



Public interest content on audiovisual platforms: access and findability

IRIS Special

A publication
of the European Audiovisual Observatory



IRIS Special 2023-1

Public interest content on audiovisual platforms: access and findability

European Audiovisual Observatory, Strasbourg 2023

ISSN 2079-1062

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Cover layout – ALTRAN, France

Please quote this publication as:

Cappello M. (ed.), *Public interest content on audiovisual platforms: access and findability*, IRIS Special, European Audiovisual Observatory, Strasbourg, 2023

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Foreword

The oft-heard phrase "the public interest is not what the public is interested in" has an oxymoronic quality. If it is not, what is it?

Perhaps the problem lies in the difficulty of precisely defining both terms, i.e. "public" and "interest". Is it useful to speak of the "public" in general, or rather of a multitude of audiences with different needs? And who decides (and how) what is in the public interest, without falling into the trap of media paternalism? The many legal instruments that deal with this sensitive issue do not provide a clear definition, and the clarification of this concept resembles somehow the famous obscenity test in *Jacobellis v. Ohio* ("I know it when I see it").¹ This uncertainty is not helped by the language used by the revised Audiovisual Media Services Directive, not only because it speaks of "general interest" rather than "public interest", but, more importantly, because it refers in recital 25 to "the appropriate prominence of *content* of general interest", but then in Article 7a to "measures to ensure the appropriate prominence of audiovisual media *services* of general interest" (emphasis added).

Definitional discussions aside, and assuming that there is such a thing as "public interest", there is a question of enormous relevance in the digital world: is availability enough, or do public interest content (and services) risk drowning in a mare magnum of digital noise?

Bringing some clarity to the issues mentioned above is precisely the purpose of this *IRIS Special*, that is, examining the law, policy and standards in Europe on access to, and findability of, public interest content on all platforms, including broadcasting and online.

The first part of the *IRIS Special* provides an overview of the regulatory frameworks in both the Council of Europe and European Union on access to and findability of public interest content. The first chapter briefly introduces the main concepts at stake, then Chapter 2 examines Council of Europe law, policy, and standard-setting instruments related to the issue. Chapter 3, in turn, provides an overview of relevant European Union legislative instruments.

The second part of the *IRIS Special* considers the issue from a number of thematic perspectives. Chapter 4 provides an economic and markets perspective on policy designed to guarantee access to and findability of public interest content. Chapter 5 examines the issue of access to public interest content from the perspective of (national) minorities and Chapter 6 does so in respect of children's access to public interest content. Chapter 7 focuses on the local and regional levels and Chapter 8 explores the role of public service

¹ *Jacobellis v. Ohio*, 378 U.S. 184 (1964),

<https://tile.loc.gov/storage-services/service/ll/usrep/usrep378/usrep378184/usrep378184.pdf>.

media. Chapter 9 summarises and draws selected conclusions from the preceding chapters.

The coordinator and lead author of this publication is Prof. Tarlach McGonagle from our partner institution IViR at the University of Amsterdam, to whom I extend my warmest thanks for having provided a multifaceted insight into a topic that is somehow a moving target, as it reflects the evolution of society and its audiences. I would also like to thank the other authors, Lotte van den Bosch, Doris Buijs, Mervin Huang, Max Nazarski, Ronan Ó Fathaigh, Joost Poort and Iryna Ulasiuk, for having each given their valuable contribution to a publication that I trust will be of great interest for our readers.

Strasbourg, October 2023

Maja Cappello

IRIS Coordinator

Head of the Department for Legal Information

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1. Introduction

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University of Amsterdam**

1.1. Media regulation and the public interest

That the media should serve the public interest has long been a central and unwavering value or goal of media regulation and policy. In its influential 1947 report, the Hutchins Commission on Freedom of the Press set out the public goals and roles of a free and responsible press.² Many of the goals and aspirations of the Hutchins Commission remain relevant today; various scandals (e.g. the News International phone hacking scandal) and policy responses (e.g. the Leveson Inquiry) periodically re-focus political and public attention on why and how serving the public interest should be a central purpose of the media. In the present ‘disinformation order’, characterised by a prevalence of disinformation and clickbait content, the need for the media to continue to serve the public interest takes on added importance.³

The goal of serving the public interest is even more salient for the broadcast media than for the printed press. Traditional regulatory thinking has held that the ether is a public good and should be used for the benefit of the public and that scarce spectrum should be allocated fairly and equitably in the public interest. The mission of public service broadcasters/media is moreover centrally concerned with serving all constituent groups in society and their interests, and not just pandering to market preferences. As Newton N. Minnow put it in his historic “Great Wasteland” speech in 1961: “Broadcasting, to serve the public interest, must have a soul and a conscience, a burning desire to excel, as well as to sell; the urge to build the character, citizenship and intellectual stature of people, as well as to expand the gross national product.”⁴

² The [Hutchins] Commission on Freedom of the Press, *A Free and Responsible Press* (Chicago, University of Chicago Press, 1947).

³ Claire Wardle & Hossein Derakhshan, “Information Disorder: Toward an interdisciplinary framework for research and policy making”, Council of Europe report DGI(2017)09, September 2017, <https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-research/168076277c>.

⁴ (quoting Governor Collins) Newton N. Minow, “Television and the Public Interest”, 55 *Federal Communications Law Journal* (No. 3, 2003), pp. 395-406, at pp. 396-397. Original speech, National Association of Broadcasters, Washington DC, 9 May 1961, <http://www.americanrhetoric.com/speeches/newtonminow.htm>.



1.2. What is the public interest?

For all its staying power as a regulatory and policy goal, serving the public interest has proved difficult to define and thus to operationalise. The first problem is the nebulous nature of the public whose interest is to be served. The public is not the coherent, unitary whole that the simplicity of the term might suggest. Every public – or society – is made up of constituent groups, with shared and divergent characteristics, needs and interests. As John Dewey – one of the early scholars to grapple with the concept – noted, societies tend to be “pulverized into an aggregate of unrelated wants and wills”.⁵ The challenge is then to organise the “variety of associative ties which hold persons together in diverse ways” according to an “integrated principle”, such as democracy.⁶ This means that an overarching vision of the public interest will be superior to all the particular interests that shape and colour it.⁷

Given the composite and fluid nature of the public, it is difficult to ascertain what the public interest exactly entails. It is often observed that the public interest is not simply what interests the public. This conception of the public interest points to matters of interest to the public; what is good for, or of benefit to, the public from the normative perspective of pluralistic democratic society. It downplays topics that are not relevant or important for public affairs and public debate. However, the quip that the public interest is not the same as what interests the public glosses over the genuine public interest in fostering particular types of media content that are of interest to specific groups in society, for example persons belonging to (national) minorities, children and persons with disabilities.

Applied to the mass media, Denis McQuail writes, the public interest implies that the media are entrusted with “a number of important, even essential, informational and cultural tasks and it is in the general interest (or good of the majority) that these are carried out well and according to principles of efficiency, justice, fairness, and respect for current social and cultural values”.⁸ The media are thus expected to navigate the often competing particular public interest claims and the superior interests that inform the overall public interest. Both the notion of the public interest and the question of how the media can best serve this shape-shifting notion are the subject of continuous discussion.

⁵ John Dewey, *The Public and its Problems* (Chicago, The Swallow Press Inc., 1954), p. 21.

⁶ *Ibid.*, at p. 38.

⁷ Jay Blumler, “Wrestling with the Public Interest in Organized Communications”, in Kees Brants, Joke Hermes & Liesbet van Zoonen (Eds.), *The Media in Question: Popular Cultures and Public Interests* (London, Sage Publications Ltd., 1998), p. 55.

⁸ Denis McQuail, *Media Accountability and Freedom of Publication* (Oxford, Oxford University Press, 2003), p. 47.



1.3. European discussions and developments

It is clear that the public interest is “pursued rather than known”, which gives the regulatory goal of ensuring that the media serve the public interest a lodestar quality.⁹ The quest to ensure that the media produce public interest content and that such content is available, accessible and findable across a comprehensive range of platforms, is very much alive in European regulatory and policy circles today. There are various ongoing and recent discussions and policy developments on access to and findability of public interest content, and on how states should guarantee that individuals have access to information on matters of public interest.

For example, in 2022, the Council of Europe’s Committee of Ministers, in its Recommendation on the impacts of digital technologies on freedom of expression, recommended that internet intermediaries should offer a “higher level” of protection for public interest content, and that states may, “where necessary and particularly in time of public emergency”, introduce “appropriate and proportionate obligations” for internet intermediaries to promote public interest content.¹⁰ At the end of 2021, the Council of Europe’s Steering Committee for Media and Information Society adopted detailed guidance to states on the prioritisation of public interest content online.¹¹

At the European Union level, while the Audiovisual Media Services Directive contains a standalone provision that allows states to take measures to ensure prominence of audiovisual media services of general interest,¹² recent legislative initiatives may have a further impact on access to public interest content. These include the recently adopted Digital Services Act (DSA),¹³ and the proposal for a European Media Freedom Act (EMFA),¹⁴ which include various provisions on media content on online platforms (Article 17 EMFA), customisation of media offerings (Article 19 EMFA), news and current affairs content

⁹ Jay Blumler, “Wrestling with the Public Interest in Organized Communications”, in Kees Brants, Joke Hermes & Liesbet van Zoonen (Eds.), *The Media in Question: Popular Cultures and Public Interests* (London, Sage Publications Ltd., 1998), p. 54.

¹⁰ Appendix to Recommendation CM/Rec(2022)13 of the Committee of Ministers to member States on the impacts of digital technologies on freedom of expression, 6 April 2022, para. 4.4, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680645b44>.

¹¹ Steering Committee for Media and Information Society, Guidance Note on the Prioritisation of Public Interest Content Online, 2 December 2021, <https://rm.coe.int/cdmsi-2021-009-guidance-note-on-the-prioritisation-of-pi-content-e-ado/1680a524c4>.

¹² Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities, Article 7a, <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>.

¹³ 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, <https://eur-lex.europa.eu/eli/reg/2022/2065/oj>.

¹⁴ Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0457>.



(Article 6 EMFA), platforms' recommender systems (Article 27 DSA), and provisions on media freedom and pluralism, and content moderation (e.g., Article 14 DSA).



2. Council of Europe

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This chapter provides an overview and analysis of how the Council of Europe seeks to protect and promote public interest content across a range of media and online platforms. It first considers relevant focuses in the case-law of the European Court of Human Rights, before considering how the Court's key principles inform recent relevant standard-setting by the Committee of Ministers.

The Court's case-law and the Committee of Ministers' standard-setting instruments are indicative of the Council of Europe's overall approach, but this limited focus does not do justice to the breadth of detailed engagement by various other Council of Europe bodies. Nevertheless, some of the relevant work by other Council of Europe bodies is covered in other contributions to this IRIS Special. For example, the Framework Convention on the Protection of National Minorities has a central place in Chapter 5; the work of the Parliamentary Assembly of the Council of Europe on public service media features in Chapter 7; and the work of the Congress of Local and Regional Authorities is analysed in Chapter 8.

2.1. European Court of Human Rights

2.1.1. The foundational case-law

The European Court of Human Rights began laying the foundations of its long-standing engagement with the public interest in its earliest judgments on Article 10 – the right to freedom of expression. Judgments like *Handyside*,¹⁵ *The Sunday Times (No. 1)*¹⁶ and (a few years later) *Lingens*,¹⁷ had a *tabula rasa* quality to them and the lines drawn by the Court in those cases have formed the broad contours of all the relevant case-law that followed.

¹⁵ *Handyside v. the United Kingdom*, 7 December 1976, Series A no. 24, <https://hudoc.echr.coe.int/?i=001-57499>.

¹⁶ *The Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, Series A no. 30, <https://hudoc.echr.coe.int/?i=001-57584>.

¹⁷ *Lingens v. Austria*, 8 July 1986, Series A no. 103, <https://hudoc.echr.coe.int/?i=001-57523>.



In *Handyside*, the Court affirmed that Article 10 protects “not only” information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also [...] those that offend, shock or disturb the State or any sector of the population”.¹⁸ It further clarified: “Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’.”¹⁹ In other words, the Court found that there is a public interest in protecting information and ideas that challenge orthodox thinking and majority viewpoints.

In *The Sunday Times (No. 1)*, the Court began to give further shape to the public interest doctrine. It linked the *Handyside* principles to the press and public debate:

*These principles are of particular importance as far as the press is concerned. They are equally applicable to the field of the administration of justice, which serves the interests of the community at large and requires the co-operation of an enlightened public. [...] Furthermore, whilst the mass media must not overstep the bounds imposed in the interests of the proper administration of justice, it is incumbent on them to impart information and ideas concerning matters that come before the courts just as in other areas of public interest. Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them.*²⁰

The Court went on in the next paragraph of the judgment to reinforce the public’s right to be informed by qualifying it as a right to be “properly” informed.²¹ Although the Court dropped the adverb “properly” in subsequent case-law, the so-called right of the public to be informed has endured as one of the Court’s most important principles on freedom of expression and media freedom.

The Court has also shortened and sharpened its description of the public watchdog role of the media, consistently recalling that the “duty of the press is to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest”.²²

The Court has moreover held that the “undertaking” of the media to inform the public on matters of public interest “cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor”, adding that “[t]his observation is especially valid in relation to audio-visual media, whose programmes are often broadcast very widely”.²³

¹⁸ *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24.

¹⁹ *Ibid.*

²⁰ *The Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 65, Series A no. 30.

²¹ *Ibid.*, § 66.

²² *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, §§ 59 and 62, ECHR 1999-III, <https://hudoc.echr.coe.int/eng?i=001-58369>; *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 165, 8 November 2016, <https://hudoc.echr.coe.int/?i=001-167828>.

²³ *Informationsverein Lentia and Others v. Austria*, 24 November 1993, § 38, Series A no. 276, <https://hudoc.echr.coe.int/?i=001-57854>.



Having recalled the foundations of the Court's freedom of expression jurisprudence, we can now turn to specific aspects of the jurisprudence that address public interest content.

2.1.2. Guiding questions

To appreciate how the Court's principles relate to public interest content and its accessibility and findability, three guiding questions will be posed and answered in turn:

1. What is public interest content?
2. What is the public interest in being able to receive such content?
3. What measure of protection is given to public interest content and public debate?

2.1.2.1. What is public interest content?

In its essence, public interest content is content – information, ideas, opinions and data – that relates to matters of interest to society. Such content helps individuals to make informed opinions and decisions, which in turn helps them to participate in public debate and in public affairs more generally. This is one of the most frequently invoked rationales for the protection of freedom of expression, described neatly by Eric Barendt as “the argument from citizen participation in a democracy”.²⁴

The Court has, on a number of occasions, set out what it understands as matters of public interest:

*Public interest ordinarily relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about.*²⁵

The Court's case-law provides various examples of matters considered to be of public interest, including: administration of justice; public health; animal welfare; environmental issues; police brutality, etc.

This approach helps to clarify what falls within the scope of the public interest. Other findings by the Court help to clarify which topics fall outside its scope: “The public

²⁴ E. Barendt, *Freedom of Speech* (2nd Edition) (New York, Oxford University Press, 2005), pp. 18-21.

²⁵ (Without references to earlier case-law) *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 171, 27 June 2017, available at: <https://hudoc.echr.coe.int/?i=001-175121>. See also (with references to earlier case-law), *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 103, ECHR 2015 (extracts), available at: <https://hudoc.echr.coe.int/?i=001-158861>.



interest cannot be reduced to the public's thirst for information about the private life of others, or to an audience's wish for sensationalism or even voyeurism."²⁶

The exclusion of these topics is consistent with the Court's wider case-law on the right to privacy of public figures. When the Court has to balance the right to freedom of expression and the right to respect for private life in a concrete case, it applies several criteria.²⁷ Among them, the value of the contribution of the publication to public debate is "an initial essential" criterion that the Court examines.²⁸

2.1.2.2. What is the public interest in being able to receive such content?

As we have already seen, the Court attaches great importance to the protection of content that reflects societal pluralism and challenges conventional thinking and majority viewpoints. This is consistent with another of the Court's key principles on freedom of expression, *viz.* that states are the ultimate guarantors of pluralism, especially in the audiovisual sector.²⁹ Together these principles forge a very strong positive obligation for states to ensure the existence of a pluralistic offer of content via the media – and other online actors.

The Court has also consistently held that the public has a right to receive information and ideas on all matters of public interest and that the media have a duty to provide the public with such content. "All matters of public interest" clearly implies content dealing with a comprehensive range of topics that are of interest to the public.

In the context of access to (official or State-held) information, the existence of a public interest in (the disclosure of) the information is an important criterion for granting or denying access. The Court considers that:

*the information, data or documents to which access is sought must generally meet a public-interest test in order to prompt a need for disclosure under the Convention. Such a need may exist where, inter alia, disclosure provides transparency on the manner of conduct of public affairs and on matters of interest for society as a whole and thereby allows participation in public governance by the public at large.*³⁰

The upshot of these principles is that there is a clear public interest in the ability to receive, and thus effectively access, wide-ranging, pluralistic and challenging content.

²⁶ (Reference to *Couderc and Hachette Filipacchi Associés* omitted) *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 171, 27 June 2017; See also, *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 101, ECHR 2015 (extracts).

²⁷ Criteria relevant for the balancing exercise: Contribution to a debate of general interest; How well known is the person concerned and what is the subject of the report?; Prior conduct of the person concerned; Method of obtaining the information and its veracity; Content, form and consequences of the publication; Severity of the sanction imposed – *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 89-95, 7 February 2012, <https://hudoc.echr.coe.int/?i=001-109034>.

²⁸ *Ibid.*, § 90.

²⁹ *Informationsverein Lentia and Others v. Austria*, 24 November 1993, § 38, Series A no. 276.

³⁰ *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 161, 8 November 2016.



Another set of principles in the Court's case-law points to a complementary public interest focus, namely the ability to express one's opinions in public debate, freely and without fear, even when they challenge or go against those of the powers that be.

In its *Steel & Morris* judgment, the Court held that:

*in a democratic society even small and informal campaign groups [...] must be able to carry on their activities effectively and that there exists a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment.*³¹

In its *Dink* judgment, the Court went further and articulated a far-reaching, many-sided positive obligation for states:³²

*States are obliged to put in place an effective system of protection for authors and journalists as part of their broader obligation to create a favourable environment for participation in public debate by everyone and to enable the expression of opinions and ideas without fear, even when they are contrary to those held by the authorities or by a significant section of public opinion and even if they are annoying or shocking for the latter.*³³

This selection of principles from the case-law of the Court bears out the observation that the Court gives pride of place to the protection and promotion of content and debate that focus on all matters of interest to the public. The primacy of democratic deliberation is clear. As Frederick Schauer explains, according to this instrumental view, “the availability to the public of a wide range of ideas, expressed in a wide variety of ways, is a necessary condition for democratic decision making”.³⁴ The underlying assumption is that “the maximum availability of ideas will in fact improve the quality of public decision making”.³⁵

2.1.2.3. What measure of protection is given to public interest content and public debate?

The Court has held that “freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention”.³⁶ Political speech is

³¹ *Steel and Morris v. the United Kingdom*, no. 68416/01, § 89, ECHR 2005-II, <https://hudoc.echr.coe.int/?i=001-68224>.

