



# MEDIA FREEDOM, REGULATION AND TRUST

A Systemic Approach  
to Information Disorder



Damian Tambini

**Artificial Intelligence – Intelligent Politics**  
Challenges and opportunities for media and democracy  
Background Paper, Ministerial Conference, Cyprus 2020



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### **Artificial Intelligence – Intelligent Politics**

Challenges and opportunities for media and democracy

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## SUMMARY

- ▶ The recent decline of trust in politics coincided with a shift of media consumption onto platforms that people trust less.
- ▶ As social media use increases, there is evidence of a decline of trust in all media, but evidence does not show that media users are migrating to media they trust more.
- ▶ Individuals increasingly rely on news and information from online sources many of which lack the accountability structures and ethical self-regulation that characterise mainstream media.
- ▶ Media industries and governments are responding to these features of information disorder, developing new structures of co-regulation with new media platforms to encourage ethical news industries that promote verification and fairness in news and journalism.
- ▶ These new forms of regulation may themselves undermine media freedom and trust in democracy however, and result in opaque reciprocities between politicians, the state and media that undermine democratic values.
- ▶ The Council of Europe should assist democracies in this important area of policy-making by providing standards for impact assessments of new laws and codes, monitoring of best practices and of implementation of Council of Europe standards, and re-iterating the value of media autonomy as it applies also to new media.
- ▶ Member states and companies should re-evaluate and reiterate Council of Europe standards as they embark on regulatory reforms.

## 1. INTRODUCTION AND OVERVIEW

In response to problems such as online disinformation, hate speech and electoral interference, fundamental reforms of media governance are now being discussed in the member states of the Council of Europe, including codes of conduct, changes in the liability of intermediaries and new offences of electoral manipulation and disinformation<sup>1</sup>. In the rush to reform, however, it is possible that the cures that policymakers seek to implement will be worse than the illnesses they seek to treat.

Since World War II, liberal democracies cooperating in the framework of the Council of Europe have embraced a principle of media independence and an expectation of media responsibility. Media systems were based on the assumption that trust in media narratives and the institutions of liberal democracy is fostered by clearly separating the institutions that articulate shared narratives, truth claims and common meanings (i.e. the media) from executive power and sectorial interests. Citizens trust political ideas and truth claims when they are independent of state or political interests and articulated through independent, trusted media, whether

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1. References in Chapter 4.

these are reports of the moon landings, or information on the benefit of vaccination<sup>2</sup>. Processes of media reform inevitably entail challenges for media freedom, and the potential for established standards to be undermined.

The Council of Europe has developed standards based on the principle of media independence, including independence of regulatory authorities<sup>3</sup> and of public broadcasters,<sup>4</sup> media pluralism and transparency<sup>5</sup> and stronger protection for freedom of expression, of the press and of media under Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, “the Convention”)<sup>6</sup>. Since 1950 these standards of media independence and responsibility have helped build and maintain open and democratic societies.

In the wake of the economic crisis, however, antidemocratic movements have benefited from a widespread decline of trust in information, expertise and the media. This lack of trust has multiple causes, but it is associated with a shift of audiences away from ‘mainstream media’ which tended to be trusted by audiences, to social media. At present, new media exist outside the established framework for media and journalism ethics and news accountability, and are based on a business model that rewards engagement and noise, rather than deliberation and truth<sup>7</sup>. This has led democratic countries to bring forward urgent proposals for reform of their media systems. These involve ethical codes and principles, and new legal frameworks to incentivise “responsible” behaviour by news creators and platforms such as social media which are implementing various forms of automated moderation of content.

Taken together, these reforms constitute a significant step towards redefining new internet intermediaries as “media”, in line with the 2011 Council of Europe Recommendation on a new notion of media<sup>8</sup>. Whilst such a reform is necessary, these reform processes bring with them challenges for human rights, democracy and the rule of law, and to the established norms of media independence. Accordingly, the importance of media independence set out in that recommendation should be reiterated. The Council of Europe should take a proactive role in ensuring that new frameworks for self- and co-regulation promote rather than undermine democracy and human rights and that their standards are properly updated to reflect contemporary challenges.

The speed of current media change could potentially undermine the incremental change and development of media systems within the Council of Europe, which has passed around a hundred recommendations and declarations in the field of media in recent decades<sup>9</sup>. Member states should reiterate that the standards of media independence remain valid and should be updated to include new media to examine whether and to what extent new notion of media applies to the new intermediaries such as search and social media platforms. Above all, states should pause for thought and ensure that in their hurry to implement reforms to protect trust in liberal democracy they do not compromise the cardinal principle of media in the Council of Europe: media autonomy, which also applies to new media.

- 
2. One in six respondents to a recent UK survey agreed with the statement “The Moon landings were staged”. <https://www.theguardian.com/science/2019/jul/10/one-giant-lie-why-so-many-people-still-think-the-moon-landings-were-faked> Across Europe there is evidence that mistrust in ‘official’ advice in media, and trust of alternative conspiracy theories about vaccination has led to a decline in vaccinations for example for measles, mumps and rubella in many European countries. [https://ec.europa.eu/health/sites/health/files/vaccination/docs/2018\\_vaccine\\_confidence\\_en.pdf](https://ec.europa.eu/health/sites/health/files/vaccination/docs/2018_vaccine_confidence_en.pdf). Direct causality would be impossible to establish given the current state of social science, but many theorists claim that media change and information disorder have created the conditions where such claims are more difficult to rebut and correct.
  3. Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector
  4. Recommendation CM/Rec(2012)1 of the Committee of Ministers to member States on public service media governance
  5. Recommendation CM/Rec(2018)1[1] of the Committee of Ministers to member States on media pluralism and transparency of media ownership
  6. Declaration of the Committee of Ministers on measures to promote the respect of Article 10 of the European Convention on Human Rights, adopted on 13 January 2010, and <https://book.coe.int/en/european-audiovisual-observatory/6691-pdf-iris-themes-freedom-of-expression-the-media-and-journalists.html>.
  7. See Larnier (2018) Zuboff (2019) and Wardle (2018).
  8. Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media
  9. See, for a list: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680645b44>

## 2. TRUST IN THE MEDIA

### a. Why trust matters

Journalism and the media have a role in establishing common societal reference points, such as objective facts on which public opinion is based. Without such common reference points the strength of common reality weakens, resulting in a fragmented, dysfunctional society.

That said, journalism can only perform this role if it is acknowledged as a truth-seeking process, and that presupposes some degree of trust in the accuracy and reliability of its products, together with a healthy dose of scepticism and cross-referencing of different sources.

In the absence of trust, all functions of journalism – that of providing information about the world and local communities, unravelling complex issues in an approachable way, serving as a public watchdog, exposing corruption and exploitation, or providing a forum for a meaningful debate on important political, social, economic, environmental and other issues – are impaired, and public opinion rests on personal beliefs fuelled by emotional appeals, with a weaker role for objective facts.

Trust is also important for the commercial survival of the media, as research shows that people tend to pay a higher price for products they trust, and they also recommend them to others.<sup>10</sup>

It is, however, worth noting that emotional appeals that activate personal beliefs are more efficient at winning over public opinion than objective facts.

Throughout this decade, the process of moving away from common objective reality has been gaining momentum, to the point when many describe this period of time as a “post-truth” era, where facts are increasingly assessed and valued in the same way as opinions.

This crisis of common truths and narratives is accelerated by the same process of digitalisation that enabled us all to be content creators, to self-select news and to restrict our perception of the world to opinions that confirm our existing beliefs. It is furthermore facilitated and incentivised by the processes of media fragmentation and political polarisation. But what does recent research say about trust in the news and media?

### b. Decline of trust

All democracies are undergoing unprecedented levels of media change. This change has been accompanied by a gradual decline of trust in news sources.<sup>11</sup> According to the Oxford Reuters Foundation, 44% of survey respondents claim that in general they trust the news.

Levels of trust in new media are lower than those in traditional media. Only 34% of respondents say they trust news they find via search and fewer than a quarter (23%) say they trust the news they find in social media (Newman et al., 2018, 16). On the other hand, brands with a broadcasting background and long heritage tend to be trusted most, followed by upmarket newspaper brands, whereas digital-born and popular newspaper brands tend to be trusted least (Newman et al., 2018, 16). Based on a “Net Trust Index”,<sup>12</sup> among the broadcast media, on average radio appears to be the most trusted medium in Europe (European Broadcasting Union (EBU), 2018, 17). Public broadcasters score best in countries where they are seen to be independent of government. In Italy and Spain they have lower scores in absolute terms but also in relation to certain flourishing digital-born brands (Newman et al., 2018, 18).

Declining trust in news often seems to be linked to political tensions at national level. While Finland is holding steady at the top of reported trust in the media (with 62% saying they trust the news) along with Portugal (62%), trust is down 7 points in Spain (44%) as the media have become caught up in the wider splits in Spanish society after the Catalan referendum. It is also down in Austria (-4) following a divisive series of elections and in Poland (-5) where the government has been accused of cracking down on private media in the name of combating “fake news” (Newman et al., 2018, 17).

The Reuters Institute for the Study of Journalism publishes annual editions of the Digital News report, providing insights on news consumption based on comparative data obtained from comprehensive surveys. In the last years the report has been focusing on, among other things, the issues of declining trust in the media.

10. R. Cellan-Jones, “Who will pay for trusted news?”, BBC News, 12 June 2019. Retrieved from <https://www.bbc.com/news/technology>.

