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Fragile Progress

The struggle for press freedom in the European Union

About this report

The report looks at the ongoing challenges facing the European Union as it seeks new ways to uphold its commitment to press freedom. A follow-up to the Committee to Protect Journalists' 2015 report "Balancing Act," 2023's "Fragile Progress" examines the EU's response to threats such as murders of journalists, pandemic-related media controls, spyware, and the war in Ukraine. The report also includes CPJ's recommendations to EU institutions and member states on protecting independent media and journalist safety.

"Fragile Progress: The struggle for press freedom in the European Union" was written by Jean-Paul Marthoz and Tom Gibson.

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By Jean-Paul Marthoz and Tom Gibson

Executive summary

The European Union traditionally has been considered among the world's safest and freest places for journalists. However, increasing pressure on press freedom in Europe has forced EU institutions to find ways to push their 27 member states to uphold their commitments to freedom of expression and the rule of law.

Often, the scope and effectiveness of EU actions in support of press freedom reflect the gap between the values-based narrative that the EU tells about itself and the reality of how it and its member states pursue their interests.

The last election for the European Parliament took place in 2019 against a backdrop of rising populism and concern about illiberal¹ governments like [Hungary](#) and Poland trampling on the rule of law, including press freedom. Maltese journalist [Daphne Caruana Galizia](#) and Slovak journalist [Ján Kuciak](#) had been murdered in connection with their work. Other journalists had been censored, spied upon, harassed online, overwhelmed with disinformation, subjected to abusive lawsuits, charged with revealing state secrets, beaten while covering street protests, banned from public meetings, or lambasted by politicians.

The EU's [next parliamentary election](#) will take place in 2024. Much has changed in the media landscape since EU citizens last went to the polls. Brussels, the shorthand reference for major EU institutions like the European Commission, the Council, the European Parliament, and the Court of Justice, has increasingly recognized that while journalists played a key role in defending EU interests and values, the EU was not doing enough to protect them – and that this needed to change. Renewed will and a strengthened mandate from the European Commission after 2019 saw Brussels pledge to tackle issues from journalist safety, the economic undermining of

¹ Pol Morillas, editor, "Illiberal Democracies in the EU: the Visegrad Group and the Risk of Disintegration," January 2017 https://www.cidob.org/en/publications/publication_series/monographs/monographs/illiberal_democracies_in_the_eu_the_visegrad_group_and_the_risk_of_disintegration

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independent journalism through [media capture](#), and the vexatious lawsuits known as [Strategic Lawsuits Against Public Participation](#) (SLAPPs). EU legislation like the Journalist Safety Recommendation, the anti-SLAPP Directive, and the European Media Freedom Act spelled out a positive new direction for the EU.

Professional associations and press freedom groups have also strengthened networks and coalitions that increased their profiles and enhanced the importance of press freedom within the EU institutions, pushing for common EU policies to support journalists and guarantee their safety.

At the same time, new challenges have arisen. Overall, the EU's shift still needs to be translated into meaningful action within member states. Some governments [used](#) the COVID-19 pandemic to control the media, including restricting access to journalists and withholding public-interest information. Russia's all-out invasion of Ukraine in 2022 has tested the EU's ability to protect journalist safety.

Other problems persist too.

In 2015, the Committee to Protect Journalists published "[Balancing Act](#),"² a special report noting the delicate diplomatic and political way in which the EU was forced to operate given the constraints of a weak legal arsenal and limited ability to change recalcitrant behavior in member states. The report noted that the capacity of the EU was limited to how much power member states were ready to concede to Brussels.

Many other concerns remain. Draft and active digital legislation threatens journalists' right to privacy and encryption. Trade secrets pose a routine obstacle to legitimate public interest reporting. The EU institutions themselves are far from fully transparent; the European Commission's handling of access to information requests can result in either restricted information or delayed responses. Journalists interviewed by CPJ say that the ease and flow of the Commission's media interactions vary, often depending on its relationship with individual outlets or sensitivity on certain subjects.

As CPJ noted in 2015, defending press freedom at home sets an example internationally. However, the EU's foreign relations strategy for dealing with autocrats who violate journalists' rights often still lacks uniformity or clarity. The frameworks, response mechanisms, and guidelines

² CPJ, "Balancing Act," 2015 <https://cpj.org/reports/2015/09/press-freedom-at-risk-europe-summary/>

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are all there and can be effective. The question is the extent to which EU officials abroad know or make use of them and how local trade or political considerations hamper local diplomats' forceful defense of press freedom in third countries.

This 2023 report, *Fragile Progress*, provides a snapshot of the current state of play regarding the EU institutions and press freedom in recent years. Based on CPJ's own research and interviews with journalists, press freedom advocates, and EU insiders,³ it finds that much progress has been made, but combating entrenched pressure on and threats to journalists in Europe – and setting an effective example for governments around the world – still requires improved and sustained action from Brussels.

The report also includes CPJ's recommendations to EU institutions and member states on defending press freedom and ensuring journalist safety. Chief among these are:

- Remediating problematic EU legislation, policy, or practice that restricts the work of journalists or threatens press freedom.
- Ensuring that positive press freedom reforms taken by the EU – including the Rule of Law Mechanism, the draft European Media Freedom Act, and the draft anti-SLAPP Directive – are robust enough to become effective tools in the defense of press freedom.
- Continuing to demonstrate international leadership by strengthening its full range of available political, diplomatic, and emergency assistance to all journalists at risk and in need of help, safe shelter and support.
- Ensuring that the next European Commission, in place in 2024, has a strong press freedom mandate and vision.

³ Some sources asked not to be named in this report in order to speak frankly or because they were not authorized to speak to the media.

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Introduction

European Union countries have traditionally been considered among the safest and freest places for journalists in the world. Yet, as the European Commission noted in November 2021, “the number of threats and attacks against them [journalists] have been on the rise in the past years with the most tragic cases being assassinations of journalists.”⁴

Since the publication of CPJ’s 2015 report, “[Balancing Act](#),” journalists have been killed in EU countries. At least two, Maltese journalist [Daphne Caruana Galizia](#) and Slovak journalist [Ján Kuciak](#), were murdered because of their work; Swedish journalist [Kim Wall](#) was killed on assignment, and the motives for the killing of Bulgaria’s [Viktoria Marinova](#), the Netherlands’ [Peter R. de Vries](#), and Greece’s [Giorgos Karaivaz](#), remain [unconfirmed](#).

Many others in the media have been gagged, spied upon, harassed online, overwhelmed with disinformation, subjected to vexatious lawsuits, charged with revealing state secrets, beaten while covering street protests, banned from public meetings, or publicly criticized by politicians. The COVID-19 pandemic took a toll as some governments used the health emergency to put controls on the media, including restricting access to journalists and retaining public-interest information.⁵

In 2022, Russia’s invasion of Ukraine added a new and dramatic dimension as journalists reporting on the conflict found themselves in the middle of a disinformation avalanche and partisan online harassment.

Maps of press freedom in the EU are also far from monochrome. Being an EU member does not mean all countries are on the same page on press freedom. In July 2022, the European Commission’s Rule of Law report⁶ helped illustrate this mixed bag, urging 16 of the 27 member states to take measures to protect journalists, media freedom, and pluralism. It also recommended that eight member states “strengthen rules and mechanisms to enhance the independence of governance and editorial independence of public service media.” The worst-rated countries present

⁴ European Commission, “Joint Statement on the International Day to End Impunity for Crimes against Journalists,” November 1, 2021 https://ec.europa.eu/commission/presscorner/detail/es/statement_21_5665

⁵ Platform for the protection of journalism and the safety of journalists / Council of Europe, “Wanted! Real action for media freedom in Europe: Annual Report by the partner organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists,” April 2021 <https://rm.coe.int/final-version-annual-report-2021-en-wanted-real-action-for-media-freed/1680a2440e>

⁶ The Rule of Law Report monitors EU member states’ performance, both positive and negative, in four key areas for the rule of law: the justice system, the anti-corruption framework, media pluralism, and other institutional issues related to checks and balances. The report is issued annually by the European Commission with input from civil society.

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features, like media capture or cyber-surveillance,⁷ which bring them close to autocracies that would never qualify for admission to the EU,⁸ and which should be in principle held to task by Brussels.⁹

The European Union has enshrined press freedom in its foundational texts¹⁰ and its Charter of Fundamental Rights.¹¹ “The freedom and pluralism of the media shall be respected,” says Article 11 of the Charter. But the EU institutions were not really expected to be actively involved in shaping the media environment nor in adopting proactive measures to defend press freedom.¹² These prerogatives were considered to be the preserve of the “capitals” (EU member states) or were in practice delegated to the Council of Europe,¹³ the Strasbourg-based human rights body, and its international court, the European Court of Human Rights, to which all EU countries must adhere. The EU stepped in only when media-related dossiers took a cross-European and internal market dimension that required coordinated action, like the strengthening of EU audio-visual policy with the adoption of the Television without frontiers (TVWF) directive¹⁴ in 1989, as well as the Audiovisual and Media Services Directive (AVMSD)¹⁵ in 2018.

⁷ These trends were confirmed by the number of alerts submitted to the Council of Europe platform to promote the protection of journalism and the safety of journalists (of which CPJ has been a member since 2015). See Council of Europe, “Defending Press Freedom in Times of Tension and Conflict,” April 2022 <https://rm.coe.int/platform-protection-of-journalists-annual-report-2022/1680a64fe1>

⁸ European Commission, “European Neighbourhood Policy and Enlargement Negotiations (DG NEAR)” https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/conditions-membership_en

⁹ European Parliament, “Fact Sheets on the European Union: Human rights” <https://www.europarl.europa.eu/factsheets/en/sheet/165/human-rights>

¹⁰ Article 2 of the Treaty on European Union: Title I Common Provisions provides that “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.” See EU, “Consolidated version of the Treaty on European Union - Title I Common Provisions - Article 2,” October 26, 2012 https://eur-lex.europa.eu/eli/treaty/teu_2012/art_2/oj

¹¹ European Commission, “EU Charter of Fundamental Rights” https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en

¹² EU, “FAQ EU competences and Commission powers” https://europa.eu/citizens-initiative/how-it-works/how-start-initiative-step-step/faq-eu-competences-and-commission-powers_en

¹³ The Council of Europe has 46 members. Russia was excluded on March 16, 2022, due to its invasion of Ukraine.

¹⁴ “Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.” <https://eur-lex.europa.eu/EN/legal-content/summary/television-broadcasting-activities-television-without-frontiers-tvwf-directive.html#:~:text=The%20Directive%20aims%20to%20ensure,and%20the%20protection%20of%20minorities>

¹⁵ “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 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” <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

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Text box:

Guide to EU legislation

Regulation

- Binding EU law for EU member states to apply in full at national level.

Directive

- Legal goals for EU member states to achieve.

Recommendation

- Non-binding ideas for action for EU member states to follow.

Little by little, the EU had to stop pretending that press freedom was none of its business. In recent years, the European Project, the name commonly used to describe the long and incremental process of European integration,¹⁶ has been directly challenged by a number of crises¹⁷ or political developments like the rise of nationalist populist movements including, in some countries, to government. The EU has been forced to gradually assume more responsibilities in its defense of the liberal democratic principles on which it was solemnly constructed after World War II.¹⁸

Violence against the press, perceived as belonging to other parts of the world, also became a European issue. The 2015 Al-Qaeda-inspired [attack](#) on the French satirical weekly Charlie Hebdo,¹⁹ as well as the gangland-style murders of prominent investigative journalists, including [Daphne Caruana Galizia](#) in 2017 in Malta and [Ján Kuciak](#) in 2018 in Slovakia, shook the narrative on press freedom in Brussels. “These two assassinations were an additional painful wake-up call, following the Charlie Hebdo massacre which was, policy-wise, primarily seen through a terrorism lens. Killings of journalists, normally associated with third countries, could also occur in the European Union,” David Friggieri, a European Commission official, told CPJ.

These developments created a new sense of urgency. The psychological pressure and clear danger to Caruana Galizia and Kuciak because of their work, along with situations such as the need for round-the-clock police protection for Italian journalists [threatened by the mafia](#), showed

¹⁶ This process included the creation of the Council of Europe in 1949 but its key date, celebrated today as Europe Day, is May 9, 1950, with the Schuman Declaration. Named after then French foreign minister Robert Schuman—considered a founding father of the EU—it called for deeper cooperation in Europe and led to the establishment in 1951 of the European Coal and Steel Community, with Belgium, France, Germany, Italy, Luxembourg, and the Netherlands.

¹⁷ Stefan Lehne, “The EU and the Creative and Destructive Impact of Crises,” October 18, 2022 <https://carnegieeurope.eu/2022/10/18/eu-and-creative-and-destructive-impact-of-crises-pub-88145#:~:text=Since%20the%20beginning%20of%20the,for%20a%20number%20of%20years.>

¹⁸ EU, “History of the EU” https://european-union.europa.eu/principles-countries-history/history-eu_en

¹⁹ CPJ, “Gunmen attack Paris offices of Charlie Hebdo, kill at least 12,” January 7, 2015 <https://cpj.org/2015/01/gunmen-attack-paris-offices-of-charlie-hebdo-kill/>

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Brussels just how vulnerable European journalists were. At the same time, verbal and physical violence from angry citizens or the police became common at public protests, like the [gilets jaunes](#) (yellow vests) crisis in France (2018-2020) or demonstrations against state-sponsored [COVID-19 policies](#). “Journalists are being targeted simply for doing their job. Some have been threatened, some beaten and, tragically, some murdered. Right here, in our European Union...They all fought and died for our right to be informed. Information is a public good. We must protect those who create transparency – the journalists,” said Ursula von der Leyen, the president of the European Commission, in her [State of the Union speech](#) in September 2021. This violence took place against a background of a worrying level of EU citizens’ mistrust in the media in a number of EU countries, including France, Italy, and Spain.²⁰

The EU was also confronted with governments or political parties bluntly declaring themselves “illiberal”²¹ and deliberately trampling on the rule of law and press freedom. “When a country starts rolling back press freedom, it never stops there,”²² U.S. journalist and author Kati Marton²³ warned at the 2015 launch in Brussels of the “Balancing Act” report (at a time when Viktor Orbán’s authoritarian rule in Hungary could no longer be dismissed as a trifling matter). The rise of these national populist movements had an additional geopolitical dimension as their leaders courted – or were endorsed by – Russia, a country that hardly veiled its attempts to undermine the EU through disinformation and influence-peddling.²⁴

By the time of the 2019 European elections, the European Commission²⁵ and the European Parliament²⁶ were both regularly and publicly recognizing the role that journalists played in defending EU interests and values, but that the institutions, and the member states, were not doing enough to protect them – and that this had to change. Both bodies were more active than ever

²⁰ Molly Killeen, “News media seek to reconnect with audiences amid falling trust,” November 10, 2022 <https://www.euractiv.com/section/media/news/news-media-seek-to-reconnect-with-audiences-amid-falling-trust/>

²¹ “Illiberal Democracies in the EU: the Visegrad Group and the Risk of Disintegration” https://www.cidob.org/en/publications/publication_series/monographs/monographs/illiberal_democracies_in_the_eu_the_visegrad_group_and_the_risk_of_disintegration

²² Ginger Hervey, “Hungary, ‘canary in the coal mine’ of EU press,” September 29, 2015 <https://www.politico.eu/article/hungary-eu-press-freedom-orban-fidesz/>

²³ Kati Marton is a member of CPJ’s board of directors.

