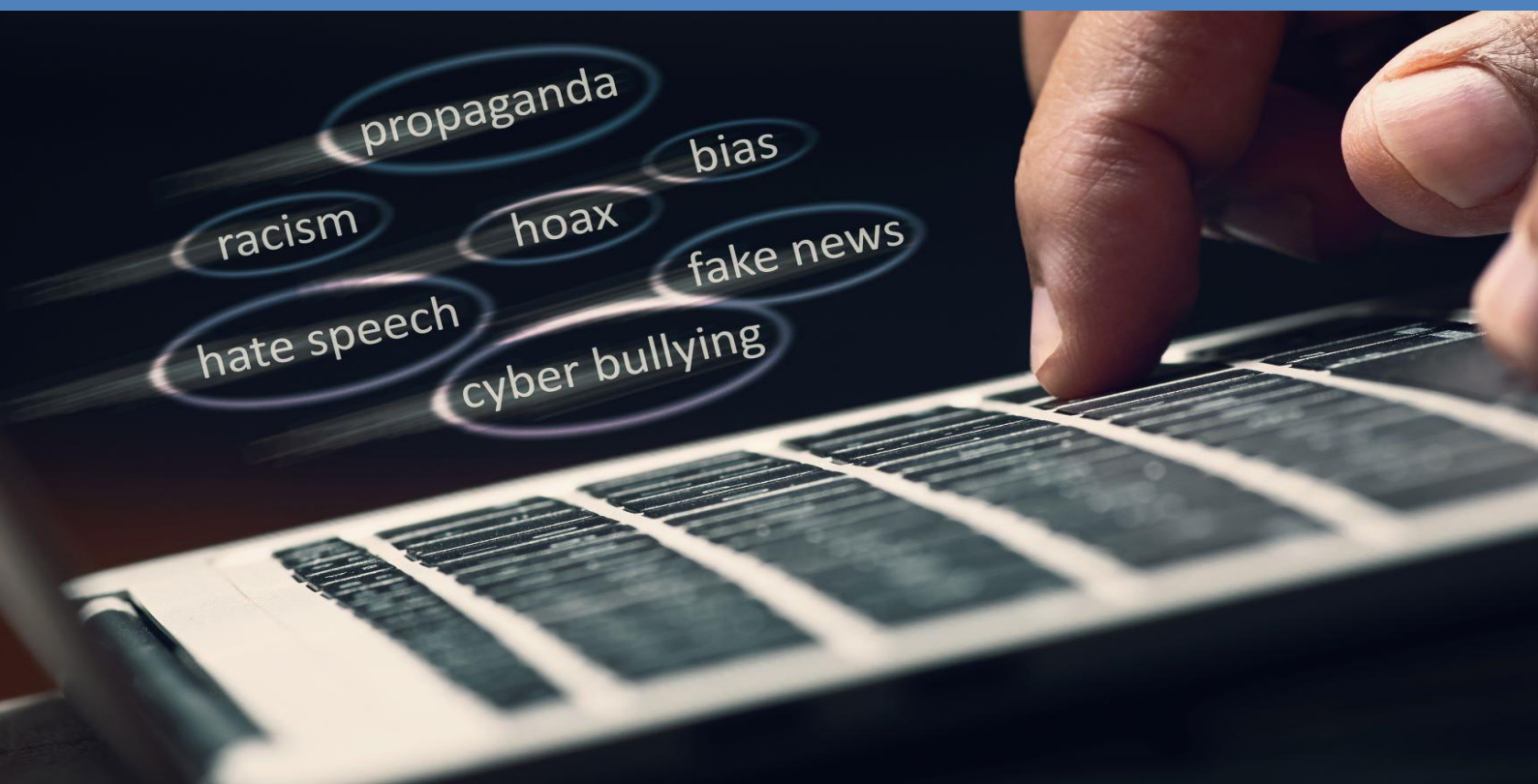


# TOWARDS COREGULATION OF HARMFUL CONTENT ONLINE IN BOSNIA AND HERZEGOVINA

A study of European standards and co-regulatory practices for combating harmful content online



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**Council of Europe Experts**

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by the European Union



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Co-funded and implemented  
by the Council of Europe

*This publication was produced with the financial support of the European Union and the Council of Europe, through the joint programme "Horizontal Facility for the Western Balkans and Türkiye". It was developed with the support of the joint action "Freedom of expression and freedom of the media in Bosnia and Herzegovina (JUFREX)" (2019–2022) and it was published within the joint action "Protecting freedom of expression and of the media in Bosnia and Herzegovina (PRO-FREX)" (2023-2026).*

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*This study was completed in December 2022 and reflects the legal landscape and practices as of that time.*

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**December 2022**

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## 1. EXECUTIVE SUMMARY

The purpose of this study was to provide an assessment of the existing legal and regulatory framework and approaches relative to harmful content online in Bosnia and Herzegovina, and to recommend concrete steps and measures for enhancing the current approach, with a particular focus on possibilities and modalities of establishing a functioning and comprehensive implementation mechanism based on co-regulation and cooperation.

To this end, the study starts by providing the contextual framework of the global problem of harmful online content and its dissemination, including the approaches taken on the European level, with a special emphasis on the latest Legislative initiatives by the European Union (EU). The notions of illegal vs. harmful content are explored, focusing on categories that are most contentious and worrying in the context of online media, namely disinformation – also in the context of elections - and hate speech.

The study then outlines the existing legal framework, practices and issues related to harmful online content in Bosnia and Herzegovina. Reports and empirical evidence suggest that online media are the leading source of disinformation and hate speech, and as such represent a particular challenge for democratic processes. The problem is further exacerbated by the role of global online platforms in the further dissemination of such content. The lack of a much-needed legal framework and strategy leaves this area vastly unregulated, and the approaches to countering harmful online content very fragmented. In this context, the study maps the relevant stakeholders and gathers their views, in search of a systematic solution to the identified challenges.

Several best-practice examples and sources of inspiration are offered, such as the approach of the countries from the region to registering online media and approaches of several European countries to tackling harmful online content, both on online platforms and online media, functioning on the principles of co-regulation and interinstitutional cooperation. The study also highlights some controversial attempts to regulate this issue at the country level, which demonstrate that one-sided and partial solutions to a complex and multi-faceted problem are not viable and could indeed be problematic from the point of view of protecting the freedom of expression. By gathering stakeholder views, the idea of co-regulation and/or cooperative regulation is explored, taking into account the realities in which each of the stakeholders is operating.

Finally, a set of recommendations is provided, acknowledging the need to take harmonised and wide-ranging actions that would cover both challenges discussed in the study: those posed by harmful content in online media, and by harmful content disseminated on online platforms. The proposed recommendations include developments in relation to the legislative and regulatory framework, bearing in mind the recent and forthcoming EU legislation on online services and media, and also with a view to the harmonisation of initiatives to tackle harmful online content in Bosnia and Herzegovina in order to avoid ad-hoc and partial solutions. Taking particular note of the coordination mechanism envisaged in the EU Digital Services Act, as well as the evident shift towards systemic regulation and co-regulation, a model based on a formalised cooperation between different stakeholders that have a role in the digital environment is proposed.

## 2. INTRODUCTION AND CONTEXT OF THE RESEARCH

### 2.1. Context of the research

The JUFREX project<sup>1</sup> aims to support the media regulatory authority in developing the regulatory framework in line with European standards (in particular as regards alignment with the revised European Audio-visual Media Directive, as well as the forthcoming EU Digital Services Package). The converged communications regulator of Bosnia and Herzegovina (BiH) - the Communications Regulatory Agency (CRA) - signalled to the Council of Europe a need for a study on the regulation of online media to be delivered under the aforementioned project.

Online media in Bosnia and Herzegovina, excluding social networks, is partially subject to a media self-regulation system, as there are a number of web-based media outlets that chose to self-regulate. The CRA, under the current legislation, does not have jurisdiction over the content of web-based media outlets. The CRA proposed an amendment to the "Rules governing the provision of audio-visual and radio media services" in 2021, with a view to extending the licensees' editorial responsibility to their online content - all content published on the official websites of broadcasters or websites marked with their logo be subject to the same basic tier of rules as the broadcast content, in terms of incitement to violence, hatred and discrimination, prejudice to public health and safety, protection of minors and their privacy, as well as the right of reply. The scope of regulation would effectively be expanded to include the prevention of harmful content in media service providers' online activities. However, this would leave outside the scope of the regulation the vast number of online media that are not linked to broadcasters. Therefore, this study was launched to examine potential models of media coregulation as the mechanism for combating harmful online content.

### 2.2. Methodology and approach

The main objectives for this study were identified as the following:

- To place the study in the context of the global problem regarding harmful content online and to provide an overview of the definitions and notions of harmful content and the approaches, obligations, standards and principles at the European level.
- To map local players in Bosnia and Herzegovina (governmental institutions, non-governmental organisations, and/or professional associations) based on their remits would logically have a role in the governance of the online media ecosystem, and assess their capacities and readiness to take on this joint responsibility;
- Based on key studies on the situation in the country and following discussions with the broad range of stakeholders identified in the mapping (media freedom, representatives of relevant State institutions, civil society and the media industry<sup>2</sup>), to outline the evidence of the specific challenges in Bosnia and Herzegovina in relation to harmful online content;
- To map existing European practices of media self and coregulation and/or cooperation platforms in the context of combating harmful content online, and to evaluate these and assess whether any of the approaches could be used as a model in Bosnia and Herzegovina. This evaluation includes stakeholder comments and proposals for addressing the problem.

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<sup>1</sup> Jointly implemented by the Council of Europe (CoE) and the European Union (EU)

<sup>2</sup> A key element of the study involved interviews to gather stakeholder views. A template questionnaire was prepared, and used during the interviewing process, in order to achieve uniformity of views.

### 3. HARMFUL ONLINE CONTENT: THE COUNCIL OF EUROPE AND THE EUROPEAN UNION

The purpose of this chapter is to place the study in the context of the Council of Europe (CoE), European Union (EU) and other international rules, regulations, guidance, recommendations, resolutions and codes relevant to the issues of harmful and illegal content – with a particular focus on disinformation and hate speech. It is commonly understood that there exists a significant problem in relation to disinformation, particularly in the online world. In the fight against harmful content, ensuring the resilience of institutions, media and citizens and civil society is a complex task that has to be tackled on many levels. It is important to note that the challenge of countering disinformation is also linked to the need for media pluralism, the fight against hate speech and discrimination, the promotion of tolerance, inclusion, diversity and social cohesion, ensuring the independence of public service media and media regulatory authorities, and the promotion and protection of quality journalism.<sup>3</sup>

A survey of European citizens conducted in 2018 by the EU Eurobarometer<sup>4</sup> found that 83% of respondents say that fake news represents a danger to democracy. Citizens are particularly concerned about intentional disinformation aimed at influencing elections and immigration policies. The survey also emphasises the importance of quality media: respondents perceive traditional media to be the most trusted source of news (radio 70%, TV 66%, print 63%). Online sources of news and video hosting websites are the least trusted, with rates of 26% and 27% respectively.

There exist particular challenges that countries in the South East Europe region are facing. The phenomenon of the proliferation of online media is more common here than in much of the European Union. A recent study by the European Parliament Committee on Foreign Affairs noted that:

“Disinformation is a significant problem throughout the Western Balkans and an increasingly important part of the way in which both domestic and foreign actors pursue political ends. The deliberate production and dissemination of ‘fake news’ – full or partial falsehoods masquerading as journalism – has become a dominant method of contesting elections, shifting government policy agendas, and settling scores between business rivals. Moreover, disinformation is sufficiently pervasive in the region that it hampers the consolidation of democratic media systems, and thus of democratic governance more broadly, as well as heightening the challenges of post-conflict resolution and transitional justice”.<sup>5</sup>

The authors presented an interesting typology of the nature of disinformation: in countries (such as Serbia and Montenegro) where politics is dominated by a single group, disinformation tends to follow the ‘party line’, serving the interests of the powerful and undermining opposition; in more competitive political environments (such as Albania, Kosovo and (to an extent) North Macedonia) disinformation tends to be used opportunistically by all sides, pursuing short-term aims rather than long-term strategies; the presence of deep ethnic and/or sectarian divides (such as in Bosnia and Herzegovina, and North Macedonia) fosters xenophobic disinformation campaigns by both domestic and foreign actors; when a

<sup>3</sup> Council of Europe, Recommendation CM/Rec(2022)4 of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age; <https://tinyurl.com/yjbd6rrk>

<sup>4</sup> Survey published in March 2018, requested by DG CONNECT: Fake news and disinformation online. <https://europa.eu/eurobarometer/surveys/detail/2183>

<sup>5</sup> European Union (2021): Mapping Fake News and Disinformation in the Western Balkans and identifying ways to effectively counter them. Prepared for the European Parliament AFET Committee (Committee on Foreign Affairs); [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653621/EXPO\\_STU\(2020\)653621\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653621/EXPO_STU(2020)653621_EN.pdf)

government's sovereignty is new or challenged (such as in Bosnia and Herzegovina, Kosovo and North Macedonia, and to a lesser extent in Montenegro) politics are especially vulnerable to geopolitically motivated interference.<sup>6</sup>

### 3.1. Overview of concepts related to harmful content

As this study aims to examine the rules, guidance, approaches and best practices in relation to harmful content – including a focus on issues such as disinformation and hate speech, it is important at the outset to briefly review the state of play with regard to conceptualising these problems. In 2021, the European Regulators Group for Audiovisual Media Services (ERGA) published a very useful discussion paper on the notions of disinformation where they indicated that there is no “commonly shared definition” of disinformation, and a number of other notions, such as fake news and false information, are routinely used as “different ways to indicate the same concept”.<sup>7</sup>

It is worth bearing in mind the statement of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, who noted in 2020 that disinformation is an “extraordinarily elusive concept to define in law”, and is “susceptible to providing executive authorities with excessive discretion to determine what is disinformation, what is a mistake, what is truth”.<sup>8</sup> The more commonly accepted definitions of disinformation now include certain limiting factors, such as the intent of the person disseminating the information – whereby the information was “deliberately created and disseminated to cause harm.”<sup>9</sup>

There has been extensive discussion on the notion of “fake news” which could incorporate anything from “playful hoaxes to belligerent propaganda or incitement to violence”.<sup>10</sup> From the perspective of the European Broadcasting Union, “the notion of ‘information disorder’ better reflects the full extent of the current problem, where ‘fake news’ is only the tip of the iceberg”.<sup>11</sup>

Fake news, disinformation and hate speech are frequently linked in the various attempts at regulation and legislation (to be discussed further below) to the issue of defamation and insult. As noted, the “...term ‘fake news’ has been used and misused in the political debate, also to dismiss reports which politicians simply did not like”.<sup>12</sup> The impact of this “information disorder” on political speech, political debate and on the integrity of elections is also a key concern for institutions (discussed further below). Election and referenda campaigns are increasingly being manipulated with disinformation, not only from internal sources but also frequently via foreign interference.<sup>13</sup>

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<sup>6</sup> Ibid

<sup>7</sup> ERGA (2020). NOTIONS OF DISINFORMATION AND RELATED CONCEPTS. Available at: <https://tinyurl.com/2ctth8mc>

<sup>8</sup> UN, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Disease pandemics and the freedom of opinion and expression, A/HRC/44/49, 23 April 2020, at para. 42. Available at: <https://undocs.org/A/HRC/44/49>

<sup>9</sup> Council of Europe, Recommendation CM/Rec(2022)11 of the Committee of Ministers to member States on principles for media and communication governance (Adopted by the Committee of Ministers on 6 April 2022 at the 1431st meeting of the Ministers' Deputies). [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a61712](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a61712)

<sup>10</sup> McGonagle, T. (2017). “Fake news”: False fears or real concerns? *Netherlands Quarterly of Human Rights*, Vol. 35 No.4, 2017

<sup>11</sup> EBU (2018). Position paper: “Fake news” and the Information Disorder. Available at: <https://tinyurl.com/jhw4hdpy>

<sup>12</sup> McGonagle, T. (2017)

<sup>13</sup> The Global Disinformation Index recently estimated that online ad spending on disinformation domains amounted to \$235 million a year. Available at: <https://disinformationindex.org/>



One of the limits to freedom of expression is speech inciting hatred. The concept of “hate speech” is also complex. A recent recommendation of the Council of Europe on hate speech<sup>14</sup> (discussed further below) defined hate speech, but also emphasised the importance of differentiating between levels of hate speech: hate speech that is prohibited under criminal law; and hate speech that does not attain the level of severity required for criminal liability, but is nevertheless subject to civil or administrative law; and offensive or harmful types of expression which are not sufficiently severe to be legitimately restricted under the European Convention on Human Rights.

The 2018 revised Audiovisual Media Services Directive (AVMS Directive) prohibits illegal content such as incitement to hatred, incitement to violence, incitement to terrorism and the distribution of child pornography. These prohibitions are emphasised with regard to the obligations of video-sharing platforms (VSPs). The Directive also addresses content harmful to minors with regard to their physical mental or moral development. Several countries are concerned with harmful content such as that encouraging harmful behaviours or suicide. The table below provides summaries of these definitions.