³² For detailed analysis, see: Tarlach McGonagle, “Positive obligations concerning freedom of expression: mere potential or real power?”, in Onur Andreotti, Ed., *Journalism at risk: Threats, challenges and perspectives*, Straatsburg: Council of Europe Publishing, 2015, p. 9-35, <https://rm.coe.int/1680706afe>.

³³ *Dink v. Turkey*, nos. 2668/07 and 4 others, § 137, 14 September 2010, <https://hudoc.echr.coe.int/?i=001-100383>.

³⁴ Frederick Schauer, “Who decides?”, in Judith Lichtenberg, Ed., *Democracy and the mass media* (USA, Cambridge University Press, 1990), pp. 202-228, at p. 216.

³⁵ *Ibid.*

³⁶ *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103.



therefore afforded “privileged protection” under the Convention.³⁷ But how broad is political speech as a category of expression and how does it relate to public interest content?³⁸ The Court does not delineate the terms precisely. It sometimes mentions them in the same breath, stating, for instance, that there “is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest”.³⁹ It has also, on occasion, described matters of public interest as a subset of political speech, holding that “‘political expression’, including expression on matters of public interest and concern, requires a high level of protection under Article 10”.⁴⁰ In any case, political expression and matters of public interest are close cousins, commanding similarly high levels of protection. The margin of appreciation for states is accordingly narrow in such cases.

Needless to say, this high level of protection equally applies online, given that the Internet is “one of the principal means by which individuals exercise their right to freedom of expression and information, providing as it does essential tools for participation in activities and discussions concerning political issues and issues of general interest”.⁴¹

There is another relevant side to “the privileged position accorded by the Court in its case-law to political speech and debate on questions of public interest”: “The rationale for allowing little scope under Article 10 § 2 of the Convention for restrictions on such expressions [...], likewise militates in favour of affording a right of access under Article 10 § 1 to such information held by public authorities”.⁴²

2.2. The Committee of Ministers

Now that we have a clearer understanding of what public interest content entails, why it is important and how it is protected, we can turn our attention to how its availability, accessibility and findability can be ensured. This question is perhaps best answered through an analysis of the Committee of Ministers’ standard-setting work on relevant topics: the political recommendations seek to operationalise the principles identified by the Court and provide (practical) guidance to the 46 member states of the Council of

³⁷ *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 47, ECHR 1999-VIII, <https://hudoc.echr.coe.int/?i=001-58364>.

³⁸ For a wide-ranging discussion of freedom of expression and political expression, see: Susanne Nikoltchev, Ed., *IRIS Special: Political Debate and the Role of the Media - The Fragility of Free Speech* (Strasbourg, European Audiovisual Observatory, 2004), <https://rm.coe.int/1680783494>.

³⁹ *Wingrove v. the United Kingdom*, 25 November 1996, § 58, *Reports of Judgments and Decisions* 1996-V, <https://hudoc.echr.coe.int/?i=001-58080>.

⁴⁰ See, for example, *Steel and Morris v. the United Kingdom*, no. 68416/01, § 88, ECHR 2005-II.

⁴¹ *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 54, ECHR 2012, <https://hudoc.echr.coe.int/eng?i=001-115705>.

⁴² *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 163, 8 November 2016. See further on different types of speech and their levels of protection: Cabrera Blázquez F.J., Cappello M., Talavera Milla J., Valais S., “User empowerment against disinformation online”, *IRIS Plus*, European Audiovisual Observatory, Strasbourg, September 2022 pp. 55-58, <https://rm.coe.int/iris-plus-2022en3-user-empowerment-against-disinformation/1680a963c4>.



Europe on how to ensure the availability, accessibility and findability of public interest content.

2.2.1. Scattered focuses

There are scattered focuses on public interest content in the Committee of Ministers' recent standard-setting work. The Committee of Ministers' approach to public interest content encapsulates (and amplifies) that of the Court. For instance, Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors faithfully follows and re-emphasises the public's right to receive information and ideas on matters of public interest and that journalists and other media actors have the task of imparting such content, with the freedom to choose their own technique or style for such reporting.⁴³ Recommendation CM/Rec(2018)1 contains two explicit references to the public interest, in respect of: access to information on issues of public interest held by public bodies;⁴⁴ and the role of the media. The latter point is quite expansive:

The media should have the freedom and resources at all times to fulfil their task of providing accurate and reliable reporting on matters of public interest, in particular concerning vital democratic processes and activities, such as elections, referendums and public consultations on matters of general interest. Adequate safeguards, including legislative safeguards, as appropriate, should also be put in place to prevent interference with editorial independence of the media, in particular in relation to coverage of conflicts, crises, corruption and other sensitive situations where objective and quality journalism and reporting are key tools in countering propaganda and disinformation.⁴⁵

In the preamble to Recommendation CM/Rec(2022)11 on principles for media and communication governance, the Committee of Ministers reaffirms that:

diverse and independent media play a central role in democratic societies by offering a wide range of information on issues of public interest, providing a space for public debate to support individuals in the forming of opinion and holding States as well as powerful groups and individuals to account; and emphasising that, beyond journalism, the media provide education, entertainment, and cultural and artistic expression.⁴⁶

⁴³ Principles, Appendix to 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, 13 April 2016, paras. 13, 29 and 32.

⁴⁴ Appendix to Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership, 7 March 2018, para. 1.2.

⁴⁵ *Ibid.*, para. 1.4.

⁴⁶ Recommendation CM/Rec(2022)11 of the Committee of Ministers to member States on principles for media and communication governance, 6 April 2022, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a61712.



Among other brief references to the public interest, the Recommendation draws attention to the provision of alternative forms of personalisation that are compatible with the public interest, first to help mitigate the risks posed by algorithmic curation, selection and prioritisation,⁴⁷ and second to empower users and encourage the responsible use of media and platforms.⁴⁸

In the preamble to Recommendation CM/Rec(2022)13 on the impacts of digital technologies on freedom of expression, it is recalled that “media pluralism is a prerequisite for secure, widespread and unlimited access to information on issues of public interest”. This point is supplemented by references to the roles of professional news organisations and public service media. The Appendix to the Recommendation contains one specific guideline to member states concerning the promotion of public interest content by Internet intermediaries. It is a heavily qualified provision and its applicability appears limited to when necessary and in times of public emergency:

States may, where necessary and particularly in time of public emergency, in accordance with Article 15 of the Convention⁴⁹ as interpreted by the European Court of Human Rights in its case law, introduce appropriate and proportionate obligations for internet intermediaries to promote public interest content. Internet intermediaries should offer a higher level of protection for public interest content in ways that should be clear, non-discriminatory and transparently defined.⁵⁰

Quality journalism is a significant subset of public interest content. Even though the term is not defined in Recommendation CM/Rec(2022)4 on promoting a favourable environment for quality journalism in the digital age, “quality journalism” is described as having an “unwavering commitment to the pursuit of truth, fairness and accuracy, to independence, transparency and humanity, and a strong sense of public interest in promoting accountability in all sectors of society”.⁵¹ The Guidelines appended to the Recommendation stress the need for (financial) support for public service media (para. 1.1.4), community and local media (para. 1.1.5), not-for-profit journalism (para. 1.2.2) and investigative journalism (para. 1.3.4), due to their specific importance for public interest journalism.

⁴⁷ Appendix to Recommendation CM/Rec(2022)11, para. 13.

⁴⁸ Ibid., para. 15.

⁴⁹ Editorial footnote: Article 15 of the Convention – “Derogation in time of emergency”.

⁵⁰ Recommendation CM/Rec(2022)13 of the Committee of Ministers to member States on the impacts of digital technologies on freedom of expression, 6 April 2022, para. 4.4.

⁵¹ Appendix to 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, 17 March 2022, para. 1, https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ddd0.



2.2.2. Broader engagement

The Guidelines' focus on "Dissemination of quality content" (Section 2.2) is part of a broader engagement with the distribution and promotion of public interest content in the digital environment. The role of online gatekeepers, who can steer the flow of information online, and the challenges of ensuring access to quality journalism, are explained:

*2.2.1. **Gatekeeping:** digital media distribution channels and gateways with curated or sponsored content now influence the access to and the findability of quality content, including from public service media, through their personalised selection and recommendations based on users' expressed or inferred preferences. States, in collaboration with online platforms and other relevant internet intermediaries, media organisations and other key stakeholders that represent the whole diversity of society, should address the challenges related to the online distribution of public interest media content and develop appropriate regulatory responses to ensure that such content is universally available, easy to find and recognised as a source of trusted information by the public.*

[...]

*2.2.3. **Prioritisation of public interest journalism:** effective access to quality journalism should be supported by independent and transparent self-regulatory media initiatives, open to multi-stakeholder participation, that develop criteria for identifying reliable content. Such criteria could be applied, either through human or automated means, in the process of media distribution and consumption. Online platforms and other relevant internet intermediaries should make use of those criteria to promote those providers of news and quality journalism that offer such reliable content, for which purpose they should continuously improve their internal processes and operations, including through enhanced transparency.*

The broader engagement with the distribution and promotion of public interest content in the digital environment, mentioned above, has been developed in most detail, not in a Recommendation by the Committee of Ministers, but in the Guidance Note on the Prioritisation of Public Interest Content Online adopted by the Steering Committee for Media and Information Society (CDMSI) in 2021.⁵² The Guidance Note, in turn, draws on a detailed 2020 report for the Council of Europe by Eleonora Mazzoli and Damian Tambini.⁵³

⁵² Steering Committee for Media and Information Society, Guidance Note on the Prioritisation of Public Interest Content Online, 2 December 2021, <https://rm.coe.int/cdmsi-2021-009-guidance-note-on-the-prioritisation-of-pi-content-e-ado/1680a524c4>.

⁵³ Eleonora Mazzoli and Damian Tambini, *Prioritisation Uncovered: The Discoverability of Public Interest Content Online*, Council of Europe study DGI(2020)19, November 2020, https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ddd0.



2.3. Concluding remarks

The analysis in this chapter of a selection of judgments by the European Court of Human Rights shows that the Court attaches great importance to: the public's right to be informed about all matters of public interest; the corresponding duty of the media to inform the public about such matters; the ability of pluralism, especially via the media, to sustain robust and diverse public debate; and the right of everyone to be able to participate in public debate, freely and without fear. The principles developed by the Court in its relevant case-law provide a strong framework for protecting the public interest.

When it comes to operationalising those principles and applying them to the ever-evolving digital environment, the Committee of Ministers plays an important role. Recent standard-setting by the Committee of Ministers includes various “nods” towards the importance of public interest across a broad range of themes. It also includes more specific and frontal engagement with public interest content and it provides states with practical guidance on how to ensure the availability, accessibility and findability of public interest content across a comprehensive offer of media and platforms. In the online environment, technical issues can have far-reaching societal impact, and the standard-setting work pays appropriate attention to: gatekeeping functions of online actors; the modalities of prioritisation and personalisation; prominence-enhancing measures; and distribution strategies for public service media and quality journalism, etc.



3. European Union

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The purpose of this chapter is to examine European Union (EU) law and policy on access to, and findability of, public interest content on all platforms, including in broadcasting and online. And in order to discuss EU law and policy on this topic, it is helpful to begin with the broad definitional framework of public interest content developed by the European Court of Human Rights in *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* (content that “relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about. The public interest cannot be reduced to the public’s thirst for information about the private life of others, or to an audience’s wish for sensationalism or even voyeurism”).⁵⁴

Of note, the *Satakunnan Markkinapörssi Oy* judgment has been cited with approval by the Court of Justice of the European Union (CJEU);⁵⁵ and importantly, the definition has also been relied upon by the European Commission when defining matters of public interest in the recently-proposed Directive on strategic lawsuits against public

⁵⁴ *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, Application no. 931/13, 27 June 2017, par. 171, <https://hudoc.echr.coe.int/eng?i=001-175121>.

⁵⁵ See *Sergejs Buivids v. Datu valsts inspekcija*, Case C-345/17, 14 February 2019, para. 66, <https://curia.europa.eu/juris/liste.jsf?num=C-345/17>. See also a similar definition of public interest content in *Tietosuojavaltuutettu v. Satakunnan Markkinapörssi Oy and Satamedia Oy*, Opinion of Advocate General Kokott, Case C-73/07, 8 May 2008, paras. 73-74 (content related to a “public debate which is actually being conducted. There are also topics which are by nature matters of public interest, for example, public hearings within the meaning of Article 6(1) of the ECHR, the public interest in the transparency of political life and information on the ideas and attitudes, as well as the conduct, of prominent politicians ... On the other hand, it is doubtful whether information on matters of public interest is being communicated where details of an individual’s private life are disseminated which have no connection with a public function of the person concerned, particularly where their sole purpose is to satisfy the curiosity of a particular readership regarding an individual’s private life and they cannot be deemed to contribute to any debate of general interest to society despite that individual being known to the public”), <https://curia.europa.eu/juris/liste.jsf?num=C-73/07&language=en>.



participation (SLAPP).⁵⁶ Thus, public interest content includes “any matter which affects the public to such an extent that the public may legitimately take an interest in it”, such as: public health, safety, the environment, climate or enjoyment of fundamental rights; activities of a person or entity in the public eye or of public interest; matters under public consideration or review by a legislative, executive, or judicial body, or any other public official proceedings; allegations of corruption, fraud or criminality; and activities aimed to fight disinformation”.⁵⁷ However, “there is no legitimate interest involved where the sole purpose of a statement or activity concerning such a person or entity is to satisfy the curiosity of a particular audience regarding the details of a person’s private life”.⁵⁸

Notably, guaranteeing access to and findability of public interest content is currently high on the EU policy agenda, with further elaborations on the concept of public interest content. For example, the European Commission’s European Democracy Action Plan emphasised that an important tool to combat disinformation on online platforms is to guarantee “adequate visibility of reliable information of public interest”,⁵⁹ and the European Parliament has also emphasised that content on matters of public interest enjoys a “higher threshold of protection” under freedom of expression, and must be protected.⁶⁰ Recent legislative initiatives, such as the proposal for a European Media Freedom Act (EMFA), recognise the importance of ensuring prominence of “content of general interest” – in view of the current “abundance of information” and “increasing use of digital means to access the media”.⁶¹ Crucially, while the EMFA does not define public interest content, it does use the concept of quality media services (“quality media services, which have been produced by journalists and editors in an independent manner and in line with journalistic standards and hence provide trustworthy information, including news and current affairs content”).⁶² This focus on quality also underpins the recently adopted Digital Services Act (DSA), which uses the concepts of dissemination of “reliable information” and visibility of “authoritative information”.⁶³ Thus, for the purposes

⁵⁶ Proposal for a Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”), COM(2022) 177 final, Article 3(2), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0177>.

⁵⁷ Proposal for a Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”), COM(2022) 177 final, Article 3(2), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0177>.

⁵⁸ Proposal for a Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”), COM(2022) 177 final, Recital 19, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0177>.

⁵⁹ Communication On the European democracy action plan, COM(2020) 790 final, Section 4.2, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0790&from=EN>.

⁶⁰ European Parliament Resolution on strengthening democracy, media freedom and pluralism in the EU, P9_TA(2021)0451, 11 November 2021, para. A, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0451_EN.html.

⁶¹ Proposal for a Regulation establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EUCOM/2022/457 final, Recital 28, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0457>.

⁶² Proposed EMFA, Recital 11.

⁶³ 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, Recital 88 and 108 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065>.



of this chapter, the notion of public interest content is rooted in accurate and reliable public interest content, which is also consistent with ECHR case law, where reporting on matters of public interest is “subject to the proviso” that it is done “in good faith in order to provide accurate and reliable information”.⁶⁴

As such, this chapter will provide an overview of EU law and policy affecting access to, and findability of, public interest content on all platforms. The chapter thus takes a broader approach than focusing on concepts such as “prominence of audiovisual media services of general interest” under the Audiovisual Media Services Directive,⁶⁵ on which there are a number of excellent studies,⁶⁶ including a recent IRIS *Special* on prominence of services of general interest.⁶⁷

3.1. European Electronic Communications Code

When discussing EU law on access to, and findability of, public interest content, it is helpful to first provide a brief mention of early EU law rules which were designed to guarantee access to “content considered by society to be of public interest”.⁶⁸ In this regard, the 2002 Universal Service Directive (USD) should be mentioned, which contained provisions on so-called must-carry obligations.⁶⁹ Indeed, Article 31 provided that member states could place reasonable must-carry obligations, for transmission of specific radio and television channels, on electronic communications networks used for distribution of radio or television.⁷⁰ Notably, Article 31 did not impose must-carry obligations, but allowed member states to impose such obligations, in the interest of “legitimate public policy considerations”, and where they are “necessary to meet general interest objectives”.⁷¹ And as noted by Closs and Nikoltchev, Article 31 allowed member states to

⁶⁴ *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, Application no. 931/13, 27 June 2017, par. 183, <https://hudoc.echr.coe.int/eng?i=001-175121>.

⁶⁵ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, Article 7a, <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>.

⁶⁶ See e.g. European Regulators Group for Audiovisual Media Services, “Ensuring Prominence and Access of Audiovisual Media Content to all Platforms (Findability)”: Overview document in relation to Article 7a of the Audiovisual Media Services Directive, 2020, https://erga-online.eu/wp-content/uploads/2021/01/ERGA_SG3_2020_Report_Art.7a_final.pdf; and Mark D. Cole and Christina Etteldorf, “Implementation of the revised Audiovisual Media Services Directive” (European Parliament, 2022), [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/733100/IPOL_STU\(2022\)733100_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/733100/IPOL_STU(2022)733100_EN.pdf).

⁶⁷ Cappello (ed.), “Prominence of European works and of services of general interest”, IRIS *Special* (2023), <https://rm.coe.int/iris-special-2022-2en-prominence-of-european-works/1680aa81dc>.

⁶⁸ European Audiovisual Observatory, “To Have or Not to Have Must-Carry Rules” (2005), p. 4, <https://rm.coe.int/168078349b>.

⁶⁹ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services (Universal Service Directive), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002L0022>.

⁷⁰ Directive 2002/22/EC, Article 31.

⁷¹ Directive 2002/22/EC, Recital 43.



“award” channels that offered “content in furtherance of public interest goals” the right to be carried on all networks,⁷² in an early example of rules on ensuring access to certain public interest content.⁷³ The whole discussion around the USD is quite similar to that of today on “whether government should have a role in guaranteeing that certain content considered by society to be of public interest reaches all viewers”, and on how to guarantee access to “content that matters because it caters for public interests”.⁷⁴ Notably, in 2018, the European Electronic Communications Code (EECC) was enacted,⁷⁵ which replaced the USD, with Article 114 EECC replacing Article 31 USD. Article 114 retained most of Article 31’s language. Importantly, it added must-carry obligations that may include “accessibility services to enable appropriate access for end-users with disabilities” (end-users with disabilities had only been mentioned in a recital under the USD).⁷⁶ There have been various detailed studies on member state implementation of Article 114, noting the “diversity” of national legal approaches, including the networks covered (cable, DTT, IPTV and satellite), and the channels to be carried (public service media, commercial channels and foreign public service media).⁷⁷ As such, the USD and EECC are examples of EU law allowing imposition of obligations on electronic communications networks to promote access to services that are considered to carry content of general interest. This is in contrast to rules that promote access to content of general interest.

