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# Protecting Freedom of Expression and of the Media in the Western Balkans PRO-FREX

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## Report

### The Role of Regulators in Countering Harmful Content Western Balkans Regional Peer Exchange for Regulatory Authorities

Budva, Montenegro  
25-26 June 2024

Council of Europe  
Division for Cooperation on Freedom of Expression

The role and responsibility of the Council of Europe in protecting freedom of expression has been underlined in the "Reykjavik Principles for Democracy", the [Reykjavik Declaration – United around our values](#).

The report was prepared within the action 'Protecting Freedom of Expression and of the media in The Western Balkans' (PRO-FREX) that enables the beneficiary institutions and civil society organisations to progress towards meeting their reform agendas in the field of freedom of expression and freedom of media, in line with the European standards.

The action is implemented within the joint programme of the European Union and Council of Europe Horizontal Facility for the Western Balkans and Türkiye running from 2023 to 2026 and aims to contribute to an improved environment for the exercise, by all stakeholders 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 (ECHR).

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## List of Abbreviations

ACC	Audiovisual commercial communication
AEM	Agency for Electronic Media (Montenegro)
AEM	Agency for Electronic Media of the Republic of Croatia
AMA	Audiovisual Media Authority (Albania)
AVMSD	Audiovisual Media Services Directive
AVMU	Agency for Audio and Audiovisual Media Services (North Macedonia)
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CRA/ RAK	Communication Regulatory Agency (Bosnia and Herzegovina)
CvdM	Commissariaat voor de Media (Netherlands)
DRCF	Digital Regulators Cooperation Forum (United Kingdom)
DSA	Digital Services Act
DSB	Digital Services Board
DSC	Digital Services Coordinator
ECTT	European Convention on Transfrontier Television
EMA	European Media Board
EMFA	European Media Freedom Act
EPRA	European Platform of Regulatory Authorities
ERGA	European Regulators Group for Audiovisual Media
EU	European Union
HFSS	High fat, salt or sugar (foods)
IMC	Independent Media Commission of Kosovo
NRA	National Regulatory Authority
Ofcom	Office of Communications (United Kingdom)
OSA	Online Safety Act (United Kingdom)
REM	Regulatory Authority of Electronic Media (Serbia)
T&C	Terms and Conditions
UN	United Nations
VLOPs	Very Large Online Platforms

VLOSEs      Very Large Online Search Engines  
VSPs        Video-sharing platform service

## Executive Summary

The aim of the event was to focus on the role of regulators in countering harmful content and disinformation and to exchange experiences and good practice. Participants agreed on the importance of having clear definitions regarding concepts such as ‘disinformation’ and ‘harmful content’. It was emphasised that those included in the Council of Europe relevant standards and also European Union legislation (and guidance and codes) could be used directly when developing new primary legislation, national by-laws, codes and guidance.

There was a general agreement that the fight against disinformation could not be a task that is left to the regulator alone. Regulators were recommended to encourage the development of a Task Force at the national level to develop an overall strategy on tackling disinformation which should involve the input of a range of relevant bodies and stakeholders.

The Ofcom representatives (regulatory authority from the United Kingdom) provided an overview of their approach to regulating media coverage of election campaigns and more recent efforts to deal with disinformation during election campaigns.

A key problem across the Western Balkans region is the role of online news portals in election campaigns. Many of these do not become part of the self-regulatory structures, and they are often not identifiable regarding contact or ownership. In addition, the nature of political advertising on such platforms (including spend) is not clear.

Discussions on the Digital Services Act revealed that there is uncertainty as to whether the 6 beneficiaries (Albania, Bosnia and Herzegovina, Kosovo\*, Montenegro, North Macedonia, Serbia) need to implement quickly or whether it is more advisable to wait for EU countries to develop more expertise in the area. It was also acknowledged that the DSA requires cooperation between a range of national authorities as its scope is beyond audiovisual content. The regulators were advised to encourage and support the development of a national forum or platform of various authorities engaged in the regulation of online platforms (following examples from other European countries). In addition, the elements of the DSA intended to support the implementation of the Audiovisual Media Services Directive (AVMSD) regarding video-sharing platform services (VSPs) can be very useful in the development of the relevant by-laws, guidance and codes.

The representatives provided detailed feedback on their activities to date including: the development of bylaws and rulebooks in several jurisdictions, the important work in the area of media and information literacy (MIL), efforts to communicate and cooperate with online platforms, knowledge of and contact with ‘fact-checkers’, etc. Also discussed

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\* *This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ opinion on the Kosovo Declaration of Independence.*

were issues of capacity, finances, human resources, and external expectations. It was agreed that communication with authorities and the public, the raising of awareness and the management of expectations were key strategies.

A further session was dedicated to the European Media Freedom Act (EMFA) - in particular those elements of the Act that support the efforts to combat disinformation such as protecting journalism and editorial independence and in the provisions supporting public service broadcasters. Other areas such as transparency of ownership and transparency of financing, which echo key Council of Europe standards in this area, have an important role to play in identifying and understanding the market players. The EMFA also supports media pluralism – again with the aim of supporting media and particularly news media that works according to high journalistic standards. In advance of developing strategies for implementation of the EMFA, it could be useful to carry out Gap assessments of where their legislative frameworks already reflect the provisions of this Act.

Regarding problematic content that is disseminated on foreign services and in particular the very large global platforms, an overview was provided of the formal approaches under the various legislative Acts at the EU level where it is always necessary as a starting point to contact the regulator in the country of origin. Regulators should develop relationships with key regulators of large platforms in Ireland, the Netherlands and the United Kingdom. It was also highly recommended to develop communication channels directly with the larger platforms on an individual level and also as a group. Cooperation in the region is considered key to successful communication and collaboration with the large online platforms.

Following a presentation from Ofcom, the regulators provided feedback on their own situations regarding governance, organisation, resources, capacities and challenges. A common challenge is the lack of sufficient human and financial resources to implement the relevant legislation and fulfil their remits. A major emphasis was also placed on the need to communicate to the outside (to the public and to relevant authorities) and manage expectations regarding the role of the NRA, particularly in relation to online issues. Ideally the NRAs should be recognised by public authorities as being the key ‘expert groups’ in this field in each country, and be part of all relevant working groups that develop strategy, policy and legislation in the field.

Finally, the central and recurring issue of discussion during the workshop concerned the need for a regional cooperation between the regulators in the Western Balkans, which could include EU Member States in the region such as Croatia and Slovenia. The review here provides an overview of the types of cooperation networks and platforms that already exist. Participants discussed whether a network would mainly focus on online platforms and address online media issues. It was recognised that the regulators in the region would be stronger together in communicating and collaborating with larger online platforms. They believe common principles and standards regarding content available in



the region should be protected and enhanced, and measures to safeguard citizens should be developed. At the same time, an analysis of the nature of cooperation in other platforms should be carried out to assess what model would best suit such a Western Balkans cooperation.

## **Introduction**

On 25-26 June 2024, a Regional Peer Exchange was held in Budva, Montenegro in the context of the Regional action – “Protecting Freedom of Expression and of the Media (PROFLEX)” - that focused on the role of regulators in countering harmful content. The event was attended by representatives of the national media regulatory authorities in the Western Balkans, and the UK, representatives of the Council of Europe Secretariat, and an international consultant).

The event’s objective was that regulators could exchange experiences and approaches and discuss key challenges and problems in relation to ‘disinformation’ and ‘harmful content’. It provided the opportunity for regulators to share information on initiatives and procedures in their regions, discuss good practice and establish ways in which they could cooperate in dealing with these issues.

This Report follows the thematic discussions and summarises presentations. The summaries are followed by overviews of the key issues raised by the participants. During various sessions, several recurring themes underscored the interrelation between ‘disinformation’ and ‘harmful content,’ as many of the same issues, challenges and approaches are relevant to both. Each chapter provides information on key documents and resources applicable to the themes discussed (including many not directly referenced in the main text).

The first discussion of the day focused on the importance of definitions and the clarity of definitions regarding concepts such as ‘disinformation’ and ‘harmful content’ (chapter 1). This was followed by discussions on ‘disinformation’ (chapter 2), regulating election coverage and combatting ‘disinformation’ (chapter 3), the Digital Services Act (DSA) and its implementation (chapter 4), the European Media Freedom Act (EMFA) (chapter 5), and formal approaches to cooperation between regulators with regard to dealing with services that originate in other countries (chapter 6). A final session focused on the governance and organisation of the National Regulatory Authorities (NRAs) in the region and issues related to financing, human resources and expertise is also summarised (chapter 7).

An important outcome of the discussion was a focus on the development and enhancement of regional cooperation and this is discussed in detail under chapter 8. Chapter 9 includes the information from the PROFLEX project regarding ongoing actions and future support. It also provides some conclusions from the workshop and recommends subsequent steps to be taken.

## 1. Key concepts related to ‘disinformation’ and ‘harmful content’

The first sessions of the event focused on the issue of ‘disinformation’ while later sessions discussed in more detail the broader concept of ‘harmful content.’

### 1.1. ‘Disinformation’

In 2021, the European Regulators Group for Audiovisual Media Services (ERGA) published a discussion paper on the notions of disinformation where they indicated that there is no ‘commonly shared definition’ of disinformation, and others such as ‘fake news’ and ‘false information’ are routinely used as ‘different ways to indicate the same concept’.<sup>1</sup> The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression 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>2</sup> The Council of Europe 2018 Recommendation on the roles and responsibilities of internet intermediaries emphasised that:

*Any legislation applicable to internet intermediaries and to their relations with States and users should be accessible and foreseeable. All laws should be clear and sufficiently precise to enable intermediaries, users and affected parties to regulate their conduct. The laws should create a safe and enabling online environment for private communications and public debate and should comply with relevant international standards.<sup>3</sup>*

The graphic below provides detail on relevant definitions and also highlights what does not qualify as disinformation (these are based on CoE and EU definitions in the documents discussed in chapter 3 below).

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<sup>1</sup> ERGA 2020: Notions of Disinformation and Related Concepts: <https://erga-online.eu/wp-content/uploads/2021/03/ERGA-SG2-Report-2020-Notions-of-disinformation-and-related-concepts-final.pdf>

<sup>2</sup> 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 <https://undocs.org/A/HRC/44/49>

<sup>3</sup> [Recommendation CM/Rec\(2018\)2 of the Committee of Ministers to Member States on the roles and responsibilities of internet intermediaries.](#)

## Key term : Disinformation

**'disinformation'** – verifiably false, inaccurate or misleading information deliberately created and disseminated to cause harm or pursue economic or political gain by deceiving the public

**"misinformation"** refers to verifiably false, inaccurate or misleading information disseminated without an intention to mislead, cause harm, or pursue economic or political gain; users who share misinformation generally believe it to be true;

**"disinformation" does not include** misleading advertising, reporting errors, satire and parody, or clearly identified partisan news and commentary

**'Organised disinformation campaigns**

**Large scale Disinformation**

**Foreign interference**



With specific purpose to influence voting

General aim to cause polarisation/ division in communities and societies

General aim to cause chaos, riots

Force nations to focus on problems at home

Deflect attention from international affairs

Council of Europe definitions of disinformation include certain limiting factors, such as intent - whether the information was 'deliberately created and disseminated to cause harm.'<sup>4</sup>

### 1.2. 'Harmful content'

The concept of 'harmful content' is used frequently in discussions and often cited in legislation and regulatory acts without a clear definition of what constitutes 'harmful content'. There is a need to distinguish between illegal (including criminal) and (non-illegal) harmful content.

The Audiovisual Media Services Directive has a particular focus on illegal content under Article 6 which covers: 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; public provocation to commit a terrorist offence; offences concerning child pornography; offences concerning racism and xenophobia.

The Directive also addresses harmful content in relation to minors: 'which may impair the physical, mental or moral development of minors' (Article 6a). In addition, the most harmful content - gratuitous violence and pornography, shall be subject to the strictest measures.

It is possible to derogate from the principle of freedom of reception and re-transmission where services 'manifestly, seriously and gravely infringe' these provisions. Derogation is also possible where content on a service 'prejudices or presents a serious and grave risk of prejudice to public health' (Article 3). In addition, a set of procedures are provided under the Directive where content prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence.

<sup>4</sup> [CoE \(2017\), Information Disorder: Toward an interdisciplinary framework for research and policy making.](#)

The latter could potentially include content that may be illegal under European or national law.

On a lower level of harm (which does not fall under derogations) certain types of advertising are considered harmful. EU and national law prohibits advertising for cigarettes and tobacco products for example. The Directive also addresses types of advertising that are deceptive – surreptitious. The Directive also identifies the advertising of certain products as being harmful to children (advertising for alcohol, advertising for food that is high in fat, salt or sugar (HFSS foods)).

