processes work on these intermediary services becomes pivotal in order to better understand how media content and services – especially news - circulate online. However, the prioritisation principles and content curation criteria of these systems are, in most cases, unknown to their users, and they are hard to negotiate by the providers and publishers (Mazzoli and Tambini, 2020; Phillips & Mazzoli, 2021).

Building on the typology that was advanced in the Council of Europe study (Mazzoli & Tambini, 2020), the Table below provides an overview of the key prioritisation measures that take place through these devices (See Table A1.2). The Table is complemented with additional information on search engines and social media in the following sections.

Table A1. 2. Summary overview (smartphones)

Access points and related users' interfaces	Examples of market actors	Content prioritisation measures
Home screen	Device manufacturer's home screen: e.g., iPhone home screen	Even though there are pre-installed apps and search areas in the device, most users personalise their home screen by re-arranging/selecting/deleting/downloading their apps, however they prefer
Search area	Device manufacturer's search area e.g., Google Android's search area (text + automated voice activation)	Most smartphones have integrated voice assistant search functionalities as well as dedicated search areas on the screen
Push notifications area	Push notification from OS provider, appearing on device manufacturer's screen saver	Certain smartphones have default push-notification from selected content providers (often news providers), which are integrated with the OS and are shown to the users on their screensavers. This functionality can be disabled.
Apps²⁰⁷	Search engine app: e.g., Google Chrome app	Prominence of search results, ranking systems (within the same page, between different pages, and within the thematic sub-tabs on videos, images, news etc.); dedicated and sponsored boxes

²⁰⁶ As reported by 2021 Digital News Report, Facebook is seen as the main channel for spreading false information almost everywhere but messaging apps like WhatsApp are seen as a bigger problem in parts of the Global South such as Brazil and Indonesia (Newman, 2021, p.9). Furthermore, the spread of disinformation and fake news

²⁰⁷ The apps discussed are those that are relevant to the accessing of audiovisual media content and news through these gateways. Other apps that can be downloaded, but that are not relevant for this study, were not considered.

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

	Social media apps: e.g., Facebook, Twitter, Tik Tok, Instagram	Flagging and tagging, personalised ranking of newsfeed, instant articles, trending, recommendation algorithms, pushed notifications, personal settings
	News aggregator apps: e.g., Google News	Newsfeed and related ranking, notifications, <i>"following"</i> area, <i>"for you"</i> area and personalised news boxes on the feed, <i>"headlines"</i> area, <i>"news stand"</i> area, search area, sponsored and promoted content
	Video sharing apps: e.g., YouTube	Homepage, personalised feed and related ranking, recommended titles, personalised tags based on content categories (mix of genre-based categories and users' preferences); automated <i>"play-next"</i> function, <i>"explore"</i> tab or function, dedicated tabs (mix of subscription, personal library and additional spaces for users' personal settings), ad-hoc boxes for specific content (e.g., COVID-19 featured box for COVID-19 related news and content)

2.2.1 Search engines

Taking the market leader - i.e., Google Search - as an example of a search engine that is predominantly used on both smartphones and tablets, we broadly know that its search algorithms look at many factors, including the users' previous search history, the words of the queries, the relevance and timeliness of pages, location and settings, attributing different weight to each factor (Google Search, 2019). In recent years, and probably following public pressures from civil society, regulators and companies, Google has put more effort into explaining, in a user-friendly manner, how its search algorithms and ranking systems work. While there are no transparency notices that are directly visible on the Google Search homepage or results page (after a users' input her/his own text search), information can be found on its help-pages (Google Search 2021). In addition, more detailed information about how its search engine optimisation techniques and general search functionality work, are available on the "Google Search Central Hub",²⁰⁸ which provides a series of dedicated help-pages to guide and support content providers, websites' and apps' developers, in making their content available and more easy to find on Google Search.

For the purposes of this report, we will focus on those help-pages that are accessible and more easily understandable for all users. At the moment of writing, Google Search outlines that the mission of its "Search Index" is to sort and organise all of the information and content that is available on the web:

With the vast amount of information available, finding what you need would be nearly impossible without some help sorting through it. Google's ranking systems are designed to do just that: sort through hundreds of billions of web pages and other content in our Search index to present the most relevant, useful results in a fraction of a second (Google Search 2021).

To do so, its search algorithms look at many factors and signals that are used to prioritise and rank content on its results' pages, including "the words of your query, relevance and usability of pages, expertise of sources, and your location and settings, and the weight applied to each factor varies depending on the nature of the query" (Google Search 2021). For example, the freshness of the

²⁰⁸ See Google Search Central for developers: <https://developers.google.com/search>

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

content plays a bigger role in answering queries about current news topics than it does in relation to dictionary definitions. In a nutshell, the key factors that thus help to determine which results are returned in answer to a query, and that are used to prioritise content, are: a) the meaning of the query; b) its relevance; c) its quality; d) its usability, and d) its context (see Table A1.3).

Table A1. 3. Overview of key factors feeding Google Search's ranking and sorting algorithms (Google Search 2021)

Factors	Explanation
Meaning of the query	<p>Interpreting users' query: <i>"to return relevant results, we first need to establish what you're looking for – the intent behind your query. To do this, we build language models to try to decipher how the relatively few words that you enter into the search box match up to the most useful content available. This involves steps as seemingly simple as recognising and correcting spelling mistakes and extends to trying our sophisticated synonym system that allows us to find relevant documents, even if they don't contain the exact words that you used."</i></p> <p>Targeting the results to the interpreted query: <i>"Our systems also try to understand what type of information you are looking for. If you used words in your query like 'cooking' or 'pictures', our systems realise that showing recipes or images may best match your intent. If you search in French, most results displayed will be in that language, as it's likely that is what you want. Our systems can also recognise that many queries have a local intent, so that when you search for 'pizza', you get results about nearby businesses that deliver."</i></p> <p>Providing updated results: <i>"If you search for trending keywords, our systems understand that up-to-date information might be more useful than older pages. This means that when you're searching for sports scores, company earnings or anything related that's especially new, you'll see the latest information."</i></p>
Relevance of content	<p>Google's systems analyse the content to assess whether it contains information that might be relevant to what users are looking for, using quantifiable signals to assess such relevance, which <i>"are not designed to analyse subjective concepts such as the viewpoint or political leaning of a page's content."</i> The signals mentioned on the page include:</p> <p>Keywords: <i>"The most basic signal that information is relevant is when content contains the same keywords as your search query. For example, with web pages, if those keywords appear on the page, or if they appear in the headings or body of the text, the information might be more relevant."</i></p> <p>Interaction data: <i>"We also use aggregated and anonymised interaction data to assess whether Search results are relevant to queries. We transform that data into signals that help our machine-learned systems better estimate relevance."</i></p>
Quality of content	<p>Google's systems aim to also prioritise "quality content" and to do this, they identify signals that can help determine which content demonstrates <i>"expertise, authoritativeness and trustworthiness"</i>. How such categories are determined depends on <i>"several factors"</i>, only one of which is explained i.e., external reviews intended as cross-references from other prominent websites</p> <p><i>"One of several factors that we use to help determine this is understanding if other prominent websites link or refer to the content. This has often proven to be a good sign that the information is well trusted. Aggregated feedback from</i></p>

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

	<i>our Search quality evaluation process is used to further refine how our systems discern the quality of information”</i>
Usability of web pages	<p>When all things are relatively equal, content that people will find more accessible may perform better. Thus, usability is hereby intended as:</p> <p>Access and popularity-based indicators, how often certain pages are being accessed based on users’ data;</p> <p>Page experience aspects,²⁰⁹ such as if content is mobile-friendly, so that those on mobile devices can easily view it.</p> <p>Performance-related indicators e.g., whether content loads quickly.</p>
Context and settings	<p>Information such as your location, past Search history and Search settings all help Google Search to refine and target the ranking of search results.</p> <p>Geolocation: <i>“We use your country and location to deliver content relevant for your area. For instance, if you’re in Chicago and you search ‘football’, Google will most likely show you results about American football and the Chicago Bears first. Whereas if you search ‘football’ in London, Google will show results about football and the Premier League.”</i></p> <p>Settings, such as preferred language or privacy setting (e.g., opted in to SafeSearch (a tool that helps filter out explicit results).</p> <p>Past search activities: <i>“In some instances, we may also use your recent Search activity to present more relevant results. For instance, if you search for ‘Barcelona’ and recently searched for ‘Barcelona vs Arsenal’, that could be an important clue that you want information about the football club, not the city”</i></p> <p>Other activities on the users’ Google Accounts: <i>“Search also includes some features that personalise results based on the activity in your Google Account. For example, if you search for ‘events near me’ Google may tailor some recommendations to event categories that we think you may be interested in.”</i></p>

To some extent, this demonstrates an attempt to include slightly more transparency and explainability in relation to how information is arranged, curated and ranked on Google Search. It should be noted that users can also intervene in at least one of these factors, namely, “context and settings”, and can partially enhance their control over their search results. As indicated at the end of the “Google Search – how search works” help-page (2021) users can control what Search activity is used to improve their Search experience, and they have the possibility to adjust which data is saved to their Google Account (at myaccount.google.com). Furthermore, Search personalisation, based on activity in your account, can also be disabled by “turning off Web & App Activity” on the same account, or preferences like “SafeSearch” can be added as preferred settings. We therefore see some forms of efforts being made towards giving users the possibility to change their default settings, to receive fewer results that are based on passive personalization and that target activities, and increase the privacy of their searches. However, how often this is done, and how easy it is for this information to be found by a regular Google search user, is highly disputable.

In addition, factors like “quality” also appear to be a form of public interest principles in the ranking system, but it is also one of the most vaguely explained factors. Overall, though, as some research participants have highlighted, while notions of *relevance* or *context* can be more easily measured and justified, concepts like *quality*, *authoritativeness* and *trustworthiness* are more normative and

²⁰⁹ See: <https://developers.google.com/search/docs/advanced/experience/page-experience#signals>

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

subjective, there are no shared guidelines on how to define them, and they are open to different interpretations and potential misuse. In this regard, as we also mentioned in the introduction, the current industry efforts of content providers, especially of news content providers (see JTI, 2019), are calling for standards and criteria that can be applied to organisational processes and practices, rather than benchmarking individual pieces of content with “*quality labels*”, which may be open to manipulation and abuse, either by States or by private actors. *Ad-hoc* examples of how these normative notions were operationalised throughout the COVID-19 pandemic can be found in the dedicated boxes, or search areas, that most of the major intermediary services have provided.

As has also been argued by Mazzoli and Tambini (2020), during the pandemic, all of the signatories of the EU Code of Practices on misinformation actively promoted fact-checked and quality news on this topic, prioritising those sources that are considered to be reliable and trustworthy, that are adapted to the geolocation of the users, such as the World Health Organisation, national Departments of Health, and national PSM organisations (see Fig. A1.11). This demonstrates that such services have the technical capability to identify and bring to the surface those specific types of services that comply with their ideas of *quality* and *trustworthiness*, making almost an editorial choice when curating their homepages, results rankings and news feeds (Mazzoli and Tambini 2020, p.5). However, we should take into account that this was done during a moment of global emergency, and that positive discrimination was limited to content and news related to COVID-19 and vaccines, in order to curb the spread of misinformation, while other prioritisation strategies remained unchanged. While there may thus be a shared understanding of what fact-checked and quality news on COVID-19 and vaccines is, applying similar strategies to other topics and matters may be questionable and prone to misuse.

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

Figure A1. 11. Screenshots of the first page results from a Google Search on “COVID-19”

https://www.worldometers.info › coronavirus
Coronavirus Cases - Worldometer

Country, Other	Total; Cases	New; Cases	Total; Deaths	New; Deaths	Total; Recovered	N...
World	247,950,726	+96,644	5,022,972	+2,500	224,634,793	+8...
Asia	79,479,337	+21,747	1,172,642	+387	76,561,339	+2...
Europe	64,786,198	+72,254	1,307,286	+1,980	58,246,303	+6...

Visualizza altre 236 righe

https://www.nhs.uk › conditions ▼ Traduci questa pagina
Coronavirus (COVID-19) - NHS
 NHS advice about coronavirus (COVID-19), including information on symptoms, testing, vaccination and self-isolation.
 NHS COVID Pass · Self-isolation and treating... · Book a vaccination · Vaccination

https://www.who.int › health-topics ▼ Traduci questa pagina
Coronavirus disease (COVID-19) - WHO | World Health ...
 Coronavirus disease (COVID-19) is an infectious disease caused by the SARS-CoV-2 virus. Most people infected with the virus will experience mild to moderate ...
 COVID-19 vaccines available · Technical guidance publications · Considerations for

https://covid19.who.int ▼ Traduci questa pagina
WHO Coronavirus (COVID-19) Dashboard
 World Health Organization Coronavirus disease situation dashboard presents official daily counts of COVID-19 cases and deaths worldwide, ...

The screenshot shows a Google search for "covid-19" with the following elements:

- Search Bar:** "covid-19" with a search button and a clear button.
- Navigation:** "Tutti", "Immagini", "Notizie", "Maps", "Video", "Altro", "Strumenti".
- Results:**
 - Worldometers table of COVID-19 cases and deaths.
 - NHS advice on COVID-19 symptoms and testing.
 - WHO information on COVID-19 and available vaccines.
 - WHO Coronavirus (COVID-19) Dashboard.
- News Section:** "Notizie principali" with three news snippets:
 - Rai News:** "Covid-19, 5 milioni di morti nel mondo. Oms: 'Forse tre volte di più'" (5 ore fa).
 - Adriatico:** "Come ottenere e scaricare il Green pass" (15 ore fa).
 - sky tg24:** "Covid, news. Il bollettino: 2.818 nuovi casi e 20 morti. Tasso positività all'1,9%" (13 ore fa).
- Buttons:** "Mostra tutto" at the bottom of the news section.

Source: author's product testing, geolocated in England, with preferred language settings as Italian.

Finally, prioritisation is also strongly influenced by sponsorship, promotion and marketing agreements between content providers/apps, website developers and Google Search. Often, the first page results of a users' query would indeed include one or multiple search ads at the very top (Fig. A1.12). Finally, several European competition cases on Google Search have also argued that Google makes its own companies, or related services, more prominent in search results, thus negatively having an impact on competition and leveraging its control and power over the ranking of the results for its own competitive advantage.²¹⁰ Despite the aforementioned efforts, there are still a number of questions regarding, for instance, possible criteria that might ensure the diversity and pluralism of news, which appear to be completely absent; further transparency in relation to the

²¹⁰For instance, in 2019, the European Commission fined Google €1.49 billion for breaching EU antitrust rules, since Google had abused its market dominance by imposing a number of restrictive clauses in contracts with third-party websites, which prevented Google's rivals from placing their search adverts on these websites (Source: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1770).

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

underlying commercial and marketing agreements that also influence what appears more, or less, prominently in the rankings; a better understanding of how human curation and automated and federated search are combined in these systems (Phillips and Mazzoli, 2021), and a general reflection on the types of default settings that might be promoted to users who may not be inclined to dig deeper into the numerous Google's help-pages.

Figure A1. 12. Illustration of a search engine results page



Source: UK Competition & Markets Authority, 2020: 74.

2.2.2 Social media apps

When it comes to social media platforms (and their mobile phone apps), one of the most influential prioritisation mechanisms of these services concerns their recommendation systems and personalised content feeds. Recommendation systems are based on recommender algorithms, which can work on the basis of: (i) the data on users' preferences, interests and consumption habits (content-based filtering); (ii) insights into what other users like to read (collaborative filtering); (iii) data on their users (knowledge-based filtering), or (iv) a combination thereof (Helberger, 2019; Jannach et al., 2010; Karimi et al., 2018). Depending on the outlet and the metrics that are used for optimisation, these systems can be used to increase the time spent, the advertising revenues, and user satisfaction, but also to actively guide readers and to match individual readers with the news they will receive (Helberger, 2019, p.994). Choosing amongst these optimisation metrics therefore depends on the organisation's primary objectives and interests.

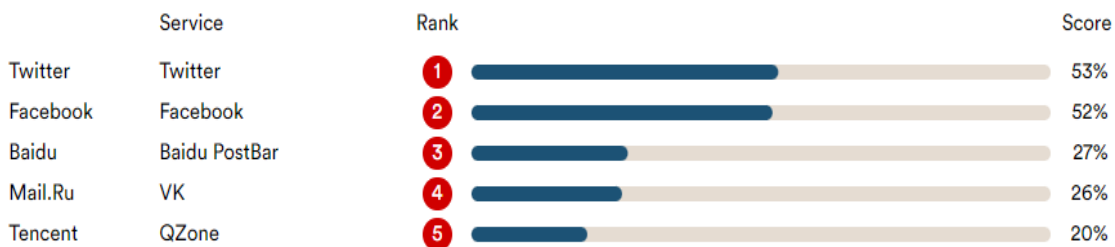
Overall, though, the power to actively guide and shape individuals' news exposure also brings fundamental questions about the values and guiding principles of these systems as they have an impact on the media's democratic mission (e.g., Helberger, 2019; Mazzoli 2021; Napoli 2011; Sørensen 2016, 2019). Such power is even more concerning when popularity, advertising interests and commercial agreements become the primary drivers of content prioritisation, rather than the

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

integrity and diversity of news information. The ability to serve individual users better and more effectively is also the source of some of the most prominent concerns about the impact of recommendation systems on democracy (Helberger, 2019, p. 995) and human rights (see Ranking Digital Rights, 2020). Not only academics, but also the regulators, warn that there is at least “a risk that recommendations are used in a manner that narrows citizens’ exposure to different points of view, by reinforcing their past habits or those of their friends” (Ofcom, 2012).

While this debate has been discussed for years now (see also, Pariser 2011, Sunstein 2001, Gitlin 1998), there are still informational asymmetries and a lack of transparency in relation to these content curation processes and prioritisation mechanisms. This has been confirmed also by the 2020 Corporate Accountability Index, which was developed by Ranking Digital Rights, and which evaluated 26 of the world’s most powerful digital platforms and telecommunications companies on their disclosed policies and practices in relation to their effect on people’s rights to freedom of expression and privacy. Their most striking takeaway is that companies, across the board, are not willing to publicly disclose much information about how they shape, curate and moderate digital content; how they enforce their rules, collect and use people’s data, and how this feeds into their algorithmic systems (RDR 2020). What they have also argued, though, is that there have been improvements by the companies that have been evaluated, including Twitter and Facebook, which have the highest total scores among those social media companies that were evaluated (Fig. A1.13), but, at the same time, “there is great evidence showing what so many advocates and experts warn is a systemic crisis of transparency and accountability among the world’s most powerful tech giants” (RDR 2020). More specifically, when it comes to the transparency of algorithmic processes, including both content moderation and curation processes,²¹¹ the RDR ranking also pinpointed that there is ample space for improvement (see Fig. A1.14).

Figure A1. 13. Total scores for the category “social networking and blogs” analysed by RDR 2020 ²¹²

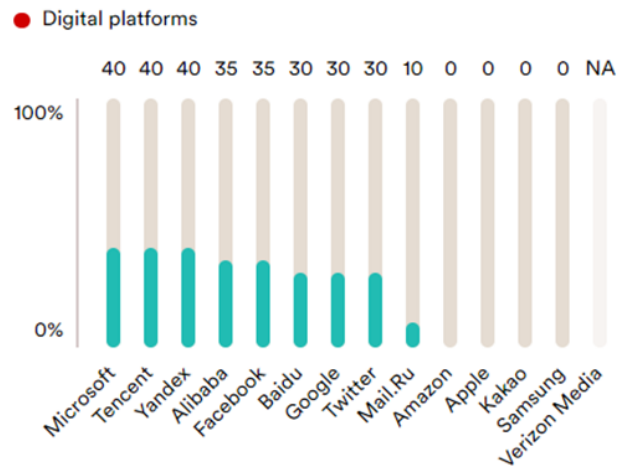


Source: RDR total ranking results, <https://rankingdigitalrights.org/index2020/explore-services>

²¹¹ More information on this aspect can be found in the analysis of the indicator F12 of the 2020 RDR Corporate Accountability Index.

²¹² Source RDR total ranking results: <https://rankingdigitalrights.org/index2020/explore-services>

Figure A1. 14. RDR 2020 ranking of indicator F.12: Algorithmic content curation, recommendation, and/or ranking systems. The selected digital platform companies are ranked based on whether they clearly disclose how content online is curated, ranked or recommended on their services and UIs.²¹³



Taking Facebook as an example, the content distribution guidelines and help pages that are publicly available are rather high level and they mainly focus on the types of “problematic” and “low-quality” content that receive reduced distribution in the News Feed (e.g. Meta Transparency Centre, 2022). According to the research participants, this focus is justified because prioritisation measures go hand in hand with moderating and demoting content, including removing misinformation, and therefore it is difficult to separate the two processes. Content curation and content moderation are indeed two sides of the same coin (Mazzoli & Tambini, 2020), however, this should not be an excuse to be transparent only on one of these practices, as both are equally important for the distribution and access to content online.

It should be acknowledged though that in recent years, Meta has been increasing its efforts towards improving its transparency notices about these practices, especially when it comes to the curation and moderation of news content by publishing help-pages that explain in a user-friendly manner what criteria feed into its algorithmic processes (Meta Transparency Centre, 2022). For instance, Meta Transparency Centre (2022) provides some general information on how its News Feed algorithm works, highlighting that since most people have more content in their News Feed than they could possibly browse in one session, Facebook uses “an algorithm to determine the order of all of the posts users could see” and “to prioritise the most meaningful posts at the top of the News Feed” the algorithm consider four aspects, namely inventory, signals, predictions and relevance (see Table A1.4). However, it is still unclear how such criteria are translated into their ranking and scoring

²¹³The elements used to evaluate the selected companies on this specific indicator include the following questions: 1) Does the company clearly disclose whether it uses algorithmic systems to curate, recommend, and/or rank the content that users can access through its platform? 2) Does the company clearly disclose how the algorithmic systems are deployed to curate, recommend, and/or rank content, including the variables that influence these systems? 3) Does the company clearly disclose what options users have to control the variables that the algorithmic content curation, recommendation, and/or ranking system take into account? 4) Does the company clearly disclose whether algorithmic systems are used to automatically curate, recommend, and/or rank, content by default? 5) Does the company clearly disclose that users can opt in to automated content curation, recommendation, and/or ranking systems? Each indicator of the RDR ranking system is made up of a set of elements, and for each element companies receive a different score. To achieve a score of 100% (100 points), companies should be providing “full disclosure” on the above questions and requested data; to achieve 50% (Partial, 50 points), a company should disclose some, but not all, aspects of the element, or the disclosure is not comprehensive enough to satisfy the full scope of the element, while 0 points are assigned if researchers were unable to find the information that is provided by the company, or company disclosure exists, but does not answer the question that the indicator asks. For more information, and to access the data, see: <https://rankingdigitalrights.org/index2020/indicators/F12>

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

system, whether other factors feed into such scores, and how the different factors are then weighed in practice to determine what content is ultimately recommended and prioritised.

Table A1. 4. Overview of the four steps used to prioritise content in Facebook’s News Feed algorithm

Factors	Explanation
Inventory	<i>“The first item the algorithm considers is your inventory, or the total set of posts you could see when you open Facebook. This includes all of the posts shared by the people you have connected to as ‘friends’, the Pages that you follow and the groups that you have joined, interspersed with ads and recommended content that we think will be relevant to you based on your Facebook activity”.</i>
Signal	<i>“Then, for each of these posts, the algorithm considers multiple factors such as who posted it, how you have previously interacted with that person, whether it’s a photo, a video or a link, and how popular the post is based on things such as how many of your Friends liked it and Pages that re-shared it. All of these factors are called signals.”</i>
Predictions	<i>“From there, the algorithm uses these signals to make a series of personalised predictions about each post based on how likely it is to be relevant to you: for example, whether it’s from your friends or family, how likely you might be to comment on it, how likely it is to foster a meaningful interaction, how likely you might be to find it on your own or if it contains a quality indicator (if a piece of news is original content, the algorithm assigns it a higher personalised relevance score, and it will often show up closer to the top of your News Feed). We also run a number of surveys asking people whether a post was “worth your time”, and based on those survey responses, we predict how likely people are to find a post worthwhile. Posts that are predicted to be more worthwhile are shown higher up in the News Feed.”</i>
Relevance	<i>“Lastly, the algorithm calculates a relevance score for each post in your inventory based on these signals and predictions. Posts with higher scores are more likely to be interesting to you, so they’ll be placed closer to the top of your News Feed, and posts with lower scores will be closer to the bottom”</i>

Source: Meta Transparency Centre, 2022

When it comes to news content specifically, Meta Transparency Centre provides some additional information on how the company curates and ranks “newsworthy content” on its Facebook’s service (2022). In the current approach that Meta takes on such “newsworthy content”, the company claims that their choice on what “newsworthy content” should be and whether it should be more or less visible to users are based on “a balancing test that weighs the public interest against the risk of harm” (Meta Transparency Centre 2022). Such tests and related judgments are said to be based on “international human rights standards” (Meta Transparency Centre 2022), but which standards are used and what types of human rights risks assessment frameworks inform such decisions is not clear.

Furthermore, as further explained in the transparency notice (2022), and as it emerged from the stakeholder consultation, determining the “newsworthiness” of a piece of content, as well as other public interest criteria such as quality, trustworthiness and authoritativeness is a challenging task, and at the moment of writing this is decided based on their internal content guidelines and community standards but there is no shared definition among social media companies or external standards

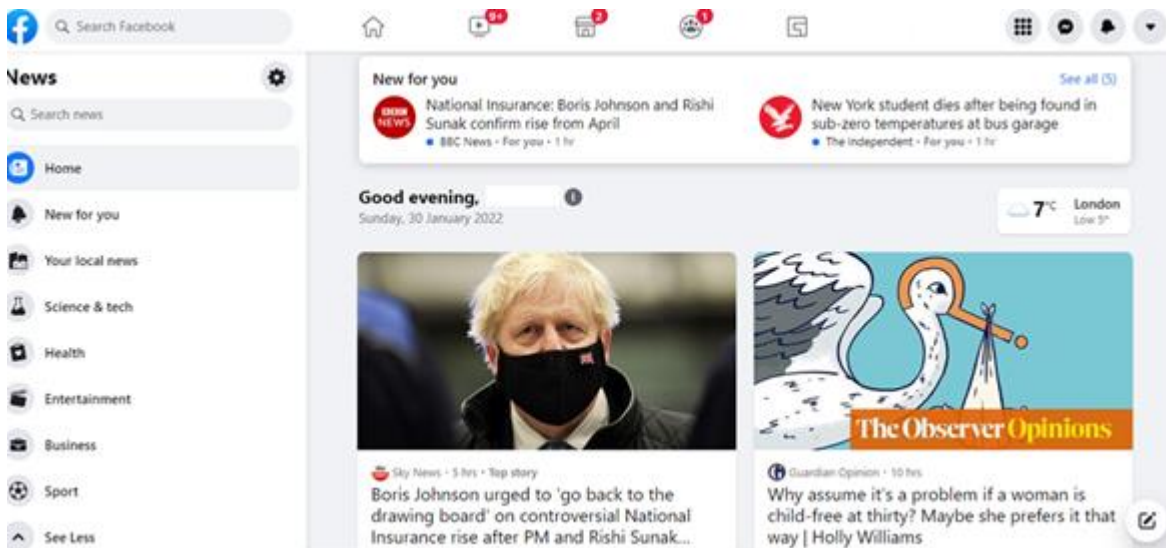
Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

that are internationally recognised and therefore applicable also for global intermediary services. At the moment of writing, the news allowance seems to be based on a combination of factors, that include (Meta Transparency Centre 2022):

- A **“special value”**, described as the value given “to content that surfaces imminent threats to public health or safety or that gives voice to perspectives currently being debated as part of a political process”);
- **Country-specific circumstances**, for example, whether there is an election underway or the country is at war).
- **The nature of the speech**, “including whether it relates to governance or politics”.
- **The political structure of the country**, “including whether it has a free press”.

Based on these factors, “content from all sources, including news outlets, politicians or other people, is eligible for a newsworthy allowance”, and the main limitation is balancing the news allowance with the potential “risk of harm” of such content, intended “as physical, emotional and financial harm, or a direct threat to public safety” (Meta Transparency Centre 2022). Alongside, these prioritisation measures, in specific countries (namely, UK, Germany, US and Australia, and in France in early 2022), Meta has introduced a dedicated “News tab” on Facebook, giving the possibility to news publishers to apply and join in order to have their content available in such separate news-only sections. The News Tab is listed on the left side of the Facebook app’s UI, and it directs the users to a collection of news content that is personalised for each individual user, and an additional list of thematic sub-sections which provide additional news local content or news content on specific topics like health, entertainment, science & tech etc. (Fig. A1.15).

Figure A1. 15. Screenshot of Facebook’s News Page



Source: author’s product testing, geolocated in England.

As it will be further discussed in A2, these content curation and prioritisation processes show that social media companies - like Facebook in this case - are willing to improve their content curation and moderation practices also through measures that support public interest services, especially when it comes to news content providers. However, as also highlighted by Mazzoli (2022), there is still an overall lack of coordination between these companies on the one hand, and the existing civil

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

society initiatives and industry standards on the other (see A2). Furthermore, both in Facebook and Google Search cases, “there are no independent evaluations of how these criteria feed into their content prioritisation measures, how they are weighed against other criteria that value popularity, relevance, or user engagement, and what impacts they have on users’ access and consumption of news” (Mazzoli 2022). The core purpose of online intermediaries like social media is to moderate, curate, select, and filter what content can be found on their services, but they are driven by private and commercial interests (Gillespie 2018), and it therefore still remains to be seen whether they would embrace signing up to public interest principles and how policy interventions could foster that (see A3).

2.3 Smart speakers

As the market for media interfaces remains hugely innovative, gateways to content that can influence how content is prioritised and made more, or less, prominent and discoverable, are constantly changing. Amongst these emerging gateways, we can also consider smart speakers, i.e., speaker and voice command devices with an integrated voice assistant system, such as Alexa (Amazon), Google Assistant (Google Alphabet), Siri (Apple), Cortana (Microsoft), and Bixby (Samsung). As shown by recent studies, while only a small number of consumers chose to access content in this way, the penetration of voice-activated speakers is growing at an astonishing pace, today reaching mainstream audiences (Newman, 2018a, 2018b), and in territories where these are available in the local language, the speed of adoption may prove equal to that of the telephone and colour television (EBU 2018).

Like all new devices and new intermediary services, smart speakers, with their voice control functionalities, also present both an opportunity and a challenge to the media sector, thus raising issues around prominence, brand recognition and disintermediation (EBU 2018). On the one hand, commercial and public service radio broadcasters have raised concerns about the growing dominance of digital voice assistant platforms that are offered through smart speakers, highlighting the anti-competitive behaviours of these platforms, and the related issues around access, self-preferences, prominence, and privacy (EBU, EDRA and AER, 2021). However, the opportunities are also very appealing for any organisations that produce and distribute content, including commercial and public service radio broadcasters. For instance, the accessibility of radio and related on-demand audio services, such as podcasts, can be enhanced by voice control at moments where physical selection might not be so convenient, and the overall users’ experience can become significantly smoother (EBU 2018). At the moment of writing, there is still little data available about the usage of these devices and their impacts on the way that content circulates online - including the potential implications of these systems for exposure diversity. Nevertheless, which content or services are delivered when a user asks: “Alexa, play the news”, or “Siri, play a documentary about the elections”, is also a form of content prioritisation which calls for further investigation and monitoring (Mazzoli and Tambini, 2020, p.39).

2.4 Closing remarks

In conclusion, this first mapping strives to outline, in a descriptive and simplified manner, the complexities of the internet-distributed audiovisual media value chain and how different types of prioritisation measures take place at different points. These issues are highly important for the future evolution of this sector, as well as for its internal plurality. The evidence seems to be that there are a number of factors and criteria that feed into the decision-making processes in relation to granting prominence and discoverability online. Even though some public interest considerations seem to be

emerging amongst some of the industry's actors, at the moment of writing, evidence points to the fact that it is mainly commercial considerations that are more influential. Due to the lack of transparency around these criteria, and the limited access to data that is publicly available, besides general guidelines and help-pages, the implications that such practices have on fundamental rights and media pluralism, especially for internal pluralism and the diversity of exposure, are likely to be significant, and yet difficult to fully comprehend and measure (Mazzoli & Tambini, 2020). The work done in the context of A2, however, will strive to investigate in more depth such implications that complement and triangulate the publicly available information with the ongoing experts' interviews.

3. Mapping of legislative measures across Europe

Main author: Ingrid Lambrecht

3.1 Overview of mapped legislative measures

This section of the study represents the narrative report of the mapping exercise, resulting in a high-level description of some of the general findings. As elaborated in the methodologies section (Section 7 Methodologies), the findings are divided across key features: a) the rules prescribed, b) the actors to which the rules apply, c) the type of content and services that are positively discriminated against (i.e., content and content providers that are considered to be of "general interest" or of "public interest"); d) the implementation of the rules in practice. The narrative report largely follows the same structure, highlighting interesting commonalities, trends or outliers in these features. Additionally, the report will focus on the different types of prominence measures, such as those provided by the AVMSD, or those that are related to the organisation of Electronic Program Guides ('EPGs'), and will contrast them – where relevant -, with the more traditional measures of 'must carry' and 'must offer'. Finally, please note that the implementation of these measures is limited to a mapping of key traits and will be further analysed in relation to their effectiveness in the context of A2.

3.1.1 Prominence

The central category of the measures of this mapping is any measure which includes an objective to improve the prominence, findability or discoverability of media content, regardless of transmission or format type. The mapping will show, however, that this may largely be reduced to three different types of measures: national implementations of Articles 7a and 13 of the AVMSD (2018), and Article 62 of the European Electronic Communications Code ('EECC' (2018)).

The most common measure is derived from the AVMSD, which has, since its most recent revision in 2018, the "prominence" of European works as an obligation for all on-demand AVMS (Article 13(1), Recital 35 AVMSD). Please note that this mapping exercise requires the transposed Article to include the prominence requirement additional to the 30% quota obligation for European works in order to be counted as an implementation of the prominence measure in the mapping.

Additionally, the revised AVMSD also recognizes Member States' freedom to adopt rules that ensure the "appropriate" prominence of audiovisual media services that are of "general interest" (Article 7(a), Recital 25 AVMSD). Article 7a of the AVMSD is an optional provision for Member States allowing them to take measures to ensure the appropriate prominence of audiovisual media services of general interest. Member States are still in the process of adopting national prominence frameworks, and approaches vary significantly from country to country. Some have built on long standing traditions regarding the PSM, others consider the use of 'quality labels'. A number of EU MS still lack a minimal policy framework.

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

Finally, the EECC has also copied the rules on CAS, APIs and EPGs from the Access Directive (2002, Amended in 2009) but, as it deals only with transmission, and not with content, such provisions are “*without prejudice to the ability of Member States to impose obligations in relation to the presentational aspect of EPGs and similar listing and navigation facilities*” (Article 62(3)). The mapping will present the different implementations of this Article across Europe.

3.1.2 Must carry

In the EU, must-carry obligations are justified on both media diversity and pluralism grounds and as a measure to ensure that certain programs are available to the population at large. Minimum harmonisation of rules that intervene at the level of the distribution of audiovisual media has been achieved through the electronic communications’ regulatory framework. They consist of obligations that are imposed on networks/platform operator to carry specific content, such as TV channels. The precise reasons may vary across Member States, as the general interest objectives are defined at Member State level.

Since 2002, and the Universal Service Directive, most Member States have put in place must carry obligations, but there is a diversity in national legal approaches. Article 31 of the Universal Service Directive (Directive 2002/22/EC) allowed the EU Member States “*to impose reasonable must-carry obligations for the transmission of specified radio and television broadcast channels and services on undertakings providing electronic communications networks used for the distribution television and radio broadcasts to the public, where a significant number of end users of such networks use them as the principal means to receive radio and television broadcasts.*” Article 31 thus allowed Member States to impose reasonable must-carry obligations, or obligations for electronic communication network operators to transmit and distribute specified television and broadcast services. Article 31 has since been replaced by Article 114 of the 2018 EECC, which did not substantially amend the rules.

In practice, though, the EECC also allows for a diversity of national legal approaches, in respect of the networks covered (only cable, or also DTT, IPTV and satellite), the channels to be carried (only PSB, or also other), or the remuneration mechanisms. For instance, some countries, in particular, Italy and Spain, did not adopt the must-carry obligations in the traditional sense, but they do have rules with similar effect. The full mapping has, in practice, outlined some of the different approaches to the must-carry obligation.

3.1.3 Must offer

There is no EU-wide harmonisation when it comes to must offer obligations. Member States have regulated this obligation in their national legislation. A number of EU Member States have coupled their must-carry obligations with some type of must-offer obligations, such as Spain, France, Ireland and Poland. Four types of must offer obligations have been observed.

Firstly, concerning the obligation to offer premium content, Spain uses this type of obligation in its national legal order. The goal is to make premium TV channels available on a non-exclusive basis and under fair, reasonable, objective, transparent and non-discriminatory terms.

Secondly, concerning the obligation to offer public service content, which ensures that public service content is widely available to the public. France, Ireland, Italy, Spain and the United Kingdom have put such rules in place.

Thirdly, there are must-offer obligations mirroring must-carry rules, i.e., obligations to carry certain content over certain networks. Countries like France, Ireland, Poland and the United Kingdom have obligations of this type. However, each of them has very specific rules in place depending on whom

this obligation is imposed, who benefits from it, and the exact scope of the obligation. The common point among their approaches is that none of them had set up a pricing requirement for this obligation.

Lastly, Member States, such as France and Spain, have obligations in place to ensure the reception of free to air channels in areas that are not covered by digital terrestrial television. Here, France established a pricing requirement, while Spain did not.

3.2 Narrative report on legislative measures on findability, prominence and exposure

3.2.1 The adoption rate of aforementioned measures

The first section of this narrative report zooms in on the mapping features that are related to the relevant regulations in support of the prominence, findability or discoverability of media content and general interest content specifically, where this is applicable. More specifically, this section provides a summary of the findings that are related to: (1) the existence of such measures, and (2) their relation to the EU's framework for prominence measures.

The first measure to be discussed is the optional implementation of Art. 7a of the revised AVMSD concerning the prominence of general interest content. The revised AVMSD recognizes Member States' freedom to adopt rules that ensure the "appropriate" prominence of audiovisual media services that are of "general interest" (Article 7a, Recital 25 AVMSD). Generally, Member States are still in the process of or finalizing their implementation of the AVMSD and approaches to the voluntary measure provided by this article vary significantly. The mapping has currently found seven voluntary implementations of the measure.²¹⁴ Some of these build on long standing traditions regarding PSM,²¹⁵ others consider the use of qualification criteria or conditions.²¹⁶ The vast majority of these voluntary implementations currently lack the necessary framework to ensure its effective implementation in practice, however.

The second measure which requires attention is related to the AVMSD's European works provision. With the revision of the AVMSD came the additional condition that European works should also receive due prominence, implying that a quantitative share does not suffice if it is not sufficiently visible or findable by the end-user. Given that the condition was not optional, like that of Art. 7(a), the transposition rate of this additional condition is much higher, with nearly all countries having implemented it in some shape or form.²¹⁷ However, the enactment of implementation decrees, or of other secondary legislation to ensure effective implementation of the prominence requirement in practice, appears to be largely missing at the time of this mapping exercise.

The third measure which is commonly associated with measures to promote prominence are those that are related to Electronic Program Guides ('EPG'). However, 11 concrete implementations of this

²¹⁴ I.e. Flemish Community of Belgium, Bulgaria, France, Germany, Greece, Italy and Romania.

²¹⁵ See, e.g., Germany, with its Medienstaatsvertrag, which introduces both negative and positive safeguards to secure pluralism through non-discrimination and the findability and prominence of general interest content (Article 84 MStV), and it is, at the moment, the first and most advanced example of regulation in this area. Other examples can be found in Italy, Ireland, Latvia and the Netherlands, with regard to their PSM.

²¹⁶ See, e.g., Bulgaria, Luxembourg, and the Recommendations made by the Flemish Media Regulator. A more detailed overview of the current implementation status of the AVMSD, and its prominence provisions, can be found in the ERGA's "Overview Document in Relation to Article 7a of the Audiovisual Media Services Directive" https://erga-online.eu/wp-content/uploads/2021/01/ERGA_SG3_2020_Report_Art.7a_final.pdf.

²¹⁷ Some exceptions were found are Bulgaria, Cyprus and Lithuania.

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

type of measure have been found in the mapping, and even less have concretely implemented this measure in practice.

In line with the previous finding, while the general articles are relatively prominent in all of the countries mapped, specific secondary legislation for implementation purposes is currently lacking, with some exceptions, such as the applicable secondary implementation legislation in Albania, France, Italy and the UK.

Some countries already have existing legislation concerning prominence and findability. Italy, for example, has measures which require national generalist channels to be listed between No.1 and No.9 on EPGs. Ireland also has existing provisions that set forth that certain TV services (PSB and parliamentary channels) are designated for findability through “must carry/must offer” obligations. Additionally, findability must also further be given to commercial ‘free to air’ services, which are awarded contracts under the legislation. Other types of measures may be found in countries such as Austria, France, Italy, Montenegro, Macedonia, Serbia, Spain, Sweden, Turkey and the UK.

Proposals to modernise, or to otherwise amend, the existing regulation, have drastically decreased over the course of the Study, with now five proposals currently remaining as others have gradually become accepted, published and entered into force. Nevertheless, many secondary legislations or other types of implementation measures are still lacking. As the overview shows, many provisions in primary legislation formulate vague obligations based on that of the AVMSD, leaving further concretisation, such as definitions or criteria, at the discretion of their NRAs or Government.

3.2.2 The different regulation of online and legacy media and distribution platforms

This section of the report provides a summary of which actors are generally targeted by these measures. A distinction is made between supply and distribution actors. The first category refers to actors such as audiovisual media service providers and public service media, while the second category, more generally, refers to the providers of networks or platforms, as defined by the applicable laws and regulations. In the work carried out in the context of A2, the scope of the actors on which these obligations rest will be analysed in more depth, amongst other things, by contrasting the more traditional obligations of must-carry and must-offer measures with the general absence of similar obligations in the online environment.

In this regard, Germany may be considered one of the more atypical States in relation to the findability and prominence measures with its Interstate Media Treaty (Medienstaatsvertrag). Under the German provisions on findability, the addressees of the obligation to give appropriate prominence to the content of general interest are only user interfaces and software-based applications, since the reception of AVMS is becoming less dependent on the choice of hardware. In the absence of legitimate reasons, similar services and content items may not be discriminated against in relation to their order and location on the user interface.

On the supply side, a distinction is made between AVMS and PSM. In terms of AVMS, it is interesting to note that nine countries keep Article 13’s limitation of the application to on-demand services only, whereas seven others extend this obligation to their PSM, and fourteen extend the scope to all applicable audiovisual media services.

On the distribution side, a distinction is specifically made between networks, platforms and EPG providers. However, definitions in this area vary widely and are thus difficult to delineate. The overview presented below generally indicates that whenever an implementation wished to include the online environment in the scope of application, it referred to the actor as being video-sharing platforms (e.g., Denmark and Finland), as a media intermediary service provider (e.g., Germany), or other types of distribution platforms. Online platform intermediaries were included in the scope a

total of five times in the mapping, primarily in the context of measures aiming to transpose EPG prominence measures onto the online environment in some shape or form.

Finally, coming then to the implementation of EPG measures, while most implementations are limited to the narrow scope of electronic program guide service providers, a handful of others additionally refer to network operators as a whole, albeit with limited obligations in their realm of technical capacities (e.g., Serbia, Slovenia and Poland). The UK further specifies its EPG provider category by adding that the obligation equally falls on the producers of connected TV-like services (e.g., smart TVs, set-up-boxes and streaming sticks), a category not applied by any other country in the mapping.

3.2.3 The positively discriminated against content or actors

This section provides a summary of the types of content that are generally supported by, or otherwise benefit from, the measures concerned.

A total of eleven implementations of all types of prominence measures include general interest content in their scope, although the exact scope of this content varies greatly. For example, Germany introduces a two-tiered form of positive discrimination of content; a) all broadcasting content must be prominently placed and easily accessible within the interface, and, b) it must be within the available broadcasting content, the programs of PSB and private programmes that contribute to plurality must be placed more prominently than other broadcasting programmes. The latter type of content is referred to, by the regulation, as “*journalistically edited offerings*”. Portugal, questioning the criteria to use to determine what might be considered to be content of general interest, emphasises that general interest may be challenging from their point of view, as this means imposing rules that can be understood as differentiating between content or programme services. With similar concern, the Irish BAI states that it will be a practical challenge to maintain audience choice while also providing prominence.

Interestingly, only three countries explicitly limit the scope of their Art. 7a implementation exclusively to the benefit of PSM content. For example, in the Netherlands, the Dutch Media Act focuses on the public service media, and it does not contain any obligations for commercial media services to ensure the prominence of content that is considered to be of general interest. The PBSs are subject to strict rules that safeguard media pluralism, accessibility, and high standards of journalism. The Act defines the general interest content to some extent. It should consist of the national, regional, and local public media services, which provide content that reaches a broad and diverse audience, and that aim to inform, educate, or bring a cultural message to the public.

In Albania and Germany, the determination of public interest content is not *ex-ante* limited to PSB channels and services, but it is delegated to the media regulatory authorities. In Germany, this list is based on considerations such as the proportion of political and regional news, accessibility, and the quota of European works, resulting in a list of “*qualified broadcast services*.” The Flemish Regulator for the Media (VRM) seems to be following a similar approach to that of Germany, by recommending that findability measures to services or to the content of the public service broadcasters (PSBs) only, should not be restricted.

Rather than implementing a definition of what constitutes general interest content, the implementations of Austria, the Flemish Community of Belgium and Montenegro, instead apply an equality principle. Application of the principle first assumes that any news media content constitutes general interest content. The principle thus prescribes that the applicable actors do not provide discriminatory prominence to specific types of news media content. This is meant to benefit smaller, less well known, media outlets who would have otherwise been outweighed by the prominence of

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

their more popular, and larger, equivalents. As touched upon above, Germany also has such a rule, which is complementary to its other prominence measures.

Finally, specifically with regard to the implementation of European works, the scope and definition of this type of content generally, quite literally, follows that provided by the AVMSD. However, some implementations, for example those provided by France, or the French Community of Belgium, expand the scope to include national works, or works in the native language, as the applicable region. Interestingly, these implementations specify a specific percentage of European works that are to be produced in their territory, or that are to be in the native language concerned, respectively.

3.2.4 The role of the regulator

Oversight by an NRA is provided by nearly every country that has been mapped; however, some countries share this oversight responsibility between different NRA's, requiring cooperation between the different bodies and dividing the responsibilities based on their expertise. The most common body is related to the Media or Broadcasting industry specifically, however, other bodies that are active in this area are the more general communications authorities (e.g., in Austria, Italy and Finland), or the more specific electronic communications authorities (e.g., Bulgaria and Serbia).

In only a handful of countries, the government is given some form of decision-making powers in the implementation of a prominence measure. It should be noted that these powers relate to the implementation of Art. 7a of the AVMSD specifically, to further define either general interest content as a concept, or the qualification criteria required by an NRA to make such a qualification assessment. This involvement ranges between a formal approval (e.g. French Community of Belgium) and the competence to define the conditions or criteria of the measure's implementation in practice (e.g., Flemish Community of Belgium, Greece, Romania or the UK). In virtually all other cases, these competences are given to NRAs with varying degrees of required public consultations (see e.g., France, which requires a public survey for each commercial provider added to the list of general interest content provider).

With relation to the monitoring of measures in favour of European works, nearly all implementations refer to the possibility and competence of an NRA to sanction upon (repeated) non-compliance. While most do so via specific reference assigning this competence within the same or related provision, others rely on the existence of general administrative competences to sanction. It should also be noted that the specified sanctions make no distinction between compliance to the obligation to respect a quota or to ensure due prominence of these works, so that it is unclear how an NRA would assess non-compliance to the due prominence obligation.

3.3 Closing remarks

For a long time, media pluralism policies were geared towards ensuring a diversity of voices and perspectives in the publicly available media offer. With digitisation, the amount of content that is available by far exceeds the amount of time and attention that citizens can invest in consuming media content. This situation has favoured the rise of entirely new forms of sorting and curating media content, and has introduced new challenges to the realisation of media pluralism. Individual's choices in relation to what content or service to consume, take place in a carefully curated technological environment, which inevitably constrain human autonomy and freedom of choice, thus potentially affecting societal values that are deemed important in the EU. In this context, the analysis of media pluralism should take account of the prominence, findability/discoverability of trustworthy quality content among the abundance of unfiltered content online.

Chapter A1. Mapping the existing and planned measures related to the prominence and findability/discoverability of general interest content and services

Promoting the diversity of audiovisual media consumption has traditionally been addressed through measures that tackle scarcity at the supply and distribution levels of the media value chain. The former includes measures to promote the production of specific types of content and providers, such as general interest content and European works. The latter mainly refer to must-carry obligations (sometimes coupled with must-offer obligations) and the regulation of so-called digital bottlenecks (conditional access, EPGs). As previously mentioned, new forms of scarcity - on the side of the media user - have emerged, resulting in new measures to ensure the diversity of exposure and media pluralism through what we can call prominence or discoverability rules.

The aforementioned regulatory frameworks derive from legacy broadcasting systems and they primarily apply to linear distribution, while - despite the introduction of organisational duties for video-sharing platform services in the AVMSD 2018 - the online audiovisual media environment is still lacking in prominence rules. At the same time, notions of prominence, and the findability/discoverability of content online are currently emerging as public policy objectives in several contexts, at the national, European, and international level.²¹⁸ Regulators and policymakers are struggling to understand how discovery and search functions work on internet connected devices and their underlying hardware and software systems. Their attempts to define these notions in regulation are still limited, and existing rules often lead to definitional confusion. These policy debates are addressed within different regulatory frameworks, from audiovisual media and electronic communications regulation, in competition frameworks and electronic commerce law, to codes of standards for misinformation and news. Content moderation strategies that have been adopted by social media and market platforms, and which affect the availability, visibility and accessibility of content, were and continue to be part of the discussions on the Digital Services Act (DSA) and Digital Markets Act (DMA).²¹⁹ The DSA, for example, suggests that, depending on the size of the intermediary services concerned, such as online platforms, they might be made subject to more, or less, stringent transparency and due diligence obligations regarding the parameters that are used in their (automated) content moderation or Recommender Systems (that may affect the availability, visibility and accessibility of content that is provided by the user) and the provision of any options that will allow users to modify these parameters. The Committee of Ministers has been looking into these issues as well, resulting in (a.o.) its 2018 Recommendation on Media Pluralism and Transparency of Media Ownership.²²⁰ Similarly, the Council of Europe has worked on its Guidance

²¹⁸ Examples of relevant non-European initiatives in this area are: a) the UK, with its recent review of the EP Prominence Rules, proposed by Ofcom in 2019, which should be transposed into primary legislation by the UK Government in 2022 (<https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>); b) Canada, with the 2020 Canadian Broadcasting and Telecommunication Legislative Review, which highlighted the necessity to support “*production and discoverability*” (<https://www.ic.gc.ca/eic/site/110.nsf/eng/00012.html>). Other non-European initiatives will also be investigated, as outlined in the introduction to this study and its geographical scope.

²¹⁹ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single Market For Digital Services (Digital Services Act) and Amending Directive 2000/31/EC, COM/2020/825 Final, see, especially, Sections 57 and 58, available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608117147218&uri=COM%3A2020%3A825%3AFIN>. ; Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on contestable and fair markets in the digital sector (Digital Markets Act) COM/2020/842 final, <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608116887159&uri=COM%3A2020%3A842%3AFIN>; See, also, the European Parliament Resolution of 20th October, 2020, with Recommendations to the Commission on a Digital Services Act: Adapting Commercial and Civil Law Rules for Commercial Entities Operating Online (2020/2019(INL)); https://www.europarl.europa.eu/doceo/document/TA-9-2020-0273_EN.pdf;

²²⁰ Recommendation CM/Rec(2018)1 of the Committee of Ministers to Member States on the Media Pluralism and Transparency of Media Ownership, search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13

Note on Content Prioritisation, Prominence and Discoverability Online.²²¹ The Guidance Note states that the online environment requires fresh approaches in order to improve exposure to diverse and general interest content for EU citizens.

CENTRAL FINDINGS: An analysis of legislative and non-legislative measures behind content prioritisation practices online

- This section presents a mapping of both non-legislative and legislative measures related content prioritisation processes in today's internet-distributed audiovisual industry, providing an overview of how industry practices and regulatory interventions can ultimately influence what content and services are made more prominent and easier to discover to the final users.
- **The non-legislative mapping shows that:**
 - Content prioritisation processes online are still rather opaque mechanisms but they central for the circulation and access of media and information online. This chapter shows that in the absence of a regulatory frameworks applicable to the online environment, prominence and discoverability as part of ad-hoc and day-to-day content policies, curation strategies, and management strategies such as distribution agreements between the interested parties.
 - There are different factors and criteria that feed into the decision-making processes in relation to granting prominence and discoverability online. Even though some public interest considerations seem to be emerging amongst some of the industry's actors (with criteria like quality, trustworthiness and vague conceptions of public value), at the moment of writing, evidence points to the fact that it is mainly commercial considerations that are more influential as services with a global presence, higher popularity and higher market and viewing shares tend to be able to also secure a higher prominence for their content on different devices and interfaces, while local public service media and commercial broadcasters have less leverage.
 - Overall though, the situation is not always black and white and the responsibility and control over content prioritisation measures varies depending on the role of different industry actors on these two levels and due to the increasing fragmentation of this industry segment and the growing number of gateways to content and information online, there is no one-size-fits-all approach to content prioritisation
 - Based on the data and information gathered, there are no shared guidelines nor industry standards for content prioritisation measures online, but emerging industry standards (e.g. JTI) and civil society and academic initiatives at the level of content and services providers, which could improve content prioritisation measures on certain service by advancing criteria to define for instance what are public interest services or more specifically public interest news providers.

²²¹ This is not yet published, but it is informed by the DG2020(19) Study of the Council of Europe (Mazzoli and Tambini, 2020).

- **The legislative mapping shows that:**

- In terms of adoption rate, though the transposition of the AVMSD has made significant progress over the course of the mapping, secondary legislation or similar to ensure effective implementation of measures in practice remain largely missing for now. With relation to the voluntary implementation of art. 7a AVMSD specifically, it can be noted how only a handful of Member States opted to implement such a measure, and between these implementations, the scope and purpose given to the measure differs greatly.
- In terms of the scope of actors to which prominence measure apply, it can be noted that online intermediary platforms remain largely outside the scope of prominence measures, with some exceptions such as that of Germany's Interstate Media Treaty. Furthermore, the mapping finds varying definitions of actors, such as online platform intermediaries or network operators, in the scope of application between implementations.
- In terms of the positively discriminated against content or actors, the mapping finds notably different approaches between implementations: some provide concrete lists of beneficiaries, others adhere to a fixed set of criteria based on which actors may apply for beneficiary status, and yet others leave the concrete scope of beneficiaries to future regulation. The status of PSM as a beneficiary also varies between different implementations.
- In terms of the measures' effective implementation and the role of the regulator therein, the mapping finds that virtually all implementations assign some supervising and monitoring role to the competent NRA. Most of these competences include supervision of self-reporting obligations. In some cases, minor involvement of a government official is foreseen. The mapping has also found some instances of mandatory public consultations.

Chapter A2. An assessment of the effectiveness of measures related to prominence and the findability/discoverability of general interest content and services

Authors: Ingrid Lambrecht, Eleonora Maria Mazzoli, Heritiana Ranaivoson, Nino Domazetovikj, Damian Tambini, Peggy Valcke

Reviewer: Natali Helberger

1. Introduction

1.1 Context of the assignment: media pluralism, prominence, and exposure diversity

Media pluralism policies are traditionally geared towards ensuring a diversity of content and sources in the publicly available media offer. Drawing on the previous deliverable, and building on the relevant academic literature on media pluralism and diversity (see A1), this part of the study argues that to ensure the effectiveness of these media pluralism policies, the actual exposure of citizens to diverse content is just as important for the realisation of the objectives attached to media pluralism, as a policy goal.

Promoting the diversity of audiovisual media, consumption has traditionally been addressed through measures that tackle scarcity at the supply and distribution levels of the media value chain. The former includes measures to promote the production and distribution of specific types of content and providers, such as general interest content and European works. The latter, mainly refer to must-carry obligations (sometimes coupled with must-offer obligations) and the regulation of the so-called digital bottlenecks (conditional access, EPGs). In this context, prominence (and, later, discoverability) rules (see A1 mapping) have emerged as regulatory instruments which could, either directly or indirectly, contribute to a more diverse and pluralistic media landscape. However, as we will further discuss in the case studies (see Section 3), it is not always self-evident that the goal of legislative measures on prominence (and similar emerging discoverability rules) is media pluralism. It should be noted indeed that the promotion of media pluralism is one relevant value behind the introduction of such rules, but it is not the only one.

This relationship between prominence and media pluralism is particularly relevant for those prominence rules that are aimed at ensuring access, distribution and higher visibility to a specific category of services, which are described in the AVMSD as general interest services, or, in the broader literature, as public interest services. Such services should respect a number of characteristics, which may vary, depending on the national regulatory contexts, such as the provision of universal services, a diverse programming offer and genres (including quality news and information), a wide range of voices and opinions, national/regional/local content, etc. By promoting services that should be internally pluralistic, regulators and policy makers thus intend to ensure access to a more diverse and pluralist range of genres. In this sense, prominence rules are seen as being instrumental in achieving one of the dimensions of media pluralism, which is known as internal pluralism (see Introductory Chapter), as well as promoting an aspect of diversity, which is intended as diversity of exposure (see, also, Napoli 2011). However, there are also other important values that are taken into account when introducing prominence rules, which may include, amongst others, the protection of the national cultural sector, the support of PSM's universality principle and, more broadly, the mission of PSM to educate, to inform and to provide accessible, inclusive, and quality services, etc.

Within this framework, as processes of digitisation and globalisation continue to affect our media systems, new forms of scarcity - on the side of the media user - have emerged, as the amount of content that is available by far exceeds the amount of time and attention that citizens can invest in consuming media content. This situation has favoured the rise of entirely new forms relating to the curation and moderation of media content, introducing new challenges to the realisation of media pluralism, as well as to the application of prominence rules that were suitable for the linear environment. Individuals' choices about what content or service to consume, take place in a carefully curated technological environment, which inevitably constrains human autonomy and freedom of choice (Yeung 2018), and potentially affects those societal values that are deemed to be important

for European democracies. Aspects of prominence, and the findability/discoverability of content in an abundance of unfiltered content online thus become even more crucial in this new media landscape.

As the A1 mapping has shown, new due prominence measures at the EU level have been introduced by the Audiovisual Media Services Directive (AVMSD), on the one hand, and the electronic communications regulatory framework (e.g., the EECC), on the other. The former has, since 1989, included provisions to promote the production and distribution of European and independent works, which were extended from linear to on-demand AVMS in 2007. Although the present study is not expected to include the rules on European works as such, it is interesting to note that, with the revision of the AVMSD, the EU put forward “prominence” as an additional way for on-demand services to promote European works. Since its most recent revision, in 2018, the “prominence” of European works is no longer a mere possibility, but an obligation for all on-demand AVMS (Article 13(1), Recital 35 AVMSD). The revised AVMSD also recognises Member States’ freedom to adopt rules that ensure the “appropriate” prominence of audiovisual media services of “general interest” (Article 7(a), Recital 25 AVMSD). Member States are still in the process of adopting national prominence frameworks, and the approaches significantly vary from country to country. Some have built on long standing traditions in regard to the PSM,²²² while others have considered the use of ‘quality labels.’²²³ A number of Member States still lack a policy framework for the prominence of general interest content.

Furthermore, when it comes to the electronic communications’ regulatory framework, only a minimum level of harmonisation has been achieved at the EU level. Article 31 of the Universal Service Directive (2002, amended 2009) allowed Member States to impose reasonable must-carry obligations, or obligations for electronic communication network operators to transmit and distribute specified television and broadcast services. Article 31 of the Universal Service Directive has been replaced by Article 114 of the 2018 European Electronic Communications Code (EECC), which did not substantially amend the rules. In practice though, the EECC also allows for a diversity of national legal approaches, in respect of networks covered (only cable, or also DTT, IPTV and satellite), channels to be carried (only PSB, or also other), or the remuneration mechanisms.²²⁴ For instance, some countries, in particular, Italy and Spain, did not adopt must-carry obligations in the traditional sense, but have rules with a similar effect. In the UK and Croatia, must-carry rules exist in the law, but are not applied in practice. Further, a number of EU Member States have coupled their must-carry obligations with some type of must-offer obligations (an area which has not been harmonised at the EU level), e.g., Spain, France, Ireland and Poland. Finally, the EECC has also copied the rules on CAS, APIs and EPGs from the Access Directive (2002, amended 2009), but as it deals only with transmission, and not with content, such provisions are “without prejudice to the ability of Member

²²² See, e.g., Germany, with its Medienstaatsvertrag, which introduces both negative and positive safeguards, so as to secure pluralism through non-discrimination, findability, and the prominence of general interest content (Article 84 MStV), and, presently, it is the first and most advanced example of regulation in this area. Other examples are found in Italy, Ireland, Latvia and the Netherlands, in relation to their PSM.

²²³ See, e.g., Bulgaria, Luxembourg, and the recommendations made by the Flemish Media Regulator. A more detailed overview of the current implementation status of the AVMSD, and its prominence provisions, can be found in ERGA’s “Overview document in relation to Article 7a of the Audiovisual Media Services Directive” (https://erga-online.eu/wp-content/uploads/2021/01/ERGA_SG3_2020_Report_Art.7a_final.pdf).

²²⁴ With Croatia, France, Ireland, the Netherlands, and Poland, who foresee that there may be compensation rules for the retransmission fees for the operat in relation to the channels carried by all cable, IPTV, and satellite channels. Others don’t have compensation rules in place (e.g., Germany, Spain, Italy) or merely have partial rules. Additionally, Finland and Sweden do not have compensation rules for Satellite network operators.

States to impose obligations in relation to the presentational aspect of EPGs and similar listing and navigation facilities” (Article 62(3)).²²⁵

1.2 Objective and scope: assessing the effectiveness of prominence measures in promoting exposure diversity

As partially discussed in the introduction, until recently, a common assumption among policy- and lawmakers has been that increasing the diversity of content is the most efficient way to expose the general public to a variety of information sources, expressions and viewpoints. In many ways, this presumption is fundamental to the underlying normative rationales for promoting source and content diversity, as it considers exposure diversity to follow automatically from this. However, scholars of selective exposure have argued that this is not automatically the case (e.g., Napoli 2011, Helberger 2018; Helberger and Moeller, 2018; Moeller et al. 2018), since, given an abundance of choice, users may tend to be exposed, more or less voluntarily, to less diverse content.²²⁶ Furthermore, without the right incentives in place, this tendency may be exacerbated by user interface design, and search and discovery functions that are primarily driven by their interest to keep their customer base and to optimise their economic profit, rather than to ensure audiences’ diverse consumption of content.

In an online environment that is increasingly reliant on content moderation, curation processes and new forms of prioritisation through the ranking and recommendation systems (please see A1), there is concern that citizens are mainly exposed to content which reinforces, or confirms, their previously formed views (the so-called “filter bubbles”, or “echo-chambers”) (Pariser, 2011),²²⁷ or, at least, that their access and consumption choices are increasingly affected by the opaque functioning of these systems (Helberger, Karppinen & D’Acunto, 2018). The fundamental concern for media pluralism is that, while the general public becoming progressively less exposed to content that is of general or public interest, their opinions risk becoming polarised, and their exposure to disinformation risks increasing along with it.²²⁸ At the same time, exposure to different voices, content and sources is also related to how user interfaces and algorithmic-driven systems can be designed in order to expose the citizen to diverse content, and, in particular, to “public interest” content, and not just to popular or click-bait content (Mazzoli & Tambini, 2020). Finally, bias and discrimination may also occur in data-supported algorithmic decisions and in algorithmic content curation systems, which may stem from historical/structural inequalities, and they may have a disparate impact on marginalised communities (OSCE, 2021).

Within this context, this study is based on the working assumption that the prominence, discoverability and findability of content have strong implications for ‘exposure diversity’. Exposure diversity, in the context of this study, refers to the extent to which audiences are exposed to, and therefore find, discover and consume, a diverse array of content. (Napoli, 2011; Helberger et al. 2014). However, as mentioned previously, while exposure diversity is thus an important requirement

²²⁵ For a fuller overview of these legislative measures, please see A1 mapping.

²²⁶ See: Helberger N and Moeller J (2018) Beyond the filter bubble: Concepts, myths, evidence and issues for future debates. University of Amsterdam: 27.; Helberger N, Karppinen K and D’Acunto L (2018) Exposure diversity as a design principle for recommender systems. *Information Communication and Society* 21(2). Taylor & Francis: 191–207.

²²⁷ Some authors have challenged the “filter bubble” theory, and claim that there is insufficient empirical research, or that the exposure of diversity is enhanced in the online environment, please see, for example, Zuiderveen Borgesius, F. J. & Trilling, D. & Möller, J. & Bodó, B. & de Vreese, C. H. & Helberger, N. (2016). Should we worry about filter bubbles?. *Internet Policy Review*, 5(1). <https://doi.org/10.14763/2016.1.401>. More on this topic may be found in T0 of this study, pp.24-25.

²²⁸ It should be noted, nonetheless, that, in a hybrid media ecosystem, casual exposure to different content remains a likely possibility.

Chapter A2. An assessment of the effectiveness of measures related to prominence and the findability/discoverability of general interest content and services

to best ensure media pluralism in a changing media environment, it is, however, not the only policy goal behind the prominence measures analysed in the case studies below. For instance, other policy goals that are aimed at improving media pluralism and diversity in a changing media environment, are the preservation of cultural diversity and the economic sustainability of the media market. From this perspective, measures aimed at ensuring the prominence, discoverability or findability of specific types of content and services, such as public interest or general interest services, may be seen as being but a few of the policy options that are required in order to improve media pluralism, more specifically, in this case, internal media pluralism (See WP0).

However, assessing the real-life impacts of current industry practices relating to the prominence, discoverability/findability of online content on users' diversity of exposure has been proven to be challenging, given the adaptive and personalised nature of automated media, and the sheer lack of access to data. Despite these difficulties, though, there is a growing body of scholarly research into the impact of EPGs and algorithmic ordering on exposure to diversity,²²⁹ and an increasing number of research projects propose ways of measuring and quantifying exposure to diversity.²³⁰ This study thus provides a state-of-the-art evidence review and a meta-analysis of existing literature, mapping the current indicators and measurements that are being used to assess the effectiveness of the prominence and diversity of exposure measures.

While the Australian Communications and Media Authority identifies two measurement paths for exposure diversity (measuring the actual exposure or measuring the barriers to exposure),²³¹ the focus of this study is on frameworks that propose indicators of exposure diversity. To complement this framework, this deliverable aims to discuss the challenges and advantages that are offered by different prominence measures, based on the A1 mapping of both legislative and non-legislative measures through a case study approach. This approach allows the research to provide practice-based and well-informed policy advice (see A3). To do so, it should be borne in mind that addressing prominence and exposure diversity through legislative and regulatory initiatives has important limits, since, for reasons of freedom of expression and privacy, regulatory efforts seeking to demand the prioritisation of certain types of content have to be met with caution.

1.3 Structure

As a complement to the mapping of both legislative and non-legislative measures used to ensure the findability, visibility or prioritisation of certain content (A1) and in order to inform the policy recommendations of this research (A3), this deliverable (A2) critically reflects on a set of selected due prominence measures and their potential (future) implementation on their ability to positively affect the diversity of exposure of citizens. To do so, the study is divided into two main tasks, namely, a mapping of existing measurement methods for diversity of exposure; and a case study approach to prominence rules.

²²⁹ See: Beam MA (2014) Automating the News: How Personalized News Recommender System Design Choices Impact News Reception. *Communication Research* 41(8): 1019–1041; Beam, M. A., Child, J. T., Hutchens, M. J., & Hmielowski, J. D. (2017). Context collapse and privacy management: Diversity in Facebook friends increases online news reading and sharing. *New Media & Society*; Helberger N, Karppinen K and D'Acunto L (2018) Exposure diversity as a design principle for recommender systems. *Information Communication and Society* 21(2). Taylor & Francis: 191–207.

²³⁰ Ranaivoson, H. (forthcoming) Technical Paper: Diversity of Content in the Digital Age: Comparative analysis of diversity measurement, study prepared for the Department of Canadian Heritage.

²³¹ ACMA. (2020). News in Australia: Diversity and localism News measurement framework (research acma).

1.3.1 Mapping of existing measurements methods for diversity of exposure

This section of the deliverable reviews the existing literature in this area, categorises it, and extracts a typology of methods that are used to measure the diversity of exposure. Empirical research has, so far, measured the impact of EPG listing and algorithmic ordering on exposure, but recent studies have also speculated on the theoretical effects of other forms of content prioritisation. Informed by this review, we will then outline the theoretical effects of influencing/limiting the exposure of citizens to certain/a variety of audiovisual and news media content and services, including the influencing factors/limitations (e.g., concerning general interest content).

The mapping and evidence review that has been carried out delivers a comprehensive overview of different measurements' initiatives which are used to assess citizens' exposure to a diversity of content and services. This section therefore builds upon a literature review of empirical research works, and it is aimed at assessing exposure to diversity. The overview first lists the main challenges that are faced when performing such an assessment. It then defines and categorises measures, metrics, methods, and effects. Measures are interventions that are intended to achieve more exposure to diversity. Metrics correspond to what is being measured, be it the diversity of exposure itself or barriers to diversity. Methods are the approaches implemented in order to collect the data through which to assess the diversity of exposure. Effects correspond to the impact of the measures or, more generally, the phenomena, on this diversity.

This review presents the necessary overview of the academic body of work on, among others, the effects of algorithmic news recommendation systems, or filter bubbles, in order to develop pertinent criteria with which to assess the effectiveness of possible prominence measures. The current body of work, and the proposed measurements, focus either on analysing the diversity of the recommendation outputs (e.g., search results, a social media feed) or users' attitudes and behaviour, by measuring, for example, the attitude extremity before and after being exposed to personalised, biased news (and hence the effect of selective exposure). The majority of this research stems from the US, although, in the past year, there have been a couple of studies that have investigated exposure diversity in the European context. This first section, therefore, constitutes the foundation on which the case studies will build in order to discuss the existing, or planned, prominence measures. Effectiveness, in the context of this study, should therefore be understood as the relationship between the positively discriminated media content by a measure, and the content which is eventually consumed, and perhaps further interacted with, or used, by the end-user.

1.3.2 Critical evaluation of the selected measures

i. Structure and method of the section

In the second part of the report, the researchers critically reflect on a selected sample of legislative measures, by, firstly, describing them; by, secondly discussing their potential challenges, concerns and shortcomings, and, finally, by critically evaluating their implementation and their potential effectiveness and suitability with regard to their respective policy objectives. Each case is analysed in-depth through an evidence review, which combines desk research, expert interviews, and the stakeholder consultation.²³²

²³² The stakeholder consultation took place on January 27th, and more detail on its organisations, discussion topics and participants are included in A3.

Chapter A2. An assessment of the effectiveness of measures related to prominence and the findability/discoverability of general interest content and services

From the A1 mapping, the study has derived a set of prominence measures which represent the existing range of legislative measures in this area, grouping different rules, which are based on common relevant characteristics, be it in terms of scope, application or implementation. From this first categorisation, one case study per category has been chosen, on the basis of two main criteria: 1) that the measure is sufficiently well-developed to justify an in-depth analysis, be it in terms of draft design or of effective implementation; 2) the overall selection of measures provides a geographical and cultural diversity in regulatory approaches to due prominence measures across the EU. To more accurately reflect on the effectiveness of a measure in practice, the study furthermore accounts for the, often complex, dynamics between the legislative and the perceived impact of industry measures to ensure prominence, which are often connected and, to some extent at least, are dependent on each other.

The proposed approach and structure of the case study analysis (see below) thus enables a more holistic perspective in relation to the measures' implementation in practice, describing a narrative of the dynamics between legislative and private efforts, and, if applicable, co-/self-regulatory efforts to improve the prominence of various types of media content in practice.

This has resulted in the following overview of case studies:

- Prominence in Logic Channel Numbering and EPG measures: Italy
- Prominence of general interest content on media platforms (Art. 7a AVMSD): Germany
- Prominence of PSM on EPG and media platforms: United Kingdom
- Prominence of European works on VOD services (Art. 13 AVMSD): Sweden
- Prominence of news on digital intermediary services: Germany

ii. Structure and method of a case study

The aforementioned approach enables the case studies to answer the following central research questions for each type of measure:

“Does the due prominence measure effectively attain its intended policy objective? Should the policy objective differ from the objective to improve exposure diversity? Is it, nevertheless, capable of impacting exposure diversity in a positive way, and capable of supporting media plurality in a changing media environment?”

The report has structured the various case studies in a consistent way so as to provide a comprehensive answer to these central research questions.

For each type of prominence measure, the study firstly provides a description of the selected measure with more detail, and places it in a broader national context than the descriptions that are provided in A1. This subsection describes what has been introduced in the different cases (e.g., AVMSD 7a, LCN, prominence of news, etc.) This should include the stated policy objectives, the scope of the application of the measures and the criteria that are used to define the content and services that are positively discriminated against.

Secondly, the measures are evaluated on their potential effectiveness, including any critical reflections made regarding legislative and practical concerns. This evaluation reflects on the stated policy objectives, their material scope and the beneficiaries of prominence rules, and on the scope of the application of the measure by its targeted actors, discussing the perceived impacts on the relevant industry stakeholders from the internet-distributed AVM chain. Finally, the evaluation will reflect on the effectiveness' and assessments' frameworks (where available) of the competent

oversight bodies, and their potential ability to assess, monitor or otherwise enforce, the measure in practice. The evaluation relies on a combination of critical reflections from a legislative and an industry perspective. The perceived impacts of these measures on industry actors is described and discussed, drawing from interviews, the stakeholders' consultation,²³³ the grey literature and publicly available documentation (e.g., AVMSD 7a will focus more on broadcasters and tech manufacturers, and the prominence of news online focus more on news providers and social media/search engines, etc.).

As a result of this structure, the in-depth analyses of the case studies aim to triangulate the findings of the A1 mapping exercise and the theoretical discussion on the perceived impacts of content prioritisation mechanisms on diversity of exposure for users and content providers. Finally, the case study-based analysis aims to provide the necessary additional insights, depth, and expert knowledge to this study so as to inform the envisaged policy recommendations and suggestions on the types of monitoring systems and evaluation frameworks that regulators and policy makers might use when introducing possible audit systems in this area, which will be presented in the A3 report of this study.

It should be noted, however, that all the new legislative measures discussed are still in their implementation phase and, thus, there is very limited, or no evidence, or data, available in order to adequately assess their effectiveness and their impacts on industry practices. The information hereby discussed are thus based on the perceived implications that these measures may have on relevant industry stakeholders, as well as offering a description of the current prioritisation measures which, in the future, may then change if these companies were to implement the new legal obligations.

2. Assessing and mapping exposure diversity: challenges, measures, metrics, methods and effects

Media diversity and pluralism, as theoretical and normative notions, are well-established in European media policy, and they are considered pivotal to an informed public and functioning democracy (McQuail, 1992). In media policy, both notions are operationalised to promote variety (of information, views, content and ownership) through measures that are mainly focused on increasing the heterogeneity of sources and contents. In the digital media environment, however, established rationales for promoting diversity are being challenged by novel patterns of content distribution and consumption, as well as by the emergence of novel types of players and intermediation. This introductory section (A2.1.1) aims to provide a better understanding of what diversity of exposure is, and of its significance in today's digital media age.

Diversity of exposure refers to the extent to which audiences are exposed to, find, discover and consume a diverse array of content (see, for instance, Napoli 1997, 2009, 2011; Helberger, 2014). In other words, diversity of exposure centres on what individuals have recommended to them, and the composition of their media diet, in contrast to source diversity, which focuses on the ownership and number of media outlets, and content diversity, which is concerned with the extent and heterogeneity of the content that is available. Napoli (2011) argues that most policy efforts have been devoted to the link between the source and content diversities, rather than between the content and exposure diversities. Media policy, particularly in Europe, has mainly aimed to organise the supply-side of pluralism through various sources that focus on content diversity (Helberger, Klein-von Königslöw, & van der Noll, 2014). Current media diversity policies remain rooted in scarcity logic (Helberger, 2019).

²³³ More information on the stakeholder consultation can be seen in A3

The digitisation and online distribution of media have contributed to an increased availability of sources and content online, which has highlighted the importance of attention, and of what can be displayed to users – for example, what the Netflix user will see when accessing the platform (Ranaivoson, 2019). Operating under time- and attention-constraints, digital media platforms rely on ML- and AI-assisted content curation to maximise user satisfaction and the time spent in consuming their services. This set of circumstances contributes to an environment which makes it challenging for users to be exposed to varied content, and which can lead to problems that are described in the literature as the “filter bubble” (Pariser, 2011) and the “echo chamber” (Colleoni et al., 2014).

2.1 Challenges in assessing the diversity of exposure

Even though the necessity of the diversity of exposure as an evaluative approach in a digital media environment is evident, and its qualitative distinction, in contrast to the diversity of supply (diversity of source and content) is broadly understood, in practice, it still remains a challenge to operationalise the concept. Some scholars suggest that concurring normatively on a definition of diversity exposure is only one of the challenges, in addition to which it is also necessary to agree on how diversity of exposure can be measured - which is crucial (Move, Hovden and Karppinen, 2020). In this subsection, we present an overview of the conceptual challenges that are identified in the literature as being necessary for the effective conceptualisation of the diversity of exposure and the evaluation of the validity and/or usefulness of various methodologies that aim to measure diversity exposure:

- **Conceptualising the diversity of exposure** requires overcoming two conceptual difficulties. On the one hand, defining diversity in a practical manner, a concept that extends far beyond the media and cultural diversity to touch upon biology and research on biodiversity (Ranaivoson, 2007). This is key to determining how to assess diversity of exposure. On the other hand, defining the frame of reference, i.e., exposure to what, in the various media (and media policy) contexts, exposure diversity may have to do with diverse sub-categories, from cultural and linguistic diversity, to the diversity of genres and media types (Moe, Hovden and Karppinen, 2020).
- **Deciding what is the appropriate degree of diversity of exposure.** From a policy perspective, it is difficult to decide how much diversity of exposure (and of sources and content) is sufficient (Helberger, 2011). This assumes that we are able to define concrete benchmarks, e.g., by comparing two systems (e.g., two countries, two catalogues). Alternatively, empirical research may assess how much exposure to which content is needed in order to achieve a certain normative goal. .
- **Defining the overall goals to which diversity of exposure is supposed to contribute, and, notably, whom exactly is the subject of such exposure.** As Helberger (2011) and Helberger, Karppinen and D’Acunto (2018) point out, diversity of exposure is not an aim in itself, but is a means to an end. The understanding of these overall goals, and how diversity of exposure can contribute thereto, is crucial, because providing more diversity usually comes at a cost (Stirling, 2007).
- **Respecting the autonomy of users.** Identifying what the ‘socially-desired distribution of audience attention’ is, (Napoli, 2011), results in the challenge of ensuring that the users’ conceptions of personal autonomy and privacy are respected (Helberger, Karppinen and D’Acunto, 2018).
- **Applying concrete diversity-sensitive design principles** raises a dilemma in regard to whether, and to what extent, an abstract value and normative conceptions may be instructive

to programmers and recommendation systems, as well as which aspects of diversity are 'lost in translation', so to speak, i.e., are less amenable to formalisation (Helberger, Karppinen and D'Acunto, 2018).

- **Introducing monitoring mechanisms.** The challenge of arriving at monitoring mechanisms is closely linked transparency and privacy obligations, and to policy and academic discussions on the transparency and accountability of algorithms, as well as access to data, and the availability of longitudinal monitoring initiatives (see the Digital Services Act Proposal).

2.2 Evaluative approaches and principles for measuring exposure diversity

In the academic literature, there are a limited number of studies that combine the diversity of algorithmic suggestions and the diversity of consumption, when proposing approaches and methodologies for assessing and measuring exposure diversity. Advancing our understanding of exposure diversity necessitates making conceptual distinctions, which can be further operationalised in research and policy-making. As a departure point, we propose to distinguish between measures, metrics, methods, and effects.

Measures are interventions to achieve more diversity. Measures may correspond to software design solutions, or to policies. Effective approaches to enhancing the diversity of exposure may be tools for alternative recommendation settings, and technologies that make users aware of their filter bubble (Helberger, 2018). There are a number of studies that measure the effectiveness of software design solutions. Kamishima, Akaho, and Asoh (2012) put forward a software design for a recommender system that offers 'neutral' recommendations in relation to a specific viewpoint that is specified by the user. A study by Latha and Nadarajan (2019), maps different approaches to improving the diversity of recommendations, and that proposes an approach that includes user exposure diversity which can be incorporated into recommendations for movies and news.

Metrics or indicators correspond to what is being measured, be it the diversity of exposure itself, or the barriers to diversity. There are four basic indicators to measure media diversity: Count, Percentages, Dual Indices and Distances (Ranaivoson, 2021). They can be combined and applied to measure the diversity of exposure.

- **Count** (also known as Species Richness, in relation to ecology (Stirling, 1998)), corresponds to the number of categories, or elements, that are present in a set. It can also correspond to the notion of the coverage of an information system, which tries to respond to the question: are all categories represented?
- **Percentages** include all of the indicators that measure the relative share of a category within a system. The NewsDNA project thus assesses, amongst others, the respective representation of different topics in the journalistic offer. Discussions around quotas
- **Dual Indices** (Stirling, 2007), include both the Entropy and the Herfindahl-Hirschman Index (HHI). Stirling's denomination of Dual Indices comes from the fact that both indices assess Variety and Balance (Stirling, 1998).
- **Distances** (Kunaver & Požrl, 2017; Ranaivoson, Forthcoming) are commonly used by computer scientists to assess diversity. In this approach, diversity is considered to be the opposite of similarity. Computer scientists often use cosine similarity to assess Distances. Cosine similarity is a metric that is used to measure how similar two items are. Mathematically, it measures the cosine of the angle between two vectors that are projected in a multi-dimensional space (Prabhakaran, 2018). It is normalised to vary between 0

(maximum similarity) and 1 (maximum dissimilarity). Such Distances can be calculated for any content, if the data is labelled or it can be categorised.

Distances play a crucial role in recommender systems. Increasing the diversity of recommendations will result in suggesting items that are further from a user's preferences, although always within certain limits. For example, if somebody always reads about football, they could be proposed an article about another sport, because football is a subcategory of sport – or because the news provider has assessed that those who read articles about football, often also read articles about sport.

According to Helberger (2018), measuring the platforms' impact on diversity should include new factors, such as: balance in the contractual relationships between platforms and media, control over data, sophisticated recommendation algorithms between platforms and media companies, the level of the media's independence from platforms, and the existence of an equal, level playing field.

Another group of approaches for assessing the diversity of exposure focus on measuring the possible negative consequences of, e.g., recommender systems – notably, echo chambers and filter bubbles. Here, filter bubbles are seen as being a proxy for the lack of diversity. By analysing platforms with similar functionalities, Cinelli et al. (2021) assess echo chambers' presence on different platforms by looking at them through two aspects: 1) homophily in interactions concerning a specific topic, and 2) bias in information diffusion from like-minded sources. This includes risk-based approaches, such as the MPM's, which identify indicators of a lack of diverse exposure.

Methods to implement in order to collect the data with which to assess diversity of exposure.

Methods include experiments, surveys, and computational approaches. Some approaches focus on analysing survey data. Moe, Hovden and Karppinen (2021) suggest that assessment of exposure diversity can be carried out based on the cluster analysis of the survey data on respondents' combinations of use of different media providers and outlets. Assessment of diversity in the digital environment, as Helberger (2018) points out, must include new criteria, such as the extent to which users have options and the autonomy to choose between different sources.

Among computational approaches, a common use case is the bag-of-words model, in which texts are compared on the basis of their vocabularies (see, for example, RECOLOCO and CPN). An advantage is that this approach does not require any pre-existing metadata, and hence neither a label nor a category. It is, however, not easily transferable in order to assess the diversity of media content, other than text. The process is roughly the following, in which the diversity of a set of texts is to be assessed: (i) all words of all texts are listed; (ii) for each article, each word is counted (very common words, such as 'the', 'a', etc., can be discarded); (iii) you get a vector for each article (e.g., consisting on the presence (value '1') or absence (value '0') of each word); (iv) Distances between vectors can be assessed (and represented in matrices). If most words are the same, two texts will appear as similar, and as dissimilar, if most words are different; (v) at the level of the set of texts, overall diversity can be measured, for example, by the average distance, or the maximum distance, etc. This example shows that there is also a very practical measurement problem here, namely, the availability of good metadata, especially for video content. Put differently, exposure diversity can be more difficult to measure for some types of content (e.g., video) than for others (e.g., text).

2.3 Normative frameworks for exposure diversity as a societal goal

In addition to the evaluative approaches that were previously discussed, exposure diversity can also be assessed as a societal goal, which implies a normative dimension. Helberger, Karppinen and D'Acunto (2018) outline three non-mutually exclusive frameworks for exposure diversity as a societal goal that may serve to inform thinking about normative positions. These are analysed in the context

of recommender systems. According to their research, exposure diversity can be assessed from different perspectives.

- **Individual autonomy perspective** (exposure diversity extends individual choice and provides individuals with more opportunities to realise their interests).
 - **Potential benchmarks and criteria:** user satisfaction and the awareness of options and choices. Means of achievement include: modifying the way in which recommendations are presented to the user, based on additional options, which may produce a different recommendation list, or by giving the users the opportunity to interactively navigate through connected lists of recommendations, or to change the settings in recommender systems;
 - **Possible metrics:** measuring the session length, the navigation behaviour on the website (which links are clicked, and how often), the number of 'likes' or 'shares' of web pages visited on social media, but also the extent to which users utilise the opportunity to adapt recommendations to their own personal preferences.
- **The deliberative perspective** (the role of diverse exposure is not only to satisfy individual consumers, but also to promote rational public debate and the formation of a reasoned public opinion)
 - **Potential benchmarks and criteria:** the reciprocity and inclusiveness of public discourse – meaning that debates should be open to all, and participants should be willing to exchange ideas and viewpoints, and even change their opinion when faced with new arguments or evidence.
 - **Possible metrics:** user engagement with opposing political views, cross-ideological references in public debates, or social media connections between people who represent different ideological positions.
- **The adversarial perspective** (exposure diversity as a corrective to the tendency for public debates to be dominated by existing elites and powerful interests).
- **Potential benchmarks and criteria:** the visibility of minority voices and controversial viewpoints, and, ultimately, also political change and increased political participation.

2.4 Overview of theoretical effects

Digital content can be distributed on different digital platforms with little or no impact on costs. This, coupled with the rise of algorithmic influences on recommendation and display, has rendered more crucial the analysis of exposure diversity. While some authors (like Haim et al., 2018) argue that there is a lack of research on the algorithms' impact on diversity, at the recommender system level, there is no consensus on how diversity should be measured (Kunaver & Požrl, 2017). Far from being neutral, algorithms come with biases, meaning, here, that they can lead to imbalance, or inequality in coverage or representation (Ranaivoson, 2019). Hence, there is a need for further assessment, monitoring and analysis of exposure to diversity.

Decision-making about online content consumption is increasingly recommender-assisted, which raises questions about the diversity of the recommendations that are offered to users. Automated and AI-assisted online curation can affect both the consumption and production of content (i.e., the effects on both the consumer and producer). This subsection presents an overview of the growing body of academic research which suggests the potential (theoretical) effects of algorithmic recommendation on content exposure and consumption (see Table A2.1). Recommender systems

Chapter A2. An assessment of the effectiveness of measures related to prominence and the findability/discoverability of general interest content and services

rely on artificial intelligence and machine learning methods to provide users with recommendations. There are three main types of recommender filtering: collaborative (the user will be recommended items that people with similar tastes and preferences liked in the past), content-based (the user will be recommended items similar to the ones the user preferred in the past), and hybrid (combining the two other main types) filtering (Ranaivoson, 2019). The effects of algorithmic recommendation depend on the balance between user/personal autonomy and the default algorithm parameters. In practice, there are recommenders that allow for user autonomy as an input (Facebook, 2016; Liu, Dolan, & Rønby Pedersen, 2010).

Chapter A2. An assessment of the effectiveness of measures related to prominence and the findability/discoverability of general interest content and services

Table A2. 1. Summary overview of the relevant academic literature

Effect type	Scope of impact	Industry segment	Metrics	Publications
Homogenisation of content consumed	Impact on public opinion (through opinion formation and polarisation of opinions); Political participation;	Social media News media	Count Percentages Dual Indices	Bruns, A., 2019. Filter bubble. <i>Internet Policy Review</i> , 8(4). Pariser, E., 2011. <i>The filter bubble: What the Internet is hiding from you</i> . Penguin UK. Nguyen, T.T., Hui, P.M., Harper, F.M., Terveen, L. and Konstan, J.A., 2014, April. Exploring the filter bubble: the effect of using recommender systems on content diversity. In <i>Proceedings of the 23rd International Conference on the World Wide Web</i> (pp. 677-686). Nechushtai, E. and Lewis, S.C., 2019. What kind of news gatekeepers do we want machines to be? Filter bubbles, fragmentation, and the normative dimensions of algorithmic recommendations. <i>Computers in Human Behavior</i> , 90, pp.298-307. Anderson, A., Maystre, L., Anderson, I., Mehrotra, R. and Lalmas, M., 2020, April. Algorithmic effects on the diversity of consumption on Spotify. In <i>Proceedings of The Web Conference 2020</i> (pp. 2155-2165). Lee, F.L., 2016. Impact of social media on opinion polarization in varying times. <i>Communication and the Public</i> , 1(1), pp.56-71.
Over-representation of sources	Impact on public opinion (through opinion formation and polarisation of opinions); Political participation;	News media Online news aggregators Search engines	Count Percentages Dual Indices	Haim, M., Graefe, A. and Brosius, H.B., 2018. Burst of the filter bubble? Effects of personalization on the diversity of Google News. <i>Digital Journalism</i> , 6(3), pp.330-343. Trielli, D. and Diakopoulos, N., 2019, May. Search as news curator: The role of Google in shaping attention to news information. In <i>Proceedings of the 2019 CHI Conference on human factors in computing systems</i> (pp. 1-15).
Chilling effects in	Impact on audience behaviour;	Social media Online	n/a	Büchi, M., Festic, N. and Latzer, M., 2022. The Chilling Effects of Digital Dataveillance: A Theoretical Model and an Empirical Research Agenda. <i>Big</i>

Chapter A2. An assessment of the effectiveness of measures related to prominence and the findability/discoverability of general interest content and services

response to dataveillance	Self-inhibition in digital media use;	communication and participation		<i>Data & Society</i> , 9(1), p.20539517211065368.
Over- and/or under-representation of genres	Competitive behaviour of comparable (often local) services; Impact on audience choice, experience, taste.	Music streaming VOD	Percentages Distances	Anderson, A., Maystre, L., Anderson, I., Mehrotra, R. and Lalmas, M., 2020, April. Algorithmic effects on the diversity of consumption on Spotify. In <i>Proceedings of The Web Conference 2020</i> (pp. 2155-2165). Snickars, P., 2017. More of the Same—On Spotify Radio. <i>Culture Unbound: Journal of Current Cultural Research</i> , 9(2), pp.184-211. Adomavicius, G., Bockstedt, J., Curley, S.P., Zhang, J. and Ransbotham, S., 2019. The hidden side effects of recommendation systems. <i>MIT Sloan Management Review</i> , 60(2), p.1. Anderson, A., Maystre, L., Anderson, I., Mehrotra, R. and Lalmas, M., 2020, April. Algorithmic effects on the diversity of consumption on Spotify. In <i>Proceedings of The Web Conference 2020</i> (pp. 2155-2165).
Over- and/or under-representation of cultures	Competitive behaviour of comparable (local) services; Competitive behaviour of content producers	VOD	Percentages Distances	Lobato, R., 2018. Rethinking international TV flows' research in the age of Netflix. <i>Television & New Media</i> , 19(3), pp.241-256. Davis, S., 2021. What is Netflix imperialism? Interrogating the monopoly aspirations of the 'World's largest television network'. <i>Information, Communication & Society</i> , pp.1-16.
Effect on production practices	Competitive behaviour of content producers; Impact on audience choice, experience, taste.	Music streaming, VOD	Percentages Distances	Hodgson, T., 2021. Spotify and the democratisation of music. <i>Popular Music</i> , pp.1-17.

2.5 Measurement initiatives for exposure to diversity

This section provides a non-exhaustive overview of the current or recent initiatives that have been promoted, or funded, by public authorities, as well as research projects. They are structured in terms of policy and research initiatives. This overview notably allows us to further illustrate the theoretical effects on exposure diversity that have been listed in the previous section.

2.5.1 Industry initiatives

a. PEACH

PEACH-Personalisation for Each, is a collaborative project that has been developed by the EBU Technology & Innovation Department and some of the EBU's members. Through this project, the EBU has developed a data science platform that provides numerous tools which are aimed at editors and journalists. What is relevant for this study is the development of a recommendation system that includes, among other recommendation algorithms, a "diversified algorithm" by use of which to recommend content which will broaden a user's horizon. The starting point is one where editors and journalists define what users will see. They ensure that there is a balance in what is presented, for example, in terms of points of view. PEACH's tools do not go against what editors propose but complement such suggestions by providing what is of interest to users, and this is done to also ensure that users come back. It is key to PEACH's approach that broadcasters should be in control. On the other hand, PEACH's approach is fully open, and is transparent, as well as agnostic of the type of data that is used.

With regard to the theoretical effects that are presented in Table A2.1, the tools proposed by PEACH could be utilised in order to assess and address the effects on production practices, as well as the effects of the over- or under-representation of genres and cultures, which may not only affect the competitive behaviour of other service providers, but could also alter the competitive behaviour of content producers, which may be incentivised so as to modify cultural production in order to better meet the perceived content demand (see Table A2.1).

The diversified algorithm gives higher scores to content which other users, with tastes similar to yours, like, thus assuming that you have similar tastes. Hence, recommendations should feel relevant but, at the same time, the diversified algorithm selects the most mutually different items from these high-scored items, so the resulting set is both diverse and still relevant. Hence, diversity is measured using Distances.

This algorithm, just like classical collaborative filtering, does not make use of content metadata, which is a great advantage in case there is a common problem of bad metadata quality. Diversified recommendations alone may appear more random than a user would expect recommendations to be. They should therefore be annotated properly in order to establish the user's expectations (e.g., "Something new for you"). PEACH lacks data about the consumption of the items, and they only have data about what is recommended.

Another relevant tool that is offered by the PEACH platform helps journalists to find elements that are related to an article that they are writing. The recommendation engine of this tool is based on what is written, and it looks for something similar in the archive. The journalists can then find what is relevant to them. The tool is in production for several months by at least 1 EBU member.

Another tool is aimed at users. When they are displayed on a list (e.g., a selection of articles, videos, etc.), the tool places an emphasis on one item on the list, since, on a phone, it is impossible to look

Chapter A2. An assessment of the effectiveness of measures related to prominence and the findability/discoverability of general interest content and services

at all of the items. Hence, the editors are responsible for the balance, but the application may provide a better experience. It is also in production.

The PEACH system is used by at least 5 EBU members, with slightly different applications, including: ARD (Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland, Germany), for its audiothek and associated mobile apps; BR (Der Bayerische Rundfunk, Germany), for its mediathek and associated mobile apps; TG4 (Teilifís Gaeilge Ceathair, Ireland), for its TG4 portal; RTP (Rádio e Televisão de Portugal - Portugal), for its on-demand service RTP Play, and SR (Sveriges Radio - Sweden): mobile apps (EBU 2020). The latter example has been recognised as being a particularly innovative approach to the production and distribution of news, as it can foster a broader and more diverse news consumption diet.

By building on the PEACH recommendation system, SR's "News Value System" developed a series of criteria that are used to optimise the distribution of its news. The three main criteria that are used to rate each news piece are: a) the magnitude of the news story (extraordinary/large/standard/light); b) the degree to which public service values are met (incl. diversity, audiences' relevance, uniqueness, etc.); c) the life span (standard/short/long) (Sverige Radio, 2021; Beckett 2020). Once all these values are set by the duty editor, the system attributes a digital score to the story, which, in turn, will determine the story's position and prominence. Prominence is therefore connected with the idea that recommendation systems should not only optimise for criteria like popularity or recentness, but should also take into account a broader set of news and public value services. Similarly, other PSM, like NPO (Nederlandse Publieke Omroep, Netherlands), with its "public value recommender", and VRT (Belgium-Flemish community), with its "Mijn NEW" project, are experimenting with innovative solutions to use recommendation systems that can optimise for diversity of exposure (see also, Van Den Bulck and Moe, 2018; Sørensen 2019).

b. Visibility of Audiovisual Works on TVOD

The European Audiovisual Observatory evaluates the visibility of audiovisual works on TVOD by analysing the number of times a piece, or a type of content, has been displayed/showcased. The analysis focuses on which content is promoted (origin, film vs. TV content) and how, and the degree of the concentration of the promotion.

Assessments of the visibility of audiovisual works and their composition (format, genre and nationality) can provide relevant information on the extent of the over- and/or under-representation of genres and cultures, which may impact upon the competitive behaviour of comparable (often local) services, the competitive behaviour of content producers, as well as audience choice (see Table A2.1).

c. Metamusic

Metamusic is a procedure that is designed to produce exhaustive and standardised metadata that can foster the discoverability of Canadian music on streaming platforms. Although not specifically designed for the task of measuring exposure diversity, it can be embedded in systems for the tracking and statistical analysis of cultural metadata, and for purposes of discoverability. The predominance of certain genres or cultures on digital content distribution platforms may have a negative effect on production practices, impacting upon the competitive behaviour of content producers, which may be incentivised in order to modify production so that it will better meet the perceived content demand (see Table 1 in 2.5).

2.5.2 Research initiatives

a. Discoverability Index (iD)

In the frame of their research on discoverability, LATICCE (CEIM) researchers have developed a Discoverability Index (iD), which was initially applied to the discoverability of Quebec cultural content on online music services, and has since then extended to audiovisual and book publishing. The LATICCE (CEIM) Discoverability Index relies on web-scraping in order to evaluate the presence and visibility of Quebecois content in the catalogues of digital content distributors/providers. The Discoverability Index is a composite of the following measures:

- Presence is a qualifying criterion, as content must be available on a platform for it to be discoverable. It is assessed as the share of content available (e.g., the percentage of new Quebecois films on Netflix)
- Visibility corresponds to the generic offer on a platform, not taking into consideration user preferences (i.e., from the perspective of a first time/new user). It looks at the landing page/user interface, or at the service's top lists of novelties, and evaluates the presence of Quebecois content;
- Recommendation is the offer, adapted to the users' preferences (based on their past consumption, or past ratings).

Developing tools with which to assess the discoverability of cultural content is necessary, in order to evaluate the extent of the over- and/or under-representation of genres (see Table A2.1), and thus to improve diversity by aiming at more balanced offers and exposure, in terms of genres and origin.

b. Australian Content in SVOD Catalogues: Availability and Discoverability

Analysis of the availability and discoverability of Australian screen content on three subscription video-on-demand services (Netflix, Stan, and Amazon Prime Video). Availability is assessed through the numbers, and share of, local content (i.e., Australian titles), and their characteristics (genres, movies, TV series, documentaries). Discoverability is evaluated by analysing the effects of interface personalisation. The analysis considers the presence or absence of the:

- Australian cinema drop-down category;
- Australian TV drop-down category;
- Australian cinema recommendation row;
- Australian TV recommendation row.

This method is based on a method of video on-demand catalogue analysis that was developed by the European Audiovisual Observatory. In the frame of a new project, Internet-Distributed Television: Industrial, Cultural and Policy Dynamics, they will soon be using data that is provided by Ampere Analysis. They are working on a list of discoverability features.

The effectiveness of national policies is aimed at improving the variety (formats and genres) and the visibility of domestic audiovisual works on on-demand services, and is dependent on the accurate evaluation of the over- or under-representation of genres and cultures which may have an impact on the competitive behaviour of content producers and comparable on-demand services (often local), as well as audience choice (see Table A2.1).

c. PERSONEWS

Three projects (at least) are concerned:

- Unlocking the potential of news recommenders for an open Internet and empowered citizens²³⁴;
- Algorithms for freedom of expression and a well-informed public²³⁵;
- Rethinking news algorithms that nudge users towards diverse news exposure²³⁶.

All these research projects are applied to news diversity, and the impact of recommender systems. They are based on Helberger's work and, in particular, the four types of recommenders, the values they optimise for, their characteristics (the diversity of what), and their form and presentation. The measurements of news diversity are applied in collaboration with media companies, to see if they are impacted. These projects are interdisciplinary, with both computer and social scientists being involved. The code is available in Open Source. Vrijenhoek et al. (2020), propose an overview of the diversity indicators that can be used as applications by the recommenders.

d. NewsDNA

NewsDNA is an interdisciplinary four-year research project (2018-2022), in which the primary aim is to develop and test an algorithm that uses news diversity as a key driver for personalised news recommendation. The measurement of diversity focuses on topics, because, in practice, it is difficult to detect news events. Although a topic-level approach is quite general, news topics can be detected automatically. Each article is automatically linked to a topic, using IPTC (International Press Telecommunications Council) News Codes, which are controlled vocabularies that allow for a consistent coding of news metadata across news providers and over the course of time.²³⁷ Ideally, this would even work with the diversity of the points of view expressed in the piece of news. It is, however, not possible to automatically detect the diversity of points of view. They work only with text. Data is collected from the industry partners in the project (VRT, Mediahuis, etc.). They then measure the difference between the actual consumption of news (e.g., in the context of an experiment) and two ideal scenarios (leading to two measurements), using cosine similarity:

- With open diversity (where all types of content are equally present)
- With reflective diversity (based on the representative distribution of the journalistic offer).

e. DIAMOND

DIAMOND was a four-year project (2017-2021) on news diversity in Flanders (Belgium). Three dimensions of diversity in journalistic practice are jointly assessed:

- Diversity of issues;
- Diversity of actors (or identities);
- Viewpoint (or opinion) diversity, or exposure to a variety of perspectives on the issue.

DIAMOND's assessment of news diversity is mainly organised around three Work Packages:

- Evaluating the diversity of sources by analysing the impact of market concentration on the newsroom's organisation;
- Evaluating the diversity of content through automated discourse analysis, notably, comparing a large sample of news articles on migration and social affairs published by two mainstream news media and four alternative outlets;

²³⁴ [SIDN fonds : Unlocking the potential of news recommenders for an open internet and empowered citizens](#)

²³⁵ [SIDN fonds : Algorithms for freedom of expression and a well-informed public](#)

²³⁶ [Rethinking news algorithms: nudging users towards diverse news exposure – CCS.Amsterdam](#)

²³⁷ <https://www.iptc.org/std/NewsCodes/guidelines/>

Chapter A2. An assessment of the effectiveness of measures related to prominence and the findability/discoverability of general interest content and services

- Evaluating the diversity of exposure, mainly through the analysis of the selective perception of news diversity.

One outcome of the projects is the Diversity Searcher. The software analyses news texts in semi-automated ways and assesses their diversity in terms of the variety, balance and disparity of types of actors or geopolitical entities occurring in these texts. By so doing, it offers the general public the opportunity to evaluate news texts; and allows journalists to use alternative approaches. This relates to the more general objectives of the DIAMOND project: to support critical thinking about diversity.

PERSONEWS, DIAMOND and NewsDNA address the challenges related to personalised news recommendation and associated with the risks of the homogenisation of the content consumed, as well as the over-representation of certain sources, which could negatively impact public opinion (by means of opinion formation and/or the polarisation of opinions) and political participation (see Table A2.1).

f. ENSURE

The ENSURE project looks at ways to improve the transparency and decision support for recommender systems (like Amazon and Spotify), in recommendation scenarios that contain both surprising recommendations and trade-offs. The research agenda involves:

- Gaining an understanding of people's concerns regarding personalisation for sequences of recommended items.
- Gaining an understanding of people's views on the kinds of explanations that alleviate their concerns and help them to make good decisions.
- Producing guidelines for algorithms to construct explainable recommender sequences.
- Developing algorithms for explaining sequences containing both novelty and trade-offs effectively, and while considering privacy concerns. This includes investigating the role of context and personal characteristics.
- Facilitating a dialogue between policy makers, researchers, and the general public regarding the findings above.

While it is more about transparency and explainability, the project also considers diversity by taking into account how to propose something new and surprising, and hence different from what would usually be recommended.

g. RECOLOCO

The Recoloco project has developed technology and methodologies to automatically identify new content tags, to recommend content tags, and to profile the users in order to personalise both the content and UX of Postbuzz, a digital replica of your physical mailbox. The unique characteristic of Postbuzz is its geographical approach. It is thus of the utmost importance to be able to collect, classify, enrich and rank geographical content. Recoloco has provided the necessary back-end algorithms to allow Postbuzz to scale up the number of users and the geography covered, without increasing the internal cost of ownership to prohibitive levels.

In Recoloco, the objective was to go towards more diversity, but within categories. The platform served local news. A few rules:

- Diversity by maximising the differences between the items that were shown (analysis of the text, by the proportion of similar words, cf. the bag-of-words model).
- Do not show what the user has already seen. Hence, the old items are still there (for continuity) but they decrease steadily.
- The news content was dependent on the geographical distances: the further away, the less interesting.

h. Content Personalisation Network

The interdisciplinary EU H2020 CPN project offers news organisations transparent & easily integrated software with which to personalise their content. The research lead during the CPN project, in the form of user surveys and expert interviews, showed that many news professionals and readers are also concerned with the concept of personalisation, suspicious of its potential to create ideological filter bubbles.

It is crucial for one of the partners, the Belgian public broadcaster, VRT, to take diversity into account. They have done it in CPN, but since then they have also done so in other activities (e.g., through the VRT Nu recommender system). As they are publicly funded, they want an impact, notably, in terms of informing the population. They have found out, in CPN, that always using the same format is less efficient.

In CPN, diversity was measured by VRT, using the bag-of-words model. The two other industrial partners used a user-centric approach more. Measuring diversity for VRT Nu is more difficult, notably, because it mainly consists of video content, which is of different lengths. Hence, they would rather use pre-defined categories.

2.6 Interim conclusion

This section has been concluded with an overview of the research and policy initiatives for exposure diversity, which rely on the proposed typology of measures, metrics and methods. These initiatives and projects, however, are at an early stage (sometimes in recently concluded projects), or in a pilot phase, and evidence about measurable impacts on exposure is not reliable, nor is it comparable among projects. Of peculiar interest, in relation to the next section, is the fact that these initiatives' effects and objectives concern different facets of exposure diversity, from reducing the homogenisation of the content consumed, to a more balanced representation of cultures and genres. In relation to this, the next section will attempt to evaluate prominence measures in practice, in relation to their ability to attain their stated policy objectives, which include, but are not limited to, ensuring exposure diversity on linear and online audiovisual media services.

3. Case study assessments of measures to increase the prominence of content

This part of the deliverable focuses on discussing and critically evaluating the five case studies identified. The following table presents an overview of the case study assessment, and the key points that will be discussed in each case study (as outlined in the methodology section), namely, the types of legislative measures, their material scope and beneficiaries, their scope of application, and their (envisaged) implementation and enforcement.

Table A2. 2. Summary overview of the prominence measures analysed in this section

Types of legislative measures	Types of intervention	Case study	Material scope and beneficiaries	Scope of application	Implementation
Prominence in EPG and LCN measures	Statutory law	Italy	General interest AVM services	EPG providers and digital terrestrial television	Enacted, preparing for concrete implementations
Prominence of general interest services on media platforms	Statutory law	Germany	PSM + selected AVM services based on public value criteria	Media platforms	Enacted, preparing for concrete implementations
Prominence of PSM on EPG and media platforms	Awaiting	UK	PSM channels and services	EPG providers and media platforms	Proposed and awaiting approval
Prominence of European works on VOD services	Statutory law	Sweden	European (incl. national) works	VOD services	Enacted, and enforcement is ongoing
Prominence of news on digital intermediary services	Statutory law	Germany	Journalistically edited content	Media intermediary services	Enacted, preparing for concrete implementations

3.1 Prominence in Electronic Programme Guides and Logical Channel Numbering in Italy

3.1.1 Italy's revision of its LCN system in light of its application to the digital environment

By starting with one of the more traditional legislative measures that are more commonly associated with prominence rules on linear broadcasting, this section focuses on prominence through Logical Channel Numbering systems (LCN) and Electronic Programme Guides (EPG). EPG measures, and the related LCN (i.e., the number associated with the different channels that are then displayed by the EPGs) are traditional, in the sense that they apply to terrestrial and digital terrestrial television.

In this context, the 2021 revision of the LCN system for digital terrestrial television in Italy constitutes a particularly interesting case study, as it is one of the most recently revised pieces of legislation in this area, and it seems to be complementary to the ongoing implementation of the AVMSD. AGCOM, the Italian NRA, did indeed revise and publish the new LCN law, in 2021, while it is now in the process of implementing the new prominence rules of the AVMSD (incl. Art. 7a). It remains to be seen how the two will fit together.

Legislative Decree 8th November 2021, n. 208, amending the Legislative Decree 31st July, 2005, n. 1717, on the "Consolidated text for the audiovisual media and radio services"²³⁸

Art. 29 General provisions

1. In order to ensure pluralism, the freedom of expression, cultural diversity and effectiveness of information for the widest possible audience, adequate emphasis on the audiovisual and radio media services of general interest that are provided through any receiving tool, or the access to such services that is employed by users, whatever the platform used for the provision of the same services, is guaranteed.

2. The Authority, by means of guidelines, defines the criteria of qualification for an audiovisual or radio media service as a service of general interest. By way of that same guidance, the Authority also defines the modalities and criteria to which manufacturers of equipment that is suitable for receiving the signals of television or radio, the service providers of the indexing, aggregation or retrieval of audiovisual content or sound systems, or those lenders who determine the methods for the presentation of services on user interfaces, will have to comply, with the purpose of ensuring compliance with the provisions of Paragraph 1.

4. Without prejudice to the right of each user to reorder the channels offered on digital television, as well as the possibility for pay TV offer operators to introduce additional program guides and channel sorting services, the Authority, in order to ensure fair, transparent and discriminatory non-transparent conditions, adopts a special automatic numbering plan for the channels of digital terrestrial television, both free to air and for payment, and establishes, by its own regulations, the modalities for the allocation of numbers to audiovisual media service providers who are authorised to broadcast audiovisual content using digital terrestrial techniques, based on the following principles and guiding criteria in order of priority:

- a) guarantee the simplicity of use of the sorting system for automatic channels;
- b) respect for the habits and preferences of users, with particular reference to the ex-analogue national programming of local broadcasters;
- c) subdivision of the numbering of national broadcasting channels, based on the prevailing programming criteria, in relation to the generalist or thematic nature of the programming. In the first range of numbers, adequate spaces must be provided to enhance the programming of media service providers of local audiovisual programmes of quality that are linked to the territory. In the

²³⁸ Translated from "Testo unico dei servizi di media audiovisivi e radiofoni" (see: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2021-11-08;208>)

- same range of numbers, programmes should not be broadcast that are aimed at an ‘adults only’ audience. In order to ensure the widest pluralism in the conditions of equality between the subjects operating in the market, a series of available numbers will have to be reserved for new entrants;
- d) definition of the conditions of use for the numbering, providing for the possibility, on the basis of agreements, of exchanges of the numbering within the same genre, following notice to the Authority;
 - e) revision of the numbering plan is based on the development of the market, after consulting the stakeholders.

Within this framework, AGCOM published the Legislative Decree of the 21st of April, 2021, n.116/21/CONS, amending the Legislative Decree of 15th July, 2010, n. 366/10/CONS, on the “New LCN of digital terrestrial television and the attribution methods of the related numbering for audiovisual media services”²³⁹

This applies to: Service providers for digital terrestrial television

And benefits: Audiovisual and radio media services that are of general interest (including, but not limited to, PSM services and content), and then, in decreasing order, other semi-general interest services, thematic channels and local services. Articles 3-12 establish the 10th numbering range (“archi di numerazione”) that is used to rank AVM services on the LCN and EPGs.

Oversight: Autorità per le Garanzie nelle Comunicazioni (AGCOM)

3.1.2 Critical evaluation of the envisaged measure and its implementation

a. Material scope of the measure and its beneficiaries

When it comes to broadcast content on smart TVs, there are examples of established industry standards and guidelines that are followed in most countries. For instance, some countries have established an LCN (Logical Channel Numbering) system that gives priority to a list of channels and services, which is usually established by the national communication and media regulator.

In Italy, the regulation of LCN for digital terrestrial television is determined under a specific regulatory framework, as stated in Art. 29 of the Audiovisual Media and Radio Services Decree (Legislative Decree 31st July, 2005, n. 177). The legislation gives AGCOM, the national regulatory authority in Italy, the power to establish the required plan and attribution measures for the channel numbering that will be used to grant prioritised placement on the EPGs of digital terrestrial TV. AGCOM therefore develops and establishes a list of the principles and criteria that are used to rank and list content providers. The final appointment of these services is then done by the Ministry of Economic Development, which can establish the conditions under which such numbering should be assigned, and the obligations that the related content providers need to respect in order to maintain such numbering.

In 2010, AGCOM adopted the first LCN plan for digital terrestrial television (Legislative Decree 15th July, 2010, n. 366/10/CONS). However, since the beginning, developing and implementing an LCN plan appears to have been a challenging task, as numerous court cases, controversies and complaints have been filed since the 2010 plan was put in place by a number of media organisations

²³⁹ Translated from “aggiornamento del nuovo piano di numerazione automatica dei canali della televisione digitale terrestre, delle modalità di attribuzione dei numeri ai fornitori di servizi di media audiovisivi autorizzati alla diffusione di contenuti audiovisivi in tecnica digitale terrestre e delle relative condizioni di utilizzo” (see: <https://www.agcom.it/documents/10179/22415622/Allegato+23-4-2021/b6f9fb71-eac2-4f92-8de8-6e797258fc6a?version=1.0>)

and providers (AGCOM, 2022a; AGCOM 2022b). Following these issues, the 2010 plan was annulled, and a new “Piano di numerazione automatica dei canali” (LCN plan) was published in 2013. This revised plan, though, was not implemented, and therefore the one that is currently applicable is the 2010 plan.

Following the European decision for the use of the 470-790 MHz frequency band in the Union, between 2019 and 2021, AGCOM was then required to update its LCN Plan, which was finally published in April 2021. Even though this latest LCN plan has just been adopted, the plan and related genre-based ranking will again have to be revised in 2022, in order that it is in alignment with the newly implemented AVMSD (Legislative Decree 8th November, 2021, n. 208). Art. 29 of this Decree provides guidelines for the definition of “general interest services” that the Authority should adopt in relation to the prominence issue, as well as to the new information about TV genres.

The stated objectives of Art. 29(1) refer to the aim of ensuring media pluralism, the freedom of expression, cultural diversity, and the distribution of information to the largest audience possible, which can be guaranteed through the adequate prominence (“rilievo adeguato”) of those audiovisual media and radio services that are of “general interest” (di interesse generale),²⁴⁰ independently of their distribution means and platforms. It will then be up to AGCOM to establish the requirements and criteria for these general interest services (Art 29(3) and (4)) in more detail, and to ensure that the new decree is then aligned with the LCN plan.

As indicated, the new regulation must give prominence to the original DTT broadcasts. Concretely, the regulator intends to make sure that these channels are made visible before the end-user is able to see the other apps and platforms that are available (e.g., Netflix, Amazon Prime, or YouTube). This measure is not limited to PSM channels, but includes all of the DTT channels that had previously attained a number in the LCN system. To attain this, the new definition of general interest content aims to include the relevant channels that are provided by private commercial broadcasters. The reasoning goes so far as to state that even connected TV should provide the same LCN numbering logic. Interestingly, due to the fact that prominence, as a concept, is not explicitly mentioned in the new LCN plan, but an interview with the NRA nevertheless indicated that appropriate prominence is hereby translated into the ranking of the channels, and it is particularly important to ensure the prominence of PSM services and channels, and other general interest services, including local ones.

Concretely, the Law prescribes the following criteria in order to evaluate the ranking of channels, i.e., higher ranking means that the channel would be attributed a lower numbering, and therefore a more prominent position on EPG:

- whether they are analogue, digital or HD, with the former analogue service being granted a higher ranking/lowering numbering;
- whether they operate at national or local level, with the national content providers being granted a higher ranking/lowering numbering;
- whether the provider is a new audiovisual media market entrant, which may benefit from the 30% reservation that is stipulated in Art. 5.4 in the third numbering range;

²⁴⁰ Original text, Art. 29(1): “Allo scopo di assicurare il pluralismo, la liberta' di espressione, la diversita' culturale e l'effettivita' dell'informazione per la piu' ampia utenza possibile, e' garantito adeguato rilievo ai servizi di media audiovisivi e radiofonici di interesse generale forniti mediante qualsiasi strumento di ricezione o accesso a tali servizi impiegato dagli utenti, qualunque sia la piattaforma utilizzata per la prestazione dei medesimi servizi. “ (<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2021-11-08;208:vig=2022-01-19>)

- the types of audiovisual media programmes and genres offered, i.e., whether they provide a generalist or specialist content offer, with the generalist content providers being granted a higher ranking/lower numbering.
- a) The generalist partially reflects the definition of “general interest content” in the AVMSD, as it requires media organisations to provide a pluralistic and diverse offer of content, including those niche-market failure genres. like news, current affairs, children’s programming, education, arts, culture, religion, etc. Generalist services are, for instance, the PSM channels: Rai 1, Rai 2 and Rai 3 (in 1st, 2nd and 3rd positions), and the commercial counterparts from Mediaset, Rete 4, Canale 5 and Italia 1 (in 4th, 5th, and 6th positions).
- b) The specialist content providers are those channels that are focused on specific genres (such as Rai News. with only news and information; Rai Movie. with only cinema and entertainment; Sky Arts, with only cultural and arts programmes. etc.). These specialist content providers are ranked based on this thematic order (which is defined under Art. 1):
 - semi-generalist content (“semigeneralista”)
 - children’s content (“bambini e ragazzi”)
 - News and information (“informazione”)
 - Culture (“cultura”)
 - Sport (“sport”)
 - Music (“musica”)
 - TV-shopping channels (“televendite”)

Regarding the concern for media diversity, however, in the NRA interview it was made clear that local television was deemed to be an important aspect of Italian media culture. Local television used to be placed prominently, and numerous, within the LCN system (Code 177/2010), with due attention to media for the minority groups in society. However, with the new changes, local television may be at stake. In the current LCN logic, Italy has a total of 700 local channels, which, of course, leads to the need to make a selection in their transposition to the digital. However, the number will likely be reduced to approximately 100, of which, again, only around 10 will be able to obtain the most prominent positions. As a guidance to this selection, the Code provides a handful of criteria which all relate to the economic profitability and sustainability of the local player, e.g., the number of journalists employed, revenues, audience measurements and the historicity of the provider. As a result, only the economically strongest and most sustainable local media providers are likely to remain. These concerns were also raised in the open stakeholder consultation that was held by AGCOM, in which industry representatives proposed alternative solutions to this issue.²⁴¹

b. Application of the measure: targeted industry actors and the extent of their obligations

In terms of the impact on the industry, in those countries where there is an established LCN system, such numbering is often questioned and criticised by different industry actors, such as the local and

²⁴¹ One suggestion was to use the last three numbers in the first arc for local programmes, instead of more national channels within the same first arc. Additionally, another suggestion made was to assign the same numbers to those broadcasters that broadcast several local channels on the same numbers in the second arc, reserved for local content, in each technical region. In other words, if a larger broadcaster maintains different regional channels, these channels could be put on the same number when a viewer is watching from a particular technical area. Finally, and perhaps most interestingly, in connection to the findings of Part B of this study, is the suggestion that, when assigning numbers to local TV channels in the second arc, care should be taken that a single ultimate party does not obtain more than two channels in that arc (10-19). (AGCOM Consultation, 2021)

regional media, as having a higher LCN (thus being displayed in a lower position on the screen) appears to negatively impact upon their audience reach, as viewers are less likely to access their content if compared to those channels that are positioned in the lower numbers. However, this negative impact is often hard to quantify, firstly, because LCN is only one of the different factors that may influence audience reach and advertising revenues (European Audiovisual Observatory, 2016, p. 63), and, secondly, because it can vary depending on the national context and the specificities.

AGCOM therefore organised an open consultation on the topic, in order to address any outstanding issues which might have required further amendments, and received a majority of support in favour of the new system. Even though the LCN plan obtained the necessary majority, there were still some remarks that are relevant for consideration when evaluating the extent of the obligations concerned.

In light of this consultation, some relevant statements from practitioners emerged. First, a group of practitioners preferred a different definition of "genres of semi-generalist programming", the reason for which being that, on the one hand, the scope of the "most popular bands" is unclear, which leaves open the possibility of opportunistic interpretations in favour of certain programmes and, on the other hand, that the requirement for a provider to have "three differentiated genres" may risk being too restrictive for some programme providers, and may jeopardise progressive or alternative providers. These were only two examples, but, overall, the sentiment portrayed was that the existing media market, including the digital and online media environment in Italy, significantly differed from the manner in which the categories or genres were selected and defined by the legislator, including new types of entertainment genres and mixed genre programmes. For this reason, the categories and definitions in this sentiment are too narrow, and are not sufficiently reflective of the diversity of the currently available programme genres and their providers. Regarding this concern, the consultation's responses therefore conclude that the genres laid out in Art. 32, Para. 2,c, of the Consolidated Law, "while constituting the reference for the organisation of the thematic sections, [...] do not exhaust the television genres currently existing and therefore it would not be correct to interpret the reference to "differentiated genres" that is contained in the definition of the "semi-generalist programming genre" as referring solely to those." (AGCOM Consultation, 2021)

Another important remark made during the Consultation concerns the obligation for a balanced distribution of such content. The consultation argues that this obligation does not account for market and audience needs, "resulting in the compression of the prerogative of television publishers to decide their own schedules and to distribute the various programs throughout the day, according to editorial criteria". In other words, while the measure intends to provide diversity, in terms of the available programmes, and the Consultation argues that this encroaches too much upon their editorial independence. For example, with regard to the criteria on the amount of information that is provided by the channel on a daily basis, the Consultation finds that, while they generally agree that the availability of information on a daily basis is part of their broadcasting duties, their editorial independence should allow them the necessary flexibility, and reasonable room for the discretion to decide on the extent and timing of this information themselves, without jeopardising their status as a semi-generalist programme provider. (AGCOM Consultation, 2021). Nevertheless, this concern may be considered a minority voice, as the majority did approve the measure, indicating that the measure could be taken to the implementation phase. This concern is, however, not uncommon, as measures undertaken by governments that aimed to increase market diversity will, eventually, one way or another, inevitably encroach upon the editorial decision-making process. To safeguard the legitimacy of such an intervention therefore requires a well-founded problem statement, which may only be remedied by regulatory intervention, and implemented in a proportionate and effective manner.

c. (Envisaged) Practical implementation of the measure and its (potential) challenges

The previous considerations translate, in practice, into “numbering arcs” (“archi di numerazione”), whose organisation and ranking systems are prescribed by Art. 3-12 of the new LCN plan. The Law therefore foresees a complex ranking system, that is based on a series of points, to increase an AVM service’s chances of obtaining a position that is more prominent than that of others. The AVM services that are evaluated are those operating in national and local territory, and that are distributed in Italy via digital terrestrial television. The underlying rationale of the points system shows a clear intention to prioritise those channels with a diverse programming offering (i.e., national generalist services), which are deemed to be more valuable to society than specialist ones are, as they provide not only entertainment, but also news, current affairs, educational and children’s programmes. However, there are also market-driven considerations that are taken into account in the final scoring, through indicators like viewing share and audience reach metrics.

Overall, the guidelines of the latest LCN plan read as follows: “The numbering of the first range (numbers from 0 to 99) were confirmed to be reserved for national broadcasters, and, in particular, for providers of quality and local content (numbers from 10 to 19 and from 71 to 99). Furthermore, the numbers from 71 to 74, in the first range, and the numbers from 171 to 174, in the second range, have been reserved for those consortia of local and national broadcasters that intend to distribute the same national programming over several areas of the territory.” These will apply to digital terrestrial television and will benefit primarily those public and national broadcasters with a higher and more prominent ranking. More detailed guidelines are then given per each numbering range, for a total of 10 ranges or arcs (Art. 3-12, Legislative Decree, 21st April, 2021, n.116/21/CONS).

When it comes to the actual implementation, and, in particular, to assigning the final numbering to each AVM service, Art. 13 (Legislative Decree, 21st April, 2021, n.116/21/CONS) states that it is the Ministry that will have to evaluate each call for application that is received by the interested AVM services. In case there are more applications than numbers available, the ranking will be attributed by following the AGCOM guidelines and numbering ranges that have been established by the LCN plan. To establish this final ranking, scores are attributed to the AVM services that are based on three main criteria, namely, the quality of the programming offer, the users’ preferences, and the connection to the national and local territory. These criteria are defined as follows:

- The quality of the programming (Art 13(10)) is assessed on the basis of the editorial plans and the employees who are employed, with the following indicators:
 - percentage share of the total hours of programming of information programs (including news broadcasts), in-depth programs (including cultural ones) and programs dedicated to minors, of the object of the application, and those with more points had a higher percentage share;
 - the average number of employees on a fixed contract, effectively applied to the activity of the audiovisual media service provider, for the object of the application;
 - the average number of journalists (professionals, publicists and practitioners) enrolled in the relevant register, effectively applied to the activity of the audiovisual media service provider for the object of the application employed;
- User preferences and the connection to the national and local territory (Art. 13(11)) are assessed, respectively, on the basis of the current and historical audience ratings, with the following indicators:
 - The weighted average daily viewing share, and the number of the net audience reach (calculated on a biannual basis 2019-20)
 - The number of years of distribution, from the start of its license.

Additionally, given the regulator's repeated concern for community media, Art. 13(12) adds that a 20% reservation goes to community media, should they choose not to compete for the regular local media spots. In which case, the ranking is based on the same criteria as above, although this was without the need for the popularity and audience metrics of Art. 13(11).

In terms of oversight and enforcement, Art. 15 (Legislative Decree, 21st April, 2021, n.116/21/CONS) stipulates that, should a media service deviate from the intended purpose, based on which they received their rank, the Ministry is authorised to suspend the transmission of their content after repeated communication that they should conform to the original service proposal again, so as to regularise their ranked position. After repeated abuses, the number of a provider may be revoked. Finally, to better futureproof the system, Art. 16 (Legislative Decree, 21st April, 2021, n.116/21/CONS) leaves the NRA with the competence to revisit the plans should the media markets drastically change in future years, based on changing technologies or user habits, and after consultation with the relevant stakeholders.

Overall, the Italian case presents a detailed overview of how AVM services might be prioritised, based on both public interest and market-driven considerations, thus establishing a scoring system that considers both the quality of the service and its market appeal. At the same time, though, the main limitation of this elaborate LCN plan is that it only applies to digital terrestrial television. The main challenge for AGCOM is therefore to align this new plan with the recently revised legislative decree for audiovisual media and radio services (Legislative Decree, 8th November, 2021, n. 208), which will have to introduce prominence rules that are suitable for internet-distributed services.

3.2 The Prominence of General Interest Content on media platforms in Germany

3.2.1 The German Interstate Media Treaty's implementation of Art. 7a AVMSD

The second measure concerns a more modern approach to prominence regulation that goes beyond linear and DTT television, which also represents a particularly interesting case of the transposition of Art. 7a of the revised AVMSD, namely, the new Interstate Media Treaty in Germany. The revised AVMSD recognises Member States' freedom to adopt rules that ensure the "appropriate" prominence of audiovisual media services that are of "general interest" (Article 7a, Recital 25 AVMSD). Generally, Member States are still in the process of adopting national prominence frameworks, and their approaches significantly vary from country to country. The mapping has currently found seven transpositions, or similar implementations, of the measure. Some of these build on long standing traditions relating to PSM, such as Germany, which is currently the first, and most advanced, example of regulation in this area.

Germany is selected as a case study with regard to its concrete implementation of Art. 7a of the AVMSD, which aims to improve the visibility of general interest content. In summary, Germany has transposed Art. 7a AVMSD into its State Media Treaty for the German Länder, which entered into force in September 2021. This implementation includes a set of articles (most notably, Art. 84) regulating the obligation on providers to provide User Interfaces ('UI') in order to facilitate the findability of general interest content by the general public. Interestingly, the scope extends beyond content that originated from PSM, which warrants a deeper look at its material scope.

With regard to the stage of the implementation of the measure, the process to ensure prominence, as set out by Art. 7a, AVMSD, consists of different types of obligations and competences, depending on the parties involved and the level of practical implementation:

- In a first step, the legislator defined the criteria, based on which public value is evaluated, and what kind of content and offers carry their preference for being included in that offer.

- In a second step, independent NRAs determine which offers effectively fulfil those criteria in the application of commercial content providers.
- In a third step, the providers of UIs are given the freedom to choose the technical method by which to implement those offers into their services, which have to be easy to find.
- These will ultimately result in a fourth step, in which compliance with the measure is to be assessed on a case-by-case basis by NRAs, and in which both parties involved will be given the opportunity to evaluate the concerned implementation in practice.

State Media Treaty. Treaty entered into force, November 7th, 2020.

- Art. 84 (2): similar services or content may not be treated differently in terms of findability, in particular, the sorting, arrangements or presentation in user interfaces, without an objectively justified reason; findability may not be unreasonably impeded.
- Art. 84 (3): the user interface shall be easily findable. §85: The principles underlying a media platform, or user interface, for the selection of broadcasting, broadcast-like telemedia, and telemedia shall be made transparent by the provider.