3.2. Audiovisual Media Services Directive

Further legislation that is highly relevant to accessing and finding public interest content is the 2010 Audiovisual Media Service Directive (AVMSD), and its 2018 amendment.⁷⁸ It contains a number of notable provisions designed to guarantee and promote access to content of public interest. First, two provisions in the AVMSD seek to guarantee wide access for viewers to events of major importance for society, by setting down rules for broadcasters, and ensuring news media can broadcast news reports on events of high interest to the public. In this regard, Article 14 AVMSD contains rules to ensure that broadcasters do not broadcast on an exclusive basis events of “major importance for society” which would deprive a substantial proportion of the public from following these

⁷² European Audiovisual Observatory, “To Have or Not to Have Must-Carry Rules” (2005), p. 1.

⁷³ Cole and Etteldorf, “Implementation of the revised Audiovisual Media Services Directive” (European Parliament, 2022), p. 45, [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)733100](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)733100).

⁷⁴ European Audiovisual Observatory, “To Have or Not to Have Must-Carry Rules” (2005), p. 3.

⁷⁵ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1547633333762&uri=CELEX%3A32018L1972>.

⁷⁶ Directive (EU) 2018/1972, Article 114.

⁷⁷ Parcu et al., “Study on media plurality and diversity online” (European Commission, 2022), p. 97, <https://op.europa.eu/en/publication-detail/-/publication/475bacb6-34a2-11ed-8b77-01aa75ed71a1/language-en/format-PDF/source-266738523>.

⁷⁸ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 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), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32010L0013>.



events via live or deferred coverage.⁷⁹ While under Article 15 AVMSD, member states are required to ensure, for the purpose of short news reports, that broadcasters have access to “events of high interest to the public”, which are transmitted on an exclusive basis by broadcasters under their jurisdiction.⁸⁰ Second, while not strictly concerning public interest content, Article 16 and 17 AVMSD have rules on ensuring broadcasters reserve certain transmission time for “European works”, with such rules designed to “contribute actively to the promotion of cultural diversity”.⁸¹ Notably, such rules have also been extended to on-demand audiovisual media services, and must ensure a certain share of “European works” in their catalogues and “prominence” of those works.⁸² Crucially, Recital 35 gives examples of ensuring prominence, including dedicated sections accessible from the service homepage, the possibility to search for European works in search tools, and European works promoted from a catalogue by use of banners.⁸³

Finally, a provision that must be mentioned and which has received quite some attention is Article 7a AVMSD, which provides that “Member States may take measures to ensure the appropriate prominence of audiovisual media services of general interest”.⁸⁴ Notably, this provision only mentions audiovisual media “services” of general interest, and not content of general interest. However, Recital 25 AVMSD 2018 provides that member states may impose obligations to ensure appropriate prominence of “content of general interest”, which should only be imposed where they are “necessary to meet general interest objectives”; and member states should only impose “proportionate obligations on undertakings in the interests of legitimate public policy considerations”.⁸⁵

Importantly, there has been considerable excellent research on Article 7a, including a recent IRIS *Special*,⁸⁶ and reports for the European Parliament, European Commission, and European Regulatory Group for Audiovisual Media Services (ERGA). As such, it is not proposed in this publication to delve deeply into implementation. However, some prominent examples of implementation include Germany, which introduced specific regulations based on Article 7a, obliging user interfaces (e.g, Smart TVs) and software-based applications to give appropriate prominence to broadcasting services providing content of general interest.⁸⁷ Similarly, in France, certain operators that set the conditions for the provision of services on user interfaces must ensure adequate visibility of services of general interest, which mainly covers public service media.⁸⁸ Notably, ERGA published a

⁷⁹ Directive 2010/13/EU, Article 14.

⁸⁰ Directive 2010/13/EU, Article 15.

⁸¹ Directive 2010/13/EU, Recital 69.

⁸² Directive (EU) 2018/1808, Article 13.

⁸³ Directive (EU) 2018/1808, Recital 35.

⁸⁴ Directive (EU) 2018/1808, Article 7a.

⁸⁵ Directive (EU) 2018/1808, Recital 25.

⁸⁶ Cappello (ed.), “Prominence of European works and of services of general interest”, IRIS *Special* (2023), <https://rm.coe.int/iris-special-2022-2en-prominence-of-european-works/1680aa81dc>.

⁸⁷ ERGA, “Ensuring Prominence and Access of Audiovisual Media Content to all Platforms (Findability)”: Overview document in relation to Article 7a of the Audiovisual Media Services Directive, p. 16, https://erga-online.eu/wp-content/uploads/2021/01/ERGA_SG3_2020_Report_Art.7a_final.pdf.

⁸⁸ See Mark D. Cole and Christina Etteldorf, “Implementation of the revised Audiovisual Media Services Directive” (European Parliament, 2022), p. 50.



2021 report detailing member state implementation of Article 7a AVMSD and noting that most member states had chosen “not to avail” of the possibility to take measures under Article 7a. A follow-up report in 2022 found that that had been “no further national transpositions of Art. 7a AVMSD”,⁸⁹ and a further report for the European Parliament published in late 2022 found that “implementation of the option provided for in Art. 7a AVMSD has been hardly used”.⁹⁰ Importantly, ERGA has emphasised that the AVMSD does not contain a definition of scope, appropriate prominence, or content of general interest, and has recommended that work on harmonising potential definitions and approaches under Article 7a AVMSD be conducted.⁹¹

3.3. Digital Services Act

As online platforms play a crucial role in access to, and findability of, public interest content online, the Digital Services Act (DSA) that recently entered into force is also of importance.⁹² The DSA aims to create a safe online environment by protecting users’ fundamental rights and regulating online intermediaries, such as platforms.⁹³ And a number of provisions are particularly relevant.

First, platforms’ content moderation policies can play a determining role in the accessibility and findability of (public interest) content. In this regard, under Article 14 DSA, platforms are obliged to include information on their content moderation practices, including algorithmic decision-making, in their terms and conditions.⁹⁴ When applying and enforcing restrictions based on their terms and conditions, platforms should do so with due regard to users’ fundamental rights, including freedom and pluralism of the media.⁹⁵ Importantly, content on matters of public interest is afforded a higher threshold of protection under the right to freedom of expression, and this would be an important principle for platforms to take into account when enforcing restrictions based on their terms and conditions while having due regard for fundamental rights.⁹⁶ Notably, the

⁸⁹ ERGA, 2022 Consistent implementation and enforcement of the AVMSD framework, p. 5, https://erga-online.eu/wp-content/uploads/2022/12/2022-12-ERGA-SG1-Report-Prominence_Art.7a-and-Art.-13.pdf.

⁹⁰ Mark D. Cole and Christina Etteldorf, “Implementation of the revised Audiovisual Media Services Directive” (European Parliament, 2022), p. 45, [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)733100](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)733100).

⁹¹ ERGA, “Ensuring Prominence and Access of Audiovisual Media Content to all Platforms (Findability)”: Overview document in relation to Article 7a of the Audiovisual Media Services Directive, p. 16, https://erga-online.eu/wp-content/uploads/2021/01/ERGA_SG3_2020_Report_Art.7a_final.pdf.

⁹² 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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065>.

⁹³ Regulation (EU) 2022/2065, Recital 3.

⁹⁴ Regulation (EU) 2022/2065, Article 14(1) and Recital 45.

⁹⁵ Regulation (EU) 2022/2065, Article 14(4) and Recital 47.

⁹⁶ European Parliament Resolution on strengthening democracy, media freedom and pluralism in the EU, P9_TA(2021)0451, 11 November 2021, para. A, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A790%3AFIN&qid=1607079662423>.



original DSA proposal did not mention media freedom or pluralism,⁹⁷ while the adopted version now explicitly mentions freedom and pluralism of the media, which was welcomed by bodies such as ERGA.⁹⁸ Further, to strengthen transparency on platforms' content moderation practices, Article 15 DSA obliges platforms to annually make a report available on the content moderation they engaged in, in which they must also specify the measures they took that affected the “availability, visibility and accessibility of information”.⁹⁹ Such reports may also help to better understand how exactly platforms influence the accessibility of (public interest) content online.

Second, recommender systems play an important role in the way content online is organised as they “determine the relative order of information presented”,¹⁰⁰ and are thus very influential with regard to accessibility and findability of (public interest) content online.¹⁰¹ Therefore, platforms that use recommender systems are obliged under Article 27 to set out the “main parameters” used in recommender systems in their terms and conditions, including any options for users to modify or influence those parameters.¹⁰² Although it remains to be seen how this provision works in practice, users may be able to for instance change the settings of their recommender systems to see more (or less) content of public interest. Very Large Online Platforms (VLOPs)¹⁰³ must also provide for an option to use recommender systems that are not based on profiling.¹⁰⁴ Notably, it is helpful to mention here the 2022 Strengthened Code of Practice on Disinformation, which is a self-regulatory instrument containing a set of commitments and measures to which platforms can voluntarily adhere.¹⁰⁵ Crucially, the Code contains a commitment for platform signatories to mitigate the spread of disinformation by designing their recommender systems to “improve the prominence of authoritative information”.¹⁰⁶ ERGA has also underlined that recommendation systems can be used to enhance prominence of general interest content.¹⁰⁷

⁹⁷ Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, Article 12 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0825&from=en>>.

⁹⁸ ERGA, Digital Services Act (DSA) - ERGA priorities for the trilogue negotiations, 18 February 2022 <<https://erga-online.eu/wp-content/uploads/2022/02/2022-02-18-DSA-ERGA-priorities-for-trilogues-position-paper-final.pdf>>.

⁹⁹ Regulation (EU) 2022/2065, Article 15(1)(c) and Recital 49.

¹⁰⁰ Regulation (EU) 2022/2065, Article 27(1).

¹⁰¹ As described in Regulation (EU) 2022/2065, Recital 70, the manner in which information is prioritised and presented on its online interface to facilitate and optimise access to information is “a core part of the online platform’s business”.

¹⁰² Regulation (EU) 2022/2065, Article 27(1).

¹⁰³ VLOPs are platforms which have a number of average monthly active recipients of the service in the EU equal to or higher than 45 million, see Regulation (EU) 2022/2065, Article 33(1).

¹⁰⁴ Regulation (EU) 2022/2065, Article 38.

¹⁰⁵ 2022 Strengthened Code of Practice on Disinformation, <https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation>.

¹⁰⁶ Commitment 18.1 of the Code.

¹⁰⁷ European Regulators Group for Audiovisual Media Services, *Consistent implementation and enforcement of the AVMSD framework. Exploring how algorithms and recommendation systems could ensure the appropriate prominence of audiovisual media services of general interest (Article 7a) as well as the prominence of European*



Third, VLOPs must also assess whether any “systemic risks” stem from their services and take appropriate measures to mitigate those risks. Risks that are regarded as systemic: are:

- the dissemination of illegal content
- any actual or foreseeable negative effects for the exercise of fundamental rights, in particular “freedom of expression and information, including the freedom and pluralism of the media”
- any actual or foreseeable negative effects on civic discourse and electoral processes, and public security and
- in relation to gender-based violence, public health and minors and “serious negative consequences” to one’s physical and mental well-being

Notably, the findability of and access to public interest content is particularly relevant in relation to VLOP services and negative effects for freedom and pluralism of the media.¹⁰⁸ When assessing those risks, VLOPs must take into account in particular their recommender systems, content moderation systems and the enforcement of their terms and conditions.¹⁰⁹ VLOPs must take mitigating measures for the systemic risks assessed, such as adapting their terms and conditions, their content moderation processes and their recommendation systems.¹¹⁰ Indeed, Recital 88 DSA stresses that one corrective measure can be “improving the visibility of authoritative information sources”. Further, the 2022 Strengthened Code of Practice on Disinformation is linked to the DSA, too; and although disinformation is not directly described as a systemic risk, several recitals describe how disinformation can contribute to systemic risks.¹¹¹ In addition, the 2022 Code describes how signing up to it should be considered as a possible risk mitigation measure under Article 35 DSA.¹¹² In this regard, public interest content can play an important role in the mitigation of systemic risks by serving as an antidote for the dissemination of disinformation.¹¹³

Lastly, the DSA contains two provisions based on which platforms can be required to take certain measures related to crisis management and the dissemination of certain public interest content to mitigate crises, namely Articles 36 and 48 DSA. Article 48(2) DSA mentions “prominently displaying information on the crisis situation” that has been provided by either EU member states’ authorities or “other relevant reliable bodies” as a possible measure to address crisis situations. In other words, in times of “crisis”, the Commission in cooperation with the European Board for Digital Services and platforms will be able to influence what information should be prioritised and prominently visible, as such measures are deemed to be of public interest. As addressing crisis situations

works (Article 13(1)), December 2022 <https://erga-online.eu/wp-content/uploads/2022/12/2022-12-ERGA-SG1-Report-Prominence_Art.7a-and-Art.-13.pdf>, p. 11.

¹⁰⁸ Regulation (EU) 2022/2065, Article 34(1).

¹⁰⁹ Regulation (EU) 2022/2065, Article 34(2)(a), (b) and (c).

¹¹⁰ Regulation (EU) 2022/2065, Article 35(1)(b), (c) and (d).

¹¹¹ E.g., Regulation (EU) 2022/2065, Recitals 83, 84 and 104.

¹¹² 2022 Strengthened Code of Practice on Disinformation, Preamble sub h..

¹¹³ 2022 Strengthened Code of Practice on Disinformation, Measure 18.1 and DSA, Recital 88 .



relates to matters of public interest, prominently displaying information to address such crises should therefore also be regarded to be of public interest. The 2022 Strengthened Code of Practice on Disinformation also addresses crisis situations, by stipulating that relevant signatories will design their services in a way to “lead users to authoritative sources on topics of particular public and societal interest or in crisis situations”.¹¹⁴

3.4. Proposal for a European Media Freedom Act

The final legislative initiative to mention is the European Commission’s recently proposed European Media Freedom Act (EMFA).¹¹⁵ The proposed regulation presents a set of rules that aim to protect media freedom, pluralism and media independence in the EU. Of the four specific objectives the EMFA mentions, the aim to facilitate provision of quality media services is of particular interest regarding the accessibility and findability of public interest content.¹¹⁶

In the context of access to content of public interest, the EMFA starts by giving media service recipients a right to “receive a plurality of news and current affairs content” that benefits public discourse.¹¹⁷ In that regard, such media service providers (MSPs) that provide news and current affairs content have certain duties as laid down in Article 6.¹¹⁸ For instance, they shall make information available on their contact details and their owners with shareholdings that enable them to influence “the operation and strategic decision making”.¹¹⁹ News and current affairs MSPs must also take measures to guarantee the independence of “individual editorial decisions”.¹²⁰ Recital 20 gives some clarification as to what should be understood under such individual editorial decisions by stating that once the overall editorial line has been established, MSPs should adopt measures to guarantee decisions taken by editors “on specific pieces of content as part of their everyday work” so as to prevent interference with “individual decisions in the course of their professional activity”.

Regarding the (appropriate) prominence and findability of public interest content, section 3.2 already discussed Article 7a AVMSD. As discussed, the option to implement rules on prominence based on Article 7a AVMSD is ongoing. The EMFA builds on Article 7a AVMSD through Article 15 EMFA. Based on this provision, the European Board for Media Services (‘the Board’) “shall foster the exchange of best practices among the

¹¹⁴ 2022 Strengthened Code of Practice on Disinformation, Measure 22.7.

¹¹⁵ EMFA; see also, Commission Recommendation EU 2022/1634 of 16 September 2022 on internal safeguards for editorial independence and ownership transparency in the media sector, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022H1634&from=EN>.

¹¹⁶ Chapter 1 of the Explanatory Memorandum of the EMFA, p. 3.

¹¹⁷ Proposed EMFA, Article 3.

¹¹⁸ MSPs that are micro enterprises within the meaning of Article 3 of Directive 2013/34/EU are exempted from these obligations, see Article 6(3) of the EMFA.

¹¹⁹ Proposed EMFA, Article 6(1).

¹²⁰ Proposed EMFA, Article 6(2).



national regulatory authorities or bodies”.¹²¹ It will do so by consulting stakeholders, and in close cooperation with the Commission, “on regulatory, technical or practical aspects pertinent to the consistent and effective application” of the EMFA and of the AVSMD.¹²² Recital 28 EMFA further details that due to the abundance of information and the increasing use of digital means to access media, it is especially important to ensure prominence for content of general interest. This is important in order to (i) achieve a level playing field and (ii) to comply with the fundamental right to receive information as laid down in Article 11 of the European Charter of Fundamental Rights.¹²³ The Commission may issue guidelines related to the application of the EMFA and the AVMSD, and in particular on the appropriate prominence of audiovisual media services of general interest under Article 7a of the AVMSD.¹²⁴ In case the Commission does so, the Board shall assist the Commission “by providing expertise on regulatory, technical or practical aspects”.¹²⁵ Such guidelines could help to achieve legal certainty, given the possible impact of measures taken under Article 7a AVMSD.¹²⁶ Of note, the EMFA’s explanatory memorandum states that in stakeholder consultations, public broadcasters specifically support guidance on the appropriate prominence of general interest services.¹²⁷ However, as ERGA described, the relatively small number of national transposition provisions of Article 7a AVMSD were due to the non-obligatory nature of the provision.¹²⁸ It remains to be seen whether Article 15 EMFA will change this situation, as this provision also does not contain an obligation to impose measures on the prominence of general interest content.

In light of the importance of online platforms (and in particular VLOPs) for access to, and findability of, media content (of public interest), the EMFA also addresses the relationship between “media service providers”¹²⁹ and VLOPs. Article 17 enables MSPs to self-declare themselves as an MSP within the meaning of Article 2(2) EMFA. They can do so if they are editorially independent from EU member states and third countries, and if they are subject to regulatory requirements for the exercise of editorial responsibility or if they adhere to co- or self-regulation that is “widely recognised and accepted in the relevant media sector”.¹³⁰ VLOPs “shall take all possible measures” to communicate to the MSP concerned their statement of reasons for their decision to suspend the provision of their service based on the fact that certain MSP content is incompatible with the VLOPs’

¹²¹ Proposed EMFA, Article 15(1).

¹²² Proposed EMFA, Article 15(1).

¹²³ Notably, Recital 28 mentions the importance of prominence of content of general interest, whereas Article 7a of the AVMSD only mentions services of general interest, see section 2.2.

¹²⁴ Proposed EMFA, Article 15(2).

¹²⁵ Proposed EMFA, Article 15(2).