Article 28b outlines the obligations of video-sharing platforms, which includes ‘programmes, user-generated videos and audiovisual commercial communications which may impair the physical, mental or moral development’ of minors. It also requires that the general public be protected from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred. Further content described as criminal offences include provocation to commit a terrorist offence, offences concerning child pornography, and offences concerning racism and xenophobia.

Chapter 4 below looks in more detail at the Digital Services Act (DSA). The DSA (Recital 12) explains what can be considered as ‘illegal content’ on the basis of relevant EU and national laws:

*The concept should be defined broadly to cover information relating to illegal content, products, services and activities. In particular, that concept should be understood to refer to information, irrespective of its form, that under the applicable law is either itself illegal – such as illegal hate speech, terrorist content and unlawful discriminatory content – or that the applicable rules make illegal in view of the fact that it relates to activities that are illegal. Examples include the sharing of images depicting child sexual abuse, the unlawful non-consensual sharing of private images, online stalking, the sale of non-compliant or counterfeit products, the sale of products or the provision of services in infringement of consumer protection law, the non-authorized use of copyright protected material, the illegal offer of accommodation services or the illegal sale of live animals.<sup>5</sup>*

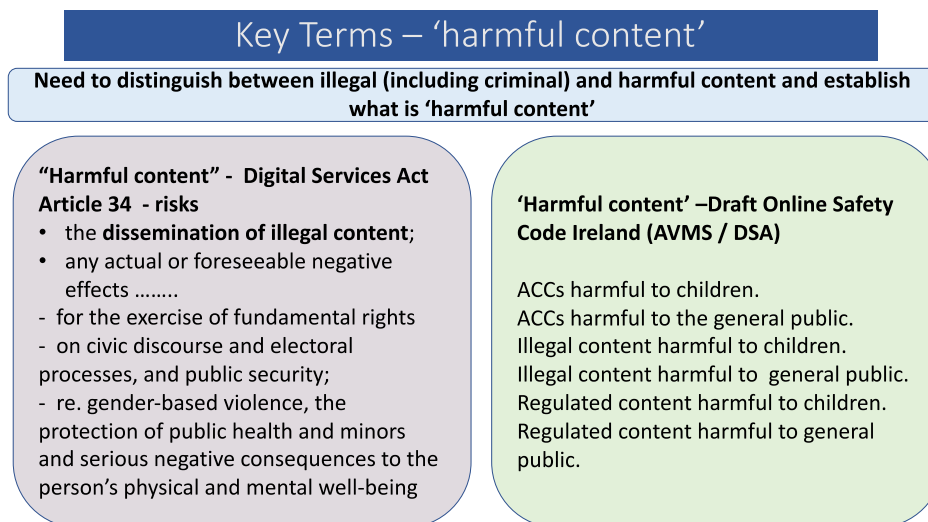
However, the DSA also deals with ‘harmful content’. In relation to the Very Large Online Platforms (the VLOPS) and Very Large Online Search Engines (VLOSES), the platforms are obliged to identify risks on their platforms and mitigate those risks. The risks include the distribution of illegal content, goods and services. Risk also includes: threats to

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<sup>5</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act). <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R2065>

fundamental rights; on civic discourse and electoral processes, and public security; risks related to gender-based violence, the protection of public health and minors and serious negative consequences to the person’s physical and mental well-being.

With regard to risks of negative effects ‘on civic discourse and electoral processes, and public security’, disinformation is an obvious risk in this area. The figure below also outlines the approach developed by the Irish media regulator in categorising content for the Online Safety Code.<sup>6</sup> This provides distinctions between illegal and harmful content, and illegal and harmful content of particular concern with regard to minors.



### 1.3. Council of Europe Standards on Hate Speech and examples of national guidance

The 2022 Recommendation of the Council of Europe on hate speech<sup>7</sup> provided a definition, 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.

In relation to the discussions above on illegal and criminal content, the Council of Europe Recommendation also provided guidance on criminal hate speech.

Defining hate speech:

(2) “...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”.

On the need to differentiate between types of hate speech:

<sup>6</sup> [Online Safety Code 2024](#)

<sup>7</sup> [Recommendation CM/Rec\(2022\)16\[1\] of the Committee of Ministers to member States on combating hate speech.](#)

“(3) 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 nevertheless call for alternative responses.”

Regarding criminal law:

“(11). Member States should specify and clearly define in their national criminal law which expressions of hate speech are subject to criminal liability, such as:

- a. public incitement to commit genocide, crimes against humanity or war crimes;
- b. public incitement to hatred, violence or discrimination;
- c. racist, xenophobic, sexist and LGBTI-phobic threats;
- d. racist, xenophobic, sexist and LGBTI-phobic public insults under conditions such as those set out specifically for online insults in the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189);
- e. public denial, trivialisation and condoning of genocide, crimes against humanity or war crimes; and
- f. intentional dissemination of material that contains such expressions of hate speech (listed in a-e above) including ideas based on racial superiority or hatred”.

Several regulatory authorities in the region have developed Guidelines in relation to hate speech (for example in Albania and North Macedonia).<sup>8</sup> The Ofcom Broadcasting Code includes a specific section on ‘Crime, disorder, hatred and abuse’. The New Zealand Code of Broadcasting Standards also addresses discrimination and denigration. ‘Denigration’ is defined as ‘devaluing the reputation of a particular section of the community’. The UK and the New Zealand Codes and the Council of Europe Recommendation all provide guidance on the importance of context. In summary (and combined), these cover the issues outlined in the table below. These mix two sets of criteria that are interconnected – a general assessment of hate speech – and – a specific assessment of hate speech in the media.<sup>9</sup>

Combined criteria/ factors relating to assessment of hate speech and the importance of context
Content, language, tone, intent: - the content of the expression (CoE); the language used (NZ) ; the tone of the person making the comments (NZ); the intent of the speaker (CoE).
The persons involved: - the status or position of anyone featured in the material (UK); the speaker’s role and status in society (CoE); the characteristics of the targeted group (CoE).
The medium: - the service on which the material is broadcast; the size and composition of the potential audience (CoE, UK); the genre and editorial content of the programme or series and the likely expectations of the audience (UK); the forum

<sup>8</sup> See further in: 'The application of the AVMS Directive in selected non-EU countries', European Audiovisual Observatory, Strasbourg, 2023. <https://rm.coe.int/the-application-of-the-avms-directive-in-selected-non-eu-countries/1680af0903>

<sup>9</sup> Information and table taken from: ‘Statutory Review of BAI Codes and Rules (Practice Review)’. Prepared for the Broadcasting Authority of Ireland by Deirdre Kevin and Miha Kriselj, Commsol, December 2022.

in which the comments were made; i.e. a serious political discussion or satirical piece (NZ); how the expression is disseminated or amplified (COE)
Consequences, context and rebuttal: the capacity of the expression to lead to harmful consequences, including the imminence of such consequences CoE); the political and social context at the time of the expression (COE); whether the comments made a legitimate contribution to a wider debate or carried public interest (NZ); whether the comments were repeated or sustained, or corrected or rebutted (NZ); the extent to which sufficient challenge is provided (UK).

#### 1.4. Resources and key documents

<b>KEY CONCEPTS</b>
Disinformation: key concepts, standards and guidance
Council of Europe Standards and Reports
CoE (2017): ‘Information Disorder: Toward an interdisciplinary framework for research and policy making’ <a href="https://rm.coe.int/information-disorder-report-version-august-2018/16808c9c77">https://rm.coe.int/information-disorder-report-version-august-2018/16808c9c77</a>
Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries <a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680790e14">https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680790e14</a>
CoE (2023): Guidance Note on countering the spread of online mis- and disinformation through fact-checking and platform design solutions in a human rights compliant manner. <a href="https://rm.coe.int/cdmsi-2023-015-msi-inf-guidance-note/1680add25e">https://rm.coe.int/cdmsi-2023-015-msi-inf-guidance-note/1680add25e</a>
<b>EU legislation, Guidance and Codes</b>
2022 Strengthened EU Code of Practice on Disinformation. <a href="https://commission.europa.eu/document/download/a2ac84d8-89d0-41dc-b480-db120ac9c376_en">https://commission.europa.eu/document/download/a2ac84d8-89d0-41dc-b480-db120ac9c376_en</a>
Harmful content: key concepts, standards and guidance
Council of Europe Standards and Reports
Council of Europe Recommendation CM/Rec(2022)16[1] of the Committee of Ministers to member States on combating hate speech <a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a67955">https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a67955</a>
COE/ JUFREX (2017/ 2018): Media Regulatory Authorities and Hate Speech. <a href="https://rm.coe.int/media-regulatory-authorities-and-hate-speech/16807338f5">https://rm.coe.int/media-regulatory-authorities-and-hate-speech/16807338f5</a>
<b>EU legislation, Guidance and Codes</b>
2008 Framework Decision on combating certain forms of expressions of racism and xenophobia <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l33178">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l33178</a>
EU Code of conduct on countering illegal hate speech online. <a href="https://ec.europa.eu/newsroom/just/document.cfm?doc_id=42985">https://ec.europa.eu/newsroom/just/document.cfm?doc_id=42985</a>
<b>Other useful national legislation / codes</b>
Ireland – Draft Online Safety Code : <a href="https://www.cnam.ie/wp-content/uploads/2024/05/Online-Safety-Code_vFinal.pdf">https://www.cnam.ie/wp-content/uploads/2024/05/Online-Safety-Code_vFinal.pdf</a>
United Kingdom – Ofcom Broadcasting Code – Section 3 Crime, disorder, hatred and abuse: <a href="https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-standards/section-three-crime-disorder-hatred-abuse/">https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-standards/section-three-crime-disorder-hatred-abuse/</a>

New Zealand - Code of Broadcasting Standards :

[https://www.bsa.govt.nz/assets/Uploads/BSA-Code-of-Broadcasting-Standards-Screen\\_FINAL.pdf](https://www.bsa.govt.nz/assets/Uploads/BSA-Code-of-Broadcasting-Standards-Screen_FINAL.pdf)



## 2. Co-regulatory standards to combat disinformation

A useful overview of the situation regarding disinformation in the Western Balkans is provided in a study published by the European Parliament in 2021.<sup>10</sup>

Two of the key documents that address the issue of disinformation are the Council of Europe 2022 ‘Guidance on countering the spread of mis- and dis-information online’. This guidance focuses on both states and platforms. The other is the EU ‘Strengthened Code of Practice on Disinformation,’ which is aimed at the platforms themselves and as such provides for an extensive range of actions that can be asked of online platforms in the context of co-regulatory structures.

### 2.1. Strengthened Code of Practice on Disinformation (EU)

The European Commission Strengthened Code of Practice on Disinformation builds on the 2018 Code of Practice. In assessing the previous Code, the Commission staff working document noted that the Code should be further improved in several areas by providing commonly-shared definitions, clearer procedures, more precise and more comprehensive commitments, as well as transparent key performance indicators (KPIs) and appropriate monitoring. Participation should be broadened to include other relevant stakeholders, in particular from the advertising sector. The working document also emphasised that there was a lack of access to data allowing for an independent evaluation of emerging trends and threats posed by online disinformation.<sup>11</sup>

The strengthened Code currently has 34 Signatories. The Code includes 44 commitments and 127 specific measures in order to achieve these commitments. Hence, this document addresses the actions of platforms. The key issues addressed can be summarised as follows:

- Demonetisation and cutting financial incentives for purveyors of disinformation;
- Ensuring transparency of political advertising;
- Ensuring the integrity of services, for instance by reducing fake accounts, bot-driven amplification, impersonation, malicious deep fakes;
- Empowering users with enhanced tools to recognise, understand and flag disinformation;
- Empowering researchers;

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<sup>10</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)

<sup>11</sup> Assessment of the Code of Practice on Disinformation – Achievements and areas for further improvement. <https://digital-strategy.ec.europa.eu/en/library/assessment-code-practice-disinformation-achievements-and-areas-further-improvement>

- Empowering the fact-checking community;
- Putting in place a Transparency Centre and Task-force;
- Establishing a strengthened monitoring framework.