Applies to: Broadcasting, Broadcast-like telemedia, and telemedia, media platforms

Benefits: European works

Oversight: 14 regional state media authorities, that work in conjunction with the 4 centralised agencies, which have different competences (ZAK, GVK, KEK and KJM)

3.2.2 Critical evaluation of the envisaged measure and its implementation

The introduction of the rules on prominence that apply to the providers of user interfaces, and that positively discriminate against content and services that comply with a set of public value criteria, will have a direct impact on a number of actors, including technology manufacturers and the providers of audiovisual media services, such as public service media organisations and commercial broadcasters. As highlighted by a number of the interviewees, and during the stakeholder consultation, though, there is neither the data nor the evidence available at the moment to adequately assess the impacts of these measures on the market, nor their effectiveness in achieving their stated policy objectives. This is also the case for Germany. Despite the fact that the German prominence rules are by far the most advanced regulation in this policy area at the European level, they entered into force only in September 2021, and their implementation is still ongoing. Informed by the input received by the relevant stakeholders during the stakeholder consultation and interviews, and by the publicly available documentation, the following sections will thus provide an evaluation of the perceived impacts that these measures may have on the relevant industry actors (namely, PSM, commercial broadcasters and technology manufacturers), as well as a critical legal evaluation of these measures in relation to their perceived potential effectiveness to achieve the two distinct, even if interrelated, policy objectives, namely, the objective to ensure the prominence of public value content, and the objective of expanding the diversity of the exposure of users.

a. Material scope of the measure and its beneficiaries

A total of eleven implementations of Art. 7a AVMSD applies this to general interest content specifically, though the scope of this content varies greatly. In the case of Germany, the implementation foresees a two-tiered form of positive discrimination for general interest content; a)

all broadcasting content must be prominently placed and easily accessible within the interface, and, b) within the available broadcasting content, the programmes of the PSB and private programmes that contribute to plurality must be placed more prominently than other broadcasting programmes. This, of course, begs the central question: which content will fall within this category of 'programmes that contribute to plurality'?

Regarding the topics of who, or what, the measure aims to benefit, or positively discriminate for a first notable remark is that the State Media Treaty refers to this type of content as 'public value content', rather than as the AVMSD's concept of 'general interest content'. This category refers, first and foremost, to the full audiovisual content offering of the German Public Service Media, including their online offers. This application of the public value status of PSM content is prescribed, and flows automatically from the Treaty. Secondly, the Treaty foresees an extension of this 'public value content' to commercial providers, insofar as they 'make a significant contribution to the diversity of opinions and offers in Germany'. The Treaty sets out that, for a commercial provider to be assigned the status as the 'providers of general interest content' in the context of its Art. 7a AVMSD implementation, a set of criteria has to be met, to be assessed and to be approved by the Germany Media Authorities ('DLM') upon application by the provider. At the time of writing, the call for applications has recently closed, and, since then, the Media Authorities are in the process of assessing which providers may successfully obtain this status. If successful, the provider will obtain a license for a period of three years, and its status will be made public on the state media authorities' website.

More concretely, the following exhaustive set of criteria are put forward by law, the Media Authorities are not allowed to apply any other criteria than those that follow when assessing which providers may be considered to be a 'commercial provider of public value content'.

- The amount of time spent reporting on political and historical events,
- The amount of time spent reporting on regional and local information,
- The ratio between in-house productions and programme content produced by third parties,
- The quota of accessible offers,
- The ratio between trained employees and employees who still need to be trained, who are involved in creating the programmes,
- The quota of European productions, and
- The quota of offers for young target groups.

The measure shows a clear intention to improve the findability of public value content, which, it claims, has become a crucial issue, given the new media landscape. The primary incentive behind this measure is therefore to provide an answer to this fragmentation of services, so that public value content may remain available on all of these platforms and services. Additionally, as a secondary policy objective, the study notes, from the NRA interview, that the measure aims to incentivise commercial content providers to keep investing in the specific types of content that are listed by the requirements that are set out to be considered to be a provider of public value content. Concretely, the inclusion of commercially less profitable content, such as children's programmes, European works, or certain types of news offerings, in the list of criteria for public value content offerings, is intended to incentivise commercial content providers to consider investing in these types of content, which are not as cost-effective as other programmes generally are. As a result, the aim appears to be two-fold: first, to promote PSM content and maintain their findability in a changing media environment; second, to incentivise the commercial market to invest in less-profitable offers, in order to also improve their findability. Whether this will lead to a diversification of the findable offer as a whole remains to be seen, and will depend on the measure's implementation in practice.

Differently from the following UK case study, these measures broaden the material scope of the beneficiaries of the prominence and findability clauses, building on the premises that both public service and commercial broadcasters can contribute to public value creation, if certain requirements are respected. Indeed, as described above, PSM's channels and services are automatically included as beneficiaries in this regulation and, thus, they need to be easy to find. This, of course, necessitates two important caveats regarding the measure's capacity to effectively contribute to media diversity. The first caveat is similar to the remark made in the UK case, in that, to warrant the privileged treatment of the Germany PSM, these providers are, in fact, under an obligation to provide inherently diverse programmes and unbiased content, which is, in practice, effectively monitored and enforced. The second caveat is that, while the measure provides that certain private and commercial organisations that fulfil a set of public value criteria may be included in the material scope, and may benefit from easy findability and prominence provisions, the same does not pertain for the public service media of other EU countries, which may seriously affect the EU's single market efforts in this respect.²⁴²

There are seven criteria through which to assess the public value nature of an offer, the NRAs establish which of the commercial offers should be determined as such, and therefore, as the regulation went into force in September, 2021, the *Mediananstalten* launched two tenders, one for commercial audiovisual, and one for audio only offers. The private commercial broadcasters, and all types of content providers, had four weeks to file their applications for the process that is currently ongoing. More than 300 applications from TV, radio, websites, streaming services, etc., were received, and they are currently being investigated under those 7 criteria (and only those criteria can be used in the measurement of status that is required in order to make a contribution to a diverse media landscape). The final list is expected to be published later in 2022. The UI producers will then have to choose the best manner of implementation for an easy to find measure, which may be very different among the types of platforms, so it is very important to leave them this choice for implementation.

Even though the final list has not yet been published, overall, both commercial and public service media organisations have broadly welcomed the German approach, and its broader definition of services and 'content of general interest', which appears to be likely to result in a fairer and more equal distribution of regulatory benefits.

Firstly, the newly introduced prominence rules in Germany are also a welcomed approach for PSM organisations, both in terms of the interpretation of the beneficiaries, and for the scope of the application of the new rules. PSM's services are indeed automatically considered to be the providers of general interest content, and therefore they are granted the new regulatory benefits without having to respond to the call for applications, as the commercial broadcasters have to. With this automatic inclusion, the new rules thus recognise the important role that independent and internally pluralistic PSM providers play in the broader media ecology. Interviewees from German PSM organisations have, indeed, highlighted that, given the specificities of the German PSM landscape, it is particularly

²⁴² This concern was highlighted in a critical opinion, published by Digital Europe et al., in response to these measures. The opinion therein resembles discussions that have been held in the past with regard to must-carry obligations. For example, in the CJEU case of *UPC v. Belgium*, the CJEU state that "the criteria on the basis of which must-carry status is awarded must be non-discriminatory. In particular, the award of that status must not, either in law or in fact, be subject to a requirement of establishment on the national territory (see also Case C-211/91 *Commission v Belgium* [1992] ECR I-6757, Para.12). Furthermore, even where the requirements laid down for the award of must-carry status apply without discrimination, in so far as those requirements are capable of being more easily satisfied by broadcasters established on the national territory by reason, in particular, of the content of the programmes to be transmitted, they must be essential for the attainment of the legitimate objective in the general interest which is being pursued." The current formulation of the material scope may thus pose a serious concern, given its potential impact on the EU Internal Market.

important that the service offer of such organisations remains integral, i.e., that prominence is given to the whole content offer from PSM organisations, such as ARD and ZDF, and not to individual programmes of content. These organisations already have to respect a number of criteria when it comes to the production and distribution of independent, quality, universally accessible, and diverse services and content and, in a nutshell, due to their legal remits and obligations, they already have to respect, and go beyond, the list of public value criteria that are proposed in the new provisions. By granting prominence to their entire offer, the legislation will thus indirectly support internal pluralism. To do so, though, a discretionary approach towards only specific genres or programmes that are offered by PSM, such as news content, would be counterproductive and it would not recognise the important contribution to society that other types of content from PSM organisations also bring.

Secondly, in recent years, both commercial broadcasters, like Sky in the UK, and trade organisations, like the Association of Commercial Television (ACT) in Brussels, have been lobbying for such a broader definition of services and ‘content of general interest’, building on the argument that every media organisation, independently of their business model, could positively contribute to the creation of public value. While this argument, and the underlying assumption that public value may be a by-product of commercial and economic interests (see Mazzoli & Tambini 2020), it is still worth highlighting that, for this stakeholder group, the German regulatory approach in this area appears to be a more inclusive and fair regulatory approach to prominence regulation, if compared to those that limit the prominence benefits to their national and/or local PSM organisations (Section 3.2). Furthermore, the Public Value Statutes have broadly provided a list of reasonably objective criteria, which not only gives the opportunity to any media organisations to apply for such benefits, but they could potentially create a virtuous cycle in industry practises as organisations are pushed to demonstrate their public value and their contribution to society, in order to access these new regulatory benefits.

In a nutshell, overall, this approach and its broader definition of the “general interest services” which benefit both PSM organisations and commercial providers that respect public value criteria, is seen as potentially being beneficial and, at the time of writing, we still do not know which services have been selected. There are thus still open questions on how the decision by the competent regulatory authority will be taken; how transparent this selection process will be, and, ultimately, who will be granted these services, given that there were more than 300 applicants²⁴³, when the UI of smart TVs can show a maximum of 7 tiles on the home page. This point has been raised both by technology manufacturers and commercial providers. The former are concerned about the practical feasibility and technical implementation of ensuring an appropriate level of prominence to all the selected public value providers within their limited UI’s spaces. The latter have highlighted that if approaches like the German one were to be taken in other national contexts, it is fundamental that these processes take place in a transparent and accountable way, so as to ensure that the selection and subsequent distribution of these regulatory benefits is granted on a fair basis. Additionally, the criteria should not impact the editorial control and responsibility of the audiovisual media services providers. In other words, they should be based on objective criteria that can evaluate the overall provision of a content provider, as opposed to evaluating individual pieces of content. A regulatory instrument that evaluates individual pieces of content might, indeed, have unintended consequences for the editorial independence and freedom of media organisations, and could easily be misused, especially if applied in less democratic countries.

²⁴³ Number given as a rough estimate during the interview with a representative of a competent German NRA.

b. Application of the measure: the targeted industry actors and the extent of their obligations

The new prominence and findability measures apply to the UI of those common access points, for German citizens, to audiovisual media content from different providers. Alongside EPG providers, technology manufacturers, such as smart TVs' and connected-TVs' manufacturers (which are also described as "media platforms"), will have to comply with the newly introduced obligations. Furthermore, it should be noted that the regulation purposefully does not address internet platforms – e.g., social media or search engines – because of their different business models and their functions as "intermediaries" for content, as opposed to the "closed shop" of media platforms, or user interfaces, where the provider decides which content can be accessed. Status as an offer of general interest, within the meaning of the German regulation, does not include access to all user interfaces either, but, instead, focuses on the findability of the available content on the applicable service.

Regarding the scope and content of this prominence measure, Germany's implementation has been named an "easy-to-find" type of regulation. Essentially, the content which has been assigned the aforementioned public value status needs to be easily findable within the UIs of the measure's applicable addressees. These addresses are common access points for German citizens to audiovisual media content from different providers. The envisaged UIs, by this measure are, for example:

- offers that give a scheduled overview (EPGs).
- all Hbb-TV or Smart TV interfaces (TV manufacturers).
- interfaces by cable network suppliers.
- the interfaces of set-top-boxes.
- The acoustic interfaces of smart speakers.

The objective of this proposed scope of application – which is focused on UI and software-based applications - was to be partially future-proof, since the regulation does not apply a predefined form, or type of measure, of appropriate prominence. Hence, the technical implementation is not regulated in detail. It lies within the competence and the responsibility of the providers of the UI to ensure the appropriate prominence of the selected offers, taking into account the differences among the interfaces addressed by this regulation, and rapid technological development. Once providers of UI have concluded the technical implementation and provided prominence measures, the German media authorities (DLM) are responsible for supervising whether the selected offers are easy-to-find with the user interface, and whether the providers meet the requirements of the regulation. This will primarily take place through a case-by-case analysis, depending on the possibility that the assigned public value content providers could file a case with the German Media Authorities arguing that their content is deemed insufficiently findable.

This approach, as was also highlighted in the interview with the NRA, ensures that neither the legislator nor the NRA have the power to decide in detail how appropriate prominence should look in practice. This was done for two main reasons. Firstly, because laws that are too detailed may hamper technical innovation, and, secondly, because an excessively prescriptive law would not be sufficiently futureproof, nor would it be capable of accounting for future technical capacities that affect citizens' exposure to content. While this appears to be a reasonable and modern approach, which is also used in the UK case (see Section 3.2), as highlighted during the interviews with technology manufacturers, complying to the additional obligations of these new rules is already perceived to be an infringement of their freedom to innovate, and to adapt their interfaces, as consumers and market trends evolve. These organisations launch new products on a yearly basis, and most of them operate on a global scale, or at least in multiple European markets and, thus, from a commercial standpoint, nationally based obligations, like the German ones, would cause additional burdens and costs,

without necessarily achieving the intended policy goal. To survive in such a highly competitive and innovative market, technology manufacturers argue that they would, instead, need open, free and harmonised standards, in which they have the relative freedom to differentiate and innovate their products.

On this question of how to balance a suitable modern approach with the rapid developments of this sector, PSM organisations highlight that it is important to introduce regulatory instruments that can easily adapt to new technological developments. In this sense, while they see the current scope of the application of the new rules as a good starting point, which may be suitable for the current market dynamics - since consumers increasingly access content through media platforms, and therefore their interfaces and UI design choices may be rather influential in the users' journey to content, issues around voice control and other forms of intermediation should, nevertheless, also be taken into account, as they become increasingly important gateways to content.

Alongside issues around voice control, commercial broadcasters have also argued that these provisions do not go far enough, as they do not address another distortion of the market that is related to hardware shortcuts that increase the prominence of certain providers (see A1): dedicated buttons on the remote control which are at present mainly dedicated to international content providers and/or streaming platforms, like YouTube, Amazon Video Prime, and Netflix. Commercial broadcasters argue that current distribution agreements for remote control allow users to circumvent EPGs and other UI prioritisation measures by accessing those services that are present on the remote control directly, thus creating positive discrimination for such international players, who can strike profitable global deals with technology manufacturers, and thus have a negative impact on the national players, who do not even have access to such deals.

Finally, an additional challenge that, according to the technology manufacturers, hinders the smooth implementation of these new prominence obligations, concerns the sharing of metadata between manufacturers and audiovisual media services' providers. Access to rich and high-quality metadata can ensure that the content and services are more easily found and shown on the UI homepage, as well as through the search and browsing functions. However, as also discussed during the stakeholder consultation, access to metadata seems to be particularly challenging especially for national media organisations, such as national commercial and public service broadcasters. This draws us back to the perception of both users' data and content metadata as both valuable assets and a source of bargaining power. On the one hand, by giving out their metadata, broadcasters feel that they will lose even more control over the ways in which their content is presented, curated and distributed. On the other hand, though, technology manufacturers argue that, for a correct implementation of any prominence obligation, greater and easier access to metadata is pivotal.

c. (Envisaged) Practical implementation of the measure and its (potential) challenges

From the interview with a German NRA we learnt that throughout earlier consultation and communication with industry stakeholders about their ideas and suggestions regarding the effectiveness of the envisioned measure in practice, the NRA received positive responses on the feasibility of the measure in practice. Furthermore, industry standards through self-regulation are not excluded in the future, but they would have to flow naturally, and not be enforced by NRAs or legislation. From the NRA interview, we also learnt that the measure may provide an incentive for the development of self-regulatory standards on which types of UI changes may provide the required levels of findability, but it is too early to tell at this point. Should the industry feel the need to draft such self-regulatory standards, this study finds that this may benefit from both support and open and clear communication, from the related Media Authorities, on which standards would be deemed effective in order to attain the goal of increasing the prominence of its public value content.

Standardisation was, indeed, mentioned, both in the interview and in the stakeholder consultation, as a way to support and ensure a smoother technical implementation of these measures. At the moment of writing, though, and despite the urgency that is required to apply these new rules, there is still a lack of reliable and shared definitions of “appropriate prominence”, which, in turn, might help to speed up the standardisation process. As was also discussed in the A1 mapping, we did not find any shared industry technical standards, or best practice examples, that relate to how technology manufacturers might effectively and efficiently comply with this new obligation. It has, however, emerged that the DVB consortium, an industry-led consortium working on global manufacturers standards for digital television, has created a dedicated task force, which is looking into specifications and standards that can signal and denote services and content that are of general interest. Such specifications may, in the future, help technology more efficiently those services and content that should be granted prominence on their interfaces.

We are still at the very early stages of this process, though, and meanwhile, each provider will have to decide on the most suitable solution for its own hardware and software services. For instance, one of the consulted manufacturers intends to introduce a dedicated tile of apps on its interfaces, on which the “public value” providers that are identified by the media authorities will be included. However, this solution was also discussed during the stakeholder consultation, and it was heavily criticised by both commercial and public service media organisations, which argued that “relegating” public value providers into a separate tile, could be counter-productive and would not comply with their understanding of “appropriate prominence”, since Netflix, Amazon Video Prime, and others, would be as prominent as the entire public value offer. Criticisms and divergent views on what appropriate prominence means, and how it can be achieved in terms of its technical implementation, thus still remain unsolved. Furthermore, even if a suitable technical solution was to be found, it would probably not be implemented in other countries, where this obligation does not exist, as technology manufacturers would prefer to maintain their full freedom of design and to have the possibility to maximise their revenue from sales by selling the same products across all other European markets, without having to customise products in each separate country.

While discussing the possible development of technical standards, it should be noted that industry stakeholders representing technology manufacturers and digital services also voiced their criticism of the German approach from an internal market perspective. In particular, in their comments on the implementation of these provisions, Digital Europe, Bitkom and ZVEI argued that these rules “will negatively impact the freedom to provide services and, in particular, will limit the freedom to provide “Information Society Services” based upon the country-of origin principle and codified in the e-Commerce Directive (eCD), and it is thus likely to hinder the functioning of the internal market” (2021, p. 1). While we do not yet have evidence to corroborate the negative impacts on the internal market, it is evident that the different national transposition and implementation of Art. 7a of the 2018 AVMSD are, to some extent, leading to an increasingly fragmented policy landscape. However, as we will further discuss in A3, it should also be said that the competencies of the European Union are also limited, and further harmonisation at EU level may not always be achievable.

Furthermore, since the technical implementation lies, in practice, with the providers of the UI, the German media authorities will primarily be responsible for assessing whether those implementations comply with the policy objective as previously set out (“easy-to-find”). From the interview with the NRA, we learnt that the regulator aims to draw inspiration from related laws and regulations when assessing such findability. A first example that was brought forward relates to the more traditional measure of prominence in EPG for European works, referring to the various assessments of easily

findable content in the EPG UIs.²⁴⁴ Another related source of inspiration is the available case law and the guidance relating to the findability of privacy policies, in the context of the GDPR.²⁴⁵

Finally, the law does not foresee a limit on the number of applications, but it does foresee a significant contribution to the diversity of opinions and content that are available in Germany, in accordance with those 7 criteria. So far, the NRA reported, in the interview, that they have thus received over 300 applicants for the limited number of slots on the targeted UIs. This means that further selection will need to be made, despite applicants being eligible to conform to the predefined set of criteria. At this stage of the measures' implementation, it is still unclear how this value will be determined in practice, or how transparent this process will be. In the interview, it was not yet clear on which basis this selection would take place in relation to the criteria, either, though it would likely be connected to surrounding conditions and offers, such as a balanced diversity of the selected offers (both in terms of content types and actor types), and it is likely that decisions will favour those who have been proven to be economically sustainable providers. This selection is important, however, so that time will be needed in order to tell how such choice will be approached in practice.

3.3 Prominence of Public Service Media's content and services on EPG and media platforms in the UK

Despite the fact that the United Kingdom is not an EU Member State anymore, the researchers decided to still include Ofcom's proposed prominence rules for PSM as a case study, since it allows us to discuss a proposal that sits at the intersection between the more traditional LCN and EPG measures which are exemplified by the Italian case, and the broader and more innovative measures of prominence on media platforms, which are exemplified by the German case. As it currently stands, Ofcom's proposals appear to rely on the existing PSM regulatory instruments, which are more suited to the linear broadcasting environment, and in doing so, it interestingly shows not only the advantages and limitations of the extension of traditional regulatory instruments to part of the internet-distributed audiovisual media value chain, but it also allows us to reflect on the pros and cons of a narrow interpretation of general interest content that is limited to PSM (Mazzoli 2021, p.10). Furthermore, Ofcom's background studies, reports and public consultation processes in this area have also provided a rich source of data and information that was not available in other Member States.

3.3.1 Ofcom's recommendations for the availability and prominence of its PSM Content

In the UK, the question of prominence in a linear television industry was introduced in 1997 by the then media regulator, the Independent Television Commission (ITC), to deal with an abundance of offerings and to ensure diverse and quality programming (Van Der Sloot, 2012: 139). The Communications Act (UK, 2003) later required Ofcom, the current independent media authority in the UK, to draw up a more detailed Code of Conduct for "appropriate prominence", which permitted measures of positive discrimination in favour of linear public service broadcasting (PSB) channels (Ofcom, 2010). In the UK context, while, initially, the rationale for EPG prominence rules was thus the equitable division of scarce transmission capacity, it later also became the fear that commercial

²⁴⁴ Examples are the inclusion of content in the first or second layer of visible user interfaces, in particular, in those special areas in which the content is made easily recognisable, directly reachable and permanently available from the main page of service. For European works, this visibility should be accompanied by the possibility to search for European works in the pages' search tool, and in categories for the orientation of the user, e.g., "new"; "recent highlights"; "best movies/series of the..."; "recommendations"; "popular".

²⁴⁵ Some examples in this area are: the requirement that policies are never more than x amount of user clicks away from the main page, or that the UI must refrain from implementing any 'dark patterns' to prevent its users from finding their way to the policy in a normal fashion.

broadcasters would not serve commercially unattractive groups and minorities, nor provide the desired diversity of content, in other words, there was a need to intervene in order to fix an existing market failure in the media industry (Mazzoli, 2020b, 2021; Van Der Sloot, 2012).

As part of the 2018 revision of the EPG Code, Ofcom proposed a set of recommendations to its government which aimed to provide a revision of the existing Code and the extension of EPG(-like) prominence measures, in order to maintain PSM's channels and services' prominence, not only on linear, but also on on-demand services across a range of connected devices (Ofcom, 2019). This revision is inscribed in the broader duties of Ofcom, which is empowered by the Communications Act to require EPG providers to offer listings on the EPG to any channel that seeks them, on terms that are fair, reasonable, and not unduly discriminatory, whilst prescribing appropriate prominence in favour of the public service broadcasting channels. While describing and analysing the proposed measures, it should thus be taken into account that the scope of Ofcom's actions was limited to the revision of this existing framework, which already applied only to the PSM's channels and services.

In 2019, Ofcom published a recommended revision of the EPG Code, alongside other related recommendations to the Government. The proposed measure would benefit the five main PSB channels (BBC1, BBC2, Channel 3 services, Channel 4 and Channel 5). There are a number of other channels that receive prominence in the listings in the EPG code: BBC Three²⁴⁶, BBC Four, BBC News, BBC Parliament, CBBC, CBeebies, BBC Scotland, BBC Alba, S4C, STV and Local TV channels. Strictly speaking, these recommended revisions to the EPG Code did not yet propose the extension of the rules to connected TV platforms, as these were published in a separate document. This extension to connected TV platforms was, instead, expanded in its more recent 2021 Public Service Media (PSM) Review, which included new recommendations, such as:

- PSM providers are required to offer their on-demand services to popular TV platforms;
- Platforms are required to include, and to give appropriate prominence to, PSM content, and to negotiate appropriate terms with PSM providers; across a range of "connected TV platforms", and
- An effective enforcement and dispute resolution process should be put in place.

While the scope of application of these proposed measures is thus similar to the prominence provisions in the German MStV, in the sense that they also cover a new set of media platforms, and their UIs. Ofcom's proposal presents a narrower set of criteria through which to define which services should be granted such prominence, which is limited to PSM (Mazzoli 2021, p.10).

Currently, the proposed recommendations are yet to be implemented, as it is currently awaiting statutory intervention from the Government, and, more specifically, from the DCMS ('Department of Digital, Culture, Media and Sports'). However, in its response to both Ofcom's recommendations and the subsequent review of the PSB regulatory framework, the Government has expressed its commitment to strengthen PSB prominence online, so that video-on-demand content can easily be found and accessed on smart TVs and other platforms and devices (Department for Digital Culture Media & Sports - DCMS, 2021).²⁴⁷

²⁴⁶ The BBC is re-launching its BBC Three channel in January 2022. Ofcom proposes amending Paragraph 12 of the current EPG Code to insert a reference to BBC Three, with effect from 31st July, 2023, to guarantee that BBC Three will be listed in a slot no lower than the 24th slot on the EPG.

²⁴⁷ More information on these developments can be found in the following sources: [Summary of existing PSB framework](#), Consultation on [small screen big debate](#), 2020 [Recommendations to the government](#)

3.3.2 Critical evaluation of the envisaged measure and its implementation

Informed by the input received from the relevant stakeholders during the stakeholder consultation and interviews, and from the publicly available documentation, the following sections will provide an evaluation of the perceived impacts that these measures may have on the relevant industry actors, as well as a critical legal evaluation of these measures in relation to their perceived potential effectiveness in achieving the two distinct, even if interrelated, policy objectives, namely, the objective to ensure the prominence of PSM channels and their content, and the objective of ensuring a thriving and pluralistic media landscape.

a. Material scope of the measure and its beneficiaries

As aforementioned, the beneficiary of this possible new regime are the PSMs, meaning not only the PSM's apps and online services (such as BBC iPlayer, All4, and ITVHub), but also PSM's content which is distributed outside the player environment in this more 'disaggregated' way. The limitation of the material scope to PSM is, firstly, due to the fact that Ofcom has a specific duty, and its power of intervention was limited to the revision of an existing regulatory instrument, which was historically applied to the PSM linear channels (i.e., the EPG Code). Expanding, therefore, the beneficiaries of these prominence rules - as in the German case - was beyond Ofcom's scope.

However, it should be noted that, in the policy debate around both the public consultation and the publication of the recommendations, a key point of discussion concerned exactly the material scope, as industry actors were supporting the proposed focus on PSM, while others were questioning it, and calling for an extension, leading to a policy "battle for prominence" (Douglas, 2018).

On the one hand, PSM organisations widely welcomed the proposed recommendations, praising the extension of a new regime as a necessary intervention that would ensure not only the discoverability of their services, but also their future sustainability in an increasingly competitive environment (BBC 2018; Channel 4 2018; ITV 2018; Freeview 2018). As argued in their responses to Ofcom's public consultation, the significant developments in the UK's media landscape have fundamentally changed how content is distributed, discovered and accessed, but prominence rules do not reflect such changes and thus need to be updated (BBC 2018; Channel 4 2018; ITV 2018) in order to more adequately support those public service actors and their mission to "educate, inform and entertain" (BBC 2018). As Ofcom representatives argued during the interview, this risk is particularly pressing for smaller PSM and their local services, which tend to "fall off the screen" and disappear in the new platform environment, as they neither have the scale nor the resources to negotiate their presence, let alone their prominence, with such players.

On the other hand, representatives from the private sector, especially commercial broadcasters and pay-tv operators, like Sky, opposed the extension, arguing that UK PSMs are already prominent on most devices and services, even without a new regime, and that granting such benefits only to PSM - especially those that are commercially funded like ITV - would give them a regulatory leg up, and would potentially distort the market dynamics (Sky, 2018, 2019; McDonald 2018). The normative justification behind this is that private media organisations, despite their economic incentives, may be contributing to the creation of public value, while the market-driven justifications concerned the possibility for these organisations to also be considered for prominence benefits, or, alternatively, to maintain their control over the ways in which content is distributed and curated on their platforms by ensuring that the PSM's offer is integrated into their software system and can therefore be accessed in a disaggregated way (Sky 2018) - a solution that is not favoured by the PSM themselves, who would prefer to direct users to their own services and apps.

Beyond the media policy debate in the UK on this question, it is pivotal to highlight that the proposed measures may work well in countries like the UK, where there is an internally and externally pluralistic media landscape, with multiple PSM organisations that are functionally and editorially independent from the State, as well as commercial competitors at the national, regional and local levels. The presence of four national PSM with mixed-funding models and different public service remits, namely, the BBC, Channel 4, ITV and Channel 5, makes the UK a unique and special case, in which prominence rules that are limited to PSM organisations could still highly benefit audiences as well as the overall market, since they will provide a public-interest driven mission for prioritisation measures, given that those same PSM organisations also reflect their mission in their own content policies. Furthermore, EPG prominence rules also constitute a form of indirect subsidy that has been historically used in the UK media policy context to support PSM, “in exchange” for their duties and obligations, which include, but are not limited to, the provision of universal, freely accessible, diverse and pluralistic offerings.

However, prominence rules need to be contextualised and, to some extent, will be adapted to the specificity of the national media context, in order to take into account the social, political and economic factors that may influence it. This is why a narrow material scope of prominence obligations that are centred on the PSM’s channels and services could be problematic if applied in countries with authoritative governments and/or in troubled democracies, in which the PSM are not independent from the State and from political interference (Mazzoli 2021, p.10). Media independence – which is intended as functional, managerial, financial and editorial independence - should be a precondition for those AVM services that benefit from prominence regulations. In cases where this is not guaranteed, not only might it be problematic, but it might even be counterproductive, since it might threaten the overall media pluralism of the Member State, and could potentially lead to “soft” forms of censorship and propaganda (Mazzoli and Tambini 2020; Mazzoli 2021).²⁴⁸ For instance, having a mandated prominence for the PSM in countries like Poland and Hungary, where the independence of these organisations has been under severe threat in recent years (Klimkiewicz, 2016; Połowska and Beckett, 2019), may impede media pluralism and harm a free and democratic opinion forming process.

Finally, as highlighted by the Council of Europe’s Guidance Note, “to the extent that human or automated judgements are being made about which content published online should be deemed worthy of interest and more widely distributed, relevant norms and principles of media independence and media pluralism should apply to those judgements.” (2021, p.4). Indeed, any prominence regime should require careful balancing against the aim of ensuring that everyone can express their opinions, while also being able to access, discover and be reached by a variety of sources and content (Mazzoli and Tambini 2020, Council of Europe 2021). Independence is, indeed, one of the standards that the Council of Europe advances in its Guidance Note on the “Prioritisation of Public Interest Content Online” (2021), and it is pivotal that such independence is also reflected in the media outlets that are granted prominence and discoverability benefits.

An extreme example of a country where prominence and discoverability rules benefit only State-approved content and services, comes from China, and its “Provisions on the Ecological Governance of Network Information Content”, which came into force in March, 2020 (Cyberspace Administration

²⁴⁸ As Mazzoli and Tambini explain, “soft”, in this context, is used to differentiate this form of indirect State (and private) influence over the discourses and information that should be prioritised, from what is traditionally associated with State propaganda, i.e. material prepared by the government that is distributed to a mass audience, with a manipulative approach that aims to influence and further a political agenda (Mazzoli 2021, p. 14). The new approaches that are of a “soft” type involve tools and strategies that are used to amplify and prioritise certain content and/or content providers over others, with the indirect aim of shaping public opinion and users’ preferences (Mazzoli and Tambini, 2020, p. 42).

of China-CAC, 2019). This text, among other provisions, states that digital platform services are encouraged to optimise the information, content recommendation systems, and prioritisation mechanisms, on their services to the mainstream value orientation of the Government (Cyberspace Administration of China-CAC, 2019).²⁴⁹ While in the EU we do not have similar cases, it is important to critically reflect on the potentially negative impacts of prominence regimes in countries where freedom of expression, media freedom and media independence, including the independence of PSM organisations, are increasingly threatened.

b. Application of the measure: targeted industry actors and the extent of their obligations

As previously mentioned, the government has yet to propose a statutory law in this area, and thus the scope of application of the new prominence regime may also be different. Given this possibility, it is important to highlight some of the advantages and limitations of Ofcom's proposed scope according to the stakeholders involved. One of the main concerns expressed by pay-tv operators and technology manufacturers was that an excessively prescriptive approach, which could have hindered their freedom to innovate and the possibility to determine how prominence is delivered on their services and devices (Sky 2018; TechUK 2018; Samsung 2018) should be avoided. Prescriptive regulation was perceived to be inflexible, as it would have required Ofcom to be involved in the ways in which platforms and services operate (Sky 2018; p. 2), and it was therefore perceived as being a threat to innovation and services' differentiation (TechUK 2018; p.1). A light approach to any additional regulatory requirements would therefore have been preferable for these stakeholders.

Even though the UK is no longer an EU-member, and therefore arguments in favour of, or against, the digital single market, were not raised, ultimately, the concerns raised addressed similar issues to those that were discussed in the German context. In particular, and also in the UK, technology manufacturers highlighted that when they were introducing new national requirements on prominence, regulators should take into account that the internet-distributed AVM value chain now operates in the context of a global content and device market place (TechUK 2018; p. 1), and most of these providers sell their services and devices in multiple countries. Just because of their international presence, technology manufacturers are reluctant about the introduction of national rules, which may ultimately increase their production and distribution costs, while negatively impacting on the global agreements that they have with international VOD services (TechUK 2018, p.5-6).

As outlined in two recent studies that were commissioned by Ofcom (MTM 2019; Mediatique 2020), TV platforms generally control the UI and its various elements, striking deals with content providers on the inclusion and prominence of their content, and, in some cases, technology providers also exert influence on these deals and on the related prominence clauses. While, on the one hand, platforms and technology manufacturers would thus like to maintain their control over these negotiations and commercial deals, on the other, the UK PSM organisations have argued that because of the global nature of these deals, they are negatively discriminated against, as they neither have the resources nor the bargaining power to secure the same level of prominence as the international VOD services (BBC 2018; Channel 4 2018; ITV 2018). At the moment of writing, though, this mainly appears to be true of the smaller PSM and their BVOD apps, such as All4 and My5, which

²⁴⁹ The provisions mentioned not only the aim to “encourage online information content services to adhere to the mainstream value orientation” (Article 11), but they also encourage them to “actively present” content producers that produce or publish content that “propagates Xi Jinping's thoughts on socialism with Chinese characteristics in the new era, and fully, accurately and vividly interpret the path, theory, system, and culture of socialism with Chinese characteristics;” “propagates the party's theoretical lines, principles, policies and major central decision-making arrangements” ; and “carries forward the core values of socialism, propagating excellent moral culture and the spirit of the times, and fully demonstrating the uplifting spirit of the Chinese nation” (Cyberspace Administration of China-CAC, 2019). For a fuller analysis see Mazzoli 2021.

feature less prominently than BBC iPlayer and ITV Hub on some platforms, and for local services, such as STV player and S4C Clic, which are rarely pre-installed on smart TVs (MTM 2019; p. 20). Contrary to what platforms and technology manufacturers have argued, PSM organisations were thus aligned in highlighting the need for new prominence measures that would cover, in their scope of application at least, the smart TVs' and connected-TVs' devices.

To strike a balance between the divergent interests and requests of the aforementioned stakeholders, the recommendations argue that the framework should be flexible so that it can adapt to technological innovation and changes in viewers' behaviour. To do so, Ofcom suggested that the rules should include order-making powers so that the Secretary of State could adapt the framework without the need for further primary legislation. In this sense, the framework also leaves sufficient room for manoeuvre for the technology manufacturers, who have the freedom to ensure what prominence means on their devices and UIs, as in the German case, but also for the regulator and policy makers, who have the possibility to adapt the framework more easily, in view of future technological and market developments. The new recommendations are separate from the existing EPG regime for linear PSB prominence, and, hence, the new prominence regime would only concern on-demand PSM content (not linear) and would only apply to connected TV platforms. In practice, many platforms would have to comply with both regimes simultaneously, as they will be a regulated EPG provider and a regulated connected TV platform under the proposed new regime.

Finally, an additional issue that is related to the scope of application, and the potential implementation of these measures concerns the availability of, and access to, metadata. However, similarly to concerns that were raised in the context of the German proposal too, the debate here is rather divided. On the one hand, technology manufacturers have argued that to ensure smoother and easier discovery of the UK PSM's services and content they would need access to quality content metadata from these organisations. By allowing technology manufacturers to access the relevant metadata, they will argue that PSM's content discovery would be improved, even without additional prominence requirements, and that platform operators will also have the ability to more easily show relevant content through their search and browsing functions (Samsung 2018, TechUK 2018). On the other hand, Digital UK, which leads the PSM-driven platform Freeview, argues that it is important that the PSM, and platforms like Freeview, maintain control and attribution over their metadata, and that the current agreements between them and the technology manufacturers already facilitates an open distribution to partners that is sufficient to enable UI innovation and easy discovery (Digital UK 2018, p.9). While it appears that metadata access is thus crucial for a smooth implementation of these rules, it is unclear whether the current agreements are sufficient, or whether this may raise further challenges in the practice implementation phase.

c. (Envisaged) Practical implementation of the measure and its (potential) challenges

One of the key points that was highlighted by Ofcom during the interview is that, in order that the new prominence rules can be successful, it is pivotal to firstly ensure accessibility to PSM services and content. In other words, the driving rationale behind the new rules is to ensure that UK audiences have access to a range of high quality and diverse content, and since UK PSMs have duties and standards to meet in their content offering, by securing accessibility and prominence of their service they would, in turn, contribute to a pluralistic media landscape. In this case, the link between the prominence of internally pluralistic PSM organisations thus appears to be linked to the higher policy objective of media pluralism. According to Ofcom, any new prominence regime should thus be tightly linked to the new PSM availability rules that were discussed in the recent revision of PSM's regulatory framework (Ofcom 2020). These availability rules - which have not yet been proposed - seem to recall must-carry provisions, as they may require media platforms to carry PSM's apps and BVOD services.

Moreover, Ofcom's recommendations have also advanced future-proof provisions that will allow the regime to be more easily and quickly adapted to technological changes and innovations. As Ofcom's representatives argued, the design of this regime should not be too prescriptive, and it should leave space to the PSM and media platforms to assess what "appropriate prominence" means, and how it should be transposed to their services. This suggested approach is similar to the German one, as they strive to leave sufficient freedom of design, and the freedom to innovate, to those industry actors that are covered by these rules. The underlying question, though, on how to balance, in practice, the desired public policy outcomes, which offer consumer choice and an effective working market, still remain open, as there is still no statutory law in place.

Finally, one of the potential challenges of the implementation of these rules concerns the assessment and measurement of their impact in the short and long term. Prior studies of the UK EPG market have, indeed, shown the impact of the EPG and the related LCN positioning in a linear world. In particular, without it being the only influence on users' choices, evidence has shown that a higher ordinal position of a channel on the EPG (one near the beginning) is usually associated with a higher audience reach and viewing share, all else being equal (Expert Media Partners, 2018a; Klein et al., 2012; Ofcom, 2018). For instance, the FEH Media Insight Report has shown that there is generally a sharp decline in reach that occurs between the first and the fifth EPG slots, followed by a more gradual decline from slot 6 onwards (Ofcom, 2018: 21). Another example from the UK media industry has shown that, in 2017, when the E4 channel moved up from Virgin Media's EPG slot 144, to slot 106, its weekly reach increased by 68%, while its share of viewing increased by 44% (Ofcom, 2018: 21).²⁵⁰

However, when it comes to the implementation of prominence rules in an online and on-demand world, the same relations should not be assumed. Firstly, because, in both cases, we should take into account that there are also multiple factors that can affect usage and performance of a service beyond a prominent position (on EPGs or on smart TV UIs), such as its target audience, its quality of content, its previous audience, its possible marketing and promotional campaigns, etc. Secondly, as has also been argued by technology manufacturers and platform organisations, the relationship between prominence in EPG and higher channel usage is not directly replicated with regard to the positioning of VOD apps on smart TV UIs, and increased usage due to the technological specificities of these new IP-distributed models (Samsung, 2018, p. 3). Thirdly, personalisation, customisation and consumer choice play an important role in usage, access and consumption. Indeed, with an increasingly fragmented media landscape, an abundance of content, and a growing array of technologies and services through which people can discover AVM services, routes to content are numerous, and people's choices may be influenced by a number of factors, including habits, preferences, technological and media literacy levels, external reviews and groups' dynamics (Johnson, Dempsey, and Hills, 2020; Johnson 2021).

²⁵⁰ Source: BARB. Following a public auction for the EPG slot 106, on the Virgin Media platform, in 2017, Channel E4 bought a higher EPG position (and moved from 144 to 106). For the period from 29th May to 8th October, 2017, E4's average weekly reach (3 minutes +) on Virgin Media was 1.475m, for the period 9th October, 2017, to 3rd June, 2018, its average weekly reach was 2.485m. In the same period, its share increased from 1.34% to 1.94%.

3.4 The Prominence of European Works on VOD services in Sweden

3.4.1 Reporting obligations for the promotion of European works in Sweden

The Modernized Radio and Television Act (SFS 2020: 875) is in force. (Transposition of the AVMSD.) and the Amendments to the Radio and Television Act (2010: 969) entered into force on December 1st, 2020.

Chapter 6, Section 8: providers of video-on-demand services shall ensure that at least 30 percent of the catalogue consists of programmes of European origin and that these programmes are given prominence. The obligation does not apply to providers of services with a low turnover or a low audience. The SPBA may decide, on a case-by-case basis, to grant exemptions from the obligation if, given the nature or theme of the service in question, it is deemed unjustified or impracticable to fulfil the obligation.

Chapter 16, Section 6: providers of video-on-demand services shall report to the SPBA the proportion of the service's catalogue that consists of programmes of European origin and how these programmes have been given prominence, pursuant to Chapter 5, Section 8.

Applies to: All TV-Broadcasters, Video On-Demand services, and video-sharing platforms.

Benefits: European works

Oversight: Swedish Press, Radio, and Television Authority, including powers to the NRA to issue regulation on the compliance, annual self-reporting related to the quota and promotion of EU works (timing of reporting, form of report, etc.)

3.4.2 Critical evaluation of the envisaged measure and its implementation

As in previous cases, the implementation of the AVMSD at the Member States' level is still ongoing, and there is therefore neither data nor evidence available at present to adequately assess the impacts of the extension of these legislative measures on the market, nor their effectiveness in achieving their stated policy objectives. Informed by the input received by relevant stakeholders, during the stakeholder consultation and interviews, and by the publicly available documentation, the following sections will thus provide an evaluation of the perceived impacts that these measures may have on relevant industry actors, namely, VOD services, as well as a critical legal evaluation of these measures in relation to their perceived potential effectiveness in achieving the two distinct, even if interrelated, policy objectives, namely, the objective to ensure the prominence of national and European works, and the objective to support cultural diversity.²⁵¹

a. Material scope of the measure and its beneficiaries

The material scope of Art. 13 of the 2018 AVMSD covers European works, intended as programs of European origin and, thus, in each Member State in which this obligation is transposed, this includes national, local and European content. As discussed above, Art. 13 (1) AVMSD encourages the providers of on-demand services to “promote, where practicable and by appropriate means, the production of and access to European works”, thus extending the provisions on the promotion of

²⁵¹ A further in-depth analysis of the effectiveness of algorithms and recommendation systems in ensuring the appropriate prominence of audiovisual media services of general interest (Article 7a) and the prominence of European works (Article 13(1)) may be found in a future report of ERGA's SG1's Guidance. For more information on this study, visit: https://erga-online.eu/wp-content/uploads/2022/03/SG1_ToR-2022-_adopted.pdf.

European works from linear broadcasting to non-linear services. While the prominence rules that are discussed in the three previous case studies thus intervene at the first gateway, which is intended as the level of the device's user interface (UI), these rules concern prominence at the second level, which is intended as the level of services' UI (see A1, p.10), such as VOD services' or other audiovisual media services' UIs.

It should be noted that the emphasis on the importance of safeguarding national and European content through prominence obligations may be related not only to the fear that European works may not be able to compete fairly with foreign, especially US-based, content, but also to the fear of a loss of "cultural sovereignty" (Bideau and Tallec, 2022). Similarly, to some extent, to the discoverability and prominence rules that are being discussed in Canada,²⁵² the need to regain and foster cultural sovereignty, combined with the necessity to find alternative sources of support for a national media industry in crisis, appear to be used as the main rationale for extending prominence obligations online (Mazzoli 2021, p.11). The Canadian approach brings this one step forward, proposing a content-based approach to prominence that is driven by a protectionist intent to safeguard national and local content, however, it can prompt us to critically reflect and to "question the extent to which national governments could and/or should prevent cross-cultural exchanges that come from being exposed to diverse, multicultural and transnational content and services" (Mazzoli 2021, p.12). Even though tensions between the localisation and globalisation of media content and services have thus characterised the evolution of the media markets and the related regulatory frameworks for decades (see, for instance, Flew, 2016; Flew et al., 2016; Hesmondhalgh, 2019; Puppis, 2008; Rantanen, 2004), it is important to strike the right balance, since similar approaches may raise even stronger concerns if applied in countries where nationalistic political movements are rising and gaining political traction in national governments (Mazzoli 2021, p. 13).

b. The Application of the measure: targeted industry actors and the extent of their obligations

At the core of the implementation of these provisions is the phrase: "where practicable and by appropriate means", which stems from the quota rules for broadcasting, and gives VOD service providers, especially the smaller and less solvent providers, some leeway with regard to their fulfilment. Thanks to this flexibility in the interpretation of the text, there are a number of ways in which VOD services might comply with these provisions in order to ensure that European and national content is given prominence and is able to find audiences online. Broadly speaking, prominence is hereby understood as a way of organising and curating content in a manner that allows titles to be easily found on VoD's user interfaces. Some of these organisations have already

²⁵² One of the most mature media policy debates on content discoverability online has occurred in Canada. In 2016, the Canadian Radio-Television and Telecommunications Commission (CRTC) and the National Film Board (NFB) had already co-hosted the « Discoverability Summit », a forum for content creators, producers, and technology experts, to discuss the opportunities and challenges for media organisations arising from today's content abundance (Desjardins, 2016a, 2016d). This Summit, combined with the pressing calls for intervention from the industry representatives, like CBC Radio and Canadian Film Fun, significantly informed the subsequent evolution of this policy debate, in the lead up to a public consultation, and the work of the Canadian Broadcasting and Telecommunications Legislative Review (ISED Canada, 2020). Among the wide range of recommendations in this review, the authors highlighted the importance of finding and accessing a diverse sets of content online, by contributing "in an appropriate manner to the creation, production, and discoverability of Canadian media content", in order to "allow Canada to assert its cultural sovereignty" (ISED Canada, 2020: 116). The proposal for new provisions to ensure the discoverability of specific types of content online thus entered the media and communication regulation debate in Canada, and was later included in the recently proposed Bill from the Canadian Government, "Modernizing the Broadcasting Act for the Digital Age", which was passed in June, 2021, and which is set to amend the Broadcasting Act of 1991 (House of Commons of Canada, 2021). For additional analysis and discussion of the Canadian case, see Mazzoli 2021, Mazzoli and Tambini 2020.

started to implement the necessary changes so as to comply with these new provisions and ensure that European works are adequately prominent and easy to discover. The specific measures in which such prominence and discoverability are achieved differ slightly, but, overall, they concern adjustments to the UI design, catalogue listings, search and recommendation areas.

As highlighted by the survey results of ERGA's subgroup on "Ensuring prominence and access", VoD services can use a variety of measures to effectively secure the prominence of European works on their on-demand catalogues, ranging from dedicated sections on the homepage to marketing campaigns, search tools, recommendation systems, etc. According to the media industry representatives surveyed, there is no single best method to ensure the prominence of content, as, alone, these measures may not suffice to enhance the visibility of European works, while a combination of them might be more effective (ERGA, 2020, p.9). Furthermore, a significant number of contributions highlighted the importance of adopting flexible means, without prescriptive interventions from the NRAs. This flexible approach would not only ensure that these provisions are future-proofed, but it would also be more suitable, and consistent with the constantly changing nature of any online catalogue, the diversity of ways that viewers can use to access content, the different architecture of each service, as well as the need to leave room for innovation (ERGA, 2020, p.9).

It should be highlighted, though, that while global VOD providers like Netflix or Amazon Video Prime are able to provide adequate and innovative solutions to these new provisions, this might not be the case for smaller providers. Indeed, as argued by the majority of the providers surveyed in ERGA's study, "the implementation of sophisticated (and hence more promising) technical solutions, such as recommendation tools, essential infrastructure, and algorithms, in order to meet these obligations, is both costly and technically complex, let alone that there is hardly any feedback on the satisfaction of the objectives that these tools are about to pursue" (ERGA, 2020, p.14). It should thus be taken into account that less resourceful providers expect to face more difficulties than the bigger and more affluent ones in developing and adopting sophisticated technical systems and tools in order to ensure prominence. To balance this, a number of financial solutions were proposed by the research participants in the ERGA study, and these might incentivise and financially support those less resourceful providers to ensure the availability and prominence of European works on their services (ERGA 2020, p 17).

With these premises, and building on the A1 mapping, the interviews with VOD services and the stakeholder consultation that were conducted for this study, five prioritisation measures emerged as being used by VOD services to promote European content (including national content) on their interfaces²⁵³:

i. Dedicated collections: numerous international VOD services that operate in European markets, such as Netflix and Amazon Video Prime, display their catalogue's content on the homepage through dedicated collections, which are more or less clearly labelled. Each title in their catalogue can be broken down into its many facets, which, in turn, enables the service to show such titles in the most pertinent collections, thus feeding into the broader personalisation strategy of the service. The number and typologies of collections are numerous, and these vary depending on the service. Taking the example of Netflix and its implementation of the Art. 13 requirements, some of its sections and collections are dedicated to European and national movies and television shows. Based on such categorisation, on the one hand, the catalogue of each user will present specific collections and sections that are dedicated to European and national content and, on the other, European and national titles will appear also as part of other thematic and genre-based collections, where relevant. The ranking of such European and

²⁵³ For a more in-depth description of the measures and relevant visualisation, see A1 mapping of non-legislative measures

national collections (i.e., whether they appear on the 2nd, 3rd or 10th, 11th, etc., row on the UI), and the exact titles available in each collection, depend on what titles are available in a particular country, on the recency of the available titles, and on users' data and preferences. Indeed, it should be noted that national collections are always geolocated, and that the distribution rights for content change from country to country, thus, even the European genre-based collections vary, depending on the locations of the users. Examples of collections that could be found in France, for instance, range from "French Movies & TV" to more specific ones, such as "Cannes Film Festival Award-winning French Movies." Finally, in addition to the differences based on the geolocations of the users, the rows, rankings and title representation on the VOD's homepage is personalised, based on its recommendation system and personalisation strategy.

ii. Marketing campaigns: as highlighted both by the interviews and ERGA's study, marketing campaigns can also bring awareness of specific titles, by promoting such titles through a dedicated banner on the homepage with an auto-play function which can attract the interest and attention of the viewers as soon as they've entered the app. Marketing campaigns not only take place on web platforms, but they also entail real-world marketing installations, screenings and emailing services. These campaigns can be used also as a tool to promote European and national content, just as much as they can be used to promote VOD's own content and new productions.

iii. Recommendation systems: at the core of VOD's services and their UI design, like those of Netflix, Amazon Video Prime, or Now TV, sits their personalisation strategy and the related recommendation systems. The ways in which recommendation systems work differ from service to service, as well as their levels of transparency. Netflix is one of the companies that has been significantly improving its transparency notices in this area. Recommendations are meant to ensure that Netflix members are presented with local content that they are likely to enjoy. As explained in the transparency notice of Netflix's help page (2021), the likelihood that a user will watch a particular title in the catalogue is calculated on the basis of a number of factors, including: (i) Users' interactions with the service (such as viewing history and how users have rated other titles), (ii) other members with similar tastes and preferences on the service, and (iii) information about the titles, such as their genre, categories, actors, release year, etc. The recommendations system does not include demographic information (such as age or gender) as part of the decision-making process, however, the researchers would argue that such data could potentially be inferred, based on other information and consumption habits. When it comes to European works on Netflix, for instance, a minimum percentage of European works is promoted from that service's catalogue by using banners, or similar tools, that are based on the outcomes of Netflix's recommendations, in order to allow European and national/local content to find its audiences in the market where it was made, as well as in other European countries and worldwide.

iv. Browsing and search functions: while to browse and search are not *per se* prioritisation measures, the findability and easy discovery of content through this function is still important in order to ensure higher exposure to European and national content on VOD services. A higher quality of metadata and tags, combined with a user-friendly and efficient search and browsing function, can also contribute to higher discoverability for European works.

To conclude, it should be highlighted that there is a lack of quantitative studies that have been carried out in order to answer the question as to whether VOD services are doing enough to promote European contents to its European users, and this is combined with a real lack of data pertaining to prominence on VOD services. However, a recently published study conducted an 8-day bot experiment to investigate the prominence of European works on Netflix's homepage (Bideau and Tallec, 2022). One of the conclusions of this study is that, over the course of this experiment, "92%

of all European titles available on Netflix have appeared at least once on one of the bots' homepages" (Bideau and Tallec, 2022). This, to some extent, confirms that the vast majority of European works on Netflix have been "pushed," in varying degrees, to the homepage at least once, through the different prioritisation measures that were discussed above. In addition, thanks to the scale and speed at which the homepage evolves in response to a user's viewing behaviour, the researchers argued that "overall, there do not seem to be many "dormant" titles buried deep within the catalogue and never surfacing to users' screens" (Bideau and Tallec, 2022). However, whether this is also the case for some of the other major VOD services, is a question that cannot be answered, as neither studies nor experiments have been publicly conducted on the UIs of other streaming and VOD services, like Amazon Video Prime, Now TV.

c. (Envisaged) Practical implementation of the measure and its (potential) challenges

In terms of the monitoring and oversight of the measure, the Swedish NRA ('SPBA') has recently issued implementing regulations on the reporting by providers on the measures taken to increase the prominence of European works, and these regulations will present insights into their assessment of when the measure is to be deemed effective in practice.²⁵⁴ Concretely, the SPBA is tasked with collecting specific pieces of information from the providers, which it then presents to the Swedish Ministry of Culture, who, in turn, reports to the European Commission, in accordance with Art 13(4) AVMSD. The articles presenting these obligations are purposefully high-level and open. However, they leave ample room for the companies to comply with these self-reporting obligations.

An important point that was raised throughout the interviews and the stakeholder consultation is that the effectiveness of certain prioritisation measures within their UI is not easily measurable, as there is no causal link between the position of a title in the catalogue and the viewing and consumption figures for that title. In other words, what can be measured and assessed is whether such a title is granted prominence and increased visibility in the first place. However, making the leap from that to whether such prominence has led users to watch that content is another matter. Furthermore, another leap from whether users will watch different content, so that their overall media consumption results in a diverse diet (both in terms of diverse genres and types of content, and content that reflects diverse viewpoints) is equally difficult to make. Users' choices may be influenced by a number of factors - one of which is prominence - and not everything can be controlled or influenced by the content providers or platform organisations. With these premises, there may be different means with which to evaluate the most appropriate implementation of the envisaged measures, and assess whether the proposed industry solutions can effectively secure the prominence of European works in on-demand catalogues. As outlined also in ERGA's report (2020, pp.15-16), a precondition to this assessment is the possibility to access data mining tools and high quality metadata, which might ensure more detailed reporting from VOD services on how European content is being viewed and consumed. The following KPIs were highlighted by ERGA's survey respondents as being useful indicators of whether the implemented changes had an impact on the prominence of European works in their catalogues (2020, pp. 16-17):

- The sales numbers related to promotion in specific corners, or recommendations during a defined period;
- "European Works Total Views" Versus "Other Works Total Views" in a given period;
- "European Works Total Sales" Versus "Other Works Total Sales" in a given period;

²⁵⁴ Swedish Press, Radio and Television Regulations on the presentation of programs of European origin, MPRTFS 2021:3, Swedish Press, Radio and Television Authority, 20/9/2021, [available here](#)

- Clicks, view duration, or an increase in the numbers of viewers/subscriptions, what is the number of users outside the VOD's country of origin;
- Can viewers search specifically for European works, as a genre in the VOD player, and in a manner which is similar to that for other genres which are offered on the VOD player?
- The number of European works included in a given VOD catalogue, the total numbers of assets/titles that compose the said catalogue, and the number of times European works in the same catalogue have been viewed.

Interviewees in this study also confirmed that, to assess the effectiveness of these prioritisation measures, they look at different types of viewing data, such as: Did the user see the content that was prioritised/recommended? Did the user click on such content? Did the user watch it, and, if so, for how long? Did they finish it? etc. While data and KPIs may thus be available - even if upon request, as such data cannot be publicly accessed at the moment – in order to develop an adequate assessment framework, NRAs should firstly clarify their understanding of effectiveness. In other words, to achieve the policy objective of promoting and supporting national and European content, is it sufficient that VOD's users are exposed to a certain number of European and national programmes, or are the NRAs interested in assessing whether prominence and exposure will lead to increased access and viewing figures? Clarity of objectives should also come with clarity of methods and driving hypotheses. For instance, in the recently published study on the prominence of European works on Netflix²⁵⁵, the researchers focused on measuring the effects of viewing behaviour (i.e., whether the programmed bots were watching more or less European content), given the placement of content on the Netflix homepage in a controlled environment that aimed to minimise any biases. It is, however, beyond the scope (and capacity) of this methodology to assess whether such prominent placement then leads back to a diet that is, overall, diverse.

In order to monitor the result of a service's prominence strategies, the regulator may impose the promotion of European contents on each user's screen, whatever their individual preferences. On the one hand, these prominence obligations play a key role in an internet-distributed space where simple quotas are not sufficient to address the issues arising from current media circulation and prioritisation practices. In this sense, one of the advantages of regulating the result of prominence and discoverability strategies in addition to specific quotas, is that regulation becomes "process-agnostic": rather than prescriptively intervening on the technological mechanisms underpinning content prioritisation, the regulator can impose a general obligation and effectively monitor how that is implemented in practice, and whether it actually achieved its intended goals (Farchy, Bideau, and Tallec, 2021, p. 10). On the other hand though, this solution may also encounter opposition from services that employ personalised recommendations, as it contradicts their economic logic, but it could effectively impose an editorial constraint on UI design that is to be applied to all users' profiles, even for service providers that otherwise claim to rely on algorithmic personalisation (Farchy, Bideau, and Tallec, 2021, p. 10).

²⁵⁵ The study focuses on measuring the effects of viewing behaviour on the placement of content on the Netflix homepage. We employ it here to survey the placement of European works with regard to past viewing behaviour. To put it briefly, our method consists of 20 Raspberry Pi's (tiny single-board computers), each provided with a different newly created Netflix account, watching 3 hours of content and collecting the position of every title on the homepage each day. The bots' actions are pre-programmed and there is no human intervention during the whole process.

For the purposes of this experiment, 10 bots watched only European content, and the 10 remaining bots watched non-European content, films and TV series alike. Before the start of the experiment, each bot was given a list of titles to watch, which were selected at random from the whole Netflix catalogue, with the only criteria being their European nature. Our goal in setting up this experiment was to remove as many biases as possible.

Furthermore, assessment, monitoring and reporting also come with a set of limitations and burdens. Firstly, NRAs will mainly have to rely on self-reporting from the companies, which are not always keen to share commercially-sensitive information. In doing so, the NRA would have to relinquish its monitoring obligations to the very services that it is required to oversee, unless there are mandatory provisions in the law compelling them to do so. In the case of Sweden, the law sets out high-level criteria for the applicable actors to report on, such as descriptions of the measures taken to enable prominence and the quota of works reached in practice.²⁵⁶ Secondly, regular reporting solutions might be a burden, especially for smaller VOD services, which do not have the same resources and capabilities as the global VOD providers. Thirdly, as was also highlighted in the ERGA study (2020, p. 17), “the normalisation of a standard European classification by universal identification codes for local works (instead of letting every platform interpret metadata as they can), alongside support to implement such classification tracking, would be extremely effective, according to the VOD providers.” Last, but not least, possible reporting and auditing measures should consider the breadth of ways in which a VOD service may comply with this obligation, and therefore allow reporting that is consistent with the measures adopted by each individual service.

Once these obligations have been set, the regulator then needs to ensure that they are respected, and monitoring which content is effectively prominent on those services is a difficult task, as personalisation implies that each user’s homepage is different. Verifying compliance with the obligation of prominence on each user’s profile is not technically feasible, and thus it becomes the regulator’s responsibility to establish its own method of oversight (Farchy, Bideau, and Tallec, 2021, p. 10). An option to overcome this would be for the regulator to randomly select a number of users on whose interfaces it could examine the prominence of European content and perform experiments, combined with audience studies (for examples of methodologies used in this area, see Section 2). Alternatively, it would be up to the NRA to define a precise methodology that would lead it to test the impact of recommender systems on prominence for fictitious users (e.g., Bideau and Tallec 2022). However, introducing an element of chance into a regulatory practice could lead to the misinterpretation of general trends, and to unfair penalties, and this would be in addition to the fact that “these are technically demanding processes for which traditional audiovisual regulators are, at present, ill-equipped” (Farchy, Bideau, and Tallec, 2021, p. 10).

²⁵⁶ Arts. 6-8 of the MPRTFS specifically require self-reporting on “the proportion of the total number of titles [i.e. European works] in the catalogue”. Furthermore, Art. 8 states that the competent authority may further specify the manner in which the reporting will take place. As noted by the ERGA2021 report, Sweden is working on operationalising an online portal to simplify the reporting process. This Article will enable the Authority to request that VOD actors submit their reports through this future platform. (ERGA, 2021, p.18)

3.5 Prominence of news and journalistic content on digital intermediary services in Germany

3.5.1 Germany's non-discrimination principle for journalistically edited offerings in online recommender algorithms

Interstate Media Treaty. Treaty entered into force, November 7th, 2020, §91 - §96:

Section 93 Transparency

(1) To ensure a diversity of opinion, providers of media intermediaries must keep the following information easily perceptible, directly accessible and constantly available:

- 1. the criteria that decide whether a content has access to a media intermediary and whether it will remain there,*
- 2. The central criteria for an aggregation, selection and presentation of content and their weighting, including information about the functioning of the algorithms used, in understandable language.*

(2) Providers of media intermediaries who have a thematic specialisation are obliged to make this specialisation perceptible through the design of their offer. § 91 paragraph 2 number 2 remains unaffected.

(3) Changes to the criteria mentioned in paragraph 1, and the orientation according to paragraph, are to be made immediately perceptible in the same way.

(4) Providers of media intermediaries who offer social networks must ensure that telemedia, within the meaning of Section 18 (3), are marked.

Section 94 Freedom from discrimination

(1) In order to ensure diversity of opinion, media intermediaries must not discriminate against journalistic-editorial offers over which they have a particularly high degree of influence.

(2) Discrimination, within the meaning of Subsection 1, exists if, without an objectively justifiable reason, the criteria to be published, pursuant to Section 93 Subsections 1 to 3, are systematically deviated from in favour of, or to the detriment of, a specific offer, or if these criteria directly or indirectly, and unfairly, systematically obstruct offers.

(3) A violation can only be asserted by the affected provider of journalistic-editorial content at the competent state media authority. In obvious cases, the responsible state media authority can also prosecute the violation ex officio.

Applies to: media intermediary providers

Benefits: Journalistically edited offerings

Oversight: 14 regional State media authorities, that work in conjunction with the 4 centralised agencies, that have different competences (ZAK, GVK, KEK and KJM)

3.5.2 Critical evaluation of the envisaged measure and its implementation

The inclusion of the additional safeguard in § 94 of the German Interstate Media Treaty, appears to put forward a non-discrimination principle in regard to journalistically edited works, which is a rather innovative approach in the EU. Essentially, the measure dictates that, in order to ensure a diversity of opinion, media intermediaries must not discriminate against journalistically edited offerings on

whose perceptibility they have a particularly high influence, and no discrimination of similar content may take place without an objectively justified reason. The measure further states that providers of media intermediaries must, in the interests of ensuring pluralism of opinion, provide the following information in a readily perceptible, immediately accessible and constantly available at all times: a) the criteria which decide on the access of content to a media intermediary, and the retention of the content, and b) the central criteria of an aggregation, selection and presentation of content and their weighting, including information on how the algorithms used work.

Informed by the input received by the relevant stakeholders during the stakeholder consultation and in the interviews, and by the publicly available documentation, the following sections will provide an evaluation of the perceived impacts that these measures may have on the relevant industry actors, such as social media and search engines, as well as a critical legal evaluation of these measures in relation to their perceived potential effectiveness in achieving the two distinct, even if interrelated, policy objectives, namely, the objective to support quality journalistic content, and the objective of ensuring a transparent and non-discriminatory distribution of such content.

a. Material scope of the measure and its beneficiaries

As outlined in the law, the beneficiaries of these provisions are journalistic-editorial offers, which, interestingly, are left undefined in the applicable articles of the State Media Treaty as such (Article 94(2)(2) MStV). As argued by research participants in both interviews and the stakeholder consultation, determining the “newsworthiness” of a piece of content, as well as other public interest, such as quality, trustworthiness and authoritativeness, is a challenging task and, at the moment of writing, this is decided based on their internal content guidelines and community standards. However, initiatives like the JTI (see Section 3.5.3) have developed technical standards that may improve the level of the transparency, professionalism and accountability of media outlets, setting a high bar for journalistically edited offerings. From the interview, it was made apparent that, when confronted with a filed complaint, the NRAs would not assess the qualities of the content as such, but would, instead, aim to assess the content based on the characteristics of its provider. In other words, if the content provider who filed the complaint is a professionally active publisher of journalistic content, and the offer concerned in the complaint is created as part of that function, then the applicability of the content would automatically flow from this. Nevertheless, this may still pose significant concerns in practice, both in situations where the content is not part of the provider’s primary professional activities, e.g., because it is commercial or promotional content instead of journalistic content, or when the content provider is not a professional journalist, e.g., bloggers or hobby/amateur journalists.

In terms of the measure’s policy objective, the most straightforward objective of the provision is to prevent the discriminatory blocking of specific journalistic editorial offers, or to otherwise make their findability, or discoverability, more difficult. From the interview with a German NRA, it became clear that the intention of the provision was to give transparency on algorithmic processes and selection to both the providers of journalistic editorial offers and to the end-users of the intermediary service. On the one hand, the aspects of transparency of the applied criteria and the obligation of non-discrimination were intended to make journalistic offers more visible, including those types of offers that may otherwise be left out. On the other hand, the provision also aimed to ensure transparency to the end user as to how their exposure to content is moderated and curated, thus providing them with insights into the workings of the algorithmic feeds. Both policy objectives combined, the NRA wished to express that the provision should thus, at least, indirectly and positively affect exposure to diversity and, by extension, to media pluralism.

More concretely and related to the objective to ensure the non-discriminatory findability of journalistic editorial offers, the service should clearly publish the criteria based on which the algorithms that are

in play decide on the visibility of the available content. From the interviews, we also learn that this includes the criteria that determine which content may be placed more prominently, or may be highlighted, in comparison to other available content. Furthermore, there are limits on which criteria are allowed to be used, so that the mere publication of the applicable criteria does not suffice. Finally, the service is allowed to limit the scope of its application, for example, if it wishes to limit itself thematically, on the condition that it also clearly indicates such a limitation. The idea behind this description of the transparency requirements was so that providers of journalistic editorial content now have a more informed possibility to produce content which is more likely to be placed more prominently, or that is made more visible, by the algorithm. While this might indeed be a positive evolution for smaller outlets, which previously could not compete with those larger providers who may have had better access to this information, this also raises a concern about the incentivising to produce increasingly ‘homogenous’ content that is available within a particular platform, although this concern has not yet been definitively proven.

Additionally, the rules also provide the competent NRAs with the possibility to assess the non-discriminatory treatment of content, based on the criteria provided by the platform, either because the criteria are unlawful, or because the effective treatment of the content concerned appears to significantly deviate from the criteria made available to the public, which could signal the existence of undisclosed commercial agreements to increase the prominence of specific content.

On 15th June, 2021, the competent NRAs ruled on the first six cases relating to possible discrimination by Google. The first was instigated by an NRA itself (Hamburg/Schleswig Holstein Media Authority), further complemented by a filed complaint from Wort & Bild Verlag Konradshöhe GmbH & Co. KG.²⁵⁷ Both procedures related to agreements between Google and the German Federal Health Ministry. The agreement provided that content from the national health Internet portal would be presented more prominently on the German version of the Google search engine for a specific time period.²⁵⁸ Such cooperation was considered sufficient to be considered to be unfair discrimination against other providers. That the complaint, filed on a pharmaceutical website, was upheld, also indicates that the definition of ‘journalistic editorial offer’ is interpreted broadly.²⁵⁹ However, another set of filed complaints concerning the *Google News Showcase* were, instead, rejected. *Google News Showcase* is a news portal which only displays the content of participating publishers and, because of that content limitation, the service falls outside the scope of being an intermediary service provider, and it is more likely to be considered within the scope of a media platform instead (Ukrow, 2021).

b. Application of the measure: targeted industry actors and the extent of their obligations

As discussed above, these new obligations on non-discrimination and transparency will apply to online digital intermediaries, which are defined in the German Interstate Media Treaty as “media intermediaries”, and these also include, among others, search engines and social media platforms. Since the implementation of the Interstate Media Treaty is still ongoing, and thus, in this case, there is also neither data nor evidence available at the moment with which to adequately assess the impacts of these new legislative measures on the market, nor their effectiveness in achieving their stated policy objectives. However, it is fair to assume that it will have an impact on the overall

²⁵⁷ Complaint published via the website www.apotheken-umschau.de.

²⁵⁸ The health portal concerned can be found at: www.gesund.bund.de.

²⁵⁹ The press release expanding on the proceedings and details of these cases may be found on: <https://www.die-medienanstalten.de/service/pressemittelungen/meldung/neue-vorschriften-zur-diskriminierungsfreiheit-zak-entscheidet-die-ersten-faelle> (last accessed on May 27, 2022).

transparency of content moderation and the prioritisation measures taken by these intermediaries, and the level of granularity of their reporting. Indeed, at the moment of writing, the level of transparency and accountability widely changes among these intermediary services, and there are no shared standards, nor are there shared approaches among these actors when it comes to reporting mechanisms and auditing processes.

However, civil society organisations, such as Ranking Digital Rights (RDR), in collaboration with companies, as well as with advocates, researchers, investors, and policymakers, have been trying to establish and advance global standards for corporate accountability, which has led to the development of the RDR Corporate Accountability Index.²⁶⁰ Through this index, the world's most powerful digital platforms and telecommunications companies have been evaluated, assessed and ranked on the relevant commitments and policies, including on their algorithmic transparency as well as the transparency of their content moderation and curation processes (RDR 2020).

With these premises, digital intermediary services themselves have also been improving their own internal content policies and ranking guidelines, also introducing, among other factors, criteria like the trustworthiness, quality and authoritativeness of news providers. Following growing public pressures from civil society, regulators and media organisations, services like Google Search from Google Alphabet, and Facebook from Meta have been improving the transparency of their algorithmic content curation processes, including recommendation and ranking systems. However, as was also highlighted by the 2020 Ranking Digital Rights Accountability Index, they still have a long way to go (Ranking Digital Rights, 2020).²⁶¹

Based on the data gathered in this study, as well as being supported by previous work in this area (Mazzoli and Tambini 2020), it emerges that these digital intermediaries are using a mix of commercial criteria and some vague public interest considerations in their content prioritisation measures. When it comes to news content on Facebook for instance, the Meta Transparency Centre provides some general information on how the company curates and ranks news content that they define as being “newsworthy content” (Meta Transparency Centre, 2022). In the current approach that Facebook takes to such “newsworthy content”, the company claims that their choice of what “newsworthy content” is, is based on a number of factors, including the “special value” of the news; the country-specific circumstances and political contexts, and the nature of the speech (Meta Transparency Centre, 2022). Whether such content should be more or less prominent to users, though, is not only informed by such factors, but is also based on “a balancing test that weighs the public interest against the risk of harm” (Ibid.). Such tests, and the related judgments, are said to be based on “international human rights standards” (Meta Transparency Centre, 2022), but which standards are used, and what types of human rights’ risk assessment frameworks inform such decisions, are not clear.²⁶²

When it comes to Google Search, instead, as outlined in its Google Search Ranking guidelines, among criteria like the meaning of the query, relevance, recency, and context, its search algorithms and ranking system also take into account the “quality of content”, especially when it comes to news content (Google, 2020; Google Search, 2021). Proxies for quality of content include “expertise, authoritativeness and trustworthiness” (Google Search, 2021). Whether a news source is deemed to be trustworthy or authoritative, and therefore is granted a higher ranking and prioritised placement on the results page seems to be determined by several factors, one of which is whether “other prominent websites link or refer to the content” (Google Search, 2021). Beyond this, though, it is still unclear what the other factors that are taken into account when defining what this rather vague and

²⁶⁰ The latest 2020 index can be found here: <https://rankingdigitalrights.org/index2020/>

²⁶¹ See also Chapter A1 of this Study.

²⁶² For a more detailed account of Facebook’s prioritisation measures mentioned here, see A1 mapping.

high-level notion of “quality” is, and existing industry standards do not seem to be used as one of the differentiating criteria.²⁶³

While the aforementioned examples show how current industry practices are developing in this area, it is still unclear whether the German media regulatory authorities will consider them to be sufficient to meet their transparency and accountability obligations. As argued in the stakeholder consultation, though, while intermediary services are making efforts to increase their transparency over content moderation and prioritisation practices, they do not see sufficient evidence or data that proves that there is a need to introduce more stringent prominence and discoverability requirements. The non-discrimination principles introduced by Germany will thus ultimately leave them enough of their ability to curate and aggregate content, as long as they are able to demonstrate that they do not discriminate against specific journalistically edited offerings for any objectively justifiable reason. However, from a news media outlets’ perspective, while transparency obligations may further improve the understanding of these practices, doubts emerge on the effectiveness of non-discrimination principles on digital intermediaries, whose core purpose is to curate, select, and filter what content can be searched for, and found, on their services (Gillespie, 2010, 2018). This is why the JTI and its supporting organisations have been calling for the introduction of an EU-wide co-regulatory framework that could grant prominence benefits to those news media outlets that respect their high technical standards (see the section below). As has also been argued in the Council of Europe’s Guidance Note, industry and policy practices may indeed require an approach that is more coordinated with existing technical standards, as well as international standards on freedom of expression and information, media freedom and media pluralism (Council of Europe, 2021: 4–5).

c. (Envisaged) Practical implementation of the measure and its (potential) challenges

Regarding the effectiveness of its implementation, the interview showed two different stages at which effectiveness may be assessed, in practice: only regular transparency reporting by the intermediary platforms on their activities, and the possibility of case-by-case assessments of non-compliance, either in cases of specific complaints by a provider, or of *ex officio* assessments in self-evident cases should the competent NRA deem this to be the case.

The first category pertains to the envisioned transparency reports. The primary activity that should be made clear from such a transparency report is which data are used for personalisation, and on which criteria they are processed, resulting in the final recommended content feed that is visible to the user. The intermediary platforms are allowed to discriminate between content that is based on a fixed set of legitimate grounds. Personalisation or user settings/preferences, for example, will be allowed, so long as the available criteria for the user are included in the transparency reports.

The second category pertains to the possibility that providers of journalistically edited offerings can file a complaint with the NRA if they deem that their content is illegitimately or unlawfully discriminated against, in terms of its availability or discoverability in the users’ content feeds. The platforms would, in turn, have to respond to specific information requests from the NRAs in order to assess these cases, so as to give them a chance to provide an ‘objectively justified reason’ other than the criteria that are prescribed by law. With respect to the envisioned assessment in light of such a case, the interviews showed some uncertainty as to its practical execution. The assessment will likely face difficult obstacles relating to the possibility to access and assess evidence, or proof, that the intermediary has applied nothing other than the legitimated grounds for criteria in order to determine the availability and discoverability of the content concerned. When confronted with this concern, the response has indicated that, as a first step, there will be a reliance on the existing regulation of evidence gathering methods in legal proceedings, with, as a second step, the future

²⁶³ For a more detailed account of Google Search’s prioritisation measures mentioned here, see A1 mapping.

possibility of NRAs formulating recommendations to Government as a tailored framework of necessary competences through the use of which to effectively assess compliance in this type of case. Until the first cases arise, the only assessment of effectiveness may be provided through the aforementioned obligatory transparency reports.

In light of the above, and as highlighted by the research participants from social media platforms also, it is difficult to measure the effectiveness that certain prioritisation measures may have in relation to the access and consumption of content, firstly, because there are many different factors and variables that can have an impact on what users will eventually access/watch/consume on their services, and, secondly, because every single person has a completely different news feed, and therefore it is difficult to have shared metrics. Nevertheless, companies have at least an estimate of how certain changes in their algorithms or homepages may have an impact on the visibility of certain content, and the metrics and data that feed into such estimates include, but are not limited to. users' clicks on specific content; the number of accesses to certain pages; users' engagement with such pages or specific content (How much time did they spend on it? Did they like it/share it/comment on it? etc.), users' surveys and *ad-hoc* research projects in collaboration with academics.

Furthermore, users can also give feedback on what they see, and whether they want to see more or less of certain content and providers, and this also feeds back into the recommendation systems and personalisation strategies of companies like Facebook. These metrics and data therefore feed into the definition of criteria like "relevance", which, in turn, shape how, for instance, Facebook News Feed's algorithm works (Meta Transparency Centre 2022). Furthermore, when prompted to discuss how prioritisation measures were considered effective for their internal standards, in practice, two examples that emerged were the Facebook COVID Hub and the Google Search COVID tabs, which are concrete and evidence-based examples of how content curation and prioritisation could, to some extent, drive access to content (Mazzoli and Tambini 2020). Even though research participants argue that it is particularly difficult for them to have a full understanding of how their prioritisation measures are effective for an individual and/or for a group of individuals, this does not necessarily mean that they do not have access to the relevant information and data that might be used to assess such effectiveness.

To conclude, it remains to be seen whether this new regulatory model will have resounding success or a positive impact on current industry practices. It is considered to be an important first step in tackling the challenges associated with digital media, but the initial findings regarding its impact and possible effectiveness will emerge only when the State Media Authorities are confronted with digitally dominant corporations, which they will have to control, monitor and, if necessary, sanction (Kalbhenn, 2020). There will certainly be room for improvement and, ideally, for (at least) a European-wide coordination of professional standards, transparency standards and accountability frameworks, which might be informed by existing human rights risks and impact assessment frameworks. In this regard, actually, the report of the Data Ethics Commission of the Federal Ministry of the Interior has already called for stricter rules to apply to media intermediaries who act as gatekeepers for democracy through, for instance, *ex-ante* controls (e.g., in the form of a licensing procedure) (Kalbhenn, 2020; Data Ethics Commission, 2020). A further proposal of the Commission is to oblige gatekeepers to 'use recommendation algorithms that allow users (at least as an additional option) access to unbiased and balanced information that embodies pluralism of opinion' (Kalbhenn, 2020; Data Ethics Commission, 2020). Cognitive and behavioural scientists should be involved in further assessing how the current practices are impacting users' access to diverse content but, for this purpose, a more cooperative media order would first be necessary (Kalbhenn, 2020).

3.5.5 Discussion of relevant self-regulatory measures

Beyond the legislative measures introduced by Germany, it is pivotal to highlight that journalists and media outlets have also been developing both guidelines and principles to promote public interest journalism on media intermediaries, as well as technical standards, which have the potential to be scaled up, and used also to improve prioritisation measures through self-regulatory instruments. The leading example in Europe is the Journalism Trust Initiative (JTI),²⁶⁴ which has developed a standardisation instrument, in line with ISO protocols and published by the European Committee of Standardization, CEN. The related JTI Certification and Accreditation Programme is currently under review by Cofrac, on behalf of European Accreditation (EA), and in line with EU Regulation (EC) No 765/2008. The European Commission is co-funding the implementation of the JTI through three consecutive grants.

The standards developed can provide a useful self-regulatory and voluntary instrument for enabling trustworthy journalism, if implemented according to its intended aims. The conforming entities for these standards are “media outlets” themselves, which are “defined as an entity, composed by means, procedures and individuals, which produces and disseminates journalistic content” (CWA, 2019).²⁶⁵ From 2021 onwards, the JTI has been offering this online tool and additional support for media outlets to voluntarily self-assess their editorial processes, to publish the results, and to be independently audited. Compliance with this CEN Workshop Agreement requires a pledge (JTI, 2019), and an explicit commitment to both the principles outlined in the preamble and to the Standard that implements them, followed by a process of self-assessment. An example of a recently assessed media outlet which is now “JTI certified” is SWI Swissinfo.ch. (SWI 2021; JTI 2021). The standards developed with the CEN Workshop Agreement (CWA) cover two main areas, respectively: 1) identify and transparency, 2) professionalism and accountability. The tables in Annex 1 provide a summary of the principles and standards that have been developed in these two areas.

As the list of “JTI certified” media outlets lengthens, the application of JTI might also be beneficial for other actors and external parties, such as:

- **regulatory and self-regulatory entities:** in order to identify those media actors that value the production of reliable information as their core mission
- **online intermediary services** to identify providers of trustworthy journalism and improve their content curation process, including prioritisation measures, in order to surface and locate reliable and trustworthy sources of information online for the benefits of societies and democracy
- **Entities supporting the development of media**
- **Advertisers and sponsors**, to support financially, whether directly or indirectly, those media outlets that respect these standards, thus contributing to a virtuous cycle that also includes economic incentives for media actors to respect higher professional standards.

When it comes to prominence and discoverability, “media outlets” that are certified under their scheme could thus be rewarded for their public interest mission and their contribution to society

²⁶⁴ See also Chapter A1 of this Study.

²⁶⁵ As a legal entity, or through its legal representatives or staff, it carries operational editorial responsibility for such content. As outlined in the CWA, the objective of this definition is to allow for a variety of entry points so as to achieve conformity with this Standard. A Media Outlet can be a single individual (e.g., a blogger), one team or department within a larger media organisation (e.g., a certain radio channel, a newsroom, a show, website or paper), or a whole media organisation, with many outlets and brands (see: <https://www.jti-app.com/footer/cwa>).

through “due prominence” benefits on digital intermediary services. In other words, one of the recommendations of JTI, in their CEN workshop agreement, is the inclusion of these standards in the prioritisation measures of digital intermediaries, like search engines and social media platforms, in order to recommend and make more prominent and visible those “reliable and trustworthy sources of information online for the benefits of societies and democracy” (Journalism Trust Initiative, 2019).

While JTI’s approach is certainly a good step in the right direction, interventions based on self-regulatory industry standards need to come with adequate checks-and-balances (see also, Heawood, 2019). To ensure that they are implemented through fair and accountable frameworks, the self-assessment and accreditation processes need to be independent and auditable. This is particularly relevant, also, if governments were to support its implementation through complementary co-regulatory interventions, as transparent and procedurally fair processes for reviewing the criteria for ‘public interest’ journalism will be crucial (Mazzoli 2022). Indeed, while prominence algorithms have the potential to promote trusted news sources, they can likewise be exploited for soft forms of censorship or propaganda, thus having implications for democracy and human rights.

These standards also need to find broad support and consensus among journalists and media outlets, and this could be a challenging task. In certain countries, there are existing independent regulators for the press with their own industry standards, to which not all press and news providers have signed up, such as IPSO and IMPRESS in the UK. And with the rising concerns around misinformation online, other networks are also striving to develop principles and guidelines for ‘trusted’ or ‘public interest’ journalism, such as News Guard and its ‘trust ratings’, the Trust Project with its ‘trust indicators’, or the Credibility Coalition, with its guidelines, in order to promote online information quality. In this context and as it will be further discussed in the next chapter,²⁶⁶ reservations have also been expressed by representatives of the news publishers during the stakeholder consultation about whether one or a plurality of standards would be more suitable for the sector.

Finally, as highlighted by the European Digital Media Observatory (EDMO, 2021, p. 19), using indicators as the single means for determining the trustworthiness of content sources may create a media environment in which “established players gain further competitive advantage, while new players face unprecedented barriers to entry,” leading to problems for media pluralism, and distortion in the media market. The pros and cons therefore need to be adequately assessed by reflecting both on the voluntary nature of technical standards and other emerging indicators, and the need for transparency in relation to the indicators’ methodology, so that users can be aware of their limits and any possible bias.

4. Concluding remarks

4.1 The assessment and mapping of exposure diversity

Digitalisation and “platformisation” require a revision of the way in which exposure diversity is approached in media policy and regulation. The development and the increasing pervasiveness of algorithmic systems have changed the ways in which media content is recommended to users, and, eventually, the diversity of content they choose to consume. There are several challenges in the ways in which exposure diversity is conceptualised and assessed. The first outcome of this section is to show that, in spite of such challenges, there is an expanding body of research, as well as relevant industry and research initiatives, that are aimed at enhancing exposure diversity. To analyse these, and the fast-growing literature, we have mapped and discussed them by using a set of metrics,

²⁶⁶ See Chapter A3 of this Study.

methods and effects. Metrics include ways of measuring diversity, as well as approaches to assessing the diversity of exposure that focus on measuring possible negative consequences (e.g., filter bubbles). Methods are ways to collect data, they include experiments, surveys and computational approaches. Effects correspond to the ways in which factors can influence exposure diversity, applied here (based on the literature) to the impact of algorithmic systems, and, in particular, recommender systems. The mapping is applied to a set of measurement initiatives.

4.2 General observations from the selected case studies

The aforementioned regulatory frameworks derive from legacy broadcasting systems and primarily apply to linear distribution, while -- despite the introduction of organisational duties for video-sharing platform services in the AVMSD2018 - the online audiovisual media environment is still lacking in prominence rules. At the same time, notions of prominence and the findability/discoverability of content online are currently emerging as public policy objectives in several contexts, at the national, European, and international level (see A1). As emerged, both from the initial mapping in A1 and in the more in-depth case study analysis, measures relating to prominence and discoverability relate to several distinct, and yet interconnected, public policy objectives, which include:

- Promoting the availability/discoverability of general interest content
- Promoting exposure to/consumption of general interest content
- Promoting exposure to a diversity of sources, genres and political views.
- Including internally plural/balanced news and information that meets ethical standards
- Preventing the capture of public opinion through the deployment of concentrated gatekeeping power

These objectives are translated into different rationales for the interventions and the different regulatory instruments, but they are ultimately concerned with ensuring fair, balanced and diverse media landscapes through positive regulation. Through the case studies, we intended to prompt a critical reflection on the advantages and limitations of the emerging types of regulatory instruments that are being introduced at the national level so as to achieve some of these policy objectives.

In this context, beyond the specificities of each case, they all share one common aspect: the absence of prominence rules for online intermediary services that are offered by platform organisations. Indeed, as outlined in Section 3, some approaches focus on PSM's prominence across EPGs and media platforms (e.g., in the UK), others on the prominence of both PSM and commercial public value providers on media platforms (e.g., in Germany), some are still working within the realms of linear and digital terrestrial networks (e.g., in Italy), and most EU Member States are developing prominence measures for national and European content on VOD platforms, but when it comes to intermediary services like social media and search engines, there are no due prominence measures. Even the Interstate Media Treaty, which is the only law that partially addresses these services, has, *de facto*, introduced transparency and non-discrimination obligations, rather than prominence rules.

Beyond this common aspect, the case studies have shown that most due prominence rules are tied to the national and local contexts, often leaving a large margin of discretion to NRAs when it comes for instance to the definition of criteria regarding the beneficiaries and the scope of application of these rules. Given these specificities, the difficulty of scaling any of these approaches for the online environment may raise problems that arise from national competencies and the principle of territoriality. The national specificities of the media market, including the presence of independent

PSM and pluralistic markets, also play a crucial role in the successful implementation of new prominence rules.

Furthermore, different approaches and regulatory instruments also have different perceived impacts on media pluralism and exposure diversity. In the cases analysed, media pluralism and exposure diversity are often considered to be possible side-effects of the measures undertaken in order to attain the primary policy objective, which concerns the prominence of a specific category of services or content. In view of the future evaluation of the effectiveness of these measures, it is important to clarify what the desired impacts of the different interventions are. For instance, while measures, such as EPG, LCN and prominence rules for media platforms, tend to favour general interest services that are internally pluralistic, prominence measures for European works are intended to protect national and European content, and, finally, non-discrimination and transparency obligations for intermediary services aim to protect the external dimension of media pluralism in the news sector. Different assessment methods will therefore be needed, depending on the intended objectives and impacts of these measures. When discussing the interrelated notions of prominence, media pluralism and diversity of exposure, it is, first and foremost, pivotal to clarify the conceptualisation of these notions, both at the national and European levels, and to better understand how they relate to each other in practice. In doing so, it is essential that such a conceptualisation remains respectful and supportive of the EU's rich cultural and linguistic diversity, which should be balanced against the objectives that are set out by the EU Single Market. These considerations and reflections will be further developed in the A3 deliverable, which focuses on policy options and recommendations.

CENTRAL FINDINGS: Assessing the effectiveness of new prominence rules and their relations to diversity of exposure

- This chapter presents the study continues with a more in-depth analysis of the perceived effectiveness of legislative measures related to prominence and the findability/discoverability of general interest content and services, and their relations to diversity of exposure through firstly an evidence and literature review and secondly, a case study analysis of the different types of prominence rules that emerged in the first legislative mapping.
- This chapter argues that ensuring prominence, discoverability/findability of specific types of services and content (e.g. general interest or public interest services) can have strong implications for exposure diversity and media pluralism. By promoting services that are internally pluralistic and independent, regulators and policy makers could indirectly foster access to a more diverse and pluralist range of genres and services.
- Thus, prominence rules could be seen as instrumental in achieving one of the dimensions of media pluralism, which is known as internal pluralism, as well as promoting an aspect of diversity, which is intended as diversity of exposure. However, these are not the only values and objectives driving prominence and discoverability rules and as we will discuss in the policy recommendations, new prominence regimes could also have negative impacts

on media pluralism and diversity without the right checks and balances in place and in the absence of adequate accountability and transparency frameworks.

- As processes of digitisation and globalisation continue to affect our media systems and as the amount of content that is available by far exceeds the amount of time and attention that citizens can invest in consuming media content, new forms of scarcity on the side of the media user have emerged together with new forms of media circulation power. This situation has introduced new challenges to the realisation of media pluralism, as well as to the application of prominence rules that were suitable for the linear environment.

However, assessing the real-life impacts of current industry content prioritisation measures on media pluralism and users' diversity of exposure is a challenging, given the adaptive and personalised nature of automated media, and the sheer lack of access to data. Despite these difficulties, though, the study has provided an evidence review of existing literature, industry and research initiatives to provide guidance on possible measurement and assessment frameworks, with related metrics and indicators that could be used to assess the effects that prioritisation measures have on diversity of exposure.

Chapter A3. Options for policy intervention

Authors: Eleonora Maria Mazzoli, Damian Tambini

Reviewers: Peggy Valcke, Ingrid Lambrecht, Natali Helberger, Sofia Verza

1. Introduction

1.1 Context of the assignment

The previous chapter reviewed the development of new approaches to prominence rules and their relationships to the policy objectives relating to media pluralism, the diversity of exposure and the protection of services that are of general interest. Informed by the mapping exercise in A1 and the case study discussion in A2, this chapter outlines and discusses possible policy options that the EU and MS might implement to promote media pluralism and the public interest. It should be noted, however, that due to the fact that we are addressing an evolving policy area, and that there is no evidence or data concerning the potential impacts of existing and newly implemented prominence regimes, it is important to keep in mind that each of the policy options discussed in this chapter will require further evidence in order to be justified and to be developed further.

1.2 Objective and scope: discussing options for policy interventions

The issues raised by prominence, and the discoverability/findability of general interest content (or public interest content), are particularly pernicious due to the lack of transparency and public understanding around these processes. In a period of polarisation and mistrust, the public needs clarity about the process of public information, and the role of the public and private content governance systems that influence which content should be prioritised as being of ‘public interest’, or ‘general interest’, and what regulatory regime should shape such decisions. As the previous chapters have also shown, there is a need to reconsider the existing regulatory frameworks in order to cater for the ongoing changes in the media landscape and to address the potential impacts of current content curation and prioritisation practices. The question of whether law and policy should intervene and deliberately create regimes of prominence for the online world, or whether public authorities should step back from the ongoing process of the *ad hoc* private construction of a new prominence regime, should be carefully considered, as it raises complex issues that are at the intersection of freedom of expression, media pluralism, privacy and human autonomy (including the right to informational self-determination) (Mazzoli and Tambini 2020).

1.3 Structure

This Chapter was written after the completion of A1 and A2. Insights from the previous Chapters have therefore informed the policy options hereby presented. The main source of primary data for this part of the Study is the stakeholders’ consultation, which took place on January 27th 2022, in the form of a virtual workshop on Zoom. This form of stakeholder consultation was deemed to be a more efficient, effective and inclusive way of gathering input and data than individual interviews.

While, in the inception report, the consultation process was meant to involve a maximum of 10 to 12 participants, given the rising interest of both policymakers and industry stakeholders in this topic, the consultation was significantly expanded, reaching 88 participants, enabling, in this way, a more inclusive process. Participants included: (i) a wide range of industry stakeholders, from, for instance, public service media broadcasters, commercial broadcasters, news media organisations, pay-tv operators, telecom operators, video-on-demand services, technology manufacturers, and internet platform organisations, (ii) representatives from EU Member States’ national regulatory authorities and EU-wide institutions, such as ERGA, EPRA and the Council of Europe; (iii) and academic experts (for an overview of participants, see Section 7 of this Chapter, Methodologies). Civil society groups were invited, but only one organisation attended. The stakeholder consultation was organised

in the form of an interactive workshop, so as to foster a fruitful debate and receive targeted feedback on some of the open questions and issues that emerged from the A1 and A2 deliverables. In order to get such feedback, participants were divided into three parallel breakout rooms, and two thematic roundtable discussions on the following topics:

- AVMSD prominence rules;
- Prominence and discoverability online: new ways forward.

A briefing package with discussion questions was shared in advance (see Section 7 Methodologies). Following the European Commission's guidelines, the roundtable discussions were recorded and automatically transcribed for the purposes of the data analysis. Transcripts and notes were summarised and analysed to inform both this deliverable and the proposed policy options.

2. Policy objectives: clarifying objectives and rationales for interventions

It is long-established in the EU that fundamental rights and democracy require a coherent and effective approach to media pluralism, because a lack of media pluralism undermines freedom of expression and democracy. As outlined in T0, media pluralism has multiple dimensions, and it can be manifested through the "internal", "external" and "exposure" of media diversity, with the latter being a fairly recent facet that refers to the exposure of individual citizens to a sufficient plurality of sources, content and viewpoints.

The policy frameworks for guaranteeing media pluralism are being revised across Europe and are subject to limited harmonisation under the AVMS and other directives. The mapping of legislative and non-legislative interventions has shown that the policy framework that could, directly or indirectly, interfere with content prioritisation processes, is currently undergoing significant changes among both public and private actors. We are therefore dealing with a rather new and contemporary policy area, which builds on previous regulatory interventions, such as EPG rules and must-carry regulations. In this context, whilst there is agreement about the importance of securing the continuing prominence of plural general interest content, there is disagreement about the interventions that may be necessary, the framework for defining what general interest content is, and the implications for media pluralism.

A lack of clarity around the underlying issues and around content prioritisation measures on different services and devices, combined with a lack of clarity around the desired policy objectives of new prominence rules, could ultimately result in unbalanced and policy initiatives that are not based on good evidence, which, in turn, could have unwanted consequences for the overall media ecosystems, and possibly on the single market. The first step is therefore to clarify the agreed policy objectives in the existing prominence regimes, and how they relate to each other. As emerged from Chapters A1 and A2, the underlying policy objectives behind regulatory interventions on prominence often refer to several interrelated and yet separate goals, namely, media pluralism (intended in its dimension of internal pluralism), diversity (intended in its dimension of exposure diversity), and support for a specific category of actors (e.g., general interest or public interest services, or PSMs), or content (e.g., national and European works) through prominence benefits. Policy objectives behind content prioritisation thus include:

- **Internal media pluralism**, or content-related diversity, which refers to a variety/plurality of content, viewpoints, social representations and experiences that are provided by a single media outlet. This concept is closely linked to the remit of public service broadcasting, once enjoying a monopolistic position as the only operator in the media market, and thus having the obligation to provide plural information to serve the public interest (see T0, p.23).

Nowadays these provisions still exist for PSM, but in a mixed media ecosystem, and other broadcasters are also obliged, as a condition of their licences to treat news impartially, and/or to commission content from a variety of sources. Together with principles of external pluralism (see T0 pp. 24-25), internal pluralism informs EU media policy and regulation, including certain prominence regimes. For instance, by prioritising independent PSM services through must carry, or EPG, prominence rules, internally plural services are prioritised.

- **Diversity of exposure** refers to the diversity of content and sources to which each individual media user is exposed, so that they can therefore find, discover and consume a diverse array of content (see T0). This is an important aspect of media pluralism, because the creation of propaganda bubbles around individual citizens can undermine democratic legitimacy and individual autonomy. The concern is also the possibility that while they are progressively less exposed to content that is of general public interest, this results in the polarising of their opinions and their being over exposed to content that amounts to disinformation. Guaranteeing the plurality of sources and content types in each media market may not necessarily guarantee sufficient diversity of exposure, as significant numbers of individuals may each access a narrow range of sources and content types, particularly given new forms of media targeting. Diversity of exposure has only recently become an area of interest in media policy and regulation, and it is often linked to new forms of regulatory interventions that can address issues of content moderation and curation online, including, but not limited to, prominence and discoverability rules.
- **The prominence and discoverability of general interest or public interest services** refer to technical, commercial and policy measures that seek to increase, or segment, audiences for particular forms of services and their content by visually or temporally prioritising them in service design. Prominence and discoverability are outcomes of content prioritisation processes, and from a definitional perspective, the former concern the location of content and services on internet intermediation services that are more or less visible to the final users, while the latter refers to the likelihood of discovery and the related consumption of content, which depend on industry dynamics, strategies, negotiations and the curation of content (Mazzoli 2020, Mazzoli and Tambini 2020). As also highlighted in A1, content and services are often prioritised for purely commercial reasons, including self-promotional and advertising reasons or on the basis of commercial negotiations and distribution deals. However, certain intermediaries may also offer prominence and discoverability on the basis of a determination that content serves the 'general', or 'public', interest, while certain technology manufacturers are sometimes obliged to promote certain forms of domestic content. As was also highlighted in A2, by promoting a category of services that should be internally pluralistic (i.e., producing and distributing a diverse range of genres, representing and giving voice to a wide range of views and opinions, being independent, etc.), this could indirectly help people to access a more diverse range of content (e.g., different genres, including information that is personally relevant, promoting national and local content, and different viewpoints), and, ideally, they would be exposed to such diversity.

Lastly, media pluralism and diversity of exposure are just two of the rationales behind prominence and discoverability rules. Other policy rationales that are weighed against them refer to the protection of the national media and cultural sector; the necessity of maintaining the universal services of general interest that also underlie the must-carry provisions of the Universal Service Directive and

the Amsterdam Protocol of the Treaty on the European Union²⁶⁷; the support of PSM and their public interest mission to educate, inform and provide accessible, inclusive, and quality services.

Although they emerged under the previous technological paradigm of linear broadcasting and spectrum scarcity, these objectives and rationales have also been transposed into current debate around the regulation of content prioritisation measures. Despite the interrelations between these three policy objectives, they should not be conflated when it comes to evaluating and assessing new policy options. A careful balancing of these media policy objectives and the underlying principles of protecting human rights, consumer and citizen interests in a democracy, including the right to impart and receive ideas, remain pivotal for these regulatory interventions.

3. A typology of legislative measures

As highlighted in A2, there are various legislative measures that may have an impact on AVM content prioritisation, which present differences (or similarities) on at least three dimensions, namely, the type of regulatory instrument, the material scope and the scope of application. Alongside these legislative measures, there are also both emerging self-regulatory standards and industry practices that may have an impact on how content is prioritised online, as well as other relevant and current policy developments that may indirectly have an impact on prominence rules or introduce new discoverability and visibility obligations for specific services and intermediaries. Based on the mapping and case-study analysis, we have thus derived a typology of legislative measures which is summarised in the Table below (see Table A3.1).²⁶⁸ The relevant dimensions that are compared in these approaches build on the structure of the case study analysis, and they include: the type of intervention, the scope of application, and the definition and criteria through which to determine the beneficiaries of these regulatory benefits.²⁶⁹

²⁶⁷Official Journal C 340 , 10/11/1997 P. 0109

²⁶⁸ The column “Examples” provides just some examples taken mainly from the A2 case study analysis, which was in turn informed by the A1 mapping. The examples were selected based on the amount of detailed information currently available on each measure. However, EU member states are still in the process of implementing the 2018 AVMSD, thus, more examples could be added as national laws are published. France for instance has just published its updated Broadcasting law introducing prominence rules (see A1 mapping, Annex C) that are in between the UK and the German measures. Indeed, at the moment of writing, the rules apply to EPG and AVM distributors, and they benefit services of general interest intended as PSM services, similarly to the UK. However, the law also states that the national regulatory authority ARCOM has the possibility to expand this definition of general interest services in accordance with certain conditions. Such conditions and related criteria are not yet specified though and therefore this case could not be clearly included in the typology. For a more detailed and complete overview of all legislative measures for prominence, findability and exposure in Europe, with the related countries’ mapping, see Annex C.

²⁶⁹ For a more in-depth discussion of the illustrative examples mentioned in the table, see A1 and A2. While a glossary clarifying the terms used in the table can be found in the T0 report.

Table A3. 1. A typology of prominence measures

Type of Regulation	Regulatory instrument	Scope of application	Examples	Beneficiaries	
				Material scope	Definitional criteria
Traditional regulation	EU law	AVM distributors (defined at the national level at the discretion of MS)	AVMSD (Art. 7a)	AVM services of General Interest	Defined at the national level at the discretion of MS
	EU Law	Providers of on-demand AVM services	AVMSD (Art. 13.1)	European works	Content-based criteria (i.e., content of European and national origin)
	National law	EPG providers and AVM distributors	Ofcom EPG rules (2019)	PSM	PSM remits
			Italian EPG and LCN rules (2021)	National and local AVM services of General interest	PSM services + content-based criteria ranking generalist and specialist content offer of AVM services
		Media platforms	German Interstate Media Treaty (Art. 84)	National and local AVM services of public value	PSM services + process-based criteria identifying AVM services of public value
Online intermediary services	German Interstate Media Treaty (Art. 94)	Journalistically-edited content	Process-based criteria focused on transparency		
Co-regulation	Strengthened Code of practice	Online intermediary services	EC Communication + CoP on Disinformation	News media services	Process-based criteria
Self-regulation	CEN technical standards	AVM services	Journalism Trust Initiative (CWA17493:2019)	Certified news media services	Process-based criteria focused on journalistic professional standards, ethical norms, transparency and accountability requirements

Chapter A3. Options for policy intervention

	Non-CEN technical standards	AVM distributors	DVB signalling standards	N/A - at the discretion of MS NRAs	N/A - at the discretion of MS NRAs
	Independent indicators and ranking systems	Online intermediary and AVM services	News Guard's "trust ratings" (industry-led)	news media services	Process-based criteria focused on transparency externally rating news media outlets
		Online intermediary service	Ranking Digital Rights (civil society-led)	N/A	Process-based criteria focused on human rights frameworks
	Internal content guidelines and transparency reporting	Online intermediary services	Google/FB Transparency reporting	news media services and content	Content-based criteria vaguely linked with human rights frameworks and notions of authoritativeness, trustworthiness and quality
Soft laws	Council of Europe standards	Online intermediary and AVM services	Guidance Note on Prioritisation	AVM services	Process-based criteria focused on transparency, accountability and independence

4. Policy Toolkit for New Prominence Regimes

There is a rationale for policy coordination at the EU level to avoid a divergence of approaches across the single market. In contemplating new prominence regimes, at the EU and/or national levels, regulators and policymakers need to address a number of key questions:

- **WHY:** what are the underlying market dynamics, and what principles should be guiding the objectives of this policy reform? (4.1, 4.2)
- **WHAT:** what content and/or services should benefit from these rules, and on the basis of which criteria? (4.3)
- **WHERE:** which intermediaries and gatekeepers should be covered in the scope of application of these rules? (4.4.)
- **WHO:** is it the EC or national MS that is in a better position to further regulate in this area, depending on the desired policy objectives and the respective competencies?
- **HOW:** how will the effectiveness of these measures be evaluated whilst maintaining the careful balance between regulatory interventions and the potential infringement of freedom of expression and freedom of choice? (4.5, 4.6.)

The policy toolkit that is outlined in this section aims to guide regulators and policymakers and to help them to address these core questions while reflecting on the advantages and limitations of prominence regulation.

4.1 Rationales for intervention, data and evidence

As highlighted in A2, prominence rules are tightly connected to the societal, political and economic context in which they are introduced, and they should therefore be informed by a sound understanding of market dynamics, key trends and issues that are impacting upon the developments of the audiovisual media landscape, at the European and/or national levels. A first step is therefore to have a comprehensive understanding of the market and the broader media ecosystem. This might be based on regular (annual or biannual) research reports that provide, among other things, an overview of the key market players, data on their market and viewing shares, information on the available programming offers, trends in viewing habits and audience consumption, innovations, etc. It emerged from the interviews with NRAs that this evidence base is not always provided.

At the time of writing, not every country has such comprehensive and publicly available studies. Examples can be found, though, at the national level in Germany, where the NRA publishes similar reports on a bi-annual basis; or in the UK, where Ofcom produces an annual report, which is known as *Media Nations*²⁷⁰, in addition to its *Communication Market Reports*, biannual reviews of media pluralism and public service broadcasting reviews, which are complemented, often with *ad hoc* commissioned studies from media market consultancy firms and independent research groups, and at the European level, with the European Audiovisual Observatory and its regular research studies, which cover key developments in the sector. We therefore argue that such data is needed, not only as background knowledge for the NRA, but also to allow the competent authority to comparatively and critically evaluate the data and information that media companies will bring to them when applying for prominence and discoverability benefits.

²⁷⁰The Media Nations report reviews key trends in the television and online video sectors, as well as the radio and other audio sectors. We provide data and analysis on traditional broadcast TV and radio services and look at the take-up and impact of video on demand and audio streaming services.

At the same time, though, it is pivotal to ensure that such research and evidence gathering processes are carried out independently from the State and the regulatory authorities, in order to avoid any risks to freedom of expression and privacy that may arise. A key part of this background research work should be focused on investigating the impacts that current content prioritisation and curation measures have, firstly, on media markets more generally; secondly, on national and local media content providers (including AVM services and news services); and, thirdly, on audiences' access and consumption of content. While A1 has offered a more in-depth understanding of the industry measures around prominence, discoverability/findability, studies on how such measures impact on the audiences and/or on specific AVM services are still limited, often due to the lack of access to data. Data and evidence are, indeed, in the hands of technology manufacturers, platforms organisations and AVM services, and it is therefore pivotal to conduct collaborative research projects with these industry actors, complemented by independent users' experiments and audience studies. Examples of methodologies that could be used to carry the type of research that is currently missing are outlined in A2 (pp. 21-26). The roles of policy makers and NRAs should therefore be to facilitate such independent research through, for instance, increased access to data regimes and public funding.

4.1.1 Principles to Guide Reform

The rationale for intervention involves both positive and negative objectives, as well as internal market principles, which should be taken into account when advancing a policy reform in this area. The positive and negative principles discussed here can be clearly adhered to by endorsing the *Council of Europe Best Practice Guidelines on Media Prominence (2022)* and the *Council of Europe Recommendation on Media Governance (2022)*. While the internal market principles can build on the *Treaty on the Functioning of the EU (TFEU)* and relevant cases of the Court of Justice of the EU (CJEU).

i. Positive and Negative Objectives

Positive objectives stress **user agency, choice** and the various **levels of media pluralism and diversity**. In particular, policy reform should seek to achieve the following outcomes:

- a) Choice between curators. Users should be able to choose between providers of different user interfaces.
- b) User control. Personalisation and recommendation, including defaults and the prioritisation of different services, should be controlled by the users themselves.
- c) Plurality of providers of plural information. Where services of general interest are prioritised, a plurality of providers of internally plural, trusted information should be provided. Having multiple PSM within the same country - as in Germany and the UK - could be an additional safeguard for the overall media plurality in that country, as well as of PSM independence itself. Furthermore, it will help to ensure that the providers of PSM services do not abuse opinion and market dominance against the consumers' and citizens' interests.
- d) A diverse media offer and consumption that reflects both internally plural and externally plural sources.

Negative objectives stress the **market and consumer outcomes** that will undermine shared European values with regard to the **consumer interest, fundamental rights and democracy**. In particular, policy frameworks should seek to avoid the following outcomes:

- a) There being significant segments of the population that are not exposed to internally plural public service media.

- b) a lack of choice among general interest/prominent providers.
- c) the ability of powerful gatekeepers to reduce the organic prominence of Public Interest/General Interest/ Public Service providers.

ii. Internal market principles

Alongside the aforementioned positive and negative objectives, it is also important to **respect internal market principles** when advancing regulatory proposals in this area. Any new prominence regime should evidently take due account of the internal market freedoms enshrined in the TFEU, and, notably, the freedom to provide services (Article 56 TFEU). Both when determining prominence beneficiaries and delineating the scope of application of prominence rules (see following sections), Member States should avoid putting into place mechanisms which would boil down to discriminatory restrictions, or to unjustified non-discriminatory restrictions (see also, A2, pp.36-42). The former might be the case when prominence rules must rely on a criterion for establishment to determine prominence beneficiaries (excluding non-domestic content providers as potential candidates). The latter would be the case when prominence rules, even if applied without distinction between domestic and foreign providers of services, would be likely to prohibit or impede the activities of service providers that are established in other Member States.

In *Debauve*,²⁷¹ the CJEU has held that, in the absence of the harmonisation of national broadcasting laws, non-discriminatory national restrictions may be justified by considerations of general interest. The CJEU has accepted as such general interest reasons, amongst others: (i) the maintenance of social order;²⁷² (ii) the protection of consumers' rights;²⁷³ (iii) the preservation of the national and artistic heritage of a Member State;²⁷⁴ (iv) **cultural and audiovisual policies, in particular, the need to guarantee the freedom of speech and the diversity and plurality of the media in a Member State**;²⁷⁵ (v) the defence of multilingualism in the country, and the promotion of one or several of its official languages.²⁷⁶ According to the settled case-law of the Court, restrictions may be justified if they fulfil four conditions: (i) they must be applied in a **non-discriminatory manner**; (ii) they must be justified by **overriding reasons that are based on the general interest**; (iii) they must

²⁷¹ *Procureur du Roi v Marc J.V.C. Debauve* (Case 52/79) EU:C:1980:83, at para.12. See also *Alfred John Webb* (Case 279/80) EU:C:1981:314, at paras 16 and 17.

²⁷² For instance, *Société Générale Alsacienne de Banque SA v Koestler* (Case 15/78) EU:C:1978:184.

²⁷³ For instance, *Konsumentombudsmannen v De Agostini (Svenska) Förlag AB and TV-Shop i Sverige AB* (Joined Cases C-34/95, C-35/95 and 36/95) EU:C:1997:344 (discussed in para.4-061).

²⁷⁴ For instance, in relation to services by tourist guides: *Commission v Italy* (Case C-180/89) EU:C:1991:78 (however, the CJEU considered the measures disproportionate).

²⁷⁵ For instance, *Stichting Collectieve Antennevoorziening Gouda v Commissariaat voor de Media* (Case C-288/89) EU:C:1991:323, at para.23; *Commission v Netherlands* (Case C-353/89) EU:C:1991:325, at paras 30 and 45. But note that, in these cases, the CJEU found that a number of restrictions in the Dutch Media Act with respect to the broadcasting of advertisements and the structure of foreign broadcasters were either not objectively necessary to achieve the cultural policy objectives pursued, or were protecting the revenues of the Dutch television advertising foundation 'STER' (albeit to a lesser degree than the previous 'Kabelregeling' which had already been found incompatible with Article 56 in *Dutch Advertisers*). As the provisions concerned were actually pursuing *economic* aims, they had to be considered unjustified restrictions on the freedom to provide services and the Netherlands had failed to fulfil its obligations under Article 56 (at that time Article 59 EEC). See also *Vereniging Veronica Omroep Organisatie v Commissariaat voor de Media* (Case C-148/91) EU:C:1993:45 and *TV10 SA v Commissariaat voor de Media* (Case C-23/93) EU:C:1994:362 (both discussed in 4-067). Maintenance of press diversity has also been recognised to constitute an overriding requirement justifying a restriction on the free movement of goods; see *Vereinigte Familiapress Zeitungsverlags- und vertriebs GmbH v Heinrich Bauer Verlag* (Case C-368/95) EU:C:1997:325.

²⁷⁶ *United Pan-Europe Communications Belgium SA, Coditel Brabant SPRL, Société - Intercommunale pour la Diffusion de la Télévision (Brutélé), Wolu TV ASBL v Belgium* (Case C-250/06) EU:C:2007:783, at para.43; *Unión de Televisión Comerciales Asociadas (UTECA) v Administración General del Estado* (Case C-222/07) EU:C:2009:124, at paras 26-30.

be **suitable** for securing the attainment of the objective which they pursue; and (iv) they must **not go beyond** what is necessary in order to attain that objective. The latter condition implies that the restriction is proportionate to the general interests that are protected and that there are no other alternative measures that are less restrictive of the inter-state provision of services that can be adopted.²⁷⁷

Based on the aforementioned cases, some relevant key take-aways from the CJEU's case law in relation to must carry provisions,²⁷⁸ which may possibly apply also in the context of prominence rules, include:

- **Media pluralism and EU competences:** Article 56 TFEU does not preclude legislation for must carry obligations, which require cable operators to broadcast television programmes transmitted by designated private broadcasters, if such legislation pursues an aim in the general interest (*in casu* the retention of the pluralist character of the television programmes that are available in that Member State). Whilst such legislation is liable to hinder the provision of services between Member States, according to the well-established case law of the CJEU, a “cultural policy aiming at safeguarding media pluralism (which is closely linked with the freedom of expression) may constitute an overriding requirement relating to the general interest which justifies a restriction on the freedom to provide services”,²⁷⁹
- **Proportionality principle:** such restriction may be justified only where it serves “overriding reasons relating to the general interest, is suitable for securing the attainment of the objective” which it pursues and when it does “not go beyond what is necessary” in order to attain it.²⁸⁰ In the must carry obligations’ case, this principle also refers to the fact that the number of channels reserved to private broadcasters that have a must carry status must not manifestly exceed what is necessary in order to attain the stated policy objective. Moreover, whether the measure is proportionate will also depend on how burdensome the obligations are for the operator concerned (looking at the number of mandatory channels in light of the network capacity available, whether a remuneration is provided for or not, etc.).²⁸¹
- **Transparency and non-discrimination:** the aforementioned proportionality principle implies that the manner in which the rules are applied must be subject to a “transparent procedure” which is based on “objective non-discriminatory criteria known in advance”, so as to ensure that the discretion vested in the Member States is not exercised arbitrarily.²⁸² In particular, each broadcaster must be able to determine in advance the nature and scope of the precise conditions to be satisfied and, where relevant, the public service obligations it is required to observe if it is to apply for that status. In that regard, the mere setting out, in the statement of reasons for the national legislation, of declarations of principle and general policy objectives,

²⁷⁷ See, for instance, *Arbeitsgemeinschaft Deutscher Rundfunkanstalten (ARD) v PRO Sieben Media AG* (Case C–6/98) EU:C:1999:532, at para.51.

²⁷⁸ Note that most of these requirements set out by the CJEU have been encoded in, firstly, Article 31 USO Directive, and subsequently Article 114 EEC.

²⁷⁹ *UPC Belgium*.

²⁸⁰ *UPC Belgium*, at paras 43-44.

²⁸¹ *UPC Belgium*, at para.47. The CJEU, however, leaves a considerable margin of discretion to the Member States to evaluate what is excessive. To judge whether the must carry obligations imposed on the cable operator are unreasonable, the national court has to assess whether they are likely to prevent the cable operator from performing them in conditions which are economically acceptable, in the light, where appropriate, of all its activities. Relevant factors in that assessment include, according to the CJEU, the (presence of absence of the) freedom for the cable operator to decide whether the channels are to be broadcast on its analogue or digital network (and whether the latter is also, or not, being subject to similar rules) and the existence of an appropriate remuneration (which is not mandatory under the relevant EU law). See *Kabel Deutschland*, at para.46 *et seq.*

²⁸² *UPC Belgium*, at paras 46-47.

cannot be considered sufficient. Moreover, in the must-carry obligations case, the criteria on the basis of which must carry status is awarded must be “non-discriminatory”, which includes that the status must not, either in law or in fact, be subject to a requirement of establishment in the national territory.²⁸³

- **General interest objectives and related criteria:** Must carry status should not automatically be awarded to all of the television channels that are transmitted by a private broadcaster, but must be strictly limited to those channels with an overall content which is appropriate for the purpose of attaining general interest objectives, such as media pluralism; and, hence, must carry rules must not only specify the media service providers, but also the individual channels benefitting from must carry status.²⁸⁴

These key take-aways from the must carry obligation regulatory framework show how the current debate on prominence (and discoverability) rules at the EU and national levels can be framed within this historical regulatory framework, within which a positive discrimination in favour of a specific category of media actors has been justified on media pluralism, diversity and general interest grounds.

4.2 The definition and determination of prominence beneficiaries

Once the principles driving a new prominence regime are clarified, the question is: what services and/or content should benefit from prominence? Since we are dealing with positive discrimination that is not simply aimed at fixing a market failure but, ideally, also at shaping the market, defining which services might contribute to such positive (and, to some extent, paternalistic) re-shaping of the market, and this is a challenging task.

In current practice, regulatory and policy makers advance a high-level definition of these beneficiaries (such as the AVMSD notion of AVM services that are of “general interest”), and then leave space for competent NRAs to operationalise such a definition and to translate it into applicable criteria. This is, however, a rather complex and difficult task for NRAs, and it is often open to criticism from those industry stakeholders who do not respect those criteria. As shown in Table A3.1, current practices often rely on content-based criteria, or process-based criteria, or a mix thereof. In this context, content-based criteria are intended as evaluating criteria that apply to individual pieces of content and programmes, or to specific categories (e.g., national or European works), while process-based criteria apply to the processes of production and distribution, as well as structural requirements that apply to the AVM service providers.

One key point that emerged throughout the A1-A2 data collection process, as well as during the stakeholder consultation, is that process-based and principles-driven criteria are preferable to content-based criteria. In other words, establishing criteria that look at the processes of content prioritisation, and the driving principles and professional norms of the organisations are preferable to criteria that evaluate, rank and label individual pieces of content, or individual journalists. The reasoning behind this is two-fold. Firstly, quality content labels can be more easily misused, and the risk of leading to soft forms of censorship and propaganda is higher than it is with process-based

²⁸³ *UPC Belgium*, at para.48, and *Commission v Belgium* (Case C-134/10) EU:C:2011:117, at para.66 *et seq.* In the latter case, the CJEU considered that the requirement that broadcasters had to fall under the powers of the Flemish, French or German-speaking Communities in Belgium in order to benefit from ‘must carry’ status, did not exclude that only broadcasters established in Belgium would be eligible, and, hence, would bring about discrimination against broadcasters of other Member States.

²⁸⁴ *UPC Belgium*, at para.47 (in the context of Article 56 TFEU). See also (in the context of Article 31 USO Directive) *Kabel Deutschland Vertrieb und Service GmbH & Co. KG v Niedersächsische Landesmedienanstalt für privaten Rundfunk* (Case C-336/07) EU:C:2008:765, at para.42, and *Commission v Belgium*, at para.63.

criteria. Secondly, by establishing high standards and professional norms and using them as criteria to reward AVM services, as well as news and journalistic organisations, they may be prompted to improve in order to access such benefits, ideally, creating a virtuous cycle in the market.

A second important aspect is that the different interpretations and implementations of the AVMSD notion of “general interest” services are often connected with the normative-driven notions of public interest objectives and public value criteria, which are operationalised in different ways, depending on the regulatory context and the organisation. For instance, when it comes to criteria that are applicable to AVM services, a self-evident case comes from the *German Interstate Media Treaty*, and its “public value statute”, which determines which commercial AVM services can also be granted prominence and findability benefits alongside PSM’s services. Concerning news media content, more specifically, examples can be found in the JTI technical standards or in trust indicators that can help to define what public interest journalism is.

However, as outlined in A1 and A2, the definitions vary depending on the national and organisational context. In order to inform industry and policy practices when they are developing their own criteria, we have thus compiled a list, based on A1 and A2. The proposed list is primarily focused on process-based criteria, and they could, respectively, be applied to: a) AVM services; b) news and journalistically edited offerings. The legislative and non-legislative measures that are revised in this study have highlighted that there are certain process-based criteria that could be applicable to both categories of services, especially when it comes to promoting ambitious standards of transparency, accountability and independence, which are needed in any prominence regime that aims to directly, or indirectly, foster internal media pluralism and exposure diversity, while respecting media freedom. Although it is also important to take into account the distinct levels of regulation that already exist both at the European and national levels between these AVM services, which are often highly regulated, and news and press services, which rely more on self-regulatory instruments and standards.

During the stakeholder consultation, industry representatives have highlighted that having common guidelines on how to define general interest services might be beneficial, as it would provide further legal clarity and it should ideally provide at least a minimum set of criteria at the EU level that might be more easily applicable by industry representatives, while reducing the chances of State and/or private influences. The table below could thus be seen as a source of inspiration for this first list of criteria, which if applied correctly, and with an adequate checks-and-balances systems, would allow both independent PSM and private media organisations to be granted prominence and discoverability benefits in a proportionate mann

Table A3. 2. Examples of public value criteria for AVM services, news and journalistic organisations

Criteria		Metrics	Example
Independence		<ul style="list-style-type: none"> - disclosure of funding sources - disclosure of governing systems (incl. management directory) 	<ul style="list-style-type: none"> - Guidance Note on Prioritisation (Council of Europe) - Journalism Trust Initiative
Transparency	of ownership	<ul style="list-style-type: none"> - disclosure of type of ownership 	<ul style="list-style-type: none"> - Journalism Trust Initiative
	of content policies	<ul style="list-style-type: none"> - disclosure of content is curated, moderated, ranked, or recommended. 	<ul style="list-style-type: none"> - Guidance Note on Prioritisation (Council of Europe) - RDR Corporate Accountability Index (Ranking Digital Rights)
	of data practices	<ul style="list-style-type: none"> - disclosure of how personal data from its audiences are being processed and used 	<ul style="list-style-type: none"> - Guidance Note on Prioritisation (Council of Europe) - RDR Corporate Accountability Index (Ranking Digital Rights) - Journalism Trust Initiative
Content diversity		<ul style="list-style-type: none"> - amount of time spent on reporting on political and cultural events - amount of time spent on reporting on regional and local information - quotas of content dedicated to young target groups - quotas of content dedicated to niche audience groups (e.g., minorities) - percentage of different genres produced and distributed (e.g., news/current affairs vs. educational programmes vs. entertainment) 	<ul style="list-style-type: none"> - Interstate Media Treaty (Germany) - LCN (Italy)

	programmes)	
Source diversity	<ul style="list-style-type: none"> - amount of time (e.g., in minutes) dedicated to different viewpoints 	<ul style="list-style-type: none"> - Interstate Media Treaty (Germany) - LCN rules (Italy)
Inclusion and accessibility	<ul style="list-style-type: none"> - percentage of accessible content offer 	<ul style="list-style-type: none"> - Interstate Media Treaty (Germany)
Support to national and local sector	<ul style="list-style-type: none"> - the ratio between in-house productions and programme content produced by third parties - quotas of national and local productions - quotas of independent productions 	<ul style="list-style-type: none"> - Interstate Media Treaty (Germany) - LCN rules (Italy)
Professionalism	<ul style="list-style-type: none"> - the ratio between trained employees and employees who still need to be trained - investment in training and educational programmes for employees - diversity of professional team 	<ul style="list-style-type: none"> - Interstate Media Treaty (Germany) - Journalism Trust Initiative
Trustworthiness	<ul style="list-style-type: none"> - presence of fact-checkers in the companies, or collaboration with third-party fact-checkers - professional editorial staff - publicly available editorial guidelines and policies - users' complaint mechanisms - fair and ethical data policies (incl. transparency and accountability frameworks, no third-party data sharing without explicit consent, etc.) - transparency on the above processes and guidelines 	<ul style="list-style-type: none"> - Journalism Trust Initiative

4.3 Scope of application

As outlined in A1 and A2, the scope of application of the current prominence rules differs, depending on the regulatory instrument used and the national specificities of different media markets. The obligations therefore vary, depending on whether the focus of the legislation is still more on linear broadcasting paradigms (e.g., EPG and LCN for analogue and digital terrestrial television), or is shifting towards internet-distributed AVM services, covering either on-demand services and their interfaces (e.g., Art. 13(1) AVMSD), or technology manufacturers and their interfaces (Art. 7a AVMSD). Existing prominence rules, at the moment of writing, do not, therefore, cover other digital services, such as social media platforms and search engines, since the only national implementation that attempts to cover such services only introduces transparency and non-discriminatory obligations (see A2).

One common aspect of the different legislative measures, though, is the attempt to remain less prescriptive, in order to both limit the impacts that these rules may have on the freedom to innovate, as well as future-proofing these regimes and allowing them to be used in view of future technological developments too. In practice, though, this leaves open a core definitional question: what do “appropriate” or “due” prominence mean for different interfaces? Currently, it is up to manufacturers and AVM services to negotiate what they mean and how they can be granted. As a consequence, their definitions of appropriate prominence diverge widely (see A2). Cooperation between NRAs and industry stakeholders could be helpful here. On the one hand, NRAs could provide process related regulation that outlines the process of determining what prominence is, for instance, by allocating the responsibility to determine what “appropriate” or “due” prominence are with one party, and/or introducing an obligation to negotiate, and/or an obligation to introduce a system of contestation and conflict resolution. On the other hand, industry stakeholders could come to an agreement over what “appropriate” or “due” prominence mean for different services and devices, outlining a graduated approach that goes from prominence in default settings, homepages, and hardware systems (e.g., remote controls), to more personalised and sophisticated forms of prominence and discoverability in higher search rankings, listings and the ranking of catalogues’ rows and recommendation systems.

Finally, when reflecting on the scope of application, it is also important to take into account the potential impacts on market development in order to avoid new prominence obligations becoming a barrier to entry for new players, in certain markets. On the one hand, similarly to the rationale used in the graduated approach to the obligations on the promotion of European works in the AVMSD, exemptions for those smaller and local players could thus be beneficial, and would avoid undue market distortions. Providers with no significant presence on the market – intended as low turnover, low audience or low customers-base²⁸⁵ – might thus not be subject to such requirements, or they might be subject to a lower tier of requirements, if a graduated approach were to be implemented. It might also be inappropriate to impose such requirements in cases in which, given the nature or the specificities of the intermediary services or technology manufacturers, they would be impracticable or unjustified. On the other hand, though, similarly to the tiered-approach of the DSA obligations, and in alignment with the *Council of Europe Guidance Note* on content prioritisation (2021, p. 3),

²⁸⁵Depending on the nature of the service, a low audience can be determined, for example, on the basis of viewing shares, sales or subscription numbers, while a low customers-base could be determined, for example on the basis of registered users and customers sales. Finally, the determination of low turnover should take into account the different sizes of audiovisual markets in Member States.

new prominence rules and guiding principles in this area should apply particularly strictly to platforms that are more dominant, given their reach, scale, and influence.

4.4 Assessment frameworks and measurements

A precondition for the creation of new prominence regimes concerns the development of transparent assessment and measurement frameworks. As argued in A2, even the most advanced regulatory proposals are still new, and there is neither evidence nor data that could be used to evaluate their impact on industry and user practices, nor their effectiveness in reaching their desired outcomes. To lay the groundwork for such assessment frameworks, there are three basic, yet pivotal, steps that policy makers and regulators should be taking:

1. **Gathering regular evidence and data on the historical and current developments in the audiovisual media ecosystem**

This builds on the first observation that was outlined in 4.1, i.e., the necessity to develop a regime that is based on a sound understanding of the audiovisual media ecosystem and its industry dynamics. Having this outlook and gathering evidence from the implementation of the new measures is pivotal in adequately assessing the effectiveness and impacts of the measures (in the short, medium, and long term), and, in turn, in informing possible future revisions, as well as the necessity and desirability of the measure. Less prescriptive approaches, such as the German and the UK ones, are indeed flexible enough to be easily updated and revised, based on technological and market developments. To do so promptly, though, regular monitoring systems and sound research is needed.

2. **Operationalising public value criteria and developing measurable metrics**

Prominence is a positive discrimination that requires selection and some form of ranking system. It may be the case that EU principles of subsidiarity and cultural diversity will lead to discretion in regard to deciding what should be prominent, and why. Establishing a list of criteria that media organisations should respect in order to benefit from new prominence and discoverability rules is thus a first step, but developing indicators and related scoring systems will be necessary in order to select those AVM services that respect such criteria. To do so, regulators will have to decide:

- a. What are the most suitable criteria for their national context?
- b. What role will each criterion play in the overall assessment? (e.g., is the production of news more or less important than the percentage of accessible services? How will the different criteria be weighed against each other, and against other values? etc.)?
- c. What metrics will be required to assess them (some examples of the metrics that emerged from the study are listed in Table 2)?
- d. What type of data and evidence will be requested by the organisations (e.g., a broad call for evidence that is loosely based on a list of open questions, as in the *Public Value Statute's* call for applications in Germany, or more detailed questionnaires with closed questions, or a combination of both), and by whom should they be requested? If there is no access to data obligations, we do indeed need to reflect by whom, on which actor, and through which instrument such an obligation should be introduced.

3. Developing adequate data collection and analysis methods.

To systematically evaluate the data and information that will be gathered, and to assess them in a transparent and accountable way, the NRA should have the right skill-sets, tools and resources in place.

After having operationalised the established criteria, put in place an adequate assessment framework, and selected those beneficiaries that should be granted appropriate prominence, the implementation of these legislative measures should be enforced and monitored, and an effectiveness assessment of whether they are achieving their desired outcomes should also be carried out. However, assessing whether the prominence of certain services is achieved and/or whether an overall diversity of exposure has been fostered, require different measurement frameworks and methods. The independence of these evaluation and assessment frameworks is crucial, and it might be achieved either through a legally and functionally independent NRA, or through a third party, whether this is a research and academic institution, or a consortium of experts, on the matter.

4.4.1 Assessing prominence

Based on A1 and A2, the following table summarises a list of indicators and possible measurement methods that could help to evaluate the prominence of content on internet-distributed AVM services and news services. These indicators primarily rely on users' behavioural data, at individual and/or aggregate level, that are normally not available to NRAs, policymakers or researchers. One solution would be to ensure increased access to data for independent researchers, in order that they can conduct *ad hoc* research which is focused on assessing how new prominence measures impact, respectively, upon the performance of an AVM service or news provider, and users' access to content. Alternative and/or complementary sources of data could be provided by users' surveys and audience studies (e.g., Johnson et al., 2020), which are also used by media and platform organisations themselves to improve and refine their content prioritisation measures and optimise their recommendation systems, or users' experiments that are focused on specific types of measures such as recommender systems (e.g., Möller et al., 2018) or prominence in VOD catalogues (e.g., Farchy et al., 2021). Insofar, though, as trusting researchers to comply with this task is only an option, if policy makers succeed in creating the conditions for, and incentivising researchers to do, this research, without steering their research agendas, it may be necessary to oblige NRAs to actively commission this research.