²⁴ Multiple reports have documented Russian strategies of influence, including Beatrix Futàk-Campbell, “Political Synergy: How the European Far-Right and Russia Have Joined Forces Against Brussels,” 2020 https://www.jstor.org/stable/pdf/48600543.pdf?refreqid=excelsior%3A24352facde45c0d7e8a9dcf4c2e040d8&ab_segments=&origin=&initiator=&acceptTC=1

²⁵ Eszter Zalan, “EU to better protect journalists, Jourova promises,” October 8, 2019 <https://euobserver.com/eu-political/146194>

²⁶ European Parliament, “LIBE Democracy, Rule of Law and Fundamental Rights Monitoring Group (DRFMG)” <https://www.europarl.europa.eu/committees/en/libe-democracy-rule-of-law-and-fundament/product-details/20190103CDT02662>

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before: holding hearings or meetings, issuing statements or resolutions, or making country missions that drew attention to press freedom and the need for Brussels to uphold the rule of law.

At the same time, journalists also became much more conscious of the pan-European dimension of their work. Professional associations and press freedom groups built up stronger networks and coalitions that increased their profile and enhanced the status of press freedom within the European institutions. They pleaded for common EU policies to support journalism and guarantee their safety.²⁷ The convergence of these trends built up a critical mass to address the issue of press freedom at EU level.

²⁷ CPJ, “CPJ leads call for new European Commission President to prioritize press freedom,” July 21, 2019 <https://cpj.org/2019/07/cpj-leads-call-for-new-european-commission-preside/>

Weak legal arsenal

By the late 2010s Brussels officials and politicians were openly speaking of a blowback as illiberal democracies were threatening not only the legitimacy and credibility of the EU but also the functioning of its institutions. For the European Commission (then chaired by former Luxembourg Prime Minister [Jean-Claude Juncker](#)), it became obvious that the EU had to go to the front lines.²⁸ Challenged by Hungary and Poland in particular, it slowly engaged in a fraught and delicate exercise aimed at safeguarding the rule of law in its member states.

The crucial question revolved around what the EU could actually do. The jurists who drafted the EU's rules and the politicians who voted them in perhaps underestimated the extent to which, once inside, some member states would backtrack on the Copenhagen criteria, the rules that define whether a country is eligible to join the European Union.²⁹ They therefore did not provide for foolproof mechanisms to confront this kind of estrangement from the common norms and values that member states had pledged to uphold when they acceded to the so-called "European club."

The EU's legal arsenal was in fact quite weak, markedly shown by Brussels' failure to challenge backsliding in Hungary.³⁰ The so-called infringement procedures³¹ – legal actions taken by the European Commission against a member state that fails to implement EU law – appear intimidating on paper as the country concerned can be referred to the European Court of Justice and forced to pay financial penalties, but in reality they are complex and long. The rule of law framework,³² in particular the triggering of Article 7 of the Treaty of the European Union, which provides for the suspension of certain rights in case a member state violates the rule of law, could sound impressive too, but the procedure is in part stymied by the so-called unanimity rule requiring

²⁸ Reuters Staff, "EU executive will get tough with countries breaking rule of law: Juncker," September 12, 2018 <https://www.reuters.com/article/us-eu-juncker-ruleoflaw-idUSKCN1LS15L>

²⁹ These rules are: the "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; a functioning market economy and the ability to cope with competitive pressure and market forces within the EU; the ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (the ' *acquis* '), and adherence to the aims of political, economic and monetary union." <https://eur-lex.europa.eu/EN/legal-content/glossary/accession-criteria-copenhagen-criteria.html>

³⁰ CPJ, "Balancing Act: The rule of law mechanism" <https://cpj.org/reports/2015/09/press-freedom-at-risk-europe-chapter-1-rule-of-law/>

³¹ European Commission, "Infringement procedure" https://commission.europa.eu/law/law-making-process/applying-eu-law/infringement-procedure_en

³² European Commission, "Rule of law framework" https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-framework_en

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that sanctions must be agreed by all member states,³³ with the exclusion of the state concerned. If it ever came to a vote on sanctions – requiring unanimity – Hungary and Poland have pledged to support each other against other member states.³⁴

But it was too little too late anyway. Despite the awareness of the danger that he had represented for the EU, Hungary's Orbán was mostly given a free ride, in large part as he benefited from his Fidesz party's membership of the center-right European People's Party (EPP),³⁵ the largest political group in the European Parliament. Between his election victory in 2010 until Fidesz's suspension from the EPP in March 2019,³⁶ Orbán was able to consolidate power. He was given the time to develop a political model that has been inspiring like-minded politicians elsewhere in Europe (and in the U.S.³⁷) and challenging the traditional EU political consensus around liberal democracy and the rule of law.

Press freedom was one of the first targets. "The public media and the regulatory agencies were put under his control, friendly oligarchs captured private media, foreign donors, publishers and investors were squeezed out...until there were only half a dozen independent media left,"³⁸ CPJ Europe Representative Attila Mong said in an interview. In the late 2010s there were stern warnings, recommendations, and rowdy hearings in the European Parliament about the so-called "Orbánization"³⁹ of Europe as well as a number of infringement proceedings on the rule of law.⁴⁰ In late 2019, after a mission to Hungary, CPJ, together with six other press freedom organizations, stated that "the Hungarian government has achieved a degree of media control unprecedented in an EU member state" and urged the EU to "take all available measures" to respond. "The construction of a pro-government media empire serves as a vast propaganda machine for the

³³ European Parliament, "Breaches of EU values: how the EU can act (infographic)," September 28, 2022 <https://www.europarl.europa.eu/news/en/headlines/eu-affairs/20180222STO98434/breaches-of-eu-values-how-the-eu-can-act-infographic>

³⁴ Kim Lane Scheppele, "EU can still block Hungary's veto on Polish sanctions," January 11, 2016 <https://www.politico.eu/article/eu-can-still-block-hungarys-orban-veto-on-polish-pis-sanctions/>

³⁵ Lydia Gall, "Hungary is Taking European Values for a Ride," June 23, 2017 <https://www.hrw.org/news/2017/06/23/hungary-taking-european-values-ride>

³⁶ "Fidesz has been suspended from membership of the EPP party alliance since March 2019 but its MEPs had remained part of the EPP group" until they officially left in 2021. See Maïa de La Baume, "Orbán's Fidesz quits EPP group in European Parliament," March 3, 2021 <https://www.politico.eu/article/epp-suspension-rules-fidesz-european-parliament-viktor-orban-hungary/>

³⁷ The New Yorker, "Why Do Conservatives Love Hungary's Viktor Orbán?" June 27 2022 <https://www.newyorker.com/podcast/the-new-yorker-radio-hour/why-do-conservatives-love-hungarys-viktor-orban>

³⁸ CPJ internal interview

³⁹ National Endowment for Democracy, Democracy Digest, "Orbanization'? How to capture a democracy," May 20, 2022 <https://www.demdigest.org/Orbanization-how-to-capture-a-democracy/>

⁴⁰ Perle Petit, "What should the EU do about Hungary's illiberal turn?" November 4, 2022 https://www.epc.eu/content/PDF/2022/DP_Hungary_s_illiberal_turn.pdf

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government of Prime Minister Viktor Orbán, insulating large parts of the public from access to critical news and information so as to maintain the Fidesz party's hold on power,⁴¹ the joint mission found.

Brussels' new mantras

Inaugurated on December 1, 2019, the new Commission, chaired by German Christian Democrat Ursula von der Leyen, could not shirk the challenges. In the wake of [Brexit](#), the UK's decision to leave the EU – in part interpreted as a broader sign⁴² of anti-establishment politics and a growing distance between people and politicians⁴³ – the threat to Brussels was clear.

Reaffirming the EU's commitment to democracy was imperative. Although it remained constrained by its limited powers, the EU pledged to give teeth to the Rule of Law Mechanism, including around making EU funds conditional on respect for the rule of law and finding creative ways to circumvent the legalistic juggernaut. Political will and retaking the initiative became the new mantras in the Brussels' European quarter.

A few months later, the COVID-19 pandemic further highlighted the urgency of protecting press freedom and journalism, in particular by combatting disinformation as well as EU governments' temptations to control the narrative and impose restrictions and censorship.⁴⁴ In March 2020, then European Parliament President David Sassoli (now deceased) stated that “nobody can be allowed to use this pandemic to undermine our freedoms.”⁴⁵ Hungary again set the bad example. In March 2020, its parliament passed amendments to the penal code threatening journalists with prison sentences if they were found guilty of spreading false information about the pandemic.⁴⁶ But Budapest was not alone: as a report of the Council of Europe Platform for the Safety of Journalists

⁴¹ CPJ, “Hungary’s media control unprecedented in EU, joint mission finds,” December 3, 2019 <https://cpj.org/2019/12/hungarys-media-control-unprecedented-in-eu-joint-m/>

⁴² Evgeniia Iakhnis, Brian Rathbun, Jason Reifler, and Thomas J. Scotto, “Populist referendum: Was ‘Brexit’ an expression of nativist and anti-elitist sentiment?” May 23, 2018 <https://journals.sagepub.com/doi/10.1177/2053168018773964>

⁴³ This distance applies also to the media. According to a 2022 Eurobarometer survey, 49% of Europeans trust public broadcasting, 39% “written press,” and 27% private broadcast stations. <https://www.europarl.europa.eu/news/en/press-room/20220704IPR34401/eu-citizens-trust-traditional-media-most-new-eurobarometer-survey-finds>

⁴⁴ “Wanted! Real action for media freedom in Europe” <https://rm.coe.int/final-version-annual-report-2021-en-wanted-real-action-for-media-freed/1680a2440e>

⁴⁵ Naja Bentzen, “The impact of coronavirus on media freedom,” May 8, 2020 [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2020\)651905](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2020)651905)

⁴⁶ This only applies to state of emergency regulation so it was in effect when the state of emergency was declared due to the pandemic. See CPJ, “Proposed Hungarian laws could imprison journalists covering coronavirus response,” March 24, 2020 <https://cpj.org/2020/03/proposed-hungarian-laws-could-imprison-journalists/>

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confirmed, a number of other EU member states (Bulgaria, Spain, Greece, and Romania) also [adopted measures](#) restraining the press's right to report.⁴⁷

TEXT BOX: FLEXING FINANCIAL MUSCLE

In 2022, the European Commission for the first time invoked the conditionality mechanism against Hungary because of rule of law concerns.⁴⁸ This procedure allows Brussels to withhold EU funds to member states for rule of law breaches that affect the EU's budget.⁴⁹ Although the withholding of funds from Hungary was made in relation to corruption and the use of EU funds, the move was important as it showed that Brussels was finally ready to flex its financial muscles.

Under the leadership of Commissioner Věra Jourová,⁵⁰ the vice president for values and transparency, and with the support of Commissioner for Internal Market Thierry Breton,⁵¹ a more comprehensive plan to create an enabling environment⁵² for media freedom was hatched. While previous policies had been mostly ad hoc, reactive, and piecemeal, the European Commission proposed a strategy for its five-year term.⁵³ The launch of the European Democracy Action Plan in December 2020 framed the overall objective. Standing up to challenges from illiberalism and strengthening press freedom was at the core of it. This plan was complemented by a [European Media and Audiovisual Action Plan](#)⁵⁴ to help the sector recover from a series of crises (including the impact of the internet and the pandemic) and transform itself by embracing and monetizing the

⁴⁷ Platform for the protection of journalism and the safety of journalists / Council of Europe, "COVID-19 Addendum: Press Freedom Suffers in Council of Europe Member States Under COVID-19: COVID-19 Addendum to the annual report by the partner organizations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists," June 2020. <https://rm.coe.int/covid-add-to-the-annual-report-2020-en/16809f0385>

⁴⁸ European Council, "Rule of law conditionality mechanism: Council decides to suspend €6.3 billion given only partial remedial action by Hungary," December 12, 2022 <https://www.consilium.europa.eu/en/press/press-releases/2022/12/12/rule-of-law-conditionality-mechanism/#:~:text=The%20conditionality%20regulation%20is%20aimed,financial%20interests%20of%20the%20Union>

⁴⁹ European Commission, "Rule of law conditionality regulation" https://commission.europa.eu/strategy-and-policy/eu-budget/protection-eu-budget/rule-law-conditionality-regulation_en

⁵⁰ European Commission, "The Commissioners" https://ec.europa.eu/commission/commissioners/2019-2024_en

⁵¹ Breton, as part of his portfolio, heads the Directorate-General for Communications Networks, Content and Technology which "develops and implements policies to make Europe fit for the digital age." Audiovisual and media services policy falls within this Directorate-General.

⁵² Free Press Unlimited, "Enabling environment for the media: Media Advocacy Resource Guide" <https://kq.freepressunlimited.org/themes/enabling-environment/> This concept covers media viability, media law, etc. that determine independent media's capacity to function properly.

⁵³ Ursula von der Leyen, president of the European Commission, "Mission letter" to Věra Jourová, vice-president for values and transparency, December 1, 2019 https://www.europarl.europa.eu/cmsdata/250018/mission-letter-jourova-2019-2024_en.pdf

⁵⁴ European Commission, "European Media and Audiovisual Action Plan" <https://digital-strategy.ec.europa.eu/en/policies/media-and-audiovisual-action-plan#>

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digital transition.⁵⁵

Jourová was critical to this significant shift on press freedom. Visibly moved by her early engagement⁵⁶ with the family of Caruana Galizia and shocked by Kuciak's murder, Jourová took it on herself to push Brussels to better protect journalists in Europe.⁵⁷ Her own background played a key role. "She was born in a communist country (the former Czechoslovakia), she knows what lack of freedom of thought means, she also grasps the deleterious impact of propaganda," one of her close advisers told CPJ.

But there were other factors at work. Institutionally, the European Parliament assumed a bigger role. Its growing protagonism largely contributed to putting press freedom on the EU agenda as a number of members (MEPs) actively devoted themselves to freedom of expression issues. Likewise, there was growing awareness that the EU was reaching a crossroads. European parliamentarians were realizing that Hungarian-style [majoritarianism](#) and restrictions on press freedom were creating conditions for flawed electoral processes that allowed illiberal governments to stay in power and continue undermining EU values and institutions.⁵⁸ As Dutch liberal MEP Sophie in 't Veld told CPJ, the EU had to "finally decide what kind of creature it was: a purely inter-governmental entity or a community of values." In addition, Brexit meant the UK – the member state most opposed to the idea of the EU meddling in national media affairs – could no longer cause headaches. "British newspaper publishers had been the most robust in challenging Brussels initiatives. They interpreted them as a risk for press freedom," Aidan White, founder and honorary president of the Ethical Journalism Network, told CPJ.

The EU is typically seen as responding to questions about its passivity or impotence by highlighting its funding of a very diverse number of initiatives. These budgets clearly reflect the EU's priorities and its defense of quality and public-interest journalism. Its major objectives include the fight against corruption through the reinforcement of investigative journalism on EU-related issues, like the embezzlement of EU funds, the rollback of disinformation, and the monitoring of attacks on the

⁵⁵ European Commission, "Digital Decade: Commission launches Action Plan to support recovery and transformation of the media and audiovisual sectors," December 3, 2020

https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2239

⁵⁶ Jourová first visited Malta in 2018 and met the family of Daphne Caruana Galizia. At the time, from 2014 to 2019, Jourová was European Commissioner for Justice, Consumers and Gender Equality.

<https://twitter.com/VeraJourova/status/1007621752543997953>

⁵⁷ Massimo Costa, "'I will keep my promises to Caruana Galizia family' - Vera Jourova," October 7, 2019

<https://www.maltatoday.com.mt/news/national/97904/i-will-keep-my-promises-to-caruana-galizia-family-vera-jourova#.Y8EnMOIKh-V>

⁵⁸ Attila Mong, "Hungarian journalists fear Orbán will use election win to tighten grip on independent media," April 5, 2022 <https://cpj.org/2022/04/hungarian-journalists-fear-Orban-will-use-election-win-to-tighten-grip-on-independent-media/>

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press. The European Commission also supports press councils, fact-checking and media literacy projects, and the elaboration of business models and of innovation strategies.⁵⁹ The European Commission also funds academic institutions, like the Florence-based European University Institute's Centre for Media Pluralism and Media Freedom (CMPF), which provides expert guidance on media-related issues and publishes the [Media Pluralism Monitor](#), an essential tool to use objective criteria in discussions on media capture and media concentration.