¹²⁶ Proposed EMFA, Recital 28.

¹²⁷ Explanatory Memorandum of the EMFA, paragraph 3, p. 11.

¹²⁸ ERGA, Consistent implementation and enforcement of the AVMSD framework: Exploring how algorithms and recommendation systems could ensure the appropriate prominence of audiovisual media services of general interest (Article 7a) as well as the prominence of European works (Article 13(1)), 2022, https://erga-online.eu/wp-content/uploads/2022/12/2022-12-ERGA-SG1-Report-Prominence_Art.7a-and-Art.-13.pdf, p. 12.

¹²⁹ Proposed EMFA, Article 2(2) defines media service provider as “a natural or legal person whose professional activity is to provide a media service and who has editorial responsibility for the choice of the content of the media service and determines the manner in which it is organised”.

¹³⁰ Proposed EMFA, Article 17(1).



terms and conditions, but it does not contribute to a systemic risk as referred to in the DSA.¹³¹¹³² Complaints by MSPs shall be handled by the VLOP with priority¹³³ and in case a MSP considers the service to be frequently restricted by the VLOP without sufficient grounds, the VLOP “shall engage in a meaningful and effective dialogue” with the MSP to find “an amicable solution”.¹³⁴ In addition, the Board shall regularly organise a structured dialogue between VLOPs and representatives of both MSPs and civil society to discuss the experiences and best practices of Article 17 EMFA “to foster access to diverse offers of independent media” on VLOPs.¹³⁵ The reports on the results of such structure dialogues may, where relevant, be examined by the Commission when assessing systemic risks as referred to in the DSA.¹³⁶

Lastly, Article 19 EMFA gives users of devices used for access to and use of audiovisual media services the right to easily change the “default settings”¹³⁷ of such devices in order “to customise the audiovisual media offer according to their interests or preferences in compliance with the law”.¹³⁸ Recital 37 EMFA explains this right to customise one’s audiovisual media offer by clarifying that recipients of audiovisual media services should be able to effectively choose the content according to their preferences, which is sometimes constrained by commercial media sector practices.¹³⁹ Manufacturers and developers of such devices and user interfaces must make sure to include a functionality that enables users to “freely and easily” change those settings.¹⁴⁰ However, this provision shall not affect national measures that implement the previously discussed Article 7a AVMSD.¹⁴¹

3.5. Conclusion

This chapter has sought to provide an overview of EU law and policy on access to and findability of public interest content. It has demonstrated that from early pieces of legislation, such as the Universal Service Directive, a core concern has been how to ensure access to content of public interest, and what the role of member states and the EU should be in guaranteeing access to such content. This central concern has perdured under various provisions of the AVMSD, DSA, and the proposed EMFA. Notably, with the DSA and proposed EMFA, there has been a regulatory shift towards the accessibility and

¹³¹ Proposed EMFA, Article 17(2) and Recital 31.

¹³² ERGA, Proposal of the Commission for a European Media Freedom Act (EMFA). ERGA position, 2022, p. 9.

¹³³ Proposed EMFA, Article 17(3).

¹³⁴ Proposed EMFA, Article 17(4) and Recital 35.

¹³⁵ Proposed EMFA, Article 18(1) and Recital 36.

¹³⁶ Proposed EMFA, Recital 36.

¹³⁷ ERGA has suggested further clarification of the concept of “default setting”, European Regulators Group for Audiovisual Media Services, Proposal of the Commission for a European Media Freedom Act (EMFA). ERGA position, November 2022, p. 10.

¹³⁸ Proposed EMFA, Article 19(1).

¹³⁹ Proposed EMFA, Recital 37.

¹⁴⁰ Proposed EMFA, Article 19(2).

¹⁴¹ Proposed EMFA, Article 19(1).



findability of public interest content in the online environment, and the impact of online platforms in particular. In addition, when comparing the DSA and the EMFA, and instruments such as the EECC and the AVMSD, there has also been a regulatory shift towards users, in the sense that users have been given more autonomy over access to content. For instance, under the DSA, users may change the settings of recommendation systems used by platforms; and under the EMFA, users of certain media service providers may change the default settings of the devices they use. As such, users are more autonomous and may be able to directly influence the degree of public interest content they will see. However, it remains to be seen whether this positively influences the success or popularity of general interest content, as users would also be able to choose to see less general interest content, according to their preferences. Finally, a major thread running through recent EU law and policy has been the importance of guaranteeing access to, and findability of, public interest content as a means to address disinformation, especially the importance of platforms guaranteeing “adequate visibility of reliable information of public interest”.¹⁴² This is particularly the case under the risk-mitigation framework of the DSA, and the Code of Practice on Disinformation, with improving the visibility of public interest content on platforms being a central concern.¹⁴³ Indeed, the EMFA is premised upon the notion that public interest content, such as news and current affairs content, is an “antidote” against disinformation, including foreign information manipulation and interference.¹⁴⁴

¹⁴² Communication On the European democracy action plan, COM(2020) 790 final, Section 4.2, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0790&from=EN>.

¹⁴³ See, for example, DSA, Recital 88.

¹⁴⁴ EMFA, Recital 11.



4. Media markets

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4.1. Introduction

With the 2018 revision of the Audiovisual Media Services Directive (AVMSD)¹⁴⁵ and the introduction of the possibility in Article 7a for member states “to take measures to ensure the appropriate prominence of audiovisual media services of general interest”, member states are faced with the question of whether to take such measures, and if so, how to shape them in the current highly fragmented and dynamic audiovisual media landscape.

Questions member states have to address are: 1) Which audiovisual media services are eligible for the epithet ‘general interest’? 2) On which platforms or in which viewing environments would they want to take measures to ensure appropriate prominence? 3) What shape can appropriate prominence take on these platforms?

This chapter discusses these issues from an economic perspective. It sets off by sketching the rapidly fragmenting audiovisual media landscape and changes in the behaviour of media consumers. Next, it discusses several aspects of prominence measures from an economic perspective. In media markets, prominence has value, and ‘markets’ for prominence exist. Given that prominence is by and large a zero-sum game, policy measures in light of Article 7a may come at an implicit cost for other actors in the value chain. Developments in various member states vis-à-vis the implementation of prominence measures under Article 7a are discussed along the three questions stated above.

4.2. The changing audiovisual media landscape

It is an understatement to say that the audiovisual media landscape has changed substantially over the past decades. In 1989, the year the Television without Frontiers

¹⁴⁵ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities, <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>.



Directive(89/552/EEC)¹⁴⁶ was adopted, there were 47 national television channels in Europe. Up until then, commercial television was virtually non-existent in Europe. By 2008, the number of television channels in Europe had exploded to more than 3,300 mostly commercial channels.¹⁴⁷ The boom of commercial television raised a new set of policy questions with an economic angle. Once commercial television started competing with public service broadcasting, questions about the social and cultural objectives of public service broadcasting became more prominent: Why are some channels financed with public money, while others have to earn all their income through advertising or other market-based revenue sources? What consequences should this have for programming restrictions?

With the increase of the number of commercial channels, the transmission capacity of cable and satellite distribution networks as well as that of spectrum for terrestrial (ether) distribution became scarce. To prevent a possible crowding out of public service broadcasting by commercial channels and to safeguard media pluralism, many countries introduced must-carry regulations that obliged these distribution networks to transmit public service broadcasting channels to their subscribers.¹⁴⁸

In the eighties and nineties, audiovisual media distribution via any distribution technology necessarily followed a broadcasting model (one-to-many), which meant consumption was essentially linear. Whether a programme was broadcast on free-to-air television or on a pay channel for which a subscription and smartcard were required, the starting time was the same for all potential viewers. They could decide to watch it directly, or to record it on their video recorder to watch it later. Alternative options for audiovisual media consumption were to rent or buy a video cassette, or to go the cinema.

Broadband Internet further disrupted the audiovisual media landscape. It enabled all the flavours of non-linear audiovisual media distribution and consumption that we know today: pausing live tv, replay services, subscription video on demand (SVOD), and transactional video on demand (TVOD). In particular SVOD services such as Netflix, Amazon Prime, and Apple TV have grown rapidly over the past years. In terms of revenues, on-demand services in Europe tripled from EUR 5.3 billion in 2017 to EUR 16.2 billion in 2021. Accordingly, the share of on demand in total audiovisual revenues increased from 5 to 13%.¹⁴⁹ In 2022, the average European consumer had as many as 71 SVOD services to choose from.¹⁵⁰

¹⁴⁶ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31989L0552>.

¹⁴⁷ ACT (Association of Commercial Television in Europe), (2009), 2009 Annual Report,, Brussels, Belgium.

¹⁴⁸ Eijk, N. van, Sloot, B. van der (2012), "Must-carry Regulation: A Must or a Burden?" In: *IRIS Plus 2012-5*, Must-carry: Renaissance or Reformation?, Susanne Nikoltchev (Ed.), European Audiovisual Observatory, Strasbourg, 2012, pp. 7-23, <https://rm.coe.int/1680783db4>.

¹⁴⁹ European Audiovisual Observatory (2023), *Yearbook 2022/2023 – Key trends*, Strasbourg, France, p. 37, <https://rm.coe.int/yearbook-key-trends-2022-2023-en/1680aa9f02>. Between 2011 and 2021, total revenues of the audiovisual sector in Europe remained stable, with some decline in 2020 and recovery in 2021 (id., p. 15 & 26).

¹⁵⁰ Id., p. 51.



Yet, while some market watchers have predicted the imminent death of linear television with the rise of SVOD, statistics tell a different story. In Europe, per capita viewing time of linear television channels fluctuated only minimally around 3.5 hours per day between 2011 and 2021, increasing by one minute over those 10 years.¹⁵¹ Underpinning this steady development is a gradual shift to the use of catch-up services and recording TV on set-top boxes. Live TV is being partially substituted by deferred usage, but on average, the rise of SVOD services is adding on to total viewing time in Europe instead of cannibalizing it. Having said this, some countries, such as the Nordic countries and the UK, are showing a gradual decline in viewing time for television channels.¹⁵²

Unsurprisingly, younger age groups differ in their viewing behaviour from older age groups. In the Netherlands, total viewing time for television channels declined by half an hour between 2011 and 2021: from 185 to 154 minutes. For youngsters between six and 19 years of age, it declined from almost two hours to less than 40 minutes in 2021, while consumers aged 65 and older increased their viewing time slightly over this period, towards 292 minutes in 2021.¹⁵³

Within the viewing time of linear television channels, public service broadcasters have an average market share of 30% in Europe. On average, this market share increased in 2020 and 2021, after a downward trend in preceding years.¹⁵⁴ Below this average, country figures range from less than 6% in Romania and Bulgaria to more than 80% in Denmark and Iceland.

Not only has watching TV partly shifted from linear to catch-up services, which has called for some adaptations in measuring consumers' behaviour, but a significant share of audiovisual media consumption has also shifted towards other screens: consumers watch audiovisual content not just on TV screens, but also on laptops, tablets, smartphones and sometimes even on smartwatches. These different screens come with different operating systems and viewing environments, for which audiovisual media services often need to launch tailored apps to reach their audience.

A further development, which is also relevant to discussions concerning prominence measures under Article 7a of the AVMSD, is the rise of content aggregator platforms launched by US-based tech giants such as Google (Chromecast) and Apple (Apple TV). Providers of set-top boxes provide similar functionality.¹⁵⁵ Aggregators provide an interface which enables consumers to browse and search for content over different underlying SVOD, TVOD or catch-up services. Not only do these aggregators provide access to the apps of the underlying services and by doing so to the curated environment

¹⁵¹ Id., pp. 30-31.

¹⁵² Id., p. 32.

¹⁵³ Commissariaat voor de Media (2022), *Mediamonitor 2022*, The Hague, The Netherlands, pp. 34-35, <https://www.mediamonitor.nl/english/about-the-mediamonitor/media-monitor-2022/>.

¹⁵⁴ European Audiovisual Observatory (2023), p. 31.

¹⁵⁵ Maltha, S., Hanswijk, M., van der Vorst, T., Groot Beumer, T., Smeitink, A., Verhagen, P., Rutten, P., van der Sloot, B. (2021), *Prominentie in beeld. Verkenning due prominence van audiovisuele media van algemeen belang*, Dialogic, Utrecht, The Netherlands, <https://www.dialogic.nl/wp-content/uploads/2021/10/prominentie-in-beeld-verkenning-due-prominence-van-audiovisuele-media-van-algemeen-belang-1.pdf>.



offered by these apps, they can also give direct access to content items within the underlying services (provided consumers have legal access, for instance via a subscription). This means the content is to some extent unbundled from the underlying audiovisual media services, and the curation and prominence choices made by these services.

4.3. An economic perspective on prominence measures

Whereas scarcity of distribution bandwidth triggered the rise of must-carry regulation in the nineties, consumers are now faced with a cornucopia-like audiovisual media landscape and a multitude of routes to consume audiovisual content. Ironically, this has raised concerns of a comparable nature. In the current landscape, it is not so much the access consumers have to certain content such as public service television which is at stake, but the findability and discoverability of such content. Not transmission capacity, but consumer attention is the scarce factor nowadays.

4.3.1. The economics of prominence

Brogi et al. (2022) define prominence as “the location of content and services on internet intermediation services that are more or less visible to the final users”.¹⁵⁶ For the purpose of this chapter, this definition is broadened towards linear television distributors. The notion that consumer attention is scarce, and hence that the location and visibility of products and services matter, is not new. For a long time now, the value of the positioning of products on shelves in stores has been acknowledged,¹⁵⁷ and printed newspapers have been aware that the headline and photo ‘above the fold’, which is visible in newspaper stands, is a strong driver of sales. Similarly, various studies have shown that the position a channel has in the electronic programming guide (EPG) positively affects viewing reach and audience performance.¹⁵⁸

Consequently, attention and a favourable position to attract attention can be offered for sale or made an element in negotiations. Grocery brands may bargain with stores about their wholesale price and shelf position simultaneously. Television channels and distributors typically negotiate about the distribution fee and many other aspects

¹⁵⁶ Brogi, E., Fahy, R., Idiz, D., Irion, K., Meiring, A., Parcu, P.L., Poort, J., Seipp, T., Verza, S. et. al. (2022), *Study on media plurality and diversity online*, Centre for Media Pluralism and Media Freedom (CMPF), European University Institute, CiTiP (Centre for Information Technology and Intellectual Property) of KU Leuven, Institute for Information Law of the University of Amsterdam (IViR/UvA), Vrije Universiteit Brussels (Studies in Media, Innovation and Technology, VUB- SMIT), p. 46, <https://cmpf.eui.eu/media-pluralism-online-project/>.

¹⁵⁷ E.g. see: Martínez-de-Albéniz, V. and Roels, G. (2011), *Competing for Shelf Space*, *Production and Operations Management*, 20, pp. 32-46 and the literature discussing therein.

¹⁵⁸ Id., p. 60.



simultaneously, one of them being the position of a channel in the EPG.¹⁵⁹ Similarly, SVOD, TVOD and catch-up services may negotiate with smart TV manufacturers about the prominence of their app: will it be pre-installed when consumers unbox their new TV set? Or will the service even have a special button on the remote control? If not, which position will the app take in the app store?¹⁶⁰ Will it be recommended 'above the fold', or only be findable if consumers search for it? Or might it be excluded from the app store altogether? Thus, it can be concluded that there is a vivid albeit rather opaque market for prominence of audiovisual services.

In this market for prominence, consumer attention is by and large a zero-sum-game: if one product negotiates a better shelf position in a store, other products will have to accept a less favourable position; if one channel gains a better position in the EPG, other channels move down; similarly, the 71 SVOD services that an average EU consumer can choose from, cannot all have a dedicated button on the remote control of a smart TV. This logic not only applies at the level of audiovisual media services on a platform or in an EPG, but also at the level of content items within a service or an aggregator platform. Within platforms, prominence is a zero-sum-game as well.

This implies that regulation to promote the prominence of an audiovisual media service of general interest per Article 7a of the AVMSD will necessarily demote other services, which did not acquire that epithet. Such regulation intervenes in the market for prominence and affects the playing field between competing services. On top of that, it may deprive distributors, platforms or TV manufacturers of some of their negotiation power or plainly of a source of income.

Audiovisual media services that do not enjoy the luxury of being considered of general interest might see this as state aid in favour of the services that do. Put simply, they might have to pay for prominence which other services get for free, by virtue of Article 7a of the AVMSD. It is, however, unlikely that it would ever be considered unjustified state aid by the Commission, bearing in mind that Article 7a explicitly creates the possibility for member states to take prominence measures, and provided member states follow a careful and transparent procedure in the definition and selection of services of general interest. Indeed, there can be good societal reasons to intervene in markets, to unlevel the playing field, and to provide state support for certain content services. It does, however, raise the bar for the problem analysis and for the justification of such regulation.

¹⁵⁹ Schelven, R. van, Wolter, L., Modderman, P., Rutten, P., Poort, J., van Eijk, N., Visser, F. (2017), *Must carry on. Onderzoek naar aanpassing van de mediawettelijke doorgifteverplichting*, Kwink Groep, The Hague, The Netherlands, https://www.ivir.nl/publicaties/download/Must_carry_on.pdf, p. 59.

¹⁶⁰ Maltha et al. (2021), pp. 15 & 33.



4.3.2. Defining general interest services

The AVMSD leaves it to member states how services of general interest are defined. A definition which has *prima facie* appeal is to equate it with public service media (PSM) services. After all, these are financed with public money and fulfil specified societal objectives defined by national laws. Even though Recital 25 of the Directive refers to “appropriate prominence of content of general interest”, Article 7a itself speaks of “audiovisual media services of general interest”, which raises doubts about whether a more fine-grained definition than that at the level of service providers can be made.

A first question this raises, however, is how to deal with regional and local PSM. If prominence regulation can be enforced as regionally or locally as their catchment area, it would make sense to treat such regional and local media similarly to national PSM. If on the other hand regulation takes a national scope, for instance by requiring apps to be pre-installed on smart TVs, or if prominence in distribution networks can only be enforced at a national or supra-regional level (e.g. think of prominence of PSM channels for satellite services), such a broad inclusion could cause a deluge of general interest content services in many member states, all deserving prominence. Consumers would be presented with many prominent content services which are not in their interest and other content would be crowded out.

Second, such a definition may hold *vis-à-vis* prominence measures in a linear environment but becomes problematic in the non-linear environment of apps and catch-up services. It is highly debatable whether all content produced or broadcast by PSM is itself of general interest while, at the same time, all content produced by commercial services is not. Commercial media services can create high-quality news programmes and documentaries as well as award-winning drama series, while public service media in many member states also engage in the production of profane entertainment shows. In a linear broadcasting environment, it is often argued that entertainment can attract viewers who are then exposed to more serious content that is truly of general interest.¹⁶¹ However, in the non-linear environment of an app, this argument can hardly be maintained. Is there a tipping point in the percentage of general interest content at which a service changes colour and becomes itself of general interest? If so, a commercial news service might also be of general interest.