Table A3. 3. Examples of indicators and measurements for prominence

Indicator	Measurement	Level of prominence
Views	Number of views of the prioritised AVM service/app/content in a given period of time compared to a benchmark (e.g., number of views of a prioritised service relative to the aggregate number of views that other items of content receive on average)	Visibility and findability of AVM service/app/content
Ease of Access	Number of clicks or downloads of the prioritised AVM service/app/content in a given period of time	Discoverability and likelihood of access of AVM service/app/content
Engagement	More granular users' consumption data incl. number of users who watch the prioritised AVM service/app/content (and for how long), in a given period of time; numbers of likes, numbers of shares/comments	Discoverability and likelihood of consumption of AVM service/app/content

Additional data points that might help in better understanding a users' journey to content, and the possible success of a new prominence regime, are trace and tracking data. For instance, such data could be used to identify whether, through a new prominence regime, more people from groups that normally do not watch specific categories of content or services (e.g., PSM content or niche-market failure genres), will watch it. Moreover, knowing, through trace data, which contents or services users travel to, after they have accessed the prioritised ones, as compared to accessing other content or services, could also tell something about the success of the new legislative measures. However, this method of using trace and tracking data is highly sensitive, and potentially problematic, from a human rights and privacy perspective, and this is why strictly observing privacy rights and data protection must be a priority. At the same time, though, such data is currently available to a restricted number of market actors, and it is used to discern users' behaviours, choices and consumption patterns. Ensuring that such data practices respect users' privacy and data protection, and creating a reporting duty on those market actors that have access to such data and will have to comply with new prominence obligations, could thus prevent misuses of personal data, but still gain an understanding of the impact of prioritisation measures.

4.4.2 Assessing the diversity of exposure

As discussed in A2 (A2, Sections 2.1-2), even though the necessity of diversity of exposure as an evaluative approach in a digital media environment is evident, and its qualitative distinction in contrast to diversity of supply (diversity of source and content) is broadly understood, it still remains a challenge to operationalise the concept, in practice, in policy making and industry practices. Building on the literature review and the conceptual clarifications of A2, the Table below presents a list of existing indicators that could be used to assess the diversity of exposure. Methods of collecting data that would allow either regulators or policy makers to assess this include experiments, surveys, computational approaches (see A2).

Table A3. 4. Examples of indicators and measurements for the diversity of exposure

Indicator	Measurement	Definition of diversity
Count	Number of categories or elements that are present in a set. It can also correspond to the notion of coverage of an information system	Diversity intended as a balanced presence of, and exposure to, diverse content and sources
Percentages	Indicators that measure the relative share of a category within a system	
Dual Indexes	Combination of Entropy and the Herfindahl-Hirschman Index (HHI), which both assess Variety and Balance	Diversity intended as a balanced presence of, and exposure to, different viewpoints and content, where one category of content or viewpoint is not unduly more or less represented than others
Distances	Mathematically, it measures the cosine of the angle between two vectors projected in a multi-dimensional space. It is normalised to vary between 0 (maximum similarity) and 1 (maximum dissimilarity). Such distances can be calculated for any content, if the data is labelled or can be categorised	Diversity intended as the opposite of similarity, and emphasis is on the exposure to diverse content and sources, achieved by combining both content that is “close to” and that which is “different from” users’ consumption habits.
Alternative voices²⁸⁶	The relative presence of the voices of people from a minority or marginalised group. A higher score indicates a proportionally larger presence of alternative voices	Diversity in the sense of giving greater prominence to voices that, on mainstream channels, tend to be unduly under-represented or more difficult to find
Fragmentation²⁸⁷	The amount of overlap between categories of content, topics and/or voices that are shown to different users	Measuring the level of shared sets of topics, content or access to voices as part of a common public sphere, as opposed to the presence of smaller and more specialised information ‘bubbles’
Activation²⁸⁸	Measuring not so many topics, categories of content or voices represented, but, rather, the formats, form and language (activating, emotional, explanatory, hostile, informative, etc.) in which that content is	This is not so much a measure of exposure diversity as such, but of the potential or intended effect of exposure on the audience. It is more a background indicator that doesn’t rely

²⁸⁶The last three metrics (alternative voices, fragmentation and activation) are the result of a recent research project carried out by the University of Amsterdam, and they are currently being tested with a number of media organisations, with the aim of thinking more holistically and critically about how to measure diversity of exposure (Vrijenhoek, Kaya, Metoui, Möller, Odijk, & Helberger, 2021).

²⁸⁷ Ibid

²⁸⁸ Ibid

	presented, as the way content is written will affect viewers in different ways	on a specific definition of diversity of exposure. It rather emphasises that such exposure can achieve different objectives (to inform, to engage, to activate, etc.), and that the form in which content is being presented can play a role in that.
--	--	---

Finally, while the two Tables, above, present only some examples of possible indicators and metrics, it is important to highlight that, despite the attractiveness of mathematically easy models and quantitative metrics, such as dissimilarity and distances, this is not necessarily the way to go if we want to adequately measure exposure diversity (see Vrijenhoek et al, 2021). Prior to developing a toolbox of metrics, we need policy makers and/or media organisations to revisit concepts of diversity, to identify the concrete normative expectations connected to diversity (e.g., tolerance, political efficacy, broad/narrow shared issue salience, etc.) and then to invest in further research on how to translate these objectives into observable metrics (Helberger, 2019). Furthermore, since we are dealing with users' behavioural data, it is important that such assessment and measurement frameworks are introduced with adequate checks and balances and are not under the influence of governments or regulatory authorities, especially if those authorities are not independent from the State. They should, rather, be commissioned from an independent third party, and with built in checks and balances and accountability systems that would respect and preserve the users' privacy.

4.5 Accountability frameworks

Any prominence regime entails risks as well as benefits for media freedom, freedom of expression and media pluralism. Risks include new ways of undermining both the audience and the revenues of alternative, community and oppositional media, as well as potential mistrust and disengagement with regard to news and those sources that are considered 'official or 'mainstream.' Care must therefore be given to the trust and accountability of the prominence measures as a whole from early in the process, in order to ensure that media actors will remain independent and free. Notably, through ensuring that criteria that can determine public interest content, the processes and assessment frameworks are independent, and that they are perceived as such.

In the short term, Member States should be encouraged to take into account the accountability standards of the *Council of Europe's Guidance Note: Effectiveness, Openness, Independence, Transparency* (2021). In the longer term, the development of stronger formal mechanisms for societal and democratic accountability should be strongly encouraged. These may take the form of the development of industry standards for self-regulation and also of content moderation standards.

5. Policy Options: Prominence Regimes

The mapping of prominence policies has revealed that there are different policy solutions to the creation of new prominence regimes, with slight variations that depend on the type of regulatory instrument, the scope of application and the material scope. While there is no one-size-fits-all solution, this study intends to provide the European Commission and its Member States with policy options that would prompt them to reflect on which approach might be the most suitable, be it in terms of procedural regulation, co- or self-regulation, or more structural interventions. The scope of the policy options reflects the EU competences in this area, and is mainly focused on the areas of

intervention that are relevant for media and communication policy and regulation and, thus, that are within the scope of action of the Directorate-General for Communications Networks, Content and Technology. Given the scope of this study and the methodology used, the options are divided into two macro- areas, namely: AVMSD and related regulatory frameworks, and new regulatory avenues related to digital services that function as intermediary services to media content online.

In both areas, EU and Member States' policies have a multidimensional role to play in facilitating the development of new prominence regimes, by helping to clarify policy and regulatory objectives and reconciling them with fundamental rights and other standards; facilitating new industry standard methods and metrics for the measurement of media prominence and exposure diversity; facilitating the emergence of industry best practices; ensuring that procedural and due process standards, such as transparency and civil society engagement, are met; and ensuring that a level playing field of rules and institutions with a minimal, or at least proportionate, regulatory burden, is in place.

Many of these policy options are therefore not mutually exclusive. In particular, the emergence of new industry standards and best practices is to be encouraged, whatever decisions are taken on the regulatory framework, but there are a range of options as regards the statutory incentives that might be developed. However, as previously mentioned, both in this Chapter and in A2, so far, we do not have sufficient evidence or data to prove that the existing prominence regimes work, and that they achieve the desired effects, without undue consequences for the broader media ecosystems. The following measures presented here are thus not recommendations *per se*, but they are policy options that could be taken, once there is sufficient evidence and data.

5.1 Regulatory and policy options at European level

5.1.1 Status quo

Until now, the EU has not adopted any policy position on the prioritisation of internet intermediaries, or smart tv/ streaming services. However, the recently adopted DSA indirectly provides additional safeguards for the circulation and curation of online media content through transparency and accountability provisions of algorithms and recommender systems. Beyond these broader DSA provisions though MSs are left to their own devices in developing their approach to general interest content prioritisation. This has the advantages of a lack of adverse regulatory impact on market actors, and of there being no additional cost burden for the EC. However, as discussed in A2, some stakeholders have highlighted that the rise of different implementations and prominence rules at the national level could pose risks to the single market. By maintaining the *status quo*, in those MS that have not implemented new prominence provisions, the default position vests the interface designers with the power to make determinations of public interest/general interest content, without a clear policy framework, and often under pressure from the government and public opinion. As such decisions are both commercially and politically sensitive, and because technology manufacturers and platform organisations enjoy, in some cases, a crucial intermediary position that is not subject to normal competitive pressures, it is likely that such decisions will be subject to various forms of legal challenge and EU MS level policy instability, resulting in market and legal uncertainty.

Even without intervening at this stage, though, progress can be made in order to better understand the impact that non-legislative and legislative prioritisation measures have on content providers and users. At this early stage, it is indeed important to monitor the enforcement, implementation and effectiveness of both new prominence rules and of the relevant DSA provisions in the coming years, while funding research that focuses on investigating how non-legislative prioritisation measures currently impact upon access to, and consumption of, content, both on the internet-distributed AVMS chain, as well as in those digital services that act as intermediaries for media content, such as social

media platforms and search engines. An expanding body of research is emerging in this area (see A2), but further evidence is needed to better understand whether additional regulation is needed, and, if so, through which instrument. In this regard, the previous chapter outlines examples of studies and methodologies that could be used in order to monitor the effectiveness, and understand the impacts, of both legislative and non-legislative measures.

5.1.2 Additional Regulation

Beyond the *status quo* option, there are two main avenues for possible interventions, one focusing primarily on AVM services, which builds on the existing EU audiovisual and media policy frameworks, and the second explores options for the regulation of a wider range of digital services. Given the scope of this study, the focus of the latter category is mainly on digital services that function as a key intermediary for news content online. In both cases, the main recommendation that underpins these policy options is that more data and evidence must be gathered in order to understand whether a regulatory intervention is needed, and, if so, to adequately assess the different policy options presented here.

i. Strengthening the current regulatory frameworks for AVMS

Further harmonisation could be achieved through the following regulatory instruments and related policy initiatives.

ii. European Commission Guideline

Guidelines are non-binding acts that set out a framework for future acts in a policy area (these frameworks tend to be broad in scope and stated in general terms, and the 'future acts' often take the form of legally binding instruments). By issuing guidelines for both national regulatory authorities and industry, the European Commission could lay the foundation for a stronger level of harmonisation, if this is deemed and proven to be necessary, while providing clarity and guidance on the key questions outlined in the policy toolkit section.

The advantages would be to ensure that such provisions are correctly implemented and not misused, but also to clarify how they could be measured and monitored. It could possibly help manufacturers by providing clarity on how they can comply with the newly introduced obligations. Indeed, as was highlighted by a representative of the technology manufacturers during the stakeholder consultation, the current transposition of the AVMSD has resulted in a diverse set of rules in different Member States, giving wide discretion on how prominence concepts and rules may be designed, which could, in turn, contribute to a fragmentation of the internal market for products like smart TVs and connected devices.

While the selection of AVM services that should be granted prominence should still remain under the Member States competences, to prevent further diversification and fragmentation, **the Guidelines could thus provide guidance on common definitional criteria, functional prominence requirements, a future-proof scope of application, enforcement and monitoring mechanisms.** The policy toolkit previously discussed could be used as a starting point for such Guidelines as its aim is to provide best practice examples and advice on how to create and implement these new regimes.

Advice on measurement and assessment frameworks for regulators could, in turn, help to demonstrate whether a revision of the AVMSD might be needed in the future. These guidelines should build on the coordination work that ERGA, the European Regulators Group for Audiovisual media services, has been doing in this area. Through its advisory role, ERGA has already facilitated the useful exchange of experiences, knowledge and good practices on the implementation of the

AVMSD prominence rules (see ERGA 2020, 2020), and could therefore provide a basis for any additional guidelines at the European level. By doing so, guidelines at the European level could therefore help to prevent widely differing national transpositions, to ensure that the creation of the new prominence regime is not misused by Member States, and to address some of the power imbalances between international, national and local market actors that have emerged in this study.

iii. European Commission's Communication

Communications may include policy evaluations, commentary or explanations of action-programmes or brief outlines of future policies or arrangements concerning details of current policy. Policy proposals will never be put forward by means of a Communication. A communication on prominence might be a complementary instrument that could be linked to either the Digital Services Act or the European Media Freedom Act. It can therefore be used to evaluate the current implementation processes, to highlight its gaps and limitations, to provide additional guidance for Art. 7a (similarly to the guidelines discussed in the section above), to propose funding for the assessment of relevant regulatory initiatives which, at that point, would be fully implemented (e.g., to assess the effectiveness of the Interstate Media Treaty and to compare it with the situation in a country where Art. 7a has not been introduced, on the basis of audience research and experimental methods, as outlined in A2). A communication could also be linked to the question of the prominence and discoverability of news providers, and it could therefore be envisioned either as a two-part Communication, or as a separate Communication (see Section 5.1.2.2.).

iv. European Commission's statutory interventions

Statutory interventions at European level could involve different policy initiatives, which are not mutually exclusive and, on the contrary, some of them might be complementary. In the view of the authors, despite there being, as yet, an insufficient basis on which to justify specific interventions in the short term, there is, however, enough evidence to suggest that it would be sensible to examine and prepare policy options in the event that they may be required. With these premises, the policy options may include:

A. Revising the AVMSD.

Revising the text by introducing a mandated prominence provision, e.g., from “may” to “shall” or “should” or “must”. in Art. 7a, and/or extending the scope of application of these prominence obligations. A revision of the AVMSD's prominence rules should be based on independent research studies that assess the impacts on the markets of both the implementation of these provisions, and the lack thereof. Collaboration with the relevant working groups in ERGA could be helpful. If a need for further coordination was proven, a possible revision might look at two areas: 1) the scope of application; and 2) the material scope, which is intended as the criteria for defining public value content and various categories. There could also be two separate categories of public value services, such as absolute public value services, which would incorporate those regulated for internal pluralism, and relative public value services, which would incorporate those providers that meet ethical standards, but that may not be internally plural (see Hartman and Holznel, 2021). Different benefits could be granted to these two categories, leading to the creation of a tailored, graduated approach to prominence. It should be noted that the AVMSD was only recently revised after a long policy cycle, and that the European Union has limited competencies in this area, thus, there could be (heavy) resistance from Member States.

While it is too soon to recommend, on substantive grounds, whether a change in the AVMSD is required, due to the fact that some MS have not yet transposed prominence obligations, it

is important to mention that power imbalances in the current market dynamics have already emerged. During the stakeholder consultation, both PSM and national commercial broadcasters have indeed highlighted the presence of such power imbalances, *vis-à-vis* international technology manufacturers and international content providers that currently seem to have a stronger bargaining power in order to secure prominence on software and hardware services (see A1). These imbalances are even more severe when it comes to local providers, for whom the risk of “falling off the screen” is even more present than it is for established national PSM and commercial broadcasters. A more in-depth economic analysis will thus be required once all Member States have implemented the 2018 AVMSD, with a closer investigation of the impacts that these power imbalances have on national and local providers in different audiovisual markets.

B. Extending ‘must carry’ provisions.

Under Article 31 of the *Universal Service Directive*, Member States may impose reasonable must-carry obligations for the transmission of specified broadcast channels and services, subject to necessity, proportionality and periodic review. These could be revised and potentially extended in a number of ways: to oblige a greater variety of services to carry a defined form of general interest content. In the longer term, depending on the evolution of the market structure in audiovisual services, it may be necessary to replace both Article 7a AVMS (prominence) and Article 31 of the USD (must carry) with a single converged rule, which specifies that MSs may (or should) make audiovisual services of general interest prominent on a wider range of services, also including, for example, Very Large Online Platforms (‘VLOPS’).

C. Complementary action following the *Digital Services Act*.

The Digital Services Act may indirectly affect the prioritisation of general interest content by encouraging digital services coordinators to monitor and assess (i) the effectiveness of online platforms and VLOP’s risk mitigation strategies, (ii) the implementation of their content moderation guidelines and relevant codes of conduct, and (iii) the implementation of transparency provisions of their recommender systems. As these recommendations will be published after the final agreement on the DSA, we would like to highlight some aspects of the DSA that could be further strengthened with complementary actions in order to specifically encourage the prioritisation of defined categories of services, while avoiding unlawful discriminatory treatments, and increase transparency over these processes.²⁸⁹ For instance, the approved transparency reporting provisions could be further strengthened and integrated in the implementation phase by including prioritisation measures alongside content moderation practices. In other words, the transparency provisions for all intermediary services (Article 13), online platforms (Article 23), and very large online platforms (Article 33),²⁹⁰ could be used as a legal basis for asking a higher level of transparency over the criteria and measures used to prioritise content through recommender systems (and other means) in order to ensure a higher level of transparency and accountability over both content moderation and prioritisation decisions. If deemed necessary, a tiered approach could be applied for VLOPs that constitute the key gatekeepers of specific providers, such as news and journalistic content providers. These clarifications could be provided in a Guidelines, Communications or Codes of conduct that might derive from the implementation of the DSA, and they could refer to the importance of the existing best practice standards, such as the

²⁸⁹ Discriminatory practices in this area are partially covered through the DMA and its ranking provisions.

²⁹⁰ Articles hereby mentioned refer to the draft agreement publicly available at the time of writing.

Council of Europe's Guidance note on Prioritisation, or directly to the principles contained therein.

D. European Media Freedom Act

The EMFA could provide the legal basis for the aforementioned soft and/or hard regulatory interventions (European Commission, 2022). Given the evidence and data gathered in this study, as well as through the EMFA's consultation and impact assessment, the EMFA could provide the legal basis to task either the European Commission or ERGA to lay the ground for a more harmonised framework for prominence and discoverability rules. As highlighted both in the Policy Toolkit section of this report and in the previous chapters, guidance on certain elements of new prominence regimes would be beneficial for both industry representatives and national regulators. While EMFA could set out the general framework, the European Commission and/or ERGA could then have the discretion to set out a code or a soft law instrument, providing clarity around the definition of general interest services and the scope of application, advancing the shared principles that should be guiding such policy reforms at the national level, and advising Member States on how to create non-discriminatory and transparent systems that can be adequately monitored and assessed throughout the years. By providing the legal basis, the specific codes and guidelines could then be developed as separate soft law instruments, such as a Guidance or Communication (see sections above), and in alignment with the recently published Guidance Note from the Council of Europe.

E. Competition Policy

While competition policy is beyond the scope of this study, it is important to highlight that this is a relevant policy area for prominence regulation. Indeed, prioritisation practices may be considered anti-competitive and they may undermine the contestability of markets in ways that are relevant to the new regime under the *Digital Markets Act*, and new obligations for gatekeepers may undermine prioritisation regimes.²⁹¹

v. Introducing new rules for online intermediaries

Here, the options for interventions are much broader and less specific, if compared to the aforementioned options on AVM services, since it is still a new policy area that is currently evolving. When it comes to online intermediaries, the primary concerns in recent years were related to data protection and negative content regulation, which led to a series of initiatives and interventions to curb and limit the negative impacts of data surveillance, profiling techniques and discriminatory practices, and to improve content moderation practices, while reducing the spread of disinformation and harmful content online, mainly by self-regulation. However, prominence regulation concerns the realm of positive regulatory interventions, which, at the moment of writing, mainly focus on transparency and accountability obligations (see A2).

Given the novelty of this policy area for online intermediaries, during the stakeholder consultation it appeared that there was more support for soft regulatory interventions, rather than for primary

²⁹¹ As highlighted in the approved DMA text indeed, ranking of intermediary services like search engines is a form of prominence (Article 2). Gatekeepers, which are often vertically integrated and offer certain products or services to end users through their own core platform services, frequently have conflicts of interest and potentially anti-competitive behaviours as they can reserve a more prominent position to their own offers and services in terms of ranking, and related indexing and crawling, as opposed to third-party products offered on their platform services (Recital 48). The referenced articles refer to the draft agreement publicly available at the moment of writing.

regulation, due to the fact that there is still mixed evidence when it comes to the impacts that current prioritisation measures have on users and on AVM content providers. When it comes to news specifically, though, numerous initiatives, including the development of CEN industry standards (JTI 2019), have already paved the way for self-regulatory instruments and soft law interventions, thus, if such means were insufficient to achieve a pluralistic, diverse and fair distribution of news content online, stronger interventions which may provide more certainty, and enforcement power might then be justified. The following sections will present and discuss some of the available options at the European level, starting from self-regulatory instruments and continuing to co-regulation and statutory interventions.

vi. Self-regulatory standards

The first step would be the development and scaling up of industry self-regulatory standards. As discussed in A1 and A2, when it comes to news media outlets and press, the leading example of CEN standards is the Journalism Trust Initiative (JTI). The process- and principle-based criteria that have been developed by JTI into industry self-regulatory standards are currently applicable to media outlets on a voluntary basis (A2, pp.64-66), with the hope that they will gain broader support from the industry and a higher number of certified organisations. This standard is indeed defined as “a normative, non-proprietary benchmark for internal and external assessment of media outlets”, which covers the “institutional and process level of journalistic production” as it looks at the characteristics of media companies and the internal procedures of content production (JTI 2019).

As the implementation phase continues, there are a number of other applications for the JTI standards that could be useful for both regulators and online intermediaries. Regulators could use JTI to identify those media actors that have complied with the higher professional norms and requirements that are related to the production of reliable and accurate information and the promotion of media pluralism and diversity in the market, and could even use these standards to reward such media actors through some direct or indirect form of subsidies (JTI 2019, p.22), including prominence benefits. Similarly, online intermediaries could use JTI as one of the indicators of “trustworthiness” or “public interest” journalism, and use it to “support the principle of surfacing (or locating) authoritative sources of information online for the benefit of societies” (JTI 2019, p. 22), in other words, they could use them in their content policies and prioritisation processes so as to decide which news media actors can be granted prominence and easier discovery.

While JTI is the only initiative that has gone through the official EU CEN standardisation process, with the rising concerns around disinformation online, other networks are also striving to develop self-regulatory instruments, such as principles and guidelines for ‘trusted’ or ‘public interest’ journalism, such as News Guard and its ‘trust ratings’, the Trust Project with its ‘trust indicators’, or the Credibility Coalition and its guidelines to promote online information quality (EDMO 2021, Mazzoli 2022). In this context, during the stakeholders consultation, several news media organisations highlighted their preference for a plurality of self-regulatory standards, and researchers have also warned against the use of indicators as the single means for determining the trustworthiness of content sources may create a media environment in which “established players gain further competitive advantage, while new players face unprecedented barriers to entry,” (EDMO 2021), thus leading to problems for media pluralism, and distortion in the media market (Mazzoli 2022). Indeed, as has also been highlighted in the stakeholder consultation, the combination of industry standards for news media outlets with prominence obligations for online intermediary services, could have

impacts on the competitive dynamics of the market, thus, requiring a closer analysis from the relevant competition authorities.²⁹²

While it is beyond the scope of this report to evaluate whether one common standard or a plurality of standards would be the most suitable, we can briefly outline the advantages and limitations of these options. On the one hand, as highlighted by the research participants from JTI, having a plurality of standards could be counter-productive, and it could undermine the objective of achieving standardisation and harmonisation around the definition of trusted and public interest journalism. In addition, it would also foster a virtuous cycle within news media organisations, as well as online intermediary services, if such standards were to be combined with prominence obligations for platform organisations. They could indeed improve current industry prioritisation measures and internal content policies by providing an agreed set of criteria that could be used to promote trusted and high-quality journalism and reduce the spread of misinformation online. On the other hand, as pinpointed during the stakeholder consultation by a representative of the news media and publishers' trade associations, having different and competing self-regulatory standards could also increase the quality of news production, distribution and access, while limiting some of the concerns arising from one main industry standard. In that regard, the main concern is that if one standard, like JTI's, was to become a default option for the online intermediary services of platform organisations to use in their recommendation and ranking systems, the prerequisite is that all of the independent free press should be signed up to that standard, or could have at least the possibility to apply for that certification, in order to avoid biases and unwanted discrimination. Furthermore, not all publishers appeared to be willing to sign up to all the criteria outlined by JTI, and therefore suggested a tiered approach combining mandatory and voluntary criteria.

Overall, though, if the European Commission and NRAs were to support and scale up these initiatives, and/or the JTI standards, they should do so only if it is possible also to secure a fair and accountable implementation with self-assessment and accreditation processes that are independent and auditable. This is especially the case if governments were to support its implementation through complementary co-regulatory interventions (see below), as transparent and procedurally fair processes for reviewing the criteria for 'public interest' journalism will be crucial. While prominence algorithms have the potential to promote trusted news sources, they can likewise be exploited for soft forms of censorship or propaganda, thus having implications for democracy and human rights (Mazzoli 2022). Finally, to limit potential biases and undue discrimination, it is important to give equal opportunities to all news and media outlets to apply for such standard certification and to undergo the self-assessment process, which can be time- and resource- consuming. *Ad hoc* forms of financial and/or skills-based support might help, in particular, local and small providers, and it could also help them to improve their own services in the long-term.

²⁹²The importance of competition frameworks in the context of news prominence on online intermediary services offered by platform organisations has actually been highlighted also in other policy reports and regulatory initiatives. For instance, the recently published OECD report (2021) discusses the competition issues arising from the control that platform organisations have over curation and prioritisation of news content on their intermediary services, as well as from their market power, which *de facto* allows such organisation to determine requirements that are essential to obtain more prominence and visibility on those services. Furthermore, in Germany The Bundeskartellamt has initiated a proceeding against Google to examine under competition law Google News Showcase service, which is a service offering the possibility to present news content from publishers in a prominent and more detailed way. In particular, the Bundeskartellamt is now examining whether the announced integration of Google News Showcase into Google's general search service is likely to constitute self-preferencing or an impediment to the services offered by competing third parties (OECD 2021; Bundeskartellamt 2021)

vii. Co-regulatory interventions

While industry standards have the potential to create a virtuous cycle for both news media actors and online intermediaries if implemented correctly, at the same time, they also present the intrinsic limitations of any self-regulatory instrument, i.e., relying on the “good faith”, self-assessment and reporting practices of those who should be complying and using them. To strengthen the existing self-regulatory frameworks, there could be at least three policy options at the European level.

A. Strengthening the EU Code of Practice on Disinformation

This Code of Practice has proven to be a valuable instrument to ensure greater transparency and accountability (European Commission 2018, 2020, 2021). However, as has also been argued by EDMO, “the self-assessment has so far failed to live up to the expectations, as platforms were arbitrarily interpreting their requirements, while the numbers and data they provided were often incomplete” (EDMO 2021, p. 22). One of the policy options that is currently being discussed is the strengthening of this Code of Practice through the development of a co-regulatory framework which, among other obligations, could include provisions around content prioritisation, the prominence/discoverability of public interest news outlets. To identify such actors, one option could be to use the existing JTI standards - if they manage to gain sufficient traction and support - or another one could be to include a list of supported indicators (including the JTI industry standards), amongst which online intermediaries could choose when they prioritise content on their services and interfaces. The decision should be based on the evaluation of the advantages and disadvantages of relying on one standard, or on a combination of certified standards and other independent initiatives.

B. Strengthening the DSA provisions with complementary actions

As these recommendations will be published after the final agreement on the DSA, we would like to highlight some areas of the DSA that could be further strengthened with complementary actions, such as any guideline, communication or code of conduct that might derive from the implementation of the DSA. The areas that would be relevant for the improvement of current prioritisation practices of online intermediaries, include:

- **Due diligence and transparency reporting obligations:** transparency obligations over data practices of online intermediaries are one of the core provisions of the DSA, and it is important that such transparency will cover the use of recommendation systems for both content moderation and content curation practices.
- **Human rights in risk assessment frameworks:** risk assessments for VLOPs refer primarily to content moderation practices, but also to recommender systems, which, in turn, have an impact on what content is made more or less accessible, discoverable and prominent to the final users. In this sense, when implementing these provisions, content curation and prioritisation measures could thus also be included as part of these risks assessments. Risk mitigation measures and independent auditing systems are also highly relevant for the successful implementation of these new obligations
- **User choice in recommendation systems:** the approved text focuses primarily on transparency requirements for VLOPs and their recommender systems. However, as highlighted in this study (see A1), and in the Council of Europe reports (Mazzoli and Tambini 2020; Council of Europe 2021), unevenly distributed behavioural nudges and technological design can influence users' choices and the types of content that surface on their searches, feeds, and interfaces, potentially perpetuating uneven patterns of user empowerment and disempowerment. Transparency over the criteria may thus not be sufficient to empower users' choices over what content is recommended to them. A solution, which is also discussed in the DMA, and which has received wide support from civil society organisations

(see, for instance, ARTICLE 19, 2020 2021a; Panoptykon Foundation 2021) is to allow the unbundling of hosting and content moderation activities (see also, Stasi 2020). Achieving this goal with complementary action or future initiatives in this area would be very relevant as this solution could give users' the choice between a plurality of recommendation systems, with different optimisation techniques and with opt-in/out functions, while opening up the market through functional separation (Stasi 2020, pp. 8-9).

5.2 Statutory interventions

European Media Freedom Act

The EMFA could provide the basis and mean for the aforementioned self and co-regulatory interventions, as well as for any additional ethical guidance and code of conduct on prioritisation. In particular, given the evidence and data gathered in this study and through the EMFA's consultation and impact assessment, the EMFA could provide the legal basis to task either the European Commission or the relevant national regulators to lay the ground for a more harmonised framework for prominence and discoverability rules for news on online intermediary services. This could, in turn, strengthen the ongoing work around the *Code of Practice on Disinformation*, as well as the obligations that will be introduced through the DSA to improve the overall fairness and transparency of online intermediary services that are offered by platform organisations.

For instance, the EMFA could establish a single Media Transparency regime which would provide more active transparency for consumers, not only about media ownership, but also about the transparency of allocation of all State resources, such as State advertising, fiscal subsidies and prominence benefits (see also, B4). This regime should be managed by a network of independent regulatory authorities, with enhanced independence from States, but with clear accountability to multi-party committees of national parliaments and to civil society. This enhanced transparency regime should be bolstered by new duties to promote critical media literacy on the basis of more reliable information that is based on new transparency and reporting duties on platforms.

Furthermore, the EMFA could also set out the general positive and negative principles that are discussed in this policy toolkit. Precisely because due prominence provisions are a market intervention with positive and negative effects on the broader media ecosystem, and they bear the potential also for abuse and censorship, the combination of European high-level principles and a legal basis for additional self- and co-regulatory instruments might promote high standards of transparency and accountability in this emerging policy area and, in turn, positively contribute to the overall fairness, diversity and sustainability of the media system.

5.3 Shared ethical guidance on prioritisation

The debate about platform governance, disinformation and harmful content has been focused on the negatives: on how to block, filter and downgrade content that may be considered to be individually or socially harmful. Initiatives, such as the *Code of Practice on Disinformation*, have led to concerns about privatised censorship, on one hand, and accusations of foot dragging and ineffective protection, on the other, and eventually to the shift to co-regulation incentives in the *Digital Services Act*.

There is also space for a more positive intervention: not only about what can be blocked, but about what should be considered to be public interest content that is worthy of promotion. The current practices, even among market leaders such as Meta, is to refer vaguely to 'human rights' standards, to develop their own vague definitions of "trusted", "quality" or "public interest" services and, in certain

cases, such as the COVID-19 pandemic, to defer to State bodies (see A1 mapping), which may create dangers for trust, particularly with regard to such market dominant players. The Council of Europe has issued guidance on good practice in prioritisation, but there is a need for the development of industry-wide guidelines on content curation and moderation, in order to foster users' trust, transparency, and the balance between conflicting values.

Shared ethical guidance on prioritisation also relates to the use (and misuse) of data, as well as to the underlying power imbalances that characterise today's online media environment (see Mazzoli and Tambini 2020). Data profiling and targeting techniques are widely used in this area, and it is therefore pivotal to ensure that content prioritisation measures do take into account the existing ethical frameworks so as to avoid the commercial exploitation of users' data (see also, B4). There is an expanding body of research that could be used as a source of inspiration to promote critical approaches to data ethics, especially when it comes to recommendation systems, machine learning (ML) and artificial intelligence (AI) (see, for instance, Ada Lovelace Institute, 2020; Helberger et al. 2019; Yeung 2019). Moreover, policy makers and institutions have also been working on promoting principles and guidelines for responsible and transparent, AI systems (see, for instance, European Commission 2019; OSCE 2021), as well as the human rights risk assessment framework (Council of Europe 2021). Last, but not least, some media organisations themselves, have also been working towards the development of public interest frameworks for data practices and content prioritisation measures, for instance, public interest-driven recommendation systems (see, A2, Section 2.5.1) and ethical ML principles (see, for instance, BBC 2018, 2021).

Finally, issues of data and market power are also inevitably linked to questions around prioritisation and prominence regimes. As highlighted in Part B of this Study (see, B4), there is indeed evidence of the concentration of market power in the hands of intermediary and auxiliary service providers from the accumulation of the data required for advertising targeting, since these are the services that are involved in the trade in online advertising, upon which many media are dependent, particularly press publishers and the smaller online media. Alongside the development and adoption of ethical data practices, data sharing and data portability requirements have thus been proposed as a way to limit the market power of such intermediaries (Furman et al. 2019). Suggestions on how this could be achieved and mandated in the context of the DMA and beyond have been advanced in Chapter B4.

5.4 Transparency reporting and human rights assessment frameworks

As highlighted by civil society organisations in the ongoing policy debate on the DSA and DMA, human rights assessment frameworks and independent audits could improve the current content moderation and the curation practices of platform organisations, as well as increasing the accountability and transparency of the algorithms that are used by these organisations for targeting purposes (see, for instance, ARTICLE19 2020; Algorithm Watch 2020; Amnesty International 2022; Panoptikon Foundation 2020; McGowan 2021, etc.). The importance of human rights assessment frameworks has also been emphasised in the guiding principles for content prioritisation that has been advanced by the Council of Europe, whose primary interest is to protect democracy, freedom of expression and the rule of law. Indeed, the principles in such a document offer a checklist of reference points to guide States and public authorities, platforms and intermediaries, media actors, and civil society organisations as they seek to shape, to deploy and/or to monitor content prioritisation and to develop human rights risk assessment frameworks and codes of conduct (2021, pp. 3-4).

While additional obligations in this area cannot be introduced directly in the DSA and DMA texts as a political agreement will be reached by the time of this publication, it is important to start reflecting

on how, in practice, they could be implemented and independently audited. Both the Council of Europe's principles and existing civil society initiatives could be taken as the starting point for this work. In this regard, an example of an existing human rights assessment framework, is the *Ranking Digital Rights Corporate Accountability Index* (which is also discussed in A1 and A2), which annually evaluates some of the world's most powerful digital platforms and telecommunications companies on their disclosed policies and practices that affect people's rights to freedom of expression and privacy (RDR 2020).

5.5 EU competences and a diverse regulatory landscape

To conclude, when considering the aforementioned policy options, the European Commission should also critically reflect on two fundamental points: firstly, on the limitations deriving from the EU competences in this area, and, secondly, on the possible implications that a diverse and potentially fragmented regulatory landscape, with different national prominence regimes, may have for the digital single market. Due to the fact that Member States have only recently transposed prominence rules into their national regulatory frameworks, it is too early to assess whether the current approaches are likely to pose risks to the single market.

It is crucial to comprehend the limits of EU competences generally in order to be able to determine the possible scope of action for the EU, with regard to matters concerning media pluralism, diversity and prominence. The scope and content of EU legal instruments in the media sector in addressing aspects of media pluralism are based on the EU competences, as derived from the EU Treaties (see T0). Based on such competences and their legal basis, what is left is for the EU to mainly regulate media pluralism from an economic perspective, which allows EU action that is based on the guarantee of an internal market for services (see T0). The establishment and functioning of the internal market is thus the prime legal basis for all EU media policy measures, and any new prominence rules at the EU-level should also be justified on those grounds.

When it comes to further harmonisation, though, the EU can intervene to further harmonise the single market where necessary (Article 114, TFEU), or where there is general agreement among MS (Article 116, TFEU). However, any additional intervention that is aimed at strengthening the current regime and reaching a higher level of harmonisation of prominence rules, will require a balancing act between national policy objectives for the pluralism, diversity and prominence of general, or public interest, services, on the one hand, and the objective of safeguarding the EU single market, on the other. As highlighted during the stakeholder consultation, on the one hand, the emergence of different national approaches may increase the fragmentation of the regulatory landscape, rather than strengthening the single market, according to technology manufacturers and platform organisations. On the other hand, though, in relation to the existing power imbalances that have been highlighted by national and local content providers, both broadcasters and news media outlets call for additional safeguards that can take into account the national specificities of different Member States. The impacts of newly introduced prominence measures (or the lack thereof, in those countries that have not implemented them) for the single market, will have to be triangulated and proven with additional research once all of the new rules will be implemented and adopted by the relevant industry actors.

In the meantime, though, we could briefly unpack the heterogeneity of these rules which, to some extent, is not new to European media and communication regulation. On the contrary, this diversity is intrinsically tied, firstly, to the historical tensions between the fact that EU Member States should maintain a degree of self-determination for their national culture and cultural diversity, in a way which would not excessively hamper the free movement of services in the EU; and, secondly, to the specificities of each of the national contexts, and the political, economic, societal and technological

drivers of the respective regulatory frameworks. The diversity of regulatory approaches to prominence can, indeed, be related to the intrinsic characteristics of each of the national markets, which include, but are not limited to, their underlying structures and power relations, as well as their governance systems.

For instance, in Italy, local television broadcasters have historically played a significant part since the beginning of their activities, thus, safeguarding a diverse and pluralistic media system in Italy is strictly connected with ensuring the preservation of this variety of local channels, including regional public service broadcasting, through different regulatory means, such as EPG and LCN prominence regulations (e.g., EAO 2016, pp. 63-66). The definition of services of general interest in Italy is thus tightly related to historical and geographical reasons, as these local media are often seen as representative voices, even in an increasingly globalised market (EAO 2016, p. 68). Furthermore, the prominence granted to DTT broadcast channels in the revised LCN system (see, A2, pp. 32-33), could be also linked to the fact that DTT is still highly significant in the Italian AVM sector, with a market penetration of 87.9%, compared to internet-distributed television and satellite television (CENSIS 2021; Santoro 2021). This penetration is higher than other European markets, as the extent to which DTT is a significant means for the delivery of television services has always varied widely among countries (EPRA 2016; EAO 2016). While the free DTT platform is thus very important in three of the largest European countries, i.e., the UK, Italy and Spain, it is of much less significance in Germany (EPRA 2016; EAO 2016).

The Italian case is taken as example of how the characteristics of national markets can, to some extent, influence the presence of different policy approaches to prominence rules at the European level. Indeed, as outlined also in each case study (see, A2), prominence measures should be contextualised and framed within each national case, as they are inevitably linked to the pre-existing rules in that specific country, to the priorities and policy objectives that the national regulators and governments have set out, and to the different political, economic, societal and technological drivers that may influence such regulatory approaches.²⁹³

6. Conclusions: The prioritisation of general interest content and media pluralism

EU Member States and different institutions are increasingly engaged in developing prominence regimes for general interest and public service media. These may have unintended consequences for competition, media pluralism and the single market. They may raise barriers to entry, favour technology and media organisations that can leverage on their pre-existing digital dominance (Moore and Tambini 2019, 2022), or facilitate increased State control of media, and they may result in a patchwork of regime types that create problems for the single market and for users' trust and transparency.

The objective of this third, and last, Chapter of Part A of this Study was to reflect on the insights gathered in A1 and A2, and to outline and discuss policy options in two main areas, respectively, AVMS regulation and online intermediary regulation. A more in-depth impact assessment of each of the policy options would then be needed if the European Commission, and/or the national governments, were to further legislate in these areas. At the same time, though, some of the policy options discussed here are relatively uncontroversial and could thus already be undertaken in the short term. These include:

²⁹³The case studies discussed in A2 provide additional example of how national specificities in Germany and the UK might be related to the specific prominence rules recently proposed in those countries.

- A clear facilitation and leadership role for self-regulation initiatives by the European Commission and/or ERGA, depending on whether we are looking at AVMS harmonisation or online intermediary and platform regulation. The EC has already used its convening power to coordinate self-regulatory standard setting, by industry and civil society, through multi-stakeholder processes in the area of negative content regulation through, for example, high level groups and the *Code of Practice on Disinformation*, and in the area of terrorism and hate speech. We therefore believe that there is a role for the EC to continue to balance these initiatives by facilitating best practice, standards setting and self-regulatory codes of practice in the area of positive content regulation, for example, by facilitating the emergence of industry standards and self-regulation in the area of the prioritisation of public interest content.
- Financial support for civil society, and industry standard setting for content standards, such as the Journalism Trust Initiative. There is a strong argument that more than one initiative will be necessary in order to protect media pluralism.
- Financial support for pan-industry transparency codes on prioritisation practices. Transparency is not forthcoming, and there appears to be little incentive to support these voluntarily.
- Support for the independent monitoring of self-regulation by independent civil society and academic research.

While self-regulation and other soft law interventions are the least controversial options outlined in this chapter, it should be noted that they also have some intrinsic limitations. Codes of practice and self-regulatory industry standards are indeed difficult to uphold, and they mostly rely on voluntary efforts from industry actors, which are not always sufficient to achieve broader societal and public interest objectives, and they are not easily auditable by independent third-parties. As highlighted also in the Guidance to “strengthen the *Code of Practice on Disinformation*” (European Commission 2021), the limitations of these soft law instruments are increasingly evident, especially when it comes to the industry practices of large media and communication intermediary services, which are offered by platform organisations. In this regard, as Tambini and Moore highlight, the growth and autonomy of these intermediaries, “should no longer be treated as unconditional liberties”, but “they should become conditional on certain ethics and norms of behaviour as the basis of a new social contract” (2022, p. 12). The political will is building, the evidence is growing, and the European Union has the opportunity to offer such a framework for a new social contract through its interlinked proposals – namely, the DSA, DMA and EMFA. These frameworks can therefore pave the way for the co-regulatory and statutory interventions that were also outlined in this Chapter – such as the revision/strengthening of Art. 7a of the 2018 AVMSD and of the must-carry provision under the USD – subject, however to further consultation and research. Finally, some policy options are long-term and uncertain, but they could provide long term objectives, e.g., move to a converged system of prioritisation obligations under the DSA, which could have integrated and complemented, if not even replaced both AVMS and USD. However, the *caveat* behind the outlined policy options, which we have emphasised throughout the report, is that more evidence is needed before further intervention, as well as more clarity in regard to what the underlying issues, desired policy outcomes, and rationales for intervention, would be.

CENTRAL RECOMMENDATIONS:

- This final section proposes and discusses policy options and recommendations for European policy makers and Member States on how to develop transparent and accountable prominence regimes that can cater for the ongoing changes in the media landscape and address the potential impacts of content prioritisation practices, while carefully considering the implications for freedom of expression, media pluralism, diversity, privacy and human autonomy (including the right to informational self-determination)
- The chapter outlines a policy toolkit, and an overview of the different policy options in this area, covering statutory, co- and self-regulatory options.
 - **Policy toolkit** provides guiding principles and practical advice on how to develop new prominence and discoverability rules while reflecting on both advantages and limitations of such interventions. As outlined in the policy options, these principles could also feed in future Guidelines from the European Commission in this area. More specifically:
 - we outline and discuss the importance of having clear rationales and objectives which are backed and supported by data and evidence of the underlying issues that these new rules should be addressing,
 - we advance positive and negative principle that should be guiding such policy reform, including internal market principles that are relevant for any additional regulation at Eu level
 - we propose a list of possible criteria that can be used to define and determine what services could benefit from these rules,
 - we discuss the advantages and limitation of more or less prescriptive regulatory interventions (scope of application)
 - we provide advice on how to assess and measure the effectiveness of these rules in achieving respectively prominence of general interest or public interest services, and users diversity of exposure, highlighting the importance of setting out adequate reporting mechanisms
 - we conclude by arguing that care must be given to trust and accountability of the prominence measures as a whole from early on in the process, in order to ensure that media actors will remain independent and free. Notably through ensuring that criteria for determining public interest content, the processes and assessment frameworks are independent and perceived as such.

Policy options

This part of the study then concludes by providing an overview of the different policy options in this area. The scope of this final Section reflects the EU competences in this area, and is mainly focused on two areas of intervention, **namely audiovisual media services regulation, and new regulatory avenues for digital intermediary services. In each area the outlined options cover statutory, co-regulatory and self-regulation policy options,**

in order to provide a full overview of the potential regulatory avenues and reflect on the advantages and disadvantages.

7. Methodologies

7.1 Methods applied in the context of Chapter A1

7.1.1 Mapping of legislative measures

The mapping of legislative measures had a legal focus, in which the Consortium has mapped existing and planned legislative measures that are related to the prominence and findability/discoverability of audiovisual media services and news content, and services that are of general interest, including the measures pertaining to digital/voice assistants, as well as ‘must carry’ and EPG rules.

a) Desk research and document analysis

In the first step of the mapping exercise, the research relied on data that was readily available within the consortium as input for a structured inventory. Where data was lacking, the research team performed a first screening through desk research, relying on the internal staff of the consortium partners (which, due to its nationally diverse character, allowed the study to overcome significant linguistic barriers). Additionally, at this stage local experts were contacted for those countries for which a preliminary assessment would have otherwise not been possible. These experts originated from contacts provided by the consortium members themselves. These local experts were contacted via email, with the request to either assist in identifying the right sources, or to confirm that measures were indeed non-existent.

The various measures to be included in the study (prominence rules; must-carry/must-offer rules; other) will be mapped and analysed on the basis of a common template that covers key features: a) the rules prescribed, b) the actors to whom the rules apply, c) the type of content and services that are positively discriminated (i.e., content and content providers that are considered to be of “general interest” or of “public interest”); d) how the implementation of the rules is ensured in practice, including the relevant data gathering/monitoring methods.

Information under a) looks more specifically at the area of regulation (broadcasting/audiovisual media - electronic communications - other); the form of regulation (statutory intervention - regulatory decision - individual decision (as in the case of licensing conditions); and, where relevant, the status of the regulatory cycle.

Information under b) specifies the types of actors (within the relevant category) at a sufficiently granular level in order to understand whether the measure applies to, for instance, all audiovisual media service providers, or only to linear (or on-demand) providers, to both commercial providers and to PSM (or only one of those), etc.

Information under c) is a comparable exercise, in order to specify whether, for instance, only PSM content, or also commercial providers’ content, benefits from the measure discussed, whether the measure only covers linear broadcasts, or also on-demand services, etc.

Information under d) covers the following aspects: is there an administrative or judicial body that is actively monitoring compliance with these rules and/or hearing complaints; if so, what is the

competent supervisory authority, and which methods does it deploy to gather relevant data; does the law grant that body effective sanctioning/enforcement powers in case of non-compliance.

More information on how to read the mapping tables may be found under Annex A.I 'Key to reading the mapping and the overviews of the legislative measures'.

b) Expert feedback on A1 mapping of legislative measures

In a second step, a survey amongst media experts of every mapped country took place with a two-fold objective: firstly, revising, updating and completing the table overview of mapped legislative measures, and, secondly, enquiring about practical experiences with the measures. Concretely, the relevant sections of the mapping overviews were extracted from the general mapping, so as to provide a brief overview of the preliminary mapping status for a specific country. This extracted mapping was then sent out to experts to double-check its contents, allowing for expert to directly enter their input into the table for ease of re-integration with the larger mapping of Annex A.

For this survey, CMPF (EUI) reached out to its network of experts via its Media Pluralism Monitor, more specifically, the survey was sent out to all members of the Group of Experts as presented on the MPM platform by the MPM Country Teams for the current implementation year of the MPM (2022). According to the MPM methodology, the Group of Experts is composed of various types of media experts. Though not every Country Team will have submitted expert details for every category, the available variety does enable the A1 mapping to access multidisciplinary expertise and practical experience on the current state of the mapped legislative measures. The categories of experts are:

- Academic/NGO researcher on social/political/cultural/legal/economic issues related to the media;
- Representative of a media regulator;
- Representative of a journalist association;
- Representative of a publisher association;
- Representative of a broadcaster association;
- Representative of a media users/consumers organisation;
- Representative of an Internet Service Provider/Video Sharing Platform/internet platform/social media service provider.

The survey was open between 16 and 30 November 2021, with exceptional extensions into early December. The survey received a total of 30 responses, applicable to a great variety of countries.²⁹⁴

c) NRA feedback on legislative measures' practical implementations

In a third step, NRA's were given the opportunity via the ERGA network to comment on the resulting mapping of prominence, findability and exposure measures specifically. The goal of this step was to not only triple-check the validity of the mapping results, but also to gain additional practical insights into the measures' implementation. The focus of this survey was therefore on the implementation of the assessed measure in practice. This included the possibility to notify us of any more novel happenings related to the measure which were not publicly available yet or difficult to find via desktop research given any linguistic barriers. The survey questions were formulated in an open format, to allow participants to openly share any relevant information they may have.

²⁹⁴ Experts responded with feedback for the following countries: Albania, Belgium, Czech Republic, Estonia, Finland, Ireland, Latvia, Hungary, Lithuania, Malta, Montenegro, the Netherlands, Portugal, Sweden, and the UK.

The survey was sent out via the ERGA network, in combination with a related survey of the B part of the study on the implementation of the measures assessed therein. The survey ran between 6 and 31 December 2021, with exceptional extensions into early January. The studies received a total of 16 responses relevant for both parts of the study.²⁹⁵

More concretely, the survey contained the following questions:

[Application in practice] Does the government in your Member State have a specific role or function with regard to the implementation of the measure? E.g. deciding which content may benefit from the measure or to which actors the obligations will apply.

[Oversight] Is there the National Regulatory Authority assigned to maintain oversight of the measure's implementation in practice?

[Enforcement] Who is the responsible body to enforce the measure, and do they have the competence to enforce specific sanctions in case of non-adherence?

[Alternative regulation] Are you aware of any other self- or co-regulatory efforts with regard to these types of measures?

[Ongoing discussions] Are you aware of any ongoing policy or political discussions that have not yet made it into a legislative drafting stage?

7.1.2 Mapping of non-legislative measures

The mapping of non-legislative measures was carried through a two-fold data collection and analysis process: a literature review and documents analysis, integrated with complementary structured experts' interviews with industry representatives.

a) Desk research and document analysis

Firstly, with regard to the literature review and document analysis, the members of the Consortium began a first mapping of existing documentation, covering where data is available, also private sector initiatives, guidelines and processes of content prioritisation mechanisms of private and public organisations. The number of sources compiled covers the following type of material: peer-reviewed journal articles; specific journals; grey literature. The grey literature has been used to further explore or confirm findings from peer reviewed literature, to provide further evidence and examples on a particular topic or to fill any gaps. For quality assessment purposes, it is important to consider the impact of bias and credibility of sources as part of the literature review. Industry and policy publications were therefore part of the grey literature category, and included, but were not limited to, organisations' distribution policies, content policies and guideline, transparency notice reports and help pages, and industry standards.

b) Structured interviews to experts

Secondly, where gaps were identified, complementary structured qualitative interviews with experts working on content policies within the identified organisations have been carried out. To maximise the outcomes and time of industry stakeholders and experts, and given that part of the A2 aimed at gathering insights on the effectiveness of prioritisation measures from the same technical experts, relevant insights from these interviews fed also into the A2 chapter.

²⁹⁵ More precisely from: Austria, Belgium (FL), Belgium (FR), Croatia, Czech Republic, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, and Sweden.

Given the scope of the analysis, the research team has selected stakeholders who are involved in the curation and distribution of audiovisual media content (including news) online. More specifically, the interview plan was focused on two categories of actors, respectively:

EU-wide services intended as European trade associations representing key stakeholders. Based on the EU’s competences and the scope that is outlined in Part 0, we have focused, as a starting point, on the industry actors who are covered by the scope of the application of AVMSD and we will integrate that with an evidence review of selected technology manufacturers (e.g., smart TV producers) and social media platforms that are identified as being relevant to the prominence and discoverability of content online. Examples of the organisations that were contacted to take part in the interviews included, but are not limited to: the European Broadcasting Union (EBU), as the representatives of the Public Service Media; the Association of Commercial Television (ACT), as the representatives for the commercial broadcasters and Pay-tv operators; DVB, as representatives for the digital and online broadcasters; Digital Europe, as representatives of the Internet platforms (members include: Google, Facebook, Apple, TikTok) and tech manufacturers (members include: Samsung, Phillips, Nokia, Sony); the Journalism Trust Initiative; and civil society organisations;

International companies and platform organisations with intermediary services in the EU, covering platform organisations which provide search engines, social media, streaming, video-sharing services in the EU, and which therefore play a role in curating and prioritising content online. To reach such organisations, we have focused on interviewing representatives from the European headquarters and the Brussels-based offices. Examples of the organisations that were contacted to take part in the interviews included, but are not limited to: Netflix, Google (including Google Search, YouTube and Android TV), Amazon (including Amazon Video Prime and Fire TV), Apple, Facebook, Twitter, and TikTok.

In total, 42 industry experts have been contacted as part of this interview plan. However, only 20 representatives agreed to participate. Interviews were carried out between October 2021 and January 2022, mostly online via Zoom. Where agreed with the research participants, the interviews were recorded solely for the purposes of note-taking and data analysis. Recordings were kept securely and were accessed only by the researcher who carried out the interviews. Aggregated and anonymised input from the structured interviews was used in the context of A1 and A2 where relevant.

An example of the interview topic guide is included in the table below.

Table A3.5. Example of the interview topic guide and questions

Introduction	Brief introduction by the interviewer on the topic of the research, the confidentiality aspects the consent form	
Main interview body – information gathering process from technical experts		
1st section (deliverable A1) Existing industry measures and practices	OB: The study should map planned measures, private sector initiatives and internal standards, guidelines and the processes of public and private institutions regarding appropriate content	How much control do you have over the distribution, selection and curation of content on your services and devices? Is it all decided through commercial negotiations with content providers? What are the measures taken by your services (if any) to make trusted or quality content more or less prominent and discoverable to the final users? Examples from the COVID-19 pandemic might be used as prompts to start the conversation

Chapter A3. Options for policy intervention

	<p>prioritisation (the so-called “internal plurality”). Include references to the implementation of prominence provisions for EU works and general interest content (AVMSD)</p>	<p>How does the process for making public interest content more prominent relate to/ differ from the process for paid prioritisation or prominence distribution deals?</p> <p>Does your organisation have internal guidelines and/or content policy standards to follow when implementing such measures?</p> <p>Are they part of broader industry standards?</p> <p>If yes, which ones?</p> <p>If not, is there something that your organisation is doing differently/better, or that other organisations are doing differently/better?</p> <p>What are the criteria that are used to identify the content and information that is granted such prominence and prioritised placement?</p> <p>Do you have any transparency notices or measures around such criteria?</p> <p>Do you have specific measures to expand the breadth and diversity of the content that is prioritised and recommended to the users?</p> <p>[For services covered by AVMSD] how do you intend to comply with the newly introduced provisions of prominence for EU works and general interest content?</p> <p>Provisions will be specified in the interviews for clarification</p> <p>Have there been specific instances when your prioritisation practices have been the subject of external pressure?</p> <p>[prompt] Are you (or any of your member organisations) criticised by government or private interests, either publicly or privately?</p> <p>[for EU-wider services] within the aforementioned industry practices, are there any relevant differences among your member organisations?</p>
<p>2nd section (deliverable A2)</p> <p>Effectiveness and diversity of exposure</p>	<p>OB: the study should critically reflect on the effectiveness and suitability in safeguarding media plurality and diversity of the mapped prioritisation measures</p>	<p>How effective do you personally think that these prioritisation measures are in promoting health/ public interest content?</p> <p>How do you assess the effectiveness of your prioritisation measures on users’ access to content? Provide some practical examples</p> <p>What criteria and related indicators do you use to assess such effectiveness? Provide some practical examples</p> <p>[prompt] what specific metrics do you use?</p> <p>[If they have diversity measures] how do you assess the effectiveness of such measures for the final users? Provide some examples of measurements methods</p>

7.2 Methods applied in the context of Chapter A2

To complement the mapping of both legislative and non-legislative measures used to prioritise content (A1), reflect on the effectiveness of these measures on prominence and diversity of exposure (A2), and inform the policy recommendations of this study (A3), a multi-methods data collection was used for this Chapter of the study. This Chapter was divided into the following two sub-tasks, namely assessing and mapping measurement frameworks for exposure diversity; and a case study analysis of emerging prominence rules.

7.2.1 Assessing and mapping measurement frameworks for exposure diversity

To map the existing measurement methods of diversity of exposure, the research team has reviewed existing literature in this area, categorised it, and extracted a typology of methods used to measure diversity of exposure. The main sources of data were, respectively, desk research, through which academic and grey literature were reviewed and analysed; complemented with the insights gathered through the structured experts' interviews with industry representatives (see section A1 above).

7.2.2 Case study analysis of emerging prominence measures

Based on the A1 mapping, relevant case studies were selected for a more in-depth analysis of the different types of prominence regulation. The focus was therefore on analysing existing legislative measures and providing a critical evaluation of their implementation and perceived impacts on relevant stakeholders. The main sources of data were legislative texts, structured experts interviews and the policy stakeholder consultation. It should be noted that the data available on the effectiveness of existing legislative measures was limited and in most cases absent, since most of the newly proposed measures for online prominence and discoverability rules were still being implemented throughout the course of the research or were just transposed into law, and therefore their effects were not yet visible.

After a document and policy analysis of the available legal texts of the selected prominence rules, complementary structured qualitative interviews with experts working on such rules within the relevant national regulatory authorities have been carried out. In total, 4 experts were contacted, one for each country national regulatory authority of the selected case studies,²⁹⁶ of which 3 agreed to participate in an interview. One expert preferred to comment via written feedback only after internal discussion. One interview included multiple relevant experts from within the same NRA. Finally, one expert was interviewed for two of the case studies. Interviews were carried out between January 2022 and February 2022, online via Zoom. Where agreed with the research participants, the interviews were recorded solely for the purposes of note-taking and data analysis. Recordings were kept securely and were accessed only by the researcher who carried out the interviews. Aggregated and anonymised input from the structured interviews was used in the context of A2 where relevant.

The selected topics for the interviews concerned the following cases and related prominence rules:

Italy: Ongoing update to the **LCN** numbering system(what/why/how) and related **EPG** measures

Germany: Implementation of **art. 7a** + definitions/criteria of general interest content, as well as regarding the effectiveness of the non-discrimination/**equality principle** for journalistically edited offerings (what/why/how) (e.g. any complaints from content providers on why they were not selected/do not fall within the criteria)

UK: Ongoing discussions on suggested renewed EPG measures for **PSM content**

²⁹⁶ More precisely from: Italy, Germany, United Kingdom and Sweden

Sweden: Implementation of art. 13 AVMSD for European works

An example of the interview topic guide is included in the table below.

Table A3.6 Example of the interview topic guide and questions

Introduction	Brief introduction by the interviewer on the topic of the research, the confidentiality aspects and the consent form	
Main interview body – information gathering process from technical experts		
1st section (deliverable A2) Implementation process	OB: The study critically evaluate the policy objectives and the implementation of the prominence rules identified	<p>What stage of the implementation are you at with respect to the previously mentioned measure?</p> <p>What was the underlying policy or democratic objective of this measure?</p> <p>How does the competent authority plan its oversight over the implementation of the measure in practice? Is there any structural monitoring competence?</p> <p>Have there been any reports, e.g. transparency reports from the industry or review reports by the supervising NRA?</p>
2nd section (deliverable A2) Effectiveness and impacts	OB: The study critically reflect on the effectiveness of the prominence rules identified and the perceived impacts that they might have in the future	<p>Has the measure made an effective impact in practice in line with the underlying policy objective? e.g. such as on changing industry, changing on consumer practices</p> <p>How was this effective impact of the measure assessed?</p> <p>e.g. how can you measure impacts on discoverability on GI content</p> <p>e.g. diversity exposure or consumption of content.</p>

Finally, additional input on the existing legislative measures and their perceived impacts on relevant stakeholders was gathered during the stakeholder consultation which was organised as part of A3 (see section below), but whose data and insights were used also for the case study analysis and its critical evaluation.

7.3 Methods applied in the context of Chapter A3

To complement and integrate the findings of A1 and A2, the Consortium has organised and successfully conducted a stakeholders consultation in the form of a virtual workshop inviting industry, policy representatives and academic experts to discuss and provide feedback on the legislative measures mapped and analysed so far and on the envisioned policy options for future prominence rules. This form of stakeholder consultation was deemed to be a more efficient, effective and inclusive way of gathering input and data, than individual interviews or written feedback.

A total of 88 research participants took part in the stakeholder consultation workshop, out of which 20 were representatives from policy makers and regulators (more specifically from the national regulatory authorities, European institutions such as the European Commission and the Council of Europe, and EU bodies like ERGA and EPRA); 35 were representatives from relevant industry stakeholders with expertise in legal and policy affairs (the industry sectors covered included public and commercial broadcasters, technology manufacturers, platform organisations, news and press publishers, and advertisers); and 18 academics and research experts. Research participants were

also invited to provide additional written feedback after the workshop, but only one feedback was submitted.

The progress report contains more detailed information on the structure and agenda of the stakeholders consultation workshop. Prior to the event, the research team shared with all research participants a briefing document which included a summary of the A1 findings and a list of questions, which were meant to gather targeted and useful insights and more efficiently steer the debate during the panel discussions. More specifically, the workshop covered two policy areas that concern prominence and discoverability/findability rules. Firstly, the implementation of the AVMSD prominence rules (especially Articles 7(a) and 13 of the 2018 AVMSD), its perceived effectiveness and impacts on the sector, and potential future improvements. Secondly, given that the current interventions and regulatory obligations mainly focus on more traditional media industry actors, while the audiovisual media content is being distributed and accessed on many more platforms and intermediary services, we were interested in discussing how issues of prominence, findability/discoverability of content emerge in other intermediary services. In particular, we discussed emerging issues of content curation/moderation on digital services like social media and search engines, and whether there is a need for further interventions (be it statutory, co- or self-regulatory) in this area.

All workshop participants were invited to comment on these two topics through smaller roundtable discussion. The discussions were held under Chatham House Rules. Below a summary of the questions addressed in the roundtable.

Roundtable discussion 1 - AVMSD Prominence Rules

Content and services benefiting from prominence rules: definition of general interest content

- Which services and content should be granted such regulatory benefits?
- Are these benefits distributed in a fair and transparent way? If not, how can we establish fairer, more transparent and accountable processes?
- How can we define objective criteria applicable to such a category?
- Are there any good or bad practice examples that you would like to share?

Services covered by prominence obligations: scope of application

- Is the current scope of application sufficient for tackling issues of prominence and discoverability online?
- Is there a need for broader scope of application? If so, which other actors could and should be covered by AVMSD prominence rules?

Current regulatory frameworks: ongoing implementation process and potential future improvements

- What are the perceived policy objectives of these prominence rules? Do you think they are achieving them?
- Based on the current implementation at national level, have you experienced/do you envisage any negative or positive impacts on your services?
- Is there a need for further harmonisation? If so, through which regulatory instrument?

Round Table Discussion 2: Prominence and discoverability online. New ways forward?

Given that the main legislative measures on prominence findability/discoverability concern more traditional actors in the audiovisual media industry, what could be the ways forward to address the issues and questions around opaque forms of content curation, and related prominence and discoverability decisions on other forms of intermediation online (e.g. social media, search engine etc.). In particular, we would like to hear your views on the following topics and related policy options:

Current industry and policy initiatives

- Are you aware of relevant initiatives in your organisations or others that seek to prioritise general interest/public interest content?
- What are the perceived objectives of such initiatives?

Services covered by prominence obligations: scope of application

- If specific prominence obligations will be needed (on the basis of relevant impact and risks assessments), which digital services should be covered?

Content and services benefiting from new prominence regimes

- Which services and/or types of content (e.g. news) should be granted such regulatory benefits?
- How can we define objective criteria applicable to such a category?
- How can we establish transparent and accountable processes?
- Are there any good or bad practice examples that you would like to share?

Types of intervention

- statutory interventions
 - At which level?
 - Scope of application?
 - Perceived negative and positive impacts?
- co-regulatory interventions
 - At which level?
 - Scope of application?
 - Perceived negative and positive impacts?
- self-regulatory standards
 - At which level?
 - Scope of application?
 - Perceived negative and positive impacts

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

Authors: Heritiana Ranaivoson, Adelaida Afilipoaie, Sofia Verza, Maria Luisa Stasi, Danielle Da Costa Leite Borges, Matteo Trevisan

Reviewer: Peggy Valcke

With contributions by: Roberta Carlini, Beata Klimkiewicz

We would like to thank, for providing their expert feedback on the mapping carried out for this chapter: Marko Ala-Fossi, Auksė Balčytienė, Judit Bayer, Marcel Betzel, Paško Bilić, Roxana Bodea, Joseph Borg, Jean-Christophe Boulanger, Pedro Jorge Braumann, Viktorija Car, Johan Cassimon, Christophoros Christophorou, Stefan Eklund, Marie Fianová, Alfred Grinschgl, Thierry Hoscheit, Ismo Huhtanen, Catalina Iordache, Ville J E Manninen, Ciaran Kissane, Ragne Kõuts, Luboš Kukliš, Carles Llorens, Francesco Marrazzo, Carla Martins, Marie McGonagle, Adriana Mutu, Lisa NI Choidealbha, Eoin O'Dell, Agnieszka Ogradowczyk, Thomas Aagaard Pallesen, Marina Popescu, Filip Rožánek, Josef Seethaler, Maria Elsa Sousa Costa Silva, Costas Stratilatis, Antigoni Themistokleous, Stephanie Tintel, Raluca Toma, Andrius Vaišnys, Jonathan Van de Velde, Karsten Xuereb.

1. Introduction

1.1 Media pluralism and the concentration of economic resources

Media pluralism and media power are the two concepts that are at the core of this chapter. Media pluralism is a multi-faceted notion, as outlined in the first chapter of this Study . The two most important operational notions in this regard are those of internal and external pluralism: the concept of **internal pluralism** refers to the plurality of content and viewpoints that are provided by a single media company, while **external pluralism** refers to the structure of the media markets. Hence, external pluralism can be assessed by measuring (i) the distribution of market power or (ii) the number of media owners, media companies or channels: arguably, the higher the number of media actors in each market, the better the possibility of bringing diverse viewpoints into the public debate would be (Valcke, 2015; Parcu and Brogi, 2021).

However, it has to be noted that **media power** does not necessarily coincide with **market power**. The latter is only one component of media power, which, instead, also comprises “opinion power” (Helberger, 2020). Moreover, **media power also has a political dimension** (e.g., the extent of state interventionism) that is relevant in a democratic context (Neuberger, 2018). Any assessment of the effects of media mergers should thus consider internal pluralism effects within one outlet, as well as external pluralism effects in the broader media ecosystem. This is because merely having a large number of media outlets competing against each other does not prove the existence of well-sustained media pluralism and diversity (Pisarkiewicz & Polo, 2021).

With the view of promoting media pluralism, many EU Member States have rules that aim to limit media concentration. Actually, media market concentration can be defined as a low number of media actors and/or a few media actors with strong market power. It is therefore the exact opposite of external pluralism. These (media-specific) rules, that aim to foster media pluralism, are complementary to the general competition law, notably antitrust and merger control.

Member States have their own sets of rules, most importantly, the *ex-ante* authorization of media market transactions that handle the restrictions on actors who can control media companies, with limitations on the allocated numbers of broadcasting licences and newspapers, foreign ownership, ownership at the level of a territory, and audience and market share ceilings. This divergence was not directly addressed by the harmonisation measures that have been adopted by the EU in the last 30 years in relation to the media and telecommunications sectors, as the legal basis for these harmonisation instruments - Art.114 TFEU on the internal market - leave little scope to do so. The EU has limited the competences to deal with media pluralism and diversity, particularly the competences that tackle the contemporary threats and market concentration that result from digitalisation and “platformization” trends.

In the digital age, Article 114 TFEU provides a legal basis from which to adopt harmonisation measures which may, at a general level – and in parallel with the *ad hoc* decisions that have been taken in individual cases on the basis of EU competition rules – address the risks that are posed by anti-competitive behaviour and innovative technological inequality in the digital single market.

Divergent national media laws dealing with the effects of digitalisation on the media can pose a barrier to the internal market. The EU therefore has the competences to harmonise those national

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

media laws that are based on its internal market competences, as long as such divergences ‘significantly distort’ the internal market.²⁹⁷

The AVMSD is an example of the EU taking harmonising measures on audiovisual media services.²⁹⁸ In a similar vein, legal instruments controlling mergers and acquisitions that affect the media market can also be based on Article 114 TFEU, to the extent that divergent national rules and regimes to control acquisitions in the Member States can put at risk the functioning of the internal market, for example, by impeding acquisitions by players who are established in other Member States.

From the outset, **Member States’ approaches to media ownership and concentration** have in common that where they exist, they **are predominantly geared towards traditional media**, such as newspapers, commercial radio, broadcasting and linear audiovisual media. Member States’ media concentration rules do not yet recognize the concentration of economic resources on the different layers of the value chain, in particular, the trends in shifting advertisement funding towards online media and platforms, or the control over important gateways to access to media content in the digital ecosystem. As outlined in the initial part of this report, the notion of media pluralism itself is challenged by the technological development that has had a heavy impact on the structure of the media market and the audience’s habits. No aspect or component of media pluralism, indeed, remains unaffected by new media and technology developments (Jakubowicz, 2015).

1.2 Mapping existing measures

In this chapter, we will outline the observations and results drawn from our collection of information about the Member States’ existing media concentration rules, and this will prepare the ground for a re-assessment of their suitability for achieving the underlying objectives. Draft measures are covered if they are exceptionally relevant to the scope of this study. This mapping will focus on the scope of application and the definitions used in the national legislations, as well as the data gathering methods that are currently being used by Member States’ authorities. This will enable our research team to assess **the extent to which the concentration of economic resources on online media markets is either addressed, or is outside of the scope of the current rules.**

In this chapter, we have firstly mapped the measures concerning market concentration in the media sector. This includes media-specific measures, as well as general measures (i.e., those that are not restricted to media companies) in as far as they apply to the media sector. We have in particular considered (i) **which measures** aim to **safeguard media plurality**, and (ii) to what extent these measures **apply to online media**. Depending on the countries and the rules, all of the media are concerned, or only some of them (the press or the audiovisual media, for example). The applicability of such rules to online media will be clarified for each Member State. The definitions and delineation of (online) media and actors are provided in the first Chapter of this Study (cf. Introductory Chapter). Part B1 of the Study is structured into the following sections:

- A section on **media ownership** provides a detailed overview and description of national and/or regional legislation that govern and limit (cross-)media ownership.

²⁹⁷ Case C-376/98, *Germany v Parliament and Council (Tobacco 1)*, Judgment of the Court, 5 October 2000, paras 84 and 106

²⁹⁸ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November, 2018 amending Directive 2010/13/EU on the coordination of certain provisions that are laid down by law, regulation or administrative action in Member States, concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities (AVMSD).

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

- A section dedicated to **media mergers** includes the application of lower turnover thresholds, the use of revenue multipliers, the presence of separate assessments by different authorities, the system of ministerial override, as well as the existence of post-merger retrospective evaluations.
- A section on the **restrictions concerning capital control** addresses direct and indirect measures that control the inflows and outflows of capital in the media market. This notably includes restrictions on foreign ownership and on the categories of actors who can control media companies.
- A section on the **disclosure and reporting of media ownership** provides an overview of the national transparency rules regarding the nature of the owner, the ownership structure, and the ultimate beneficial owners of media companies across MS.
- A section on the **financial reporting obligations for media companies** maps measures concerning the reporting of funding mechanisms, market shares, market reach, turnover and income sources/resources.
- A section on **public incentives to media pluralism** addresses those direct and indirect measures that are envisaged across the EU MS to support the traditional private sector media, as well as those relating to Public Service Media (PSM).
- A section concerning the **rules for the advertising sector**, including those on transparency, the disclosure or reporting requirements for actors who are involved in advertising, and the restrictions on the control of media companies by these actors.
- A section on the **interventions by national authorities that have an impact on media market concentration and on competition among media actors**.
- Finally, a section on **data gathering methods for assessing media concentration** provides an overview of the current initiatives across the EU MS, particularly by public authorities. Differently from the other sections, this one does not focus on legal measures.

Methodology

The mapping was developed by considering, as a starting point, the work by VUB-SMIT in the 2018 AVMSD study²⁹⁹, especially with regard to the chapter on “Media ownership and transparency in the EU”, which mapped media ownership and transparency rules in all of the EU Member States and the UK.

We elaborated a template that is to be filled with additional data provided by the EUI/CMPPF’s Media Pluralism Monitor, especially the data stemming from the MPM “Market Plurality” area, namely, Indicator 6 (“Transparency of Media Ownership”); Indicators 7 (“News media concentration”) and 8 (“Online platforms concentration and competition enforcement”).

The template has been structured to include the following questions for each of the 9 dimensions of the media market-related measures:

- Basic description (name of the legislation, sectors)
- Which responsible authority?
- Which authority is responsible for ensuring the media organization's compliance?
- Which are the applicable procedures and benchmarks?

²⁹⁹ SMART 2018/0066 Study on the implementation of the new provisions in the revised Audiovisual Media Services Directive (AVMSD).

- What are the relevant decisions and case law
- Do they apply to online media and actors?
- Is media plurality an explicit objective?

For each measure identified, we provide a basic description, including the name of the legislation and details on the sectors covered.

Potential gaps have been filled in by desk research and by surveying CMPF's and VUB-SMIT's network of experts, especially with regard to recent updates on the types of measures that are investigated for this section of the report.

2. Media ownership rules

Media-specific policies, which have been implemented in most of the EU Member States, outline **clear rules** for media companies, and they aid in continuously monitoring the market and **limiting media companies' market power**. They aim to protect both economic and non-economic interests, such as diversity, internal and external plurality, democracy, and other public interests. It is essential to point out, firstly, that there are no specific EU rules on media ownership and cross-ownership regulation. It is thus within the competence of every Member State to set up its own regulation, while still being coherent with EU law. Those rules are strongly linked to the historic, cultural, and political orientation of each Member State (Puppis, 2010; see also Chapter B4). Some countries have opted for limitations of media reach, restrictions on market shares and cross-media ownership limitations.

This section provides a detailed overview and description of national and/or regional legislation or regulation that governs and limits (cross-)media ownership, notably those that aim to limit media market concentration. The questions we aim to answer include

- Is concentration recognized as a risk to pluralism?
- Are the existing rules addressing such concerns?

2.1 Limitations of media reach (focus on supply, reach and availability)

To guarantee the **plurality of market players** and the representation of a **diversity of voices**, and to **reduce market concentration**, certain Member States have opted to implement thresholds on the allocation of licences for broadcasters, or on the number of newspapers owned by one natural or legal person. In many cases, the **allocation of licences** is linked to the geographical area that is covered, and/or the number of inhabitants in the area that is covered by the spectrum. There are also limitations to ownership at the level of a whole territory. Legislators in many countries have imposed rules to ensure that their entire territory is covered by a variety of media outlets, with several Member States even having specific rules at the regional or local levels. Another metric looks at the country's population and inhabitants in a specific area, that a certain group of stations may cover, by using both census data and signal coverage metrics. An additional limitation of media reach are the **capital rights shares and voting rights shares**, which are the quantity, values and rights that are associated with a shareholder's capital ownership share, which determine the control and voting power that the specific shareholder has in the company (Ranaivoson et al., 2021).

Results

Limitations on media reach can be found in 21 Member States out of 27. These limitations seem to be the **type of measures that have been most adopted**, in relation to media ownership rules. Generally speaking, media ownership rules are very focused on "traditional media", and they rarely take into consideration the take-up of new services and platforms, which results in the scarcity of set limits for digital news media. In this sense, the **Austria**-specific media legislation that contains thresholds in order to prevent a high degree of horizontal concentration, only concerns the audiovisual media, with the only limitations referring to areas of distribution (Seethaler & Beaufort, 2021); in **Germany**, the law offers questionable terminology when considering the application of specific thresholds to digital media ("digital groups that have been identified as being of paramount cross-market importance"), and the interpretation of this general clause, have been very limited, since the amendment containing this clause was adopted only in July, 2021.³⁰⁰

Our research found that **online media fall under the scope of these measures in only 7 Member States** (French Community of Belgium, Croatia, Denmark, France, Ireland, Malta, Slovakia). Reporting on whether the online media are covered by these rules is difficult, as their wording is not always clear as to which media actors are covered.

In the few instances in which online media are covered, the rules mostly refer to broadcasters' on-demand services, and not to online media, such as online news services. In **Slovakia**, for example, according to the Act on Digital Broadcasting No. 220/2007, there are no limitations set for the digital native media, neither are they taken into consideration when evaluating thresholds or other limitations. For the digital branches of the "traditional" media (print, TV, radio) the consideration is taken in relation to their "original" outlet source (the regulation applying to traditional TV will apply to digital TV, etc.).

In 14 Member States, media plurality is an objective of rules that limit media reach (The Belgian Flemish-speaking community, the Belgian French-speaking community, Croatia, the Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Malta, Romania, Slovakia, Spain). Pluralism, in this context, is often linked to considerations that are taken into account for broadcasting licences' allocation, and, to a lower extent, to the press. **The way pluralism is defined differs from one Member State to another. In some Member States, the reference to pluralism remains vague, for example**, being found **only in the titles** of specific law articles, e.g., Section 3 of **Spanish Law 7/2010** is entitled 'Rules for preserving competitiveness, transparency and plurality in the audiovisual market', and Section 55 of the **Czech Broadcasting Act** (Act No. 231/2001 Coll.) is entitled 'Providing information plurality in nation-wide analogue radio and television broadcasting'. In some countries, the reference to pluralism is not only seen in the rules' titles, yet it remains largely undefined. For example, Article 11 (a) of the Maltese Broadcasting Act (Chapter 350)³⁰¹ states that *"[w]hen issuing broadcasting licences, the Authority shall be guided by the following considerations [...] that the principles of freedom of expression and pluralism shall be the basic principles that regulate the provision of broadcasting services in Malta"*.

³⁰⁰ See Section 19a of the Act Against Restraints of Competition.

³⁰¹ Act XII of 1991 last amended by Act LVI of 7 December, 2020. Available at <<https://legislation.mt/eli/cap/350/eng/pdf>> last accessed on May 27, 2022.

In other Member States, in specific and detailed paragraphs in the law, plurality is often mentioned as an objective. Section 10 of the Finnish Act on Television and Radio Operations (744/1998) outlines the conditions required for the granting of a licence stipulate that *‘[w]hen declaring licences open for application and granting them, the licensing authority shall, taking into consideration the television broadcasting and radio broadcasting of the area in question as a whole, aim at promoting freedom of speech as well as safeguarding the **diversity of the provision of programs** as well as the needs of special groups of the public’*. Article 13 of Greek Law 2328/1995 limits the number of press outlets that *‘a physical or legal person [who] can be the owner [of], or partner of, a non-corporate undertaking or partnership or shareholder of a capital company’*, based on geographical distribution, to **tackle undue influence** – which is *‘understood as a violation of the rules on pluralism, the objective provision, on equal terms, of information and of competition’*. Section 64 of the 2020 German Interstate Media Treaty provides measures for ensuring diversity in a slightly different manner: by granting **airtime to independent third parties**, and by establishing a **program advisory board**.

2.2 Restrictions on market shares and audience shares (on consumption)

These rules are linked to actual consumption (rather than to supply and availability), and deal with the prevention of excessive concentration of market and/or opinion power. They do not relate to M&A assessment (see after).

Market share is a useful metric. As such, it is an omnipresent element in any media undertaking assessment. In our assessment we have included in the restrictions on market shares those rules that identify a certain percentage of market share as an expression of dominance, or of a significant position, and/or rules that establish the specific maximum market share percentages, per media type, that an entity can own before it becomes dominant.

Restrictions based on **audience shares** are used as thresholds to prevent ownership concentration and to increase pluralism. Such audience share thresholds apply only to TV and radio in most of the Member States. The **dominant power of opinion** criterion, which can be seen as a sub-category of audience shares, is established to ensure the diversity and pluralism of opinion, and it is used exclusively in a few legislations when preventive measures for media concentration are set out (Helberger, 2020).

Results

Restrictions on market shares can be found in 15 Member States out of 27. **Online media** fall under the scope of such measures **in only 6 Member States or regions** (Belgium’s French-speaking community, Croatia, Germany, Italy, Lithuania, Poland).

Reporting on whether online media are covered by rules limiting the concentration of market shares is difficult, as the kind of media actors covered by such provisions are not always specified. In the few instances where the online media are covered, the rules mostly refer to broadcasters’ on-demand services, and not to online media such as online news services. Online media seem to be mainly regulated by Competition Law, and not very often by Media Law.³⁰²

³⁰² The Danish Competition and Consumer Authority, for instance, has, within its organisation, established the Center for Digital Platforms, whose aim is to supervise the digital media and to enforce competition laws in this field. According to the Danish Competition and Consumer Authority’s Goal and Result Plan 2020 (p. 7), there is a specific focus on digital responsibility: *“Digital responsibility and digital security, e.g., with a proposal on digital accountability to support digitalisation, data-driven business models and new*

In 8 Member States or regions, **media plurality** is an explicit objective (Belgium's French-speaking community, Hungary, Italy, Poland, Romania, Sweden). In these countries, rules that restrict market shares consider **pluralism a being closely linked to the concentration of ownership**, e.g., Article 44 (1) of the Romanian National Audiovisual Law states that *'[w]ith a view to protecting pluralism and cultural diversity, ownership concentration and the extension of the audience in the audio-visual field are limited to dimensions ensuring economic efficiency, but **not generating dominant positions in forming of public opinion**'* (emphasis added). Section 28 (2-3) of the Swedish Radio and Television Act, which tackles transfers of broadcast digital commercial radio permits, mentions that such transfers are not allowed if the *'concentration of ownership among those who are authorized to broadcast digital commercial radio increases to a more than limited extent, and [that] the transfer does not entail a significant reduction of the **diversity of the range of licensed program services**'*. Article 67 of the Hungarian Media Act addresses diversity as the reasoning behind limiting market concentration, stating that *"[t]he market concentration of media service providers providing linear media services may be limited [...] in order to maintain the diversity of the media market and to **prevent the formation of information monopolies.**"* In the **French Community of Belgium**, Title II (2.2-3) of the Media Decree entitled 'Transparency and the safeguard of pluralism' lays down rules relating to the exercise of a 'significant position' that are restrictive, and explains how an evaluation of **pluralism in the audiovisual offering** is observed when a significant position is assessed. As such, a pluralistic offer is defined as being a *'media offer through a plurality of **independent and autonomous media and services reflecting the widest possible diversity of socio-cultural currents of expressions and ideas**'* – this being the most descriptive definition of pluralism in any of the national legislation that we have thus far identified.

2.3 Restrictions on cross-media ownership

Concentrated cross-media ownership may result in strong **control of public opinion** (Harcourt & Picard, 2009). It can, moreover, be **anti-competitive, by fostering monopolies, leveraging power between markets**, and slowing down innovation through acquiring or driving competitors out of the market. This section addresses the rules, thresholds, and sanctions that are provided by vertical and diagonal ownership restrictions that limit media concentration. The most common limitation is of thresholds (in relation to market shares, audience shares, etc.), above which cross-media ownership is not allowed. Other aspects that are considered in cross-media ownership regulations are the restrictions on the number of allocated broadcasting authorizations at the local, regional or national level. The media owners in specific sectors are, in some cases, prevented from having a majority holding in media services belonging to other media sectors.

Results

Restrictions on cross-media ownership can be found in 11 Member States out of 27. Overall, where no specific legislation has been adopted, or only legislation for some segments, general competition rules apply (e.g., in Bulgaria, Czech Republic, Denmark, Luxembourg, the Netherlands), with issues that are related to media concentration being taken into account by the competition authorities. Sometimes, the National Competition Authorities **competition decisions are not based on clear criteria**, as evidenced by the **Bulgarian NCA's** refusal to allow the acquisition of the Nova

technologies go hand in hand with responsible use of data and a clear framework for the platforms' market position. The proposal will also create a basis for influencing the forthcoming (EU) Digital Services Act in a responsible direction."

Broadcasting Group by Czech businessman Peter Kelner.³⁰³ In this case, the reasons put forward by the Bulgarian NCA were rather controversial, and this led to speculations that the only reason that NCA blocked the acquisition was that, essentially, this was a way for the State to decide who would be able to acquire Nova TV, along with a number of other online and print outlets and services that are part of the Nova Group. Finally, decisions based on competition law grounds, in some cases, envisage **even stricter criteria than the specific-media acts on concentration do**. For example, in the **Netherlands**, the Dutch Competition Authority forced the publisher, the De Persgroep, to sell its daily newspaper, *NRC*, after it took over its parent company PCM in 2009. Although this takeover was in accordance with the rules set out in the Temporary Act, it could not be approved based on the competition law.³⁰⁴

Online media are explicitly mentioned in rules on cross-media ownership in only 3 Member States (Croatia, Italy, Slovakia). Reporting on whether online media are covered by these rules is difficult, as rules are not always clear as to which media are covered. In the few instances in which online media are covered, the rules mostly refer to broadcasters' on-demand services, and not to online media, such as the online news services. Online media seem to be covered mainly by Competition Law, and are not often covered by Media Law.

In 5 Member States, media plurality is mentioned as an objective in the relevant legislation on cross-media ownership (Croatia, France, Italy, Malta, Slovakia), e.g., Part 10 (42) of the Slovakian Act on Broadcasting and Retransmission, which sets out restrictions on cross-media ownership rules, and does so with the objective of ensuring **plurality of information**. Moreover, ensuring the plurality of information is also mentioned in rules prohibiting the '*property connection and personal connection of the broadcaster of the radio program service and the broadcaster of the television program service to each other or to the publisher of the national periodical*'. Part 3 (16) of the same law, sets out obligations for broadcasters and on-demand audiovisual media service providers that include the obligation to '*ensure the versatility of information and pluralism of opinion within the broadcasting program service*'. Articles 41-1 and 41-2 of the French Léotard Law, which address cross-media ownership restrictions, stipulate that these rules are established '*in order to prevent attacks*' on local, regional, national pluralism in both digital and analogue modes. Articles 52-54 of Section 5 of the Croatian Electronic Media Act lays down concentration restrictions, the publicity of ownership rules, and the guidelines for the allocation of the Fund for Promotion of Pluralism and Diversity of Electronic Media among others.

³⁰³ Rafailovich, J. (2019). Domuschiev brothers buy second-largest Bulgarian TV network. Mediapool Weekly: February 16 - February 22, 2019. Available at <<https://www.mediapool.bg/president-roumen-radev-might-veto-the-amendments-to-the-elections-act-bsp-leaves-parliament-domuschiev-brothers-buy-second-lar-news290245.html>> last accessed on May 27, 2022.

³⁰⁴ Commissariaat voor de Media - The Dutch Media Authority (2011) Mediamonitor: The Dutch Media in 2010, p. 24. Available at <<chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.mediamonitor.nl%2Fwp-content%2Fuploads%2F2013%2F08%2FMediamonitor-The-Dutch-media-in-20101.pdf&clen=3046498&chunk=true>> last accessed on May 27, 2022.

The Italian case

In Italy, anti-concentration rules in the media sector have recently been under the CJEU's scrutiny with regard to their compatibility with EU internal market rules in the Vivendi Case³⁰⁵. The CJEU ruled that the provision of Italian law preventing the company Vivendi from acquiring 28% of the capital in Mediaset was contrary to EU law (art. 49 TFEU). To comply with the CJEU's ruling, the Italian government reformed the rules regarding restrictions on media ownership, with the Legislative Decree No. 208/2021 (art. 51).

The case concerned the hostile acquisition, in 2016, of 28.8% of the share capital, and 29.4% of the voting rights, of Mediaset Italia Spa ('Mediaset') - an Italian company operating in the media and audiovisual sectors that is controlled by the Fininvest group - by the French company Vivendi SA - the parent company of a group that is active in the same markets as Mediaset.

Mediaset filed a complaint with AGCOM, accusing Vivendi of having infringed the provision of Italian law which prohibits - with the aim of ensuring media pluralism - companies whose revenue in the electronic communications sector is greater than 40% of the total revenues generated in that sector, from earning, within the integrated communications system (SIC³⁰⁶), revenue exceeding 10% of the total revenues generated in that system in Italy. That was the case with regard to Vivendi, which already held a significant position in the Italian electronic communications sector by reason of the control that it exerted over Telecom Italia SpA (TIM). AGCOM declared that Vivendi had infringed that provision of the Italian law by acquiring the shares in Mediaset. Vivendi appealed the decision before Lazio's Regional Administrative Court, in Italy. The Court then submitted a reference for a preliminary ruling to the CJEU asking, in brief, whether the freedom of establishment that is enshrined in Article 49 of the TFEU precludes the legislation of a Member State, such as that in Italy, which has the effect of preventing a company that is registered in another Member State, whose revenue in the electronic communications sector at the national level, including through controlled or affiliated companies, exceeds 40% of the total revenues generated in that sector, from earning, within the SIC, revenue that exceeds 10% of the total revenues generated in that system.

The CJEU concluded that the Italian legislation was liable to be a prohibited impediment to the freedom of establishment. As to whether such a limitation was justified on the grounds of the protection of media pluralism, the CJEU found that the thresholds set in the legislation bear no relation to the risk of jeopardising media pluralism, since they do not allow the determination of whether an undertaking is actually in a position to influence the content of the media.³⁰⁷

After this decision, and in the process of the transposition of the AVMSD in Italy, a provision was included in the new legislative decree 208/2021: Art. 51 ("Positions of significant market power detrimental to pluralism in the integrated communications system") sets the new anti-concentration rules in the media sectors. Art. 51 (1) states: "In the integrated communications system and in the markets that compose it, the establishment of significant positions of market power detrimental to pluralism is prohibited, in the market and in services of information".

The numeric thresholds for physical limits and economic limits, slightly revised, remain as far as the notification obligations are concerned, and as "symptomatic" of significant market power, but to assess the position of significant market power detrimental to pluralism, AGCOM must evaluate

³⁰⁵ Case C-719/18 Vivendi SA v Autorità per le Garanzie nelle Comunicazioni.

³⁰⁶ In addition to press and electronic publications, the SIC covers radio and audiovisual media services, cinema, external advertising, communication initiatives for goods and services, and sponsorship.

³⁰⁷ Court of Justice of the European Union (2020) Press release 99/20. Available at <<https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-09/cp200099en.pdf>> last accessed on May 27, 2022.

and deliberate following a set of criteria and methodological guidelines set every 3 years (art. 51, co. 5).

As a result, the new rules ask for a case-by-case evaluation by the NRA, expanding AGCOM's supervisory powers over the SIC in order to ascertain market situations which could be detrimental to media plurality³⁰⁸.

To conclude

- In Member States that have adopted media-specific concentration rules, the parameter that is mostly used to restrict media ownership is media reach, and this is followed by market shares and, lastly, by cross-media ownership
- Where such restrictions cover online media, they usually refer to on-demand services, but do not mention other types of online media.
- When it comes to pluralism, it can be seen that the notion is interpreted differently from Member State to Member State and, in the majority of cases where pluralism is mentioned, no definition is provided. Most of the time, pluralism is given as the reasoning behind restricting market concentration. Yet, the most common use of the pluralism rationale in national law is found in the context of allocating broadcasting licences.

3. Media mergers: notifications and assessments

Concentration of media ownership is growing either as a survival or as an expansionist strategy (Evens and Donders 2018; Sjøvaag et al. 2021). Mergers can bring efficiencies to consumers, but when mergers have a significant impact on competition, such transactions can also harm them (Mancini, 2018). Mergers in already concentrated markets can be harmful to both the existing players and the consumers. Furthermore, especially when a big firm is vertically integrated, competition becomes even tougher. The lack of competition may reduce incentives to innovate, which may eventually lead to not improved goods and services. Even when monopolies appear to benefit consumers by offering free services and low prices, they can still be harmful and disrupt other industries (Kahn, 2017). For this reason, the role of competition law is to encourage competition and to ensure the existence of a fair, balanced and competitive landscape. Beyond economic perspectives, and due to media goods' economic and cultural role, **media mergers cannot only drastically impact upon** competition but also on **the diversity and pluralism of opinions and views** (Peruško, 2010). For these reasons, when dealing with media mergers, certain Member States use different rules to ensure the plurality of sources and the diversity of viewpoints.

In this section, we look at the existence of lower turnover thresholds, and the use of revenue multipliers, the presence of separate assessments and a system of ministerial override and, finally, the existence of post-merger retrospective evaluations. Additionally, we look at whether the above mentioned rules tackle online media and actors, and whether media plurality is an explicit objective. The questions we aim to answer include:

- Is cooperation between national authorities (NRAs and NCAs) widespread?

³⁰⁸ <https://www.gazzettaufficiale.it/eli/id/2021/12/10/21G00231/sg>

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

- Does such cooperation ensure that non-economic considerations (i.e., pluralism) are taken into consideration during merger assessments?
- Which authority is the best suited to taking media pluralism into account in merger assessments in the media sector? This question, while mentioned here, is further developed in Chapter B3, considering in particular the effectiveness of the measures in protecting media pluralism.

3.1 Lower turnover thresholds and the use of revenue multipliers

Under national merger control rules, concentration comes under the scrutiny of the **competition authority** when turnover-based thresholds are exceeded. Disclosing information, such as the transaction parties' revenues, turnover, and market shares, to the authorities that are in charge of assessing mergers, is the first step in the procedure. Merger control is implemented in every Member State, regardless of sector. In most Member States, to scrutinise media mergers by relying on merger control and using the same turnover thresholds as in any other industry, is believed to be sufficient. Yet, in certain Member States, to better catch the impact on media plurality, and **to make sure that the relevant M&As do not pass undetected, such thresholds are lowered for media companies**. In some Member States all mergers involving media companies are scrutinised, regardless of thresholds. Finally, some countries apply **multipliers** to the media companies' revenues when assessing mergers **to make sure that media companies with lower revenues, but with a potential to affect competition, are scrutinised and do not pass undetected** (Damodaran, 2012). Once more, the objective of such methods is to bring more of these mergers under scrutiny.

Results

Apart from competition law, the study found a scarcity of specific rules that relate to the notification of media mergers in the media sphere. **Lower thresholds, or the use of multipliers, have rarely been detected in the national legislation of MS** (where, more often, the scrutiny of media mergers falls under the same turnover thresholds, as in any other industry). More specifically, the use of lower thresholds and multipliers in the context of media mergers can be found **in 5 Member States out of 27** (Austria, Croatia, Germany, Greece, Ireland).

Each Member State has a different approach: the turnover thresholds for media mergers' scrutiny in **Greece** are three times **lower than those thresholds that are applied in other industries**.³⁰⁹ In **Croatia** and **Ireland**,³¹⁰ mergers in the media sector need to be notified, **irrespective of whether the thresholds are triggered**. Both **Austria** and **Germany** make use of revenue multipliers that are applied to media companies' revenues so as to reflect the true value of a business. By applying such multipliers in merger assessments, the legislation ensures that companies with low revenues, that could pose competitive threats, do not pass undetected and that they are brought under scrutiny. In the Austrian case, the turnover of media companies and media services shall be multiplied by a factor of 200, and the turnover of media support companies (publishing companies that are not classified as media undertakings, printing and prepress stage companies (e.g., typesetting and repro companies), companies that procure or arrange advertising orders (e.g., media agencies), companies that take care of the (wholesale) distribution of media (e.g., press wholesalers), and film

³⁰⁹ The digital outlets of legacy media do not fall within the scope of Art. 3 of Law 3592/2007, see Para. 70 of Decision 700/2020 of the Hellenic Competition Commission, on the definition of the relevant markets in relation to the online transmission of content, https://epant.gr/files/2020/apofaseis/700_2020.pdf

³¹⁰ ICGI (2021), *Merger Control Laws and Regulations, Ireland*. Available at: <<https://icgl.com/practice-areas/merger-control-laws-and-regulations/ireland>> last accessed on May 27, 2022.

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

distribution companies) by a factor of 20.³¹¹ In addition to this rule, since 2017, and based on the addition of Section 9(4) of the Federal Cartel Act (Federal Law Gazette I No. 61/2005), **Austria** employs a **transaction value-based** notification which is used for media companies when turnover thresholds are not met; very often in the digital arena, companies do not generate sufficient turnover to be assessed under merger control, but they can still have significant competitive potential. Indeed, the new transaction value-based threshold aims to cover cases with respect to the acquisition of start-ups in the digital economy, where the target has little to no current turnover and is bought primarily because of its potential growth. In **Germany**, Section 38 (3) of the Act Against Restraints of Competition provided for a calculation rule under which the turnover of media companies had to be multiplied by 8 for the purposes of determining the thresholds. However, **with the latest law changes, this multiplier has been reduced** to 4 for the publication, production and distribution of newspapers, magazines and parts thereof, meaning that fewer press transactions will be caught by merger control rules. The turnover multiplier for the production, distribution and broadcasting of radio and television programs, and the sale of radio and television advertising time, was maintained at 8.³¹²

3.2 Separate assessments and a system of ministerial override

Many Member States rely on **more than one regulatory agency** when applying merger control rules in specific sectors (Alexiadis & da Silva Pereira Neto, 2019). This is usually a **National Regulatory Authority (NRA) (for the scope of our study, a Media Regulatory Authority)**, which oversees a specific sector and a **National Competition Authority (NCA)**. Both authorities have specific allocated powers, and **cooperate** in some instances, usually with **NCAs** having the **final decision** and **NRAs** having an **advisory role**. The NRA's opinion may be **binding, and this usually happens when media pluralism** or freedom of expression is at risk. In addition, other bodies can be involved in M&A assessments. Such cooperation is welcomed, as these bodies fulfil different roles and thus approach the merger from different angles, and they can combine their expertise (Dabbah, 2011).

In some Member States, **Ministries and Governmental bodies** can intervene in the assessments that are conducted by NCAs and/or NRAs, and they have the power to override the regulatory authorities' decision, usually on non-competition grounds. It could be argued that this power could be used to keep foreign competitors at bay, and to safeguard the interests of domestic players, to the detriment of what is possibly new competition; thus, it may represent a form of protectionism.

Results

When considering the **system of ministerial override, there are 10 Member States** (Austria, Cyprus, France, Germany, Ireland, Italy, Netherlands, Portugal, Slovenia, Spain) in which certain Ministers, Councils of Ministers and Governments intervene in merger decisions. This can happen either during the assessment phase, in which these bodies usually directly lead the assessment, or

³¹¹Judith Feldner and Dieter Thalhammer (2019). Merger Control in Austria - White Paper. Eisenberger & Herzog. Available at <https://www.ehlaw.at/wp-content/uploads/2016/06/Whitepaper_2019_Merger_Control_EN.pdf> last accessed on May 27, 2022.

³¹² The Tenth Act Amending the Act against Restraints on Competition for Competition Law 4.0 (ARC-Digital Competition Act) was approved by the German Bundestag on 14th January, 2021, and came into force on 19th January, 2021. The Act is intended to realise the German government's goal of creating a "*regulatory framework for digital competition*". The Act will also implement Directive (EU) 2019/1 in order to empower the competition authorities of the Member States to be more effective enforcers (the "ECN+ Directive").

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

after the NRA or NCA have given their verdict. In both situations, the governmental body has the final say.

Among the rules providing for a system of ministerial override, pluralism **is mentioned only in the Austrian, Cypriot and Irish laws**. Articles 10-13 of the **Austrian** Federal Act against Cartels and other Restrictions of Competition, stipulates that after the receipt of the merger notification, the Federal Competition Authority must transmit the notification to the Federal Cartel Prosecutor. The Federal Competition Authority and the Federal Cartel Prosecutor may request the Cartel Court to examine the merger. The latter shall prohibit a media merger if it is likely to affect media plurality. Articles 35-39 of the **Cypriot** Control of Concentration between Undertakings Law, lay down the power of the Minister of Energy, Commerce, Industry and Tourism. It is thus stated that the Minister may, prior to the decision of the Commission for the Protection of Competition, declare, by a reasoned Order, that a notified concentration shall be deemed to be of major public interest as regards the effect it may have on public security, the pluralism of the media, and the principles of sound administration. In cases where the Commission for the Protection of Competition considers that the notified concentration is compatible with the functioning of competition in the market, the Minister can agree or disagree, based on those grounds. If the latter disagrees with the decision of the Commission for the Protection of Competition, the decision is left to the Council of Ministers, which shall decide between weighing the needs of public interest and the need for the protection of competition in the market. In **Ireland**, as stipulated in Part 3A of the Competition Act, after the Competition and Consumer Protection Commission offers an assessment of the impact of the proposed merger/acquisition on the relevant media market, it is the Minister of Communication's duty to assess the impact of the merger/acquisition on media plurality. If there are concerns about approving (with or without commitments) the merger, following an 'Initial Investigation', and, in particular, if the Minister feels that the merger 'may be contrary to the public interest in protecting plurality of the media in the State', the Minister may order the Broadcasting Authority to conduct a 'Full investigation' on the merger's impact on media pluralism.

Although not referring to "pluralism" *per se*, in France, Germany, Italy, the Netherlands, Spain and Portugal, the law mentions **the safeguarding of public/general interest** in the realm of mergers and acquisitions among companies, regardless of the sector. For example, the French Code of Commerce (Article L-430-7-I) provides that the Minister of the Economy can order the competition authority to open a Phase II review of the merger, i.e., to perform a more in depth examination of the transaction, on the basis of the parties' observations on the competition concerns that are related to it, or of the commitments offered to remedy them (if any). In case the Ministry does not intervene within 25 days of this second review, the Competition Authority has the final say. However, if the Minister of the Economy intervenes, s/he can veto the Competition Authority's decision for reasons of public interest that are other than the protection of competition. Public interest considerations evaluated by the Ministry are broadly defined as being "related to industrial development", as the competitiveness of the parties to the transaction in the context of global competition, or in relation to the development of the protection of employment. Similarly, Article 10(4) of the Spanish Competition Act lays down the rights of the Minister of the Economy and Finance and the Council of Ministers to intervene (to stop or to authorise) in the assessment during a second phase, after the Council of the National Competition Commission's decision, but only by considering six criteria that are of general interest, other than that of protecting competition. However, none of the six criteria outlined by the Act refers to either media plurality or diversity. Section 25 of the Italian Competition Law 287/90, states that the Council of Ministers shall, at the proposal of the Minister for Trade and Industry, "lay down the general criteria to be used by the Competition Authority when issuing authorization as a waiver to the prohibitions provided by section 6 of the law [prohibition on concentrations restricting

free competition], when major general interests of the national economy are involved”. Section 25 also stipulates that in cases when the entities or undertakings of countries participating in concentrations “do not protect the independence of bodies or undertakings [...] or apply discriminatory provisions or impose clauses having similar effects in relation to acquisitions by Italian undertakings or entities, the Prime Minister may [...] prohibit the concentration on the grounds that it is against the essential national economic interests”.³¹³

Article 47(1) of the Dutch Competition Act gives the Minister of Economic Affairs the power to override the Consumers and Markets Authority’s decision, but only when the Authority has blocked a transaction on competition grounds and “if, in the Minister’s opinion, this is necessary for important reasons in the public interest, which outweigh the expected impediment to competition”; the Minister’s intervention is subject to approval by the Council of Ministers. The meaning of the “*public interest*”, on which the Minister’s decision must rest, is not further specified. In principle, this might therefore include media pluralism grounds. Similarly, Section 42 of the German Act Against Restraints on Competition, mentions that the Federal Minister for Economic Affairs and Energy is able to authorise a prohibited concentration that is based on overriding public interest. Once again, what public interest specifically means is unclear, and, as such, it may include media pluralism. The Portuguese Competition Act of 2012, stipulates that the Government, sitting in the Council of Ministers, can reverse a prohibition decision by the competition authority for reasons that are related to the protection of the strategic fundamental interests of the national economy, which can be translated into the safeguarding of the public interest.

Finally, in **Slovenia**, according to Article 58(3) of the Slovenian Media Act, the Ministry of Culture can refuse to approve a merger. However, this possibility is not linked to media pluralism nor to reasons relating to public/general interest.

This Study has identified that a **separate assessment** procedure involving different public authorities in the decision related to media companies’ mergers is followed **in 11 Member States** (Austria, Croatia, France, Germany, Hungary, Ireland, Italy, Lithuania, Poland, Portugal, Slovenia). In **Hungary**, Article 171 of the **Hungarian Media Act** lays down the proceedings of the Media Council as a Special Authority. The Hungarian Competition Authority in charge of assessing mergers, thus has to obtain the position statement of the Media Council for the approval, and cannot reject the granting of an approval if the level of independent opinion sources would still ensure the right to diversity of information within the particular market segment of the media content service after the merger. The position of the Media Council binds the Hungarian Competition Authority.

However, NRAs’ opinions are not always binding. For example, in **Italy**, as stipulated in the Competition and Fair Trading Act (Law No. 287 of 10th October, 1990), before exercising its powers *vis-à-vis* undertakings that operate in the communications sector, the Italian Competition Authority must seek an opinion from the Authority for Communications (AGCOM). While the competition authority is required to request such an opinion, the Authority for Communications’ decision is not binding.

Austria, France, Germany, Ireland, Italy, Portugal and Slovenia have both a system of ministerial override and a system of parallel assessment in place: in the latter case, no governmental body is involved in the assessment process. In **France (Law No. 86-1067 of 30th September 1986)**, **Hungary (Media Act 2010, Art. 171)** and **Italy (Law 287/1990)**, the system of separate assessment

³¹³<https://en.agcm.it/en/scope-of-activity/competition/detail?id=3b426468-e51f-4bc1-b1ee-b1f4bd65d9e7&parent=Legislation&parentUrl=/en/scope-of-activity/competition/legislation> (last accessed on May 27, 2022).

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

also applies **to native digital media**. In **Germany**, in principle, this system would not be applicable to this sector. However, to an increasing extent, the Federal Cartel Office also examines online providers such as video platforms and news sites. The online media market is currently in a dynamic growth phase in **Germany**, and this is partially affecting the traditional markets. The Federal Cartel Office's task here is to protect the competitive opportunities that are inherent to this dynamic.³¹⁴

In 8 Member States (Austria, Croatia, France, Germany, Hungary, Ireland, Italy, Portugal) **the objective of media plurality is considered when a merger is being assessed, either by the NRA or the NCA**. In **Austria**, as stipulated in Article 13 (1) of the Federal Cartel Act, media mergers must also be assessed in terms of their impact on media plurality³¹⁵ and they are prohibited if media plurality is affected. Article 10 (2) of the same Act, mandates the undertakings concerned to submit, alongside a standard set of documents, exact and exhaustive information on any circumstances that might affect media plurality. Media plurality is defined as the *“diversity of independent media companies that are not affiliated to each other and that ensure media coverage that takes into account a variety of opinions”*. The Federal Competition Authority assesses media mergers and the media authority, KommAustria, is officially involved in the assessment, but cannot overrule the approval of a concentration by the competition authority.

3.3 Post-merger retrospective evaluations

The reasoning behind a post-merger evaluation would be **to assess whether the decisions in question were correct, and if they were found to be erroneous, to understand why, with a view to improving future merger analysis or decision-making processes**. Such evaluations would also shed light on the state of the market post-merger. From our mapping, such assessments are not conducted, nor are they required by any of the national rules contrary to, e.g., the USA, which has been running a Merger Retrospective Program since 1984. The reasons behind running such a program are twofold. First, to understand whether the thresholds implemented for notification have been too permissive, thus clearing potentially harmful mergers, and, second, to assess the performance of the tools that regulators use to predict the effects of the proposed mergers prospectively. The US Bureau of Economics is in charge of assessing such retrospective plans to commit additional resources to the retrospective program, so as to ensure that policy-relevant lessons are learned. The additional resources would notably allow the Bureau of Economics' Director to provide an annual summary report on the lessons from recent retrospective studies, which will be made public on the Federal Trade Commission's website (FTC, 2020.)³¹⁶. Research conducted by Ormosi et al. (2015) shows that, for best results, such assessments should be conducted no longer than five years post-merger. Unequivocally, **such evaluations would be extremely useful for competition authorities and national regulatory authorities alike**.

As anticipated, **such post-merger retrospective evaluations are not systematically conducted in the EU**. However, in a few Member States (Austria, France, Ireland, Lithuania), there are some market evaluations which, to a degree, might be considered to be retrospective evaluations. In **Austria**, under Article 16 of the Federal Cartel Act, the Cartel Court has the power to impose

³¹⁴ See the Bundeskartellamt website on *“Scope of control”*. This is available at <https://www.bundeskartellamt.de/EN/Economicsectors/Media_industry/mediaindustry_node.html;jsessionid=3620F911DC47C6A851818DB458495173.1_cid381> last accessed on May 27, 2022.

³¹⁵ ICG (2021), Merger Control Laws and Regulations, Austria. Available at: <<https://iclg.com/practice-areas/merger-control-laws-and-regulations/austria>> last accessed on May 27, 2022.

³¹⁶ See <<https://www.ftc.gov/news-events/press-releases/2020/09/ftcs-bureau-economics-expand-merger-retrospective-program>> last accessed on May 27, 2022.

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

subsequent measures on undertakings that are involved in a merger in order to reduce or eliminate the effects of a merger; in case the merging parties have provided false or incomplete information, or where an obligation deriving from the non-prohibition of such merger is infringed.

In **Ireland**, the Broadcasting Authority, through the Competition and Consumer Protection Act, enjoys functions and obligations in its mission to safeguard plurality. Under Article 28M (1) of the Competition and Consumer Protection Act, it has to undertake a retrospective review on the impact of ownership changes on media plurality over a three-year period, and to provide a report to the Minister for Communications, Energy and Natural Resources. In **Lithuania**, Article 16.9 of the Law on Electronic Communications requires the Communications Regulatory Authority (CRA) to perform a market analysis every third year.³¹⁷

Finally, in **France**, the Senate has recently created a Commission of Inquiry, which is composed by 21 senators, that is tasked with *“shedding light on the conditions of purchase and consolidation that have led to this highly concentrated press and audiovisual landscape.”* In particular, the Commission is supposed to: gather information on the current audiovisual and press landscape in the country; to assess the conditions under which the recent concentrations in the media have been carried out, to which are added those that are in progress, in order to verify the extent to which these concentrations present dangers to the pluralism and independence of the media, social and economic life in the sector concerned, and, more broadly, to democratic life; and to formulate proposals to remedy any dangers that are identified.³¹⁸

To conclude

- In the context of media merger, lower thresholds and turnover multipliers are not widely used, as only 5 Member States of the 27 resort to such measures.
- **Special rules for media mergers' assessment (a system of separate assessment by different bodies/authorities or a system of ministerial override) can be found in 14 Member States** (Austria, Croatia, Cyprus, France, Germany, Hungary, Ireland, Italy, Lithuania, Netherlands, Poland, Portugal, Slovenia, Spain), with 7 of them (Austria, France, Germany, Ireland, Italy, Portugal, Slovenia) implementing both systems. In 8 of the 11 Member States that provide a system of separate assessment, pluralism and **public/general interest considerations** are considered in the merger assessments either by the NRA or the NCA.
- Regarding the system of ministerial override, the **objective of media pluralism** is mentioned in 3 Member States, and public/general interest considerations are mentioned in 6 Member States as reasons for interventions. One of the 10 Member States in which a system of ministerial override is in force (**Slovenia**) does not mention public interest and media pluralism objectives at all.
- With regards to the 13 Member States that do not apply such special assessment mechanisms, in all but one the authority that deals with the merger does not take into consideration media pluralism objectives while doing so.

³¹⁷[https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP\(2018\)15&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP(2018)15&docLanguage=En) page 100

³¹⁸ See: French Senate, Exposé des motifs <<https://www.senat.fr/leg/exposes-des-motifs/ppr21-117-expose.html>> last accessed on May 27, 2022.

- It might be argued that, indeed, **such cooperation systems (separate assessment and/or ministerial override) do provide a more holistic assessment**. The problematic issue remains that the relevant **rules rarely provide explanations of what is meant by media pluralism and the public/general interest** considerations, which are used as bases for justifying interventions and that give additional power to one authority over another.

4. Restrictions relating to capital control

National capital control requirements are direct and indirect measures that control the inflows and outflows of capital in the market (Aizenman & Binici, 2016). They may result in **restrictions to market entry**, or to making it more difficult to operate. for media players that are already established in a certain market. As such, they might represent an **obstacle to the development of the EU media market**.

There may also be cases of national provisions that require limits to individual ownership, thereby preventing hostile takeovers, or that give some government bodies special control power which is arguably justified by legitimate objectives that are in the public interest, and that result in a restriction to the free movement of capital.

While, in some national frameworks, such restrictions have a targeted character, they may also be used as a **tool to increase political control over ownership structure in the national media market**.

Restrictions on capital controls notably include restrictions on foreign ownership, on the categories of actors and rules on the conflict of interest. The mapping will be used later in this report (Chapter B3) to assess whether such regulations are used to protect domestic players and to increase political control on national media.

4.1 Restrictions on the foreign ownership of media companies

These are measures that **limit, or even prohibit, the ownership** of media organisations by **natural persons who are not EU/EEA** citizens (in a few countries, this applies to non-nationals even if they are EU citizens) or by **legal persons** who are not established in the EU/ EEA. Threshold requirements in this category can be found when establishing the maximum level of control that a foreign owner (person or company) is allowed to exert over a local firm, thus limiting a company's influence on the market.

Results

14 Member States have measures in place that limit, or even prohibit, the ownership of media organisations by natural or legal persons who are not EU citizens, or are not established in the EU (Austria, Bulgaria, Cyprus, Denmark, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Poland, Slovenia, Spain). In some countries, such as **Slovenia** and **Germany**, foreign ownership rules are extended to non-nationals, thus including citizens and companies that are established in the EU. Some countries extend this limitation to the EEA's members, and some apply the principle of reciprocity, which promotes mutual benefits to the parties (e.g., the Member States) that are involved in the trading system (e.g., mutual concessions on tariff rates, quotas and other commercial restrictions) (Di Benedetto, 2017).

What most Member States have in common is that the **maximum stake a foreign shareholder can have in a company does not exceed 49%**. This percentage ensures that the majority owner will

never be a non-EU or non-EEA company. The **lowest threshold** which requires the Council of Ministers' consent can be found in **Cyprus**, where the threshold for approval is set at 5%. When a foreign firm notifies its intentions to become a shareholder in a national company, or to acquire broadcasting licences, in most cases it is the Minister for the Economy who must give his/her approval. In enforcing such restrictions a few Member States have explicitly outlined the objective of protecting the national market from '**undue influence**': in **Greece**, such influence is understood as a violation of the rules of pluralism, objective and equal information, and of competition, as explained in Article 5(3(b)) and Article 5(15) of the Greek Law 3592/200. In **Austria**, the Minister of the Economy can prohibit the transaction if it is capable of giving rise to a threat to public security or to public order (here: to the freedom and plurality of the media), as explained in Section 2-3 and Annex Part 2 of the Austrian Investment Control Act.

To protect public safety and critical infrastructure, and, to a certain extent, to **protect national companies from opportunistic purchases by foreign companies during the COVID-19 pandemic, when their market value was low**, a few Member States have amended their existing legislation on foreign investments (Spain, Italy), and others have adopted such restrictions for the first time (Slovenia). In **Spain**, under Royal Decree-Law 8/2020, a suspension of the regime of liberalisation for foreign investment in strategic sectors (including the media) was adopted, meaning that all investments above €1 million must now receive authorisation. This measure was adopted to protect public order, public security, and public health. Following the pandemic, Italian Decree 23/2020 amended the existing Golden Power system, which gives the Government the powers to intervene in strategic sectors in foreign investment cases. The Decree has enlarged the sectors that are defined as being strategic, and has included media pluralism and media freedom among the objectives of this regulation that are being pursued. In **Slovenia**, under the Third Anti-Corona Package, investments by foreign investors that attempt to acquire an interest of at least 10% of share capital or voting rights, must be notified to the Ministry. However, this is a **temporary measure that is due to lapse** in the summer of 2023.

Decisions on the implementation or changing of measures tackling foreign investments can affect the market structure, and raise barriers for those players who either want to enter the market, or who want to continue to conduct their activities. This was the case in Poland.

For instance, in Poland, in July, 2021, a group of MPs from the governing Law and Justice Party submitted a bill to Parliament that would further strengthen measures to prevent entities or persons from outside the European Economic Area (EEA – EU states, Iceland, Norway, Liechtenstein) from holding a majority stake in broadcasters. The MPs justified their proposal by stating that it was needed to eliminate a legal loophole which, in their opinion, had been generated by Article 35 of the 1992 Broadcasting Act, which, in its Para. 3, allows the owning of broadcasters through subsidiary companies that are established in the EEA, by entities from outside the EEA. The governing party also claimed that amendments were needed to prevent companies from countries, like Russia or China, taking control of the Polish media, and to stop “narco-businesses” and “money launderers”.³¹⁹

At the same time, the only major broadcaster that would thus far be affected by the proposed bill, is the TVN Group, which is owned by the US-based giant conglomerate Discovery, through a Dutch-registered subsidiary company (Polish Television Holdings), thus meeting the existing rules on foreign ownership. For this reason, the Bill has been widely named the “Lex anti-TVN”. Moreover, the Bill has been seen as being an instrument of political pressure against TVN’s news services. TVN television, and TVN24 news, in particular, have carried critical coverage of the government’s policies. The channels have also been frequently criticised by the current governing party and by right-wing politicians for their “*lack of objectivity*” and their “*systematic bias*”, and TVN24 was also sanctioned (although unsuccessfully) by the KRRiT in 2017.³²⁰

The proposed legislation was widely criticised by international organisations on the grounds of attempts to silence the independent media.³²¹ The European Parliament issued a Resolution on Media Freedom and the Further Deterioration of the Rule of Law in Poland. In August, 2021, the Senate rejected the Bill, and the President announced his intention to eventually veto it. As a result, the Bill returned to the Sejm (the lower house of the Polish parliament) for further work on the law.

Simultaneously with legislative proceedings, the licence-granting procedure for TVN24 was pending. In 2020, TVN24 applied for a renewal of its broadcasting licence - almost 18 months before the licence’s expiry - but KRRiT has repeatedly delayed a decision on the renewal. Interestingly, the group hasn’t previously faced licence-granting problems, despite many ownership changes. Back in 1997, the TVN Group was established by two Polish media businessmen: Jan Wejchert and Mariusz Walter. Since 2011, minority shares in ITI Holdings (which owns the TVN Group) have been controlled by Canal+, which is owned by Vivendi. In 2016, the US-owned Scripps Networks finalised the takeover of the majority of the shares in the TVN Group, and, in 2018, the Group was acquired by the US-owned Discovery. None of these ownership changes were objected to by the KRRiT, and all of TVN’s channels (including TVN television and the TVN24 news channel) used to receive or renew licences for broadcasting smoothly and without delay. TVN24’s licence to broadcast was renewed at the very last moment on 22nd September, 2021, by KRRiT. Yet it seems to have been a bitter victory, as the KRRiT asked the government to further clarify the measures on the limits of foreign ownership, so that TVN would adjust its ownership structures to comply with the law. Many commentators read this as a suggestion that TVN should sell shares to State-owned companies.

³¹⁹ Kumar, Amit (2021) Polish ruling coalition collapses amid media law protests, News WWC, 10th August, 2021. Available at <<https://newswwc.com/world/europe/polish-ruling-coalition-collapses-amid-media-law-protests/>> last accessed on May 27, 2022.

³²⁰ In 2017, under political pressure, the media regulatory agency, KRRiT, (The National Broadcasting Council), imposed a significant fine on TVN24 on the grounds of breaching the content provisions of the 1992 Broadcasting Act, regarding the coverage of the protests in the Polish Parliament by TVN24 in December,

4.2 Restrictions due to conflict of interest, and on the categories of actors who can control media companies

These restrictions address the categories of actors who are not allowed to own any media company, or who are allowed to own certain types of media companies but only subject to certain market share caps, which are based on either the nature of the owners, or on their affiliation. The most common categories of actors to whom restrictions apply are **advertising agencies**,³²² **political parties**, **state institutions and agencies**, and **family members**. Moreover, when discussing a **conflict of interest**, there is often mention of the **appointment of companies' board members or of the regulatory bodies' members**. This ensures that members undertaking specific roles, usually involved under the political blanket, such as public officers, mayors, deputies, Members of Parliament (MPs), do not exert influence over media-related regulatory decisions or programming activities, and do not have membership of certain organisations.

Results

Restrictions due to conflict of interest and on the categories of actors who can control private media companies, which are quite complex and different for each Member State, **are found in 23 Member States. These rules' efficiency in preventing unwanted control comes down to the transparency and disclosure of ownership, but also to the actual enforcement of these restrictions by the public authorities.**

Most of the existing rules can be categorised under 4 main sections.³²³ First, those relating to **public administration personnel and their involvement in commercial companies**. In **Cyprus**, according to Art. 3.1(e) of the Law on the Incompatibilities between the Exercise of the Duties of Certain Officials of the Republic and Certain Professional and other Relevant Activities (Law 7(1)2008), a public official cannot be a member of the governing council, or the Chairman of a private company, which deals with the electronic or print media. The list of officials includes the President of the Republic, the Ministers, the Members of Parliament, Chairpersons, and members of the governing councils of the legal bodies of public law, public companies listed on the Stock Exchange, local authority officials, commissioners, and others. Under the above, politicians or party officials who do not hold office, executive, legislative or administrative, can participate in a medium: print, digital or electronic. In a similar vein, in **Portugal**, According to Article 12 (1-2) of Law 27/2007, and Article 16 (1-2) of Law 54/2010, the Federal State, Autonomous Regions, the local authorities, and associations, are prohibited, whether directly or through state or regional public companies, municipal, metropolitan or inter-municipal companies, from pursuing or financing private television services. In **Spain**, according to Law 53/1984, workers serving in the public administration who wish to exercise any private or public activities must be authorized by agreement of the Government, competent of the Autonomous Community or the Plenary of the Local Corporation concerned to

2016. After the wave of criticism from the media and journalists, the decision was ultimately revoked by KRRiT's Chairman. See more in: MPM, 2021.

³²¹ See, e.g., the reactions to Article 19 <<https://www.article19.org/resources/poland-mps-must-reject-lex-tvn/>> and the International Press Institute <<https://ipi.media/independent-media-under-attack-in-poland-the-case-of-tvn24/>> last accessed on May 27, 2022.

³²² Advertising agencies are included here for calculations, but are dealt with in a more detailed manner in the section 'Special rules for the advertising sector'.

³²³ Advertising activities are dealt with in the section 'Special rules for the advertising sector'.

ensure the compatibility of both activities. In relation to private companies the only restriction is the impossibility of being a member of more than two Boards of Directors.

Second, in relation to **the involvement of family members in media companies**. In **Greece**, according to Art. 2(10) of Law 2644/1998, the spouse, direct relatives, and collateral relatives up to the fourth degree of an individual who is a shareholder in an undertaking that possesses a licence, or in undertakings that partly own a company holding a licence, cannot participate in any other undertaking that holds such a licence, nor in an undertaking that participates in the undertaking that holds such a licence. Exceptionally, the relatives mentioned above can participate in a company with such a licence, if they can prove that they have financial and business independence *vis-à-vis* their shareholding relative. In **Bulgaria**, the Conflict of Interest Prevention and Ascertainment Act, as amended by, SG No. 97/2010, provides, in its Article 9, that a person holding a public position does not have the right to dispose of state or municipal property, to spend budgetary resources, including the funds of the European Union or granted by the European Union to the Bulgarian State, to issue certificates, licences, or to control these activities in the interests of non-profit legal persons, commercial companies, or cooperatives in which this person, or their relatives, are members of a management body or control, managers, associates.

Third, relating the **limitations on the NRAs' and NCAs' board members**. In **Romania**, according to Art. 12 of the Audiovisual Act (Law 504/2002), members of the National Audiovisual Council may not, either directly or indirectly, hold shares or social shares in companies with activities in fields where they would be involved in a conflict of interests with the capacity of a member in the Council. The members of the Council may not be members of the Board of Directors of providers and distributors of audiovisual program services and they may not exert positions nor hold shares or participations in a company holding an audiovisual licence. In **Poland**, according to Art. 8 para 4 of the 1992 Broadcasting Act, current members of the National Broadcasting Council cannot be members of political parties, yet some of them are still politically active.

Finally, some of the conflicts of interest laws that exist in 23 of the MSs do not just refer to the control of private companies by certain figures, but also relate to the control of the PSM. In **Germany**, for example, the Public Service Media must be organised separately from the State, in accordance with the specifications of the Federal Constitutional Court.³²⁴ High-ranking party members must also be qualified as being close to the State, and thus as being incompatible with holding supervisory functions at PSM. In **Austria**, according to the Austrian Broadcasting Corporation Act, Art 26 (2), the control of Public Service Media by political and politically affiliated persons and organisations is restricted. Accordingly, the following persons must not be appointed as the PSM's Director General, Director or Regional Director: members of the Federal Government, State Secretaries, members of a provincial government, members of the National Council, the Federal Council, or of another general representative body, or of the European Parliament. Moreover, persons who are employees of a political party, or who have a leading position in a federal or regional organisation of a political party, as well as members of the Ombudsman's Office, the President of the Court of Audit, and persons who have held one of the above-mentioned positions within the last four years cannot hold such supervisory positions.

³²⁴ BVerfG, 1 BvR 2270/05 from 11. 9. 2007, para. 120 et seqq.

To conclude

- **Foreign investment measures have been amended or newly adopted** by the Member States during the pandemic in order to **protect the national interests and shield opportunistic takeovers**. It might be argued that non-pandemic related regulations which are aimed at limiting foreign investments in national media companies were adopted with the same protectionist purpose³²⁵. Certainly, adopting such measures or amending the existing ones may change the market structure and may prevent competitors from entering the market or, as in the Polish case, may (try to) prevent some media outlets from continuing their activities in the market.
- While the **restrictions relating to conflicts of interest and to certain categories of actors** who can control media companies are set in place to limit political control over essential sectors, and to ensure some sort of regulatory independence when it comes to board members' appointments, and the limitation of their connection with the industry they are supposed to regulate, they **can still be circumvented**. For example, when **disclosure of ownership is not carried out in a transparent manner, and when such rules are not effectively enforced**.

As a higher level of transparency of ownership information is favourable for controlling and monitoring media pluralism – and, at the same time, facilitates the collection of further information that can serve as the basis for future ownership regulation (Bárd, Bayer & Carrera, 2016), the following sections provide an in-depth analysis of the legislation of the Member States, listing all the main pieces of information relating to media transparency requirements in the EU Member States.

5. Rules on the disclosure and reporting of media ownership

We map here all of those measures that concern the disclosure and reporting of media ownership. Such obligations notably concern the nature of the owner, the ownership structure and the ultimate beneficial owner.

5.1 Information to be disclosed

This section firstly includes all of the cases when **ownership structure** and status, as well as any change of it, must be **published** (namely, it must be made available to the public) or **reported** to a state authority. Beyond this, some countries scrutinise in order to find out who is **the real owner** (or the **beneficial owner**, or the **UBO, the ultimate beneficial owner**) of media companies, and thus they increase transparency by revealing hidden ownership structures. The real owner is a natural person (or more natural persons) who owns the media company, directly or indirectly, through other companies, or through a chain of companies. According to Article 3 Section (6) of Directive (EU) 2015/849 (EU's Anti-Money Laundering and Terrorist Financing Directive), the **UBO is “any natural person who ultimately owns or controls the customer or any natural person on whose behalf a transaction or activity is being conducted”**.

This section includes all of the requirements related to the disclosure of the **nature of the actors who own or control media companies**. This may apply to categories of actors, such as members

³²⁵ European Parliament (2019) EU framework for FDI screening. Briefing: EU Legislation in Progress. Available at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614667/EPRS_BRI\(2018\)614667_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614667/EPRS_BRI(2018)614667_EN.pdf) last accessed on May 27, 2022.

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

of political parties, people working in state institutions or agencies, people involved in the advertising trade, and their family members.

More precisely, we map:

- The existence of constitutional provisions relating to media ownership transparency;
- The existence of specific (media) ownership transparency acts;
- The effects on disclosure and reporting obligations that are derived from the implementation of the 2018 revision of the Audio-Visual Media Services Directive;
- The effects on the disclosure of the ultimate beneficial owners of the implementation of the Fifth Anti-Money Laundering Directive (2018/843);
- The existence of general rules on ownership transparency, as far as they apply to the media sector.

5.2 How information must be disclosed

We further analyse how, and to whom, the information described in the transparency requirements must be shared by media companies. **Communication to the public** includes all of those provisions that are directed at making information directly available to the general public. The main way to share ownership information is through their publication in **annual reports**, which disclose, for example, the identity and shares of the main stakeholders, on **corporate websites**, and through **company registers** that are usually managed by the national Chambers of Commerce. Access to data such as market shares is essential for companies that aim to invest in any given market, as it is a key indicator for the assessment of market competitiveness, and it is one of the most important metrics for assessing how competitors are performing, to gauge revenue creating opportunities, to assess their brands' positioning against those of their competitors', and to predict future growth (Borman-Shoap, 2019; Welch & Nayak, 1992). Most companies do not have the competitive data necessary to measure market share, and they rely on publicly available data, which could be inaccurate. Lack of data and erroneous data can lead to incorrect strategic decisions. In merger assessments, more often than not, companies over- or underestimate their shares; and this is noticed by the European Commission in its merger assessments and, as a consequence, it must conduct additional market research and involve existing competitors in the data gathering for more accurate estimates (Afilipoaie, et. al., 2021).