## **2.2. Council of Europe Guidance note on countering the spread of online mis- and disinformation**

The Council of Europe Guidance note on countering the spread of online mis- and disinformation was published in 2023 and focuses on the actions of States and of platforms. The Guidance covers three key thematic areas – fact-checking, platform design solutions, and user empowerment. The types of recommendations are summarised below:

*Recommendations on fact-checking – of central importance, transparent, independent, well-funded, sustainable, quality, access to data, trusted, multilingual*

*Recommendations on platform-design solutions – human rights by design, safety by design, multi-lingual content moderation, focus on the processes, graduated approaches to content, promoting professional news sources and public interest content, independent research*

*Recommendations on empowerment of users – enhance quality journalism, build resilience, work with communities, promote user rights, protect vulnerable groups, trusted flaggers, collaboration, digital tools, MIL, education reform.*

## **2.3. Feedback from the discussions**

The discussions in the session on ‘disinformation’ and discussions related to ‘harmful content’ are interrelated as many of the same issues and challenges arose. Indeed, disinformation is in itself ‘harmful content’ and disinformation can often include specific disinformation on particular groups which amounts to hate speech. Hence many of the same issues arose during both sessions – in relation to competences, resources, work on user empowerment etc. The feedback is organised thematically here and under chapter 4 (looking at ‘harmful content’ and the Digital Services Act) in an attempt to bring similar discussions together.

Most of the regulators mentioned challenges regarding online portals of which there are many in each jurisdiction. But there are also sometimes problems in relation to traditional media service providers. Key challenges relate to online hate speech and also the protection of minors. Broadcasters are subject to regulations, whereas online media portals are not, leading to complaints from traditional media outlets.

For example, in Bosnia and Herzegovina there are more than 600 online portals and 400 have no impressum (details of ownership or contact details). The Communication Regulatory Agency - CRA have highlighted the [Council of Europe study “Towards coregulation of harmful content online in Bosnia and Herzegovina](#), which identified key issues and proposed recommendations for the online sphere in the country. It noted the large number of self-regulated online media under the Press and Online Council. However, the lack of a Media Ownership Transparency Law hinders the establishment of an online media register and the improvement of standards. In the context of the Digital Services Act (DSA), the study identified potential stakeholders for a coregulatory system.

The media laws in Montenegro do not address ‘disinformation’. According to the regulator (Agency for Electronic Media – AEM) the work is mainly focused on trying to strengthen self-regulation. There is a problem with online portals as many of the largest are avoiding any form of regulation. The Ministry is also focused on enhancing media pluralism. Financial sustainability of the traditional media is a challenge which leads to political dependency and in some cases this enhances the problems of disinformation.

The regulator in Albania (the Audiovisual Media Authority – AMA) has focused on ‘harmful content’ in traditional media, but will now be developing new methods of monitoring and have a new Broadcasting Code. They are particularly interested in understanding what are the standards and approaches in other countries.

The representatives from the Kosovo regulator (the Independent Media Commission – IMC) questioned how deep the role of the regulator can be to address the issue of disinformation with limited resources. They suggested dealing with local disinformation issues while also playing a role in raising public awareness. A cooperation with different national authorities would be crucial. The NRA representatives from Kosovo try to focus on the services with most impact, citing the example of music channels which can be problematic as regards to protection of minors.

Ofcom explained that they rely on a complaints-led framework which alerts them to potential breaches of the Broadcasting Code. They also conduct monitoring of licensed services.

A key issue and a recurring thematic in the discussions was the need for the regulators in the region to cooperate with each other. This is also addressed under chapter 4 and a full section (chapter 8) is dedicated to expanding on this idea in more detail. This was also discussed in relation to making contact with platforms (see also 4.2 below). As noted by a representative from the Serbian regulator (Regulatory Authority of Electronic Media – REM), the regulatory authorities in Western Balkans represent a stronger voice with more leverage when united, in terms of engaging VSPs on harmful content.

## 2.4. Media literacy, media use and research

The discussions on media literacy, media and information literacy (MIL) and empowerment were relevant to both the challenges of disinformation and that of harmful content (discussed in more detail under chapter 4 in relation to the DSA). This section combines the relevant discussions on MIL.

In Bosnia and Herzegovina, fact-checking is being supported by a major UNESCO project – Social Media 4 Peace. It was emphasised that MIL is a long-term solution. It was noted that it would be useful to have a common approach to developing and supporting MIL and to exchange experience in order to empower users in the region.

Many of the regulators are very involved with supporting MIL networks along with other civil society organisations. Some input was provided from Bosnia and Herzegovina, Albania, Kosovo and North Macedonia. In North Macedonia, the regulator (Agency for Audio and Audiovisual Media Services - AVMU) explained that the Macedonian Institute for the Media plays an important role in promoting and developing MIL. Media literacy is now part of the school curriculum. The recent amendments to the legislation in Serbia now officially include MIL as part of the remit of the regulator. Although they have worked in the area previously, the official remit should aid in strengthening their work and further supporting initiatives, including the [Council of Europe MIL training for pre-school educators](#).

A further challenge is the lack of data on media use and online habits. All of the NRAs in the region face challenges regarding raising funds for research and rely on funding from international organisations or on the research of third party organisations.

## 2.5. Fact-checkers

The important role of fact-checkers has been emphasised in both co-regulatory documents outlined above. The discussion turned to the role of fact-checkers in different jurisdictions. In some cases, these are unfamiliar to the regulators in certain jurisdictions.

In Bosnia and Herzegovina, the fact-checking platform *Raskrinkavanje.ba* was set up by the civic organisation "Zasto ne", and is part of a multistakeholder coalition on Freedom of Expression and Content Moderation, under the UNESCO Project Social Media 4 Peace<sup>12</sup>.

In North Macedonia, the main fact-checker is Metamorphosis, who has also developed a trusted flagger cooperation with Facebook.

The Macedonian Institute for the Media in partnership with civil society organisations in the Western Balkans has been involved in the project 'RESILIENCE: Civil society action

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<sup>12</sup> UNESCO Social Media for Peace project - objective to strengthen the resilience of societies to potentially harmful content spread online. <https://www.unesco.org/en/articles/social-media-4-peace>

to reaffirm media freedom and counter disinformation and hateful propaganda in Western Balkans and Turkey (2018 – 2023)'.<sup>13</sup>

On the extent to which there exists national research about disinformation and other online harm issues, it was noted that there was a heavy reliance on civil society research with external funding. There are few resources for research to be carried out by academia, regulators or other independent research bodies at the national level.

## **2.6. Combatting disinformation and cooperation between national actors**

There was strong agreement that combatting disinformation is not a task that can be left to the media regulators alone. It is important that governments develop national strategies to counter disinformation. In addition, networks involving different stakeholders including government, regulators and civil society should be established to support such a strategy.

An example is the Taskforce established in Ireland by the Government in 2023. The terms of reference of the Irish National Counter Disinformation Strategy are the following:

*Identify the role of media literacy in supporting, and map media literacy initiatives that can help deliver, a targeted whole of Government approach to countering disinformation.*

*Provide a comprehensive analysis of existing tools and mechanisms to combat disinformation in Ireland, including international best practice tools, mechanisms and approaches, with a focus on mechanisms to address evolving threats, and on ensuring transparency about content moderation policies that impact people in Ireland.*

*Identify measures to support innovation in fact-checking and disinformation research and develop effective long-term monitoring of the application of the Strengthened EU Code of Practice on Disinformation and the Digital Services Act in Ireland.*

*Explore ways in which the Strategy can support the important role that free, independent, high- quality journalism plays in countering disinformation, in particular in aligning with efforts to protect the supply of public interest information at local and national level.*

*Identify ways to better coordinate national efforts to counter organised campaigns of manipulation of internet users in Ireland, in particular, on how to facilitate access by researchers to data held by platforms to better inform interventions.<sup>14</sup>*

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<sup>13</sup> See: <https://www.mirovni-institut.si/en/projects/resilience-civil-society-for-media-free-of-hate-and-disinformation/>

<sup>14</sup> Irish national Counter Disinformation Strategy Group Terms of Reference: [Link](#)

Therefore, it is highly recommended that the NRAs push for a national Taskforce on Disinformation that would include various organisations (Government, authorities, civil society and media). The discussions at the POINT Conference in Sarajevo<sup>15</sup> were also cited with regard to the need for cooperation between different bodies and institutions at the national level. While certain authorities may be more focused on dealing with serious threats of foreign interference, the other key approaches outlined in the Council of Europe guidance include supporting fact-checkers and enhancing user empowerment and media literacy.

#### Resources and key documents

Disinformation
Council of Europe Standards and Reports
CoE (2017): ‘Information Disorder: Toward an interdisciplinary framework for research and policy making’ <a href="https://rm.coe.int/information-disorder-report-version-august-2018/16808c9c77">https://rm.coe.int/information-disorder-report-version-august-2018/16808c9c77</a>
CoE (2023): Guidance Note on countering the spread of online mis- and disinformation through fact-checking and platform design solutions in a human rights compliant manner. <a href="https://rm.coe.int/cdmsi-2023-015-msi-inf-guidance-note/1680add25e">https://rm.coe.int/cdmsi-2023-015-msi-inf-guidance-note/1680add25e</a>
Parliamentary Assembly, Resolution 2255 (2019) on public service media in the context of disinformation and propaganda, 23 January 2019. <a href="https://pace.coe.int/en/files/25406/html">https://pace.coe.int/en/files/25406/html</a>
CoE/ JUFREX (2018): ‘Regulatory Authorities for Electronic Media and Media Literacy - Comparative analysis of the best European practices’. By Robert Tomljenović. <a href="https://rm.coe.int/regulatory-authorities-for-electronic-media/1680903a2a">https://rm.coe.int/regulatory-authorities-for-electronic-media/1680903a2a</a>
Lacourt A., ‘Media literacy and the empowerment of users, IRIS, European Audiovisual Observatory, Strasbourg’, June 2024. <a href="https://rm.coe.int/iris-2024-2-media-literacy/1680b06196">https://rm.coe.int/iris-2024-2-media-literacy/1680b06196</a>
Cabrera Blázquez F.J., Cappello M., Talavera Milla J., Valais S., ‘User empowerment against disinformation online’, IRIS Plus, European Audiovisual Observatory, Strasbourg, September 2022 <a href="https://rm.coe.int/iris-plus-2022en3-user-empowerment-against-disinformation/1680a963c4">https://rm.coe.int/iris-plus-2022en3-user-empowerment-against-disinformation/1680a963c4</a>
EU legislation, Guidance and Codes
2022 Strengthened EU Code of Practice on Disinformation. <a href="https://commission.europa.eu/document/download/a2ac84d8-89d0-41dc-b480-db120ac9c376_en">https://commission.europa.eu/document/download/a2ac84d8-89d0-41dc-b480-db120ac9c376_en</a>
Other useful reports/ websites/ documents
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 <a href="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</a>

<sup>15</sup> POINT Conference (Political Accountability and New Technologies): <https://point.zastone.ba/point/>

EU Disinfo Code Transparency Centre: <https://disinfocode.eu/>

Irish national Counter Disinformation Strategy Group webpage:  
<https://www.gov.ie/en/publication/04f9e-national-counter-disinformation-strategy-working-group/>

### **3. Regulating election campaigns – disinformation on broadcast, on-demand and online**

#### **3.1. Ofcom and the regulation of elections**

Representatives from Ofcom in the United Kingdom provided an overview of the standards that apply to election coverage in the UK on broadcast media and also the work of the regulator in implementing these standards. This covered the remit of Ofcom during elections, the general rules on due impartiality on news and current affairs programming and the specific rules on media coverage of elections and referenda.

Political advertising is prohibited on broadcast media in the UK. This is also the case in many other European countries, including Austria, Belgium, the Czechia, Denmark, Norway, France, Germany, Ireland, Spain, Portugal, and Switzerland (while limited to election periods in Germany, and managed by the regulators).<sup>16</sup> The UK operates a system of allocation of free airtime to political parties (Party Election Broadcasts – PEBs). A similar system exists in most European countries, although it can be organised in different ways (sometimes involving equal access and in other cases equitable access – reflecting results from previous elections and/ or representation in Parliament).

Regarding the role of Ofcom, they publish a note of guidance in advance of each election reminding broadcasters of their obligations to ensure that their content complies with the due impartiality, due accuracy and special election rules in the Broadcasting Code. They also supply a summary of the past and current support of political parties to help broadcasters make editorial decisions about election coverage and decisions about the allocation of PEBs. During the election period, Ofcom operates a fast-track process to make sure that all complaints about election coverage are assessed and, where necessary, investigated as quickly as possible. A special Election Committee is also formed to consider significant election-related complaints, which, because of the nature of the cases it considers, reaches decisions in just a few days.