TABLE 1: DEFINITIONS AND NOTIONS OF HARMFUL CONTENT AND DISINFORMATION	
	Disinformation/ misinformation/ malinformation
Council of Europe reports <sup>15</sup>	<p><b>Dis-information:</b> Information that is false and deliberately created to harm a person, social group, organization or country.</p> <p><b>Mis-information:</b> Information that is false, but not created with the intention of causing harm.</p> <p><b>Mal-information.</b> Information that is based on reality, used to inflict harm on a person, organization or country</p>
Council of Europe recommendations <sup>16</sup>	Disinformation refers to verifiably false, inaccurate or misleading information deliberately created and disseminated to cause harm or pursue economic or political gain by deceiving the public
European Commission policy documents <sup>17</sup>	Disinformation is understood as verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm
ERGA Study on notions of disinformation <sup>18</sup>	Proposal for a unified approach to defining <b>disinformation</b> : <ul style="list-style-type: none"> <li>- a) false or misleading information,</li> <li>- (b) disseminated with a specific intention (malicious or bad faith)</li> <li>- (c) and has the ability to cause certain public harms.</li> </ul>
The Ethical Journalism Network <sup>19</sup>	Fake news information that has been deliberately fabricated and disseminated with the intention to deceive and mislead others into believing falsehoods or doubting verifiable facts
	Hate Speech
Council of Europe Recommendation	Hate speech is understood as all types of expression that incite, promote, spread or justify violence, hatred or discrimination against a person or group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status such as race,

<sup>14</sup> Council of Europe, Recommendation CM/Rec(2022)16[1] of the Committee of Ministers to member States on combating hate speech (Adopted by the Committee of Ministers on 20 May 2022 at the 132nd Session of the Committee of Ministers).

Available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a67955](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955)

<sup>15</sup> For example, Wardle, C. & Derakhshan, H. (2017): Information Disorder : Toward an interdisciplinary framework for research and policy making. Strasbourg: Council of Europe. Available at: <https://tinyurl.com/9cdpjdx>

<sup>16</sup> Council of Europe (2022b)

<sup>17</sup> Such as the Joint Communication of the European Commission and the European External Action Service, also known as the Action Plan against Disinformation, JOIN(2018) 36 final, available at: <https://tinyurl.com/5n774xtk>

<sup>18</sup> ERGA (2020)

<sup>19</sup> The Ethical Journalism Network. Available at: <http://ethicaljournalismnetwork.org/tag/fake-news>

on combating hate speech <sup>20</sup>	colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation.
Council of Europe recommendation on combating hate speech	Need to differentiate between a. - i. hate speech that is prohibited under criminal law; and ii. hate speech that does not attain the level of severity required for criminal liability, but is nevertheless subject to civil or administrative law; and b. offensive or harmful types of expression which are not sufficiently severe to be legitimately restricted under the European Convention on Human Rights, but call for alternative responses
	<b>Harmful content</b>
In the context of the AVMS Directive - audiovisual acquis	Content which may impair the physical, mental or moral development of minors
In the context of national legislations (UK and Ireland) <sup>21</sup>	Harmful online content: content that encourages harmful behaviour such as self-harm, anorexia, suicide; and harmful online behaviour such as stalking, bullying and posting of intimate images, etc.
	<b>Illegal content</b>
In the context of the AVMS Directive - audiovisual acquis	<ul style="list-style-type: none"> <li>- incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter;</li> <li>- a public provocation to commit a terrorist offence</li> <li>- offences concerning child pornography</li> <li>- offences concerning racism and xenophobia</li> </ul>

### 3.2. The fight against disinformation

#### Council of Europe

An important contribution to the debates on disinformation was the Council of Europe 2017 study *Information Disorder: Toward an interdisciplinary framework for research and policy-making*.

This report provided very useful definitions (outlined in the table above) that distinguish different types of problematic information: dis-information as information that is false and deliberately created to harm a person, social group, organisation or country; misinformation as information that is false, but not created with the intention of causing harm; and mal-information as information that is based on reality, used to inflict harm on a person, organization or country.

In addition, the report emphasised the need to examine the various “agents” who create disinformation, how it is distributed and how it is received and interpreted. The report provided an extensive section on recommendations for various actors.

For Member States, it proposed (among others) the mapping of information disorder within their respective countries, the regulation of the transparency of advertising, and supporting quality journalism.

#### European Union

The European Commission published a report in 2018 on fake news and information disorder, which provided a range of recommendations on the basis of five pillars, stressing the need to: “enhance the transparency of online news, involving an adequate and privacy-compliant sharing of data about the systems that enable their circulation online; promote media and

<sup>20</sup> Council of Europe (2022c)

<sup>21</sup> Online Safety Bill, UK, available at: <https://bills.parliament.uk/bills/3137> and Online Safety and Media Regulation Bill, Ireland, available at: <https://tinyurl.com/3fm2cjjd>

information literacy to counter disinformation and help users navigate the digital media environment; develop tools for empowering users and journalists to tackle disinformation and foster a positive engagement with fast-evolving information technologies; safeguard the diversity and sustainability of the European news media ecosystem, and promote continued research on the impact of disinformation in Europe to evaluate the measures taken by different actors and constantly adjust the necessary responses".<sup>22</sup>

The key initiative stemming from this was the EU Code of Practice on Disinformation (the Code) launched in 2018.<sup>23</sup> The Code emerged as an initiative at the EU level to address concerns about disinformation. The related Action Plan published in December 2018, requested the assistance of ERGA in monitoring the implementation of this Code. The Code included 5 main pillars of action: scrutiny of ad placements (aimed at demonetizing online purveyors of disinformation); transparency of political advertising and issue-based advertising (aimed at making sure that political adverts are clearly identified by the users); integrity of services (aimed at identifying and closing fake accounts and using appropriate mechanisms to signal bot-driven interactions); empowering consumers (aimed, on the one hand, at reducing the risks of social media 'echo chambers' by making it easier for users to discover and access different news sources representing alternative viewpoints and, on the other hand, to plan and execute media literacy campaigns against disinformation); empowering the research community (aimed at granting researchers access to the data of platforms that is needed for continuous monitoring of online disinformation).

The European Commission published a "Strengthened Code of Practice on Disinformation 2022" on 16 June 2022.<sup>24</sup> According to the EC website and press release: the new Code brings together a more diverse range of stakeholders than ever, empowering them to contribute to wide-ranging improvements by signing up for precise commitments relevant to their field. Such commitments include demonetising the dissemination of disinformation; guaranteeing transparency of political advertising; enhancing cooperation with fact-checkers; and facilitating researchers' access to data.

In parallel, in 2020 the European Commission established the European Digital Media Observatory (EDMO)<sup>25</sup> with the aim of "creating and supporting the work of an independent multidisciplinary community capable of contributing to a deeper understanding of the disinformation phenomenon and to increase societal resilience to it". The Commission also published its European Democracy Action Plan (EDAP) in December 2020.<sup>26</sup> The EDAP is linked to other aspects of EU policy in the area of disinformation (including the Code outlined above, the DSA, and also further regulations for example on political advertising, and media freedom, to be discussed in brief below). The EDAP is designed to empower citizens and build more resilient democracies across the EU by promoting free and fair elections, strengthening media freedom (including the safety of journalists), and countering disinformation.

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<sup>22</sup> For example, the European Commission (2018): Final report of the High Level Expert Group on Fake News and Online Disinformation. Available at: <https://tinyurl.com/53yzapmk>

<sup>23</sup> EU Code on Disinformation (2018). Available at: <https://tinyurl.com/2s43n4j3>

<sup>24</sup> The Strengthened Code of Practice on Disinformation (2022), Available at: <https://tinyurl.com/3ty8mx6m> Press Release: <https://tinyurl.com/746f3vwa>

<sup>25</sup> European Digital Media Observatory (EDMO). Available at: <https://edmo.eu/>

<sup>26</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Democracy Action Plan. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0790&from=EN>

### 3.3. Approaches to harmful (including illegal) content

#### Council of Europe

The Council of Europe, in its 2018 recommendation on the roles and responsibilities of internet intermediaries, recognised the complexity of the term “internet intermediary”. The recommendation noted that: “a wide, diverse and rapidly evolving range of players, commonly referred to as “internet intermediaries”, facilitate interactions on the internet between natural and legal persons by offering and performing a variety of functions and services”.<sup>27</sup>

Among others, intermediaries have the responsibility to respect human rights and to employ adequate measures applies regardless of their size, sector, operational context, ownership structure or nature. The greater the impact and the potential damage to the objects of legal protection and the higher the value of the services for the exercise of human rights, the greater the precautions that the intermediary should employ when developing and applying their terms and conditions of service, community standards and codes of ethics aiming, notably, to prevent the spread of abusive language and imagery, of hatred and incitement to violence.

The recommendation states that internet intermediaries should (among others):

- carry out regular due diligence assessments of their own compliance with the responsibility to respect human rights and fundamental freedoms and with their applicable duties;
- ensure that all terms of service agreements and policies specifying the rights of users and all other standards and practices for content moderation and the processing and disclosure of user data are publicly available in clear, plain language and accessible formats;
- take reasonable and proportionate measures to ensure that their terms of service agreements, community standards and codes of ethics are applied and enforced consistently and in compliance with applicable procedural safeguards;
- provide public information about the operation of automated data processing techniques in the course of their activities, including the operation of algorithms that facilitate searches based on user profiling or the distribution of algorithmically selected and personalised content, such as news;
- and regularly publish transparency reports information on all restrictions to the free and open flow of information and ideas and all requests for such restrictions.

The recommendation further stresses that any measures taken to restrict access (including blocking or removing content) as a result of a State order or request should be implemented using the least restrictive means, and should be accompanied by information to the public, explaining which content has been restricted and on what legal basis.

Other recommendations address: the use of personal data, tracking and profiling of users; the provision of access to effective remedies and complaints mechanisms. It is recommended that intermediaries should engage in dialogue with consumer associations, human rights advocates and other organisations representing the interests of users and affected parties, as well as with

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<sup>27</sup> Council of Europe, Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries (Adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies). Available at: <https://tinyurl.com/twej268t>

data protection and other independent administrative or regulatory authorities, to ensure that their complaint mechanisms are designed, implemented, evaluated and improved through participatory processes.

### **European Union**

The e-Commerce Directive of 2000<sup>28</sup> was formerly the main EU instrument that addressed illegal online content, requiring that service providers expeditiously act to remove access to the information stored when informed that the information has been removed from the network, when access to it has been disabled or when a responsible authority has ordered the removal. The scope of the Directive covered "information society services". They were defined as - any service normally provided for remuneration - at a distance - by electronic means at the individual request of a recipient of services.

The e-Commerce Directive established a limited liability for service providers. In order to retain liability exemption, platforms must not have actual knowledge of illegal activity or information and/or not be aware of facts or circumstances from which the illegal activity or information is apparent and upon obtaining such knowledge or awareness, must act expeditiously to remove or to disable access to the illegal content (Article 14 e-Commerce Directive).

The variety of intermediary services was also recognised in the European Digital Services Act (DSA), which was approved by the European Parliament on 5 June 2022.<sup>29</sup> The DSA discusses the passive nature of some intermediaries and provisions on the exemption of liability of providers of intermediary services liability (similar to those of the e-Commerce Directive, see above) – i.e. conditions under which providers of mere conduit (Article 3), caching (Article 4) and hosting services (Article 5) are exempt from liability for the third-party information they transmit and store.

In addition, it recognises that a range of intermediary services exerts more influence on the content available to the user: "recognising the particular impact of very large online platforms on our economy and society, the proposal sets a higher standard of transparency and accountability on how the providers of such platforms moderate content, on advertising and algorithmic processes".

The Digital Services Act is part of what is known as the EU Digital Services Package. The second element of this package is the Digital Markets Act, which will not be addressed in the context of this study, as it concerns market and competition issues, and only applies to the very large technology companies identified as "gatekeepers", and the enforcement will be carried out by the European Commission. The aim of the DSA is to modernise the rules of the e-Commerce Directive in relation to illegal content and to address transparency of advertising and disinformation online.

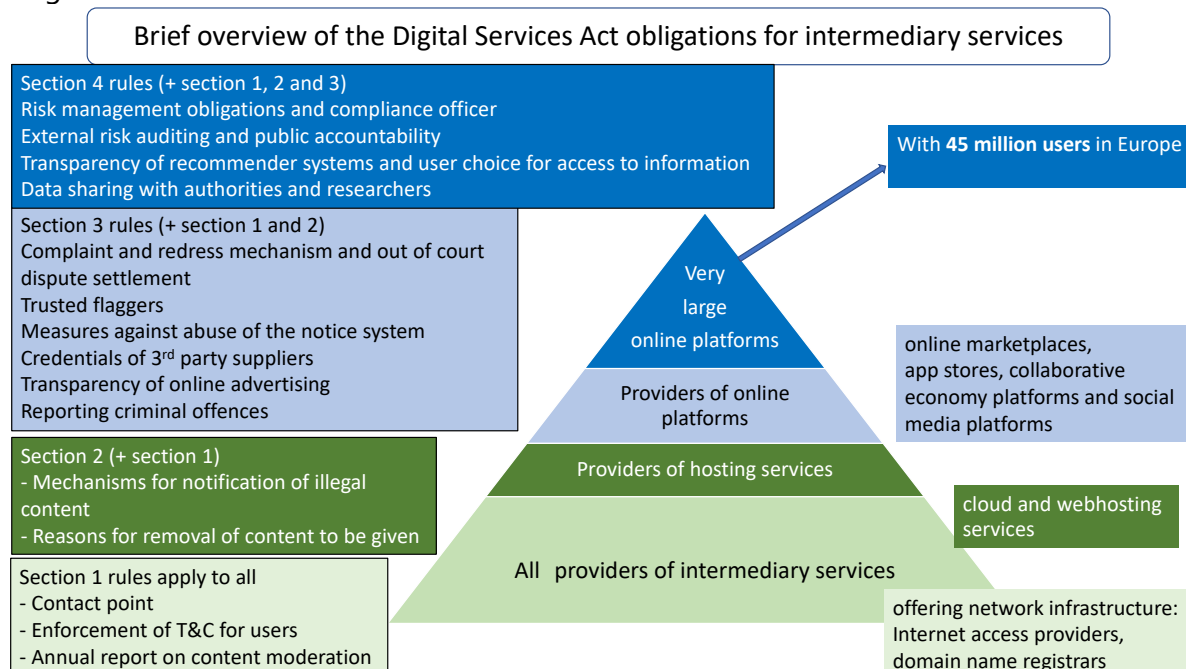
According to the European Commission website, the rules are intended to: "better protect consumers and their fundamental rights online; establish a powerful transparency and a clear accountability framework for online platforms; foster innovation, growth and competitiveness within the single market".

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<sup>28</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'). Available at: <https://tinyurl.com/ypkrmvpp>

<sup>29</sup> European Commission, Proposal for a Regulation of the European parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC. Available at: <https://tinyurl.com/yd935ccv>

The DSA categorises intermediaries in what has become known as the “pyramid”, and the responsibilities and obligations vary according to category. The responsibilities are however cumulative, with each layer having the obligations of the layer below plus additional obligations.



**Fig 1: The Obligations introduced by the Digital Services Act**

On the bottom – the pale green section relates to all intermediary services that should provide public details of a contact point. They should include Terms and Conditions (T&C) for their users, and they should provide annual reports on the activities related to content moderation. As a subset of all intermediaries, providers of hosting services (cloud and web hosting) have these obligations, plus, requirements to establish mechanisms whereby they can be notified regarding illegal content. They should provide users with reasons for the removal of content. The next subset (in the pale blue row of the pyramid) are providers of online platforms (online marketplaces, APP stores, collaborative economy platforms, social media platforms). They are required to fulfil all of the obligations outlined above. In addition, they must: establish a complaint and redress mechanism and engage in an out-of-court settlement; they must engage with trusted flaggers with regard to notification of illegal content; they must introduce measures to deal with abuse of their notification systems; these services (specifically in the case of online market places and e-Commerce) should verify the credentials of third party suppliers; they must provide transparency of online advertising; and they must report criminal offences.

Trusted flaggers are organisations that will be awarded, upon application, the status of trusted flagger by the national Digital Services Coordinator of the Member States. Such a trusted flagger should: be an entity with particular expertise and competence for the purposes of detecting, identifying and notifying illegal content; represent collective interests and be independent of any online platform; carry out its activities for the purposes of submitting notices in a timely, diligent and objective manner (Article 19 of the DSA).

The final sub-group at the top of the Pyramid is what is known as Very Large Online Platforms (the VLOPs), which include the Amazons, Googles and Facebooks of the digital world. An additional term is also being used in relation to the DSA – Very Large Online Search Engines

(VLOSEs) in reference to services such as Google. This final group has a number of additional obligations – the need to establish risk management procedures and to have a compliance officer. These companies must carry out risk auditing and be publicly accountable for their actions to reduce risk. They have to introduce transparency with regard to their recommendation systems and provide user choice regarding access to information. In addition, they need to share data with authorities and with vetted researchers.<sup>30</sup>

Each Member State will have to appoint a Digital Services Coordinator (DSC), an independent authority responsible for supervising service providers established in their Member State. There will be an individual right to lodge a complaint to the DSC in their own countries or another. Very Large Online Platforms (VLOPS) will be under the direct supervision of the European Commission and regulated by the EC in coordination with the national DSCs.

### 3.4. Combatting hate speech

#### Council of Europe

A second recommendation of the Council of Europe on hate speech, the Recommendation CM/Rec (2022)16[1] of the Committee of Ministers to member States on combating hate speech was adopted by the Committee of Ministers on 20 May 2022.<sup>31</sup>

The Recommendation states that: “hate speech is understood as all types of expression that incite, promote, spread or justify violence, hatred or discrimination against a person or group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status such as “race”, colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation.”

As will be seen below (in relation to other European regulations and policies, and also national approaches), the Recommendation also emphasises a principle of differentiation between:

- a.** hate speech that is prohibited under criminal law; and
- ii.** hate speech that does not attain the level of severity required for criminal liability, but is nevertheless subject to civil or administrative law; and
- b.** offensive or harmful types of expression which are not sufficiently severe to be legitimately restricted under the European Convention on Human Rights, but nevertheless call for alternative responses, as set out below, such as: counter-speech and other countermeasures; measures fostering intercultural dialogue and understanding, including via the media and social media; and relevant educational, information-sharing and awareness-raising activities.