Otherwise, or as a complement to this, there are all the **cases where information needs to be notified or disclosed to authorities**. Under the word "authorities" we include the competition authorities, the media regulators, other relevant regulatory bodies, and government representatives (often, Ministries of Culture). These authorities and bodies may then share the information, or part of it, with the general public.

This categorization builds on the distinction between upward and downward transparency. Upward transparency renders media actors accountable to regulatory bodies or public administration, while downward transparency makes the media accountable to civil society, investors and the general public, and facilitates informed financial, personal and political decision-making (Craufurd-Smith et al., 2021).

In this section, we aim to answer the following questions:

- What are the minimum rules for media ownership transparency in the MSs?
- Are data on media ownership publicly available, or are they only available to the authorities?

- Are the rules media-specific?

Results

There is a fragmented picture among the European Member States with regards to whether they have media-specific transparency obligations (see Table B1.1 below). **Only 3 countries have constitutional provisions relating to media transparency** (Greece, Italy and Spain). **Most Member States have adopted specific media ownership transparency acts.**

General rules relating to ownership transparency are envisaged in the legislation of all MS (all countries have at least one measure that will eventually require media ownership transparency – even if they are not media transparency acts *per se*). Media-specific transparency requirements are not always linked to media pluralism objectives (e.g., in Denmark or Estonia), or they are required for PSMs only (e.g., in Denmark). Moreover, **some countries do not envisage specific media transparency rules** at all, as in the cases of Netherlands and Sweden. Notably, in **Finland**, the Limited Liability Companies Act permits foreign stockholders obscuring their ownership through so-called omnibus accounts. For example, Sanoma Oyj (one of Finland's largest newspaper publishers) reports that approximately 13.4 percent of its shares are held in omnibus accounts, meaning that the owners of these stocks are hidden from the public.³²⁶ In any case, **the problem often lies in the ineffectiveness of the current measures, and the loopholes allowing media companies not really to disclose their ownership structure** (Ala-Fossi et al., 2018).

In **Romania** there is no obligation for full disclosure of individual ownership when a company or companies own shares and, notably, there can also be anonymous shareholders. Moreover, except for audiovisual media companies there is no legal requirement of ownership disclosure even at the level of these corporate and quasi-anonymous entities and no self-regulation that would apply to all outlets.

Conversely, even when there are no regulations providing for disclosure of ownership information to the public the data might be retrievable in other ways. In the **Netherlands**, the information regarding ownership has to be reported to the Media Authority only in the process of granting licence. However, the data might be retrievable through the Commissariaat voor de Media's annual Mediamonitor,³²⁷ which is freely available online and, although incomplete, contains detailed information revealing the real owners of certain groups.

A positive example comes from **Ireland**, where reports published by the NRA 'BAI' increased thanks to the mediaownership.ie resource, a publicly accessible media ownership monitor website updated on an annual basis.

Finally, in many Member States the **2018 AVMSD** has not been fully transposed yet.³²⁸ In countries where it has been transposed new transparency obligations have been introduced in the legal framework. By contrast, full transposition has been declared by all Member States with regards to

³²⁶ See <<https://www.sanoma.com/en/investors/share-information/major-shareholders/>> and <<https://www.euroclear.com/finland/en/statistics.html>> last accessed on May 27, 2022.

³²⁷ See note 6.

³²⁸ On September 23, 2021, the Commission decided to take the second step in the infringement procedure by sending a reasoned opinion to nine Member States that have still not notified full transposition. They now have two months to reply to the Commission, or the Commission may decide to refer their cases to the Court of Justice of the European Union. European Commission (2021), *September infringements package: key decisions*. Available at <https://ec.europa.eu/commission/presscorner/detail/en/inf_21_4681> last accessed on May 27, 2022.

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

the Anti-money laundering directive IV, although infringement proceedings are pending against 16 Member States due to the lack or delay of the notification of national transposition measures or their incompleteness³²⁹.

In relation to media transparency measures **a clear imbalance appears between the broadcasting sector (TV and radio) on the one hand, and the press sector on the other hand.** In fact, legal measures for transparency in the TV sector can be found in 24 MS, in the radio in 23 MS, and in the press sector in 19.

In scrutinising the transparency measures in more detail, we focus on **whether the information is made available to the public, and to what extent.** More precisely, we have mapped:

- (i) which countries ensure that the public has access to information on media ownership;
- (ii) whether access is possible for free;
- (iii) if the public has access to the same amount of data as the public authorities do.³³⁰

The first result is that while almost all EU MS have ownership transparency rules, only 14 ensure access to data related to media ownership for free, and **only 9 MS grant the general public access to the same amount of data that is granted to public authorities.** The following table details whether the access is allowed under media-specific or general legislative measures. In most Member States, both types of measures provide for data disclosure.

Table B1. 1. Mapping of media transparency rules

Countries	Access to some information	For free	Publicly available and public authorities' equate information
Media-specific measures	22	14	9
General measures	23	10	6
Combination of both	27	19	12

Which kind of information is provided then? In particular, it is crucial here to assess whether there is transparency regarding the real (or “ultimate”) owner of a media company. Our mapping shows that **17 countries have legislation that allows for finding the real owners.**³³¹ Again, these countries often combine both media-specific and non-media-specific law (esp. the implementation of the Anti-Money Laundering Directive). It is actually possible that a few more countries have non-media-specific laws with similar objectives.³³² A first problem lies in the **difference** between theory and practice, in other words **between law and how it is enforced.** While the law may state that every information should be made available, thus allowing the identification of real owners, in practice it is

³²⁹ European Commission (2021), Anti-money laundering directive IV (AMLD IV) - transposition status. Available at: <https://ec.europa.eu/info/publications/anti-money-laundering-directive-4-transposition-status_it> last accessed on May 27, 2022.

³³⁰ It has to be noted that equal access to data for the public and the public authorities does not actually ensure that the public has access to information on e.g. real owners.

³³¹ Here, we have searched in our mapping templates of legal measures- built for the scope of this research- the occurrences of the words “ultimate”, “UBO” and “beneficial” (cf. methodological annex).

³³² These would be laws not covered by the scope of the study and then overlooked by the mapping.

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

often difficult to gather such information. If the law does not facilitate the identification of beneficial owners, to do so in practice can be more or less difficult, or impossible. For example, as already mentioned, in the **Netherlands**, the CvdM's annual Mediamonitor is freely available online and contains detailed information revealing the beneficial owners of certain groups. However, it is incomplete and it must be concluded that information leading to the beneficial owners is not readily available: it requires time and effort to glean missing information from different sources. Besides, a small fee must be paid to access trade registry information (kept by the Chamber of Commerce).

Besides, **it can be even more difficult to identify real owners when these owners are located outside the national borders**. As a matter of fact, transparency rules could be adequately enforced at national level but be less operative when it comes to cross-national ownerships. This difficulty might explain why the law that requires all **Luxembourgish** entities registered in the Luxembourg Business Register to provide detailed information on their ultimate beneficial owners includes an exception for entities which are regulated in other states with equivalent standards.³³³ The only requirement is for these entities to disclose the country of origin where they are registered. **Such difficulty is reinforced in the case of digital media**, as digital technologies make it easier for a service to be available beyond national borders.

Finally, there is the question again of public access to ownership-related data. Often, national experts assess that the information is made available to the public authority and less so to the public. In **Malta**, for example, the Minister Responsible for Culture is the sole receiver of such information which is not made public. In **Bulgaria**, although there are media ownership registers and a general Commercial register, the information is not actually presented in easy-to-find files which makes it difficult for the public to assess them.³³⁴

To conclude

- The picture of media-specific transparency obligations across Member States is one of considerable variation (Table B1.1 above).
- There are discrepancies among media sectors with actors in the TV and radio sectors being more often required to be transparent about their ownership structure than in the press sector.
- In some situations the difficulty in identifying the beneficial owners is not due to the absence of rules that allows for finding the real owners but to the fact that: a) there is missing information; b) fees are charged to access such information; c) information is not made available to the public; or d) information is not presented in easy-to-find files.

³³³ Luxembourg law of 13 January 2019 on the register of beneficial owners or "RBE Law". The RBE Law implements the transparency requirements of Article 30 of Directive 2015/849/EU on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLD IV) by creating a central register of beneficial owners, in abbreviated form referred to as "RBE", the purpose of which is to safekeep and make available relevant information on the beneficial owners of Luxembourg entities registered with the Luxembourg Trade and Company Register (the "RCS"). The RBE Law also implements the transparency requirements of Directive 2018/843/EU on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLD V), which require the RBE to be publicly available.

³³⁴ See "Вите кдин издоткл но фолшиви сойтевк нк ск к вписол в публичния ркгистър но мкдиитк" 24 часа.bg. Available at <<https://www.24chasa.bg/novini/article/9042574>> last accessed on May 27, 2022.

6. Financial reporting obligations

We map here all obligations on disclosure of financial information for media companies, including non-media specific obligations. Such obligations concern the following metrics: funding mechanisms, market shares, market reach, turnover, and income sources/resources.

6.1 Information to be disclosed

The information usually to be disclosed under financial reporting obligations include:

- Media entities' **market share** (or **audience share**) is a metric that can be assessed to determine a company's market power. As such, it is an element omnipresent in any media undertaking assessment. Therefore, providing information on market share to the competent authority is an essential measure for media ownership transparency and for media pluralism as well.
- Sales and **market reach** of a media group's brands, which cover information on the media groups' average circulation, as well as ratings and distribution reach.
- Transparency of media groups' **turnover, which** includes data on income and revenues, and more generally all financial reporting. Such data is usually required in the context of mergers and acquisitions, with the obligation to notify the competition authority when a defined turnover threshold is reached (see previous section). There are also rules to ensure transparency on turnover outside the context of merger transactions. These are the ones considered in this report, as far as the measures apply to media sectors.

6.2 How information must be disclosed

We further analyse how and to whom the information must be shared by media companies. **Communication to the public** includes all routes for making information directly available to the general public. The main ways of sharing information are through **communication in annual reports** (e.g., as it is usually the case in the financial reports of companies that are listed on the stock exchange), which can be available on corporate websites. Otherwise, there are all the cases when authorities must be notified or when information is disclosed to them. "Authorities" include the competition authority, media regulator, other regulatory bodies, and government representatives (often ministries of culture).

A common case is the **notification to the competition authority**. In this case, the media owner must inform the competition authority, which may inform the public as well, though with less detail: confidential or commercially sensitive information will always be redacted in the decisions. This takes place in the case of **mergers and acquisitions** when parties must notify the competition authority before the merger or acquisition is potentially assessed. The information provided normally includes market shares and turnover (revenue, income). Some countries publish information on the website of the national competition authority.

For each measure identified, we provide a basic description including the name of the legislation and details on the sectors covered. We map:

- Which authority is responsible for ensuring compliance;
- What are the applicable procedures and benchmarks;

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

- What are the consequences in case of non-compliance;
- The eventual consequences of the implementation of the 5th Anti-Money Laundering Directive.
-

The questions we aim to answer include whether there are differences between media sectors, as well as between online and traditional media.

Results

In contrast to media ownership-related information, not as many MS have measures requiring the disclosure of financial information.³³⁵ **17 EU MS have measures imposing transparency of media companies' financial information.** One interesting case is **Romania**, where financial reporting obligations are mentioned in the Constitution: according to Article 30(5) of the Romanian Constitution “[t]he law may impose upon the mass media the obligation to make public their financing source.”

Most of these measures relates to the disclosure of turnover-related information, including e.g. financial accounts and revenues. In **Cyprus**, for example, according to the 1998 Law on Radio and Television Organizations (Art. 47) audiovisual media service providers should submit their financial reporting to the Cyprus Radio Television Authority and to the House of Representatives and should publish such reporting in two daily newspapers. In **Portugal**, media companies have to report on market shares or voting rights, but also on companies' main financial flows. In a similar vein, in **Bulgaria**, the Law on The Mandatory Deposit of Printed and Other Works and on the Announcement of the Distributors and Suppliers of Media Services, in force since January 2001 and amended in 2010, is intended to make media ownership transparent by leveraging funding in the media and its “real” owners. It requires media service providers to report to the Ministry of Culture by 30 June of each year the actual owner and any beneficial owner as well as all sources of funding including loans and property (Article 7a).

Only 3 MS (**Belgium, Hungary and Italy**), according to our mapping, provide disclosing obligations measures concerning market shares. In **Italy**, for example, all audiovisual providers, network operators, press, advertising agencies and other actors working in the media sector have to fill in the AGCOM Economic System Information (IES) annual declaration filling in personal and economic data on their activities, including market share information (Carlini & Brogi,2021).

We could find only 3 Member States reporting obligations concerning market reach (Croatia, Czech Republic and Italy). In **Croatia**, under the Article 34(3) of the Media Act (OG 59/04), publishers need to announce their average circulation, that is, average radio or television ratings, data on total income and average print run sold, that is, average listening/viewing ratings to the Croatian Chamber of Economy.

There are huge regulatory discrepancies among media sectors with **TV and radio being more regulated than press**. 15 Member States provide measures aimed at TV, 14 at radio, 7 at press. **Croatia** is the only country where transparency measures address the press sector but not TV and radio.

³³⁵ The analysis here does not cover notifications in the frame of Mergers & Acquisitions (see previous subsection).

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

Regarding **online media services**, only **6 Member States** envisage measures targeting them along with offline media: Bulgaria, **Greece, Italy**, Malta, Netherlands and **Portugal**. However, as seen with other types or rules mapped in this part of the study, it is not always clear which actors among online media are covered, and how the law is actually implemented. In **Portugal**, for example, Law 78/2015 clearly states that all types of news media companies (legacy and digital) must publish up-to-date ownership structures.

Finally, **Belgium, Italy** and **Portugal** are the **only 3 countries where we identified media plurality stated as an explicit objective of financial reporting obligations**. In **Italy**, AGCOM (Italian Communications Regulatory Authority) states in its deliberation 397/13/CONS, at Para. 16: "(...) the perspective followed goes in the direction of greater protection of pluralism, as it allows the Authority to detect the consistency of the market and the positions of the different subjects within it, allowing the overview of the development of a healthy competitive system, in direct compliance with the general principles governing the sector".

To conclude

- Few MS have measures requiring the disclosure of financial information than those requiring disclosure of media-ownership information.
- The most common required information concerns turnover, including, e.g., financial accounts and revenues.
- Only **Bulgaria, Greece, Italy, Malta, Netherlands and Portugal** envisage measures targeting **online media services** along with other media sectors, though it is not always clear which actors among online media are covered.

7. Public incentives to media pluralism

Public incentives are a form of **state aid that must be justified and in line with EU rules, as they can lead to unfair competition within the EU single market** (Boev and Bukovska 2011). Indeed, because subsidies provide financial advantages to companies that receive them, they can **distort competition between media companies in the relevant markets**. Therefore, they can be granted only in specific circumstances, and to reach a range of legitimate ends, among which **cultural, economic, and social objectives**; this includes **addressing market failures** relating to content production and dissemination and fostering pluralism. Such public support schemes (both for public and private media) can for example foster media organizations' reach or help the survival of smaller media companies. Actually, **with audiences increasingly using new media platforms**, governments should think about additional forms of support for traditional private media companies. However, subsidies for the media sector experienced a long period of relative stagnancy from the late 1990s in much of the 'Western world' (Nielsen, 2014), with evidence of recent decreases, particularly in funding for public service media, right up until the 2020 COVID-19 crisis (EAO, 2019).³³⁶ Online media, particularly online-only news media organizations receive less support and not in all the EU countries.

³³⁶See <<https://rm.coe.int/yearbook-key-trends-2020-2021-en/1680a26056>> last accessed on May 27, 2022.

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

It has been argued that in some countries, in particular **Eastern Europe and countries with polarized political climates**, governments are using public funds and distributing them **unfairly**, as a way of **capturing the media** (Dragomir and Aslama Horowitz 2021; Schiffrin 2021). Dragomir (2017:2) highlights that **funding is the most effective method to capture the media**, by for example choosing not to fund independent, critical media and instead fund those media “willing to toe the government line”. A distinction in this category is made between direct subsidies and indirect subsidies. The questions we aim to answer include:

- What are the criteria in the allocation of subsidies? Are they fair and transparent?
- Are subsidies allocated to both public and private media?

7.1 Direct subsidies

This refers to direct financial support – which is **the most common form of state support** all over the EU – allocated to media companies. Direct state-support could be allocated for, among others, content production, distribution, publications in national minority languages and online press services which employ a minimum of one professional journalist regularly. **The biggest risk here is that if the direct subsidies are not granted under the right conditions, they can distort competition.** Besides, they can be ineffective, threaten the companies’ independence and can lead to ‘politically problematic and a bad use of taxpayers’ money’ (Kleis Nielsen & Linnebank, 2011). This is the case when subsidies are allocated by politicians and government officials with close relations to large conglomerates that own a selected number of organisations that receive such subsidies.

20 Member States offer support to their media through direct subsidies. **The media sectors that receive such subsidies more often is TV and press**, in 17 Member States. This is not surprising as this sector has been suffering a clear revenue decrease and low readership (cf. Chapter B2).

In **Greece**, according to Law n. 4674/2020, newspaper companies can receive direct subsidies through cash grants for specific support schemes provided that they meet certain requirements in relation to respect for journalism ethics and the promotion of pluralism and quality in public debate. In the **Netherlands**, according to Article 8 of the Media Act of 2008, press aid is intended for the promotion of good quality, diverse and independent journalism. In **Sweden** the purpose of the grants is to strengthen democracy by promoting public access to news media throughout the country through a variety of public news media. According to the **Austrian Press Subsidies Act of 2004**, in Austria the press enjoys special subsidies for the preservation of diversity in regional daily newspapers, as well as distribution subsidies for all newspapers and grants for journalist training. In both the **Flemish Community** and **French Community of Belgium**, the overall objective is to ensure a high quality, pluralist and objective press and to offer support for the preservation of the largest possible diversity in newspapers respectively. In **Finland** the subsidies’ aim is to increase versatile journalistic content and its supply as well as to promote and develop journalism at local, regional, and national levels.

Referring to the media sector in general, **online media receives direct subsidies** in 13 Member States.

It must be noted, however, that **a common problem observed in different MS is the lack of transparency in the allocation of funds.** Some Member States have adopted strategies to overcome this problem. For instance, in **Latvia, according to Section 71, part 2 of the Electronic Mass Media Law of 2010**, the media authority promotes contests to distribute subsidies to media outlets, using criteria, such as professional operations in the field of media, editorial independence

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

and content that addresses wider audiences. In a similar vein, in **Portugal**, according to Law Decree 23/2015, direct incentives are awarded in the form of grants to support projects that promote employment, technology, partnerships and media literacy.

The same happens with **funds granted to PSMs**, in which regard a common criticism is raised by private broadcasters and newspapers: that this kind of State aid distorts competition, especially with regard to their online news services – and this distortion has been observed in **Cyprus, Denmark** and **Lithuania**.³³⁷ With regard to the press sector, in December 2012 in **Belgium** the authorities amended the Belgian broadcaster, RTBF's, regulatory framework after the association of Belgian French-speaking press (les "Journaux Francophones Belges", JFB) issued complaints to the European Commission, which eventually started an investigation (European Commission, 2014). In other MSs, criticism concerns the political interference that may take place in the granting of funds to PSMs, as recently happened in **Slovenia**, where the Government Communication Office has been trying to destabilise the Slovenian Press Agency (STA) by suspending monthly payments to it (MFRR Press Freedom Mission to Slovenia, 2021).³³⁸

7.2 Indirect subsidies

Indirect subsidies may take the form of tax breaks (i.e., for newspaper subscription sales), VAT-exemptions (i.e., for newspapers, due to falling circulation and a decrease in newspaper advertising revenue), reduced charges for state services, and regulatory relief exemptions, among others.

21 Member States offer support to their media through indirect subsidies, with **10 of them also subsidising different types of online media**. The most popular sector to receive such subsidies is the **press**, in the form of **reduced VAT rates**. The reasoning behind such a significant adoption of tax breaks is a result of the EU interventions in the VAT directive³³⁹ which has allowed the Member States, since 2018, to reduce the VAT rates for electronic publications, which were previously taxed at the standard VAT rates, whereas physical publications, such as books and newspapers, benefitted from various reduced rates. When it comes to VAT reductions for electronic publications, these rates thus vary between 3% in **Luxembourg**, and 10% in various other Member States. Some Member States (**Greece, Belgium, France, Italy and Slovenia**) also offer such subsidies to the audiovisual sector.

³³⁷ Delfi.en (2020), *Commercial media files complaint to Brussels over LRT financing*. Available at <<https://www.delfi.lt/en/politics/commercial-media-files-complaint-to-brussels-over-lrt-financing.d?id=84594725>> last accessed on May 27, 2022.

³³⁸ Euronews & AFP (2021) *Brussels warns Slovenia over press agency funding row*. Available at <<https://www.euronews.com/2021/01/12/brussels-warns-slovenia-over-press-agency-funding-row>> last accessed on May 27, 2022.

As the MFRR reports, after being deprived of state financing since December, 2020, the STA is struggling between its survival and its independence, as it will be required, by a government decree agreement, to submit to direct financial oversight by UKOM. Media Freedom Rapid Response (2021), *MFRR REPORT: Press Freedom Deteriorating in Slovenia under Latest Janša Government*. Available at: <https://www.mfrr.eu/wp-content/uploads/2021/06/Slovenia_PressFreedomMission_Report_Final_20210630.pdf> last accessed 08.11.2021

³³⁹ Council of the European Union (2018) *Electronic publications: Council agrees to allow reduced VAT rates*. Available at <<https://www.consilium.europa.eu/en/press/press-releases/2018/10/02/electronic-publications-council-agrees-to-allow-reduced-vat-rates/>> last accessed on May 27, 2022.

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

In **France**, indirect subsidies are given to, amongst others, associations that promote pluralism in the press sector³⁴⁰. These associations benefit from a special fiscal regime for patronages, subscriptions and donations, resulting in a tax reduction of between 30% and 50%.³⁴¹ In **Luxembourg**, according to the Law on the Promotion of the Print Media of 1998, there are several forms of indirect support for the press sector. These include preferential rates in relation to VAT and postage, official notices published in the press, a significant number of subscriptions by state institutions, and support for daily press distribution. A scandal emerged recently concerning the indirect subsidies that newspapers had received for publishing the Parliamentary Minutes. The President of the Parliament, a member of the liberal party DP, granted a beneficial deal to the Liberal Party's own online newspaper *The Lëtzebuurger Journal*, in the amount of €30.000 per year, for the publication of a pdf on their website – no other newspaper was granted such a subsidy, nor did they know about such a deal. Under public pressure, the President of the Parliament was forced to backtrack (Kies & Hamdi, 2021). In **Italy**, the indirect subsidies introduced after the COVID-19 crisis have sparked debates as to their allocation, when tax credits for advertising was raised to 50% and extended to audiovisual, which was not included in the past. As a result, the measure de facto benefit the audiovisual and penalized the other media and smaller outlets (Carlini & Brogi, 2021).

In **Greece**, according to the Ratification of the Act of Legal Content of 1/5/2020, digital TV content services are eligible for a discount of up to 50% on the amount they pay for making use of DIGEA's network. This is the only private digital television network operator. The respective discount is applied to the amount that DIGEA has to pay to the Hellenic Telecommunications and Posts Commission for the rights to use frequencies. In the **Flemish Community of Belgium**, as stipulated in Article 194 of the Income Tax Code, any company can participate in the production of audiovisual works with favourable tax conditions. Formats such as fiction films, documentaries, animated or short films, which are intended for the cinema, full-length fiction films for television (possibly those that are divided into episodes), fiction series, animated series, children's series, or documentaries that are intended for television, which are recognized by the **Flemish Community** as European audiovisual productions, are eligible for economic support through the tax shelter.

7.3 Public Service Media

This section discusses both the direct and indirect subsidies that are received by Public Service Media, and looks at the composition of **Public Service Media budgets** (e.g., license fee, advertising, State subsidies).

PSMs are present in all Member States. The European Commission's Broadcasting Communication of 2009³⁴² stipulates that Governments should ensure that State funds do not exceed what it is necessary to provide to the public service. **Most of the PSM are funded by a mixed type of funding**, including combinations of license fees, advertising, and State subsidies; and sometimes gifts and donations. Member States have usually entrusted one or more bodies (media regulatory authorities, Courts of Auditors, Councils, competition authorities, broadcasting councils, or other

³⁴⁰Legifrance (2021), *Code général des impôts*, Article 200. Available at <https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006069577/LEGISCTA000006191957/2021-07-12/#LEGISCTA000006191957> last accessed on May 27, 2022.

³⁴¹Legifrance(2021), *Code général des impôts*, Article 200. Available at <https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006069577/LEGISCTA000006191957/2021-07-12/#LEGISCTA000006191957> last accessed on May 27, 2022.

³⁴² European Commission (2009) Communication from the Commission on the application of State aid rules to public service broadcasting. Available at <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:257:0001:0014:EN:PDF>> last accessed on May 27, 2022.

boards) with the task of verifying that the measures, requirements, budget allocations and, in certain cases, the indicators and target values (e.g., structural measures to reduce the cost basis in the medium term), are complied with by the PSM. Debates relating to PSM funding revolve around three main categories of issues.

- 1) First, around the **PSM's online public service mission**: there have been **debates relating to PSM's presence online as being a distortive player**, especially as, in some legislations, the PSM cannot use the license fee and other public income to finance commercial activities and cross-subsidization. At the same time, PSMs are asking for support for online activities as part of their public service remit. This need for an online presence is fuelled by the PSM's worries regarding the shift in audience consumption towards the online medium, and it is considered an option in order to mitigate this change. In **Austria**, the Director General of the PSM, ORF, argued that the next fee increases, in 2022, will not be able to compensate for declines (in the number of people paying the fee) that result from cancellations due to streaming instead of TV use. Moreover, expansion and budgetary backing for the online public service mission of the PSM is requested, as the PSM's internet presence is subject to extensive restrictions. In the **Flemish Community of Belgium**, the new charter agreement for the Flemish PSM, VRT, does specify that it has a responsibility to have an online presence, but that it must be complementary and supportive of the highly competitive private media ecosystem online.

Another example comes from **Denmark**: the Danish Radio and TV Broadcasting Act (Act n. 1052 of 17th December, 2002) does not provide funding that adequately covers the online public service missions of the PSM, DR, without distorting the competition with private media actors, but the issue is addressed, as the agreement with DR is that it should limit some of its activities online. In fact, as provided for under the Danish law, DR cannot receive advertising revenues from program services and public service activities on the Internet.

- 2) Second, around the **lack or the excess of funds, and increased state control**. In **Hungary**, for example, the state budget of the PSM, which is financed through the Media Services and Support Trust Fund's (MTVA), is growing every year, as well as state advertising revenues, and this is raising concerns about the extent of the state's control on the PSM (Bátorfy & Szabó, 2021).
- 3) Third, around the **ban on PSM's advertising activities**. In **Lithuania**, since 2015, the PSM, LRT, does not participate in the advertising market, with the ban being complemented by a very rapid annual surge in its revenue, due to an increase in the allocation of state budget. However, the LRT still broadcasts commercials in the form of sponsorships (which are not defined as advertising). This has fuelled friction with the commercial media, who argue that LRT creates unfair competition in the market (including online), and its activities exceed the public mission that must be performed under the law covering public service media (Balcytiene et al., 2021). In **Cyprus**, too, since 2019 the Cypriot PSM CyBC is banned from screening advertising, which has caused complications in its operation. Disagreements between the government and opposition parties have led to the temporary blocking of parts of its budget, and it will need additional procedures to de-block them.

To conclude

- There does not seem to be a preference for either direct or indirect subsidies as 20 Member States implement direct subsidies, and 21 Member States support their media market through the implementation of indirect subsidies, mostly through tax breaks.
- The **sectors receiving direct subsidies are more diverse than those receiving indirect subsidies** as, in the latter case, the vast majority of subsidies are allocated to the press sector. The sector receiving the most funding is the press (both direct and indirect subsidies).
- PSMs are mostly funded through a mixed type of funding (i.e., public and commercial funding combined) which ensures some degree of independence from the state.** In most Member States that have raised the issue of PSMs conducting their operations online, the laws do not provide for funding that adequately covers the online public service missions of the PSM without distorting competition with private media actors. Complaints against the unfair distribution of subsidies for PSM stations, and the distortion of competition, have been raised by commercial players, not only at the national, but also at the EU level.
- In the majority of the Member States, the allocation of subsidies is justified in detail, thus making it transparent.** However, it seems that there is a **high number of complaints in relation to the subsidies' unfair or discretionary allocation.**
- Media pluralism** is mentioned **as an objective** for granting direct support to the press, in most cases. At first glance, it seems that there is no discrimination between the eligibility of the funds for the public or the private media. Online media is covered by direct subsidies in 13 Member States, and in 10 Member States by indirect ones.

8. Special rules for the advertising sector

With its contribution to funding media, advertising plays a crucial role in the functioning and sustainability of the media sectors. While there will be further elaboration on this theme in Chapters B2 and B3 (Case Study 4), this section focuses on mapping all of the special rules for the advertising sector. This includes the rules that relate to state advertising and its transparency; the disclosure or reporting requirements for actors involved in the advertising trade; and the restrictions on the control of media companies by these actors.

We first map **state advertising** and its transparency. State-related advertising refers to any form of financial support the media receive in exchange for presentation and promotion of ideas, policies, goods and services by the state-related entity (most commonly the government, state-owned companies or state administration bodies). It includes all uses of the state budget or of the budget from state-owned companies, to run social campaigns (Dragomir, 2017). While state advertising is common worldwide, and these campaigns are normally considered, and expected, to play a positive role in improving societies, state advertising can be used as a highly effective form of media capture. Problems that are related to the unfair distribution of state advertising budgets have been widely documented for decades, with state advertising funding often being used to reward media outlets that are close to, or uncritical of state authorities (Dragomir, 2017). Increased **transparency standards** could be one of the ways to limit the use of state advertising in relation to media capture.

Disclosure or reporting requirements for those actors who are involved in the advertising trade are covered. This includes all transparency rules, that **directly concern the advertising sector**. This, then, considers how, and to whom (general public, public authorities, etc.) information must be provided regarding ownership and financial information in the advertising sector.

Moreover, **restrictions on the control of media companies by actors who are involved in the advertising trade** are a **form of cross-media ownership restriction**, but applied to the advertising sector.

For each measure identified, we provide a basic description and details of the sectors covered. For all these measures, we extensively map the following information:

- Which authority is responsible for ensuring compliance;
- What are the applicable procedures and benchmarks?
- What are the consequences in the case of non-compliance?
- References to relevant decisions and case law.
-

The questions we aim to answer include:

- Are there significant differences among MSs relating to the regulation of State advertising?
- What are the criteria employed in the allocation of State advertising? Is this allocation fair and transparent?

Results

Our mapping shows that **14 Member States provide measures concerning state advertising**. They are analysed in more detail below. In comparison, only 7 countries provide disclosure or reporting requirements for those actors who are involved in the advertising trade, and 5 countries provide restrictions of control on media companies for these actors. **15 countries** have no specific measures that target the advertising sector: Bulgaria, Cyprus, Czechia, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Luxembourg, Poland and Slovenia.

In relation to restrictions of control on media companies for actors involved in the advertising trade: in Croatia, a legal or natural person, or a group of connected persons whose activity is in advertising and that owns more than 10% of the ownership share in the capital, cannot be an owner, nor can they have ownership of stocks or shares in the capital of the television and/or radio broadcaster (Electronic Media Act - 153/09). In Slovenia, advertising agencies and telecoms are restricted from owning radio or television stations, according to the 2006 Mass Media Act.

In relation to **state advertising**, we looked in more detail at the measures adopted in the 14 Member States in which such measures are in place. Only **Italy** explicitly takes **media plurality** into account as an objective of the related measures. In **4 Member States, state advertising rules also apply to online media**, or there is a plan for them to do so: Croatia, Greece, Spain and Belgium (both Flemish and French communities). In **Greece**, for example, pursuant to Art. 54(b) of Law 4339/2015, online media outlets are also eligible to host public sector advertising, provided that they are registered with the “Online Media Register”.

We also evaluated whether the measures could be considered fair and transparent. **Fairness** refers to the extent to which the measures aim to ensure some balance between media outlets, for

example, by favouring some categories of actors that would be in a weaker position such as local media. **Transparency** includes all of the requirements of the disclosure of the amounts and beneficiaries of spending. While we separate these two criteria for analytical purposes, both are complementary and, as a result, there is a continuum in their relative presence or absence. More precisely, **without any transparency, it is impossible to assess the fairness of any measure.**

Some countries can be identified as taking into particular consideration the importance of **transparency**, for example, Austria, France, the Netherlands and Portugal. In **Austria**, the 2012 Media Transparency Law (amended in 2015) thus forces the government, public bodies and state-owned corporations to disclose their media collaborations if the total amount of the fees paid exceeds €5,000 per quarter year (Art. 1(1)). The law has been criticised for not providing fair rules on distribution, and thus for not preventing preferential treatment and misconduct (Seethaler & Beaufort, 2021). In the **Netherlands**, a yearly evaluation of State advertising campaigns is published.

Other countries have adopted **measures that are more aimed at “fairness”**. In **Croatia**, for example, Article 33 of the Electronic Media Act (OG 153/09) states that state bodies and legal entities which are owned by the Republic of Croatia are required to spend 15% of their annual budget for the promotion of their services or activities on advertising in the audiovisual or radio programs of regional and local television and/or radio broadcasters.

The remaining countries usually include objectives of both transparency and fairness. This is the case, for example, in Belgium (Flanders), Greece, Italy and Lithuania. In **Greece**, at least 30% of the budget planned for each type of medium should be allocated to the regional media (Art. 4(2) of Presidential Decree 261/1997). To select the outlets that shall display the ads, the public bodies that wish to be advertised have to employ certain criteria, with due respect to the principle of non-discrimination and value-for-money (Arts 6 and 7 of Presidential Decree 261/1997). Turning to transparency, the law requires that public authorities submit, on an annual basis, to the General Secretariat for Information and Communication, a list detailing the amount that they have spent on advertising in each type of medium during the past year, and they have to specify the recipients (Art 47) of Presidential Decree 261/1997). In **Italy**, according to Legislative decree n.208/2021 (art. 49), government departments, agencies and state administration bodies (including the economic ones) that buy advertising on the mass media must reserve 15% of the expenditure for local radio and tv, and 50% for the press (daily newspapers and periodicals). These expenditures must be communicated yearly to AGCOM by these government departments and public authorities. It is worth noting that these provisions do not apply to publicly-owned companies.

Finally, even in those countries that do not have such measures on state advertising, **discussions around the necessity to regulate State advertising** are taking place. In **Germany**, for example, where only general procurement law applies, there is an ongoing political debate about whether and how to regulate the advertising marketing, especially with regard to the transparency of price structures. So far, no draft legal measure has been suggested. In **Malta**, Prime Minister Robert Abela deemed it too costly to collect the information that is needed to assess the government’s expenditure on advertising and communication in the media.³⁴³

³⁴³ See <<https://newsbook.com.mt/en/question-on-government-spending-on-media-and-advertising-to-remain-unanswered/>> last accessed on May 27, 2022.

To conclude

- 14 MSs have in place measures concerning state advertising;
- While some MSs emphasise transparency measures, others emphasise fairness measures (more balanced distribution among media sectors and among those at the national-local level). A third group of countries aim to achieve both transparency and fairness;
- Among the MS that do not have measures relating to state advertising, some are discussing the necessity to regulate it.

9. Interventions by national authorities that affect competition among media actors

This **includes interventions by data protection, competition, or other relevant authorities**, which do not derive from the application of media-specific rules but, nonetheless, have an impact on media concentration and on competition in the media markets. For example, the imposition of data sharing obligations, the imposition of obligations with regard to the relationship between content producers and content distributors (signal integrity – Article 7b in AVMSD), the Directive on Copyright and Related Rights in the Digital Single Market (DSM Directive)³⁴⁴ and the monitoring activities that are conducted by the competition authorities or by other regulatory bodies with regard to concentration on, for example, the advertising market.

The questions we aim to answer include:

- Is there inter-institutional coordination in such interventions?
- To what extent are the initiatives complementary to competition and media (ownership) law?

The mapping here is rather limited, with only 10 relevant interventions identified. They can be grouped into 3 categories.

First, there are interventions (under either IP or competition rules) that protect media companies' intellectual property from undue exploitation by distributors or digital platforms. This protection may cover both traditional and new rights, such as the new, short (2 years) **neighbouring rights that have been granted to press publishers** by the **DSM Directive**. **Article 15** grants publishers direct copyright over "online use of their press publications by information society service providers", with exceptions for hyperlinks, "legitimate private and non-commercial use of press publications by individual users" and individual words or very short extracts of a press publication. The Maltese Copyright Act Law 261/2021, which transposed this Directive, established a **Copyright Board**, which will determine whether a collective management organisation is able to meet the conditions in the context of a non-exclusive licence that is negotiated in terms of sub-regulation. However, overall, it is too early to assess how the DSM Directive and the national rules that have been, or will be, adopted to implement it will impact upon the competition among media actors since, at the time of writing, only 12 countries transposed the DSM Directive.

Sometimes, stakeholders have reverted to competition rules. For instance, following the French transposition of Article 15 of the DSM directive, in November 2019, several press unions lodged a complaint to the French Competition Authority arguing that Google is abusing its dominant

³⁴⁴ See <<https://eur-lex.europa.eu/eli/dir/2019/790/oj>> last accessed on May 27, 2022.

position.³⁴⁵ In April 2020, the Competition Authority concluded in its interim decision that Google holds a dominant position and that their practices are likely to be qualified as anti-competitive. It required Google to negotiate “*in good faith*” with the press industry over the licensing fees, and to do so within three months. It also applied conservatory measures during the negotiations, which will remain until it has made a definitive statement on the case³⁴⁶. In October 2020, the interim decision was confirmed by the Paris Court of Appeal. In July 2021, the Competition Authority fined Google €500 million for not respecting the interim measures.³⁴⁷ In December 2021, the French NCA launched a market test of the commitments that Google proposed to address the raised competition concerns. If and once the commitments will be imposed on Google, they would be binding for 5 years (see also Chapter B3 for an analysis of the French case).

Second, we came across interventions that deal with **data and advertising**. Once again, the authorities that take the initiative in these cases are National Competition Authorities. In **Italy**, in October 2020, the AGCM opened an **investigation into Google over the alleged abuse of its dominant role in the country’s online display advertising market**. The investigation followed a complaint that had been filed by the Italian digital advertising lobby group, IAB (Interactive Advertising Bureau Italy). AGCM questioned the discriminatory use of the huge amount of data collected through its various applications, which was preventing its rivals from competing effectively, as well as adversely affecting consumers.³⁴⁸ The AGCM investigation has been closed (12 oct 2021) following the EC investigation on the same alleged conduct (ex art. 102 TFEU).³⁴⁹

In **Finland**, existing rules and regulations are vague, and they have not been updated to meet the development in the sector. Nevertheless, in 2017, the Competition and Consumer Authority, the ‘FCCA’, issued a report on platform economy, and the FCCA argued against regulation reform in Finland. In 2019, it **investigated the cooperation of Sanoma Media Finland Oy and Fox Networks Group Oy in selling television ad space**. However, it decided to close the investigation in 2020, as it found that there was still a significant amount of competition in the television market, even though the arrangement was potentially restricting competition.³⁵⁰

³⁴⁵ A similar case involved Google in Germany, see: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2021/04_06_2021_Google_Showcase.html accessed on May 27, 2022.

³⁴⁶ Autorité de Concurrence, Related rights: the Autorité has granted requests for urgent interim measures presented by press publishers and the news agency AFP (Agence France Presse), 9th April, 2020, <https://www.autoritedelaconcurrence.fr/en/press-release/related-rights-autorite-has-granted-requests-urgent-interim-measures-presented-press>

³⁴⁷ Autorité de Concurrence, Rémunération des droits voisins: l’Autorité sanctionne Google à hauteur de 500 millions d’euros pour le non-respect de plusieurs injonctions, 13 July 2021, <https://www.autoritedelaconcurrence.fr/fr/communiqués-de-presse/remuneration-des-droits-voisins-lautorite-sanctionne-google-hauteur-de-500>

³⁴⁸ AGCM (2020) A542 - ICA: investigation opened against Google for an alleged abuse of dominant position in the Italian market for display advertising. Press release, 28th October, 2020. Available at <<https://en.agcm.it/en/media/press-releases/2020/10/A542>> last accessed on May 27, 2022.

³⁴⁹ https://ec-europa-eu.eui.idm.oclc.org/commission/presscorner/detail/en/ip_21_3143 accessed on May 27, 2022.

³⁵⁰ See <<https://www.google.com/url?q=https://www.kkv.fi/ajankohtaista/Tiedotteet/2020/23.3.2020-kkv-selvitti-sanoman-ja-foxin-valista-tv-mainostilan-myyntiyhteistyota--tutkinta-paatetty/&sa=D&source=docs&ust=1636100970064000&usq=AOvVaw01eYppuiJcaqtCDXauEKIF>> last accessed on May 27, 2022.

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

In **France**, the Competition Authority produced a **report on online advertising** in 2018,³⁵¹ in which it analysed the market, its structure, the problems that economic actors faced, and announced that it would look further into the question.

In Belgium, the NCA scrutinised the **merger of the Telenet Group BVBA / De Vijver Media NV** (Decision 19-CC-16), according to merger rules that are contained in the Code of Economic Law. Interestingly, it actively **accounted for online advertising** in its competition assessment. Besides this, although the Code of Economic Law does not contain any explicit legal obligation for the Competition Authority to take into account media pluralism in its competition assessments, the latter **has paid due regard to the media pluralism aspects** in a number of cases. Media pluralism was, **however, considered only as part of its consumer welfare analysis**. This, for example, resulted in remedies that aim to preserve the number of newspaper titles: in the Mediahuis merger, the parties committed to maintaining all of the existing newspaper titles in the next five years, and to guaranteeing that these newspapers would have their own editorial staff and a dedicated editor-in-chief (Decision BMA-2013-C/C-03, 25 October 2013).

Finally, we want to highlight **interesting and innovative institutional practices, including inter-institutional cooperation between authorities**. In Ireland, the **Future of Media Commission** was created to examine the challenges faced by public service broadcasters, commercial broadcasters, print and online media platforms. The Commission was due to produce a report and recommendations, by the summer of 2021, on how the media can address these challenges both now and in the future.

In **Italy**, 3 authorities (**AGCM, AGCOM and GDPD, that deal respectively with competition, media and data protection and privacy**) joined forces in an **inquiry on big data**, which started in 2017, and they produced cooperation guidelines and policy recommendations released on 10 February 2020³⁵².

Similarly, in **France**, there was the creation in March, 2020, of a **joint division** between the 2 NRAs, ARCEP and CSA (now ARCOM), one dealing with Electronic Communications, Postal and Print media distribution, the other with audiovisual media, to draw on their complementary expertise in order to deepen the technical and economic analyses **of digital markets**. A first joint session of the ARCEP and CSA/ARCOM plenary boards was held on 9 October, 2020, at which time the joint digital division's work program was also published.³⁵³

To conclude

- There are interventions, under either IP or competition rules, that relate to the protection of media companies' intellectual property from undue exploitation by distributors or platforms, though only in a handful of MS as of the time of writing
- This protection may cover both traditional and new rights, such as the new, **neighbouring rights for press publishers**, which are guaranteed by the **DSM Directive**.

³⁵¹ Autorité de la Concurrence, "Avis n° 18-A-03 du 6 mars 2018 portant sur l'exploitation des données dans le secteur de la publicité sur internet <<https://www.autoritedelaconcurrence.fr/fr/avis/portant-sur-l'exploitation-des-donnees-dans-le-secteur-de-la-publicite-sur-internet>> last accessed on May 27, 2022.

³⁵² AGCM, AGCOM, GDPD (2020) Indagine Conoscitiva sui Big Data, Available at <https://www.agcom.it/documents/10179/17633816/Documento+generico+10-02-2020+1581346981452/39c08bbe-1c02-43dc-bb8e-6d1cc9ec0fcf?version=1.0> last accessed on May 27, 2022.

³⁵³ See 'Cooperation Between Regulators. ARCEP and CSA developing new areas of collaboration within a joint division, 2nd March, 2020, <https://en.arcep.fr/fileadmin/cru-1582218129/user_upload/12-20-english-version.pdf> last accessed on May 27, 2022.

- There have been a few investigations by national competition authorities into **online advertising** that have focused significantly on the role of data use.
- **There are also innovative institutional practices, including inter-institutional cooperation between authorities**, which are currently found in **Ireland, Italy and France**.

10. Data gathering methods for assessing media concentration

We map here the methods for gathering data about market concentration in the media sectors. This stands in contrast to the rest of the mapping, since we do not focus here on legal measures but, from the perspective of (media) economics, on the ways in which data related to the media markets' concentration can be collected and assessed. **While the main focus is on the methods employed by public authorities** (media authorities, but also the national competition authority, governmental bodies etc.), **this mapping also includes methods employed by industry associations** (such as IAB or the Cyprus Online Publishers Association) **and data companies** (such as Nielsen). In addition to the mapping performed for this Chapter, notably based on the MPM data, this section benefited from the feedback of 16 ERGA members to a survey circulated in December 2021.

Information mapped on data gathering methods

The assessment of market concentration is a traditional endeavour of competition authorities. For media markets, media authorities are the entity having a role in this activity, in particular due to the connection to media pluralism issues. Actually, in relation to the media, the focus on market concentration (rather than, for example, internal pluralism or exposure diversity) is based on a longstanding presumption that, in a competitive media environment, media outlets will seek to differentiate themselves by producing a diversity of content and viewpoints that will capture the differing needs and niches of the public (Napoli, 1999). Hence, **ensuring that there is not too much market concentration should lead to a diversified offer of content and to diverse consumption**.

For regulatory bodies, **one notable challenge** lies in the assessment of **media concentration with regard to online media**. The frameworks are here adapted by the inclusion of Internet media in the assessment of cross-media market concentration. Actually, several countries have regulations limiting cross-media ownership. Their regulations, and hence the way to measure such cross-media ownership, have to be adapted to the advent of online media (ACMA, 2020).

A second, and more specific, challenge with regard to the focus of this study is the fact that **in many EU MS, there seems to be no publicly available data on market share and revenues**, not even in the audiovisual sector (e.g., in **Luxembourg, Slovakia**). In addition, our mapping reveals a **very fragmented picture**. In the **Czech Republic**, for instance, there is no central regulatory body that collects data on media companies' revenues, and the assessment of the market situation in a given segment (i.e., by the Office for the Protection of Competition) is carried out based solely on viewership/circulation figures. Things become even more complicated in the digital field. In **Italy**, there is a lack of standards for the measurement of the digital audience: in this regard, the Italian Communications Regulatory Authority (AGCOM) has recently released some recommendations for

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

those private actors who are collecting audience indices in the digital ecosystem³⁵⁴. Some virtuous examples come from **Ireland**, where the BAI reporting obligations state that methodological research, and the development of appropriate measurement instruments are required.³⁵⁵

Nonetheless, through this mapping, we have attempted to describe several metrics of media concentration, such as the number of competitors; the concentration of market shares; the concentration of revenues; the concentration of audience shares (and, more generally, information about audience measurement); cross-media concentration; the concentration of content; and internal pluralism.

We have mapped information on the method that is employed for collecting data on market concentration, including:

- Which authority is responsible for assessing the concentration of the media market;
- Whether there is an obligation to regularly report on media concentration level, or the occasion on which concentration is measured;
- The indicators used. Most common indicators are Concentration Ratios (CR) and the Herfindahl-Hirschman Index (HHI);
- How are the components of the indicators calculated? (are these market shares? Based on what? Audience? Downloads? Purchases? Etc.);
- The sources of data (in other words who gathers the data, whether it is the public authority itself, or a subcontractor).

The questions we aim to answer include:

- In which sectors are data on media concentration collected?
- How regular is this monitoring?
- Which metrics are employed?

Results

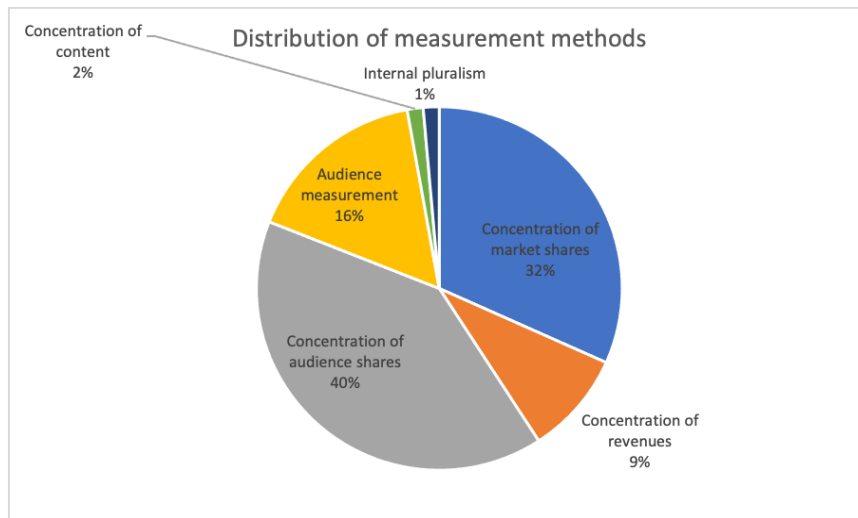
The mapping of data gathering methods on media concentration finds that **142 different methods** are employed throughout the 27 EU Member States. These methods refer to very different measurement instruments and indicators, from full reports to scattered figures (e.g. on market shares).

First of all, it must be outlined that the object of our scrutiny here relates to the **kinds of data that** are gathered in order to assess the eventual media concentration. The following figure offers an overview of the distribution of measurement methods according to the object, or the metric, of the measurement. **The majority of methods measure audiences or the concentration of audience shares.** 32% measure the concentration of market shares, and 9% measure concentration from the perspective of revenues.

³⁵⁴ Resolution No. 194/21/CONS: https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5lVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5lVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5lVOIXoE_assetEntryId=23344823&_101_INSTANCE_FnOw5lVOIXoE_type=document last accessed on May 27, 2022.

³⁵⁵ Section 28M of the Competition Act, 2002 (as updated by section 74 of the Competition and Consumer Protection Act 2014).

Figure B1.1. Distribution of measurement methods in terms of the object of the measurement



Focusing on the methods employed by public authorities, we find that almost as many countries assess the concentration of audience shares (19) and of market shares (16). The measurement of the concentration of revenues takes place in only 9 countries, 4 for content (Germany, Italy, Netherlands and Portugal) and 5 for internal pluralism (Cyprus, Denmark, Italy, Netherlands and Portugal). In particular, the very extensive Annual Regulation Report, published by the Portuguese Media Authority (Regulatory Entity for Social Communication 'ERC'), which includes a lot of information about the level of media concentration in the country, is worth mentioning here.³⁵⁶

We were not able to find any methodology to measure cross-media concentration in the EU.

In this regard, the UK might be an interesting example to analyse in more detail. Developed by Ofcom in 2015, upon the request of the British Government, in order to develop a framework for measuring media plurality, the **Measurement Framework for Media Plurality** is composed of 3 key quantitative categories (Availability, Consumption and Impact) and it takes into account the contextual factors. It attempts to measure concentration across media platforms (TV, radio, newspapers, Internet) (Ofcom, 2015).

From a **sector-specific perspective**, we find that 44 methods for measuring concentration are applied to TV, 35 to radio, 29 to print, and 45 to online media services. Focusing on methods employed by public authorities, 19 countries or regions assess concentration in the TV sector, 17 in the radio sector, 9 in the press sector, and 13 in the online sector. There is thus a smaller number of methods for assessing the level of media concentration that is being applied to the press sector, if compared with the other media sectors. Another interesting finding regards the high number of methods that exist for assessing the concentration in the online sector, which, however, also reflects its variety and broadness. However, the focus on methods employed by public authorities shows that the online sector remains less monitored than TV or radio sectors.

Another important point relates to the **regularity** of the monitoring of media market concentration in the Member States. Our study identifies **only 12 countries in which public authorities** monitor market concentration. 10 out of 12 **on a yearly basis**: Austria, **Belgium** (both communities), **France**, **Italy**, **Lithuania**, the **Netherlands**, **Poland**, **Portugal**, **Spain** and **Sweden**. In **Cyprus** and in **Ireland**, the media authority has to provide a report on media concentration and plurality every three

³⁵⁶ See, for instance, the Portuguese Regulatory Authority For The Media - ERC (2020) available at <<https://www.erc.pt/pt/estudos-e-publicacoes/relatorios-de-regulacao>>, last accessed on May 27, 2022.

years, and that is primarily aimed at government representatives. Another initiative worth mentioning is the **Baltic Media Health Check**, a journalistic study that analyses yearly trends, finances and issues of importance in the Baltic media markets (Krūtaine & Jemberga, 2020). This includes the concentration of TV channels, Internet media websites, radio stations, newspapers and magazines, in each of the three Baltic countries.

Finally, usually not much information is provided in relation to the **indicators used to assess concentration (see also Chapter B3)**. Information is most often provided for the top 4 actors in each media sector, which permits the calculation of the Concentration Ratio 4 (C4 or CR4). More precisely, CR4 measures the market share (in %) of the 4 most important companies in a given market (for example, of the 4 main TV broadcasters in a specific country). Only the Belgian and Polish media regulators (for Belgium from both the Flemish³⁵⁷ and the French communities) mention the HHI, or Herfindahl-Hirschman Index. Based on Simpson's (1949) work, it allows not only taking into account the market shares of top players, but also the calculation of the differences between them. Hence, the level of competition in a market will be different if one actor has 50% and the 3 following actors have 10% each, or if the top 4 each have 20% of the market shares (while CR4 would give 0.8 in both cases).

To conclude

- **Methods** employed to analyse media concentration across MSs vary significantly.
- The majority of them **measure audiences or the concentration of audience shares**.
- The measurement of the level of **internal pluralism and of the concentration of content** are, instead, **more marginal**.
- **Our mapping does not identify a methodology that is being** employed anywhere in the EU that is related to the data gathering and the measuring of **cross-media concentration**.
- Only a **few MS regularly measure media market concentration**.

11. Conclusion

This Chapter has provided the initial outcomes of the mapping of the measures and data gathering methods that are employed in the EU Member States in regard to the concentration of economic resources, in order to ensure and monitor media plurality offline and online. There are two main types of outcomes in this Chapter. **The first outcome is the mapping framework**, which is articulated around 9 types of measures and methods:

- Media ownership rules
- Media mergers (notifications and assessments)
- Restrictions concerning capital control
- Disclosure and reporting of media ownership
- Financial reporting obligations for media companies
- Public incentives for media pluralism
- Special rules for the advertising sector

³⁵⁷ Annual Media Concentration Report – 2020, available here: <https://publicaties.vlaanderen.be/view-file/39898> (retrieved on May 27, 2022).

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

- Interventions by national authorities that affect competition among media actors
- Data gathering methods for assessing media concentration

The collection, updating, verification and cleaning of the datasets led to **the second outcome, namely, the results of the analysis**, here articulated around these 9 measures and methods. This section summarises these results, starting with general considerations that are related to media pluralism and online media.

First, despite a vast array of literature that emphasises the link between media market concentration and media pluralism, **pluralism is not usually an explicit objective of the measures that relate to concentration in the media markets in the EU Member States**. For example, with regard to the regulations on state advertising, only Italy explicitly takes media plurality into account. With regard to the rules prescribing financial reporting obligations for media companies, only 3 MS (Belgium, Italy and Portugal) identify media plurality as an objective of the measures. One exception concerns direct support to the press sector, where pluralism is evoked as an objective for the granting of such support, in most cases. Another interesting example stems from the practice of inter-institutional cooperation in the cases of the assessment of the mergers of media companies, in the form of a separate assessment by different authorities and/or a ministerial override. In these cases, it is more likely that media pluralism, or general interest considerations, will be taken into account in the media merger assessments.

Besides, there are **differences between EU Member States with regard to how pluralism is defined**, when it is defined at all. For media ownership rules, it can thus be seen that, most of the time, pluralism is given as a reason for restricting market concentration; however, the notion of pluralism is interpreted differently from MS to MS, and in the majority of cases where pluralism is mentioned, no definition is provided.

Most of the measures mapped in this chapter do not apply to online media. Media ownership rules are thus very focused on "traditional media", and they rarely take into consideration the take-up of new services and platforms, resulting in a scarcity of set limits for digital news media. Only a very few measures on financial reporting obligations apply to the online media. Only a few countries take online media into account in their measures that are related to State advertising. This is, however, not the case in the field of subsidies (direct and, especially, indirect) to the media sector, where online media is also covered in the majority of the MS.

When there are measures applying to online media, it is **most often unclear which services exactly are concerned**, or the scope might seem quite restrictive. Thus media ownership rules mostly refer to on-demand services, but they do not mention other types of online media. There can also be **difficulties in enforcing the law for online media**, as exemplified in the rules on the disclosure and reporting of media ownership: as a matter of fact, it is even more difficult to identify real owners, as digital technologies make it easier for a service to be available across national borders.

Regarding **media ownership rules**, they are not envisaged by all of the EU Member States. In some MS there are no specific media ownership rules at all (e.g., in Slovakia, Estonia or Luxembourg). Overall, where no specific legislation is conceived of, or where it is conceived of only for some segments, general competition rules apply (e.g., in Bulgaria, Czech Republic, Denmark, Greece, or Luxembourg), with issues related to media concentration being taken into account by authorities other than those that are specifically Media Regulators (e.g., in Estonia or Luxembourg). The use of

Chapter B1. Mapping of the measures and data gathering methods concerning the concentration of economic resources to ensure media plurality

such rules mostly occurs through the implementation of the limitations on media reach, followed by restrictions on market shares and, lastly, by cross-media ownership restrictions.

Regarding **media mergers (notifications and assessments)**, lower thresholds and/or multipliers are not widely used. Special rules for the notification and assessment of media mergers (a system of separate assessment by different authorities/bodies or a system of ministerial override) can be found in almost half of the Member States.

Regarding **restrictions concerning capital control**, most Member States provide measures that limit, or even prohibit, foreign ownership or control of media organisations. In some countries, the award of licences is subject to thresholds on foreign shareholders. A large majority of MS provide restrictions in ownership or control by certain categories of actors (e.g., politicians) in order to avoid conflicts of interest.

Regarding the rules on the **disclosure and reporting of media ownership**, they are envisaged in the legislation of all Member States. However, transparency requirements are not always linked to media-specific laws, or to media pluralism objectives. Besides, there is a clear imbalance of regulation among media sectors, with the press sector being less often constrained in terms of media ownership transparency than are the TV or radio sectors. Moreover, although most often there is some provision that some information should be publicly available, in the majority of MSs, the public does not have access to the same information as the public authorities. Often, this is due to the ineffectiveness of the current measures and of the loopholes that allow media companies not to actually disclose their ownership structures.

Regarding **financial reporting obligations**, most MSs provide measures that impose transparency on media companies' financial information, and mainly on these companies' turnover. Here, again, TV and radio are more regulated than the press.

Regarding **public incentives to media pluralism**, there does not seem to be a preference among MSs for either direct or indirect subsidies. The sector receiving the most funding is the press (both in terms of direct subsidies and indirect ones). In the majority of Member States, the allocation of subsidies is explained in detail, thus making it transparent. However, it seems that there is a high number of complaints as to their unfair or arbitrary allocation. PSMs are mostly funded through a mixed type of funding, for example, by combining a license fee and advertising revenues.

Regarding **special rules for the advertising sector**, most Member States provide measures relating to state advertising. These measures usually put emphasis on either transparency (requirements for the disclosure of amounts and beneficiaries of spending) or fairness (measures that aim to ensure some balance between different kinds of media outlets). In comparison, only a few MSs provide disclosure or reporting requirements for those actors who are involved in the advertising trade, or restrictions on control on media companies for these actors.

Regarding **data gathering methods for assessing media concentration**, the majority of these methods are focused on measuring audiences and its concentration. There is a lower number of methods for assessing the level of media concentration that is applied to the press sector, in comparison with other media sectors. And no authority makes use of a method to measure cross-media concentration. Only a few countries have regular monitoring of media market concentration (and, in this case, it is usually conducted on a yearly basis).

Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data

Authors: Kristina Irion, Roberta Carlini, Beata Klimkiewicz, Daphne Idiz, Maria Luisa Stasi, Sally Broughton Micova, Joost Poort

Reviewer: Pier Luigi Parcu

With contributions by: Sofia Verza

1. Introduction

Many actors and activities in the media sector - particularly so in news media and commercial radio and television - are to a significant degree dependent on generating income from advertisement. For several years now, there is an observable trend in advertising revenue that signifies a major redistribution of advertising funds away from traditional media formats to online advertising. Traditional media actors' declining ability to attract advertisement revenues slowly but steadily undercuts their financial viability while other actors involved in the online media ecosystem are the beneficiaries of the redistribution of advertisement budgets. Concomitantly, the digital transformation has enabled a range of media revenue models which are significantly less reliant on advertisement revenues. For example, subscription-based and pay-per-view video-on-demand providers have gained a strong foothold in Europe. However, the ability to monetize media content and market conditions, it appears, are different for AVMS, on the one hand, and news media, on the other hand.

The increasingly dominant role of digital platforms in the online advertising market disrupted the business model of legacy media actors and offset many of the positive effects of the digital transformation for especially news media in terms of reducing costs and barriers to entry, and enhanced reach. That these shifts affect the economic viability of media actors has been noted in connection with newspapers and broadly journalism. Governments in Australia, France, Germany, Japan, Italy, Spain, the UK, and the US as well as the OECD have investigated competition issues concerning news media and digital platforms. The pandemic crisis starting in 2020 has intensified the competition for advertising revenue, thereby further putting pressure on news media's sustainability at a time when there is an increasing need for reliable news.

Sustainability and resilience of media revenue models can have a direct bearing on media plurality and diversity in a given media market. Internal plurality is at stake when media outlets whose financial viability is declining respond by cutting costs of media production, for example reducing newsroom staff. External media plurality suffers if as a result, media outlets distribute essentially the same media content, for example, the news acquired from wholesale news providers, and if media outlets have to quit their business. Media outlets in financial distress are also less likely to perform their important democratic watchdog function to hold those in power accountable. An economically viable position, by contrast, makes news media more resilient against political pressure and media capture.

Access to and use of consumer data for the various actors in the media industry (i.e. media outlets and all intermediaries) is becoming increasingly linked to commercial viability. Unlike with advertising revenue, however, there is no systematic collection of data about which actors in the value chain have access to which kinds and amounts of consumer data and the intensity of the use of this data. Moreover, the economic value of consumer data is largely based on its interaction with other data such as insights from aggregated personal data, content related data, transactional data, campaign performance data and so on. Data is important not just for advertising and targeting, but also for content personalization, service improvement, and maintaining attractiveness (e.g. for subscription services).

This Chapter will work towards three objectives: Firstly, it will provide a detailed snapshot of the distribution of advertising revenues, both online and offline, between media actors and other actors in the media ecosystem. This will feed an analysis of the impact of the current distribution of advertising revenues on the economic viability of European media actors, including a brief outlook on the likely evolution in the coming 5-10 years. Secondly, it will map access to and the intensity of

the use of consumer data in the media sector as well as the ability to harness consumer data on media plurality. Thirdly, it will introduce and assess media resilience through a string of non-advertising reliant business models.

2. Distribution of advertising revenues

In this part of the research, we will present data on advertisement revenues and examine the impact on media actors of the advertising funded business models. As such, the section will begin by showing advertising spending and revenue trends in relation to EU media markets. Following from this, the available evidence on the concentration of the digital advertising market between online platforms and media actors will be reviewed.

2.1 Research on digital advertising market and the online media sector

In the traditional media business model, media operate in a two-sided market, providing, normally at a subsidised price, content to consumers and selling consumers' attention to advertisers (Anderson, S. P. and Julien, B., 2015: 41-90). The digital transformation had a significant impact on both these sides of the media market, changing the behaviours of both consumers and advertisers, and therefore negatively affecting their two main sources of revenue: sales and advertising (Parcu, P. L., 2019: 5). On the one hand, the abundance and free availability of information in the online environment reduced the willingness to pay, and consequently the revenues from the sale of content; on the other hand, global advertising spending kept increasing, but with a substantial shift from traditional advertising (offline) to digital advertising.

Online platforms operate with a multi-sided markets model that allow them to exploit direct and indirect network effects, often distributing content that is generated by media or users. Platforms gather consumers' attention and data, and sell them to the advertisers. They are able to effectively exploit different market sides by distributing and selling targeted content/advertising, because granular access to consumers' data allows them to offer personalised free content to consumers and to market the ability to target consumers with online advertising. As a consequence, digital platforms act as direct competitors, in the advertising market, of media providers whose content they intermediate and distribute. Like in other economic sectors disrupted by "platformization", huge economies of scale and strong network effects create a winner-take-all dynamic, with these new digital competitors rapidly disrupting the old business models and dominating the market.

In the EU and globally, there is a growing debate around these disruptive challenges to competition and regulation and the need to create a level playing field in the digital business environment (European Commission, Directorate-General for Competition, Montjoye et al., 2019; Stigler Committee on Digital Platforms, 2019; Furman et al., 2019; US House of Representatives, 2020). Specific initiatives and investigations have focused on the peculiar risks for media market plurality and media pluralism related to the digital platforms' dominance. A relevant part of these reports as well as several competition cases focus on the digital advertising market and on the unfairness of the commercial relationships between platforms and publishers (Australian Competition & Consumer Commission, 2019 ads 2021; Autorité de la Concurrence, 2020 and 2021; Autorità Garante della Concorrenza e del Mercato, 2020; Bundeskartellamt, 2018 and 2019; Comisión Nacional de los Mercados y la Competencia, 2021; Competition & Markets Authority, 2020; Japan Fair Trade Commission, 2021; Martens, B. & al., 2018; US House of Representatives, 2020)³⁵⁸. Main

³⁵⁸ In June 2021, the European Commission opened a formal antitrust investigation to assess whether Google has violated EU competition rules by favouring its own online display advertising

enforcement and regulatory initiatives to address competition issues concerning news media and digital platforms are summarised in OECD (2021).

Although a comprehensive summary of the findings of these reports and investigations would be far beyond the scope of this chapter, some main points can be highlighted:

1. Digital competition in the advertising market is undermining a model that - in the past century, at least to some extent - solved the long-lasting issue of financing public interest journalism. The OECD Background note on *Competition issues concerning news media and digital platforms* focuses on the crisis of public interest news, noting that “public interest journalism is a good that has always faced concerns of under-provision due to market failures, and this is worsened by a few digital platforms” (OECD 2021: 37). In the traditional new media business model, public interest journalism was funded (and the issue of under-supply in some way resolved) by exploiting economies of scope through bundling with other content and by exploiting a two-sided business model through advertising revenue (OECD 2021: 7). In the digital media environment, this is less and less the case.
2. The commercial relationships between digital platforms and publishers are complex, as they impact all the phases of media production, distribution and financing. When it comes to the advertising sector, not only is the dominance of a few platforms in maximising the outcome of investors' spending under examination, but also their pervasive role in the advertising value chain, in which they often also act as intermediaries between publishers and investors (OECD 2021, Competition & Markets Authority, 2021).
3. In the digital advertising market, like in other digital markets, digital platforms' dominance is related to the very characteristics of their business model, that give them an “unassailable incumbency advantage”: in fact, “network effects and economy of scale; consumes decision making and the power of defaults³⁵⁹; unequal access to consumer data; lack of transparency; the importance of ecosystem; the vertical integration, and resultant conflict of interest” (Competition & Markets Authority, 2020:11).
4. Overall, this leads to unbalanced commercial relationships whose negative effect on media financing largely overcomes the positive effect of technological innovation (in terms of reduction of production and distribution costs, and increased online reach and audience). A specific source of concern is the declining sustainability of public interest journalism and local media.
5. The high concentration of the online advertising market is leading to a worldwide debate about the reform of competition law and/or competition tools. The UK Competition & Markets Authority (2020) includes the threats to news media economic sustainability among the issues that “matter for consumers” and sustain the case for a novel pro-competition regulatory regime for platforms:

“Although people do not typically have to pay directly for the content that is supported by digital advertising, all consumers stand to experience harm in a variety of forms if competition in these markets is not working well” (UK Competition & Markets Authority 2021).

technology services in the so called “ad tech” supply chain, to the detriment of competing providers of advertising technology services, advertisers and online publishers. https://ec.europa.eu/eui.idm.oclc.org/commission/presscorner/detail/en/ip_21_3143 accessed on May 27, 2022.

³⁵⁹ I.e., A growing propensity by consumers to accept the default options presented by the platforms; at the same time, the default setting gives the platforms substantial power in influencing consumer behaviour and can act as a barrier to competition.

In particular:

“Concerns relating to online platforms funded by digital advertising can lead to wider social, political and cultural harm through the decline of authoritative and reliable news media, the resultant spread of ‘fake news’ and the decline of local press which is often a significant force in sustaining communities. For online newspapers and other content providers, traffic from online platforms and revenue from digital advertising represents a vital part of their business. Problems in the search, social media or digital advertising sectors can dramatically affect their advertising revenues and reduce their ability to invest in news and other online content, to the detriment of those who value such content and to broader society” (Competition & Markets Authority, 2020: 7-9).

“These issues matter to consumers: if competition in search and social media is not working well, this can lead to reduced innovation and choice, while poor competition in digital advertising can increase the prices of goods and services across the economy, and undermine the ability of newspapers and other providers who rely on digital advertising revenue to produce valuable content” (Competition & Markets Authority, 2020: 42).

6. The issue of media sustainability, as a pre-condition for media plurality, calls for a holistic approach. Along with (renewed) competition tools, regulatory and policy initiatives are at stake to rebalance the market relationships between platforms and publishers and to safeguard media pluralism. These range from increased copyright protection to new codes of conduct for the platforms to meet objectives of fair trading, to public funding schemes.

1.1. 2.2 Data on the evolution of advertising revenues

Many media actors depend significantly on advertising revenues. In the EU, advertising revenues made up approximately one third of total revenues for audiovisual media services in 2020.³⁶⁰ In the press sector, this percentage was slightly higher.³⁶¹ For audiovisual services as well as for newspapers, the share of revenues coming from advertising has been decreasing over time, even before the extraordinary circumstances of 2020, due to the impact of digital innovation on the advertising market and the expansion of other types of ad-funded services. This section will present data on the distribution of advertising revenue that will provide a snapshot of the current trends in advertising spending and revenues in the media sector, traditional and online, as well as the distribution between publishers and platforms.

i. Methodology and data sources

Scope. For the scope of this part of the analysis, the whole media environment must be considered, including intermediary services which contribute to the functioning or accessing of a media but do not or should not exercise editorial control, therefore having limited or no editorial responsibility (e.g., search engines, social media, video-sharing services). Therefore, we will take into consideration the

³⁶⁰ In 2019, the share of advertising revenue for television and radio was 35.4% of total revenues of audiovisual services (including: public funding, advertising tv and radio, subscription revenues, pay-tv, on demand revenues) for EU28. In 2020, it decreased to 31.1% for EU27 + UK. Source: European Audiovisual Observatory, WARC.

³⁶¹ According to WAN-IFRA-PWC-Zenith data, advertising expenditure on newspapers and magazines in Europe made up for 37.7% of total revenues in 2019, 34.1% in 2020 (for methodology and list of countries covered by the WAN-IFRA dataset, see notes to the figures B.2.9, B.2.15-B.2.18).

“other actors, intermediaries and auxiliary services, in the media ecosystem” (see Table I.1, Introductory Chapter), namely the digital platforms funded (totally or in part) by digital advertising. We will visualise the evolution of global advertising expenditure, as resultant by the opposite trends of traditional media advertising revenues and digital advertising revenues. Then, we will try to assess to what extent the digital advertising growth did benefit the content providers (distribution between publishers and platforms); the related issue of the market concentration in online advertising; and the impact of digitalization on media revenues other than advertising (sales, subscriptions, pay-per-view models, etc).

Geographical coverage. After providing an overview of the worldwide trends, we will focus our analysis on the European Union + UK markets and on the different media sectors. There are several reasons for including the UK market in our analysis: the UK is the fourth advertising market in the world after the US, China and Japan, the third for digital ad spending (after US and China), and the first in Europe³⁶². For its size, as well for its relationships with the EU media markets, the UK market’s trends must be taken into consideration to understand the overall evolution, up to 2020; and the potential impact of Brexit, since 2020.

Time-frame. The time-frame of the analysis is 2010-2021³⁶³ and the forecasts from 2021 onwards, when available. This time-frame will help us to collocate the extraordinary shock of 2020³⁶⁴ in the longer trend of the market, and the direction of the economic recovery as far as advertising revenues are concerned.

Data sources. The analysis will be based on secondary data, from the following sources: eMarketer, WARC, WAN-IFRA-PWC, European Audiovisual Observatory, IAB Europe.

We will focus on:

- a. total advertising spending trends: distribution between offline and online advertising, worldwide;
- b. total advertising spending trends: distribution between offline and online advertisement, in European Union + UK;
- c. distribution between publishers and platforms;
- d. concentration in the advertising market;
- e. the impact of digitalization on the other revenues: circulation, subscriptions, pay models;
- f. the role of public sector advertisement.

ii. Total advertising spending trends – worldwide

In the last decade, after the economic crisis of 2007-2008, the global advertising market kept growing, climbing from 403.62 billion US dollars in 2011 to 651.19 in 2020 (at current prices). The overall growth has been driven by digital advertising expenditure, which increased by 405%, while traditional advertising expenditure (printed newspapers, TV, radio, cinema, outdoor) declined by 17.6%. More specifically, traditional advertising expenditure was stationary in the first years of the 2010s, and kept declining by 2015. In the meantime, digital advertising increased constantly, at an

³⁶² eMarketer, October 2021.

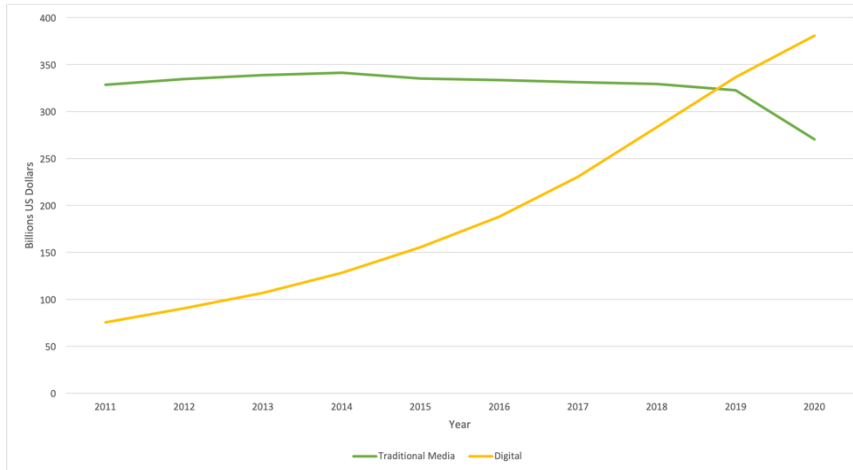
³⁶³ A different time frame can appear when full data are not available.

³⁶⁴ The impact of the COVID-19 crisis on the media economy has been widely investigated, in studies based on preliminary evidence: see Berger et al. (2020).; Bleyer-Simon and Carlini (2021); EJO (2021); KPMG (2020). COVID-19 and the media industry; The Economist (2020); The Euromedia Research Group (2020).

Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data

annual rate of 18-20%. As a result, in 2019 digital advertising surpassed the sum of all traditional media advertising on a worldwide level. The opposite trends of the two aggregates are similar in all the countries, with some markets anticipating the overall dynamics: in China, UK, Australia and Norway the digital advertising spending share has overtaken the traditional one since 2016.

Figure B.2.1. Advertising expenditure, traditional and digital, Worldwide, 2011-2020



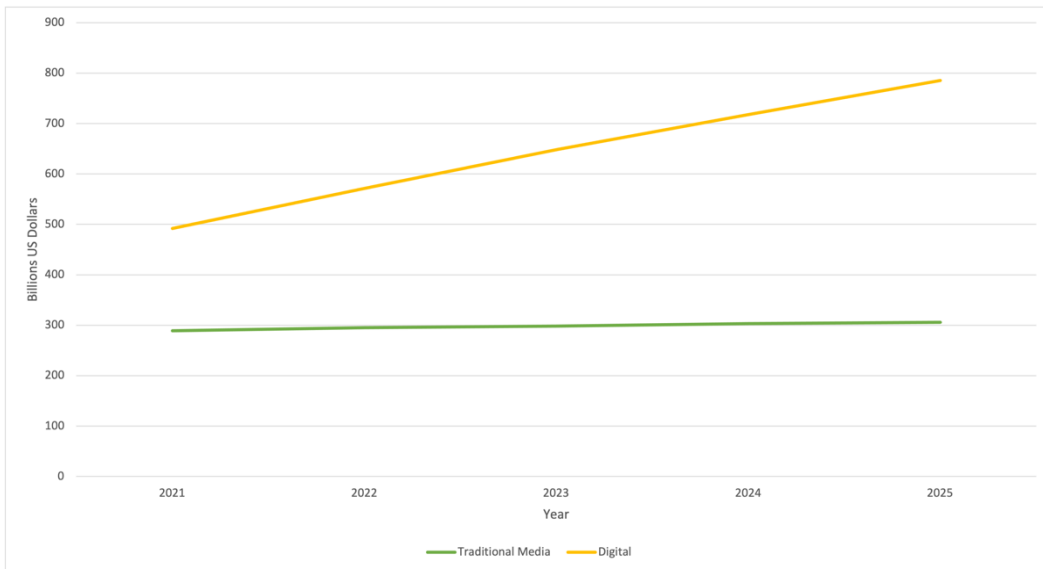
Source: eMarketer, *Worldwide Digital Ad Spending Year-End Update (23 Nov 2021)*.

Note: “Traditional” includes TV, magazines, newspapers, out-of-home and radio. eMarketer methodology includes in “traditional” the non-digital advertising revenues for traditional media. Digital advertising revenues of legacy media are included in digital.

Methodology: All years converted to US dollars using average 2020 exchange rates. Estimates are based on the analysis of various elements related to the ad spending market, including macro-level economic conditions, historical trends of the advertising market, estimates from other research firms, and consumer media consumption trends.

In 2020, the COVID-19 crisis accelerated the trend and digital advertising spending overtook traditional advertising spending in the European market as well. What has been named the “COVID 19 paradox” for media - a huge boost in demand and attention came along with a tremendous drop in financing - is blatant in the advertising numbers. In the unprecedented economic shock that occurred in 2020, with GDP declining by 4.9% in the OECD area, the traditional media advertising market performed worse than the overall economy, and lost 32.7% of its revenues worldwide; while digital advertisement had just a temporary slowdown, and then a relevant boost, finally increasing by 44.3% in 2020. According to the provisional data for 2021 and forecasts for the next few years, the trend is not going to reverse, and the faint recovery of the traditional advertising sector is far from compensating for the recent losses.

Figure B.2.2. Advertising expenditure, traditional and digital, worldwide (forecasts)



Source: eMarketer, *Worldwide Digital Ad Spending Year-End Update (23 Nov 2021)*.

Note and methodology: see above.

According to eMarketer forecasts, in 2021 digital advertising increased by almost 30%, whereas traditional media advertising experienced a limited rebound of 6.8%. In the following years, forecasters expect the gap between the two trends will continue to widen.

iii. Total advertising spending trends in the EU + UK

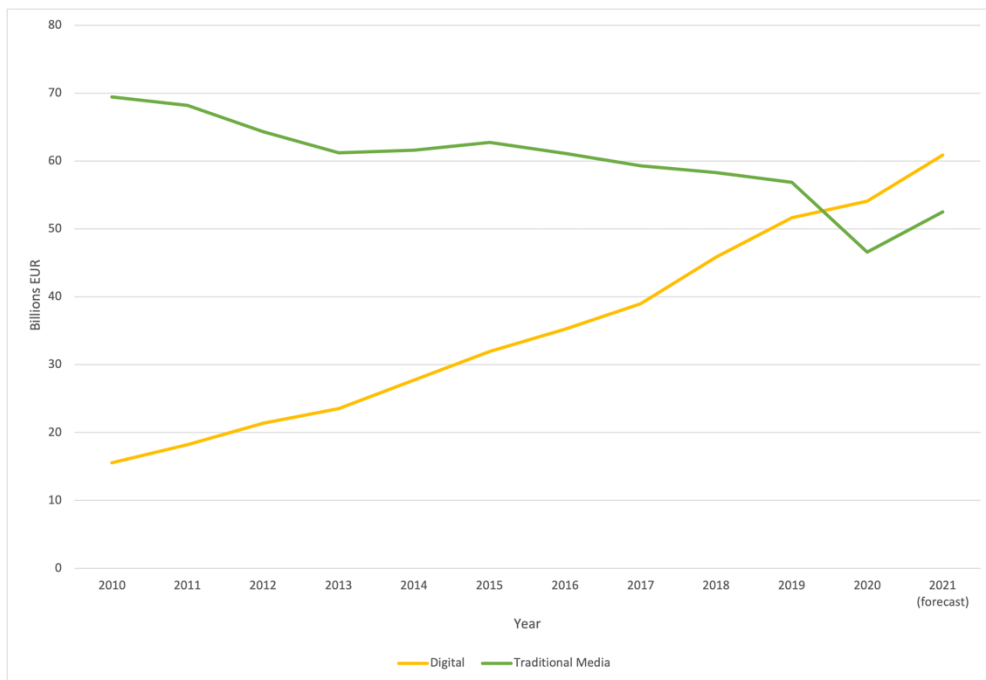
The European advertising market's trends are not significantly different from the worldwide scenario described above, except in the timing. Overall, the advertising expenditure in EU + UK increased by 33.4% from 2010 to 2021, reaching 113.3 bn EUR³⁶⁵.

As at a global level, in EU + UK this trend results from the two opposite trends of the traditional and digital advertising markets, with digital ad spend going up by 292% and traditional declining by 24.4%. As can be seen in figure B.2.3, digital overcame the sum of all the traditional advertising expenditure sectors in 2020.

It must be noted that "traditional" includes all the advertising revenues that are not digital, i.e. the traditional sectors of legacy media (television, radio, outdoor, cinema, physical video). The online advertising revenues for these sectors are counted in "digital". The distribution of the digital advertising growth between platforms and publishers will be discussed further in this chapter.

³⁶⁵ Source: WARC. In Europe (all the European Union member states, plus: Bosnia, Georgia, Kosovo, Moldova, Montenegro, North Macedonia, Norway, Russia, Serbia, UK, Ukraine) the total media advertising expenditure increased by 33.2%, up to 131.5 bn EUR. In the following graphs, we present data extracted from the WARC database for the European Union countries plus the UK.

Figure B.2.3. Advertising expenditure, traditional and digital, EU + UK, 2010-2021

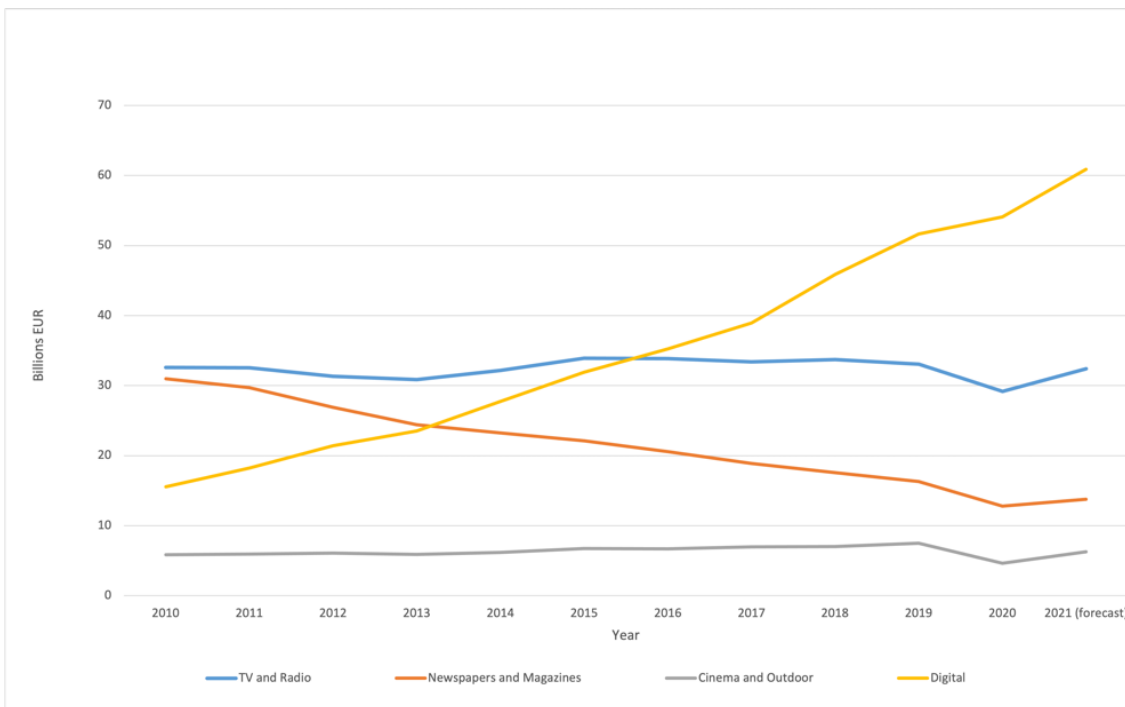


Source: our elaboration on WARC data. Current prices, billions EUR. Traditional includes: Newspapers, magazines, television, radio, cinema, outdoor. According to WARC methodology, advertising data are calculated net of discounts, including press classified ad spend and agency commission but excluding production costs.

Note: missing data for Digital in Luxembourg (2010, 2011, 2012, 2013) and Portugal (2010, 2011, 2012); missing data for Cinema for Estonia and Cinema + Outdoor for Greece (all years).

The overall trend results from different dynamics of the different media sectors and reflects the specificities and the weights of the national markets. Figure B.2.4 shows the trends of advertising revenues for each media sector from 2010 to 2021, in billions EUR. As can be seen, in 2010, television and radio received the highest share of advertising expenditure, followed by newspapers and magazines (combined); digital came third, and cinema and outdoor aggregate last. In 2014, the digital advertising expenditure reached and surpassed the print sector; in 2016, digital overcame television + radio; by 2020, digital advertising expenditure surpassed all the other sectors combined.

Figure B.2.4. Advertising spending by medium in EU + UK, 2010-2021



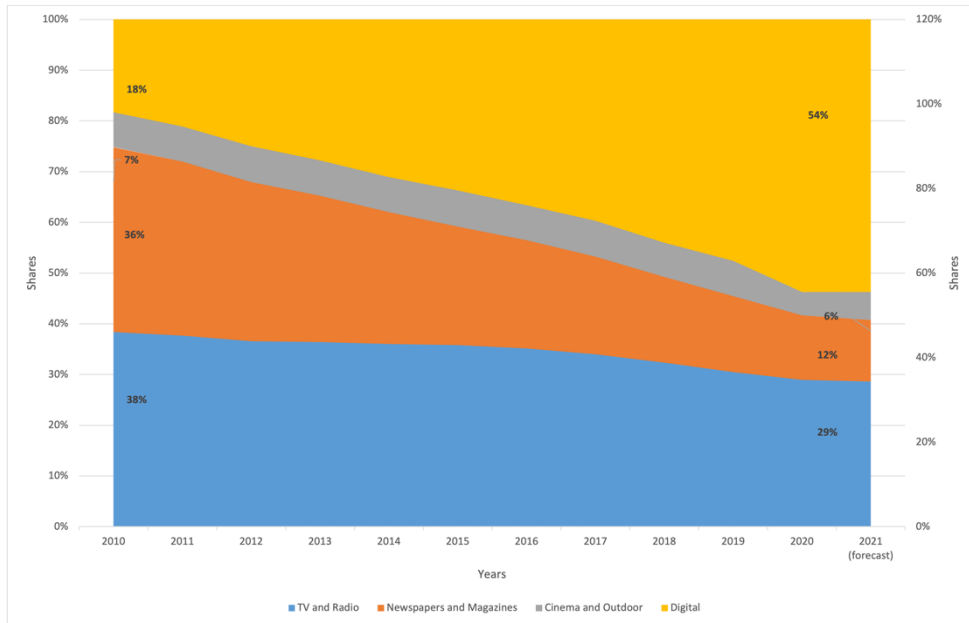
Source: WARC (see above)

The deepest and most persistent crisis is in the print sector. Newspapers and magazines advertising revenue fell by nearly 60% between 2010 and 2020. Even though 2020 has been an extraordinarily negative year, due to COVID-19, the downward trend was clearly visible before that; the 2021 recovery, according to the forecast, did not substantially change the trend (minus 55% 2010-2021).

In parallel, television and radio advertising revenues remained stable in value (at current prices), until the 2020 COVID-19 crisis, while the internet advertising revenues have steadily increased. As the European Audiovisual Observatory summarises, “until the COVID-19 crisis TV advertising had resisted Internet advertising competition comparatively well. The year 2021 may however mark a tipping point” (European Audiovisual Observatory YearBook 2020/2021: 6). More specifically, “TV advertising will, on the one hand, have been deeply hurt by the economic recession and will, on the other, probably recover more slowly than its main competitor, online advertising” (ibidem: 34).

Figure B.2.5 shows the outcome of these opposed trends, visualising the resulting shares of each sector (each year = 100).

Figure B.2.5. Advertising expenditure by medium in EU + UK, % of total, 2010-2021



Source: WARC (see above)

Note: values rounded.

As it can be seen, at the beginning of the last decade tv, radio, and newspapers shared the majority of the advertising revenues. The internet share has grown steadily, gathering almost all the market increase of the advertising expenditure increase and subtracting revenues from traditional sectors - primarily newspapers.

When it comes to the different national dynamics, it must be noted that the first three national markets - UK, Germany and France - sum up to 59% of all the European advertising expenditure (traditional plus digital); their share is higher (64%) if only digital advertising is considered. The top 5 markets - including Italy and Spain - cover 73% of total advertising expenditure, and 76% of digital advertising expenditure. This indicates that the share of digital ad spend is somewhat larger in the largest EU markets.

Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data

Figure B.2.6. Total advertising spending in the EU + UK by countries

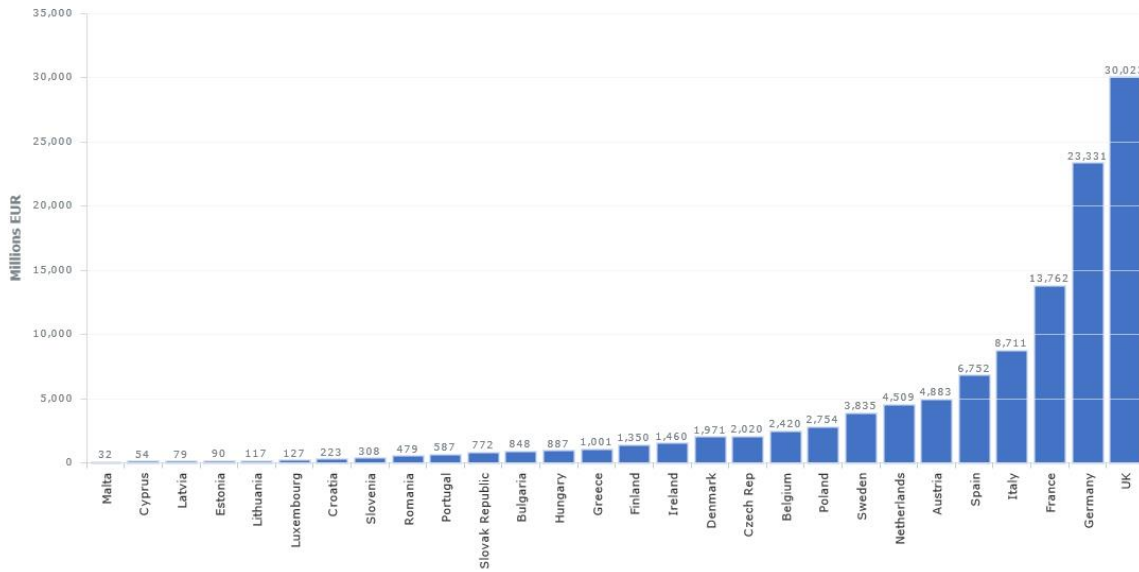
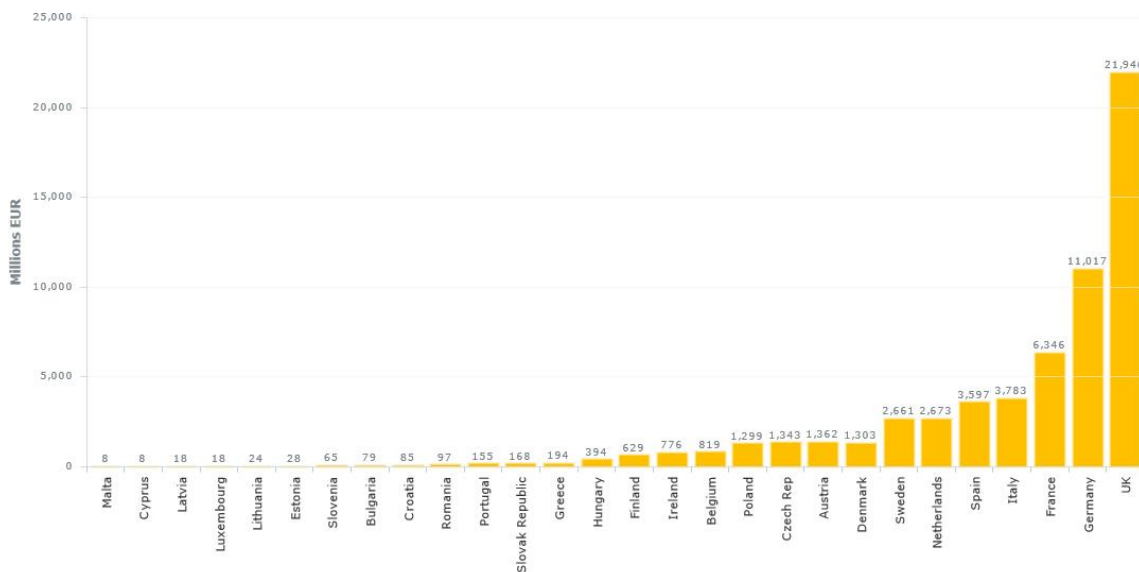


Figure B.2.7. Digital advertising spending in the EU + UK by countries



Source: WARC, million EUR, year 2021

At the top of the ranking, each market tells a different story. In the UK, at the beginning of the past decade the main sectors - television + radio, newspapers + magazines and digital - had similar market shares. Then, digital kept growing, becoming dominant since 2016 and reaching close to 80% in 2021. Germany, the second European market and now the first in EU27, was historically characterised by a dominance of the press sector in the advertising market. The press sector (newspapers + magazines) gathered most advertising revenues in 2010 (at the time, it almost doubled the television + radio revenues); since then, it has been declining constantly, surpassed UK first

by digital and then by audiovisual. In France, Italy and Spain television + radio dominated the advertising market in 2010 (by a large margin in Italy and Spain) and the print sector historically gathered a minor share of the advertising spending. The digital advertising growth impacted the advertising distribution differently in these countries, with the newspapers and magazines suffering most everywhere, and the audiovisual sector losing ground at a greater degree in Spain and France, more mildly in Italy.

Overall, similar trends can be seen in all countries. Whereas the details for each country can be seen in Annex B2, some general trends can be summarised:

- 1) Wherever the press sector was dominant in the advertising market at the beginning of the decade (Austria, Denmark, Finland, Germany, Greece, Ireland, Luxembourg, Malta, The Netherlands, Slovenia, Sweden), it lost ground very rapidly to the advantage of digital and (in some cases) of television and radio. By 2021, there were only two countries left in the EU in which the print sector still gathered the majority of advertising revenues, namely Austria and Luxembourg³⁶⁶. In all the other countries in which the newspapers + magazines sector led the advertising market in 2010, now it comes third, after digital and television + radio. It must be noted that in most of the eastern and southern countries, the share of the press did not shift completely to digital but benefited the television and radio sector as well. As a result, in Greece, Malta and Slovenia, as of 2021, the television + radio sectors gained the largest share of the advertising expenditure, with digital ranking second.
- 2) In countries in which the dominant share of the advertising market at the beginning of the decade was gained by television + radio (Belgium, Bulgaria, Croatia, Cyprus, Estonia, France, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Spain), different trends can be tracked. Generally speaking, the decline of the television + radio share of advertising was slower. Even though the digital sector kept increasing also in these countries, in some cases (Italy) it surpassed the television + radio sector ad revenues only with the 2020 crisis; while in other countries (Belgium, Bulgaria, Croatia, Cyprus, Estonia, Latvia, Lithuania, Portugal, Romania, Slovakia, Slovenia) the television + radio sector is still the first player of the advertising market. It is worth underlining the cases of France and Spain, where, in spite of a strong audiovisual sector in 2010, the shift from television and radio advertising to digital advertising was rapid, and digital overtook television + radio respectively since 2016 and 2018. An outlier in this group of countries is Poland: here the television and radio sector was by far the main player in the advertising market in 2010, and kept moderately growing until 2019; nonetheless, the digital market grew at a greater rate, consequently reaching and surpassing the sum of television and radio advertising revenues in 2020.
- 3) Finally, it is worth highlighting the cases of Czech Republic and Hungary. Here the shares of the two traditional sectors (grouped in television + radio, and newspapers + magazines) were very close to each other, at the beginning of the decade. In both of them, the press sector lost moderately but constantly and the television + radio sector gained moderately until the 2020 shock. But in both countries, digital kept growing quickly, so that it surpassed audiovisual in 2015 (Czech Republic) and in 2017 (Hungary).

³⁶⁶ This result can be explained by the structural features of the media market in these countries. In both cases, the print sector had relatively higher shares of the advertising revenues at the beginning of the decade. In the Austrian case, they remained stationary; in Luxembourg, there has been a decline in newspapers advertising revenues, but they remained above the other sectors, due to the higher starting point.

Main findings

- The consolidated data for the EU countries + UK confirms the worldwide trend, with a constant shift of advertising revenues towards the digital sector. In 2020, online advertising revenues overtook the sum of all the traditional advertising expenditure.
- Newspapers and magazines advertising revenues fell by nearly 60% in a decade, in the average EU + UK market. Advertising revenues in the audiovisual sector remained stable in absolute values until 2020, losing in relative weight.
- Preliminary forecasts show that after the 2020 crisis the traditional media advertising revenues are only partially recovering, not returning to pre-pandemic levels.
- This process is more visible in the most dynamic markets - UK, Nordic countries, Germany. The national markets have been impacted differently according to historical, economic and institutional features like the greater role of a high-concentrated audiovisual sector in most continental countries; the different consumers' habits; the different degree of development in digital skills and connectivity.

iv. Distribution between publishers and platforms

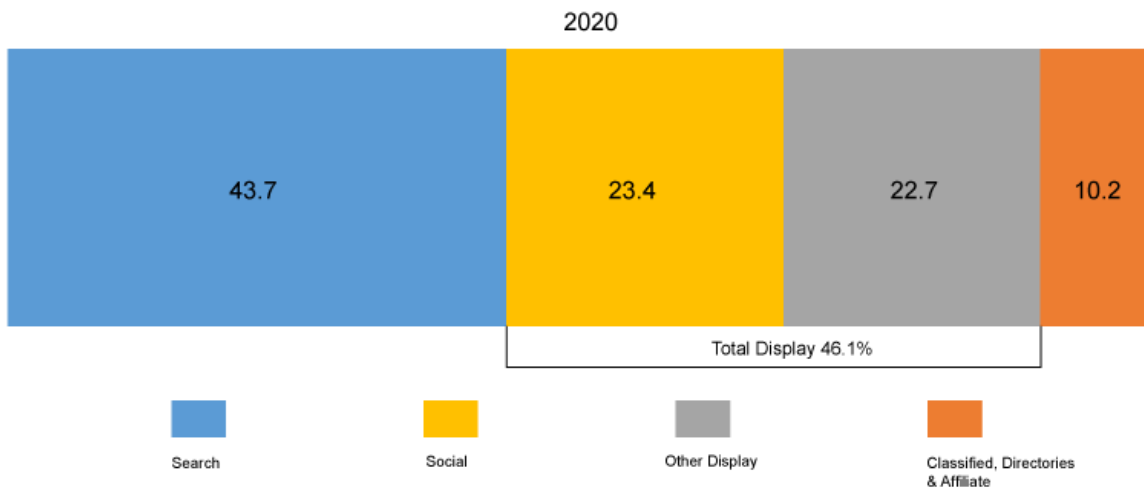
This section aims to answer the following question: to what extent did the digital advertising growth benefit the traditional media? In the above illustrated figures, “digital” is an aggregate that includes all the advertising expenditure that goes to the online formats. This includes the pure digital players (content producers or OTT) as well as the traditional publishers, televisions, radios who distribute their content also online. In other words, certain digital advertising revenues pertaining to “traditional” media are included in the digital numbers. Therefore, whether and to what extent the growth of digital advertising compensated traditional media for the decrease of offline advertising needs to be assessed.

To understand the distribution of the revenues from the digital advertising market, the composition of this market by format must be taken into consideration. The main formats of digital advertising are search advertising, in which sponsored ads appear in response to search queries, and display advertising, in which ads are displayed alongside the content users are interested in (like banners, buttons, native ads)³⁶⁷, followed by minor shares of classified advertising and others. In the search format, search engines are largely dominant, and among them the lion's share goes to Google-Alphabet. The display format can be split between social and other display: in the first, social platforms dominate, whereas in the “other display” there is the publishers' share, still intermediated and influenced by the platforms' referral traffic.

Both search and display contributed to the growth of digital advertising spending. In the display sector, the main driver is the share of social media display advertising. According to IAB Europe (2020), social accounts for more than 50% of all display spend in Europe; outside the social, the fastest growing segment is video. An overview of the shares of digital advertising spending by format in Europe can be seen in the following figure:

³⁶⁷ For definitions, see IAB Europe (2020).

Figure B.2.8. Digital advertising expenditure by format in Europe



Source: IAB Europe (2020).

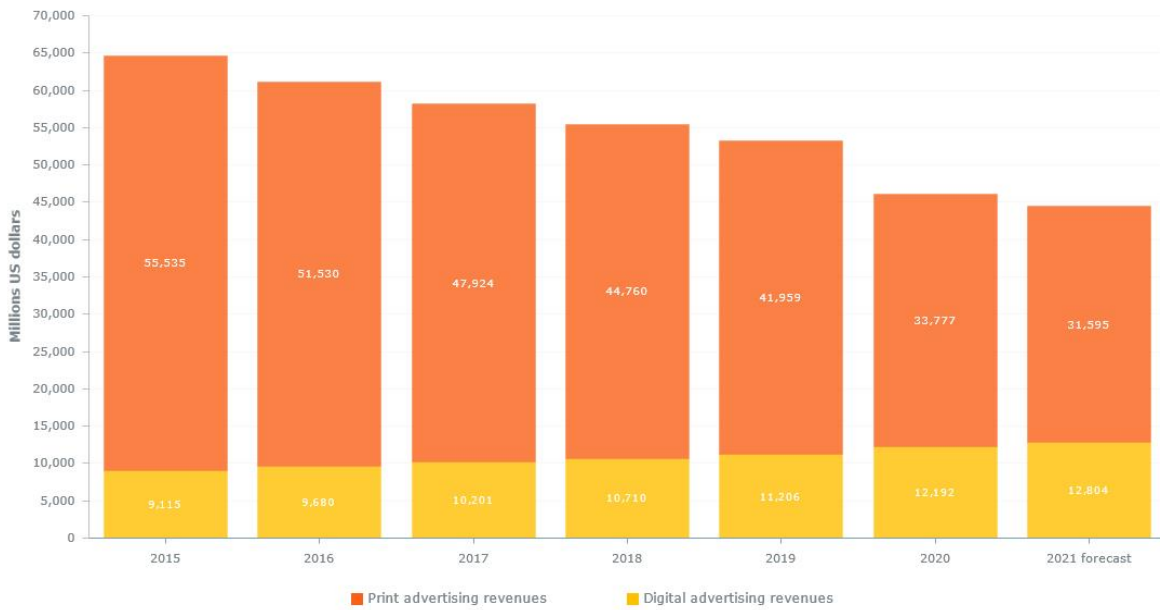
Note: The report covers 28 markets in Europe: Austria, Belarus, Belgium, Bulgaria, Czech Republic, Croatia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, The Netherlands, Norway, Poland, Russia, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, UK, Ukraine.

According to the same study, the “other display” segment is estimated to decrease in the last 4-5 years (by 3 percentage points), at the advantage of the social media display segment.

In the newspaper sector, according to the last report by the World Association of News Publishers (WAN-IFRA 2021), digital advertising revenues in 2021 were 28.8% of total advertising revenues for newspapers at worldwide level. From 2015 to 2021, digital advertising revenues increased by 40%, whereas print advertising revenues decreased by 43%. In absolute numbers, as can be seen in the figure below, digital growth did not compensate for the decline in print advertising if not for a modest percentage³⁶⁸: the digital advertising revenues increase for newspapers, at worldwide level, covered 15% of the print advertising revenues decrease (Y-o-Y, 2015-2021).

³⁶⁸ The impact of digital distribution on the newspapers’ revenues will be analysed in Section 3 of this Chapter.

Figure B.2.9. Newspaper’s advertising revenues (USD millions) print vs digital - worldwide

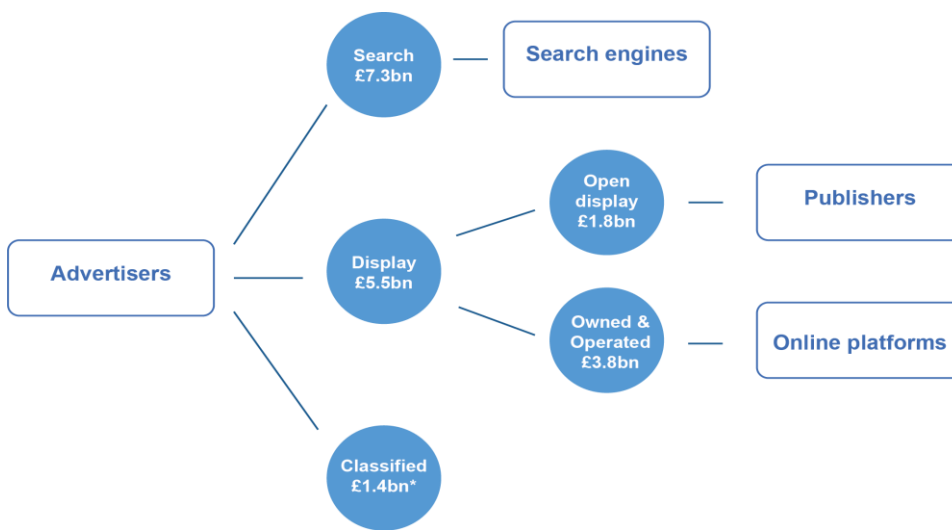


Source: WPT analysis based on historical data, Zenith (ad expenditure) and the WPT Outlook survey. Figures for daily publications only (WAN-IFRA, World Press Trends 2020-2021 Outlook).

In the US, where the digital transition of the traditional newspapers models first began, the digital newspapers’ advertising revenues increased by 50% between 2012 and 2021 and in the last year they surpassed the print advertising revenues. Nonetheless, a comparison with the total revenues shows that the decline in traditional advertising (minus 75%) was much higher than the increase in digital. In sum, after a decade the total advertising revenues for the newspaper sector declined by 56% in the US. The success stories in this regard - the New York Times for the US, The Guardian for the UK - do not compensate for the average disruptive effect; the benefits prevailing just in the cases of very large markets and audiences, in which the media outlets could effectively monetise the enlarged reach in worldwide markets.

In the UK, the Competition & Markets Authority (2020) estimates the share of publishers in the digital advertising market as follows:

Figure B.2.10. Expenditure on different types of digital advertising in the UK in 2019



Source: Competition & Markets Authority (2020)

In the UK, according to WARC data³⁶⁹, digital advertising revenues for news brands increased by 44% between 2013 and 2020, while the offline declined by almost 60%; in this case as in the US case, the growth of digital could not compensate for the offline losses, with a total decline around 44%.

It can be worth considering, as a different model, the case of Italy, whose media market is historically characterised by the dominance of a highly concentrated audiovisual sector, and the digital transition of legacy media arrived later and moved slower. In the Italian press sector, offline advertising for news brands declined abruptly from 2013 to 2020, almost halving the revenues; in the same period, digital advertising revenues showed a slight increase for a few years, then stagnated, ending up in 2020 at the same level of 2013. As a result, total advertising for news brands in Italy declined by 41.9% between 2013 and 2020 (source: WARC).

Consolidated data on the share of digital advertising for newspapers publishers are not available at EU level, nor are they always collected at national level: many media companies do not separate in their financial reports revenues between online and offline advertising; and not all media authorities in the EU monitor and report on the online advertising market.

In the audiovisual sector, losses in traditional advertising in linear TV could be compensated by the development of streaming services financed by advertising (AVOD, Advertising financed video on demand; and BVOD, Broadcaster video on demand). A study by the European Audiovisual Observatory underlines that even though:

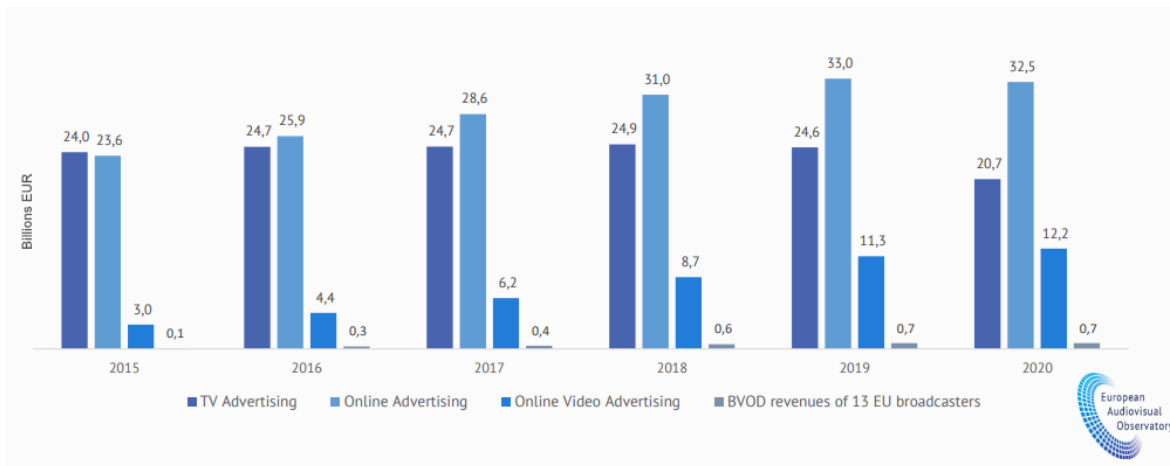
“European TV players have launched their own broadcaster video on demand services to capture online viewing by audiences, AVOD/BVOD revenues are a small part of online video advertising, dominated by international tech giants, video-sharing platforms and social media players”. Consequently, “BVOD services (are) still a fragment of TV advertising (‘analogue

³⁶⁹ The WARC database provides the split of the digital advertising between print and digital for the news brands for UK and Italy. This is why we show here the data digital/legacy for these two countries, which can be taken as examples of two types of markets: on the one side, an advanced and dynamic digital market; on the other side, a media market historically dominated by linear television.

europa for digital cents') revenues in Europa for broadcasters but set to play an important role in the near future" (Grece, C., 2021).

As can be seen in figure B.2.11, in 2020, advertising revenues from BVOD services of 13 EU broadcasters were 0.7 billions euro, compared to 11.1 billions from traditional advertising for the same groups.³⁷⁰

Figure B.2.11. EU28 TV advertising, online advertising, online video advertising and broadcaster video-on-demand advertising revenues



Main findings

- The rapid growth of the digital advertising market did not benefit, or benefited to a very small extent, the players of the advertising market who produce original content.
- Publishers' revenues from display advertising increased over the years, especially in countries where the media industry first took advantage of the opportunities of the digital transformation, innovating their models and offers. But even in these markets - US and UK - the publishers' share of digital advertising is minor and did not compensate for the losses of the legacy model.
- In the audiovisual sector, there is room for the development in the advertising-financed video on demand market, but so far it is still a small part of advertising revenues for broadcasters.
- This outcome has to be better investigated as the analysis suffers from lack of official and detailed data; but the trend is clear, as it is built in the very characteristics of the digital markets, which tend to a winner-takes-all dynamic leading to a further increase in ownership concentration.

v. Concentration in the advertising market

The trends highlighted above show that the main players in the advertising market are actors that do not create original content but distributing media and user-generated content, capture people's attention and sell it to advertisers.

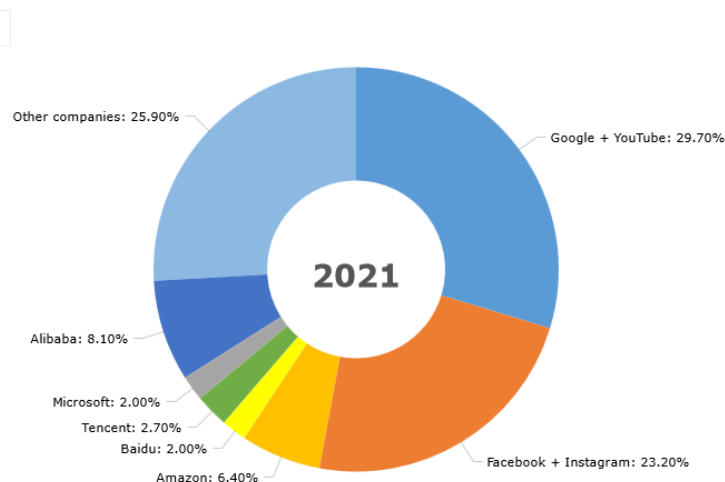
³⁷⁰ The impact of streaming services revenues on the audiovisual sector revenues will be analysed in Section 3 of this Chapter.

Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data

If the total advertising market is taken into account, the first five operators worldwide are digital platforms financed completely or partially by advertising revenues. The first media company in this list ranks sixth (Comcast), the first European media company (RTLgroup) ranks 18th³⁷¹.

When it comes to digital advertising, the market is even more concentrated, and no media company is listed in the top 20 positions. Google-Alphabet and Facebook-Meta together control more than half of the worldwide market. Compared with 2011, Google's share slightly declined (from 36.3 to 29.7%), Facebook jumped from 4.2 to 23.2%, while the most recent trend to be noticed is the growth of the advertising revenues for the e-commerce industry. Amazon's share of online advertising increased from 0.5% in 2011 to 6.4% in 2021³⁷².

Figure B.2.12. Share of digital advertising revenues, by company, worldwide, 2021



Source: eMarketer, *Worldwide Digital Ad Spending Year-End Update* (23 Nov 2021).

Note: Includes advertising that appears on desktop and laptop computers as well as mobile phones, tablets and other internet-connected devices, and includes all the various formats of advertising on those platforms; net ad revenues after companies pay traffic acquisition costs (TAC) to partner sites.

Regional and national data on concentration in advertising revenues is more difficult to collect, as the main players are multinational companies based in the US (or China), rarely obliged to report financial data to the national authorities. While media ownership concentration is a source of concern and object of specific media regulation in several EU media markets (see Chapter B1), concentration in the advertising market is generally addressed by general competition law. As mentioned above, several studies set by media or competition authorities in the European Union addressed the platforms' market dominance in digital advertising, investigating and/or ascertaining alleged abuses of this market power. In the UK, the Competition and Markets Authority (2020) reports that Google has a 90% share in the search advertising market, and Facebook is above 50% in the display advertising market. In Spain, the *Comisión nacional de los mercados y la competencia* (2021) assesses that Google + Facebook have over 70% of the online advertising market. In Italy, where the online advertising sector is included in the Integrated Communication System (SIC) and therefore

³⁷¹ GroupM Mid-Year Forecasts, June 2021.

<https://www.groupm.com/this-year-next-year-global-2021-mid-year-forecast/> accessed on May 27, 2022.

³⁷² "Although there is no 'triopoly' yet, the duopoly does have a collective rival from the e-commerce industry" (eMarketer Insider Intelligence 2021: 9). See also European Audiovisual Observatory (2021: 46), in which e-commerce is defined "the new online advertising star".

subjected to the jurisdiction of the media authority, the media authority reports evolution and concentration index of the sector: in 2020, the CR4 index in the online advertising market was 72.7% (increasing from 69.2% in 2015) (Autorità per le Garanzie nelle Comunicazioni, 2021: 147). The Italian media authority in another report points out the competitive advantage of the digital platforms, comparing the platforms' and publishers' Average Revenue per User (ARPU): "On a national level, it was observed that for advertising purposes only, the turnover generated in a year by the data of a single Italian user is for the platforms on average 5 times the revenues of the main national publishers (online newspapers and portals)" (Autorità per le Garanzie nelle Comunicazioni, 2020: 150).

In the absence of a standardised and official measurement of the concentration of the online advertising market, the results of the Media Pluralism Monitor allow the tracking of tendencies per country in the EU market, evaluating the risks to media pluralism related to high concentration of online advertising revenues³⁷³. Overall, the indicator on Online platforms concentration and competition enforcement, which measures the risks to market plurality in the digital environment, scores a high risk. The Top4 index in the online advertising market is one of the variables that can be looked at to assess the risk to media market pluralism. According to MPM2021 results, "in all the countries for which this data is available, the Top4 index for the online advertising market concentration is above 50%. But in several countries, it is even higher" (Bleyer-Simon et al., 2021:116). It is reported to be above 80% in Estonia, Finland, Germany, and Spain. The MPM exercise highlights both the high concentration of the online advertising market all over the European countries and the need for harmonised and official data.

Main findings

- High concentration of revenues characterises the advertising market and particularly the online advertising market. Worldwide, as well as at EU level, a few global platforms have acquired substantial market power.
- Although the trend is well-known and confirmed by several investigations and decisions by the media and competition authorities, a detailed analysis at national and regional level is not fully possible due to the lack of official and reliable data.

2.3 The importance and the biases of public sector advertisement

High-quality journalism offering original, well-resourced and pluralistic (not-polarizing) content, depends on healthy financial conditions of news media outlets. The more diverse revenue streams the outlets use, the less they are exposed to political and commercial pressures and newsrooms may better exercise professional autonomy. At the same time, when financial resources are dominated by a single source (e.g. state-owned company, government fund or a single large advertising agency), independence and editorial autonomy might be threatened (Trappel and Tomaz, 2021; McQuail, 1992).

The role of the state is principal in creating/contributing to conditions of financial stability and diversity of revenues of the news media. The CoE Recommendation CM/Rec(2018)1 on media pluralism and transparency of media ownership advises that states are "encouraged to provide various forms of financial support such as advertising and subsidies" (para 2.13) to different media types, at the same

³⁷³ In the Market Plurality area of the Media Pluralism Monitor questionnaire a sub-indicator focuses on "Gateways to news", asking: 1) the main way in which people access news online (variable 84); 2) the Top4 index in the online advertising market (variable 85); 3) the Top4 index in the online audience (variable 86). Here we report the results of variable 85.

time, “support measures should have clearly defined purposes and should be based on predetermined, clear, precise, equitable, objective and transparent criteria” (para 2.14) and be “administered in a non-discriminatory and transparent manner by a body enjoying functional and operational autonomy” (para 2.15) (Council of Europe, 2018). Moreover, the CoE Recommendation on principles for media and communication governance calls on states to implement principles of transparency and accountability, openness and inclusiveness and independence and impartiality (Council of Europe, 2022).

i. Defining state advertising

State-related advertising refers to any form of financial support the media receive in exchange for presentation and promotion of ideas, policies, goods and services by the state-related entity (most commonly the government, state-owned companies or state administration bodies).

One significant risk for media pluralism is that state advertising may serve as a vehicle for funding the government-friendly media at the expense of the media offering critical watchdog journalism. Asymmetric distribution of state advertising may not only sharpen asymmetric intervention on media markets, but may also contribute to the deepening of newsrooms’ and audience polarisation and ultimately, it can prove detrimental to media outlets with critical attitudes towards governments and erode accountability of governments to citizens.

ii. Transparency and non-discriminatory allocation: legal measures

In terms of existing legal measures, there is a large variety across EU Member States in addressing transparency and fair rules concerning the distribution of state advertising. The MPM 2021 Mapping Study and other sources (Dragomir & Söderström, 2021; UNESCO, 2021) show that these include: media specific measures on transparency and fair distribution of state advertising (not in all cases these go together); ban or limits on state advertising; requirements for state institutions to advertise in the media; general procurement, public transparency rules or other relevant rules with special mentioning of state advertising and other non-legally binding instruments (e.g. recommendations). The table below shows however, that the largest number of countries in the EU lacks specific rules on state advertising.

Table B2.1. Existence of the legislation providing fair and transparent rules on the distribution of state advertising in the EU Member States

RULES IN PLACE	Media specific legal rules on transparency of state advertising	Media specific legal rules on fair distribution of state advertising	Ban or limits on state advertising	Requirements for state institutions to advertise in certain media	General procurement, public transparency rules or other relevant rules with specific mentioning of state advertising	Lack of specific rules	Other non-legally binding instruments (e.g. recommendations)
COUNTRIES	Austria, ⁱ Italy, ⁱⁱ Portugal ⁱⁱⁱ , Croatia	Portugal (with reference to local and regional media), Italy	Belgium ^{iv} (restrictions for PSM), Germany, Spain ^v	Croatia ^{vi} , Italy	Denmark, France, ^{vii} Ireland, Greece, Romania, Sweden	Bulgaria, Czech Republic, Cyprus, Estonia, Finland, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovakia	Poland, Slovenia

Source: MPM, 2021^{viii}

i. The 2012 Media Transparency Law: Federal Act on Transparency in Media Cooperation as well as of Advertising Orders and the Funding of Media Owners of a Periodical Medium (Transparency in Media Cooperation and Funding Act - MedKF-TG): https://www.ris.bka.gv.at/Dokumente/Erv/ERV_2011_1_125/ERV_2011_1_125.pdf accessed on May 27, 2022.

ii. Article 49 of the Legislative Decree of 8 November 2021, no 208 /2021 (novelised Article 41 of the previous Legislative Decree 177/2005) regulates placement of advertising by public entities and requires transparency of this process (disclosure and reporting of expenditures to AGCOM), <https://www.gazzettaufficiale.it/eli/id/2021/12/10/21G00231/sq> accessed on May 27, 2022.

iii. Law n° 95/2015, of 17 August, establishes the rules and transparency obligations concerning “the Institutional Advertising Campaigns of the State”. Related advertising expenses must be reported to the ERC - Media Regulatory Authority, https://dre.pt/home/-/dre/70025050/details/maximized?p_auth=1Y2m8juJ accessed on May 27, 2022.

Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data

- iv. Article 50 FIRTA restricts any advertising broadcast by the broadcaster of the Flemish Community, except for radio advertising and advertising aimed at self promotion. Flemish Community Radio and Television Broadcasting Act (FIRTA): <http://www.vlaamseregulatormedia.be/nl/mediadecreet-en-wetgeving> accessed on May 27, 2022.
- v. Law 29/2005 of 29 December on institutional advertising and communication forbids the use of official advertising to promote “administrative achievements” and it also prohibits government advertising during election periods, Act 29/05 on Institutional Communication and Advertising, enacted on December 29, 2005, Article 4.1.a, <https://www.boe.es/buscar/pdf/2005/BOE-A-2005-21524-consolidado.pdf> accessed on May 27, 2022.
- vi. Article 38 of the 2021 Electronic Media Act (transposition of AVMSD) (OG 111/21) requires state bodies and public institutions founded by the Republic of Croatia to spend 15% of the annual amount intended for the promotion or advertising of their services or activities on advertising in regional and local publishers of television and / or radio and / or with providers of electronic publications registered in the Register of Providers of Electronic Publications, Electronic Media Act: https://narodne-novine.nn.hr/clanci/sluzbeni/2021_10_111_1942.html accessed on May 27, 2022.
- vii. The purchase of advertising spaces is regulated by chapter 2 of the 29 January 1993 “Sapin Law” (no. 93-122) on the prevention of corruption and the transparency of economic life and public procedures. advertising purchased from state or public funds must be contractually defined, prices must be made transparent and public. Loi n° 93-122 du 29 janvier 1993 relative à la prévention de la corruption et à la transparence de la vie économique et des procédures publiques: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000711604/2020-10-20/> accessed on May 27, 2022; LOI n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000033558528> accessed on May 27, 2022.
- viii. Legal sources are provided for such country cases where there are unique rules specifying or facilitating transparency or fair distribution of state advertising.

Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data

There seem to be also significant differences regarding the efficiency of rules in place. Some countries (e.g. Austria) introduced rules on media transparency, and specifically on transparency of state advertising, but not on fair or non-discriminatory proportional distribution of these expenditures. As a result, media transparency rules do not automatically eliminate unfair or preferential allocation of paid advertising by state or public institutions to the media.

In some countries, state institutions are banned from advertising in certain types of the media (e.g. public service TV channels cannot broadcast state advertising in Belgium – in the case of the Flemish community). In Germany, there is no explicit restriction on state advertising in PSM, but the Interstate Media Treaty prohibits advertising of a political, ideological, or religious nature (Article 8(9)) and also prevents advertisers' influence on editorial content (Article 8(2)), thus practically resulting in absence of state-related advertising in PSM.³⁷⁴ In Spain, advertising cannot be used to “highlight administrative achievements” and the law prohibits government advertising during election periods.³⁷⁵

Croatia seems to be the only EU country, where state and state-owned entities are encouraged by law to spend a portion of their annual budget for the promotion of their services or activities through advertising in audiovisual or radio programs.

As regards general procurement rules, in Denmark the principles on objective public administration developed in case law ensure that public authorities must carry out advertising activities in a factual and equal way and no specific media can be favoured in this process. On the other hand, general procurement measures in many countries lack specific rules that would improve transparency and fair distribution of state advertising (e.g. Estonia, Czech Republic, Slovakia, Slovenia). Moreover, state advertising is not distinguished or legally recognized in most of these laws.

Some countries (e.g. Cyprus) have no legal rules on non-discriminatory distribution of state advertising, yet in practice the allocation of state advertising does not lead to distortions and mostly economic/efficacy criteria are applied.

iii. Allocation of state-related advertising in practice

In practice, the allocation of state-related advertising is often opaque and systematic data are missing across the EU. Importantly, the role of state advertising seems to depend on specific external factors such as country size, degree of centralization, and socio-cultural factors.

³⁷⁴ The Interstate Media Treaty (Medienstaatsvertrag) of 14/28 April 2020, https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Gesetze_Staatsvertraege/Interstate_Media_Treaty_en.pdf accessed on May 27, 2022.

³⁷⁵ Act 29/05 on Institutional Communication and Advertising, enacted on December 29, 2005, article 4.1.a, <https://www.boe.es/buscar/pdf/2005/BOE-A-2005-21524-consolidado.pdf> accessed on May 27, 2022.

Table B2.2. The role of state advertising in national media markets

ROLE OF STATE ADVERTISING	NOT SIGNIFICANT, state advertising plays a marginal role	SIGNIFICANT, state advertising distributed in non-discriminatory manner	SIGNIFICANT, some cases of disproportionate distribution	SIGNIFICANT, disproportionate distribution of state advertising
COUNTRY EXAMPLES	Germany, Denmark	Cyprus, France	Ireland, Greece, Austria, Lithuania, Latvia, Portugal, Romania	Czech Republic, Bulgaria, Hungary, Malta, Poland

Source: MPM 2021³⁷⁶

In some countries state advertising plays no significant role in funding media businesses (e.g. Germany, Denmark), in others (e.g. Austria) state-related advertising surpasses significantly subsidies distributed among the media outlets. The historical and socio-cultural role of state intervention (e.g. France) and degree of centralization also play a considerable role. In more centralised markets, the survival of regional media tends to depend more significantly on state advertising (e.g. Bulgaria).

Table B2.3. Distribution of state advertising to media outlets in practice

POLICIES IN PLACE	Monitoring or mapping of distribution of state advertising	Thresholds on reporting	Institutional allocation, oversight or other criteria in place	No particular policies or data missing
COUNTRY EXAMPLES	Belgium, Italy	Croatia, Finland, Latvia	Netherlands, France, Denmark, Portugal, Spain, Sweden	Czech Republic, Bulgaria, Malta, Poland, Slovakia, Romania

Source: MPM, 2021

Monitoring or mapping of distribution of state advertising is regularly conducted only in a small number of countries (e.g. Belgium, Italy). In many countries, adequate monitoring is absent, and there is no other data than journalistic accounts or news reports (e.g. Czech Republic, Slovenia). Some countries have introduced thresholds for transparency and public reporting on state advertising (e.g. Finland). Hence, smaller contracts are largely uncovered. In Latvia, a procurement

³⁷⁶ “Not significant” indicates that state advertising plays a marginal role in funding of particular media outlets and also, in the media market as a whole. “Significant” indicates that state advertising constitutes an important source of funding for particular media outlets and the media market as a whole. “Non discriminatory” distribution of state advertising pertains to fair modes of distribution based on objective criteria, while “disproportionate” indicates high asymmetries in allocation of state advertising funding (for example, some media outlets are being continuously omitted while having substantial audience shares).

procedure applies, for example, only to contracts exceeding 10 000 EUR. Frameworks have been put in place in some countries, providing for institutional allocation, oversight or other criteria being used in distribution of state advertising. In France, the public purchase of advertising is elaborated by an inter-ministerial team, coordinated by the Government Information Service.³⁷⁷ In the Netherlands, state advertising is institutionally designed by the *Dienst Publiek en Communicatie* - DPC (Public and Communication Service). The DPC is made up of 11 departments, one of which is responsible for buying media space for public/state-related advertising. The range of media involved in this process is to be diverse and composed of different platforms: newspapers, spots, radio, television.

Unfair allocation of state advertising is used in some countries (e.g., Hungary, Bulgaria, Poland) to control the media and influence sympathetic coverage or impair the position of those media that offer more critical reporting. Both in Hungary and Poland, official narratives claim that state advertising and other forms of support “balance inequalities on media markets” or “support media pluralism”.³⁷⁸ In Poland, advertising expenditures increased most significantly in between 2016–2020 in the right wing media, to such an extent that in some cases state-related advertising has composed a dominant portion of the outlet’s revenue stream.³⁷⁹ In this way, unfair distribution of state-related advertising may contribute to increased polarisation and partisanship in the news media sector.

To summarise: while there is no one ideal model in place across the EU, the cases analysed above show that a lack of adequate legal measures and frameworks of practice in place more often contribute to discretion and even arbitrariness in the allocation of state advertising. Combined with lack of transparency this may constitute a form of pressure that acts as a reward or sanction in order to shape editorial policy or a tone of reporting of a particular newsroom. Such conditions not only affect how media pluralism is exercised in practice, but also have a structural impact on the internal market.