Brogi et al. write in this context:

The notion of public interest services builds on a normative understanding of media and information content that are produced by organisations and/or service providers that strive to achieve wider public and societal objectives, that are best-serving a societal collective and enhancing public values rather than solely pursuing their own private interests and commercial gains. However, one of the working assumptions of this study is that public interest services do not have to be necessarily equated with publicly-funded or public

¹⁶¹ In more general terms, this is referred to as the ‘sandwich programming strategy’. See e.g.: Tiedge, J. T., & Ksobiech, K. J. (1988), The Sandwich Programming Strategy: A Case of Audience Flow, *Journalism Quarterly*, 65(2), pp. 376–383, <https://doi.org/10.1177/107769908806500217>.



service media (PSM) organisations, since in certain instances also commercially-funded media may also produce content that is considered to be of public interest and contributed to wider public and societal goals.¹⁶²

The implementation of Article 7a in Germany in the *Medienstaatsvertrag*¹⁶³ presents an interesting case in this context.¹⁶⁴ In Germany, all PSM including their online offerings automatically qualify as ‘public value content’ and fall under the relevant regulations. In addition, commercial providers that “make a significant contribution to the diversity of opinions and offers in Germany” can apply to receive the general interest content status for a period of three years. Applications are assessed based on a set of predefined criteria. More than 300 applications were received. While this approach meets the concerns expressed under the second point above by being open to commercial media services, it underscores the risks that were flagged in the first: so many services may be considered of general interest and deserving of prominence, that prominence measures risk losing their relevance, given the fact that prominence is a zero-sum game. After all, one cannot fit 300 services on the first page of an EPG or in the recommendation section of an app store.

In France, on the other hand, general interest content has in principle been confined to PSM providers, although some room has been created to also include other (commercial) audiovisual services if they contribute to plurality and cultural diversity.¹⁶⁵

4.3.3. The many shapes of prominence

Once “audiovisual media services of general interest” have been defined, the following questions remain: what does “appropriate prominence” mean, on which platforms or viewing environments should it be regulated and how? As was discussed in section 4.2, consumers increasingly watch content using catch-up services and via different screens such as laptops, tablets and smartphones. Even on the big screen in the living room, content may be accessed in different ways: via the EPG of the set-top box, via apps on a smart TV (activated on the screen or directly by pushing a button on the remote control)

¹⁶² Brogi et al. (2022), p. 46-47.

¹⁶³ *Medienstaatsvertrag (MStV) in der Fassung des Dritten Staatsvertrags zur Änderung medienrechtlicher Staatsverträge (Dritter Medienänderungsstaatsvertrag) in Kraft seit 1. Juli 2023*, Article 84: „Auffindbarkeit in Benutzeroberflächen », https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Gesetze_Staatsvertraege/Medienstaatsvertrag_MStV.pdf.

¹⁶⁴ Maltha et al. (2021), pp. 109-113 and Brogi et al. (2022), pp. 123-131.

¹⁶⁵ *Ordonnance n° 2020-1642 du 21 décembre 2020 portant transposition de la directive (UE) 2018/1808 du Parlement européen et du Conseil du 14 novembre 2018 modifiant la directive 2010/13/UE visant à la coordination de certaines dispositions législatives, réglementaires et administratives des Etats membres relatives à la fourniture de services de médias audiovisuels, compte tenu de l'évolution des réalités du marché, et modifiant la loi du 30 septembre 1986 relative à la liberté de communication, le code du cinéma et de l'image animée, ainsi que les délais relatifs à l'exploitation des œuvres cinématographiques*, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042722588>.

See for a discussion of the French case: Maltha et al. (2021), pp. 113-118.



or via a content aggregator platform which combines content from different underlying services. All these different ways of accessing content come with different prominence issues.

Within the context of an EPG, the prominence of a service – a channel or set of channels – translates to the position in the EPG. This is relatively easy to regulate, as long as the number of services that benefit from regulated prominence is very limited. When consumption takes place via apps on smart TVs and other devices, prominence rather translates to the question of whether an app is pre-installed, whether it is available in the app store and how it is positioned in the app store or on the device. Again, regulation requiring apps to be pre-installed or at least supported in the app store, or regulation of the positioning of apps, is an option, as long as the number of services eligible to benefit from this is limited. One may wonder whether the findability of the selected services is actually a problem for consumers in these environments, but a more prominent positioning of the channel or app can undoubtedly support viewership, just like shelf positioning of groceries boosts sales.

As long as the epithet ‘general interest’ is awarded at a service level and not at a content level, regulating prominence becomes much more complicated or even untenable in the context of content aggregator platforms, where browsing and searching takes place within the repertoire of various service providers. Ironically, the findability of general interest content might be more problematic in such environments than at the level of linear channels. At the same time, in such environments it becomes hard to argue that content created or provided by commercial services can never be of general interest and thereby deserve prominence.¹⁶⁶ A definition of general interest in terms of services might have the effect of favouring an entertainment show produced by services of general interest over a profound documentary produced by a service which does not have that label.

4.4. Concluding remarks

So far, most member states seem to have been hesitant to act on the option provided in Article 7a of the AVMSD, “to take measures to ensure the appropriate prominence of audiovisual media services of general interest”. This may not come as a surprise, given the remarkably stable trend regarding the viewing time of linear television channels in Europe, and the fact that on average public service broadcasters – the most obvious addressee of the epithet “services of general interest” – have an average market share of 30% in Europe.

This suggests that up until now, the findability and discoverability of public service media has remained adequate for the average European citizen. Given the fact that prominence measures in a way unlevel the playing field in favour of the beneficiaries of such measures, one may doubt if these average figures provide sufficient justification

¹⁶⁶ Maltha et al. (2021), pp. 79-80.



for this. In the viewing environment of content aggregator platforms that enable consumers to browse and search for content over different underlying services, the prominence of what might be deemed general interest content could be more problematic. In these environments, however, defining general interest at the level of services rather than at the level of content items may prove unsustainable.



5. National minorities

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5.1. Introduction

The public interest is an amalgamation of the various interests of the groups and individuals that together make up the public.¹⁶⁷ In practical terms, it can often be very difficult to identify or delineate the full range of group and individual interests, let alone accommodate them in public policy. It should also be borne in mind that interests are typically shaped by the complex and dynamic relationship between group identities and individual identities.

Yet, group identities are sometimes sufficiently coherent and distinctive to warrant specific recognition as such. National minorities, children and persons with disabilities are examples of groups in society whose interests are discernible and catered to in media regulation, policy and practice.

Whereas pluralistic societies can count many different types of minority groups, international and European human rights law has traditionally tended to place emphasis on national minorities, or more precisely, persons belonging to national minorities. This emphasis can be seen across various international and European treaties, even though the term “national minority” has not yet been defined in an authoritative, legally binding or universally accepted way. It can also be seen in media regulation, policy and practice.

This chapter explores a selection of different media regulatory and policy measures at the European and national levels that aim to ensure that national minorities have effective access to public interest content that matches their particular interests.

At the European level, three instruments are of particular relevance: the Council of Europe’s treaties, the Framework Convention for the Protection of National Minorities (FCNM) and the European Charter for Regional or Minority Languages (ECRML), and the OSCE High Commissioner on National Minorities’ (HCNM) Tallinn Guidelines on National Minorities and the Media in the Digital Age. Each of these instruments will be explored in turn, using selected examples from different countries to illustrate how relevant issues

¹⁶⁷ In this IRIS Special, the general understanding of ‘public interest’ follows the approach of the European Court of Human Rights, briefly summarised as matters of interest to the public.



have been addressed in the (monitoring of the) implementation of these instruments. First, though, we will fix our attention on some conceptual issues.

5.2. National minorities and the media

5.2.1. National minorities in pluralistic societies: distinctiveness and integration

Persons belonging to national minorities need to be able to practise and develop their languages, religions, and cultures through a range of expressive and participatory activities in society. On the one hand, persons belonging to national minorities need their own media and (online) fora and platforms for intra-group communication and deliberation. On the other hand, national minorities are not hermetically sealed off from other groups in society; they are an integral part of society. They accordingly need to be able to access and participate in shared media and (online) fora and platforms for inter-group communication and deliberation. The inward- and outward-looking nature of these complementary communication needs is captured nicely by Todd Gitlin when he refers to the multitude of discrete “public sphericules” that make up the larger public sphere.¹⁶⁸

The broader point here is that while national minorities may have distinctive characteristics, which need to be protected and promoted, it is also important for societal cohesion that they are integrated in pluralistic societies. As we will see below, the dual aims of fostering distinctiveness and achieving societal integration, are central elements in European regulation and policy-making for national minorities and the media. Freedom of expression plays a key role - as “a method of achieving a more adaptable and hence a more stable community, of maintaining the precarious balance between healthy cleavage and necessary consensus”.¹⁶⁹

5.2.2. National minorities and pluralistic content

Public interest content concerning national minorities is pluralistic in nature. This pluralistic content implies that different needs are catered to: those of national minorities themselves, and those of society more broadly. The types of content involved are not simply different types of content targeting national minorities on the one hand, and wider society on the other hand. They are more complex, and they have wider benefits for

¹⁶⁸ Todd Gitlin, “Public sphere or public sphericules?”, in Tamar Liebes and James Curran (Eds.), *Media, Ritual and Identity* (London, Routledge, 1998).

¹⁶⁹ Thomas I. Emerson, *The System of Freedom of Expression* (New York, Random House, 1970), p. 7.



society beyond the public interest in their specific content. The following table sets out the different types of content and their various public interest benefits:

Table 1. Different types of content and their various public interest benefits

Type of content	Description of content	Public interest benefits
Type A	Content by minorities about minorities for minorities	Autonomy, collective identity, self-fulfilment, intra-group communication, empowerment
Type B	Content by minorities about minorities for other groups in society	Mutual understanding, tolerance, societal integration, cohesion and stability, autonomy, collective identity, empowerment
Type C	Content about other groups in society for minorities	Mutual understanding, tolerance, societal integration, cohesion and stability

This typology shows that public interest content that is relevant for national minorities is not only about thematic focuses, but wider societal benefits. Here we see the instrumental value of freedom of expression for communicating different perspectives and thus facilitating inter-group understanding, dialogue and tolerance.¹⁷⁰ Direct participation by minorities in programmes can help to achieve this goal in practice. A concrete example can be found in the Romanian Audiovisual Code. Article 70(1) states that “within the news and debate programmes that address issues of public interest regarding ethnic, religious or sexual minorities, the point of view of the abovementioned minorities will be presented”.¹⁷¹ To underscore the importance of adherence to this article, members of the Consiliul Național al Audiovizualului (National Audiovisual Council – CNA) and broadcasters issued a Joint Statement on Correct and Objective Public Information and Respect for the Rights of National Minorities in 2018.¹⁷²

5.2.3. National minorities and pluralistic media

The mere production of public interest content will have limited impact if the same content is not accessible or findable across a range of media, media services and platforms that in turn match the media use of persons belonging to national minorities

¹⁷⁰ See further, below, Article 6 FCNM and the Tallinn Guidelines.

¹⁷¹ Cojocariu E., “[RO] Joint Statement on correct and objective public information and respect for the rights of national minorities”, IRIS 2018-6:1/31, <https://merlin.obs.coe.int/article/8294>; Cojocariu E., “[RO] Modification of the Audiovisual Code”, IRIS 2019-8:1/34, <https://merlin.obs.coe.int/article/8665>.

¹⁷² Ibid.



and society. This point is underscored in Guideline 17 of the Tallinn Guidelines (discussed below):

*States should take effective measures to guarantee pluralism in the evolving media environment and to ensure that persons belonging to national minorities can access a wide range of media providing content that corresponds to their needs and interests, including in their own languages. These could include measures to promote such content and to ensure its visibility and findability.*¹⁷³

The reference to a wide range of media is important. Different media, media services and social media have different functionalities and are used in different ways. Consumption of news is a good example; in the Reuters Institute's annual Digital News Reports,¹⁷⁴ we can see how patterns of accessing news vary due to different influences, including age, levels of media and digital literacy, etc. Public interest content has maximum benefit when it is visible and findable across numerous outlets. This also explains the wider and ongoing shift in policy-making – illustrated in Guideline 17 – from requiring and incentivising production to mandating and stimulating prominence and dissemination.

The media offering available to minorities can be assessed in terms of its so-called institutional completeness. The term denotes “the level of completeness of a media system that serves a particular minority”, measured in terms of: (i) the availability of different types of media, and (ii) the availability of different formats [within available media types].¹⁷⁵ But Tom Moring has refined the notion, taking into account that minorities typically do not enjoy full institutional completeness. Moring's qualification is to speak of functional completeness, meaning “the extent to which people within a target group actually lean on the media supply that is produced for them (in their language or for their community).¹⁷⁶

5.3. Regulatory and policy frameworks

The central provisions for the protection of the rights of national minorities under international human rights law are Article 27 of the International Covenant on Civil and

¹⁷³ See further, the Explanatory Memorandum to the Tallinn Guidelines, pp. 47-50.

¹⁷⁴ Reuters Institute for the Study of Journalism, University of Oxford, annual Digital News Reports, <https://reutersinstitute.politics.ox.ac.uk/>.

¹⁷⁵ Tom Moring, “Functional Completeness in Minority Language Media”, in Mike Cormack & Niamh Hourigan, Eds., *Minority Language Media: Concepts, Critiques and Case Studies* (Clevedon, Multilingual Matters Ltd., 2007), pp. 17-33.

¹⁷⁶ Tom Moring, *Access of National Minorities to the Media: New Challenges, Report for the Committee of Experts on Issues Relating to the Protection of National Minorities (DH-MIN)*, Doc. DH-MIN(2006)015, 20 November 2006, p. 9.



Political Rights (ICCPR)¹⁷⁷ and Article 30 of the Convention on the Rights of the Child (CRC).¹⁷⁸ The latter was closely modelled on the former. Article 27, ICCPR reads:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

This provision has been formulated in rather negative terms (“shall not be denied”), but the UN Human Rights Committee has affirmed that it also entails some positive obligations on the part of states to ensure that persons belonging to such minorities can effectively exercise their rights.¹⁷⁹ The scope of the provision is limited to “ethnic, religious or linguistic” minorities, which are not defined. In 1979, Francesco Capotorti, then Special Rapporteur for the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, attempted to fill this definitional gap. He defined a minority – for the purposes of Article 27 – in the following terms:

*[A] group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.*¹⁸⁰

Although this definition is not legally binding, it has held sway for a long time and it remains a relevant reference point today. By way of illustration: it forms the backbone of the definition of “minority” used by the Media Pluralism Monitor (MPM).¹⁸¹

Notwithstanding its longevity, Capotorti’s definition – itself the product of the language of Article 27 – does feel increasingly dated. Its exclusive focus on national minorities¹⁸² does not leave room for other types of minorities, such as persons with disabilities, and the LGBTIQ+ community. Protection of the rights of those groups has

¹⁷⁷ International Covenant on Civil and Political Rights, United Nations General Assembly Resolution 2200A (XXI), 16 December 1966 (entry into force: 23 March 1976), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

¹⁷⁸ Convention on the Rights of the Child, United Nations General Assembly Resolution 44/25, 20 November 1989 (entry into force: 2 September 1990), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

¹⁷⁹ Human Rights Committee, General Comment No. 23 - The rights of minorities (Article 27), Doc. No. CCPR/C/21/Rev.1/Add.5, 8 April 1994, paras. 6.1 and 6.2.

¹⁸⁰ Francesco Capotorti, “Study on the rights of persons belonging to ethnic, religious and linguistic minorities” (E/CN.4/Sub.2/384/Rev.1) (1979), p. 96, para. 568.

¹⁸¹ Centre for Media Pluralism and Media Freedom, Bleyer-Simon K., Brogi E., Carlini R., Da Costa Leite Borges D., Nenadic I., Palmer M., Parcu P. L., Trevisan M., Verza S., Žuffová M., *Monitoring media pluralism in the digital era: application of the media pluralism monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2022*, EUI, RSC, Research Project Report, Centre for Media Pluralism and Media Freedom (CMPF), MPM, 2023 (hereafter, MPM 2023) - <https://hdl.handle.net/1814/75753>, p. 123.

¹⁸² By underscoring that members of minority groups are “nationals of the State”, Capotorti is in effect referring to national minorities, without explicitly using the precise term, ‘national minority’.



been secured under other provisions of international human rights law and their interests are catered to in media regulation and policy in different ways.¹⁸³ Again, by way of specific illustration: the MPM's indicator on representation of minorities in the media includes persons with disabilities, but to justify their inclusion, various provisions in international and EU law are referenced.¹⁸⁴

The European approach to the protection of the rights of persons belonging to (national) minorities is largely consistent with the international approach. The European Convention on Human Rights (ECHR)¹⁸⁵ includes “association with a national minority” as one of the listed impermissible grounds of discrimination in Article 14, but it does not contain a specific provision on minority rights. The drafters of the Convention did, however, consider including provisions on minority rights¹⁸⁶ and the Parliamentary Assembly of the Council of Europe recommended the inclusion of such an article in a protocol to the Convention, and later an additional protocol to the Convention.¹⁸⁷ In the absence of a dedicated minority-rights provision, the European Court of Human Rights' case-law on minority rights has been developed around a number of rights enshrined in the Convention, for example freedom of expression, freedom of religion, freedom of assembly and association, the right to non-discrimination, educational rights, etc.¹⁸⁸ These – and other – human rights can have clear minority dimensions.

Against the backdrop of the ECHR, the Council of Europe has elaborated the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, focusing specifically on the rights of national minorities and regional or minority languages, respectively.

¹⁸³ For overviews and analysis in the context of the European audiovisual sector, see: Cabrera Blázquez F.J., Cappello M., Larcourt A., Munch E., Radel-Cormann J., Valais S., *Accessibility of audiovisual content for persons with disabilities*, IRIS Plus, European Audiovisual Observatory, Strasbourg, April 2023, <https://rm.coe.int/iris-plus-2023-01en-accessibility-of-audiovisual-content-for-persons-w/1680ab1bdc> and Cabrera Blázquez F.J., Cappello M., Talavera Milla J., Valais S., *Diversity and inclusion in the European audiovisual sector*, IRIS Plus, European Audiovisual Observatory, Strasbourg, April 2021, <https://rm.coe.int/iris-plus-2021en1-diversity-and-inclusion-in-the-european-audiovisual-/1680a299b9>.

¹⁸⁴ MPM 2023, pp. 123-124.

¹⁸⁵ Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR), ETS No. 5, 4 November 1950 (entry into force: 3 September 1953), <https://www.echr.coe.int/european-convention-on-human-rights>.

¹⁸⁶ For a brief overview and discussion, see: Tarlach McGonagle, *Minority Rights, Freedom of Expression and of the Media: Dynamics and Dilemmas*, (Antwerp, etc., Intersentia, 2011), pp. 177-179.

¹⁸⁷ Explanatory Report to the Framework Convention for the Protection of National Minorities, paras. 1-4.

¹⁸⁸ For an overview of relevant case-law, see: <https://www.coe.int/en/web/minorities/judgments-of-the-european-court-of-human-rights>.