Regarding the legal framework, the regulation addresses criminal law, civil and administrative law and legislation regarding online hate speech. In the case of the latter, legislation should ensure the swift and effective removal of online hate speech that is prohibited under criminal, civil or administrative law. The Recommendation also reiterates the need to define the roles and responsibilities of intermediaries (as discussed above).

Of note is the recommendation that public officials, elected bodies and political parties should avoid engaging in, endorsing or disseminating hate speech, and should instead promote a culture of human rights and condemn hate speech firmly and promptly.

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<sup>30</sup> In order to be vetted, researchers shall be affiliated with academic institutions, be independent from commercial interests, have proven records of expertise in the fields related to the risks investigated or related research methodologies, and shall commit and be in a capacity to preserve the specific data security and confidentiality requirements corresponding to each request (DSA, Article 31 (4)).

<sup>31</sup> Council of Europe (2022c)

Among other recommendations for the media sector, it is emphasised that national independent regulatory authorities and media co-regulatory and/or self-regulatory bodies should play a positive role in addressing hate speech. They should be independent of the government, publicly accountable and transparent in their operations. Civil society organisations should also be encouraged to cooperate and coordinate between themselves and with other stakeholders on hate speech issues.

Finally, there is a range of recommendations with regard to: awareness raising, education, training and use of counter-speech and alternative speech; support for those targeted by hate speech; and monitoring and analysis of hate speech. A key issue is also the national coordination and international cooperation, wherein member States should engage in regular, inclusive and transparent consultation, cooperation and dialogue with all relevant stakeholders. Also, Member States should cooperate with each other with a view to promoting consistency in legal standards and approaches to preventing and combating hate speech, in accordance with the provisions of this Recommendation. They should furthermore adhere to and effectively implement relevant European and international instruments, engage with intergovernmental organisations and exchange information and best practices.

### **European Union**

In the European Union, all Member States have criminalised hate speech and hate crimes on the grounds covered by the 2008 Council Framework Decision 2008/913/JHA.<sup>32</sup> Hate crime has been broadly criminalised across the EU either as a 'self-standing' offence (defined by the bias motivation) or as an aggravating circumstance for any offence or a range of specific offences.<sup>33</sup> In a November 2020 Resolution of the European Parliament (Resolution (2020/2009(INI)),<sup>34</sup> the Parliament observed that hate speech and disinformation were increasingly exploited for political purposes as a means of intensifying social polarisation. It recognised a relationship between the business model of social media platforms – which is based on micro-targeted advertising – and the spreading and amplifying of hate speech by these platforms, which may result in radicalisation leading to violent extremism. The Parliament reiterated its calls on the Member States to implement and enforce measures to prevent, condemn and counter hate speech and hate crime.

### **3.5. Preserving the integrity of elections**

#### **Council of Europe**

The Parliamentary Assembly of the Council of Europe (PACE) adopted a Resolution in 2020 providing guidance regarding disinformation in the context of elections<sup>35</sup>, stating that:

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<sup>32</sup> The Council of the European Union, Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. Available at: <https://tinyurl.com/59998yd3> It prohibits 'publicly inciting to violence or hatred against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin'. The Parliament and the Commission are working to extend these grounds. In addition, the Commission is working to by extending the list of 'EU crimes' included in Article 83 of the Treaty on the Functioning of the European Union (TFEU), to cover hate speech and hate crime.

<sup>33</sup> European Parliament, Briefing note: Combating hate speech and hate crime in the EU. Available at: <https://tinyurl.com/4swvyzxu>

<sup>34</sup> European Parliament, Resolution of 25 November 2020 on strengthening media freedom: the protection of journalists in Europe, hate speech, disinformation and the role of platforms (2020/2009(INI)). Available at: <https://tinyurl.com/2fxpsrt>

<sup>35</sup> Council of Europe, Parliamentary Assembly Resolution 2326 (2020): Democracy hacked? How to respond? Available at: <https://tinyurl.com/47jjz5ka>



“As the internet and social media seep into ever more aspects of the political landscape, the Assembly points to the need to improve the internet’s content and architecture, build up the resilience of Europe’s democratic systems and societies, counter disinformation, invest in quality journalism and preserve freedom of expression and media and political pluralism, especially in the context of elections.”<sup>36</sup>

Specific details from the Resolution are outlined in the table below.

**TABLE 2: PACE RESOLUTION - Democracy hacked? How to respond?**

Among others, the PACE calls on member states to address disinformation challenges in the context of democratic elections. In summary, in order to achieve this, Member States should (among others)

- promote media education and digital literacy skills;
- encourage and support collaborative fact-checking initiatives and other improvements on content moderation and curation systems;
- secure adequate funding to independent public service media, so that the media can allocate enough resources to innovation in content, form and technology to foster their role as major players in countering disinformation and propaganda;
- strengthen transparency in political online advertising, information distribution, algorithms and business models of platform operators;
- guarantee that political parties and candidates have the right to purchase advertising space for election purposes, equal treatment in terms of conditions and rates charged;
- develop specific regulatory frameworks for internet content at election times and include provisions on transparency in relation to sponsored content on social media, so that the public is aware of the source that funds electoral advertising or any other information or opinion;
- address the implications of the micro-targeting of political advertisements with a view to promoting a political landscape which is more accountable and less prone to manipulation;
- support researchers’ access to data, including datasets with deleted accounts and content, with a view to examining the influence of strategic disinformation on democratic decision-making and electoral processes;
- consider national and international regulation to share best practices and increase cooperation among security agencies, for instance by creating a specific mechanism for monitoring, crisis management and post-crisis analysis and sharing resources that already exist in various countries;
- call on professionals and organisations in the media sector to develop self-regulation frameworks that contain professional and ethical standards relating to their coverage of election campaigns, including enhanced news accuracy and reliability and respect for human dignity and the principle of non-discrimination;
- initiate judicial reforms and set up specialised divisions for judges and prosecutors focusing on disinformation and hate speech.

### **European Union**

Following the publication of the European Commission’s European Democracy Action Plan<sup>37</sup> in 2020, the EU has been engaged in a range of actions to promote one of the key themes of the plan which is strengthening democratic resilience. The plan outlined an enforced EU policy framework and specific measures to: Promote free and fair elections and strong democratic participation; support free and independent media; and counter disinformation.

Part of this plan was to ensure the transparency of political advertising. In November 2021, the European Commission published its Proposal for a Regulation on the transparency of political advertising.<sup>38</sup>

<sup>36</sup> Ibid, para 3

<sup>37</sup> European Commission (2020a)

<sup>38</sup> European Commission (2021). Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the transparency and targeting of political advertising. Available at: <https://tinyurl.com/49wy2ckx>

The proposed regulation introduces:

- (a) harmonised transparency obligations for providers of political advertising and related services to retain, disclose and publish information connected to the provision of such services;
- (b) harmonised rules on the use of targeting and amplification techniques in the context of the publication, dissemination or promotion of political advertising that involve the use of personal data.

The proposal does not cover other aspects regulated at the domestic level like the legality of the content of political advertisement and the periods during which advertisements are permitted, or the nature of participants in the democratic process. The scope of the regulation covers political advertising in all media (not just online). It is intended to complement the Digital Services Act, which already requires transparency in advertising. While the DSA imposes transparency requirements on online platforms, this initiative covers the entire spectrum of political advertising publishers, as well as other relevant service providers involved in the preparation, placement, promotion, publication and dissemination of political advertising. The proposal provides a definition of "political advertising": *"political advertising means the preparation, placement, promotion, publication or dissemination, by any means, of a message: (a) by, for or on behalf of a political actor, unless it is of a purely private or a purely commercial nature; or (b) which is liable to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour."*

There are strong requirements for transparency in political advertising. It requires (among others) that providers of advertising services shall request sponsors and providers of advertising services acting on behalf of sponsors to declare whether the advertising service they request the service provider to perform constitutes a political advertising service (Article 5).

Providers of political advertising services shall retain the information they collect in the provision of their services, on the following: (a) the political advertisement or political advertising campaign to which the service or services are connected; (b) the specific service or services provided in connection to the political advertising; (c) the amounts they invoiced for the service or services provided, and the value of other benefits received in part or full exchange for the service or services provided; and (d) where applicable, the identity of the sponsor and its contact details (Article 6).

It is also important to take note of the recent European Commission proposal for a European Media Freedom Act published in September 2022. In summary, the regulation includes, among others, safeguards against political interference in editorial decisions and against surveillance. It puts a focus on the independence and stable funding of public service media as well as on the transparency of media ownership and of the allocation of state advertising. It also sets out measures to protect the independence of editors and disclose conflicts of interest. Finally, the Act will address the issue of media concentration and create a new independent European Board for Media Services, comprised of national media authorities.<sup>39</sup> When these new regulatory proposals come into force, they will also need to become part of the legislative framework for the media sector, and for the legislative framework governing elections.

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<sup>39</sup> European Commission (2022). European Media Freedom Act: Commission proposes rules to protect media pluralism and independence in the EU. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_5504](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_5504)

### 3.6. Video-sharing platforms and new approaches to regulation

The inclusion of video-sharing platforms (VSPs) in the scope of the 2018 Audiovisual Media Services Directive was a reflection of the “changing market realities.”<sup>40</sup>

As noted above, VSPs are obliged to protect: minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development; the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred; the general public from incitement to terrorism, and offences related to child pornography, and racism and xenophobia. In line with Article 4a of the 2018 Audiovisual Media Services Directive, Member States should encourage the use of co-regulation and the fostering of self-regulation through codes of conduct. Such codes should be broadly accepted by the main stakeholders in the Member States concerned. They should clearly and unambiguously set out their objectives and provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives as well as for effective enforcement including effective and proportionate sanctions.

This has brought about a shift in the approach to regulation – to what is now termed a systemic approach. The regulated services become responsible for achieving regulated aims via a range of recommended measures to be assessed by the relevant regulatory authority.

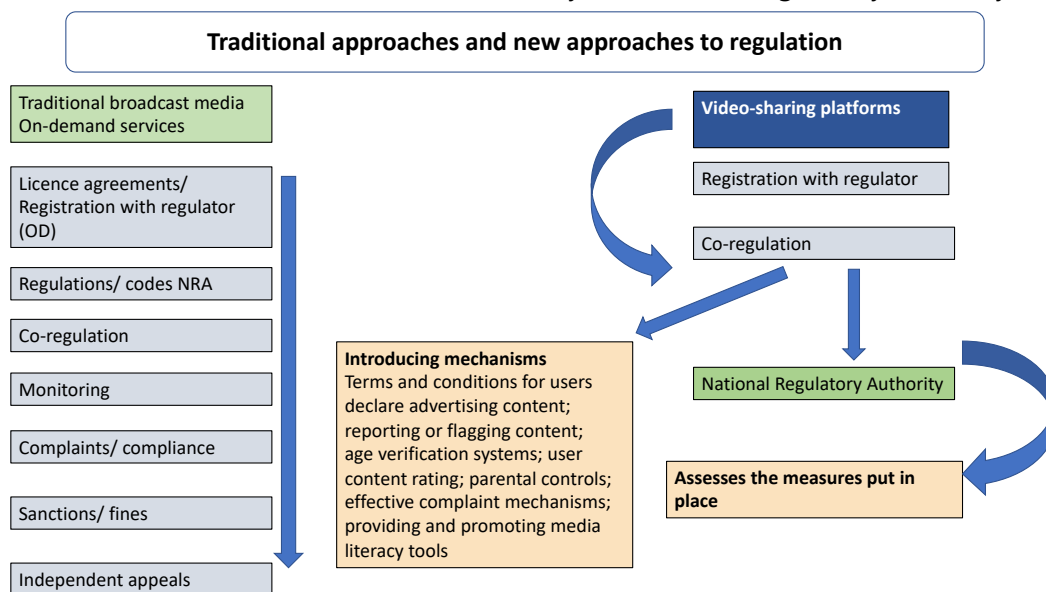


Fig 2: The systemic approach to regulation of online media

This is a natural consequence of the fact that monitoring content and actions on the Internet is an impossible task for the NRA. The regulatory authority then has the role of assessing the measures taken by the services in order to ascertain if they are achieving the regulatory aims. This is an example of a co-regulatory approach, where in this instance the legislation sets the aims of the regulation and with the NRA outlines methods to achieve these aims. The services then apply measures to achieve the outcomes following this proposed structure. They report on the activities and outcomes. The NRA retains the backstop powers in order to assess if the

<sup>40</sup> 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. Available at: <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

system in place is working. This systemic approach, whereby the operators are required to introduce a range of measures to reduce the risk of harm while reporting to a regulatory body is also foreseen in the Digital Services Act (as discussed above).

## 4. BOSNIA AND HERZEGOVINA: CONTEXT AND EVIDENCE OF HARMFUL CONTENT

The following section outlines the legal framework, practices and issues related to online media in Bosnia and Herzegovina. The analysis is based on a range of recent research reports that have provided key data on the market, and also insight into consumer behaviour and citizen concerns regarding harmful content. In addition, the views of the key stakeholders with regard to the issue of harmful content and the key challenges in addressing this problem are integrated into the analysis.

### 4.1. The Internet as a key source of information

As elsewhere in the world, digital technologies have radically affected the way content is produced, distributed and consumed. What can be observed globally is also true for Bosnia and Herzegovina: the number of internet users is constantly on the rise (according to the Communications Regulatory Agency (CRA) Annual report for 2021, internet penetration reached almost 96%).<sup>41</sup> Also on the rise is the use of online sources of information. According to the research into media habits of adults in Bosnia and Herzegovina conducted in 2021, nine out of ten adults use the Internet, whereas social networks are used by eight out of ten adults.<sup>42</sup> Even though the majority of adults still rely on television as their source of information about events in the country and the world (78%), this is followed by social networks (52%) and online news portals (45%). Video-sharing platforms such as YouTube are used by 42% of adults. A significant percentage of adults (35%) say that they have been exposed to potentially harmful content in the media and ICT environment – hate speech being at the top of the list (48%).<sup>43</sup> There seems to be strong support among the public in Bosnia and Herzegovina for the regulation of online content: 17% of adults believe that one should be allowed to express their opinions on social networks and online platforms without any restrictions, 33% support restricting illegal and/or harmful content, 23% support restricting opinions that can cause harm to others, while 19% believe that certain opinions should not be expressed at all on social networks/online platforms. At the same time, 71% of adults support moderating/deleting inappropriate user comments on portals/video-sharing platforms/social networks. However, only a fifth (19%) claim to have reported inappropriate content that they have been exposed to in the media and ICT environment.<sup>44</sup>

### 4.2. The online media sector: overview

The media sector in Bosnia and Herzegovina is characterised by a large number of media outlets in general, but in recent years there has been a rapid rise in the number of online media outlets or news portals. Since the establishment and activities of such media do not require any kind of registration (in contrast to print and electronic media), there is no clear understanding of how many of these types of websites actually exist and provide content. Many of these websites are anonymous, lack an “impressum” (i.e. a legal notice carrying

<sup>41</sup> CRA Annual report for 2021, <https://docs.rak.ba/documents/9a2a8a6b-dced-4008-b2cf-6de15c7fb172.pdf>

<sup>42</sup> Hasanagić, Snježana, Maja Papović and Erna Lević. (2021). Research on Media Habits of Adults in BiH. Council of Europe and CRA. Available at CoE BiH web site [English, B/C/S](#)

<sup>43</sup> Other reported harmful content includes: profanity (45%), undesired contact (43%), depictions of violence (33%), discriminatory content (32%), abuse and insults of others online (27%), nudity (24%), incitement to violence and pornography (22% respectively), incitement to extremism and/or terrorism (18%), promotion of extremist world views and ideologies (18%) and promotion of harmful behaviors (18%). The same percentage (18%) say that they themselves have been abused or insulted online.

<sup>44</sup> Hasanagić, Snježana et al (2021).

information on the owner/founder, headquarters, editor-in-chief/responsible person and contacts) and are not registered as businesses – and these are the outlets that especially thrive in pre-election periods and publish favourable news about political parties.<sup>45</sup>

There is no official register of online media. Some of the more prominent outlets have endorsed the self-regulatory mechanism as implemented by the Press and Online Council in Bosnia and Herzegovina, but these remain in the minority. The list of online media available on the website of the Press and Online Council<sup>46</sup> totals 105 online media outlets whose publishers, editors and contacts are known.

However, according to the study Mapping of media web portals in Bosnia and Herzegovina conducted in 2021, there were at least 615 web portals - and this list is not exhaustive due to the online media scene being “highly dynamic, poorly visible and non-transparent.”<sup>47</sup> This mapping confirmed the problem that has been emphasized by many, namely the problem of “wild”, anonymous portals without any impressum, which in the study accounted for the majority of the identified portals – 270 or 44%. Partial data was available in 29%, and only 27% of portals offered a full impressum. Other noteworthy findings include the fact that 41% of identified portals contained user comments sections, as well as that almost all of them (95%), were represented on at least one of the social media platforms – Facebook, Twitter or Instagram. Also, 25% are portals derived from other media outlets, namely television, radio or press, due to the tendency of media to use online presentations for self-promotion, interaction with the audience and advertising.