3. Assess the impact of the current distribution of advertisement revenues

The evolution of the advertising market must be framed in the context of the digital transformation of the media overall. As shown in the previous sections, the shift of revenues from traditional players (media content producers) to new digital intermediaries has been strongly accelerated in 2020 by the COVID-19 crisis. Attempts by the media providers to adapt to the new digital environment are challenged by the superior efficiency and substantial market power of the digital platforms business model in the field of targeted advertising. Other than draining one of their main sources of revenues, technological innovation impacted the media business model more broadly, on the supply side (affecting production costs, organisation, distribution) as well as on the demand side (affecting the willingness to pay by the consumers, in a context of abundance of information). In this section, based on the empirical data and contextual information from relevant countries we will gauge the degree of digital disruption in the media economy, analysing separately the audiovisual and the newspaper sectors.

³⁷⁷ Décret n°2000-1027 du 18 octobre 2000 relatif au service d'information du Gouvernement: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000585145/2020-10-20/> accessed on May 27, 2022; Décret n° 2016-247 du 3 mars 2016 créant la direction des achats de l'Etat et relatif à la gouvernance des achats de l'Etat: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000032148548/> accessed on May 27, 2022.

³⁷⁸ For Hungary, see: Bátorfy, A. and Szabo, K. (2021); Bátorfy, A. and Urbán, A. (2020); for Poland see: Kowalski, T. (2020); Klimkiewicz, B. (2021).

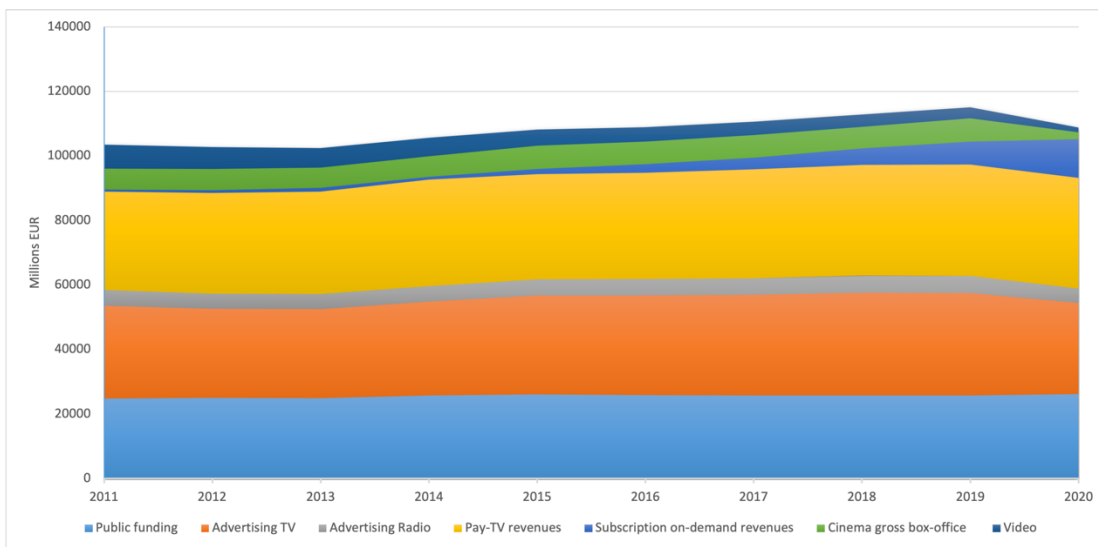
³⁷⁹ Ibidem.

i. The audiovisual media market

In the past decade, the audiovisual market in the EU³⁸⁰ has been stagnant or declining, except for the on-demand segment. As noted by the European Audiovisual Observatory, “in nominal value, the annual growth rate between 2015 and 2019 was 1.6% on average. But, discounting inflation, the market remained flat. Excluding the on-demand segment, it even decreased by 1% per year in real terms” (European Audiovisual Observatory, 2021:34). From 2015 to 2019, “on-demand services have been the growth engine of the audiovisual sector,” while the other sectors - the legacy audiovisual services, cinema gross box office and physical videos - have been either flat or in red. The COVID-19 crisis accelerated this trend, further boosting the subscription on-demand revenues (whose revenues for EU 28 increased by 70% in 2020, compared to 2019); advertising on radio and TV decreased substantially (as seen above) and pay TV revenues remained stable, whereas public funding showed a slight increase, due to some extraordinary intervention to sustain public services broadcasters.

In 2020, the audiovisual market in EU + UK was worth about 108 billions EUR, decreasing from 115 bn EUR in 2019. The biggest drop came from the cinema gross box office and physical video revenues.

Figure B.2.13. The audiovisual market in EU 28 (EUR millions)

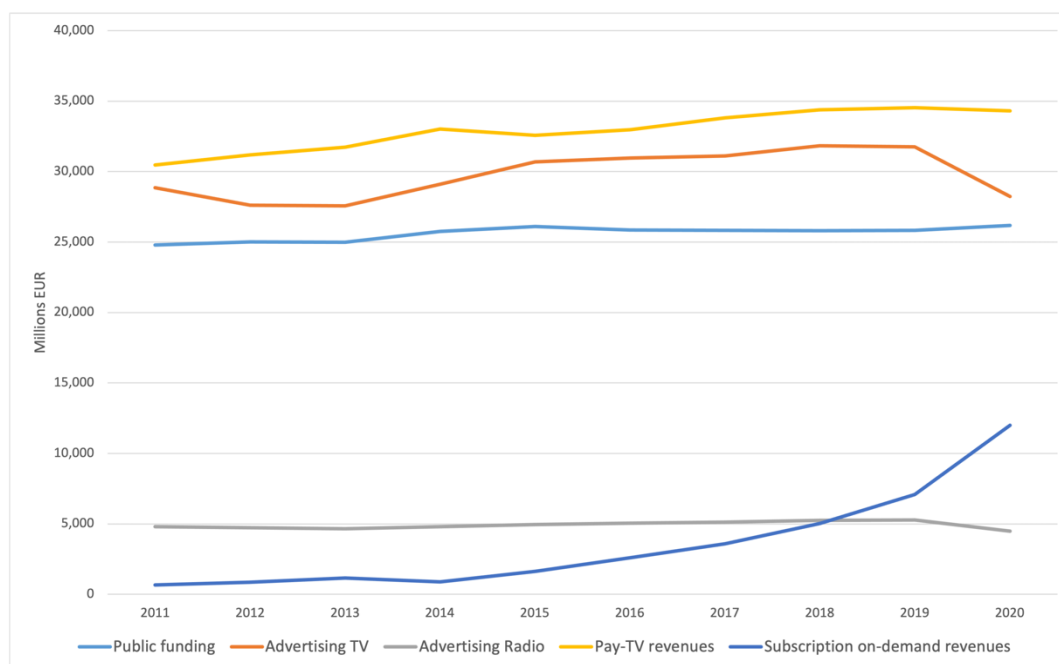


Source: European Audiovisual Observatory

Excluding cinema box gross office and video, we can isolate the trend of the audiovisual services. In the audiovisual services, the overall revenues were stable, with a redistribution from advertising towards the subscription on-demand revenues, as shown in figure B.2.14.

³⁸⁰ Audiovisual market total revenues are classified by the European Audiovisual Observatory as follows: Audiovisual services (Public funding, Advertising TV, Advertising Radio, Pay-TV revenues, Subscription on-demand revenues); Cinema gross box-office; Video (Physical and Digital).

Figure B.2.14. The audiovisual services revenues in EU28 (EUR millions)



Source: European Audiovisual Observatory

The redistribution of the revenues' share reflects different business models and benefits different players within the media landscape. On one hand, in legacy audiovisual services advertising revenues decrease, whereas traditional pay TV services seem to resist; this would differently affect models that rely exclusively on advertising revenues (commercial linear free-to-air TV), mixed models (free + paid services), and public service media that rely also on advertising revenues for their funding. Moreover, pay TV services are often offered by distributors or telecom operators, rather than media content providers. In other words, the resilience of the pay TV sector does not necessarily help to significantly finance the news media content production.

On the other hand, the fast-growing sector of subscription video-on-demand (SVOD), even if it is still a modest share of the audiovisual services market, signals a shift towards the over the top (OTT), dominated by a few new global players. In 2020, the main two companies (Netflix and Amazon) gathered 74% of SVOD revenues in the EU 28 (Grece, 2021). As outlined by Grece:

“Most of the established media players, on the EU and international markets, did not launch their own direct-to-consumers services, not wanting to cannibalise their (higher) existing revenue streams than those on the nascent SVOD market, they rather saw licensing to SVOD services as an additional revenue source than a threat to their business model (...). In the past years, traditional media players rushed to adapt to this new era (...) by launching their own direct-to-consumer streaming service. The question can be asked if this is too little, too late” (Grece, 2021).

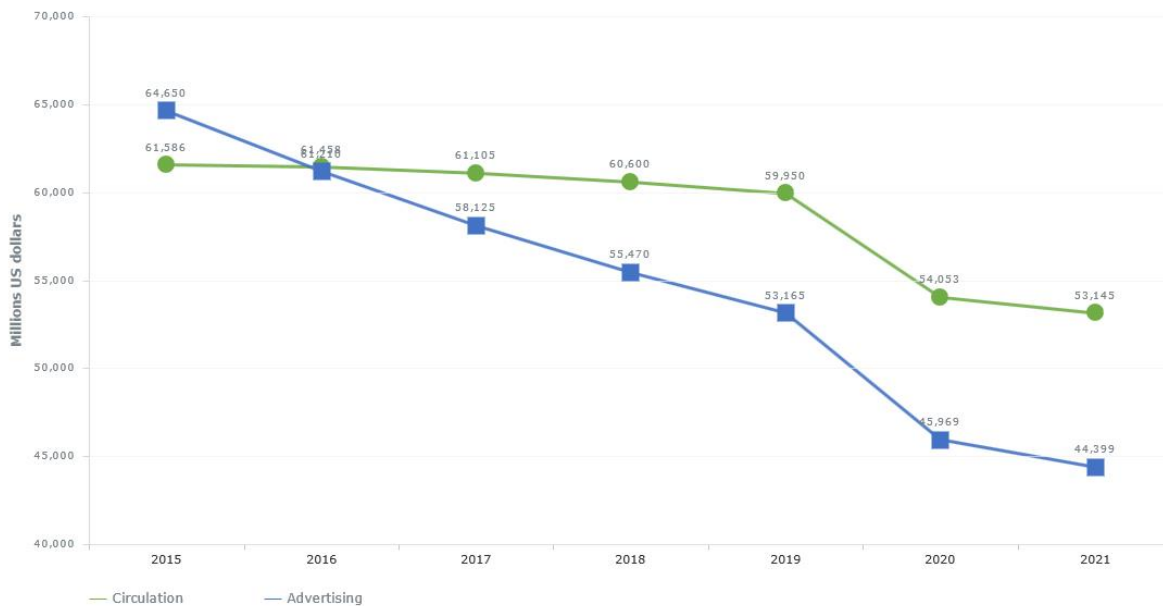
ii. The newspaper sector

As seen above, newspapers and magazines were hit first and massively by the decline in revenues following the shift towards online advertising. In parallel, circulation revenues declined as well, due to the wider impact of digitalization on the media environment: the abundance of information, its separation from the physical media, and the reduced willingness to pay by consumers dwarfed the

Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data

potential advantages of the reduction of production and distribution costs. As the Cairncross Review points out, “online distribution makes news more widely available - and less expensive for readers - than even before. Yet, alongside the benefits that online distribution brings, the Internet has also created significant problems for publishers. Print circulation has been drifting down since the 1950s, but the decline has accelerated since the advent of the Internet, and especially since the arrival of the smartphones just over a decade ago” (Cairncross 2019: 14). While the analysis of the Cairncross Review focuses on the UK market, addressing the issue of the sustainability of journalism and public interest news, the parallel decline of advertising and sales revenues for newspapers is a global phenomenon, which started in the first decade of this century. In 2013, after the double-hit of the Great Recession and digitalization, the newspaper industry was worth over 200 billion dollars worldwide (WAN-IFRA 2013). In 2021, its revenues more than halved, down to 97.5 billion dollars (WAN-IFRA 2021). The following figure shows the more recent trends at the worldwide level of the overall revenues from circulation (print + digital) and advertising (print + digital).

Figure B.2.15. Press circulation and advertising revenue (USD millions) - worldwide



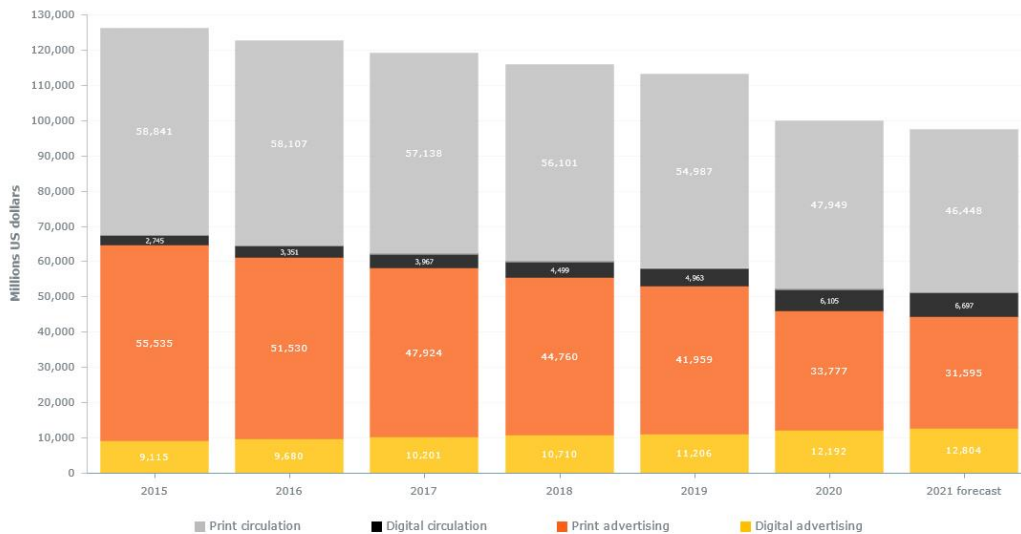
Source: WPT analysis based on historical data, Zenith (ad expenditure) and the WPT Outlook survey. Figures for daily publications only (WAN-IFRA 2021).

Note: 2021 forecast.

As can be seen, advertising revenues decreased more than circulation revenues, whose share of the total newspapers revenues became prevalent, at worldwide level, in 2016. The overall revenue trend reflects two opposite tendencies of the print and digital sectors, with the first declining and the latter slightly increasing. This is visualised in the following figure.

Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data

Figure B.2.16. Newspapers' circulation and advertising revenues (USD millions) - print and digital, worldwide



Source: WPT analysis based on historical data, Zenith (ad expenditure, and the WPT outlook survey)

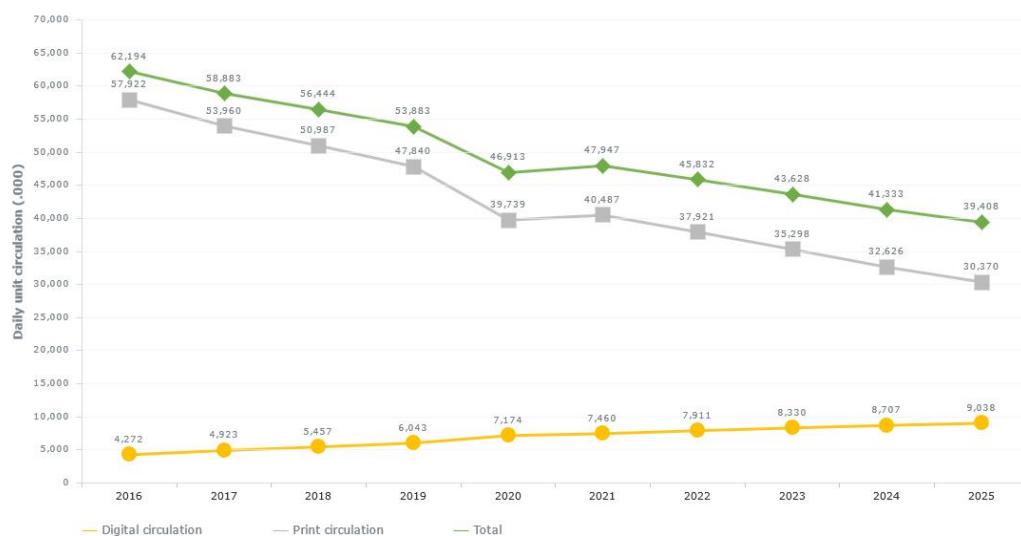
Note: figures for daily publications only

As for the advertising market, in the case of circulation revenues, the increased revenues from digital were far from compensating for the print losses. As the WAN-IFRA report points out, publishers still earn 82% of their total revenue from the print sector, despite its fast decline.

When it comes to the European print market, data provided by WAN-IFRA/PwC shows a similar trend, with an interesting difference: in the European newspaper market the revenues from circulation were already above the advertising revenues, and the two declining trends proceeded in parallel.

In terms of unit circulation, Figure B.2.17 shows that in the last 5 years (2016-2021), the total newspaper circulation declined by 22.9%, despite a small but constant increase of the digital circulation. Estimates from 2022 to 2025 do not forecast any inversion of the trend.

Figure B.2.17. Newspapers average daily unit circulation in Europe*

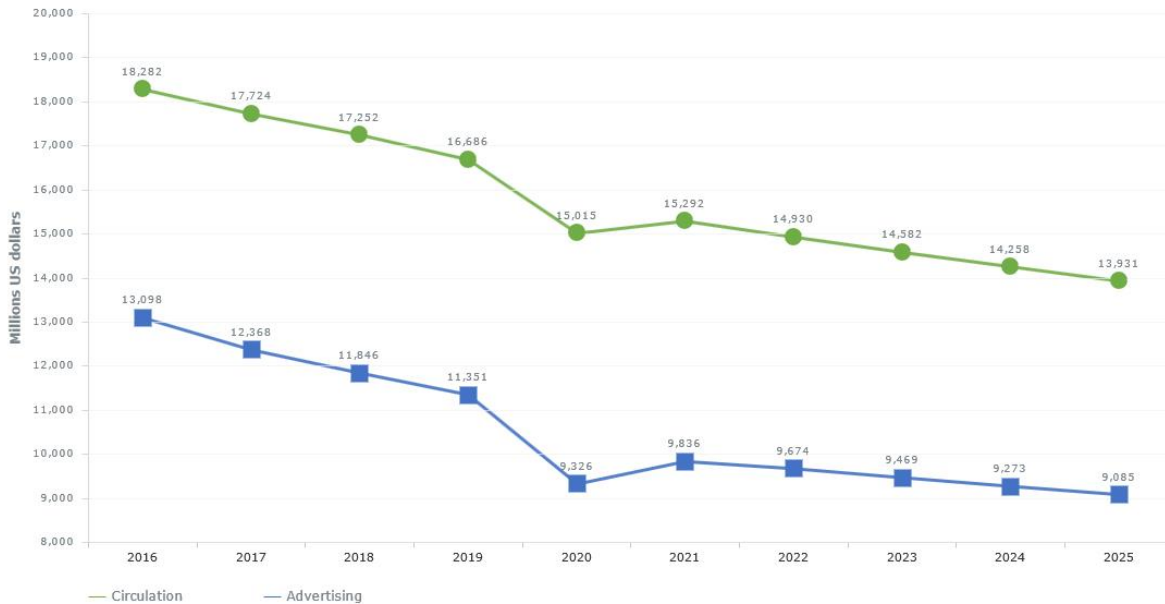


Source: our elaboration from WAN-IFRA/PwC.

Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data

*Countries included: Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Poland, Portugal, Romania, Spain, Sweden, UK.

Figure B.2.18. Newspaper circulation and advertising revenues (USD millions) in Europe*



Source: WAN-IFRA/PwC.

*Countries included: Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Poland, Portugal, Romania, Spain, Sweden, UK.

N.B. Circulation revenues include print (newsstand purchases and subscriptions to the print edition) and digital (digital subscriptions and payments for newspapers delivered direct to connected devices such as a PC, tablet or smartphone, including fees to access online content). Advertising revenue considers advertising spend on both print editions of newspapers and digital newspapers, which includes all advertising in newspapers websites.

Figure B.2.18 shows that, whereas at worldwide level the two declining lines of advertising and circulation revenues for newspapers crossed each other in 2016, with the circulation revenues overtaking the advertising ones, in the European countries (monitored by the WAN-IFRA database) the advertising revenues were already minor at the beginning of the considered timeframe. Since 2016, the two sources of revenues continued to decline in parallel, and no signals of rebounds are forecasted for the near future.

In Europe as at worldwide level, the double impact of digitalization on advertising and circulation revenues hit the newspaper sector much more than all the other media sectors. While in chapter 5, indications of resilience will be provided, it must be noted that the crisis of the press is the crisis of the media sector that traditionally financed and provided investigative journalism; reported on public power at national and local level; and was more fit to pursue the objectives of media diversity and media pluralism. As Cairncross (2019) points out, “newspaper publishers are responsible for 50% of all frontline journalism costs...in the UK”. Newspapers, in other words, still play the central role in financing the creation of original journalism, accounting for as much as broadcasting and online put together”.

Main findings

- In the audiovisual market, the source of revenues other than advertising were stagnant (public funding, pay-tv) or increased (subscription on-demand). The fast-growing sector of subscription video-on-demand (SVOD), even if it is still a modest share of the audiovisual services market, signals a shift towards the over the top (OTT)
- In the newspaper sector, circulation declined in parallel with advertising. Revenues from digital circulation slightly increased. In the last 5 years the newspaper sector lost 22.4% of its total revenues (print and digital advertising, + print and digital circulation).

4. Access to and the intensity of use of consumer data and its contribution to value creation

Having mapped out the decline of advertising revenues for traditional media actors in the new online environment, this section explores how media actors have sought to respond to these challenges and remain commercially viable, particularly through the access to and use of consumer data. Unlike with advertising revenue, there is no systematic collection of data about which actors in the media value chain have access to consumer data and the intensity of the use of this data. Moreover, the economic value of consumer data is largely realised from its interaction with other data such as insights from aggregated personal data, content related data, transactional data, campaign performance data and so on. Consumer data is important not just for advertising and targeting, but also for content personalization, service improvement, and maintaining attractiveness (e.g. for subscription services) (Krämer et al., 2020).

Taking an industry approach, we will map consumer data collection and its contribution to value creation for four business models that are characteristic for the contemporary media industry in European countries. The access and use of consumer data is discussed in terms of three categories, based on the model of Krämer et al.'s (2020) report for the Centre on Regulation in Europe (see Table B2.4).

Table B2. 4. Categories of consumer data

Type of Consumer Data	Description
Volunteered/stated Data or explicit consumer feedback	information explicitly provided by a consumer (e.g. account registration info, likes, rankings, comments, etc.).
Observed/revealed Data or implicit consumer feedback	information collected from a consumer's behaviour on a platform (e.g. searches, consumption history, temporal/geographic information, etc.). Although the GDPR outlines information duties about the collection and use of personal data which has to be shared with the consumer, the latter often does not read this information and may remain unaware (of the extent to which their data is being collected).
Inferred data	information derived from the combination of a consumer's individual volunteered and observed data, as well as aggregate data on the platform's consumers in general and non-personal content data. It is not a raw form

Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data

	of data, as it has undergone some degree of analysis in order to produce new data, through human and/or machine learning.
--	---

In addition to these categories, data is considered **first-party data** when it is a company's own reader/viewer/customer data, **second-party data** when it is another company's first-party data, or **third-party data** when it is purchased from an external source that collects and aggregates data from various sources) (Deloitte, 2019, p. 14). The latter category can be found on data markets or can be generated by third party services, such as those that verify ad placement or play other roles in the advertising ecosystem.

4.1 Approach and methods

This section examines the collection and use of consumer data and its contribution to value creation in certain major business models that are common in the contemporary media industries in Europe. A typical value chain in the media industry is composed of multiple actors, and many of these are operating in multi-sided markets and across multiple jurisdictions meaning that value chains, to the extent that they can be identified, are often intertwined. Taking an industry approach, we will map consumer data collection and its contribution to value creation by these actors. We cover traditional or offline media that have an online presence as well as online only media, paying special attention to the role of media intermediaries and online platforms.

Table B2.5 below provides an overview over the main characteristics of the four selected business models covering: (1) a major AVMS providing addressable advertising, (2) a major publisher, (3) a local news website, and (4) non-advertising supported VOD (see characteristics in table below). The first three models are located within the advertising ecosystem, with varying degrees of intensity of use of consumer data for that purpose, while the latter model, although not reliant on advertising, still uses consumer data to create value.

Table B2.5. Selected business models and their characteristics

Business Model	Characteristics
(1) Major AVMS	<ul style="list-style-type: none"> • Distributed traditionally and online; • Provides addressable advertising; • Has arrangements with other actors; • Consumer data is extensively captured and used by several actors besides the AVMS services.
(2) Major Publisher	<ul style="list-style-type: none"> • Distributed traditionally and online; • Heavily vested in the programmatic trading system; • Acquires consumer data at various points and generates value from it in multiple ways; • Confronts access issues with the walled gardens of large platform ecosystems.
(3) Local News Website	<ul style="list-style-type: none"> • Distributed online only; • Funded wholly or partly by online advertising (sold programmatically through intermediaries); • May collect some consumer data through login or subscription.

(4) Non-Advertising Supported VOD	<ul style="list-style-type: none"> ● Distributed online only; ● Non-advertising supported, does not use consumer data for targeting advertising; ● Reliant on alternative forms of funding (subscribers or public funding); ● Collects consumer data through login/subscription to improve user engagement.
-----------------------------------	---

Each case begins with an overview of the business model, followed by its access to consumer data, how this data is used to create value, and finally any data deficiencies. Through these cases, we map out the different actors involved, paying particular attention to the more traditional actors in the media industry as well as the increasingly important role of intermediaries and online platforms. The description of the business models primarily relies on literature review, analysis of industry documents, and secondary data analysis.

Whether each actor is collecting and using consumers' data in compliance with EU data protection legislation is not part of the representation of the business cases. However, a discussion of consumer rights such as personal data protection will follow after the business models.

4.2 Description of major business models

4.2.1 Major AVMS with linear and on demand distribution providing addressable advertising

AVMS under this business model are commercial advertising funded content providers with linear and on demand distribution. Such services are delivered to consumers through cable, satellite or Internet Protocol television (IPTV), accessible via a set top box and/or Smart TV. Some examples of AVMS with an addressable offer include the United Kingdom's Sky (AdSmart), Italy's Mediaset (ADD+), and Belgium's SBS (SmartAD).

By providing addressable advertising, such AVMS enable advertisers to target households or even individual viewers instead of broader audience segments associated with programmes or time periods (Experian, 2016). In other words, it allows advertisers to serve different ads to neighbouring households watching the exact same program at the same time, based on household-level data or even provide ads with dynamic elements to a household based on other relevant data (e.g. weather, time of day, etc.).

Under the addressable TV model AVMS remain intermediaries between advertisers and consumers. These AVMS strive to invest in content that attracts consumers and to collect data on their behaviour where possible (e.g. through catch up service) so as to make themselves more attractive to advertisers. Addressable advertising also allows advertisers to optimise and monitor their campaigns with granularity. The intermediation is based on data collected on individual households or logged-in users and the collection and use of that data has to be negotiated among a number of actors involved in the service (IPTV or cable, AVMS, set-top box provider, etc.). Furthermore, the consumer data is also captured and may be used by several other actors, including the smart tv/set-top box provider, advertising services, third party measurement and verification, and content delivery network (see Irion and Helberger, 2017; van Breda et al. 2016; Bundeskartellamt, 2020). A contentious aspect for AVMSs is that third parties (for instance, smart TV manufacturers) have allegedly been interfering with the broadcasters' signal integrity by overlaying their own ads, something the revised AVMSD seeks to rectify (Afilipoaie et al., 2021, pp. 345-346).

AVMS under this model generally serve one country, sometimes broadcasting in neighbouring countries, depending on the arrangement among the different actors involved. In Europe, some AVMS providers have pooled together on a transnational and national level in order to try to match

the scale offered by online programmatic advertising and remain competitive with global platforms such as Facebook and YouTube. The European Broadcaster Exchange (EBX) is an example of a transnational collective of broadcasters (EBX, 2021) and similarly, in Germany, AVMS providers have banded together to provide programmatic solutions for addressable TV advertising (Broadband TV News, 2021).

i. Access to Consumer Data

The access to consumer data under this business model is very much dependent on the level of vertical integration of the AVMS, as well as their arrangements with other actors in the television ecosystem. AVMS providers who are not part of a large media group do not have the same access to consumer data as those that are, as the latter control more of the content delivery chain (content production, distribution, ad sales, etc.) (EGTA, 2020, p. 21). In the case of large media groups, the “ubiquity of offered products and services allows them to connect viewing behaviour data and insight across [all] devices, platforms and providers (belonging to one group)” (EGTA, 2020, p. 21). Nevertheless, there is still a lack of access to data equivalent to audience metrics as compared with the platforms (Broughton Micova and Jacques, 2019, pp. 54-59).

ii. Volunteered and Observed Data

a) Least Vertically Integrated

In the least vertically integrated model, it is the distributor/telecommunications partner, not the AVMS, who collects and controls consumer data. This includes their first party viewer data as well as third party data from external data/analytics companies (De Schaepdrijver et al., 2021, p. 18) and software/technology vendors (EGTA, 2020, p. 62). In this context, the AVMS only receives consumer data after it has been processed by distributors (i.e. audience segments/profiles, addressable campaigns performance data, etc.) (De Schaepdrijver et al., 2021, p. 18) and advertisers (i.e. first party client data, cookie tracking, etc.) (Bourreau et al., 2017, p. 270). For example, SBS Belgium falls under this category as it is reliant on datasets from its telecommunications partner for the adtech of its addressable advertising offer, SmartAD (EGTA, 2020, p. 62).

b) Most Vertically Integrated

More vertically integrated AVMS may be subsidiaries of larger media conglomerates or electronic communications companies. Through acquisitions and partnerships, such AVMS have large access to volunteered and observed consumer data. This includes account registration (for on demand services), viewing behaviour, geolocation, etc. Advertisers may still supplement such data with their own first party consumer data.

For instance, Mediaset has significant access to data and adtech through its sales house Publitalia. In addition to its consumers viewing behaviours on Mediaset’s linear channels and Smart TVs, it has acquired “a location intelligence Mobile Data Company able to track and collect behavioural data offline” (EGTA, 2020, p. 71) and has a joint venture with the largest publisher in Italy which gives it access to its audiences’ content consumption patterns and interests outside of Mediaset (EGTA, 2020, p. 71). In 2021, Sky announced the launch of its own smart TV to replace satellite dishes and set top boxes and be more competitive with major streaming services like Netflix and Amazon (Martin, 2021). Such a venture will give Sky access to considerably more consumer data than its other forms of transmission.

c) Inferred Data

AVMS have access to inferred data related to their consumers' viewing preferences. Such data primarily takes the form of household-level audience segments or profiles with varying levels of complexity. These take into consideration demographic factors (e.g. geolocation, age, etc.) as well as attributes (e.g. pet owners, smokers, etc.).

It is worth noting that inferred data is also collected by large media agencies whose role is to plan and place ad campaigns on behalf of advertisers through their trading desks or direct, 'premium' arrangements. The 'big four' agencies dominating this market, WPP Group (London), Omnicom Group (New York City), Publicis Groupe (Paris), and Interpublic Group (New York City), have been concentrating power and holdings over the last several years capturing a large majority of the trade in online advertising (Decarolis & Rovigatti, 2021). These agencies combine client first party data with data from their previous campaigns and third-party sources to generate inferred data for campaign planning purposes and for implementing campaigns that include targeted advertising.

With the complex nature of programmatic trading and sophistication of targeted advertising these agencies have carved out a specific role based on their access to data from multiple sources and expertise in using it on behalf of clients, often extracting larger margins than they did in the arbitrage role they have in offline media buying (Broughton Micova and Jacques, 2019). As places where first, second and third-party data are brought together these, and other major media agencies are the focus on significant intensity of consumer data use.

iii. Use(s) of Consumer Data for Value Creation

Consumer data may be used by AVMS to make content investment decisions based on predicted popularity and personalised recommendations for users of on demand services. However, for an AVMS offering addressable advertising, data-driven granular audience segmentation (Turow and Couldry, 2018, pp. 417–418) as well as the ability to monitor and optimise campaigns is considered essential for attracting advertisers.

Value is created through addressable advertising in a variety of ways. First, addressable advertising presents an opportunity to reach new clients and therefore new revenue. For instance, Sky UK claims that 75% of its addressable advertising customers are new to TV or new to Sky (Sky, 2019, pp. 8-9) while 50% of SBS Belgium's advertisers using Smart AD are new to TV (EGTA, 2020, p. 64). Second, AVMS have a better opportunity to target ads on niche channels or outside of primetime, thus enabling them to sell less competitive ad inventory (De Schaepdrijver et al., 2021, p. 34). Finally, it has been argued that addressable ads can also benefit the AVMS by placing more relevant ads in individual households, which in turn has been shown to reduce channel switching (Sky, 2019, pp. 10-11).

For major AVMS with in house ad sales/media houses, a central goal is therefore to create their own "walled garden" of consumer data. Meaning a "data environment that is controlled by one company that may allow users to import data but only allow selected aggregate data to be extracted" (Broughton Micova and Jacques, 2020a, pp. 530-531). These are typical configurations of online platforms within larger ecosystems such as Google and Facebook, and are being mimicked by those engaged in addressable TV, especially those like Sky UK or Mediaset that have multiple avenues for accessing consumer data.

iv. Data Deficiencies

Data deficiencies stem from the complex arrangements of the multitude of actors in the audiovisual media ecosystem. Where traditionally, different parties could each pay for data through, for instance, panel surveys, in the current configuration data can be collected directly and used to create value by the set-top box, smart TV, electronic communications company, content delivery network, etc. That various actors in the value chain collect consumer data concurrently means that AVMS may not have exclusive access to consumer data. In some countries who owns the data collected through programmatic addressable TV systems is a matter of business arrangement between set-top box provider or network and the AVMS, whereas in a few, such as France, statute establishes that the AVMS broadcasters control the data needed to provide addressable advertising (Broughton Micova and Jacques, 2019, p. 64).

Significant intensity of use of consumer data is found at the level of the large media agencies whose role is to plan, on behalf of advertisers, the best way to deliver ads (Broughton Micova and Jacques, 2019, p. 17).

4.2.2 Major publisher with traditional and online distribution

This model concerns major multimedia publishers with digital and print distribution, heavily vested in the programmatic trading system. Such a publisher owns multiple news brands (national and international), magazines, websites, etc. An example of a company falling under this business model is Axel Springer, the largest European publishing house.

This publisher has multiple streams of revenue, including from classified ads, marketing, and paying readers (Axel Springer, 2021). The classified ads stream derives revenue from e.g. real estate or automotive clients paying to list classified ads.

Marketing revenue is paid by advertisers buying ad slots for both digital and print publications. In terms of online ad inventory, this data-intensive press publisher trades programmatically. Programmatic advertising refers to the ability to automatically buy and sell ads according to a prearranged formula (e.g. consumer demographics, location, interests, device, etc.). This process uses machine learning to buy/sell ads in real time as a consumer loads a webpage. In most cases this involves adtech vendors as not many publishers maintain in-house adtech solutions.

Finally, revenue can be derived from readers directly through, for instance, paid subscriptions (print and digital) or putting certain premium articles behind a paywall.³⁸¹ Press publishers under this model aim to collect consumer data in order to maximise the value of their advertising space (Cairncross, 2019, p. 44). However, they are highly reliant on Google and Facebook for online publications (Fanta and Dachwitz, 2020, p. 4). This duopoly also dominates the online ad market and controls unparalleled amounts of consumer data, making it difficult for even the largest most data-intensive publishers to compete for ad revenue (Fanta and Dachwitz, 2020, pp. 13-14; Australian Competition and Consumer Commission (ACCC), 2019, pp. 11-15; Cairncross, 2019, p. 47; Competition & Markets Authority (CMA), 2020, pp. 15-16).

i. Access to Consumer Data

a) Volunteered/Stated Data

In terms of volunteered data, a publisher may collect contact information and interests from consumers through various means (e.g., account registration, signing up for newsletters, subscriptions, etc.). Such data can be collected across the publisher's online portfolio of brands.

³⁸¹ For instance, by asking consumers to subscribe for ad-free access or premium articles or to read an unlimited amount of articles.

b) Observed/Revealed Data

The heavy traffic across a publisher's different brand websites also generates valuable first party data. Every event (visits per day/month, clicks, page views, searches, paywall hits, e-commerce data, etc.) can be collected and stored in an internal data platform. For example, Axel Springer collects "information about the end device accessing the site and the software used; date and time of the access; cookies and pseudonym IDs (core services); websites from which the user has accessed [their] website or which the user accesses through [their] website; [and] IP address" (Axel Springer, 2021a).

c) Inferred Data

Publisher's inferred data primarily includes a consumer's perceived interests as well as audience segments for personalising programmatic advertising.

The large media agencies play the same role in this model as in the AVMS models.

ii. Use(s) of consumer data for value creation

Regarding the consumer, publishers use the collected data to measure content performance, monitor what consumers are engaging with, and serve more relevant content (i.e. personalised by interest) accordingly (Axel Springer, 2021a; FIPP, 2019). As relates to advertisers, consumer data is used by major publishers to build granular audience segments (Tealium, 2019, 12:13) so as to deliver better programmatic advertising. For instance, Axel Springer's customer data platform describes the ability to target consumers with different banner ads on one of their brands' websites depending on the reader's interests and the device being used (Tealium, 2019, 15:50). Thus, a consumer's personal data generates significant value for publishers in the context of online advertising, on top of the revenue derived from subscriptions.

However, the most significant intensity of use of consumer data is arguably by the media agencies who are planning the campaigns and buying the ad inventory from the publishers.

iii. Data Deficiencies

Even in the context of a major data-intensive publisher, such a business is both highly reliant on and in competition with online platforms. Publishers are reliant on Google and Facebook as these platforms are essential distribution channels for their content (Fanta and Dachwitz, 2020, p. 4; ACCC, 2019, pp. 8-10; Cairncross, 2019, pp. 57, 65; Sehl et al., 2021). However, the relationship between publishers and these major platforms are characterised by imbalance with multiple issues surrounding data.

Firstly, the business models of Google and Facebook have been contested insofar as publishers reach an audience on the platform. It is considered problematic that these platforms enable the consumption of a publisher's content without the publisher receiving the related data. Publishers feel that platforms "share with them much less data than they could" (Cairncross, 2019, p. 65) related to their content. In essence, publishers are helping to generate significant amounts of consumer data for platforms, without knowing themselves how their content is performing. Secondly, the data collected by even the most data-intensive publisher is eclipsed by the volume of data collected by Google and Facebook. As such, the best efforts of a publisher at creating a competitive walled garden of consumer data will still be a far less attractive offering in terms of programmatic trading than those of the Google and Facebook ecosystems.

Third, publishers are reliant on ad servers for all their ad trading transactions. However, Google and Facebook are ubiquitous across the advertising supply chain and have the largest share of online

advertising revenue (Cairncross, 2019, pp. 62-63). Furthermore, the leading ad server and other dominant adtech is all owned by Google (Geradin and Katsifis, 2019). As such, publishers have little choice but to make their inventory available or risk losing some of the market, consequently impacting their ability to collect and use data, in particular inferred data.

This struggle has led some publishers, such as Axel Springer, to denounce the data monopoly of big tech companies (Döpfner, 2021) and try to reduce their reliance on Google by buying their own ad tech, creating their own walled gardens of data, and offering programmatic advertising solutions at a national level.

4.2.3 Advertising-Funded Local News Website Distributed Exclusively Online

This business model examines local news distributed exclusively online (no print), funded wholly or partly by advertising. Such websites are highly reliant on online advertising revenue, in particular from display and classified ads (Ramsay and Moore, 2016, pp. 27-28). It is noteworthy that although classified ads are the smallest segment of online advertising in the global market, they hold a more important role in Europe as “the European market for classified online advertising is the world's largest” (Fourberg et al., 2021, p. 18). Local news websites have suffered significant losses in the advertising market to online competitors, such as Craigslist, Gumtree, Google, and Facebook (Ramsay and Moore, 2016, p. 27, 41; Cairncross, 2019, p. 47). Additionally, Facebook and other social media groups are increasingly used by consumers for local news (Newman et al. 2020, p. 11), putting further pressure on local news websites.

Nevertheless, these websites continue to serve as the “the top source of news about a particular town or region” (Newman et al., 2020, p. 11) in most countries, thereby playing an important role in the context of media plurality. Some examples of businesses under this model include Dichtbij in the Netherlands and Aqui.fr in France.

i. Access to Consumer Data

a) Volunteered/Stated Data

Local news websites “often do not have the technical and financial resources necessary to market their space to advertisers effectively, to collect user data, or to navigate the online advertising market.” (Cairncross, 2019, p. 47) The consumer data they have access to is therefore minimal and generally takes the form of volunteered data collected through log-ins, subscriptions, or newsletter sign-ups. For instance, Aqui.fr offers consumers a free weekly newsletter which only requires an email address.

b) Observed/Revealed Data and Inferred Data

Local news websites do not collect observed or inferred data on their consumers as they do not personalise/target their advertisements or their content. However, as such websites are reliant on Google Analytics and Google’s ad tech, observed data is collected by the ad servers and others in the programmatic system who are placing the ads. Similarly, social media (e.g., Facebook) plug-ins may enable the collection of further consumer data (Fashion ID GmbH & Co. KG v. Verbraucherzentrale NRW eV, 2019).

ii. Use(s) of Consumer Data for Value Creation

In contrast with the previous business model, local news websites are some of the least data-intensive press publishers. Although they may have limited knowledge of their consumers, the geographic proximity of the readers that they serve (e.g. in a particular town or region) allows them to derive revenue from geographically-relevant display and classified advertising. In other words, ad revenue is derived from local businesses and the advertisements themselves are not targeted or personalised to specific consumers. Insofar as local news websites seek digital advertising revenue, these ads are traded on the open web (Geradin and Katsifis, 2019) and most local news publishers are reliant on Google's ad tech.

iii. Data Deficiencies

Despite the best efforts of local news publishers, many classified ads have migrated to online competitors who offer a lower cost option for local classified ads, including job listing, car sales, etc. (Ramsay and Moore, 2016, p. 27). Meanwhile, the ability of major platforms like Google and Facebook to track and target consumers is unmatched, making them "highly attractive to local advertisers" (Ramsay and Moore, 2016, p. 41).

Local news websites may also be locked into using Google Ads for display ads placed on their websites, further restricting any data collected to Google's walled garden (Broughton Micova and Jacques, 2020a, pp. 530-531). For small online local news publishers, this dependency on major platforms is pervasive, extending to Google Analytics for tracking, for example, or YouTube for hosting video content. In sum, most of the consumer data collected on these websites will be owned by and create value for third parties.

4.2.4 Non-Advertising Supported Internet-Distributed VOD

This model examines two forms of non-advertising supported VOD: subscription VOD providers and the catch-up/on demand services of Public Service Broadcasters (PSB). Instead of (or in addition to) advertising revenue, SVOD providers (e.g. Netflix, Amazon Prime Video) rely on a subscription fee from their users while PSB services (e.g. BBC Iplayer, ZDF Mediathek, NPO Start) are publicly funded, for instance through a licence fee. The core objectives of SVOD providers are to retain and gain subscribers, while PSB primarily aim to fulfil a public service mandate.

It is important to note that while advertising is not the primary revenue model of SVOD services, they nevertheless maintain value-creating relationships with advertising through other forms of marketing, including product placement (Tran, 2018; Kuthan et al., 2021), merchandise (Simon, 2021), and brand collaborations/licensing (Hsu, 2019). In the context of these deals, the consumer data they have is a valuable asset.

The internet-distributed television industry is highly competitive, earning the moniker "streaming wars." Netflix has thus far maintained the position of market leader, with over 209 million worldwide memberships (Netflix, 2021) (which can each have up to 5 user profiles).

SVOD providers are often available across multiple jurisdictions, for instance, Netflix is distributed in over 190 countries (Netflix, 2021), with slightly different content catalogues for different countries (dependent on content licensing rights, cultural tastes, etc.), whereas PSB are generally embedded within a specific national context.

Internet distribution enables these services to offer content catalogues unrestrained by linear programme schedules. In turn, these VOD services collect a large volume of consumer data, which

is used in a multitude of ways to create value.

i. Access to Consumer Data

In the 1970s, media scholar Raymond Williams likened television to “a person’s private—unwatched—window” (Williams, cited in Turow and Couldry, 2018, p. 421). Indeed, broadcast television was traditionally conceptualised as a one-way transmission; however, with the advent of internet distribution VOD services were able to collect and harness a significantly higher amount of feedback or “return path data” (Doyle, 2018) directly from their consumers. In other words, VOD services are able to closely observe their consumers as they look out the metaphorical “window.”

a) Volunteered/Stated Data

Most VOD services require consumers to create an account in order to access content. This registration provides the VOD service with a consumer’s basic personal information such as name, age, email, language preference, geographic location, etc. Some services also offer an initial “taste survey [for new users] to express preferences” (Amatriain and Basilico, 2015, p. 398). Following from this, consumers supply further volunteered data through actions such as rankings, reviews, posts, likes, etc. What a VOD service can collect is of course dependent on the specific platform’s interface. Volunteered data is collected on an individual user level. This data can be collected at multiple points in time, such as during initial registration as well as anytime a user provides feedback on content (e.g. through ratings).

b) Observed/Revealed Data

VOD services are able to collect the bulk of their user data from monitoring their users’ behaviours on their platforms. Observed data is collected on an individual user level and is collected the entire time a consumer spends on a platform. This observed data includes “play data” (Amatriain and Basilico, 2015, p. 398), i.e. everything observable related to a user’s consumption behaviour (what content is watched, when/where/on what device, how long each item is watched for, whether it is paused/skipped/stopped, etc.). In addition to this highly detailed information, VOD services can monitor what consumers search for, what they click on/scroll past, what they add to a watch list. Observed data therefore provides VOD services with an incredibly rich picture of their users’ behaviours and interests.

c) Inferred Data

Inferred data is generated from a combination of individual level volunteered and observed data, aggregate consumer data, and non-personal content data. It allows VOD services to make inferences on their consumers interests, such as a consumer’s preferences, the likely popularity of different genres of content, audience segments/taste profile categories, etc. It therefore transcends the individual consumer, also offering information on a VOD service’s content and interface.

Inferred data is reliant on the coding of a VOD service’s catalogue, where each content item (in this case films or television series) can be tagged with varying degrees of specificity (Krämer et al., 2020, pp. 44-45). For instance, at Netflix, content data includes “metadata such as synopsis, genres, actors, directors, subtitles, parental rating, and user reviews” (Amatriain and Basilico, 2015, p. 398) but also more abstract “human-provided annotations on each video that describe aspects such as mood (e.g. witty, dark, goofy), qualities (e.g. critically- acclaimed, visually-striking, classic), and storyline (e.g. marriage, time travel, talking animals)” (Amatriain and Basilico, 2015, p. 398).

Similarly, PSB VOD services are coding their content with characteristics or “genomes” (Krämer et al., 2020, p. 45), such as “contextual attributes, for example: genre and sub-genre; nationality of actors; location; mood of the plot; whether music plays an important role in driving the narrative” (Doyle, 2018, p. 58). From this, inferred data can be drawn about, for example, which genres are most popular with certain audience segments.

ii. Use(s) of Consumer Data for Value Creation

VOD services collect and use consumer data to varying degrees and with different goals. PSB VOD services are less data-driven than most SVOD services, however both use consumer data to improve their user interfaces.

For PSB, this is done within the context of a public service mandate. For instance, the BBC’s “Privacy Promise” (BBC, 2018) cites the following uses for the consumer data they collect:

1. *Personalising their service* in order to make more accurate recommendations based on watch history, geographic location, and age.
2. *Understanding their audience* in order to check that they are producing and distributing a diversity of content that caters to all audience segments.

Since PSB mandates aim at providing a range of content, personalised recommendations are cognizant of aspects of exposure diversity. As one example of how PSB can respond to this, NPO Start “base recommendations on current viewing behaviour (for both logged in and anonymous users), but also make sure that one or more of the recommendations are not of the same genre and/or broadcaster” (NPO, 2021).

By contrast, SVOD services are highly data-driven, with consumer data becoming “a key source of competitive advantage in the television industry and a resource that can be monopolized” (Doyle, 2018, p. 53). As a by-product of nonlinearity, SVOD services are able to have large catalogues of content. The ability to facilitate a consumer’s navigation, discovery, and selection is therefore essential. All the data collected on consumer behaviour is channelled towards better understanding how to categorise audiences and content, which in turn allows SVOD services to highly personalise their interfaces to individual consumers and make data-informed decisions related to content production and acquisition.

The more sophisticated the content tagging and audience segmentation into taste profiles, the more accurate personalised recommendations can be. In 2014, it was found that Netflix had thousands of “microgenres” (Madrigal, 2014) which could be targeted at specific audience segments called “taste clusters” (Adalian, 2018) In this case, categorising users based on aggregate audience viewing patterns replaced traditional targeting metrics such as demographics or socioeconomic status (Adalian, 2018).

The classic example of data-driven personalization is Netflix, where “everything is a recommendation” (Amatriain and Basilico, 2015, p. 391). From the moment a consumer logs in, everything they see is catered to them. This includes the categories of content, the order of these categories, what content appears in these rows (Amatriain and Basilico, 2015, pp. 391-393; Gomez-Urbe and Hunt, 2015), even content cover artwork (Chandrashekar et al., 2017). This complex recommender system consists of a collection of algorithms which each serve to provide a different form of personalised recommendation (Gomez-Urbe and Hunt, 2015). SVOD services are incentivised to encourage users to consume their content, as this produces more consumer data which, in turn, increases the VOD service’s competitiveness.

Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data

Importantly, consumer data is also being used to make decisions related to SVOD services' content production and acquisition (Doyle, 2018, pp. 56-57; Turow and Couldry, 2018, p. 419). To mitigate the risks associated with television production, VOD services with access to large amounts of consumer data are turning to this information in order to assess the likely success of a potential commission or acquisition (Doyle, 2018, p. 55; Smith and Telang, 2016, p. 140).

Finally, consumer data may also play an important role in SVOD services' aforementioned product placement, self-marketing, and collaboration/licensing deals.

iii. Data Deficiencies

The major data deficiencies in the VOD ecosystem relate to content creators (e.g. directors and producers). In particular in the case of major SVOD services like Netflix, a source of contention is the lack of data sharing on the performance/viewership of their content. Content creators contend that this lack of transparency strips them of important indicators, resulting in them having a weaker negotiation position and not receiving proportionate remuneration for their work (Federation of European Screen Directors, 2021). It is particularly harmful for independent producers who generally own no rights related to the content they produce exclusively for major VOD platforms (Idiz et al. 2021, p. 436). This has significant implications in the context of media plurality as independent producers are the cornerstone of a diverse audiovisual sector (UNESCO, 2005, Article 6; Cabrera Blázquez et al., 2019, p. 8).

4.3 Conformity of the collection of and intensity of use of consumer data with the EU framework on personal data protection

A note of caution is in order about the compliance of aforementioned business models and their use of consumers' personal data with the EU's legal framework on personal data protection. The collection and use of consumer data that qualifies as personal data namely has to meet the requirements of the EU data protection legislation. The General Data Protection Regulation (GDPR) defines personal data quite broadly as "any information relating to an identified or identifiable natural person" (Article 4(1) GDPR). Going back to the consumer data categories operationalised in this study they will qualify as personal data if the data maintains a connection with a household or individual consumer, as this would be the case with an identifiable user profile or retaining a digital identifier per user. Only if consumer data cannot be directly or indirectly related to a household or individual it would no longer be considered personal data, such as for instance statistical or aggregated consumer data.

4.3.1 Lawfulness of processing of consumers' personal data

Pursuant to the GDPR, the lawfulness of processing of consumers' personal data requires a legal basis. From the menu of legal bases provided for in Article 6(1) of the GDPR, the most relevant in the context of the collection of and intensity of use of consumer data in the online media sector are:

- (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- (c) - (e) *not applicable*;
- (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental

Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data

rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

As a consequence of the requirement for a legal basis, media actors who maintain a direct relationship with their audiences can make use of consumers' personal data insofar as this is necessary for the performance of a contract (in case of a subscription) or the service (in case of offering free media content). In connection herewith also marketing activities, audience research, service improvements and other auxiliary activities can in principle be carried out in full respect of EU data protection rules. Finally, also an individual's free, specific, informed and unambiguous consent can be a legal basis for the processing of personal data.

Compliance with EU data protection legislation in the online media sector by actors that have no direct consumer relationship appears rather patchy. Oftentimes, actors in the digital media ecosystem have no legal justification for collecting consumers' personal data and its subsequent use whatsoever. Individuals are not aware of the incessant collection of their personal data by intermediaries, nor did they consent to these practices knowingly. For example, a 2020 sector inquiry of the German competition law authority on smart TVs concluded that in most smart TVs surveyed the collection of personal data is often not in full compliance with the legal requirements of the GDPR (Bundeskartellamt, 2020).

In the digital media ecosystems multiple actors are concurrently collecting consumer data from individuals and households, therefore multiplying the use of the same consumer data in the value chain. In practice, the collection of and the intensity of use of consumers' personal data by actors that have no direct consumer relationship is far removed from what is allowed but there is too little up-front compliance by actors and supervision and enforcement by data protection authorities in the EU Member States has not yet caught up.

4.3.2 EU data protection rules and the Cookie conundrum

In light of the strict requirements from data protection law, several practises pervasive in the digital media sector and beyond have been contentious. First, an individual's consent in line with the GDPR can be most precious in the online sector since it can be used to broaden the range of purposes consumer's personal data can be lawfully processed for. Moreover, e-Privacy Directive (2002/58/EC) requires a consent in the event of the storing of information and access to information already stored in the terminal equipment of a subscriber or user - a rule that is better known as the "Cookie rule". Such "Cookies" are small text files that allow the identification of online users when they browse the internet and access websites. The CJEU has ruled in case *Planet49* (C-673/17) that a consent is not validly given when the user must uncheck a box in order to refuse his or her consent.

In order to obtain individuals' consent, online websites have increasingly resorted to controversial "Cookie walls". With a cookie wall access to a given website is only granted on the condition that a user agrees to cookies from third parties, often dozens and even hundreds of them (Zuiderveen Borgesius et al, 2017). Such "Cookie walls" have led to a controversy over their lawfulness under the e-Privacy Directive read in conjunction with the GDPR's definition of an individual's consent. After the Dutch Data Protection Authority ruled against "Cookie walls" in 2019 also the European Data Protection Board (EDPB) clarified that this practice is not a valid means to obtain consent:

"Access to services and functionalities must not be made conditional on the consent of a user to the storing, or gaining of access to information already stored, in the terminal equipment of a user" (EDPB guidelines 05/2020, page 11)

In a further iteration of the contentious Cookie consent banners are designed to nudge internet users to click consent. The tactic is discussed as “dark patterns” in Cookie consent banners which are designed to prompt users to agree (Graßl et al, 2021) but often the option to disagree is visually subdued and requires more steps to effectuate than to agree. Here the French Data Protection Authority has stepped up enforcement and issued high fines against Google and Facebook for non-compliance with the principle that “refusing cookies should be as easy as accepting them” (CNIL, 2022). According to a draft decision of the Belgian Data Protection Authority a leading industry template for obtaining users’ consent to online tracking will be found in breach of the GDPR (Lomas, 2021).

4.3.3 Current proposals to restrict online targeted advertisements

Besides, the entire legitimacy of tracking consumer behaviour for online targeted advertising is under intense discussion in the EU, as it involves the online tracking of individuals often without their knowledge and consent (see for an overview: Fourberg et al., 2021, pp. 87-91). In 2020, the European Parliament adopted a resolution on a Digital Services Act (DSA) calling for online targeted advertising to be regulated more strictly in favour of less intrusive forms of advertising that do not require any pervasive tracking of user interaction with content (European Parliament, 2020, Para. 15). The European Data Protection Board (EDPB) concurs with this European Parliament Resolution in its own statement (EDPB, 2021). These are clear indications that there is political momentum in the EU to reign in those types of online advertisement that require the excessive tracking of individuals online.

A proposal to ban tracking-based targeted advertising has been met by significant resistance by media representatives who argue that such a ban would “harm media freedom” (Bertuzzi and Killeen, 2021). Opponents to the ban claim that it would “forc[e] media organisations out of the market, and [...] only [allow] access to readers who can afford to pay for content” (Bertuzzi and Killeen, 2021). This would have an impact on media pluralism, as the Reuters Institute Digital News Report 2021 has warned that “the vast majority [of consumers] are still not prepared to pay for online news” (Newman et al., 2021, p. 29). However, the counterargument is that contextual advertising “based on keywords, language and the geographical location of the user” (Bertuzzi and Killeen, 2021) could serve as a viable alternative, with research suggesting it would not significantly decrease ad revenue (Bertuzzi and Killeen, 2021). Member of the European Parliament Paul Tang suggests that the industry’s resistance to the ban stems from the platform-dependency of publishers and advertisers (Bertuzzi and Killeen, 2021).

The positions of the European Magazine Media Association (EMMA), the European Newspaper Publishers’ Association (ENPA), the European Publishers Council (EPC) and News Media Europe (NME) is that “data protection and data-driven advertising should be left to GDPR and the forthcoming ePrivacy Regulation. Any further restriction on consent and use of data going beyond GDPR would be unacceptable” (van Wijk et al., 2021).

At the time of writing the Council and the European Parliament reached a provisional political agreement reached on the DSA in April 2022. Following this, online platforms will be prohibited from using targeting techniques involving the data of minors for the purpose of displaying ads, as well as targeting individuals on the basis of special categories of data which allow for targeting vulnerable groups. The amendments foresee improved transparency and informed choice for the recipients of digital services, including information on how their data will be monetised, and the prohibition of so-called ‘dark patterns’. As it stands, the provisional political agreement does not foresee a ban of tracking walls.

4.3.4 Strategies of selected online news publishers' websites

Online news publishers are responsible to ensure compliance with the EU framework on personal data protection. Where they resort to facilitating the tracking of consumers as an input for serving them with online targeted advertisement this often involves a large, distributed network of adtech services and third parties:

“Simply accessing a single page of a typical, ad-supported news website leads to a multitude of globally distributed, networked processing operations involving potentially over a hundred actors.” (own translation; Wendehorst et al., 2021)

Online news publishers have to gather consumers' consent to the tracking by third parties and adtech intermediaries as well as to placing targeted online advertising. This has been challenging because consumers of online news often do not favour online tracking and thus may not be inclined to consent and/or they may use ad blockers to suppress online advertisement. Online news publishers have been experimenting with various strategies to overcome the fallacy of earning advertising revenues with online news content. Ultimately, individuals have constitutionally protected rights as media users that also have to be taken into consideration.

i. Litigation against ad-blockers

Ad blockers are software which individual users can install as browser extensions in order to instruct the browser to refrain from loading certain content. Next to the ability to customise the ad blocker, the user can import lists with known trackers and online advertisers and block them. The way ad blockers interfere with business models around targeted online advertisement has caused much controversy between ad blockers and website publishers, among which online news publishers. Germany has seen a wave of litigation against providers of ad blockers initiated by online news publishers on grounds of unfair competition. Examples of online news publishers who took civil law action in Germany are Axel Springer, Süddeutsche Zeitung, and RTL interactive (Miller, 2018).

In 2018, the German Federal Court of Justice (*Bundesgerichtshof*, 2018) ruled that providing an ad blocker does not constitute a violation of the Unfair Competition Act. The court held that an ad blocker does not cause a direct or indirect interference with the business model of the news publisher. The provider cannot be held liable for the actions of internet users whose autonomous decision it is to install and use the ad blocker. Following the court, news publishers have the technical means to prevent users with an ad blocker from accessing free editorial content and they can introduce paid access options. In the meantime, there have been unsuccessful attempts to obtain legal bans on ad blockers in German media law.

ii. Introduction of pay or consent models

Several major news publishers have introduced a different choice architecture where consumers can either enter into a paid subscription or consent to accepting Cookies and third-party tracking. These news media actors argue that the alternative to paying for media content and news is revenue from digital online advertisement in order to finance the production of news and media content. Examples are the German news websites of Spiegel Online, die Zeit, and Frankfurter Allgemeine Zeitung as

well as the Austrian online news Der Standard and Krone. Whether this practice is in conformity with EU data protection rules has not yet been tested and there is currently a complaint by an organisation representing data subjects (NOYB, 2021).

iii. Replacing targeted with contextual online advertising

Yet another strategy has been to replace targeted online advertising with contextual online advertising. Contextual advertising does not need incessant tracking and profiling of users, instead the ads relate to the content or the specific search query. Especially public service media actors have found themselves at odds with their mission if they use Cookie walls and extensive tracking of their users (Helberger 2013). There is even evidence from both the New York Times in Europe and Dutch public broadcaster NPO that their ad revenue increased after switching from tracking-based behavioural to contextual advertising (Edelmann, 2020; Lomas, 2020). NPO credits their successful transition away from targeted advertising based on personal data to an investment in contextual targeting technology and the role of its sales house (Lomas, 2020). Yet, as mentioned earlier, most media actors currently seek to retain their ability to use consumer data extensively online targeting and targeted online advertising.

4.4 The role of the intensity of the use of consumer data on media plurality

It is widely accepted in the media industry that access to and use of consumer data contributes to making media economically viable, however the theoretical underpinnings for a link to media plurality are still in development. One theory underlines the reduction of media users’ range of choice due to personalization techniques that have come to be known as echo chambers or filter bubbles (see part A of this Study). Another maintains that the online media and large online intermediaries are better able to collect and use consumer data at the expense of traditional offline and local media (Broughton Micova and Jacques, 2020b) leading to less plurality of media outlets, especially among those that produce news and informative content. These two dynamics might both be in play, as could other alternatives.

The ability to accumulate consumer data and the intensity of consumer data use affect media pluralism on both the supply-side and demand-side media plurality, as exemplified by the following table. As defined in the T0 chapter of this report, internal plurality refers to plurality of content and viewpoints provided by a single media outlet, while external plurality refers to the structure of the media market (i.e. the overall number of media outlets in each market) (see T0 chapter of this Study). Supply-side plurality, also called source diversity, refers to the diversity of content provided by a media outlet (internal) or by the market (external), while demand-side plurality, also called exposure diversity, refers to audiences’ exposure to and discovery/consumption of a diverse range of content (see the Introductory Chapter of this Study).

	Internal plurality	External plurality
Supply-side plurality	Personalization/ recommender systems	Possible reduction of media outlets and sources
Demand-side plurality	Filter-bubble/ echo chamber	Less choice among diverse media outlets

4.4.1 Supply-side plurality

In terms of internal plurality on the supply-side, the collection of consumer data can be used by a media outlet to generate personalised recommender systems. These algorithms create value for such a media outlet in that they increase user engagement through more accurate targeting of content and advertising. This would be applicable in the first two advertising supported business models and the VOD model. The impact of (micro-)personalization techniques on exposure diversity is covered in section A of this Study.

From the perspective of external plurality, the concern is that those who are unable to collect sufficient consumer data to remain competitive in marketing online ads in a context characterised by online targeted advertising may struggle to generate the revenue required to reach long term sustainability (OECD, 2021). Furthermore, as advertising moves towards the highly opaque data-driven programmatic type, large intermediary platforms will benefit while other media actors will be dependent on information on consumers and ad performance. There is also a concern for the firms competing with each other who are operating the first two business models and with advertising supported online intermediaries. Reduction of external plurality among commissioning media will be particularly detrimental to independent production companies, creating significant dependence on the major platforms. Also noteworthy for media plurality on the supply-side is the fact that algorithms and consumer data collected on a large scale may be influencing what cultural content is being produced, especially in the case of major SVOD services (Grant, 2018). As entertainment media also plays an important role in social cohesion, cultural identities, and the negotiation of social norms, this trend should not be overlooked.

4.4.2 Demand-side plurality

On the demand-side, overreliance of media outlets on consumer data may create a hyper-personalised media environment. For consumers, the result of algorithmically recommended content can be the creation of filter bubbles or echo chambers, reducing the diversity of content a consumer will be presented on any given media outlet and influencing how consumers navigate and consume cultural content and news. The state of knowledge of the impact of personalization on exposure diversity is explained in section A of this Study.

For external plurality, less diverse media exposure results in less choice for consumers. Furthermore, in the current data-driven media context commercially successful outlets will likely be those able to collect and use consumer data on a large scale, therefore amplifying the reliance of consumer data collection and intensity of use. Indeed, consumers are so reliant on major platforms that they often consume news content in the form of snippets, which are detached from their original source (OECD, 2021, p. 12, 17). Studies have shown that in these instances, around half of consumers are unaware of the original source of news accessed through social media platforms (Ofcom, 2020, p. 51). Contrastingly, consumers are more aware if the news is shared by a news organisation directly, e.g. via email or text alerts (Mitchell et al., 2017).

While most consumers distinguish between news organisations and social media platforms and hold a 'generalised scepticism' of news accessed through the latter, they lack understanding around the algorithmic filtration of such content (Fletcher and Nielsen, 2019, p. 1765). As many news outlets become reliant on the subscription model for long term sustainability, there are also concerns around whether all segments of society will have access to independent journalism and reliable information (Milosevic, 2020, p. 4). Finally, it has been argued that:

Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data

“the advertising industry’s use of big data to target advertising, through fuelling more personalised content, is fracturing audiences and eroding shared civic culture [... by] ‘clearing’ the landscape of one of the ‘basic ingredients of democratic life: the reliable and regular exchange of common ideas, facts, and reference points about matters of common concern” (Couldry and Turow, 2014, cited in Doyle, 2018, p. 56).

This raises questions around consumer rights and whether there are viable alternatives to the overuse of consumer data.

4.4.4 Consumers are citizens and enjoy fundamental rights

Governments and policy makers also have to balance the fundamental rights of media users. Individuals have a right to the enjoyment of the freedom of information and the protection of private life and personal data. These rights are guaranteed enshrined in the European Convention on Human Rights, the EU Charter of Fundamental Rights and European countries’ constitutional law. Concerns have been raised that the vast collection and intensity of use of consumer data in the current online media environment may undermine these fundamental rights. Especially in the context of news media the argument has been made that the overuse of consumer data due to online targeting for the purpose of news personalization, profiling and online advertising is an infringement on an individuals’ personal information data sphere and is not in line with the GDPR. Importantly, “the GDPR does not block the media from disseminating news content; it merely conditions how the media may process personal data to disseminate news in a personalised manner” (Eskens, 2019, p. 160).

4.5 Concluding Remarks

In the digital media sector, each media actor may use consumer data to create value in different ways. Table B2.6 summarises the primary ways in which consumer data is used by the different business models discussed to create value.

Table B2.6. Business models’ value-creation from consumer data

Media actor	Uses of consumer data	Value creation
<i>Major AVMS</i>	<ul style="list-style-type: none"> ● Increase viewer engagement by placing more relevant ads 	Improve the performance of the media service
	<ul style="list-style-type: none"> ● Deliver/address household-level targeted advertisement ● Monitor/optimize ad campaigns ● Attract new advertisers ● Create walled garden of consumer data 	Online tracking/profiling for targeted advertisement
<i>Major Publisher</i>	<ul style="list-style-type: none"> ● Measure content performance and monitor reader engagement 	Improve the performance of the media service
	<ul style="list-style-type: none"> ● Deliver personalised content 	Improve personalization and navigation
	<ul style="list-style-type: none"> ● Build granular audience segments to better deliver programmatic advertising ● Create walled garden of data 	Online tracking/profiling for targeted advertisement

Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data

<i>Local News Website</i>	<ul style="list-style-type: none"> • Deliver geographically relevant display and classified advertising 	Online advertising (ads that are not micro-targeted)
<i>Non-Advertising Supported VOD</i>	<ul style="list-style-type: none"> • Make data-driven investment choices for content production and acquisition 	Improve the performance of the media service
	<ul style="list-style-type: none"> • Deliver personalised content • Facilitate catalogue discovery, navigation, and selection • Improve interface 	Improve personalization and navigation

In sum, four main ways are identified in which consumer data is used to create value. First, to improve the performance of the media service. Second, to improve personalization and navigation. Third, to focus on online advertising (such as classified ads that are not targeted). And fourth, to allow online tracking and profiling for targeted advertising.

In the case of the first three, the ability to create value from consumer data is positively correlated with the integration/scale/control of a business and its consumer relationship. In other words, a major SVOD service with large amounts of first party data from its subscribers is able to generate considerably more value than a small local news website with access to negligible amounts of consumer data. As such, especially in the case of audiovisual media, there is a battle for control of the first screen as this affects which actor will have the ability to collect consumer data. Furthermore, AVMSs and publishers do not have access to online campaign-related data in the same way online platforms do, which harms their ability to compete for advertisers and know the worth of their ad inventory (Broughton Micova and Jacques, 2019, p. 10).

The fourth (micro-targeting) is the most controversial form of data exploitation as the extensive use of consumer data collected by multiple actors at multiple points in the value chain can conflict with consumer rights such as data protection and the right to receive information. Further concerns stem from the fact that micro-targeted advertising contributes to a high dependency on adtech from Google.

In addition to this, concerns have been raised around how personalization stemming from the intense tracking of consumers may undermine consumers' fundamental right to receive information and infringe on their personal data protection rights. Nevertheless, the European Parliament's proposal to further restrict tracking-based targeted advertising has been met with strong opposition by media representatives claiming the loss of revenue would force media outlets to close down, thus reducing overall pluralism. However, there is a real need to consider viable alternatives to the overuse of consumer data for online targeted advertising. Furthermore, under the proposal, media outlets could still generate comparable revenue by moving to contextual advertising, which would mitigate the aforementioned concerns around consumers' rights.

A cross-cutting issue for the first three business models is the asymmetry of market power between big online platforms who have control of consumer data and publishers/AVMSs who do not (or at least not anywhere close to a comparable scale). The transparency issues here are twofold: content related and ad related. In terms of content, publishers and AVMSs are subject to an imbalance in data regarding how their media content performs. In terms of ads, they are similarly unaware of how ads perform next to their content and, as such, cannot attest to the value of their ad inventory (OECD, 2021, p. 18; Broughton Micova and Jacques, 2019, p. 10). For news publishers especially, it is a source of tension that digital platforms do not transparently share information on their commercial

terms (OECD, 2021, p. 18). Such data blind spots thus lead to a weaker negotiation position for media actors (OECD, 2021, p. 20). However, as will be explained in the next section the proposal for the DMA aims to address these asymmetries with new obligations for digital gatekeepers to increase transparency about the price of ads and the remuneration paid to publishers, as well as access to their performance measuring tools (European Commission, 2020).

The access to and use of consumer data has significant implications for media plurality, including hyper-personalization, reduction of content diversity, reduction of media outlets (particularly of smaller independent/local outlets), increased dependence on major intermediary platforms, data-driven cultural content production, and increase of misinformation. However, media actors have also developed other financing models not reliant on advertising revenue, which will be examined in the following section.

Main findings:

- Most media actors in the online media sector try to be active in the collection and use of consumer data, emulating highly successful data-driven business models that extensively collect consumer data, such as large platforms.
- Value is created through the collection of consumer data in four primary ways: to improve the performance of the media service, to improve personalisation and navigation, to focus on online advertising (ads that are not micro-targeted), and to allow online tracking/profiling for targeted advertisement.
- Major platforms and larger scale media actors with more control over the value chain have a significant competitive advantage over smaller local media actors in the collection and use of consumer data.
- Micro-targeted advertising requires intensive tracking and profiling of consumers, and as such is highly contentious.
 - While under the current legal framework on data protection consumers' consent is required for micro-targeted online advertising in practice media users' consent is more engineered than free.
 - The EU co-legislators of the DSA reached a political agreement to restrict online platform directing targeted advertising to minors and targeting advertising based on the use of sensitive data as defined in the GDPR.
- The introduction of pay or consent models and of contextual advertising may be viable alternatives, insofar as they are in full compliance with the GDPR.
- Access to and use of consumer data has significant implications for media plurality of supply, exposure and consumption of diverse media content.
- On the supply side, media plurality is affected by the intense collection and use of consumer data:
 - *internally*, in that media outlets use consumer data to generate personalised recommender systems; and
 - *externally*, by potentially reducing the overall number of media outlets, as some are unable to compete in the collection of data.

- On the demand side, media plurality is affected by the intense collection and use of consumer data:
 - *internally*, by creating a hyper-personalised media environment which can lead to filter bubbles/echo chambers; and
 - *externally*, by potentially decreasing consumer choice, in particular in terms of smaller independent media outlets.

5. Indications of resilience: the evolution of non-advertising reliant business models

This analysis looks into media resilience and examples of non-advertising reliant business models. Note that while Chapter B1 employed quantitative data mapping, this section relies on illustrative examples (taken primarily from the EU, but with some external examples where relevant). As such, its aim is not to perform a comprehensive assessment, but rather to indicate some key forms or resiliency and discuss their long-term sustainability.

As noted in previous sections of this report, while digitization has opened up new technical possibilities in revenue generation, digital ad revenue often fails to compensate for the losses of traditional ad revenue (Vara-Miguel et al., 2021, p. 1). This section examines some ways in which companies have sought to develop non-advertising reliant sources of revenue, including: pay per view/read, subscriptions and memberships, copyright fees and new rights, crowdfunding and donations, private subsidisation and philanthropy, and public subsidisation. In each instance, an overview of the revenue model in question as well as an assessment of its resilience is provided.

Resilience is defined as the ability to “obtain revenue from sources that will be sustainable over time” (Vara-Miguel et al., 2021, p. 2). Generally, a mix of revenue sources is most sustainable long term as “there are more opportunities to survive and succeed if multiple sources of revenue are involved, and therefore the organisation is not dependent only on a handful of private or public advertisers or sponsors, or any other single kind of income” (Vara-Miguel et al., 2021, p. 2).

The revenue models described in this section have been split between: (a) money earned (i.e. revenue from content) and (b) money gifted (i.e. subsidies and third party funding).

5.1 Money earned

5.1.1 Pay per view/read

Pay per view or pay per read allows viewers/readers to directly purchase specific content items (e.g. a film or an article) through a transaction called a micropayment. In the context of audiovisual media, this is known as transactional video on demand (TVOD) and has developed as an alternative, as well as an additional revenue source, to advertising and subscription funding models.

Some examples of TVOD services include Italy-based Chili and Spanish Sala Virtual de Cine. Chili was founded in Italy as a purely pay per view platform in 2012 and later expanded into the UK, Poland, Germany, and Austria (Chili, n.d.). Its shareholders include several major media conglomerates including Paramount Pictures, Sony Pictures, Viacom and Warner Bros (Chili, n.d.). However, by 2020, Chili announced the launch of an additional advertising-based VOD (AVOD) model (Chili, 2020), suggesting that its TVOD model alone was not sustainable in the long term.

Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data

In response to the COVID-19 pandemic, pay per view became a popular alternative for films unable to have a theatrical release due to cinema closures. For instance, Spanish movie distributor A Contracorriente Films launched a TVOD service called Sala Virtual de Cine (or ‘Virtual Cinema Room’), which offers a catalogue of recently released films on a pay per view basis and shares its revenue with cinemas (Thompson, 2021). Major subscription services such as Disney+ and Amazon Prime Video also began offering “premier access,” which gave their subscribers the option to purchase newly released films (Spangler, 2020; Gomez, 2021).

Pay per read has also been utilised in the context of news publication. As news publishers struggled to compete in the context of digital advertising and declining print readership, many moved towards different forms of paywalls to increase revenue. In particular, the subscription model (which only allows paying subscribers to access news articles), metered model (which allows readers to read a certain number of articles without paying), and freemium model (which charges readers for premium articles) (Vara-Miguel et al., 2021, p. 3). Pay per read presents an alternative to these paywalls, allowing readers to pay per article instead of being locked into subscriptions.

A company using this revenue model, Dutch online news platform Blendle, was launched in 2014. Blendle allowed readers to “make micropayments for individual articles from major publishers, rather than having to commit to monthly or annual subscriptions” (O’Reilly, 2015). Hailed as the “iTunes for news” (Schmidt, 2019), it received major investments from The New York Times and Axel Springer (Lichterman, 2014). However, by 2019, Blendle was still not profitable and was forced to pivot its model to a premium subscription service instead (Schmidt, 2019). Regarding this transition, Blendle’s co founder Alexander Klöpping stated:

“Premium members turn out to be much more active and read or listen to considerably more pieces. On average, they spend 22 minutes a day on Blendle, three times as many as users who pay per item. For us, of course, premium offers a much more stable source of income, which means we can continue to develop great features for our users” (Schmidt, 2019).

While others are still searching for ways to successfully implement a micropayment system in the publishing industry (Axate, n.d.) and see it as an important opportunity for local digital news publishers to financially sustain news production (Nesta, 2020), Blendle’s case underlines some of the key challenges they are likely to face.

i. Advantages

Pay per read offers the attractive potential of “open[ing] up a new stream of reader revenue for publishers, without locking out readers who need access to information” (Axate, 2020). For readers facing a news industry increasingly reliant on paywalls, this could indeed provide a more accessible option than subscriptions. In the context of COVID-19, pay per view has also become an important means for films unable to have a theatrical release to still generate revenue.

ii. Resilience concerns

In the news industry, a significant challenge for pay per read is that it may be incompatible with the traditional nature of publishing, whereby articles are considered a package deal. In other words, the different production costs of different articles are traditionally balanced out by advertising or subscription revenue. In the context of pay per read, if micropayments are only made for the most valuable content, they are not likely to generate sufficient income on their own to be a sustainable

revenue model in the long term. Furthermore, with the prolific availability of news for free, readers may be anyway hesitant to pay for articles.

In the audiovisual industry, pay per view solutions may prove more resilient depending on the quality of content offered (based on a platform's licensing deals) but will have increased likelihood of long term sustainability if combined with additional revenue streams such as subscriptions (as on major platforms like Disney+ and Amazon Prime Video) or advertising.

5.1.2 Subscriptions and memberships

The subscription revenue model entails direct payments, often monthly or yearly, from users to a content provider (for instance, a news organisation or VOD platform) for access to its content. The long term sustainability of this model is based on attracting new subscribers and keeping existing subscribers. This is achieved through the provider's value proposition and the differentiation of content offered (Vara-Miguel et al., 2021, p. 3).

Memberships are a similar model, where revenue is also derived from direct payments from users. However, membership payments are generally "made by individuals to support a media brand with whom [they] share a common political, social view or interest [and] there is a strong sense of community or identity behind the payment" (Vara-Miguel et al., 2021, p. 3).

Some examples of businesses who derive revenue from viewer/reader subscriptions include French independent online investigative journal Mediapart as well as subscription VOD (SVOD) services such as Dutch NLZiet. The Guardian is used as an example of a membership-based newspaper.

Mediapart is an independent news organisation in that it is free from advertising and funded wholly by reader subscriptions (Mediapart, n.d.). Indeed, it prides itself on having "no advertising, no public subsidies and no wealthy patrons" (Willsher, 2018). It is distributed online, and its model includes sharing snippets of articles on its website, where a reader must subscribe to read them in full. These subscriptions may be monthly or annual (Mediapart, n.d.). In 2021, Mediapart had over 220,000 paid subscribers (Challenges, 2021).

Mediapart is transparent about its financing, with an open access article detailing how its capital is controlled by its founders (mainly journalists) and its reliance on reader subscriptions (Plenel, 2008). Mediapart cites the 1945 "draft declaration of the rights and duties of the free press [translated]" which states:

Article 1: The press is not an instrument of commercial profit. It is an instrument of culture, its mission is to provide accurate information, to defend ideas, to serve the cause of human progress. Article 2: The press can fulfill its mission only in freedom and through freedom. Article 3: The press is free when it does not depend on government power or money powers, but on the conscience of journalists and readers [translated] (Plenel, 2008).

Mediapart's public interest mission and democratic values are clear: they refer to the freedom of knowledge and speech, and its values, which include transparency, inclusion, and freedom of expression (Mediapart, 2021).

The subscription model as an alternative to advertiser funding is also found in audiovisual media, pioneered by services such as Netflix and Amazon Prime Video. European broadcasters and content providers have also been turning to this model as an alternative or additional service in order to stay competitive in the digital environment.

For instance, in 2014 Dutch public and commercial broadcasters teamed up to offer an SVOD service called NLZiet (or 'the Netherlands watches') to compete with Netflix and similar services (Digital TV

Europe, 2014). NLziet offers monthly subscriptions for its viewers to access “all Dutch TV programs in one app [translated]” (NLziet, n.d.). Because NLziet is operated by both public and commercial broadcasters, it does not have a strictly public interest mandate. For example, while the dutch public broadcaster NPO’s own on demand service (NPO Start) attempts to counter filter bubbles by recommending content of different genres (NPO, 2021), NLziet does not state how personalised recommendations or content discovery may work on its platform (Easton, 2021).

The Guardian is an example of a news organisation employing the membership model. Although the Guardian has a subscription option, it also asks its readers for “support” through contributions (The Guardian, 2021). In addition, it displays ads/banners for readers who do not subscribe or contribute, thus remaining available for everyone to read (The Guardian, n.d.). The core objective of the Guardian’s revenue model is to allow the newspaper to “remain independent of shareholders or a billionaire owner, free to report relentlessly on world events” (The Guardian, 2021).

i. Advantages

The subscription model has the potential to be highly resilient, in that it is the only revenue model discussed in this section that does not necessitate mixed revenue in order to reach long term sustainability. As such, it is “one of the most popular revenue models of digital media” (Vara-Miguel et al. 2021, p.2; Nel et al., 2020, p. 426).

To reduce their reliance on major platforms such as Google and Facebook, news publishers have increasingly been turning to the subscription model (Newman et al., 2021, pp. 14-15). Similarly, to compete with major on-demand services like Netflix and Amazon Prime Video and respond to increased cord-cutting, many traditional broadcasters and new content providers alike have established subscription offerings.

Memberships also have the potential to be resilient, especially when mixed with other forms of reader-based revenue, as exemplified by the Guardian. When in a subscription model subscribers are enticed by content *value*, memberships are reliant on a more complex ideological alignment between their members and the content offered. Thus, a potential result of society’s increased polarisation (Newman et al., 2020, p. 9) may be that consumers become members of newspapers which align with their world view.

ii. Resilience concerns

For businesses reliant on subscriptions or memberships, the major challenges are around scalability and value proposition. Indeed, most local SVOD services are limited in their opportunity for growth. Similarly, a local news website may struggle to gain subscribers or members outside of its regional base. This is a concern for resilience as the long term sustainability of a business requires some degree of scalability. Research has shown that although reader-based revenue has the potential to be highly resilient, it is more likely to prove successful for “highly trusted national titles [,] smaller niche and partisan media brands” (Newman et al., 2020, p. 31).

Another concern is around content value. Because subscriptions or memberships are reliant on the retention of existing readers/viewers as well as the ability to attract new ones, the content offered by such businesses must be sufficiently differentiated or valuable so as to meet and maintain subscribers’ “quality expectations” (Nel et al., 2020, p. 420).

This is different for the membership model. Where subscriptions are perceived as transactional, memberships are “a relational concept” (Vara-Miguel et al., 2021, p. 7). Thus, these newspapers must make clear their editorial stance (e.g. independent investigative journalism with a public-interest

mandate) in order to reach the readership that aligns with them and will therefore be likely to contribute (e.g. educated international readers). However, as noted earlier in this Study, The Guardian's success is based on its ability to harness a worldwide market, something which is likely to remain out of reach for most small/local news outlets.

5.1.3 Copyright-related revenues and new rights for publishers

A revenue source which is increasingly gaining space and attention comes from the enforcement of the new EU copyright framework. Reference to this is made in Chapter B1, and in particular to Section 9 therein, where this phenomenon is mapped across the EU. The 2019 Directive on Copyright and Related Rights in the Digital Single Market (DSM Directive)³⁸² recognises that the reuse of press publications is an important source of revenue for press publishers, news aggregators or media monitoring services;³⁸³ Article 15 grants publishers copyright over "online use of their press publications by information society service providers", with exceptions for hyperlinks, "legitimate private and non-commercial use of press publications by individual users", and "individual words or very short extracts of a press publication". Member States had to implement the Directive by 7 June 2021, however many are late. In the Member States that already transposed Article 15, publishers started to negotiate new licences in an attempt to secure new revenues.

However, the transposition in national law and the enforcement of this new right is not problem-free, and competition authorities are stepping in. In France, for example, in November 2019 several press unions complained with the Competition Authority (ADLC) about Google's abuse of dominant position. The ADLC found that Google's practices on the occasion of the entry into force of the related rights law were likely to constitute an abuse of a dominant position, and caused serious and immediate harm to the press sector. Therefore, it imposed interim measures for the negotiation period, i.e. a duty to negotiate 'in good faith' with the press (ADCL, 2020). As Google didn't respect the interim measures, in July 2021 ADLC condemned the platform to pay a high fine (ADLC, 2021). Finally, Google signed multi-years agreements to pay for news with a variety of publishers.³⁸⁴

In Italy, the implementation of the DSM Directive has been criticised by some scholars because it grants to AGCOM, the relevant Italian regulator, the right to determine the fair compensation due in specific cases where publishers and information society service providers are not able to reach an agreement under Article 15. This intervention might not only be contrary to EU law, but also disproportionately invasive of the parties' contractual freedom (Rosati, 2021).³⁸⁵

Discussions and regulatory initiatives aiming to address the strong imbalances in the bargaining power between the digital platforms and news publishers are not an EU exclusive. Following the government's call, the Australian Competition and Consumer Commission (ACCC) proposed to fix the imbalance between digital platforms, specifically Facebook and Google, and news producers through a mandatory bargaining code (ACCC, 2020). The code was enacted in March 2021³⁸⁶: it is

³⁸² Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, *OJ L 130, 17.5.2019, p. 92–125*.

³⁸³ Directive (EU) 2019/790, cit., Recital 54.

³⁸⁴ The last one, in November 2021, was signed with Agence France-Presse, see: Reuters, Google signs 5 year deal to pay for news to AFP, 18 November 2021, available at: <https://www.reuters.com/technology/google-signs-5-year-deal-pay-news-afp-2021-11-17/> accessed on May 27, 2022.

³⁸⁵ Article 47(3) of the Italian Copyright Act.

³⁸⁶ Australian Treasury Laws Amendment, News Media and Digital Platforms Mandatory Bargaining Code, Act No. 21, 2021, <https://www.legislation.gov.au/Details/C2021A00021> (accessed on May 27, 2022) and more information here <https://www.accc.gov.au/focus-areas/digital-platforms/news-media-bargaining-code> (accessed on May 27, 2022).

based on competition law, contains minimum standards digital platforms need to adhere to, imposes a good faith bargaining process for what concerns remuneration and data sharing, and it introduces a compulsory final offer arbitration in case the parties are not able to find an agreement. This regulatory plan has been both acclaimed and criticised (Cafarra & Crawford, 2020; Newton, 2021). Following the announcement of this regulatory proposal, both Google and Facebook seemed to have rushed to secure an agreement with publishers before the new code entered into force (Financial Times, 2021).

The United Kingdom is also looking at code of conducts as a possible way to set a level playing field for the future relationship between platforms and powers. On request of the government, in November 2021 the Digital Markets Unit within the UK competition authority (CMA) and Ofcom, the telecoms and media regulator, produced a joint advice where they suggest, among others, that under the code publishers would be entitled to fair and reasonable compensation for the use of their content by firms, and that the code should be able to set expectations for negotiations of fair compensation without the need for direct price setting by the regulator (CMA & Ofcom, 2021). However, before any such code is implemented, the UK government will need to finalise its proposal for a new pro-competitive regime to be applied to digital markets.

i. Advantages

As this source of revenues is based on recently implemented or soon to be implemented regulatory frameworks, a comprehensive assessment of pros and cons is not yet possible. Nevertheless, a few considerations can be already charted.

The attribution of additional bargaining power to news producers, being it in the form of a new IP right or of the right to a fair negotiation, can help re-establishing the balance between them and digital platforms, which have a fundamental role in their monetisation strategies. These new rights could also contribute to a fairer redistribution of revenues in the entire value chain.

ii. Resilience concerns

On the other hand, various people have argued that there is no indication that the proposed right in the EU DSM Directive will produce the positive results it is supposed to (Broughton Micova et al., 2018). Due to the high concentration on the online advertising markets and in the media, the fear is that a publishers' right may well backfire and 'lead to a further strengthening of the power of media conglomerates and of global platforms to the detriment of smaller players' (Academics Against Press Publishers' Rights, 2018).

Similar critiques have been moved to the ACCC suggested code. Given the revenue threshold in the code, it could be argued that it might not be a sufficient solution to the problem of media sustainability at the local level, nor to level the playing field for longer term media sustainability between the media sector and tech platforms. Although the code offers the possibility of group negotiations, smaller companies still have very little leverage.

Moreover, while copyright fees may provide for a new revenue stream from large platforms to news publishers, these same publishers depend on the same large platforms for a large share of their advertising revenues. The interlinkage of these two negotiation tables is likely to weaken their bargaining power for copyright fees per se.

In addition, the draft law only covers "core news," which is defined as "journalism on publicly significant issues, journalism that engages Australians in public debate and informs democratic

decision making; and journalism relating to community and local events” (ACCC, 2020). Therefore, it remains to be seen what news organisations publish will not be covered under this definition (Radsch, 2020).

5.2 Money gifted

5.2.1 Crowdfunding and donations

Crowdfunding and donations are a voluntary transfer of money from individuals or organisations to a news organisation implying no direct exchange of value on the part of the latter. They can be one off payments, or regular ones. Crowdfunding could be used for a variety of aims. While it seems to be used predominantly to create a new platform or news outlets or to fundraise for a single news story, more recently, it has become increasingly common also for regular coverage too (Ladson & Lee, 2017; Carvajal et al., 2012). This revenue source is currently key for many digital media outlets dealing with current affairs. Donors are driven by a variety of motives: curiosity and entertainment; empathy or the feeling to be part of an organisation; extrinsic motivations; sense of guilt (Harlow, 2021; Gomez-Diago, 2015).

One of the most meaningful examples is the Hungarian digital media outlet Telex.hu. After resigning from the popular outlet Index.hu because of interventions from an investor with close ties to Hungarian Prime minister Viktor Orbán, the editorial staff launched a crowdfunding for the independent news site Telex. In September 2020 alone, the crowdfunding managed to raise 1 million Euros, and more than 42-thousand donors have ever contributed financially.³⁸⁷ Telex was thought to fill a gap in the Hungarian media landscape and the public was responsive and willing to pay. After the initial phase, Telex shifted to a mixed part-subscription model to cover monthly costs.

A second example is the Polish investigative journalism website OKO.press, active since 2016, which is funded by a mix of individual donations and grants.³⁸⁸ In 2019, 80% of its revenue came from individual donations, including voluntary, regular and one-off donations; the remaining 20% was made up of grants (Kelly, 2020). All articles are available for free, there is no sponsored content and no commercial advertising on the website. During the pandemic, OKO.press saw a surge of organic traffic to its COVID-19 coverage and a focus on fact-checking politicians, together with a 75% increase in one-off donations. Regular donations also increased by 25% (Kelly, 2020). In 2020, Index of Censorship attributed to OKO.press the Freedom of Expression Award for being one of the first free investigative journalism and fact-checking websites in Poland", for its journalistic work "[paving] the way for other news sources to follow suit", "fighting for immunity from government propaganda", and being "crucial in an environment sliding further and further into authoritarianism and censorship" (Index of Censorship, 2020).

i. Advantages

The main advantage of the crowdfunding and donation model is the complete independence from any private or public entities, including political parties. Crowdfunding is also a way to connect with the audience, as it creates a sense of belonging. Some forms of crowdfunding are particularly well set to do so: for example, those that look for funding for single stories, or that let donors express

³⁸⁷ For further information, see Telex fist transparency report, 19 November 2020, available at: <https://telex.hu/english/2020/11/19/telex-transparency-report-september> accessed on May 27, 2022.

³⁸⁸ <https://oko.press/about-oko-press/> accessed on May 27, 2022.

preferences about the story they want to read about.³⁸⁹ In the same vein, another advantage of this model is that it allows to sidestep topics of mainstream interest and focus on what's of interest to readers (Majid, 2021).

ii. Resilience concerns

On the other hand, this revenue model is not prone to scalability, and it is not necessarily sustainable in the long term. Although some donors contribute regularly, most donations are one off. To overcome this problem, a mix of revenue sources might be a more resilient strategy, and in fact a number of outlets that start with crowdfunding then head towards mixed models.³⁹⁰ In addition, as researchers in Spain have found, the model works better for digital media, while it is more rarely functional for legacy media, and it tends to be more functional for specialised media than for generalist one, because the audience's willingness to pay might be higher for the former than for the latter (Vara-Miguel et al., 2021).

An additional concern for the long term sustainability of this model derives from its likely dependency on the political landscape and the status of the media environment. For instance, one could wonder if the readers' willingness to pay in the Hungarian and Polish cases illustrated above would change should the political environment go through substantial changes. As such, this model might play an important role to ensure media plurality in the short term, but less so in the long term.

Finally, depending on what the crowdfunding covers, some have argued that this revenue source might give audience too much power over news production: while this can be seen as something that increases the audience's trust in and loyalty to news, the opposite could be true as well, as it could send the message that journalists do not have their own agenda (Ferrucci & Nelson, 2019).

5.2.2 Private subsidisation and philanthropy

a. Subsidies from digital platforms

Media outlets can receive financial support from a variety of private entities. In recent years, a large part of these private subsidies came from the digital platforms Google and Facebook.

In April 2015, following a pilot project developed in France, Google announced its Digital News Initiative (DNI), aimed to provide 150 million Euros to Europe's media companies. European media, research institutions and news-related organisations and individuals could apply for funding for up to 1 million Euros. The initiative covered the period 2015-2019 and the funding was provided for technical innovation, not for content. Despite the fact that a project description is published online, there is lack of transparency about the amount of funding attributed to the majority of the projects, and many recipients have been reluctant to declare it. In addition, some grants have been controversial. For example, in 2019 a grant of about 50.000 Euros was attributed to the pro government Hungarian media company for a project related to the Origo website (Kingsley, Novak, 2018). Following the critiques, Google decided to suspend the grant.

In March 2018, Google transformed the European initiative into a global one, and committed to allocate further 300 million dollars to the initiative, called Google News Initiative (GNI), for the period 2019-2021. The GNI promulgated three objectives: to elevate and strengthen quality journalism, to empower news organisations through technical innovation, and to evolve business models to drive

³⁸⁹ See, for instance, the example of Revista 5W in Spain: Engaged Journalism Accelerator, How Revista 5W let readers decide what he wrote about, available at: <https://engagedjournalism.com/resources/how-revista-5w-let-readers-decide-what-it-wrote-about> accessed on May 27, 2022.

³⁹⁰ An example could be The Correctiv (Germany), see: <https://correctiv.org/> accessed on May 27, 2022.

“sustainable growth” (Schindler, 2018). Fellowships, as well as the organisation of training and conferences are a stable component of the initiative. Some argue that with the ending of the DNI and the transition to the GNI the focus has shifted from allowing publishers to carry out their own innovations to innovation projects directed towards content partnership (Fanta & Dachwitz, 2020).

In its 3 years operation, the DNI funded 645 projects from all the Member States, although the number of projects and the funding amount changed considerably from state to state. The main category of recipients was commercial media, including leading media newspapers and media companies such as *Le Monde*, *Il Corriere della Sera*, *Der Spiegel*, *Financial Times*. A good percentage of the funding went to actors other than media outlets, such as service providers for the media industry, think tanks, agencies, foundations and industry associations. Only about 5% of the funding was granted to non-commercial media.

In January 2017, Facebook launched its Facebook Journalism Project (FJP), a “new effort to support quality journalism, improve news literacy and provide reporters and editors with tools and training to help them better tell their stories” (Simo, 2017) in the words of the company. The project develops around three pillars: financial grants, training for journalists and partnerships with publishers and other organisations. The training and resources seem to be focused on a better use of Facebook tools: examples include the *Journalist’s Guide to Facebook and Instagram* (Meta Journalism Project, 2021); the Accelerator Programme, which is supposed to help “news organisations to strengthen their business strategies both on and off Facebook” (Grand, 2020); or the use of Instant Articles to create fast and interactive articles on Facebook (Meta Journalism Project).

In April 2020 the FJP, in cooperation with the European Journalism Centre (EJC), a non-profit aimed at supporting, strengthening and developing journalism in Europe, launched a 3 million USD fund to support community, local and regional news organisations and journalists during the pandemic (the European Journalism COVID-19 Support Fund, or the Support Fund). The grants were supposed to help them to “provide essential coverage, inform citizens and fight misinformation with minimal resources during the COVID-19 crisis” (European Journalism Fund, 2020). Grants were open to both profit and non-profit entities from any of the Council of Europe countries, as long as they have proven community loyalty and a focus on producing public interest journalism. News organisations publishing in print, online/web, television, radio, podcasts, online video, messaging service, e-newsletter, mobile app, social media or any combination thereof could apply, and the grants were unrestricted core fund. According to their report, through the Support Fund, EJC and FJP supported 162 grantees across 35 countries in Europe, 49 of which were freelancers. It is noted that the total amount of the fund appears to be rather small in comparison to its goal; therefore one might conclude that its impact has been limited.

b. Subsidies from foundations

Apart from digital platforms, media outlets can receive support from other private entities, mainly philanthropic foundations. Foundations-funded journalism (Benson, 2018; Scott et al., 2019) saw an increase in the European Union in recent years (Niels et al., 2019), although it remains limited in comparison to other contexts, such as the United States (Write et al., 2019). Examples include the Investigative Journalism for Europe funds (IJ4EU),³⁹¹ the European Cross-Border Grant³⁹², the

³⁹¹ For more information, see: Investigative Journalism for Europe, available at: <https://www.investigativejournalismforeu.net/> accessed on May 27, 2022.

³⁹² For further information, see: Journalismfund.eu, European Cross-border Grants, available at: <https://grants.journalismfund.eu/en/european-cross-border-grants> accessed on May 27, 2022.

Investigation Grant for Environmental Journalism³⁹³, the European Development Journalism Grant Programme.³⁹⁴ The funders include Open Society Foundations, Fritt Ord Foundation, Luminare, Adessium Foundation, Stavros Niarchos Foundation, Arcadia Fund, Bill & Melinda Gates Foundation, King Baudouin Foundation. Smaller foundations, mainly operating at national level, can also be mapped across EU Member States.

Grants can be given to natural persons (journalists and freelancers) or to media outlets, and their amount can vary from a few thousand Euros to tens of thousands. Apart from news production, support can cover tech-driven projects, engagement with the community and other elements. However, information about these grants are scattered making it difficult to obtain an overview.

i. Advantages

Private subsidies could play a key role in the short-term sustainability of media outlets and freelance journalism, as they can be used to cover news production costs, especially for those kinds of reporting that are either more expensive or less mainstream, such as investigative journalism or specialised coverage. Furthermore, depending on the conditions for the grant/support, they can be used in ways that enhance the sustainability also in the medium and long term, such as technological investments or various types of capacity building, which contribute to enlarge the readers' base and to gain their loyalty. Indeed, both digital platforms and philanthropes seem to be very attentive to support for innovation purposes, and in particular tech-driven innovation. This support can help the media to cut costs and increase efficiency. Foundations appear also sensitive to support audience engagement, with the aim to increase trust and loyalty, and stimulate citizens' participation.

Unrestricted funding has been vital during the pandemic. Core grants like the Support Fund can help beneficiaries to fully or partially overcome the challenges posed by COVID-19, and to build more engagement with their communities of reference (European Journalism Fund, 2021).

For freelancers in particular, the unrestricted grant can provide the level of independence needed to report on topics that they feel are of particular public interest, and to engage with their chosen community groups, rather than having to chase stories that are more likely to be commissioned (European Journalism Fund, 2020). While the financial support has a positive impact mainly in the short term, the building of a stronger engagement with the communities is more likely to help sustainability in the medium and long term too.

When private funding is incorporated in a broader or mixed revenue model, it can generate a more sustainable outcome. For example, media outlets could use the funding to cover news production costs and earn revenues from the selling of what they produce.

ii. Resilience concerns

Private support can raise risks for editorial independence of the beneficiaries. This risk is there irrespective of whether the support comes from digital platforms or from foundations. The long relationship between media and the funder could lead to an alignment of the editorial agenda with the funder's priorities, or with its understanding of 'public interest'. In addition, the firewall between newsrooms and advertisers that is present in the advertising-based model might not be in place

³⁹³ For further information, see: Journalismfund.eu, Investigation Grants for Environmental Journalism, available at: <https://grants.journalismfund.eu/en/investigation-grants-environmental-journalism> accessed on May 27, 2022.

³⁹⁴ For further information, see: Journalism Grants, What we do, available at: <https://publishers.journalismgrants.org/about> accessed on May 27, 2022.

between newsrooms and funders in this model (Ferrucci & Nelson, 2019). According to some scholars, the influence exercised by funders is not direct, but takes effect in a subtler, even unconscious way (Scott et al., 2019; Rosenstiel et al., 2016). Some have gone as far as to describe this phenomenon as ‘disruptive philanthropy’, and to infer that the collaboration between journalism funders and media “could lead to an even ‘more skewed power dynamic than existed within the previous funding model, one where journalists cede agency to elite foundations situated outside the boundaries of journalism” (Ferrucci & Nelson, 2019).

Another major concern is the lack of transparency about the financing (Fanta & Dachwitz, 2020), often coupled with the lack of clarity or vagueness about its ultimate goals. Digital platforms or foundations’ funding can more easily be obscured than advertising funding, and the reasons for the funders to support a news organisation or journalists might be less clear (Konieczna, 2018). Without such clarity, it is also impossible, or at least extremely difficult, to make a proper assessment of the impact.

The financial support granted for innovation purposes raises the additional challenges. In case of support by digital platforms, the risk is of ‘infrastructural capture’: the media is no longer able to sustainably operate without the digital resources (products and services) provided by Google and Facebook (Nechushtai, 2017). As noted by Klossa, when it comes to distribution, advertising, audience measurement, research and development, media outlets are increasingly reliant on those two platforms (Klossa, 2019). Innovation grants by foundations are not exempt from challenges either: funders seem to be interested in testing new technologies in order to find the one(s) that can unlock journalism’s potential and put it to the path of self-sustainability. However, it can be expected that in this experimentation various attempts will not reach the goal, or that the funder loses interest in a specific technology, and thus the funding will be discontinued (Ferrucci & Nelson, 2019). More generally, it seems that the funders’ and the media’s incentives with regards to innovation might not be aligned, and this might be reflected in the type of projects that receive support.

In short, private support might solve some immediate financial problems for media and freelance journalists, but it doesn’t ensure their long-term sustainability and it could exacerbate their credibility and independence crisis in the long term.

Finally, it is worth noting that philanthropic support to non-profit media has a major limit in the European Union: usually the foundations’ statute includes bans to fund non-charitable activities, or obligations not to finance activities that could be interpreted as being political (which can include forms of journalism). This context makes this source of funding problematic (Karstens, 2018), and particularly so for journalistic activities like fact-checking and source verification, which are innovative and often primarily pursued by small, new non-profit news organisations (Nielsen et. al. 2019). To overcome this barrier, there have been calls for a policy reform that could include, among others: to ease the creation of non-profit news organisations, to recognise the public-interest journalism as a charitable activity, and to provide concomitant tax incentives to prospective individual and institutional donors (Nielsen et. al. 2019).

b. Public subsidisation

European countries have traditionally used a variety of public support schemes for the media.³⁹⁵ A detailed mapping of these measures is available in Chapter B1 of this study. In this section, we limit ourselves to a brief recap of the main forms that this public subsidisation can take, and we briefly assess pros and cons.

³⁹⁵ For a mapping and discussion of direct and indirect state subsidies to the media in the EU member states, see B1.

Direct financial support is the most common form of state support all over the EU, and the media sector that most often receives the funding is the press. Media can receive the support for, among others, content production, distribution, publications in national minority languages (Nielsen et. al. 2019). The overall goals of direct financial support include the support of pluralism and diversity, the promotion of quality in public debate, the adoption of technological developments for sustainability in the medium and long term.

Start-ups and outlets with innovative projects are the main grantees. One example is the Dutch Journalism Fund, launched in 2010, and financed by the Dutch Ministry of Education, Culture and Science³⁹⁶. Another example is the France's *Aides du fonds stratégique pour le développement de la presse*³⁹⁷, which offers grants to news publishers for innovation projects and to help them make the transition to a digital way of working.

However, media outlets can receive financial support to cover core costs too. This kind of support has seen a steady increase during the COVID-19 pandemic across the majority of EU countries.

With regards to indirect financial support, the most common instruments are tax breaks and VAT-exemptions. Since the EU 2018 Directive,³⁹⁸ this exemption can be applied to electronic publication as well, and a number of states, such as Ireland and France, have already moved in that direction. Other forms of indirect support are regulatory exemptions, or reduced charges for state services.

Traditionally, public support came from EU Member States. In recent times, the European Commission decided to play a more active role in this field, announcing a variety of instruments that provide direct financial support to the media. The support is foreseen for pilots, preparatory actions, and it includes funding to foster the cross-border collaboration across news media, the independent production and dissemination of news content on EU affairs, and to develop innovative and attractive projects to engage with citizens, as well as media literacy (European Commission, 2021).

i. Advantages

Public support that covers regular costs can be key for the sustainability of media outlets, and therefore contribute to media pluralism, at least in the short term. Since the COVID-19 pandemic, public funds have played a key role for the survival of a variety of outlets, especially at local and regional level.

Innovation funds, depending on how they are shaped, have the additional potential of making a difference for the entire industry and not only for the direct beneficiaries. Indeed, they can lead to the establishment of a better, and more resilient, journalistic infrastructure.

When transparency and accountability are guaranteed with regards to the support's eligibility criteria, amount, goals and monitoring and evaluation, they enhance the credibility and trustworthiness of the beneficiaries and of the entire sector.

In comparison to national subsidies, EU direct support seems to better protect media and journalists' independence. In addition, it might be able to better support cross-border cooperation and to be more scalable.

³⁹⁶ Dutch Journalism Fund, About us, available at: <https://www.svdj.nl/dutch-journalism-fund/>

³⁹⁷ Ministère de l'Économie, des finances et de la relance, Modernisation du fonds stratégique pour le développement de la presse, available at: <https://www.economie.gouv.fr/plan-de-relance/profils/entreprises/modernisation-fonds-strategique-developpement> accessed on May 27, 2022.

³⁹⁸ Council Directive (EU) 2018/1910 of 4 December 2018 amending Directive 2006/112/EC as regards the harmonisation and simplification of certain rules in the value added tax system for the taxation of trade between Member States.

ii. Resilience concerns

A number of trade-offs can come into play with public subsidies to the media. For a start, there is the risk of subsidising models that are not sustainable. Interventions should be carefully designed not to create permanent dependency between industry and government (Cairncross, 2019) and priority should be given to those interventions that help the industry to help itself. On the one hand, support for innovation seems to better fit this purpose, as it can increase sustainability in the medium and long term. On the other hand, this kind of support leaves unaddressed the likely funding gap in the short term (Cairncross, 2019). A mix of core and innovation funding might be a better solution. In addition, it has been noted that the public support should be generous enough to make a difference, or it will be a patch on a wound rather than a boost to the sustainability of the beneficiaries and of the entire sector.

As explained in the B1 Chapter, a common problem observed in different Member States is the lack of transparency in the allocation of funds. To guarantee transparency and accountability in the allocation is indeed essential to avoid the use of public funding to capture the media. States can choose not to fund independent, critical media and instead fund those media “willing to toe the government line” (Dragomir, 2018). Some States have adopted strategies to overcome this risk. For instance, in Latvia the media authority promotes competitions to distribute subsidies to media outlets, using criteria, such as professional operations in the field of media, editorial independence and content that addresses wider audiences. Other initiatives come from a multistakeholder setting; one example is the Journalist Trust Initiative (JTI), which suggests States to use the JTI system as a possible benchmark to allocate subsidies and benefits to media outlets.³⁹⁹

In addition, certain public interventions might result in further weakening of the news media vis-à-vis digital platforms. This is, for instance, the case of the draft advertising tax bill in Poland proposing a higher tax levy for some TV, radio and legacy press publishers with respect to e.g. digital platforms (Klimkiewicz, 2021)⁴⁰⁰.

5.3 Concluding remarks

Because some of the revenue models discussed in this section are relatively new, their long term resilience remains unknown. Nevertheless, giving priority to interventions that help the industry strengthen itself may prove more sustainable in the long term, and it better guarantees independence.

One challenge highlighted by this section is the difference in success rates of revenue models in the audiovisual and print industries. Indeed, audiovisual content is copyright protected work which sells and can therefore be monetized, enabling AVMSs to implement subscription and transactional revenue models with varying degrees of success. For the news industry, where there is a proliferation of free content and the use of snippets (OECD, 2021) by major platforms such as Google and

³⁹⁹ For more information about the initiative, see Journalism Trust Initiative, available at: <https://www.journalismtrustinitiative.org/> accessed on May 27, 2022.

⁴⁰⁰ The massive protest of most media organisations in Poland, supported by advertising agencies and also journalistic associations led to final abandonment of the draft law by the Ministry of Finance. See Wirtualnemedi.pl (2021) Organizacje branżowe przeciwne daninie od reklamy, apelują do Ministerstwa Finansów o zaniechanie dalszych prac legislacyjnych (The media and advertising agencies against the levy on advertising, appeal to the Ministry of Finance on abandoning further legislative works), <https://www.wirtualnemedi.pl/arttykul/organizacje-branzowe-przeciwne-podatek-od-reklamy-apeluja-do-ministerstwa-finansow-o-zaniechanie-dalszych-prac-legislacyjnych> accessed on May 27, 2022.

Chapter B2. Overview of distribution of advertising revenues and access to and the intensity of use of consumer data

Facebook is not protected, it is significantly more difficult to establish the value of news content and generate direct revenue from it. Furthermore, from a demand perspective, it is substantially easier to retrieve similar content without paying, therefore the willingness to pay is significantly lower.

In general terms, it can be observed that models based on earning revenues from content guarantee more independence than those based primarily on revenues which are gifted by external actors. Nevertheless, they present some shortfalls in terms of sustainability.

For instance, while the subscription model overall is one of the most sustainable in the long term, it nevertheless faces the issue of scalability. Similarly, crowdfunding might be an efficient way to kick off or cover a specific story, but it hardly guarantees sustainability in the medium and long run.

Diversification may be the key to resisting competitive pressure and ensuring long term sustainability. Among the various models, cooperative structures that allow sharing costs among journalists/outlets might be a good compromise between the need to reach scale and the one to keep costs down, and they might contribute to innovate and to build trust. Furthermore, models that combine philanthropy with revenues earned from selling the content might be a more sustainable way to inject private money in the media sector. Finally, some models differ substantially with regards to the type of relationship that they require to implement with the audience as well as with the platforms; therefore, not all models might be compatible or easy to match.

Nevertheless, a mixed approach is recommended as it presents possibilities for businesses to increase their long-term resilience. In particular, by decreasing the reliance of a company on, for instance, one major sponsor. Mixed models also appear to offer better guarantees in terms of both financial sustainability and independence, whilst being more flexible and better equipped to incorporate changes in case of need.

A final note is that each revenue model's long-term sustainability is highly specific to the type of media, as well as to the status of the media environment and of the political situation in a country; as such there is no one-size-fits all solution to stand the test of time.

Main findings:

- Revenue models function differently across audiovisual and print media industries, and are highly specific to geo-political, economic and cultural context. Furthermore, each model has advantages and risks. As such, policy initiatives aiming at long term resilience need to consider all these factors.
- Scalability and long term sustainability appear to be two of the main challenges across models.
- Revenue generated from content appears to offer more long term resilience than revenue generated from subsidisation, which can make media actors dependent on their sponsors.
- Generally, mixed revenue models offer the most long term sustainability as they are not reliant on a single source of revenue and have more flexibility to pivot in times of need.

6. The distribution of advertising revenues, access to consumer data and their impact on media plurality

In Section 2 of this Chapter, it was shown that one by one, national advertising markets tip towards digital. In 2019, worldwide digital ad spend overtook traditional. This tipping point was reached in 2020 for the EU (and the UK), while in some Member States, this point will be passed within the next few years. The COVID pandemic primarily served as a shock to accelerate this trend, which resulted from a decline in revenues for all traditional media types in combination with a rapid increase for online media.

Underlying the latter are two main drivers: 1) consumer attention has made a substantial shift towards online while ad revenues tend to follow consumer attention; 2) online advertising has opened a myriad of ways to targeting ads based on the content presented as well as consumer demographics and interests. Furthermore, in comparison to traditional distribution channels, online advertising offers far superior ways to monitor exposure and conversion, thereby creating positive feedback loops which traditional advertising cannot offer.

Against this background, the extreme economic concentration of digital advertising revenues within a few large global players (illustrated earlier in this chapter) should not come as a surprise, given the strong economies of scale and scope and network effects associated with targeted advertising. Better access to continual flows of consumer data allows for more refined analysis and better inferences, leading to superior targeting and higher conversion rates.

This intrinsic winner-takes-all tendency entails an imminent risk for external media plurality, at least for as long as ad revenues are a main source of income for publishers, and they cannot survive without them. Not only do most such media companies lack the scale to compete successfully with the global giants for advertising revenues. They are also much less ubiquitous in consumers' digital life making them dependent on digital gatekeepers such as Google and Facebook for information about the profile of the consumers of their content, as well as about the performance of the ads surrounding it. In their interaction with these gatekeepers, media companies suffer from substantial information asymmetries in these respects.⁴⁰¹

The forthcoming Digital Markets Act (DMA) will introduce new transparency rules to remedy instances of these information asymmetries between digital gatekeepers, on the one hand, and, on the other hand, publishers as well as advertisers. Once it has entered into force, the DMA will oblige digital gatekeepers to provide advertisers and publishers, upon their request and free of charge, with access to the performance measuring tools of the gatekeeper and the data necessary for advertisers and publishers to carry out their own independent verification of the advertisements inventory. In the recitals it is further specified that this information should be provided, upon request, to an advertiser at the level of an individual advertisement in relation to the price and fees charged to that advertiser and, subject to an agreement by the publisher owning the inventory where the advertisement is displayed, the remuneration received by that consenting publisher. The same obligation and principles of sharing the relevant information concerning the provision of online advertising services should apply in respect of requests by publishers. This way, advertisers and publishers would obtain

⁴⁰¹ In this context, see for instance complaints by the European Publishers Council <https://www.epceurope.eu/post/european-publishers-council-files-eu-complaint-against-google-for-anti-competitive-ad-tech-practices> accessed on May 27, 2022.

the performance measuring tools and the information necessary to carry out their own independent verification and measurement tools to assess the performance of the core platform services provided for by the gatekeepers.

Moreover, the DMA will introduce new rules against a gatekeeper's ability to leverage its core platform services to process personal data of end users for the purpose of providing online advertising services, to combine and cross-use personal data across core platform services or with any other affiliated services or with personal data from third-party services, unless the end-users' consent has been obtained in line with the GDPR. The DMA will thus tackle the current information asymmetries between digital gatekeepers, on the one hand and publishers, on the other hand when they distribute their content over the platform. However, only time will tell whether the new rules for digital gatekeepers will significantly improve the position of media actors and by doing so help preserve media plurality.

7. Conclusions

This Chapter took a closer look at media business models and how digital transformation impacts on media actors' revenue models. Starting with advertising markets, the review of empirical data underscores that online advertising expenditures have been overtaking the traditional advertising expenditures. Media actors' ability to generate revenue from advertising is affected to varying degrees. In particular, the print and news media could not offset the losses in legacy revenues with digital advertising revenues which undermines their economic viability and in turn media plurality.

Empirical data on online advertising expenditure and corresponding revenue point towards high concentration of market shares of digital platforms. There is insufficient empirical data to analyse the segment of online display advertising served in connection with media content on digital platforms. In a similar vein the information asymmetry can affect media publishers' ability to market and understand performance of their ad inventory. Also outside the digital platform environment, media publishers, online, are quite reliant on intermediary services and adtech by these digital platforms. Besides, state advertisement is an important source of revenue which is governed to an appreciable extent differently across EU Member States. Rules on transparency and public procurement can offer procedural and material safeguards against arbitrariness of state advertising. The lack of empirical data on state advertising spending stands in the way of monitoring problematic practices in certain EU Member States where state funded advertising may contribute to increased polarisation and partisanship in the news media sector.

Next this Chapter mapped how access to and the intensity of the use of consumer data in the media sector is linked to value-creation and media plurality. Value is created through the collection of consumer data in four primary ways: to improve the performance of the media service, to improve personalisation and navigation, to focus on online advertising (ads that are not micro-targeted), and to allow online tracking/profiling for targeted advertisement. Emulating digital platforms and data-intensive services, online advertising reliant media actors over-exploit consumer data as an input for online micro-targeted advertising.

Finally, this Chapter reviewed media resilience through a string of non-advertising reliant business models. Overall, business models based on earning revenues from content guarantee more independence than those based primarily on revenues which are gifted by external actors. There are market differences between media actors that defy generalisation. Diversification is recommended as it presents possibilities for businesses to increase their long-term resilience.

Overall, contemporary media markets and their interrelations with digital platforms and ad tech sector are difficult to grasp due to a lack of robust data on consumption and revenues. The DMA will focus on reducing information asymmetries with digital gatekeepers in ways that can improve the

bargaining power of media publishers with advertisers and digital gatekeepers alike. However, monitoring media plurality online and the resilience of media business models requires improved public transparency about digital advertising and related revenues streams of media actors.

Main findings

Distribution of advertising revenues:

- The consolidated data for the EU countries and the UK confirms the worldwide trend of advertising revenues shifting to digital, ultimately overtaking traditional advertising expenditure.
- Newspapers and magazines advertising revenues fell by nearly 60% in a decade, in the average EU + UK market. In the last five years the newspaper sector lost 22.4% of its total revenues and circulation declined in parallel with advertising.
- Advertising revenues in the audiovisual sector remained stable in absolute values until 2020, losing in relative weight. The source of revenues other than advertising were stagnant (public funding, pay-tv) or increased (subscription on-demand).
- High concentration of revenues characterises the online advertising market with a few global platforms having acquired substantial market power. There is not sufficient empirical data to analyse the effects on online advertising in relation to media consumption.
- State-funded advertisement can distort media markets, especially in EU Member States where they are a significant source of revenue. Monitoring state advertisement requires better data.

Access to and intensity of use of consumer data:

- For most media actors in the online media sector, the access to consumer data is an essential element of competition and value creation, however this access is highly imbalanced and in favour of major platforms.
- Major platforms and larger scale media actors with more control over the value chain have a significant competitive advantage over smaller local media actors in the collection and use of consumer data.
- The practice of micro-targeted advertising may conflict with consumers' data protection rights and right to receive information. Pay or consent models or contextual advertising may be viable alternatives.

Indications of resilience:

- Policy initiatives aiming at long term resilience need to consider the many factors that affect a revenue model's sustainability.
- Revenue generated from content and mixed revenue models offer the most long-term sustainability.

New EU legislation relevant to media actors:

- The 2019 Directive on Copyright and Related Rights in the Digital Single Market (DSM Directive) introduces an exclusive right for publishers for the use of their media content by digital platforms.

- When in force, the Digital Services Act will prohibit online targeted advertising to minors and based on special categories of personal data.
- When in force, the Digital Markets Act will improve transparency between digital gatekeepers and advertisers as well as publishers about the performance of content and digital advertising. It will prohibit that digital gatekeepers combine and cross-use personal data, including where this can be obtained from third-party services, for its own ends unless end users have given a GDPR compliant consent.
- The DSA and the DMA are not media-specific and do not increase external transparency to better assess the media markets and resilience of media actors.

Chapter B3. Assessment of effectiveness of measures and methods concerning market concentration in the media sectors

Authors: Heritiana Ranaivoson, Maria Alessandra Rossi, Maria Luisa Stasi, Adelaida Afilipoaie, Nino Domazetovikj, Arlette Meiring, Joost Poort, Danielle Da Costa Leite Borges, Matteo Trevisan, Sofia Verza

Reviewer: Pier Luigi Parcu

With contributions by: Roberta Carlini, Tim Raats

1. Introduction

i. Context

The tendency for media markets to be oligopolistic, or even near monopolistic, is a result of the structure of the media industries, which are characterised by economies of scale, product differentiation, advertising-content interdependence, and network effects. In unregulated media markets, concentration is inevitable, as companies seek to expand, to become more competitive and to increase their market power. This makes the identification of the market-operating boundaries more difficult. M&A transactions in the media sector can also be a form of survival strategy. In today's globalised and competitive media industries, where a handful of media giants put pressure on smaller media companies, consolidation may be the only feasible survival option (Evens & Donders, 2018). Current consolidations within traditional media conglomerates are, furthermore, pushed by the rise of global platforms (Google, Amazon, Facebook, Netflix, Apple, which have all started competing in the production and distribution of content, and whose business models allow them to build scale at a rapid pace) (Evens & Donders, 2018).

However, M&A, and the concentration activities may translate into reduced competition and higher prices for consumers – at least in the short run (Genakos et al., 2017; Leigh & Triggs, 2016); not to mention the non-economic threats to media pluralism and diversity as a result of excessive media concentration (Hendrickx & Ranaivoson, 2019; Iosifidis, 2014). Actually, ownership concentration in the media industry has a profound social, political, and cultural impact (Mancini, 2018; Peruško, 2010). Additionally, concentration puts pressure on the legacy media's budgets and threatens their societal remit (Trappel & Nieminen, 2018).

Consequently, measures are needed to monitor, and limit the concentration of, media markets and the potential negative effects. To limit concentration and, beyond, to deliver plural ownership structures, some authors argue that competition policy must be coupled with other regulatory instruments (Collins & Murrone, 1996; Dabbah, 2011). These measures' effectiveness remains an open question. Actually, the current set of measures and methods relating to market concentration in the media sectors, considered in Chapter B1, may no longer be fit for purpose, in the context of online media. While the effects of competition policy intervention is generally assessed in relation to consumer welfare (Rompuy, 2012), the focus of media policy necessarily requires the consideration of the citizens (Picard, 2020), beside the democratic institutions and societal values. Dominance by particular actors in the media industry, namely, online platforms, and raises concerns about 'citizen wellbeing' (Broughton Micova, 2020; van Dijck et al, 2019), which requires the plurality of the media, through which citizens can exercise their right to receive and impart information, as well as sufficient diversity among the suppliers to allow them to exercise choice as consumers that is based on privacy levels, child protection options, or other characteristics. While a high number of media content suppliers does not necessarily ensure the representation of diverse viewpoints, as concentrated ownership and scale may lead to increased pluralism in outputs, it may be necessary to address other aspects of citizen wellbeing.

ii. Objectives

This Chapter addresses the effectiveness of measures relating to market concentration in the media sectors. This assessment relies on the mapping that was performed, and which is discussed in the B1 chapter, and combines two complementary approaches: an exploratory data analysis, and a set of six in-depth, contextualised case studies.

Chapter B1 has provided a mapping of the measures and data gathering methods that are employed in the EU Member States in regard to the concentration of economic resources. The mapping process has led to two main types of outcomes. The first outcome is the mapping framework, a typology articulated around 9 categories of measures and methods and applied to all EU Member States. The second outcome consists of the results of the mapping. These results are at the base of the analysis that is performed in this chapter. Actually, the assessment of effectiveness will consist of analysing whether the measures mapped in Chapter B1 safeguard sustainable levels of media plurality, including online plurality. The first, essential aspect of effectiveness that we are considering, especially in the data analysis, is the impact of the measures on media market concentration. Actually, this concentration is one core aspect of external pluralism (cf. Introductory Chapter). The assessment also takes into account the importance of a fair distribution of economic resources (in particular, advertising) for the media industry. It builds upon the exploratory approach to the potential impact of media-specific ownership regulation on media market concentration developed in the previous AVMSD Study (Ranaivoson et al., 2021). Finally, where relevant, all of the analyses in this Chapter consider the potential implications of the measures on the internal market perspective.

The work carried out in this Chapter has relied on several sources and methods, which are developed in the sections that follow. First, it has relied on the mapping performed in Chapter B1 and the related methodologies. The two following sections provide the empirical analysis of the measures' effectiveness, each section following a specific approach. Section 2 provides an exploratory data analysis. Section 3 relies on 6 case studies, which tackle different types of measures relating to media concentration.

2. The relationship between media concentration regulation and market concentration: an exploratory data analysis

2.1 Context

The detailed mapping that was implemented for the drafting of Chapter B1 provides up-to-date information on the number and types of measures that are related to media market concentration, and which have been adopted across the EU Member States. This section combines this information with data on market concentration, in order to uncover patterns in these data, and, particularly, the relationships between the measures and market concentration through exploratory data analysis techniques. The analysis is relevant to the assessment of the effectiveness of these measures in a context where there is a trend towards deregulation, notably, for measures that are related to media ownership (Harcourt, 2007; Galik, 2010; Noam, 2016; Iosifidis & Papathanassopoulos, 2019; Papathanassopoulos, 2020). This is exemplified in the case of the Netherlands, where, in 2011 and 2016, media and cross-media ownership restrictions were abolished (see, Case 1, after).

This subchapter builds on a previous study (Ranaivoson et al., 2021) that applied an exploratory assessment of the Pearson's product-moment correlation between, on the one hand, the level of regulation and, on the other, the level of media market concentration. The EU Member States (including the United Kingdom) were categorised according to the level of regulation, in other words, the number of measures, following a slightly different typology than that in Chapter B1, in particular, with a different scope and composition of the measures. Ranaivoson et al. (2021) assessed concentration by using the level of concentration in the TV broadcasting market for each Member State in 2014 and in 2018, based on the concentration ratio for the top four TV groups (CR4),

calculated on the reported audience data and the Herfindahl-Hirschman Index (HHI), and based on audience share. The data source was the European Audiovisual Observatory's Yearbook 2019/2020 Key Trends (2020). They found that the higher the number of media ownership rules, the lower the HHI level is. In other words, more measures tend to be associated with lower market concentration. On the other hand, the correlation with CR4 was not significant. The present analysis expands on Ranaivoson et al. (2021) in the following ways: (i) by updating and expanding the dataset; (ii) by analysing media sectors beyond TV (including the press, radio and online media); and (iii) by using different statistical tools.

2.2 Data Sources

In addition to the database containing the dummy coding of the measures adopted in the EU Member States (see B1), the analysis relies on the data on concentration, which is drawn from different sources. For the audiovisual sector, we used data from the European Audiovisual Observatory⁴⁰² (EAO) on the distribution of audience market shares for each EU country, so as to construct two indices of market concentration: CR4 and HHI.

The calculation of the CR4 is straightforward. To calculate the HHI, a choice had to be made to render comparable data, which are not homogeneously reported in the EAO⁴⁰³. The HHI has thus been calculated as the sum of the squared market shares of the top 6 TV groups in each country⁴⁰⁴. While calculating an accurate HHI implies that, ideally, data on the market shares of all companies is known (Naldi & Flamini, 2014), this approach allows the adoption of a common metric for all countries⁴⁰⁵.

For the newspapers, radio and online media sectors, data on concentration were obtained from CMPF's Media Pluralism Monitor (MPM). In particular, for newspapers and radio, we collected two relevant indicators: the market share of the Top 4 newspapers/radio owners and the audience concentration of the Top 4 newspapers/radios. For online media, we collected the market share of the Top 4 online news media, the audience share of the Top 4 online news media, and the audience concentration of the Top 4 online players. This choice followed accurate research of alternative sources, which resulted in no reliable alternative to the MPM data. It is noted that the MPM data on concentration derive from the collection of information from many (often national) data sources, which may not be fully comparable across countries. The **lack of comprehensive data sources on EU media markets** is thus something that should be flagged as an **important obstacle to a better understanding of the EU media landscape**.

⁴⁰² European Audiovisual Observatory. (2021). *Yearbook 2020/2021 - Key Trends 2020*. <https://rm.coe.int/yearbook-key-trends-2020-2021-en/1680a26056> accessed on May 27, 2022.

⁴⁰³ In the EAO, market shares are reported for a varying number of firms in different countries. This number goes from a minimum of 6 (Finland and Slovakia), to a maximum of 41 (Slovenia). EAO also reports missing values for each country under the 'Others' category, which represents the audience market share of unknown TV groups, or of groups that have not disclosed their market shares. The number of unknown market shares varies between 2.2% (minimum) (Denmark) and 53% (maximum) (Austria).

⁴⁰⁴ As explained in the previous footnote, six is the minimum number of market shares reported for all of the countries that are considered in this study.

⁴⁰⁵ To check the appropriateness of our choice, we checked that the difference between the HHI for the top 6 firms (HHI6) and the HHI, including all known TV groups, was not large (it was between 0.04 and 41.9 in absolute terms). This is in line with the work of Naldi and Flamini (2014), who argue that it is possible to apply HHI measurements to the market shares of the largest companies and to generate reliable results, even if data is missing on the other companies' market shares.

2.3 Methodology

The exploratory analysis proceeds in two steps. In the first step we consider, for each type of medium (TV, newspapers, radio and online media), whether there is a statistically significant relationship between the number of measures adopted in one country that may have an impact on media concentration⁴⁰⁶ and the degree of concentration of the relevant media market, as measured by the indicators that are described in the previous section. This is accomplished by computing two measures of correlation: Pearson's product-moment correlation test, for the analysis of linear relationships, and Spearman's rank correlation coefficient, which captures the existence of monotonic – not necessarily linear – relationships of association. These measures have been calculated for the relationship between the indicators of ownership concentration and different variables capturing the number of measures that may affect concentration more or less directly⁴⁰⁷. In particular, three groups of variables have been considered: (a) the sum of all of the measures mapped in each country⁴⁰⁸; (b) the sum of only the measures that are more directly relevant to ownership concentration⁴⁰⁹; and (c) the sum of the subset of measures that are more directly relevant to ownership concentration for which the number of observations (countries) with missing values is the lowest⁴¹⁰.

In addition, another two exploratory techniques have been used. The first is the analysis of variance (ANOVA), with the corresponding box plots⁴¹¹. This has been applied to the relationship between indicators of ownership concentration and each of the measures in the database, by comparing countries that have a specific measure in place and countries that do not have that measure. This type of analysis aims to assess whether the presence of a specific measure is associated with statistically significant differences in the distribution of concentration measures. The second is the construction of two-way contingency tables with the calculation of measures of association (Pearson's Chi-square test of independence) between categories of levels of concentration⁴¹², and any of the measures most directly related to ownership concentration⁴¹³.

⁴⁰⁶ (i) restrictions on media reach; (ii) restrictions on market shares; (iii) restrictions on cross-media ownership; (iv) lower thresholds and multipliers; (v) separate assessments; (vi) ministerial override; (vii) media transparency; (viii) the general transparency rules that are in force; (ix) financial transparency; (x) direct subsidies; (xi) indirect subsidies; (xii) rules on state advertising; (xiii) restrictions on foreign ownership; (xiv) rules on conflict of interest.

