

# Guarding the Guardians

## Rule of Law & the Media

By Emily Binchy



### Introduction

A free, pluralistic media and freedom of expression play a pivotal role in upholding the values espoused by the European Union, such as respect for the rule of law. Recently, however, [more frequent attacks on journalists](#) and increased state control of the public media sector in certain Member States, have spurred the European Commission to take a more active approach to safeguarding these fundamental freedoms.

This Explainer will outline the legislative and policy proposals emerging at EU level, which aim to protect media freedom and to ensure the safety of journalists, and will analyse the importance of a free, independent and pluralistic media in upholding the rule of law in the Union.

Section One will outline the policy and legislative tools to ensure that the rule of law is observed in the media sector and that the media sector is protected across the EU from undue political interference in the market. Section Two will explore the role freedom of expression plays in ensuring adherence to rule of

law principles. Section Three will outline the policy instruments designed to protect journalists in the EU and how this is being achieved.

### Section 1: Safeguarding Media Freedom in the EU

In its annual *Rule of Law Report 2021*, the European Commission dedicates an entire chapter to 'Media Freedom and Pluralism', referring to them as important ['enablers' of the rule of law and democratic accountability](#). The 2021 report points to a deterioration compared to the previous year in the standards of media freedom and pluralism in the EU, noting that there is [a high risk of political interference](#) in the media in some Central, Eastern and South Eastern Member States. For example:

- In [Czechia](#), the Czech TV supervisory board has been the ongoing subject of political controversy.
- In [Malta](#), a constitutional case has been brought challenging the two main political parties' ownership of their own media stations.
- In [Slovenia](#), there are allegations of political motivations behind changes in the funding of the

public service broadcaster.

- In [Poland](#), the potential acquisition of a large privately owned media outlet by a state-controlled oil company has raised concerns of market monopolisation.
- In [Bulgaria](#), political influence over the media remains a cause of concern, as does a lack of rules pertaining to media ownership.

Furthermore, on 2 December 2021, the Commission sent a [reasoned opinion](#) to Hungary regarding the refusal by the Hungarian Media Council to renew the licence of [Klubrádió](#), a leading independent radio station in Hungary. In its opinion, the Commission stated that this action was disproportionate to the alleged complaints and lacking in transparency. If Hungary fails to address this infringement of EU telecoms rules, as set out in the [European Electronic Communications Code](#), the Commission has stated that it may refer the case to the Court of Justice of the European Union.

The case of [Klubrádió](#) highlights the convoluted route which the Commission has to take in order to address such infringements of EU law and points to the need for an alternative, more streamlined mechanism.

### Proposal for a Media Freedom Act

In her [State of the Union](#) address on 15 September 2021, European Commission President, Ursula von der Leyen, announced the Commission's intention to produce a [European Media Freedom Act](#) in autumn 2022 – an innovative legislative tool to protect and strengthen the freedom and plurality of the media sector across the Union. A public consultation will be launched by the European Commission in early 2022 in order to garner the opinions of stakeholders such as journalists and civil society. The purpose of this act is to increase transparency, independence, and accountability in the media. The act will also mark a shift in approach away from regarding the media not merely as economic actors, but as a [public good](#), in need of protection for the role it plays in society.

The European Media Freedom Act is intended to complete the EU's tool kit –which already comprises the [European Democracy Action Plan](#), adopted in 2020 to ensure that citizens can participate fully in democratic society, and the [Media and Audiovisual Action Plan](#), launched in July 2021 in order to aid the economic recovery of the media sector from the COVID-19 pandemic. Furthermore, the media sector across the EU increasingly faces a dual threat from authoritarian leaders who wish to both limit its independence and to alter the market structure. The European Media Freedom Act will have to strike a balance between upholding EU values, such as democracy and freedom of expression, and promoting competition policy.

The value of the media as an independent resource was highlighted during the COVID-19 pandemic when there was a heightened desire for fact-based objective information. This period of unprecedented uncertainty also marked a time of [economic loss for the sector](#), when regional and local media outlets appeared to be severely affected by the economic repercussions of the pandemic, which in turn led to a more concentrated market comprising of a small number of big players. However, in this environment, traditional competition law tools are arguably insufficient to defend and foster a vibrant and diverse media ecosystem. According to the Commissioner for the Internal Market, Thierry Breton, a new mechanism is needed. The proposal for a European Media Freedom Act seeks to fill this void by adopting a holistic EU approach to safeguarding media freedom.

### The Media Pluralism Monitor and the Rule of Law

In terms of wider policy tools already available to the Commission, the annual [Media Pluralism Monitor](#), produced by the European Institute in Florence, provides accurate information about media freedom for the Commission's annual Rule of Law Report, and assesses the risks to media freedom and pluralism in all Member States, across 24 indicators and focusing on four areas:

1. Basic protection of media freedom

2. Market plurality
3. Political independence
4. Social inclusiveness of media

The results of the Monitor in 2021 point to a deterioration compared to the previous year in three key indicators: freedom of expression, protection of the right to information, and protection of journalists. This is a cause of considerable concern given that all three of these are important for the rule of law and necessary counterweights to the misuse of power.