11. <https://news.gallup.com/poll/1663/media-use-evaluation.aspx>

12. The Net Trust Index is obtained by the difference between the percentage of people who tend to trust a certain news source or medium, and the percentage of people who do not tend to trust. The results on EU level represent a weighted average across the 28 EU Members States applying official population provided by Eurostat. Source: EBU Media Intelligence Service, based on Eurobarometer 88.



## Proportion that say they trust news from each source – all markets

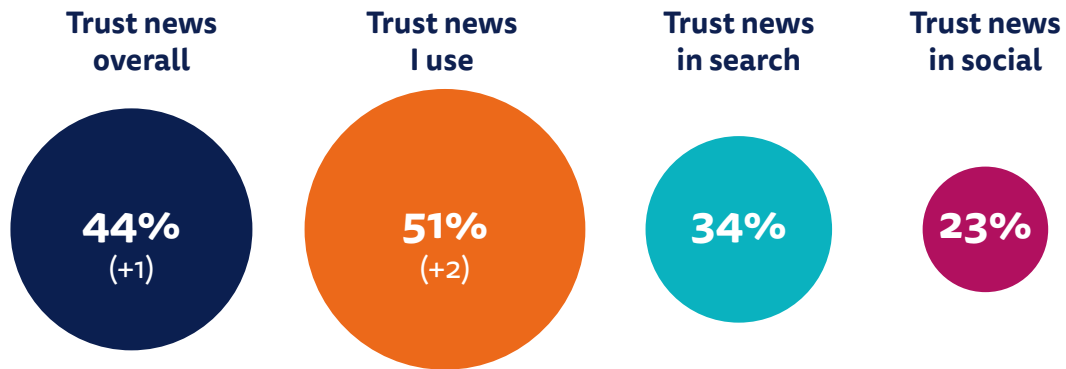


IMAGE 1. Source: Reuters Digital News Report, 2018, p. 16<sup>13</sup>

## Average level of trust in selected news brands within each type – selected markets

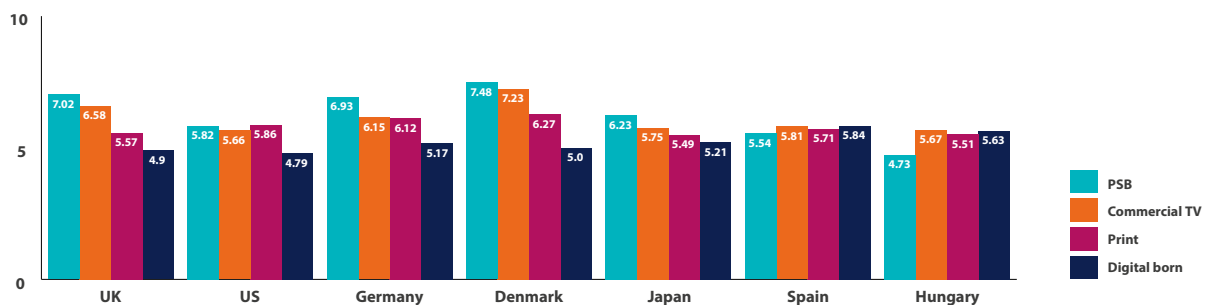


IMAGE 2. Source: Reuters Digital News Report, 2018, p. 41<sup>14</sup>

In most national markets public service media are highly trusted, but that is not the case in Spain and Hungary, likely because of doubts about independence of these media, and episodes of recent government interference.

13. Question 6\_2018\_1/2/3/4: Please indicate your level of agreement with the following statements. I think you can trust 'most news'/news I consume'/news in social media'/news in search engines' most of the time. Base: Total sample in all markets = 74194.

14. Question 6\_2018: How trustworthy would you say news from the following brands is? Use the scale below, where 0 is 'not at all trustworthy' and 10 is 'completely trustworthy'. Base: Total sample in each market. Note: People who indicated that they have not heard of a brand were excluded.

## Average level of trust in selected public service broadcasters by political leaning - selected markets

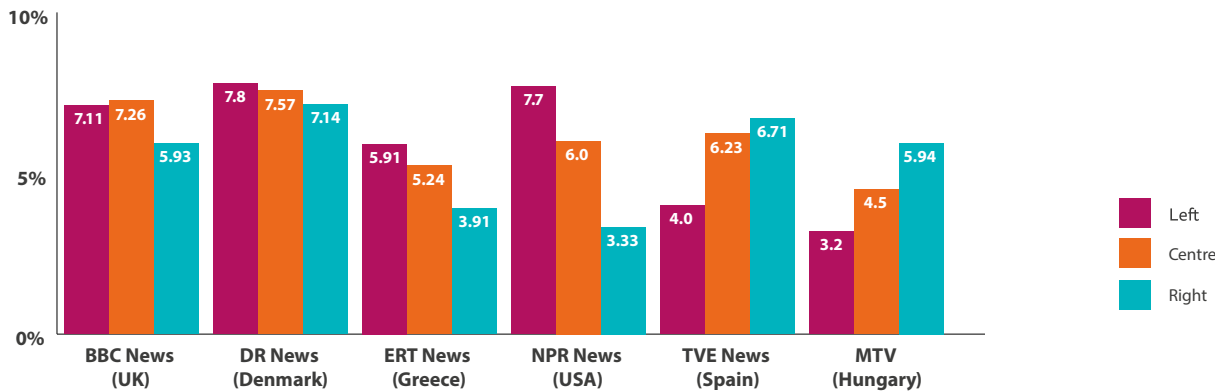


IMAGE 3. Source: Reuters Digital News Report, 2018, p. 42<sup>15</sup>

## Average level of trust in selected news brands by political leaning - USA



IMAGE 4. Source: Reuters Digital News Report, 2018, p. 43<sup>16</sup>

The European Broadcasting Union, an alliance of public service media, addressed the issue of trust in the media in its report “Trust in Media 2018”<sup>17</sup>, acknowledging that maintaining a high level of trust is more and more challenging also because of the phenomenon of disinformation.

15. Question 1F: Some people talk about ‘left’, ‘right’, and ‘centre’ to describe parties and politicians. With this in mind, where would you place yourself on the following scale? Question 6\_2018. How trustworthy would you say news from the following brands is? Use the scale below, where 0 is ‘not at all trustworthy’ and 10 is ‘completely trustworthy’. Base: Left/Centre/Right: US = 567/970/550. Note: People who indicated that they have not heard of a brand were excluded.

16. Question 1F: Some people talk about ‘left’, ‘right’, and ‘centre’ to describe parties and politicians. With this in mind, where would you place yourself on the following scale? Question 6\_2018: How trustworthy would you say news from the following brands is? Use the scale below, where 0 is ‘not at all trustworthy’ and 10 is ‘completely trustworthy’. Base: Left /Centre/Right: UK = 523/1018/292, Denmark = 345/1108/351, Greece = 336/1196/192, Spain = 587/1097/142, USA = 526/801/450, Hungary = 195/1162/314. Note: People who indicated that they have not heard of a brand were excluded.

17. Note on methodological context: Data used for the Report was collected from the 88<sup>th</sup> Eurobarometer database on the 28 EU Member state. Survey results on EU level represent a weighted average across the 28 EU Member States applying official population figures provided by Eurostat

## Trust in media across the EU (% of population, 2017)

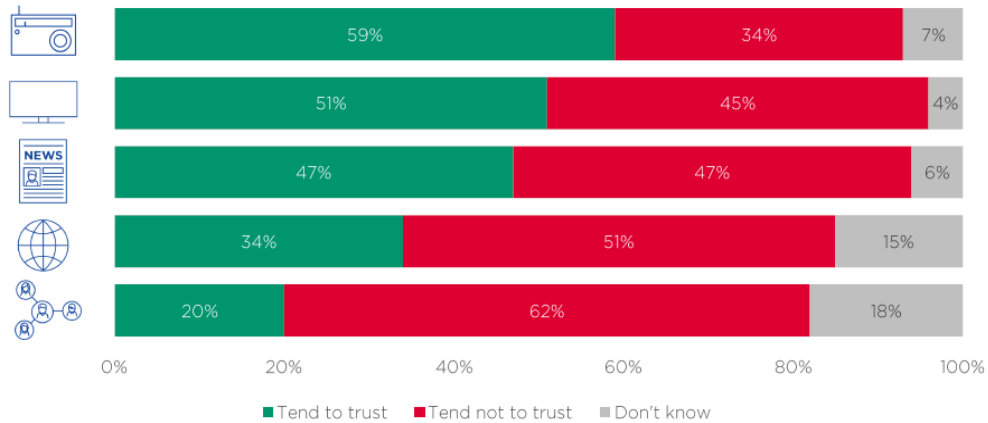


IMAGE 5. Source: EBU Media Intelligence Service Trust in Media 2018, p 15.<sup>18</sup>

## Evolution of the net trust index in the EU (2012-2017)

Net Trust Index = 'Tend to Trust' – 'Tend not to Trust'

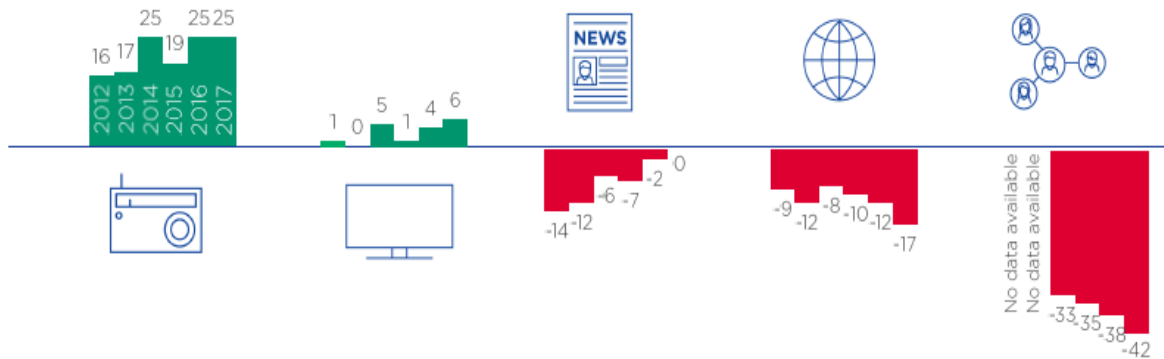


IMAGE 6. Source: EBU Media Intelligence Service Trust in Media 2018, p 17.<sup>19</sup>

18. Base: all market (28 EU Member States). Year: 2017. Images represent in order: Radio, TV broadcast, printed press and newspaper, the internet and social networks. No clear information on which social networks have been selected nor what is defined by "The internet category".