⁴⁰⁷ For example, restrictions on media reach can be considered to have an immediate impact on concentration, while rules on the transparency of media ownership can be considered to influence concentration more indirectly, for example, by affecting the ability of foreign firms to acquire information on a market which they plan to enter, and therefore the barriers to entry that they face.

⁴⁰⁸ (i) restrictions on media reach; (ii) restrictions on market shares; (iii) restrictions on cross-media ownership; (iv) lower thresholds and multipliers; (v) separate assessments; (vi) ministerial override; (vii) media transparency; (viii) the general transparency rules that are in force; (ix) financial transparency; (x) direct subsidies; (xi) indirect subsidies; (xii) rules on state advertising; (xiii) restrictions on foreign ownership; (xiv) rules on conflict of interest.

⁴⁰⁹ (i) restrictions on media reach; (ii) restrictions on market shares; (iii) lower thresholds and multipliers; (iv) separate assessment; (v) ministerial override; (vi) media transparency; (vii) foreign ownership.

⁴¹⁰ (i) restrictions on media reach; (ii) restrictions on market shares; (iii) media transparency; and (iv) foreign ownership.

⁴¹¹ This exploratory data technique is used to determine whether or not there is a statistically significant difference between the means of a continuous variable, calculated for independent groups of observations. In the present case, the groups of observations (countries) are defined by whether the latter have a certain measure in place.

⁴¹² The continuous variable "ownership concentration" has been transformed into a categorical variable by using the thresholds that are normally adopted by the European Commission: "low concentration" means below 1.000 points, "medium concentration" between 1.000-2.000, and "high concentration" more than 2.000 points.

⁴¹³ Two-way contingency tables with the calculations of the Chi-Square Test of Independence are used to determine whether or not there is a significant association between two categorical variables.

In the second step, we explore further the heterogeneity of EU countries with respect to the relationships among the different measures (for TV, the press, radio and online), and how these relate to concentration. More specifically, we investigate whether EU Member States can be meaningfully grouped according to a specific combination of measures that they have chosen, and test whether there are statistically significant differences in the mean values of concentration that are associated with the different groups. The aim of this analysis is both to uncover possible patterns in the choice of regulatory measures across different Member States, and to evaluate whether these combinations of measures tend to be associated with different outcomes, in terms of the degree of market concentration.

The statistical tool used in this case is cluster analysis, which is not based on measures of correlation, but on measures of distance/proximity among variables. Cluster analysis is an exploratory data analysis technique that seeks to classify different observations (countries, in the present case) into groups. The classification is based on the idea that observations belonging to the same group should be similar among themselves and as different as possible from observations in other groups. In the present case, the grouping of countries is based on similarity, in terms of the type and number of the policy measures that they have adopted, so that if a cluster emerges, it indicates that that group of countries has adopted a similar group of measures. One benefit of cluster analysis, as applied here, is that it avoids the loss of information that derives from summarising the information for a country with a single number (the count of the number of measures adopted in the country), which is at the basis of the analyses of correlation above.

2.4 Results

A first notable result is the lack of any statistically significant (Pearson⁴¹⁴ or Spearman) correlation between the number of measures adopted in a country and the degree of concentration in the TV sector. This holds for all the regulatory variables described above, and for both indicators of concentration (CR4 and HHI6), and contrasts with the results of previous studies (Ranaivoson et al., 2021). The correlations have also been computed separately for the subgroups of countries that became Member States before and after 2004, again, we found no significant correlation.

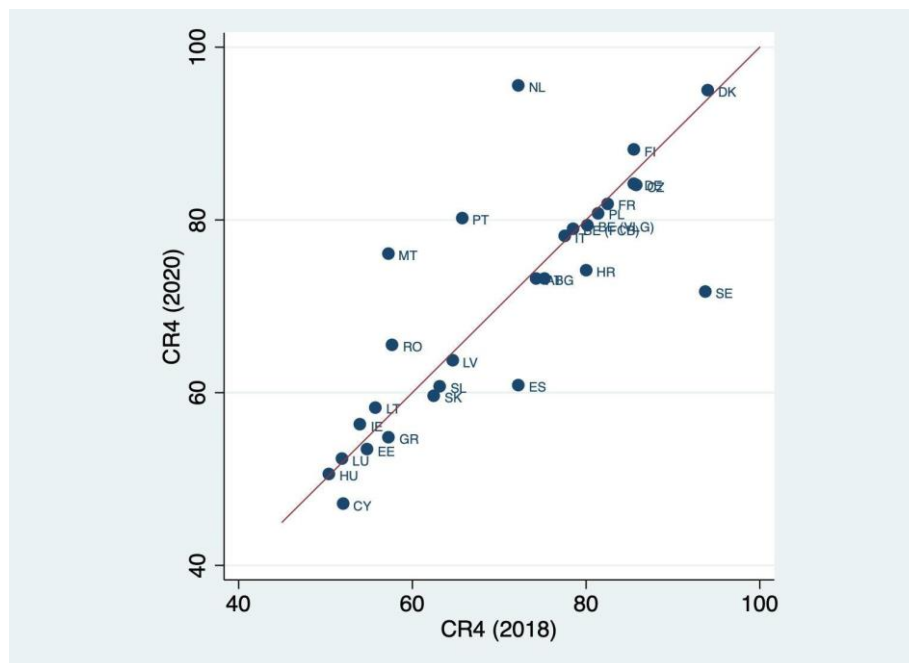
A comparison between the data used by Ranaivoson et al. and the updated database that is used in the present Study reveals, first, that while average concentration of the EU TV market has not changed, the ranking of countries according to concentration levels did change, in 2020, as compared to 2018 (see Figure B3.1).⁴¹⁵ Second, the ranking of EU Member States according to the number of measures also changed between 2018 and 2020⁴¹⁶. These changes may contribute to an explanation of the different results of this study with respect to those of Ranaivoson et al. (2021).

⁴¹⁴ The result does not depend on the fact that the assumptions for computing Pearson's correlation fail. In particular, the Shapiro-Wilk W test for normal data was performed to confirm normality.

⁴¹⁵ Average concentration, as measured by CR4, was about 70.5% in 2018, and 70.3% in 2020. The correlation between CR4 for 2018 and 2020 is, however, only about 0.8, indicating the occurrence of some changes across individual countries. Of particular interest is the increase in concentration between 2018 and 2020 that was observed in the Netherlands, which is further explored in Case Study 1.

⁴¹⁶ The comparison is, in any event, not perfect, because the typology adopted for the analysis of 2018 data is slightly different to the current one.

Figure B3.1. Correlation between the CR4 in EU countries in 2018 and 2020⁴¹⁷



No significant correlation was detected in the **radio market** either. Pearson and Spearman correlations were computed for all the available regulatory and concentration variables that are described in the data paragraph, and no statistically significant results were found.

Some significant results emerge, by contrast, when considering the **press** and online media **markets**. In both cases, there is an inverse correlation between measures of regulation and indicators of concentration, hinting at the fact that more regulation tends to go hand in hand with lower concentration in these sectors. In particular, for the press, a strong and statistically significant negative Pearson correlation,⁴¹⁸ at the 5% level, exists between the top four firms market share concentration ratio and all of the variables, thus capturing the extent of regulation in a given country (with correlation coefficients of - 0.57 (p value of 0.017) for the overall extent of regulation; - 0.64 (p value of 0.005) for the variable capturing regulatory measures that are more directly related to ownership concentration, and - 0.52 (p value of 0.031) for the subset of variables on ownership concentration, with fewer missing values. Due to many missing values in the variable capturing CR4, in terms of market share, the underlying number of observations is only 17. The negative correlation is insignificant, however, when considering the measure of audience concentration instead of market share concentration (which brings the number of observations up to 22).

A significantly strong negative correlation can also be detected for **online media**, between the two variables that capture measures that are more directly linked to the regulation of media concentration and the audience concentration of the Top 4 online players (- 0.66 with p-value of 0.0183 and -0.61 with p-value of 0.0334, respectively, for the variable restricted to measures with fewer missing values and for the variable summing up all of the measures that are directly related to concentration). Again,

⁴¹⁷ The red line in the graph indicates the points at which CR4 (2018) is equal to CR4 (2020). For points above the line, CR4 (2020) > CR4 (2018) (i.e., concentration has increased from 2018 to 2020). The reverse is true for points below the line.

⁴¹⁸ Correlation is considered low for $0.1 < |r| < 0.3$, medium for $0.3 < |r| < 0.5$ and strong for $r > 0.5$, where r is the Pearson correlation coefficient. Significance at the 5% level.

the number of observations is limited to 12 by constraints on the availability of the relevant ownership concentration variable for all the Member States that are considered in the study. The correlations among the other variables that are available for online media, do not lead to significant results.

Overall, the existence of a statistically significant negative correlation cannot be confirmed across the board for all of the markets and indicators considered. However, **whenever statistically significant results do emerge, they point to the existence of a negative correlation between the number of regulatory measures adopted in each Member State and the indicators of ownership concentration.**

It is important to note that **the dearth of statistically significant correlations should not be taken as an indication of the lack of a real-world relationship between the number of regulatory measures and ownership concentration.** The exploratory assessment performed in this Study, while improving on previous analyses, has several limitations: (a) the quantitative mapping of regulations only reflects the formal existence of any given measure, not its concrete implementation in Member States; (b) both regulatory and concentration variables may have missing values; (c) the data used are cross-sectional, i.e., they provide a “snapshot” of the situation in different EU countries at the time of the mapping, without distinguishing between measures that have long been in place, and more recent measures. In contrast, longitudinal data (following the evolution of both regulations concerning media market concentration and the levels of such concentration) may provide more interesting results. The analysis of the impact of repealing and relaxing media-specific concentration rules in the Netherlands offers such insights (see Case Study 1).

Unfortunately, **no statistically significant relationship emerges, either from the ANOVA analyses of concentration performed for any of the specific measures or from the two-way contingency tables,** between the categories of levels of concentration and any of the measures that are most directly related to ownership concentration. No relationship between specific measures and concentration can thus be uncovered through these tests.

As a second step, we performed a **cluster analysis of regulatory measures in the TV sector.** The dummy variables that indicate the absence (0) or the presence (1) of any given measure have been aggregated so as to create new variables representing specific types of regulatory measures: “concentration rules”⁴¹⁹; “merger rules”⁴²⁰; “transparency rules”⁴²¹ and “subsidies”⁴²². These variables were used to run a hierarchical cluster analysis⁴²³ that uncovered three different clusters, which was confirmed by the application of the Calinski/Harabasz pseudo-F test and the Duda/Hart test, albeit less clearly. Figure B2.3 below provides the conventional visual representation of the clusters (dendrogram). The vertical axis shows the distance between the various Member States, in terms of the number of measures adopted in the various categories. The lower this distance, the more similar the observations (Member States) listed on the horizontal axis linked by the correspondent nodes.

⁴¹⁹ Restrictions on media reach and restrictions on market shares.

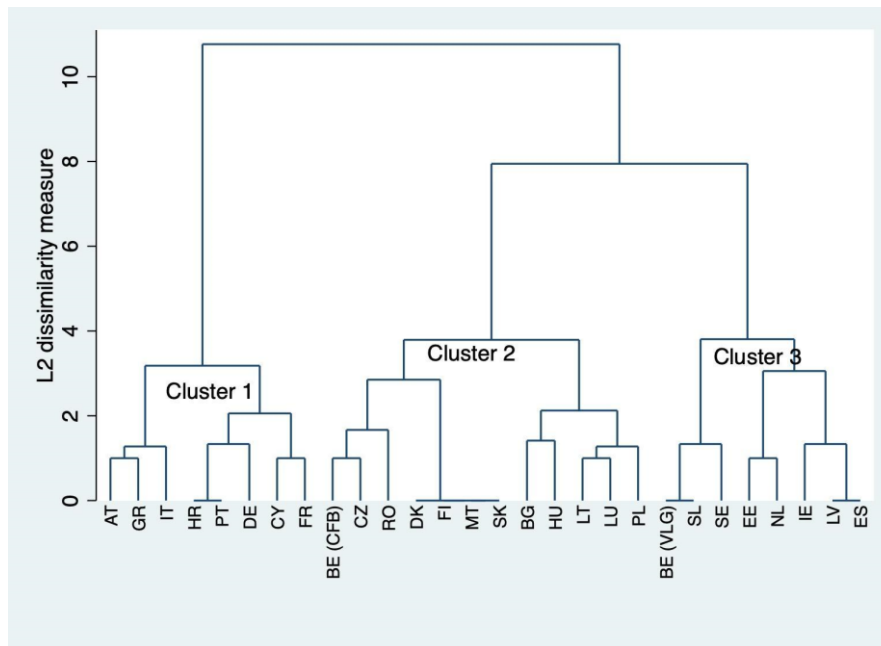
⁴²⁰ Lower thresholds and the use of multipliers; separate assessments; ministerial override.

⁴²¹ Media-specific transparency rules; general transparency rules in force; rules on financial transparency.

⁴²² Direct and indirect subsidies.

⁴²³ The analysis is based on Ward’s method and on the application of squared Euclidean distances as a measure of similarity.

Figure B3.2. Dendrogram of the hierarchical cluster analysis for the TV sector



Source: own elaboration. Clusters 1 comprises 8 Member States: AT= Austria; GR = Greece; IT = Italy; HR = Croatia; PT = Portugal; DE = Germany; CY = Cyprus; FR = France. Cluster 2 comprises 12 Member States or regions: BE (CFB) = Belgium (French Community); CZ = Czech Republic; RO = Romania; DK = Denmark; FI = Finland; MT = Malta; SK = Slovakia; BG = Bulgaria; HU = Hungary; LT = Lithuania; LU = Luxembourg; PL = Poland. Cluster 3 comprises 8 Member States or regions: BE (VLG) = Belgium (Flemish Community); SL = Slovenia; SE = Sweden; EE = Estonia; NL = Netherlands; IE = Ireland; LV = Latvia; ES = Spain.

The graphical representation, above, only allows us to visualise the existence of groups of Member States that can be considered similar, in terms of the numbers and types of measures adopted. However, it does not directly provide information on the extent of the adoption of different types of measures. To obtain this information, it is necessary to go back to the database and to compare the clusters, in terms of the average number of measures corresponding to each of the variables considered. By doing so, noticeable differences emerge. Cluster 1 is characterised, on average, by a significantly higher degree of regulation (with the sum of the mean value of the regulation variables being almost twice the corresponding metric for Cluster 2 and Cluster 3). Other differences among the clusters emerge with regard to the type of measures that tend to be adopted in the different countries belonging to each cluster. Relative to Cluster 1, which contains countries that adopt measures in all of the domains considered, the countries in Cluster 2 do not adopt merger measures⁴²⁴ and tend not to provide direct or indirect subsidies⁴²⁵. Member States in Cluster 3, in turn, have measures in place in all 4 regulatory domains, but with, on average, a lower number of them than there are in the Member States in Cluster 1⁴²⁶. **Overall, the cluster analysis indicates a significant regulatory fragmentation across Member States.**

Computing the average ownership concentration by cluster (both in terms of CR4 and HHI) reveals that Cluster 1, which presents a significantly higher average number of measures, is associated with a lower average degree of concentration than are the other two clusters. The differences between

⁴²⁴ With the exception of Hungary.

⁴²⁵ Lithuania, Poland and Luxembourg do have one type of subsidy in place.

⁴²⁶ Estonia is included in this cluster, but appears to be an outlier, as it presents a very low degree of regulation, with measures in place only in the transparency domain. It is thus treated as an outlier in subsequent analyses.

mean concentration levels are, however, not statistically significant, due to the wide variability of the concentration data within each cluster, as measured by high standard deviations. Moreover, consistent with the results of the correlation analysis, the average concentration of Cluster 2 is higher than that of Cluster 3, confirming the lack of a clear monotonic relationship between the scope of regulation and concentration.

When the cluster analysis is applied to the measures adopted in the EU-27 press and radio markets, the situation appears to be significantly more fragmented. Application of the Calinski/Harabasz pseudo-F test and of the Duda/Hart test provides inconsistent results and, in any case, indicates the presence of many more groupings of countries. Indeed, the lack of a clear grouping of countries is also apparent from the dendrograms (not shown here, as they do not convey meaningful information). Given the high number of clusters, a further exploration of the existence of the relationships between the types/scopes of those measures adopted in different clusters and concentrations does not appear to be promising.

2.5 Conclusion

The exploratory data analysis that has been conducted in this Section clearly suggests the **existence of a significant fragmentation across the media markets of the EU Member States**. This also holds with regard to the regulatory landscape, and in terms of the relationship between regulation and market concentration. **No simple statistically significant correlation exists between the intensity of regulation and ownership concentration for the EU-27 Member States taken together**. In the present analysis, statistically significant correlations only emerge in a few cases when, for reasons of data availability, the sample is restricted to a lower number of Member States. This is consistent with the results obtained by Afilipoaie and Ranaivoson (forthcoming), who find a statistically significant negative correlation of the intensity of regulation with both CR4 and HHI6 in the audiovisual sector⁴²⁷. The typology of measures they use is similar, but not completely overlapping with that adopted in this Study, while the data for concentration are the same⁴²⁸. Importantly, their result is obtained on a subset of the EU-27 Member States, which was constructed by removing from the dataset those Member States that they identified as outliers by plotting the CR4 and HHI against the number of rules, by calculating the mean CR4 and the mean HHI.

A joint reading of the results of the present Study, and of Afilipoaie and Ranaivoson (forthcoming), suggests that: (a) whenever a statistically significant correlation emerges from the data, it is unequivocally negative, indicating that more intense regulation tends, indeed, to moderate concentration; and (b) that a more accurate understanding of the relationship between regulation and concentration requires more information than the presence/absence of specific measures. In particular, **information on the actual enforcement of existing measures appears particularly important in order to fully understand the impact of regulation across the Member States**.

As regards correlations, it is also important to note that, in any case, it should be considered that the presence of a given measure may well be associated with lower degrees of concentration (in countries where measures are effective) or higher concentration (in countries where measures are implemented as there is a need to address problems of excessive concentration), so that, overall,

⁴²⁷ The Pearson r correlation test indicates a negative, strong correlation CR4 ($r=-.705, p<.001$) and HHI6 ($r=-.710, p<.001$) respectively.

⁴²⁸ They use the following measures: (i) restrictions on media reach; (ii) restrictions on market shares; (iii) restrictions on cross-media ownership; (iv) lower thresholds and multipliers; (v) separate assessments; (vi) ministerial override; (vii) restrictions on foreign ownership; (viii) restrictions on the categories of actors.

no clear correlation can be observed. As a final observation, it is worth highlighting that another possible interpretation of the lack of statistically significant correlations between the intensity of regulation and ownership concentration for the EU-27 Member States may well be that imperfections in the design or implementation of the current set of measures strongly limit their effective impact on market concentration. A definitive conclusion on this point cannot, however, be reached on the basis of the present analysis.

The cluster analysis of the TV sector has also uncovered interesting patterns in the adoption of regulatory measures, indicating the existence of 3 groups of countries with relatively distinct profiles, in terms of the scope and nature of the measures they tend to adopt. The cluster characterised by broader and more intense regulation does exhibit a lower degree of market concentration in the audiovisual market, but differences in average concentration are not statistically significant, due to the strong variations within clusters.

Finally, it is important to stress that the methods used – both correlations and cluster analysis – are exploratory data-analysis techniques, which are intended as tools that are useful to generate hypotheses, rather than for empirically testing them (see, e.g., Everitt, 1993). Any result of this study should therefore not be interpreted as suggesting causal relationships. Indeed, to identify causation, it would be necessary to be able to identify, for each country, a “counterfactual”, i.e., what would have happened to concentration in that country had the measure not been in place. This is outside of the scope of this Study.

3. Case studies

3.1 Context

This Subchapter provides a more qualitative assessment of the effectiveness of measures concerning media concentration via 6 case studies:

- Repeal and relaxation of media-specific concentration rules in the Netherlands
- M&A assessment - the impact of binding decisions
- The interplay of (media) concentration regulations and tools: the French case
- Regulation of State advertising
- PSM funding & remit, and the impact on pluralism: the German case
- Approaches that ensure the transparency of media ownership - the Italian Register of Communication Operators

Case studies were selected based on the mapping that was performed in Chapter B1. Four are focused on a country; two on a type of measure. In every case, the objective is to allow readers to understand the case at hand by presenting a short description of the issues, of the measures, or of the national media regulatory framework analysed, and to summarise the lessons learned and their relevance for the concentration of media markets.

Case Study 1 can be directly related to the previous section: in contrast, the longitudinal study of Dutch regulation in regard to media concentration shows how erasing such regulation can lead to more concentration.

Case Study 2 takes one step further, if compared to Chapter B1. We found that only a minority of Member States have their NCA and NRA separately assessing media M&A. Here, we want to

address the role of the NRA, and especially whether it contributes to better taking pluralism into account.

Case Study 3 focuses on France's complex interplay of regulations regarding media concentration. It allows, on the one hand, the extension of Case Study 2's analysis of the separate assessment of M&A and, on the other, the analysis of how French regulation applies and adapts to online media. Actually, Chapter B1 shows that only a few countries apply measures to online media, and it remains unclear which services are effectively concerned.

Chapter B1 has emphasised the key concepts of transparency and fairness as far as State advertising is concerned. Case Study 4 further elaborates upon them, complementing the analysis developed in Chapter B2. Besides, it develops the importance of its actual regulation, in relation also to the development of the EU internal market.

Also, Chapter B1 addresses the importance of funding for Public Service Media (PSM) and only briefly mentioned their remit's role. Case Study 5 develops this role, discussing how the remit is supervised, and the relationship to funding, using the case of two German PSM: ARD and ZDF.

Case Study 6 analyses media ownership transparency in the Italian case. It usefully extends the mapping in Chapter B1, which remained at the level of existing laws, to address issues that are related to implementation. Problems here notably arise due to little effort having been made to make information available to the public.

The inherently qualitative approach of the case studies, while limiting the scope and generalisation, allows us **to analyse in more depth the influence of contextual factors** (historical, socio-economic, etc.). The assessment goes beyond the measures' impact on concentration, or even on external plurality, to consider dimensions and features such as internal plurality, the levelness of the playing field, the transparency and fairness of funding, the citizens' effective access to information about their media and the EU internal market. Regarding the latter, the EU legislation concerning free movement within the single market, including the right to establish media companies, the freedom to provide services and the free movement of journalists, as well as consumers' (in this case, audiences') rights and protection, may be relevant to media pluralism (see the arguments developed in the Introductory Chapter).

The results of this analysis will directly feed into B4 and its policy recommendations.

3.2 Methodology

Each of the 6 cases are analysed in a different manner, one that is adapted to the specific focus (in particular, whether the study is focused on a measure and its implementation, or on a country). There are, however, a few common methodological points that are related to structure and data sources.

First, all of the case studies rely on a triangulation of sources. One starting point is the mapping of measures that are related to the concentration of economic resources in the media sector, which is performed in B1 Chapter. This mapping allowed us to identify some issues that are worth investigating, as explained previously.

Another common source, especially helpful for the case conclusions, consists of the stakeholder consultation meeting that was organised by the Study team on January 20th, 2022. For 3h 30, 65 representatives from the media industry, online platforms and civil society, journalists and regulators took part in intense discussions addressing - amongst other topics - the themes analysed in this Chapter. In particular, during the panel dedicated to the transparency of media ownership and ownership limitations, Case Studies 1 and 6 (the Dutch and Italian cases, outlined in the following paragraphs) were presented; the panel on the concentration of economic resources in the media ecosystem allowed the discussion of the question of inter-institutional cooperation among different

authorities, in the context of M&As (cf. Case Studies 1, 2 and 3); the panel dedicated to PSM, 'State advertising and public subsidies' gave special consideration to the German context (Case Studies 4 and 5).

The workshop thus allowed us to both gather further input from other participants, and to check with them the validity of our results. All this was done in order to finalise the writing of the case studies.

3.3 Case Study 1: Repeal and relaxation of media-specific concentration rules in the Netherlands

This case study examines the effects of the repeal and relaxation of media concentration rules in the 2010s on media pluralism in the Netherlands. It describes the content and aims of the former sector-specific rules, and sets out the reasons for the reform that were cited by the legislator and the media industry. At the heart of the case study is an analysis of the media mergers and acquisitions (M&As) that have taken place since the laws have been changed, as well as an exploration of alternative pluralism protection measures. It concludes with a critical discussion on the alleged causal links between the repeal of media merger rules and the increase in media ownership concentration, and on the perceived effectiveness of existing alternative remedies.

3.3.1 Former media concentration rules

From 13th June, 2007, to 31st December, 2010, the Temporary Media Concentrations Act (TMCA) (*Tijdelijke wet mediaconcentraties*) regulated the creation of media concentrations in the Netherlands. M&As that would lead to media concentrations holding more than 35% of the market share in the national daily newspaper market, were prohibited. The same applied to media concentrations leading to a large cumulative market share in (at least two of the three) combined markets for newspapers, television programmes and radio programmes: concentrations leading to a cumulative market share of 90% (out of 300%) were prohibited. The online market was left free of constraints. The aims of the TMCA were twofold: on the one hand, it created more room for cross-ownership and multi-media developments, as compared to the stricter Media Act (*Mediawet*) that was in force at the time. On the other hand, it protected consumers against large concentrations of 'opinion power' in the markets that were deemed to be the most important for the forming of public opinion (Explanatory Memorandum TMCA, 2007). The power to assess media mergers was attributed to the National Competition Authority (NCA), but the NCA was required to seek advice from the National Media Authority (NMA) before taking substantive decisions.

In addition, the commercial radio market was also subject to absolute ownership limits. From 2003 to 2016, Article 8 of the Regulation on the designation and use of frequency space for commercial radio broadcasting 2003 (old) (*Regeling aanwijzing en gebruik frequentieruimte commerciële radio-omroep 2003*), in conjunction with Article 6.24 Media Act (*Mediawet*), limited the number of national commercial FM licences that a company could hold to two licences, one of which had to be subject to format requirements. The ownership restrictions aimed to foster effective frequency use and, at the same time, to safeguard diversity in radio stations (external pluralism) and in radio programmes (internal pluralism) (Explanatory Memorandum Regulation of the State Secretary 2003; Explanatory Memorandum Regulation of the State Secretary 2015).

3.3.2 Repeal and relaxation

Given the rapid developments in the media ecosystem, the TMCA would only apply temporarily, until 1st January, 2010 (Explanatory Memorandum TMCA 2007). In 2009, the Dutch government initially proposed extending the regime after 2010, as political concerns about the increasing media

companies' concentration, and their impact on the diversity and independence of news and information, remained (Letter of the Minister of Education, Culture and Science, 2009). However, a specially appointed parliamentary committee recommended withdrawing the Act. The committee's main argument was that the TMCA disregarded the powerful and unregulated online news market, which would inevitably outperform the traditional newspaper market if the latter were given the opportunity to grow and to explore cross-media activities (Tijdelijke Commissie, 2009). Large newspaper publishers further argued that newspaper editorial boards were independent, so that there was no real danger of concentrating "too much opinion power in too few hands" (Letter of the State Secretary of Education, Culture and Science, 2010). In line with the committee, and the daily newspaper industry, on 8th December, 2009, the Dutch Parliament requested that the government should = either not extend the TMCA, or that it should increase the maximally allowed market share of 35%, in the newspaper market, to 50% (Parliamentary Motion Remkes c.s., 2009).⁴²⁹

Despite the Parliament's efforts, the government concluded, on 21st December, 2009, that it would extend the TMCA until 1st January, 2012 (Decision 21st December, 2009).⁴³⁰ However, within less than a year, the newly installed government decided to withdraw the TMCA as per 1st January, 2011 (Decision 16th December, 2010). The new Minister considered an immediate withdrawal to be beneficial to the newspaper market, as it would create opportunities for newspaper publishers to explore multimedia developments and preserve newspapers that were otherwise likely to disappear due to financial issues. Moreover, the diverse supply of news and information, through radio, television and the Internet kept growing. Finally, it was stressed that the general merger rules, as applied by the NCA, would sufficiently safeguard media pluralism (Explanatory Memorandum Decision, 16th December, 2010).

In a similar vein, technological developments were the main drivers behind the reassessment of the pluralism policy for commercial FM radio in 2016. On 26th June, 2015, the government admitted that the media landscape had changed significantly, and that the conditions for radio frequency licensing had become outdated. Scarcity of frequency space has so far been the rationale behind radio ownership restrictions, in order to safeguard the plurality of radio providers. However, over the years, technological advancements had led to an increase in different distribution methods and audio content supply and had thereby reduced the scarcity of distribution means. The supply was expected to expand even more because of the growth in mobile broadband and digitisation through DAB+. Moreover, it was thought that by allowing more entrepreneurship, radio programmes would be better tailored to the needs of listeners. The government further highlighted the role of the Dutch public broadcasting organisation (*NPO*) in offering a diverse range of radio programmes. The withdrawal of the TMCA, in 2011, was also brought up, as it had 'freed' other media markets from concentration restrictions. Upholding ownership restrictions in the FM-market therefore seemed inappropriate and unnecessary. Lastly, the government reassured the Dutch Parliament that the NCA's application of general merger rules and the NMA's (non-binding) yearly reports would provide sufficient safeguards

⁴²⁹ While ensuring a level playing field for both national and foreign media companies that are active in the Dutch market was mentioned as an argument for replacing pre-existing regulation with the TMCA in 2007 (see Kamerstukken II, 30 921, nr. 3), there are no indications that considerations concerning the EU internal market played a role in repealing the TMCA.

⁴³⁰ The reason that the government 'overruled' the Parliament at this time remains unclear. It should be noted that, *after* the cabinet had ended in February, 2010, the 'demissionary' State Secretary for Education, Culture and Science (who by that time was formally resigned) wrote, in June, 2010, that it would leave final decisions regarding the TMCA up to the new cabinet, since she was of the opinion "that a demissionary cabinet must be cautious when it comes to issuing, amending and repealing of legislation", see *Kamerstukken II*, 32 123 VIII, nr. 136, p. 6, see <https://zoek.officielebekendmakingen.nl/kst-32123-VIII-136.html> (accessed on May 27, 2022).

to prevent undesirable media concentrations (Letter of the Minister of Economic Affairs, 2015; Letter of the Minister of Economic Affairs and the State Secretary of Education, Culture and Science, 2015).

On 2nd July and 8th October, 2015, the Dutch Parliament formally requested the relaxation of radio ownership restrictions (Parliamentary Motion Gesthuizen c.s., 2015; Parliamentary Motion Rutte and Mohandis, 2015). The parliamentary motions were allegedly informed by a lobbying campaign of national commercial radio market players.⁴³¹ On 13th December, 2015, the State Secretary of Education, Culture and Science issued a regulation amending the Regulation of 2003, in that commercial radio companies could now use four FM radio frequencies, instead of two. The legislator emphasised that the relaxation of ownership rules would open up opportunities for commercial radio stations to realise efficiency benefits and financial gains, which, in turn, could lead to speeding up digitalisation and to investments in programming. Finally, the legislator did not expect that radio stations within one company would all create the same content. On the contrary, it was expected that diversity on the radio market would be promoted (Explanatory Memorandum Regulation of the State Secretary, 2015).

3.3.3 M&As under the old and new media concentration regimes

It is open to debate whether the former Dutch media merger assessment rules were an effective means of protecting media pluralism. A more straightforward question is whether their repeal and relaxation have led to, or at least coincided with, increased media market concentration. An analysis of media mergers that took place under the *old regimes* indicates that during those years, the NCA did not refuse or adjust M&As on the basis of exceeding concentration limits, or on media pluralism grounds, more generally. There were media M&As that were refused by the NCA (e.g., the acquisition of Wegener by Mecom in 2007 and the acquisition of PCM Holding B.V. by De Persgroep B.V. in 2009), but not because of the TMCA or media pluralism more generally, but for (economic) reasons of competition law. This does not rule out, however, the possible ‘chilling effects’ that may emanate from the rules that may have prevented certain M&As from being initiated. The research found that *after* the repeal and relaxation of media concentration rules, M&As have taken place which would not have been allowed before, which could be an indication of the existence of such chilling effects.

i. Newspaper market

Within a timespan of six years after the repeal of the TMCA, three M&As have occurred in the newspaper market that would have exceeded the former concentration limit of 35%: Metro–Telegraaf Media Group, in 2012 ($\pm 37\%$), Mecom–De Persgroep, in 2014-2015 (around 50%)⁴³², and Telegraaf Media Group–Mediahuis N.V., in 2017 ($\pm 39\%$)⁴³³. More details on these M&As are provided in the **Annexe**. Together with the Concentra–Mediahuis M&A in 2017 (which in fact was in line with the TCMA), the NMA considers these mergers as the main drivers behind the high concentration of the Dutch newspaper market that is currently dominated by two publishing companies that, together, hold 90% of the market (CvdM, 2018). In its latest annual report for 2021, the NMA explicitly claimed that “the enormous concentration on the newspaper market that emerged in the Netherlands could not have taken place without the repeal of the Temporary Media Concentrations Act” (CvdM, 2021).

⁴³¹ E.g. see: <https://www.radiofreak.nl/radiobedrijven-mogen-vanaf-2016-vier-fm-zenders-hebben/>.

⁴³² According to the 2021-NMA report (CvdM, 2021), De Persgroep acquired **47%** of the newspaper market. However, the NCA estimated that they held a market share of **52%**, based on sales figures published on the website <http://oplagen-dagbladen.nl> (NCA Approval Decision 2014), accessed on May 27, 2022.

⁴³³ According to the 2018-NMA report (CvdM, 2018), Mediahuis acquired **39.1%** of the newspaper market. The NCA estimated a market share of **30-40%** (NCA Approval Decision 2017).

ii. Combined markets for newspapers, television and radio

Importantly, similar high concentration rates have not materialised in the combined markets for newspapers, television and radio. No evidence of M&As leading to cross-media concentrations that exceeded the cumulative limit of 90%, have been found. Even the upcoming M&A of Talpa Network B.V. and the RTL Group in 2022 – if it receives the expected approval by the NCA – will only lead to media concentration on the combined television and radio markets of 72,2% (CvdM, 2021). Although this percentage is, in the words of the NMA, “unprecedentedly high”, it will still be lower than the former threshold.

iii. Commercial radio ownership

As for the national commercial radio market, it is safe to say that this market has become more concentrated as a result of the 2016 relaxation of radio ownership rules. On 3rd October, 2016, four radio stations merged into a new company. In the press release about the merger, it was expressly stated that “because of the relaxation of ownership restrictions of Dutch commercial radio per 1 January 2016, the path was cleared for the consolidation of the radio market” (Mediahuis Newsroom, 2016). The Dutch media regulator and the Minister of Economic Affairs also both recognised a causal relationship, the latter stating that the newly created legal opportunity for radio broadcasting companies to hold four licenses “had been effectuated very quickly”, and that he assumed that this had been “the intention of the Parliament” (CvdM, 2015-2016; Parliamentary Report, 2016).

For an overview of the changed concentrations in the Dutch media markets, please see the **Annex**.

3.3.4 Alternative remedies to safeguard media pluralism?

Assuming that the repeal and relaxation of media merger rules have led to a decline in external media pluralism in the Netherlands, the next question is whether effective alternative remedies (other than numerical concentration thresholds) have been implemented in order to address concerns about pluralism. Possible remedies may be found in: (a) the general competition law framework, (b) the M&A-approval decisions by the NCA, (c) cooperation schemes between the NCA and the NMA, and (d) commitments by market players.

a. Competition law: standard merger-test and ministerial intervention

In the documents supporting the repeal of the TMCA, the Dutch legislator frequently emphasised that media pluralism could be protected by the general competition law framework.

First, it was argued that the objectives of competition law and the public interest of (media) pluralism overlap, to a certain extent. In a media merger-test, the NCA assesses not only whether media concentrations might lead to unreasonable increases in prices, but also whether consumers will be left with sufficient freedom of choice. Indeed, the NCA will map out consumers’ media preferences and investigate whether other competitors provide adequate alternatives. In other words, the legislator may consider ‘consumer choice’ to be a proxy for media pluralism. One might wonder whether this is an adequate indicator with which to measure media pluralism, since competition law is based primarily on market considerations. Moreover, there is an institutional question as to whether the NCA is even in the position to take media pluralism into account, or whether that would be the primary duty of the NMA. Although the Dutch legislator recognised that the standard competition law-test does not offer exactly the same safeguards as the TMCA, it has nevertheless

argued that it helps to ensure sufficiently plural media markets (Letter of the Minister of Education, Culture and Science, 2010; Letter of the State Secretary for Education, Culture and Science 2010).

Second, Article 47 of the Dutch Competition Act provides for the possibility of ministerial intervention in M&As. In the event that the NCA refuses to grant a license for a concentration, the Minister of Economic Affairs may overrule the NCA-decision and grant the license if they deem it necessary for reasons of public interest that are significant and that outweigh the expected impediments to market competition. Importantly, the power to intervene in NCA decisions does not work both ways, i.e., the Minister *cannot prevent* a concentration from being approved. This means that the power cannot be used to promote external media pluralism, but only (potentially) to protect internal pluralism. One might think, for example, of a situation in which a newspaper publisher who is in serious financial trouble would soon disappear from the market if not taken over by a bigger market player, which would arguably leave citizens with insufficient diversity of information and opinions. In such a case, the Minister could approve a takeover, even if it is blocked by the NCA for reasons of market concentration. Besides the inherent limitations of ministerial power, it also follows from the text of the provision that it is written in relation to exceptional cases. Since the creation of the Competition Act in 1997, Article 47 has been applied only once, and then not in relation to the media, and therefore this appears to be a theoretical, rather than a practical, tool.⁴³⁴ The ministerial power to intervene in market competition – and, by implication, to contribute to a pluriform media landscape – cannot be applied lightly, and can therefore not be regarded as an effective means with which to safeguard (internal) media pluralism.

b. Use of specific remedies in M&A-approval decisions

Another way to safeguard media pluralism would be for the NCA to include specific remedies in its M&A-decisions. However, the NCA has so far neither required nor implemented any such remedies. With regard to the acquisition of Mecom in 2014-2015, the NCA stated that readers would still have enough choice from among the different newspapers (NCA Approval Decision, 2014; NCA Mecom press release 2015). As for the Telegraaf Media Group acquisition, in 2017, the authority argued that the two merging companies had their own target audience, and that the readers of the two national newspapers rarely seemed to switch between them. The regional newspapers of the two companies were not competing either, which would leave the readers of newspapers with sufficient options, even after the acquisition (NCA Approval Decision, 2017; NCA Telegraaf press release, 2017).

c. A more formal cooperation between NCA and NMA

A third remedy could be to make the cooperation between the NCA and NMA more formal. The Dutch NMA currently does not have the legal power to overrule the NCA's M&A-decisions. In a case where the NMA considers an M&A in the media sector to be a threat to media pluralism, the only action it could take is to contact the NCA and negotiate arrangements (see Article 7 of the NCA-NMA Cooperation Protocol). The NCA is under no formal obligation to seek advice from the media regulator, as used to be the case under the TMCA.

⁴³⁴ In September, 2019, the then, State Secretary for Economic Affairs and Climate Policy used the provision to retrospectively approve the acquisition of Sandd (market share 29%) by PostNL (market share 70%) in the postal delivery sector (Letter of the State Secretary for Economic Affairs and Climate Policy, 2019). The State Secretary's intervention was, in fact, overturned in Court, which considered the State Secretary's justification inadequate (*Plaintiffs v. State Secretary*, 2020). The State Secretary appealed the decision and reviewed her licence approval in April, 2021 (State Secretary's Revised Decision, 2021). The judgement of the Appellate Court is still awaited.

The powers of the NMA to safeguard media pluralism are rather soft. It can give subsidies to the press sector with the purpose of promoting pluralism (Article 8.3 Media Act). It is also burdened with the task of keeping track of developments relating to media concentrations, and to investigating the effects on pluralism and independence of the media (Article 7.21 Media Act). In its annual reports, the media regulator draws up recommendations – addressing both the legislator and the media sector itself – on how to mitigate the risks posed by market concentration developments. In its latest report, the NMA particularly focused on the planned merger between the radio and television market players RTL and the Talpa Network, in 2022, and recommended that they should: (i) create a sustainable public broadcaster, (ii) create a level playing field for Dutch broadcasters, (iii) create a level playing field between Dutch media companies and Big Tech, and (iv) be transparent about ownership relations (CvdM, 2021).

d. Commitments by media market players

Finally, responsible media market players could play their part too. In the press release about the merger between the 538Groep and the Sky Radio Group into Talpa Radio (2016), the two merging radio companies stated that “they [would] delineate the profiles of the different [radio] stations more precisely, so that they are as complementary as possible and their total reach will increase” (Mediahuis Newsroom, 2016). For what it is worth, such written intentions by market players regarding their media content could be considered to be very soft safeguards put in place to promote internal media pluralism.

3.3.5 Lessons learned

The repeal and relaxation of media concentration rules in the Netherlands, in the 2010s, which have been the subject of political controversy, have been followed by a substantial increase in market concentration for newspapers and commercial FM radio. Even without any evidence of mergers that were blocked under the pre-existing concentration rules, it is reasonable to assume that these rules had (positive) effects on external pluralism by discouraging large M&As, while they were in effect. On the other hand, no large cross-media mergers have taken place since the rules have been relaxed.

Although external pluralism has significantly decreased in the newspaper and commercial radio markets, it is premature to draw conclusions on the effects on internal or overall pluralism. In its general assessment of mergers and acquisitions, the NCA implicitly takes internal pluralism into account as being ‘consumer choice’, and even if it may be disputed whether this suffices, no indications have been found that consumer choice has been reduced by the mergers that have led to a more concentrated market. In any case, more formal cooperation between the NCA and the NMA in order to safeguard internal pluralism in M&A decisions, may be considered in the future.

The Dutch Minister of Economic Affairs has been granted the authority to overrule the merger blocking decisions of the competition authority, in light of public interests. Ensuring the survival of a newspaper title could be an example of such a public interest, which might justify overruling the competition authority. Having said this, this overruling authority has, as yet, never been used in media markets. Nor have any specific remedies to safeguard pluralism been imposed in M&A-decisions.

3.4 Case Study 2: M&A assessment - the impact of the NRA's decisions

This case study focuses on National Regulatory Authorities' (NRAs) decisions on media mergers and acquisitions (M&As), how they oppose, or complement, the National Competition Authorities' decisions (NCAs), and how the NRAs take into account media pluralism while doing so. Ex-ante assessments of M&A activities are essential in order to prevent adverse outcomes on markets and societies that might arise from excessive media concentration. A rigorous assessment of this impact is fundamental to guaranteeing pluralism and diversity.

Usually, the best placed authority to perform this assessment is the NRA that is in charge of overseeing the application, compliance and enforcement of media laws; however, **M&A analysis and authorisation is traditionally part of the NCA's remit, which usually does not include the safeguarding of media plurality** (see Chapter B1). Merger rules, *per se*, do not envisage that media pluralism will be an objective. Nevertheless, as they aim to ensure the presence of a number of competitors on the market, and to avoid excessive concentration, they have an impact on pluralism. However, because competition policy is an economically driven tool, some scholars contest its capacity to bring diversity and plurality to the media sector (Cappello, 2020) as, sometimes, media markets that raise no concerns in terms of competition may, nonetheless, lack the range and diversity of voices that are needed to safeguard pluralism, a case in which State intervention is necessary.

3.4.1 How media M&A are dealt with at the national level

M&A cases are dealt with at the national level if those cases do not exceed certain thresholds that are set by the EU, and which are also known as 'concentrations with a Community dimension'.⁴³⁵ Discussing the relationship between NCAs and sector regulators (NRAs), Dabbah (2011) argues that competition law aims to protect competition, whereas, in some sectors, what is needed is the facilitation of competition, and this is usually absent. Sectoral regulation is concerned with protecting the public interest and achieving various social objectives. However, Dabbah (2011) roots for a cooperative concurrency model, in which competition authorities are involved in competition enforcement in the sectors, alongside the sector regulators, because **safeguarding competition through competition law is a different objective than promoting pluralism** on the democratic, social, and cultural grounds, which is the objective of media-specific regulation. Competition policy and media-specific regulation play complementary roles as, on their own, they cannot simultaneously ensure healthy competition, diversity, and pluralism aspirations. Regulators ought, therefore, to work together.

Merger control is implemented in every Member State, regardless of sector. While we refer the reader to Chapter B1 of this Report for a full overview, it is worth remembering the differences among Member States in terms of their procedures. In all of the Member States, the NCA is the leading authority for assessing all M&As in the same manner, regardless of the sector, and without the intervention of another authority. Many Member States, in specific sectors, rely on **more than one regulatory agency** when applying merger control rules (Alexiadis & da Silva Pereira Neto, 2019). These are usually **NRAs, (for the scope of our study, a Media Regulatory Authority)**, which oversee a specific sector, and an **NCA**. In some Member States, **Ministries, Councils of Ministers and Governments** may also be able to intervene in the assessments that are conducted by NCAs and/or NRAs, and they have the power to override the authorities' decision, usually on non-competition grounds.

⁴³⁵ European Commission. (2004). Council Regulation (EC) No 139/2004 of 20th January, 2004, on the control of concentrations between undertakings (the EC Merger Regulation) (Text with EEA relevance). Official Journal L 024, 1–22.

In Member States where there is a separate assessment involving an NCA, and (at least) an NRA, both authorities have specific allocated powers, and cooperate in some instances, usually with **NCAs having the final decision** and **NRAs having an advisory role** (see Appendixes B1.1 and B1.2). In addition, other authorities can be involved in M&A assessments (e.g., electronic communications authorities, commissions/authorities in charge of specific media markets). Such cooperation is welcomed, as these authorities fulfil different roles and thus approach the merger from different angles, and they can combine their expertise (Dabbah, 2011); research on inter-agency cooperation has been conducted by several stakeholders, including EPRA, whose most recent 54th Meeting tackled this topic and generated some key lessons for audiovisual regulators.⁴³⁶ **In a very few Member States, the NRA’s opinion is binding**, which means that a merger cannot be authorised if the NRA decides against it. An important point here is to consider whether **non-economic considerations, such as media pluralism**, are taken into account by NRAs when assessing a merger.

3.4.2 The country cases

Following this overview, we focus here on 5 countries (see Table B3.1). The objective of this focus is to illustrate (i) how cooperation takes place in various countries (and, hence, in various media market & policy contexts). We will especially highlight (ii) whether the NRA’s opinion on media mergers was followed, and (iii) to what extent media pluralism and diversity have been taken into account, more precisely, what type of remedies have been envisaged under such binding decisions (for instance, any commitments related to media pluralism).

For this case study, we will first look at the countries in which there is a separate assessment (with or without a system of ministerial override), and in which the NRA’s decision binds the NCA’s decision. Secondly, we expand this analysis to countries in which the NRA’s decision is not binding, however, its opinion is requested by the NCA.

Table B3.1 - Summary of separate assessment and ministry override in the countries under focus (see the Annex of Case Study 1 for more details)

Country	Separate assessment	Ministry override	NRA’s decision is binding	NRA Acronyms	NCA Acronym
Croatia	Yes	No	No	Regulatory Authority for Network Industries (HAKOM) Agency for Electronic Media (AEM)	Croatian Competition Agency (AZTN)
Germany	Yes	Yes	Yes	Commission on Concentration in the Media (KEK)	Federal Cartel Office (Bundeskartellamt)
Hungary	Yes	No	Yes	National Media	Hungarian Competition

⁴³⁶ EPRA. (2021, December 6). 54th EPRA meeting - “Cross-sectoral cooperation between regulators”: summary of discussion. https://www.epra.org/news_items/54th-epra-meeting-cross-sectoral-cooperation-between-regulators-summary-of-discussion accessed on May 27, 2022.

				and Communications Authority (NMHH)	Authority (GVH)
Italy	Yes	Yes	No	Authority for Communications (AGCOM)	Italian Competition Authority (AGCM)
Portugal	Yes	Yes	Yes	National Communications Authority (ANACOM) Portuguese Regulatory Authority for the Media (ERC)	Portuguese Competition Authority (AdC)

Two examples of legal cases are first given. In these cases, the NCA and the NRA agreed on the decision regarding the M&A. However, the NRA's considerations went beyond economic arguments to include pluralism and diversity. In **Croatia**, in the 2021 Telemach and Optima merger, which concerned the electronic communication market and the TV advertising market, AZTN cleared the merger in a Phase I Investigation, but not before obtaining the expert opinion of two NRAs (AZTN, 2021). The first one was HAKOM, as the specific regulator in the electronic communication market. Its opinion was that the transaction would achieve future synergies in terms of sustainability and trade-offs in the Croatian electronic communication market. The second was AEM, as the specific regulator in the electronic media markets.⁴³⁷ The AEM confirmed AZTN's findings: that the concentration was in line with the provisions under the Electronic Media Act, and that **the transaction ensured the pluralism and diversity of the electronic media**.

In **Germany**, in the 2005/2006 merger case between the publishing company Axel Springer and the German broadcaster ProSiebenSat.1, the *Bundeskartellamt* blocked the merger on competition grounds.⁴³⁸ **KEK issued a suit based on media plurality grounds**, arguing that post-merger, too many media companies would be brought under the same umbrella. Three remedies were proposed:

- The divesting of one of the two biggest national channels in the group;
- Axel Springer should guarantee editorial independence from Axel Springer for programmes on one of the national channels;
- Autonomous programming advisory boards (*Programbeirat*) should be introduced in order to increase pluralism. It was, however, considered, by KEK, that such a board would not have been sufficiently relevant in solving the issue, because the number of percentage points (of TV viewing share) allowed by the Interstate Broadcasting Treaty for such arrangements (up to two percentage points deducted from regional windows, and up to three from outsourced

⁴³⁷ As defined in the Electronic Media Act (OG 153/09; 84/11) the rights, obligations and responsibilities of legal and natural persons that provide audio and audiovisual media services and services of electronic publications by electronic communication networks, and the interest of the Republic of Croatia in the field of electronic media, are concerned.

⁴³⁸ Bundeskartellamt. (2006). *Bundeskartellamt prohibits merger between Springer/ProSiebenSat.1*. News. https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2006/24_01_2006_Springer_Untersagung_eng.html accessed on May 27, 2022.

programmes, to be allocated to third parties, if they are accepted as being genuinely autonomous from Springer AG's final control) would be too small to make any difference.

We should note, however, that none of these options was accepted by Axel Springer. In spite of Axel Springer's attempts to offer different commitments, these were considered insufficient by KEK (Hultén & Tjernström, 2010; Rab & Sprague, 2016). Springer appealed the decision to the Bavarian Administrative Court, but the Court dismissed the complaint, stating that the procedure followed by KEK, and the evaluation of the result, are decided by the law, and such a decision is not to be questioned by the Court. In 2012, the Bavarian Higher Administrative Court intervened in the blocked merger case, and it overruled KEK's ruling, after Axel Springer vetoed KEK's and the FCO's decisions to block the merger (Grünwald, 2012). The Court confirmed the FCO's decision to block the merger, based on competitive grounds, however, it found that KEK's negative ruling on media plurality grounds was unlawful, and that it exceeded the authority's powers, since KEK had looked at Axel Springer's activities in other media markets, and not exclusively at ProSiebenSat.1's TV audience share. Since KEK had included other media markets in its assessment, it was concluded that the merged party would gain power over opinion-forming, which would correspond to 42% of the national TV viewing. Under the Interstate Broadcasting Treaty, KEK is thus allowed to look at other media markets if the 20% limit is exceeded. Due to these considerations, KEK concluded that, post-merger, Axel Springer would have exercised a predominant power of opinion which is prohibited under the German Media concentration law (Lovells, 2012). As Hultén and Tjernström (2010:158) argue, relying on the share of national TV viewing "does not reflect variations between different audience groups or variations in the use of different genres of programmes. It makes no distinction between transmission platforms, forms of access (free TV vs. pay-TV) or seasons. Nor does it take into consideration editorial conditions or editorial autonomy".

The 2000 Seat Pagine Gialle/Cecchi Gori Communications is the first case in **Italy** that involves a merger between two companies that are involved in the telecommunications sector and television broadcasting (Seat was a subsidiary company to Telecom Italia). The merger was considered to substantially change not only the above-mentioned markets, but also the markets for the supply of interactive services via television, and the transmission of traditional television programmes via the Internet. The case was reviewed separately by AGCM and AGCOM, because the thresholds outlined in the Italian Competition Law exceeded the NRA's remit.⁴³⁹ AGCM approved the merger, however, AGCOM opposed the deal, declaring it incompatible with Section 4(8) of Law no. 249/1997 on the communication sector, which included a cross-media ownership prohibition of being an 'exclusive licensee' for both a public telecommunications service and broadcasting (American Bar Association, 2005). AGCOM expressed that, although following the liberalisation of the telecommunications market, Telecom Italia was no longer an 'exclusive licensee', it still enjoyed a quasi-monopolistic position, and thus the prohibition should continue to apply. Additionally, AGCOM **considered that by banning the merger, pluralism and the access to information would be ensured** (Comino et al., 2002). On appeal, the Tribunal annulled AGCOM's ruling, and also concluded that AGCM should "play a more important role" than AGCOM (Subiotto & Snelders, 2002: 120). The Supreme Administrative Court affirmed the Tribunal's judgement. AGCOM argued that its competence is different from that of AGCM, and thus the two authorities' decisions should not be considered contradictory. Ultimately, though, the merger was approved.

A case in **Portugal** where the NRA overruled the NCA's decision is the 2009 case in which a local investment fund- Ongoing Strategy Investments- wanted to buy a 35% stake in media capital from

⁴³⁹ AGCM. (2000). *SEAT PAGINE GIALLE/CECCHI GORI COMMUNICATIONS. PRESS RELEASE. Investigation into Seat's acquisition of TMC*. Press Releases. <https://en.agcm.it/en/media/press-releases/2000/11/alias-1111> accessed on May 27, 2022.

the Spanish media group Prisa.⁴⁴⁰ Prisa is the world's leading Spanish and Portuguese-language media group, active in the creation and distribution of content in more than twenty countries. Media Capital is the largest communications and entertainment group in Portugal (Albornoz, et al., 2020) and owns Portugal's most-viewed television channel TVI. According to Article 194 of the Portuguese Securities Code (SC)⁴⁴¹, a bidder is required to issue a mandatory public takeover offer (PTO) if the target company is a publicly traded company – Which Prisa was since 2000 – and if the acquirer is attributed with more than 1/3 or 50% of the voting rights over the target company.⁴⁴² Therefore, the Ongoing Strategy Investments launched a mandatory public takeover bid. The merger posed no competition concerns, which was also the opinion of ANACOM, who were consulted. However, AdC objected to the bid, based on ERC's negative (and binding) decision. **ERC opposed the merger, considering that, through the merger, Ongoing would affect "diversity and pluralism in areas as relevant as television, the job market for journalists and other professionals in the media, television advertising and content production".**⁴⁴³ Additionally, the merger would have resulted in a "greater uniformity of content in the two private television channels".⁴⁴⁴ As a result, the bid could not be concluded.

Finally, the **Hungarian KESMA case** is proof that **NRAs' binding decisions alone are not enough to ensure that media pluralism is promoted**, or that media capture is completely avoided. In 2018, 476 media outlets were placed under the control of the Central European Press and Media Foundation (KESMA) (Ranaivoson et al., 2021). Declared to be of "national strategic importance" (a specific concept set out in the Hungarian Competition Act), it was made impossible for GVH to scrutinise the merger. It also indirectly prevented NMHH's proceedings in the case (Brogi et al., 2020). GVH had to dismiss the case, as this decision was found to conform with the Basic Law by the Hungarian Constitutional Court (AB. II/313/2019.).⁴⁴⁵ According to numerous commentators, the Hungarian government can reshape the media landscape using legal, regulatory and state-backed financial instruments (Bátorfy, 2019).

3.4.3 Lessons learnt

The objective of this case study has been to highlight the role of NRA decisions in M&A assessments. It thus focused on EU countries where a separate assessment system is in force. We contrasted countries in which NRA decisions are binding with others where they are not binding.

A first finding, which is related to the effectiveness of NRA's binding decisions, is that **there are not that many examples of NRA's binding decisions being opposed to the NCA decision**. There are, instead, concrete cases where M&A could not be concluded because of an opposing opinion that was issued by the NRA. More importantly, although it is very difficult to assess, the *possibility* of

⁴⁴⁰ Autoridade da Concorrência. (2010, March 30). *DECISÃO DE OPOSIÇÃO DA AUTORIDADE DA CONCORRÊNCIA. Processo Ccent. 41/2009 – Ongoing/ Vertix/ Media Capital.* https://www.concorrenca.pt/sites/default/files/processos/ccent/AdC-CCENT_2009_41-Decisao-VNC-final-net.pdf accessed on May 27, 2022.

⁴⁴¹ CMVM. (2019). Securities Code. https://www.cmvm.pt/en/Legislacao/National_legislation/Securities%20Code/Documents/CdVM.Ingl%C3%AAs.26.12.2019.2.pdf accessed on May 27, 2022.

⁴⁴² RRP Advogados. (2019). Portugal: Mergers & Acquisitions. Comparative Legal Guide (3rd edition). https://www.rrp.pt/applications/app_rrp/assets/images/The%20Legal%20500%20&%20The%20In-House%20Lawyer%20Comparative%20Legal%20Guide%20-%20Portugal%20-%20Mergers%20&%20Acquisitions%20-%203rd%20edition.pdf accessed on May 27, 2022.

⁴⁴³ *Ibid.* Para 35

⁴⁴⁴ *Ibid.* Para 35

⁴⁴⁵ See <https://rm.coe.int/hungarian-constitutional-court-decision-on-kesma-25-june-2020/16809ee78e> accessed on May 27, 2022.

an NRA action may also influence the transaction's outcome: perhaps because the NRA is likely to decide against a M&A case on media pluralism grounds, fewer M&A transactions are pursued by companies (cf. the chilling effect, mentioned in Case 1).

Second, these cases (see also Case 3) confirm our hypothesis from Chapter B1 of this Report, that **to provide a holistic picture**, in which both economic interests and public interests are protected, coordination and cooperation between authorities **is key** (e.g., information and data sharing, pooling resources, sharing experience and opinions), as these public interest elements (i.e., pluralism) are genuinely taken into consideration and are not merely a box ticking exercise. This is because of the NCA's and NRA's different duties and mandates, as pointed out in the literature, in particular, with NRA's ability to consider media pluralism. During the stakeholder consultation, a representative of the French NRA, ARCOM, emphasised and confirmed that this is indeed the case, and gave as an example a merger case that was currently being assessed in France by the NCA and NRA, and the different stances that were taken.

The stakeholder consultation emphasised a common theme, that of **a need for a harmonised legal definition, at the EU-level, of what is meant by a public interest test, and what is understood as, and considered to be, 'media pluralism'**. In addition to NCAs and NRAs having clearly defined roles, responsibilities, powers and jurisdictions, defining these two elements would address the frictions that currently exist between authorities and fragmented interpretations of these non-economic elements.

Unless NRAs have the power to issue binding opinions, the NCAs' assessments will be insufficient to achieve the socially beneficial objectives that are specified in media-specific regulation. An option would be to include such responsibilities in the NCAs' remit, which should "take into account the specific value of media pluralism in the enforcement of competition rules", as was proposed in a report by the High-Level Group on Media Freedom and Pluralism.⁴⁴⁶ It is important to point out that the Flemish NCA considers public-interest objectives in its assessment. Yet, as a result of the stakeholder consultation, a member of the Organisation for Economic Co-operation and Development (OECD) argued that NCAs are reluctant to take plurality into account, stating that a reason for this hesitancy was, firstly, its economic focus and, secondly, the unquantifiable metric for plurality. The contributor put forward an idea to requalify media plurality as a consumer choice element, which could probably be adopted by the NCA in merger assessments. A reply from a Professor in Information Law said that such an option is a slippery concept as a proxy for pluralism. However, an OECD representative concluded that the economic and non-economic principles are difficult to reconcile under a simple merger review conducted by the NCA, although, by blocking mergers, it is indirectly protecting pluralism. Ultimately, the question that is then left is how to make sure that the opinion of the authority that is best placed to assess media pluralism is duly taken into account.

Regarding the internal market perspective, two main points are worth mentioning. First, this case study illustrates the fragmentation of media merger measures, here, notably regarding the existence of separate assessment and of ministry override, and the forms that are taken in the cooperation between regulatory authorities. Second, the 2021 update of Article 22 of the EU Merger Regulation, while being mainly about regulatory efficiency, contributes to the harmonisation of merger regulation across the EU. This update implies that merging parties must also consider, in their standard

⁴⁴⁶ High Level Group on Media Freedom and Pluralism. (2013). *A free and pluralistic media to sustain European democracy*. https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/hlg/hlg_final_report.pdf accessed on May 27, 2022.

transaction documentation, the possibility of the transaction being referred to the European Commission (Modrall, 2021). That would spare them from having to notify the merger in several Member States (thus saving the related costs and uncertainties). However, the Proceedings before the European Commission has its problems too, in particular, the fact that it has less knowledge of national markets than the respective national authorities.

More generally, having to handle different merger measures is a potential deterrent to market entry through M&A transactions, and might be considered as a barrier to entry – thus, the preferred principle of a ‘one-stop shop’, that is available only through harmonised measures. However, creating a common legislation on media concentration, at the EU level, meets a variety of obstacles from its possible design to its implementation, notably, reshaping the roles of NCAs and NRAs and raising issues around the principle of subsidiarity with regard to the Member States competences. One particular concern of the 2021 update of Article 22 is that media pluralism is not taken into account in assessments when those assessments are made at EU level.

3.5 Case Study 3: The interplay of (media) concentration regulations and tools: the case of France

Chapter B1 of this Study has shown that the degree of complexity of the media regulatory frameworks varies across EU Member States. In particular, it does so with regard to online media, and to those markets and services that form part of today's wider media ecosystem. One of the main challenges in this ecosystem is the high degree of economic resources' concentration, and the impact this has on media pluralism. As such, measures that have the objective of keeping concentration in check play a fundamental role.

The mapping of the regulatory frameworks across the EU reveals that merger rules remain central. However, on the one hand, the level of attention dedicated to media plurality in merger assessment is not homogeneous across Member States, as Case Study 2 exemplifies, and it could be argued that this discrepancy may lead to fragmented realities within the internal market. On the other hand, to tackle positions of power in digital markets, other instruments are increasingly being used, instruments derive from various sources, including the 2019 DSM Directive (see, in this regard, Chapter B2). However, here too, the approach varies depending on the Member State, and there is no homogeneity in the responses.

France is an interesting case study through which to assess the interplay of (media) concentration rules and these new legal tools/initiatives. With regard to the first, the focus is on the various forms of inter-institutional cooperation that are provided by the fragmented French framework on merger assessments. With regard to the second, the focus is on the market studies and regulatory initiatives that have recently taken place in the country. This case study explores the extent to which the interplay among the various rules, measures and initiatives is capable of adequately protecting media pluralism, and tries to identify trends which could be useful for the shaping of the policy proposals that are to be presented in the B4 Chapter.

3.5.1 Inter-institutional cooperation

The French system of merger scrutiny provides for an advanced degree of inter-institutional cooperation. Law No. 86-1067 of 30th September, 1986, mandates that the NCA (ADLC) shall consult the Media NRA (Arcom) whenever it proceeds to a Phase 2 Investigation of a merger involving, directly or indirectly, press, radio or broadcasting entities, in order to better understand its possible impact on media plurality. The ADLC may also request the opinion of the Electronic Communications Authority (ARCEP), so as to clarify certain aspects of the functioning of the relevant

markets, which are subject to specific regulations; as well as to better organise merger control and regulatory procedures that are specific to these sectors. This is, for instance, what happened in the acquisition of sole control of TPS and Canalsatellite by Vivendi SA and the Canal Plus Group, where the ADLC requested the opinion of ARCEP (ARCEP, 2016) and of Arcom (CSA, 2017). A similar situation recently verified with regards to the M6 - TF1 merger, where ADLC has asked the opinion of both regulators (CSA, 2021). The case is still pending at the moment of writing, as ADLC decided, on 18 March 2022, to open a phase two probe, which can take up to 65 days but may also be extended if necessary).⁴⁴⁷

On the one hand, **this system of separate assessment is supposed to enhance the understanding of the ADLC, especially with regard to the impact that the merger is likely to have on media pluralism**, and it applies also to acquisitions relating to native digital media. On the other hand, though, the ADLC remains free not to follow the sector regulators' advice.

The ADLC's inter-institutional cooperation expands to the Ministry of the Economy. As explained in Chapter B1, the French Code of Commerce (Article L-430-7-I) grants to the Minister a role in mergers' assessment, which includes the possibility to veto the ADLC's decision for reasons of public interest. However, the rule describing such public interest considerations does not explicitly mention media plurality, but, rather, makes broad reference to reasons "related to industrial development", the competitiveness of the parties to the transaction in the context of global competition, or the development of protection of employment.

It is noted that inter-institutional cooperation is not a prerogative of proceedings that are led by the ADLC. In 2020, ARCEP and Arcom set up a joint division to draw on their complementary expertise so as to deepen the technical and economic analyses of digital markets. A first joint session of the ARCEP and Arcom plenary boards was held on 9th October, 2020, at which time, the joint digital division's work programme was also published (ARCEP & CSA, 2020). Amongst other things, the joint division is supposed to perform joint studies on the consumption of online services and broadcasting content, on the role design and functioning of the digital platforms' recommender algorithms, as well as on their economic impact, including the impact on advertising.

ARCEP can also ask ADLC for opinions with regard to the *ex-ante* regulation of the markets that fall within its competence. A recent case concerns the upcoming launch of the fifth round of the *ex ante* regulation of the upstream wholesale market for DTT broadcasting services (period 2022-2026. ADLC, 2021b). The ADLC's opinions are not binding but, once again, have as their main goal the widening of the knowledge and understanding of the regulator requiring it, in order to allow sounder and more evidence-based decisions.

Furthermore, starting from 1st January, 2022, CSA and Hadopi, i.e., the Authority for the diffusion of artworks and the protection of related rights online, merged into the Authority for the regulation of audiovisual and digital communication (Arcom). This move might yet be seen as another acknowledgment that the digitalisation of media markets has created the need for a unified approach to various regulatory issues, and a more structured and consistent cooperation amongst the relevant regulators.

⁴⁴⁷ <https://www.autoritedelaconurrence.fr/fr/communiqués-de-presse/tf1m6-lautorite-de-la-concurrence-ouvre-une-phase-dexamen-approfondi> accessed on May 27, 2022.

Finally, it is noted that, in France, inter-institutional cooperation with regard to the media regulatory framework includes the French Parliament. While reasoning about the reform of the audiovisual sector, the Committee on Cultural Affairs and Education of the French National Assembly (Assemblée nationale) has referred this matter to the ADLC. In February, 2019, the ADLC delivered its opinion recommending, amongst other things, the loosening of constraints on television channels, which are subject to much more restrictive rules than those that currently apply to internet stakeholders, and the reviewing of the 1986 law on anti-concentration measures in the sector (ADLC, 2019).

3.5.2 Other regulatory initiatives and market studies

Apart from inter-institutional cooperation mechanisms, the authorities in France have used a variety of non-media specific tools to approach the issues of concentration and market power in the media ecosystem, especially with regard to a variety of online markets that form part of it. The ADLC, in particular, seems to have been extremely active.

i. Online advertising

Online advertising markets are one of the emblematic sectors of the new digital economy, and they have a strong impact on the dynamics in traditional and online media markets⁴⁴⁸. To gain a better understanding of the issue, in 2016, the ADLC launched a sector inquiry into online advertising, which concluded in 2018 (ADCL, 2018a). The ADLC showed that online advertising has changed the markets' landscapes, with strong growth mainly being captured by Google and Facebook. In this context, traditional stakeholders, including the media, have been forced to operate under different conditions, to adapt rapidly to avoid being supplanted by new stakeholders, and they have seen their advertising revenues decrease, despite the overall online advertising sector growth. Following the investigation, the ADLC assessed a number of mergers and cases of the abuse of a dominant position in the sector. For the first category, we might mention, among other things, the acquisition of Aufeminin, a digital company that is active in website publishing and press magazines, by TF1, a group that is active in the free TV and pay TV sectors (ADLC, 2018b); and the acquisition of Concept Multimedia, which is primarily active in the property ads sectors online, and in print media, by the Axel Springer Group, which is active in the ads, print media and communication services sectors (ADLC, 2018c). For the second category, reference is made to the case initiated against Facebook following a complaint, filed in October, 2019, by Criteo, a French online advertising actor, regarding practises implemented by Facebook in the online advertising sector (ADLC, 2021a); and to the decision following referrals by News Corp Inc., the Le Figaro group and the Rossel La Voix group, by which decision ADLC sanctioned Google for abuse in the advertising server market for website and mobile application publishers (ADLC, 2021c).

It can be argued that these cases have at least an indirect, and often a direct, impact on the media ecosystem and on the concentration of economic resources in media markets. Nevertheless, the ADLC did not analyse them from a media plurality perspective, but, rather, they focused on a more traditional competition assessment. Moreover, the CSA was not involved in these proceedings, as none of them fell within the scope of the application of the rules that provide for a separate assessment of media mergers.

⁴⁴⁸ For a deeper analysis of the advertising trends in digital markets across the EU. See Chapter B2 of this Study.

ii. 'New' rights

Another instrument used by the ADLC to intervene in the media ecosystem is the Law of 24th July, 2019, on related rights, which transposes into French law part of the 2019 Directive on Copyright and Related Rights in the Digital Single Market (DSM Directive). The aim of the 2019 Law is to establish the conditions for balanced negotiations between publishers, news agencies and digital platforms, in order to redefine, in favour of publishers and news agencies, the sharing of value between these players.

As previously mentioned, (see Chapter B2), in November, 2019, several trade unions, representing press publishers and the Agence France-Presse, referred to the ADLC a case of the abuse of a dominant position and the abuse of economic dependency, by Google, in the press, online public communication services and digital advertising sectors, and filed a request for interim measures. In April, 2020, the ADLC granted the interim measures, which Google subsequently violated. For this reason, in July, 2021, the ADLC sanctioned the company with a fine of €500 million. At the time of writing, the case is still pending, although Google has signed agreements with a number of press publishers and offered commitments in response to the ADLC's competition concerns.⁴⁴⁹ In its assessment of the case, the ADLC put emphasis on the 'irreplaceable' nature of Google's services, which, according to the Authority, allowed the company to avoid the negotiations that are envisaged by the law (OECD, 2020).

3.5.3 Preliminary considerations/conclusions

From the mapping, above, a few trends can be observed, and a number of preliminary considerations can be put forward. The digitalisation of media markets and the appearance of new dynamics, business models and services therein, has led to **an increasingly shared regulatory space, where diverse regulators appear to have overlapping competences and pursue different priorities** (EPRA, 2021). The French response to this development seems to have gone in the direction of increasing opportunities for inter-institutional cooperation, which takes a variety of forms and involves ADLC, Arcom, ARCEP, the Ministry of the Economy, as well as, when needed, the French Parliament. In the vast majority of cases, the **cooperation** does not imply shared powers, or the possibility of vetoing actions or decisions; rather, it **takes the form of advising the leading actor**. As such, this cooperation, while enhancing the knowledge and understanding of the leading actor, does not imply any departure from the achievement of its main goals. **It therefore remains unclear whether this cooperation is adequate to protect media plurality, when this goal is not among those that the leading actor is supposed to achieve**. For instance, it can be questioned whether the involvement of Arcom in a competition proceeding is sufficient to adequately include media plurality considerations in the ADLC's assessment, and to do so in such a way that it could take priority over the stricter economic efficiency considerations that usually drive the competition assessment.

Another observable trend in France is that, **in the digital environment, there are regulatory gaps, grey regulatory zones, as well as new rights challenges, which are mainly dealt with by the competition authority, which appears to be by far the most proactive regulator in this area**. This attitude has pros and cons. Among the pros, we might list the fact that the ADLC has a broad

⁴⁴⁹ At the time of writing, the ADLC has subjected Google's commitments to a market test. In response to these competition concerns, Google offered to make various commitments. The *Autorité* is subjecting these proposed commitments to a market test. Interested third parties, publishers and news agencies, were invited to submit their comments before 31st January, 2022.

toolbox at its disposal. In addition, due to its horizontal competence, the ADLC seems to be better placed to intervene, not only in the traditional media markets, but also in the variety of digital markets that increasingly play a role in the evolving media ecosystem, such as online advertising. As for the cons, it might be argued that the main problem lies in the fact that media plurality is not one of the lenses that the ADLC is supposed to use when looking at markets' dynamics, nor is it of the goals it is supposed to achieve and protect through its interventions. In addition, *ex post* competition intervention tends to be *ad hoc*. The combination of these elements might suggest that **the optimal solution cannot rest within the traditional competition framework**. Incidentally, the European Institutions reached a similar conclusion when it comes to ensuring fairness and contestability in the digital markets, two goals that are complementary, but different from, competition, and that recur in a different regulatory framework, the Digital Markets Act, in order to achieve them.

As mentioned in the introduction, France is an interesting case-study for the topic under analysis. Nevertheless, it is noted that while experimentalism and a proactive approach by individual Member States is likely to deliver welcomed outcomes, in terms of mutual learning, when it comes to the internal market perspective, the wider the margin of manoeuvre for individual states that are absent in an EU framework, the more this process could lead to discrepancies within the internal market.

3.6 Case Study 4: Regulation of state advertising

State advertising serves the important public policy purpose of providing citizens with relevant and useful information⁴⁵⁰. In addition, it can constitute an important source of revenues for the media, and can contribute to their sustainability. Yet, as highlighted in Chapters B1 and B2 of this Study, in the absence of transparency and of objective and non-discriminatory criteria in the allocation of advertising expenditures, the public funding of advertising campaigns may be used to exert undue political influence on the media. As traditional sources of media funding dwindle, this risk is magnified.

The arbitrary use of institutional advertising funds may have a twofold impact on media pluralism in a country. Excessive discretion in the allocation of State advertising may have a direct effect on internal pluralism, through the ensuing distortion of media outlets' editorial lines in relation to content that is supportive of the government's views and may lead to an increased tendency towards self-censorship. In addition, it may have a less direct, but no less important, effect on external pluralism, through its implications for competitive dynamics amongst media players. When governments disproportionately allocate funds to specific market players who are willing to serve the government's own political agenda, they distort the level playing field. Not only do existing national media players find it difficult to compete on an equal footing but, also, new entrants in the market may be discouraged. This, in turn, is relevant beyond the issue of pluralism as, by raising barriers to entry into national markets, it offers a clear obstacle to the effective functioning of the EU internal market.

The purpose of this case study – building on the research carried out in Chapters B1 and B2 – is to review the rules and procedures that have been put in place by a subset of EU countries in order to prevent these undesirable potential implications of State advertising and to ensure its fair and transparent allocation. The comparative analysis will focus on the key aspects of the design of these rules and seeks to highlight the trade-offs that are involved by different design choices, and their likely impact on the intended objectives of transparency and fair allocation and, ultimately, on internal and external pluralism. The analysis is necessarily exploratory and holistic in nature. For the

⁴⁵⁰ For a definition of State advertising, see Chapters B1 and B2 of this Study.

purposes of this case study, in order to investigate the impact of different design choices, we will rely on the information on the effectiveness of State advertising-related measures that are recorded by public data sources, such as the Media Pluralism Monitor, the Rule of Law Report and press articles. In particular, any reference to the level of “risk” to pluralism in a country draws on the MPM. This approach allows us to balance the needs for the depth and comprehensiveness of the analysis, while exploiting to the maximum the extent to which information can be accessed within the (short) timeframe of this Study⁴⁵¹.

3.6.1 Analysis

Transparency requirements are the most diffused tool with which to increase public bodies’ accountability with regard to their advertising expenditures. Transparency rules in different Member States vary according to six key design features: (i) the legal basis of the transparency obligations; (ii) the forms of advertising that are subject to transparency obligations; (iii) the entities that are subject to transparency obligations; (iv) the thresholds triggering their application; (v) the subjects who can access the information that is made available, and the means of *ex post* control/verification of information; and (vi) the allocation criteria. In what follows, we will consider each of these features.

Transparency requirements’ underlying legal frameworks. Transparency requirements may be found either in non-media-specific legal rules, such as general public procurement law or public contract rules, or in media-specific laws and regulations. Since EU public procurement rules do not apply to public service contracts for “the acquisition, development, production or co-production of programme material intended for audiovisual media services or radio media services”⁴⁵², the relevant public procurement provisions are national. The legal basis *per se* does not seem to be decisive in determining the effectiveness of the transparency measures. Both types of rules include, as a minimum, the obligation to disclose the identity of the recipient of advertising funds and the amount granted. The comparative analysis shows that transparency in the presence of public procurement rules may be high (as is the case in Germany), or low (as is the case in Ireland and the Czech Republic). Similarly, media-specific frameworks may ensure a relatively high (e.g., in Greece), or low (e.g., in Austria) degree of transparency.

Forms of advertising that are subject to transparency obligations. Member States differ as to whether transparency obligations apply to advertising **on all media, or only on specific ones**, and as to whether they cover offline advertising only, or online as well (see Chapters B1 and B2 of this report for details). Given the crucial role of transparency, it is difficult to articulate the reasons for which obligations should be limited to specific media. In particular, in light of the growing weight of online advertising on total advertising spending, the extension of transparency obligations to any form of online State advertising seems clearly to involve more benefits than costs.

⁴⁵¹ Moving beyond effectiveness, as registered by secondary sources, towards inferring a direct (causal) relationship between media pluralism and any single policy measure (such as State-advertising measures) would require gathering a wide set of data, some of which appears to be unavailable. Indeed, reliable (causal) inferences on the impact of specific measures are made difficult by the fact that media pluralism is affected by a plurality of factors, and by the fact that Member States differ in many ways, and not only in terms of the combination of measures that are adopted, but also in terms of their socio-economic contexts and the historical evolution of their media industry.

⁴⁵² Art. 10(b), DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26th February, 2014, on public procurement and repealing Directive 2004/18/EC.

Entities that are subject to transparency obligations. Measures adopted in different Member States may target different entities, which may be public, private, or both. In the first case, transparency obligations may address: all the levels of the State administration, or only the central government; publicly owned companies or State bodies only; or, finally, only direct government expenditure or also expenditure through intermediaries. Given the risks of the misuse of State advertising, there is a strong case for the targeting of transparency measures to be as comprehensive as possible, although a wide scope of application cannot be associated *per se* with better results. The content of the measures, as defined by the different design choices discussed below, is clearly decisive.

In **Spain**, the lack of homogeneity in the transparency rules that are in force in different autonomous, and in different localities, is one of the reasons why transparency is deemed to be lacking⁴⁵³. While, in the Canary Islands, Catalonia and Valencia regions transparency obligations go beyond the mere indication of the amounts spent and the fundee⁴⁵⁴, other regions (such as Aragon and Galicia) do not foresee any transparency provision. By contrast, in **Germany**, the public procurement laws that are in force define as ‘contracting authorities’ any regional or local authorities together with their special funds⁴⁵⁵, thus ensuring that the extent of transparency is greater overall.

When State-owned enterprises are outside the scope of the application of transparency rules, the advertising expenditure of State-owned companies may be subject to misuse. For instance, they may be used to indirectly finance election campaigns by some political parties. This has been reported as being the case in **Romania**, for instance⁴⁵⁶. Recent events in **Greece**, exemplify the risk of the ineffectiveness of measures that only apply to direct public expenditure, and not to expenditure through intermediaries. As mentioned in Chapter B2 of this Study, emergency legislative measures that were enacted during the COVID-19 outbreak have created an opportunity for the non-transparent allocation of public funds⁴⁵⁷. The key driver of this undesirable outcome, in an otherwise transparent system, is the fact that these measures have allowed for the implementation of information campaigns to be assigned, by direct contracting, to an advertising company that is acting as an intermediary, and the latter were not subject to the obligation to upload information on the allocation of funds to the public transparency registry (*diavgeia*).

An alternative way to ensure transparency might be to place the obligation to share the relevant information on the fundee (a private party), rather than exclusively on the funder (the public body). This is part of the approach taken in **France**, where the 1993 Law Sapin I has introduced transparency obligations for funders, fundees and intermediaries, with the objective of reducing the scope for unfair behaviour on the part of the latter (who is frequently engaged in excessive billing, to the detriment of both funders and fundees) and, at the same time, to increase access to information on the remuneration of, and the relationships among, the different players involved in any type of

⁴⁵³ <https://www.theeconomyjournal.eu/texto-diario/mostrar/716986/transparencia-publicidad-institucional> accessed on May 27, 2022.

⁴⁵⁴ See, e.g., the easily accessible information that is available on the webpage of the Generalitat de Catalunya, at <https://governobert.gencat.cat/en/transparencia/Gestio-serveis-publics/memoria-sobre-publicitat-institucional/> accessed on May 27, 2022.

⁴⁵⁵ Section 99 of the German Act against Restraints on Competition (GWB).

⁴⁵⁶ <https://www.profit.ro/povesti-cu-profit/energie/dna-compania-de-stat-oil-terminal-a-sponsorizat-o-excursie-in-cuba-a-ioanei-basescu-cumparand-fictiv-publicitate-15574001> accessed on May 27, 2022.

⁴⁵⁷ Act of Legislative Content of 30th March, 2020: <https://www.taxheaven.gr/law/%CE%A0%CE%9D%CE%A030.03.2020/2020>; Joint Ministerial Decision 227/2020: <https://www.e-nomothesia.gr/kat-ygeia/astheneies/koine-upourgike-apophase-227-2020.html> accessed on May 27, 2022. See Law 4728/2020, adopted in September, 2020.

advertising campaign. Obligations on private parties are also imposed in the **Flemish community in Belgium**, where the Flemish Media Act⁴⁵⁸ contains financial reporting obligations for distributors for the providers of cable networks, and for providers of digital terrestrial broadcast networks. Similar obligations exist for the public service broadcaster and for regional TV stations (which are private organisations, but with a public service mission). It is noted, though, that the French and Flemish **measures complement obligations on fundees with obligations on funders**⁴⁵⁹. This ensures that a broader information set is made available, increasing the overall degree of transparency, and addressing the shortcomings that would be entailed by relying on transparency relating to fundees only. Indeed, when transparency obligations are placed on private parties only, the quality of the available information crucially depends on the truthfulness of private parties' reporting. Moreover, citizens and other interested parties are able to access only fragmented information, which can be difficult to aggregate.

In sum, the country cases that have been reviewed highlight the risks, in terms of the effectiveness of transparency measures with a limited subjective scope. The case for including entities at the regional and sub-regional level is particularly strong: the more localised the advertising expenditure, the greater its potential distortionary impact, due to the limited size of the local advertising market. While a broader definition entails a greater cost, in terms of the administrative burden, the benefits, in terms of the greater effectiveness of the relevant measures, clearly outweigh these costs.

Thresholds triggering application. One important design issue is whether specific thresholds for transparency requirements should be defined for media advertising (therefore being different from those that are generically used for other public contracts), and at what level they should be set.

In the **Czech Republic**, the Public Procurement Act requires that any State advertising contract with a value of over €2,000 (50,000 CZK) shall be published in the public registry. In **Austria**, the 2012 Media Transparency Law, amended in 2015, sets a threshold of €5,000 per quarter of a year for the disclosure of any order placing advertisements. In the **Netherlands**, a detailed yearly evaluation of State campaigns with a budget exceeding €150.000 is published⁴⁶⁰. There does not seem to be a clear association between the level at which the threshold is set and the effectiveness of the measures. In principle, lower thresholds should result in greater transparency, even if, again, at a cost in terms of a greater administrative burden. However, in spite of the low thresholds they have in place, the effectiveness of the measures in Austria and the Czech Republic is perceived as being limited. In Austria, in particular, a report by the Court of Audit⁴⁶¹ has found that at least one-third of public advertising contracts fall below the threshold, and they are therefore not publicly disclosed. Several stakeholders have raised concerns that this discrepancy between the official subsidies and the distributed State advertising amounts, creates the risk of the latter being used to exert political

⁴⁵⁸ https://www.vlaamseregulatormedia.be/sites/default/files/mediadecreet_27_maart_2009_22_versie_20210804.pdf.

⁴⁵⁹ In Belgium, the Flemish Open Governance Act of 26th March, 2004, (Belgisch Staatsblad/Moniteur belge, 1st July, 2004) disciplines State communication to the public, including about advertising. The information is then aggregated by the Department of Communication of the DAR (Diensten voor het Algemeen Regeringsbeleid). In France, the public purchase of advertising is elaborated by an inter-ministerial team, coordinated by the Government Information Service (S ervice d'Information du Gouvernement - <https://www.gouvernement.fr/textes-reglementaires-du-sig> accessed on May 27, 2022). See, also, Chapters B1 and B2 of this Study.

⁴⁶⁰ <https://www.rijksoverheid.nl/onderwerpen/campagnes/>

⁴⁶¹ Court of Audit (2015), Sonderaufgaben des RH nach den Medientransparenzgesetzen [please check], available at: https://www.rechnungshof.gv.at/rh/home/home_1/Sonderaufgaben_nach_Medientransparenzgesetz.pdf accessed on May 27, 2022.

influence.⁴⁶² In the Netherlands, by contrast, the relatively high threshold has not been reported to have prevented the accurate disclosure of State advertising contracts.

Overall, the cases reviewed, in addition to highlighting great heterogeneity across Member States, indicate the risks of the ineffectiveness of thresholds that are not coupled with anti-circumvention measures, i.e., with rules that prevent the artificial fragmentation of above threshold contracts into a number of below threshold ones, with the only aim being to avoid transparency requirements.

Transparency for whom and ex post control/verification of information. An important element of transparency obligations is to ascertain who can effectively access the information. Indeed, transparency may be due to the relevant authorities, or to the general public. Communication to the NRA is not *per se* a guarantee of the effectiveness of transparency measures. This occurs in **Italy** and **Portugal**, where transparency is deemed to be high, but also in **Croatia**, where transparency is deemed to be suboptimal. Lack of public access to information can be considered an important limit to the effectiveness of transparency rules. Moreover, it is reasonable to argue that transparency rules that benefit all citizens, and that make access to information effortless for anyone, contribute to creating trust and to enhancing accountability, which are essential elements not only for a democratic system, but also to incentivise media companies to enter the market.

Apart from having access to it, citizens, journalists, and other stakeholders should be able to meaningfully aggregate the available information. Developments in this direction have been recently observed in **Lithuania**, where the Ministry of Culture, in 2021, planned the setup of a publicly available Information System of Producers and Disseminators of Public Information (“VIRISIS”), which will synchronise the information on media ownership and advertising income obtained from the public bodies with information that is drawn from other State information systems and registers. It is certainly too early to tell if the new Lithuanian information system will be able to remedy the perceived lack of transparency that has so far characterised the country’s system of State advertising⁴⁶³, but the effort at the coordination of different sources of relevant information may be considered to be a positive feature.

There are, however, limits to the extent to which the availability of information on the use of public funds is *per se* capable of holding governments accountable for their choices. Some countries have added to the transparency rules systems of *ex post* oversight. For instance, in **Austria** and the **Czech Republic** the regulatory frameworks provide for an *ex-post* control by the Court of Audit. However, the fact that the levels of transparency and accountability of State advertising for these countries is reported to be relatively low in the MPM, suggests that this feature is not decisive for effectiveness.

Transparency is effective if citizens perceive the issue to be sufficiently salient to trigger some sort of public opinion reaction, and if this reaction is, in turn, perceived to be salient by the government. To effectively curb any scope for arbitrariness in the use of advertising expenditure, independently of these favourable local conditions, **tighter legal provisions are necessary, and, particularly, the clear and transparent ex ante definition of allocation criteria for public funds.**

Allocation criteria. One common criterion is the geographical area of activity of the recipients of public funds (e.g., a percentage of the total State advertising expenditure is destined for local media outlets). The fact that the same percentage allocation gives rise to very different perceived results in

⁴⁶² 2021 Rule of Law Report; Press Club Concordia, Media Policy Positions, Stellungnahmen & Positionen, <https://concordia.at/stellungnahmen-und-positionen/> accessed on May 27, 2022.

⁴⁶³ See the various MPM Country Reports for Lithuania and the ROLR 2021.

different countries (e.g., the 15% rule that is in place in both “high risk” **Croatia** and “low risk” **Italy**) suggests that a “fair allocation” of advertising funds cannot be based only on rules about geographical distribution, but needs to include clearer indications, in terms of non-discrimination, to be applied in each area.

Examples of the *ex ante* criteria that provide objective parameters for the detection and control of discriminatory choices are the rules imposed in Greece and the Netherlands, both of which are identified as being “low risk” by the MPM sub indicator on State advertising. In **Greece**, in addition to the geographical criterion (with a reserve for regional media of 30% of the overall expenditure), Presidential Decree 261/1997 (Arts. 6 and 7) foresees market-based criteria that are meant to be compliant with the principles of non-discrimination and value-for-money: the cost of the ad, the overall outlet circulation/audience share, and its popularity within the target audience. In the **Netherlands**, the law prescribes that government communication should select a mixture of media instruments for optimal reach to different targets. These rules emphasise the objective elements that are important in any advertising campaign (public or private), such as the profile of the target population that is to be reached, and the cost of the ads, which can be transparently communicated to the public and can be subjected to external oversight. This provides **a clear and (more) enforceable notion of non-discrimination**: the allocation of public funds is non-discriminatory when it is based on the objective criteria that are transparently indicated in the law. Conversely, it may be considered discriminatory at any time at which different criteria are used. The reference to the reasonable costs of the ads also helps to prevent the potential distortions that are associated with inflated estimations of the advertising costs.

Similar outcomes can be achieved also in the absence of media-specific rules, through effective public procurement regulations. For instance, **German** procurement law, by specifying the fundamental principles for tender procedures of equal treatment, transparency and competition, and by requiring independence and impartiality on the part of the contracting authority, satisfies the same needs, in terms of objectivity and non-discrimination.

All in all, to define *ex ante* clear, transparent, objective, non-discriminatory and market-based criteria for the allocation of funds seems to provide adequate guarantees against the possibility for the (mis)use of this instrument. In particular, the market-based nature of the criteria that have been chosen in Greece and the Netherlands appears to balance the need to fulfil the communication purpose of State advertising with the need to prevent discriminations in the allocation of public funds well.

3.6.2 Preliminary considerations

As a general remark, it is noted that **the absence of a harmonised definition of the key aspects of the transparency and fairness rules on State advertising contributes to a fragmented environment across the EU**. As a consequence, the media players that are active in each national market are confronted with different rules and market realities, including in terms of the barriers to entry, and the competitive dynamics. This fragmentation is likely to create friction with the EU internal market’s objective, and, equally important, it is likely to result in different essential services being delivered to citizens in each Member State, with regard to both the public policy purposes of State advertising, and its impact on media sustainability.

The risk of potential distortions is higher, the higher the ratio of State advertising spending to the overall size of the country’s advertising market. As an example, compare **Austria**, where

media-specific transparency measures are in place, but the perceived risk of distortions is high, with **Denmark**, where risk is perceived to be low, in spite of the absence of specific legislation on State advertising and a very high degree of concentration in some media markets (audiovisual) - features that are normally identified as magnifying the risks of distortions. In the first country, the State advertising budget is very large, relative to the size of the direct public funding of media. In Denmark, on the contrary, State advertising is quite limited and is perceived as being non-problematic.

Transparency obligations should apply to any form of advertising purchased through public funds: direct (made at any level of State administration and by State-owned enterprises), and indirect (through an intermediary), and through any media. It could be argued that **lower thresholds for the application of the relevant rules should be preferred**, given that transparency is a general principle of public administration, and that their benefits clearly outweigh the costs, in terms of the increased administrative burden. In addition, it could be argued that, due to the impact that State advertising can have on media pluralism and on competition dynamics in the media markets, to set specific thresholds for this kind of public contracts should be preferred to adopting those that are set by non-media specific frameworks, such as general public contract law. Finally, there should be **anti-circumvention guarantees** that limit the possibility of withdrawing significant fractions of State advertising from public scrutiny through the artificial fragmentation of the threshold contracts, above, into a number of those that fall below the threshold.

The lack of a harmonised definition of the key aspects of transparency and fairness rules on State advertising also has a more direct impact on Member States' degree of internal pluralism. A clarification of the legitimate content of State advertising, and the contracts for its procurement, are absent, and may unduly incorporate requests that raise concerns in relation to editorial autonomy. The messages of political parties and publicity to administrative staff, for instance, should be explicitly ruled out from the legitimate content of institutional campaigns. Furthermore, narrow definitions of the funding entities that are to be subjected to transparency obligations increase the risk of public funds escaping the relevant regulatory framework and being used in an opaque way, or for illegitimate purposes.

The harmonised adoption of transparency measures, along with market-based criteria for the allocation of state advertising, may go a long way preventing distortions. Indeed, transparency about the funder, the budget and the fundee, although a needed first step, might not be, *per se*, a guarantee against distortions. On the contrary, **to ensure the allocation of public advertising funds that is based on a "value for money" market logic** (selection of the media outlet on the basis of price and audience reach considerations), **and to impose transparency on these criteria, allows the pursuit of the primary objective of State advertising**, which is to reach the widest possible section of the audience that is the target of the advertising campaign, but without distorting competition.

One implication of selecting a market-based allocation criterion needs particular attention. To adequately meet the specific information needs of citizens, resources will inevitably tend to be directed towards those media that have the largest audiences for any given target of an advertising campaign. This creates a trade-off: pursuing the maximum impact of State advertising on the relevant audience comes at the cost of creating a distribution of resources that is suboptimal, from the point of view of ensuring media sustainability and pluralism. Adopting market-based criteria for the allocation of advertising thus indirectly clarifies both that State advertising should not be used in such a way that it unfairly distorts competition, and that media financing for pluralism purposes should occur through a separate budget allocation.

In other words, while State advertising can contribute to the sustainability of the media, the latter cannot be considered its main goal. The most that can be expected from measures on State advertising, in terms of effects on pluralism and market concentration, is the avoidance of any non-necessary distortion of the advertising and media markets. From this, it follows that, to fully ensure a level playing field in the media market and pursue objectives of external pluralism, a sufficient level of coordination is needed between the State policies on spending for advertising and those for media sustainability and pluralism. In particular, coordination may possibly entail that the amount of direct funding granted to any media outlet is set by taking into account the amounts of public funds that the media have received in the previous year, in the form of State advertising expenditure.

As a final note, clear mechanisms for the enforcement of the rules on State advertising are important. The case of **Spain**, amongst, illustrates how relatively clear and detailed rules on annual state expenditure may end up as being hardly effective, given the lack of the enforcement of the transparency measures.

3.7 Case Study 5: PSM funding and remit, and the impact on pluralism: the German case

Public service media (PSM) in the EU are at the centre of attention following debates on PSM's independence from governments and regulators, how they struggle to reconnect with increasingly fragmented and complex societies, and how they are repositioning themselves amidst a fully digital media environment (Donders, 2021; d'Arma et al, 2021). Renewals of governance arrangements similarly, bring about discussions on the appropriateness of PSM funding and scope of their public remit, as well as how those may affect markets and competition. Main sources of PSM funding include public income in the form of audience contributions (licence or household fee) or public transfers (direct transfers and subsidies from regional or state budget), and commercial income from the sale of advertising, licensing and other commercial activities (EAO, 2022). Licence fee funding regimes rely on households and individuals paying a fee to finance the work of PSM, which makes this type of public funding independent from the state budget. In Europe, most PSM rely on budget transfers and licence fee as main sources of income, complemented with commercial income, mainly from advertising, which has been in decline since 2015 (EBU, 2020). According to several studies, licence fee-based funding is less risky in terms of control and influence by a government or advertisers on the broadcasters (Picard 2006), and it ensures more stability and predictability for PSM revenues (Ranaivoson, 2015), given that licence fees are arranged for a fixed period of time and are not subject to government cut-backs, which, in return, could lead to more media pluralism. In contrast, state subsidies are arguably one of the most discretionary of the forms of public funding for the media (Dragomir, 2017).

However, in several countries, current discussions hint at a replacement, or at least the questioning of licence fees, by other public forms of funding for the PSM, the latest example being Denmark, where there is currently a transition from a licence fee to a State subsidy. During the stakeholder consultation, a representative of an association that represents the interests of European PSM, reflected on the possibility for State interference in PSM through direct funding and subsidies. The representative highlighted that the association representing the European PSM **is in favour of PSM funding models that are as independent as possible from State interference**. Furthermore, the representative shared that the association holds a view that PSM funding **should be stable over time, so that public broadcasting organisations can fulfil their remit**. The stakeholding association concerned is **in favour of a licence fee funding model, which would guarantee that PSM budgets are not dependent on political decisions that are made on a yearly basis**, and acknowledges that there are different models to achieve this.

A key takeaway from the interaction with the stakeholder association is that **it is of paramount importance** to maintain the principle that **PSM funding cannot be put into question with the change of government**. The very recent example from the UK, i.e., the “freezing” of the BBC licence fee⁴⁶⁴ traces **waning political support for one of Europe’s most advanced PSM systems**, and this was pinpointed by the stakeholder representative as an area of concern. The freezing is effectively closing off the main revenue source for the broadcasting corporation. Nadine Dorries (Secretary of State for Digital, Culture, Media and Sport) indicated that the government is searching for a new funding model for the BBC after the current licence fee funding deal expires in 2027. In contrast to the UK, Germany, whose post-war public broadcasting system was inspired by the BBC model and, to some extent, is still comparable today, has recently revised the level of the licence fee from €17,50 to €18,36 per month. The public service media in Germany, in light of recent developments, have not only remained stable amid market challenges, but have also succeeded in securing their financial future, demonstrating that PSM can deliver value and rally support.

In the EU, PSM’s remit, rights and obligations are outlined in national media/broadcastings Acts, and are further specified in charters or government agreements. At the European level, the Treaty of Amsterdam acknowledges the importance and legitimacy of public broadcasters in ensuring plurality in the European market (Amsterdam Protocol, 1997), Further rules with regard to the PSM are included in Broadcasting Communications, part of the European State Aid Policy (Donders, 2012). PSM are present in all Member States. The 2009 Broadcasting Communication stipulates that governments should ensure that State funds do not exceed what is necessary in order to fulfil the public remit (in other words: to avoid over-compensation or cross-subsidising commercial activities), and that supervising bodies maintain effective independence from PSM management, while maintaining the **powers and the necessary capacity and resources to carry out supervision regularly and to enforce appropriate remedies**, when necessary. Member States have usually entrusted one, or more, bodies, with the task of verifying that the measures, requirements, budget allocations and, in certain cases, indicators and target values (e.g., structural measures to reduce the cost basis in the medium term), are complied with by the PSM. While being present in all Member States, every Member State comes with a specific media market, including a different position and history for its PSM. The German situation is particularly interesting and special, as we analyse in this case study.

3.7.1 PSM’s remits in Germany

Germany has a **dual broadcasting system**, which includes public service media (in particular, ARD and ZDF, see after) and commercial broadcasting services (Holtz-Bacha, 2003; Schultz et. al., 2008). Private broadcasters, such as RTL, Sat. 1, Klassik Radio, or Energy, primarily finance themselves through advertising and other commercial revenues.

PSM in Germany draw on a solid financial foundation and high public funding per capita compared to other PSM in the EU (Saurwein et al., 2019). In fact, ARD is the highest funded public broadcaster in the world, with a total income exceeding €6500.000 million, it is the second largest media group in Europe (after Sky) (EAO, 2022). Public broadcasting was re-introduced in Germany according to the country’s lines of political organisation following WWII, and was later extended to all federal states following German reunification (Woldt, 2010). As the policymaking, supervision and monitoring of broadcasting is a federal state matter, it has resulted in a **complex landscape of regulatory instruments and entities that are underpinned by the interstate cooperation** that shapes the remit, governance and funding of the public service media.

⁴⁶⁴ In January, 2022, the UK government announced that the licence fee will be frozen for the next two years and will then be index-linked to inflation for the next four.

The Basic Law for the Federal Republic of Germany of 1949, Articles 30 and 70, recognises the cultural sovereignty of federal states (the *Länder*) and allocates the primary responsibility for legislation and administration in the field of culture and media to the federal states. This includes matters relating to education, language, arts, and broadcasting (radio and television). In line with the Basic Law, regulation and supervision of public broadcasting is a federal state matter.

Public broadcasting is governed through an extensive regulatory structure. At the national level, Article 5 of the Basic Law (1949) establishes freedom of speech, press and broadcasting, as well as the non-interference of the State in broadcasting. However, the principal legal foundation for broadcasting lies in the broadcasting laws of each of the sixteen German federal states, which join together in inter-state treaties, and thereby establish a quasi-national structure of broadcasting regulation. The Interstate Media Treaty (MStV) of 14th-28th April, 2020, replaced the Interstate Broadcasting Treaty (RStV) in November, 2020. The MStV also transposes into German legislation the AVMSD 2010/13/EU (as amended by Directive 2018/1808/EU). The Federal Constitutional Court's rulings contribute to the interpretation of regulations and their enforcement (Holtz-Bacha, 2017) (see the mapping of relevant legislation in the Annexe).

Broadcasting governance in Germany is markedly characterised by **concurrent regulatory competences between the regional states and the federal government**. A similar approach can also be traced within the existing broadcasting monitoring and oversight framework. There are 14 *Länder* NRAs in Germany (*Landesmedienanstalten*), which together form the "Medienanstalten", an umbrella organisation that coordinates their cooperation in four thematic commissions that are focused on the licensing, supervision and monitoring of the compliance of commercial broadcasters with regard to rules on advertising, youth protection and concentration. The NRAs of each federal state, and their cooperation within the "Medienanstalten", are central to the uniform regulation of commercial broadcasters. The PSM, on the other hand, are primarily overseen, and held accountable by broadcaster-specific public supervisory bodies (The TV council; the Broadcasting council; the Administrative Council).

3.7.2 Revised licence fee

Public broadcasting in Germany is dominantly financed through a licence fee (*Rundfunkbeitrag*). ZDF can acquire additional income through advertising and sponsorship⁴⁶⁵. The licence fee is determined through a process of consultation between German PSM and the independent Commission for the Determination of the Financial Requirements of the Broadcasters (KEF)⁴⁶⁶. Every four years, PSM organisations put together a plan of expenditure (i.e., a bid) and submit it to the KEF. The KEF evaluates the proposal, considers potential savings, and assesses the PSM's actual needs. The outcome of the consultative process is a statement, issued by the KEF, that contains a recommendation for the amount of the licence fee. The recommendation is then forwarded to the regional parliaments, which further decide. The KEF acts as one of many buffers

⁴⁶⁵ Special advertising regulations apply, and ads are restricted to a maximum of twenty minutes per day, and can only run from Monday to Saturday, and no later than 8 pm. In comparison, commercial broadcasters can show advertisements for up to 4 hours per day

⁴⁶⁶ The independence of the Commission is assured through its composition. The Commission consists of 16 independent experts. Their independence is underpinned through their expertise within their respective fields. For example, some of the current members are professionals in prominent positions from major auditing institutions, such as PwC, Ernst & Young. In addition, there are members who come from national/regional auditor courts (public bodies that verify the competences and qualifications of auditors), and also members who come from academia. Each regional state nominates one member; the appointments are made by the Head of the federal state governments; reappointment is allowed. The Commission then elects the Commission Chair and their deputies from among its members.

between the broadcasters and the government. The fee is collected by the *Beitragservice* on behalf of ARD, ZDF und Deutschlandradio.

The last major reform of the licence fee system was enacted in 2013. Until the end of 2012, the licence fee was linked to the possession of a working radio, television device or Internet capable computer. The ability to receive public service media was sufficient, on its own, to trigger the obligation. **After 2013, the licence fee was transformed into a household fee.**⁴⁶⁷ The licence fee for businesses is progressively determined according to the number of employees.

The latest increase in the fee follows the failed attempt of the *Land* of Saxony-Anhalt to block the increase. The bid to block the upward revision was overruled by the Federal Constitutional Court of Germany, which plays a crucial role in interpreting and shaping Germany's media policy.

3.7.3 ZDF

The ZDF (Zweites Deutsches Fernsehen) was launched in 1961 as a nationwide broadcaster. **The work of ZDF is overseen by the ZDF Television Council** (der ZDF-Fernsehrat), which is a form of supervisory body that is common in public service media oversight in Germany. The Television Council sets out ZDF's programme guidelines and monitors its compliance with the said programme guidelines, and with the public remit principles that are set out in the MStV. By doing so, the ZDF Television Council draws up documents (the Statute, guidelines, codices, etc.) that **shape the ZDF public remit**. The ZDF Television Council elects 8 of the 12 members of the ZDF Administrative Council, who may not belong to any government or legislative body.

The ZDF Television Council represents the interests of the general public vis-à-vis ZDF. The Television Council's central task is to oversee the programme and online offerings, to monitor ZDF programming, and to advise the Director-General on programming issues. The Council approves the budget adopted by the Board of Directors, as well as the annual financial statements. The Broadcasting Council also elects the Director-General, by secret ballot, for a term of five years.

The ZDF Television Council is not an expert body, **its members are delegated by different social groups**. It is composed of 60 members from various social groups which represent the interests of the general public. It meets in public. Both the agenda and the summaries of the main results of the meetings are published on the Internet. The Television Council is an advocate for viewers, and it can address programme complaints directly. In 2014, the Federal Constitutional Court called on the States to revise the rules determining the composition of television/broadcasting councils, in essence, demanding that "State-affiliated" members must be limited to a maximum of one-third of the members of the television/broadcasting councils.

The Broadcasting Council organises its work in the form of committees. These committees are assigned to specific areas of expertise, and they prepare the plenum's deliberations, which provide in-depth advice on programmes and telemedia services. Both the plenum and the respective committees generally meet four times a year. Unlike the plenary sessions, the committee meetings are not open to the public, but the agendas and summaries of the main results of the committee meetings are also published on the Television Council's website.

The **ZDF Board of Directors** (*ZDF-Verwaltungsrat*) oversees the activities of the Director General (*Intendant*) and monitors ZDF's finances and investments by adopting the budget that is submitted by the Director-General, together with the annual financial statements, and submits both to the Broadcasting Council (Fernsehrat) for approval. The Board of Directors is composed of 12 members,

⁴⁶⁷ We label it as a licence fee, or a fee, in the remaining Case Study, as it keeps the general features of a licence fee. The EBU actually classifies Germany among those countries that have a licence fee, although it acknowledges the fee's transformation into a household charge (EBU, 2020).

who are elected for a five-year term. ZDF is headed by the Director General, with the support of four managing directors (Administrative Director and Deputy Director General; Editor-in-Chief, Programme Director; Production Director). The Director General, together with the four managing directors, make up the ZDF Management. The ZDF Management is also aided by a General Counsel/Legal Adviser (*Justitiar*).

The Board of Directors pre-approves contracts that are concluded by the Director General, i.e., those worth more than €250,000 and collective bargaining agreements. The Board also approves the conclusion of contracts with non-tariff employees. Contracts for the production or delivery of programmes are not subject to approval by the Board. The Board of Directors co-appoints the Director of Programming, the Editor-in-Chief and the Director of Administration, in agreement with, and at the suggestion of, the Director General. It also appoints ZDF's data protection officer, who monitors compliance with data protection regulations independently of the company.

The Board of Directors usually meets five times a year. It organises its work in committees that prepare resolutions. These are the Finance Committee, the Investment Committee and the Human Resources Committee. The Board of Directors reports to the Television Council (ZDF-Fernsehrat).

3.7.4 ARD

The sovereignty of federal states in matters relating to media has prompted not only coordinated law-making, but also the formation of individual PSMs in the federal states. Founded in 1950, the ARD (Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten; Association of Public Broadcasting Corporations in the Federal Republic of Germany) is an organisation made up of nine of Germany's regional public-service broadcasters (plus Deutsche Welle) and operates as a joint national television network that serves the 16 federal states of Germany (e.g., BR, HR, MDR, NDR, Radio Bremen, RBB, SR, SWR, WDR). These regional PSMs serve the federal states (Länder), or groups of federal states, based on interstate treaties. The **PSM of individual federal states are joined together in a network that forms ARD**. ARD thus makes up a federal television media network. The best-known output of the cooperation of the consortium is the nationwide television programme, Das Erste.

According to German broadcasting laws, the regional PSMs forming ARD are public service institutions with independent funding (the household fee) and oversight (broadcasting councils), which contribute to the production of programming that is independent of political and commercial interests. As is the case with ZDF, the regional PSMs that are joined together in ARD, reflect, through their respective broadcasting councils, the diverse parts of society at large.

In addition to the Interstate Media Treaty (MStV) and the Basic Law, the ARD Statute and the ARD Interstate Treaty shape **ARD's public remit**. ARD's remit is broadly defined in the founding articles of the nine broadcasting corporations and, at the national level, in Section 3 (Special Provisions for Public Service broadcasting) of the MStV, which also determines the number of channels. Regional PSMs contribute to the media offering of ARD. Hence, ARD maintains regional as well as national programming, the most prominent being Channel 1 (Das Erste).

ARD's main governing body is its General Assembly (ARD Hauptversammlung). It consists of the ARD Directors General and the ARD constituent broadcasters' Chairmen of the Broadcasting Councils. The General Assembly entrusts one of the Broadcasting Councils, and the Director-General of its constituent PSM, to manage and represent ARD during a one-year mandate, in the form of a rotating leadership. The Director-General, elected from one of the constituent PSMs, thus serves as the Chair of ARD (*ARD-Vorsitz*). The ARD Chair manages the business of the working group, by holding and chairing general meetings (Hauptversammlung) and working sessions of the

General Directors of the ARD members (Arbeitssitzungen der Intendanten der Mitglieder). The ARD Chairmanship is supported in its tasks by the ARD General Secretariat, which is based in Berlin.

Plans are underway to reform the ARD and ZDF, and these plans are intended to make broadcasting in Germany more flexible (Rlp, 2021). If successful, ARD and ZDF could be given the opportunity to decide whether they will "completely or partially discontinue special interest channels or transfer their content to offers on the Internet with similar content." The future of special interest channels becomes more uncertain.

3.7.5 Conclusion and lessons learnt

In this section, we have described the rather complex German PSM system, which is composed of several regional PSM, describing how they are funded, how their remit is defined and supervised. Regarding governance, our analysis allows us to compare, in more detail, ZDF and ARD. In both cases, there is a **high level of self-governance, with no accountability to (local) government(s)**: decisions are made within the organisation, notably, in regard to how executives are elected, the way they work in commissioning, etc. **On the other hand, public accountability is crucial.** The governing bodies of ARD and ZDF consist of representatives of political parties (up to one third of the total membership), worker's unions, trade and industry representatives, as well as religious institutions, universities, cultural and non-governmental organisations (NGOs), in order to ensure that broadcasters are accountable to society and enjoy political independence.

The latter reflects the fact that, for both PSMs, diversity is related to public accountability. In other words, the **PSM are accountable for a diverse representation of society.** To ensure distance from the State, and to limit its possibility to influence the PSM, many steps are taken that involve multiple actors in the **decision making on PSM programming** (broadcasting councils and administrative councils), in **drafting and interpreting legislation** (the public and other stakeholders, regional parliaments and the Federal Constitutional Court), and **PSM financing and the level of the household fee**⁴⁶⁸ (KEF, proposing evidence-based suggestions, the regional parliaments having the power to veto KEF's recommendation, and the PSM themselves), thus effectively creating several barriers between the PSM and the State. Notably, the Federal Court has limited the number of government representatives in these bodies (to a maximum of one third)⁴⁶⁹. The discussions in terms of pluralism revolve, for both of the PSM, around their potential dominance, the unfair advantage that they would have over the private media, due to the public funding that they receive. This has, however, been resolved, after private companies initiated a case before the Commission, claiming that public funding was inadequate to the needs of the PSM, thus leading to overcompensation, the cross-subsidisation of commercial activities, and negative effects on competition in the area of new media services and the acquisition of sports' rights. The outcome of the proceedings before the Commission included a more precise definition of the public service mission, and adequate safeguards against overcompensation and cross-subsidisation (see IP/05/250; MEMO/06/273; MEMO/06/494; IP/07/543⁴⁷⁰).

⁴⁶⁸ The licence fee system has already been broadly argued as not going against the internal market (see, notably, Donders & Pauwels, 2008). This is especially the case in Germany, as a result of the household fee's independence from State funds.

⁴⁶⁹ Judgement of March 25th, 2014, regarding the ZDF Interstate Treaty. Only one-third of the supervisory bodies, the ZDF Television Council and the ZDF Administrative Council, may consist of State and State-affiliated members. The judgement refers to ZDF only, but the principle applies to other public broadcasters too. See more at: <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2014/bvg14-026.html> accessed on May 27, 2022.

⁴⁷⁰ IP/05/250 https://ec.europa.eu/commission/presscorner/detail/en/IP_05_250 accessed on May 27, 2022.

The important takeaway is that the German market is characterised by its capacity to **accommodate more than one PSM**, even at the federal level. Far from a one-size-fits-all model, it is one that accommodates plurality and the diversity of structures among the PSM too. There are actually major differences between both PSM:

- ZDF is a legal entity, while ARD is a consortium or a network, which is made up of different organisations.
- The top governing body is the Broadcasting Council (for ZDF), and a General Assembly (for ARD), with a rotating leadership.

3.8 Case Study 6: Approaches to ensuring the transparency of media ownership: the Italian Register of Communication Operators

The effective implementation of media ownership regulation may play an important role in respect of media pluralism, as the lack of ownership transparency enables uncontrolled media concentration and affects the audience's ability to assess the value of the information coming from a particular source, thus affecting media pluralism (CoE, 2018). Moreover, the transparency of media ownership empowers citizens to assess the information that is provided in a more conscious and critical way (Madelin, 2015), thus playing an important democratic function in providing citizens with relevant, accurate and timely information about politics and current affairs (Craufurd Smith et al., 2021).

The disclosure of corporate information is assumed to be beneficial to commercial transactions, as access to reliable information on companies may be used by different groups, such as banks, consumers, suppliers and investors, who are contemplating buying shares. This is the reason that the transparency of corporate information has become a central part of EU company law (Engsig Sørensen, 2019).⁴⁷¹ Likewise, in other areas of EU law, the disclosure of corporate information is crucial. In State Aid Law, transparency aims, amongst other things, at giving potential beneficiaries and competitors a chance to check which awards of aid have been granted to their competitors (Lillerud, 2019). In consumer law, transparency ensures that the consumer has the opportunity to become aware of the terms of the contract before its conclusion (Momberg, 2016).⁴⁷² In this case, transparency not only benefits the consumer, but also businesses, as it diminishes the risk of unfair competition caused by deceptive business (Iamiceli, 2019).⁴⁷³ Transparency therefore also plays a key role in the EU internal media market, as has been recognised in pieces of EU legislation, for instance, in Recital 30 of the E-commerce Directive (Directive 2000/31/EC). When it comes to the media sector, the revised AVMSD (Directive 2010/13/EU), in its Recital 10, refers to transparency as a means through which to achieve low barriers to entry in the audiovisual media services market.

A holistic assessment of transparency is comprehensive of two distinct functions: upwards transparency and downwards transparency. The first corresponds to the legal and administrative functions of transparency, whereas the second function corresponds to the civic functions of

MEMO/06/273 https://ec.europa.eu/commission/presscorner/detail/en/MEMO_06_273 accessed on May 27, 2022. MEMO/06/494 https://ec.europa.eu/commission/presscorner/detail/en/MEMO_06_494 accessed on May 27, 2022. IP/07/543 https://ec.europa.eu/commission/presscorner/detail/en/IP_07_543 accessed on May 27, 2022.

⁴⁷¹ Engsig Sørensen, K. (2019). Access to Information in Company Registers. In V. Tountopoulos & R. Veil (Eds.). *Transparency of Stock Corporations in Europe: Rationales, Limitations and Perspectives* (pp. 7–28). Oxford: Hart Publishing. Retrieved on May 27, 2022 from <http://dx.doi.org.eui.idm.oclc.org/10.5040/9781509925551.ch-001>.

⁴⁷² Momberg R. (2016). Standard Terms and Transparency in Online Contracts. In A. De Franceschi (Ed.), *European Contract Law and the Digital Single Market: The Implications of the Digital Revolution* (pp. 189-208).

⁴⁷³ Iamiceli, P. (2019) "Online Platforms and the Digital Turn in EU Contract Law: Unfair Practices, Transparency and the (pierced) Veil of Digital Immunity" *European Review of Contract Law*, vol. 15, no. 4, 2019, pp. 392-420. <https://doi.org.eui.idm.oclc.org/10.1515/ercl-2019-0024> accessed on May 27, 2022.

transparency. In the media sector, this means that the upwards function of transparency renders the media accountable to regulatory authorities and/or public administration, and the downwards transparency renders the media accountable to civil society and the general public (Craufurd Smith, Klimkiewicz & Ostling, 2021).

The transparency-related legal framework, at the EU level, includes, in the media sector, the Audiovisual Media Services Directive (AVMSD) and other non-sectoral rules, such as the Anti-Money Laundering Directive (AML), which provide for some transparency requirements. However, the framework at the European level is more comprehensive, as the Council of Europe, through Recommendation CM/Rec (2018) of the Committee of Ministers to Member States on Media Pluralism and Transparency of Media Ownership provides for a set of requirements to be included in media ownership transparency regulations. In this regard, Recommendation CM/Rec (2018) recommends that media outlets operating within State jurisdiction should disclose ownership information directly to the public on their website, or in another publication, and this information should be reported to an independent national media regulatory body, or to another designated body, which is tasked with gathering and collating the information and making it available to the public. Moreover, the recommendation describes the information that should be required by Member States' legislative measures in order to comply with media transparency requirements. This includes:

- a) the legal name and contact details of a media outlet;
- b) the name(s) and contact details of the direct owner(s) with shareholdings that enable them to exercise influence on the operation and strategic decision making of the media outlet. States are recommended to apply a threshold of 5% shareholding for the purpose of disclosure obligations;
- c) the name(s) and contact details of natural persons with beneficial shareholdings. Beneficial shareholding applies to those natural persons who, ultimately, own or control shares in a media outlet, or on whose behalf those shares are held, enabling them to indirectly exercise control or to influence the operation and strategic decision making of the media outlet;
- d) information on the nature and extent of the shareholdings or voting rights of the above legal and/or natural persons in other media, in media-related or advertising companies, which could lead to a decision-making influence over those companies, or any positions that they may hold in political parties;
- e) the name(s) of those persons with actual editorial responsibility;
- f) the changes in ownership and control arrangements of a media outlet.

Regulation in this area can take different forms, and Member States within the EU have experimented with different solutions. However, good practices in the regulation of media ownership transparency should include, at the very least, information on beneficial owners or their substitutes, the company's key documents, the size of shareholdings, the place of domicile of offshore shareholding companies and those abroad. Moreover, this information should be disclosed to national media authorities, as well as to the public, in a clear and easily accessible way (Transparency International, 2016).

As reported in Chapter B1 of this Study, some countries do not envisage specific media transparency rules at all, relying on sectoral self-regulation and/or corporate law, whereas others have specific media transparency rules. Among the latter, some have a more comprehensive legal framework, as is the case in Italy. Besides having a constitutional provision on media-transparency ownership. In 2016, Italy approved (Law 198/2016), a law requiring online newspapers to register in the local Court registry and in the Register of Communication Operators (R.O.C.), as will be seen below. **Despite having this comprehensive legal framework, curiously, Italy presents a medium risk level**

assessment in the Media Pluralism Monitor 2021 - Italy (Brogi & Carlini, 2021) regarding the transparency of media ownership (score 0.53), which could apparently seem to be irreconcilable in a country with such a framework. It is exactly this incongruity that will be looked at in the following sections, where we will explore, and try to explain, these apparent incompatibilities.

3.8.1 Laws on transparency of media ownership in Italy

The principle of transparency of media ownership is enshrined in Article 21(5) of the Italian Constitution: “The Law can request the disclosure of the financial sources of newspapers and printed publications”. The subsequent implementation is left to ordinary law, and specifically to Article 29 of the Consolidated Law on Audiovisual Media Services (TUSMA) and Article 5 of Law No.47/1948, the Press Law.

The dispositions envisaged in Article 29 TUSMA obliges the audiovisual media to provide “easy, direct and permanent access” to at least the following information: name, geographical address of establishment, and the contact details of the media service provider (including an e-mail address or the URL), plus the Member State that has jurisdiction, and the Authority that holds regulatory and supervisory powers.

Art. 5 of the Press Law states that “no newspaper or periodical can be published unless it has been registered at the Court Chancellery, in whose district the publication must take place”. In order to register, the following must be deposited in the above-mentioned public registry (“Registro della Stampa”): a declaration with the authenticated signatures of the owner and the director (or the deputy director who is responsible), showing their names, their addresses, and the title and nature of the publication - if the person running the journalistic business is not the owner, his/her name must also be indicated; documents proving the possession of the requisites, and also showing the registration in the register of journalists and, if the owner is a legal person, a copy of the deed of incorporation or the Statute.

With the coming into force of Law No. 198/206, the publishers of online newspapers are also required to register the newspaper at the local Court Registry and, subsequently, in the R.O.C., the national public list that is aimed at “assuring the transparency and publicity of the ownership structures, in order to guarantee the application of sector regulations, such as those concerning the anti-concentration regulations, the protection of information pluralism or compliance with the limits set for equity investments of foreign companies”, as defined on the AGCOM website, pursuant to Art. 2 of Resolution 666/08/CONS. As per online periodicals, the same source reads, only those earning equal or more than €100,000 or more from their publishing activities, or from applying for public benefits, contributions or subsidies, must register with the R.O.C.

3.8.2 The functioning of the R.O.C

Legal basis - Established in 1997, by Law No. 249, the R.O.C is managed by the Italian Media Regulator, AGCOM, and finds its Regulation in Resolution No. 666/08/CONS (2008); the activities relating to the management of the Register are delegated to the Regional Committees for Communications (Co.re.com.) as a result of the so-called 2008 Framework Agreement, while the provisions regulating its organisation and maintenance are included in “Annexes A and B” to Resolution No. 666/08/CONS, the latter including the specific ownership details that are required in order to be listed (i.e., shareholders, their quotas and their voting rights).

Subjects obliged to register with the ROC - According to Annexe A, Art. 2 to Resolution No. 666/08/CONS and the subsequent amendments, the operators that are obliged to register with the ROC include: a) network operators; b) audiovisual or radio media service providers (AVMS providers); c) associated interactive service providers, or conditional access service providers; d)

those subjects carrying out the broadcasting activity; e) advertising concessionaires; f) companies producing or distributing radio and television programmes; g) national press agencies; h) the publishers of daily newspapers, periodicals or magazines; i) those subjects who are engaged in electronic publishing; j) companies providing electronic communications services. k) economic operators carrying out call centre activities. l) those subjects who indirectly use national numbering resources. m) the providers of online intermediation services n) online search engine providers.⁴⁷⁴

With the 2021 Italian Budget Law (Law No. 178/2020), the legislator implemented EU Regulation 2019/1150 (“P2B Regulation”), which establishes that online search engines and online intermediation service providers will have to comply with the obligations to register with the R.O.C.⁴⁷⁵ (Balestra, Antoniazzi & Horgan, 2021). The obligation to register with the R.O.C. has been extended to online intermediation service providers and online search engines that, even if not geographically established in the national territory, still offer services in Italy (AGCOM, 2021).

Registration - On the basis of AGCOM Resolution No. 393/12/CONS, the subjects who are obliged to register in the R.O.C. must provide, through the portal www.impresainungiorno.gov.it, a series of templates that differ according to their legal nature and activity. Registering with the R.O.C. is allowed only through the use of a National Services Card (CNS), which is distributed in the form of a smart card (credit card format), or of a USB key, by the provincial Chambers of Commerce. The application for registration must be presented within 60 days of the starting date of the relevant activity⁴⁷⁶, while, if a registered subject starts a new activity that is relevant to the R.O.C., it has 30 days in which to make the notification⁴⁷⁷, according to Art. 10 of Annexe A. With particular regard to online search engines and online intermediaries, “Resolution No. 200/21/CONS does not lay down a deadline for their registration, following Art. 5 (5) of Resolution No. 666/08/CONS, according to which operators are required to register within 60 days of the date of the commencement of their activities, is deemed applicable to the case at stake. The deadline of 60 days for online intermediaries that are already operating in the relevant markets in Italy will run from the date of the publication of Resolution No. 200/21/CONS. The deadline for registration with the ROC therefore expires on 6th September, 2021” (Balestra, Antoniazzi & Horgan, 2021).

3.8.3 How information is kept up-to-date

As defined by Article 11 of Annexe A, each registered subject - with the exception of those carrying out activities as Internet Points and Phone Centres, which are a sector of those companies that supply electronic communications services - must submit an annual electronic update (Comunicazione Annuale), including both corporate data and data relating to the activities carried out. The relative templates, that are generally to be presented by July 31st of each year, and updated on that date, differ on the basis of the legal nature of the registered operator (see “Data to be

⁴⁷⁴ As reported in Zaccaria et al. (2021), the Register of Operators is divided into two different sections; the first concerns the collection of “general” information by those subjects listed above; the second, concerns the collection of information relating to the digital terrestrial frequencies that are granted to network operators. This special section of the R.O.C. is called the “National Radio Frequency Cadastre”.

⁴⁷⁵In addition to paying an annual contribution to the Authority, and entrusting AGCOM with the role of ensuring the correct and effective application of the P2B Regulation.

⁴⁷⁶ If the qualification required for commencing the activity is still pending, the deadline runs from the date of release of the qualification.

⁴⁷⁷ The same applies to any change relating to what was declared when registering, with the exception of a few subjects: Notices of changes are not due from those subjects who carry out the following activities: advertising concessionaire in periodical newspapers, including telematic ones, not meeting the requirements of Article 18, Paragraph 1, of the Law of 5th August, 1981, n. 416 (i.e., those who publish fewer than 13 issues a year, or who have employed fewer than 5 full-time journalists for a year); publishers of periodicals, including telematic ones, who publish fewer than 13 issues a year or who have employed fewer than 5 full-time journalists for a year.

disclosed”). Only joint-stock companies or cooperatives must transmit the annual communication within thirty days from the date of the filing of the financial statements at the Chamber of Commerce, and must be updated on the date of the meeting that approves the financial statements.

Importantly, the subjects registered in the Business Register⁴⁷⁸ are not required to notify the R.O.C. of any changes relating to personal data, administrative bodies and ownership structures that are already filed with the Chamber of Commerce. The obligation remains that the data relating to fiduciary headings, pledges, usufruct and common property of shares that are not accessible through the application cooperation systems with the Business Register, must be updated with the R.O.C.

Furthermore, under Law No. 62/2001, those subjects that are obliged to register with the R.O.C are exempted from the obligation to register their newspaper at the Court. Registering with the ROC is, therefore, a condition for the commencement of publications. However, with the entry into force of Law No. 198/2016, a differentiated regime has been introduced for the publishers of online newspapers: these, in fact, are required to register the newspaper with the registry of the competent Court and, subsequently, to submit the application for registration with the Register of Communication Operators.

Those data recorded by the R.O.C. are not the only data collected by AGCOM in order to fulfil its institutional tasks. In carrying out its duties, AGCOM also collects data through the Economic System Report (IES).

3.8.4 Data to be disclosed to the NRA (AGCOM)

As previously mentioned, the data that it is necessary to provide at the time of registration by each specific subject, are organised into 3 different sections: common statements, statements relating to the corporate structure, and statements relating to the activity that is carried out. As previously introduced, some specific models, as well as some specific information, which is listed below, are not required for all operators. Besides, companies operating as radio or television advertising concessionaires, and companies producing or distributing radio and television programmes, must also attach the anti-mafia self-certification form to the online application for registration.

Common statements: Application for Registration and General Personal Data must be submitted by all operators, representing only two models that are provided by sole partnerships. As for joint-stock companies, cooperatives, partnerships, foundations or associations, these must also indicate the corporate or associative object and the indication of the composition, duration and personal details of the administrative body. Public bodies must present an application for registration, general personal data, composition, duration, and the personal details of the administrative body, but not an indication of the corporate or associative object.

Statements relating to the corporate structure: while the subjects, in the form of partnerships are only required to provide a list of their shareholders, the subjects, in the form of joint stock companies or cooperatives, must indicate:

- Their share capital, list of shareholders, ownerships of shareholdings with voting rights. Companies listed on the stock exchange only communicate shareholdings with voting rights above 2% of the share capital, indicating, for each of them, the respective controlling shareholdings.⁴⁷⁹

⁴⁷⁸ The Business Register (Registro delle Imprese) is a public register containing data on all companies of any legal form and sector of economic activity, that are located in Italy, as well as other subjects that are provided for by law.

⁴⁷⁹ For this purpose, both the shares in which a person is the holder, even if the voting right belongs, or is attributed to, third parties, and those in relation to which the right to vote belongs, or is attributed to, are

- Share capital, a list of shareholders, the ownerships of shareholdings with voting rights that are above 2% of the companies that are holding the shares, or of the quotas of the company to be registered.
- Where the majority of the shares, or the quotas of the company to be registered, is in the name of subjects other than natural persons, or subjects who are equivalent by law, it is necessary to indicate the share capital, a list of shareholders, the ownership of shareholdings with voting rights above 2% of the companies in the holding chain, until the identification of the natural persons, or of those subjects that are equivalent by law, who hold the majority of the shares, or stakes in each of the said companies;
- Where not already communicated, an indication of those companies which, through subsidiaries, have at least 20%, or 10% in the case of listed companies, of the votes that can be exercised at the ordinary meeting of the company to be registered.
- The indication of any fiduciary headings, interpositions of persons, or the existence of other limits that have a weight on the shares or quotas of the company.

Statements relating to the activity carried out: in addition to the aforementioned data, the electronic request must be accompanied by the forms that are specifically concerned with the activity of the communication operator requesting registration.

3.8.5 Effectiveness of media ownership transparency measures

Although national law contains provisions requiring the disclosure of ownership details in the news media sector, including the digital sphere (with some important developments that are related to online intermediaries and search engines), **transparency measures in Italy can be considered to be only partially effective**. While the R.O.C. aims to provide for the “transparency and publicity of the ownership structures”, specific information allowing the disclosure of media ownership is provided only to public bodies, and the system does not provide sufficient and easily accessible information to the public (Brevini & Fanucci, 2013).

As previously reported, AVMS providers that are organised as limited companies or as cooperatives, must communicate to the R.O.C. detailed information about shareholders, shareholding quotas and voting rights, including those that are owned through another person, and details about the ultimate and beneficial owners (Brogi & Carlini, 2021).⁴⁸⁰ However, the information disclosed, which may help to track down the ultimate owners, is **not directly available to the public**. Information available to the public on the AGCOM website only includes the name, business name, office address, the field of activity and the ROC number (Brevini & Fanucci, 2013). Indeed, only the registered operators can access the R.O.C. and any additional and relevant details in regard to ownership. To retrieve this kind of information, the public can only send a formal request to AGCOM, which may answer at its discretion (Brevini & Fanucci, 2013), or can access it through the Registro delle Imprese by paying a fee. Notably, Italy neither signed nor ratified the Council of Europe’s Convention on Access to Official Documents.