### 4.3. Challenges regarding the online media sector (including news portals)

Research into the scale and scope of disinformation in online media in Bosnia and Herzegovina conducted in 2019 identified anonymous websites as the main source and redistributor of disinformation and propaganda online: “Their activity creates a virtual eco-system where disinformation almost instantly reaches large audiences, due to their proliferation, intense content production and significant reach on social media. Anonymous online portals account for two-thirds of disinformation sources tracked in this research. In most of cases, the primary motive for producing such content is a commercial gain which anonymous website owners obtain from online ads. However, several anonymous outlets traced in the research appear to be established by political actors as tools to attack political opponents using false information and inflammatory accusations. The anonymity of these outlets is used to avoid public scrutiny and accountability for such actions.”<sup>48</sup>

Another significant conclusion of this research is the existence of the so-called “disinformation hubs”, formed by media outlets from neighbouring countries whereby disinformation appears via their connections with *in/country* media outlets, as they use each other as sources and redistributors of disinformation. The disinformation produced by these hubs relates both to political issues in Bosnia and Herzegovina and to geopolitical issues and events in the region. In discussions with stakeholders, it emerged that they were in concert when it comes to the identification of the main challenges present in the online media in Bosnia and Herzegovina.

<sup>45</sup> Sokol, Anida (2020). Propaganda, disinformation and hate models of media and communication in Bosnia and Herzegovina. SEENPM, Peace Institute and Foundation MediaCentar. Available at: <https://tinyurl.com/4nct6rwf>

<sup>46</sup> <https://www.vzs.ba/index.php/vijece-za-stampu/internet-portali-u-bosni-i-hercegovini>

<sup>47</sup> Osmančević, Enes et al. (2021). Mapiranje medijskih web portala u Bosni i Hercegovini. CPCD. Available at: <https://tinyurl.com/nsew5ukn>

<sup>48</sup> Cvjetičanin, Tijana et al (2019). Disinformation in the Online Sphere: The Case of BiH. Zašto ne? Available at: <https://tinyurl.com/ywsw298a>

The damage caused by certain elements of online media is vast. First, there is an impact on readers and public opinion that is becoming increasingly susceptible to misinformation and conspiracy theories, which abound in online media, and which ultimately endangers citizen health and even lives. Among the younger generations, this leads to a lack of interest in news altogether. Media editors and owners are forced to significantly revise their ethical standards and norms, while journalists operate in an environment that prevents them from maintaining professional integrity. The types of damage include non-credible media reports, the increased sharing and influence of conspiracy and disinformation theories, bias and reporting, as well as the impact of media credibility on the distribution of media resources.

In summary, the problems outlined by stakeholders that emerge in relation to a significant portion of the online media sector included the following:

- A lack of professional standards from editorial and ownership structures;
- Questionable business models employed by social networks;
- Excessive daily norms of publishing content that leads to a large percentage of content on online media without fact-checking and verification;
- Political and other influences that lead to disinformation and self-censorship;
- Inadequate functioning of professional associations as well as self-regulatory mechanisms;
- Existence of many anonymous portals and click farms that have a great impact on the distribution of marketing resources in the online space.<sup>49</sup>

Numerous problems pertain to poor implementation of existing laws, with many detected shortcomings, especially when it comes to online media, most especially the regulations regarding defamation and criminal laws, which directly affect the work of the media.

The stakeholders stressed the need for legislative reform highlighting several legislative acts that are vital to addressing the situation. These include those related to the transparency of media ownership, and consequently the establishment of an online media register.

#### **4.4. The current legislative framework, regulation and self-regulation**

With regard to the potential for the various authorities to address the problems outlined above, the following briefly outlines the relevant legal framework in Bosnia and Herzegovina:

**Audiovisual media services:** The Law on communications of Bosnia and Herzegovina was adopted in 2002 and covers broadcast media only. So far, the initiatives to amend this law have not yielded any results (discussed further below). The 2010 AVMSD (2010/13/EU) has been transposed via secondary legislation, extending the regulation to on-demand audiovisual media services and adopting the Directive's technology-neutral approach, which means that also those audiovisual media services that are provided online are covered. The transposition of the revised Directive (2018/1808/EU) is currently underway, which will include (co-) regulation of video-sharing platforms.

**Hate speech:** Criminal laws prohibit particular forms of hate speech.<sup>50</sup> Hate speech is also prohibited by the secondary legislation of the Communications Regulatory Agency, which

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<sup>49</sup> Darko Brkan, NGO Zašto ne.

<sup>50</sup> See Article 145a of the BiH Criminal Code

applies to online content insofar as the media service fulfils the definition of the audiovisual media service.<sup>51</sup>

**Elections:** In May 2022, the Central Election Commission updated the Rulebook on media coverage of political entities from the day elections are announced until Election Day, a document which further specifies the provisions of the Election Law concerning the media in the election campaign. The Rulebook defines online media as “Internet portals and other online platforms used as a means of communication”, however, the specific reference to online media is made only once in the text, saying that political entities shall address their complaints on the print and online media coverage of election campaign to the Press and Online Media Council. The provisions regarding paid political advertising (its prohibition during the period from the day of the official start of the election campaign until the election day) and electoral silence only implicitly apply to online media.

### **Self- regulatory framework**

The **Press and Online Media Council** receives an ever-growing number of complaints, predominantly regarding the content of online media and in particular, regarding user comments on texts published on websites. The latest amendments to the Code in 2021 particularly strengthened the provisions with regard to online media, defining them as “all types of media that publish on the Internet by means of different platforms, with the view to collect, process and publish information, through organized and continuous activity, in accordance with the principles of journalism, on different spheres of life and at different levels including local, national and global.<sup>52</sup>” Among others, the revised Code:

- Extends editorial responsibility to the entire content of the website, including user comments. Online media are expected to remove user comments that represent hate speech, incitement to violence, provocation, intolerance, insults, threats and any other form of inappropriate and socially unacceptable communication.
- Tackles disinformation, in particular by specifying that editors are not relieved from responsibility when they spread disinformation from other media or sources.
- Introduces provisions on transparency of print and online media, requiring them to make accessible contact information, including the responsible publisher and editor who shall receive complaints about the published content.

The available statistics<sup>53</sup> on complaints show just how problematic the comments sections in BH online media are: in 2021, the number of complaints about user comments (505) was just slightly lower than the number of complaints about articles in both print and online media (563). This problem is especially prominent with regard to hate speech: out of 509 complaints about hate speech, only 4 pertained to articles, and 505 to user comments. The numbers suggest that all complaints received by the Press and Online Media Council about user comments in 2021 concerned (alleged) hate speech.

However, being a self-regulatory body, the Council’s power is limited to mediation and issuing non-binding decisions on content that are in breach of the Press and Online Media Code, including hate speech. The effects of self-regulation are especially limited in the case of

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<sup>51</sup> Under Article 4 - Code on audiovisual media and radio media services 2015.

<sup>52</sup> <https://www.vzs.ba/index.php/vijece-za-stampu/kodeks-za-stampu-i-online-medije>

<sup>53</sup> <https://www.vzs.ba/index.php>



anonymous websites which are the biggest sources of disinformation, propaganda and hate content, and lack accountability for the content they produce or disseminate<sup>54</sup>.

### **Regulatory Framework**

The **Communications Regulatory Agency (CRA)** has the remit over audiovisual media services, including those provided online. By the end of 2022, the CRA is expected to adopt a new set of by-laws implementing the revised AVMSD, whereby its responsibilities will extend to video-sharing platforms.

Being a converged regulator, the CRA is also responsible for licencing ISP providers. According to the terms and conditions of the provision of ISP services<sup>55</sup>, ISP providers must not restrict access to publicly available content and services offered on the Internet, unless those found to be harmful and illegal on the basis of a special regulation or decision of the competent institution in Bosnia and Herzegovina. To this date, no such regulation or decision has been issued requiring an ISP provider in Bosnia and Herzegovina to block access to a certain website. This certainly represents a gap in the legislation which should now be addressed in light of the Digital Services Act (discussed above).

In early 2021, the CRA Council approved draft amendments to the CRA Rules governing the provision of audiovisual and radio media services, with a view to extending the licensees' editorial responsibility to their online content. It was proposed that all content published on broadcasters' official websites or websites marked with their logo is subject to the same rules as the broadcast content, in terms of incitement to violence, hatred and discrimination, prejudice to public health and safety, protection of minors and their privacy, as well as the right of reply. This proposal came in response to the broadcasters' practice to publish content on their websites which is derived from the broadcast programme (news items in particular) but treats the subject matter in a way that does not comply with professional standards. The aim of the proposed amendments was therefore to expand the scope of regulation to include the prevention of most harmful content in media service providers' online activities. The drafts went through two rounds of public consultations, and the opinions expressed by the media representatives were divided. Whereas the attempts to regulate the sphere of online media were generally welcomed, the concern was expressed that such a solution would leave the vast number of online media outlets that are not linked to broadcast media unregulated.

#### **4.5. The perspective of the Communications Regulatory Agency**

The CRA<sup>56</sup>, in discussions with the authors of this study, stated that some of the main issues pertaining to online media include a clear lack of regulation in this area, namely the transparency and advertising -related legislation, as well as the lack of a register of online media.

In addition, when strategies are initiated, issues are dealt with partially yielding incomplete results, without a comprehensive approach to finding durable solutions.

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<sup>54</sup> Sokol, Anida (2020).

<sup>55</sup> Contained in the CRA Rule 60/2012 on conduct of activities of Internet service providers. Available at: <https://rak.ba/en/articles/60>

<sup>56</sup> It should be noted that here we did not use the interview template and instead the meeting held with the CRA representatives, Amela Odošić, Director of Broadcasting, Azra Maslo, Head of Division of Programme Content and Complaints and Maida Čulahović, Head of Department of Complaints and Analyses on 3 June, 2022 was executed in the form of discussion, concentrated on the rationale for the study.

What is also noticeable is that there is a lack of a definition of online media, which presents additional problems. Even if the CRA is provided with a mandate vis-à-vis the online media, there is a lack of basis for this extension of the CRA mandate, and, judging by previous experiences, it would probably result in some partial solutions.

As some of the main challenges present in the online media sphere, the CRA identifies hate speech, disinformation, and lack of respect for professional journalistic standards, which, in some areas, even fall under matters pertaining to discrimination against migrants.<sup>57</sup>

Regarding the quality of journalism, one of the predominant practices seen in many online media portals is copy-paste journalism of very low quality, followed by the practice of non-removal of user comments which are clearly hate speech, in addition to passive and ineffective creation and distribution of counter-narratives. Also noted by the CRA, in some instances, is the practice of its licensees to abide by applicable regulations in their broadcasting programmes but show clear disrespect for them on their web pages. The CRA Research on media habits of adults in Bosnia and Herzegovina<sup>58</sup> shows that the level of media and information literacy in the country is very low, coupled with the overall de-sensitisation of society to issues such as hate speech, wars, etc.

The legal and regulatory policy regarding online media can be, in accordance with the CRA view, regarded as non-existent. The CRA is of the opinion that a state-level media strategy should be adopted, addressing all present challenges, even if it is in the form of trying to achieve short-term goals for start, with an eye on future developments. In this, it is necessary to include the civil society, with stakeholders who are active and eager to get even more engaged. However, it is apparent that the governing structures have a lack of interest in resolving many online media challenges, and even when some initiatives are taken up, they are done on an ad hoc basis, without conceptualising the issues and trying to extensively respond to them.

As an area that should be further explored, the CRA representatives point to the aforementioned provision of its Rule 60/2012 on the provision of Internet Service Provider (ISP) services.

Article 8 stipulates that ISP is obliged to declare certain content illegal by applying appropriate technical measures, disable access to Internet addresses for which such regulations or decisions apply and for which the competent institutions in Bosnia and Herzegovina have decided to be harmful and illegal, especially if these contents spread:

- child pornography and similar harmful content,
- illegally online gambling,
- computer viruses or dangerous programs,
- illegally obtaining personal data,
- endangering general security, public order and peace,
- allows the illegal use of computers programs and applications,
- as well as other threats to the safe use of the Internet.

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<sup>57</sup> The example with the web site Anti-migrant, with many issues pertaining to the discrimination against is a clear indication of the level of problematic issues that are and can be present online. The articles and videos on this site were subject to a court proceeding related to spreading the national and religious hatred and against the author and editor, which were later dismissed,

<sup>58</sup> Hasanagić, Snježana et al (2021).

This is a solid base for addressing the most serious online content, by which the relevant institutions, i.e., law enforcement agencies and judicial bodies can effectively reduce its presence online.

Regarding possible remedies to a rather grim picture vis-à-vis the online media, the CRA emphasises that relying on self-regulatory mechanisms alone is illusory, and that co and regulatory structures are needed. Questions to be answered in this respect include the scope, the legal base, the identification of stakeholders and clear cooperative mechanisms, with distinctive and unambiguous detail of tasks, mandates, etc. It has also been pointed out that the existing structures, such as the Press and online Council of Bosnia and Herzegovina and other stakeholders should be built on and restructured and reinforced, as already established mechanisms. The CRA is of the opinion that a co-operative mechanism, with the inclusion of all relevant stakeholders, can effectively respond to the challenges of online media, emphasising the need to ensure adequate human, technical and financial resources for all involved.

In this regard, it is necessary to ensure the viability of stakeholders with whom the necessary cooperation should be established in the area of self, co and regulation of online media.

The CRA also noted the initiative of some members of the Parliament of Bosnia and Herzegovina from 2020 in the form of adopting the Law on preventing illegal hate speech online has been taken up by the Ministry of Transport and Communications and the Ministry of Justice, by the decision to form a working group that would develop the draft legislation, without the inclusion of the CRA. Upon receiving the information on the establishment of this working group, the CRA requested to be included in this work, pointing out the need to access the EU legislative initiatives, e.g., revised AVMSD, currently being transposed into CRA rules and regulations, DSA, DMA, etc. The activities of this working group and the potential inclusion of the CRA are currently pending.

#### **4.6.Challenges related to addressing harmful content**

##### **Harmful online content**

A recent study on harmful online content in Bosnia and Herzegovina<sup>59</sup> evaluates the scope of harmful online content in the country as “worrying”: “The internet and social networks are used by diverse actors for spreading hate speech, denials of war crimes and glorification of war criminals, disinformation, politically and ethno-nationally biased media reporting and smear campaigns against individuals for diverse motives that can undermine freedom of expression and democratic processes.”<sup>60</sup>

The study also elaborates that there are no strategic efforts to combat disinformation: “efforts aimed at combating disinformation are mainly restricted to self-regulatory frameworks, individual media outlets, media watchdog platforms, the fact-checking platform and social networks”<sup>61</sup>.

The “Bosnia and Herzegovina 2021 Report” issued by the European Commission<sup>62</sup> notes that self-regulation of online media is of limited effect, and online platforms continue to be used

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<sup>59</sup> Sokol, Anida and Maja Čalović (2022). [Regulation of Harmful Content Online in Bosnia and Herzegovina: Between Freedom of Expression and Harms to Democracy](#). Mediacentar Sarajevo.

<sup>60</sup> Ibid., p.11.

<sup>61</sup> Ibid., p. 91.

<sup>62</sup> European Commission (2021). Bosnia and Herzegovina Report 2021. Available at: <https://tinyurl.com/knr33ptp>

to spread hate speech and disinformation. Criminal prosecution is limited to the offence of inciting religious and ethnic hatred through the internet or social networks.

### **The integrity of elections and the impact on public discourse**

According to the stakeholders interviewed, mis/mal/disinformation in the online sphere affects almost every aspect of citizen's lives, including "misinformation and false information regarding the election process and the competencies and work of the Central Elections Commission (CEC)<sup>63</sup>, which seriously further jeopardize the undeveloped and fragile state of democracy in the country.

A flood of propaganda and false news, both accidental and deliberately created is cited, with an "all-present war-inciting propaganda, primarily created by politicians, which continuously causes fear and tension among citizens and which is further complicated by the (Russian, op.ed.) invasion, which triggered a kind of PTSD among citizens."<sup>64</sup>

Alarming levels of tendentious and sensationalist reporting, including cases of hate speech – most often originating from elected officials and politicians, but also from political bots present in the commentary sections of news portals portal's commentaries. Some of these are "seasonal" portals mushrooming before the elections and operating with no impressum or any verifiable data as to their origin. There is a reluctance or refusal on the part of online media to delete such user-generated content and click-bait content. There is also a major problem in relation to comments discussing the "constant threats to the secession of Republika Srpska, with comparisons and statements that draw parallels between the situation in Ukraine and Bosnia and Herzegovina, which further raise tensions, where this situation especially can be dangerous, given that it is the election year...especially because of all these external effects, which can be a dangerous trigger in Bosnia and Herzegovina."<sup>65</sup>

The prime danger of the presence of hate speech in public discourse is confirmed when "hate speech that can incite hatred, sexist and chauvinistic statements is present in comments on online media, their scope normalizes this type of communication."<sup>66</sup>

With a relatively low level of responsibility for the public discourse published online, "there is an increase of sensationalism, clickbait and superficial entertainment content, which distracts public attention, with various problems related to threats, hate speech, publishing negative content, misinformation... that are very often generated in online news portals are negative phenomena that in the long run can affect the quality functioning of democratic processes in the broadest sense."<sup>67</sup>

The main challenges are identified as flourishing in "both 1.0 and 2.0 formats, as for 1.0 space, i.e., on web portals, the main challenge is the inability to control comment sections, which are rich in hate speech and inappropriate speech, while in the web 2.0 space, the key challenge is hate speech, and targeting individuals and vulnerable groups on bot and troll profiles associated with political parties"<sup>68</sup>.

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<sup>63</sup> Maksida Pirić, Central Election Commission.

<sup>64</sup> Maida Bahto – Kestendžić, Online and Press Council.

<sup>65</sup> According to the Dayton Peace Agreement for Bosnia and Herzegovina, and its Annex IV. The Constitution of Bosnia and Herzegovina, the country is consistent of two entities: Federation of Bosnia and Herzegovina and Republika Srpska. Assessing the political rhetoric and actions related to the threats of secession of Republika Srpska are elaborated in, e.g. [NATO Mission report to Bosnia and Herzegovina](#) from June, 2022.