However, it became clear that throwing money at problems was no longer enough. The EU had to confront issues head-on – politically. The first annual Rule of Law Report was published in 2020.⁶⁰ It was meant as a warning: publicizing the failings in a particular member state was expected to name and shame it into adopting necessary reforms. But it was also conceived as a more objective basis to justify real action, including on media freedom and pluralism,⁶¹ with the overall aim of preventing future backsliding. It provided a country by country assessment that included indicators on transparency of media ownership, regulation, and safety of journalists.

In September 2021, the European Union adopted a recommendation on the protection, safety and empowerment of journalists,⁶² setting out concrete actions for member states to take. It sought to convince member states to address some of the underlying daily problems faced by so many European journalists: unresponsive law enforcement to threats, physical violence (including at protests) and online harassment, with an emphasis on female and minority journalists. The recommendation is not legally binding⁶³ and, at the time of writing this report, Brussels had not publicly disclosed whether any member states had provided requested updates on their actions in this regard. Time will tell the extent to which some of the EU's more illiberal governments use smokescreens or obstructive tactics to avoid meaningful action or discussion on how to make journalists safer.

⁵⁹ European Commission, "Media sector calls — EU support to Media Freedom and Pluralism" <https://digital-strategy.ec.europa.eu/en/policies/funding-media-freedom>

⁶⁰ Directorate-General for Justice and Consumers, "2020 Rule of law report - Communication and country chapters," September 30, 2020 https://commission.europa.eu/publications/2020-rule-law-report-communication-and-country-chapters_en

⁶¹ The Rule of Law Report covers four areas: justice, corruption, media, "and other institutional issues related to checks and balances." https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en

⁶² European Commission, "Recommendation on the protection, safety and empowerment of journalists," September 16, 2021 <https://digital-strategy.ec.europa.eu/en/library/recommendation-protection-safety-and-empowerment-journalists>

⁶³ European Union, "Types of legislation" https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en

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In 2022, the European Commission also issued a proposal for a [directive](#) to address what is broadly considered one of the biggest threats to independent journalists in Europe: Strategic Lawsuits Against Public Participation (SLAPPs). These civil or criminal suits are typically brought by individuals, institutions, or corporations to burden journalists and others with the distraction and cost of a legal defense – even if the plaintiffs themselves do not expect to win the case.⁶⁴ The directive, taking on civil cross-border cases, strives to address the personal isolation and legal uncertainty faced by SLAPP victims. Alongside the directive proposal, the European Commission formulated another [recommendation](#) that identified a number of measures for member states to counter vexatious criminal and civil lawsuits – both texts followed sustained calls from SLAPP victims, journalists and civil society.

“The Commission’s proposal provides for early dismissal procedures and shifts the burden on the claimant to prove the claim is not manifestly unfounded. It also obliges member states to ensure that the costs of the proceedings can be imposed on the claimants,”⁶⁵ explains Maria Diaz Crego, policy analyst at the European Parliamentary Research Service (EPRS).

The directive could be adopted in 2023,⁶⁶ but while it has been largely welcomed by groups like the Coalition against SLAPPs in Europe (CASE) – of which CPJ is a member – it will apply only to cross-border civil cases – about 10% of all suits.⁶⁷ “There was no legal basis [for applying the directive] for purely national cases, but it is a political signal that undermines SLAPPs generally,” Nick Aiossu, Transparency International EU’s deputy director, told CPJ.⁶⁸ CASE reports, however, that the Commission was innovative in its thinking about what could be considered cross-border and has been pushing for the parliament and council to maintain as broad an interpretation as possible, rooted in public interest.⁶⁹

Laurent Mauduit, co-founder of French investigative online outlet Mediapart, told CPJ that his website had faced about 300 lawsuits since its founding in 2008. Mauduit himself has received 12

⁶⁴ The prevalence of SLAPPs led to the establishment of CASE, of which CPJ is a member. The anti-SLAPP directive would not only protect journalists and newspapers, but also activists, campaigning organizations, whistleblowers, and others. <https://www.the-case.eu/>

⁶⁵ EPRS, media freedom conference in Paris, December 3, 2022

⁶⁶ “The proposed Directive entered the ordinary legislative procedure in the European Parliament and the Council.” <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-initiative-against-abusive-litigation-targeting-journalists-and-rights-defenders>

⁶⁷ CASE, “Shutting Out Criticism: How SLAPPs Threaten European Democracy,” March 2022 <https://static1.squarespace.com/static/5f2901e7c623033e2122f326/t/6231bde2b87111480858c6aa/1647427074081/CASE+Report+on+SLAPPs+in+Europe.pdf>

⁶⁸ Platform to Promote the Protection of Journalism and Safety of Journalists launched its report “Defending Press Freedom in Times of Tension and Conflict.” <https://fom.coe.int/en/rapports/detail/4>

⁶⁹ ECPMF, “CASE welcomes the EC’s Anti-SLAPP Initiative as a landmark step in the right direction” <https://www.ecpmf.eu/case-welcomes-the-ecs-anti-slapp-initiative-as-a-landmark-step-in-the-right-direction/>

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legal complaints from a single bank. “We live in a judicial universe of litigation,” he said. Matthew Caruana Galizia, son of the murdered Maltese journalist, has told EU institutions that his mother was facing 43 civil and five criminal libel suits at the time of her assassination⁷⁰ – some of which her family are still fighting years after her death.

A March 2023 text agreed by member states indicates they want to [water down](#) key parts of the draft law, including the important provisions for cross-border cases and early dismissal. CASE [cited](#) the “compromise proposal” as “self-defeating” and “contrary to the purpose of the anti-SLAPP Directive and undermines its spirit.”

The EU has also responded to pressure to rein in big tech, putting into effect the long-awaited Digital Services Act (DSA) and Digital Markets Act in November 2022 (to be applied in full by member states by 2024).⁷¹ According to digital-rights group Access Now, the DSA was the “first time in the history of EU platform governance regulation that people’s fundamental rights are put at the forefront,”⁷² with both acts seeking to “create a safer digital space.”⁷³

The DSA covered the question of content moderation, which media representatives and organizations like CPJ had noted could potentially impact journalism through the removal of journalistic content or of sensitive yet legitimate source material.⁷⁴ The reactions to the bill were nuanced. “The final bill avoids transforming social networks and search engines into censorship tools, which is great news,” said the Electronic Frontier Foundation, a defender of free speech online. “It also retains important principles under the previous internet rules that helped to make the internet free, such as allowing liability exemptions for online platforms for the speech of others and limiting user monitoring. And it improves things as well, by imposing higher standards for transparency around content moderation and creating more user control over algorithmically-curated recommendations.”

⁷⁰ Daphne Caruana Galizia Foundation, “Defence against frivolous and vexatious libel suits” <https://www.daphne.foundation/en/justice/vexatious-libel-cases>

⁷¹ European Commission, “Digital Services Act: EU’s landmark rules for online platforms enter into force,” November 16, 2022 https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6906
European Parliament, “Digital Markets Act: Application timeline,” November 30, 2022 [https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA\(2022\)739226](https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2022)739226)

⁷² Eliska Pirkova, “The Digital Services Act: your guide to the EU’s new content moderation rules,” March 17, 2023 <https://www.accessnow.org/digital-services-act-eu-content-moderation-rules-guide/>

⁷³ European Commission, “The Digital Services Act package” <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package#:~:text=The%20Digital%20Services%20Act%20and,level%20playing%20field%20for%20business>

⁷⁴ Tom Gibson, “How will the EU’s Digital Services Act impact journalism?” July 29, 2020 <https://cpj.org/2020/07/how-will-the-eus-digital-services-act-impact-journalism/>

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However, the EFF added, "the final deal isn't all good news... The DSA obliges platforms to assess and mitigate systemic risks, but there is a lot of ambiguity about how this will turn out in practice. Much will depend on how social media platforms interpret their obligations under the DSA, and how European Union authorities enforce the regulation."⁷⁵ The future litmus test for the DSA will be the speed, transparency and effectiveness of platforms' response to journalists' complaints, the extent to which platforms' risk assessments and mitigation measures handle media freedom concerns effectively and are trusted by journalists and the media freedom community, and the way that platforms' presentation of content promotes media freedom and pluralism.

Some media groups had asked for a media exemption, or the right to be warned by online platforms before any decision affecting their content was taken. Without it, "the boundaries of press freedom would no longer be defined by law, but by private companies,"⁷⁶ warned Ilias Konteas, director of EMMA/ENPA,⁷⁷ two organizations representing Europe's magazine and newspaper publishers. However, a media exemption was not included in the final version of the DSA,⁷⁸ with the European Commission's Jourová labeling it "one of those good intentions leading to hell."

The refusal was mainly due to tech companies' opposition, but also because of anti-disinformation activists' concern about the exploitation of the exemption in an environment where anyone with a smartphone and the ability to post on social media could call themselves a journalist or a publisher. "Granting blanket exemptions for the media sector would defeat the DSA's number one objective of ensuring the safety of users online," wrote tech expert Victoria de Posson, currently secretary general of the European Tech Alliance (EUTA). "Free speech must be protected with exceptions for some specific content, instead of creating sector-specific exemption."⁷⁹

⁷⁵ Electronic Frontier Foundation, "EFF Statement on EU Parliament's Adoption of Digital Services Act and Digital Markets Act," July 5, 2022

<https://www.eff.org/press/releases/eff-statement-eu-parliaments-formal-approval-digital-services-act-and-digital-markets>

⁷⁶ ENPA, "The Digital Services Act must safeguard freedom of expression online," January 18, 2022

<https://www.enpa.eu/press-releases/digital-services-act-must-safeguard-freedom-expression-online>

⁷⁷ European Magazine Media Association (EMMA); European Newspaper Publishers' Association (ENPA).

⁷⁸ Doris Buijs, "The Digital Services Act and the implications for news media and journalistic content (Part 1)," September 29, 2022 <https://dsa-observatory.eu/2022/09/29/digital-services-act-implications-for-news-media-journalistic-content-part-1/>

⁷⁹ Victoria de Posson, "A media exemption in the DSA is a recipe for unintended consequences," December 7, 2021 <https://www.project-disco.org/european-union/120721-a-media-exemption-in-the-dsa-is-a-recipe-for-unintended-consequences/>

Upholding the law

Other governments, like those headed by Slovenia's "pro-Trump populist"⁸⁰ Prime Minister Janez Janša from 2020-2022 and Greece's conservative Prime Minister Kyriakos Mitsotakis, also adopted illiberal practices, from media capture to public denigration of critical journalists.⁸¹

Yet the European Union can only act in those areas where its member states have authorized it to do so. The European Commission has been given so-called "exclusive competences"⁸² on competition policies and trade, for instance, but it shares these powers with member states on justice and fundamental rights, which cover press freedom. The challenge has been how to push the interpretation of the treaties to uphold rights in ways that might not be open to legal dispute.

"We need new laws which draw on the European Commission's own core and unquestionable prerogatives," a top EU official dealing with Hungary told CPJ in mid-2022, not long after the authorities blocked the broadcasting license of Budapest-based Klubrádió [radio] station.⁸³ "The only time Orbán had to backtrack is when we applied EU market regulations in order to protect Klubrádió, [radio station] that he had in his crosshairs," said the official. "The Commission argued that the power of some pro-Orbán media is such that it effectively prevents others to enter into the market, which is in clear violation of the rules on competition and cross-border investments." Klubradio however still ended up losing its license.⁸⁴

Using internal market rules as a legal basis requires, however, some innovative thinking. "If, for instance, a member state hampers media investigations into corruption, its action might be considered a violation of transparency rules necessary to the internal market," a senior European Commission official told CPJ. "If it misuses EU funds to reward friendly media with state advertising it may be a breach of internal market regulations." Justice Commissioner Didier Reynders told *Le Soir* in July 2022 that the Commission was in the process of developing a wider competence on this issue. "We can act on media regulators and broadcasting licenses, or by regulating public

⁸⁰ Matt Murphy, "Janez Jansa: Slovenia votes out pro-Trump populist," April 25, 2022

<https://www.bbc.com/news/world-europe-61214175>

⁸¹ "Wanted! Real action for media freedom in Europe" <https://rm.coe.int/final-version-annual-report-2021-en-wanted-real-action-for-media-freed/1680a2440e>

⁸² EU, "Division of competences within the European Union," February 24, 2022 <https://eur-lex.europa.eu/EN/legal-content/summary/division-of-competences-within-the-european-union.html>

⁸³ Attila Mong, "Hungary's Klubrádió owner András Arató on how the station is responding to the loss of its broadcast license," November 9, 2021 <https://cpj.org/2021/11/hungary-klubradio-andras-arato-loss-broadcast-license/>

⁸⁴ "Hungary's Klubrádió owner András Arató on how the station is responding to the loss of its broadcast license" <https://cpj.org/2021/11/hungary-klubradio-andras-arato-loss-broadcast-license/>

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authorities' communications or advertising because the allocation of resources by these authorities may totally unbalance the relations among the media."⁸⁵ Marius Dragomir, founding director of the Santiago de Compostela-based Media and Journalism Research Center, told CPJ that these were crucial questions, "as media capture by oligarchs and the scooping [hijacking] of state advertising and subsidies drastically limit new investments from other private or not-for-profit actors."

In the struggle to find ways to protect media pluralism and independence in the EU, the European Commission announced its proposal for the [European Media Freedom Act](#) (EMFA) on September 16, 2022.⁸⁶ Using EU market law as its basis, the draft regulation seeks to broadly defend journalists from "undue interference" by safeguarding editorial independence; protecting journalists against abusive spyware; funding and creating guarantees to ensure public service⁸⁷ media is independent; and improving transparency around media mergers, ownership and state advertising. The spirit of the text was clearly to limit or curb the financial and political capture of media by certain EU governments or business interests connected to those governments. A proposed independent European Board for Media Services comprised of national media authorities would provide oversight and assist the Commission.⁸⁸ The Commission also adopted a complementary recommendation to, amongst other things, encourage internal safeguards for editorial independence and transparency around media ownership. "The idea is to create common standards related to the issues identified in the rule of law reports," according to Marie Frenay, an adviser to Commissioner Jourová.

Many press freedom advocates welcomed the proposal, saying that linking internal trade law with press freedom was a smart and significant step forward, placing press freedom front and center. "It is the first time the Commission considers news as a public good," European Federation of Journalists Director Renate Schroeder told the European Journalism Symposium in Brussels in November 2022. The proposal also gave it a pan-European dimension. "Press freedom is still often considered as a national or even a local issue. We must get out of this national fragmentation," said Jean-Pierre Jacqmin, news director at the French-language Belgian public broadcaster RTBF.

⁸⁵ Véronique Lamquin, "Didier Reynders: 'On observe une tendance inquiétante en termes de sécurité des journalistes,'" July 13, 2022 <https://www.lesoir.be/453766/article/2022-07-13/didier-reynders-observe-une-tendance-inquietante-en-termes-de-securite-des>

⁸⁶ European Commission, "European Media Freedom Act: Commission proposes rules to protect media pluralism and independence in the EU," September 16, 2022 https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5504

⁸⁷ Article 2 of the European Media Freedom Act defines a public service media provider as a provider "entrusted with a public service mission under national law or receives national public funding for the fulfillment of such a mission." <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0457&from=EN>

⁸⁸ "European Media Freedom Act: Commission proposes rules to protect media pluralism and independence in the EU" https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5504

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“If passed, this new law would represent a major shift in EU policy on the media, and a welcome shot in the arm for democracy across the Union,”⁸⁹ wrote Damian Tambini, Distinguished Policy Fellow in the Department of Media and Communications at the London School of Economics.