5.3.1. Council of Europe

5.3.1.1. Framework Convention for the Protection of National Minorities (FCNM)

From the vantage point of the early 1990s, the FCNM¹⁸⁹ was a very timely initiative to address some of the pressing geo-political challenges of the day. After the fall of the Iron Curtain, new democracies emerged in Central and Eastern Europe and in the former Soviet Union. Nationalism and the status and rights of national minorities were prominent political issues – also in several Western European countries. The leaders of Council of Europe member states believed that a treaty establishing the legal principles for the protection of the rights of persons belonging to national minorities could make a lasting contribution to peace and stability throughout Europe.¹⁹⁰

The FCNM guarantees a range of rights for persons belonging to national minorities. Article 9 is the most important provision for ensuring the production, accessibility and findability of public interest content for persons belonging to national minorities. But Article 6 creates space for public interest content about minorities that is of wider benefit to society.

Article 9 FCNM could be seen as an adapted version of Article 10 ECHR that incorporates some minority-specific emphases. Its main provisions can be essentialised as follows:

Table 2. Main provisions of Article 9 FCNM

Provision	Essence
Article 9.1	Linguistic freedom and non-discriminatory access to media
Article 9.2	Licensing of radio, television or cinema must be non-discriminatory and based on objective criteria
Article 9.3	Freedom to create and use print media without hindrance; possibility to create and use own broadcast media outlets
Article 9.4	States must adopt adequate measures to facilitate minorities' access to media and to promote tolerance and permit cultural pluralism

Article 9.3 provides for Type A content (by minorities for minorities), whereas Article 9.4 caters for Types B and C, which concern the broader relationship between minorities and other groups in society.

¹⁸⁹ Framework Convention for the Protection of National Minorities, ETS No. 157, 1 February 1995 (entry into force: 1 February 1998): <https://rm.coe.int/168007cdac>.

¹⁹⁰ Council of Europe Summit of Heads of States and Governments, Vienna, 8-9 October 1993.



Article 6 FCNM also addresses the broader societal dynamics. Under Article 6.1, States Parties “shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons’ ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media”. This concerns Type B and Type C content.

In the most recent and ongoing monitoring cycles of states’ implementation of the Convention (the 4th, 5th and 6th cycles), the Advisory Committee (AC) to the FCNM has paid attention to a number of relevant issues.¹⁹¹

For instance, in the context of Article 6, the AC’s regular calls on authorities at all levels to promote intercultural dialogue and mutual understanding among different groups are often accompanied by calls to condemn discriminatory and hateful speech by politicians and in the media.¹⁹² The AC also consistently calls for enhanced efforts to counter stereotypical portrayals of members of minority groups in the media, including through the promotion of, and adherence to, high professional and ethical standards by journalists.¹⁹³ These calls are intended “without prejudice to the editorial independence” of the press/media. They sometimes make specific suggestions, for example that journalists be recruited from (particular) minority groups or that they be involved in reporting and programming (decisions), or that journalists avoid referring to ethnic or religious affiliation in a negative way, except when strictly necessary.

In the context of Article 9, the AC regularly calls for improved provision of television and radio broadcasting (i.e., duration and frequency of programming) in the languages of various linguistic minorities¹⁹⁴ – a typical example of Type A content. Similarly, the AC regularly calls for improved access for national minorities to programming in minority languages via the national public service broadcaster¹⁹⁵ and

¹⁹¹ For more detailed analysis of media-related provisions in earlier monitoring rounds, see Tarlach McGonagle, “The Council of Europe’s standards on access to the media for minorities: A tale of near misses and staggered successes”, in Amos M., Harrison J., & Woods ., Eds., *Freedom of Expression and the Media* (Leiden/Boston, Martinus Nijhoff Publishers, 2012), pp. 111-140.

¹⁹² See, for example: AC FCNM, Fourth Opinion on Poland, 6 November 2019, para. 83, https://hudoc.fcnm.coe.int/eng?i=4th_Op_Poland_EN-7; AC FCNM, Fourth Opinion on Bulgaria, 26 May 2020, paras. 84 and 85, https://hudoc.fcnm.coe.int/eng?i=4th_Op_Bulgaria_EN-7; AC FCNM, Fifth Opinion on the Slovak Republic, 2 February 2022, para. 147, https://hudoc.fcnm.coe.int/eng?i=5th_OP_SlovakRepublic_en-7.

¹⁹³ See, for example: AC FCNM, Fifth Opinion on Germany, 3 February 2022, para. 95, https://hudoc.fcnm.coe.int/eng?i=5th_OP_Germany_en-7; AC FCNM Fifth Opinion on Spain, 27 May 2020, para. 107, https://hudoc.fcnm.coe.int/eng?i=5th_Op_Spain_EN-8; AC FCNM Fifth Opinion on Cyprus, 7 November 2019, para. 125, https://hudoc.fcnm.coe.int/eng?i=5th_OP_Cyprus_en-7; AC FCNM, Fifth Opinion on the Slovak Republic, 2 February 2022, para. 150, https://hudoc.fcnm.coe.int/eng?i=5th_OP_SlovakRepublic_en-7.

¹⁹⁴ See, for example: AC FCNM, Fifth Opinion on Germany, 3 February 2022, para. 19, https://hudoc.fcnm.coe.int/eng?i=5th_OP_Germany_en-8; AC FCNM, Fifth Opinion on Slovenia, 18 May 2022, paras. 121 and 122, https://hudoc.fcnm.coe.int/eng?i=5th_OP_Slovenia_EN-8; AC FCNM, Fourth Opinion on Bosnia and Herzegovina, 9 November 2017, para. 92, https://hudoc.fcnm.coe.int/eng?i=4th_OP_BiH_en-7.

¹⁹⁵ AC FCNM, Fourth Opinion on the United Kingdom, 25 May 2016, para. 96, https://hudoc.fcnm.coe.int/eng?i=4th_OP_UnitedKingdom_en-7; AC FCNM, Fifth Opinion on Slovenia, 18 May 2022, paras. 121 and 122; AC FCNM, Fourth Opinion on Bosnia and Herzegovina, 9 November 2017, para. 92.



specifically on mainstream television.¹⁹⁶ It also calls for “positive steps to include information about the culture, language and history of national minorities, as well as their concerns and interests, in mainstream national public radio and television programming” (Type B content).¹⁹⁷ In addition to its emphasis on traditional forms of media, the AC also recognises the importance of promoting and facilitating “new digital media produced by national minorities”, including through ensuring that sufficient funding is available for such digital media and content.¹⁹⁸

5.3.1.2. European Charter for Regional or Minority Languages (ECRML)

The driving aim of the ECRML¹⁹⁹ is to protect and promote regional or minority languages in Europe and to ensure their continued vitality. The rights of users of those languages are an important corollary to this central aim. As regional or minority languages are a “threatened aspect of Europe’s cultural heritage”, they merit protection and promotion.²⁰⁰ The Charter thus focuses on non-discrimination in the use of regional or minority languages and developing measures to actively support regional or minority languages.²⁰¹ One focus area for such measures is the media (Article 11).

Article 11, in keeping with the overall approach of the Charter, sets out a cascading list of commitments for states to undertake, including: public service radio and television; radio and television generally; the production and distribution of audio and audiovisual works; newspapers; funding for the media/audiovisual production; support for training of journalists and media professionals; and structured representation of regional or minority language speakers in bodies with responsibility for freedom and pluralism of the media. These possible commitments largely involve Type A content, and to a lesser extent, Type B.

In its monitoring of the Charter, the Committee of Experts evaluates the extent to which states fulfil the range of specific media-related commitments they have entered into under Article 11 in respect of specific regional or minority languages within their territories, with a view to continuously improving levels of fulfilment.²⁰² Key considerations include whether the media provision is sufficient to make an effective contribution to the promotion of a language; whether appropriate capacity-building measures exist, for example for training journalists and media professionals in regional or minority languages; and whether there are arrangements for meaningful participation of representatives of regional or minority language groups in decision-making bodies.

¹⁹⁶ AC FCNM, Fifth Opinion on the United Kingdom, 8 December 2022, para. 151, https://hudoc.fcnm.coe.int/eng?i=5th_OP_UK_en-8.

¹⁹⁷ AC FCNM, Fourth Opinion on Poland, 6 November, 2019, para. 111.

¹⁹⁸ AC FCNM, Fifth Opinion on the Czech Republic, 31 May 2021, para. 109, https://hudoc.fcnm.coe.int/eng?i=5th_OP_Czech_Republic_EN-8.

¹⁹⁹ European Charter for Regional or Minority Languages, ETS No. 148, 5 November 1992 (entry into force: 1 March 1998): <https://rm.coe.int/1680695175>.

²⁰⁰ Explanatory Report to the ECRML, para. 10.

²⁰¹ Ibid.

²⁰² All ECRML monitoring texts can be found via the HUDOC-ECRML database: <https://hudoc.ecrml.coe.int/eng>.



Capacity-building and decision-making are structured ways to sustain media (output) in regional or minority languages, and thus largely Type A content. In its monitoring activities and in additional research, the Committee of Experts is consciously examining how the Charter's objectives can be achieved across a range of traditional and digital media.²⁰³

5.3.2. OSCE²⁰⁴

5.3.2.1. Background

Following the end of the Cold War, and the corresponding re-alignments within the world order, the 1990s saw a return to the recognition of the importance of the rights of national minorities. In 1992, OSCE participating states by consensus created a specific institution to address minority concerns in the form of the OSCE High Commissioner on National Minorities (HCNM).²⁰⁵ Pursuant to its conflict-prevention mandate, the HCNM mediates and proposes solutions to minorities' situations. The goal is to depoliticise the issue and thereby propose possible ameliorative solutions based on OSCE values as a facet of conflict prevention strategy, considering both state and minority group interests. Over the years, the successive High Commissioners have encountered a number of recurring issues in their work. In response, they provided insight for OSCE participating states, both through specific advice – often confidential – as well as general guidance in the form of thematic Recommendations and Guidelines.

5.3.2.2. The Tallinn Guidelines

In February 2019, then High Commissioner Lamberto Zannier launched “The Tallinn Guidelines on National Minorities and the Media in the Digital Age”.²⁰⁶ They synthesise the accumulated experience and expertise of the HCNM and provide policy advice to participating states on a number of media-related issues that have the potential to affect inter-ethnic relations in diverse societies.

The Tallinn Guidelines build on the HCNM's 2003 “Guidelines on the Use of Minority Languages in the Broadcast Media”,²⁰⁷ which specifically focused on the role of

²⁰³ Elin Haf Gruffydd Jones, Jarmo Lainio (editor), Tom Moring, Fatma Resit, “New technologies, new social media and the European Charter for Regional or Minority Languages”, Report for the Committee of Experts, Council of Europe, November 2019, <https://rm.coe.int/new-media-report-web-en/168098dd88>.

²⁰⁴ This section was written by Dr. Iryna Ulasiuk. The views expressed in this article are those of the author alone and do not necessarily represent the official view of the OSCE HCNM.

²⁰⁵ <https://www.osce.org/hcnm>.

²⁰⁶ The text of the OSCE HCNM Tallinn Guidelines on National Minorities and the Media in the Digital Age is available, in various languages, at: <https://www.osce.org/hcnm/tallinn-guidelines>.

²⁰⁷ Guidelines on the Use of Minority Languages in the Broadcast Media & Explanatory Note, OSCE High Commissioner on National Minorities, December 2003, available in various languages at:



language, including minority languages, in the media, and on how a balanced use of language in the media can contribute to easing inter-ethnic tensions. While language remains a fundamental and a cross-cutting issue in HCNM work, other factors at play made it important to tackle the role of the media in relation to minorities in a more comprehensive manner. Since the early 2000s, fundamental changes in the media landscape have taken place.²⁰⁸ They have affected the role that media plays in conflict, posing the question of how to leverage its potential as a powerful tool of conflict prevention.

Social media and digital technologies interact with conflict in new ways. New technologies have opened up to the individual vital spaces of communication once controlled exclusively by the State. The emergence of social media platforms has created new fora that allow people to communicate outside traditional state hierarchies of communication, and spaces in which a plurality of positions can be voiced and identities can be shaped and displayed. However, media also provides platforms and tools to manipulate reality and to shape events. It is used to spread and amplify hatred and ignite conflict.

Minorities are often caught in the middle in many ways. Some are positive; some are negative or carry risks. On a positive side, minorities can benefit from enhanced opportunities for pluralistic and inclusive debate. As information and communication transcend borders, minorities can also rely on the broad reach of media to form transnational networks. On the negative side, transitional networks have the potential to interfere in bilateral relations between states. A rise in inflammatory language in political discourse globally has led to the spread of inflammatory, xenophobic and racist language on social media, which often targets minorities. New media carries the risk of political manipulation, and minorities risk being instrumentalised.

Media is directly relevant to minority-majority relations and its potential to facilitate the integration of diverse societies is immense. The “Tallinn Guidelines on National Minorities and the Media in the Digital Age”, crystallised in 37 concrete recommendations, provide guidance on exactly how to exploit that potential. Specifically, these guidelines advise states on how to use the media, and in particular digital media, as a tool for conflict prevention and societal integration. They address specific challenges shared by OSCE participating states, namely how to operationalise the right to freedom of expression in diverse societies by providing guidance on creating and sustaining structures and processes for a pluralistic discussion between and within communities of majorities and minorities in the digital age. As such, and like the FCNM, discussed above, the Tallinn Guidelines include detailed provisions for Type A content (by minorities for minorities), as well as for Types B and C, which concern the broader relationship between

<https://www.osce.org/hcnm/32310>. For a summary, see: T. McGonagle, “High Commissioner on National Minorities: International Guidelines on Use of Minority Languages in Broadcast Media”, IRIS 2004-1: 1/2, <https://merlin.obs.coe.int/article/2887>.

²⁰⁸ “How Media Can Help Integration In Diverse Societies”, Op-ed by Lamberto Zannier,

<https://www.osce.org/files/2019-02-13%20Op-ed%20by%20HCNM%20Lamberto%20Zannier%20at%20Tallinn%20Guidelines%20Launch-Estonia.pdf>.



minorities and other groups in society. The interplay between all three types of content is of utmost importance.

The Tallinn Guidelines are based on the premise that states need to honour their international commitments to ensure that there is a favourable environment for freedom of expression and participation in public debate for everyone, that everyone can participate in that debate in an equitable and fair way, and that they can do so freely, safely and without fear.²⁰⁹

Following the launch of the “Tallinn Guidelines on National Minorities and the Media in the Digital Age” the HCNM made it a priority to promote them locally, through roundtables and other events which target national and local officials, alongside civil society organisations. For example, HCNM held several online roundtables to promote the Tallinn Guidelines in Central Asian States. HCNM has also engaged with some participating states in order to provide confidential advice on how to ensure the media, including digital media, plays the role of a tool for social integration through free, balanced and professional reporting rather than turn into a platform for hateful ideology that detrimentally affects the enjoyment of human rights by those it targets. This has been done in confidence through diplomatic correspondence.

HCNM-supported projects may constitute the more visible part of the institution’s practice of providing governments with instruments they can implement to follow up on their commitments. While the more general theme of media diversity has been addressed within the framework of different projects throughout the years,²¹⁰ a recent example of a project in Georgia is directly relevant to the work on operationalising the “Tallinn Guidelines”. In 2022-23 the HCNM has supported a project focusing on increasing the capacity of the Tbilisi-based and regional media to address hate speech when covering issues related to national minorities. This has been done through a series of seminars and trainings on the “Tallinn Guidelines” for the national minority youth from Kvemo-Kartli (Marneuli and Gardabani), Samtskhe (Akhaltsikhe), Javakheti (Akhalkalaki) and Tbilisi. The programme of the trainings targeted the needs of the participants, including those related to such issues as identifying and tackling disinformation and hate speech, different tools for checking online content, and sources for the identification of disinformation, as well as ethical coverage by the media of national minorities, and media self-regulation mechanisms and their practical application.

In conclusion, the Tallinn Guidelines’ focus on the media can be explained by the fundamental role that the media play in sustaining spaces for inclusive, pluralistic deliberation in diverse society. However, we should not forget that conflict and human rights abuses are the result of creeping longer-term processes, and of the conditions that

²⁰⁹ For a detailed overview of the Tallinn Guidelines on National Minorities and the Media in the Digital Age please see McGonagle T., “OSCE: Tallinn Guidelines on National Minorities and the Media in the Digital Age”, IRIS 2019-5:1/1, <https://merlin.obs.coe.int/article/8555>.

²¹⁰ See for more details, Chapter 6. S. Stephan and D. Nurumov, “HCNM Recommendations on the Use of Minority Languages in the Broadcast Media as a Baseline for Context-Specific Advice to Participating States”, in Ulasiuk, I., Hadirca, L. and W. Romans (eds.), (2018) *Language Policy and Conflict Prevention*, Brill.



help them thrive. Looking at society as a whole, and taking a multi-faceted and long-term approach that protects minority rights and promotes inclusion in a number of spheres of public life, is, in the experience of successive High Commissioners, the best recipe for peace and stability.

5.4. Conclusion

As publics are diffuse bodies, it can be difficult to break down the public interest into identifiable interests of the different groups and individuals that collectively constitute the public interest. This chapter has explored, from different angles, the public interest in terms of ensuring access to content that is relevant for (national) minorities: A) content by minorities about minorities for minorities; B) content by minorities about minorities for other groups in society; and C) content by other groups in society for minorities. The exploration has focused on types of content rather than types of media, genres and formats.

The exploration has shown how the FCNM and the ECRML aim to create a favourable environment for the production, dissemination and use of content that is relevant for minorities, including in their own languages. The FCNM refers in broad strokes to different types of media (print, radio, television and cinema), whereas the ECRML is somewhat more specific in that it also refers to public service media, stations, programmes, etc. The monitoring of both treaties has given the Advisory Committee to the FCNM and the Charter's Committee of Experts scope to examine the relationship between minority-relevant content (including in minority languages) and particular types of media, genres and formats.

With their emphasis on how the media, and in particular digital media, can serve as a tool for conflict prevention and societal integration, the OSCE HCNM's Tallinn Guidelines also provide affirmation of the importance of Type B and Type C content for stability and cohesion in pluralistic societies. There is clear public interest in achieving and maintaining such stability and cohesion.

The take-away message of this chapter, in broad terms, is that the public interest in minority content lies not just in the substantive value of such content (i.e., that it focuses on matters of interest to [sections of] the public), but in its instrumental value for achieving various societal goals (e.g., inter-group dialogue and understanding, inclusive participation in public debate, conflict prevention, etc.).



6. Children

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6.1. Introduction

As explained in Chapter 1, the public comprises various constituent groups. Children are clearly one such group. Whereas it may be difficult to define certain groups in society, for instance when there is uncertainty about the shared characteristics that define them, it is quite straightforward to define a child. Age is the most objective criterion for determining who is a child. Under international human rights law,²¹¹ children are children until they reach the age of 18 – whether they like it or not and no matter how precocious they may be.