<sup>66</sup> Anida Sokol, Mediacentar Sarajevo.

<sup>67</sup> Vuk Vučetić, University of East Sarajevo.

<sup>68</sup> Lejla Turčilo, University of Sarajevo.

Related to this problem is the growing activity of political bots and trolls that contribute to polarization, spreading negative content, incitement, etc., which is especially pronounced during election campaigns. Also, violations of copyrights online, as well as issues pertaining to the protection of minors online and their exposure to harmful content have been identified by the Ministry of Communications and Transport.<sup>69</sup>

All media, and online media in particular, except for the politically controlled outlets, are faced with strenuous relations with government institutions, whereby there are numerous examples of partial or complete denial of the right to free access to information and terrible examples of crises communications, etc. This is in combination with numerous issues of online media financing, such as lack of quality content, the Covid-19 pandemic, which was further complicated by Russia's invasion of Ukraine, when the media were already in a difficult financial situation, now exuberated with dire economic circumstances, with increased examples of employees' layoffs and forced changes to the operating modes. Faced with challenges of ethical reporting even before these crises, media are now struggling with these challenges on a large scale, in addition to numerous "political pressures...where especially online media are much more vulnerable and far more disadvantaged."<sup>70</sup>

Finally, it has been stressed that "online media can be set up with small capital, with one or two employees, and thus do a very serious job – influencing the masses with fake news, which in Bosnia and Herzegovina as it is, brings new turbulent challenges every day."<sup>71</sup>

### **The Lack of legal obligations for online media**

The administrative and legal requirements of the establishment and functioning of online media are completely unregulated. Online media do not have any obligation to register, as is the case e.g. in the neighbouring countries.<sup>72</sup> This issue is further discussed below in terms of solutions.

### **Transparency of ownership**

Linked to this is a lack of transparency regarding ownership of the media. Numerous reports identify the lack of legislation on media ownership, as well as on advertising in the media, as largely problematic. Especially opaque is the ownership of online media, due to the above-mentioned lack of requirement to register.

In relation to this, the European Commission 2021 Report stresses: "No steps were taken to adopt legislation on media ownership transparency, to ensure transparency and prevent hidden media concentration, nor legislation on advertising or criteria for the distribution of subsidies. The advertising practices of publicly owned enterprises, such as telecom companies, and advertising agencies linked to political parties continue to harm media integrity. Local broadcasters which receive funds from local authorities remain subject to political pressure and influence. (...) Self-regulation of online media is of limited effect, and online platforms

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<sup>69</sup> Milanka Sudžum, Ministry of Transport and Communications.

<sup>70</sup> Maida Bahto – Kestendžić, Online and Press Council.

<sup>71</sup> Elvir Švrakić, Hayat TV.

<sup>72</sup> In Serbia, the Law on Public Information and Media prescribes the establishment of the Media Register, run by the Serbian Business Registers Agency. In Croatia, the Agency for Electronic Media maintains the register of electronic publications, as stipulated by the Law on Electronic Media. In Montenegro, as well as in Slovenia, media – including online – need to register with the ministry of culture.

continue to be used to spread hate speech and disinformation. Criminal prosecution is limited to the offence of inciting religious and ethnic hatred through the internet or social networks.<sup>73</sup>

### **Threats to freedom of expression**

In addition to disinformation and hate speech on the internet, hidden political advertisements, algorithmic bias, the use of bots and trolls for manipulative purposes, harmful content, and non-transparent and non-legitimate content removal on social networks are issues that also pose threats to freedom of expression.<sup>74</sup> However, researchers point to a lack of awareness among the authorities and media professionals about these threats, including little recognition or the role played by major internet/data companies and the need for Bosnia and Herzegovina / the region to have a voice in the ongoing conversations with those entities.<sup>75</sup>

### **Fragmentation of approaches and lack of strategy**

It is evident that the governing structures have a lack of interest in resolving many online media challenges, and even when some initiatives are taken up, they are done on an ad-hoc basis, without conceptualizing the issues and trying to extensively respond to them. The initiatives on the adoption of the Law on electronic media and the Law on electronic communications, which has been taken up by the Ministry of Transport and Communications attest to this ad hoc approach.

The initiative of a delegate in the House of Representatives of the Bosnia and Herzegovina's Parliamentary Assembly in December 2020, resulted in the establishment of a working group tasked with preparing a draft Law on the prevention of illegal hate speech on the Internet, that would mirror solutions of some EU member states, such as the German NetzDG (discussed in the following chapter). To date, the working group has not produced a draft.

Some other parliamentarians<sup>76</sup> believe that the Law on Communications should be amended so as to give a clear mandate to CRA to regulate the content of online media (news websites), as is the practice in Croatia.

In September 2021, a delegate at the Parliament of the Federation of Bosnia and Herzegovina submitted an initiative to declare Internet platforms and social networks in this Bosnia and Herzegovina's entity a «public place», and to amend the Law on maintaining public order and peace accordingly, which would enable the sanctioning of incitement to violence and hatred<sup>77</sup>.

### **Challenges regarding engagement with global online platforms**

Facebook is, by far, the main social network among Bosnia and Herzegovina's adults, on which almost three-quarters of adults have an account (73%). Instagram is used by significantly fewer respondents (39%) as is YouTube (38%). All other social networks are used by fewer than 10% of adults – with TikTok and Snapchat being more popular than Twitter, Pinterest and LinkedIn

<sup>73</sup> [European Commission, Bosnia and Herzegovina Report 2021](#)

<sup>74</sup> Sokol, Anida and Maja Čalović (2022), p. 28.

<sup>75</sup> Cvjetičanin, Tijana et al (2019), p. 9.

<sup>76</sup> Tomić, Slađan (2021). Regulacija sadržaja internet stranica televizijskih i radijskih emitera. Available in Bosnian at: <https://www.media.ba/bs/magazin-novinarstvo/regulacija-sadrzaja-internet-stranica-televizijskih-i-radijskih-emitera>

<sup>77</sup> ZaštoNe? (2021). Šta bi za građane i građanke FBiH značilo proglašavanje interneta javnim mjestom? Available in Bosnian at: <https://zastone.ba/sta-bi-za-gradane-i-gradanke-fbih-znacilo-proglasavanje-interneta-javnim-mjestom/>

(8% and 8% vs. 4%, 2% and 2%)<sup>78</sup>. On the other hand, 95% of children aged 7-18 use YouTube, and 85% use at least one social network.<sup>79</sup>

According to the investigation into content policing by Facebook and Twitter in the Balkans conducted by BIRN<sup>80</sup>, the tools used by social media giants to protect their community guidelines are failing, especially when small language groups in terms of numbers of users, such as languages in the Western Balkans region are concerned because there is “no incentive or sufficient pressure from the public and political leaders to invest in human moderation”. BIRN’s investigation showed that 43% of content reported as hate speech remained online, whereas only 57% of those who reported hate speech said they were notified that the reported post/account violated the rules.

Facebook’s role is particularly important in disseminating the content of anonymous portals: since Facebook is still the dominant social media platform in Bosnia and Herzegovina and the region, the entire business model of anonymous portals is built around this social network. These anonymous websites, a phenomenon described as “portal farms”<sup>81</sup>, appear as networks of websites and Facebook groups which link to each other and use multiple outlets to amplify the reach of the content they publish and are considered to be the driving force of the expansion of disinformation.

As the most widely used social media platform in Bosnia and Herzegovina, Facebook’s policies significantly impact civil society and media. The most common complaints about the functioning of the platform involved the difficulty of contacting platform representatives, insufficient clarity of procedures for removal of content or suspension of pages and subsequent appeals, as well as declining organic reach of their content.<sup>82</sup>

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<sup>78</sup> Hasanagić, Snježana et al. (2021).

<sup>79</sup> Hasanagić, Snježana, Maja Papović and Slađana Kovačević. (2020). Children’s Media Habits and Parental Attitudes. Unicef and CRA. <https://www.unicef.org/bih/media/5861/file/Medijske%20navike%20djece%20i%20stavovi%20roditelja.pdf>

<sup>80</sup> Jeremić, Ivana and Milica Stojanovic (2021). Facebook, Twitter Struggling in Fight against Balkan Content Violations. Available at: <https://balkaninsight.com/2021/02/16/facebook-twitter-struggling-in-fight-against-balkan-content-violations/>

<sup>81</sup> Cvjetičanin, Tijana et al (2019), p.25.

<sup>82</sup> Sokol, Anida and Maja Čalović (2022), p. 76.

## 5. SEEKING SOLUTIONS: REGULATORY TRENDS AND APPROACHES IN OTHER COUNTRIES

### 5.1. Transparency of the online media sector

The issue of transparency of the online media sector, in particular in relation to those providing news and information was frequently cited in reports and discussions with domestic stakeholders. As noted earlier, there are good examples of the inclusion of online media in national media registers in other countries in the region. In Serbia, the Law on Public Information and Media<sup>83</sup> prescribes the establishment of the Media Register, run by the Serbian Business Registers Agency. In Croatia, the Electronic Media Act (EMA)<sup>84</sup>, includes electronic publication services via electronic communication networks in its scope (Article 1). Hence in Croatia, the Agency for Electronic Media maintains the register of electronic publications, as stipulated by the Electronic Media Act (EMA).

In Montenegro<sup>85</sup> and Slovenia<sup>86</sup>, media – including online – need to register with the respective ministry of culture. In Slovenia, according to the Mass Media Act, each publisher/media provider is obliged to register with the Ministry of Culture prior to commencing its activities.<sup>87</sup> The registry contains data such as the address of the establishment or head office, responsible persons, editor-in-chief, sources and method of financing, as well as information on owners with a minimum 5% of ownership/majority share/share of voting rights.

In Croatia, the “Rulebook on conditions for inclusion of both commercial and non-profit electronic publications in the register of electronic publications”<sup>88</sup>, adopted in April 2022 by the Council for Electronic Media stipulates that, in accordance with the 2021 Act on Electronic Media, the electronic publications are registered in the register, maintained by the AEM, as “editorially designed, produced or collected media content published via the Internet for the purpose of public information, entertainment or education” in accordance with the relevant provisions of the aforementioned legislation.

Some of the conditions for registration include the existence of a statute, obligatory court registration or other appropriate registers in the country, presence of headquarters and the editorial office of the electronic publication in Croatia. The Rulebook further stipulates the operational conditions for the electronic publication, including transparency requirements related to the electronic publication itself (such as the name of the provider, the addresses of its headquarters and editorial office, registration numbers, name and surname of the editor-in-chief, and other responsible persons and section editors, if the editor-in-chief is not the only editor, and in accordance with the internal structure of the newsroom and contact details). In addition the Rulebook also stipulates the transparency of the authors of the content published except when the authors insist on anonymity. Audio and audiovisual content is considered a supplement to the published textual content.

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<sup>83</sup> [Zakon o javnom informisanju i medijima \(paragraf.rs\)](#)

<sup>84</sup> [Electronic Media Act \(EMA\)](#)

<sup>85</sup> [Zakon o elektronskim medijima](#), Ministarstvo kulture Crne Gore

<sup>86</sup> [Mass Media Act Slovenia](#)

<sup>87</sup> <https://tinyurl.com/4ucs85mz>

<sup>88</sup> Agency for Electronic Media of Croatia AEM, [Pravilnik o uvjetima za upis u upisnik pružatelja elektroničkih publikacija](#)



## 5.2. Legislative approaches to harmful online content

This section provides a brief overview of recent domestic approaches in developing legislation to address harmful and/or illegal content online.

### Legislation to address illegal content and hate speech online

There have been a couple of controversial approaches to legislating online media, namely in Germany and France. In 2017, Germany introduced the Network Enforcement Act- NetzDG.<sup>89</sup> The law aimed to require social networks to deal more quickly and more comprehensively with complaints, in particular from users, about hate speech and other content amounting to criminal offences. The Act outlined the relevant criminal/illegal content, required the removal of such content within short deadlines and introduced fines for failure to do so. The services falling within the scope of the law were also required to report on the complaints and their responses thereof. The Act provoked much debate as regards the extent to which it could limit freedom of expression. One particular issue was the lack of an appeals mechanism.

In addition, the law was widely criticised by civil society and media organisations and human rights watchdogs<sup>90</sup>, as undermining freedom of expression and inciting unwarranted censorship. The United Nations Human Rights Committee expressed concerns that the Act, in giving tech companies the power to decide what speech is (not) allowed, could have a chilling effect on online freedom of expression, and recommended that Germany considers revisiting it "to provide for judicial oversight and access to redress in cases where the nature of online material is disputed."<sup>91 92</sup>

On 28 June 2021, the Act to Amend the Network Enforcement Act<sup>93</sup> entered into force in Germany.<sup>94</sup> The amendment aims to increase the information content and comparability of social media providers' transparency reports and improve the user-friendliness of the reporting channels for complaints about unlawful content. Furthermore, the amendment responded to criticism by introducing an appeals procedure for measures taken by the social network provider.

In a recent judgement on a case brought by Google and Meta's Ireland subsidiaries, the Cologne Administrative Court ruled that key provisions of NetzDG violate European Union law, more specifically the country-of-origin principle enshrined under the e-Commerce Directive, according to which the legal requirements for a provider of electronic services are based on the law of the EU member state in which they are located.<sup>95</sup> The future of the law is being debated at the moment, one of the possibilities being its abolishment.

In July 2019, the French Parliament adopted a bill to combat online hate speech.<sup>96</sup> The proposed law would require Internet platforms and search engines to remove or block illegal content within 24 hours of it being reported. The failure to do so entails liability to pay a fine of up to EUR 1.25 million. This includes content that infringes human dignity, condones crimes,

<sup>89</sup> Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (NetzDG), in English here:

<https://germanlawarchive.iuscomp.org/?p=1245>

<sup>90</sup> See for example Human Rights Watch: <https://tinyurl.com/2j3wu7rz>

<sup>91</sup> Baghdasaryan Meri and Karen Gullo (2021). UN Human Rights Committee Criticizes Germany's NetzDG for Letting Social Media Platforms Police Online Speech. Available at: <https://tinyurl.com/47uf7v26>

<sup>92</sup> [UN Report on HR on Germany](#)

<sup>93</sup> [Network Enforcement Act](#)

<sup>94</sup> Noyan, Oliver (2022). Big tech opposes Germany's enhanced hate speech law. Available at: <https://tinyurl.com/5dvct7j5>

<sup>95</sup> IRIS 2022-4:1/23: [DE] Cologne Administrative Court: new Network Enforcement Act provisions breach EU law. Available at: <https://merlin.obs.coe.int/article/9442>

<sup>96</sup> Proposal of the online hate speech bill. Available at: <https://tinyurl.com/mr2r4umc>

or constitutes the provocation of and incitement to hatred, violence or insults on grounds of origin, race, religion, sexual orientation or gender identity. It also includes sexual harassment, child pornography and content related to the procuring or trafficking of human beings.<sup>97</sup> The law would also require (as in the case of the NetzDG) platforms to appoint a legal representative in France and set up mechanisms for flagging illegal content. The media regulator (at that time the CSA) was designed as the authority responsible for regulating platforms in relation to hateful content and had the power to fine the platforms. The law was ultimately blocked by the Constitutional Council on 18 June 2020.<sup>98</sup> The legislature has since then enacted further provisions which are more aligned with the forthcoming DSA. It has also given the Tribunal Judiciaire de Paris (Paris judicial court) jurisdiction to deal with Internet-based psychological and sexual harassment of a discriminatory nature that is committed on French soil and reported online.<sup>99</sup>

### **Attempts to regulate the content of online media and news portals**

In 2019, the Albanian Government introduced draft amendments to the Media Law, which aimed to regulate Electronic Publication Service Providers (EPSPs). These amendments, known as the “anti-defamation package” intended to extend the jurisdiction of the Audiovisual Media Authority (AMA) and of the Complaints Committee (CC) to online media and give AMA new administrative powers in this field. The amendments were criticised locally and several expert opinions provided for international organisations also criticised the amendments.<sup>100</sup> For example, the Venice Commission opinion warned that extending the authority of the Albanian Media Authority (AMA) to online media risks exposing individual users to undue restrictions on their freedom of speech. Additionally, before granting AMA such power its composition, as well as the composition of the Complaints Committee, must be reviewed in order to ensure their independence from the government and corporate control. The Commission encouraged the creation of an independent self-regulatory body that can ensure media accountability. These amendments were eventually abandoned.

Initiatives to regulate content on the Internet, on online news portals or on online publications were attempted in North Macedonia in 2013. The government passed a general Law on Media that would regulate the audiovisual, print and online media and would expand the powers of the media regulator on all types of media. However, under pressure from the civil society sector and international organisations, in 2014 the Law was amended and online media were taken out of its scope. In 2019, the Government adopted a Proposal-Action Plan to combat Fake news and disinformation, which provoked reactions from journalists' associations and civil society organizations due to the fear that some news media content would be treated and

<sup>97</sup> See details here: IRIS 2019-8:1/20. [FR] National Assembly adopts online hate speech bill. Available at: <https://merlin.obs.coe.int/article/8651>

<sup>98</sup> IRIS 2020-8 :1/22: Constitutional Council blocks online hate law, <https://merlin.obs.coe.int/article/8972>

<sup>99</sup> Décret n° 2020-1444 du 24 novembre 2020 pris pour l'application de l'article 15-3-3 du Code de procédure pénale Projet de loi confortant le respect des principes de la République Available at: <https://tinyurl.com/ybx5asx7>

Decree No. 2020-1444 of 24 November 2020 pursuant to Article 15-3-3 of the Code of Criminal Procedure Bill strengthening respect for the principles of the Republic. See details here: IRIS 2021-2:1/9, Fight against online hate speech addressed again in Bill “Strengthening respect for the principles of the Republic”, <https://merlin.obs.coe.int/article/9094>

<sup>100</sup> Mir, Joan Barata (2019). Legal Analysis on the Draft Laws on Changes and Amendments to the Law on Audiovisual Media in the Republic of Albania. Commissioned by the Office of the OSCE Representative on Freedom of the Media.