Regarding the concept of due impartiality, Ofcom explained that ‘due’ is an important qualification to the concept of impartiality. ‘Impartiality’ means not favouring one side over another, and ‘due’ means adequate or appropriate to the subject and nature of the programme. So ‘due impartiality’ does not mean an equal division of time has to be given to every view, or that every argument has to be represented. During elections, due weight must be given to the coverage of parties and independent candidates. There is no requirement to give equal time to all parties and not every party has to feature in every

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<sup>16</sup> See for example: JUFREX (2020): 'Regulation of Political advertising - A comparative study with reflections on the situation in South-East Europe'. By Jean-François Furnémont and Deirdre Kevin. <https://rm.coe.int/study-on-political-advertising-eng-final/1680a0c6e0> . See also: Cappello M. (ed.), Media coverage of elections: the legal framework in Europe, IRIS Special, European Audiovisual Observatory, Strasbourg, 2017. <https://rm.coe.int/16807834b2> . See also: Venice Commission (2020): Report on Electoral Law and Electoral Administration in Europe: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)023-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)023-e)



item (programme or discussion). In determining the appropriate level of coverage to be given to parties and candidates, broadcasters must take into account evidence of past and/or current electoral support. Ofcom provides additional guidance on these issues to assist the broadcasters in making these editorial decisions.

The UK law provides for a silence period from when the polls open on election day until the polls close (7am to 10pm). During this time there is no further discussion of the elections or election issues and no publishing of results of opinion polls. A considerable number of countries include, in their relevant legal or regulatory frameworks, rules on moratoriums, or ‘silence periods’<sup>17</sup> or ‘days of reflection’. The 1999 Council of Europe Recommendation noted in this regard that:

*It is not compulsory to introduce a reflection period (usually 24 hours before the beginning of the vote) in the regulatory framework. However, when a provision that prohibits spreading of partisan electoral messages is present, all media should respect it.*

### **3.2. Online coverage of elections and dealing with disinformation**

Many of the key standards regarding election coverage – related to political advertising, to silence periods at the end of election campaigns, and to the general standards on journalism and current affairs – are challenged by the online world.

The EU Regulation (2024) on the transparency and targeting of political advertising has a strong focus on transparency of political advertising. The rules address: harmonised transparency obligations for providers of political advertising and related services to retain, disclose and publish information connected to the provision of such services; and 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.

In the case of the UK, in October 2023, the Parliament passed the Online Safety Act (“OSA”)<sup>18</sup> which is designed to protect children and adults online. It puts a range of new duties on social media companies and search services. In the area of elections, the OSA sets out two specific illegal harms: the foreign interference and false communications offences. Ofcom are currently in the process of developing their Codes of Practice in relation to these and other illegal harms set out in the legislation. The first Codes of Practice for Illegal Harms will be published in December 2024.

The OSA expands Ofcom’s media literacy duties. Ofcom is required to: support users of regulated services to establish the reliability, accuracy, and authenticity of content; and

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<sup>17</sup> According to the 2020 Venice Commission Report, the purpose of a silence period is ‘to allow voters to absorb and digest all the information received during the electoral campaign and to make a choice without pressure’.

<sup>18</sup> Online Safety Act 2023: <https://www.legislation.gov.uk/ukpga/2023/50>

understand the nature and impact of disinformation and misinformation and reduce their and others' exposure to it. They will also establish – as required under the OSA – an Advisory Committee on Misinformation and Disinformation, which will advise Ofcom on this area of work. Ofcom recently published its new 3-year media literacy strategy setting out how it will meet its media literacy duties.

### **3.3. Feedback from the discussions**

In most of the jurisdictions in the Western Balkans, paid political advertising is allowed, in contrast to many EU Member States. In some cases (but not all), it is permitted only during the election campaign period. The legislation covering elections is quite varied in the Western Balkans. Some have Election Laws (Bosnia and Herzegovina, Kosovo) or Election Codes (Albania, North Macedonia). For some, the national Election Commission plays an important role in regulating media coverage. Some concerns that can be noted are that 'silence periods' at the end of election campaigns are regularly broken by broadcasters that are licensed in foreign countries and candidates frequently appear on such channels.<sup>19</sup>

As with many other countries, election legislation has not necessarily been updated to deal with election coverage or political advertising online. A key problem is also transparency – the transparency regarding who placed the advertising but also transparency regarding ownership of the media outlets.

For Bosnia and Herzegovina, forthcoming legislation will include certain online media – with a definition of online media, and a requirement to provide ownership information. The Election Law prohibits political actors from distributing “fake news”. This is overseen by the Central Election Commission. There have also been problems with regard to “premature campaigns” – before the official start of the campaign – particularly on online portals and social media. Research from Transparency International was cited in this context.<sup>20</sup>

Regarding paid political advertising, this is funded by public money in North Macedonia, implying that taxpayer funds are distributed to the media by the political parties (who report on this to the Election Commission who transfer the money). Money is also distributed to online platforms where there is a lack of transparency regarding the ownership of many of these platforms and also regarding the amount of political advertising spent online.

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<sup>19</sup> For more detail, see: JUFREX (2020): 'Regulation of Political advertising - A comparative study with reflections on the situation in South-East Europe'. By Jean-François Furnémont and Deirdre Kevin. Page 62-63. <https://rm.coe.int/study-on-political-advertising-eng-final/1680a0c6e0>

<sup>20</sup> Transparency International in BiH presented recommendations for improving the election legislation. 21 May 2021: <https://ti-bih.org/transparency-international-in-bih-presented-recommendations-for-improving-the-election-legislation/?lang=en>

In Kosovo, the regulator monitors the broadcaster coverage and in the most recent elections took a particular focus on monitoring gender balance in coverage. They also noted problems with breaches of the silence period during elections.

### 3.4. Resources and key documents

Elections and Democratic Resilience - Key documents:
Council of Europe Standards and Reports, European Audiovisual Observatory reports
Recommendation No. R (99) 15 on Measures Concerning Media Coverage of Election Campaigns. <a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e3c6b">https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e3c6b</a>
Recommendation CM/Rec(2007)15 on measures concerning media coverage of election campaigns. <a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d4a3d">https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d4a3d</a>
Parliamentary Assembly of the Council of Europe Resolution 2254 (2019) - Media freedom as a condition for democratic elections. <a href="http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25409&amp;lang=en">http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25409&amp;lang=en</a>
Recommendation CM/Rec(2022)12 of the Committee of Ministers on electoral communication and media coverage of election campaigns. <a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a6172e">https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a6172e</a>
Venice Commission (2020): Report on Electoral Law and Electoral Administration in Europe: <a href="https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)023-e">https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)023-e</a>
JUFREX (2020): 'Regulation of Political advertising - A comparative study with reflections on the situation in South-East Europe'. By Jean-François Furnémont and Deirdre Kevin. <a href="https://rm.coe.int/study-on-political-advertising-eng-final/1680a0c6e0">https://rm.coe.int/study-on-political-advertising-eng-final/1680a0c6e0</a>
Cappello M. (ed.), Media coverage of elections: the legal framework in Europe, IRIS Special, European Audiovisual Observatory, Strasbourg, 2017. <a href="https://rm.coe.int/16807834b2">https://rm.coe.int/16807834b2</a>
EU legislation, Guidance and Codes and other relevant reports
EU Action Plan on Human Rights and Democracy 2020 – 2024 <a href="https://www.eeas.europa.eu/sites/default/files/eu_action_plan_on_human_rights_and_democracy_2020-2024.pdf">https://www.eeas.europa.eu/sites/default/files/eu_action_plan_on_human_rights_and_democracy_2020-2024.pdf</a>
Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising. <a href="https://eur-lex.europa.eu/eli/reg/2024/900/oj">https://eur-lex.europa.eu/eli/reg/2024/900/oj</a>
Communication from the Commission – Commission Guidelines for providers of Very Large Online Platforms and Very Large Online Search Engines on the mitigation of systemic risks for electoral processes pursuant to Article 35(3) of Regulation (EU) 2022/2065. <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52024XC03014&amp;qid=1714466886277">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52024XC03014&amp;qid=1714466886277</a>

#### 4. The Digital Services Act – aims and challenges of implementation

The Digital Services Act (DSA) is part of a package including also the Digital Markets Act (DMA), which will not be addressed here. The DMA concerns market and competition issues, and only applies to the very large technology companies identified as ‘gatekeepers,’ and the enforcement will be primarily carried out by the European Commission. The DSA covers issues that are broader than those relevant to audiovisual content or user-generated content and follows the principle that what is illegal offline is illegal online. It is intended to deal with online services and consumer protection regarding products and services, and therefore the DSA cannot be fully implemented via the media legislative framework. The DSA provides a framework for the implementation of regulations covering consumer protection, copyright, and online safety, among others, requiring cooperation between a range of different authorities.

The DSA is a horizontal tool to deal with illegal content and services on intermediary services including online platforms, which include VSPs and social media. The Act has a graduated approach to placing obligations on services. In summary, this approach works in two ways: in terms of engagement with the content (modification or organisation) and in terms of size and impact. It is worth noting that the Council of Europe CM/Rec(2018)2 Recommendation of the Committee of Ministers to Member States on the roles and responsibilities of internet intermediaries, also emphasised that:

*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 of incitement to violence.<sup>21</sup>*

Online intermediaries that act as ‘mere conduits’, ‘caching’ services and ‘hosting’ services and do not produce, modify or organise content have the least obligations, but must have a contact point and Terms and Conditions (T&C) for users, and they should provide annual reports on the activities related to content moderation. Providers of hosting services (cloud and webhosting) have these obligations – plus – requirements to establish mechanisms whereby they can be notified regarding illegal content and react when they have knowledge or illegal content on their platforms.

Providers of online platforms (online marketplaces, APP stores, collaborative economy platforms, social media platforms) are required to fulfil all the obligations outlined above. In addition, they must: establish a complaint and redress mechanism and engage

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<sup>21</sup> [Recommendation CM/Rec\(2018\)2 of the Committee of Ministers to Member States on the roles and responsibilities of internet intermediaries.](#)

in out of court settlements; 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.

The strongest obligations are on the very large platforms (VLOPS and VLOSES). They 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. As noted above, this includes illegal content and also content that presents risks, i.e. harmful content including: disinformation and content harmful to public and state security, public health, election processes, the protection of minors and also risks of content that are a serious threat to the health and well-being of individuals. 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>22</sup>

Hence, the DSA has crossovers with the AVMS Directive – both addressing video-sharing platforms - and both including measures such as ‘Terms and Conditions’ for users, transparency of advertising, protection of minors, trusted flaggers, complaints systems, etc. ‘Trusted flaggers’ are referenced in relation to the obligations of VSPs under the AVMSD, in relation to online platforms with regard to the Strengthened Code on Disinformation, and also in the DSA. In the DSA, providers of online platforms must give priority to notices submitted by trusted flaggers and ensure that these are processed and decided upon without undue delay.

The implementation regarding large platforms is largely the responsibility of the European Commission in cooperation with national Digital Services Coordinators (DSC) and with the Digital Services Board (DSB). During the introductory presentation, it was emphasised that the DSA is an Act that produces large amounts of data - due to requirements of transparency and reporting. Therefore, data analytics and computer science experts will play an important role in implementing the DSA.

In addition, risk identification and mitigation are key to preventing harm on larger platforms. Here there is a key role for auditors (at the level of the European Commission regulation) and the research community at the national level. The European Commission have already published a Regulation with regard to auditing. A further delegated Act (regulation) will be developed in the near future with regard to ‘vetted researcher’ access to data. In discussions with researchers, it was noted that 5 years ago was a golden era

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<sup>22</sup> For more details see: COE/ JUFREX (2022): 'Towards coregulation of harmful content online in Bosnia and Herzegovina. A study of European standards and co-regulatory practices for combating harmful content online'. By Deirdre Kevin and Asja Rokša- Zubčević. <https://www.coe.int/en/web/sarajevo/-/towards-the-co-regulation-of-harmful-online-content-in-bosnia-and-herzegovina>.

of data access and there is currently a dark age of data access.<sup>23</sup> Researchers stressed the need to be able to carry out research and experiments within the system (A/ B tests). There are also strong calls to have stronger rules on algorithms and recommender systems to prevent the spread of harmful content and the exposure of children to harmful content.<sup>24</sup>

#### **4.1. Cooperation at the national level**

In order to deal with the new challenges of regulation (in particular as regards to the DSA), there will need to be many collaborative and cooperative approaches to the regulation of the online sphere.

*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>25</sup>

These types of national cooperation include the establishment of Fora or Platforms where the national media regulatory authorities work with Press Councils or Commissions, Electoral Commissions, Competition Authorities, Consumer Agencies, Copyright Protection bodies, Data Protection agencies etc. Examples include: the Swedish DSA Network, the Dutch Digital Regulators Cooperation Platform (SDT), and, outside of the EU, the UK Digital Regulation Cooperation Forum (DRCF).<sup>26</sup> Key aims of such collaborations encompass enabling cooperation and the exchange of knowledge and experience between the various bodies, authorities or stakeholders. An illustrative example of how such a cooperative/ collaborative forum could be structured is outlined below. This cooperation may involve a formal Memorandum of Understanding (MOU) or could be less formal. Given the need to deal with illegal activities, goods and services on online platforms, the police, judiciary, and the national cybersecurity authorities may also be involved. Such a platform should allow for consultation with various stakeholders and civil society as outlined below.