19. Base: all market (28 EU Member States). Year: 2017. Images represent in order: Radio, TV broadcast, printed press and newspaper, the internet and social networks. No clear information on which social networks have been selected nor what is defined by "The internet category". The Net Trust Index is hereby defined as="percentage of people who tend to trust" – "percentage of people who tend not to trust".

### 5-year-evolution of trust in TV (Net Trust Index 2012 – 2017)

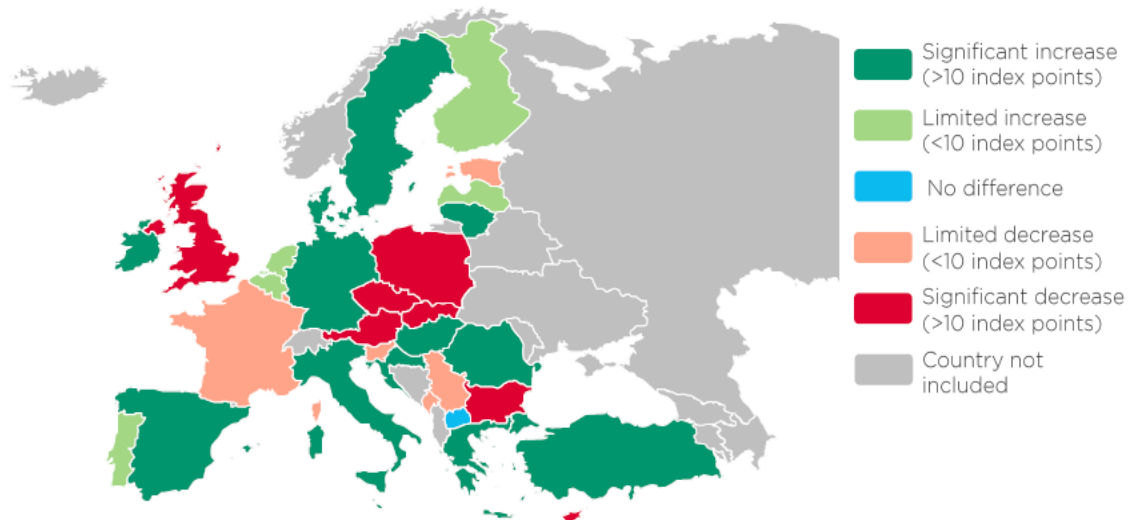


IMAGE 7. Source: EBU Media Intelligence Service Trust in Media 2018, p. 25<sup>20</sup>

### 5-year-evolution of trust in the written press (Net Trust Index 2012 – 2017)

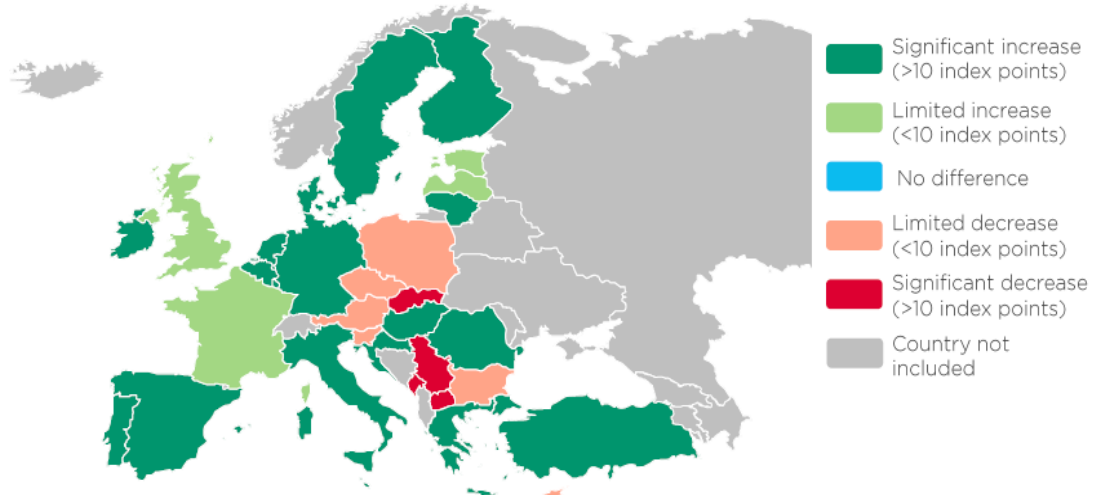


IMAGE 8. Source: EBU Media Intelligence Service Trust in Media 2018, p. 29<sup>21</sup>.

In the longer term, according to the European Broadcasting Union, there has been considerable volatility in trust in the media across Europe. Trust in television and other media has declined in many places, but the internet has not improved its trustworthiness in order to fill the gap. The result is a generalised atmosphere of mistrust. In the past five years, trust in the internet has declined considerably in most of Europe. In many of the cases where traditional media are less trusted this can be explained by reference to whether it is considered independent, and on whether PSM are strongly represented.

20. Base: 27 EU Member States, historical data not available for Albania. Years: 2012-2017.

21. Base: 27 EU Member States, historical data not available for Albania. Years: 2012-2017.

## 5-year-evolution of trust in the internet (Net Trust Index 2012 – 2017)

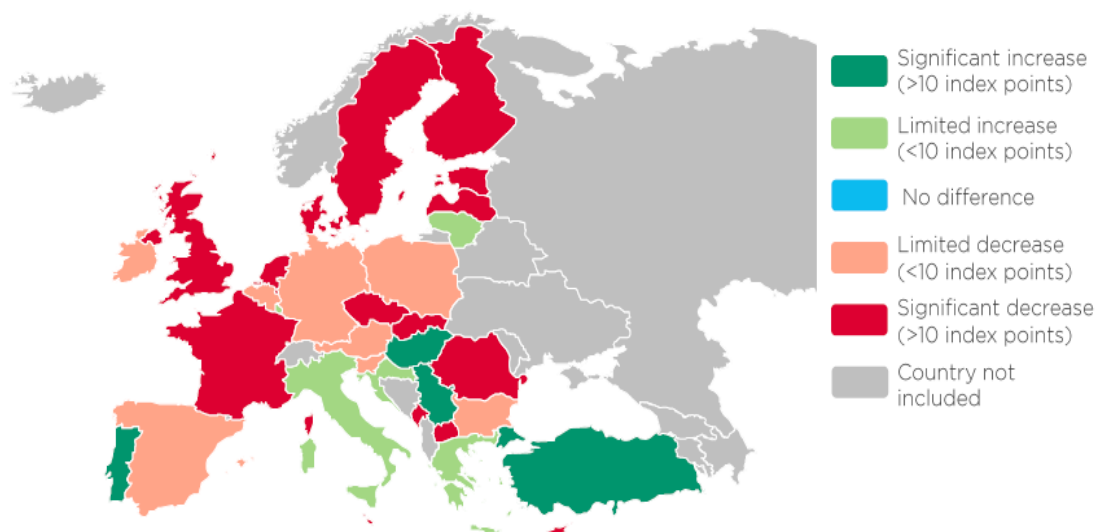


IMAGE 9. Source: EBU Media Intelligence Service Trust in Media 2018 p. 31.<sup>22</sup>

### 3. MEDIA CHANGE AND TRUST

What explains the decline in trust in media? Where independence of media is compromised, it is generally trusted less, but this does not explain the general decline. Arguably the last decade, which has seen a process of relative economic decline for many in Europe, has seen a loss of trust in many diverse forms of hierarchy and authority in society, from various forms of ‘experts’, to politicians and even medicine. But this does not explain the specific problems of lack of trust in media. Whilst certainty about causation is impossible, commentators have argued that the crisis of trust is associated with long-term structural changes in media institutions and the circulation of news and information in society.<sup>23</sup>

#### a. Media change 1987-2019<sup>24</sup>

Declines in newspaper readership began early in the post-war period, but a more radical transition began at the turn of the century with the rise of digital multi-channel TV and then smart, internet-enabled devices and social media which led to a turn away from the dominant broadcast channels. Taking the example of the United Kingdom, which was quicker to shift news consumption onto the internet and other digital platforms, the historical data shows that the paradigm shift in news consumption began before the rise of the internet. Between 1987 and 2000, the proportion of survey respondents that mentioned first newspapers when asked to name their source of world news declined from 25% to 13%. At the turn-of-the-century, consumers first began to regard the internet as a source of news, which is reflected in this survey data. During this period however, it was TV that gained from the drift away from newspapers: and TV was at that time perceived by audiences as more trustworthy than other media.