However, journalists and press freedom groups also identified a number of limits and ambiguities. These include questions on whether the law goes far enough on media ownership transparency,⁹⁰ whether requirements could apply to the full breadth of possible media service providers, how it could be enforced, and how information could be made publicly accessible.

In addition, would the proposed European Board for Media Services⁹¹ be independent given that it would be made up of representatives of national media regulatory boards? Although article 53 of the Audiovisual Media Services Directive clearly requires these boards’ independence from governments, “some of these national bodies, like in Croatia, are under political pressure,”⁹² warned Maja Sever, President of the Croatian Union of Journalists and of the European Federation of Journalists. Another concern: what would guarantee that the board’s actions and opinions were independent of the European Commission? And how would the board work with press freedom groups as part of a proposed structured dialogue?

Another challenge is ensuring that the EU’s proposals meet the standards and interpretation provided by the European Convention on Human Rights (ECHR) and case-law from the European Court of Human Rights on protecting journalists and their sources, including from all forms of spyware and surveillance. Dirk Voorhoof, a European media law expert at Ghent University and a member of Columbia University’s global freedom of expression network, notes that the provisions intended to protect journalistic sources risk being “a step backwards” because they “[do] not guarantee the level of protection that all EU member states should already respect as developed and applied in the well-established case law of the European Court of Human Rights (ECHR) on this topic.”⁹³ Voorhoof has called for more precise judicial safeguards, like court orders or

⁸⁹ Damian Tambini, “The democratic fightback has begun: The European Commission’s new European Media Freedom Act,” September 16, 2022 <https://blogs.lse.ac.uk/euoppblog/2022/09/16/the-democratic-fightback-has-begun-the-european-commissions-new-european-media-freedom-act/>

⁹⁰ Luci Rohrbacherová and Eva Simon, “Transparency of Media Ownership within the EMFA Proposal” https://dq4n3btxmr8c9.cloudfront.net/files/3rgtsq/Media_ownership_within_the_EMFA.pdf

⁹¹ “European Media Freedom Act: Commission proposes rules to protect media pluralism and independence in the EU” https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5504 “The Commission proposes to set up a new independent European Board for Media Services comprised of national media authorities. The Board will promote the effective and consistent application of the EU media law framework, in particular by assisting the Commission in preparing guidelines on media regulatory matters. It will also be able to issue opinions on national measures and decisions affecting media markets and media market concentrations.”

⁹² European Journalism Symposium in Brussels, November 25, 2022

⁹³ Dirk Voorhoof, “European Media Freedom Act and the protection of journalistic sources: still some way to go – Dirk Voorhoof,” November 18, 2022.

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proportionality requirements, to be included in the final text. The European Data Protection Supervisor has also said it does not go far enough on clarifying journalists' protections.⁹⁴

One article of the text⁹⁵ proposes that media outlets declare themselves as media in order to better engage with online platforms in “meaningful dialogue...with a view to finding an amicable solution” on content-removal decisions. This approach has divided opinions amongst press freedom and disinformation groups about how such a system would work in practice, including potentially creating loopholes for media outlets considered as seeking to spread disinformation.⁹⁶

Some skeptics also criticize the lack of penalties for non-compliant member states. “It leaves too much ground to member states,”⁹⁷ said Maria Diaz Crego, an analyst at the European Parliamentary Research Service.

The draft legislation will have to navigate between the institutions to be adopted by the Council and the European Parliament and confront a number of member states that feel the Commission has gone beyond the limit of its mandate. Some governments, in particular Germany, which is [under pressure](#) from its media publishers, [unsuccessfully raised concerns](#) about the legal basis of the act.⁹⁸

Journalists and press freedom groups share a strong consensus on core issues like violence against the press, SLAPPs, or surveillance. But journalist unions, member states and media owners do not necessarily see eye to eye on the question of editorial independence, public service media, media concentration, or ownership transparency. Finding common ground between divergent group interests and different levels of tolerance for interference will be yet another balancing act for the EU.

<https://inform.org/2022/11/18/european-media-freedom-act-and-the-protection-of-journalistic-sources-still-some-way-to-go-dirk-voorhoof/>

⁹⁴ EU, “EU Media Freedom Act: EDPS calls for better protection for all journalists and a ban on highly advanced military-grade spyware,” November 14, 2022 https://edps.europa.eu/press-publications/press-news/press-releases/2022/eu-media-freedom-act-edps-calls-better-protection-all-journalists-and-ban-highly-advanced-military-grade-spyware_en

⁹⁵ Article 17 of the European Media Freedom Act <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0457&from=EN>

⁹⁶ See “Platforms’ privileged treatment’ of media content (Article 17)” in Eliska Pirkova, “FAQ: how the EU plans to protect media freedom,” March 17, 2023 <https://www.accessnow.org/faq-how-the-eu-plans-to-protect-media-freedom/>

⁹⁷ EPRS, media freedom panel discussion, December 3, 2022

⁹⁸ Molly Killeen, “EU Council lawyers confirm legal basis of Media Freedom Act,” March 30, 2023 <https://www.euractiv.com/section/media/news/eu-council-lawyers-confirm-legal-basis-of-media-freedom-act/>

Collateral damage

Journalists' organizations and press freedom advocates have welcomed many of the European Commission's current initiatives.

However, other measures – such as digital legislation – have raised fears of harmful side-effects for the media. While claiming virtuous objectives – like combating online child abuse,⁹⁹ fighting terrorism,¹⁰⁰ supporting criminal investigations,¹⁰¹ or protecting privacy¹⁰² – journalists and digital rights activists fear that the implementation of some provisions may adversely impact media freedom by potentially paving the way to online censorship or undermining reporters' source confidentiality or their ability to work effectively or securely.

On content moderation, media organizations are particularly concerned about the risks of relying on private tech companies to defend press freedom when they decide whether to delete or keep information. The specter of crushing fines, journalists fear, may lead these companies to err on the side of excessive caution and unjustified censorship. "When it comes to content regulation, the EU should be careful not to open space for national governments to misuse the rules," the Media and Journalism Research Center's Dragomir told CPJ. "It really can have a chilling effect on journalism or freedom of expression."

Dragomir notes that well-intentioned measures may in fact be misused by illiberal actors. "The much-vaunted GDPR [[General Data Protection Regulation](#)], a law meant to protect EU citizens' personal information, includes a journalistic exemption, but it has nonetheless sometimes been misused by governments to block publication or deny requests to access information," he told CPJ.

In 2020, for instance, a Hungarian court ordered the recall of the issue of Forbes Hungary on the country's 50 richest people after one company complained that the magazine had violated the GDPR by listing the company owner's name without his permission.¹⁰³

⁹⁹ EDRI, "European Commission must uphold privacy, security and free expression by withdrawing new law, say civil society," June 8, 2022 <https://edri.org/our-work/european-commission-must-uphold-privacy-security-and-free-expression-by-withdrawing-new-law/>

¹⁰⁰ Tom Gibson, "CPJ joins call to reject draft EU regulation for online terrorist content," March 25, 2021 <https://cpj.org/2021/03/cpj-reject-eu-regulation-online-terrorist-content/>

¹⁰¹ Tom Gibson, "CPJ reminds EU that 'e-evidence' rules should protect journalists," September 14, 2020 <https://cpj.org/2020/09/cpj-reminds-eu-that-e-evidence-rules-should-protect-journalists/>

¹⁰² CPJ, "Hungarian court gags investigative report, citing EU data protection law," October 21, 2020 <https://cpj.org/2020/10/hungarian-court-gags-investigative-report-citing-eu-data-protection-law/>

¹⁰³ Zsuzsa Detrekői, "How to Gag Journalism in Hungary: Use GDPR," October 7, 2020 <https://cmds.ceu.edu/article/2020-10-07/how-gag-journalism-hungary-use-gdpr>

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This was not an isolated case.

In October 2020, a Hungarian court issued a gag order that cited the GDPR to prevent the weekly Magyar Narancs newspaper from publishing an article on Budapest-based soft drinks company Hell Energy and its owners.¹⁰⁴ “Due to incomplete, confused or overly narrow national implementations of this journalistic exemption, the GDPR is increasingly discovered as an instrument to discourage, or punish, critical news coverage,” writes Melinda Rucz, a researcher at the Institute for Information Law (IViR) at the University of Amsterdam. “GDPR-based litigation and administrative proceedings emerge as new forms of strategic litigation against public participation (SLAPP), with dangerous implications for the protection of public interest journalism in Europe.”¹⁰⁵

In late 2019 Romanian authorities filed a complaint under the GDPR, ordering the investigative outlet Rise Project to reveal its sources on a report alleging [corruption involving Liviu Dragnea](#), then president of the ruling party, or pay a fine of up to 20 million euros (US\$23 million).¹⁰⁶

GDPR has also been used to obstruct journalists who want to get access to CCTV footage for their investigations. “On several occasions, in Slovakia for instance, I went there immediately to collect evidence on attacks on the press. But I was refused access to CCTV,” Vlad Lavrov, security official at the Organized Crime and Corruption Reporting Project (OCCRP), told CPJ. Although journalists can express concern about the misuse of the GDPR to the European Commission,¹⁰⁷ to date there has been no formal infringement procedure against these offending countries for press freedom abuses.

Encryption

Recent years have seen a growing tension between free speech advocates and the EU over efforts to obtain expanded access to end-to-end encryption of electronic communications. For journalists, encrypted messages are essential to obtain confidential information and protect

¹⁰⁴ CPJ, “Hungarian court gags investigative report, citing EU data protection law,” October 21, 2020 <https://cpj.org/2020/10/hungarian-court-gags-investigative-report-citing-eu-data-protection-law/>

¹⁰⁵ Melinda Rucz, “The GDPR enters the SLAPP scene: GDPR proceedings as emerging forms of strategic litigation against public participation,” February 22, 2022 <https://europeanlawblog.eu/2022/02/22/the-gdpr-enters-the-slapp-scene-gdpr-proceedings-as-emerging-forms-of-strategic-litigation-against-public-participation/>

¹⁰⁶ Attila Mong, “In Romania, EU data protection law used to try to muzzle Rise Project, January 16, 2019 <https://cpj.org/2019/01/in-romania-eu-data-protection-law-used-to-try-to-m/>

¹⁰⁷ Data Protection Law Scholars Network, “The right to lodge a data protection complaint: OK, but then what? An empirical study of current practices under the GDPR,” June 2022 <https://www.accessnow.org/cms/assets/uploads/2022/06/Complaint-study-Final-version-before-design-June-15.pdf>

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their sources. For governments and law-enforcement agencies, encrypted messages provide a hiding place for criminal activities like terrorism or child sexual abuse.

The European Commission says it is [committed](#) to protecting children by proposing new legislation to help online service providers in detecting online child abuse, but in doing so risks opening the door for the automated scanning of everyone's private communications. Civil society organizations – including CPJ – have called on the EU “to not interfere with encryption services, which protect both cybersecurity and journalists’ ability to communicate with their sources securely.”¹⁰⁸

In a position paper published in October 2022, international advocacy network European Digital Rights (EDRi) warned against the potential collateral damage of the European Commission's proposal for a Child Sexual Abuse Regulation. “The proposal is a fishing exercise,” said EDRi, “treating all internet users in the EU as potential child sexual abuse perpetrators. By casting a wide net instead of starting with reasonable suspicion of individual perpetrators, the proposal turns the presumption of innocence on its head and inverts the rule of law, due process and the right to the presumption of innocence.”¹⁰⁹

The proposed regulation, noted EDRi, would interfere “with a wide range of other rights and freedoms, including free expression.” As pressure mounts to conclude negotiations on the proposal before the 2024 elections, critics – including within the EU institutions – are vocal in their complaints that the Commission has failed to meet the test of proportionality.¹¹⁰ It is now up to the European Parliament (and member states) to weigh in with a counter-strategy that allows for both the protection of child rights and encryption.¹¹¹

¹⁰⁸ Tom Gibson, “CPJ joins call for human rights protections in EU Digital Services Act,” March 2, 2022 <https://cpj.org/2022/03/cpj-joins-call-for-human-rights-protections-in-eu-digital-services-act/>

¹⁰⁹ EDRi, “Position paper: A safe internet for all – Upholding private and secure communications,” October 19, 2022 <https://edri.org/our-work/a-safe-internet-for-all-upholding-private-and-secure-communications/>

¹¹⁰ EDPB and EDPS, “Joint Opinion 4/2022 on the Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse,” July 28, 2022 https://edps.europa.eu/system/files/2022-07/22-07-28_edpb-edps-joint-opinion-csam_en.pdf

¹¹¹ Javier Zarzalejos, “New legislation to fight child sexual abuse online,” March 20, 2023 <https://www.europarl.europa.eu/legislative-train/theme-promoting-our-european-way-of-life/file-combating-child-sexual-abuse-online>

Spyware and the EU

In July 2021 the [Pegasus Project](#), an investigation led by Forbidden Stories with the assistance of Amnesty International's Security Lab,¹¹² revealed how some EU countries, in spite of being officially committed to protect journalists' freedom, had used [surveillance technology](#) to spy on the press.¹¹³ In response, the European Parliament set up the [PEGA Committee of Inquiry](#) to investigate alleged breaches of EU law in the use of the surveillance software in EU member states and, in association with the Foreign Affairs Committee (AFET), in non-EU countries where its use could have implications for EU relations. The European Commission lacks powers to hold member states to account – a weakness to be partially addressed in the upcoming European Media Freedom Act.

On September 9, 2021, the EU put in force a new regulation¹¹⁴ on the export of dual-use technology, covering in particular surveillance technologies used and abused in order to spy on journalists in third countries. But as CPJ, together with a number of NGOs, had warned¹¹⁵ on September 8, 2021, effective implementation by member states was not guaranteed. EU member states, including Bulgaria and Cyprus, were subsequently reported to have exported surveillance equipment to third countries.¹¹⁶ On December 8, 2022, the Greek government also confirmed to The New York Times that it gave Athens-based company Intellexa the official permits to export the malicious spyware Predator to Madagascar.¹¹⁷

Disinformation

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Amnesty International, "Forensic Methodology Report: How to catch NSO Group's Pegasus," July 18, 2021 <https://www.amnesty.org/en/latest/research/2021/07/forensic-methodology-report-how-to-catch-nso-groups-pegasus/>

¹¹³ Forbidden Stories, "About the Pegasus Project" <https://forbiddenstories.org/about-the-pegasus-project/>

¹¹⁴ EU, "Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast)" <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R0821>

¹¹⁵ Human Rights Watch, "EU: Robustly Implement New Export Rules for Surveillance Tech," September 8, 2021 https://www.hrw.org/news/2021/09/08/eu-robustly-implement-new-export-rules-surveillance-tech#_ftn1

¹¹⁶ "European Parliament Draft Recommendation to the Council and the Commission ... following the investigation of alleged contraventions and maladministration in the application of Union law in relation to the use of Pegasus and equivalent surveillance spyware" https://www.europarl.europa.eu/doceo/document/PEGA-RD-740554_EN.pdf

¹¹⁷ Mark Mazzetti, Ronen Bergman, and Matina Stevis-Gridneff, "How the Global Spyware Industry Spiraled Out of Control," January 28, 2023 <https://www.nytimes.com/2022/12/08/us/politics/spyware-nso-pegasus-paragon.html>

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Brussels recognizes that disinformation¹¹⁸ – which it [defines](#) as “false or misleading content that is spread with an intention to deceive or secure economic or political gain and which may cause public harm” – poses a major threat for democracies by undermining and polluting the fact-based, political decision-making on which they are founded. In recent years, the problem of “fake news” and [post-truth politics](#) has been exacerbated within the EU by the rise of illiberal, anti-Brussels movements. It has also been associated, as underlined in a report for the European Parliament’s DROI human rights subcommittee, with inciting “violence, discrimination or hostility against identifiable groups in society.”¹¹⁹ A ground-breaking 2022 report¹²⁰ on foreign interference in EU democracies found that a number of hostile states, including Russia and China, had tried for years to manipulate public opinion by using disinformation on media and social networks. Among the recommendations the MEPs considered were revoking the licenses of organizations distributing foreign state propaganda and forcing social media platforms to stop boosting inauthentic accounts “that drive the spread of harmful foreign interference.”