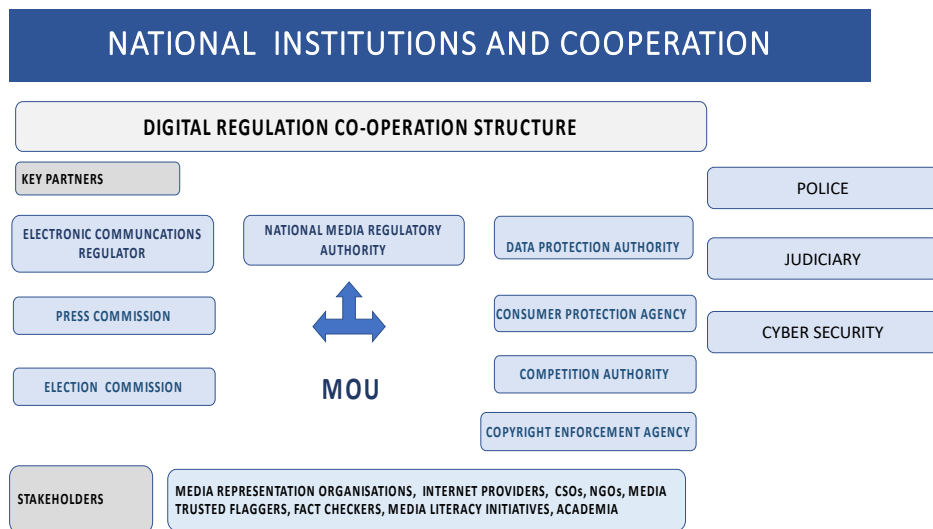
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<sup>23</sup> Mapping of Irish Research Community – The Digital Services Act (DSA) and ‘Vetted Researchers’. Prepared for Coimisiún na Meán / Media Commission, Ireland by Deirdre Kevin, CommSol. May 2024.

<sup>24</sup> See, for example, Amnesty International (2023): 'Driven into the darkness - How TikTok encourages self-harm and suicidal ideation.' <https://www.amnesty.org/en/latest/news/2023/11/tiktok-risks-pushing-children-towards-harmful-content/>

<sup>25</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://rm.coe.int/iris-plus-2021en2-media-regulatory-authorities-and-the-challenges-of-c/1680a55eb1>

<sup>26</sup> <https://www.gov.uk/government/publications/drcf-terms-of-reference/terms-of-reference>



#### 4.2. Feedback from discussions and the need for regional cooperation

Some regulators have developed by-laws to regulate VSPs according to the AVMS Directive (Bosnia and Herzegovina and Serbia). Serbia benefited in this context from the support provided by the Council of Europe.<sup>27</sup> In Bosnia and Herzegovina, the alignment with the AVMS Directive was achieved mainly via the development of by-laws. These two authorities have exchanged information on their approaches. Again, the important issue of cooperation between regulators was discussed, which also highlighted the need for cooperation with EU regulators in the region such as in Croatia (Agency for Electronic Media of the Republic of Croatia – AEM) and Slovenia (Agency for Communication Networks and Services – AKOS) (see further under chapter 8 below).

The representatives from Ofcom highlighted the importance of a systems and processes and risk-based approach to regulating online platforms and to directly supervise the way in which the largest platforms are implementing safety systems. It is also important to manage expectations regarding what the NRA can achieve with risk-based regulations, when the NRA does not have powers to remove content. This includes not just the expectations of Government and authorities but also the expectations of the public.

#### 4.3. Communication with online platforms

Several regulators have started to develop contact with the large global online platforms. The Serbian regulator has contact with TikTok and developed an informal cooperation, which is a key element in solving irregularities.

The AEM from Montenegro has signed a memorandum of agreement with the Bosnian Regulator RAK (CRA). In Bosnia and Herzegovina, some cooperation work was carried out with TikTok. In particular, they are working together on MIL and plan to co-organise MIL

<sup>27</sup> COE/ JUFREX (2022): Base-line Study on ‘the legislative and regulatory framework and practices of the Regulatory Authority for Electronic Media (REM) in Serbia and the process of its alignment with relevant CoE and EU Standards’. Prepared by Deirdre Kevin.

days later in the year. It was stressed that it is important to have individual contact with the platforms (from the regulators in the region) alongside any future cooperation. Ofcom supported several of the regulators in developing contacts.

The UK had implemented the AVMS Directive and Ofcom has been regulating VSPs for several years, including TikTok, Snap, Twitch and OnlyFans. With the full implementation of the Online Safety Act (OSA), the VSP regime will be repealed and all user-to-user and search services, including currently notified VSPs, will be in scope of the OSA. Ofcom emphasised the importance of a risk-based approach to platform regulation where platforms are required to implement systems and processes to keep their users safe. Ofcom as the regulator will then supervise platforms in their implementation of the Act, developing Codes of Practice and detailed regulatory guidance to set clear expectations for regulated services. In addition to Ofcom's supervision of platforms, Ofcom also has strong enforcement powers to use should platforms not comply with their safety duties in the Act. Ultimately the OSA calls for platforms to implement strong risk and safety governance processes as a means of keeping users safe.

#### **4.4. Challenges**

Discussions on various tools to implement the aims of the DSA also included discussions on trusted flaggers and MIL as outlined under chapter 3 above.

The relevant Ministry in Serbia has initiated a project to examine the current legal framework relevant to the DSA. The Serbian Regulator has begun work on capacity building regarding the DSA and EMFA, through the exchange of knowledge with the CRA and activities involving relevant ministries.

Western Balkans jurisdictions could benefit from the experiences of other countries who are in the process of implementing these Acts. For the moment, the focus would be placed on 'learning, educating and raising awareness' (according to the representative from CRA), in line with their discussions with their contacts from the EU. Others have had a different experience whereby there has been encouragement from the EU to speed up the process. This is the case in Montenegro where the relevant Ministry is planning to create a working group to develop a strategy on implementing these Acts. In North Macedonia, the regulator is also taking a 'baby steps' approach. It also needs to be considered whether the implementation of the DSA requires a new department.

Representatives of the regulator from Bosnia and Herzegovina stated that being a converged regulator already makes it easier to cooperate as the CRA is a 'one stop shop' for media and electronic communications. The CRA is one of 5 converged regulators in Europe.<sup>28</sup> Many regulators in key countries are not converged with telecommunications regulators (including France, Germany, Spain and Ireland). An important

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<sup>28</sup> Including also Estonia, Slovenia, Italy and the UK.



recommendation of this study should be to encourage cooperation between all the stakeholders in each country (as outlined under 4.1 above).

It was emphasised by the Ofcom representatives that for both the VSP rules and the OSA in the UK, the regulator will not run an individual complaints scheme, but will instead ensure that platforms have adequate systems to receive and action user complaints and provide mechanisms for users to seek redress should their content be taken down erroneously. The role of the regulator is then to assess whether platforms have put all the relevant safety measures and processes in place.

#### 4.5. Resources and key documents

Digital Services
EU legislation, Guidance and Codes
REGULATION (EU) 2022/2065 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act). <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R2065">https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R2065</a>
Council of Europe Standards and Reports
Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries <a href="https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680790e14">https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680790e14</a>

### 5. The European Media Freedom Act

The European Media Freedom Act introduces obligations regarding a range of issues including media pluralism, transparency of media ownership, state advertising, the independence of public broadcasters, and the safety of journalists.

#### 5.1. Provisions that support quality media content and help fight disinformation

In support of fighting disinformation and harmful content, the EMFA promotes the right to receive a plurality of news and current affairs produced with respect for editorial freedom. Article 3 enshrines a right of the:

*‘recipients of media services in the Union shall have the right to receive a plurality of news and current affairs content, produced with respect for editorial freedom of media service providers, to the benefit of the public discourse and plurality of news and current affairs content.’*

Article 4 also supports quality journalism via the protection of journalists and promotion of editorial independence. It has long been recognised that public service media have an important role to play in providing quality journalism and countering disinformation. A 2019 Resolution of the Parliamentary Assembly of the Council of Europe (PACE), specifically recommended that online platforms cooperate with public and private European news outlets to improve the ‘visibility of reliable, trustworthy news and

facilitate users' access to it.'<sup>29</sup> Article 5 of the EMFA enshrines 'safeguards for the independent functioning of public service media providers.'

Article 17 of the EMFA supports what is known as the 'media privilege'. The original aim was to prevent very large online platforms from suspending or removing content provided by traditional (news) media providers that abide by relevant laws and journalistic standards and principles, without prior notification. Some challenges were raised with regard to this as it was argued that this privilege may impede efforts to fight disinformation. Article 17 provides for a self-declaration process for media outlets, the procedure for communicating with the media service to inform that content may be removed, a complaints system for media outlets, and Article 18 requires that the European Media Board organise structures dialogues in relation to these procedures between platforms and relevant stakeholders (media and civil society).

## **5.2. Provisions related to transparency of ownership and financing**

The Audiovisual Media Services Directive emphasises (under recital 15) that 'Transparency of media ownership is directly linked to freedom of expression, a cornerstone of democratic systems'. The AVMSD requires a minimum of public information about services (Article 5), and national lists of audiovisual media services (Article 2). The most recent Council of Europe standards in this area are from 2018 and introduced more detail on the approach to transparency of media ownership:

*'Media transparency requirements should be specific and include a requirement for media outlets operating within State jurisdiction to disclose ownership information directly to the public on their website or other publication and to report this information to an independent national media regulatory body or other designated body, tasked with gathering and collating the information and making it available to the public. This body should be provided with sufficient and stable financial resources and staff to enable it to effectively carry out its tasks.'*<sup>30</sup>

The 2018 Council of Europe Recommendation also addressed financing:

*High levels of transparency should also be ensured with regard to the sources of financing of media outlets in order to provide a comprehensive picture of the different sources of potential interference with the editorial and operational independence of the media and allow for effective monitoring and controlling of such risks. To this end, States are encouraged to adopt and implement legislation or other equally effective measures that set out the disclosure of information on the*

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<sup>29</sup> See: Parliamentary Assembly, Resolution 2255 (2019) on public service media in the context of disinformation and propaganda, 23 January 2019. <https://pace.coe.int/en/files/25406/html>

<sup>30</sup> [Recommendation CM/Rec\(2018\)1\[1\] of the Committee of Ministers to member States on media pluralism and transparency of media ownership.](#)

*sources of the media outlet's funding obtained from State funding mechanisms (advertising, grants and loans). States are furthermore encouraged to promote the disclosure by media outlets of contractual relations with other media or advertising companies and political parties that may have an influence on editorial independence.<sup>31</sup>*

Article 6 of the DSA requires that as part of the duties of media service providers:

*1. Media service providers shall make easily and directly accessible to the recipients of their services up-to-date information on:*

*(a) their legal name or names and contact details; (b) the name or names of their direct or indirect owner or owners with shareholdings enabling them to exercise influence on the operation and strategic decision making, including direct or indirect ownership by a state or by a public authority or entity;*

In terms of transparency of financing Article 6 also requires that media service providers shall make easily and directly accessible to the recipients of their services up-to-date information on:

*d) the total annual amount of public funds for state advertising allocated to them and the total annual amount of advertising revenues received from third-country public authorities or entities.*

The DSA recognises the key importance of audience measurement systems due to the impact on the allocation of resources in the media sector. Article 24 requires that:

*1. Providers of audience measurement systems shall ensure that their audience measurement systems and the methodology used by their audience measurement systems comply with the principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination, comparability and verifiability.*

The DSA also introduces a role for NRAs

*3. National regulatory authorities or bodies shall encourage providers of audience measurement systems to draw up, together with media service providers, providers of online platforms, their representative organisations and any other interested parties, codes of conduct or shall encourage providers of audience measurement systems to comply with codes of conduct jointly agreed and widely accepted by media service providers, their representative organisations and any other interested parties.*

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<sup>31</sup> Ibid.

Audience measurement systems are further discussed below under 5.5 in the feedback from discussions.

### **5.3. Other supports for media pluralism**

The EMFA also introduces media pluralism tests in assessing media market concentrations. This already happens in a number of countries (United Kingdom, France, Ireland, Austria, Germany), where competition policy and the assessment of media mergers should include a specific assessment of the impact of mergers on media pluralism and the audiovisual media regulators provide opinions on media mergers. The European Media Board (see below) will provide opinions on the potential impact of media mergers on pluralism.