Bogdani, Mirela, Paolo Cavaliere and Deirdre Kevin (2020). Technical Paper: European standards and case law references relevant to the draft amendments to the Law No. 97/2013 “Audiovisual Media in the Republic of Albania”. Council of Europe. Venice Commission Opinion No. 980/2020, <https://rm.coe.int/vc-opinion-albania-0620/16809ec9c9>

sanctioned as fake news or disinformation. However, this Action Plan did not result in any initiative to pass a law that would regulate disinformation.

These examples highlight the complexity of attempts to legislate in this area and the inevitable concerns and criticism that come not only from national stakeholders but also from international organisations with regard to potential threats to freedom of expression that they entail. At the same time, there appears to be a growing acceptance (even among journalism organisations) that something needs to be done regarding the online media that operate without regard for professional journalism and ethics.

### **Online media in the scope of the regulatory remit**

In Croatia, the Electronic Media Act (EMA), includes electronic publication services via electronic communication networks in its scope (Article 1). Article 15 includes obligations for electronic publications (the same applicable to audiovisual media) to publish accurate information, respect human rights and fundamental freedoms; contribute to the free formation of opinions, comprehensive and objective information to listeners and viewers, as well as their education and entertainment; promote Croatian cultural assets and encourage listeners and viewers to participate in cultural life; promote international understanding and the public's sense of justice, defend democratic freedoms, serve to protect the environment, promote equality between women and men; promote the equality of members of national minorities; promote the equality of persons with disabilities and children with developmental disabilities. Most recently, in 2021, above mentioned Act on Electronic Media entered into force in Croatia, implementing the 2018 Audio Media Services Directive. Regarding electronic publications, they are obliged to take all measures to protect minors and to prevent the publication of content that incites violence or hatred, and to prevent the publication of content that encourages criminal acts of terrorism, to prevent criminal offences related to child pornography and criminal offences related to racism and xenophobia (Article 94 (2)).

In addition, the 2021 Act includes a provision on the liability of providers of electronic publications (e.g., news portals) in relation to all the content published on such electronic publications, including content generated by users if they fail to register users and warn them about rules on commenting in a clear and easily visible manner (Article 94 (3)).<sup>101</sup>

This last element is an interesting aspect of what can form part of a self- or co-regulatory system. This will be further discussed below.

### **Other legislation to address harmful online content**

Two recent legislative proposals in Ireland and in the United Kingdom aim to address not only illegal content but also "harmful content". The United Kingdom's Online Safety Bill passed through the Committee stage in the House of Commons in June 2022.<sup>102</sup> As outlined by the Ofcom (Office of Communications), the online safety regime is divided into four key areas, each of which will have specific requirements on services and a timeline for implementation. These areas are:

- Protecting people from illegal content;
- Protecting children from age-inappropriate content;
- Empowering adults to protect themselves from legal but harmful content; and

<sup>101</sup> [https://www.sabor.hr/sites/default/files/uploads/sabor/2021-07-30/110302/PZE\\_62.pdf](https://www.sabor.hr/sites/default/files/uploads/sabor/2021-07-30/110302/PZE_62.pdf)

<sup>102</sup> <https://bills.parliament.uk/bills/3137>

- Increasing public transparency of categorised services' actions to protect.<sup>103</sup>

It is useful to consider both the online Safety Bill and the Ofcom approach to regulation as a principles-based approach. The first aspect of this is a **differentiated and proportionate approach**, reflecting the fact that different requirements will be placed on different types of service. This is not dissimilar to the approach in the Digital Services Act (DSA)

Secondly, Ofcom plans to proceed with a **focused engagement with services that pose particular risks**. They note that: "building a stronger culture and practice of risk management in online services is a long-term project and will not solve the problems of online harm overnight. So, we plan to complement our cross-cutting focus on risk management with early action to address the most significant online harms".

Another key issue is the **alignment with other regulators**. The Ofcom currently works with the Information Commissioners Office (ICO), the Competition and Markets Authority (CMA) and the Financial Conduct Authority (FCA) and they have established the Digital Regulation Cooperation Forum (DRCF) to support coordination across online regulatory efforts in the United Kingdom (see discussion below).

The Irish Online Safety and Media Regulation Bill 2022 is currently (September 2022) at the third stage of the legislative process in the national parliament. It includes a range of content as harmful (including the illegal harmful content outlined in the AVMS Directive. In addition, the Bill specifies a range of harmful but not illegal content including:

- (a) online content by which a person bullies or humiliates another person;
- (b) online content by which a person promotes or encourages behaviour that characterises a feeding or eating disorder;
- (c) online content by which a person promotes or encourages self-harm or suicide;
- (d) online content by which a person makes available knowledge of methods of self-harm or suicide;
- (e) any category specified for the purposes of this paragraph by order under section 139B.

The Bill also requires that for the above range of content to qualify as harmful online content it must also meet a risk test: that is where such content gives rise to— (a) any risk to a person's life, or (b) a risk of significant harm to a person's physical or mental health, where the harm is reasonably foreseeable.<sup>104</sup>

In relation to self and co-regulatory measures, the United Kingdom is an inspiring example, as the culture of functioning of these mechanisms is well established. The general legal duties of Ofcom, stemming from the Communications Act 2002, as amended,<sup>105</sup> provide Ofcom with the authority to recognise a self-regulatory authority should one be established by the industry. Ofcom also has the following additional powers: to designate a regulatory authority for VSPs; to serve as the regulatory authority if none is formed; to require notification of VSPs and charge them a fee; to monitor and require information from VSPs; to facilitate the development of VSP codes of conduct on food and beverage in commercial communications in and around videos likely to appeal to children; to enforce the notification requirement for VSPs and their duties to implement measures to protect consumers from harmful content including advertising through enforcement notifications and financial penalties.

<sup>103</sup> Ofcom (2022): Online Safety Bill: [Ofcom's roadmap to regulation](#).

<sup>104</sup> PART 8A ONLINE SAFETY CHAPTER 1 Interpretation: harmful online content and age-inappropriate online content Available at: [https://data.oireachtas.ie/ie/oireachtas/bill/2022/6/eng/ver\\_b/b06b22s.pdf](https://data.oireachtas.ie/ie/oireachtas/bill/2022/6/eng/ver_b/b06b22s.pdf)

<sup>105</sup> <https://www.legislation.gov.uk/uksi/2020/1062/made>

In line with that, Ofcom has designated the Advertising Standards Authority (ASA<sup>106</sup>) to carry out duties related to the regulation of audiovisual commercial communications, including on VSPs. This includes drawing up guidance and rules, handling complaints, and referring non-compliance to Ofcom and covers all advertising sold or arranged by VSPs, or audiovisual media service providers. Ofcom retains direct oversight over the appropriateness of the measures taken by VSPs to ensure that commercial communications not sold or arranged by the VSP also comply with the law and standards.

The Irish Online Safety and Media Regulation Bill of 2022 foresees significant changes in the structure of the current media regulator, the Broadcasting Authority of Ireland, which will be dissolved with its functions transferred to a larger Media Commission. The Media Commission will be tasked with ensuring that VSPs (a) take appropriate measures to provide the required protections from the revised AVMSD, (b) comply with the requirements concerning audiovisual commercial communications that are marketed, sold or arranged by them, and (c) take appropriate measures to comply with the requirements concerning audiovisual commercial communications that are not marketed, sold or arranged by them, taking into account the limited control they exercise over those communications.

On the matters pertaining to self and co-regulation, the future Media Commission will be empowered to assist the self-regulatory and engage in co-regulatory agreements relative to VSPs. For now, and in line with the Irish Statutory Instrument No 258 of June 2010 of the Minister of Communications, Energy and Natural Resources<sup>107</sup>, which provides for a system of co-regulation by media services providers of on-demand audiovisual media services, including the creation of codes of conduct for on-demand audiovisual media service providers, the On-demand Audiovisual Media Services Group (ODAS) was established and a code of conduct for on-demand audiovisual media service providers was created.<sup>108</sup>

### 5.3. Elections, political debates and disinformation

As noted in the previous chapter, stakeholders interviewed for this study stated that almost every aspect of citizen's lives, including "misinformation and false information regarding the election process and the competencies and work of the Central Elections Commission (CEC)"<sup>109</sup>, seriously further jeopardize the undeveloped and fragile state of democracy in Bosnia and Herzegovina.

From the perspective of the CEC, the mandate to monitor the behaviour online of candidates only for 30 days in the election campaign and react to reports or start ex officio procedures, should be changed, so that the CEC "could act in the same manner as is it is prescribed for audiovisual media in the election period, when it could legally regulate publications on the Internet during the election campaign, from the aspect of the owners of the news portals."<sup>110</sup>

This implies also a clear mandate in dealing with online publications in relation to political debate and disinformation. While not having high expectations regarding the regulation of social networks, the CEC considers it would be good to at least make a step in setting the responsibility of the online portals.

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<sup>106</sup> <https://www.asa.org.uk/>

<sup>107</sup> European Communities (Audiovisual Media Services) Regulations 2010, Ireland. Available at: <https://www.irishstatutebook.ie/eli/2010/si/258/made/en/pdf>

<sup>108</sup> Code of Conduct On-Demand Audiovisual Media Services, Ireland. Available at: <https://tinyurl.com/mruxj73c>

<sup>109</sup> Maksida Pirić, CIK

<sup>110</sup> Maksida Pirić, CIK

There are many national examples of efforts to address problems of disinformation in the context of elections. In 2018, the French National Assembly adopted the Law on the manipulation of information.<sup>111</sup> Under the new law, an emergency procedure can be used to stop the dissemination, during election campaigns, of “inaccurate or misleading allegations or statements likely to affect the sincerity of the vote” when they are “disseminated on a massive scale in a deliberate, artificial or automated manner via an online public communication service”.

What is significant here is the focus on inaccurate and misleading statements disseminated on a massive scale in a deliberate automated manner.

The French law subjected digital platforms to new obligations concerning cooperation (to combat “fake news”) and transparency. For example, those “whose activity exceeds a certain number of connections on French soil” will be required to “provide users with accurate, clear and transparent information about the identity of any natural person, or the name, headquarters and purpose of any legal entity, or of that on whose behalf it is acting, that pays the platform to promote information linked to a debate of general public interest”.

On 15 May 2019, the CSA recommended that platform operators put in place a number of practical measures designed to improve the fight against the dissemination of fake news. It also set up an internal committee of experts on online misinformation. Such measures include: reporting systems; the processing of information; quantitative aspects; the transparency of algorithms; existing fact-checking partnerships or initiatives; how to deal with sponsored content, etc. In particular, the CSA asked the operators how they defined the content of information linked to discussions of general public interest. The platforms were also asked how they “ensure that the measures are applied in conformity with the freedom of expression and communication.”

In Ireland, the Electoral Reform Bill 2022<sup>112</sup> was passed in the national parliament in July 2022. This introduced (for the first time) the establishment of the Electoral Commission.

The key elements of the Bill included (among others):

- the regulation of online political advertising to provide for transparency during electoral campaigns and ensure that elections remain free from hidden influences on how people vote
- provisions to protect the integrity of the electoral processes which will see the regulation of electoral process information and online electoral information in order to guard against manipulative or inauthentic behaviour during electoral campaigns

The Irish Electoral Reform Law grants the new Electoral Commission<sup>113</sup> strong investigative powers in this regard where the Electoral Commission may monitor online electoral information (Article 50): (2) Where the Commission reasonably believes that any online electoral information may (a) constitute disinformation, (b) constitute misinformation, or (c) involve manipulative or inauthentic behaviour, including the use of undisclosed bots,

The Law also requires that the Electoral Commission establish a stakeholder council to provide advice and opinions to the Commission generally and in relation to the preparation and use of codes of conduct. This stakeholder council shall comprise not more than 15 persons, to be

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<sup>111</sup> [Law on the manipulation of information, France](#)

<sup>112</sup> [Electoral Reform Bill 2022](#)

<sup>113</sup> CHAPTER 3- Powers of Commission - Monitoring, and investigation, of online electoral information: <https://data.oireachtas.ie/ie/oireachtas/act/2022/30/eng/enacted/a3022.pdf>

appointed by the Commission, the composition of which shall reflect the views of members of the Oireachtas (houses of parliament and senate) as well as those of print, broadcast and online media.

The important takeaways from these examples, also in light of Council of Europe Recommendations in the field, and the European Commission Proposal for a Regulation on the Transparency of Political Advertising are: the Electoral Commission needs to be strong and well-resourced; there is a need for transparency of political advertising online and offline; a specific approach is needed to address inaccurate and misleading statements disseminated on a massive scale in a deliberate automated manner. In addition, an Electoral Commission needs to be granted powers to deal with such a phenomenon.

In discussions with stakeholders, it was noted that of interest, a similar idea was proposed to the CEC by the UK Embassy to Bosnia and Herzegovina to start dealing with disinformation issues in the election period and the CEC's election process and mandate, through the establishment of a unit within the CEC for rapid response. Such a rapid response unit would need to be supported and adequately financed.

#### **5.4. Self- and co-regulatory approaches for online media**

The industry as well as most other stakeholders call for co- and regulatory measures, including institutionalisation and providing "more responsibilities for the Press and Online Council" <sup>114</sup> with the view that "co-regulation may be possible between the CRA and the Press and Online Council, by sanctioning the most glaring examples of online media content that violates the codes" <sup>115</sup>, while making sure to remove political influences on these bodies.

In other words, mechanisms are necessary to ensure permanent and stable funding of the CRA, CEC and Press and Online Council and "mechanisms for their political independence, which is a prerequisite for their systematic and meaningful action in the field of co-regulation in online space and offline media." <sup>116</sup> The introduction of co-regulatory systems and the reinforcement of self-regulation will inevitably "bring with it various "children's diseases"...which require time, patience, hard and dedicated work of various actors, media, faculties, NGOs" <sup>117</sup>, as there are no instant workable solutions.

The Press and Online Council is in a dire financial situation. Currently, it has "only donor funds, which is insufficient for work and sustainability, while the challenges in online communication are multiplying and are much greater." <sup>118</sup> Also, it is identified that the prerequisite for any activities is the adoption of relevant legislation which "should lay the foundations, while everything else should be left to self and regulation alone, so the sanctioning should be left for the most serious forms of violations of the right to freedom of expression, such as hate speech, when the Prosecutor's Office and the courts of Bosnia and Herzegovina should act...for the rest, other mechanisms of self and regulatory mechanisms should be strengthened and relied on." <sup>119</sup>

In addition to co- and regulatory mechanisms, stakeholders call for media and information literacy activities "as it seems that there is still no development of awareness that online space

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<sup>114</sup> Elvir Švrakić, Hayat TV.

<sup>115</sup> Anida Sokol, Mediacentar Sarajevo.

<sup>116</sup> Lejla Turčilo, University of Sarajevo.

<sup>117</sup> Vuk Vučetić, University of East Sarajevo.

<sup>118</sup> Maida Bahto – Kestendžić, Online and Press Council.

<sup>119</sup> Ibid.

is actually a public space.”<sup>120</sup> While the regulatory and legal frameworks are identified as the most important methods, the need for “strengthening the influence of technology companies in the fight against misinformation through fact-checking, disabling business models of non-credible media and strengthening the visibility of credible content for algorithms on social networks”<sup>121</sup> has also been expressed.

In the context of the Croatian legislation covering obligations for providers of electronic publications, the Act includes a provision on the liability of providers of electronic publications (e.g., news portals) in relation to all content published on such electronic publications, including content generated by users if they fail to register users and warn them about rules on commenting in a clear and easily visible manner (Article 94 (3)).

This last element is an interesting aspect of what can form part of a self- or co-regulatory system. For example, a brief overview of the approaches of online news media in other countries reveals the importance of terms and conditions for people who register in order to add comments. Some examples of the nature of such guidelines and policies are illustrated in the table below.

<b>TABLE 3 EXAMPLES OF RULES FOR ONLINE COMMENT SECTIONS ON NEWS MEDIA</b>		
<b>Managing comments sections</b>	<b>UK Independent</b>	<b>Journal.ie</b>
Requiring registration to leave comments	x	x
Not allow anonymous posting – registration by correct name but usernames allowed	x	x
Ability for users to delete their own comment	x	
Ability for user to flag comments	x	x
Ability for users to report comments		x
A moderation programme automatically refers to moderation comments which contain certain words and takes less than 24 hours	x	
Feedback while writing comments: Google’s Jigsaw programme <a href="#">Perspective</a> to help identify whether a comment could be perceived as “toxic” to a constructive discussion.		x
Potential to ban users	x	x
<b>Prohibited and problematic content</b>		
Comments which are defamatory, malicious, threatening, false, misleading, offensive or abusive	x	x
Comments that are abusive to other commenters or our journalists will not be tolerated.	x	x
Sexist, racist, homophobic, or other discriminatory language or views	x	x
Comments which incite violence or appear threatening or harassing will also be deleted	x	x
Comments which include swear words will automatically be referred for moderation and usually deleted.	x	
Respect the privacy of other commenters and addresses, email addresses, phone numbers or full names in your post. Do not impersonate another user in your post.	x	
We reserve the right to close comments on reports concerning ongoing court cases and other articles for any reason.	x	

<sup>120</sup> Vuk Vučetić, University of East Sarajevo.

<sup>121</sup> Darko Brkan, NGO Zašto ne.