Furthermore, although more detailed information on those publishers and media providers that ask for public support should be publicly available (Art. 22 of Annexe A stipulates that AGCOM must

considered to be controlling shareholdings. For the same purposes, those shares that are held by third parties, trustees, subsidiaries, and those in relation to which the right to vote belongs, or is attributed to, such persons, must be included.

⁴⁸⁰ The same rules apply to publishers and online media, although only above a certain threshold, as per Annexe B to Resolution No. 666/08/CONS

publish yearly ownership details on those news media that require public support), the list currently available on AGCOM's website was updated only to 2013.⁴⁸¹

With regard to sanctions, in cases where the operator presents false accounting data or facts to the authority, the sanctions are defined pursuant to Article 2621 of the Italian Civil Code. In cases where there is a delay, or a failure, to comply with the terms defined by law, operators are subject to a pecuniary administrative sanction, pursuant to Article 1 Paragraphs 29, 30, 31 and 32 of Law No 249/1997. If the violation is particularly serious or is reiterated, they are liable to a suspension for a maximum of 6 months, or the revocation of the licence. In 2020, AGCOM completed its investigation on some digital platforms, and sanctioned them for the violation of the registration obligation, affirming the principle by which the players in the news media market (even if they were based abroad) must register with the R.O.C if they operate in Italy (Brogi & Carlini, 2021). The website of the Italian Media Authority reports that there were two sanctioning proceedings filed in 2021.

To conclude, a legal framework on media ownership transparency is in place in Italy, but it is limited in its effectiveness. Although **the obligation for the online intermediation service providers to register in the Register of Communication Operators represents an important novelty in relation to monitoring the new digital markets** that concern subjects that are operating in Italy, but which are established abroad, the analysis has evidenced several shortcomings on the side of publicity, making it impossible for the public to verify the ways in which crucial information to enable them to track the ultimate ownership is described, requested and organised. Not least, it must be underlined that some digital platforms have appealed against the obligation to register with the R.O.C.

Ultimately, such shortcomings may impair the Italian media market's efficiency: from an EU internal market perspective, an effective framework for transparency in relation to media ownership would be essential for those media operators who are willing to invest beyond national boundaries, as it would provide relevant information which would enable the making of better strategic decisions. While general corporate transparency requirements have been widely put in place, there has been limited adoption of binding requirements when it comes to media ownership transparency at the EU level. Moreover, the issue stands on whether these requirements effectively match the standards that are defined in the 2018 CoE Recommendation (CoE, 2018), thus posing a question as to whether there is a need for further media-specific initiatives: in this context, research has evidenced that, although these measures certainly provide relevant information, they are not specifically calibrated for media-related concerns (Smith, Klimkiewicz and Ostling, 2021, p.558). In consequence of this, and given the relevance of transparency for the internal market, as discussed above, there may be the need to recalibrate and harmonise the latitude and effectiveness of media transparency requirements in Italy.

4. Conclusions

This Chapter has addressed the difficult and multifaceted question of the effectiveness of measures concerning market concentration in the media sectors. Primarily, the effectiveness has been addressed in terms of external plurality (market concentration), including online media, while also including the fair distribution of economic resources and the potential consequences relating to the EU internal market. The Chapter has done this by relying on two complementary approaches: an exploratory data analysis, and a set of 6 in-depth, contextualised case studies. Since the data

⁴⁸¹See <https://www.agcom.it/asseti-proprietari-dichiarati-dalle-imprese-richiedenti-i-contributi> accessed on May 27, 2022.

analysis and each case study already have a conclusion, we focus here on some of the most important points, on those results that combine the findings of several cases.

First, the Chapter confirms and illustrates the existence of a significant **fragmentation of the regulation across the media markets of EU Member States**. The mapping conducted for Chapter B1 has already shown this. Case Study 4, in particular, shows how the absence of a harmonised definition of the key aspects of transparency and fairness rules on State advertising contributes to a fragmented regulatory environment across the EU. Case Study 2 illustrates the fragmentation of media merger measures. The exploratory data analysis suggests that such fragmentation also exists in regard to the relationship between regulation and market concentration. This should, however, not necessarily be seen as a disadvantage. Even at the level of one country, there can thus be diversity in the regulation, as Case Study 5 shows. Actually, far from a one-size-fits-all model, the German market accommodates the diversity of structures among the PSM.

Such diversity has a direct impact on the EU internal market. Case Study 4 assumes that the absence of harmonised definitions (in this case, of transparency and fairness rules in relation to State advertising) leads to barriers to entry for media players, and thus to obstacles to the EU's internal market objective and, equally important, this results in different essential services being delivered to citizens in each of the Member States. Case Study 3 suggests that the wider the margin for the manoeuvre of the individual states, the more absent the EU framework is, and the more this process may lead to discrepancies in the internal market. Case Study 2 discusses how fragmentation might be overcome: In the context of media companies' M&As, the 2021 updating of Article 22 of the EU Merger Regulation contributes to the harmonising of rules across the EU; however, it carries with it some risks, as, notably, media pluralism is rarely taken into account in M&A assessments. Case Study 6 also reminds us of the importance of transparency for the EU internal market, and analyses the shortcomings that are to be seen in the Italian case.

Chapter B1 has extensively mapped regulation relating to media market concentration. One of the initial objectives of this Chapter was to assess the effectiveness of such regulation on this concentration. The exploratory data analysis indicates that **a higher number of regulatory measures tends to moderate concentration** – although there are several limitations to such results. In a related way, Case Study 1 shows that the repeal and relaxation of media concentration rules in the Netherlands, in the 2010s, have been followed by a substantial increase in the market concentration of newspapers and commercial FM radio. **It is thus not directly derived from this that stricter regulation of media market concentration will automatically lead to more media pluralism**. The reason is that **more concentration does not necessarily equate with less pluralism**. Case Study 1 warns us that it is premature to draw conclusions relating to the effects of the significant decrease in external pluralism in the newspaper and commercial radio markets on internal or overall pluralism. The exploratory data analysis reminds us that higher concentration may go hand in hand with more diversity and quality in the media content produced.

Like the mapping in Chapter B1, the quantitative data analysis reminds us of **the importance of having information on the actual extent of the enforcement** of those measures regarding media market concentration, in order to fully understand the impact of regulation across Member States. Similarly, Case Study 4 states that clear mechanisms for the enforcement of the rules on State advertising are important.

Case Studies 2 and 3 confirm and refine the hypothesis from Chapter B1 of this Report, that to provide a holistic picture, in which both economic interests and public interests are protected,

separate M&A assessment systems, in which more than one regulator is involved and in which they cooperate, are key. Case Study 3 shows, from the French case, that, while the optimal solution cannot rest in the traditional competition framework; cooperation alone may not suffice to promote pluralism. Probably, pluralism should be a goal among those that the leading actor is supposed to achieve. The NRA is often better placed to take this goal into account. However, Case Study 2 reminds us that there are few examples of NRAs that are given binding decisions in M&A assessments, and, of them, few that oppose the NCA decision based on economic reasoning.

Digitalisation creates new challenges for regulators, and thus **requires innovation in regulation.** Case Study 3 shows how regulation has led to an increasingly shared regulatory space, in which diverse regulators appear to have overlapping competences and different priorities. Still, the competition authority remains the main authority that is dealing with those new challenges. In Italy, as Case Study 6 shows, the obligation for the online intermediation service providers to register in the Register of Communication Operators represents an important novelty with which to monitor the new digital markets.

Finally, this Chapter has discussed **ways to improve transparency and accountability to the public.** Case Study 5 shows that, for the German PSMs, while there is a high-level of self-governance (and hence no accountability to governments); public accountability is crucial, as these PSMs are accountable to a diverse representation of society. Case Study 6 analyses transparency measures in the Italian context. Its assessment is that they can be considered to be only partially effective, since information is not directly available to the public.

These results, and the other conclusions and recommendations outlined in this chapter's case studies, will be further elaborated in Chapter B4, in order to potentially derive policy recommendations.

Chapter B4. Methodologies for measuring media plurality and options for policy intervention

Authors: Elda Brogi, Danielle Borges, Roberta Carlini, Kristina Irion, Sally Broughton Micova, Joost Poort, Heritiana Ranaivoson, Theresa Seipp, Matteo Trevisan, Sofia Verza

Peer reviewer: Beata Klimkiewicz

With the contribution of: Maria Luisa Stasi, Pier Luigi Parcu

1. Introduction

This final section of Part B of the Study builds on the findings of the previous chapters, it intends to define some benchmarks and standards for analysing and safeguarding media pluralism in a digital media environment, and also to provide some recommendations to (EU level and domestic) policymakers.

The analysis in this B4 Chapter is mostly carried out by considering the characteristics of the media markets, and therefore by focusing on the dimension of external pluralism. The conclusions of this part are limited to the data collected and the research carried out under the previous parts of the Study. The analysis also takes into account the stakeholders' consultation that was organised for the sake of this Study on January 20th, 2022.

Media plurality and diversity are goals that cut across different MSs' policies, and the policy tools that are used to achieve this goal vary across the MSs. When it comes to external plurality, the analysis highlights that the audiovisual sector is the most regulated, while online media are most likely to fall outside of the scope of anti-concentration and transparency regulations.

Section 2 of this Chapter analyses the methodologies employed for measuring media plurality, ranging from the scope of these measurements to the access to transparent and comparable data. Section 3 addresses the question of transparency from a twofold perspective: the transparency of media ownership, and the transparency of State advertising. Section 4 analyses the challenges and measures adopted in the field to control the concentration of media power, from the point of view of the limitations to media ownership, of the controls on foreign ownership and of M&As in the media markets. Section 5 revolves around the issue of the sustainability of the media industry, which depends significantly on the Internal Market's fairness and ability to function well. This section defines the concept of "sustainability", summarises the challenges posed by the increase in online advertising, scrutinises multiple public investments in the media sector, looks at non-advertising reliant business models, and considers the redistribution of revenues through copyright. Throughout its recommendations, it calls for the utmost attention to be paid to the respect of citizens' rights.

Finally, this Chapter highlights that broad common EU standards defining "media plurality and diversity" are necessary in order to evaluate media policies and to assess risks for media pluralism in the media market.

This Chapter is systematised in such a way that, at the end of each Section, a text box presents, in ascending hierarchical order, the proposed policy options. The categories used for this hierarchical order are: a) Soft Law; b) self-regulatory instruments; and c) EU harmonising measures (including principles-based and detailed harmonisation). By soft-law, we mean the quasi-legal acts of the EU, besides those mentioned in Article 288(5) TFEU - Recommendations and Communications, such as codes of conduct, guidelines and notices, that, in principle, lack legally binding force, although they have a certain normative content and generate practical effects. In relation to harmonising measures, we mean EU legally binding measures: regulations, directives or decisions (Article 288 TFEU).

2. Methodologies for measuring media plurality

This section reflects on the challenges encountered by public authorities when measuring media plurality, and it provides policy recommendations. Hence, the core of the analysis revolves around methodologies in order to assess and measure media plurality. This includes methodologies to assess external pluralism (cf. data gathering methods, in Chapter B1), or exposure diversity (cf. Chapter A2).

2.1 Context and objectives

Beyond a consensual support for media plurality, there are no established measurement frameworks for media diversity, and these include standard definitions (in the academic and policy-making realms), data collection and gathering methods, and metrics. However, as outlined throughout this Study, **the notion of media pluralism is challenged by the technological development** that has heavily impacted upon the structure of the media market and the habits of the users. Digitalisation raises new challenges relating to an assessment of pluralism. Two components are mainly concerned: external pluralism (in particular, media market concentration) and exposure diversity.

The first challenge, notably, for regulatory bodies, lies in **the assessment of media concentration, taking into account online media**. Due to the convergence process,⁴⁸² the boundaries between media sectors are blurred. Convergence thus opens up the definition of the traditional media sector (Krätke, 2003), with some actors being active in several media sectors. As media consumption also converges via a few screens (e.g., smartphones), it makes it easier for users to switch from one content to another, from listening to music on Spotify to watching a video on YouTube, to using Facebook to access pieces of news.

The second challenge consists of the **assessment of exposure diversity**, i.e., the extent to which audiences are exposed to, find, discover and consume a diverse array of content (see also, Part A of this Study). Actually, the other side of convergence is that digitalised content can be distributed on different digital platforms with little or no impact on costs. Content convergence can thus lead to distribution and consumption divergence (Dal Zotto & Lugmayr, 2016). This, coupled with the rise of algorithmic influence on recommendation and display, has rendered more crucial the analysis of exposure diversity (Ranaivoson, 2021).

Media diversity is traditionally measured by regulatory authorities via a measure of market concentration (ACMA, 2020), and there may be two reasons for this. First, media market concentration may remain easier to measure than other components of the model (Ranaivoson, 2021). Second, media pluralism policies are traditionally geared towards ensuring a diversity of content and sources in the publicly available media offer. The regulatory emphasis is based on a longstanding presumption that, in a competitive media environment, media outlets will seek to differentiate themselves by producing a diversity of content and viewpoints that will capture the differing needs and niches of the public (Napoli, 1999). In many ways, this presumption is fundamental to the underlying normative rationales for promoting source and content diversity, as it considers that exposure diversity will automatically follow from this. However, given an abundance of choice, users may tend to be exposed, more or less voluntarily, to less diverse content (Helberger & Moeller, 2018). Furthermore, without the right incentives in place, this tendency could be

⁴⁸² Convergence can be identified as the ability to deliver different media channels via one digital platform. With digitalisation, no matter what the type of signal, any content can be transformed into undifferentiated bits of data that converge onto the same platform (McPhillips & Merlo, 2008).

exacerbated by user interface design, search and discovery functions that are primarily driven by an interest in keeping their customer base and optimising their economic profit, rather than in ensuring audiences' diverse consumption of content.

The fundamental concern for media pluralism is that while the general public becomes progressively less exposed to content of general or public interest, their opinions risk becoming polarised, and their exposure to disinformation risks being increased along with this. Actually, due to the platform-structured architecture of the media and communication environment, a crucial issue for media pluralism is also the **quality of the news** production, distribution and consumption (Lyubareva & Rochelandet, 2021). During the last few years news risks have grown with the trend to news avoidance (Newman et al 2019: 27; Eurobarometer, 2017), attention-driven information supply leading to political polarisation and societal divides (Voltmer & Sorensen, 2016), a growing confusion and uncertainty among media users reinforced by a cacophony of voices concerning such important issues as climate change or the pandemic health crisis (Smith & Wanless, 2020). Most recently, propaganda media-like and news-like services are being spread amongst the real news so as to construct narratives justifying the Russian war of aggression against Ukraine (Roth, 2022).

With regard to **data gathering**, it is now possible to have access to new and large amounts of real-time data on online consumption and experience (clicks, time spent, attention, engagement, etc.). However, there is **no unified, transparent way to access or share such data** by scholars, companies and regulators (Ranaivoson, 2021). Proprietary customer data can help to build strong competitive positions (Hagiu & Wright, 2020). Since online platforms can make use of the data they collect about their users' behaviour (attention, purchases, engagement, etc.), they do not give access to their data. Scarcer data in offline activities are available more publicly. For example, box-office data in Europe are made available via the EAO LUMIERE database, but only Netflix has access to Netflix users' viewing data, and they selectively release audience data (Wayne, 2021). Extensive reliance on commercial data sources not only creates a barrier to the transparency of the policy process, it also hinders any possibility of data reanalysis (Napoli, 1999: 21).

All this leads to a need to readdress how media pluralism can be measured. Obviously, this is needed by policy-makers and regulators, as it is crucial to monitor how online media pluralism is evolving and, eventually, to regulate this evolution. Tackling these issues is also important for business purposes, as media companies and online platforms may have an interest in providing diverse content (Ranaivoson, 2019). Finally, for scholars, there is a need to go beyond the current vast myriad of incompatible definitions and measurements of (online) media pluralism and diversity.

2.2 Gaps and challenges

The analysis performed in the previous chapters allows us to identify the main gaps in legislation and regulation regarding methodologies that can be used for measuring media plurality. The chapters concerned are, in particular:

- Chapter B1: the section on data gathering methods for assessing media concentration, which provides an overview of the current initiatives (particularly those initiatives by public authorities) across the EU MSs, that are used to assess media market concentration;
- Chapter A2: the section on assessing and mapping exposure diversity reviews the existing literature on exposure diversity, categorises it, and extracts a typology of the methods that are used to measure it;

- Chapter B3 and, in particular, the online consultation that was organised on January 20th, 2022, for informing this Study, in order to discuss and refine its main results.

The first gap in the current practices for the measurement of media plurality deals with **how to conceptualise media plurality and diversity**. At the EU level a common definition of media pluralism is lacking, in line with this, Chapter B1 finds that, in the EU, there is an absence of methods to measure cross-media concentration. Regarding metrics, it also finds that not much information is provided in relation to the indicators that are used to assess concentration. When mentioned, the information available is usually that relating to the Top 4 companies, and only the Belgian and Polish NRAs mention the use of Hirschman Herfindahl Indices to assess concentration – despite this method being a common indicator in competition policy.

As the conceptual challenge is arguably greater, Chapter A2 analyses the concept of exposure diversity in more depth. It lists the main challenges to operationalising the concept in practice – with its definition being only one of those challenges (Move et al., 2020). Various methods exist to collect the data that is used to assess the diversity of exposure, notably, experiments, surveys and computational approaches.

The analysis in the previous chapters highlights the existence of **differences between media sectors, in as far as measuring media plurality is concerned**. The analysis in Chapter B1 shows that there are **fewer methods that are applied to the press sector** while the TV sector's plurality is that which is most often measured and monitored. The exploratory data analysis (see Chapter B3) highlights, in its methodology, the lack of comparable data with which to assess concentration (and, hence, external plurality) in the media markets. The situation is only **better for the TV sector**, due to the existence of the data that is provided by the European Audiovisual Observatory for TV – although there are also missing values. The smaller amount of data on media plurality for the press sector is to be contrasted with the fact that exposure diversity is easier to measure in that sector. Actually, as Chapter A2 reminds us, among computational approaches, the bag-of-words model allows the comparison of texts on the basis of their vocabulary, without requiring any pre-existing metadata and categorisation. It is, however, not easily transferable to an assessment of the diversity of media content other than text. In other words, exposure diversity can be more difficult to measure for other types of content (e.g., video) than for text.

Beyond a comparison in terms of sector, previous chapters show the **difficulties that arise in connection with delineating the relevant market** in order to evaluate the degree of external media pluralism, especially that for online media. As signalled in Chapter B2, it is difficult to understand which part of online advertising (revenues) goes to publishers and news media – and we have to rely on commercial sources to assess it. Even in countries where there is data about advertising, data about online advertising is aggregated. This reflects a recurring concern that is mentioned in Chapter B1: that when online media are mentioned, it is most often unclear exactly which services are concerned.

Another crucial challenge concerns the **access to the data** themselves, how can they be best collected and gathered? Again, there are differences, depending on the type of data concerned. Chapter B1 shows that, regarding data gathering methods for assessing media concentration, most of these methods are focused on measuring the concentration of audience and market shares. For this reason, the exploratory data analysis in Chapter B3 also relies on data on audience share or market share. More generally, as Chapter A2 recalls, this challenge of access to data is related to discussions on privacy obligations, and on transparency and the accountability of algorithms. During

the stakeholders' consultation of January 20th, 2022, several NRA representatives expressed the difficulties they were experiencing, in the digital ecosystem, in obtaining detailed data and information, especially regarding online platforms. Even for traditional media, it may be more difficult to get access to the data about their digital business, as the information that is released is aggregated.

Even when some data are available, the **need remains for comprehensive and harmonised data at the EU level**. This is related to the fragmentation that is described and analysed in Chapters B1 and B3. As Chapter B3 states, the lack of comprehensive data sources on the EU media markets is an important obstacle to a better understanding of the EU media landscapes. During the stakeholders' consultation, several representatives of media organisations also raised this issue of the lack of harmonisation, and even of standardisation. In fact, sometimes, their members (media companies) use different indicators to assess, for example, their revenues or market shares. One representative stated that s/he expects the NRAs to effectively monitor and assess the market situation at the national and regional levels, as they are better placed than private media companies to fulfil that role. Obviously, this is also linked to the premise that public policy and market analysis should be conducted with publicly available data.

Finally, and derived consistently from the previous challenges, there is **a lack of regular monitoring**. Chapter B1's mapping shows that only a few countries regularly monitor media market concentration, usually on an annual basis. When reviewing measurement initiatives, Chapter A2 was unable to highlight an established policy initiative that was monitoring exposure diversity. There are industry initiatives in Europe, notably PEACH, which are, however, at an early stage, or which are in a pilot phase, and evidence about measurable impacts on exposure is unreliable or not comparable among projects.

2.3 Policy proposals

Based on the gaps and challenges identified, we make (although they are not mutually exclusive) the following policy recommendations.

i. To further promote best practice exchanges among regulatory authorities

The literature review, the mapping of legislative and non-legislative measures and online consultation activities all point to some interesting practices, and they highlight the possibility that NRAs might learn from what other regulatory authorities have implemented (best practices) or, sometimes, more simply, from the challenges that they are facing. Interesting examples of what are arguably best practices include the very extensive *Annual Regulation Report*,⁴⁸³ which is published by the Portuguese Media Authority (The Regulatory Entity for Social Communication, 'ERC'), which includes a lot of information about the level of media concentration in the country, and which seems to be able to do so thanks to the existence of a Transparency Law that facilitates data gathering.

For this reason, and, to some extent as a preliminary step to the other policy recommendations, **it is important that regulatory authorities exchange information, be it via networking activities or more formal collaborations**. In some cases, this means continuing a current effort, for instance, the 2018 revision of the AVMSD has further promoted ERGA's role in relation to the audiovisual sector. Exchanges between regulatory authorities with different and complementary scopes (in

⁴⁸³ <https://www.erc.pt/pt/estudos-e-publicacoes/relatorios-de-regulacao> accessed on May 27, 2022.

particular, NCAs and NRAs) should also be promoted, as they may be able to learn from each other, as it is further elaborated in Section 4 of this Chapter.

It is, **however, less clear for the press and the online media**, how such information exchanges might take place in light of the current regulatory framework. These are sectors where there is an even bigger gap in the measurement of media plurality. In contrast to the TV and radio sectors, there are also bigger discrepancies as far as regulation is concerned, notably, regarding the authority that is in charge, and, hence, who has the responsibility to measure and monitor media plurality. For the press, one might advise that there be cooperation between industry stakeholders. Actually, in many countries there are "press chambers" or "press councils" that gather press entities. Moreover, we have networks of ABC (Audit Bureaux of Circulation) that, in many cases, collect the data on readership or press consumption. Finally, European branches of the press industry (ENPA) could play such a role in favouring best practice exchanges around the measurement of media plurality.

More generally, the objective is to **learn from existing policy initiatives outside the EU also**. Regulatory frameworks exist, which may include frameworks to deploy methodologies to measure media plurality, but they need to be reassessed, in terms of their conceptualisation and indicators, and should, eventually, then be updated for the digital era. Initiatives outside of the EU, or ones that are not limited to the EU, should be further scrutinised. Interesting initiatives include the Multi-Stakeholder Working Group on the Origin of the Guiding Principles on Diversity of Content Online.⁴⁸⁴ The current discussions around legislations and policies in Canada (Bill C-10 to adapt the Broadcasting Act) and Australia (see ACMA, 2020) could lead to the extension of current measurement frameworks for exposure diversity. Ofcom's (UK) Measurement Framework for Media Plurality proposes methods with which to assess cross-media concentration and exposure diversity.

ii. Set up standards

Arguably, a necessary step, after ensuring more best practice exchanges, consists of enforcing the adoption of common standards with which to measure media diversity among regulators, or within the media industries. This relates also to the challenge identified in Chapter B1, that Member States differ in their ways of defining media plurality or diversity – if they define them at all.

During the stakeholders' consultation, one NRA suggested that monetary value would form a solid basis for such standard-setting, especially since all Member States use the Euro, or have a currency linked to the Euro. This way, it would be easier to monitor than some indirect forms of influence, and also it would be a kind of information more available to companies when asked to share data.

Referring again to the Ofcom's Measurement Framework for Media Plurality, the framework would be worthy of further investigation. It is composed of 3 key quantitative categories (Availability, Consumption and Impact), and it takes into account the contextual factors. It attempts to measure concentration across media platforms (TV, radio, newspapers, Internet) (Ofcom, 2015) and, hence, cross-media market concentration. Yet, in the 2021 *OFCOM Report on The Future of Media Plurality in the UK*, OFCOM introduces the category of "news creator" to replace references to "newspaper"

⁴⁸⁴ <https://www.canada.ca/en/canadian-heritage/news/2021/06/canada-releases-guiding-principles-on-diversity-of-content-online.html> accessed on May 27, 2022. The Multi-Stakeholder Working Group includes representatives from governments (Australia, Canada, Finland, France, Germany), the private sector (Deezer, Google, Netflix, Vubble) and civil society (Article19, Coalition française pour la diversité culturelle, International Federation of Coalitions for Cultural Diversity, Society of Authors, Composers and Publishers of Music, European Audiovisual Observatory).

and “media enterprise”. In doing so, OFCOM suggests taking into account public interest concerns that might arise through transactions involving news providers that do not meet the statutory definitions of broadcasters or print newspapers (OFCOM, 2021). This raises questions about a new paradigm for the measurement of media plurality that would reflect new challenges stemming from the dynamic changes affecting the media environment, which is structured by platforms such as news sustainability, news providers’ ability to earn revenues, the use of algorithms and users’ ability to discern quality journalism that is characterised by accuracy, credibility, and impartiality.

iii. Centralise data gathering methods at EU level

Not all the regulatory authorities in the EU have the same financial means, nor do they benefit from the same independence, or from a favourable legal framework that allows them to get access to data. They also differ in terms of their remit and powers. In addition, in a context where online platforms are active in most markets, having data on one national or regional market only can be too partial to allow us to say anything about the situation of media plurality. For these reasons, **we recommend that data gathering methods be centralised at the EU level.**

This could concern one of several steps in the process from data collection to harmonising and checking data, to providing analyses and impact assessments. As Chapter A2 highlights, a few initiatives exist, at the industry level, that are of relevance for the whole EU and that deserve to be further supported, such as PEACH, the European Audiovisual Observatory’s monitoring activities, or the Media Pluralism Monitor.

Importantly, there is a two-directional approach, that we support here, regarding the measurement of media plurality: **initiatives at the local or national levels are crucial, as well as those that are more centralised at the EU level.** In other words, the European institutions should not wait for each national market to have reliable data before thinking about common ways in which to harmonise their collection and analysis. Similarly, it is not necessary to have extensive EU guidelines on how to measure media plurality before developing context-adapted national measurement frameworks for media plurality.

2.4 Conclusion

To conclude, and to link this to the next section, as stated above, access to publicly available data is the key to any data gathering method. This study has particularly focused on access to data by public authorities. The case study on the Italian Register of Communication Operators (see Chapter B3) highlights those initiatives, however imperfect, are being deployed to ensure that a wide range of data on media companies, including online ones, can be gathered. When developing such initiatives, the sources for data, and the ways in which to ensure that data are transparently shared, should be carefully taken into account. They might consist of legislation, providing that media companies (traditional and new) should provide regular data that can be used to assess media plurality.

On the enforcement level, current initiatives also consider how to develop recommendations for online platforms. **Algorithm auditing** has recently developed in reaction to the growing importance of algorithms and the difficulty in predicting their outcomes (even for the online platforms themselves). It aims to detect problems and analyse biases when new versions of algorithms are released, beyond just performance metrics per click or per use (PEReN/Regalia, 2021). Algorithm auditing could provide support for regulatory authorities’ activities that aim to apprehend the

functioning and the impact of online platforms on media plurality; however, it raises challenges regarding the cost of access to data, for regulators as well as for audited platforms, the quantity and quality of data that can be collected, and the legal soundness of the approach in general (PEReN / Regalia, 2021).

The evidence-based and data-driven mechanisms should thus include: an extension of the necessary access to the relevant commercial databases, more effective access to data collected by platforms and the implementation of data formats that can enable meaningful comparison across national media or news markets, and across longer periods of time, so that relevant trends can be extrapolated from that analysis.

This section mainly deals with the assessment of online media concentration and of exposure diversity. The main challenges are conceptual (how to define these notions), the differences between media sectors, as far as measuring media plurality is concerned, difficulties with delineating the relevant market, access to relevant, comprehensive and harmonised data and the lack of regular monitoring. Our main policy proposals are:

- Further **promotion of best practice exchanges among regulatory authorities**, first within ERGA, but also within organisations and networks that remain to be built, so as to learn from existing policy initiatives;
- **Centralising data gathering methods to measure media plurality at the EU level**. In particular, for online media, and as a complementary measure to more bottom-up initiatives (either from the Member States or industry);
- **Setting up standards**, from the definition of online media concentration and exposure diversity to the concrete implementation of assessment measures;

3. Transparency

As explained in Chapter B3, in the media sector, transparency is strictly connected to the democratic role of media, as it means the public availability of accurate, comprehensive, and up-to-date data on media ownership, which is essential in order to avoid conflicts of interest, to ensure that abuses of media power can be acknowledged and debated, that media concentrations are addressed or prevented, according to the law, and that, finally, the citizen/user is aware of the potential bias of the content supplied by a given media outlet. “Transparency of media ownership can help to make media pluralism effective by bringing ownership structures behind the media – which can influence editorial policies – to the awareness of the public and regulatory authorities” (CoE CM/Rec (2018)1). This is comprised of two distinct functions: upwards transparency and downwards transparency. Obligations to transparency render the media accountable to regulatory authorities and/or to the public administration and to civil society and the general public (Craufurd-Smith, Klimkiewicz & Ostling, 2021).

We illustrate the case of the Italian Registry of Media Operators (*Registro Unico degli Operatori di Comunicazione* - ROC) as a possible form of best practice in this area. Then, we look at transparency from the perspective of State actors, analysing the case of State advertising and pointing out the main problems in this area.

This Chapter also addresses the issue of transparency in relation to private subsidies to media organisations, which include any type of donation or sponsorship. This is dealt with in Section 5, where we analyse the sustainability of media markets.

3.1 Transparency and media actors: media ownership transparency

Media ownership transparency plays a fundamental role with respect to the **right of citizens to choose their source of information freely and consciously** as they deem such choice more appropriate.⁴⁸⁵ The possibility to retrieve detailed information on ownership structures, to collect accurate data on who is behind a specific outlet in a direct and straightforward manner, can significantly contribute to the detection of potential biases in news, with important implications in terms of media pluralism. Ultimately, this means providing the chance to react against excessive media concentrations, conflicts of interest, and to expose the leanings of a particular media outlet. As underlined by Craufurd-Smith, Klimkiewicz and Ostling (2021), transparency of media ownership would allow a wide range of actors (public bodies, journalists, researchers) “to **perform independent analysis**, to cross-reference ownership data with other datasets (e.g., data on the financial interests of politicians) and to transform the data into easily digestible information for citizens and third parties”, thus supporting the ‘watchdog’ function and helping citizens to monitor public and private institutions with regard to abuse of power and/or misconduct.

Ownership transparency is also important in order to **gain the public's trust**, reducing levels of scepticism amongst audiences (scepticism which is caused by potential media concentration and conflicts of interest), and it may reinforce public attachment to, and respect for, high-quality news media and editorial independence (JTI, 2019). In times when there is the proliferation of on- and offline information sources, individuals need to have access to information that reveals basic data (name, activity, contact details, etc.), as well as all of the relevant information on ownership and the sources of revenue for news media organisations.

Moreover, the **disclosure of corporate information is assumed to be beneficial to commercial transactions**, as access to reliable information on companies may be used by different groups, such as banks, consumers, suppliers and investors who are contemplating buying shares. In the media sector, an effective framework for transparency relating to media ownership information would be essential for media operators who are willing to invest beyond national boundaries, as it would provide the relevant metrics and accurate data to enable the performance of better strategic decisions. For instance, access to data on market shares is essential for those companies that aim to invest in any given market, as it is a key indicator for market assessment and an important metric by which to assess how competitors are performing, to gauge revenue creating opportunities, to assess their brands’ positioning against those of their competitors, and to predict future growth (Borman-Shoap, 2019; Welch & Nayak, 1992).

Finally, media ownership transparency also provides **policymakers and regulators with the information that is needed to develop, monitor and enforce media-related policies** (Craufurd-Smith, Klimkiewicz & Ostling, 2021), for example, assessing the pre- and post- transaction concentration levels in the case of M&As.

The current situation in relation to media ownership transparency across the EU MSs can be explored from the viewpoints of four different topics/angles: 1) the type of legislation; 2) the type of

⁴⁸⁵ As recognised in the AVMS Directive (Recital 15), acknowledging information on ownership of media providers helps users to make decisions about the kind of content they want to access.

information; 3) the existence of repositories of ownership information; and 4) the level of access to information.

First, in terms of media ownership legislation, the EU reveals a variety of regulatory solutions across the MSs. As reported in the B1 Chapter, the EU MSs can be divided into three clusters: a) MSs which rely on media-specific legislation; b) MSs which rely on media-specific and general rules, such as company law or anti-money laundering legislation; and c) MSs which rely on general rules only. The analysis carried out in B1 provides evidence that **all countries have at least one measure in force that eventually would require media ownership transparency – even if they are not media transparency acts *per se***. This means that transparency requirements are not always linked to media-specific laws, or to media pluralism objectives. In any case, they are often ineffective, due to loopholes allowing media companies not to really disclose their true ownership structure (Ala-Fossi et al., 2018). Finally, it is important to note that some EU MS had not yet transposed the 2018 AVMSD, to their domestic legislation at the time of writing⁴⁸⁶.

When it comes to the **type of information that should be disclosed**, again, the EU picture reveals inconsistencies across the EU MSs, as only 14 MS require the disclosure of the ultimate owners. These countries often combine both media-specific and non-media-specific law (e.g., the implementation of the 2018 Anti-Money Laundering Directive). In this context, as reported in Chapter B1, the first problem lies in the difference between the law and the way it is enforced. While the law may state that complete ownership information should be made available, thus allowing the identification of the real owners, in practice, it is often difficult to gather such information. Conversely, the law may not guarantee the identification of beneficial owners but, in practice, it is possible to identify them.

How **media ownership registers** are managed, updated and made public also differs from country to country. In 12 MS – Belgium (FR), Bulgaria, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Portugal, Romania and Spain - the media authority is in charge of collecting the relevant information, while, in the others, information is collected in commercial/enterprise registries. With regard to the **public's access to information on media ownership**, the situation in the EU also reveals discrepancies across the MSs, as highlighted in Chapter B1. In some MSs, the information is not made available to the public (e.g., Malta), or information is made available, but not for free, or is presented in files that are not easy to find; finally, the problem may not be related to the possibility of accessing information, but to their quality, which is sometimes not consistent nor up to date. It is important to add, in this context, that media ownership transparency extends beyond simply disclosing information: the data must also be up-to-date, comprehensible, useful, and adequately contextualised, so that users can easily make sense of it. One interesting initiative, that might be considered to be an example of good practice, is the Media Ownership Ireland project, an initiative of the Broadcasting Authority of Ireland (BAI), which provides a structured and searchable reference database of Irish media outlets, where the public can discover data about the companies and the individuals who own them. The site, and its content, are developed, collected, and periodically updated, as a project of Dublin City University's School of Communications. The project focuses on providing shareholder information about the Global Ultimate Owner (GUO) of each of the listed media outlets in the database. Information about ownership and shareholdings is derived (as

⁴⁸⁶ The 2018 AVMSD states that MSs shall ensure that a media service provider under their jurisdiction shall make easily, directly and permanently accessible to the recipients of a service at least the following information: a) its name; b) the geographical address at which it is established; c) the details, including its email address or website, which allow it to be contacted rapidly in a direct and effective manner; d) the Member State having jurisdiction over it and the competent regulatory authorities or bodies or supervisory bodies.

indicated in the records displayed) from the Irish Companies Records Office, the FAME database, corporate annual reports, company websites, and from direct communication with media outlets and/or their owners. The ownership status of all of the media outlets that are included in the Media Ownership database is revisited at six-monthly intervals, with the most recent date of updating indicated on the relevant tables.

In conclusion, another discrepancy that can be observed across the MSs is the fact that, in some of the countries, **only the ‘traditional media’ are subject to disclosure obligations**, leading therefore to a lack of ownership information relating to digital native media; also, the TV and radio sectors are more often required to be transparent about their ownership structure than is the press sector.

Chapter B3 has analysed in detail the **media ownership transparency framework in Italy**. The study has focused on the functioning of the Register for Communication Operators (R.O.C), specifically analysing the typology of operators who are obliged to register, how the information is kept up-to-date and, importantly, what kind of data on the operators are required to be submitted to the media authority through the Register, and whether this information is made available to the public. The Italian framework is to be considered a comprehensive one, as the Integrated Communication System (SIC) includes large digital portals and global sharing platforms. The enhancement of the Integrated Communication System (SIC) requires the collection and processing of the additional economic data that the Authority acquires from operators through the Economic System Report (IES), an annual declaration that affects thousands of subjects operating in the sectors of interest and which has been redesigned to collect the personal and accounting data of the companies providing the online intermediation services offered in the country (AGCOM, 2021). In consequence of this, the NRA AGCOM has access to companies’ data and can provide an up-to-date yearly assessment.

While R.O.C. can be assessed as being a good practice, since AGCOM collects the relevant data on ownership, thanks to a comprehensive legal framework obliging operators to provide to the R.O.C. detailed information about their shareholders, shareholding quotas and voting rights, and also whether these are owned through another person, it must be noted that the disclosure of this information, which can help to track the ultimate owner, is not directly available to the public, as only registered operators can access R.O.C. and, consequently, additional relevant ownership details⁴⁸⁷. Full information is accessible upon formal request to AGCOM, or by paying a fee, if the information is accessed through the Business Register. It follows that the system is only partially effective, as specific information allowing disclosure of media ownership is provided only to public bodies, while the system does not provide sufficient/easily accessible information to the public. Not least, even if online intermediation service providers are asked to register with the R.O.C., some digital platforms have appealed against this obligation.

As discussed in Chapter B3, while general corporate transparency requirements have been widely put in place, there has been **limited adoption of binding requirements when it comes to media ownership transparency at the EU level**.

⁴⁸⁷ It has also to be highlighted that, despite more detailed information on publishers and media providers who ask for public support should be publicly available, the list in the AGCOM website is updated only to 2013.

Recital 15 to Directive 2018/1808⁴⁸⁸ (AVMS Directive), makes the links between freedom of expression, democracy and media ownership transparency, acknowledging that information on the ownership structure of media service providers is important for users who make decisions about the kind of content they want to use. At the same time, the Directive applies only to broadcast and audiovisual on demand services, leaving it to the MSs to determine whether, and to what extent, information about the ownership structure of a media service provider should be accessible to users. As emerged in the course of the stakeholders' consultation that was organised on January 20th, 2022, for the scope of this Study, before changing the legislation at the EU level, it would be of primary importance to "give a chance" for the transposition of AVMSD, making sure that rules are properly applied and that media companies would support the enforcement of media ownership transparency legislation⁴⁸⁹. Some resistance from operators, for example, was detected in Portugal, as the result of an "ambitious" law on media transparency, transposing the AVMSD, covering direct and indirect ownership structures, foreign ownership and information on individuals/companies who are financing media companies.

Moreover, although these measures certainly provide the disclosure of the relevant information, corporate transparency requirements are not specifically calibrated for media-related concerns (Craufurd-Smith, Klimkiewicz & Ostling, 2021). The issue stands on whether these requirements effectively match the standards that are defined in the *2018 CoE Recommendation of the Committee of Ministers to Member States on Media Pluralism and Transparency of Media Ownership*⁴⁹⁰, thus posing the question as to the need for further media-specific initiatives: the Recommendation suggests media outlets operating within the State jurisdiction to disclose ownership information directly to the public on their website or other publication, and to report this information to an independent national body, tasked with making it available to the public. Moreover, the recommendation describes the information that should be required, including:

- a) legal name and contact details of a media outlet;
- b) name(s) and contact details of the direct owner(s) with shareholdings enabling them to exercise influence on the operation and strategic decision making of the media outlet. States are recommended to apply a threshold of 5% shareholding for the purpose of disclosure obligations;
- c) name(s) and contact details of natural persons with beneficial shareholdings;
- d) information on the nature and extent of the shareholdings, or the voting rights of the above legal and/or natural persons in other media, media-related or advertising companies, which could lead to their having a decision-making influence over those companies, or the positions they may hold in political parties;
- e) name(s) of the persons with actual editorial responsibility;
- f) changes in the ownership and control arrangements of a media outlet.

Consequently, and given the relevance of transparency for the internal market, there might be the need to harmonise the latitude and effectiveness of media transparency requirements within the internal market.

⁴⁸⁸ European Parliament and the Council (2018b) Directive (EU) 2018/1808 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (AVMSD) in view of changing market realities (2018) OJ L303/69.

⁴⁸⁹ Although it must be noted that AVMSD deals only with audiovisual media.

⁴⁹⁰ Council of Europe (2018) Recommendation CM/Rec (2018)1 on media pluralism and transparency of media ownership, 7 March 2018, at: <https://rm.coe.int/1680790e13> accessed on May 27, 2022.

Taking all of this into consideration, our (not mutually exclusive) policy recommendations are the following:

- MSs should put in place mechanisms, according to which **information is preferentially collected by the NRA**; in a case where this is not possible, for instance, where companies' registries centralise this information, a free flow of information should be in order so as to allow NRAs to access the media ownership information needed. MSs should consider empowering NRAs to conduct sector inquiries when data is otherwise not forthcoming. Also, **NRAs could cooperate in this regard with national industry stakeholders or chambers** (e.g., audiovisual providers' chambers, publishers' councils, etc.) that collect relevant ownership/circulation/reach information about their members.
- MSs should put in place mechanisms, according to which **access to up-to-date ownership information is guaranteed to the public** - for free or upon payment of reasonable fees - by the institution(s) in charge of collecting the information.
- **The European Regulators Group for Audiovisual Media Services (ERGA) could play a standard setting role** in the process of implementation of the criteria envisaged in the 2018 Recommendation and encouraging MSs receptiveness to Article 5.2 of the AVMSD. Moreover, ERGA could play a coordinating role among NRAs for strengthening the exchange of information and best practices.
- The EC should recommend the creation of **cross-country and cross-jurisdiction data repositories** of media ownership data, requiring free of charge data to be provided in machine readable formats;
- **Harmonising at EU level the media ownership information to be disclosed**; i.e., essential list of ownership information that should be required, on an annual basis, to companies operating in the media sector in the EU. This list should include, at least, the information provided for in the 2018 CoE Recommendation, ideally including details on beneficial ownership, data on financial relations, as well as data on other risky connections (i.e., the holding of a political mandate). A higher standard for beneficial ownership information, could be provided by the FATF Guidance for Collection of Information (FATF, 2019).
- **Harmonising at EU level the typology of media actors that should be asked to provide such information**, so that the same level of information is required from the different types of media: TV, radio, press and digital.

3.2 Transparency and state actors: state advertising transparency

As mentioned above, in addition to media ownership transparency related to private actors, there is a need to ensure transparency of state-related actors active in the media field. This includes transparency of various forms of support to media from the state (e.g., public subsidies), together with state advertising. Transparency of state funding is analysed further in Section 5 of this Chapter, while this one focuses on transparency with regard to state advertising.

State advertising should be understood as any advertising paid by governments (national, regional, local) and state-owned institutions and companies. The content of this advertising is not necessarily of political nature. The **transparency requirements to which state advertising is subject are stricter than common commercial advertising**. This is due to the fact that, for state accountability reasons, it is expected that the use of the state budget or budget from state-owned companies is

used in a fair and non-discriminatory way. The asymmetric distribution of these funds can be used as a highly effective form of media capture, serving as a vehicle for funding pro-government media, deepening newsrooms' and audiences' polarisation and, ultimately, eroding citizen-driven accountability. In effect, problems related to the unfair distribution of state advertising budgets have been widely documented for decades, with state advertising funding often used to reward media outlets close to or uncritical of state authorities (Dragomir, 2017). As highlighted in the B1, B2 and B3 Chapters of this Study, in absence of transparent, objective and non-discriminatory criteria in the allocation of advertising expenditures, the public funding of advertising campaigns may be used to exert undue political influence on the media.

Therefore, the discretionary use of state advertising can impact media pluralism in different ways, as explored in Chapter B3. First, it may have a direct effect on internal pluralism through the ensuing distortion of media outlets' editorial lines towards content supportive of the government's views and an increased tendency towards self-censorship. Secondly, it may have an indirect effect on external pluralism by impacting upon the dynamics among media players, as some of them may be favoured with a disproportionate allocation of state funds in order to serve the government's own political agenda, distorting the level playing field and discouraging new market players.

The **regulation on the distribution of state advertising across EU MSs consists of a varied framework**. As demonstrated in Chapter B2, these rules include: i) media specific measures on transparency and fair distribution of state advertising (not in all cases these go together); ii) ban or limits on state advertising; iii) requirements for state institutions to advertise in the media; iv) general procurement, public transparency rules or other relevant rules with special mentioning of State advertising and other non-legally binding instruments (e.g., recommendations, see Table B2.1 in Chapter B2).

Among the 15 EU MS that adopt specific rules concerning State advertising, some take into consideration the importance of transparency, while others focus more on fairness, and a third group takes into account both principles: transparency and fairness. By transparency, we mean the requirement to disclose the amounts and the beneficiaries of the public spending for advertising, and, for fairness, the requirement that measures on the distribution of State advertising ensure some balance between media outlets.

However, there seem also to be **significant differences regarding the efficiency of these rules**, in such a way that they do not neutralise the unfair or preferential allocation of funding by State or public institutions, and no individual MS framework has been identified as being an ideal model.

The lack of adequate legal measures and frameworks regarding transparency and fairness in the distribution of State advertising therefore contribute to discretion, and even to arbitrariness in the allocation of resources, affecting, thus, the internal market's functioning and also media pluralism.

According to CoE Recommendation CM/Rec (2018), States are "encouraged to provide various forms of financial support such as advertising and subsidies"), but state advertising, like other public support measures, "should have clearly defined purposes and should be based on predetermined, clear, precise, equitable, objective and transparent criteria".

Taking this scenario into account, together with the findings of previous Chapters, and considering that the harmonisation of the transparency requirements that are linked to State advertising increases legal certainty and reduces the fragmentation of the obligations that service providers meet in the context of State advertising within the internal market, our policy proposals for this area are:

- In general terms, any measure adopted by the EC or MSs which is intended to improve the regulation of State advertising should be aimed at **enhancing both transparency and fairness**;
- MSs should be encouraged to put in place measures allowing for more transparency in relation to the information that should be displayed by State advertising; it should contain, in a clear, salient and unambiguous way, a **statement to the effect that the content displayed is State advertising**, as well as information on the **identity of the sponsor** or the entity who ultimately controls it.

4. Market power

The concentration of economic resources in media markets is an issue that has been addressed over the years by the EU Member States, mainly through two kinds of measures: (i) limitations to media ownership (e.g., granting licences, providing thresholds for the concentration of market shares); (ii) merger rules. These legislative measures are aimed at preserving external media pluralism, as elaborated in the Introductory Chapter of this Study.

The mapping of media anti-concentration measures that is carried out in Chapter B1 of this Study, outlined, on the one hand, that general competition rules apply in all EU Member States (notably, in relation to antitrust and merger control), with issues related to media concentration being taken into account by authorities other than those that are specifically Media Regulators (National Regulatory Authorities, NRAs); on the other hand, **not all EU Member States have specific media ownership rules**. When the latter are in place, they mainly implement limitations on media reach, restrictions on market shares and cross-media ownership restrictions. Restrictions on foreign (non- EU or non-domestic) ownership are also in place in some MSs. Finally, mergers in the media sector are assessed either by National Competition Authorities (NCAs), by NRAs (media authorities), or by both, and they rely on different legislations in terms of the thresholds, multipliers or principles that are applied.

Member States thus have their own sets of rules, and eventual divergences have not been directly addressed by the European harmonisation measures. In fact, as outlined in the Introductory Chapter of this Study, the EU has limited competencies to deal with issues related to media pluralism and diversity. However, divergent national media laws can pose a barrier to the internal market. The EU thus has the competencies to harmonise those national media laws that are based on its internal market competencies, if such divergences 'significantly distort' the internal market (Art. 114 TFUE).

Chapter B1 of this Study has outlined that, despite a vast array of literature that emphasises the link between media market concentration and media pluralism, and the recognition of media pluralism

as a fundamental principle by the *EU Charter of Fundamental Rights*, **pluralism is not usually an explicit objective of the measures that tackle concentration in the media markets in the EU Member States.**

Moreover, our Study shows that Member States' approaches to media ownership and concentration are **predominantly geared towards traditional media**, and they **do not always apply to online media**. When there are measures applying to online media, it is **mostly unclear exactly which services are concerned**, or the scope may seem to be quite restrictive: media ownership rules mostly refer to on-demand services, but they do not mention other types of online media. There can also be **difficulties in enforcing the law for online media**, as exemplified in the rules on the disclosure and reporting of media ownership. It is, in fact, even more difficult to identify the real owners, as digital technologies make it easier for a service to be available across national borders, and thus to be able to exploit regulatory gaps.

Member States' media anti-concentration rules do not yet recognise the concentration of economic resources in the different layers of the value chain: in fact, they focus on the supply side of the media market, addressing the concentration of ownership in the production. By separating the control of production and distribution, digitisation has increased the roles of intermediaries, their control over access to the media and on the digital advertising market.

Moreover, as outlined in the Introductory Chapter and Chapter B1 of this Study, considerations about external media pluralism in the new media ecosystem also need to take account of communicative power, transparency versus opaqueness, and conflicts of interest. Market power is only one component of media power, which also comprises "opinion power" (Helberger, 2020)⁴⁹¹. Any assessment of the effects of media mergers should thus consider internal pluralism effects within one outlet, as well as external pluralism effects in the broader media ecosystem. This is merely because a large number of media outlets competing against each other does not necessarily result in well-sustained media pluralism and diversity. These considerations will be borne in mind while we are suggesting the policy recommendations that are listed in this Section.

4.1 Media ownership rules

In 11 Member States, media plurality is an objective of the rules that limit media reach. Pluralism, in this context, is often linked to the considerations in relation to broadcasting licences' allocation, and, to some extent, to the press. Media plurality is an explicit objective of **market share restrictions** in 6 Member States, and in 5 MSs with regard to **cross-media ownership restrictions**. **The way pluralism is defined differs between Member States, and the definition often remains vague.**

We believe that **media pluralism deserves more careful consideration in regulations concerning media ownership limitations**, starting from a common definition and common criteria through which to assess it. Moreover, we signal that **proper enforcement of those regulations is another key factor that should be considered**⁴⁹².

⁴⁹¹ Opinion power can be defined as the ability of the media to influence the processes of individual and public opinion formation (see also, Neuberger 2018).

⁴⁹² It is not the case in all circumstances in which pluralism is mentioned in the legislation, that it leads to an actual improvement in the media environment. For example, the Hungarian Media Act addresses diversity as the reasoning behind limiting market concentration, but a considerable concentration of media outlets has taken place in recent years. Please note that an analysis of the enforcement of the rules that we have mapped is beyond the scope of this Study.

Online media fall under the scope of media ownership limitations **in only 4 Member States**. In the others, online media companies are regulated by competition law.

Based on the findings in the previous Chapters, our (not mutually exclusive) policy recommendations in relation to the limitations to media ownership, are the following:

- MSs should enhance NRAs competences, power and resources, and ensure their independence from political and other third parties' influence, and their accountability, so that these institutions can **strengthen their supervisory roles for the effective enforcement of the existing legal limitations**.
- An EU-level measure that clearly includes online media among the actors that are subject to such rules: as outlined in the Introductory Chapter, the actors who operate within the media ecosystem should be offered a policy framework which guarantees an appropriate level of protection, and which provides a clear indication of their duties and responsibilities, with the policy response being "graduated and differentiated", based on the part that media services play in content production and dissemination processes.
- A clear **EU-level definition of media pluralism - as a specific objective of the media ownership limitations - and defined criteria and procedure for measuring it**, would greatly benefit the design and implementation of national measures in the Member States.⁴⁹³ As recently underlined by the CJEU, in the Vivendi case (2020), even though a restriction on freedom of establishment may, in principle, be justified by an objective that is of general interest, like the pluralism of information and the media, the thresholds for limiting media ownership and/or for preventing mergers between media companies, that are set in the domestic legislation, may bear no relation to the risk of jeopardising media pluralism, nor to allowing the determination of whether an undertaking is actually in a position to influence the content of the media.⁴⁹⁴

4.2 Controls on foreign capital and conflict of interest restrictions

Some other forms of media ownership limitations regulate the in- and outflows of foreign (non-national or non-EU) capital in the market; others address individual ownership, namely, the categories of figures upon which special limitations in the media market are set (preventing conflicts of interest, e.g., the ownership of a media outlet by a politician).

There are **14 Member States that have measures in place** that limit, or even prohibit, the ownership of media organisations by natural or legal persons who are not EU citizens, and who are not established in the EU either. In some countries, such as **Slovenia** and **Germany**, foreign

⁴⁹³ In this regard, the inclusion of such definitions, in the 2014 *Irish Competition Act* may be regarded as best practice: Part 3A states that the "diversity of content" means the extent to which the broad diversity of views (including diversity of views on news and current affairs) and diversity of cultural interests prevalent in Irish society is reflected through the activities of media businesses in the State including their editorial ethos, content and sources; 'diversity of ownership' means the spread of ownership and control of media businesses in the State linked to the market share of those media businesses as measured by listenership, readership, reach or other appropriate measures; 'plurality of the media' includes both diversity of ownership and diversity of content."

⁴⁹⁴ After this decision, and in the process of the transposition of the AVMSD in Italy, a provision was included in the new legislative decree which expanded AGCOM's supervisory powers over the SIC in order to ascertain market situations which could be detrimental to media pluralism (see Art. 51 legislative decree 208/2021, <https://www.gazzettaufficiale.it/eli/id/2021/12/10/21G00231/sg> accessed on May 27, 2022).

ownership rules are extended to non-nationals, i.e., they also limit ownership by persons or entities from other Member States. Some of these regulations were enacted during the COVID-19 pandemic, and were justified as being put in place in order to prevent hostile takeovers in a period of economic crisis.

These measures recall the long-discussed “national champion” issue. “In the context of merger control, the notion generally means government support for a merger between two domestic firms to create a more powerful entity, often also expressly opposing the takeover of one of the domestic firms by a foreign company” (Galloway, 2007). Our B1 mapping outlines that, in enacting and enforcing such restrictions on foreign media ownership, a few Member States have explicitly outlined the objective of protecting the national market from ‘**undue influence**’.

With regard to restrictions on foreign ownership, it was noted in Chapter B1 that they may result in **restrictions to market entry and thus represent a possible obstacle for the development of the EU internal media market**. Moreover, it is quite straightforward to identify possible infringements of EU legislation relating to free movement within the single market, including the right to establish media companies, the freedom to provide services, and the free movement of journalists, that may be relevant to media pluralism.

Based on the findings in the previous Chapters, our (not mutually exclusive) policy recommendations in regard to the limitations of foreign media ownership are the following:

- The EU should elaborate **a restrictive policy with regard to national regulations that limit the ownership (or shareholder voting power) of media companies by other MSs**, as this conflicts with the internal market and fundamental freedoms within the EU. Within the internal market, considerations of internal and external media plurality should prevail in the assessment of mergers and acquisitions (see below) due to the desire to support national champions, or to block ownership relations with other MSs;
- An EU level **harmonisation of the measures and related thresholds that are set at the national level, controlling the acquisitions by non EU companies**; such harmonisation should take into careful consideration not only the economically driven considerations, but also public interest objectives, and this should be aimed at guaranteeing to EU citizens access to diversified and independent media content.

With regard to the restrictions that are related to possible conflicts of interest, the most common categories of actors to whom restrictions apply are **advertising agencies, political parties, state institutions and agencies, and their family members**. According to the B1 mapping, these are present in **23 Member States**. These rules’ efficiency in preventing unwanted control boils down to the transparency and disclosure of ownership, but also to the actual enforcement of these restrictions by the public authorities.

Based on the findings in the previous Chapters, our (not mutually exclusive) policy recommendations in relation to the limitations to media ownership that are based on considerations regarding the issue of conflict of interest, are the following:

- With regard to ownership limitations that are related to situations of potential conflict of interest, when such possible conflicts exist, the evaluation of the actual presence of such a conflict should be **more carefully scrutinised case-by-case, thus enhancing the possibility for national authorities to identify the ultimate owner of a media company**.

Of course, this is intrinsically linked with the recommendations that are listed in Section 2, and which relate to media ownership's transparency.

- **The EC should promote the enactment of such rules in the MSs in which they are still not in force** (e.g., in Malta and Slovenia), as they would help to address influence problems, such as the issue of direct political pressure on media outlets.

4.3 Media mergers

Beyond economic perspectives, and due to media goods' economic and cultural roles, **media mergers may not only drastically impact upon** competition, but also on **the diversity and pluralism of opinions and views**. As outlined in Chapter B1, in most Member States, media mergers are scrutinised using the same turnover thresholds as in any other industry. In 5 MSs, however, **such thresholds are lowered for media companies**. Some other MSs apply **multipliers** to the media companies' revenues when assessing mergers, so as to make sure that media companies with lower revenues, but with a potential to affect pluralism and competition, do not pass undetected.

The exploratory data analysis that was conducted in Chapter B3 highlights the **existence of a significant variety within the internal market**, with regard both to the regulatory landscape, and in terms of the relationship between regulation and market concentration. **No simple statistically significant correlation exists between the existence of regulation and actual ownership concentration for the EU-27 Member States taken together**. A more accurate understanding of the relationship between regulation and concentration would require more information than the presence/absence of specific measures. In particular, **information on the actual enforcement of existing measures appears to be particularly important if we are to fully understand the impact of regulation across Member States**.

Moreover, such evaluations are rendered even more complicated in the context of a **powerful** (both in terms of market and of opinion power) **and unregulated online news market**. As a Dutch Parliamentary Committee argued, while abolishing the *Temporary Media Concentration Act*, the online media market would inevitably outperform the traditional newspaper market if the latter were not to be given the opportunity to grow and explore cross-media activities (Tijdelijke Commissie, 2009). This is one of the perspectives adopted when deciding how to reform the legal framework in this sector, in other MSs also, with the risk (which was proven to be real in the Netherlands, as outlined in Case Study 1 of Chapter B3) of concentrating the traditional media markets in unprecedented ways.

Based on the findings in the previous Chapters, our (not mutually exclusive) policy recommendations in the field of mergers between media companies and/or actors who are active in the media ecosystem, are the following:

- With no prejudice to the established competition assessment procedures, **a harmonised EU- level definition of what is the media sector under consideration should be established** (i.e., which media actors are relevant, both on the production and distribution side (see the Introductory Chapter).
- It is crucial for **M&As' assessment to effectively evaluate the impact in terms of the opinion power and the consequences for plurality of voices** resulting

from such mergers. In order to do so, specific competences should be assigned to NRAs, in the form of a “media pluralism test”.

- Such a **“media pluralism test” should take into account internal pluralism-related considerations**, similar to those that are already applied in some MSs for granting broadcasting licences. Moreover, in cases of mergers that might have an impact on the distribution side of news, the safeguarding of exposure diversity should also be taken under consideration⁴⁹⁵. As outlined in Chapter A3’s recommendations, guaranteeing the plurality of sources and content types in each media market may not guarantee sufficient diversity of exposure, as significant numbers of individuals may each access a narrow range of sources and content types, particularly given the new forms of media targeting.
- **Civil society organisations that deal with free speech/media issues should be given a more specific role in the context of media mergers’ assessment for bringing in arguments related to media pluralism** This provision might have strong impacts in merger cases, at least in terms of accountability and raising public attention⁴⁹⁶.
- In light of the complexity of the current media ecosystem, simply lowering the thresholds provided for media ownership, or for concluding a merger, might not be a decisive solution. As a matter of fact, **shedding light on the state of the market post-merger, on the basis not only of economically driven criteria**, would also be important.⁴⁹⁷ Of course, the possibility of effectively carrying out such an evaluation is intrinsically linked to the availability of transparent and consistent data on media audiences and ownership.

4.3.1 An issue of competences: NCA or NRAs?

The objective of media pluralism is considered when a merger is being assessed, either by the NRA or the NCA, in 5 MSs.⁴⁹⁸ Chapters B1 and B3 of this Study have outlined the key role of the national regulatory authorities in the field of merger control. Many MSs rely on **more than one regulatory agency**, usually, a **Media Regulatory Authority (NRA)**, and a **National Competition Authority (NCA)**. Both authorities have specific powers, and they cooperate, in some instances, usually with NCAs having the final decision and NRAs having an advisory role. In some MSs, the NRA’s opinion may be binding, and this usually happens when media pluralism or freedom of expression is at risk.

⁴⁹⁵ As underlined in part A of this Study, exposure diversity refers to the diversity of content and sources to which each individual media user is exposed and can actually access.

⁴⁹⁶ For example, see the *amicus curiae* submitted by Article 19 to the Regional Court in Warsaw on the case of the PKN Orlen media purchase in Poland: https://www.article19.org/wp-content/uploads/2021/06/ARTICLE-19-Orlen-amicus_EN.pdf accessed on May 27, 2022.

⁴⁹⁷ The B1 mapping outlined that no EU MS provides post-merger evaluations, to assess whether the decisions in question were correct, and why, with a view to improving future merger analysis or decision-making processes. Virtuous retrospective evaluations are carried out, for example, in Ireland, where the Broadcasting Authority undertakes a retrospective review on the impact of ownership changes on plurality over a three-year period.

⁴⁹⁸ In Austria, for example, where media plurality is defined as the “diversity of independent media companies that are not affiliated to each other and that ensure media coverage that takes into account a variety of opinions”. See also the best practice of Ireland, and the specifications in Part 3A of the Competition Act.

The High-Level Group on Media Freedom and Pluralism suggested, in 2013, that responsibilities related to safeguarding media plurality and other public interest considerations be included in the NCAs' remit, "in the enforcement of competition rules".⁴⁹⁹ This is partially already foreseen by Art. 20 (4) of the *2004 EC Merger Regulation*⁵⁰⁰, which provides that the plurality of the media is a legitimate interest that MSs may undertake in order to tackle concentrations⁵⁰¹.

It is, however, open to discussion whether entrusting the NCAs with the role of also safeguarding public value goals would be the best choice⁵⁰². Often, NCAs have no formal obligation to seek advice from the NRAs. This practice is contestable, given **the best placed authority to evaluate media plurality-related issues is the NRA**, which could assess it on democratic, social, and cultural grounds.

To protect media plurality may raise **trade-offs between efficiency or economic development and public values: a European framework with indications on how to reconcile these two interests**, beyond the concept of "consumers' welfare", would be useful⁵⁰³.

In addition, in 9 Member States, **Ministries and Governmental bodies can** override the assessments that are conducted by NCAs and/or NRAs, with a view in relation to **safeguarding public/general interests**. In principle, this might, therefore, include media plurality grounds. The problematic issue remains that the relevant **rules rarely provide extensive explanations of what is meant by media plurality and by public/general interest** considerations, which are used as bases for justifying interventions, and that give additional power to one authority over another. Other bodies can be involved in M&A assessments too (e.g., data protection authorities). As outlined in Case Studies 1-3 of Chapter B3, such cooperation is welcomed, as these bodies can combine their expertise and provide a more holistic assessment. In practice, however, such involvement rarely takes place, when looking at the MSs domestic policies.

⁴⁹⁹ High Level Group on Media Freedom and Pluralism. (2013). *A free and pluralistic media to sustain European democracy*.

https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/hlg/hlg_final_report.pdf

⁵⁰⁰ [EUR-Lex - 32004R0139 - EN \(europa.eu\)](https://eur-lex.europa.eu/uri/lexuri-vogel?uri=CELEX:32004R0139-EN) accessed on May 27, 2022.

⁵⁰¹ As outlined in Case Study 2, Chapter B3, one particular concern of the 2021 update of Article 22 of the *EU Merger Regulation* is the failure to take media plurality into account in assessments, when such assessments are made at the EU level.

⁵⁰² The Flemish NCA, for example, considers public-interest objectives in its assessment. Yet, as was seen during the stakeholder consultation of January 20th, 2022, a member of the Organisation for Economic Co-operation and Development (OECD) argued that NCAs are reluctant to take plurality into account, stating that a reason for this hesitancy is, firstly, its economic, and not its social focus, and, secondly, the unquantifiable metric for plurality.

⁵⁰³ It was repeatedly emphasised by the Dutch legislator that media plurality can be protected by general competition law, through assessing whether consumers will be left with sufficient freedom of choice (see Case Study 1, Chapter B3). Basically, the NCA would map out consumers' media preferences and investigate whether other competitors provide adequate alternatives, considering 'consumer choice' as a proxy for media plurality. One might, however, wonder whether this is an adequate indicator with which to measure media plurality. In this regard, the Polish case related to the takeover of Polska press by the state-owned company Orlen, approved by the Polish competition authority UOKiK based on merely economic considerations and ignoring media plurality-related issues such as editorial control (see Klimkiewicz B., 2022: <https://cmpf.eui.eu/orlens-takeover-of-polska-press-media-market-and-pluralism-issues-are-intertwined/> accessed on May 27, 2022).

From an internal market perspective, having to handle different merger measures is a potential deterrent to market entry through M&A transactions. However, creating a common legislation against media concentration, at the EU level, meets a variety of obstacles from its possible design to its implementation, raising issues over the principle of subsidiarity with regard to the Member States' competences. Moreover, **harmonisation in this field needs to take into the utmost account the specificity of media markets, and their implications for democracy.** Having taken all of this into consideration, the suggested (not mutually exclusive) policy proposals are the following:

- MSs should be encouraged to put in place a **cooperative model**, in which **competition authorities are involved in merger control in the media sector**, alongside sector regulators. Research on inter-agency cooperation has been conducted by several stakeholders, including EPRA, whose 54th Meeting tackled this topic and generated some key lessons, while also promoting the enhancement of inter-institutional cooperation.⁵⁰⁴

One option for such collaboration is **enhancing the practice of exchanging data and information among different authorities**, and creating **joint committees** for institutional cooperation, working on shared concepts concerning public value and plurality, and on a shared analysis of cases.

This could be supplemented with the creation of an EU wide vehicle for inter-agency collaboration and knowledge exchange among media authorities (this would be comparable to BEREC/ECN), which would help in developing EU wide definitions of, and metrics for, plurality, best practices concerning remedies, etc.

- In cases when media pluralism issues are concerned, **the NRA and the NCA should try to coordinate to come to a joint decision.** In any case, the NCA should always have the power to block a merger on the basis of its competition concerns (*including consumer choice*) and the NRA should have the power to block a media merger on the basis of media pluralism concerns that go beyond consumer choice concerns. None of the two authorities should be granted the power to overrule the other. This means that, because of the specificity of the media and the democratic importance of media pluralism, mergers in this area should be subjected to the double, possibly co-ordinated but ultimately independent, filter by the two authorities.
- To propose a harmonised legal definition, at the EU-level, on what is meant by a public interest test (which, when run by NRAs, could be considered to be a “media pluralism test”), and what is understood, and considered, to be ‘media pluralism’. In addition to NCAs and NRAs having clearly defined roles, responsibilities, powers and jurisdictions, defining these two elements would address currently existing frictions between authorities and different interpretations of these non-economic elements.

⁵⁰⁴ EPRA. (2021, December 6th). 54th EPRA meeting - “Cross-sectoral cooperation between regulators”: summary of discussion. https://www.epra.org/news_items/54th-epra-meeting-cross-sectoral-cooperation-between-regulators-summary-of-discussion accessed on May 27, 2022.

4.4 Data-related market power

Digital markets are highly dependent on data collection and processing. Competition authorities and scholars have established a link between the capacity to collect and process data, and market power in a variety of digital services, including many which, as explained in the Introductory Chapter, would be considered auxiliary to, or intermediaries among media markets (see Australian Competition and Consumer Commission, 2019; Competition & Markets Authority (CMA), 2020; Crémer et al., 2019; Furman et al., 2019). Perhaps the most attention has been paid to the consumer data that is used for targeted advertising, however, as Chapter B2 of this study has discussed, there are also other ways that data is used, and other types of data from which the media derive value, and also, in some cases, market power.

Our Study adds **further evidence of the concentration of market power into the hands of intermediary and auxiliary service providers from the accumulation of the data that is required for the targeting of advertising**. As illustrated in the business models that are elaborated in Chapter B2, these are the services that are involved in the trade in online advertising, upon which many media are dependent, particularly press publishers and the smaller online media. This concerns personal data relating to individual consumers, or information that is generated by their use of those media or services. It is used in aggregate form in order to generate archetypes and insight about specific, or even micro, segments of the population of users for the purposes of targeting. It is also used in aggregate form to generate the insight that is used by media agencies and advertisers for campaign planning, and by content producers to allow them to understand the performance of their content, and to establish the value of the advertising inventory both in and around their content (Broughton Micova, S & Jacques, S. 2020a; Krämer. J. et al 2020). Identifiable personal data is also required to serve ads to specific targeted consumers when advertising is targeted. This means that there is market power, or commercial advantage, to being the first party holder of this data, who therefore controls the consent procedure and the further processing of the data. Often this is not the media that are producing the content.

One participant in the stakeholders' consultation of 20 January , 2022, explained the problem and highlighted the key question:

“Another aspect is data related to content that is consumed within news apps; here digital platforms, as intermediaries, have access to data that is actually produced by consuming news content over publishers' websites and apps. This has been discussed in terms of competition law, digital platforms that are free riding and monetizing on values that are produced by media companies. To what extent will media companies be able to compete with platforms if they have access to data?”

As elaborated in Chapter B2, some major publishers and audiovisual media services that are operating their own targeted or addressable advertising options, are mimicking the large online content services by trying to accumulate and process this kind of first party data. In some cases, even these publishers and audiovisual media services encounter problems with collecting the data from consumers' interaction with their content. As illustrated in our case study, and confirmed during the stakeholders' workshop, in some jurisdictions, cable and telecommunications providers, who provide Internet protocol TV (IPTV), act as gatekeepers, maintaining control over the collection and processing of this data. Smaller publishers, such as local or niche media, are reliant on the tools of the intermediary services, and they collect very little, if any, first party data that would give them

insight on their consumers, the performance of their content, or the value of their advertising inventory.

Data sharing and data portability requirements have been proposed as one way to limit the market power of such intermediaries (Furman et al. 2019). The *Digital Markets Act* (DMA), mandates some forms of data sharing on the intermediary or auxiliary services that are identified as gatekeepers. Most important to media market power is the obligation in Article 6(8), which is to: “provide advertisers and publishers, as well as third parties authorised by advertisers and publishers, upon their request and free of charge, with access to the performance measuring tools of the gatekeeper and the data necessary for advertisers and publishers to carry out their own independent verification of the advertisements inventory, including aggregated and non-aggregated data.”, and 6(10), to: “provide business users and third parties authorised by a business user, at their request, free of charge, with effective, high-quality, continuous and real-time access to, and use of, aggregated and non-aggregated data, including personal data, that is provided for or generated in the context of the use of the relevant core platform services or services provided together with, or in support of, the relevant core platform services by those business users and the end users engaging with the products or services provided by those business users”. Combined with the DMA’s requirement that both advertisers and publishers are provided with data on the prices paid and the remuneration to publishers, **these provisions have the potential to significantly affect the power balances between media and intermediary and auxiliary services.**

The DMA takes a nuanced approach which is focused on the kind of data from which advertising dependent media derive value. It has the potential to be a significant step in addressing the free-rider problem, which was mentioned in the stakeholder quotation, above. **However, it is likely to be necessary for it to be complemented by additional interventions in order to ensure the fair and efficient functioning of the internal market for media and advertising.** Our study also highlights two other points on the role of data in creating value and market power.

Firstly, data is not only used in the service of advertising and, secondly, being able to access data does not necessarily mean having the capacity to create value from that data. Data is used by non-advertising dependent services to plan and tailor their content, even in individual commissioning or production decisions. It is, therefore, not only important for value creation and competitiveness, for the media as market players, but is also connected to the potential internal pluralism and exposure diversity concerns that are set out in the Introductory Chapters and in Chapter A3. As one respondent in the stakeholder consultation of January 20th, 2022, argued:

“It’s not only about having access to data but it’s also about the structure of the market; it’s not only about personal data, lots of data that can be shared are useful to small businesses, to make financial decisions. The big issue today is the discoverability of your content, the personalisation, you understand how people are consuming your content, all this data can be reused to better define your offer.”

Even for those media that have opted for contextual or other non-targeted advertising, or who operate as subscription or public services, data is important. They need both the ability to access the data on a continual basis, as the DMA will ensure, and the capacity to generate insight from this data and make use of it in content planning, prominence measures, and building relationships with their audiences. How would a local online news medium, such as those described in the third business model in Chapter B2, make use of this data? They could potentially use it to better understand the needs and interests of their audiences, perhaps then better addressing accessibility

challenges (e.g., for the elderly or visually impaired), or to ensure coverage of issues that are relevant to them. However, they would need to have the resources to generate that kind of insight from aggregate big data in the format in which it is provided by the gatekeeping service.

Another example of this kind of data use was given in Chapter B2, which recounted how the SVOD provider Netflix uses data both to refine its recommender system and its production and acquisition of content. In relation to this example, we pointed out that independent producers whose content is purchased by an SVOD service do not necessarily get the performance data that is associated with their content. Not only does this raise similar questions about the capacity to generate value and insight, as for the local news media, but also as SVOD services would not meet the definition of gatekeeper as it is set out in the DMA, there is not an obvious mechanism through which to ensure access to such data. There is, therefore, likely to be a need for both interventions aimed at supporting media to make use of the data to which they gain access, and a careful examination of the impact of the DMA in media markets, in order to assess whether those services that hold market power derived from their ability to accumulate and process data, are being captured.

We therefore make the following (non-mutually exclusive) policy proposals:

- The problem of the concentration of data-derived market power has largely been treated as a competition problem, with little to no concern for fundamental rights (Pisarkiewicz, A., Polo, M, 2021; Lynskey, 2017). It is important that **consideration of data use by the media, and the roles of intermediary services, include** not only the consequences for external plurality and the sustainability of a diversity of media in any given market, but also the **consequences for internal plurality** within the media, and the **exposure diversity** that is experienced by consumers.
- The adoption of **the DMA should be followed by Commission guidance on formats and standards for the sharing of the data that are to be made accessible under its Article 6 provisions**. This can ensure the standardisation that is necessary for the smaller media, in particular, in order to pool expertise and share processing resources, and could reduce the learning cost that would be incurred in order that they can create value from this data.
- The implementation of the DMA should be accompanied by EU and MS level **programmes and policy, which are aimed at supporting media in generating insight and creating value from data**, in compliance with the EU data protection framework. This might take the form of direct support for initiatives from the media through, or in a similar form to, the Creative Europe programme which supports production. They could also take the form of policies that are aimed at the standardisation of the metrics that are used to establish content and advertising performance, or the establishment of data pools that could be either co-owned or public resources.

5. The sustainability of media markets

5.1 What does sustainability of the media market mean?

The sustainability of the media and the media markets is crucial to media pluralism. In many ways, the health of the internal market, fair competition and opportunities for growth, can serve as proxies for sustainability. They are intrinsically linked. However, in the context of media plurality, our understanding of sustainability is not limited to the continued existence of media. As explained in the Introductory Chapter, this study has been concerned with multiple aspects of media pluralism. To achieve external pluralism, for which a diversity of media owners and types are needed in any given market, the sustained survival of multiple media companies or providers is necessary. However, the mere survival of multiple media firms in a commercial market, would be insufficient to ensure internal pluralism, which requires diversity of content, deliberative pluralism, (the dissemination of a diversity of opinions and world views), or representative pluralism (media that represents the diversity present in the population). These aspects of media pluralism depend also on the breadth, variety and quality of the content that is produced and accessed by citizens.

We therefore understand **sustainability** to be both the **ability to sustain existence in the long term**, and the **ability to continue to provide sufficient scale and variety of quality content, especially of news and informative content, and communication spaces**. As argued in the Introductory Chapter, media pluralism is not equivalent to abundance. This Study is particularly interested in the sustainability of news and other journalistic or informative types of content within the internal market, which significantly contribute to “expression on matters of public interest” and “general interest content”, as well as the extent to which there is the maintenance of shared communicative spaces within which deliberative pluralism can support the exercise of democratic governance. Resilience is critical here. This means not only having sustainable sources of revenues, as discussed in Chapter B2, but also, as discussed in the Introductory Chapter, being able to resist political and commercial pressure through both financial and institutional independence.

This Study has also extensively considered **media pluralism as exposure diversity**, meaning the extent to which people are exposed to, and consume, a variety of content. This understanding was primarily relevant to the examination of prioritisation and access to general interest content in Part A. However, it also informs our definition of sustainability. For enduring exposure diversity to be experienced by citizens, there must be a sustained ability for the media to access and engage with audiences, which may now require intermediation and data feedback loops.

To summarise, we understand **sustainability of media markets in the context of media pluralism** to be a condition in which a variety of media have:

1. **Enduring revenue streams**, whether from commercial or public sources, that are sufficient for the continuous provision of media services and investment in the production of a variety of content, especially news and informational content;
2. The **ability to be resilient** in the face of disruptions or influences, whether in the form of commercial or political pressures;
3. **Secure access to audiences** and reliable means to engage with, or gather feedback from them.

There is a complex relationship between the sustainability of media markets and competition in those media markets. Media pluralism, mainly its external pluralism aspect, is linked to the level of competition in media markets. Media markets have long been highly liberalised in much of Europe. There have been few, if any, constraints on press publishers and audiovisual media markets, which were liberalised from the mid '80s onwards with the introduction of commercial TV broadcasters in some MSs, and later with the 1989 *Television Without Frontiers Directive*; at the same time, online content delivery and ad tech platforms have been allowed to flourish as minimally regulated services. Media markets tend towards concentration, as sustainability and growth, especially for those producing high quality content, depend on attaining sufficient scale. As detailed extensively in Chapters B1 and B2, MSs have often relied on cross-ownership restrictions, special treatment of media company mergers, and special transparency requirements, to prevent unhealthy concentration in their media markets. The evidence presented also indicates that these measures have primarily targeted offline media, that they are not consistent across the EU, and that concentration among intermediary or auxiliary actors in media markets is having damaging consequences for the sustainability of many media. This raises questions about whether interventions to protect or encourage competition might help in ensuring sustainability.

This Study has provided ample evidence that the condition of sustainable media markets is threatened in many, if not most, MSs. Understanding sustainability as having the dimensions listed above, in this section we address the policy options for ensuring the sustainability of media markets, including some competition policy tools, *ex-ante* regulations, and media policy interventions. These should be seen as making up a multi-layered approach, rather than as mutually exclusive choices. The revision of existing tools, and some thinking outside the box, are likely to be required. We discuss possible interventions in the area of online advertising and then the potential for public funding, followed by options for encouraging non-advertising reliant business models. We then consider the possibilities stemming from the recent introduction of the neighbouring rights for publishers and the GDPR.

5.2 Considerations on online advertising

Much of the media that contribute to a healthy level of pluralism are commercial media that are reliant on advertising. This means that advertising **revenues are still important both for maintaining the number and variety of media companies in a market, and for providing individual media with sufficient resources to ensure deliberative and representative pluralism in their own outputs.** Our study confirms that there are significant challenges to the sustainability of advertising dependent media across much of the European Union.

Firstly, as evidenced in Chapter B2, **online advertising revenues have far outstripped revenues for broadcast and print advertising.** As the data shows, there has been steady growth in online advertising, while there has been stagnation in broadcast advertising, and severe decreases in print advertising. This trend has been exacerbated by the COVID-19 crisis. The crisis initially caused declines in overall advertising expenditure in 2020. The evidence on recovery indicates that, while online advertising recovered quickly, for broadcast and print the recovery has been slow, or non-existent, at the time of writing.

Secondly, the evidence gathered for this Study indicates that **the revenues from the online advertising inventory of press publishers and audiovisual media services are not replacing those lost from the declines in the revenues generated by their broadcast and print inventory.** This was most clear for the print media. As Figure B.2.16 illustrated, since 2015, revenues from

digital advertising have not increased enough to fill the large gap that has been left by declines in print advertising and circulation revenues worldwide, while the data on circulation and advertising revenues from several MSs, which is shown in Figure B.2.18, mirrored this global trend with parallel declines in both. For audiovisual media, this study found notable growth only in SVOD subscription revenues in the EU since 2017, but not in advertising revenues as illustrated in Figure B.2.14. Data from 2020 showed that Netflix and Amazon captured 74% of the SVOD revenues in the EU as a whole. It is likely that the overall growth in SVOD can be attributed to the taking up of these services, rather than those from broadcasters who are also investing in news and informational content. SVOD revenues are therefore generated not as complements or replacements for advertising revenue but by SVOD-only newcomers whose expansion in the market further reduces the monetizable attention that can be captured by advertising dependent media. As national level figures were not available, it is impossible to determine whether any of the growth in subscription revenues is replacing the revenues lost from advertising. Access to MS level data that might help to identify damaging concentration among commercial media and auxiliary services, is a significant problem, one that it is hoped the regular *European Media Outlook Reports*, which were foreseen in the EU's *Media Action Plan*, will help to rectify.

Thirdly, there are **strong indications that concentrations of market power are detrimental to sustainability in the EU media markets, but the lack of detailed national level data makes this difficult to track**. As of 2021, Facebook and Google together captured 53% of global online advertising revenue shares (Figure B.2.12), which helps to explain why print and audiovisual media have not seen sufficient growth from their online advertising revenues. The remaining 47% is shared with other digital platforms, leaving a small share to news media providers. However, significantly more data needs to be gathered nationally, on a regular basis, in order to assess damaging concentration and to identify approaches and conditions that might be countering this dominance.

As previous research has shown, **media agencies are incentivised** by high margins, easy KPI-serving metric, and the lack of transparency, **to push advertisers towards programmatic online advertising options** (Broughton Micova, S. & Jacques, S. 2019). At the same time, large portions of the online advertising spend is syphoned off by the intermediaries that operate the programmatic trade behind the highly targeted data-intensive advertising (CMA, 2020; Adshhead et al. 2019). This, and other, studies have found that some larger audiovisual media services and publishers are investing in their own programmatic and addressable options, as well as the accompanying capacity to accumulate and process data. However, this remains out of the reach of the majority of smaller, local or niche media, as illustrated by the disparity in the intensity of data use among the three advertising-dependent business models that are explained in Chapter B2. The tendency towards increasingly targeted, or even micro-targeted, advertising contributes to further dependency on adtech, mainly tools owned by Google, and to the widening gap between those with the ability to create value from consumer data, and those without.

Not all of the advertising supported media have chosen the route of increasingly sophisticated targeting. Chapter B2 also gave the examples of the Dutch broadcaster NPO, and the *New York Times* in Europe, which have replaced targeted advertising with contextual advertising. This type of advertising can also be carried out automatically, and in near real time, but is based on data about content, rather than on personal data, so they can remain independent of data-rich intermediaries.

As discussed in the previous section, **the requirements in the DMA will address some of the problems that arise from the data-derived market power** that appear to be threatening the sustainability of advertising dependent media. The proposals made in the previous section, for

additional intervention that is aimed at leveraging the access to data that the DMA will provide, could also help to combat the deepening crisis in print and broadcast advertising revenues. However, most of these media, upon which effective media pluralism depends, will still struggle to match the targeting capabilities of the major online platforms, many of which are also highly invasive and could be considered questionable in regard to their use of personal data.

Based on these findings, we propose the following (non-mutually exclusive) actions:

- **The DMA should be implemented so as to maximise transparency in the advertising trade, with special recognition of media actors and media plurality.** This may require regular external auditing of pricing data that are made available to advertisers and publishers, according to Article 6, and close monitoring of the provision's implementation. It may also require an examination of the intermediary role that major media agencies play.
- Data about online advertising markets are not available for free, or for a reasonable price, to regulators or citizens, particularly when it comes to revenues or pricing data and the shares of actors in relevant thematic markets, such as the news. It may require some coordination or harmonisation to support greater transparency and data access by regulators, ensured researcher access, and NRAs that are to be empowered by MSs in order to conduct sector inquiries as needed.
- **ERGA and the European Competition Authorities (ECA), should work together to determine the type of data that should be gathered at the national level,** in order to assess the levels of concentration and the consequences. Accurate pictures of the distribution of advertising revenues, broken down by types of advertising inventory, as well as by data on other sources of revenue, expenditures, commissioning outlays, and even employment figures for commercial players, are needed. The mechanism for this collection of data could be the *European Media Outlook Reports*.
- European policymakers should consider further **limits on the allowable levels of targeted advertising,** or other ways to **encourage the industry to shift towards un-targeted or contextual advertising** that is less dependent on personal data and less invasive.

5.3 Public investments in media pluralism

To be compliant with the EU rules on State aid (Art. 107 TFEU), public subsidies to the media can be granted, in specific circumstances, in order to achieve cultural, economic and social objectives, which may include addressing market failures relating to content production, and fostering pluralism. A variety of public support schemes for the media in the EU countries were mapped in Chapter B1 of this Study. All 27 MSs support their media markets through **indirect subsidies**, mostly tax breaks and VAT reductions, while 21 provide different forms of **direct subsidies**. All 27 MSs have **Public Service Media (PSM)** that are supported by public financing.

Traditionally, public support was the domain of Member States. Recently, the European Commission decided to play a more active role in this field, announcing a variety of instruments that provide direct financial support to the media (European Commission, 2021).

i. Public Service Media

As explored in Chapter B3, the debates concerning PSM revolve around three main issues: 1) **PSM's online public service mission, as its presence in some MSs is seen as a distortive player**, especially where PSM cannot use the licence fee and other public income for financing commercial activities and cross-subsidisation; 2) the **lack, or the excess, of direct State funding, and the potential increase in State control, since, in some MS, the state budget for PSM has been growing every year**; and 3) the ban on PSM advertising activities.

According to the 2009 *European Commission Communication on State Aid and Broadcasting*, MSs should ensure that State funds do not exceed what is necessary to provide the public service, and they must be tied to a clear mandate. Choosing the type of funding is a national competence (Protocol no. 29 TFEU, "Amsterdam Protocol"). As described in Chapter B1, most PSM budgets are made up of a mix of funding sources, both public (license fees and State subsidies) and commercial (advertising). As shown in Figure B2.13, public funding for the EU's PSMs has been stationary, in nominal terms, for the last decade, which means that, in real terms, it has declined.

The ***independence of PSM is now a crucial sustainability issue***. Funding models that depend on non-transparent and discretionary decisions by governments, and that do not guarantee stable revenues over time, expose the PSMs to the risk of political capture. Responses from the stakeholder consultation of January 20th, 2022, mirrored arguments in the academic literature (e.g., Ranaivoson, 2015), that PSM funding should be stable over time and that the mechanisms based on license fees are preferable, as they are less subject to government influence or cut-backs. Nonetheless, discussions are underway in several MSs about replacing the license fee with State subsidy or tax-based funding. PSM funding models must be independent from State interference. A stable proportion of tax, set out in legislation, can afford sufficient protection from interference, but *ad hoc* subsidies from State budgets can easily be used for manipulation. Together with the funding system, public accountability to society is crucial in pursuing the goal of political independence. This is one important take-away of the case-study on the complex German PSM system, which is analysed in Chapter B3 of this Study.

Due to the problematic approach of viewing PSM as a market distorting intervention that must be constrained, ***PSM's public service mission online has often been challenged***. While many PSM seek support for online activities as part of their public service remit, in several countries there have been debates relating to the PSM's presence online, and their impact on commercial players. According to the *Council of Europe Recommendation on the Remit of Public Service Media in the Information Society* (2007), States should secure adequate financing for PSMs, enabling them to fulfil their role in the information society, including by "complementary funding solutions". These principles should be reflected also in EU policy. More importantly, the threats of disinformation and polarisation online may be addressed by the PSM's strengthened online presence, as many of them play an important role in a global communication space by providing credible sources and debate on such issues as human rights, climate change, migration issues, not to speak of the coverage of recent challenges - such as COVID-19 or the Russian war of aggression against Ukraine.

ii. Public subsidies

Public subsidies for media and culture are allowed within the internal market within the boundaries of state aid rules, and they can be useful in rectifying imbalances. This Study has found that, across MSs, the sectors receiving direct subsidies are more diverse than those receiving indirect subsidies. In the latter case, the vast majority of subsidies is allocated to the press sector. Online media are

covered by direct subsidies in 14 MSs, and in 23 MSs by indirect ones. Media pluralism was mentioned as an objective for granting direct support to the press, in most cases.

However, **public subsidies carry a risk of political interference when combined with a lack of transparency**. Even though, in the majority of the MSs, the allocation of funds is explained in detail, and is accompanied by transparency requirements, we found evidence of a high number of complaints about their unfair and/or opaque allocation in some MSs. Transparency and accountability in the allocation are essential conditions for avoiding the use of public funding to capture the media.

Another issue is that their **impact on the economic sustainability of the media in the medium and long term is unclear**. Innovation and technological development are not always goals of the national schemes, and the online media are often minor beneficiaries, at best. Some MSs have implemented direct funds to finance start-ups and outlets with innovative projects. As highlighted in Chapter B2, earmarking public support for innovation and innovative projects/products can address the resilience concerns. It can avoid the risk of financing models that are not sustainable and of increasing sustainability in the medium and long term, while addressing a short-term funding gap. This is what has happened in response to the COVID-19 crisis, when several MSs implemented extraordinary plans of support for the media in order to cover core funding (e.g., the journalists' salaries).

iii. State advertising

As discussed in B2, and illustrated by Case Study 4 in Chapter B3, State advertising is not always an effective contributor to sustainability. According to CoE Recommendation CM/Rec (2018)1, States are “encouraged to provide various forms of financial support such as advertising and subsidies”, but the Recommendation warns that State advertising, like the other public support measures, “should have clearly defined purposes and should be based on predetermined, clear, precise, equitable, objective and transparent criteria”. This Study shows that **most MSs lack specific rules on State advertising**, and that there is **significant variation in the efficiency of such rules**.

There was evidence that consistent and adequate measures to ensure that State advertising is distributed fairly, and was not used as a tool for political pressure, were lacking. Combined with the lack of transparency, this can be a form of pressure that acts as a reward or a sanction, in order to shape the editorial policies of a particular newsroom. Such conditions not only affect how media pluralism is exercised, in practice, but also the **sustainability of some media sectors, in particular, at the regional and local level**. Chapter B2. identified several useful measures, namely, the monitoring of distribution, institutional limits, shares based on the type of media, and criteria for recipients that can help State advertising to have a positive structural impact on the media market, particularly at the regional and local level.

5.3.1 Policy options

The existing forms of public intervention in the media sector originated in the traditional media environment, and they have not yet been adapted. They are predominantly set at the national level, with a variety of models and rules, according to different economic, social and cultural backgrounds. They address the challenges of digitisation to varying degrees, and with different tools. This variety of approaches can undermine the efficiency of the European internal media market, without effectively sustaining the media at the national level. European countries can take advantage of the

historical presence of public intervention in the media sector, but the existing framework must be updated to support media plurality in the digital era, addressing the risk of the under-financing of journalism, and supporting the production and dissemination of diverse and pluralistic media content.

Firstly, a **shift** is needed **from a “negative” approach - what the public intervention should not do - to a “positive” one - why a public intervention matters-** defining what it should do, and how, at which institutional level. In an economic scenario in which highly concentrated media companies are fighting to survive, public subsidies should avoid sustaining just the incumbent industry, and aim to create the conditions for market entry, and for diverse voices to emerge. Programmes should be designed to include the content-producers themselves, such as associations and consortia of journalists, among the beneficiaries.

Public support should incentivise innovation in the professional production and dissemination of information. It should help the media providers to benefit from technological developments, in terms of costs, organisation, distribution, and the promotion of innovation in content forms and services. In the medium and long term, this is the path to sustainability. Additional direct support to public interest journalism, whose high costs cannot be covered in the market’s conditions, may be needed: in this case, it should be linked to positive obligations, both from the PSMs and/or private beneficiaries. To be included in public programmes, and to have access to the related financial benefits, public and private media actors should respect self-regulatory standards, as proposed in Chapter A3 (Para. 5), the Journalism Trust initiative (JTI), or similar standards could be used to select the media actors that might have access to public subsidies and to prominence benefits.

Our (non-mutually exclusive) policy proposals are therefore:

- **MSs should be encouraged to put in place systems for monitoring the implementation of public subsidies and state advertising** by independent bodies. The *European Media Outlook Report* could be designed to include data on such expenditures, as the official requirement for data to be provided could help to ensure transparency.
- Acknowledging the work done in monitoring the application of the **2009 *Communication on State Aid and Broadcasting***, we recommend that **additional attention should be paid to the role that stable and independent PSMs can play in sustaining media pluralism** as defined in this Study.
- The mechanisms of the *EU’s Media Action Plan*, such as the European New Media Forum, and, possibly, the *Media Freedom Act*, which is due to be proposed in 2022 should **establish standards for the use of State subsidies and State advertising by MSs**. They should recommend that direct and indirect public subsidies, when administered at the national level, should be allocated with detailed and objective criteria. Standards should also cover transparency obligations for governments, other public expenditure and advertising by State-controlled companies, as well as for the beneficiaries of subsidies or advertising.
- **An EU fund for media pluralism should be established**. Such a fund would finance original and independent journalistic programs and initiatives, develop innovation in the production and dissemination of public-interest news, and sustain start-ups created by journalists. This could be a longer term and expanded version of the journalism partnerships that are funded under the Media Action Plan, or it could be integrated into the Creative Europe programme, which, as according to its 2021-2027 budget, includes actions that are focused on media plurality and freedom, journalism and media freedom.

To be effective, an EU Fund for media pluralism should be guaranteed a sufficient budget, which means considerably greater amounts than are currently available through the existing funds.

5.4 Non-advertising dependent revenue models

With advertising expenditure shifting away from content producing media into sharing and social platforms, as elaborated above, many media companies have turned towards alternative business models. Chapter B2 of this Study examined a number of business models that were built around revenue sources that are unrelated to advertising. For each of them, we considered the advantages and the resilience concerns that they raised. Our conclusion from the review of the existing evidence, is that **a mix of funding sources was most conducive to sustainability**, and this was affirmed by the stakeholders who took part in the consultation on 20th January, 2022.

A variety of media have opted to **earn revenues through pay per view/read, or through subscription or membership schemes**. Pay per view/read seems to work best for entertainment content, particularly for high value content, such as film and big production audiovisual. Although micropayment systems have enabled individual news items, or other short forms of content, to generate revenues, they do not seem to generate sufficient income for reliable funding. They work best as ways of attracting new audiences to complement a subscription or membership scheme. Subscription and membership schemes show great promise in terms of sustainability, not only for premium entertainment providers, but also for quality news production. *Mediapart*, in France, and the UK's *Guardian*, have demonstrated success in generating revenue in this way. This is evident thanks to the high level of transparency that they have in relation to their ownership structures, revenues and structures, which also facilitates their accountability to their users. However, their experience also indicates that scale may be necessary.

Another way in which the media are obtaining funding is as money gifted. Private subsidies and philanthropic contributions in the news media sector are still low when compared to other market sectors,⁵⁰⁵ however the evidence in this study indicated it is still a notable revenue source. One of the **advantages identified with philanthropic or charitable contributions was that they were often also open to freelancers, collectives, and niche media**. Even the very large platforms' funds had a history of funding freelance journalists directly. It was reported by stakeholders that it can provide funding for risky investigations or for innovation. Stakeholders in the consultation that was run for this Study (20th January, 2022) noted, however, that support for local or domestic reporting in the smaller countries is rare, and they have had more success with cross-border consortia.

Foundation funding of all types can raise concerns about both transparency and the influence that funders may bring to bear. Although there are numerous foundations contributing to journalism, including the Gates Foundation and the Open Society Foundation, as demonstrated in Chapter B2, in recent years, a large proportion of these private contributions came from the digital platforms Google and Facebook. Both Google and Facebook, have established funds to support journalism and publishers, but there is a lack of transparency in relation to the beneficiaries and the amounts of

⁵⁰⁵ KEA, Research for CULT Committee (2021) *Europe's Media in the Digital Decade*, European Parliament, Policy Department for Structural and Cohesion Policies, Brussels. Available at [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2021\)690873](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2021)690873) accessed on May 27, 2022.

funding received by media actors. The Google News Initiative funded 645 projects across all MSs in the three years following its launch in 2018. The Facebook Journalism Project has been funding projects since 2017, albeit with a smaller overall amount.

The literature reviewed argued that, with this type of funding, the influence was often subtle or even unconscious. With the initiatives of Google and Facebook, concerns have also been raised about the extent to which they encourage dependence on their own technical tools.

In a similar vein, philanthropy also became a growing source of revenue for local news outlets, especially in the United States.⁵⁰⁶ Private subsidies might play a key role in the short term for the sustainability of media outlets and freelance journalism, as discussed in Chapter B2, since they can be used to cover news production costs, especially for those kinds of reporting that are either more expensive or less mainstream, such as investigative journalism or specialised coverage. However, they can lead to media capture, thus raising risks for the editorial independence of the beneficiaries. There is thus a need for more transparency in this area, in such a way that external private funding to media outlets contains information on the identity of the sponsor, or the entity ultimately controlling it, and the amount donated, in case it exceeds a certain threshold (e.g., 10% of the annual turnover).

Crowdfunding has become increasingly used to fund journalism. It was initially used to fund individual investigations or stories but has since been used to maintain core operations for some media. The examples given in Chapter B2 showed this in use for the independent media, in both Hungary and Poland. With crowdfunding, there may be lower risks of the kind of overt or unconscious influence that may come with support from foundations, but this form of funding can be significantly unstable.

One specific problem that Chapter B2 identified as preventing media from making use of gifted revenues, is their status. **In many MSs, the media are not able to receive gifted revenues, particularly donations, without paying significant tax on them, as they are not registered as charities.** Attaining charitable status may preclude them from utilising other revenue streams. Two stakeholders' representatives at the 20th January workshop mentioned the need for a public interest designation that would allow the media a special tax status, with one suggesting that such an initiative is underway in Germany.

Our (non-mutually exclusive) policy proposals are therefore:

- The **media industry should be incentivised to develop mixed revenue models**, which offer the most long term sustainability
- **MSs should be encouraged to put in place systems for monitoring private subsidies to news media organisations**, requiring that information on the identity of the sponsor, or of the entity that is ultimately controlling it, and the **amount donated in case it exceeds a certain threshold** (e.g., 10% of the annual turn-over).

5.5 Redistribution through copyright

Media companies have long generated revenue through the licensing of their content to others. This has primarily been the case for entertainment content, but documentary and some other informative

⁵⁰⁶ See <https://pressgazette.co.uk/philanthropy-funding-journalism/> accessed on May 27, 2022.

formats have also been successfully ‘sold’ to others by those who produce them. The expansion of VOD services has arguably provided more opportunities for a diversity of content that can garner income in this manner, and that would otherwise not have spread much beyond the media that produced it. The dramatic **rise of social media and news aggregating platforms has resulted in news content being disseminated across a number of services beyond the media that produced it, but without the accompanying remuneration**. Often, only snippets or headlines are used, however, news media publishers have long complained about this uncompensated use of their content, especially by platforms that are also competing with them for advertising revenues. The 2019 Directive on Copyright and Related Rights in the Digital Single Market (DSM Directive) was intended to address this imbalance by granting publishers additional neighbouring or related rights over the online use of their publications.

As the provisions of the Directive still need to be transposed and implemented in several Member States, it is too early to assess their impact on the economic relationships between publishers and digital platforms. Our Study relates about issues that can arise – and emerged in some cases – in the implementation of the new rules, in particular in guaranteeing access to a fair remuneration to all media companies and actors; and compares the European debate with the Australian experience. Even though **the extent to which publishers’ rights that have been established by the DSM Directive will contribute to the sustainability of media markets cannot yet be determined**, but indications are that, at best, they may provide one of several revenue streams for major publishers in some MS markets. The next important step is to gather information on how the right is being exercised in the MSs, and the experience of a great variety of media as a result of this right.

Our policy recommendation is therefore:

- The EC to consider gathering information from relevant MS authorities and industry stakeholders on the application of this right across the EU, for example in the context of evaluation and review of the Directive normally undertaken by the EC. This could include include the cataloguing of approaches, especially of any enforcement measures, as well as a record of the revenues received, and how they are distributed among market players.

5.6 Media sustainability and citizens’ rights

This section has addressed the challenges to the sustainability of media markets and to the ability of the media to play a positive role in society. Several of those challenges were related to the concentration of online advertising revenues in the hands of just a few intermediary services, and the control that those same services have on continuing supplies of large amounts of consumer data. We have generally welcomed the DMA, which aims to address these concentrations by mandating transparency obligations on core platform services provided by gatekeepers that will give publishers, among others, improved access to consumer data, namely, the data generated by engagement with their content and the advertising around it. We have also noted that many of the larger publishers and audiovisual media services were making significant progress in establishing their own role as collectors of first party consumer data for the purposes of targeted advertising. While both of these are likely to level the playing field among the media and intermediary services in the advertising ecosystem, they both **entail the expansion of the accumulation of consumer data and its use in advertising**.

This might help to sustain the larger commercial media and their ability to invest in content, including news and informative programming. Such media are vitally important for media pluralism and for citizens' exercise of the freedom of expression, particularly their right to receive information. However, **citizens should not have to sacrifice their right to privacy in order to preserve their freedom of expression.** It is, therefore, more in harmony with fundamental rights to encourage media markets overall to move away from highly targeted advertising that is based on the continual surveillance of individual consumers' media consumption.

As elaborated above, there are alternative advertising options to those that are based on the extensive processing of consumer data, as well as a variety of other revenue sources. Among the non-advertising revenue generating options that this section has examined, only subscription stood out as being an option that could function as a sole source, and this is not even the case for all types of media. While subscriptions may work for VOD services offering premium entertainment content, there was little evidence that it might work on its own, for news media. As highlighted in this section, much more information must be regularly collected about MSs' media markets in order to thoroughly assess all the funding options that are discussed in this section. The evidence presented, however, indicated that public funding, private funding, pay per view/read, subscription, membership, and the licensing of copyrighted content, can all be viable options for funding, even if none seemed likely to generate sufficient resources on its own. Some of these also had other drawbacks and might actually pose risks to media pluralism if they are not accompanied by adequate transparency and fairness measures, namely, forms of State funding and grants from private sources. The media can protect themselves from risks to their viability and to their independence by mixing their revenue sources. **Diversification is likely to be the key to media sustainability and to the protection of fundamental rights.**

Our policy recommendation is therefore:

- That the EC should give **better recognition to the rights to informational privacy and the fundamental right to freely seek the opinions of media users, consumers and citizens**, which means that the monitoring and profiling of individuals' media consumption solely for the purpose of delivering behavioural or micro-targeted advertising should not be allowed. Media actors, and other economic actors, such as online platforms and social media, should refrain from using advertising that is highly invasive of privacy in the context of media consumption, thereby levelling the playing field and reducing the reliance of media actors on adtech.

6. Conclusion

This Study outlines that the components of the EU MSs' media policies- ranging from transparency requirements to ownership limitations- are various, and they sometimes differ substantially in their approaches.

The drivers of this variety are rooted in the different historical and cultural traditions of each MS (Levy, 1999): for example, media regulation in Spain, Portugal and Greece only followed the fall of authoritarian dictatorships in these countries. Differences in the MSs' media policies are also rooted in the different market realities that exist at the national level, depending, for example, on the related market size (see, for example, the case of the Netherlands). Moreover, from the mid '80's, the liberalisation of the media markets, which opened them up to private broadcasting, was accompanied by the revision of national regulations. Basically, **the characteristics of media systems across Europe** (their political independence, the level of State intervention, and journalistic professionalism) **are different** (Hallin and Mancini, 2004).

Finally, media pluralism and cultural policies partially fall outside the EU's competences, and they are left to the MSs' exclusive competences: the small space for manoeuvre for the EU institutions in this field⁵⁰⁷, has undoubtedly favoured the development of different national policies, which are based on the dynamics of the national media landscapes.

Despite these differences, as Harcourt (2005) outlines, a combination of soft and hard law has driven policy convergence across Europe, and has even shaped the market in the MSs, for example, in Luxembourg, when following the TWF Directive, cross-border broadcasting was allowed, hence, turning the media sector into an important revenue source for the economy of the country (Harcourt, 2005). Moreover, in a circular way, EU media policy has been an arena for interstate bargaining, and some MSs' policies have inspired and influenced subsequent EU policies, for example, Italy's failure to regulate the concentration of broadcasting companies into the hands of one influential politician, between the 1980s and '90s, led Italian politicians to lobby the Commission to introduce European rules on media ownership (Harcourt, 2005).

Policy convergence is also happening, and it is needed, because the media ecosystem is changing quickly, moving ever closer to an international dimension that is dominated by big digital platforms. For this reason, as outlined in the Introductory Chapter, **a comprehensive and principle-based definition of "media pluralism"**, one that takes into account the technological developments and is shared at the EU level, would be beneficial. It should be holistic and comprehensive of the different dimensions of external pluralism, and, among other things, it would strongly benefit the phase of the assessment of mergers in the media sector by the competent authorities, and for the running of a "media pluralism test". In addition, in order to identify a clearer procedure for evaluating the level of internal pluralism and of exposure diversity, a clearer definition of what is meant by "general interest content" (as stated in the AVMSD) should be proposed at the EU level. Such a definition should comprehend not only audiovisual content, but also news and cultural content that are conveyed through other means of distribution.

Any attempt to **define media in the contemporary information environment** should address all of the holders of the power to form public opinion. An EU definition of media should particularly be careful of including online media and actors, considering the benefits and risks that are carried by

⁵⁰⁷ Despite the attempts that are outlined in the Introductory Chapter, such as the 1992 EC Green paper *Pluralism and Media Concentration in the internal Market—an assessment of the need for Community action*.

the flow of information online. More specifically, it should take into consideration the online media (print, broadcasting, non-linear audiovisual, online newspapers, websites, news portals); "other media actors" (other actors who contribute to the information activity, e.g., bloggers, well known social media users); and intermediary services that disseminate the news (e.g., social media platforms, search engines, hosting services).

What has been proposed throughout this chapter is a harmonisation of some of the elements that are necessary for the internal market to function well, especially in light of the new technological developments. For example, in order to tackle positions of power in digital markets, it is relevant to take into account mergers among the auxiliary services. Instruments other than merger rules and media ownership limitations are increasingly relevant, and these derive from various sources, including the 2019 Directive on Copyright and Related Rights in the Digital Single Market (see, in this regard, Chapter B2 and Case Study 3 on France, in Chapter B3). An EU-level harmonisation would thus be beneficial.

6.1 Policy objectives and justifications for intervention: Legal action based on the EU's internal market competence

As outlined in the Introductory Chapter, under the principle of conferral (Art. 2 TFEU) and the principles of proportionality and necessity (Art. 5(3)-(4) TFEU), the EU may exercise its competences and pass legislation as prescribed under the EU Treaties. The EU has exclusive competences to act on competition-related matters, and shared competences with the Member States, to regulate and harmonise the single market, notably, in the field of media pluralism, diversity and cultural matters, MSs wield the competences to act. Indeed, **EU intervention in the field is primarily based on its competences, which were conferred under Art. 114 TFEU**, which allows the EU to pass legislation and to harmonise competition, as well as to ensure the functioning of the media market. The EU therefore has the competences to regulate media pluralism from an economic perspective, as it has previously done, for instance, in its audiovisual media policy (i.e., AVMSD), by regulating electronic communications networks (i.e.: EECC), and with regard to State aid. The regulation of the media, such as that of the audiovisual media services, but also in regard to rules relating to media ownership and concentration, relates as much to cultural services, hence, within the MSs competences, as it does to economic services. The EU's competence in regulating the media and ensuring a plural media market thus stems from an economic perspective, one which aims to create a level playing-field and a single European market, stimulating economic growth and investment, and guaranteeing the conditions for fair competition (Brogi, Gori 2013, 49). In focusing on the establishment and functioning of the internal market, and on enhancing competition by preventing anti-competitive behaviour, the EU can intervene to protect media pluralism and diversity. Indeed, the protection of pluralism would then be configured as a *consequence* of enhanced competition rules (rather than as its aim), and not as a consequence of the protection of a cultural and democratic principle (Ariño 2004).

This Study outlines several suggestions for EU policy interventions in the field of media pluralism and diversity. The primary source of EU competences may be based on the **EU's shared competence, with the Member States, for the Establishment and Functioning of the Internal Market under Art. 114 TFEU**. It confers upon the EU the competence to enact 'measures for the approximation' (harmonisation) of national rules regarding the establishment and functioning of the internal market. Indeed, Protocol 27 specifically confers upon the EU the legislative competences that are required in order to achieve the internal market's objective, which may be jeopardised by

media market concentrations.⁵⁰⁸ Accordingly, the EU may set **minimum harmonisation standards** to which the MSs must adhere when implementing legislation. That is, for the EU to harmonise MS laws to **prevent market distortions that are caused by divergent national laws**. For instance, audiovisual media policy was harmonised at the EU level so as to prevent market and competition distortion effects, as well as to protect the four freedoms of the internal market, in the form of the AVMSD, which also aims to protect media pluralism.

Further, policy interventions to enhance **media ownership transparency** shall be justified under the EU's competence to harmonise transparency obligations EU-wide, so as to avoid the distortion of competition and anti-competitive behaviour within the internal market. As the requirements for disclosing information are currently not harmonised among the different types of media actors, it is relevant, from an economic perspective, to harmonise the relevant provisions so as to effectively assess mergers and investments in the EU media market. This is also highly relevant in assessing the (market and media) power of new types of media actors.

Moreover, **principle-based definition, at the EU-level**, of what is meant by the public interest test (which, when run by NRAs, might be considered to be a "media pluralism test"), and what is understood by, and considered as, 'media pluralism', shall be harmonised within the EU. Such EU action, as mentioned before, shall be justified so as to avoid the possible distorting effects of divergent national laws when assessing mergers and media concentration differently.

Other policy suggestions concern the rules on public funding, public subsidies, as well as public advertising. Generally speaking, the organisation and funding of PSMs falls within the competences of the MSs. Nonetheless, the EU has competences to set some **limits and rules to national funding systems and State aid**. In particular, public subsidies and public advertising may be regulated by the EU, as abuse of public funding and investments may create barriers to entry into the internal market. Accordingly, the policy proposals for the enhancement of transparency and accountability, with regard to public investments, subsidies, and advertising, will be justified by the EU's competences under Art. 114 TFEU.

Enhanced transparency and fairness requirements that are linked to State advertising are justified for reasons that are similar to those for State aid rules. It is crucial to harmonise the requirements that are linked to State advertising in order to overcome the fragmentation of national laws, and to avoid there being disproportionate State aid, which may lead to anti-competitiveness within the internal market.

The concentration of media market power and opinion power has distorting effects, not only for media pluralism, but also for the internal market and for competition. The primary objective of national media ownership rules is the protection and promotion of media pluralism, and the EU must be wary of its limited competences in this field. The EU may act on the basis of its competence so as to support, coordinate, and supplement MSs' actions, without superseding their competences (Art. 2(5) TFEU). Hence, besides the exclusive and shared competences, Article 2(5) TFEU allows the EU to take action to **support, coordinate, recommendations or supplement Member States' actions**, without thereby superseding their competence in these areas, and without entailing the harmonisation of MSs' laws (Schütze, 2006).⁵⁰⁹ Article 167 TFEU states that the EU can only adopt incentive measures and recommendations in order to encourage cooperation between MSs and to

⁵⁰⁸ Protocol (No 27) on the internal market and competition OJ C 115, 9.5.2008.

⁵⁰⁹ Article 2, Consolidated Version of the Treaty on the Functioning of the European Union (2012) OJ C 326 (TFEU)

support and supplement their action, excluding the harmonisation of the laws and regulations of the MSs on matters that are related to culture. This can be seen as offering room for intervention by the EU through “*persuasive soft law*”, in the form of best practices and monitoring, and through “*legal incentive*” measures, in order to achieve the overall objective of the specific area concerned (Craig & de Búrca, 2015).

Accordingly, the EU may further expand its function in supporting and coordinating Member States’ actions in dealing with media ownership through **institutional support that is** provided by ERGA, as well as through data and information collection and sharing. Particularly in the assessment of mergers, the EU may act, based upon its supporting, coordinating, and supplementing role in providing an **EU-wide vehicle for inter-agency collaboration and knowledge exchange between media authorities**.

Lastly, important reference should be made to new regulatory frameworks. The EU has negotiated a new Digital Services Act Package, consisting of the Digital Services Act (DSA) and the Digital Markets Act (DMA), which are both based on Article 114 TFEU. The regulatory goals are the **creation of legal certainty and the filling of regulatory gaps, as well as the harmonisation of the EU legal landscape**, in order to create a safer and more open digital space in which the rights of the users of digital services are protected.⁵¹⁰ It further aims to create a level-playing field that enables fair competition, innovation and growth within the European Single Market.⁵¹¹ The planned European Media Freedom Act (EMFA) builds on the AVMSD, and it lays down further rules, with the goal of **eliminating barriers to the establishment and operation of media services**, and to **establishing a common framework for advancing the internal market in the media sector**, with a view to safeguarding media freedom and pluralism in that market.⁵¹²

Media market regulation is a frontier test for EU policy making, since it concerns both democratic governance and industrial policy (Harcourt, 2005). Taking into account the considerations offered in the previous lines, EU policy implementation has posed problems at the national level, as it has sometimes conflicted with traditional media regulation and national policy choices. In addition to economic considerations, the measures should also explicitly be directed at **safeguarding media pluralism and diversity in the media ecosystem at large**. As outlined in the Introductory Chapter of this Study, according to the EU’s competences, any legal instrument can be adopted on a single or dual legal basis. **A dual legal basis can be relevant if no single legal basis can be established by those Treaties that would provide sufficient competences. If two or more inseparable objectives are accredited to the proposed measure, a dual legal basis also becomes necessary.**^{513 514}

⁵¹⁰ Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and the amending Directive 2000/31/EC; *Proposal for a Regulation of the European Parliament and of the Council on Contestable and Fair Markets in the Digital Sector (Digital Markets Act)*; <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package> accessed on May 27, 2022.

⁵¹¹ *Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC*; *Proposal for a Regulation of the European Parliament and of the Council on Contestable and Fair Markets in the Digital Sector (Digital Markets Act)*; <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package> *ibid*.

⁵¹² [European Media Freedom Act: Commission launches public consultation](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_85) available at https://ec.europa.eu/commission/presscorner/detail/en/ip_22_85 accessed on May 27, 2022.

⁵¹³ Case C-376/98 *Federal Republic of Germany v European Parliament and Council of the European Union. - Advertising and Sponsorship of Tobacco Products* (2000) EU:C:2000:544, Para. 83

⁵¹⁴ Opinion 2/00 (2001) I-09713, Para. 5.

The enactment of autonomous domestic legislations should also be welcomed, to the extent it would help to enhance the understanding and effectiveness of certain measures, and that it would respect the fundamental rights that are recognised at the EU level, as well as not endangering the internal market⁵¹⁵. As a matter of fact, the economic arguments that are based on the EU policies may not match well with the democratic significance of media regulation on the national levels (Harcourt, 2005).

Legal action that is based on the EU's internal market competence, as it affects the media, requires particular consideration that goes **beyond economic risks**. For the creation of a new set of rules that are relevant to the media sector, **a complex balancing of the assessment of the purpose of protection and the implications for fundamental rights, is necessary**. Legal instruments that are based on the fulfilment of the internal market that affects the media do not systematically address the impacts on media pluralism and diversity, from a fundamental rights perspective (Pisarkiewicz, Polo, 2021, 40). As outlined in the Introductory Chapter, a good example of this can be found in the Impact Assessment for the GDPR, which finds its legal basis in Article 16 TFEU (the right to personal data protection) (along with Article 114 TFEU), in which a much more thorough assessment of fundamental rights than was carried out in the IAs regarding the AVMSD and the DSM.⁵¹⁶ New EU-level media policies should also take on board the considerations of the public interest, pluralism and democracies, which are derived from national rationales for legislation at the MSs' level, and input from the European Parliament and interest groups (Harcourt, 2005).

⁵¹⁵ In this regard, see Gorwa (2021), on the necessity to notify the EC about the drafts of laws that may represent a conflict of competences with the EU (as happened with the German NetzDG law and with the French Avia Law). As outlined in the Introductory Chapter of this Study, even in areas that remain within Member States' competences, national rules in these areas must be exercised consistently with the four freedoms (goods, people, service, capital) that constitute the core of the internal market, or with EU conceptions of citizenship (see Case C-246/89 *Commission vs United Kingdom* (1991) ECR I-4585, Para. 22-24)

⁵¹⁶ Impact Assessments - Trade - European Commission, which is available at <https://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/impact-assessments/> accessed on May 27, 2022.

List of references

Introductory Chapter

- Academic sources

Aral, S. (2020). *The Hype Machine: How Social Media Disrupts Our Elections, Our Economy, and Our Health – And How we must adopt to it*. HarperCollins.

Balkin, J.M. (2004). Digital speech and democratic culture: A theory of freedom of expression for the information society. *New York University Law Review*, 79(1), 1-55. https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1239&context=fss_papers

Brogi, E., Carlini, R., Nenadić, I., Parcu, P.L. & de Azevedo Cunha, M.V. (2021). EU and media policy: Conceptualizing media pluralism in the era of online platforms. The experience of the Media Pluralism Monitor. In P.L. Parcu & E. Brogi (Eds.), *Research Handbook on EU Media Law and Policy* (pp. 16-31). Edward Elgar Publishing. <https://doi.org/10.4337/9781786439338.00007>

Brunetti, A. & Weder, B. (2003). A Free Press is Bad News for Corruption. *Journal of Public Economics* 87(7-8): 1801-1824.

Cavaliere, P. (2012). An Easter Egg in the Charter of Fundamental Rights: the European Union and the Rising Right to Pluralism, *International Journal of Public Law and Policy* (2)4: 357-396.

Chowdhury, S.K. (2004). The Effect of Democracy and Press Freedom on Corruption: An Empirical Test. *Economic Letters* 85(1): 93-101.

Craig, P. & De Búrca, G. (2015). *EU Law: Text, Cases and Materials*, 6th Edition, Oxford University Press.

Dahlgren, P. (2009). *Media and political engagement: Citizens, communication and democracy*. Cambridge University Press.

Dragomir, M. (2019). *Media Capture in Europe*. Media Development Investment Fund. <https://www.mdif.org/wp-content/uploads/2019/07/MDIF-Report-Media-Capture-in-Europe.pdf>

Dreyer, S., Heyer, R., Seipp, T.J., Schulz, W. (2020). *The European Communication (Dis)Order. Mapping the media-relevant European legislative acts and identification of dependencies, interface areas and conflicts* (Working Papers of the HBI No. 52). Verlag Hans-Bredow-Institut (Working Papers of the HBI No. 52).

Dutta, N. & Roy, S. (2008). *The Role of Foreign Direct Investment on Press Freedom*. RePEc.

Engel A. (2018). *The Choice of Legal Basis for Acts of the European Union: Competence Overlaps, Institutional Preferences, and Legal Basis Litigation*. Springer International Publishing.

Foster, M.J. (2012). *Calling the Shots: How Ownership Structures Affect the Independence of News Media*. CIMA.

- Goldhaber M. H. (1997). The Attention Economy and the Net. *First Monday*, 2(4). <https://journals.uic.edu/ojs/index.php/fm/article/view/519>.
- Hartmann, S. & Holznagel, B. (2021). Reforming Competition and Media Law: The German Approach. In Moore, M., Tambini, D. (eds.). *Regulating Big Tech: Policy Responses to Digital Dominance*. Oxford University Press.
- Helberger, N. (2020). The Political Power of Platforms: How Current Attempts to Regulate Misinformation Amplify Opinion Power. *Digital Journalism*, 8(6), (842-854).
- Helberger N., Karppinen K. & D'Acunto L. (2018). Exposure diversity as a design principle for recommender systems. *Information, Communication & Society*, 21(2), 191-207. [10.1080/1369118X.2016.1271900](https://doi.org/10.1080/1369118X.2016.1271900)
- Irion, K. & Valcke, P. (2014). Cultural diversity in the digital age: EU competences, policies and regulations for diverse audiovisual and online content. In Psychogiopoulou, E. (Ed.), *Cultural Governance and the European Union*. Palgrave Macmillan.
- Habermas, J. (1995). *The structural transformation of the public sphere: An inquiry into a category of bourgeois society*. The MIT Press.
- Jakubowicz, K. (2015). New media ecology: Reconceptualizing media pluralism. In Valcke, P., Sükösd, M., & Picard, R. G. (Eds.), *Media pluralism and diversity: Concepts, risks and global trends*. (pp. 23-54). Palgrave Macmillan.
- Karppinen, K. (2007). Making a difference to media pluralism: a critique of the pluralistic consensus in European media policy. In Cammaerts, B., & Carpentier, N. (Eds.), *Reclaiming the media: Communication rights and democratic media roles* (pp. 9-31). Intellect Books.
- Karppinen, K. (2013). *Rethinking media pluralism*. Fordham University Press.
- Kleis Nielsen, R., Gorwa, R. & de Cock Buning, M. (2019). *What Can Be Done? Digital Media Policy Options for Strengthening European Democracy*, Reuters Institute for the Study of Journalism at the University of Oxford, 2019. https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2019-11/What_Can_Be_Done_FINAL.pdf
- Klimkiewicz, B. (2021). The Public Sphere and the Changing News Media Environment in Poland: Towards Structural Polarisation. *Javnost – The Public*, 28(1), 53-74. <https://www.tandfonline.com/toc/rjav20/28/1?nav=tocList>
- Lynskey, O. (2017). *Regulating 'Platform Power*. *LSE Law, Society and Economy Working Papers*. London School of Economics and Political Science.
- Mastroianni, R. (2011). *Freedom of Expression in ECJ and ECHR Case Law*. In *Pluralism and Competition in the Regulation of New Media*. European University Institute (EUI).
- Mill, J. S. (1859). *On liberty*. John W. Parker & Son.
- Moore, M. & Tambini, D. (Eds.) (2018). *Digital dominance: The power of Google, Amazon, Facebook, and Apple*. Oxford University Press.

- Napoli, P. M. (2011). Exposure Diversity Reconsidered. *Journal of Information Policy*, 1(1), 246–259.
- Nenadić, I. (2019). To understand media pluralism is to understand changes in news media and journalism fostered by digital technologies. In A. Giannakopoulos (Ed.), *Media, freedom of speech, and democracy in the EU and beyond*. The S. Daniel Abraham Center for International and Regional Studies, Tel Aviv University.
- Neuberger, C. (2018). Meinungsmacht im Internet aus Kommunikationswissenschaftlicher Perspektive. *UFITA* 82(1), 53-68.
- Parcu, P.L. & Rossi, M.A. (2021). Policy changes to strengthen the protection of media freedom and media pluralism in the EU. In Parcu, P.L., Brogi, E. (eds). *Research Handbook on EU Media Law and Policy*. Edward Elgar Publishing.
- Parisier, E. (2012). *The filter bubble: What the internet is hiding from you*. Penguin Books.
- Picard, R.G. (2008). The challenges of public functions and commercialized media. In Graber, D. A., McQuail, D. & Norris, P. (Eds.). *The politics of news, the news of politics* (pp. 211-230). CQ Press.
- Pisarkiewicz, A. & Polo, M. (2021). Old and New Media: the Interactions of Merger Control and Plurality Regulation. in Parcu, P. L., and Brogi, E. (eds), *Research Handbook on EU Media Law and Policy*. Edward Elgar Publishing.
- Schiffrin, A. (ed.) (2017). *In the Service of Power: Media Capture and the Threat to Democracy*. CIMA.
- Schütze, R. (2006). Co-operative federalism constitutionalised: the emergence of complementary competences in the EC legal order, *European law review*, 31(2), 167-184.
- Smith, V. & Wanless, A. (2020). *Unmasking the Truth: Public Health Experts, the Coronavirus, and the Raucous Marketplace of Ideas*. Carnegie Endowment for International Peace. https://carnegieendowment.org/files/05_20_Smith_Wanless_Truth.pdf
- Tambini, D. (2021). A theory of media freedom. *Journal of Media Law*, 13(2), 135-152. [10.1080/17577632.2021.1992128](https://doi.org/10.1080/17577632.2021.1992128)
- Valcke, P. (2009). From ownership regulations to legal indicators of media pluralism: Background, typologies and methods. *Journal of Media Business Studies*, 6(3), 19-42.
- Valcke, P. (2019). The EU Regulatory Framework Applicable to Audiovisual Media Services. In Garzaniti, L., O'Regan, M., de Streel, A., Valcke, P. (Eds.), *Electronic Communications, Audiovisual Services and The Internet: EU Competition Law & Regulation* (4th ed., pp. 159-269). Sweet & Maxwell.
- Voltmer, K. (2000). *Structures of diversity of press and broadcasting systems: The institutional context of public communication in Western democracies*. Discussion Paper. Wissenschaftszentrum Berlin für Sozialforschung (WZB). https://www.researchgate.net/publication/237718590_Structures_of_diversity_of_press_and_broadcasting_systems_The_institutional_context_of_public_communication_in_Western_democracies

Wu T. (2017), *The Attention Merchants: The Epic Struggle to Get Inside Our Heads*. Atlantic Books

- **EU and CoE sources**

Conclusions 2020/C 422/08. *Safeguarding a free and pluralistic media system*. Council of the European Union. [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XG1207\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XG1207(01)&from=EN)

Council of Europe (1989). *European Convention on Transfrontier Television, article 10bis*. Strasbourg, 5.V.1989. <https://rm.coe.int/168007b0d8>

Council of Europe (2020, July 7). *Compilation of Venice Commission opinions and reports concerning freedom of expression and media*. [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)008-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)008-e)

Declaration by the Committee of Ministers (2019, February 13). *The financial sustainability of quality journalism in the digital age*. Council of Europe. https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168092dd4d

Directive 2018/1808, amending Directive 2010/13/EU. *The coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities*. European Parliament, Council of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018L1808&from=EN>

Directive 2019/789. *Laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC*. European Parliament, Council of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0789>

Recommendation CM/Rec(2022)4 (2022, March 17). *Promoting a favourable environment for quality journalism in the digital age*. Council of Europe: https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ddd0

European Commission (2020, December 3). *Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European democracy action plan*. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0790&from=EN>

European Commission Staff Working Document SEC(2007)32. *Media Pluralism in the Member States of the European Union*. https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/media_pluralism_swp_en.pdf.

High Level Group on Media Freedom and Pluralism. *A free and pluralistic media to sustain European democracy*. European Commission. January 2013. https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/hlg/hlg_final_report.pdf.

Recommendation of Committee of Ministers to Member States CM/Rec(2018). *Media pluralism and transparency of media ownership*. Council of Europe.

Recommendation of Committee of Ministers to Member States CM/Rec(2007)2. *Media pluralism and diversity of media content.* Council of Europe.
https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6be3

Recommendation of Committee of Ministers to Member States CM/Rec(2018)1. *Media pluralism and transparency of media ownership.* Council of Europe.
https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13

Recommendation of Committee of Ministers to Member States CM/Rec(2018)2. *The roles and responsibilities of internet intermediaries.* Council of Europe.
https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e1

Recommendation of Committee of Ministers to Member States No.R(94)13. *Measures to promote media transparency.* Council of Europe.
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680645b44>

Recommendation of Committee of Ministers to Member States No.R(99)1. *Measures to promote media pluralism.* Council of Europe.
https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804fa377

Resolution 2017/2209(INI). *Media Pluralism and Media Freedom in the European Union.* European Parliament. https://www.europarl.europa.eu/doceo/document/TA-8-2018-0204_EN.html.

Resolution (54)11. *Use of television as a medium for securing the support of the general public for the European idea.* Council of Europe.
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680645b44>

- **Example country sources**

Franck, J.W., Monti, G. & de Streel, A. (2021). *Legal Opinion: Article 114 TFEU as a Legal Basis for Strengthened Control of Acquisitions by Digital Gatekeepers.* Federal Ministry for Economic Affairs and Energy Publication.

UK Department for International Development. (2015). *“Why Corruption Matters: Understanding Causes, Effects and How to address them”, Evidence paper on corruption, January, 2015.*
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/406346/corruption-evidence-paper-why-corruption-matters.pdf

- **Reports/Other sources**

Bard. P. & Bayer, J. (2016). *A comparative analysis of media freedom and pluralism in the EU Member States.* European Parliament.

Bárd, P., Bayer, J. & Carrera, S. (2016). *A Comparative Analysis of Media Freedom and Pluralism in the EU Member States: Study.* European Parliament.

Bermingham, R. (2020, May 21). *Media, communication and COVID-19: What are experts concerned about?* UK Parliament.

<https://post.parliament.uk/media-communications-and-COVID-19-what-are-experts-concerned-about/>

Brookes, K. & Dér, P. (2018). Freer Markets, Freer Media: Want to protect reporters? Promote economic liberty. *The Wall Street Journal*. <https://www.wsj.com/articles/freer-markets-freer-media-1525215224>

Kim, A. B. & Tyrell, P. (2018). *Why a Free Press is actually good for the economy*. The Heritage Foundation. <https://www.heritage.org/international-economies/commentary/why-free-press-actually-good-the-economy>

Klimkiewicz, B. (2019). *Pluralism in a hybrid media environment from the user perspective*. Technical Report, Centre for Media Pluralism and Media Freedom (CMPF). <https://cadmus.eui.eu/handle/1814/65604>

EU Media Futures Forum (2012). *Final Report – September 2012, ‘Report for European Commission Vice-President Neelie Kroes’*. https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/forum/report.pdf

Lucas, E. (2020). *Firming Up Democracy’s Soft Underbelly: Authoritarian Influence and Media Vulnerability*. National Endowment for Democracy: Sharp Power and Democratic Resilience Series. <https://www.ned.org/wp-content/uploads/2020/02/Firming-Up-Democracys-Soft-Underbelly-Authoritarian-Influence-and-Media-Vulnerability-Lucas.pdf>

Majid, A. (2021, March 25). Investors do not appear to care about media freedom - but they should. *Press Gazette*. <https://pressgazette.co.uk/foreign-direct-investment-media-freedom/>

Máriás, L., Nagy, K., Polyák, G. & Urbán, Á. (2018). *An Illiberal Model of Media Markets. Soft Censorship 2017*. Mérték Booklets (Vol. 15). <https://mertek.eu/wp-content/uploads/2018/08/MertekFuzetek15.pdf>

Mazzoli, E., & Tambini, D. (2020). *Prioritisation uncovered. The Discoverability of Public Interest Content Online*. Council of Europe.