### **5.4. The European Board for Media Services and cooperation**

The EMFA changes the ERGA (European Regulators Group for Audiovisual Media Services) to the European Board for Media Services. The Board may invite permanent observers (as is the current case with the ERGA), which already include most of the NRAs in the Western Balkans. Of interest is the fact that where the Board deals with matters beyond the audiovisual media sector, it should rely on an effective consultation mechanism involving stakeholders from the relevant media sectors which could include press councils, journalistic associations, trade unions and business associations.

There are several areas of structured cooperation between regulators via the European Media Board. Under Article 12 (Cooperation) NRAs may request other NRAs to cooperate by exchanging information or by means of mutual assistance. The Board can be requested to settle any disagreements. In the case of serious or grave risks an NRA can request accelerated cooperation.

Under Article 15 (Enforcement of obligations of VSPs), NRAs may request competent NRAs to take necessary and proportionate actions for the effective enforcement of the obligations imposed on video-sharing platform providers. The European Media Board can be requested to settle/mediate any disagreements, or to issue an opinion.

Under Article 17 (Measures concerning media services from outside the Union), where media services prejudice or present a serious and grave risk of prejudice to public security the Board coordinates measures to be taken following the request of at least 2 NRAs. The Board in consultation with Commission can issue an opinion on appropriate measures.

### **5.5. Feedback from discussions**

The issue of identification of those responsible for online platforms was also highlighted and this is linked to the important principle of media ownership transparency. As outlined above, the European Media Freedom Act places obligations on all media services to provide transparency of their ownership. This should act as a support for

NRAs in identifying services. Media ownership transparency is complicated in the region as in many cases big business and industry are intertwined with media companies. The regulator in North Macedonia creates an annual report on media ownership in the country – with a focus on the broadcasters – who are already obliged to provide detail on this.

As regards audience measurement systems, the representatives from Kosovo highlighted the fact that there is no audience measurement system and no resources to fund a system. In this instance it would be useful for the regulator to investigate approaches in other countries where the media outlets cooperate to form a Joint Industry Committee and share the costs of audience measurement. The role of the regulator, according to the EMFA is limited to encouraging providers of audience measurement systems, media service providers, providers of online platforms, and their representative organisations to develop codes of conduct related to the systems.

## 5.6. Resources and key documents

KEY DOCUMENTS
EU legislation, Guidance and Codes
Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act)Text with EEA relevance. <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1083">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1083</a>
EU Action Plan on Human Rights and Democracy 2020 – 2024 <a href="https://www.eeas.europa.eu/sites/default/files/eu_action_plan_on_human_rights_and_democracy_2020-2024.pdf">https://www.eeas.europa.eu/sites/default/files/eu_action_plan_on_human_rights_and_democracy_2020-2024.pdf</a>
Council of Europe standards relevant to the EMFA
Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society <a href="https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-cm-rec-2007-3-of-the-committee-of-ministers-to-member-states-on-the-remit-of-public-service-media-in-the-information-society">https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-cm-rec-2007-3-of-the-committee-of-ministers-to-member-states-on-the-remit-of-public-service-media-in-the-information-society</a>
Parliamentary Assembly, Resolution 2255 (2019) on public service media in the context of disinformation and propaganda, 23 January 2019. <a href="https://pace.coe.int/en/files/25406/html">https://pace.coe.int/en/files/25406/html</a>
Recommendation CM/Rec(2018)1[1] of the Committee of Ministers to member States on media pluralism and transparency of media ownership. <a href="https://search.coe.int/cm/#{%22CoEIdentifier%22:[%220900001680790e13%22],%22sort%22:[%22CoEValidationDate%20Descending%22]}">https://search.coe.int/cm/#{%22CoEIdentifier%22:[%220900001680790e13%22],%22sort%22:[%22CoEValidationDate%20Descending%22]}</a>
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. <a href="https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Rec(2022)4">https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Rec(2022)4</a>

Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors.

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016806415d9#\\_ftn1](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415d9#_ftn1)

## 6. Country of origin and formal cooperation procedures

Given the various legislative Acts at the EU level that deal with audiovisual media and VSPs, it is important to clarify to what extent a regulator can take action in relation to foreign services. One section of the discussions looked at what types of actions national authorities can take against the larger platforms. In this context the *Google Ireland and others* case (see below) was presented in order to clarify EU law with regard to measures that can be taken against online platforms which are established in another EU Member State.

### 6.1. CJEU Google Ireland and others

In 2021 the KoPl-G (a package of laws against Online Hate Speech) was passed in Austria. This placed obligations on large platforms, including foreign platforms not based in Austria. These included obligations relating to reporting, review and complaint procedures and the possibility to issue fines of up to € 10 million. This law was challenged by Google, Meta, and TikTok at the Court of Justice of the European Union (CJEU)

The legal base for the dispute was the E-Commerce Directive (Directive 2000/31/EC) – ‘Article 3 Principle of control in the country of origin’ (similar to provisions of the AVMS Directive).

*Article 3 (2). Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide information society services from another Member State.*

*Article 3 (4). Member States may take measures to derogate from paragraph 2 in respect of a given information society service if the following conditions are fulfilled:*

*Public policy, ... criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons,*

- the protection of public health,*
- public security, including the safeguarding of national security and defence,*
- the protection of consumers, including investors.*

In its judgement the Court states that a Member State cannot impose general and abstract obligations on providers of communication platforms which are established in another Member State. A Member State cannot impose general and abstract obligations which relate to generally defined categories of certain services of communication

platform providers, without these measures being taken in relation to a specific individual case.

Before taking the measures in question - the Member State has to have: asked the Member State referred to in paragraph 1 to take measures and the latter did not take such measures, or they were inadequate; notified the Commission and the Member State referred to in paragraph 1 of its intention to take such measures. (Article 3 (4b)). Article 3 (5) allows for urgent cases, which implies taking measures and then notifying the relevant MS and the Commission.

The ruling confirmed that a country cannot establish a set of rules that apply to communication platform providers established in another country. Hence the understanding of 'measures' from the E-Commerce Directive did not include 'general and abstract obligations' but rather 'measures' should be understood as actions taken in relation to a specific case. These need to be preceded by the actions outlined above: first requesting the Member State of origin to take measures, and notifying that MS and the Commission of any intention to take measures. The figure (below) provides an overview of the procedures regarding foreign services under the AVMS Directive, the EMFA, the DSA and the E-Commerce Directive.

#### **Services regulated in the country of origin - but derogations from freedom possible**

##### **Audiovisual media services – AVMS Directive – Article 3 derogations**

Manifestly, seriously and gravely infringes – hate speech, protection of minors, terrorist offence, risk of prejudice to public health. Cooperation with regulating Member State and European Commission. EMFA – the new Board may mediate and/or provide opinion in consultation with European Commission. And for 'services from outside the Union' (Article 17) will coordinate measures

##### **Platforms (information society services) – E Commerce Directive derogations Article 3**

Reasoning: criminal offences, hate speech, protection of minors, and violations of human dignity, protection of public health, public security, national security and defence.... Inform Member State and Commission of any measures.

##### **Video-sharing platforms - AVMS Directive, updated under European Media Freedom Act- Article 14 - Requests for enforcement of obligations of video-sharing platform providers**

Cooperation with regulating Member State. The new Board may mediate and/or provide opinion in consultation with European Commission.

##### **Digital services Act - cross border cooperation – Article 58**

Digital Services Coordinator – to inform DSC in of country of establishment – they will take appropriate measures.

At the same time, it is worth re-emphasising with regard to foreign services and particularly the large online platforms, the approach followed by Ofcom, to develop a risk-based approach and highlight the need to work with platforms to build systems and processes to keep users safe (see 4.2 above). This is an important element of discussions on regional cooperation (see chapter 8 below).



## 6.2. Resources and key documents

KEY DOCUMENTS
EU legislation and case law
C-376/22 - Google Ireland and Others: <a href="https://curia.europa.eu/juris/liste.jsf?num=C-376/22">https://curia.europa.eu/juris/liste.jsf?num=C-376/22</a>
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, as amended by DIRECTIVE (EU) 2018/1808. <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02010L0013-20181218">https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02010L0013-20181218</a>
Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act)- Text with EEA relevance. <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1083">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1083</a>
REGULATION (EU) 2022/2065 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act). <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R2065">https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R2065</a>
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'). <a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031</a>

## **7. Governance of NRAs, resources, expertise, remits, challenges**

The final main session in the Peer Review event looked at the professional situation of the regulatory authorities in terms of governance, independence, resources, expertise, remits and challenges. The Ofcom colleagues provided an overview of the structure and governance of the organisation and the way in which they approach the regulation of online platforms.

### **7.1. Overview of Ofcom**

Ofcom staff totals 1500 people with around 180 working on broadcasting. In the context of the implementation of the OSA, 450 people work on online safety issues.

Ofcom is funded via licence fees set for the industry, though additional funding was provided for the initial implementation of the OSA.

Key departments in Ofcom include the Communications team, Public Policy and Human Resources. The Communication team is important as a means for the regulator to defend itself and its actions and to tell the story regarding the need for effective and safe communications.

It is also vital (in particular in relation to issues such as disinformation and online harm) to clearly manage expectations of the public and also of government, parliament and other authorities. Ofcom is accountable to Parliament but independent of government. Ofcom communicates regularly with parliament and provides expertise and advice to the government. Regarding communication to the public, it is vital to provide clear and accessible communications in plain English and publish decisions in the correct timeframe. In this context, the Council of Europe representatives drew attention to the Council of Europe Good Governance Principles.

The Ofcom Board has a non-executive Chair, executive members (including Ofcom's Chief Executive), and non-executive members appointed by the government. The Board sets the overall strategy and establishes various committees.

### **7.2. Feedback from the discussions**

The representatives from Bosnia and Herzegovina explained that in the past the regulator (Communication Regulatory Agency – CRA) was independent in both financial and operational terms. They learned to build up the diplomacy and communication with government, and not consider that questions regarding their work was an attack on the organisation. It is important that the regulator be part of expert groups – and particularly those engaged in developing relevant legislation. It should be well communicated that the regulator is the key expert body in the country regarding media regulation.

The CRA has a staff of 140. The key challenges in maintaining independence involve the influence of political considerations in the appointment of high-ranking positions; in

addition, the CRA budget needs to be adopted by Parliament which can be typically delayed. There is also a problem with the appointment of new members of the Council which is delayed. The current mandate expired 4 years ago. Out of a total of 7 members, there are currently only 4. While the CRA Council has been appointed, the process for nominating a new Director General has not yet been finalised.

In Serbia, there are similar obstacles. The Serbian regulator (Regulatory Authority of Electronic Media – REM) are not civil servants according to the law, which helps with independence regarding staff decisions. The changes to the Law on Electronic Media have adapted the system of governance. Where previously the Chair of the Council also had the role of Director General, these roles have now been split. This should provide a better balance between the role of management and the role of the supervisory body. Civil society will play a stronger role in nominating Council members. REM has 80 staff members, covering legal, monitoring, general affairs and finance. Software has been developed for the monitoring department. However, the challenges of the implementation of the DSA will require to think differently, and the role of regulators remains to be clearly defined. It will be important (as also emphasised by the Ofcom) to change mindsets and reshape perceptions. The work on MIL seems to be progressing well with a good impact on raising awareness. A key challenge is in reconstructing the regulator and rethinking how to organise work in order to deal with new services.

The Albanian regulator (Audiovisual Media Authority – AMA) has a staff of 80 dealing with programmes, technology, licences, international affairs, human resources and external relations. The Council is comprised of the Chair, the Vice- Chair and 5 members. No particular challenges or developments were mentioned by the representatives.

The regulator in Montenegro (Agency for Electronic Media – AEM) is, according to the Law, independent from Government and they are financed via the licences paid by the broadcasters. Under the new Law, 5 Members of the Council will be nominated by NGOs. The Council should include expertise covering economic, legal and audiovisual media, among others. The Parliamentary Assembly adopts the report of the AEM. The new Laws adopted in June 2024 will change the title of the regulator to the Agency for Audiovisual Media Services. Key challenges regarding the implementation of the Laws (and the AVMS Directive and the DSA) involve the need to map news portals that also provide audiovisual media services, and also those companies providing VSPs. The regulator faces problems in hiring information technology (IT) staff. It is a challenge to recruit such people as they earn far more in the private sector.

In Kosovo, the regulator (Independent Media Commission – IMC) currently has a Commission consisting of 5 members out of 7, as foreseen by the IMC Law. However, the staff of the Executive Office which deals with monitoring, legal and financial issues and licensing consists of 30 people. Currently, they only regulate broadcasting but, in the future, will be regulating VSPs and on-demand services (including any online media that qualifies as audiovisual media or VSPs). They are financed via the state budget and their

key challenges are related to finances and human resources. The license fees from operators become part of the state budget and are not directly paid to the regulator. Even for the implementation of the AVMS Directive, the regulator representative fear that they lack sufficient funds and human resources. The regulator is quite dependent on international organisations to help support its activities. One challenge concerns the difficulty of carrying out research in the market and assessing the needs of the national and local media sector. With new obligations from the updated legislation, they will need greater resources. In addition, the regulator has to frequently deal with copyright issues and review agreements established in this area by cable operators and on-demand services. It is important to note that the legislative framework should be updated to reflect the EU Acquis concerning copyright and a specific Copyright Enforcement Authority should be established to deal with these issues.