The European Commission published a strengthened Code of Practice on Disinformation in June 2022.¹²¹ Signed by 34 companies and organizations, including Google, Meta, and Twitter, this voluntary code includes proposals such as demonetizing the dissemination of disinformation; ensuring the transparency of political advertising; enhancing cooperation with fact-checkers and providing researchers with better access to data.¹²²

The dilemma here is when the battle against disinformation crosses the line into censorship. “A number of member states, among them Hungary, have adopted anti-fake news policies which in reality constrain freedom of expression,”¹²³ French media law scholar and fact-checking expert Vincent Couronne explains.

If they agree that building trust in journalism is crucial, press freedom organizations are not necessarily on the same page when they discuss concretely how to combat disinformation. The

¹¹⁸ Section 4 of the European democracy action plan defines disinformation as “false or misleading content that is spread with an intention to deceive or secure economic or political gain and which may cause public harm” <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0790&from=EN>

¹¹⁹ Carme Colomina, Héctor Sánchez Margalef, and Richard Youngs, “The impact of disinformation on democratic processes and human rights in the world,” April 22, 2021 [https://www.europarl.europa.eu/thinktank/en/document/EXPO_STU\(2021\)653635](https://www.europarl.europa.eu/thinktank/en/document/EXPO_STU(2021)653635)

¹²⁰ “Special Committee on Foreign Interference in all Democratic Processes in the European Union, including Disinformation” https://www.europarl.europa.eu/doceo/document/A-9-2022-0022_EN.html

¹²¹ European Commission, “The 2022 Code of Practice on Disinformation” <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>

¹²² “The 2022 Code of Practice on Disinformation” <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>

¹²³ UNESCO, press freedom conference, December 2, 2022

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debate often focuses on the labeling of the media according to their level of trust and reliability, the linking of EU funding to the respect of core journalistic principles, or the banning of media accused of being tools of influence of foreign states. “When Google qualifies as state media those which receive public funding, we are on the wrong track,” said Dragomir when he raised the confusion by some tech platforms between independent public broadcasters (like the U.K.’s BBC) and non-independent, state-controlled media (like Russia’s RT). “Imposing such labels in the legislation might be problematic too. How do you guarantee that such a system will not be hijacked or that it is adapted to smaller media operators?”

The EU’s 2022 suspension of broadcasts by Russian state media, RT (previously Russia Today) and Sputnik because of “systematic information manipulation and disinformation by the Kremlin” following Russia’s full-scale invasion of Ukraine on February 24, also raised concerns amongst some press freedom activists as it was imposed as part of EU sanctions, instead of being grounded in the implementation of existing EU and national media legislation. “The EU Council and Commission might have opened a Pandora’s box to the detriment of its own crucial values of democracy, the rule of law and media freedom,”¹²⁴ warned Ghent University’s Voorhoof.

In May 2022, the main Dutch journalists’ union (NVJ) filed a lawsuit with the [Court of Justice of the European Union](#) challenging the suspension as a violation of European citizens’ own rights to freedom of information. “Allowing the ban to go unchallenged could set a precedent for banning other politicized news outlets,” NVJ General Secretary Thomas Bruning argued. “Disinformation is a serious problem of our times. Censorship is an easy answer, but it’s not the right answer.”¹²⁵

RT France also questioned the suspension and submitted a request to the Court of Justice of the European Union. In July, the court upheld the ban, ruling that there was a “concrete, precise and consistent body of evidence” that can demonstrate RT’s disinformation campaigns constitute a “significant and direct threat” to the EU’s public order and security.¹²⁶ Freedom of expression advocates criticized the Commission’s decision for questionable [proportionality](#).

¹²⁴ Dick Voorhoof, “EU silences Russian state media: a step in the wrong direction – Dirk Voorhoof,” May 8, 2022 <https://inform.org/2022/05/08/eu-silences-russian-state-media-a-step-in-the-wrong-direction-dirk-voorhoof/>

¹²⁵ Toby Sterling, “Dutch journalists, rights group file lawsuit challenging EU ban on RT, Sputnik,” May 25, 2022 <https://www.reuters.com/business/media-telecom/dutch-journalists-rights-group-file-lawsuit-challenging-eu-ban-rt-sputnik-2022-05-25/>

¹²⁶ Jorge Liboreiro, “European General Court upholds EU ban on Russia Today,” August 1, 2022 <https://www.euronews.com/my-europe/2022/07/27/european-general-court-upholds-eu-ban-on-russia-today>

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To date, the European Commission has not given a clear response to inquiries from freedom of expression groups – including CPJ – including when the ban will end and what resources they have allocated to monitor the ban.¹²⁷

¹²⁷ On April 19, 2022, CPJ, Access Now, and EDRi wrote to the European Commission seeking information about the implementation of the RT-Sputnik ban. A response was received on June 28, 2022. An information request also was sent on January 19, 2023, to ask the Commission to provide further information not otherwise provided in the June response.

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TEXT BOX - WAR IN UKRAINE

The EU's commitment to assisting journalists has been tested by Russia's war against Ukraine,¹²⁸ with many member states providing refuge or support to Russian and Ukrainian journalists affected by the war.

In the new emergency support program for Ukraine,¹²⁹ 15 million euros have been earmarked for measures to strengthen the media. Ukrainian journalists based in Ukraine or in EU [candidate countries](#) can also benefit from support from the EU-funded Media Freedom Rapid Response network, which provides grants of up to 5,000 euros to cover needs such as medical assistance, subsistence, relocation costs and psychological support. The Journalists-in-Residence program¹³⁰ is already offering temporary shelter to a number of journalists in Leipzig and Milan. Despite the emergency, "exiled journalists have experienced difficulties to obtain visas and to normalize their situation by opening bank accounts or getting a job," Ricardo Gutiérrez, general secretary of the European Federation of Journalists, told CPJ. Independent Russian journalists have also received a mixed welcome, even though Gutiérrez sees them as "crucial in any strategy aiming to circumvent the news blackout that has fallen on Russia."

The war may also influence the way the EU deals with its rule of law procedures against Hungary and Poland as these two illiberal countries have adopted radically different approaches to the armed conflict. While Hungary's Orbán has expressed support for Putin, Poland's government has emerged as one of the most vocal EU member states against Russia. "The imperative to maintain European unity in the face of Russian aggression has put the EU political establishment under pressure to de-escalate its rule of law conflict with Poland's ruling party, Law and Justice,"¹³¹ Sussex University Professor Aleks Szczerbiak wrote in July 2022.

"In open conflict with the European Commission on Rule of Law issues, Poland's immediate and unflinching support to Ukraine since the first days of the Russian aggression, its exemplary reception

¹²⁸ Tarja Laaninen, "Ukraine: Media freedom and disinformation," June 24, 2022 <https://epthinktank.eu/2022/06/24/ukraine-media-freedom-and-disinformation/>

¹²⁹ European Commission, "EU assistance to Ukraine" https://eu-solidarity-ukraine.ec.europa.eu/eu-assistance-ukraine_en

¹³⁰ Media Freedom Rapid Response, "Residencies" <https://www.mfrr.eu/support/residencies/>

¹³¹ Aleks Szczerbiak, "How will the Russia-Ukraine war affect Poland's rule of law dispute with the EU?" July 11, 2022 <https://www.pubaffairsbruxelles.eu/opinion-analysis/how-will-the-russia-ukraine-war-affect-polands-rule-of-law-dispute-with-the-eu/>

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of millions of refugees, its position as a hub for Western military assistance to Kyiv, have put her back on the saddle,”¹³² added Le Monde and The New York Times columnist Sylvie Kauffmann.

¹³² Sylvie Kauffmann, “La vision de ‘l’Europe à un tournant historique’ défendue par la Pologne est à l’opposé de celle de ses partenaires français et allemand,” April 5, 2023
https://www.lemonde.fr/idees/article/2023/04/05/la-vision-de-l-europe-a-un-tournant-historique-defendue-par-la-pologne-est-a-l-oppose-de-celle-de-ses-partenaires-francais-et-allemand_6168293_3232.html

Trade Secrets Directive

Adopted in June 2016 to standardize the national laws in EU countries against the unlawful acquisition, disclosure, and use of trade secrets, the Trade Secrets Directive has been controversial from the outset. According to the European Commission, the directive does not affect press freedom nor the right to information. “Journalists remain free to investigate and publish news on companies’ practices and business affairs, as they were before,” the Commission [states](#). “The Directive only deals with unlawful conduct by which someone acquires or discloses, without authorisation and through illicit means, information with commercial value that companies treat as confidential in order to keep a competitive advantage over their competitors. Even when a trade secret is misappropriated, the Directive foresees a specific safeguard in order to preserve the freedom of expression and right to information (including a free press).”¹³³

Journalists are not reassured, however, as private companies as well as public institutions in a number of countries have brandished the directive to deter journalists from reporting. “It contributes to opacity in the name of the protection of company secrets,” researcher researcher Hans van Scharen of Corporate Europe Observatory, an advocacy group that tries to curb corporate influence over EU policy-making, told CPJ. Mediapart’s co-founder Laurent Mauduit lists a number of prominent cases in France where the directive was used against journalists although their investigations had a clear public interest (for example on the [management of nursing homes](#),¹³⁴ the [shortage of face masks](#)¹³⁵ in the first weeks of the COVID-19 pandemic, or [health concerns about breast implants](#)¹³⁶) and were the focus of intense political controversies. In 2022, the French company Altice referenced the trade secrets law in its effort to stop online magazine Reflets.info from publishing investigative articles related to the company’s activities “because of a risk of imminent damage posed by the dissemination of new information, which could compromise the protection of trade secrets.”¹³⁷ The French judiciary, however, lifted the ban on January 19, 2023, alleging that “the trade secrets law could not be used against journalists who had done their work

¹³³ European Commission, “Trade secrets” https://single-market-economy.ec.europa.eu/industry/strategy/intellectual-property/trade-secrets_en

¹³⁴ Franceinfo, “Scandale dans les Ehpad Orpea : ‘Le rapport d’enquête ne sera pas public et c’est inquiétant,’ juge le cadre infirmier à l’origine de l’enquête,” March 25, 2022 https://www.francetvinfo.fr/societe/prise-en-charge-des-personnes-agees/scandale-dans-les-ehpad-orpea-le-rapport-d-enquete-ne-sera-pas-public-et-c-est-inquietant-juge-un-cadre-infirmier_5045116.html

¹³⁵ Yann Philippin, Antton Rouget, and Marine Turchi, “‘Secret des affaires’: l’Etat refuse de communiquer ses commandes de masques,” June 15, 2020 <https://www.mediapart.fr/journal/france/150620/secret-des-affaires-l-etat-refuse-de-communiquer-ses-commandes-de-masques>

¹³⁶ L’Express, “‘Implant Files’: le secret des affaires empêche l’enquête,” November 28, 2018 https://www.lexpress.fr/societe/justice/implant-files-le-secret-des-affaires-empêche-l-enquete_2050808.html

¹³⁷ Spiil, “Reflets.info vs. Altice : more than ever the Spiil reminds that the right to information must take over business secrecy,” October 10, 2022 <https://spiil.my.site.com/s/position/reflets-info-vs-altice-more-than-ever-the-spiil-reminds-that-the-right-to-inform-MCEMFINNU6TJC43DN7HMZEJIYWKI>

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of investigation.” The court ordered the company to pay legal costs to the magazine’s publisher and the French Union of Journalists SNJ (Syndicat national des journalistes).¹³⁸

¹³⁸ Brice Laemle, “La justice autorise ‘Reflets.info’ à publier de nouveaux articles à propos d’Altice à partir de données piratées,” January 20, 2023 https://www.lemonde.fr/economie/article/2023/01/20/la-justice-autorise-reflets-info-a-publier-de-nouveaux-articles-a-propos-d-altice-a-partir-de-donnees-piratees_6158707_3234.html

TEXT BOX

The weight of the European Parliament

The European Parliament – the only directly elected EU institution – has been particularly active on press freedom issues. Many of its country-specific resolutions, reports, and hearings have included references to media freedom and challenges facing journalists. A number of parliamentary committees devote special attention to press freedom issues within the EU, including the Committee on Civil Liberties, Justice and Home Affairs ([LIBE](#)), and the Committee on Culture and Education (CULT), and in non-member states, with the Subcommittee of Human Rights (DROI), part of the Foreign Affairs Committee (AFET). A LIBE working group on rule of law issues, named the LIBE Democracy, Rule of Law and Fundamental Rights Monitoring Group (DRFMG), is conducting hearings and missions on press freedom in EU member states.

The parliament also has the power to set up special committees directly related to press freedom. The Special Committee on Foreign Interference in all Democratic Processes in the European Union, including Disinformation ([INGE](#)), underlined the need to protect journalists' safety and strengthen press freedom and independent reporting as a bulwark against foreign interference targeting the EU in [a report](#) published in March 2022. An informal media working group can also act to raise concerns on media freedom.¹³⁹ The European Parliament also rewards and amplifies the work of investigative journalists with the [Daphne Caruana Galizia Prize for Journalism](#).¹⁴⁰

¹³⁹ EPP Group, "MEP Casa nominated as Co-Chair of the EP's Media Working Group," September 8, 2020 <https://www.eppgroup.eu/how-we-make-it-happen/with-eu-countries/malta/news/mep-casa-nominated-as-co-chair-of-ep-s-media-working-group>

¹⁴⁰ Daphne Caruana Galizia Prize for Journalism <https://daphnejournalismprize.eu/>

EU access and transparency

The press corps remains a major actor in Brussels in spite of a decline in the number of accredited correspondents as many legacy media downsized staff or began covering the EU from outside of Brussels. The European Commission's midday briefings are a key source of news. But some journalists question whether those briefings truly provide the information and context needed to report thoroughly on complex issues.

While a 2021 survey of EU correspondents by the Council of the European Union noted "a close and trusted relationship between officials and media professionals in Brussels,"¹⁴¹ many Brussels-based reporters are more nuanced about this relationship. "People are accessible, they respond to your calls," György Folk, of the Hungarian website EUrologus, replied to a CPJ question at the Brussels Journalism Symposium¹⁴² in November 2022. Folk's fellow-panelist Eric Bonse, correspondent for the Berlin-based left-wing daily Tageszeitung, disagreed. "It's more propaganda than information," said Bonse. "And conditions are worsening."

Marco Appel, former correspondent of the Mexican weekly magazine Proceso and founder of the Brussels-based online site Underground Periodismo Internacional, told CPJ that the communication of EU institutions is "amazing" compared to Mexico. "But it has become more complicated over the years," he said. Officials often insisted on speaking off the record without being named, "meaning that no one assumes the responsibility of the information" and that his requests were often stonewalled. "I was systematically refused the minutes of meetings on human rights in Mexico," he said. "Without mentioning the fact that most media from non-EU countries are very much down the line of attention."

James Kanter, a former correspondent for The International Herald Tribune and The New York Times, told CPJ that cautious official spokespeople frequently hid behind carefully tailored EU jargon. "If you depend on the Commission for a story you are nowhere," he said.

"Press relations officials were more amateur in the 1980s-2000s, they became more professional with the clear will to control the message," says Gareth Harding, director of the Brussels Program at the U.S.-based Missouri School of Journalism. "There is an inherent conflict between what the media want and the EU's communications strategies. Brussels is a city of compromise, very

¹⁴¹ Council of the European Union, "Live from Brussels: A study of the Brussels press corps," 2021 https://www.consilium.europa.eu/media/54576/eu-press-corps-report_final_web_010322.pdf

¹⁴² "Reporting on European affairs: a thankless calling?" round table, November 24, 2022 <https://twitter.com/LesAssises/status/1595798460803989504>

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diplomatic, where the EU officials know they have to make sure they don't upset member states. It is all about process, long-winded negotiations. It does not make for dramatic journalism, while some journalists would like to sex it up."