22. Base: 27 EU Member States, historical data not available for Albania. Years: 2012-2017. No clear definition on what is included in the category “The internet”.

23. See Sunstein, Cass. R. #Republic 2.0. 2017 Princeton University Press.

24. The author is grateful for the research assistance of Eleonora Mazzoli on this section.

## First mentioned source of most world news: trends 1987-2000

|             | 87  | 88  | 89  | 90  | 91  | 92  | 93  | 94  | 95  | 96  | 97  | 98  | 99 | 2000 |
|-------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|----|------|
|             | %   | %   | %   | %   | %   | %   | %   | %   | %   | %   | %   | %   | %  | %    |
| Television  | 65  | 65  | 58  | 69  | 70  | 71  | 69  | 72  | 71  | 68  | 67  | 71  | 67 | 72   |
| Newspaper   | 25  | 25  | 25  | 18  | 19  | 17  | 19  | 15  | 16  | 19  | 20  | 14  | 17 | 13   |
| Radio       | 9   | 9   | 14  | 11  | 11  | 10  | 11  | 10  | 11  | 8   | 9   | 8   | 11 | 9    |
| Talking     | 0   | 1   | 1   | 2   | *   | 1   | 1   | 1   | 1   | 1   | 1   | 1   | 1  | 2    |
| Teletext    | n/a | n/a | n/a | n/a | n/a | n/a | n/a | 1   | 1   | 2   | 2   | 2   | 2  | 2    |
| PC/Internet | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | *  | 1    |

*Base: All television viewers*

IMAGE 10. Source: TV: The Public's View 2000, An ITC Research Publication, 2000, p.54<sup>25</sup>

At the end of the 1990s beginning of the 2000s, according to the UK Independent Television Commission<sup>26</sup>, the most popular programmes among viewers were local and regional news as well as national and international news<sup>27</sup> (Cumberbatch et al., 2000, 53). Moreover, as also illustrated by the data, the main source of national and international news for 84% of viewers was television, followed by newspaper (52%) and radio (33%), while very small numbers mentioned teletext (8%), internet (3%) and magazine (1%), which were the least cited (Cumberbatch, Wood, & Littlejohns, 2000, 53). However, already in 2000-2001, it emerged that 'new' forms of news, such as 24-hour television news and news on the internet may be playing a larger role, as more traditional news genres started to slowly decline (Hargreaves & Thomas, 2002, 5). Nevertheless, the perceived standard of quality of factual news and information programmes remained high with the advent of multichannel programmes and services (Cumberbatch, Wood, & Littlejohns, 2000, 46).

From the baseline in the year 2000 therefore, when 1% of users interviewed mentioned first the internet when asked where they got their news, the internet has emerged as the principal source of news for many people.

That said, television remains a critical source of news for many, but declines in annual audience continue to raise new questions about the future role of legacy television providers and their ability to attract the next generation of viewers. However, legacy players such as public service media are embracing the digital transformation shift and strengthening their presence online by providing news content across different platforms and investing in cross-industry collaborations, innovative services and digital technologies (European Broadcasting Union (EBU), 2018a).

Overall, the proliferation of technology, devices and content over time has also allowed media to reach more of us each week than ever before. Within each country though, the benefits of the last ten years of connectivity have not been distributed equally. Nowadays, mobile phones and TVs are the only communications devices with near universal reach in the UK (96% and 95% of households), however, lower-income households and over-54s are less likely to have smartphones, laptops and tablets, but are as likely to have a TV (Ofcom, 2018).

25. Base: all television viewers. Notes: 1) "don't knows" not shown; 2) \*denotes less than 0.5%; 3) n/a Not asked.

26. ITC Research Publication, 2000. Note on methodological context: Television: The Public's View 2000 is the 30th in a series of comprehensive annual surveys; a unique monitor of changes in the broadcasting environment over the years. The current survey takes, as its focus, the ITC's responsibilities under the Broadcasting Act 1990 to track shifts in public attitudes, including concerns about broadcasting, as well as considering opinions about the newer forms of broadcasting becoming available. The sample is drawn randomly from the Electoral Register Enumeration Districts and respondents recruited on the basis of a pre-specified quota such as the number of males and females, those working or unwaged and age band. Finally, the sample is reweighted to ensure that it is representative of known demographics. Total respondents= 1,173. The survey covers 14 ITV region.

27. Data relatively consistent across all demographic categories (gender, age, social grade and type of viewer)

## Use of main platforms for news nowadays 2018 – by demographic group

All adults 16+

|                        | Total | Male | Female | 16-24 | 65+ | ABC1 | C2DE | EMG | Non-EMG |
|------------------------|-------|------|--------|-------|-----|------|------|-----|---------|
| Television             | 79%   | 79%  | 80%    | 57%   | 94% | 79%  | 80%  | 69% | 81%     |
| Internet (any device)* | 64%   | 64%  | 64%    | 82%   | 38% | 68%  | 59%  | 73% | 62%     |
| Radio                  | 44%   | 45%  | 43%    | 24%   | 54% | 47%  | 40%  | 35% | 46%     |
| Newspapers (printed)   | 40%   | 41%  | 38%    | 21%   | 60% | 43%  | 36%  | 40% | 40%     |

IMAGE 11. Source: Ofcom News Consumption Survey 2018<sup>28</sup>

International data confirm that there has been a fundamental shift in news consumption across the EU in the past decade. The rate of change is not in one direction however, and there are reasons to be more optimistic about the future of established media.

## Weekly news access by source country

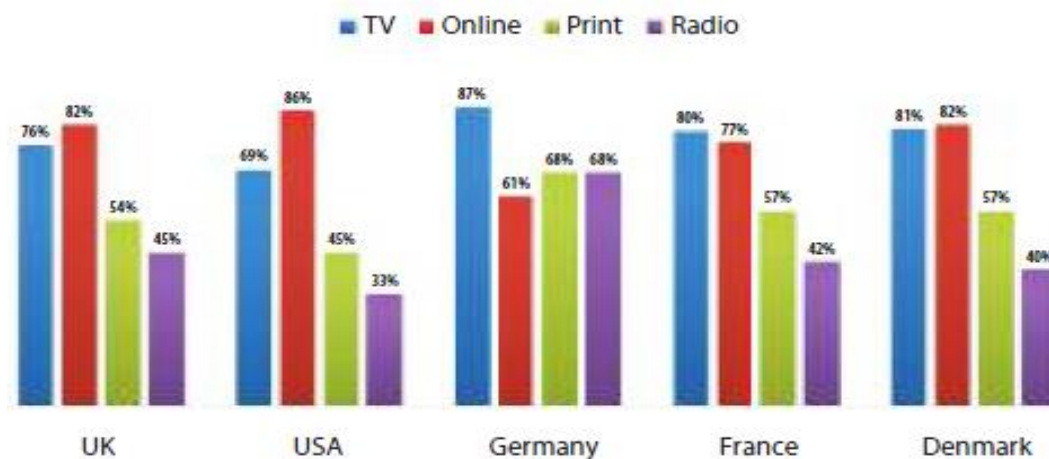


IMAGE 12. Source: Reuters Institute Digital News Report 2012, p.24<sup>29</sup>

For example, whilst young people list the internet as their first or main source of news<sup>30</sup>, they do also continue to use other sources of news. Very few people in general only use one medium, and it is important to remember that the internet is often used as a gateway to news published also on other platforms.

28. Question: C1. Which of the following platforms do you use for news nowadays?

Base: All adults 16+ 2018 – Total=4618, Male=2194, Female=2417, 16-24=631, 65+=990, ABC1 (middle class)=2502, C2DE (working class)=2110, EMG (ethnic minority groups)=722, Non-EMG=3880

Green shading indicates significant differences between groups

\*Internet figures include use of social media and all other internet sources accessed via any device

29. Question : Q3. Which of the following news sources have you used in the last week?

Base: All UK (n=2173) Denmark (n=1002) France (n=1011) Germany (n=970) USA (n=814)

30. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/116529/news-consumption-2018.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/116529/news-consumption-2018.pdf)