We will delete comments that we deem to be potentially defamatory, in breach of copyright or otherwise unlawful.	x	
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In Sweden, the Media Ombudsman, an independent self-disciplinary body, has extended its mandate to handle individual complaints on the editorial content of newspapers, magazines, broadcast media and their websites and social media. The Swedish Press and Broadcasting Authority (MPRT) shall now contribute to co-regulation on issues relating to appropriate measures to be taken by video-sharing platforms providers and develop the related out-of-court redress mechanisms.

Furthermore, the Swedish Media Council (SMC), might be mandated according to the current draft Law, to assist the content providers in the creation of a content warning system and to participate in the co-regulation of video-sharing platforms by mapping initiatives aimed at promoting media and information literacy.

In Spain (Catalonia) and in the Netherlands, VSPs will have to establish and apply a code of conduct providing for regular, transparent and independent monitoring, evaluation measures with regard to the extent to which the objectives are being achieved and effective enforcement, including effective and proportionate sanctions. The Dutch media authority, CvdM, and the Catalan authority, CAC, have been assigned with the legal task to supervise this obligation of the VSPs, and ensuring the compliance of the measures implemented by the VSPs with the objectives established in these codes of conduct.

In France, a new co-regulatory scheme was introduced by the French Law on the manipulation of information. The Law (22 December 2018) provides that platforms shall be/are encouraged to - depending on the topic - take measures in order to fight online disinformation and gives the CSA the power to issue recommendations to online platforms in this field.<sup>122</sup> Additionally, this law requires the CSA to publish a periodic report on the implementation and efficiency of the measures adopted by the platforms.

### 5.5. The importance of cooperative and collaborative approaches

The digital environment has prompted policy-makers and regulatory authorities to review the frontiers of cooperative schemes, to take into account not only the cross-border challenges but also the cross-sectoral ones.<sup>123</sup>

In many countries, collaborative and cooperative approaches to the regulation of the online sphere have been developed. Many of these are outlined in detail in a recent report jointly authored by the European Audiovisual Observatory and the EPRA examining the issue of Media regulatory authorities and the challenges of cooperation.<sup>124</sup>

In a review of the activities of RAs, a recent Background Paper based on questionnaires to the EPRA members also stressed that more intense and inclusive cooperation has to be put in place with stakeholders, governing bodies, regulatory authorities from adjacent regulatory fields (telecommunications, data protection, competition, elections), NGOs and academia.<sup>125</sup>

<sup>122</sup> For more details, please refer to the Recommendation of the CSA to online platform operators in the context of the duty to cooperate to fight the dissemination of false information of May 15, 2019 (also available in English), at:

<https://tinyurl.com/mrytjrk7>

<sup>123</sup> Quoted from the: Cabrera Blázquez F.J., Denis G., Machet E., McNulty B. (2021). Media regulatory authorities and the challenges of cooperation, IRIS Plus, European Audiovisual Observatory, Strasbourg. Available at: <https://tinyurl.com/hnj63tzd>

<sup>124</sup> Ibid

<sup>125</sup> 52nd EPRA (Virtual) Meeting Plenary session 1: "Great expectations: The changing paradigm of media regulators" Background paper, by Asja Rokša-Zubčević & Jean-François Furnémont, Wagner-Hatfield 27 October 2020 Available at: <https://tinyurl.com/ycxnsnwm>

There are numerous examples of stakeholder collaboration being developed in order for different authorities to share information and expertise, and to collaborate more intensively in order to strengthen the supervision of digital activities and digital services

In July 2020, the Digital Regulators Cooperation Forum (DRFC) was formed in the UK by Ofcom, the CMA (Competition and Markets Authority) the ICO (Information Commissioner’s Office) (and later the FCA – the Financial Conduct Authority) to ensure a greater level of cooperation, given the unique challenges posed by the regulation of online platforms. According to the Terms of Reference<sup>126</sup> of the Forum, the goals of the DRCF are threefold:

- *to promote greater coherence, so that where regulatory regimes intersect the DRCF helps to resolve potential tensions, offering clarity for people and industry*
- *to work collaboratively on areas of common interest and jointly address complex problems*
- *to work together to build the necessary capabilities, learning from what each regulator is doing and striving to be best in class, both now and in the future*

The objectives of the DRCF include:

- Objective 1: Promote coherent regulatory policy making, using the collective expertise of its member regulators to explore and respond to policy challenges in the digital space.
- Objective 2: Collaborate to ensure that regulation and other enforcement tools applied to the digital landscape are implemented by its member regulators in a coherent way.
- Objective 3: Enhance regulatory capabilities by pooling knowledge and resources to ensure that its member regulators have the skills, expertise and tools needed to carry out their functions effectively in digital markets.
- Objective 4: Anticipate future developments by developing a shared understanding of emerging digital trends, to enhance regulator effectiveness and inform strategy.
- Objective 5: Promote innovation by sharing knowledge and experience, including regarding innovation in the approaches of regulators.
- Objective 6: Strengthen international engagement with regulatory bodies to exchange information and share best practices regarding approaches to the regulation of digital markets.

Ofcom also formed an informal group to discuss the challenges of online regulation with counterparts from Australia, Ireland and Canada.

The table below provides a brief overview of these types of cooperation and collaboration models.

TABLE 4 EXAMPLES OF MODELS OF COOPERATION BETWEEN NATIONAL AUTHORITIES			
Country and platform	Type of cooperation	Members	Issues addressed
Swedish DSA Network	Voluntary Forum	Swedish Press and Broadcasting Authority, the Swedish Media Council, the Swedish Post and Telecom Authority, Swedish Authority for Privacy Protection, Swedish Competition Authority, Swedish Consumer	media regulation, telecommunications, data protection, competition, consumer protection and cross-border trade

<sup>126</sup> <https://www.gov.uk/government/publications/drcf-terms-of-reference/terms-of-reference>

		Agency, National Board of Trade Sweden, Swedish Agency for Digital Government	
Dutch Digital Supervisors Collaboration Platform (SDT)	Formal collaboration <sup>127</sup>	Dutch Data Protection Authority (AP), the Netherlands Authority for Consumers and Markets (ACM), the Netherlands Authority for the Financial Markets (AFM) and the Media Authority	protection of personal data, consumer protection, the integrity of digital content and competition, artificial intelligence, algorithms and data processing, online design, personalization, manipulation and deception
United Kingdom Digital Regulation Cooperation Forum (DRCF)	voluntary cooperation forum	The Competition and Markets Authority (CMA); The Office of Communications (Ofcom); and The Information Commissioner's Office (ICO). AND	to support regulatory coordination in online services, and cooperation in areas of mutual importance.
Australia Digital Platform Regulators Forum		Australian Competition and Consumer Commission, Australian Communications and Media Authority, Office of the Australian Information Commissioner, and Office of the eSafety Commissioner	cross-cutting issues and activities relating to the regulation of digital platforms: internet search engines, digital content aggregators, social media services, private messaging services, media referral services and electronic marketplaces.

Similarly, in Sweden, the NRA developed a DSA Network as a voluntary forum for cooperation between interested authorities on matters that primarily concern the DSA. The authorities involved deal with media regulation, telecommunications, data protection, competition, consumer protection and cross-border trade.<sup>128</sup> The authorities saw the need for further cooperation regarding the regulation of online platforms and considered there to be great value in a closer dialogue regarding the DSA.<sup>129</sup>

In the Netherlands, in October 2021, a range of Dutch institutions formed the Digital Regulators Cooperation Platform (SDT) with the goal of developing “smart” monitoring of digital service providers – services delivered over the internet or a digital network. The aim is to collaborate more intensively in order to strengthen the supervision of digital activities. The rationale included the fact that new European rules may lead to obligations for companies that affect more than one regulator and collaboration is therefore essential. Regarding such rules, the members specifically reference the Digital Services Act and the forthcoming European Media Freedom Act. The Platform wishes to respond effectively to the rapid pace of new developments, where a coherent and coordinated approach is needed and in the best interest of both users and providers of digital services. The members will work together by exchanging knowledge and experiences from supervisory practice on themes such as artificial intelligence,

<sup>127</sup> Surmised from the plans to “invest together in internal knowledge, expertise and competences. And reinforce each other in enforcement processes”

<sup>128</sup> The network currently consists of representatives from the SPBA, the Swedish Media Council, the Swedish Post and Telecom Authority, the Swedish Authority for Privacy Protection, the Swedish Competition Authority, the Swedish Consumer Agency, the National Board of Trade Sweden and the Swedish Agency for Digital Government.

<sup>129</sup> Details from the: Cabrera Blázquez F.J. et.al (2021)

algorithms and data processing, online design, personalization, manipulation and deception. They also want to invest jointly in knowledge, expertise and competencies. The regulators are also looking at where they can strengthen each other in enforcement processes, for example by jointly tackling digital market problems.<sup>130</sup>

### **Discussion with stakeholders on the establishment of an effective cooperative self and (co)regulatory scheme in Bosnia and Herzegovina**

Discussions were held with the stakeholders on the possibility of developing a wider collaborative interinstitutional and interdisciplinary platform for addressing the challenges of online media. The stakeholders considered that such an approach was highly relevant and imperative, and all stakeholders were extremely supportive of this proposal: "Such a cooperation platform is an excellent idea, perhaps the only one that could effectively tackle the challenges in the online space, particularly where VSPs are concerned."<sup>131</sup>

When asked about the possibility of a cooperative scheme in Bosnia and Herzegovina, the majority of stakeholders identified the CRA and CEC as being the key players and having primary responsibility for the activities related to any type of cooperative or collaborative platform.

The CEC is of the view (similarly to that expressed by the CRA) that, while the idea is excellent, it must be ensured that some higher-level governmental bodies are involved, at least in the establishment of such a platform, such as the Ministry of Transport and Communications, the Ministry of Justice, etc.

Ideally, the establishment of this platform would include the adoption of the related legal base, however, since the Parliament of Bosnia and Herzegovina has practically not been in function for years and almost no laws are adopted, except for some that favour the positions and benefits of elected officials, it is illusory to expect this; hence, the idea is to provide for the legal back-up in the form of executive sub-legislation.

Also, its functioning would "depend on how the platform would function, what its tasks would be, how binding the conclusions would be and on the basis of which regulations that platform would function..."<sup>132</sup> While all stakeholders expressed interest to gather around the establishment and functioning of such a collaborative platform, the first challenge identified in this respect, besides the need to formally and institutionally recognize its work, has to do with the inherited lack of financial and human resources, even from the institutions of CRA and CEC, due to budget-adoption and implementation issues, ban/difficulties in hiring new employees, etc. not to mention the difficult economic and financial situation in the NGO sector, media industry and self-regulatory mechanism, as confirmed by all the stakeholders.

As mentioned above, interestingly and coincidentally, a similar idea was proposed to the CEC by the UK Embassy to Bosnia and Herzegovina to start dealing with disinformation issues in the election period and the CEC's election process and mandate, through the establishment of a unit within the CEC for rapid response. CEC is of the opinion that the platform that would be formed at the level of Bosnia and Herzegovina should certainly then have one such unit

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<sup>130</sup> Autoriteit Persoonsgegevens (2021). Dutch regulators strengthen supervision of digital activities through increased cooperation. Available at: <https://tinyurl.com/4vhhkcsb>

See also Toezine (2022). AFM, ACM, AP and CvdM united in strict supervision of digitization. Available at: <https://www.toezine.nl/afm-acm-ap-en-cvdm-verenigd-in-stevig-toezicht-op-digitalisering/>

<sup>131</sup> Mr. Nasir Muftić, Assistant Professor, Law School, University of Sarajevo

<sup>132</sup> Maksida Pirić, CIK.

that should be financed and which would know exactly its tasks and manner of providing accurate information to the public.

### **5.6. Regional models for addressing the phenomenon of disinformation**

An interesting novelty can be found in the Croatian National Recovery and Resilience Plan 2021-2026,<sup>133</sup> in the component "Resilient, green and digital economy". The Plan states that "the increase in the presence of disinformation and manipulation in the media threatens the media industry, among other reasons the absence of a system for the safe use of digital content and the slow adaptation of classical media to the challenges digital market."<sup>134</sup>

According to this plan, the Croatian Ministry of Culture and Media and the Agency for Electronic Media are the beneficiaries of funds related to the "establishment of checking media facts and system of public publication of data" and the subsequent reform identified as the "Development of a resilient cultural and creative sector."

In order to remedy the circumstances, Croatia has been approved circa 6,5 MIL €, (of EU funding) with the general goal to strengthen society's resistance to misinformation by reducing the amount of dis/misinformation in the public space, through strengthening information reliability and safety while using media content and social networks; strengthening the quality of journalism and credible reporting; and strengthening media literacy. The specific goals of the plan are to: strengthen the competencies of existing independent verifiers of the accuracy of the information published in the public space, media and social networks and promote the development of new ones; develop software and platforms to work on information verification; strengthen the resilience of media to misinformation; and encourage quality and credible journalism; promote education and empowerment of individuals in combating disinformation and its negative impacts; and creating a collaborative platform and repository of verified information.

As part of these initiatives, an expert study has been prepared, under the title: "Strengthening society's resistance to disinformation: Analysis of the state of play and guidelines for action",<sup>135</sup> consisting of a comprehensive analysis of current trends in the field of journalism, media, digital platforms, social networks and new technologies, as well as their impact on society, the problem of disinformation and the functioning of the fact-checking systems. It also contains an overview of the most important international activities and documents in the field of combating disinformation, as well as an analysis of international practices, standards and criteria related to the work of information verifiers and the establishment of an accuracy verification system.

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<sup>133</sup> Croatian Government's adopted act, available in Croatian at: <https://planoporavka.gov.hr/dokumenti-113/113>.

The adoption was subsequent to its approval by the EC in July 2021, as part of the EU-funded resilience and recovery initiative, established in 2020.

<sup>134</sup> <https://planoporavka.gov.hr/UserDocsImages/dokumenti/NPOO%20prezentacija%20-%20kultura.pdf?vel=532488>

<sup>135</sup> Grbeša-Zenzerović Marijana and Iva Nendić (2022). Jačanje otpornosti društva na dezinformacije: analiza stanja i smjernice za djelovanje. Agencija za elektroničke medije./ Available at: <https://tinyurl.com/3fst4sp2>

## 6. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

Harmonised and wide-ranging actions are needed to address the issues posed by harmful content in online media on the one hand, and harmful content disseminated on online platforms on the other hand. These two problems require different, yet coordinated approaches. In that respect, this study provides a set of recommended actions, tailored to the findings on the state of play vis-à-vis the harmful content in online media in Bosnia and Herzegovina. They indicate possible interventions on the legislative and regulatory framework, address the collaborative approach which is needed to tackle the numerous challenges posed by harmful content, in particular given the widespread presence and use of online media, and conclude on the potential further engagement in these matters on the part of the Council of Europe.

### 6.1. Developments in the legislative and regulatory framework

#### The transposition of the revised AVMSD

The activities undertaken by the CRA to align applicable secondary legislation with the provisions of the revised AVMSD should reflect the changing paradigm of content regulation with regard to online services; unlike in the case of audiovisual media services, the regulation does not focus on individual pieces of content, but on the assessment of whether the providers have in place appropriate measures, systems and procedures in order to protect their users from harmful content.

Having in mind the examples offered, the principles of the revised AVMSD, the complexities of the online space, and the necessity (now more than ever) to safeguard the principles of free speech and free media, the recommended direction of attempting to curtail the damage of the vast quantities of harmful content online is presenting itself in the form of the establishment of self and co-regulatory mechanisms as one of the driving principles behind the dictum of harmful online content.

As emphasised by the revised AVMSD: “Experience has shown that both self- and co-regulatory instruments, implemented in accordance with the different legal traditions of the Member States, can play an important role in delivering a high level of consumer protection. Measures aimed at achieving general public interest objectives in the emerging audiovisual media services sector are more effective if they are taken with the active support of the service providers themselves.”<sup>136</sup>

It is clear that the existing model of self-regulation is insufficient since the activities of the Press and Online Media Council are restricted to mediation and decisions about media content that violates the standards of the Press Code. While it is crucial to raise professional standards and accountability of professional online media, self-regulation has limited effect, as pointed out in the European Union Commission’s report in 2021. Indeed, not only the Press Council does not have the power to issue binding decisions, but more importantly, they are powerless against the numerous anonymous portals. As a result, public concerns are not being adequately addressed by self-regulation alone: as mentioned, the number of complaints to the Press and Online Media Council about the content of online media, and especially user comments, is on the constant rise, which suggests the growing public awareness and concern about harmful content spread on this type of media.

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<sup>136</sup> AVMSD Recital (13)

In addition to creating legal preconditions for transparency and accountability of online media providers, it is advised to follow the systemic approach based on coregulation in which roles should be shared and the problem tackled at its root. Self-regulation through codes of conduct should remain the main mechanism of dealing with complaints relating to the specific content of online media, whereas regulatory enforcement<sup>137</sup> should be reserved for cases of failure to apply measures to prevent and minimise the effects of harmful content, such as e.g. failure to moderate user comments efficiently and in line with the Code. Indeed, a regulatory approach to content moderation would be not only impractical but outright impossible due to the large volumes of content being published online.

### **Amendments to the CRA Rules on audiovisual media services and radio media services**

CRA should refrain from adopting the proposed amendments to its rules aimed at establishing editorial responsibility of its licensees over their online content. As expressed by some stakeholders, this would indeed result in an uneven treatment of providers of the same services on the market. Most importantly, the proposed amendments in their current wording would not solve one of the most pressing problems that exist in relation to online portals, i.e. their anonymity. It is the lack of transparency in ownership and editorial responsibility which allows these portals to spread disinformation, propaganda and hate speech without incurring any liability, as a consequence of legislative shortcomings that allow for such a business model to exist and proliferate. The CRA's proposal, being limited in its scope, would fail to address these issues. Any approach should therefore be focused on establishing the appropriate system and accountability for all providers on the market.