Many correspondents refer to an increasingly controlled EU communications policy. "We are facing people, often very young, inexperienced, who are pure communicators," said Jean-Pierre Stroobants, a longtime correspondent for France's *Le Monde*. "It is difficult to have a follow-up to questions that have not received a satisfactory answer during the midday briefings. Specialists in the general directorates are generally out of reach." Stroobants also noted that the EU sometimes organized briefings with just "a few privileged correspondents," which meant excluding other journalists.

"The touchier the issue, like migration, the more laconic the spokespersons," Dutch-Italian correspondent Gian-Paolo Accardo, founder of the independent news website *VoxEurop*, told CPJ. The messaging on the war in Ukraine has also been tightly managed. "Throughout ten rounds of sanctions against Russia, the Commission has proven that it can keep sensitive information secret when it needs to. Parliament may not be able to say the same," wrote POLITICO Jakob Hanke Vela in February 2023.¹⁴³

Media downsizing has further complicated journalists' ability to probe beyond the official EU narrative. Other than those at major news organizations and wire services, most correspondents work alone in one-person bureaus to cover diverse and often technical stories. "Instead of having to follow two or three stories now we have 8 to 9 stories to cover at the same time. The priority is to flood the zone with EU messages all the time," Italian veteran Brussels correspondent Lorenzo Consoli, former president of the International Press Association (IPA), the association of Brussels accredited correspondents, told CPJ. "It is a system which favors the big media, like POLITICO or Bloomberg, which have specialized reporters. It also allows the Commission to sell more easily its messages since most journalists don't have the time to understand, check and contradict." Only 20% of Brussels-based journalists cover exclusively EU affairs; most use the city as a hub to cover NATO or other European countries.¹⁴⁴

¹⁴³ Jakob Hanke Vela, "Brussels Playbook: Burn after reading — Séjourné slams 'Trumpist' migration debate — Subsidy row latest," February 7, 2023 <https://www.politico.eu/newsletter/brussels-playbook/burn-after-reading-sejourne-slams-trumpist-migration-debate-subsidy-row-latest/>

¹⁴⁴ "Live from Brussels: A study of the Brussels press corps," 2021 https://www.consilium.europa.eu/media/54576/eu-press-corps-report_final_web_010322.pdf

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In December 2022, “Qatargate” exploded as one of the EU’s biggest corruption scandals. Eva Kaili, one of 14 vice presidents of the European Parliament, and former MEP Pier Antonio Panzeri were among those¹⁴⁵ accused of accepting money from Qatar and Morocco to paint a positive picture of the countries’ poor human rights record. (Qatar and Morocco have denied the allegations.)

The ongoing investigation exposed how, under the current rules of the [EU Transparency Register](#), a database listing organizations that try to influence the law-making and policy implementation process of EU institutions, MEPs were not obliged to make public their meetings with diplomats or agents of third countries – a gaping loophole in the right to public interest information and a blatant contradiction of the parliament’s proclaimed vanguard role in combating foreign interference in the EU.

Five months earlier, the release of the [Uber files](#) – an [investigation](#) led by the U.K.-based Guardian and the International Consortium of Investigative Journalists (ICIJ) into European lobbying by the U.S.-based ride-hailing company – had revealed other documentation gaps in the Transparency Register, described by Corporate EU Observatory’s Van Scharen as “often a black box.” According to the investigation, Uber had 12 meetings with European Commission representatives that weren’t publicly disclosed.¹⁴⁶

As CPJ noted in its 2015 report, transparency is essential for democratic accountability and for journalists to perform their duty as watchdogs. Yet while access to information over some EU negotiations has improved, it is clear Brussels could take further steps to enhance transparency, including by upholding its own legislation and developing administrative procedures. Overall, expert observers note that the EU doesn’t always meet its own transparency requirements.

Former IPA president Consoli says that EU documents are more accessible than in most member states. “But the definition of what is confidential is questionable. [Take] the discussions with

¹⁴⁵ Italian MEP Andrea Cozzolino and Belgian MEP Marc Tarabella were later connected with the scandal and are facing investigations: <https://www.brusselstimes.com/451951/european-parliament-scandal-cozzolino-extradition-postponed-yet-again>

¹⁴⁶ Sydney P. Freedberg, Nicole Sadek, Brenda Medina, Agustin Armendariz, and Karrie Kehoe, “How Uber won access to world leaders, deceived investigators and exploited violence against its drivers in battle for global dominance,” July 10, 2022 <https://www.icij.org/investigations/uber-files/uber-global-rise-lobbying-violence-technology/>

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pharmaceutical companies during the COVID-19 crisis. This information is mostly classified although it is clearly in the public interest.”

Helen Darbishire, the executive director of Madrid-based [Access Info Europe](#), has been monitoring the “right to know” in the EU since Regulation 1049/2001¹⁴⁷ – the EU law on access to documents – went into force in 2001. She told CPJ that the European Commission “is especially bad” about responding within the 15 working-day time frame after a request for information – a major problem for journalists working on time-sensitive news. “There is fear of criticism within the EU institutions, especially in the current populist context,” she said. “The EU is very self-protective. They don’t seem to see that more transparency might help build trust. It is not a technical question of access. It is about information that citizens need in order to understand what the EU is doing. It is a fundamental right.” Darbishire noted that different EU bodies had different policies on releasing documents. “Frontex [European Border and Coast Guard Agency] for instance, is tougher. Some documents on the decision making or internal discussions in the council are hard to get.”

Documents of EU commissioners’ or MEPs’ expenses for instance, are not released on the grounds of protecting personal data under the General Data Protection Regulation ([GDPR](#)) or other instruments on privacy.¹⁴⁸ When a team of European investigative journalists joined forces in the [#RecoveryFiles project](#) to request access to documents about [NextGenerationEU](#), a COVID-19 recovery package of 723.8 billion euros, they found that the European Commission “continues to seize opportunities” to keep records confidential. “Members of the team have faced delays, obstacles or outright obstruction when trying to exercise their European right to access documents related to the fund. While it pays lip service to the value of transparency, the European Commission is refusing to disclose hundreds of documents, using arguments deemed ‘absurd’ or ‘sloppily elaborated’ by experts,”¹⁴⁹ two German journalists involved in the project wrote in February 2022.

Nick Aiossu, Transparency International EU’s deputy director, believes the council has been “overzealous” in classifying documents. “Too many are *limité* [limited use] but when you read them,

¹⁴⁷ EU, “Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents,” May 30, 2001 <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32001R1049>

¹⁴⁸ For example, see Article 4 (regarding “Exceptions”) of “Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents” <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001R1049>

¹⁴⁹ Hans-Martin Tillack and Peter Teffer, “Brussels conceals records on recovery billions, despite transparency pledge,” February 9, 2022 <https://www.ftm.eu/articles/recovery-files-eu-transparency?share=m4j0NAAq%2BLdAWWfK8he3fhLyWqN5zvqkDKQaHiPh6Fd1WzIse0z5gEAKeMVkS%2Fc%3D>

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come on,” he told CPJ. “The European Parliament is horrible in releasing administrative documents, for example on MEPs’ general expenses.” Corporate Europe Observatory’s Van Scharen is equally skeptical about the EU’s pledge of transparency. “Many documents are heavily redacted,” he noted.

Stonewalling and the non-application of the EU’s Court of Justice (CJEU) rulings is another challenge for transparency campaigners. In 2018, Italian lawyer and former European Parliament official Emilio de Capitani won in the EU’s General Court a case about the transparency of three-way legislative negotiations known as [trilogues](#). The case established that these procedures “are legislative in nature and therefore should be accessible to citizens,” wrote POLITICO in January, 2023.¹⁵⁰ Four years after the court ruled in his favor, De Capitani told POLITICO, “these legislative preparatory documents covering an essential phase of the legislative negotiations are still kept in the background and it is almost a ‘mission impossible’ for ordinary citizens to obtain them in due time — while lobbyists regularly get them.” According to De Capitani, the parliament’s plenary said in 2011 that these documents should be proactively published, but the Bureau, which determines the way Parliament’s work should be organized, never implemented that change.¹⁵¹

EU communications using mobile phones, including in crucial discussions and negotiations about matters of public interest, are set to fuel ongoing debate around transparency. Alexander Fanta, who covers EU digital policy for the German website netzpolitik.org, requested access to text messages that the Commission’s Von der Leyen exchanged with Pfizer CEO Albert Bourla in early 2021 to negotiate almost 2 billion COVID-19 vaccination doses. The Commission responded that it did not archive text messages because they did not qualify as documents.

In January, 2022, however, EU Ombudsman Emily O’Reilly concluded that these text messages were documents to which the public could request access.¹⁵² However, the European Commission refused to budge. “Transparency campaigners and members of the European Parliament are aghast at the implications of this,” Fanta wrote in POLITICO. “By exempting a whole category of

¹⁵⁰ Jacopo Barigazzi, “Brussels Playbook: Qatargate — China travel deal — Guerrillas in Russia,” January 5, 2023 https://www.politico.eu/newsletter/brussels-playbook/qatargate-the-inevitable-car-crash-china-deal-guerrillas-in-russia/?utm_source=POLITICO.EU&utm_campaign=5cbbab4dc5-EMAIL_CAMPAIGN_2023_01_05_03_43&utm_medium=email&utm_term=0_10959edeb5-5cbbab4dc5-%5BLIST_EMAIL_ID%5D

¹⁵¹ “Brussels Playbook: Qatargate — China travel deal — Guerrillas in Russia” https://www.politico.eu/newsletter/brussels-playbook/qatargate-the-inevitable-car-crash-china-deal-guerrillas-in-russia/?utm_source=POLITICO.EU&utm_campaign=5cbbab4dc5-EMAIL_CAMPAIGN_2023_01_05_03_43&utm_medium=email&utm_term=0_10959edeb5-5cbbab4dc5-%5BLIST_EMAIL_ID%5D

¹⁵² Access Info, “European Commission President’s text messages are documents and can be requested says Ombudsman,” January 28, 2022 <https://www.access-info.org/2022-01-28/text-messages-documents-ombudsman/>

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content from FOI (Freedom of Information) legislation, the European institutions are creating a massive loophole. And a no-disclosure form of communication will be duly exploited by the likes of fossil-fuel lobbyists, arms traders and governments in Europe and beyond, all who want to keep their dealings with the EU a secret.”¹⁵³

The case has clear implications for press freedom. In February 2023, POLITICO reported that The New York Times had lodged a case against the European Commission the previous month on the grounds that it had a legal obligation to release the messages.¹⁵⁴

On the positive side, some journalists’ associations and newsrooms have praised the EU for its whistleblower directive, which came into force in November 2019¹⁵⁵ and which member states must transpose into their national law. “It improves significantly the rights of whistleblowers in Europe,”¹⁵⁶ said the influential French freedom of expression group *Informer n’est pas un délit* (To inform is not a crime) in June 2021. “Its transposition into French law has been the only progressive law adopted [during] President [Emmanuel] Macron’s first term. It is a real advance,” Mediapart’s co-founder Laurent Mauduit told CPJ.

However, Transparency International notes that the EU directive “unfortunately” does not include a key group of employees : the staff members of the EU institutions, agencies, and bodies¹⁵⁷ who might be the best positioned to blow the whistle on corruption or abuses inside the EU institutions. Whistleblowing International Network also warns that delays and ambiguities in member states’ integration of the directive into domestic law could create loopholes for some whistleblowers to be left out.¹⁵⁸

¹⁵³ Alexander Fanta, “Von der Leyen’s texts are not a private matter,” June 30, 2022

<https://www.politico.eu/article/von-der-leyens-texts-are-not-a-private-matter-covid-vaccines-coronavirus/>

¹⁵⁴ Samuel Stolton, “New York Times sues EU over von der Leyen’s Pfizer texts,” February 13, 2023

<https://www.politico.eu/article/new-york-times-sue-european-union-ursula-von-der-leyen-pfizer-texts/>

¹⁵⁵ EU, “Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law” <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1937>

¹⁵⁶ Informer n’est pas un délit, “Loi ‘lanceurs d’alerte’ : 29 organisations lancent un appel à la société civile,” June 2, 2021

<https://informernestpasundelit.org/2021/06/loi-lanceurs-dalerte-29-organisations-lancent-un-appel-a-la-societe-civile/>

¹⁵⁷ Nicholas Aiossa, “Make 2020 the year of the EU staff whistleblower,” January 22, 2020

<https://transparency.eu/euwhistleblower/>

¹⁵⁸ Whistleblowing International Network, “Whistleblowing protection laws must cover breaches of national law” <https://whistleblowingnetwork.org/Our-Work/Publications/WIN-Series-EU-Directive-in-Brief-Whistleblowing>

TEXT BOX

Privacy and the EU's Court of Justice

The Luxembourg-based Court of Justice of the European Union (CJEU) is the chief judicial authority in the EU overseeing the uniform application and interpretation of EU law by member states. Privacy advocates have applauded some of its work as it plays an increasing role on issues like the defense of privacy. One case in point: the court's September 2022 decision that the mass retention of phone and internet traffic and location data violated fundamental EU privacy rights – against the opinion of many European law enforcement and government officials who argued that such data retention was vital for fighting crime.¹⁵⁹

Other judgments have been less welcome to freedom of expression advocates. The court's [2014 decision](#) on the “right to be forgotten,” that compelled search engines to remove links to personal information in certain circumstances, for example, has raised concerns about giving too much power to private companies. According to Access Now's Eliska Pirkova and Estelle Massé, one of the most concerning elements in the court's reasoning was “the assumption that it should be Google, a privately owned company with multiple online services and a vested interest in having as much information available through its search engine as possible, that ultimately decides what information falls under the scope of ‘public interest’ — or does not.”¹⁶⁰ Other critics note that the “right to be forgotten” has also led to the creeping suppression of articles from news websites, equating to a right to remove “inconvenient journalism.”¹⁶¹

The court has also cited privacy as grounds for refusing journalists' access to information considered of public interest. In 2018, the General Court denied a request by a group of journalists for access to the monthly expenses of European parliamentarians.¹⁶² In November 2022, invoking again the right to privacy and the protection of personal data, the Court also invalidated public access to beneficial ownership registers that reveal the names of owners of a company. An EU anti-money laundering directive had granted this access in 2018. Although the ruling stated that

¹⁵⁹ CJEU, “The Court of Justice confirms that EU law precludes the general and indiscriminate retention of traffic and location data, except in the case of a serious threat to national security,” September 20, 2022 <https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-09/cp220156en.pdf>

¹⁶⁰ Eliska Pirkova and Estelle Massé, “EU Court decides on two major ‘right to be forgotten’ cases: there are no winners here,” January 13, 2023 <https://www.accessnow.org/eu-court-decides-on-two-major-right-to-be-forgotten-cases-there-are-no-winners-here/>

¹⁶¹ Michael J. Oghia, “Information Not Found: The ‘Right to Be Forgotten’ as an Emerging Threat to Media Freedom in the Digital Age,” January 9, 2018 <https://www.cima.ned.org/publication/right-to-be-forgotten-threat-press-freedom-digital-age/>

¹⁶² Nikolaj Nielsen, “EU court delivers transparency blow on MEP expenses,” September 25, 2018 <https://euobserver.com/eu-political/142946>

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journalists and civil society organizations had what the court called a “legitimate interest,”¹⁶³ the OCCRP (Organized Crime and Corruption Reporting Project) considered that “it was not good enough,” as “restricting access creates serious new barriers”¹⁶⁴ for journalists in consulting the data. Transparency International Chair, Delia Ferreira Rubio, described the decision as “the best present that this court has given to organized crime,”¹⁶⁵ leading French daily Le Monde to call it a blow to investigative journalism. These databases were “a major tool for journalists” in their investigations of tax evasion and fraud, like OpenLux or the Pandora Papers, Le Monde wrote. As the International Consortium of Investigative Journalists (ICIJ) underlined, the European Parliament had passed in October 2021 a resolution “calling on member states to strengthen their beneficial ownership registries — or face penalties if they are lagging behind in implementing existing anti-money laundering regulation.”¹⁶⁶ However, the CJEU’s opinion differed with the EU’s parliamentary body and quashed the right to access information of public interest.