In North Macedonia, the regulator (Agency for Audio and Audiovisual Media Services - AVMU) is independent according to the law and funded via the state budget. There are 7 members of the Council and the Parliament votes on the final Council. The Law also has a provision for relevant civil society organisations to take part in the nomination of candidates. Competences are focused on audio and audiovisual media services (according to the AVMS Directive). The main challenge concerns a lack of human and financial resources.

In summary, although the Law provides for independence of the NRAs, several problems remain. There are frequent delays in appointments and nominations, and changes of the supervisory boards/ councils, which presents obstacles to the work of the NRAs. All participants emphasised that the overarching issue was the lack of human and financial resources to deal with properly implementing the legislation and coping with new competences in relation to online media (such as VSPs and on-demand services). It is important to remember that Member States are obliged to ensure that NRAs have sufficient capacities (under Article 30 of the AVMSD and under Article 7 of the EMFA).

It was also emphasised that the regulators need to focus on managing expectations and raising awareness in relation to what role they play, particularly as regards to regulating online media. It is important that the relevant Government Ministries and Parliamentary Committees recognise that the regulators represent important expert bodies in the field. The regulator should always be part of Working Groups and discussions concerning strategies and the development of legislative proposals.

### 7.3. Resources and key documents

KEY DOCUMENTS- Governance and Independence
EU legislation
Article 30, AVMSD- 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, as amended by DIRECTIVE (EU) 2018/1808.  
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02010L0013-20181218>

Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act)- Text with EEA relevance. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1083>

#### CoE standards and Guidance

Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector.  
<https://rm.coe.int/16804e0322>

Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector, adopted by the Committee of Ministers on 26 March 2008.

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805d3c1e](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d3c1e)

Council of Europe: 12 Principles of Good Governance: <https://rm.coe.int/12-principles-brochure-final/1680741931>

## **8. Creating a regional cooperation network**

### **8.1. The need for cooperation between regulatory bodies in the region**

A key discussion at the meeting centred around ideas for formalising cooperation between the regulatory authorities in the Western Balkans – in particular with respect to dealing with disinformation, online harms and cooperation and communication with large platforms. The need for such a cooperation was raised at several points throughout the event. For instance, it was noted that it would be useful to have a common approach to developing and supporting MIL and to exchange experience in order to empower users in the region.

### **8.2. The nature of cooperation platforms of national regulators in the media sector**

There are many examples of networks and platforms of cooperation between regulators. These vary significantly in terms of the depth of cooperation between regulators. The European Regulators Group for Audiovisual Media Services (ERGA) was established by a decision of the European Commission in 2014 and thus, is the most formal of cooperation procedures.<sup>32</sup> The role of the ERGA is established in the Audiovisual Media Services Directive (Directive 2010/13/EU as amended by Directive (EU) 2018/1808) under Article 30(b). This provision has been further updated by the European Media Freedom Act (2024) where the ERGA will be replaced by the European Board for Media Services. The Board will have a broader scope of action and additional tasks in relation to implementation of the EMFA and the AVMS Directive.

The long-established European Platform of Regulatory Authorities (EPRA) will celebrate 30 years of cooperation in 2025. EPRA is managed by a five-person Board and the members are also members of the EPRA Board Association which is responsible for the organisational and financial agreements with the selected hosting body via a Memorandum of Understanding (MOU).<sup>33</sup> Since 2006, the EPRA has been hosted at the European Audiovisual Observatory. EPRA Members pay annual fees which fund the Secretariat of the EPRA and other costs related to events, use of experts etc. EPRA also represents a relatively formal cooperation, which reflects its size (55 authorities) and the extent of the work (conferences, papers, workshops) produced over the years.

The table below provides a list of all cooperation networks including regional cooperation fora in Europe. This includes the Baltic Cooperation, where the three Baltic states signed a cooperation agreement in 2005. Some other types of cooperation involve annual

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<sup>32</sup> ‘Commission Decision of 3.2.2014 on establishing the European Regulators Group for Audiovisual Media Services’. [https://erga-online.eu/wp-content/uploads/2016/10/Decision\\_2014\\_en.pdf](https://erga-online.eu/wp-content/uploads/2016/10/Decision_2014_en.pdf)

<sup>33</sup> For more detail see the EPRA statutes: <https://www.epra.org/articles/statutes-of-the-european-platform-of-regulatory-authorities-epra>

meetings such as the French/German/UK Tripartite meetings (see below). Hence, there are a wide variety of ways in which different regulators can establish cooperation.

It would be useful to develop a more detailed overview of the different approaches to establishing cooperation and the levels of formality and informality. The representatives of the regulators working with the PROFREX project would then be able to assess the most appropriate approach for their purposes, and the best way that they can engage their Boards and management in its development. Consequently, it is critical to establish the key aims and focus of this type of cooperation forum/network.

Networks of regulatory authorities	Key aims on establishment <sup>34</sup>
<b>International</b>	
Global Forum of Regulators (UNESCO) (June 2024). Potentially 124 countries. <a href="#">See information here</a>	Coordinate the international response to the challenges posed by digital platforms.
Global Online Safety Regulators Network (2023). 9 members (July 2024) <a href="#">See information here</a>	Enhance regulatory coherence in approaches to online safety, and share information, expertise and experience
<b>Pan-European</b>	
European Regulators Group for Audiovisual Media Services (ERGA) (future European Media Board) – EU regulators (2014) 27 members + 3 EEA + 9 Observers. <sup>35</sup> Website: <a href="https://erga-online.eu/">https://erga-online.eu/</a>	Advise and assist the Commission; facilitate cooperation between EU regulators; exchange of experience and good practices.
European Platform of Regulatory Authorities (EPRA) (1995). Members 55 authorities from 47 countries and entities <sup>36</sup> . Website: <a href="https://www.epra.org/">https://www.epra.org/</a>	Set up in 1995 in response to the need for increased co-operation between European regulators - Exchange information, cases and best practices.
<b>Multi-national</b>	
The Mediterranean Network of Media Regulatory Authorities (1997). Members 27 <sup>37</sup> <a href="#">See information here</a>	Reinforce cultural and historical links between Mediterranean countries and identify common challenges against the backdrop of globalisation.
Network of French-speaking media regulatory authorities (REFRAM) (2007). 31 institutions from Africa, the Americas and Europe. <sup>38</sup> Website: <a href="https://www.refram.org/">https://www.refram.org/</a>	Establishing and strengthening solidarity and exchanges between its members. It is a forum for debate and exchange of information on issues of common interest and fosters training and cooperation between its members.

<sup>34</sup> Courtesy of the EPRA website and the websites of the various networks.

<sup>35</sup> Including Albania, Bosnia and Herzegovina, Montenegro, North Macedonia and Serbia

<sup>36</sup> Including Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia

<sup>37</sup> Including Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia

<sup>38</sup> Including Albania

Ibero-American Platform for Regulators of the Audiovisual Sector (PRAI) (2014). 10 countries. Website: <a href="https://prai.tv/">https://prai.tv/</a>	Share their experience and take joint decisions
<b>Regional</b>	
Central European Regulatory Forum (CERF) (2009). Five members. <sup>39</sup> Website: <a href="http://cerfportal.org/">http://cerfportal.org/</a>	Cooperation on complaints related to Transfrontier broadcasts
Black Sea Broadcasting Regulatory Authorities Forum (BRAAF) (2007) <sup>40</sup> (possibly inactive) <a href="#">Information here</a>	Furthering cooperation and discussing the common issues of the broadcasting sector.
<b>Other regional co-operations</b>	
Iberian Conference of Independent Authorities (2008). 4 authorities from Portugal and Spain	Aims to exchange experiences, opinions and views on self and co-regulation
French/German/UK Tripartite meetings (1996)	Since 1996, annual tripartite meetings
Nordic Regulatory Cooperation (1996). 5 countries.	Regional cooperation concerning e.g. legislation, cable and satellite operations, digital broadcasting, local and community radio
Baltic Cooperation (trilateral meeting) (2005). 3 countries.	Take into account the similarities of the small audiovisual markets of the Baltic States.
Euregiolators (Netherlands, Belgium (Flemish, French and German language communities), Luxembourg and German Länder bordering these countries)	Forum of regulators

### 8.3. Approaches to the development of cooperation

The participants outlined the following points with regard to a future cooperation:

- The need to establish the parameters of cooperation, which might mainly focus on online platforms and online media;
- However, given that disinformation (and content harmful to minors) is often also spread on traditional broadcasting, cooperation in this area may also be useful;
- Linked to this is the need to discuss together the depth of any cooperation whether informal or more formal;
- Further research into types of cooperation (as in the table above) and of their nature is needed;
- Including EU regulators from the region such as those from Croatia (Agency for Electronic Media of the Republic of Croatia – AEM) and Slovenia (Agency for

<sup>39</sup> Including Serbia

<sup>40</sup> Including Albania and Serbia



Communication Networks and Services – AKOS) is considered to be very important for the success of such a network;

- Participants emphasised the need to be precise in defining their common challenges;
- The participants aim to develop a set of common standards and principles that are shared and which can be communicated to the major online platforms;
- A further concern to be considered is that of language barriers where the platforms may not be providing sufficient coverage of the languages in the region;
- Linked to this is the importance of trusted flaggers for content regulation in each beneficiary;
- A key issue will involve exploring how regulators can cooperate in communicating with the larger platforms and develop common approaches to dealing with them;
- As emphasised in the discussions, it is important to develop ‘soft law’ and cooperative approaches;
- It is also important that the network establish links with certain NRAs that are central to the regulation of the large platforms such as Coimisiún na Meán /Irish Media Commission, the Ofcom (UK), and the Dutch regulator the Commissariaat voor de Media (CvdM).

## 9. Conclusions and next steps

### 9.1. The Council of Europe and PROFREX

Cooperation between the Council of Europe and regulators from the Western Balkans region continues through specific local-level PROFREX actions as well as a Regional Action, under which this first Peer Exchange was organised<sup>41</sup>. Upon request of project beneficiaries, the Division for Cooperation on Freedom of Expression facilitates capacity-building activities, connects professionals with an international network of experts, and provides policy and legal guidance on all topics discussed during the event. In this context, regulators are encouraged to inform local teams of their current needs and expectations in the field. Translating relevant Council of Europe recommendations and standards into regional languages will aid regulators and other stakeholders in further disseminating these standards and integrating them into the development of by-laws, codes, and guidance.

Further discussions will be held with the regulators from the region regarding future events and actions as Profrex Actions will run until December 2026. It was acknowledged that it would be good to revisit the issues of the DSA and the EMFA again next year as there would be more knowledge and expertise to share from EU countries who are just beginning to organise and regulate in these areas.

It was emphasised that it is important that the regulators make specific requests under the project for actions or research that are needed.

An important task for the future could be the further elaboration of a potential cooperation network (see also chapter 8 above).

The regulators particularly welcomed the proposal for regional cooperation and the potential help with establishing contact with the platforms. This could also facilitate exchanges of studies on co-regulation and exchange of information in general. Participants of the meeting specifically stressed the importance of sharing good practices. Additionally, regional publications and meetings are important as they serve as platforms for exchange.

A list of expectations and inputs drafted by the regulators can be useful for both the PROFREX actions but also for sharing with other donors who wish to support work in the area of freedom of expression in the region.

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<sup>41</sup> Access to the Profrex and to previous information, documents and studies can be accessed via three websites: the Council of Europe's Freedom of Expression webpage <https://www.coe.int/en/web/freedom-expression>; the website of the Horizontal facility (Profrex); and on the websites in the various field offices.

## 9.2. Conclusions and next steps

The participants agreed on the importance of clear definitions of the key terms relevant to the regulation of online platforms or online media – in particular regarding ‘disinformation’ and ‘harmful content’. Such definitions should follow Council of Europe standards and European Union legislation, guidance and codes (as outlined above). It is important that definitions are reflected in primary legislation, by-laws, codes and guidance. The potential to translate some Council of Europe standards into the regional languages may assist regulators in further advising government, parliament and parliamentary committees with regard to the importance of clear definitions.