Last but not least, such a solution cannot be considered to be in line with either domestic and international legal framework, or the principles of the freedom of expression.

In a traditional sense, regulation has been considered a warranted limitation to the freedom of expression, against which it needs to be carefully balanced, because of the specific nature of broadcast media, especially the impact of those media on the way people form their opinions. Later on, these arguments have been translated to on-demand services and video-sharing platform services in acknowledgement of the fact that these services compete for the same audiences and revenues as audiovisual media services, as well as because of their impact on shaping and influencing the opinions of others. In defining its scope the AVMSD strictly limits itself to those services whose principal purpose is the provision of programmes to inform, entertain or educate, excluding all services the principal purpose of which is not the provision of programmes, i.e. where any audiovisual content is merely incidental to the service and not its principal purpose.<sup>138</sup> Using the same analogy, in extending regulation to video-sharing platform services, the revised AVMS Directive covers only those services – whose essential functionality is the provision of programmes and user-generated videos – i.e. the audiovisual content.<sup>139</sup>

Media service providers should be encouraged to apply strong ethical standards regarding the written content on their websites, enforcing “the same content standards, irrespective of where their content is placed.”<sup>140</sup>

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<sup>137</sup> As pointed out in Recital (14) of the revised AVMSD, the existence of a legislative backstop is considered an important success factor in promoting compliance with a self- or co-regulatory code.

<sup>138</sup> Recital 22 AVMSD

<sup>139</sup> Recital (5) of the revised AVMSD

<sup>140</sup> Wardle, C. & Derakhshan, H. (2017).

### **Laws on transparency of media ownership and advertising**

This legislation should be adopted without further delay. The law should provide a clear definition of media, as well as establish the obligation to register before providing media services.

It should be recalled that the civil sector in Bosnia and Herzegovina, gathered around the Consortium implementing the EU-funded “Media and Public Credibility” project aimed at promoting transparency of media ownership and legitimate forms of media financing and advertising in Bosnia and Herzegovina, prepared Draft Law on media transparency, ownership and protection of media pluralism in Bosnia and Herzegovina and Draft Law on Advertising in Bosnia and Herzegovina in 2018.<sup>141</sup> These drafts inter alia envisaged:

- Establishment of media registry with contacts and ownership information,
- Transparency obligations of all media to report information on media ownership and ownership in related activities,
- Conflict of interest and protection of market competition provisions, including the rules on unauthorized horizontal and vertical concentration,
- Transparency of financial information such as market shares and advertising revenues,
- Establishment of a Fund for media pluralism and diversity,
- Establishment of a self-regulatory body for advertising,
- Principles of online advertising.

The Draft Laws were submitted to the competent ministries in order for them to initiate a procedure for their adoption, but there have not been any developments since. The existing drafts represent a solid base for a legal framework in line with European Standards, and it would be worth resuming efforts on updating and moving forward with their adoption, rather than proceeding with new drafts. The coordination of this process could be carried out by the Council of Europe since it provided the legal analysis of the said drafts and facilitated dialogue between the members of the Consortium with responsible state institutions.<sup>142</sup>

Partnerships with research institutions and academia are particularly beneficial in cases when official registries fail to reveal hidden ownership. A good example of efforts to identify where the ultimate ownership of a media outlet resides is the Media Ownership Ireland database<sup>143</sup>, a registry developed to serve as a reference point for the implementation of competition legislation, as well as the Broadcasting Authority of Ireland’s (BAI) statutory requirement to conduct research relating to the plurality of the media in Ireland and to report on the impact of ownership and control changes on the plurality of media in the country. The database has been developed by the DCU School of Communications at the initiative of the BAI, and it derives data from various sources such as the Irish Companies Records Office, corporate annual reports, company websites and direct communication with media outlets and/or their owners.

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<sup>141</sup> EU Delegation to Bosnia and Herzegovina (2018). Media and Public Credibility: Draft laws on Media ownership transparency and advertising were introduced. Available at: <https://europa.ba/?p=61396>

<sup>142</sup> At the round table held in Sarajevo on 16 December 2019, as part of the “Human rights reporting and the role of media in BiH - media freedom legal framework analysis” project.

<sup>143</sup> <http://www.mediaownership.ie/#about>



## **Preparation of the draft Law on the prevention of illegal hate speech on the Internet**

The work of the working group on the preparation of this law should be terminated. As discussed above, similar laws in the EU have been criticised as limiting the freedom of expression and being inefficient, failing to address the problem of hate speech and other illegal content on the internet. These examples also demonstrate that individual national actions to rein in the problems related to the spread of illegal content online, in particular when very large online platforms are involved, fall short of effectively addressing the challenges at hand.<sup>144</sup>

Regulating illegal and harmful online content requires a cautious approach with regard to the international context and, above all, it needs to be carefully balanced against other rights and freedoms.

The efforts and focus of Bosnia and Herzegovina legislators should therefore be focused on observing the developments currently being undertaken at the EU (as discussed above) level with the adoption of the Digital Services Act (DSA), the proposal for Regulation on the transparency of political advertising, and the Proposal for a European Media Freedom Act (EMFA) in order to ensure an informed and timely response, as well as the proper implementation of these instruments into Bosnia and Herzegovina legislation. The new EU legislative framework proposes a common set of rules for the entire EU, as opposed to addressing this problem at the level of individual member states.

It should be noted that the implementation of the EU acquis is Bosnia and Herzegovina's obligation under the Stabilization and Association Agreement. Any legislative measures will therefore need to ensure that the principles contained in the above acts are enshrined in the Bosnia and Herzegovina legislation, as well as to avoid any overlapping or contradictions between the national and EU law.

### **6.2. Cooperation and collaboration of stakeholders**

Initiatives and attempts at tackling threats posed by online content should be coordinated and harmonised in order to avoid ad-hoc and partial solutions.

#### **Establishment of a cooperation platform**

Bosnia and Herzegovina should take note of the oversight mechanism envisaged in the DSA in the form of so-called Digital Service Coordinators. Member States will be required to designate one or more competent authorities responsible for the DSA enforcement. One of the competent authorities will be the Digital Services Coordinator, an independent authority with strong requirements to perform their tasks impartially and with transparency, acting as a "regulatory hub" ensuring coherence and digital competence.<sup>145</sup>

Having also in mind the shift towards systemic regulation and co-regulation (see chapters three and four), envisaged by both the DSA and the revised AVMSD, as well as the complexity and variety of online challenges and issues (harmful online content, data protection, free elections, protection of consumers...), it is suggested that rather than one institution, the

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<sup>144</sup> European Commission, Questions and Answers: Digital Services Act. Available at: <https://tinyurl.com/w3p4br5c>

<sup>145</sup> Ibid.

oversight should be entrusted to a platform based on cooperation between different stakeholders that have a role in the digital environment.<sup>146</sup>

In addition, as outlined earlier, these types of collaborative forums are developing across Europe, as many relevant authorities and organisations believe that: “the unique challenges posed by the regulation of online platforms require an even greater level of regulatory cooperation.”

The CRA, having in mind its experience in regulating traditional media and dealing with issues such as hate speech and the protection of minors, as well as its new competences over video-sharing platforms, is suggested to be the coordinator in this multi-stakeholder platform, and indeed the future DSC. Other stakeholders would include the Central Election Commission, Data Protection Authority, Competition Council, the Press and Online Media Council, with the support of relevant CSOs, media / fact-checking organizations, academia, etc.

### **Formalisation of cooperation**

The cooperation within the platforms should be formalised by means of a legal instrument, in order to ensure that the respective tasks of each stakeholder are clearly defined and that they cooperate closely and effectively. Since the process of the adoption of a specific law to this end would be too lengthy, it is proposed that the platform is established by means of secondary legislation, more specifically a Decision adopted by the Council of Ministers of Bosnia and Herzegovina which is, in fact, the appropriate legal instrument for the implementation of the DSA. This decision should identify the scope and principles of its functioning, roles and obligations of each partner in the cooperation platform, methodology of works and coordination mechanism, as well as matters of financing.

In order to test the feasibility and functioning of such a platform, a pilot project should be carried out, possibly supported by the Council of Europe and the European Commission. Such a project would be an excellent opportunity to prepare all the necessary prerequisites for the proper and smooth functioning of this platform, inclusive of setting up the composition of the platform, establishing governing and functioning structures of the platform, preparation of statutes, memorandums of co-operations and understanding, action plans, etc. It would be an opportunity to test the agility of the platform to not only tackle harmful online content by referring the cases to relevant authorities for processing, reinforcing regional and international cooperation in this regard, but also by organizing campaigns, workshops, etc. for the purpose of provision of effective counter-narratives. A preliminary illustration of the composition of the platform is provided below:

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<sup>146</sup> Or a 'national digital forum' as suggested in: Furnémont, Jean-François and Rokša-Zubčević, Asja (2021), 'Reclaiming digital democracy: A need for inauguration of regulated digital sovereignty', *Journal of Digital Media & Policy*, 12:3, pp. 521–29.

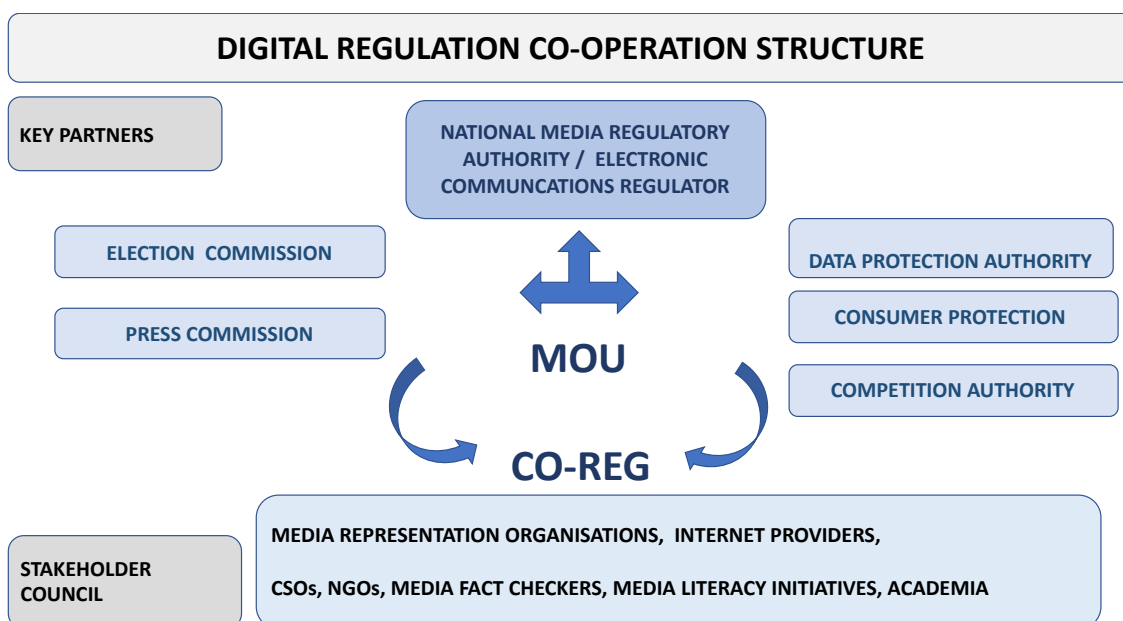


Fig 3: Potential model for a cooperation structure relating to regulating online media

### 6.3. Empowering stakeholders

For such a model to function well it is necessary to empower the relevant stakeholders involved in the collaboration and in the elaboration of, and implementation of any co-regulatory mechanisms.

#### Ensuring adequate institutional capacities

Given the new, broader competences and tasks that are envisaged, the CRA (as well as CEC Bosnia and Herzegovina) should be guaranteed adequate financial and human resources in order to carry out its functions effectively. In relation to the CRA, Article 30 of the revised AVMSD clearly stipulates the obligation to ensure legal distinction from the government and functional independence of the regulator, exercising its powers impartially and transparently, not seeking or taking instructions from any other body in relation to the exercise of the tasks assigned to it. Moreover, platform regulation will require an entirely new set of skills and competences to be developed within the CRA staff, in addition to employing additional staff and fostering partnerships outside of the institution.

The Press and Online Media Council should be guaranteed a stable source of income instead of the existing donation-based one. It could be tied to the sector policy or strategic goals identified by the aforementioned decision of the Council of Ministers.

#### Support for fact-checking and media organisations

Under the DSA, trusted flaggers are given a special role: platforms will have to create a privileged channel for trusted flaggers to report illegal content to which platforms will have to react with priority. Trusted flaggers will be independent entities approved by the Digital Service Coordinators that have demonstrated particular expertise and competence in detecting, identifying and notifying illegal content. Fact-checking and media organisations need to be further empowered to perform this important function.

In order to avoid one-off, incoherent and irregular funding with varying results, the support for media organisations should be organised and delivered in a coordinated manner, for

example through an advisory body of experts established within the cooperation platform, which would provide for strategic orientation of projects and feedback on their effectiveness. In this way, donors could have a one-stop shop that would guarantee longer-term commitments and sustainability of their efforts.

#### **6.4. Strategy to combat disinformation and hate speech**

Bosnia and Herzegovina lacks a strategy and an action plan that would combat disinformation and involve diverse actors such as governments, non-governmental organisations, regulators, self-regulators and academics. Efforts aimed at combating disinformation are mainly restricted to self-regulatory frameworks, individual media outlets, media watchdog platforms, fact-checking platforms and social networks.<sup>147</sup>

The role of the cooperation platform should also be to develop such a strategy and carry out a coordinated, wide-ranging campaign, especially with regard to elections.

A special emphasis should be put on the development and promotion of counter-narratives against hate speech, discrimination and stereotypes to be disseminated via online platforms, aimed at restoring core democratic values.

#### **6.5. Regional cooperation**

The necessity to continue and further strengthen regional cooperation has never been more pronounced than in light of the challenges posed by the digital environment. In addition, due to the cross-border aspects of the AVMS and VSP services, there is an ever-growing need for cooperation and coordination of MRAs and other relevant authorities in the field of electronic communication, data protection, competition, elections, etc.<sup>148</sup>

Bosnia and Herzegovina, as well as all the countries from the region, are small markets in which the presence of large online platforms in terms of legal representation cannot be expected. On the other hand, it is reasonable to expect their regional presence.<sup>149</sup> In that respect, it is recommended to develop a coordinated regulatory approach which could lend the region a much stronger voice in engaging with global online platforms. This could, again, be done in a form of a cooperation platform based on the Memorandum of Understanding, for the purpose of the exchange of ideas, creation of common policies and strategies, as well as joint action in dialogues with online platforms, but also the European Commission which will be enforcing DSA rules for very large online platforms and search engines.

#### **6.6. Potential engagement of the Council of Europe**

As mentioned above, the Council of Europe could have a role in reopening the debate around the draft laws on transparency of media ownership and advertising, including assistance with their updating and liaising with the competent ministry in order to commence the procedure of their adoption.

Furthermore, the Council of Europe could use its influence to promote the need for a functioning cooperation within a co-regulatory scheme to be set up at the national level, as well as to facilitate such an arrangement among the parties involved.

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<sup>147</sup> Sokol, Anida and Maja Čalović (2022), p. 91.

<sup>148</sup> Council of Europe, Technical paper from the Regional conference for media regulatory authorities: The role of the national media regulatory authorities in the new media paradigms, held in Budva, Montenegro, 9-10 September 2021.

<sup>149</sup> It was announced in early 2022 that Meta would open its representative office for the Balkans in Serbia Available at: <https://www.kurir.rs/vesti/biznis/3849087/fejsbuk-stize-u-srbiju-odlucili-su-se-za-nasu-drzavu-jer-smo-lideri-u-regionu>

In addition, the Council of Europe should continue to support regional cooperation of regulatory authorities, particularly their efforts to establish a coordinated approach towards global online platforms.

Another invaluable contribution would be assisting in strengthening institutional capacities, expertise and knowledge of the CRA and partner institutions through various trainings and workshops.

Finally, financial support (by Council of Europe as well as other international actors), for the pilot project for the cooperation platform would contribute significantly to the implementation of this solution.

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*This publication was produced with the financial support of the European Union and the Council of Europe, through the joint programme "Horizontal Facility for the Western Balkans and Türkiye". It was developed with the support of the joint action "Freedom of expression and freedom of the media in Bosnia and Herzegovina (JUFREX)" (2019–2022) and it was published within the joint action "Protecting freedom of expression and of the media in Bosnia and Herzegovina (PRO-FREX)" (2023-2026).*

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*The joint European Union and Council of Europe programme "Horizontal Facility for the Western Balkans and Türkiye" (Horizontal Facility III) is a co-operation initiative, running from 2023 until 2026. The programme covers actions in Albania, Bosnia and Herzegovina, Kosovo\*, Montenegro, North Macedonia, Serbia and Türkiye. It enables the Beneficiaries to meet their reform agendas in the fields of human rights, rule of law and democracy and to comply with European standards, which is also a priority for the EU enlargement process.*

*The action "Protecting freedom of expression and of the media in Bosnia and Herzegovina (PRO-FREX)", implemented under the Horizontal Facility III, enables the beneficiary institutions and civil society organisations in Bosnia and Herzegovina to progress towards meeting their reform agendas in the field of freedom of expression and freedom of media, in line with the European standards. It aims at contributing to an improved environment for the exercise, in particular by journalists and media actors, of their rights of freedom of expression, in a more pluralistic and safer media environment, in line with the standards as set by in accordance with Article 10 of the European Convention of Human Rights.*

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