McGonagle T., Voorhoof D., et al. (Ed. Sup.) (2021). *Freedom of Expression, the Media and Journalists: Case-law of the European Court of Human Rights, IRIS Themes*. European Audiovisual Observatory.

OSCE (2021). *#SAIFE: Spotlight on AI’s Impact on Freedom of Expression: Draft Outcome Report: Content Curation and Media Pluralism*. <https://www.osce.org/files/f/documents/9/f/456319.pdf>

Parcu, P.L. (2019). *New digital threats to media pluralism in the information age*. Centre for Media Pluralism and Media Freedom. <http://hdl.handle.net/1814/61890>

UNESCO (2005, October 20). *The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. Paris. <https://en.unesco.org/creativity/sites/creativity/files/passeport-convention2005-web2.pdf>.

UNESCO (2017, June 12-15). *Operational guidelines on the implementation of the Convention in the digital environment, approved by the Conference of Parties to the 2005 Convention on the*

Protection and Promotion of the Diversity of Cultural Expressions at its sixth session. Paris. https://en.unesco.org/creativity/sites/creativity/files/sessions/digital_operational_guidelines_en.pdf.

Chapter A1

- Academic sources

Bennet, J. (2018). Public Service Algorithms. In D. Freedman & V. Goblet (Eds.), *A future for public service Television* (pp. 112–120). University of Goldsmith Press. [https://pure.royalholloway.ac.uk/portal/en/publications/public-service-algorithms\(1dd0abf6-691a-469a-92f4-acb4dc296bb9\)](https://pure.royalholloway.ac.uk/portal/en/publications/public-service-algorithms(1dd0abf6-691a-469a-92f4-acb4dc296bb9)).

Bucher, T. (2012). Want to be on the top? Algorithmic power and the threat of invisibility on Facebook. *New Media and Society*, 14(7), 1164–1180. <https://doi.org/10.1177/1461444812440159>

Bucher, T. (2018). *If... Then: Algorithmic Power and Politics*. Oxford University Press.

Burri, M. (2016). Nudging as a Tool of Media Policy: Understanding and Fostering Exposure Diversity in the Age of Digital Media . In: *Mathis K and Tor A (eds) Nudging - Possibilities, Limitations, and Applications in European Law and Economics*. Cham: Springer. pp. 227–247. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2638034

Craufurd Smith, R., & Tambini, D. (2012). Measuring Media Plurality in the United Kingdom: Policy Choices and Regulatory Challenges. *Journal of Media Law*, 4(1), 35–63. <https://doi.org/10.5235/175776312802483862>

Epstein, R. (2018). Manipulating Minds: The Power of Search Engines to Influence Votes and Opinions. In Tambini, D., & Moore, M., (Eds.), *Digital Dominance: The Power of Google, Amazon, Facebook, and Apple* (pp. 294–319). Oxford University Press.

Evens, T., & Donders, K. (2018). *Platform Power and Policy in Transforming Television Markets*. Palgrave Global Media Policy and Business. https://doi.org/http://doi.org/10.1007/978-3-319-74246-5_8

Feintuck, M., & Varney, M. (2006). Media regulation, public interest and the law. In *Media Regulation, Public Interest and the Law* (2nd ed.). Edinburgh University Press.

Gillespie, T. (2010). The politics of ‘platforms.’ *New Media & Society*, 12(3), 347–364. <https://doi.org/10.1177/1461444809342738>

Gillespie, T. (2018). *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions That Shape Social Media*. Yale University Press/New Haven & London.

Gorwa, R., Binns, R., & Katzenbach, C. (2020). Algorithmic content moderation: Technical and political challenges in the automation of platform governance. *Big Data and Society*, 7(1), 1–15. <https://doi.org/10.1177/2053951719897945>

Helberger, N. (2015). Merely facilitating or actively stimulating diverse media choices? Public service media at the crossroad. *International Journal of Communication*, 9(1), 1324–1340.

- Helberger, N. (2019). On the Democratic Role of News Recommenders. *Digital Journalism*, 7(8), 993–1012. <https://doi.org/10.1080/21670811.2019.1623700>
- Helberger, N., Karppinen, K., & D'Acunto, L. (2018). Exposure diversity as a design principle for recommender systems. *Information Communication and Society*, 21(2), 191–207. <https://doi.org/10.1080/1369118X.2016.1271900>
- Hendrickx, J., Smets, A., & Ballon, P. (2021). News Recommender Systems and News Diversity, Two of a Kind? A Case Study from a Small Media Market. *Journalism and Media*, 2(3), 515–528. <https://doi.org/10.3390/journalmedia2030031>
- Hesmondhalgh, D., & Lotz, A. D. (2020). Video Screen Interfaces as New Sites of Media Circulation Power. *International Journal of Communication*, 14(0), 24.
- Johnson, C. (2019). *Online TV*. (1st ed.). Abingdon and New York: Routledge.
- Johnson, C. (2020). The appisation of television: TV apps, discoverability and the software, device and platform ecologies of the internet era. *Critical Studies in Television* 15(2): 165–182. DOI: [10.1177/1749602020911823](https://doi.org/10.1177/1749602020911823).
- Kapel, E. (2019). *Enhancing the Recommendations of NPO Start with Metadata*. University of Amsterdam.
- Mazzoli, E. M. (2020). Online content governance: Towards a framework for analysis for prominence and discoverability. *Journal of Digital Media & Policy*, 11(3), 301-319.
- McKelvey, F., & Hunt, R. (2019). Discoverability: Toward a Definition of Content Discovery Through Platforms. *Social Media + Society*, 5(1), <https://doi.org/10.1177/2056305118819188>
- Michael, J. (1990). Regulating Communications Media: From the Discretion of Sound Chaps to the Arguments of Lawyers. In Ferguson, M. (Ed.), *Public Communication: The New Imperatives* (pp. 40–60). SAGE Publications.
- Moeller, J., Trilling, D., Helberger, N., & van Es, B. (2018). Do not blame it on the algorithm: an empirical assessment of multiple recommender systems and their impact on content diversity. *Information Communication and Society*, 21(7), 959–977. <https://doi.org/10.1080/1369118X.2018.1444076>
- Napoli, P. M. (2011). Exposure Diversity Reconsidered. *Journal of Information Policy*, 1(2), 246–259. <https://www.jstor.org/stable/10.5325/jinfopoli.1.2011.0246>
- Napoli, P. M. (2014). Automated media: An institutional theory perspective on algorithmic media production and consumption. *Communication Theory*, 24(3), 340–360. <https://doi.org/10.1111/comt.12039>
- Nielsen, R. K. (2017, May 30). Where do people get their news? The British media landscape in 5 charts. *Medium Oxford University*, 19(2). <https://doi.org/10.1080/1461670X.2016.1171163>
- Newman N (2018) *The Future of Voice and the Implications for News*. September. Oxford. Available at: https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2018-11/Newman - Future of Voice FINAL_1.pdf (accessed 29 October 2020).

- Newman N, Fletcher R, Kalogeropoulos A, et al. (2018) *Reuters Institute Digital News Report 2018*. Reuters Institute for the Study of Journalism. DOI: 10.2139/ssrn.2619576.
- Newman N, Richard Fletcher W, Kalogeropoulos A, et al. (2019) *Reuters Institute Digital News Report 2019*. Oxford. Available at: https://reutersinstitute.politics.ox.ac.uk/sites/default/files/inline-files/DNR_2019_FINAL.pdf (accessed 11 September 2020).
- Newman N, Richard Fletcher W, Schulz A, et al. (2020) *Reuters Institute Digital News Report 2020*. Oxford. Available at: https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2020-06/DNR_2020_FINAL.pdf (accessed 11 September 2020).
- Newman N (2021) Overview and Key Findings of the 2021 Digital News Report . Available at: <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2021/dnr-executive-summary> (accessed 16 May 2022).
- Newman N, Fletcher R, Schulz A, et al. (2021) *The Reuters Institute Digital News Report 2021*. Oxford. Available at: https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2021-06/Digital_News_Report_2021_FINAL.pdf (accessed 16 May 2022).
- Phillips, A., & Mazzoli, E. M. (2021). Minimizing Data-Driven Targeting and Providing a Public Search Alternative. In Tambini, D., & Moore, M. (Eds.), *Regulating Big Tech: Policy Responses to Digital Dominance* (pp. 110–126). London: Oxford University Press. <https://doi.org/10.1093/oso/9780197616093.003.0007>
- Simge A (2021) How and why do consumers access news on social media? . Available at: <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2021/how-and-why-do-consumers-access-news-social-media> (accessed 16 May 2022).
- Sunstein, C. R. (2015). *Why Nudges? The Politics of Libertarian Paternalism*. Yale University Press.
- Tambini, D., & Labo, S. (2016). Digital intermediaries in the UK: implications for news plurality. *Digital Policy, Regulation and Governance*, 18(4), 33–58. <https://doi.org/10.1108/info-12-2015-0056>
- Thaler, R., and Sunstein, C.R., (2008). *Nudge. Improving Decisions about Health, Wealth and Happiness*. London: Penguin Books.
- Thaler, R., Sunstein, C.R., and Baltz, J.P., (2013). Choice Architecture. In: Shafir, E., (ed.), *The Behavioral Foundations of Public Policy*.
- Van der Sloot, B. (2012). Waking a Thin Line: The Regulation of EPGs. *Journal of Intellectual Property Information Technology and Electronic Commerce Law*, 3, pp.138-147.
- Woodard, C. Y., & Jason, B. C. (2008). The Architecture of Platforms: A Unified View. In *Journal of Polymer Science, Part B: Polymer Physics*. <https://doi.org/10.1002/polb.10065>
- Yeung, K. (2016). Hypernudge': Big Data as a mode of regulation by design. *Information Communication and Society*, 20(1), 118–136. [10.1080/1369118X.2016.1186713](https://doi.org/10.1080/1369118X.2016.1186713).

- **EU and CoE sources**

Cabrera Blázquez FJ, Cappello M, Grece C, et al. (2021) *Yearbook 2020/2021 key trends. Television, cinema, VOD, audiovisual services - the pan-European picture*. Strasbourg. Available at: <https://rm.co>

Cabrera Blázquez FJ, Cappello M, Grece C, et al. (2022) *Yearbook 2021/2022 key trends. Television, cinema, VOD, audiovisual services - the pan-European picture*. Strasbourg. Available at: <https://rm.coe.int/yearbook-key-trends-2021-2022-en/1680a5d46b> (accessed 16 May 2022).

Council of Europe. (2018). *Recommendation CM/Rec(2018)1 of the Committee of Ministers to Member States on media pluralism and transparency of media ownership*. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13

Directive 2010/13. *The coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services*. European Parliament, Council of the European Union, p. 1–24.

Directive 2019/882. *The accessibility requirements for products and services*. European Parliament, Council of the European Union, p.70–115.

Directive 2018/1972. *Establishing the European Electronic Communications Code*. European Parliament, Council of the European Union, pp. 36–214.

European Parliament. (2020, October 20). *Resolution on Digital Services Act: adapting commercial and civil law rules for commercial entities operating online*. https://www.europarl.europa.eu/doceo/document/TA-9-2020-0273_EN.pdf

Grece C (2021) *Trends in the VOD market in EU28*. January. Strasbourg. Available at: <https://rm.coe.int/trends-in-the-vod-market-in-eu28-final-version/1680a1511a> (accessed 16 May 2022).

Proposal for a Regulation and Directive 2000/31. *Digital Services Act*. European Parliament, Council of the European Union, especially sections 57 and 58. <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608117147218&uri=COM%3A2020%3A825%3AFIN>

- **Example country sources**

Ampere Analysis. (2019). *The UK VoD market. Current status and future developments*. Ofcom. https://www.ofcom.org.uk/data/assets/pdf_file/0026/149075/ampere-analysis-current-status-future-development.pdf.

Competition & Markets Authority. (2019, July 3). *Online platforms and digital advertising. Market study final report*. www.nationalarchives.gov.uk/doc/open-government-

El-Husseini, F. (2010). *An Analysis of the Audience Impact of Page One EPG Prominence. A Report for Ofcom*. Ofcom. https://www.ofcom.org.uk/data/assets/pdf_file/0033/68793/attentionalreport.pdf

- El-Husseini, F. (2013). *An Analysis of the Audience Impact of Page One EPG Prominence A Report for Ofcom.* Ofcom. https://www.ofcom.org.uk/data/assets/pdf_file/0015/57201/impact_of_epg_prominence.pdf
- ERGA. (2020). *Subgroup 3, Ensuring Prominence and Access of Audiovisual Media Content to all Platforms (Findability).*
- ERGA. (2020). *Overview document in relation to Article 7a of the Audiovisual Media Services Directive.* https://erga-online.eu/wp-content/uploads/2021/01/ERGA_SG3_2020_Report_Art.7a_final.pdf
- Expert Media Partners. (2018). *Report on the UK Market in EPG Positions.* Ofcom. https://www.ofcom.org.uk/data/assets/pdf_file/0025/116287/expert-media-partners.pdf
- Expert Media Partners. (2018). *A8. EPG slot price modelling and interpretation.* Ofcom.
- ISED Canada. (2020). *Canada's Communication Future: Time to Act. Final Report.* <https://www.ic.gc.ca/eic/site/110.nsf/eng/00012.html>.
- Law No. 6112. *The Establishment of Radio and Television Enterprises and their Media Services.* Official Gazette in Turkey. <http://www.lawsturkey.com/law/law-on-the-establishment-of-radio-and-television-enterprises-and-their-media-services-6112>.
- Mediatique. (2020). *Connected TV gateways : review of market dynamics. A report for Ofcom.* Ofcom. https://www.ofcom.org.uk/data/assets/pdf_file/0019/201493/connected-gateways.pdf.
- MTM, & Ofcom. (2019). *Review of TV user interfaces in the UK market. Current offerings and future developments. Final Report.* Ofcom. <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>
- Ofcom. (2012). *Measuring Media Plurality. Ofcom's Advice to the Secretary of State for Culture, Olympics, Media and Sport.*
- Ofcom. (2018). *EPG Prominence A report on the discoverability of PSB and local TV services.* <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>
- Ofcom. (2019). *Review of prominence for public service broadcasting. Recommendations to Government for a new framework to keep PSB TV prominent in an online world.* <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>
- Ofcom. (2020). *Review of prominence for public service broadcasting.* <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>.
- The Irish Broadcast Act (2009). <https://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/html>.
- The UK Communications Act (2003). <https://www.legislation.gov.uk/ukpga/2003/21/contents>.

- **Reports/Other sources**

- Amatriain, X., and Basilico, J. (2013, March 27). *System Architectures for Personalization and Recommendation.* *Netflix Techblog.* <https://netflixtechblog.com/system-architectures-for-personalization-and-recommendation-e081aa94b5d8> (accessed 26 January 2022).

- Beckett, C. (2020, September 28). An algorithm for empowering public service news. *LSE Polis*. <https://blogs.lse.ac.uk/polis/2020/09/28/this-swedish-radio-algorithm-gets-reporters-out-in-society/> (accessed 28 October 2021).
- COMPROP/Oxford Internet Institute. (2020). *Coronavirus Misinformation: Weekly Briefings*. <https://comprop.oii.ox.ac.uk/research/posts/coronavirus-misinformation-weekly-briefings/>
- Desjardins, D. (2016). Discoverability. Toward a common frame of reference. Part 1. *Canada Media Fund*. <http://www.cmf-fmc.ca>
- Desjardins, D. (2016). Discoverability. Toward a common frame of reference. Part 2: The Audience Journey. *Canada Media Fund*. <https://trends.cmf-fmc.ca/research-reports/discoverability-toward-a-common-frame-of-reference/>
- Easton, J. (2021, July 22). Smart TVs to become the majority within five years. *Digital TV Europe*. <https://www.digitaltveurope.com/2021/07/22/smart-tvs-to-become-the-majority-within-five-years/>
- EPRA. (2020, July 9). Media plurality in the age of algorithms - European Media & Regulation. *Acast*. <https://shows.acast.com/epra/episodes/media-plurality-in-the-age-of-algorithms>
- EPRA. (2020, July 19). *UK Regulator is calling for new legislation to ensure that PSM content will remain easy to find online*. https://www.epra.org/news_items/prominence-of-public-services-broadcasters-in-the-online-world-ofcom-s-recommendations.
- European Audiovisual Observatory. (2015) *Access to TV platforms: must-carry rules, and access to free-DTT*. <https://rm.coe.int/16807835e4>.
- European Audiovisual Observatory. (2019). *The internationalisation of TV audience markets in Europe*. 59. <http://www.obs.coe.int>
- European Audiovisual Observatory. (2020). *The Revised AVMSD Tracking Table*. <https://www.obs.coe.int/en/web/observatoire/avmsd-tracking>
- European Broadcasting Union. (2017, February 23). *Big Data Initiative: Time to Invest*. <https://www.ebu.ch/publications/time-to-invest---ebu-big-data-initiative-report>
- European Broadcasting Union. (2020). *Diversified Algorithm. PEACH*. <https://peach.ebu.io/technical/tutorials/algorithms/diversified/>
- European Broadcasting Union. (2020). *PEACH*. <https://peach.ebu.io/>
- European Broadcasting Union. (2020, April 20). *Digital Transformation Initiative (DTI)*. <https://knowledgehub.ebu.ch/digital-transformation/digital-transformation-initiative-casebook>
- European Broadcasting Union. (2020, April 27). *Swedish Radio leverages Peach recommendations for content production*. EBU Technology & Innovation. <https://tech.ebu.ch/news/2020/04/swedish-radio-leverages-peach-recommendations-for-content-production>
- European Broadcasting Union. (2020, June 10). *AVMSD: EBU calls on Member States to ensure prominence of general interest content*. <https://www.ebu.ch/news/2020/06/avmsd-ebu-calls-on-member-states-to-ensure-prominence-of-general-interest-content>

- Fontaine, G. (2015). The Visibility Of Film On On-Demand Platforms: Germany, France & The United Kingdom. *European Audiovisual Observatory*, November 2015, 1–34.
- Google Search. (2019). *How Search algorithms work*. https://www.google.com/intl/en_uk/search/howsearchworks/algorithms/
- Google Search. (2021). *Ranking results – How Google Search works*. from https://www.google.com/intl/en_uk/search/howsearchworks/how-search-works/ranking-results/
- Google. (2020). *General Guidelines - Search Quality Rating Programme*. <https://static.googleusercontent.com/media/guidelines.raterhub.com/en//searchqualityevaluatorguidelines.pdf>.
- Grece, C. (2021). *Trends in the VOD market in EU28. A publication of the European Audiovisual Observatory*. <https://rm.coe.int/trends-in-the-vod-market-in-eu28-final-version/1680a1511a>
- Hall, E., & Lawson, F. (2012). *The UK's EPG Market*. https://webarchive.nationalarchives.gov.uk/20130503192524/http://dcmscommsreview.readandcomment.com/wp-content/uploads/2012/07/The_value_and_optimal_management_of_channel_position_and_prominence_on_electronic_programme_guides.pdf
- Harbers, M., Willemsen, L., and Rutten, P. (2020). Values in public service media recommenders. In: *ETHICOMP 2020. Paradigm shifts in ICT Ethics*, pp. 241–244.
- International Television Expert Group. (2010). *EPG & TV Middleware Forecast, Western Europe (2008-2014)*. http://www.international-television.org/tv_market_data/epg-penetration-forecast-europe_2008-2014.html.
- Johnson, C., Dempsey, L., & Hills, M. (2020). *Routes to Content: How people decide what TV to watch. (Key Insights 1. Default TV)*. Univeriisity of Huddersfield. <https://mhm.hud.ac.uk/routes/routes-report.pdf>
- Klein, J., Freeman, J., & Lambert, R. (2012). *The value and optimal management of channel position and prominence on electronic programme guides*. https://webarchive.nationalarchives.gov.uk/20120711183612/http://dcmscommsreview.readandcomment.com/wp-content/uploads/2012/07/The_value_and_optimal_management_of_channel_position_and_prominence_on_electronic_programme_guides.pdf
- Mandese, J. (2019, November 22). Freedom Of Speech Is Not Freedom Of Reach. *MediaPost*. <https://www.mediapost.com/publications/article/343722/freedom-of-speech-is-not-freedom-of-reach.html>
- Mazzoli, E.M., (2022, February 14). Journalists step in where platforms have no answers. *360.org*. <https://360info.org/journalists-step-in-where-platforms-have-no-answers/>
- Mazzoli, E. M. (2021). *A comparative lens on prominence regulation and its implications for media pluralism*. A working paper. TPRC49 - The Research Conference on Communications, Information and Internet Policy, 20.

- Mazzoli, E. M., & Tambini, D. (2020). Prioritisation Uncovered. The Discoverability of Public Interest Content Online. *Council of Europe*. <https://rm.coe.int/publication-content-prioritisation-report/1680a07a57>
- McKelvey, F. (2016, July 1). The new attention factory: discoverability and Canadian cultural policy. *Canada Centre for Policy Alternatives*. <https://www.policyalternatives.ca/publications/monitor/new-attention-factory>
- Meta Transparency Center. (2022, January 19). *Approach to newsworthy content*. <https://transparency.fb.com/en-gb/features/approach-to-newsworthy-content/>
- Meta Transparency Center. (2022, January 19). *Our approach to ranking*. <https://transparency.fb.com/en-gb/features/ranking-and-content/>
- Meta Transparency Center. (2022, March 17). *Types of content we demote*. <https://transparency.fb.com/en-gb/features/approach-to-ranking/types-of-content-we-demote/>
- Mohsin, M. (2020, April 3). 10 Google Search Statistics You Need to Know in 2020. *Oberlo*. <https://www.oberlo.com/blog/google-search-statistics>
- Netflix. (2021). *How Netflix's Recommendations System Works*. <https://help.netflix.com/en/node/100639>
- Netflix. (2021). *Personalization & Search. Helping members discover content they'll love*. <https://research.netflix.com/business-area/personalization-and-search>
- Newman, N., Fletcher, R., Kalogeropoulos, A., & Nielsen, R K.. (2019). *Reuters Institute Digital News Report 2019*. Reuters Institute. https://reutersinstitute.politics.ox.ac.uk/sites/default/files/inline-files/DNR_2019_FINAL.pdf
- Newman, N., Fletcher, R., Schulz, A., Simge Andi, & Nielsen, R. K. (2020). *Overview and Key Findings of the 2020 Digital News Report*. Reuters Institute. <http://www.digitalnewsreport.org/survey/2020/overview-key-findings-2020/>
- NPO. (2018). *Terugblik 2018*.
- Raimond, Y., and Basilico, J., (2016, February 17). Recommending for the World. *Netflix TechBlog*. <https://netflixtechblog.com/recommending-for-the-world-8da8cbcf051b>
- Ranking Digital Rights. (2020). *2020 Ranking digital rights corporate accountability index. Research Indicators*. <https://rankingdigitalrights.org/who/partners/>
- Ranking Digital Rights. (2020). *Key findings from the 2020 RDR Corporate Accountability Index*. <https://rankingdigitalrights.org/index2020/key-findings>
- Reuters Institute. (2019). *Interactive - Reuters Institute Digital News Report*. <http://www.digitalnewsreport.org/interactive/>
- Scarlata, A., & Lobato, R. (2019). *Australian Content in SVOD Catalogs: Availability and Discoverability*. RMIT University <https://doi.org/10.4225/50/58225b7d49d1a>

Sørensen, J. K., & Schmidt, J.-H. (2016). *An Algorithmic Diversity Diet? Questioning Assumptions behind a Diversity Recommendation System for PSM*. RIPE@2016 Conference: 'Public Service Media In A Networked Society? <http://ripeat.org/library/2016/7015-algorithmic-diversity-diet-questioning-assumptions-behind-diversity-recommendation>

Sørensen, J. K. (2019). *Public Service Media, Diversity and Algorithmic Recommendation*. 7th International Workshop on News Recommendation and Analytics (INRA 2019), Cmi.

Sterling, G. (2018, August 28). *Survey: 82 percent of smartphone shoppers conduct “near me” searches*. SearchEngineLand. <https://searchengineland.com/survey-82-percent-of-smartphone-shoppers-conduct-near-me-searches-304512>

Sveriges Radio. (2020). *Sveriges Radio News Values system* [Video]. YouTube. <https://www.youtube.com/watch?v=tSBUjZBcc8g>

Chapter A2

Farchy, J., Bideau, G., & Tallec, S. (2021). Content quotas and prominence on VOD services: new challenges for European audiovisual regulators. *International Journal of Cultural Policy*, 1–13. <https://doi.org/10.1080/10286632.2021.1967944>

García, T. M. L., & Albornoz, L. A. (2020). VOD service providers and regulation in the European Union: an audiovisual diversity approach. *International Journal of Cultural Policy*, 27(3). <https://doi.org/10.1080/10286632.2020.1769614>

Mazzoli, E. M. (2020). Online content governance: Towards a framework for analysis for prominence and discoverability. *Journal of Digital Media & Policy*, 11(1).

Ukrow, J. (2021). ZAK objects to cooperation between Google and German Health Ministry over online health portal. *IRIS 2021-8:1/19, Institute of European Media Law*. <http://merlin-int.obs.coe.int/article/9275>

Van Den Bulck, H., & Moe, H. (2018). Public service media, universality and personalisation through algorithms: mapping strategies and exploring dilemmas. *Media, Culture & Society*, 40(6), 875–892. <https://doi.org/10.1177/0163443717734407>

Van Der Sloot, B. (2012). Walking a Thin Line: The Regulation of EPGs. *JIPITEC*, 138–147. <http://nbn-resolving>.

Yeung, K. (2016). 'Hypernudge': Big Data as a mode of regulation by design. *Information Communication and Society*, 20(1), 118–136. <https://doi.org/10.1080/1369118X.2016.1186713>

- EU and CoE sources

Council of Europe. (2021). *Guidance Note on the Prioritisation of Public Interest Content Online*. <https://rm.coe.int/cdmsi-2021-009-guidance-note-on-the-prioritisation-of-pi-content-e-ado/1680a524c4>

Commission v Belgium, CJEU C-211/91, par.12. (1992).

European Commission. (2020). *Study on the implementation of the new provisions in the revised Audiovisual Media Services Directive*. <https://digital-strategy.ec.europa.eu/en/library/study-implementation-new-provisions-revised-audiovisual-media-services-directive-avmsd>

Directive 2018/1808. *Audiovisual Media Services Directive*. European Parliament, Council of the European Union. <https://eurlex.europa.eu/eli/dir/2018/1808/oj>

UPC v. Belgium, CJEU, C 250/06, par.34-36 and par.48-49. (2007).

- **Example country sources**

AGCOM. (2022). *Numerazione automatica dei canali (LCN) sul digitale terrestre*. <https://www.agcom.it/digitale-terrestre>

AGCOM. (2022). *Contenziosi LCN - AGCOM*. <https://www.agcom.it/contenziosi-licn>

BBC. (2018). *Consultation on proposed changes to the linear EPG Code and future of the regime: BBC response*. Ofcom. <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>

BBC, ITV, STV, Channel 4, S4C, & Channel 5. (2018). *Consultation on proposed changes to the linear EPG Code and future of the regime: Joint PSB position paper*. Ofcom. <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>

Channel 4. (2018). *Consultation on proposed changes to the linear EPG Code and future of the regime: Channel 4 response*. Ofcom. <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>

Cyberspace Administration of China-CAC. (2019). *Regulations on the Ecological Governance of Network Information Content*. http://www.cac.gov.cn/2019-12/20/c_1578375159509309.htm

Department for Digital Culture Media & Sports - DCMS. (2021, June 23). *New plans to boost Britain's broadcasters and protect viewers on video-on-demand channels*. <https://www.gov.uk/government/news/new-plans-to-boost-britains-broadcasters-and-protect-viewers-on-video-on-demand-channels>

Digital UK. (2018, October 5). *Consultation on proposed changes to the linear EPG Code and future of the regime: Digital UK response*. Ofcom. <https://www.ofcom.org.uk/research->

El-Husseini, F. (2010). *An Analysis of the Audience Impact of Page One EPG Prominence. A Report for Ofcom*. Ofcom. https://www.ofcom.org.uk/_data/assets/pdf_file/0033/68793/attentionalreport.pdf

Expert Media Partners. (2018). *Report on the UK Market in EPG Positions*. Ofcom. https://www.ofcom.org.uk/_data/assets/pdf_file/0025/116287/expert-media-partners.pdf

ISED Canada. (2020). *Canada's Communication Future: Time to Act. Final Report*. www.ic.gc.ca/eic/site/110.nsf/eng/00012.html

- ITV. (2018). *Consultation on proposed changes to the linear EPG Code and future of the regime: ITV*. Ofcom. <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>
- Mediatique. (2020). *Connected TV gateways : review of market dynamics. A report for Ofcom*. Ofcom. https://www.ofcom.org.uk/data/assets/pdf_file/0019/201493/connected-gateways.pdf
- MTM, & Ofcom. (2019). *Review of TV user interfaces in the UK market. Current offerings and future developments. Final Report*. <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>
- Ofcom. (2010, May 21). *Code of Practice on Electronic Programme Guides, 1* <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/epg-code>
- Ofcom. (2018). *EPG Prominence. A report on the discoverability of PSB and local TV services*. <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>
- Ofcom. (2018, July 25). *Review of prominence for public service broadcasting*. <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>
- Ofcom. (2019). *Annex 4. Ofcom's EPG slot price modelling and interpretation*. https://www.ofcom.org.uk/data/assets/pdf_file/0023/154382/annex-4-epg-slot-price-modelling-and-interpretation.pdf
- Ofcom. (2020). *Small Screen: Big Debate*. <https://www.smallscreenbigdebate.co.uk/>
- Ofcom. (2020, November 30). *Review of competition rules in the EPG Code*. <https://www.ofcom.org.uk/consultations-and-statements/category-2/review-competition-rules-in-epg-code>
- Samsung Electronics UK. (2018). *Consultation on proposed changes to the linear EPG Code and future of the regime: Samsung Electronics UK response*. Ofcom. <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>
- Sky UK. (2018). *Consultation on proposed changes to the linear EPG Code and future of the regime: Sky response*. Ofcom. <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>

- **Other sources**

- Amatriain, X., & Basilico, J. (2013, March 27). System Architectures for Personalization and Recommendation. *Netflix TechBlog*. <https://netflixtechblog.com/system-architectures-for-personalization-and-recommendation-e081aa94b5d8>
- Beckett, C. (2020, September 28). An algorithm for empowering public service news. *LSE Polis*. <https://blogs.lse.ac.uk/polis/2020/09/28/this-swedish-radio-algorithm-gets-reporters-out-in-society/>
- Boididou, C., Sheng, D., Mercer Moss, F. J., & Piscopo, A. (2021). *Building public service recommenders: Logbook of a journey*. 15th ACM Conference on Recommender Systems, 539–541. <https://recsys.acm.org/recsys21/>

- Data Ethics Commission. (2020). *Opinion of the Data Ethics Commission*. https://www.bmi.bund.de/SharedDocs/downloads/EN/themen/it-digital-policy/datenethikkommission-abschlussgutachten-lang.pdf?__blob=publicationFile&v=2
- Deirdre, K., & Schneeberger, A. (2015). *Access to TV platforms: must-carry rules, and access to free-DTT Europe*. European Audiovisual Observatory. <https://rm.coe.int/16807835e4>
- Digital Europe et al. (2021). Comment on the German Draft Statute for the implementation of the regulations of the State Media Treaty (MStV) (Public Value Statute). TRIS Notification 2021/204/DE.
- Douglas, T. (2018, February). The battle for prominence. *Royal Television Society*. <https://rts.org.uk/article/battle-prominence>
- ERGA. (2020). *Ensuring Prominence and Access of Audiovisual Media Content to all Platforms (Findability)*. https://erga-online.eu/wp-content/uploads/2021/01/ERGA_SG3_2020_Report_Art.7a_final.pdf
- ERGA. (2020). *Internal Media Plurality in Audiovisual Media Services in the EU: Rules & Practices (ERGA Report)*. <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007b0d8>
- ERGA. (2021). *Overview document on the exchange of best practices regarding Art. 7a and 7b AVMSD*. <https://erga-online.eu/wp-content/uploads/2021/12/ERGA-SG1-2021-Report-Articles-7a-and-7b.pdf>
- ERGA. (2021). *Transposition and implementation of Article 13(1) of the new AVMSD – Ensuring prominence of European works in the catalogues of on-demand audiovisual media services*. https://erga-online.eu/wp-content/uploads/2021/12/ERGA-SG1-2021-Report-Article-13_1.pdf
- European Broadcasting Union. (2020). *PEACH*. <https://peach.ebu.io/>
- European Broadcasting Union. (2020, April 27). Swedish Radio leverages Peach recommendations for content production. *EBU Technology & Innovation*. <https://tech.ebu.ch/news/2020/04/swedish-radio-leverages-peach-recommendations-for-content-production>
- European Broadcasting Union. (2020). Diversified Algorithm. *PEACH*. <https://peach.ebu.io/technical/tutorials/algorithms/diversified/>
- European Committee for Standardization. (2019). *CEN Workshop Agreement*. <https://www.cen.eu/News/Workshops/Pages/WS-2019-018.aspx>
- Google. (2021, October 19). *General Guidelines - Search Quality Rating Programme*. <https://static.googleusercontent.com/media/guidelines.raterhub.com/en//searchqualityevaluatorguidelines.pdf>.
- Google Search. (2022). *Ranking results – How Google Search works*. https://www.google.com/intl/en_uk/search/howsearchworks/how-search-works/ranking-results/
- Harbers, M., Willemsen, L., and Rutten, P. (2020). Values in public service media recommenders. In: *ETHICOMP 2020. Paradigm shifts in ICT Ethics*, pp. 241–244.

- Heawood, J. (2019). *The Press Freedom Myth* (ProQuest E). Biteback Publishing.
- Jackson, J. (2017, March 20). UK broadcasters back BBC's call for top spots on programme guides. *The Guardian*. <https://www.theguardian.com/media/2017/mar/20/uk-broadcasters-back-bbcs-call-for-top-spots-on-programme-guides>
- Johnson, C. (2020). The appisation of television: TV apps, discoverability and the software, device and platform ecologies of the internet era. *Critical Studies in Television*, 15(2), 165–182. <https://doi.org/10.1177/1749602020911823>
- Johnson, C., Dempsey, L., & Hills, M. (2020). *Routes to Content: How people decide what TV to watch*. (Key Insights 1. Default TV). Univeriisity of Huddersfield. <https://mhm.hud.ac.uk/routes/routes-report.pdf>
- JTI. (2021, September 22). JTI Certificate for SWI swissinfo.ch. *JTI:App*. <https://www.jti-app.com/report/4503a2jJBPjymrWN>
- Kalbhenn, J.C. (2020, February 21). New Diversity Rules for Social Media in Germany. *CMPF(EUI)*. <https://cmpf.eui.eu/new-diversity-rules-for-social-media-in-germany/>
- Mazzoli, E. M. (2020, December 7). Discovering content online: how is control over the users' journey shifting? . *Media @LSE*. <https://blogstest.lse.ac.uk/medialse/2020/12/07/discovering-content-online-how-is-control-over-the-users-journey-shifting/>
- Mazzoli, E. M., & Tambini, D. (2020). Prioritisation Uncovered. The Discoverability of Public Interest Content Online. *Council of Europe*. <https://rm.coe.int/publication-content-prioritisation-report/1680a07a57>
- Mazzoli, E. M. (2021). *A comparative lens on prominence regulation and its implications for media pluralism*. A working paper. TPRC49 - The Research Conference on Communications, Information and Internet Policy, 1-20.
- McDonald, A. (2018, November 16). Sky urges Ofcom to look 'beyond the rhetoric' of PSBs in prominence decision. *Digital TV Europe*. <https://www.digitaltveurope.com/2018/11/16/sky-urges-ofcom-to-look-beyond-the-rhetoric-of-psbs-in-prominence-decision/>
- Meta. (2021, January 26). *How Does News Feed Predict What You Want to See?* <https://about.fb.com/news/2021/01/how-does-news-feed-predict-what-you-want-to-see/>
- Meta Transparency Center. (2022, January 19). *Approach to newsworthy content*. <https://transparency.fb.com/en-gb/features/approach-to-newsworthy-content/>
- Meta Transparency Center. (2022, January 19). *Types of content we demote*. <https://transparency.fb.com/en-gb/features/approach-to-ranking/types-of-content-we-demote/>
- Netflix. Help Center. (2021). *How Netflix's Recommendations System Works*. <https://help.netflix.com/en/node/100639>
- Netflix Research. (2021). *Personalization & Search. Helping members discover content they'll love*. <https://research.netflix.com/business-area/personalization-and-search>

- Netflix Research. (2021). *Recommendations. Figuring out how to bring unique joy to each member.* <https://research.netflix.com/research-area/recommendations>
- Raimond, Y., & Basilico, J. (2016, February 17). Recommending for the World. *The Netflix TechBlog.* <https://netflixtechblog.com/recommending-for-the-world-8da8cbcf051b>
- Ranaivoson, H. (2021, October 29). *The assessment of media diversity in the online age. An overview of media measurement frameworks and challenges.* emma2021, Jönköping, Sweden.
- Ranaivoson, H. (Forthcoming). *Technical Paper: Diversity of Content in the Digital Age: Comparative analysis of diversity measurement. Final Report.* Department of Canadian Heritage.
- Ranking Digital Rights. (2020). *2020 Ranking digital rights corporate accountability index. Research Indicators.* <https://rankingdigitalrights.org/who/partners/>
- RDR. (2020). Key findings from the 2020 RDR Corporate Accountability Index. *RDR.* <https://rankingdigitalrights.org/index2020/key-findings>
- Sky UK. (2016). *Method for allocating listings in Sky's EPG.* <https://s3-eu-west-1.amazonaws.com/skygroup-sky-static/documents/about-sky/regulatory-information/method-for-allocating-listing-in-skys-epg-290116.pdf>
- Sørensen, J. K. (2019). Public Service Media, Diversity and Algorithmic Recommendation. Tensions between Editorial Principles and Algorithms in European PSM Organizations. *Public Service Media. CEUR Workshop Proceedings, 6–11.* http://ceur-ws.org/Vol-2554/paper_01.pdf
- Sveriges Radio. (2020). *Sveriges Radio News Values system* [Video]. YouTube. <https://www.youtube.com/watch?v=tSBUjZBcc8q>
- Sweney, M. (2018, October 15). Keep us at top of TV listings, say public service broadcasters. *Public service broadcasting. The Guardian.* <https://www.theguardian.com/media/2018/oct/15/keep-us-top-listings-public-service-broadcasters-bbc-itv-ofcom>
- SWI. (2021, September 22). SWI swissinfo.ch certificato dalla Journalism Trust Initiative. *SWI SwissInfo.* <https://www.swissinfo.ch/ita/swissinfo-journalism-trust-initiative/47132946>
- VRT. (2020,). VRT MYNWS 2.0. *VRT Innovation.* <https://innovatie.vrt.be/en/artikel/vrt-mynws-2.0>

Chapter A3

- Farchy, J., Bideau, G., & Tallec, S. (2021). Content quotas and prominence on VOD services: new challenges for European audiovisual regulators. *International Journal of Cultural Policy, 1–13.* <https://doi.org/10.1080/10286632.2021.1967944>
- Hartmann, S., and Holznagel, B. (2021). Reforming Competition and Media Law - the German Approach. In Moore and Tambini (eds), *Regulating Big Tech.* Oxford University Press. <https://oxford.universitypressscholarship.com/view/10.1093/oso/9780197616093.001.0001/oso-9780197616093>
- Helberger, N. (2019). On the Democratic Role of News Recommenders. *Digital Journalism, 7(8), 993-1012.* <https://doi.org/10.1080/21670811.2019.1623700>

Mazzoli, E. M. (2020). Online content governance: Towards a framework for analysis for prominence and discoverability. *Journal of Digital Media & Policy*, 11(3), 301-319.

- **EU and CoE sources**

Criminal proceedings against Alfred John Webb. EU:C:1981:314, Case 279/80. (1981).

Arbeitsgemeinschaft Deutscher Rundfunkanstalten (ARD) v PRO Sieben Media AG. EU:C:1999:532, Case C-6/98. (1999).

Commission v Belgium. EU:C:2011:117, Case C-134/10. (2011).

Commission v Netherlands. EU:C:1991:325, Case C-353/89. (1991).

Council of Europe. (2021). *Guidance Note on the Prioritisation of Public Interest Content Online*. <https://rm.coe.int/cdmsi-2021-009-guidance-note-on-the-prioritisation-of-pi-content-ado/1680a524c4>

Council of Europe. (2022). Recommendation CM/Rec (2022) 11 of the Committee of Ministers to Member States on principles for media and communication governance. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a61712

European Commission. (2018, September 26). *Code of Practice on Disinformation*. <https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation>

European Commission. (2019, April 8). *Ethics guidelines for trustworthy AI*. <https://digital-strategy.ec.europa.eu/en/library/ethics-guidelines-trustworthy-ai>

European Commission. (2020). *The Digital Services Act package. Shaping Europe's digital future*. <https://ec.europa.eu/digital-single-market/en/digital-services-act-package>

European Commission. (2021, May 26). *Guidance to strengthen Code of Practice on Disinformation*. https://ec.europa.eu/commission/presscorner/detail/en/QANDA_21_2586

Kabel Deutschland Vertrieb und Service GmbH & Co. KG v Niedersächsische Landesmedienanstalt für privaten Rundfunk. EU:C:2008:765, Case C-336/07. (2008).

Procureur du Roi v Marc J.V.C. Debaeve. EU:C:1980:83, Case 52/79. (1980).

Société Générale Alsacienne de Banque SA v Koestler. EU:C:1978:184, Case 15/78. (1978).

Stichting Collectieve Antennevoorziening Gouda v Commissariaat voor de Media. EU:C:1991:323, Case C-288/89. (1991).

United Pan-Europe Communications Belgium SA, Coditel Brabant SPRL, Société - Intercommunale pour la Diffusion de la Télévision (Brutélé), Wolu TV ASBL v Belgium. EU:C:2007:783, Case C-250/06. (2007).

Unión de Televisión Comerciales Asociadas (UTECA) v Administración General del Estado. EU:C:2009:124, Case C-222/07. (2009).

Vivendi SA v Autorità per le Garanzie nelle Comunicazioni. EU:C:2020:627, Case C-719/18. (2020).

- **Example country sources**

Bundeskartellamt. (2021). *Bundeskartellamt examines Google News Showcase*. https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2021/04_06_2021_Google_Showcase.htm

Ofcom. (2020). *Media Nations 2020: UK report*. https://www.ofcom.org.uk/data/assets/pdf_file/0010/200503/media-nations-2020-uk-report.pdf

- **Reports/Other sources**

Ada Lovelace Institute. (2020). *JUST AI*. <https://www.adalovelaceinstitute.org/our-work/just-ai/>

Algorithm Watch. (2020, October 30). *Putting Meaningful Transparency at the Heart of the Digital Services Act Why Data Access for Research Matters & How we can Make it Happen*. https://algorithmwatch.org/en/wp-content/uploads/2020/10/Governing-Platforms_DSA-Recommendations.pdf

Amnesty International. (2022, March 2). *Open letter: Civil society call for a Digital Services Act that benefits people and is compatible with human rights*. <https://www.amnesty.org/en/documents/eur01/5287/2022/en/>

ARTICLE 19. (2020). *ARTICLE 19's Recommendations for the EU Digital Services Act*. <https://www.article19.org/wp-content/uploads/2020/04/ARTICLE-19s-Recommendations-for-the-EU-Digital-Services-Act-FINAL.pdf>

ARTICLE 19. (2021, September 22). *EU: Civil society urges EU to fix algorithms*. <https://www.article19.org/resources/eu-civil-society-urges-eu-to-fix-algorithms/>

ARTICLE 19. (2021, November 4). *EU: A diverse, decentralised digital services environment will protect rights*. <https://www.article19.org/resources/eu-a-diverse-decentralised-digital-goods-environment-will-protect-rights/>

BBC. (2018). *Responsible Machine Learning in the Public Interest*. <https://www.bbc.co.uk/rd/projects/responsible-machine-learning>

BBC. (2021). *Machine Learning Engine Principles*. https://downloads.bbc.co.uk/rd/pubs/MLEP_Doc_2.1.pdf

CENSIS. (2021, December 3). *Il capitolo «Comunicazione e media» del 55° Rapporto Censis sulla situazione sociale del Paese/2021*. <https://www.censis.it/comunicazione/il-capitolo-«comunicazione-e-media»-del-55°-rapporto-censis-sulla-situazione-sociale>

CWA 17493. *CEN Workshop Agreement, Pub. L. No. CWA 17493:2019 E (2019)*. <https://www.cen.eu/News/Workshops/Pages/WS-2019-018.aspx>

Deirdre, K., & Schneeberger, A. (2015). *Access to TV platforms: must-carry rules, and access to free-DTT Europe*. European Audiovisual Observatory. <https://rm.coe.int/16807835e4>

- EDMO. (2021). *Enhancing Content Reliability by Prominence: Indicators for Trustworthy Online Sources*. <https://edmo.eu/wp-content/uploads/2021/12/Enhancing-Content-Reliability-by-Prominence.-Indicators-for-Trustworthy-Online-Sources-Report.pdf>
- EPRA. (2016, May 27). *Access to TV platforms: EAO report for the European Commission. European Platform of regulatory authorities*. https://www.epra.org/news_items/access-to-tv-platforms-eao-report-for-the-european-commission
- ERGA. (2020). *Ensuring Prominence and Access of Audiovisual Media Content to all Platforms (Findability)*. https://erga-online.eu/wp-content/uploads/2021/01/ERGA_SG3_2020_Report_Art.7a_final.pdf
- ERGA. (2021). *Overview document on the exchange of best practices regarding Art. 7a and 7b AVMSD*. <https://erga-online.eu/wp-content/uploads/2021/12/ERGA-SG1-2021-Report-Articles-7a-and-7b.pdf>
- ERGA. (2021). *Transposition and implementation of Article 13(1) of the new AVMSD – Ensuring prominence of European works in the catalogues of on-demand audiovisual media services*.
- Helberger, N., Eskens, S.J., Van Drunen, M.Z., et al. (2020). *Implications of AI-driven tools in the media for freedom of expression*. CoE - Conference of Ministers responsible for Media & Information Society. [168097fa82 \(coe.int\)](https://www.coe.int/t/090040168097fa82)
- Johnson, C., Dempsey, L., & Hills, M. (2020). *Routes to Content: How people decide what TV to watch. (Key Insights 1. Default TV)*. University of Huddersfield. <https://mhm.hud.ac.uk/routes/routes-report.pdf>
- Marcus, M. (2021, August 5). *Ethics of recommendation systems in public service media*. BBC. <https://www.bbc.co.uk/rd/blog/2021-08-recommendations-ethics-public-service-media>
- Mazzoli, E. M., & Tambini, D. (2020). *Prioritisation Uncovered. The Discoverability of Public Interest Content Online*. Council of Europe. <https://rm.coe.int/publication-content-prioritisation-report/1680a07a57>
- Mazzoli, E. M. (2022, February 14). *Journalists step in where platforms have no answers*. 360.Org. <https://360info.org/journalists-step-in-where-platforms-have-no-answers/>
- McGowan, I. (2021, September 9). *How can we apply human rights due diligence to content moderation? Focus on the EU Digital Services Act*. Center for Democracy and Technology. <https://cdt.org/insights/how-can-we-apply-human-rights-due-diligence-to-content-moderation-focus-on-the-eu-digital-services-act-event-summary/>
- OECD. (2021). *Competition Issues concerning News Media and Digital Platforms*. <https://www.oecd.org/daf/competition/competition-issues-in-news-media-and-digital-platforms.htm>
- Panoptykon Foundation. (2020, September 8). *Panoptykon Foundation's submission to the consultation on the Digital Services Act Package About Panoptykon*. https://panoptykon.org/sites/default/files/stanowiska/panoptykon_dsa_consultation_submission_08.09.2020_final.pdf

Panoptykon Foundation. (2021). *Alternative recommender systems in the DSA Webinar*. Panoptykon Foundation [Video]. <https://www.youtube.com/watch?v=ZPuB4JRRhw0>

RDR. (2020). *Key findings from the 2020 RDR Corporate Accountability Index*. <https://rankingdigitalrights.org/index2020/key-findings>

Santoro, P.L. (2021, March 21). L'audience online dei broadcaster in Italia. *La Repubblica*. https://www.repubblica.it/tecnologia/blog/esplorazioni-digitali/2022/03/21/news/laudience_online_dei_broadcaster_in_italia-342212958/

Stasi, M.L. (2020). *Ensuring Pluralism in Social Media Markets: Some Suggestions*. EUI working papers. Robert Schuman Centre. https://cadmus.eui.eu/bitstream/handle/1814/65902/RSCAS_2020_05.pdf?sequence=1&isAllowed=y

Vrijenhoek, S., Kaya, M., Metoui, N., Möller, J., Odijk, D., & Helberger, N. (2021). *Recommenders with a Mission: Assessing Diversity in News Recommendations*. In CHIIR'21: proceedings of the 2021 Conference on Human Information Interaction and Retrieval, March 14-19, 2021, Canberra, Australia (pp. 173-183). The Association for Computing Machinery. <https://doi.org/10.1145/3406522.3446019>

Yeung, K. (2019). *Responsibility and AI*. Council of Europe Study. <https://rm.coe.int/responsability-and-ai-en/168097d9c5>.

Chapter B1

Afilipoaie, A., Donders, K., & Ballon, P. (2021). The European Commission's approach to mergers involving software-based platforms: Towards a better understanding of platform power. *Telecommunications Policy*. <https://doi.org/10.1016/j.telpol.2021.102288>.

Aizenman, J., & Binici, M. (2016). Exchange market pressure in OECD and emerging economies: Domestic vs. external factors and capital flows in the old and new normal. *Journal of International Money and Finance*, 66, 65–87. <https://doi.org/10.1016/J.JIMONFIN.2015.12.008>

Ala-Fossi, et al. (2018). *Medie- och kommunikationspolitikens tillstånd och mätning Slutrapport*. Kommunikationsministeriets publikationer 4/2018. <http://urn.fi/URN:ISBN:978-952-243-548-4>

Alexiadis, P., & da Silva Pereira Neto, C. M. (2019). *Competing Architectures for Regulatory And Competition Law Governance*. European University Institute. <https://doi.org/10.2870/26573>

Balcytiene A., Juraite K., Jastramskis D., Kalpokas I. (2021). *Monitoring media pluralism in the digital age. Country report: Lithuania*. Centre for Media Pluralism and Media Freedom (CMPF), European University Institute. https://cadmus.eui.eu/bitstream/handle/1814/71953/lithuania_results_mpm_2021_cmpf.pdf?sequence=1&isAllowed=y

Bárd, P., Bayer, J., & Carrera, S. (2016). *A Comparative Analysis of Media Freedom and Pluralism in the EU Member States: Study*. European Parliament.

Bátorfy A. & Szabó K.(2021). *Monitoring Media Pluralism in the Digital Era. Application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia,*

Serbia & Turkey in the year 2020. Country Report: Hungary. Centre for Media Pluralism and Media Freedom (CMPF), European University Institute. https://cadmus.eui.eu/bitstream/handle/1814/71949/hungary_results_mpm_2021_cmpf.pdf?sequence=1&isAllowed=y

Beaufort, M., Seethaler, J. (2021). *Monitoring Media Pluralism in the Digital Era. Application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia & Turkey in the year 2020. Country Report: Austria* (p. 16). Centre for Media Pluralism and Media Freedom (CMPF), European University Institute. https://cadmus.eui.eu/bitstream/handle/1814/71937/austria_results_mpm_2021_cmpf.pdf?sequence=1&isAllowed=y

Boev, B., & Bukovska, B. (2011). Public service media and human rights. In *Human rights and a changing media landscape* (pp. 139–145). Council of Europe Publishing. <https://book.coe.int/en/human-rights-and-democracy/4900-pdf-human-rights-and-a-changing-media-landscape.html>

Borman-Shoap, E., Li, S. T. T., St Clair, N. E., Rosenbluth, G., Pitt, S., & Pitt, M. B. (2019). Knowing Your Personal Brand: What Academics Can Learn from Marketing 101. *Academic Medicine*, 94(9), 1293–1298. <https://doi.org/10.1097/ACM.0000000000002737>

Carlini, R., Brogi, E. (2021). *Monitoring media pluralism in the digital era. Monitoring Media Pluralism in the Digital Era. Application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia & Turkey in the year 2020. Country Report: Italy* (p. 12). Centre for Media Pluralism and Media Freedom (CMPF), European University Institute.

Craufurd-Smith, R., Klimkiewicz, B., & Ostling, A. (2021). Media ownership transparency in Europe : Closing the gap between European aspiration and domestic reality. *European Journal of Communication*, 16.

Dabbah, Maher, M. (2011). The Relationship Between Competition Authorities and Sector Regulators. *The Cambridge Law Journal*, 70(1), pp. 113–43. https://www.jstor.org/stable/41300946?seq=9#metadata_info_tab_contents

Damodaran, A. (2012). Revenue Multiples and Sector-Specific Multiples. In *Tools and Techniques for Determining the Value of Any Asset* (3rd edition). Wiley. <https://www.oreilly.com/library/view/investment-valuation-tools/9781118011522/>

Di Benedetto, F. (2017). Reciprocity in International Trade and Investment Law and the Establishment of an European Committee on Foreign Investment. SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3072214

Dragomir, M. (2017). Control the money, control the media: How government uses funding to keep media in line: *Journalism*, 19(8), 1131–1148. <https://doi.org/10.1177/1464884917724621>

Dragomir, M., & Aslama Horowitz, M. (2021). Media Capture and Its Contexts: Developing a Comparative Framework for Public Service Media. In *The Values of Public Service Media in the Internet Society* (pp. 217–246). Nature Publishing Group. https://doi.org/10.1007/978-3-030-56466-7_12

- Evens, T., & Donders, K. (2018). *Platform Power and Policy in Transforming Television Markets*. Cham: Springer International Publishing. <https://doi.org/10.1007/978-3-319-74246-5>
- Feldner, J., Thalhammer D. (2019). *Merger Control in Austria - White Paper* (p.4) Eisenberger & Herzog. https://www.ehlaw.at/wp-content/uploads/2016/06/Whitepaper_2019_Merger_Control_EN.pdf
- Harcourt, A., & Picard, R. G. (2009). Policy, Economic, and Business Challenges of Media Ownership Regulation. *Journal of Media Business Studies*, 6(3), 1–17. <https://doi.org/10.1080/16522354.2009.11073486>
- Helberger, N. (2020). The Political Power of Platforms: How Current Attempts to Regulate Misinformation Amplify Opinion Power. *Digital Journalism*, 8(6), (842-854), p. 843.
- Kies, R. & Hamdi, M. (2021), *Monitoring Media Pluralism in the Digital Era. Country Report: Luxembourg*. Centre for Media Pluralism and Media Freedom, European University Institute. https://cadmus.eui.eu/bitstream/handle/1814/71954/luxembourg_results_mpm_2021_cmpf.pdf?sequence=1 (accessed 13 May 2022).
- Kleis Nielsen, R., & Linnebank, G. (2011). *Public Support for the Media: A Six-Country Overview of Direct and Indirect Subsidies*. <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2017-11/PublicsupportforMedia.pdf>
- Napoli, P. M. (2021). Media Capture and the Crisis in Local Journalism. In A. Schiffrin (Ed.), *Media Capture* (pp. 46–66). Columbia University Press. <https://doi.org/10.7312/SCHI18882-004/HTML>
- Neuberger, C. (2018). Meinungsmacht im Internet aus Kommunikationswissenschaftlicher Perspektive. *UFITA*, 82(1), p. 53 - 68.
- Peruško, Z. (2010). The link That Matters: Media Concentration and Diversity of Content. In B. Klimkiewicz (Ed.), *Media freedom and pluralism : media policy challenges in the enlarged Europe* (pp. 261–273). Central European University Press. <https://books.openedition.org/ceup/2184?lang=en>
- Pisarkiewicz, A., Polo, M. (2021), “Old and New Media: the Interactions of Merger Control and Plurality Regulation,” in Parcu, P. L., and Brogi, E. (eds), *Research Handbook on EU Media Law and Policy*. Edward Elgar Publishing.
- Puppis, M. (2010). Media Governance: A New Concept for the Analysis of Media Policy and Regulation. *Communication, Culture & Critique*, 3(2), 134–149. <https://doi.org/10.1111/j.1753-9137.2010.01063.x>
- Schiffrin, A. (2021). *Media Capture*. (A. Schiffrin, Ed.). Columbia University Press. <https://doi.org/10.7312/SCHI18882-004>
- Simpson, E. H. (1949). Measurement of Diversity. *Nature*, 163(4148), 688-688. <https://doi.org/10.1038/163688a0>
- Sjøvaag, H., Owren, T., & Borgen, T. (2021). Strategic and Organisational fit in Corporate News Markets: A Principal-agent Approach to Studying Newspaper Mergers. *Journalism Practice*, 15(8), 1181–1198. <https://doi.org/10.1080/17512786.2020.1772097>

Welch, J. A., & Nayak, P. R. (1992). Strategic sourcing: a progressive approach to the make-or-buy decision. *Academy of Management Perspectives*, 6(1), 23–31. <https://doi.org/10.5465/AME.1992.4274302>

- EU and CoE sources

Directive 2015\849. *Anti-money laundering directive IV (AMLD IV) - transposition status*. European Commission. https://ec.europa.eu/info/publications/anti-money-laundering-directive-4-transposition-status_it

European Commission. (2021). *September infringements package: key decisions*. https://ec.europa.eu/commission/presscorner/detail/en/inf_21_4681

European Parliament. (2019). *EU framework for FDI screening. Briefing: EU Legislation in Progress*. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614667/EPRS_BRI\(2018\)614667_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614667/EPRS_BRI(2018)614667_EN.pdf)

- Example country sources

ACMA. (2020). *News in Australia: Diversity and localism. News measurement framework*. <https://www.acma.gov.au/publications/2020-12/report/news-australia-diversity-and-localism>

AGCM, AGCOM, GPDP. (2020). *Indagine Conoscitiva sui Big Data*. <https://www.agcom.it/documents/10179/17633816/Documento+generico+10-02-2020+1581346981452/39c08bbe-1c02-43dc-bb8e-6d1cc9ec0fcf?version=1.0>

ICGL. (2021). *Merger Control Laws and Regulations, Austria*. <https://iclg.com/practice-areas/merger-control-laws-and-regulations/austria>

ICGL. (2021). *Merger Control Laws and Regulations, Ireland*. <https://iclg.com/practice-areas/merger-control-laws-and-regulations/ireland>

Legifrance. (2021). *Code général des impôts, Article 200*. https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006069577/LEGISCTA000006191957/2021-07-12/#LEGISCTA000006191957

Ofcom. (2015, November 5). *Measurement framework for media plurality. Ofcom's advice to the Secretary of State for Culture, Media and Sport*. https://www.ofcom.org.uk/data/assets/pdf_file/0024/84174/measurement_framework_for_media_plurality_statement.pdf

Portuguese Regulatory Authority For The Media - ERC. (2020). <https://www.erc.pt/pt/estudos-e-publicacoes/relatorios-de-regulacao>

- Reports/other sources

Delfi.en. (2020). *Commercial media files complaint to Brussels over LRT financing*. <https://www.delfi.lt/en/politics/commercial-media-files-complaint-to-brussels-over-lrt-financing.d?id=84594725>

- Krūtaine, A., Jemberga, S. (2020). *Baltic Media Health Check 2019–2020. The Media After COVID: Finding strategies to survive and thrive*. Stockholm School of Economics. https://www.sseriga.edu/sites/default/files/2020-11/Baltic_Media_Health_Check_2019_2020.pdf
- Leurdijk, A., Slot, M., & Nieuwenhuis, O. (2012). *Statistical, Ecosystems and Competitiveness Analysis of the Media and Content Industries: The Newspaper Publishing Industry*. European Commission. <https://publications.jrc.ec.europa.eu/repository/handle/JRC69881>
- Mancini, J. (2018). *Considering non-price effects in merger control – Background note by the Secretariat*. OECD. www.oecd.org/daf/competition/non-price-effects-of-mergers.htm
- Media Freedom Rapid Response. (2021). *MFRR REPORT: Press Freedom Deteriorating in Slovenia under Latest Janša Government*. https://www.mfr.eu/wp-content/uploads/2021/06/Slovenia_PressFreedomMission_Report_Final_20210630.pdf
- Ormosi, P., Mariuzzo, F., Havell, R., Fletcher, A., & Lyons, B. (2015). *A review of merger decisions in the EU: What can we learn from ex-post evaluations?* European Commission. <https://ec.europa.eu/competition/publications/reports/kd0115715enn.pdf>
- Ranaivoson, H., Afilipoaie, A., Magyar, M., Raats, T., & Donders, K. (2021). Media ownership and transparency in the EU. In *Study on the implementation of the new provisions in the revised audiovisual media services directive (AVMSD). Final Report* (p. 127-233). European Commission. <https://digital-strategy.ec.europa.eu/en/library/study-implementation-new-provisions-revised-audiovisual-media-services-directive-avmsd>

Chapter B2

- Afilipoaie, A., Dewaele, S. and Donders, K. (2021). “Signal integrity” in the Audiovisual Media Services Directive: Process, positions and policies examined and explained. *Journal of Digital Media & Policy*, 12(3), pp. 345–65. https://doi.org/10.1386/jdmp_00075_1
- Amatriain, X. and Basilico, J. (2015). Recommender Systems in Industry: A Netflix Case Study. In Ricci, F., Rokach, L., Shapiro, B., and Kantor, P. (eds), *Recommender System Handbook* (pp. 385-419). New York: Springer Science + Business Media. <https://doi.org/10.1007/978-1-4899-7637-6>
- Anderson, S. P., & Julien, B. (2015). The Advertising-Financed Business Model in Two-Sided Media Markets. In S. P. Anderson, J. Waldfogel, and D. Strömberg (eds), *Handbook of Media Economics* (pp. 41-90). North Holland.
- Benson, R. (2018). Can foundations solve the journalism crisis? *Journalism*, 19(8), 1059–1077.
- Bourreau, M., Caillaud, B., & de Nijs, R. (2017). The Value of Consumer Data in Online Advertising. *Review of Network Economics*, 16(3), 269–289. <https://doi.org/10.1515/rne-2017-0066>
- Broughton Micova, S., Hempel, F., Jacques, S. (2018). Protecting Europe’s content production from US giants. *Journal of Media Law*, 10(2), 219-243.
- Broughton Micova, S. & Jacques, S. (2020a). The Functions of Data in the Competition between Audiovisual Media and Video Sharing Platforms for Advertising. *Journal of Information Policy*, 10, 514-548. <https://doi.org/10.5325/jinfopoli.10.2020.0514>

- Carvajal, M.; García-Avilés, J.A.; Gonzalez, J.L. (2012). Crowdfunding and non-profit media: The emergence of new models for public interest journalism. *J. Pract.*, 6, 638–647.
- Decarolis, F., & Rovigatti, G. (2021). From mad men to maths men: Concentration and buyer power in online advertising. *American Economic Review*, 111(10), 3299-3327. https://www.researchgate.net/profile/Francesco-Decarolis/publication/324672002_Online_Auctions_and_Digital_Marketing_Agencies/links/5fce07a2299bf188d4fd90cd/Online-Auctions-and-Digital-Marketing-Agencies.pdf
- Doyle, G. (2018). Television and the development of the data economy: Data analysis, power and the public interest. *International Journal of Digital Television*, 9(1), 53–68. https://doi.org/10.1386/jdtv.9.1.53_1
- Dragomir, M. (2018). Control the money, control the media: How government uses funding to keep media in line. *Journalism*, 19(8), 1131-1148. [10.1177/1464884917724621](https://doi.org/10.1177/1464884917724621)
- Eskens, S. (2019). A right to reset your user profile and more: GDPR-rights for personalized news consumers. *International Data Privacy Law*, 9(3), 153–172. <https://doi.org/10.1093/idpl/ipz007>
- Ferrucci, P., & Nelson, J.L. (2019). The New Advertisers: How Foundation Funding Impacts Journalism. *Media and Communication*, 7(4), 45-55.
- Fletcher, R. & Nielsen, R. K. (2019). Generalised scepticism: how people navigate news on social media. *Information, Communication & Society*, 22(12), 1751–1769. <https://doi.org/10.1080/1369118X.2018.1450887>
- Geradin, D., & Katsifis, D. (2019). Google's (Forgotten) Monopoly – Ad Technology Services on the Open Web. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3391913>
- Gomez-Diago, G. (2015). Communication in Crowdfunding Platforms. In *Creativity in the Digital Age*; Zagalo, E., Branco, P., Eds.; Springer: London, UK, pp. 171–190.
- Gomez-Uribe, C. A., & Hunt, N. (2016). The Netflix Recommender System: Algorithms, Business Value, and Innovation. *ACM Transactions on Management Information Systems*, 6(4), 1–19. <https://doi.org/10.1145/2843948>
- Graßl, P., Schraffenberger, H. ., Zuiderveen Borgesius, F. ., & Buijzen, M. . (2021). Dark and bright patterns in cookie consent requests. *Journal of Digital Social Research*, 3(1), 1–38. <https://doi.org/10.33621/jdsr.v3i1.54>
- Idiz, D. R., Irion, K., Ebbers, J. and Vliegenthart, R. (2021). European audiovisual media policy in the age of global video on demand services: a case study of Netflix in the Netherlands. *Journal of Digital Media & Policy*, 12(3), pp. 425–49. https://doi.org/10.1386/jdmp_00070_1
- Irion, K., & Helberger, N. (2017). Smart TV and the online media sector: User privacy in view of changing market realities. *Telecommunications Policy*, 41(3), 170–184. <https://doi.org/10.1016/j.telpol.2016.12.013>
- Konieczna, M. (2018). *Journalism without profit: Making news when the market fails*. Oxford University Press.

Ladson, N.; Lee, A.M. (2017). Persuading to pay: Exploring the what and why in crowd-funded journalism. *International Journal on Media Management*, 19(2), 144–163.

Miller, R. (2018). The Legal Fate of Internet Ad-Blocking. *Boston University Journal of Science & Technology Law*, 24(2), 299–371.

Nechushtai, E. (2017). Could digital platforms capture the media through infrastructure?, *Journalism*, 19(8), 1043-1058. <https://doi.org/10.1177/1464884917725163>

Nel, F., Milburn-Curtis, C., Lehtisaari, K., & Kammer, A. (2020). Free to succeed: Does press freedom influence the entrepreneurial orientation and the reader revenue performance of independent news media firms?—A cross-sectional study. *Newspaper Research Journal*, 41(4), 417–432. <https://doi.org/10.1177/0739532920969918>

Scott, M., Bunce, M., & Wright, K. (2019). Foundation funding and the boundaries of journalism. *Journalism Studies*, 20(14), 2034–2052

Sehl, A., Cornia, A., & Nielsen, R. K. (2021). How Do Funding Models and Organizational Legacy Shape News Organizations' Social Media Strategies? A Comparison of Public Service and Private Sector News Media in Six Countries. *Digital Journalism*, 1–20. <https://doi.org/10.1080/21670811.2021.1968920>

Smith, M. D., and Telang, R. (2016). *Streaming, Sharing, Stealing: Big Data and the Future of Entertainment*. Cambridge: MIT Press.

Trappel, J. and T. Tomaz (Eds.). (2021). *The Media for Democracy Monitor 2021: How leading news media survive digital transformation (Vol. 1)*, (pp. 197–256). University of Gothenburg, <https://doi.org/10.48335/9789188855404-5>

Turow, J., & Couldry, N. (2018). Media as Data Extraction: Towards a New Map of a Transformed Communications Field. *Journal of Communication*, 68(2), 415–423. <https://doi.org/10.1093/joc/jqx011>

Vara-Miguel, A., Sánchez-Blanco, C., Sádaba Chalezquer, C. S., & Negrodo, S. (2021). Funding Sustainable Online News: Sources of Revenue in Digital-Native and Traditional Media in Spain. *Sustainability*, 2021(13), 11328, 1-17. <https://doi.org/10.3390/su132011328>

Wright, K., Scott, M., & Bunce, M. (2019). Foundation-funded Journalism, Philanthrocapitalism and Tainted Donors. *Journalism Studies*, 20(5), 675-695. <https://doi.org/10.1080/1461670X.2017.1417053>

Zuiderveen Borgesius, F., Kruikemeier, S., Boerman, S., & Helberger, N. (2017). Tracking Walls, Take-It-Or-Leave-It Choices, the GDPR, and the ePrivacy Regulation. *European Data Protection Law Review*, 3(3), 353–368.

- EU and CoE sources

Council of Europe. (2018). *Recommendation CM/Rec(2018)1 of the Committee of Ministers to Member States on media pluralism and transparency of media ownership*. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13

Council of Europe. (2022). Recommendation CM/Rec (2022) 11 of the Committee of Ministers to Member States on principles for media and communication governance. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a61712

EDPB. (2020, May 4). *Guidelines 05/2020 on consent under Regulation 2016/679*. https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_202005_consent_en.pdf

EDPB. (2021, November 18). *Statement on the Digital Services Package and Data Strategy*. https://edpb.europa.eu/system/files/2021-11/edpb_statement_on_the_digital_services_package_and_data_strategy_en.pdf

European Commission. (2020, December 15). *Digital Markets Act: Ensuring fair and open digital markets*. https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2349

European Commission (2021). *Media sector calls — EU support to the news media sector*. <https://digital-strategy.ec.europa.eu/en/policies/funding-news-media-sector>

European Parliament. (2020, October 20). *Resolution on Digital Services Act: adapting commercial and civil law rules for commercial entities operating online*. https://www.europarl.europa.eu/doceo/document/TA-9-2020-0273_EN.pdf

European Parliament. (2021, 23 November). *Digital Markets Act: ending unfair practices of big online platforms*. <https://www.europarl.europa.eu/news/en/press-room/20211118IPR17636/digital-markets-act-ending-unfair-practices-of-big-online-platforms>

Fashion ID GmbH & Co. KG v. Verbraucherzentrale NRW eV (2019, July 29). CJEU, Case C-40/17. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62017CJ0040&from=en>

- **Example country sources**

Australian Competition and Consumer Commission. (2019). *Digital Platforms Inquiry: Final Report*. <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>

Australian Competition and Consumer Commission. (2020). *Draft news media bargaining code*. <https://www.accc.gov.au/focus-areas/digital-platforms/draft-news-media-bargaining-code>

Australian Competition and Consumer Commission. (2021) *Digital advertising services inquiry - final report*. <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-advertising-services-inquiry/final-report>

Australian Treasury Laws Amendment, News Media and Digital Platforms Mandatory Bargaining Code, Act No. 21, 2021, <https://www.legislation.gov.au/Details/C2021A00021>

Autorità Garante della Concorrenza e del Mercato (2020, October 28). *A542 - Aperta istruttoria nei confronti di Google per abuso di posizione dominante nel mercato italiano del display advertising*. https://www.agcm.it/dotcmsdoc/allegati-news/A542_avvio%20istruttoria.pdf

Autorità per le Garanzie nelle Comunicazioni. (2020). *Relazione annuale 2020*. <https://www.agcom.it/documents/10179/19267334/Documento+generico+06-07-2020/d0962b60-452c-4477-9677-0c7f447a425e?version=1.0>

Autorità per le Garanzie nelle Comunicazioni. (2021). *Relazione annuale 2021*. <https://www.agcom.it/documents/10179/23560628/Documento+generico+26-07-2021/32d25996-0a6b-4e0b-a303-0c1e9152e4cc?version=1.1>

Autorité de la concurrence. (2020, April 9). *Décision n° 20-MC-01 du 9 avril 2020 relative à des demandes de mesures conservatoires présentées par le Syndicat des éditeurs de la presse magazine, l'Alliance de la presse d'information générale e.a. et l'Agence France-Presse*. <https://www.autoritedelaconcurrence.fr/en/decision/requests-interim-measures-syndicat-des-editeurs-de-la-presse-magazine-alliance-de-la>

Autorité de la Concurrence. (2020, April 9). *Related rights: the Autorité has granted requests for urgent interim measures presented by press publishers and the news agency AFP (Agence France Presse)*. <https://www.autoritedelaconcurrence.fr/en/press-release/related-rights-autorite-has-granted-requests-urgent-interim-measures-presented-press>

Autorité de la Concurrence. (2021, June 7). *Decision 21-D-11 regarding practices implemented in the online advertising sector*. <https://www.autoritedelaconcurrence.fr/en/decision/regarding-practices-implemented-online-advertising-sector>

Autorité de Concurrence. (2021, July 13). *Remuneration of related rights for press publishers and agencies: the Autorité fines Google up to 500 million euros for non-compliance with several injunctions*. <https://www.autoritedelaconcurrence.fr/en/article/remuneration-related-rights-press-publishers-and-agencies-autorite-fines-google-500-million>

Bundeskartellamt (2018, February), *Online advertising*. http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Schriftenreihe_Digitales_III.pdf?__blob=publicationFile&v=5

Bundeskartellamt. (2019, February). *Facebook, Exploitative business terms pursuant to Section 19(1) GWB for inadequate data processing*. https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2019/B6-22-16.pdf?__blob=publicationFile&v=3

Bundesgerichtshof. (2018, April 19). I ZR 154/16, ECLI:DE:BGH:2018:190418UIZR154.16.0.

Bundeskartellamt. (2020, July). *Sector inquiry smart TVs: Conclusion and recommendations for action*. https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Others/Sector_inquiry_smart_TV_conclusion.pdf?__blob=publicationFile&v=2

Cairncross, F. (2019, February 19). *The Cairncross Review: a sustainable future for journalism*. Department for Digital, Culture, Media & Sport https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779882/021919_DCMS_Cairncross_Review_.pdf

CNIL. (2022, January 6). *Cookies: the CNIL fines GOOGLE a total of 150 million euros and FACEBOOK 60 million euros for non-compliance with French legislation*. <https://www.cnil.fr/en/cookies-cnil-fines-google-total-150-million-euros-and-facebook-60-million-euros-non-compliance>

Comision Nacional de los Mercados y la Competencia. (2021, July 7). *E/CNMC/002/2019 Estudio sobre las condiciones de competencia en el sector de la publicidad online en España*, http://www.cnmc.es/sites/default/files/3626347_10.pdf.

Competition & Markets Authority. (2020, July 1). *Online Platforms and Digital Advertising: Market Study Final Report*. https://assets.publishing.service.gov.uk/media/5efc57ed3a6f4023d242ed56/Final_report_1_July_2020_.pdf

Cooperation Protocol Authority for Consumer and Market and Media Authority. (2015). *StaatsCourant*. <https://zoek.officielebekendmakingen.nl/stcrt-2015-46967.pdf>

Japan Fair Trade Commission. (2021, February). *Fact-finding Survey Report on Digital Platform Operators' Trade Practices – Final Report Regarding Digital Advertising*. <http://www.jftc.go.jp/en/pressreleases/yearly-2021/February/210217.html>

Ofcom. (2020, August 13). *News Consumption in the UK: 2020*. https://www.ofcom.org.uk/data/assets/pdf_file/0013/201316/news-consumption-2020-report.pdf

U.S. House of Representatives (2020). *Investigation of Competition in Digital Markets - Majority Staff Report and Recommendations*. https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf

- Reports/Other sources

Academics Against Press Publishers' Rights. (2018). Universiteit van Amsterdam. <https://www.ivir.nl/academics-against-press-publishers-right/>

Adalian, J. (2018). Inside the Binge Factory. *Vulture*. <https://www.vulture.com/2018/06/how-netflix-swallowed-tv-industry.html>

Axate. (n.d.). *The simplest way to make money from your website*. <https://www.axate.com/>

Axate. (2020, June 5). *Impact of COVID-19 on DCMS sectors*. <https://committees.parliament.uk/writtenevidence/4948/pdf/>

Axel Springer. (2021). *Brands*. <https://www.axelspringer.com/en/brands>

Axel Springer. (2020). *Data and Privacy*. <https://www.axelspringer.com/en/data-and-privacy>. last review 13 May 2022

Bátorfy, A. and Szabo, K. (2021). *Monitoring Media Pluralism in the Digital Era: Country Report Hungary*. Robert Schuman Centre. https://cadmus.eui.eu/bitstream/handle/1814/71949/hungary_results_mpm_2021_cmpf.pdf

Bátorfy, A. and Urbán, A. (2020) State advertising as an instrument of transformation of the media market in Hungary, (in) *East European Politics*, 36(1). <https://www.tandfonline.com/doi/full/10.1080/21599165.2019.1662398>

BBC. (2018). *The BBC privacy promise. Using the BBC*. <https://www.bbc.co.uk/usingthebbc/privacy/privacy-promise/>

Berger V. et al. (2020). *A Lockdown for Independent Media? Effects of the COVID–19 pandemic on the media landscape and press freedom in Central and Southeast Europe*. Working paper. Free Press Unlimited.

https://www.fes-budapest.org/fileadmin/user_upload/dokumente/pdfdateien/A_Lockdown_for_Independent_Media_Report_Final.pdf

Bertuzzi, L. and Killeen, M. (2021). Media sector fears EU ban on targeted advertising. *Euractiv*. <https://www.euractiv.com/section/digital/news/media-sector-fears-eu-ban-on-targeted-advertising/>

Bleyer-Simon, K., Brogi, E., Carlini, R., Nenadic, I., Palmer, M., Parcu, P.L., Verza, S., Viola de Azevedo Cunha, M. & Žuffová, M. *Monitoring Media Pluralism in the Digital Era. Application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, Republic of North Macedonia, Serbia & Turkey in the year 2020*. Robert Schuman Centre. https://cadmus.eui.eu/bitstream/handle/1814/71970/CMPF_MPM2021_final-report_QM-09-21-298-EN-N.pdf?sequence=1&isAllowed=y

Bleyer-Simon, K. and Carlini, R., (2021). *Media economy in the pandemic: a European perspective*. Technical report, CMPF. <https://cadmus.eui.eu//handle/1814/71004>

Broadband TV News. (2021, July 5). 'RTL and ProSiebenSat.1 offer targeted advertising via HbbTV. *Broadband TV News*. <https://www.broadbandtvnews.com/2021/07/05/rtl-and-prosiebensat-1-offer-targeted-advertising-via-hbbtv/>

Broughton Micova, S. and Jacques, S. (2019, April). *The playing field in audiovisual advertising: What does it look like and who is playing?*. Centre on Regulation in Europe. https://cerre.eu/wp-content/uploads/2020/05/cerre_playing_field_audiovisual_advertising.pdf

Broughton Micova, S., & Jacques, S. (2020b). Platform power in the video advertising ecosystem. *Internet Policy Review*, 9(4). <https://policyreview.info/articles/analysis/platform-power-video-advertising-ecosystem>

Cabrera Blázquez, F. J., Cappello, M., Fontaine, G., Talavera Milla J., & Valais, S. (2019). *The promotion of independent audiovisual production in Europe*. European Audiovisual Observatory (IRIS Plus). <https://rm.coe.int/iris-plus-2019-the-promotion-of-independent-audiovisual-production-in-/1680947bc8>

Cafarra C., Crawford G. S. (2020, 25 September). *The ACCC's News Media Bargaining Code: Experimenting with "Decentralized Regulation of Dominant Digital Platforms"*. ProMarket. <https://promarket.org/2020/09/25/the-acccs-news-media-bargaining-code-experimenting-with-decentralized-regulation-of-dominant-digital-platforms/>

Challenges. (2021, March 16). *Mediapart progresse fortement en 2020 et franchit le cap des 200.000 abonnés*. *Challenges*. https://www.challenges.fr/media/mediapart-progresse-fortement-en-2020-et-franchit-le-cap-des-200-000-abonnes_755837

Chandrashekar, A., Amat, F., Basilico, J. & Jebara, T. (2017, December 17). *Artwork Personalization at Netflix*. *The Netflix Tech Blog*. <https://netflixtechblog.com/artwork-personalization-c589f074ad76>

Chili. (n.d.). *Timeline*. <https://corporate.chili.com/uk/who-we-are/timeline/>

- Chili. (2020, October 21). *Chili Launches AVOD Service*. <https://corporate.chili.com/uk/press-room/chili-launches-avod-service/>
- De Schaepdrijver, L., Baecke, P., Tackx, K., Coeymans, J., Lauwers, L., & Van Driessche, B. (2021). *Addressable Ads are Shaping the Future of TV Marketing*. Vlerick Business School. <https://dam.vlerick.com/m/1e3a35e74fd0c43a/original/Addressable-ads-are-shaping-the-future-of-TV-marketing.pdf>
- Deloitte. (2019). *Digital transformation through data: a guide for news and media companies to drive value with data*. <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/technology-media-telecommunications/us-digital-transformation-through-data-for-news.pdf>
- Digital TV Europe. (2014, June 13). *Dutch broadcasters team up to launch SVoD service*. <https://www.digitaltveurope.com/2014/06/13/dutch-broadcasters-team-up-to-launch-svod-service/>
- Döpfner, M. (2021, January 27). It's time for Europe to take private data from the hands of powerful tech monopolies and give it back to the people. *Business Insider*. <https://www.businessinsider.com/big-tech-private-data-facebook-google-apple-europe-eu-2021-1>
- Dragomir, M. and Söderström, A. (2021). *The State of State Media: A Global Analysis of the Editorial Independence of State Media and an Introduction of a New State Media Typology*. CEU Democracy Institute. <https://cmds.ceu.edu/sites/cmcs.ceu.hu/files/attachment/article/2091/thestateofstatemedia.pdf>
- Easton, J. (2021, July 2). NLZIET picks XroadMedia for content discovery. *Digital TV Europe*. <https://www.digitaltveurope.com/2021/07/02/nlziet-picks-xroadmedia-for-content-discovery/>
- Edelman, G. (2020, August 5). Can Killing Cookies Save Journalism?. *Wired*. <https://www.wired.com/story/can-killing-cookies-save-journalism/>
- EGTA. (2020, October). *Addressable TV: An Overview of Business Strategies for TV Companies*. EGTA. http://www.egta.com/uploads/000_publications/2020_egta_insight_addressable.pdf
- EJO (2021). *The economic impact of COVID-19 on European media in 2020*. <https://en.ejo.ch/media-economics/the-economic-impact-of-COVID-19-on-european-media-in2020>
- European Audiovisual Observatory. (2021). *YearBook 2020/2021. Key Trends*. <https://rm.coe.int/yearbook-key-trends-2020-2021-en/1680a26056>
- European Broadcaster Exchange. (2021). *About EBX*. <https://ebx.tv/>
- European Journalism Fund. (2020). *European Journalism COVID-19 Support Fund*. <https://europeanjournalism.fund/>
- European Journalism Fund. (2021). *European Journalism COVID-19 Support Fund: Impact and learnings*. <https://docs.google.com/document/d/1hWh-qKLvbpVq6koht0WPRt81sKnkWvD3Og5llyyZEdbM/edit#heading=h.6oy1dh558jqj>
- Experian. (2016). *Addressable TV: Harness the power of audience data for one-to-one targeting*. <https://www.experian.com/assets/marketing-services/white-papers/audience-iq-addressable-tv-wp.pdf>

- Fanta, A., & Dachwitz, I. (2020). *Google, the media patron. How the digital giant ensnares journalism*. [Preprint]. SocArXiv. <https://doi.org/10.31235/osf.io/3qbp9>
- Federation of European Screen Directors. (2021, February 15). *EU Filmmakers Call on Global Streamers to Commit to Fair Negotiating Conditions On Remuneration*. <https://screendirectors.eu/eu-filmmakers-call-on-global-streamers-to-commit-to-fair-negotiating-conditions-on-remuneration/>
- FIPP. (2019, January 28). *Axel Springer's head of technology and data on cultural and digital transformation*. <https://www.fipp.com/news/axel-springer-head-technology-data-cultural-digital-transformation/>
- Financial Times. (2021, March 16). *Facebook agrees to pay News Corp for content in Australia*. <https://www.ft.com/content/3743eba8-dc91-47f8-add1-f2f9626f75dc>
- Fourberg, N., Taş, S., Wiewiorra, L., Godlovitch, I., De Streel, A., Jacquemin, H., Hill, J., Nunu, M., Bourguignon, C., Jacques, F., Ledger, M., & Lognoul, M. (2021, June). *Online advertising: the impact of targeted advertising on advertisers, market access and consumer choice*. European Parliament's committee on the Internal Market and Consumer Protection. [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662913/IPOL_STU\(2021\)662913_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662913/IPOL_STU(2021)662913_EN.pdf)
- Furman J., Coyle, D., Fletcher, A., McAuley, D. & Marsden, P. (2019). *Unlocking Digital Competition. Report of the Digital Competition Expert Panel* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785547/unlocking_digital_competition_furman_review_web.pdf
- Gomez, D. (2021, November 6). 'No Time to Die' Heads to Premium Video on Demand on Tuesday. *The Wrap*. <https://www.thewrap.com/no-time-to-die-heads-to-premium-video-on-demand-on-tuesday/>
- Grant, D. (2020, January 28). What's Next for Facebook's Accelerator Programme. *Meta*. <https://www.facebook.com/journalismproject/programs/accelerator/whats-next-2020>
- Grant, H. W. (2018, May 28). Netflix's Data-Driven Strategy Strengthens Claim For 'Best Original Content' In 2018. *Forbes*. <https://www.forbes.com/sites/kristinwestcottgrant/2018/05/28/netflixs-data-driven-strategy-strengthens-lead-for-best-original-content-in-2018/?sh=535ea31f3a94>
- Grece, C. (2021). *Trends in the VOD market in EU28*. European Audiovisual Observatory <https://rm.coe.int/trends-in-the-vod-market-in-eu28-final-version/1680a1511a>
- Harlow, S. (2021). Entrepreneurial news sites as worthy causes? Exploring readers' motivations behind donating to Latin American journalism. *Digital Journal*, 9(3), 364–383.
- Helberger, N. (2013). Freedom of Expression and the Dutch Cookie-Wall. *Institute for Information Law Research Paper No. 2013-06*. <http://dx.doi.org/10.2139/ssrn.2351204>
- Hsu, T. (2019, December 16). Netflix Is Ad Free, but It Isn't Brand Free. *The New York Times*. <https://www.nytimes.com/2019/12/16/business/media/netflix-commercials.html>

- IAB Europe. (2020). *Adex Benchmark Study*. <https://iab europe.eu/knowledge-hub/iab-europe-adex-benchmark-2020-report/>
- Index of Censorship. (2020, April 16). *Journalism 2020. OKO Press is the 2020 Index on Censorship Freedom of Expression Awards Journalism Fellow*. <https://www.indexoncensorship.org/2020/04/journalism-2020/>
- Karstens, E. (2017, May 11). On Bridging the Gap between Journalism and Philanthropy. *European Journalism Centre*. <https://medium.com/we-are-the-european-journalism-centre/on-bridging-the-gap-between-journalism-and-philanthropy-bd69f8ed28b2>
- Kelly, T. (2020, September 10). Reader-funded journalism in a crisis: Lessons from OKO.press. *Poynter*. <https://www.poynter.org/business-work/2020/reader-funded-journalism-in-a-crisis-lessons-from-oko-press/>
- Kingsley, P., Novak, B. (2018, November 24). The Website That Shows How a Free Press Can Die. *The New York Times*, <https://www.nytimes.com/2018/11/24/world/europe/hungary-viktor-orban-media.html>
- Klimkiewicz, B. (2021). *Monitoring Media Pluralism in the Digital Era: Country Report Poland*. Robert Schuman Centre. https://cadmus.eui.eu/bitstream/handle/1814/71949/hungary_results_mpm_2021_cmpf.pdf
- Klimkiewicz, B. (2021). *The Media Strike in Poland: Why Media Resilience is (desperately) Needed in Destabilising Times*. Robert Schuman Centre. <https://cmpf.eui.eu/the-media-strike-in-poland-why-media-resilience-is-desperately-needed-in-destabilising-times/>
- Klossa, G. (2019). *Toward European Media Sovereignty. An Industrial Media Strategy to leverage Data, Algorithms and Artificial Intelligence*. European Commission. https://ec.europa.eu/commission/sites/beta-political/files/quillaume_klossa_report_final.pdf
- Kowalski, T. (2020). *Analiza wydatków reklamowych spółek skarbu państwa (SSP) w latach 2015 – 2019 (The Analysis of advertising expenditures of state companies in 2015 – 2019)*. https://www.researchgate.net/publication/339800640_Analiza_wydatkow_reklamowych_spolek_skarbu_panstwa_SSP_w_latach_2015-2019
- KPMG. (2020). *COVID-19 and the media industry*. <https://advisory.kpmg.us/blog/2020/COVID-19-and-media-industry.html>
- Krämer, J., Schnurr, D., and Broughton Micova, S. (2020, September 9). *The Role of Data for Digital Markets Contestability: Case Studies and Data Access Remedies*. Centre on Regulation in Europe. <https://cerre.eu/wp-content/uploads/2020/08/cerre-the-role-of-data-for-digital-markets-contestability-case-studies-and-data-access-remedies-september2020.pdf>
- Kuthan, C., Aendapally, A. and Snyder, A. (2021, January 27). Using Machine Learning for Programmatic Product Placement in TV Advertising. *Amazon Web Services*. <https://aws.amazon.com/blogs/industries/using-machine-learning-for-programmatic-product-placement-in-tv-advertising/>

- Lichterman, J. (2014, October 26). The New York Times Co. and Axel Springer are investing €3 million in Dutch startup Blendle. *Niemen Lab*. <https://www.niemanlab.org/2014/10/the-new-york-times-co-and-axel-springer-are-investing-e3-million-in-dutch-startup-blendle/>
- Lomas, N. (2020, July 24). Data from Dutch public broadcaster shows the value of ditching creepy ads. *TechCrunch*. <https://techcrunch.com/2020/07/24/data-from-dutch-public-broadcaster-shows-the-value-of-ditching-creepy-ads/>
- Lomas, N. (2021, November 5). IAB Europe says it's expecting to be found in breach of GDPR. *TechCrunch*. <https://techcrunch.com/2021/11/05/iab-europe-tcf-gdpr-breach-belgium/>
- Madrigal, A. C. (2014, January 2). How Netflix reverse engineered Hollywood. *The Atlantic*. <https://www.theatlantic.com/technology/archive/2014/01/how-netflix-reverse-engineered-hollywood/282679/>
- Martin, A. (2021, October 7). Sky Glass: New 4k UltraHD smart TV set to replace satellite dishes and boxes. *Sky News*. <https://news.sky.com/story/sky-glass-new-4k-ultrahd-smart-tv-set-to-replace-satellite-dishes-and-boxes-12427480>
- Majid, A. (2021, January 22). Alternative Ways of Funding Journalism: Crowdfunding has raised \$20m+ and seeded some major titles. *Press Gazette*. <https://pressgazette.co.uk/alternative-funding-journalism-crowdfunding/>
- Mediapart. (n.d.). *Why Subscribe?*. <https://www.mediapart.fr/en/abonnement>
- Mediapart. (2021). *Manifeste*. <https://blogs.mediapart.fr/charte-de-participation>
- Meta Journalism Project (2021, May). The Journalist's Guide to Facebook and Instagram. *Meta*. https://scontent.flhr3-3.fna.fbcdn.net/v/t39.8562-6/192346468_4062804990479965_5488218302219698187_n.pdf?nc_cat=111&ccb=1-5&nc_sid=ae5e01&nc_ohc=fGYk2wQxcrEAX-m3vFq&nc_ht=scontent.flhr3-3.fna&oh=00_AT_sk6xXxlcm0x47hq84cplzfy5r5EuCTn63sVwPFukjRq&oe=61FC4A84
- Meta Journalism Project. Instant Articles and Subscriptions.. <https://www.facebook.com/journalismproject/tools/instantarticles-subs.>
- Media Pluralism Monitor. (2021). Robert Schuman Centre. <https://cmpf.eui.eu/media-pluralism-monitor/>
- Milosevic, M. (2020, November 16). *Media Independence and Sustainability*. Global Conference for Media Freedom. https://www.international.gc.ca/campaign-campagne/assets/pdfs/media_freedom-liberte_presse-2020/policy_paper-documents_orientation-independence-independance-en.pdf
- Mitchell, A., Gottfried, J., Shearer, E., & Lu, K. (2017, February 9). *How Americans Encounter, Recall and Act Upon Digital News*. Pew Research Center. <https://www.pewresearch.org/journalism/2017/02/09/how-americans-encounter-recall-and-act-upon-digital-news/>
- Montjoye, Y., Schweitzer, H., Crémer, J. (2019). *Competition policy for the digital era*. European Commission (Directorate-General for Competition). <https://data.europa.eu/doi/10.2763/407537>

- Nesta. (2020, February 17). The Future News Pilot Fund: Meet the grantees. *Features*. <https://www.nesta.org.uk/feature/future-news-pilot-fund/>
- Netflix Investors. (2021). *Company Profile*. <https://ir.netflix.net/ir-overview/profile/default.aspx>
- Newton C. (2021, February 17). Australia's bad bargain with platforms. *Platformer*. <https://www.platformer.news/p/australias-bad-bargain-with-platforms>
- Newman, N., Fletcher, R., Schulz, A., Andl, S., & Nielsen, R. K. (2020). Reuters Institute Digital News Report 2020. Oxford: Reuters Institute for the Study of Journalism. https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2020-06/DNR_2020_FINAL.pdf
- Nielsen, R. K., Gorwa, R., & de Cock Buning, M. (2019). What Can Be Done? Digital Media Policy Options for Strengthening European Democracy. *Reuters Institute Report*. <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2019-11/What Can Be Done FINAL.pdf>
- NLziet. (n.d.). *Kijk alle programma's van de Nederlandse tv in één app [Translation: Watch all Dutch TV programs in one app]*. <https://www.nlziet.nl/nl/>
- NOYB. (2021). *News Sites: Readers need to "buy back" their own data at an exorbitant price*. <https://noyb.eu/en/news-sites-readers-need-buy-back-their-own-data-exorbitant-price>
- NPO. (2021). *Aanbevelingen op NPO Start [Translation: 'Recommendations on NPO Start']*. <https://service.npo.nl/onderwerp/npo-start-plus#aanbevelingen-op-npo-start-1>
- OECD. (2021). *Competition issues concerning news media and digital platforms, OECD Competition Committee Discussion Paper*, <https://www.oecd.org/daf/competition/competition-issues-in-news-media-and-digital-platforms.htm>
- O'Reilly, L. (2015, 11 March). This startup may have found the answer for getting people to pay for journalism online. *Business Insider*. <https://www.businessinsider.com/blendle-at-digital-media-strategies-2015-3?r=US&IR=T>
- Parcu, P. L. (2019). *New digital threats to media pluralism in the information age. EUI Working Paper*. Centre for Media Pluralism and Media Freedom (CMPF). <https://cadmus.eui.eu//handle/1814/61890>
- Plenel, E. (2008, March 16). Comment Mediapart a construit son indépendance. *Mediapart*. <https://www.mediapart.fr/journal/france/090308/comment-mediapart-construit-son-independance>
- Publitalia. (2021). *Addressable Advertising*. <https://www.publitalia.it/sezione/prodotti/20.html#stripe-25>
- Radsch, C. (2020, September 8). Australia's Journalist Union on Facebook, Google, and Who Should Pay for News. *Committee to Protect Journalists*. <https://cpj.org/2020/09/australias-journalist-union-on-facebook-google-and-who-should-pay-for-news/>
- Ramsay, G. and Moore, M. (2016). *Monopolising local news: Is there an emerging local democratic deficit in the UK due to the decline of local newspapers?* King's College London: Centre for the Study of Media, Communication and Power. <https://www.kcl.ac.uk/policy-institute/assets/cmcp/local-news.pdf>

- Rosati, E. (2021, November 7). Italy Has Transposed the DSM Directive. *The IPKat*. <https://ipkitten.blogspot.com/2021/11/italy-has-transposed-dsm-directive.html>
- Rosenstiel, T., Buzenberg, W., Connelly, M., & Loker, K. (2016). *Charting new ground: The ethical terrain of nonprofit journalism*. American Press Institute.
- SBS Belgium. (2021). *SBS SmartAd*. <https://www.sbsbelgium.be/adverteren/sbs-smart-ad>
- Schindler P. (2018, March 20). The Google News Initiative: Building a stronger future for news. *Google*. <https://www.blog.google/outreach-initiatives/google-news-initiative/announcing-google-news-initiative/>.
- Schmidt, C. (2019, June 10). Micropayments-for-news pioneer Blendle is pivoting from micropayments. *Niemen Lab*. <https://www.niemanlab.org/2019/06/micropayments-for-news-pioneer-blendle-is-pivoting-from-micropayments/>
- Simo F. (2017, January 11). Announcing the Facebook Journalism Project. *Meta*. <https://about.fb.com/news/2017/01/announcing-the-facebook-journalism-project/>
- Simon, J. (2021, June 10). Introducing Netflix.shop: A New Way for Fans to Connect With Their Favorite Stories. *Netflix Newsroom* <https://about.netflix.com/en/news/introducing-netflix-shop>
- Sky. (2019). *AdSmart: Five Years & Forward*. <https://www.skymedia.co.uk/wp-content/uploads/2019/08/The-AdSmart-White-Paper-2019.pdf?status=complete&dl=1>
- Sky. (2021). *AdSmart from Sky*. <https://www.adsmartfromsky.co.uk/>
- Spangler, T. (2020, September 4). Disney Plus 'Mulan' Early-Access Purchase Available on Amazon Fire TV. *Variety*. <https://variety.com/2020/digital/news/mulan-access-amazon-fire-tv-disney-plus-1234759653/>
- Stigler Center News. (2019, September 16). *Stigler Committee on Digital Platforms: Final Report*. <https://www.chicagobooth.edu/research/stigler/news-and-media/committee-on-digital-platforms-final-report>
- Tealium. (2019). *How Axel Springer Transcends to a Personalized Programmatic Advertising Approach* [Video]. YouTube. https://www.youtube.com/watch?v=bQ_nQ0bnL0s.
- The Economist. (2020, April 18). *The newspaper industry is taking a battering*. <https://www.economist.com/britain/2020/04/18/the-newspaper-industry-is-taking-a-battering>
- The Euromedia Research Group. (2020, September 1). *COVID-19 and the Media: Devastation or Renaissance?* <http://euromediagroup.org/mdm/policybrief01.pdf>
- Tran, K. (2018, June 18). OTT services are helping to drive product placement deals. *Business Insider*. <https://www.businessinsider.com/amazon-hulu-netflix-driving-product-placement-deals-2018-6?r=US&IR=T>

- The Guardian. (2021). *Support the Guardian*. <https://www.theguardian.com/international>
- The Guardian. (n.d.). *Why am I still seeing ads/banners?* <https://manage.theguardian.com/help-centre/article/why-am-i-still-seeing-adsbanners>
- Thomson, S. (2021, February 3). Spanish 'virtual cinema' TVOD service launches. *Digital TV Europe*. <https://www.digitaltveurope.com/2021/02/03/spanish-virtual-cinema-tvod-service-launches/>
- UNESCO. (2005). *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. New York: United Nations.
- UNESCO. (2021). *World Trends in Freedom of Expression and Media Development*. <https://www.unesco.org/en/world-media-trends>
- van Breda, B., van Eijk, N., Irion, K., McGonagle, T., & van Voorst, S. (2016). *Smart TV and data protection*. European Audiovisual Observatory (IRIS special). <https://rm.coe.int/iris-special-2015-smart-tv-and-data-protection/1680945617>
- van Wijk, W., Konteas, I., & Mills Wade, A. (2021, December 14). European Press Urges European Parliament to Protect Editorial Content Integrity and Online Advertising Revenues. *European Newspaper Publishers' Association*. <https://www.enpa.eu/press-releases/european-press-urges-european-parliament-protect-editorial-content-integrity-and>
- WAN-IFRA. (2013). *World Press Trends 2013*.
- WAN-IFRA (2021). *World Press Trends 2020-2021*. https://wan-ifra.org/wp-content/uploads/2021/04/WAN-IFRA-Report_WPT2020-21.pdf
- Willsher, K. (2018, March 16). How pioneering Mediapart has set the French news agenda. *The Guardian*. <https://www.theguardian.com/world/2018/mar/16/how-pioneering-mediapart-has-set-the-french-news-agenda>
- Wendehorst, C., Stiemerling, O., and Weiß, S. (2021, December 16). *Forschungsgutachten zum Einwilligungsmanagement nach § 26 TTDSG. Studie im Auftrag des Bundesministeriums für Wirtschaft und Energie*. <https://www.gdd.de/downloads/aktuelles/studien/Gutachten-fuer-Bundesministerium-Wirtschaft-und-Energie.pdf>

Chapter B3

- Afilipoaie, A., & Ranaivoson, H. (forthcoming). EU and the complex, nation-dependent web of media ownership regulation in Europe. The role of media ownership rules to limiting market concentration. In T. Raats, H. Ranaivoson & S. Broughton Micova (Eds.). *European Audiovisual policy in transition*. Routledge.
- Albornoz, L. A., Segovia, A. I., & Almiron, N. (2020). *Grupo Prisa : Media Power in Contemporary Spain*. Routledge. <https://doi.org/10.4324/9780429297717>
- Alexiadis, P., & da Silva Pereira Neto, C. M. (2019). *Competing Architectures for Regulatory And Competition Law Governance*. Robert Schuman Centre. <https://doi.org/10.2870/26573>

- American Bar Association. (2005). *Competition Laws Outside the United States* (First Supplement). ABA Book Publishing.
- Ashenfelter, O., & Hosken, D. (2010). The effect of mergers on consumer prices : Evidence from five mergers on the enforcement margin. *Journal of Law and Economics*, 53(3), 417-466. <https://doi.org/10.1086/605092>
- Bátorfy, A. (2019). Hungary: A country on the Path towards an Authoritarian Media System. In *Media, Freedom of Speech, and Democracy in the EU and Beyond* (pp 31-47). A. Giannakopoulos (ed.). <https://europeanjournalists.org/wp-content/uploads/2019/07/Media-Freedom-of-Speech-and-Democracy-min.pdf>
- Brogi, E., Nenadic, I., Viola De Azevedo Cunha, M., & Parcu, P. L. (2020). Assessing certain recent developments in the Hungarian media market through the prism of the media pluralism monitor. *Technical Report, Centre for Media Pluralism and Media Freedom (CMPF), 2019/01*. <https://doi.org/10.2870/560715>
- Broughton Micova, S., & Jacques, S. (2020). Platform power in the video advertising ecosystem. *Internet Policy Review: 9(4)*, 1-28.
- Budzinski, O., & Kuchinke, B. A. (2018). *Modern Industrial Organization Theory of Media Markets and Competition Policy Implications*. Ilmenau Economics Discussion Papers (No. 115). <https://www.econstor.eu/bitstream/10419/182542/1/1031111565.pdf>
- Cappello, M. (2020). *Media pluralism and competition issues*. European Audiovisual Observatory. <https://rm.coe.int/iris-special-1-2020en-media-pluralism-and-competition-issues/1680a08455>
- Carlini, R., Brogi, E. (2021). *Monitoring media pluralism in the digital era. Monitoring Media Pluralism in the Digital Era. Application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia & Turkey in the year 2020. Country Report: Italy (p.21)*. Centre for Media Pluralism and Media Freedom (CMPF), European University Institute.
- Collins, R., & Murrioni, Cristina. (1996). *New media, new policies : Media and communications strategies for the future*. Polity.
- Comino, S., Manenti, F. M., Nicolo, A., & Valbonesi, P. (2002). *Il Caso Seat Pagine Gialle / Cecchi Gori Communications: Tutela Della Concorrenza Ed Incentivi All'innovazione Nei Mercati Derivanti Dalla Convergenza*.
- Colangelo, G. (2021). Enforcing copyright through antitrust? The strange case of news publishers against digital platforms. *Journal of Antitrust Enforcement*. <https://doi.org/10.1093/jaenfo/jnab009>.
- Craufurd-Smith, R., Klimkiewicz, B., & Ostling, A. (2021). Media ownership transparency in Europe : Closing the gap between European aspiration and domestic reality. *European Journal of Communication*, 16.
- d'Arma, A., Raats, T. and J. Steemers (2021). *Public Service Media in the Age of SVoDs: A Comparative Study of PSM Strategic Responses in Flanders, Italy and the UK*. Media, Culture and Society, online first, doi.org/10.1177/0163443720972909

- Dabbah, M. M. (2011). The Relationship Between Competition Authorities and Sector Regulators. *The Cambridge Law Journal*, 70(1), 113–143. https://www.jstor.org/stable/41300946?seq=9#metadata_info_tab_contents
- Donders, K. (2012). *Public service media and policy in Europe*. Palgrave Macmillan
- Donders, K. (2021). *Public service media in Europe. Law, Theory and Practice*. Routledge.
- Dragomir, M. (2018). Control the money, control the media: How government uses funding to keep media in line. *Journalism*, 19(8), 1131-1148.
- Donders, K., & Pauwels, C. (2008). Does EU policy challenge the digital future of public service broadcasting? An analysis of the Commission's state aid approach to digitization and the public service remit of public broadcasting organizations. *Convergence*, 14(3), 295-311.
- Engsig Sørensen, K. (2019). Access to Information in Company Registers. In V. Tountopoulos, V., & Veil, R. (Eds.). *Transparency of Stock Corporations in Europe: Rationales, Limitations and Perspectives* (pp. 7–28). Hart Publishing. <http://dx.doi.org.eui.idm.oclc.org/10.5040/9781509925551.ch-001>.
- Evens, T., & Donders, K. (2018). Planet of the Platforms. In *Platform Power and Policy in Transforming Television Markets* (p. 1-13). Springer International Publishing. https://doi.org/10.1007/978-3-319-74246-5_1
- Fox, J., and Haight, L. (2010). *Mexico's transparency reforms: Theory and practice*. Center for Global, International and Regional Studies.
- Gálik, M. (2010). Regulating Media Concentration within the Council of Europe and the European Union. In Beata Klimkiewicz (Éd.), *Media freedom and pluralism: Media policy challenges in the enlarged Europe* (p. 336). Central European University Press
- Genakos, C., Valletti, T. M., & Verboven, F. (2017). *Evaluating Market Consolidation in Mobile Communications*. N° 6509, CESifo Working Paper Series.
- Harcourt, A. (2007). Institution-Driven Competition: The Regulation of Cross-Border Broadcasting in the EU. *Journal of Public Policy*, 27(3), 293-317. <http://www.jstor.org/stable/40072028>
- Hendrickx, J., & Ranaivoson, H. (2019). Why and how higher media concentration equals lower news diversity – The Mediahuis case. *Journalism*. <https://doi.org/10.1177/1464884919894138>
- Holtz-Bacha, C. (2003). *Of markets and supply: Public broadcasting in Germany*.
- Hultén, O., & Tjernström, S. (2010). The Proposed Acquisition of ProSiebenSat.1 by Springer AG in 2005. In O. Hultén, S. Tjernström, & S. Melesko (Eds.), *Media Mergers and the Defence of Pluralism* (pp. 143–161). Nordicom. <http://norden.diva-portal.org/smash/get/diva2:1534746/FULLTEXT01.pdf>
- Iamiceli, P. (2019). Online Platforms and the Digital Turn in EU Contract Law: Unfair Practices, Transparency and the (pierced) Veil of Digital Immunity. *European Review of Contract Law*, 15(4), pp. 392-420. <https://doi-org.eui.idm.oclc.org/10.1515/ercl-2019-0024>.

- Iosifidis, P. (2014). Pluralism, Media Mergers and European Merger Control. In K. Donders, C. Pauwels, & J. Loisen (Éds.), *The Palgrave Handbook of European Media Policy* (p. 461-475). Palgrave Macmillan UK. https://doi.org/10.1057/9781137032195_25
- Iosifidis, P. & Papathanassopoulos. (2019). Media, politics and state broadcasting in Greece. *European Journal of Communication*, 34(4), 345-359. <https://journals.sagepub.com/doi/10.1177/0267323119844414>
- Leigh, A., & Triggs, A. (2016). Markets, Monopolies and Moguls: The Relationship between Inequality and Competition. *Australian Economic Review*, 49(4), 389-412. <https://doi.org/10.1111/1467-8462.12185>
- Lillerud, K. (2019). The National Transparency Registers in Action. *European State Aid Law Quarterly*, 18(3), 239–248.
- Madelin, R. (2015). *Digital Single Market, European Commission. Knowing Who's Behind Media*.
- Momberg, R. (2016). Standard Terms and Transparency in Online Contracts. In De Franceschi, A. (Ed.), *European Contract Law and the Digital Single Market: The Implications of the Digital Revolution* (pp. 189-208). Intersentia. [10.1017/9781780685212.011](https://doi.org/10.1017/9781780685212.011).
- Naldi, M., & Flamini, M. (2014). The CR4 Index and the Interval Estimation of the Herfindahl-Hirschman Index: An Empirical Comparison. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2448656>
- Noam, E. M. (2016). *Who Owns the World's Media?* Oxford University Press. <https://global.oup.com/academic/product/who-owns-the-worlds-media-9780199987238?cc=be&lang=en&>
- Papathanassopoulos, S. (2020). *Deregulation*. *The International Encyclopedia of Journalism Studies*. Eds Vos, T.P., Hanusch, F., Dimitrakopoulou, D., Geertsema-Sligh, M. and Sehl, A. <https://onlinelibrary.wiley.com/doi/epdf/10.1002/9781118841570.iejs0114>
- Peruško, Z. (2010). The link That Matters: Media Concentration and Diversity of Content. In B. Klimkiewicz (Éd.), *Media freedom and pluralism: Media policy challenges in the enlarged Europe* (p. 261-273). Central European University Press.
- Picard, R. G. (2006). Historical trends and patterns in media economics. *Handbook of media management and economics*, 35-48.
- Picard, R. G. (2020). *Media and Communications Policy Making*. Springer.
- Rab, S., & Sprague, A. (2016). Media Ownership and Control. In Rab, S., & Sprague, A. (Eds.), *Media Ownership and Control: Law, Economics and Policy in an Indian and International Context* (pp. 63–86). Bloomsbury Publishing. <https://doi.org/10.5040/9781474201964>
- Ranaivoson, H. R. (2015). *Licence fee systems in Europe*. iMinds-SMIT, Free University of Brussels (VUB).
- Ranaivoson, H., Afilipoaie, A., Magyar, M., Raats, T., & Donders, K. (2021). Media ownership and transparency in the EU. In *Study on the implementation of the new provisions in the revised*

audiovisual media services directive (AVMSD). Final Report (p. 127-233). <https://digital-strategy.ec.europa.eu/en/library/study-implementation-new-provisions-revised-audiovisual-media-services-directive-avmsd>

Saurwein, F., Eberwein, T., & Karmasin, M. (2019). Public service media in Europe: Exploring the relationship between funding and audience performance. *Javnost-The Public*, 26(3), 291-308.

Schulz, W., Held, T., Dreyer, S., & Wind, T. (2008). *Regulation of Broadcasting and Internet Services in Germany: a brief overview* (Vol. 13, p. 21). Leibniz-Institut für Medienforschung .

Sjøvaag, H., Owren, T., & Borgen, T. (2021). Strategic and Organisational fit in Corporate News Markets: A Principal-agent Approach to Studying Newspaper Mergers. *Journalism Practice*, 15(8), 1181–1198. <https://doi.org/10.1080/17512786.2020.1772097>

Subiotto, R., & Snelders, R. (2002). Antitrust developments in Europe, 2002 (R. Subiotto & R. Snelders (eds.); 2nd ed. New York: Kluwer Law International. https://richmond.primo.exlibrisgroup.com/discovery/fulldisplay?vid=01URICH_INST:law&search_scope=Law_and_Ebooks&tab=Law&docid=alma997413273606241&context=L.

Trappel, J., & Nieminen, H. (2018). Media and Democracy : A Couple Walking Hand in Hand? In L. d’Haenens, H. Sousa, & J. Trappel (Éds.), *Comparative Media Policy, Regulation and Governance in Europe : Unpacking the Policy Cycle* (p. 185-206). Intellect.

van Dijck, J. & Nieborg, D. & Poell, T. (2019). Reframing platform power. *Internet Policy Review*, 8(2). <https://doi.org/10.14763/2019.2.1414>

van Rompuy, B. (2012). *Economic efficiency: the sole concern of modern antitrust policy? : non-efficiency considerations under Article 101 TFEU*. Wolters Kluwer Law & Business

Zaccaria, R., Valastro, A., Albanesi, E., (2021). *Diritto dell’Informazione e della Comunicazione*. CEDAM

Weatherill, S. (2021). Consumer Policy. in Craig, P., & De Burca, G. *The evolution of EU law*. Oxford University Press.

- **EU and CoE sources**

European Commission. (2005, March 3). *State aid: Commission requests Germany, Ireland and The Netherlands to clarify role and financing of public service broadcasters*. https://ec.europa.eu/commission/presscorner/detail/en/IP_05_250.

European Commission. (2006). *Agreement on the state aid case with respect to the funding of ARD and ZDF*. https://ec.europa.eu/commission/presscorner/detail/en/MEMO_06_494.

European Commission. (2006, July 7). *State aid: public service broadcasting in Germany - joint press declaration of European Commissioner Neelie Kroes and Minister-Presidents Kurt Beck and Edmund Stoiber*. https://ec.europa.eu/commission/presscorner/detail/en/MEMO_06_273.

European Commission. (2007). *State aid: Commission closes investigation regarding the financing regime for German public service broadcasters*. https://ec.europa.eu/commission/presscorner/detail/en/IP_07_543.

Regulation 139/2004. *The control of concentrations between undertakings*. European Commission.

Recommendation CM/Rec(2018). *Media pluralism and transparency of media ownership*. Committee of Ministers to Member States.

- **Example country sources**

AGCOM. (2021). *Relazione Annuale 2021 sull'attività svolta e sul programma di lavoro*.

ARCEP. (2016, November 16). *Opinion 2016-1551*.

ARCEP & CSA. (2020). *Programme de travail 2020 - 2021 du pôle commun ARCEP - CSA*. https://www.arcep.fr/fileadmin/user_upload/pole-numerique-arcep-csa/programme-travail-pole-numerique-arcep-csa_oct2020.pdf

Autorité de la Concurrence. (2017, December 17). *Opinion regarding practices implemented in the collection and recovery of non-hazardous office waste sector*. <https://www.autoritedelaconcurrence.fr/fr/avis/relatif-une-demande-davis-de-lautorite-de-regulation-des-communications-electroniques-des-0>

Autorité de la Concurrence. (2018, February 18). *Decision relating to the acquisition of sole control of the company Concept Multimedia by the Axel Springer Group*. https://www.autoritedelaconcurrence.fr/sites/default/files/decision_seloger_en_def.pdf

Autorité de la Concurrence. (2018, March 6). *Press release. Sector specific investigation in online advertising*. <https://www.autoritedelaconcurrence.fr/en/press-release/6-march-2018-sector-specific-investigation-online-advertising>

Autorité de la Concurrence. (2018, April 23). *Décision relating to the acquisition of Aufeminin by TF1*. <https://www.autoritedelaconcurrence.fr/sites/default/files/commitments//18DCC63decisionpubliee.pdf>

Autorité de la Concurrence. (2019, February 21). *Opinion on a request from the Committee on Cultural Affairs and Education of the French National Assembly (Assemblée nationale) for an opinion on the audiovisual sector*. https://www.autoritedelaconcurrence.fr/sites/default/files/integral_texts/2019-10/19a04_en.pdf

Autorité de la Concurrence. (2021, June 3). *Press release, In the context of an investigation opened before the Autorité in the online advertising sector, Facebook proposes commitments*.

<https://www.autoritedelaconcurrence.fr/en/press-release/context-investigation-opened-autorite-online-advertising-sector-facebook-proposes>

Autorité de la Concurrence. (2021, June 7). *Decision regarding practises implemented in the online advertising sector*. <https://www.autoritedelaconcurrence.fr/en/decision/regarding-practices-implemented-online-advertising-sector>

AZTN. (2021). *CCA clears telecom merger between Telemach Hrvatska and OT-Optima Telekom*. News. <https://www.aztn.hr/en/cca-clears-telecom-merger-telemach-hrvatska-ot-optima-telekom/>

Balestra, M.F., Antoniazzi, L., Horgan, C. (2021, July 20). *AgCom publishes the Resolutions defining the new obligations for online search engines and online intermediaries*. Bird & Bird. <https://www.twobirds.com/en/news/articles/2021/italy/pubblicare-le-delibere-agcom-nuovi-obblighi-per-motori-di-ricerca-e-intermediari-online>

Bundesverfassungsgericht (2014, March 25) - *Press - Applications for judicial review filed against the ZDF State Treaty successful for the most part*. <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2014/bvg14-026.html>.

Commissariaat voor de Media (CvdM) (2013). *Mediamonitor 2012-2013*, p. 63, <https://www.mediamonitor.nl/wp-content/uploads/2013/10/Mediamonitor-2013-Mediabedrijven-en-Mediamarkten-2012-2013.pdf>

Commissariaat voor de Media (CvdM) (2016). *Mediamonitor 2015-2016*, p. 39, <https://www.mediamonitor.nl/wp-content/uploads/Mediamonitor-2016.pdf>

Commissariaat voor de Media (2021), *Mediamonitor 2021*, p. 8-9, 49, 50. Available at: <https://www.cvdM.nl/actueel/mediamonitor-2021-kantelpunt-in-digitalisering-mediagebruik-en-concentratie>

Commissariaat voor de Media (CvdM) and Reuters Institute Digital News Report (2018). *Mediamonitor 2018*, p. 10, <https://www.mediamonitor.nl/wp-content/uploads/Mediamonitor-2018-Reuters-Institute-Digital-News-Report-Nederland-2018.pdf>

CSA. (2017, February 22). *Opinion 2017-04*.

CSA. (2021, December 6). *Press release, Instruction de l'opération de rapprochement des groupes TF1 et M6* :

le CSA adresse aux acteurs concernés un questionnaire pour préparer son avis à l'Autorité de la concurrence. <https://www.arcom.fr/sites/default/files/2021-12/CP-Instruction%20de%20l%E2%80%99op%C3%A9ration%20de%20rapprochement%20des%20groupes%20TF1%20et%20M6%20-%20le%20CSA%20adresse%20aux%20acteurs%20concern%C3%A9s%20un%20questionnaire%20pour%20pr%C3%A9parer%20son%20avis%20%C3%A0%20l%E2%80%99Autorit%C3%A9%20de%20la%20concurrence.pdf>

Decision of 21 December 2009 establishing the time of withdrawal of the Temporary Media Concentrations Act (2009, December 21). <https://zoek.officielebekendmakingen.nl/stb-2009-603.pdf>

Decision establishing the time of withdrawal of the Temporary Media Concentrations Act, amending Decision of 21 December 2009. (2009, December 21). https://www.njb.nl/umbraco/uploads/2013/10/stb10_835.pdf

District Court of Rotterdam. (2020, June 11). ECLI:NL:RBROT:2020:5122, <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBROT:2020:5122>

Explanatory Memorandum. (2003, February 26). *Regulation of the State Secretary of Education, Culture and Science regarding the designation and use of frequency space commercial radio*

broadcasting, p 3-4. Staatscourant. <https://zoek.officielebekendmakingen.nl/stcrt-2003-40-p34-SC38739.pdf>

Explanatory Memorandum. (2007). *Temporary Media Concentrations Act 2007*, p. 1. Staatscourant. <https://zoek.officielebekendmakingen.nl/kst-30921-3.pdf>

Explanatory Memorandum. (2010). *Decision of 16 December 2010 amending Decision 21 December 2009 establishing the time of withdrawal of the Temporary Media Concentrations Act*, p 2. Staatscourant. https://www.njb.nl/umbraco/uploads/2013/10/stb10_835.pdf

Explanatory Memorandum. (2015, December 21). *Regulation of the State Secretary of Education, Culture and Science, No. WJZ/853428 (6968), amending the Regulation designation and use frequency space commercial radio broadcasting 2003 because of the increase in FM frequency spaces that can be used by commercial broadcasters*, p 3-4. Staatscourant. <https://zoek.officielebekendmakingen.nl/stcrt-2015-46434.pdf>

Letter of Minister of Economic Affairs and State Secretary of Education, Culture and Science, No. 384, p. 6-7. (2015, June 26). <https://zoek.officielebekendmakingen.nl/kst-24095-384.pdf>

Letter of Minister of Economic Affairs, No. 388, p. 11. (2015, July 2). <https://zoek.officielebekendmakingen.nl/kst-24095-388.pdf>

Letter of Minister of Education, Culture and Science, No. 9, p. 3. (2009, April 29). <https://zoek.officielebekendmakingen.nl/kst-30921-9.pdf>

Letter of Minister of Education, Culture and Science, No. 55, p. 22. (2010, November 26). <https://zoek.officielebekendmakingen.nl/kst-32500-VIII-55.pdf>

Letter of State Secretary of Economic Affairs and Climate, CE/19226757. (2019, April 27). <https://www.rijksoverheid.nl/>

Letter of State Secretary of Education, Culture and Science, Nr. 136, p. 3-4. (2010, June 21). <https://zoek.officielebekendmakingen.nl/kst-32123-VIII-136.pdf>

NCA. (2014, September 9). *Approval Decision, ACM/DM/2014/205323_OV*, p. 14, 19, https://www.acm.nl/sites/default/files/old_publication/publicaties/13384_de-persgroep-mecom-concentratiebesluit-2014-09-19.pdf

NCA (2017, May 1) *Approval Decision, ACM/DM/2017/202511_OV*, p. 17, https://www.acm.nl/sites/default/files/old_publication/publicaties/17228_mediahuis-telegraaf-media-groep-concentratiebesluit-2017-05-01.pdf

NCA Press Release. (2015, February 11). *De Persgroep mag Mecom overnemen*. <https://www.acm.nl/nl/publicaties/publicatie/13833/De-Persgroep-mag-Mecom-overnemen>

NCA Press Release. (2017, May 1). *NRC en Telegraaf mogen onder één dak bij Mediahuis*. <https://www.acm.nl/nl/publicaties/publicatie/17202/NRC-en-Telegraaf-mogen-onder-een-dak-bij-Mediahuis>

Parliamentary Motion of the Member of the House Gesthuizen c.s., 24095, No. 385. (2015, July 2). <https://zoek.officielebekendmakingen.nl/kst-24095-385.pdf>

Parliamentary Motion of the Member of the House Remkes c.s., 32123 VIII, No. 74. (2009, November 30). <https://zoek.officielebekendmakingen.nl/kst-32123-VIII-74.pdf>

Parliamentary Motion of the Members of the House Rutte and Mohandis, 34264, No. 27. (2015, October 8). <https://zoek.officielebekendmakingen.nl/kst-34264-27.pdf>

Parliamentary Report, No. 404, p. 12. (2016, June 29) <https://zoek.officielebekendmakingen.nl/kst-24095-404.pdf>

Rundfunkkommission der Länder. (2021). *Diskussionsentwurf zu Auftrag und Strukturoptimierung des öffentlich-rechtlichen Rundfunks. [Draft discussion on the mandate and structural optimization of public service broadcasting]*. https://www.rlp.de/fileadmin/rlp-stk/pdf-Dateien/Medienpolitik/Synopse_MAESTV_Reform_OERR_Nov2021.pdf

State Secretary of Economic Affairs and Climate (2021, April 9). *Revised Decision regarding the application of article 47 of the Competition Act*. <https://open.overheid.nl/repository/ronl-172d92ada4f7-4d82-99c8-b74a71234a11/1/pdf/bijlage-herzien-besluit-tot-toepassing-van-artikel-47-van-de-mededingingswet.pdf>

Tijdelijke Commissie Innovatie en Toekomst Pers (2009). *Adviesrapport: De volgende editie*. House of Representatives. <https://www.tweedekamer.nl/kamerstukken/detail?id=2009D32702&did=2009D32702>

- **Reports/other sources**

Brevini, B. Fanucci, F. (2013). *Transparency of media ownership - The legal Framework: Italy*, Access Info Europe

McNulty, B. (2021, October 14). *Cross-Sectoral Cooperation between Regulators*. 54th EPRA meeting (online). https://cdn.epra.org/attachments/files/4071/original/Plenary_54th_epra_Plenary_Background_paper_final.pdf?1638973456.

Grünwald, A. (2012). *Court clarifies rules on cross-media mergers*. Global Media & Communications Quarterly Spring Issue. https://www.hoganlovells.com/~/_/media/hoganlovells/pdf/publication/courtclarifiesrulesoncrossmediamergers_pdf.pdf

Hogan Lovells. (2012). *Axel Springer and ProSiebenSat.1 achieve a media law precedent-setting judgment with Hogan Lovells*. Media Press Releases. <https://www.hoganlovells.com/en/news/axel-springer-and-prosiebensat1-achieve-a-media-law-precedent-setting-judgment-with-hogan-lovells>

Mancini, J. (2018). *Considering non-price effects in merger control – Background note by the Secretariat*. OECD.

Mediahuis Newsroom. (2016, January 15). *TMG kondigt strategische samenwerking met Talpa aan op het gebied van radio, TV en OTT*. <https://nieuws.mediahuis.nl/tmg-kondigt-strategische-samenwerking-met-talpa-aan-op-gebied-van-radio-tv-en-ott/>

Modrall, J. (2021, April 1). *EU Commission Launches Major Merger Control Reform*. *Kluwer Competition Law Blog*. <http://competitionlawblog.kluwercompetitionlaw.com/2021/04/01/eu-commission-launches-major-merger-control-reform/>

OECD. (2020, November 24). *Working Party No. 2 on Competition and Regulation Competition in Digital Advertising Markets – Note by France*. [https://one.oecd.org/document/DAF/COMP/WP2/WD\(2020\)3/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2/WD(2020)3/en/pdf)

Transparency International. (2016). *Good Practices to ensure transparency and integrity in media companies*. https://knowledgehub.transparency.org/assets/uploads/helpdesk/Good_practices_in_media_transparency_2016.pdf

Chapter B4

Ariño, M. (2004) Competition Law and Pluralism in European Digital Broadcasting: Addressing the Gaps. *Communications and Strategies*, (54), pp.97–130.

Brogi, E., Gori, P. (2013). *Legal Analysis of the EU Instruments to Foster Media Pluralism and Media Freedom*. In European Union Competencies in Respect of Media Pluralism and Media Freedom. RSCAS Policy Paper 2013/01.

Craufurd-Smith, R., Klimkiewicz, B., & Ostling, A. (2021). Media ownership transparency in Europe : Closing the gap between European aspiration and domestic reality. *European Journal of Communication*, 16.

Dal Zotto, C., & Lugmayr, A. (2016). Media convergence as evolutionary process. In *Media Convergence Handbook-Vol. 2* (p. 3-16). Springer.

Galloway J. (2007). The Pursuit of National Champions: The Intersection of Competition Law and Industrial Policy, *European Competition Law Review*.

Hallin, D. C., & Mancini, P. (2004), *Comparing Media Systems: Three models of Media and Politics*. Cambridge University Press.

Harcourt A. (2005). *The European Union and the regulation of media markets*. Manchester University Press

Krätke, S. (2003). Global media cities in a world-wide urban network. *European Planning Studies*, 11(6), 605-628.

Levy, D. A. (1999), *Europe's Digital Revolution: Broadcasting Regulation, the EU and the Nation States*. Routledge.

Lillerud, K. (2019). The National Transparency Registers in Action. *European State Aid Law Quarterly*, 18(3), 239–248.

McPhillips, S., & Merlo, O. (2008). Media convergence and the evolving media business model : An overview and strategic opportunities. *The Marketing Review*, 8(3), 237-253.

Napoli, P. M. (1999). Deconstructing the Diversity Principle. *Journal of Communication*, 49(4), 7-34. <https://doi.org/10.1111/j.1460-2466.1999.tb02815.x>

Ranaivoson, H. (2019). Online platforms and cultural diversity in the audiovisual sectors : A combined look at concentration and algorithms. In *Audiovisual Industries and Diversity* (p. 100-118). Routledge.

Williams, B.A., Delli Carpini, M.X. (2011). *After Broadcast News: Media Regimes Democracy and the New Information Environment*. Cambridge University Press.

- **Example country sources**

ACMA. (2020). *News in Australia: Diversity and localism. News measurement framework*. <https://www.acma.gov.au/publications/2020-12/report/news-australia-diversity-and-localism>

Adshead, S., Forsyth, G., Wood, S., & Wilkenson, L. (2019). *Online Advertising in the UK*. UK Department of Media Culture and Sport. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777996/Plum_DCMS_Online_Advertising_in_the_UK.pdf

AGCOM (2021). *Relazione Annuale 2021 sull'attività svolta e sul programma di lavoro*.

PEReN / Regalia. (2021). *Evaluation Methods for Content Recommendation Algorithms*. Ministère de la Culture. <https://www.peren.gouv.fr/rapports/2021-05-06%20-%20Evaluation%20Methods%20for%20Content%20Recommendation%20Algorithms%20-%20PEReN-Regalia.pdf>

- **Reports/Other sources**

Edelson, L. et al. (2021). *A Standard for Universal Digital Ad Transparency: Proposal spells out criteria that trigger transparency requirement, with ad data to be collected by government agency*. The Knight First Amendment Institute at Columbia University. <https://knightcolumbia.org/content/a-standard-for-universal-digital-ad-transparency>

Financial Action Task Force. (2019). *International standards on combating money laundering and the financing of terrorism & proliferation*. <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

Privacy International. (2019). *Why is advertising transparency important? Companies like Facebook, Google, and Twitter are not doing enough to provide their users with ads transparency*. <https://privacyinternational.org/explainer/3288/why-advertising-transparency-important>

GETTING IN TOUCH WITH THE EU

In person

All over the European Union there are hundreds of Europe Direct information centres. You can find the address of the centre nearest you at: https://europa.eu/european-union/contact_en

On the phone or by email

Europe Direct is a service that answers your questions about the European Union. You can contact this service:

- by freephone: 00 800 6 7 8 9 10 11 (certain operators may charge for these calls),
- at the following standard number: +32 22999696 or
- by email via: https://europa.eu/european-union/contact_en

FINDING INFORMATION ABOUT THE EU

Online

Information about the European Union in all the official languages of the EU is available on the Europa website at: https://europa.eu/european-union/index_en

EU publications

You can download or order free and priced EU publications at: <https://publications.europa.eu/en/publications>. Multiple copies of free publications may be obtained by contacting Europe Direct or your local information centre (see https://europa.eu/european-union/contact_en).

EU law and related documents

For access to legal information from the EU, including all EU law since 1952 in all the official language versions, go to EUR-Lex at: <http://eur-lex.europa.eu>

Open data from the EU

The EU Open Data Portal (<http://data.europa.eu/euodp/en>) provides access to datasets from the EU. Data can be downloaded and reused for free, for both commercial and non-commercial purposes.