¹⁶³ Solvej Krause, “Who should have access to beneficial ownership registries? ECJ revokes public access in the EU but confirms access for journalists and civil society,” January 26, 2023 <https://star.worldbank.org/blog/who-should-have-access-beneficial-ownership-registries-ecj-revokes-public-access-eu-confirms#:~:text=In%20a%20consequential%20ruling%20from,EU%20Charter%20of%20Fundamental%20Rights>

¹⁶⁴ Alexandra Gillies, “FAQ: The EU Ruling on Ownership Transparency and What It Means for Journalists,” January 5, 2023 <https://www.occrp.org/en/beneficial-ownership-data-is-critical-in-the-fight-against-corruption/faq-the-eu-ruling-on-ownership-transparency-and-what-it-means-for-journalists>

¹⁶⁵ Abdelhak El Idrissi, Anne Michel, and Jérémie Baruch, “‘In one day, the court destroyed years of work’: Shock at European ruling on financial transparency,” December 7, 2022 https://www.lemonde.fr/en/economy/article/2022/12/07/in-one-day-the-court-destroyed-years-of-work-shock-at-european-ruling-on-financial-transparency_6006821_19.html

¹⁶⁶ Scilla Alecci and Sean McGoey, “Pandora Papers Reporting from Across Europe,” December 21, 2021 <https://www.icij.org/investigations/pandora-papers/pandora-papers-reporting-from-across-europe/>

Press freedom diplomacy

The defense of press freedom is part of the EU's Common Foreign and Security Policy (CFSP). At least in its rhetoric. The EU, represented by the European External Action Service (EEAS) and most of its member states, can be reliably expected to stand on the side of threatened journalists or more generally on freedom of expression. Initially framed as a human rights issue, press freedom diplomacy was addressed in 2016 "for the first time as a security and foreign policy aspect, and it was channeled through a high-level strategy document" -- the Global Strategy for the European Union's Foreign and Security Policy,¹⁶⁷ wrote Raquel Jorge Ricart of the Madrid-based Elcano Royal Institute in December 2022.

In March 2022, the EU Council, acting in the context of Russia's aggression against Ukraine, also approved the Strategic Compass, a plan of action for strengthening the EU's security and defense policy by 2030. The plan integrates media freedom and pluralism, especially the reinforcement of free and independent media in relation to hybrid threats and foreign information manipulation and interference (FIMI).¹⁶⁸

Together with other democracies around the world, the EU challenges the strategies of influence developed by Russia and China, especially in Africa and in Latin America. "It must also confront the growing influence of emerging activist states like Saudi Arabia, Qatar or Turkey, especially in Africa and the Middle East, which are offering different models of journalism and of press freedom," Kamel Labidi, a press freedom expert who has served as a program coordinator for CPJ and as a head of Tunisia's National Commission to Reform Information and Communication, said in an interview.

This EU commitment entails close cooperation with other international institutions, including with the Council of Europe, the OSCE and the UN.¹⁶⁹ In that context it also sees itself as a global norm-setting power. In what Columbia University Law School's Anu Bradford calls the "Brussels effect," this implies "the ability to promulgate regulations that shape the global business environment,

¹⁶⁷ Raquel Jorge Ricart, "The geopolitical implications of the EU's Media Freedom Act," December 16, 2022 <https://www.realinstitutoelcano.org/en/work-document/the-geopolitical-implications-of-the-eus-media-freedom-act/>

¹⁶⁸ Council of the European Union, "A Strategic Compass for a stronger EU security and defence in the next decade," March 21, 2022 <https://www.consilium.europa.eu/en/press/press-releases/2022/03/21/a-strategic-compass-for-a-stronger-eu-security-and-defence-in-the-next-decade/>

¹⁶⁹ Resource Centre on Media Freedom in Europe, "UN-EU High-level Policy Dialogue on safety of journalists and media freedom," February 4, 2022 <https://www.rcmediafreedom.eu/News/UN-EU-High-level-Policy-Dialogue-on-safety-of-journalists-and-media-freedom>

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elevating standards worldwide and leading to a notable Europeanization of many important aspects of global commerce.”¹⁷⁰ This effect has been particularly obvious in the digital realm, and therefore in the definition of free speech. “The EU has drawn the line between acceptable and unacceptable speech in the internet era—not just in Europe but around the world,” Bradford writes.

As Facebook whistleblower Frances Haugen told the EU, the Digital Services Act could become a “global gold standard”¹⁷¹ in content moderation. “The EU has the capacity to make things change, even in the U.S., like it did on data protection,” said French Green MEP Gwendoline Delbos Corfield.¹⁷²

However, some groups have challenged the EU’s role as a global norm setter on such issues as the right to be forgotten and what some claim to be the negative threat of the Digital Services Act.¹⁷³

Driven by the official line that human rights is the “silver thread” of its diplomacy, the EEAS has developed a broad range of policies and initiatives, which since July 2014 have been rooted in the EU Human Rights Guidelines on Freedom of Expression Online and Offline.¹⁷⁴ A digest of EU principles and policies on these matters, they were designed in particular to help the 140 EU delegations and offices around the world in their interactions with local journalists and authorities to defend freedom of expression. The Media4Democracy project, a EU-funded technical assistance facility, was one such project set up in 2017 to strengthen the EU Delegations’ ability to implement the EU Guidelines.¹⁷⁵ In July 2020 it was complemented by an EU Delegation handbook on journalists’ safety.¹⁷⁶

¹⁷⁰ Anu Bradford, “The Brussels Effect: How the European Union Rules the World,” 2020 <https://scholarship.law.columbia.edu/books/232/#:~:text=The%20Brussels%20Effect%20shows%20how,influence%20long%20into%20the%20future>

¹⁷¹ European Parliament, “Frances Haugen to MEPs: EU digital rules can be a game changer for the world,” November 8, 2021 <https://www.europarl.europa.eu/news/en/press-room/20211107IPR16801/frances-haugen-to-meps-eu-digital-rules-can-be-a-game-changer-for-the-world>

¹⁷² In response to CPJ’s question at the European Journalism Symposium in Brussels, November 25, 2022.

¹⁷³ In an April 2022, Foreign Policy piece, Jacob Mchangama, who directs Copenhagen-based think-tank Justitia and Justitia’s The Future of Free Speech Project, expressed his concerns about the Digital Services Act’s “Brussels Effect,” writing “the DSA does not strike the right balance between countering genuine online harms and safeguarding free speech. It will most likely result in a shrinking space for online expression, as social media companies are incentivized to delete massive amounts of perfectly legal content.” <https://foreignpolicy.com/2022/04/25/the-real-threat-to-social-media-is-europe/>

¹⁷⁴ EU Human Rights Guidelines on Freedom of Expression Online and Offline, 2014: https://www.eeas.europa.eu/sites/default/files/eu_human_rights_guidelines_on_freedom_of_expression_online_and_offline_en.pdf

¹⁷⁵ Media4Democracy <https://www.media4democracy.org/>

¹⁷⁶ Media4Democracy, “Protecting the Safety of Journalists Protecting Freedom of Expression: A Handbook for EU Delegations,” 2020 <https://www.media-diversity.org/wp-content/uploads/2020/10/Final-M4D-Safety-of-Journalists-Handbook.pdf>

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Josep Borrell, the EEAS high representative for foreign affairs and security policy and a vice president of the European Commission, regularly publishes public statements in support of journalists in non-EU countries and press freedom is on the agenda at multiple meetings – including human rights dialogues – between EU officials and third countries.

Funding, again, is a key instrument. The European Union has developed a system of external financial assistance – including for journalists – through the European Instrument for Democracy and Human Rights (EIDHR), which broadly seeks to support and promote human rights in non-EU countries. The EIDHR finances ProtectDefenders.eu, an EU mechanism managed by a consortium of 12 NGOs that provides for emergency support and financing, including shelter programs, as well as for protective equipment and assistance for human rights defenders in hostile environments around the world. It organizes trial observation, manages a 24/7 hotline for human rights defenders in danger, and covers legal fees for journalists. Global Europe, the EU program for external action funds for 2021-2027, also supports media-related projects, a need outlined in the EU Action Plan on Human Rights and Democracy 2020-2024,¹⁷⁷ which also calls for the protection of journalists and the fight against impunity. “In the last 12 months, the EU has supported more than 400 journalists with emergency grants, temporary relocation, or support to their respective media outlets,”¹⁷⁸ said the European Commission in late 2021.

The EU helps with financial support for United Nations special rapporteurs, in particular the rapporteur on the promotion and protection of freedom of opinion and expression. It also funds the European Endowment for Democracy (EED), an autonomous international trust fund which works in the so-called “[European Neighbourhood](#),”¹⁷⁹ as well as the Western Balkans and Turkey, and, among other actions, supports independent media platforms and journalists. Its asset is that it can work directly with journalists independently of EU delegations. Among its recent grantees: the Ukrainian investigative outlet [Slidstvo.Info](#), which collects evidence of Russian war crimes in Ukraine, and the Syrian Media Center for Media and Freedom of Expression.

¹⁷⁷ EU, “EU Action Plan on Human Rights and Democracy 2020 – 2024” https://www.eeas.europa.eu/sites/default/files/eu_action_plan_on_human_rights_and_democracy_2020-2024.pdf

¹⁷⁸ European Commission, “Joint Statement on the International Day to End Impunity for Crimes against Journalists,” November 1, 2021 https://ec.europa.eu/commission/presscorner/detail/en/statement_21_5665

¹⁷⁹ European Neighbourhood Policy: What is it? https://neighbourhood-enlargement.ec.europa.eu/european-neighbourhood-policy_en e.

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TEXT BOX: Fighting impunity

CPJ's 2022 [Global Impunity Index](#) found that no one has been held to account for nearly 80% of 263 journalist murders over the past 10 years worldwide. Could the EU play a more active role in the fight against impunity, in particular in cases involving journalists in the EU? Greece's case illustrates the scope of the challenge. "Investigative journalist Sokratis [Giolias](#), who was killed in 2010, and crime reporter Giorgos [Karaivaz](#), who was killed in 2021, were gunned down in similar circumstances by professional hitmen in the streets and there have been no arrests in either case," CPJ's Europe representative Attila Mong wrote in October 2022. "It has been years since authorities provided updates on Giolias, and while authorities say they are looking into what happened to Karaivaz, his family and colleagues are dissatisfied by the pace of the investigation."¹⁸⁰

Some crimes have been partially punished. The hitmen in Daphne Caruana Galizia's murder were each sentenced to 40 years in prison,¹⁸¹ but further legal proceedings are pending against the alleged mastermind and two men who allegedly supplied the bombs. The killers of Ján Kuciak and his fiancée Martina Kušnírová were also prosecuted,¹⁸² with fresh trial proceedings against the alleged mastermind underway at the time of writing this report. In October 2022, a court in Paris [sentenced](#) two people to life imprisonment and 13 years respectively for complicity with the attackers against the French satirical weekly Charlie Hebdo in 2015.¹⁸³

EU officials have repeatedly called for more involvement of the Hague-based Europol (the EU Agency for Law Enforcement Cooperation) and Eurojust (the EU Agency for Criminal Justice Cooperation) in resolving crimes committed against journalists. The September 2021 recommendation on the protection, safety and empowerment of journalists specifically calls on member states to involve the two institutions in cases related to the safety of journalists. In October 2017, a team of Europol organized crime experts were assigned to help Maltese police investigate Daphne Caruana Galizia's murder. On May 5, 2020, a number of press freedom organizations unsuccessfully called on Malta's attorney general to request further support from Europol and in

¹⁸⁰ Attila Mong, "In Greece, reporters' killings unsolved, critical journalists complain of growing threats," October 27, 2022 <https://cpj.org/2022/10/in-greece-reporters-killings-unsolved-critical-journalists-complain-of-growing-threats/>

¹⁸¹ CPJ, "Malta: Court sentences hitmen to 40 years each for role in assassination of Daphne Caruana Galizia," October 14, 2022 <https://cpj.org/2022/10/malta-court-sentences-hitmen-to-40-years-each-for-role-in-assassination-of-daphne-caruana-galizia/>

¹⁸² CPJ, "Slovak Supreme Court cancels acquittal of primary suspects in journalist Ján Kuciak's murder," June 15, 2021 <https://cpj.org/2021/06/slovak-supreme-court-cancels-acquittal-of-primary-suspects-in-journalist-jan-kuciaks-murder/>

¹⁸³ CPJ, "CPJ welcomes final sentencing over Charlie Hebdo terrorist attack," October 24, 2022 <https://cpj.org/2022/10/cpj-welcomes-final-sentencing-over-charlie-hebdo-terrorist-attack/>

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April 2021 the European Parliament adopted a resolution calling for “the full and continuous involvement of Europol in all aspects of the murder investigation and all related investigations.” In Slovakia, the Bratislava-based Slovak Spectator praised Europol assistance for its contribution in the case of murdered journalist Kuciak and his fiancée. The publication reported that a Europol forensic investigator extracted data from 12 devices, among them phones and SIM cards of suspects. Another investigator extracted data from other devices that the police seized during house searches, such as hard drives and computers.”

The EU also sees its role in fighting impunity more broadly and sets its sights on so-called “serious international crimes” committed outside of its borders, including by the establishment in 2002 of the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes within Eurojust.¹⁸⁴ In the same vein, the EU supports International Criminal Court investigations into alleged Russian war crimes –including attacks on journalists – in Ukraine.¹⁸⁵

However, some experts feel the EU could do more. “The EU should engage more deeply into supporting procedures related to killings of journalists,” Pierre Hazan, a senior adviser at the Geneva-based Centre for Humanitarian Dialogue and founder of Justiceinfo.net, told CPJ. U.S. human rights lawyer Reed Brody, a former Human Rights Watch counsel agrees: “The EU may have a very positive impact, especially if it increases its funding to justice activists in Southern countries,” he told CPJ.

‘Plowing water’

The scope and effectiveness of EU actions in support of press freedom often reflect the gap between the values-based narrative that the EU tells about itself and the reality of how it and its member states pursue their interests.

In private, EEAS officials can admit that their work often looks like plowing water. “It is the fate of most democratic countries’ human rights diplomacy,” an EEAS diplomat who spent a number of years in EU delegations in authoritarian countries told CPJ. “When push comes to shove, economic or strategic interests trump human rights. And we are left with trying to dampen as much as we can the effects of *Realpolitik* on human rights defenders or journalists.”