It was also agreed that the fight against disinformation could not be a task that is left to the regulator alone. Following the discussions and various local examples, it is apparent that the governments need an overall strategy on tackling disinformation which should involve the input of a range of relevant bodies and stakeholders. Hence, it is also important for the regulators to encourage the development of a Task Force at the local level to coordinate the various actions needed to combat disinformation and use the Council of Europe guidance and EU Codes to develop strategies in this area. The Ofcom representatives provided an overview of their approach to regulating media coverage of election campaigns and also more recent efforts to deal with disinformation during election campaigns.

A key problem across the Western Balkans region is the role of online news portals in election campaigns. Many of these do not become part of the self-regulatory structures. Frequently, they are not identifiable in terms of contact or ownership. In addition, the nature of political advertising on such platforms (including spending) is not clear.

Regarding the Digital Services Act and its implementation, there is uncertainty as to whether the jurisdictions need to implement quickly or whether it is more advisable to wait for EU countries to develop more expertise in the area which can inform approaches in the Western Balkans.

Hence, it is strongly advised to encourage the development of a national forum or platform of various authorities engaged in the regulation of the goods and services on online platforms. This is something that can be established in advance of the full implementation in order to begin the process of exchange of information and expertise and to establish the cooperation procedures.

The Digital Services Act is a horizontal tool which (among others) is intended to support the implementation of the Audiovisual Media Services Directive. Therefore, the additional detail in the DSA with regard to terms and conditions, complaint systems, trusted flaggers etc. can be very useful in the development of by-laws, guidance and codes relevant to video-sharing platform services.

The European Media Freedom Act also provides a range of provisions that support the efforts to combat disinformation. This is evident in the provisions that aim to protect

journalism and editorial independence and in the provisions supporting public service broadcasters. Quality journalism and the role of the public broadcasters are seen as key to countering disinformation. The EMFA also places a strong emphasis on transparency of ownership and transparency of financing (including state advertising) echoing key Council of Europe standards in this area. The EMFA also introduces other mechanisms to support pluralism such as the ‘media privilege’ which aims to protect journalistic content of high standards from being removed from platforms, and also a broader focus on the impact of competition decisions and mergers on media pluralism. For the national regulators, it would be useful to carry out Gap assessments of where their legislative frameworks already reflect the provisions of the EMFA (under media laws, or freedom of expression laws or those implementing the AVMSD).

Foreign services (broadcasting or online media or the very large global platforms) can often be a source of disinformation and harmful content and this presents a challenge for national regulators. As there are various legislative Acts at the EU level that deal with audiovisual media and VSPs, the workshop looked at the approaches that the regulator can take action in relation to foreign services. In the context of formal procedures, it is always necessary as a starting point to contact the regulator in the country of origin. Hence it is important to develop relationships with key regulators from countries where large platforms are based, such as Ireland, the Netherlands and the UK. It is also highly recommended to develop communication channels directly with the larger platforms on an individual level and also as a group (see below regarding the discussions on cooperation in the region).

Discussions on governance, organisation, resources, capacities and challenges of the NRAs raised some very important issues. A very common challenge is that of having sufficient human and financial resources to implement the relevant legislation and fulfil their remits. A major emphasis was also placed on the need to communicate to the outside (to the public and to relevant authorities) and manage expectations regarding the role of the NRA in particular in relation to online issues. The NRAs should be recognised by public authorities as being the key ‘expert groups’ in this field in each country. They should be a part of relevant working groups and task forces that develop strategy, policy and legislation in the field.

Finally, the central and recurring issue of discussion during the workshop concerned the need for a regional cooperation between the regulators in the Western Balkans. Regardless of the format that this takes, it would ideally include EU Member States in the region such as Croatia and Slovenia. Chapter 8 looked in more detail at the types of cooperation for platforms that already exist. The chapter also outlined some key points raised by participants and proposed next steps. For example, such a forum might mainly focus on online platforms and online media or potentially address traditional media issues. The forum would be a place for exchange of expertise but also a network that would be stronger together in communicating and collaborating with larger online

platforms. Next steps include the need to establish common principles and standards that they believe should be protected and enhanced pertaining to content available in the region and measures to protect the citizens. A deeper examination of the nature of cooperation (from highly informal to very formal) in other platforms should be carried out to assess what would best suit such a Western Balkans cooperation.

## References and resources

### Council of Europe Standards and Guidance and reports and studies

Recommendation No. R (99) 15 on Measures Concerning Media Coverage of Election Campaigns.

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805e3c6b](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e3c6b)

Recommendation CM/Rec(2007)15 on measures concerning media coverage of election campaigns.

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805d4a3d](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d4a3d)

Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector.

<https://rm.coe.int/16804e0322>

Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society

[https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset\\_publisher/aDXmrol0vvsU/content/recommendation-cm-rec-2007-3-of-the-committee-of-ministers-to-member-states-on-the-remit-of-public-service-media-in-the-information-society](https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-cm-rec-2007-3-of-the-committee-of-ministers-to-member-states-on-the-remit-of-public-service-media-in-the-information-society)

Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector, adopted by the Committee of Ministers on 26 March 2008.

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805d3c1e](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d3c1e)

Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors.

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016806415d9#\\_ftn1](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016806415d9#_ftn1)

CoE (2017): 'Information Disorder: Toward an interdisciplinary framework for research and policy making' <https://rm.coe.int/information-disorder-report-version-august-2018/16808c9c77>

COE/ JUFREX (2017/ 2018): Media Regulatory Authorities and Hate Speech. <https://rm.coe.int/media-regulatory-authorities-and-hate-speech/16807338f5>

Recommendation CM/Rec(2018)1[1] of the Committee of Ministers to member States on media pluralism and transparency of media ownership. [https://search.coe.int/cm/#{%22CoEIdentifier%22:\[%220900001680790e13%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\]}](https://search.coe.int/cm/#{%22CoEIdentifier%22:[%220900001680790e13%22],%22sort%22:[%22CoEValidationDate%20Descending%22]})

Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680790e14](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680790e14)

CoE/ JUFREX (2018): 'Regulatory Authorities for Electronic Media and Media Literacy - Comparative analysis of the best European practices'. By Robert Tomljenović. <https://rm.coe.int/regulatory-authorities-for-electronic-media/1680903a2a>

Parliamentary Assembly, Resolution 2255 (2019) on public service media in the context of disinformation and propaganda, 23 January 2019. <https://pace.coe.int/en/files/25406/html>

Parliamentary Assembly of the Council of Europe Resolution 2254 (2019) - Media freedom as a condition for democratic elections. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25409&lang=en>

JUFREX (2020): 'Regulation of Political advertising - A comparative study with reflections on the situation in South-East Europe'. By Jean-François Furnémont and Deirdre Kevin. Page 62-63. <https://rm.coe.int/study-on-political-advertising-eng-final/1680a0c6e0>

Venice Commission (2020): Report on Electoral Law and Electoral Administration in Europe: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)023-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)023-e)

COE/ JUFREX (2022): 'Towards coregulation of harmful content online in Bosnia and Herzegovina. A study of European standards and co-regulatory practices for combating harmful content online'. By Deirdre Kevin and Asja Rokša- Zubčević. <https://www.coe.int/en/web/sarajevo/-/towards-the-co-regulation-of-harmful-online-content-in-bosnia-and-herzegovina>

Recommendation CM/Rec(2022)16[1] of the Committee of Ministers to member States on combating hate speech [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a67955](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a67955)

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://search.coe.int/cm/Pages/result\\_details.aspx?Reference=CM/Rec\(2022\)4](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Rec(2022)4)

Recommendation CM/Rec(2022)12 of the Committee of Ministers on electoral communication and media coverage of election campaigns. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a6172e](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a6172e)

COE/ JUFREX (2022): Base-line Study on ‘the legislative and regulatory framework and practices of the Regulatory Authority for Electronic Media (REM) in Serbia and the process of its alignment with relevant CoE and EU Standards. Prepared by Deirdre Kevin.

CoE (2023): Guidance Note on countering the spread of online mis- and disinformation through fact-checking and platform design solutions in a human rights compliant manner. <https://rm.coe.int/cdmsi-2023-015-msi-inf-guidance-note/1680add25e>

Council of Europe: 12 Principles of Good Governance: <https://rm.coe.int/12-principles-brochure-final/1680741931>

### **European Union legislation, codes, guidance, reports**

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'). <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031>

2008 Framework Decision on combating certain forms of expressions of racism and xenophobia <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l33178>

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, as amended by DIRECTIVE (EU) 2018/1808. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02010L0013-20181218>

Commission Decision of 3.2.2014 on establishing the European Regulators Group for Audiovisual Media Services. [https://erga-online.eu/wp-content/uploads/2016/10/Decision\\_2014\\_en.pdf](https://erga-online.eu/wp-content/uploads/2016/10/Decision_2014_en.pdf)

EU Code of conduct on countering illegal hate speech online. [https://ec.europa.eu/newsroom/just/document.cfm?doc\\_id=42985](https://ec.europa.eu/newsroom/just/document.cfm?doc_id=42985)

EU Action Plan on Human Rights and Democracy 2020 – 2024, [https://www.eeas.europa.eu/sites/default/files/eu\\_action\\_plan\\_on\\_human\\_rights\\_and\\_democracy\\_2020-2024.pdf](https://www.eeas.europa.eu/sites/default/files/eu_action_plan_on_human_rights_and_democracy_2020-2024.pdf)

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)

Court of Justice of the European Union C-376/22 - Google Ireland and Others:  
<https://curia.europa.eu/juris/liste.jsf?num=C-376/22>

REGULATION (EU) 2022/2065 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act). <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R2065>

Communication from the Commission – Commission Guidelines for providers of Very Large Online Platforms and Very Large Online Search Engines on the mitigation of systemic risks for electoral processes pursuant to Article 35(3) of Regulation (EU) 2022/2065. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52024XC03014&qid=1714466886277>

2022 Strengthened EU Code of Practice on Disinformation. [https://commission.europa.eu/document/download/a2ac84d8-89d0-41dc-b480-db120ac9c376\\_en](https://commission.europa.eu/document/download/a2ac84d8-89d0-41dc-b480-db120ac9c376_en)

Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act)- Text with EEA relevance. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1083>

Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising. <https://eur-lex.europa.eu/eli/reg/2024/900/oj>

### **Other reports, studies and documents**

Amnesty International (2023): 'Driven into the darkness - How TikTok encourages self-harm and suicidal ideation.' <https://www.amnesty.org/en/latest/news/2023/11/tiktok-risks-pushing-children-towards-harmful-content/>

Cabrera Blázquez F.J., Cappello M., Talavera Milla J., Valais S., 'User empowerment against disinformation online, IRIS Plus, European Audiovisual Observatory, Strasbourg, September 2022. <https://rm.coe.int/iris-plus-2022en3-user-empowerment-against-disinformation/1680a963c4>

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://rm.coe.int/iris-plus-2021en2-media-regulatory-authorities-and-the-challenges-of-c/1680a55eb1>

Cappello M. (ed.), Media coverage of elections: the legal framework in Europe, IRIS Special, European Audiovisual Observatory, Strasbourg, 2017. <https://rm.coe.int/16807834b2>



EPRA statutes: <https://www.epra.org/articles/statutes-of-the-european-platform-of-regulatory-authorities-epra>

ERGA 2020: Notions of Disinformation and Related Concepts: <https://erga-online.eu/wp-content/uploads/2021/03/ERGA-SG2-Report-2020-Notions-of-disinformation-and-related-concepts-final.pdf>

Lacourt A., 'Media literacy and the empowerment of users, IRIS, European Audiovisual Observatory, Strasbourg', June 2024. <https://rm.coe.int/iris-2024-2-media-literacy/1680b06196>

'The application of the AVMS Directive in selected non-EU countries', European Audiovisual Observatory, Strasbourg, 2023. <https://rm.coe.int/the-application-of-the-avms-directive-in-selected-non-eu-countries/1680af0903>

Ireland – Draft Online Safety Code : [https://www.cnam.ie/wp-content/uploads/2024/05/Online-Safety-Code\\_vFinal.pdf](https://www.cnam.ie/wp-content/uploads/2024/05/Online-Safety-Code_vFinal.pdf)

United Kingdom – Ofcom Broadcasting Code – Section 3 Crime, disorder, hatred and abuse: <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-standards/section-three-crime-disorder-hatred-abuse/>

New Zealand - Code of Broadcasting Standards : [https://www.bsa.govt.nz/assets/Uploads/BSA-Code-of-Broadcasting-Standards-Screen\\_FINAL.pdf](https://www.bsa.govt.nz/assets/Uploads/BSA-Code-of-Broadcasting-Standards-Screen_FINAL.pdf)

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 <https://undocs.org/A/HRC/44/49>

## Annex – Participation in workshop



FINAL Agenda PTP

Review Budva 25-26



List of participants -  
1st conference for R

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