Although the shared characteristic of being under 18 years of age says nothing about the infinite variety of subjective identities and interests of children of different ages and backgrounds, it does provide sufficient basis for a distinct perspective on public interest content. Children and adults have different sets of needs, preferences and expectations when it comes to public interest content.²¹² This is largely explained by children's ongoing development and evolving capacities, and the need to ensure that they enjoy requisite measures of freedom and protection as they navigate their way through an increasingly digitized world. As their cognitive and emotional faculties are still developing, children tend to be more impressionable and vulnerable than adults. Adults, having attained (at least the age of) maturity, and thus being more aware of, and hardened to, the potential effects of harmful content, have a diminished need for extra protection.

This chapter first explores how international and European regulatory and policy frameworks try to strike an appropriate balance between empowerment and protection of children in how they exercise their rights to freedom of expression and information. The

²¹¹ Specifically the Convention on the Rights of the Child, see below.

²¹² Cf. Livingstone, Sonia and Third, Amanda (2017), *Children and young people's rights in the digital age: an emerging agenda*, New Media & Society, p. 5. ISSN 1461-4448, http://eprints.lse.ac.uk/68759/7/Livingstone_Children%20and%20young%20peoples%20rights_2017_author%20LSERO.pdf.



Convention on the Rights of the Child is the leading international standard; European law and policy are consistent with the guarantees enshrined in the Convention and are rather detailed, including in respect of the digital environment. The chapter will then turn to selected recent developments at the national level that illustrate how children's access to relevant public interest content is realised in practice.

6.2. Regulatory and policy frameworks

Under international and European law, the right of children to freedom of information and expression has been crafted carefully. Relevant treaties and regulatory and policy texts seek to strike the delicate balance between safeguarding the freedom of children to access information, ideas and content, and ensuring their protection against harmful content.

6.2.1. United Nations

Article 19 of the Universal Declaration of Human Rights²¹³ and Article 19 of the International Covenant on Civil and Political Rights (ICCPR)²¹⁴ are the central reference points for the protection of freedom of expression and information in international human rights law. Both provisions guarantee the right to freedom of expression for everyone, including children. Article 19 ICCPR provided the blue-print for Article 13 of the Convention on the Rights of the Child (CRC),²¹⁵ which guarantees the right to freedom of expression specifically for children. The scope and text of Article 19 ICCPR and Article 13 CRC are strikingly similar, but there are two notable differences between them.

First, whereas Article 19 ICCPR explicitly provides for the right to hold an opinion, Article 13 CRC does not. It is unclear why the drafters of the CRC opted not to include such a provision. Perhaps they felt the right is adequately protected under a child's right to freedom of thought, or perhaps they were skeptical about a child's capacities to form opinions.²¹⁶ Second, Article 13 CRC does not repeat Article 19 ICCPR's central reference to the "special duties and responsibilities" that govern the exercise of the right to freedom of expression. Again, the reasons for the omission are unclear, but it has been suggested

²¹³ Universal Declaration of Human Rights (UDHR), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

²¹⁴ International Covenant on Civil and Political Rights, United Nations General Assembly Resolution 2200A (XXI), 16 December 1966 (entry into force: 23 March 1976), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

²¹⁵ Convention on the Rights of the Child, United Nations General Assembly Resolution 44/25, 20 November 1989 (entry into force: 2 September 1990), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

²¹⁶ Lucy Smith, "Convention on the Rights of the Child: freedom of expression for children", in Tarlach McGonagle & Yvonne Donders, Eds., *The United Nations and Freedom of Expression and Information: Critical Perspectives* (Cambridge University Press, 2015), pp. 145-170, at p. 151.



that this “probably has to do with children’s limited capacity to undertake legal responsibilities and duties”.²¹⁷

Article 17 CRC, which builds on the general guarantee in Article 13 CRC, is also very important. It sets out – in some detail – how the media can be instrumental in providing different types of public interest content, tailored to the needs of children. It reads:

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;*
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;*
- (c) Encourage the production and dissemination of children’s books;*
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;*
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.*

The different emphases in Article 17 show that the drafters of the CRC sought to “tread the fine line between the *freedom* of children to access diverse information and material [...] and the *protection* they need from information and material that could harm them”.²¹⁸ This fine line concerns not only the different forms of (mass) media mentioned in Article 17, but also online and digital media, as the Convention must be understood as a living instrument. The Committee on the Rights of the Child, the Convention’s oversight body, re-affirms this in its General comment no. 25 (2021) on children’s rights in relation to the digital environment.²¹⁹ The Committee underscores that the “digital environment provides a unique opportunity for children to realize the right to access to information” *inter alia* through “information and communications media, including digital and online content”.

The section, “Access to information”, of General comment no. 25 sets out detailed and forward-looking provisions concerning public interest content for children (paras. 50-

²¹⁷ Ibid.

²¹⁸ (Emphasis per original) Tarlach McGonagle & Emmanuel Vargas Penagos, “The Norm Entrepreneurship of the United Nations”, in Lee C. Bollinger and Agnès Callamard, Eds., *Regardless of Frontiers: Freedom of Expression and Information in the 21st Century* (New York, Columbia University Press, 2021), pp. 145-164, at p. 153.

²¹⁹ Committee on the Rights of the Child, General comment no. 25 (2021) on children’s rights in relation to the digital environment, CRC/C/GC25, 2 March 2021, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation>.



57). It calls on States to: “provide and support the creation of age-appropriate and empowering digital content for children in accordance with children’s evolving capacities and ensure that children have access to a wide diversity of information, including information held by public bodies, about culture, sports, the arts, health, civil and political affairs and children’s rights”. This is a broad range of public interest content *par excellence*: information relating to all kinds of democratic and civic issues.

The section addresses numerous priorities, which together make a list for states to ensure the provision of accessible, findable, suitable, independent, diverse and quality content for children across a comprehensive range of media and platforms, with safeguards for children’s right of access to information on the one hand and their online safety on the other. States parties to the CRC have the obligation to ensure the effective exercise of children’s rights in the digital environment and they are accordingly expected to act on the recommendations put forward in the General comment. In doing so, they are expected to engage with other stakeholders, public and private, who wield communicative power. States should, for instance, “ensure that automated search and information filtering, including recommendation systems, do not prioritize paid content with a commercial or political motivation over children’s choices or at the cost of children’s right to information”. They should also “encourage providers of digital services used by children to apply concise and intelligible content labelling, for example on the age-appropriateness or trustworthiness of content”.

The overall picture here is that the Committee is attentive not only to the nature of public interest content, but also its ready availability to children, including children with disabilities and children belonging to minority groups. Access to public interest content must be effective for all children. The Committee accordingly also pays attention to the role of effective access to media and digital technologies and to the role of information, media and digital literacy, which enable effective use of the said technologies. These regulatory and policy priorities are very much in evidence at the European level, as we will see in the next sub-sections.

6.2.2. Council of Europe

The European Convention on Human Rights²²⁰ does not contain a dedicated article on children’s rights. As Article 10 guarantees the right to freedom of expression for everyone, children also enjoy this right. The European Court of Human Rights’ corpus of case-law dealing with children’s right to freedom of expression and information is limited, but it does contain some important principles and emphases when it comes to public interest content for children.

²²⁰ European Convention on Human Rights (with amending Protocols), <https://www.echr.coe.int/european-convention-on-human-rights>.



In the *Khurshid Mustafa & Tarzibachi v. Sweden* case,²²¹ for instance, the applicants (an immigrant family from Iraq) wished to receive television programmes in Arabic and Farsi from their native country or region. The Court held that “the freedom to receive information does not extend only to reports of events of public concern, but covers in principle also cultural expressions as well as pure entertainment”. In other words, the Court found that there is a public interest in being able to receive different types of content. It further affirmed: “The importance of the latter types of information should not be underestimated, especially for an immigrant family with three children, who may wish to maintain contact with the culture and language of their country of origin”.²²² The Court went on to point out that foreign newspapers and radio programmes are qualitatively different to television broadcasting; they do not provide the same coverage.²²³ Different media are thus not straightforwardly interchangeable; content received through particular media may be more accessible to particular persons or groups than when it is disseminated through other media. The upshot of these findings by the Court is that there is a public interest in ensuring that particular types of content are available and accessible through different types of media and this can be especially important for families with children.

The case, *Macatė v. Lithuania*,²²⁴ involved the temporary suspension of a children’s fairy tale book depicting same-sex relationships and the subsequent labelling of the book as harmful to children under the age of 14. The Grand Chamber of the Court was “firmly of the view that measures which restrict children’s access to information about same-sex relationships solely on the basis of sexual orientation have wider social implications”. It found that “such restrictions, however limited in their scope and effects, are incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society”.²²⁵ As the restrictions on children’s access to information about same-sex relationships were “based solely on considerations of sexual orientation”, they could not be considered as having a legitimate purpose in the sense of Article 10 § 2 of the Convention.²²⁶ Here, again, the Court is laying down a marker about the public interest in children being able to access particular content in a democratic society.

Over the years, the Committee of Ministers has adopted numerous Recommendations with focuses or part-focuses on topics that fall under the banner of public interest content. Those focuses have typically included the empowerment of

²²¹ *Khurshid Mustafa and Tarzibachi v. Sweden*, no. 23883/06, § 44, 16 December 2008, <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=001-90234&filename=CASE%20OF%20KHURSHID%20MUSTAFA%20AND%20TARZIBACHI%20v.%20SWEDEN.docx&logEvent=False>.

²²² *Ibid.*

²²³ *Ibid.*, at § 45.

²²⁴ *Macatė v. Lithuania* [GC], no. 61435/19, § 215, 23 January 2023, <https://hudoc.echr.coe.int/eng?i=001-222072>.

²²⁵ *Ibid.*

²²⁶ *Ibid.*, at § 216.



children in the online environment,²²⁷ the safeguarding of their (online) privacy and data protection, and their protection from harmful content – off- and online.²²⁸

Its various Recommendations on public service media, media pluralism²²⁹ and quality journalism in the digital age are also of broad relevance for children, but only contain a smattering of references that are specifically relevant. One such provision, in Recommendation CM/Rec(2022)4 on promoting a favourable environment for quality journalism in the digital age, is very much on-topic:

*2.1.6. **Children:** the information needs of children of different age categories should be specifically addressed through the availability, via all relevant media and platforms, of wide-ranging quality content suited to their interests, literacy levels, linguistic preferences and cultural background. Such quality content should include informative and factual content and educational and cultural content, as well as content with entertainment value. Newsrooms, especially within public service media, are encouraged to invest in the production and dissemination of news and current affairs programming and services specifically targeting children and young people. In doing so, they are encouraged to promote opportunities for young people's involvement in quality content production and engagement with such content, for instance by using genres, formats and distribution channels that speak to and interest young audiences. Community media activities involving different age groups in journalistic training and production contribute to exchange and dialogue across generations, and also need specific support.²³⁰*

This general and accretive approach changed in 2018: the Committee of Ministers provided full-fledged engagement with the digital environment in CM/Rec(2018)7.²³¹ In terms of scope, structure and overall approach, the Recommendation is similar to General comment no. 25 (discussed above). The principles of 'best interests of the child' and

²²⁷ Recommendation Rec(2006)12 of the Committee of Ministers to member states on empowering children in the new information and communications environment, 27 September 2006, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805af669.

²²⁸ Recommendation CM/Rec(2009)5 of the Committee of Ministers to member states on measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communications environment, 8 July 2009,

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d0b0f; Recommendation CM/Rec(2008)6 of the Committee of Ministers to member states on measures to promote the respect for freedom of expression and information with regard to Internet filters, 26 March 2008,

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d3bc4.

²²⁹ See, for example, Section 5: Media literacy and education, Guidelines on media pluralism and transparency of media ownership - Appendix to Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership, 7 March 2018, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13.

²³⁰ 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, 17 March 2022, https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680a5ddd0.

²³¹ Recommendation CM/Rec(2018)7 of the Committee of Ministers to member states on Guidelines to respect, protect and fulfil the rights of the child in the digital environment, 4 July 2018, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016808b79f7>.



‘evolving capacities of the child’ are at the heart of the Recommendation. There are key focuses on access to the digital environment (3.1), the right to freedom of expression and information (3.2), and digital literacy (under 3.5 – Right to education). These focuses are complemented by focuses on the right to protection and safety (3.6), which unfold various sub-focuses such as measures to address risks in the digital environment and protection and awareness-raising measures. Two of the most directly relevant provisions for children’s access to public interest content are cast as positive measures to be taken by states:

15. States should ensure a plurality of sources of high-quality information and educational digital content and services for children. Children’s rights should be taken into account in related public procurement procedures, for instance for educational tools, so that access to and use of digital services and content is not unduly restricted by commercial interests or filters.”

[...]

“18. States should initiate and encourage the provision of diverse high-quality online content and services of social and cultural benefit to children in support of their fullest development and participation in society. This should include the largest possible amount of high-quality content that is specifically made for children, easy for them to find and understand, provided in their language, and which is adapted to their age and maturity. In this context, information on the rights of the child, including in the digital environment; news; health; information on sexuality, among other resources of benefit to them, is particularly important. In particular, States should ensure that children are able to locate and explore public service media and high-quality content likely to be of benefit to them.

These are specific, detailed and rounded recommendations to member States to address the various dimensions of public interest content for children: to ensure its production, availability, accessibility and findability. In their specificity, these provisions represent the spearhead of the Council of Europe’s overall approach.

6.2.3. European Union

Selected provisions of EU law need to be pieced together to obtain an overview of how the EU seeks to ensure the availability, accessibility and findability of suitable public interest content for children. The general safeguard for children’s rights in the Charter of Fundamental Rights of the European Union (Article 24)²³² mentions the right of children to express their views freely (especially in matters affecting them), but does not specifically address children’s informational needs. It incorporates the principles from the Convention on the Rights of the Child, such as the growing capabilities of the child and best interests of the child.

²³² EU Charter of Fundamental Rights, https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en.



The Audiovisual Media Services Directive²³³ contains a number of provisions that seek to protect minors from harmful content when using audiovisual media programmes and services, audiovisual commercial communications and user-generated videos and other audiovisual content on video-sharing platforms (e.g. Articles 6a(1), 9(1)(g), 9(3) and (4) and 28b(1)(a)). “Harmful” in this context is understood as meaning content that may impair the physical, mental or moral development of children. Article 7a, while not focusing specifically on children, allows member states to take measures to ensure the appropriate prominence of audiovisual media services of general interest. This provision could be applied to public interest content for minors.

Two Recommendations – by the Council and by the Parliament and the Council, adopted in 1998 and 2006, respectively – deal with the protection of minors in the context of the European audiovisual industry.²³⁴ Both recommendations position the protection of minors (along with human dignity) within the broader frame of the competitiveness of the European audiovisual industry. This framing sets up an exploration of children’s use of audiovisual and online information services within the tight parameters of protection and (market) competition, which seems to leave little room for a wider exploration of children’s right to seek and receive audiovisual or online content. The texts of both recommendations are faithful to the announced framing. They present an array of measures that are largely geared towards protection. One provision, which is present in both recommendations in almost identical language, goes against that trend, recommending that EU member states promote:

in order to encourage the take-up of technological developments, in addition to and consistently with existing legal and other measures regarding broadcasting services, and in close cooperation with the parties concerned:

(a) action to enable minors to make responsible use of audiovisual and on-line information services, notably by improving the level of awareness among parents, teachers and trainers of the potential of the new services and of the means whereby they may be made safe for minors, in particular through media literacy or media education programmes and, for instance, by continuous training within school education,

²³³ Consolidated text: Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 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) (codified version) (Text with EEA relevance), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02010L0013-20181218>.

²³⁴ Council Recommendation of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity (98/560/EC), <https://eur-lex.europa.eu/eli/reco/1998/560/oj>; Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry (2006/952/EC), <https://eur-lex.europa.eu/eli/reco/2006/952/oj>.



*(b) action to facilitate, where appropriate and necessary, the identification of, and access to, quality content and services for minors, including through the provision of means of access in educational establishments and public places.*²³⁵

Here the emphasis is first on the public interest in ensuring that minors have access to relevant technologies and the media literacy to be able to use them safely. Emphasis is also placed on the identification/findability of, and access to, “quality content and services” for minors, which could also be considered to be public interest content.

As these selected instruments show that the overall tendency in the EU’s approach to children’s ability to access and find public interest content suited to their needs is towards protection and safety, and informed use of relevant technologies.

6.3. Developments at the national level

Given the rapidly changing media landscape and changes in media use due to digitalisation, children have more viewing choices than ever before.²³⁶ The popularity of traditional media (TV and print) continues to decline and, at the same time, online media consumers are using online news less than in previous years.²³⁷ Public service media are also increasingly struggling to reach younger audiences.²³⁸ In light of these challenges, the question arises as to what Council of Europe (CoE) member states are doing to ensure the accessibility and findability of public interest content for children.

This section accordingly presents an illustrative selection of relevant recent regulatory and policy developments in different CoE member states. These developments have been grouped under three main themes: news and current affairs programmes (6.3.1), public service media (6.3.2) and media literacy (6.3.3). The tensions between children’s right to receive information and ideas and the need to protect them from harmful content is also evident in the selected national examples.²³⁹

²³⁵ Recommendation of the European Parliament and of the Council of 20 December 2006, para. I.2(a) – (b); see also, Council Recommendation of 24 September 1998, para. I.4.

²³⁶ Steemers, J. H. (2019), “Invisible children: Inequalities in the provision of screen content for children”, In J. Trappel (Ed.), *Digital Media Inequalities: Policies against Divides, Distrust and Discrimination*, Nordic Co-operation, p. 179. <http://norden.diva-portal.org/smash/record.jsf?pid=diva2%3A1535723&dswid=3026>.

²³⁷ Reuters Institute for the Study of Journalism, *Reuters Institute Digital News Report 2023*, London: Reuters Institute 2023, p. 11-12, <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2023>.

²³⁸ Reuters Institute for the Study of Journalism, *Reuters Institute Digital News Report 2023*, London: Reuters Institute 2023, p. 11-12.

²³⁹ See also: Livingstone, Sonia and Third, Amanda (2017) *Children and young people’s rights in the digital age: an emerging agenda*, New Media & Society, p. 7. ISSN 1461-4448, http://eprints.lse.ac.uk/68759/7/Livingstone_Children%20and%20young%20peoples%20rights_2017_author%20LSERO.pdf.



6.3.1. News and current affairs programmes

News and current affairs programmes are essential for informing children about topics of public interest.²⁴⁰ They provide children with age-appropriate insights into local, national and international public affairs.

In recent years, news organisations in Denmark have been responding to changes in the digital domain in order to reach new and younger audiences. The online children's channel *Ultra* launched a news app and an associated social media channel (*Ultrany+*) for children between nine and 14 years of age.²⁴¹ At the same time, it can also be observed how difficult it is for news organisations to keep young people engaged. Danish news brand *Altinget* targeted children aged between 13 and 18 years with its news service *Spektrum*, but discontinued the service in 2022 after a three-year innovation fund grant expired.²⁴² Also, in Belgium we see how news organisations have to remain resilient in the digital domain to reach young people. In June 2021, *VRT's* daily news bulletin for children, *Karrewiet*, left Instagram in favour of a TikTok channel that gained 75,000 followers in three months.²⁴³

Besides these examples of efforts to strengthen the accessibility and findability of public interest content for children, other examples demonstrate the need to protect children with regard to news coverage of traumatic events.