¹⁸⁴ Ionel Zamfir, “Transitional justice: Central to fighting impunity,” June 15, 2022 <https://epthinktank.eu/2022/06/15/transitional-justice-central-to-fighting-impunity/>

¹⁸⁵ “EU assistance to Ukraine” https://eu-solidarity-ukraine.ec.europa.eu/eu-assistance-ukraine_en

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The EP's human rights subcommittee, part of the foreign affairs committee, has been assessing EU actions abroad in defense of press freedom and a draft report¹⁸⁶ is due to be finalized in 2023. A preliminary study on the impact of EU actions in the Philippines, El Salvador and Tunisia, presented at a European Parliament hearing in June 2022, has already underlined a number of weaknesses in the array of tools –including démarches, public statements, human rights dialogues, and emergency assistance – deployed by the EU, in particular via its delegations on the ground. However, most of these tools were “under-known and under-used,”¹⁸⁷ reported study author Tamsin Mitchell, a postdoctoral fellow at the Centre for Freedom of the Media at the University of Sheffield. She stressed the need for more training and resources for delegation staff on these matters, and for a thorough review of the implementation by EU delegations of the EU guidelines on freedom of expression online and offline. Her study also underlined the gap between “the EU's preference for private diplomacy and civil society organizations' wish for more public action.”¹⁸⁸

The EU's efficiency and commitment varies considerably from country to country and from one specific period to another. A “doctrine of principled pragmatism” inspires the EEAS, according to Mario Damen, of the European Parliamentary Research Service, “meaning a differentiated approach according to the countries it interacts with and with the aim of enhancing Europe's strategic autonomy.”¹⁸⁹

According to CPJ Turkey Representative Özgür Öğret, the EU's discussions with Turkey on its accession to the union were beneficial to press freedom in the country. “But when things went sour and President [Recep Tayyip] Erdoğan used the [migration issue](#) against Brussels, press freedom took a back seat. The EU feared to upset him and its officials mostly refrained from issuing too damning public statements.”

Brussels correspondent Appel confirms that this “pragmatic” approach also applies to Mexico. “Each time something bad happens, the EEAS is very diplomatic and the Council is even more cautious. The European Parliament is the exception, even if it was not always the case.” In an April

¹⁸⁶ European Parliament, “Draft Report on the protection of journalists around the world and the European Union's policy on the matter,” January 10, 2023 https://www.europarl.europa.eu/doceo/document/AFET-PR-740635_EN.pdf

¹⁸⁷ Tamsin Mitchell, “Safety of journalists in non-EU countries: state and non-state protection mechanisms and the role of the EU,” June 2022 [https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/702564/EXPO_IDA\(2022\)702564_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/702564/EXPO_IDA(2022)702564_EN.pdf)

¹⁸⁸ In March 2022, a number of human rights organizations insisted, for instance, on the EU to publicly call “at the beginning of the EU-China summit and at all high-level interactions for the release of arbitrarily detained human rights defenders and activists, ... such as citizen journalist Zhang Zhan.” <https://www.hrw.org/news/2022/03/18/joint-ngo-letter-ahead-eu-china-summit>

¹⁸⁹ Mario Damen, “Values on the retreat? The role of values in the EU's external policies,” March 2022 [https://www.europarl.europa.eu/thinktank/en/document/EXPO_STU\(2022\)639318](https://www.europarl.europa.eu/thinktank/en/document/EXPO_STU(2022)639318)

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2022 article, Appel described the meandering ways of the parliament along the years as MEPs, with their own political interests, blocked Urgency Resolutions.¹⁹⁰ A 10 March 2022 resolution condemning “the alarming rate” at which journalists and human rights defenders were being threatened, harassed, and [killed](#) in Mexico, however, upset the applecart. The resolution bluntly referred to “institutionalized and widespread corruption, abetted by a deficient judicial system” and to the “Mexican President’s frequent use of populist rhetoric to denigrate and intimidate independent journalists.”¹⁹¹ The EP has become the “new enemy of [Mexican President] AMLO,” Appel wrote.

The corruption scandals involving Qatar and Morocco and a number of subsequent investigations have also revealed the extent of the links, through “friendship groups”¹⁹² or consultancies, that some MEPs have developed with authoritarian countries.¹⁹³

More generally, there is no agreement on how to assess whether EU policies in trade or development may contribute to shaping a toxic environment that puts human rights defenders and journalists at increasing risk.¹⁹⁴ The EU has been conducting trade sustainability impact assessments (SIAs) prior to the conclusion of each trade agreement as part of the EU’s sustainable development policy. But human rights organizations remain concerned that trade agreements could have unintended consequences.

EU trade agreements include human rights provisions but most observers agree that they lack effective implementation mechanisms. “They should be binding like in the Cotonou Agreement,¹⁹⁵ where human rights are considered as fundamental and essential elements of the EU-ACP relations and can be invoked to suspend non-humanitarian aid,” says a senior adviser of

¹⁹⁰ Marco Appel, “Parlamento Europeo, el nuevo enemigo de AMLO,” April 5, 2022

<https://undergroundperiodismo.com/parlamento-europeo-el-nuevo-enemigo-de-amlo/>

¹⁹¹ European Parliament, “EP Press Release of 10 March 2022 on situation of journalists and human rights defenders in Mexico,” March 10, 2022 <https://www.europarl.europa.eu/delegations/en/ep-press-release-of-10-march-2022-on-sit/product-details/20220310DPU32324>

¹⁹² Henry Foy, Sam Fleming, and Javier Espinoza, “European parliament to ban all unofficial ‘friendship groups,’” December 15, 2022 <https://www.ft.com/content/76a9eca0-700e-48b6-b3ae-e44dcd06455c>

¹⁹³ Andreas Kouwenhoven and Clara van de Wiel, “Op de loonlijst in Brussel én de Emiraten: hoe het Europelement openstaat voor autocratische regimes,” February 8, 2023

<https://www.nrc.nl/nieuws/2023/02/08/op-de-loonlijst-in-brussel-en-de-emiraten-hoe-het-europarlement-openstaat-voor-autocratische-regimes-a4156616>

Sarah Wheaton, “Brussels Playbook: EUCO deals on fences, funds — Zelensky’s success rate — Sikorski’s UAE gig,” February 10, 2023 <https://www.politico.eu/newsletter/brussels-playbook/euco-deals-on-fences-funds-zelenskyys-success-rate-sikorskis-uae-gig/>

¹⁹⁴ Renata Neder, “‘Covering a lawless land’: Brazilian journalists on reporting in the Amazon after Dom Phillips’ and Bruno Pereira’s killings,” July 26, 2022 <https://cpi.org/2022/07/covering-a-lawless-land-brazilian-journalists-on-reporting-in-the-amazon-after-dom-phillips-and-bruno-pereiras-killings/>

¹⁹⁵ Signed in Cotonou (Togo) in 2000, it is a partnership agreement between the EU and the so-called ACP (Africa, Caribbean and Pacific states).

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the EP subcommittee on human rights. Human rights dialogues are also often too couched in diplomacy, like check-box exercises with EEAS officials repeating statements with well-trodden EU jargon.

“An effective EU sanctions policy or a better exploitation of GSP [the Generalised Scheme of Preferences, which removes import duties from products coming into the EU market from vulnerable developing countries in exchange for the upholding of human rights standards] might have teeth,” a European Parliament senior adviser told CPJ. “If, for instance, [journalist] [Maria Ressa](#) is condemned to jail in the Philippines, the EU could no longer have trade relations like today. The protection of journalists must be specifically part of the GSP+ [[Generalised Scheme of Preferences Plus](#)] mechanisms,” said one senior official. A revision of GSP remains underway, with some MEPs calling for it to be much tougher.¹⁹⁶

¹⁹⁶ Heidi Hautala, “Review of the Generalised Scheme of Preferences (GSP) Regulation,” March 2023 <https://www.europarl.europa.eu/legislative-train/theme-an-economy-that-works-for-people/file-new-gsp-regulation>

Conclusion

The 2019 European elections were an important moment for the EU and press freedom. EU institutions have generally pivoted in a positive direction since the publication of CPJ's 2015 Balancing Act report. Groups including the Committee to Protect Journalists campaigned in 2019 for the European Commission to have a strengthened mandate to work on press freedom. The subsequent media reforms set a positive foundation on paper; but the question is how they will be applied and sustained beyond the mandate of the current Commission, and past the European elections of 2024.

Within the EU, the power of Brussels will have its limitations, at least for the short-term, and it will fall at the feet of EU member states to effectively strengthen national policy on media freedom and journalist protection along the lines of national safety action plans or press freedom reforms, such as in the [Netherlands](#), [Sweden](#) or [Slovakia](#). Yet the test of Brussels' influence will be the extent to which national measures are then taken up by judicial authorities or law enforcement and whether they will be known by – and have the trust of – the journalist communities in member states.

EU actions do not always trickle down to the journalists it says it is supporting – both in Europe and around the world. The shift in acknowledgement that protecting journalists is a pan-European, cross-border issue has helped, but more sustained support is needed. The institutions of the EU must also strengthen their reputation and integrity, ensuring that all legislation, policy and communications have, where applicable, press freedom and journalist safety at their core. Until inconsistencies in practice are ironed out, Brussels will have a checkered relationship with media advocates. On the one hand, as the European Parliament moves to address surveillance, on the other, the European Commission threatens the protection offered by encryption. As Brussels funds investigative journalists, it makes access to official documents difficult.

In its foreign relations, the EU has to demonstrate that its member states fully respect press freedom at home or open itself to criticism and accusations of hypocrisy. Coherency in its criticism of third countries, an issue which challenges EU human rights policy more generally, is crucial. To be effective and credible, the EU must apply the same criteria to all actors, within the EU and internationally, and actively fight against the pitfall of double standards.

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Such contradictions short change significant actions to advance press freedom and hinder the protection of EU values as a cornerstone of democracy.

About the authors

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CPJ's recommendations to the EU

The Committee to Protect Journalists 2023 report, *Fragile Progress*, highlights the EU's responses to the complex and severe challenges currently facing journalists. As a critical juncture for continuing the defense of democracy approaches with the 2024 elections, CPJ believes that the European Union must build on recent EU press freedom reforms, uphold EU values by safeguarding independent journalism for its citizens, and maintain its role as a global standard bearer on press freedom.

To achieve these goals, CPJ calls on the EU to implement the following recommendations:

To the European Commission:

- Strengthen the Rule of Law Report of the European Commission, by:
 - developing its coordination and communication with civil society groups;
 - increasing visibility and awareness among affected journalist communities in member states with a view to building local trust in the effectiveness of the process;
 - strengthening it with more measurable and precise recommendations that can serve as benchmarks for progress in EU member states;
 - ensure that country visits are as visible, transparent and inclusive as possible, including by creating easily accessible online country guides that allow local journalists to better follow and integrate into the process.
- Use the Rule of Law Mechanism, and all other means of political pressure, to push member states to implement in full the [2021 Recommendation](#) on ensuring the protection, safety, and empowerment of journalists, and to evaluate and report back publicly and with the opportunity for scrutiny from civil society.
- Pressure the Council of the European Union to regularly report on, publicly debate, and draw attention to effective measures taken by member states regarding press freedom and journalist safety; and apply pressure on those states that continuously fail to muster the political will to take effective action at national level.
- Seek to broaden the scope of the 2020 [Regulation](#) on a general regime of conditionality for the protection of the Union budget to make EU funds conditional when violations of media freedom in member states breach the rule of law and EU treaty values.

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- Ensure the swift and transparent provision of all internal, institutional information in line with [Regulation No 1049/2001](#) regarding access to information.
- Consider, and where applicable, start formal infringement procedures against member states who misuse the 2016 [General Data Protection Regulation](#) to violate press freedom.
- Investigate in full the misuse of the 2016 [Trade Secrets Directive](#) to limit legitimate journalism, make the findings of such investigations public, raise allegations of abuse by companies, individuals, and member states in advance of the 2026 reporting deadline, and propose steps for addressing abuse.
- Support initial calls by the European Parliament to immediately start a conditional moratorium on the sale, acquisition, transfer and use of spyware, to be lifted only on a country-by-country basis if due diligence conditions are met.

To the European Parliament and the Council of the European Union (as part of inter-institutional legislative negotiations):

- Secure the adoption of the [European Media Freedom Act](#) (EMFA) as a regulation and ensure that it contains strong provisions, including on protecting journalists and their sources from all forms of spyware and surveillance technology, strengthening media ownership transparency, and increasing the independence and effectiveness of the European Board for Media Services.
- Ensure that the proposed [EU anti-SLAPP Directive](#) covers a broad definition of cross-border cases and includes effective anti-SLAPP protection measures, including stay of proceedings and early dismissal of SLAPPs, compensation for defendants' damages, and penalties for SLAPP claimants.
- Ensure that the proposed [Regulation on Child Sexual Abuse](#) does not threaten the use of encryption, disproportionately threaten online privacy and freedom of expression, and violate prohibition of the EU's general monitoring obligations.
- Ensure that the proposed Regulation on [European production and preservation orders](#) ("e-Evidence"), which would facilitate prosecutors' access to data held by internet service providers in another EU member state, provides necessary judicial oversight and safeguards to fully protect the rights of journalists.
- Ensure that the proposed [Review of the Generalised Scheme of Preferences \(GSP\) Regulation](#) strengthens the EU's leverage to improve press freedom in third countries.

To EU member states:

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- Immediately implement all provisions of the European Commission's [Recommendation on strategic lawsuits against public participation](#) (SLAPPs), and publicly report on what actions have been taken.
- Immediately implement all provisions of [the recommendation](#) on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union and integrate civil society into national processes, allowing space for both scrutiny and further recommendations for improvement.
- Prioritize the timely processing of visa applications and provision of shelter to journalists at risk, as well as their family members and dependents, and establish effective national frameworks and measures, in coordination with the European External Action Service, to relocate journalists fleeing crises in their home country.
- Review and revise existing EU visa policies and practice for journalists at risk to access emergency visas to travel to EU member states, including a specific facilitated procedure for journalists within the [EU Visa Code](#); clear language in the [EU Visa Handbook](#) on helping journalists at risk; and a review of the Temporary Protection Directive to be extended to journalists at risk.
- Call on member states who have allegedly used Pegasus and other spyware to restore sufficient institutional and legal safeguards and oversight, and where necessary provide full remedy for targeted journalists.
- Ensure an ambitious transposition of the Directive on the protection of persons who report breaches of Union law (the "[Whistleblowers Directive](#)") to grant full protection to such individuals, including in their interactions with journalists.
- Uphold in full the [Regulation \(EU\) 2021/821](#) governing the EU's export control regime of dual-use technology.
- Where necessary, request the assistance of Europol (the EU Agency for Law Enforcement Cooperation) and Eurojust (the EU Agency for Criminal Justice Cooperation) to help resolve crimes against journalists.
- Broaden the scope of the [Rule of Law Conditionality Regulation](#) to make EU funds conditional when violations of media freedom in member states breach the rule of law and EU treaty values.

To the European External Action Service:

- Continue to provide all necessary support and training to EEAS staff, including at EU delegation level, to allow them to fully implement the [EU Guidelines on Freedom of Expression Online and Offline](#) in a consistent and uniform manner.

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- Fully utilize the [Generalised Scheme of Preferences](#) as a meaningful source of leverage to improve press freedom in third countries.
- Continue to conduct reviews of the uniformity and coherence of EEAS human rights criticism of third countries, including through all bilateral relations and human rights dialogues, with a view to upholding EU values and international human rights standards to the highest degree possible.
- Condemn all reports of the misuse of spyware in third countries, and stop support to third countries that enables them to develop surveillance capabilities. .

To the future president of the European Commission (after the 2024 European elections):

- Continue the legacy of the vice president for values and transparency and re-appoint a new vice president of the Commission with a clear and robust mandate to use all available EU mechanisms, including policy, legislation, and budget, to defend press freedom and the safety of journalists.
- Outline an ambitious press freedom mandate in the post-election mission letter to the new vice president which re-establishes media freedom as a political priority over the next five-year term, setting clear benchmarks for enabling an environment for free, independent, pluralistic, and diverse media and the safety of journalists, as well as ensuring tangible implementation of press freedom reforms taken by the Commission between 2019 and 2024.
- Ensure maximum resources and staffing for the Commission to guarantee success of ongoing media reforms.

To the European Parliament (after the 2024 elections):

- Following the 2024 European elections, set up a Press freedom Intergroup, with the necessary staffing and resources to defend press freedom in Europe and internationally, as well as to provide scrutiny of the actions and initiatives taken by the European Commission and the European External Action Service.