## Cross-over use of four main platforms for news nowadays – 2018

All (UK) adults 16+

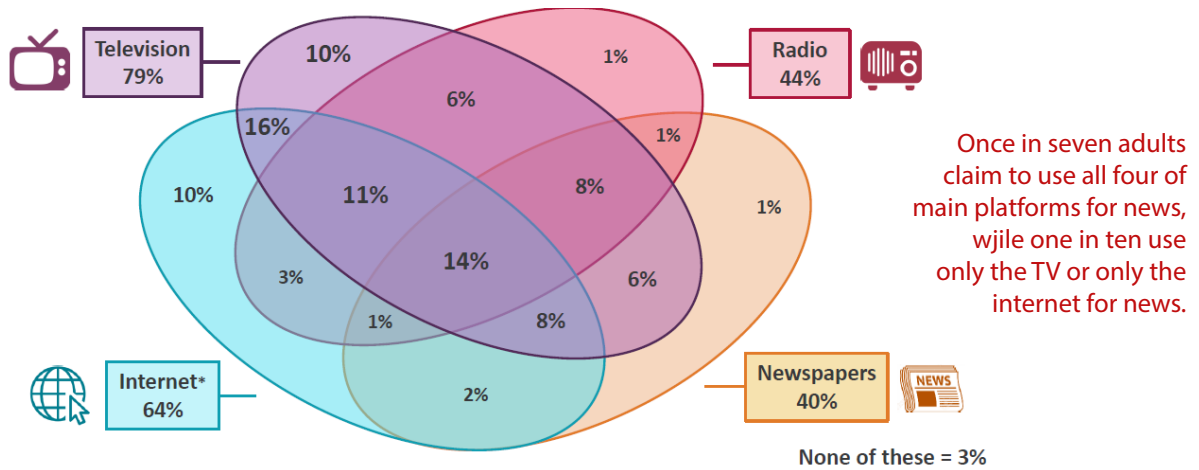


IMAGE 13. Source: Ofcom News Consumption Survey 2018<sup>31</sup>

Conflicting trends are emerging today with regard to the use of social media as source of news. Overall, Facebook is by far the most important network for finding, reading, watching and sharing news, however, its use as source of news has started to fall in a number of key markets (especially in the US, UK and France), after years of continuous growth (Newman et al., 2018). This is partially due to the fact that consumers are being put off by toxic debates and unreliable news, and therefore they are turning to alternative networks which offer them more private and less confrontational spaces to communicate. This trend is reflected by the significant rise in the use of messaging apps, such as WhatsApp, Snapchat and Instagram, for news as consumers and particularly younger users, look for more private communication spaces (Newman et al., 2018, 11-12). These increases may have also been driven by publishers changing their strategies in a bid to become less dependent on Facebook.

## Proportion that used social media as a source of news in the last week (2013-2018) – selected markets

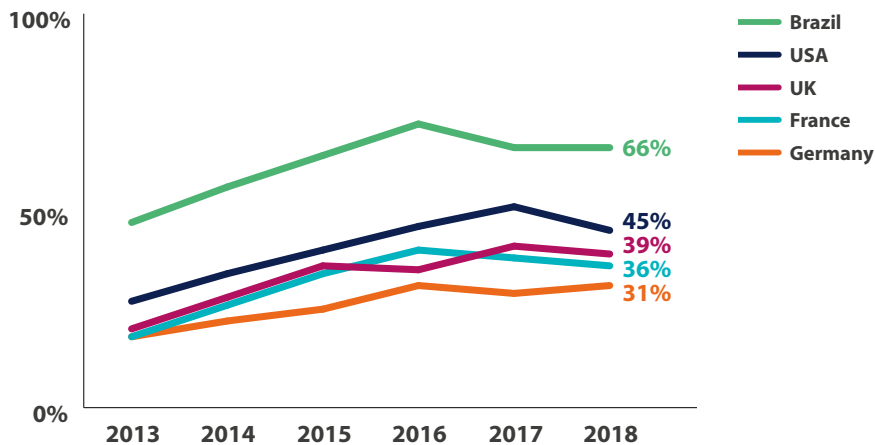


IMAGE 14. Source: Digital News Report, 2018, p.10

In recent years, there has been a slight decline in the numbers of people reporting that they use social media as a source for news. It is likely that a proportion of this is explained by reporting bias however (the number of people prepared to admit using social media for news having declined). Whilst there is evidence (below) that people are increasingly prepared to pay for news, the proportion of people that report doing so is still relatively small, well below 20% in most countries. In the light of this evidence it is clear that social media remains a hugely important source of news in most European democracies.

31. Question: C1. Which of the following platforms do you use for news nowadays?

Base: All adults 16+ 2018 – Total=4618.

\*Internet figures include use of social media and all other internet sources accessed via any device



## Proportion that have paid for online news in the last year (2014-2018) – selected markets

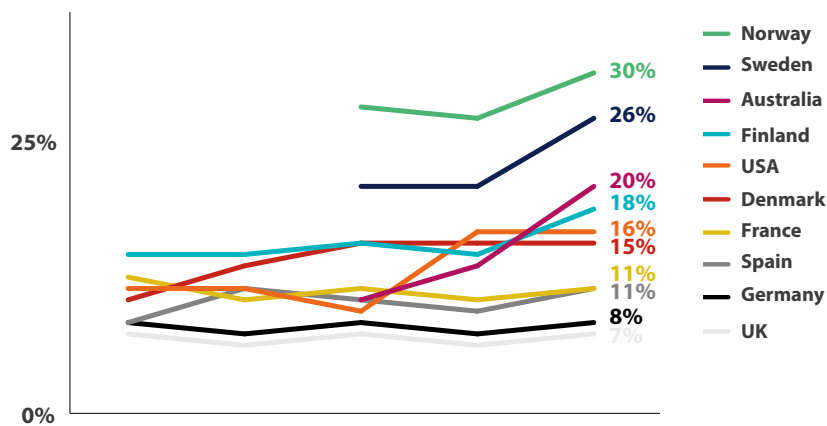


IMAGE 15. Source: Digital News Report, 2018, p.23<sup>32</sup>

A sobering finding is that even as audiences say they trust the new platforms less, they nonetheless appear to be voluntarily migrating their time and consumption onto these less trusted platforms, indicating that the process is not self-correcting, at least in the short term.

### **b. The symptoms and possible responses to the paradigm shift**

The rapid, two-decade historical shift of attention away from established news brands which are subject to various forms of regulation of news ethics and towards platforms that do not benefit from independent regulation, has been revolutionary.

The bulk of the rise of social media intermediaries and Web 2.0 has occurred in the last 10 years, and whilst direct causation will never be established in such complex historical processes, the decline of powerful media and journalistic fourth estate is widely associated with the rise of a more polarised, populist politics.

Commentators have attempted to grasp qualitatively the cumulative implications of the paradigm shift in the media, and wider issues of trust and democracy, for example by identifying 'post truth' as a contemporary tendency. The [London School of Economics Truth Trust and Tech Commission](#) identified the following elements of the crisis of trust in information and media.

### **The five evils of the information crisis**

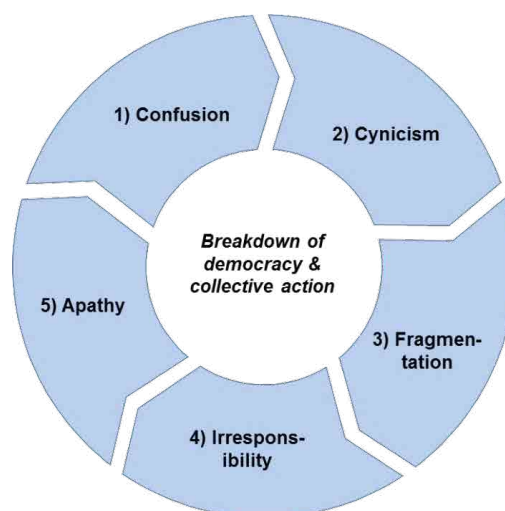


IMAGE 16. Source: LSE Truth Trust and Technology Commission 2018

<sup>32</sup> Question 7a. Have you paid for ONLINE news content, or accessed a paid for ONLINE news service in the last year? (This could be a digital subscription, combined digital/print subscription or one-off payment for an article or app or e-edition).

- ▶ **Confusion** – Individuals are less sure about what is true, and who to believe.
- ▶ **Cynicism** – Individuals are losing trust, even in trustworthy sources.
- ▶ **Fragmentation** – Individuals have access to potentially infinite knowledge, but the pool of agreed facts on which to base societal choices is diminishing. Individuals are becoming more divided into ‘truth publics’ with parallel realities and narratives.
- ▶ **Irresponsibility** – Power over meaning is held by organisations that lack a developed ethical code of responsibility and exist outside of clear lines of accountability and transparency.
- ▶ **Apathy** – As a result, individuals disengage from established structures of society and begin to lose faith in democracy.

It is difficult to find conclusive proof in support of a claim that media change has *caused* any of the wider societal effects such as populism, ‘post-truth’ or the crisis of deference and trust, simply because of the complexity of causation in such macro processes. But the perception that it is in some way to blame has pushed up the priority list in many democratic countries the task of reforming media regulation, in an attempt to put the genie of information disorder back into the bottle of regulation<sup>33</sup>. There is a danger in all of this that actions taken go too far, have a negative effect on freedom of expression or are used as ways of suppressing, or filtering the expression of valid political viewpoints, or facilitating the targetting of instrumental messages to key parts of the audience.

### c. Possible regulatory responses

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Public debate on media regulation as a response to information disorder focuses on the following:

- i. **Concerns about media independence and accountability to the public** – issues most often addressed include the lack of objective news sources, media capture by political interests, polarised perception of individual media outlets according to users’ political affiliation, governmental crackdowns and political attacks on the media, a diminishing scope of public interest news and growth of purely commercial media.
- ii. **The state of media pluralism** – there are concerns about an abundance of sources that make it difficult to choose and contrast the dubious quality of many such sources; about the replication of messages across different platforms owned by the same owners, courtesy of convergence and concentration; about insufficient coverage/inclusion of specific societal groups (minorities, young people, low-income people, migrants, etc.) and the consequential disconnection of these groups from the media environment, and about a lack of users’ understanding of the digital news environment.
- iii. **Implications of consuming news content on social media** – they include a lack of fact-checking, confusion about news sources due to a lack of news brands attribution on online platforms, mixing of reliable journalistic sources and other content, recommendations according to expressed or inferred preferences and consequential prioritisation of content.; also the emerging need for regulation of the platforms, but lacking political will. In general there is a problem of a lack of clarity about the expectations of ethical behaviour. On one hand intermediaries claim neutrality and on the other they claim that they seek to protect users, for example by promoting ‘quality’ news and demoting junk news.
- iv. **Challenges of information disorder.** There is a sense that the business model for social media may be to blame, because the advertising model provides an economic motivation for disinformation<sup>34</sup>. If this view is taken, more drastic solutions such as regulating or excluding certain US based social networks (as has been the case in Russian Federation and China) could become attractive. Another focus has been on user engagement with disinformation: and the question under what conditions they share content. Shifting responsibility onto users or criminalising certain forms of sharing behaviour could have a chilling effect on freedom of expression. As for the media, their responsibility for information disorder is often seen as lack of fact-checking and editorial oversight, prioritisation of speed and scale over quality. As a result, regulatory burdens on media may be increased at a time when resources are limited. And the question of AI and political bots should be mentioned. Can such non-human agents be considered media, and how might they be given a stronger sense of their own ethical responsibilities?