Although the EU has long been a hospitable environment for the media sector, evidence of an increase in illiberal values across certain Member States and the monopolisation of media outlets, including by state authorities, suggest that a more active approach to protecting media pluralism is required.

Transparency of media ownership is an essential factor in ensuring reliability of information. A corresponding initiative aimed at conserving a pluralistic media was the [Euromedia Ownership Monitor](#), which was launched on 27 September 2021. This Monitor comprises a database for each Member State disclosing information on media ownership to the public and simultaneously assesses relevant legal frameworks and flags possible risks to transparency of media ownership.

### Section 2: Freedom of Expression and Rule of Law

The right to Freedom of Expression, as enshrined in Article 11 of the [EU Charter of Fundamental Rights](#), includes the freedom to hold opinions and to receive and impart information and ideas without interference by a public authority. The dissemination of information is often carried out most effectively by media outlets, and therefore the media sector is often an attractive vessel for those seeking to mould public opinion.

Hannah Arendt argued that authoritarianism becomes possible when the [people are not informed](#) and when freedom of expression and the independence

of the media are constrained by the arbitrary use of government powers to undermine democratic decision-making.

To counter this, on 29 November 2021, Commissioner Breton, at the European News Media Forum announced the development of a 'European Newsroom', which would gather news agencies in Brussels to [collaborate in reporting on EU affairs](#). This initiative aims to facilitate greater ease of access for citizens to quality information on EU affairs through cross-border cooperation among media outlets, extending into the Balkan region.

In providing a pool of 16 news agencies and funding of €1.76 million, Commission Vice President, Věra Jourová, said that she hopes this collaborative network, rooted in solidarity, would make it [more difficult for state actors to interfere](#) and will therefore bolster media freedom. If successful, this initiative could both enhance freedom of expression and by extension, rule of law in the EU.

### Section 3: Protection of Journalists

The ['fourth estate'](#) is a cornerstone of the rule of law and an important source of information for the effective and full participation of citizens in society. The role of journalists in society and the protection of liberal democratic values, such as rule of law, are closely linked. Journalists are often among the first to expose or denounce erosion in standards of the rule of law. However, they are often among the first to suffer the repercussions of deviations from rule of law principles, with more than [900 attacks on journalists recorded in the EU in 2020](#).

On 2 November 2021, the International Day to End Impunity for Crimes against Journalists, EU High Representative Josep Borrell deplored the increase in attacks on journalists across the EU in recent months and years. He drew attention to a new Commission initiative, a [Recommendation to Member States on Safety of Journalists](#), which was launched on 16 September 2021. This Recommendation includes proposals for joint coordination and support centres

for journalists, legal advice, psychological support, shelters, and early warning mechanisms. A particular emphasis is placed on the [safety of female journalists](#), who are often vulnerable to attack.

The Commission has stated that [funding will be available](#) to support Member States in implementing this Recommendation, in the form of training for judges, police forces and journalists. On 16 September 2021, the Commission announced a [call for proposals](#) on media freedom and investigative journalism, amounting to €4 million in EU funding. While such measures have been welcomed by stakeholders such as the European Federation of Journalists, there has also been criticism of [the lack of an implementation evaluation mechanism](#) at national level.

There is a dual dimension to the issue of protecting journalists: protecting their physical safety and protecting them from ‘Strategic Lawsuit Against Public Participation’, so-called ‘SLAPPs’. Such lawsuits are used to intimidate and silence journalists and pose a significant threat to freedom of expression and by extension, to democracy and rule of law. On 29 November 2021, Commission Vice President Jourová announced that the Commission hopes to launch an initiative early in 2022 to help minimise the impact of these abusive lawsuits. A [public consultation](#) was launched on Monday, 4 October 2021 and will feed into this initiative in order to address the increasingly hostile working environment for journalists.

### Conclusion

While the Charter of Fundamental Rights of the European Union has established a [duty of EU institutions to preserve the freedom of the media](#), Member States also have a duty of care to protect freedom of expression and a pluralistic media as part of a vibrant democracy.

This paper has outlined the legislative and policy tools which the EU has developed to date in order to counter the subversive attacks on media freedom and media pluralism: the European Democracy Action Plan; the

Media and Audiovisual Action Plan; the forthcoming Media Freedom Act 2022; the Media Pluralism Monitor; the Euromedia Ownership Monitor; the European Newsroom; a Recommendation to Member States on Safety of Journalists; and the forthcoming initiative on countering the use of SLAPPs.

Commission Vice President Jourová commented on a [recent visit to Poland that](#): “It is fine to differ politically – this is what democracies are for. But we have to follow the common rules of the game; we have to agree that there is one referee. These rules are called the rule of law”. As authoritarianism and illiberalism rise, particularly in Central and Eastern European states, public trust in the media is declining and protecting media freedom and the rule of law in times of the pandemic has become an issue of vital importance.

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