33. See the discussion in Wardle 2017. Information Disorder (Council of Europe).

34. Social media advertising models appear to neutrally reward engagement, rather than ‘truth’ or ‘the public interest’. Their role in news and information, and more widely, is increasingly questioned. See Zuboff. (2018).

In responding to these challenges, policymakers are engaging in a negotiation with platforms that are opaque, have a major structuring effect on freedom of expression and play an increasingly political role.<sup>35</sup> The negotiation over a future policy framework could itself undermine media independence. This should be more openly acknowledged.

Ideally, the media should be the subjects of 'due trust'. In other words, more trust is only appropriate when it is deserved. Initiatives to improve trust in the media should therefore emerge from wider attempts to improve media ethics, professionalism and genuine media literacy not only in terms of traditional media, but in terms of how the new gatekeeping and curation role played by the platforms is executed. It is widely recognised that the fake news and online misinformation discussion plays out against "generalised scepticism toward most of the actors that dominate the contemporary information environment"<sup>36</sup>. Recent evidence of a decline in trust may not be a wholly bad thing if it reflects growing awareness of consistently weak ethics and professionalism in news and creates incentives to improve journalism, but the public needs to be provided with more information about trustworthiness of media.<sup>37</sup>

## 4. THE RUSH TO MEDIA REFORM

As "information disorder" has come to be considered a public policy problem, Council of Europe member states have sought, with increasing urgency, to create institutional responses to improve performance and trust through professional standards, coordinated private sector self-regulation, and legislative change.

### a. Responses of media industries:<sup>38</sup> self-regulation, fact-checking, moderation and trust signalling

To address declining trust in media and respond to the spread of fake news and misinformation online, a number of cross-industry collaborations, codes of practice and guidelines have been developed. As highlighted by the European Commission, good industry practices tend to fall into three major categories: transparency, trust-enhancement, and media and information literacy (European Commission, 2018, 15). Within this context, those online platforms and advertising networks that have signed the EU Code of Practice on Disinformation (CoP) have committed to invest in products, technologies and programs to develop and implement effective indicators of trustworthiness in collaboration with the news ecosystem (Multi-stakeholder forum on the Code of Practice, 2018, 7).

Media industries have responded to the crisis, in particular by developing new systems for verifying and curating content and 'credibility signalling'. Because there is evidence that users tend to share content on the basis of its emotional resonance rather than its veracity, social media have attempted to assist them by labelling content either in a negative way (raising questions about whether it should be trusted through fact-checking labels for example) or in a positive way through building the news brand and protecting it by self-regulating journalism standards.

News media organisations, broadcasters and civil society organisations are developing and testing fact-checking initiatives in collaboration with online platforms such as Google and Facebook, such as the [CrossCheck project](#) developed by network of collaborators of the [First Draft News](#) initiative (European Commission, 2018, 15). Moreover, promising collaborative efforts have emerged in the bigger Member States<sup>39</sup> and a number of EU-funded projects are also working on verification and fact-checking tools.

Credibility signalling involves therefore the development of various trust marks such as NewsGuard and the TrustProject, and the Reporters without Borders' Journalism Trust Initiative<sup>40</sup>. Such initiatives develop brands

35. Naughton, John (2018). Platform Power in the Attention Economy. In Digital Dominance, Martin Moore and Damian Tambini (Eds) Oxford University Press 2018).

36. Nielsen & Graves (2017, 1).

37. In the words of philosopher Onora O'Neil (2002) media users should be given information that will permit them to assess the trustworthiness of media. Media policy should promote the "assessability" of media.

38. For a longer discussion see the report of the Truth Trust and Technology Commission. <http://www.lse.ac.uk/media-and-communications/truth-trust-and-technology-commission/The-report>

39. Successful experiments at national level in the UK include Channel 4 Fact Check, BBC Reality Check. In Italy, the collaboration between RAI 2 and Pagella Politica has shown potential over the past years.

40. NewsGuard: <https://www.newsguardtech.com/>; the TrustProject: <https://thetrustproject.org/>; Journalism Trust Initiative: <https://rsf.org/en/news/rsf-and-its-partners-unveil-journalism-trust-initiative-combat-disinformation>

and trust marks that may be viewed by the users themselves. They may also be machine readable; in other words social media and other intermediaries may set their algorithms to filter or promote content on the basis of such flags and tags. This could potentially have more questionable implications from the point of view of media independence and freedom of expression in part because of the absence of human checks on the process of automated filtering of speech.

Lastly, private bodies have taken a number of voluntary actions in the specific area of elections. In particular, there is evidence that social media are developing new approaches to their role in electoral campaigns. Facebook has inaugurated a voluntary repository of political advertising<sup>41</sup>, and new transparency standards. Initiatives tend however to be based within single corporations rather than industry wide.

Admittedly, there are a number of problems with an approach based on voluntary self-regulation:

First of all, there are problems of competition and co-ordination as self-regulation requires companies to collaborate with one another. If trust marks for news (akin to fair-trade or organic labels) are to be developed independent of other brands, this will require a high level of consumer awareness building and also policing of professional standards. The high level of cooperation required by such developments may be unrealistic in markets where there are high levels of competition. If trust marks are to be programmed into news/relevance algorithms of the main platforms and intermediaries, this will require also cooperation along the value chain, between organisations (take for example News Corporation and Facebook) that are involved in a zero sum competition for revenues.

Another key challenge of self-regulation that concerns primarily user content is volume and scale. Whilst bodies such as the UK Parliament have called for the application of broadcast standards to social media content, there is simply too much content for this to be feasible. Therefore there is a strong impetus to automate takedown and minimise human involvement. Judgements are therefore often made on the basis of word patterns and there may be a tendency to risk aversion (taking down content that is reported) rather than a balancing exercise which includes potentially infringed rights including freedom of expression.

In this light, the use of AI and machine learning entails a danger of what you might term 'machine driven super-cooling' of free speech. Whereas a huge amount of concern was raised in the past about any media law that might have resulted in a 'chilling effect' reducing the amount or content of public deliberation, on-line platforms' non-transparent processes of notification, automated takedown and blocking on an industrial scale have the potential to achieve powerful censorship results without the mechanism or fact of blocking or filtering ever being explicit, nor with the intervention of human ethical restraint, transparency or whistle-blowing.

In creating these new institutions and ethical principles, platforms and information providers are reconstituting the nature of what "media" are, but are not necessarily respecting established standards of media accountability, transparency and independence. The development of self-regulatory standards often takes place in terms of a loose negotiation between politicians and internet intermediaries that is the territory of deep and concerning conflict of interest between intermediaries that require a new policy settlement, and politicians that rely on processes of public opinion formation.

## **b. Responses of policymakers**

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*"Fake news" laws, election security and standard setting*

Public authorities have responded by encouraging self- and co-regulation, including by funding it. They have developed new offences and categories of illegal content, and sought to adjust the liability framework including with regard to notice and takedown of various forms of illegal content. In addition they have also attempted to shape the market structure and incentives, including through taxation, levies and competition law.

In 2016 and 2017 policymakers attempted to develop legislative responses to the problem of so-called "fake news", in the context of a wider debate about harmful and illegal content. State actions to control the spread of misinformation and disinformation take the form of (i) new laws on the liabilities of media companies, internet intermediaries, and end-users responsible for spreading misinformation and disinformation; (ii) state-funded agencies that have a remit to identify, sometimes to report and monitor processes of disinformation and misinformation; (iii) standard setting such as adopting new definitions of misinformation and disinformation including codes of conduct.

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41. Facebook ad library: <https://www.facebook.com/ads/library/>

Whilst the German Network Enforcement Act ([Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken](#), 'Netz DG') is often cited in connection with problems of online misinformation and deception, the law is rather more narrowly targeted. Its aim is to force intermediaries to take down illegal hate speech. Several countries for example [France](#) have passed specific new laws against forms of online deception. The French Law to fight the manipulation of information ([Loi n° 2018-1202 relative à la lutte contre la manipulation de l'information](#)) was passed in November 2018. This law establishes an obligation for political advertising transparency, and also a new procedure for injunctions permitting material identified as "fake news" to be blocked on order of a judge. In the United States of America, the Honest Ads Act ([S. 1989](#)) attempts to provide obligations to support online political ad transparency. A number of other initiatives have been passed at the state level in the USA, including the California [Bot Disclosure Act](#) ([Senate Bill No. 1001](#)) which makes it unlawful to willingly mislead voters or shoppers through presenting a bot as a human. Also in California, the Office of Election Security ([Assembly Bill No. 3075](#)) attempts to counter social media campaigns that intend to confuse voters about voting processes or to discourage them from voting. In Canada proposed [Bill C-76](#) (Elections Modernization Act) reforms election law. The legislation attempts to curb foreign spending on political ads.

In addition, a number of publicly funded, state sanctioned initiatives have emerged to combat so called "fake news" through executive action. In the Czech Republic [Centre against Terrorism and Hybrid Threats](#) counters terrorist content and disinformation campaigns, whilst Italy introduced [Postal Police](#) "red button" to report disinformation before the 2017 election.

The UK has set up a [National Security Communications Unit](#), tasked with combating disinformation by state actors and others. Sweden's Civil Contingencies Agency (MSB) has set up a [task force](#) on protecting integrity of elections; government has adopted broader security strategy (July 2018). A separate "[psychological defence authority](#)" was also announced, but not yet inaugurated (2018). Denmark set up an [Inter-ministerial task force](#) to counter disinformation and educate soldiers on how to do so effectively (2017). Belgium engaged in an [online](#) consultation on proposed solutions to disinformation and public debate (2018), and the UK published a new White Paper in April 2018 This contains a comprehensive new framework to impose a 'Duty of Care' on platforms to reduce 'online harms' such as disinformation.

International organisations have also been centrally involved in the response. The NATO/EU [Centre of Excellence for Countering Hybrid Threats](#) researches disinformation campaigns and publishes examples of fake news. The European External Action Service created East StratCom Task Force: [EU vs. Disinformation campaign](#). The European Commission has made [proposals](#) for election cooperation, cybersecurity protection, and fighting disinformation at the European Parliament elections in May 2019.

At the international level the special rapporteurs on freedom of expression and freedom of media have issued a joint declaration<sup>42</sup> which establishes shared principles for the limits of state interference and the role of self-regulation. These principles should be debated and updated in line with the action of state and private actors with regard to misinformation and disinformation. Self-regulation should not be a means to close down debate.

Multi-national institutions and standards can act as a check on potential for state capture, private interest capture and public interest eclipse. The Parliamentary Assembly of the Council of Europe has, in its recent Resolution 2254 (2019) [Media Freedom as a condition for democratic elections](#), recommended the review and updating of regulatory frameworks, including strict rules on media coverage of government activities, liability for social media companies, and support for self and co-regulation. Other commentators beyond the Council of Europe go further, calling for strict legal liability of intermediaries for content.

In summary, policy responses include a number of key means to 'responsabilize' intermediaries. Together, these policy interventions amounts to a shift from a "neutral internet" which acts as a mere conduit of information, to a hybrid internet which is developing new approaches to curating, filtering, shaping, and in general gatekeeping internet content in ways analogous to mass media. This is a dangerous inflection point, because those filtering and curation effects are essentially media functions and as such not only their operation, but the detailed design of co-regulatory accountability frameworks needs to be kept completely independent from executive control, from capture and from conflict of interest. At the domestic and international level, the focus has been on the social and political problems that arise due to online communication (such as child protection, hate, disinformation). In line with council of Europe standards, emphasis must also be given to *policy procedure*: how these policy problems are resolved without compromising principles of media independence, on the assumption that intermediaries are now media.<sup>43</sup>

42. <https://www.osce.org/fom/302796?download=true>

43. In line with the Council of Europe [Recommendation CM/Rec\(2011\)7 of the Committee of Ministers to member states on a new notion of media](#).

## 5. THE DANGER OF OVERREACTION AND 'KNEE-JERK' REGULATORY RESPONSES

Calls for urgent reform should thus be treated cautiously in the media sector. Whilst the dangers of information disorder are real and do require reform, there is a potential for capture and abuse as new laws are introduced that will fundamentally shape the media system. In many countries, calls for regulation of new media are being led by legacy media interests. Governments may also seek to use media reform to disadvantage new political actors. Policymakers should thus be aware of the dangers of responses to information disorder. These include the chilling of speech, the linking of state and algorithmic censorship, and reliance on intermediation by bots or censorship algorithms.

Not only can vaguely worded categories of harmful or undesirable content (such as fake or hate) be interpreted in a way that will inevitably act as a chilling effect on the expression and dissemination of news, but the increasingly automated, AI driven approaches to moderation can multiply the chilling effect by offering immediately scalable co-regulatory and moderation processes. Word patterns, keywords or even particular people or images may be unjustifiably blocked, and this could result in loss of livelihood and may be unjust or disproportionate. A small alteration in the liability calculation of social media platforms for example, could result in a shift to automated blocking or takedown, or the closing of moderated social media forums, with widespread implications for the enjoyment of freedom of expression rights.

The dangers of reform are many, and immediate. Given that the processes through which social media filter and surface news are opaque, there is always the potential that new laws and co-regulatory structures will be used in ways that engage new forms of reciprocity with political leaders and used to selectively block or promote certain intermediaries at the expense of others. This is particularly worrying as codes of conduct seek to define 'extremist', 'terrorist' or 'hate speech' rules.

In sum, because the changes in regulatory and liability frameworks impact upon the perception of democratic fairness as well as the reality of potential state and or private control of democratic communication, a very high level of care is required in adjusting to the current challenges, and protecting reliability and trust in information without reverting to excessive state control.

The protection of democratic values in this sense requires further oversight, transparency and co-regulatory institution building. The Council of Europe's departments and bodies could for example join their expertise and work with academic and other experts to provide new frameworks for monitoring of ever more complex frameworks of co and self-regulation and coordinating transparency reporting on filtering, promotion and takedowns. Criteria for filtering removing and promoting of content should be transparent.

The intense activity of both private bodies and legislators reflects a high level of goodwill and intent to resolve problems of online hate and disinformation. There is a consensus that reform is necessary but it faces a number of challenges:

- ▶ Hate and disinformation are difficult to define and ultimately subjective.
- ▶ Standards are contested and change over time and across and within countries.
- ▶ Hate and disinformation cover content that is both (i) illegal and (ii) legal, but potentially subjectively undesirable.
- ▶ Standards of what is legal vary by country and region.
- ▶ Ethical principles of harm also vary, internationally and within countries.
- ▶ Standards relating to free speech, and the philosophical and legal principles that underpin them vary internationally, and particularly between the US and Europe.
- ▶ There is a lack of consumer information and understanding about what determines the visibility of content and who receives it.
- ▶ Decisions about content moderation need to be taken quickly and at scale and therefore often by machines.
- ▶ These policy interventions involve complex interactive effects.
- ▶ Conflict of interest and interest capture lead to bias in filtering and harm definitions. For example, new rules on political advertising could be drafted in a way that rewards incumbents.
- ▶ There is a lack of transparency in the process of blocking, filtering and surfacing content.
- ▶ There is a lack of agreed content standards, resulting in an over-broad discretion and non-transparent administrative determination of their application. This challenges content standards' justiciability, and therefore also legitimacy; it creates regulatory uncertainty with resulting chill of speech.

- ▶ There is a risk of violating human rights and fundamental freedoms (particularly freedom of expression and privacy) through the administration of new forms of arbitrary discretion by private actors and machines.
- ▶ There appears to be a lack of long term vision, e.g. regarding whether ethics and codes are platform-specific or industry-wide.
- ▶ There is a risk of slippery slope effects, as institutions are asked to block and filter more categories of content, which can lead to progressive slide towards chilling of speech.
- ▶ There is a lack of consumer information to facilitate informed switching.
- ▶ There is a lack of interoperability and consequential consumer lock-in.
- ▶ There is jurisdiction uncertainty and regulatory arbitrage.
- ▶ Global content moderation policies reflect the most sensitive standards in relation to nudity, violence, blasphemy, etc. (levelling up).
- ▶ There is a lack of co-regulation and imposition of licensing and more direct controls on social media.
- ▶ Impact on market structure i.e. regulation can raise barriers to entry, thus restricting certain interests and voices and leading to dependent monopolies rather than autonomous sustainable service providers.

In this context there is a danger of not only new forms of opaque reciprocities between information gatekeepers and economic and political interests, but of a protracted period of difficult negotiation between platforms and governments which would in itself risk to further damage democracy and trust. Attention must be given to the institutional framework for setting out a new settlement for platform responsibility.

The question of the institutional framework also has to take into account the changing security and political environment. New forms of populist government could potentially exploit structures of governance to control opinion, and a change in the security (particularly cybersecurity) context could rapidly change standards of justified restriction of speech online.

## a. Updating principles of communication governance

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Given this context there is a need for new principles of communication governance to guide this new period of governance reform.

The European Union [Better Regulation Principles](#) stipulate the following standards: decision-making should be open and transparent; individuals and stakeholders should have the opportunity to contribute throughout the policy and law-making process; actions should be based on evidence and understanding of the impacts; and regulatory burdens on businesses, individuals or public administrations should be kept to a minimum.

Current reforms of online content governance raise significant challenges for better regulation. First, governance systems are more complex<sup>44</sup>, multileveled, multi-stakeholder and interjurisdictional. Top-down approaches are very difficult to deploy as no one actor is in a position to design the system, which combines public and private actors and depends on consent of the regulatee. Second, unlike 'better regulation' approaches that are more concerned with economic impacts, communication governance dilemmas engage fundamental rights and in particular free speech.

As a result a *flexible, functional and systemic multi-stakeholder* approach is required. Multiple actors, including states, communication regulators, moderators, publishers, advertisers, platforms, social media, hosts, intermediaries are involved in the ecology of content distribution. The complex co-regulatory framework includes the following generic functions, which can be carried out by government agencies, private companies, independent regulatory authorities, or by civil society organisations.

The following table summarises some guiding principles that could guide some of the proposed reforms in media regulation. They outline ways in which established Council of Europe principles relating to media independence need to be protected in the process of reform. This is an incomplete list, and doesn't for example touch upon related issues such as data, competition and fiscal policy.

<sup>44</sup> Regulation and governance experts have attempted to develop regulatory theory to account for these new forms of 'principles based' 'risk based' and 'reflexive' regulation (Julia Black 2016; Jufang Wang 2019).

| REGULATORY FUNCTIONS  | REFORM PRINCIPLES  |
|---|--|
| <b>Content standards setting</b>  |  |
| The process of creating rules and principles about what kind of content should be promoted filtered or blocked and writing these into a code such as producers' guidelines, community standards, moderation principles, licenses or an ethical code.  | Should be carried out as locally as possible, and in a way that involves those people that will be subject to the content standards. It should also be done in ways that reflect local laws and fully transparently. Editorial policies and ethical codes should be published in full.   |
| <b>Editorial curation</b>   |  |
| This is the process of deciding in line with a range of values including perhaps commercial, artistic and political concerns, what should be disseminated and publishing it.  | Editorial policies and ethical codes should be followed. The Santa Clara Principles <sup>45</sup> on content moderation set out standards for private moderation (Numbers, Notice, Appeal) guard against the potential for a slippery slope to private censorship and should be adopted.   |
| <b>Distribution regulation</b>  |  |
| Applying rules to determine which forms of content will be afforded most prominence and therefore attention.  | Platform power to determine audience for a given piece of content should be locally accountable. Regulators should be given powers to require algorithmic disclosure to a regulatory authority to determine whether social media distribution serves competition and media plurality.  |
| <b>Adjudication of complaints</b>   |  |
| Dealing with complaints when people think that content is illegal, or breaches the voluntary code, or that content has been taken down that does not.   | There should be the possibility to appeal complaints – either those that require filtering or blocking, or claims that it has been too zealous and penalties both for non-blocking or over-blocking. These should be made in terms of the ethical code. Discretion should initially be with the platform, but with the possibility of appeal to an independent authority such as an ombudsman. |
| <b>Transparency</b>   |  |
| This is the process of signalling to the wider public information about the operation of the system and in particular information about the content standards, the processes of filtering and blocking and the rates of takedowns to promote assessability of media, informed consumer switching and the repair of due trust in the media and the messages they convey. | All takedowns by platforms (and not just those that result from a formal complaint that is upheld) should be recorded and data on numbers of takedowns, topic and reason (legal or code article) openly published. These transparency and procedural requirements should be subject to independent co-regulatory oversight.  |

## b. Principles and objectives of reform

These basic functions of a communication governance system can be fulfilled by public or private actors, and by actors with a range of relationships to the state, government, parliament and the law. The current period is one of experimentation and realignment of these institutions, and the process of reform is iterative: the eventual settlement will depend on the extent to which online gatekeepers are prepared to take voluntary ethical action to restrain their own behaviour or whether the operation of their data driven business model will prevent this.

The overall system should enable and incentivise publishers and distributors to act ethically in a way that is autonomous from the state and other interests and able to serve users interests and develop a notion of the public interest. It should contain sufficient safeguards and balances to enable civil society to hold media to account, but ensure that media institutions have the autonomy to hold powerful interests (including one another) to account.

45. The Santa Clara Principles on content moderation were published by a coalition of academics and industry reps in 2018 <https://santaclaraprinciples.org/>



The process of reform contains its own risks of capture, and could itself constitute an improper means for compromise and opaque conflict of interest among the key actors. It is essential that independent, transparent and open forums to articulate a new 'social contract'<sup>46</sup> on social media speech are provided.

### **c. Liability**

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Liability exemptions should be earned by a proven record of behaviour that serves the public interest. Platforms and social media benefit from an exemption from liability for content that they host but are unaware of. There is no "a-priori" answer to whether this could and should continue – it depends on whether publics and parliaments take the view that the platforms operate in the public interest. It is not possible for the public to determine if platforms serve the public interest without transparency. In the short term platforms should be encouraged and incentivised to take voluntary action to ensure that their products and services serve rather than undermine the public interest. It is important however that the threat of imposing strict liability is not used as a means to exert leverage over platforms to encourage loosely defined "good behaviour", or the removal of loosely defined "extreme" or "hate" content. Discretion over which standard should apply, and whether it is breached, should be exercised by an independent, preferably judicial authority.

### **d. Structural interventions**

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in addition to these function-specific principles, the following principles apply to the structures of communication ecosystems and to the process of reform:

Competition regulators should work closely with sector specific regulators, including data protection authorities and be given duties to advise parliaments on market structure and its implications.

Dominant social media platforms should be kept under permanent review, and be subject to more oversight as they have the power to censor and shape public opinion.

If behavioural approaches are not successful in improving the outcomes (particularly as regards hate and disinformation), then structural solutions (including breaking up social media companies) should be considered, but this should be an evidence-based, open and transparent process that includes adequate cost-benefit analyses and civil society consultation, and not be used as a threat to intimidate new media.

Any new limitations of human rights and fundamental freedoms set out in the Convention, notably in its Article 10, should be accompanied by an independent impact assessment and evaluation clauses.

It is necessary for a degree of policy coordination from the centre, but not control by a single party or interest. Policymakers should build upon the model of multi-stakeholder policymaking to develop a "coordinated responsibility approach" to benefit from different capabilities of different actors (such as platforms, news media and journalists' associations). Platforms alone are probably not capable of fighting disinformation in a trusted and legitimate way. They will need to benefit from transparent and legitimate multi-stakeholder bodies that enjoy all party support and civil society engagement. There must be a network of responsibility between the states, platforms, media, users, etc.)

The role of media literacy: civil society forums that encourage democratisation of information should be promoted by states (co-regulatory approaches could be developed).

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46. See Tambini (2013) and Picard (2015) for a discussion of the social contract approach to media governance.

## 6. CONCLUSION: COUNCIL OF EUROPE STANDARDS

The crisis of trust in liberal democracy across the Council of Europe will not be cured by media reform alone. Our democratic malaise has deep roots in the challenges of economic dislocation, ecological risk and inequality faced by all societies at the dawn of the third Millennium. But fundamental reform of media systems will be a necessary part of democratic renewal.

Council of Europe member states are in the process of establishing a new paradigm of governance for the internet, focusing on the role and responsibility of key social media intermediaries in the protection of human rights and democracy.

In so doing, they are taking a decisive step towards defining intermediaries as 'media' and signalling that not only the ethical responsibilities, but some of the privileges and liberties that accompany that status should be available to them.

As has been evident historically in the press and broadcasting sectors, the redefinition of intermediaries as "responsible media" is fraught with dangers of compromise, capture and conflict of interest in democracies based on popular sovereignty, because these intermediaries can shape popular opinion and the outcome of elections.

In the eventual settlement and in the process of policy reform all parties should therefore respect the central value of media independence and autonomy, and its application to internet intermediaries. In common with press and internet freedom, media autonomy is not an absolute but a conditional right: to be enjoyed insofar as media support democracy, and intermediaries should interpret this as they develop their autonomous approach to their responsibility and plurality.

The Council of Europe should assist democracies in this important area of policy-making by developing standards for impact assessments of new laws and codes, and monitoring of best practices.

Since 1950 the Council of Europe and the Convention have operated under the principle that democracies may benefit from international standards and accountability that restrain their ability to censor domestic news and opinion. The key problem of insufficient separation between media institutions and the state has benefited from these forms of external accountability and appeal provided by international oversight. Whilst the core principle of media independence has remained constant since 1950, technological and market change have required the updating of how such principles are applied. For example, changing economics of broadcasting led to the gradual erosion of public service broadcasting monopoly and decisions of the European Court of Human Rights as well as domestic courts established the mixed system of broadcasting.

The rise of satellite and internet delivery of audio-visual content have led to a need for further updating to protect Council of Europe runs. In the past decade of the Council of Europe has developed standards to accommodate the new social media these have not yet provided clear settled principles for regulatory reform, because of underlying uncertainty about the nature and role of social media and the balance between ethical responsibility and liberty. There are a number of ways in which Council of Europe standards need now to be audited and made media neutral. For example, numerous Council of Europe standards on the independence of regulatory authorities from broadcasting should be applied to internet content regulator is, such as that envisaged by the NetzDG, the Online Harms White Paper in United Kingdom, and similar bodies.

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Our states are undergoing unprecedented levels of media change, with a shift of media consumption from traditional to digital channels and especially onto online platforms. This has had major implications for the complex system of media funding, ethics and regulation. The media sector is faced with major financial difficulties and decline of trust. Not surprising, as consuming news and information on social media involves challenges ranging from a lack of fact-checking, confusion about news sources to online disinformation, hateful rhetoric and electoral manipulation.

In response to these problems, reforms of media legislation and policies are being discussed across Europe, including codes of conduct, changes in the liability of online platforms and new offences of electoral manipulation. Such reforms, while necessary, need to be implemented with due consideration for human rights, democracy and the rule of law. Accordingly, the principles of media freedom and independence should be reiterated. The Council of Europe should take a proactive role in ensuring that new frameworks for self- and co-regulation promote rather than undermine democracy and human rights and that their standards are properly updated to reflect contemporary challenges.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