In 2022, German state media authorities received numerous reports of violations of rules relating to the protection of minors in connection with the war in Ukraine. Although German law prohibits any violation of human dignity in written and photographic coverage, the depiction of real violence and other atrocities, even if they do not cross that line, can still cause serious damage to the mental development of minors in certain cases. This problem is compounded by the fact that such material, which may have informative value for an adult audience, is mainly available online, making it difficult to restrict access to adults only. In its press release on the investigation into the complaints received, the *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM) urged the media to consider the welfare of children and adolescents in their coverage and to shield minors from graphic images, especially images of dead bodies. It also reminded readers that they could file complaints (including online) with state media authorities if they came across graphic images of war-related atrocities that went beyond what was necessary for reporting. The balance between the public's interest in receiving information about the war in Ukraine, which sometimes includes detailed descriptions and images of atrocities and war crimes, and the need to protect young

²⁴⁰ Carter, C., Steemers, J., & Messenger Davies, M. (2021), "Why children's news matters: The case of CBBC Newsround in the UK", *Communication, The European Journal of Communication Research*, 46(3), p. 354-359. <https://doi.org/10.1515/commun-2021-0048>.

²⁴¹ Reuters Institute for the Study of Journalism, *Reuters Institute Digital News Report 2022*, London: Reuters Institute 2022, p. 74, <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2022>.

²⁴² Reuters Institute for the Study of Journalism, *Reuters Institute Digital News Report 2022*, London: Reuters Institute 2022, p. 74.

²⁴³ Reuters Institute for the Study of Journalism, *Reuters Institute Digital News Report 2022*, London: Reuters Institute 2022, p. 66.



people is currently being debated in several European Union member states and beyond.²⁴⁴

6.3.2. Public service media

Children’s programming has long had a “special place” in “the European public service broadcasting scheme of things”.²⁴⁵ Such programming has traditionally been attentive to children’s developing capacities and their growing civic consciousness and awareness of the world around them. It comprises a variety of genres, such as news and current affairs programmes (as discussed in the previous section), informative and educational programmes and entertainment programmes. This approach to children’s programming has been described as “central to and a supreme expression of the basic public service philosophy”.²⁴⁶ Ensuring the availability, accessibility and findability of children’s programming and content across a comprehensive range of platforms remains a constant challenge for national public service media.

In 2023, Ofcom introduced the BBC’s new operating licence which came into effect on 1 April 2023.²⁴⁷ For the first time, the licence now imposes extensive new obligations on the BBC’s online platforms, encompassing services like BBC iPlayer, BBC Sounds and the BBC website. The licence terms ensure the protection of significant content across the BBC’s television and radio broadcasts, including the implementation of quotas to guarantee that the broadcaster provides a specified quantity of news and current affairs content, along with original UK programming.²⁴⁸ The licence mandates that the BBC must guarantee the accessibility of important content to online viewers, encompassing categories such as children’s programmes. The BBC primarily provides children’s TV programming through CBBC and CBeebies broadcast TV channels, along with availability on BBC iPlayer. Preserving the uniqueness of the BBC’s children’s programming is partly achieved through set quotas for original productions, which are retained in the updated operating licence. These quotas specify the proportion of content on CBBC and CBeebies that must be commissioned by the BBC itself, and they also limit the amount of acquired content.²⁴⁹

²⁴⁴ C. Etteldorf, “[DE] State Media Authorities Examine Complaints on the Protection of Minors from Graphic War Images”, IRIS 2022-7:1/22, <https://merlin.obs.coe.int/article/9520>.

²⁴⁵ Jay G. Blumler, “Children’s Television in European Public Broadcasting”, in Roger G. Noll and Monroe E. Price (Eds.), *A Communications Cornucopia* (Washington, D.C., Brookings Institution Press, 1998), pp. 337 – 349, at p. 338.

²⁴⁶ Ibid.

²⁴⁷ Ofcom’s Modernising the BBC’s Operating Licence, https://www.ofcom.org.uk/_data/assets/pdf_file/0033/255786/statement-modernising-the-bbc-operating-licence.pdf.

²⁴⁸ J. Wilkins, “[GB] Ofcom Issues New Terms for the BBC’s Operating Licence to Reflect Changing Habits of Viewers and Listeners”, IRIS 2023-5:1/14, <https://merlin.obs.coe.int/article/9753>.

²⁴⁹ Ofcom’s Modernising the BBC’s Operating Licence, para. 7.64, https://www.ofcom.org.uk/_data/assets/pdf_file/0033/255786/statement-modernising-the-bbc-operating-licence.pdf.



On 2 June 2022, the heads of government of the German Länder reached an agreement to reform the scope and structure of public broadcasting in Germany through the Third State Treaty amending the State Media Treaties (3. MÄndStV).²⁵⁰ Special attention is given to different age groups, particularly children, teenagers, and young adults, while also considering the interests of disabled individuals and families in the content provided. Notably, the amended treaty explicitly states that entertainment falls within the public service mandate as long as it aligns with a public service profile. Consequently, a wide range of entertainment programs should be easily accessible on the primary websites of general-interest channels throughout the day.²⁵¹

In the Reithian vision of public service broadcasting, the tasks of informing, educating and entertaining the public are interwoven.²⁵² Packaging informative and educational content as entertainment can render that content all the more appealing to children. And it should not be forgotten that children have a right to play: Article 31 of the Convention on the Rights of the Child guarantees the right of the child “to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts”. Entertainment programmes and content can serve children’s right to play, leisure and recreation.

On 8 September 2021, the Plenary session of the *Consell de l'Audiovisual de Catalunya* (Catalan Audiovisual Council - CAC) approved Agreement 73/2021 regarding the fulfilment of public service missions by the *Corporació Catalana de Mitjans Audiovisuals* (Catalan Media Corporation - CCMA), as assigned by *Ley 22/2005, de 29 de diciembre, de la comunicació audiovisual de Catalunya* (Law 22/2005, of 29 December, on audiovisual communication in Catalonia - LCA). The CAC report assesses the content broadcast and disseminated by the CCMA in 2019. The report highlights the relevance of programmes for minors. *Super3*, the CCMA channel specifically aimed at children and young people, increased its daily broadcasts by half an hour in 2019.²⁵³

²⁵⁰ Medienstaatsvertrag (MStV) in der Fassung des Dritten Staatsvertrags zur Änderung medienrechtlicher Staatsverträge (Dritter Medienänderungsstaatsvertrag) in Kraft seit 01. Juli 2023, https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Gesetze_Staatsvertraege/Medienstaatsvertrag_MStV.pdf.

²⁵¹ C. Etteldorf, “[DE] Federal State Governments Agree German Public Broadcasting Reforms”, IRIS 2022-8:1/22, <https://merlin.obs.coe.int/article/9560>.

²⁵² The BBC’s mission, “to inform, educate and entertain” was propounded by Lord Reith, the first Director-General of the BBC, <https://publications.parliament.uk/pa/ld201516/ldselect/ldcomuni/96/9606.htm>.

²⁵³ M. Duran Ruiz, “[ES] The CAC Approves the Report on the CCMA’s Fulfilment of its Public Service Missions in 2019”, IRIS 2021-9:1/11, <https://merlin.obs.coe.int/article/9312>.



6.3.3. Media literacy

Children need the analytical skills of media literacy to assess what is being reported so that they become better able to process information more effectively and in a more conscious and informed way.²⁵⁴

On 16 December 2019, the Ministry of Education and Culture in Finland published a new media education policy in collaboration with the National Audiovisual Institute.²⁵⁵ In this new policy the enhancement of media literacy is linked to boosting the empowerment and involvement of children and adolescents in society, as well as deterring the spread of false information. Moreover, there is an emphasis on aiding children in safeguarding themselves from and managing challenges they come across on the web.²⁵⁶ The central government has taken measures to implement the new policy. For example, the Ministry of Education and Culture has launched initiatives aimed at enhancing the programming, media literacy, and ICT abilities of children and adolescents at school and during their free time. Additionally, these efforts will also assist in promoting the teaching of interdisciplinary skills.²⁵⁷ Going forward, the Department for Art and Cultural Policy within the Ministry of Education and Culture intends to designate funding for media education initiatives that are in accordance with the principles outlined in this policy document.

On 31 August 2022, the German Federal Government implemented a new digital strategy aimed at accelerating the digital transformation in the country. In the government's vision, digitalisation should be specifically designed to prevent the exploitation of disadvantaged individuals and vulnerable groups, including children and young people, women, the elderly, disabled individuals, the LGBTQI+ community, and those from immigrant backgrounds. To achieve this, the government plans to ensure the safety and well-being of children and adolescents in the digital environment through the restructured *Bundeszentrale für Kinder- und Jugendmedienschutz* (Federal Office for the Protection of Children and Young People in the Media). They aim to provide a secure digital environment for young people and enable them to benefit from the opportunities it offers. The *Gutes Aufwachsen mit Medien* (Good Media Upbringing) program will play a

²⁵⁴ Wallis, R., & Buckingham, D. (2016), "Media literacy: The UK's undead cultural policy", *International Journal of Cultural Policy*, 25(2), 188–203, p. 195.

²⁵⁵ Salomaa, S., Palsa, L. (2019), "Media Literacy in Finland: National media education policy", *Publications of the Ministry of Education and Culture*, 39, https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162065/OKM_2019_39.pdf?sequence=1&isAllowed=y.

²⁵⁶ Salomaa, S., Palsa, L. (2019), "Media Literacy in Finland: National media education policy", *Publications of the Ministry of Education and Culture*, 39, p. 9, https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162065/OKM_2019_39.pdf?sequence=1&isAllowed=y.

²⁵⁷ Salomaa, S., Palsa, L. (2019), "Media Literacy in Finland: National media education policy", *Publications of the Ministry of Education and Culture*, 39, p. 48, https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162065/OKM_2019_39.pdf?sequence=1&isAllowed=y.



role in promoting digital skills from early childhood, with the involvement of parents and experts.²⁵⁸

Also in Germany, but at the regional level, the *Hessischer Landtag* (Hessian State Parliament) passed a law to modernize media regulations in Hesse on 17 November 2022. The law includes significant changes to the provisions regarding support for media literacy, with media education now falling under the purview of the media authority. The Act also enables the media authority to establish media education centers and collaborate with two public-access channels to finance their operations, particularly to promote local diversity. The promotion of media education and media literacy programmes, including those conducted by media education centers, is not limited to children and young people. Instead, it emphasises the inclusion of all age groups, particularly parents, teachers, and other education professionals, as part of a comprehensive and sustainable approach. The new Act places a stronger emphasis on the statewide orientation of such programs and projects.²⁵⁹

In the UK, Ofcom released an evaluation toolkit for media literacy intervention under its “Making Sense of Media” programme on 7 February 2023. According to Ofcom, the goal of the toolkit is to “help improve the online skills, knowledge and understanding of UK adults and children”. The initiative is among the actions implemented by Ofcom in line with its legal obligation to advance media literacy and to conduct research into matters related to media literacy, as outlined in sections 11 and 14(6)(a) of the Communications Act 2003. Through this toolkit, the regulator aims to empower individuals engaged in media literacy initiatives, enabling them to assess their projects and communicate their outcomes to others, thereby enhancing the effectiveness of future endeavors. Additionally, the toolkit is supplemented by two online databases that are easily searchable, cataloging media literacy initiatives and research in the field.²⁶⁰

The UK press regulator IMPRESS introduced its updated Standards Code on 16 February 2023. This revision includes notable modifications such as providing advice on AI and emerging technologies, implementing more rigorous approaches to addressing misinformation, establishing more robust guidelines for ensuring safety, and reducing the level at which discriminatory content is tolerated.²⁶¹ Although the Standards Code focuses on guiding media professionals and protecting the public from unethical newsgathering, important changes have been made in relation to the coverage of news stories involving children. All of these changes recognise the importance of fostering children’s media literacy, autonomy and the protections and assistance they need to develop as people.²⁶² For example, this consideration is reflected in Clause 3.3 which provides that “publishers must reasonably consider a child’s request to remain anonymous”.

²⁵⁸ S. Klein, “[DE] German Digital Strategy Adopted”, IRIS 2022-9:1/22, <https://merlin.obs.coe.int/article/9582>.

²⁵⁹ J. Ukrow, “[DE] Hessian Media Act Amended”, <https://merlin.obs.coe.int/article/9711>.

²⁶⁰ E. Munch, “[GB] Ofcom Launches Media Literacy Evaluation Toolkit”, IRIS 2023-3:1/12, <https://merlin.obs.coe.int/article/9690>.

²⁶¹ A.K. Antoniou, “[GB] New Standards Code Launched by IMPRESS with AI Future-Focused Provisions and a Revised Discrimination Treshold”, IRIS 2023-4:1/19, <https://merlin.obs.coe.int/article/9719>.

²⁶² Impress, Guidance on the Standards Code, p. 30, <https://www.impress.press/standards/impress-standards-code/our-standards-code/>.



6.4. Conclusion

A key difference between measures to ensure the availability, accessibility and findability of public interest content for adults and children is the need for the latter to be protected against content that could harm them or their development. This creates a tension between the right of children to search for, receive and access information, and the need for them to be protected and safe. At all times, the evolving capacities of the child and the best interests of the child should be taken into account to resolve or reduce this tension.

The brief survey and analysis of UN, Council of Europe and EU standards in this chapter has revealed how complex it can be to guarantee children's rights to freedom of expression and information in a way that is effective, but also suitably protective. The balancing act is particularly difficult in the online environment, and it calls for a multi-stakeholder approach that is both comprehensive and detailed. The Committee on the Rights of the Child's General comment no. 25 and the Council of Europe's Committee of Ministers' Recommendation CM/Rec(2018)7 both engage frontally with the rights of the child in the digital environment, including their rights to freedom of expression and information. Both instruments are broad in scope and extensive in detail. The scope of the EU's approach, in general terms, is somewhat narrower in its prioritisation of safety and protection of minors.



7. The local and regional levels

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Public interest content is not only provided or promoted by national authorities and national media systems throughout Europe. On a sub-national level, local and regional media systems address public interest content in a specific way, as this chapter sets out by giving some indicative examples. In doing so, this chapter successively pays attention to the specific characteristics of local and regional media, to the work of the Congress of Local and Regional Authorities regarding this topic and to current European initiatives on the local and regional levels concerning the role that local and regional media play in addressing public interest content.

7.1. The specificity of local and regional information and communication media systems

The importance of local and regional media is widely recognised.²⁶³ This importance primarily lies in the roles that media generally play, such as their public watchdog role and their role as a platform for information and public debate.²⁶⁴ In general terms, as Tarlach McGonagle and Nico van Eijk (*IViR*) state in the introduction to the 2014 *IRIS Special*, “media’s forum-providing role is particularly important for fostering participatory

²⁶³ E.g. the European project Local Media for Democracy which was launched by the European Federation of Journalists (EFJ) and its partners (the Centre for Media Pluralism and Media Freedom (CMPF), International Media Support (IMS) and Journalismfund.eu): <https://europeanjournalists.org/local-media-for-democracy/>. On regional media, see also T. McGonagle & N. van Eijk, “The Role of Regional Media as a Tool for Building Participatory Democracy”, *IViR* 2014, 5, <https://www.ivir.nl/publicaties/download/regional-media-and-participatory-democracy.pdf>: “Media operating at the regional level have special significance for participatory democracy as the relationship between regional media and persons from the areas and communities they serve tends to be closer, stronger and more representative than equivalent relationships at, say, the national or international levels.” See also Congress of Local and Regional Authorities, “‘Local and regional journalism is crucial for the functioning of democracy,’ says Congress rapporteur Cecilia Dalman Eek,” 7 December 2022, <https://www.coe.int/en/web/congress/-/local-and-regional-journalism-is-crucial-for-the-functioning-of-democracy-says-congress-rapporteur-cecilia-dalman-eek>.

²⁶⁴ See T. McGonagle & N. van Eijk, “The Role of Regional Media as a Tool for Building Participatory Democracy”, *IViR* 2014, 5, <https://www.ivir.nl/publicaties/download/regional-media-and-participatory-democracy.pdf>.



democracy because the media can open up shared spaces for discussion and debate on matters of public interest”.²⁶⁵ The role of media at the sub-national level (local and regional media) can be described even more precisely where public interest content is concerned, specifically. This first section describes the specificity of the systems of local and regional media serving information and communication purposes (hereafter: local and regional media).

7.1.1. General characteristics of local and regional media systems

The specificity of local and regional media systems presents both benefits and challenges. These become clear when sketching their main characteristics. A first specific and distinctive characteristic of local and regional media systems is that they are sub-national systems. Operating at sub-national levels, local and regional media have their own logic and thus often differ from country to country. Accordingly, in the foreword to the 2016 *IRIS Special* on “Regional and local broadcasting in Europe”, attention was paid to the “strong differences across the various institutional systems across Europe”, as well as, for instance, to the fact that “the word ‘region’ does not have one and only meaning [sic]”,²⁶⁶ but differs depending on the region or nation in question. Media pluralism thus manifests itself on local and regional levels.²⁶⁷

When it comes to public interest content specifically, local and regional media have a significant role to play in informing citizens about issues directly affecting their (local and regional) communities.²⁶⁸ In this respect, local and regional media can differ from national media, for they can offer detailed coverage of matters relevant to the public that may not receive the same level of attention from larger media corporations or nationwide public service media. For instance, where the national media usually cover national tax changes, a local media outlet may report extensively on a proposed tax increase specific to the area it targets, paying attention to the direct consequences this increase might have on citizens. Additionally, some issues that are covered in regional and local media are not likely to be found on national platforms. For example, a local

²⁶⁵ Ibid.

²⁶⁶ Cappello M. (ed.), “Regional and local broadcasting in Europe”, *IRIS Special 2016-1*, European Audiovisual Observatory, Strasbourg, 2016, <https://rm.coe.int/regional-and-local-broadcasting-in-europe/1680789635>.

²⁶⁷ E.g. K.U. Leuven – ICRI, Central European University – CMCS, Jönköping International Business School – MMTC & Ernst & Young Consultancy Belgium, “Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach”, prepared for the European Commission, Directorate-General Information Society and Media, 2009, 5, https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/pfr_report.pdf, where media pluralism is described as “the diversity of media supply, use and distribution, in relation to [amongst other things] local and regional interests”.

²⁶⁸ See, for instance, T. McGonagle & N. van Eijk, “The Role of Regional Media as a Tool for Building Participatory Democracy”, *IViR* 2014, <https://www.ivir.nl/publicaties/download/regional-media-and-participatory-democracy.pdf>.



newspaper may report extensively on a controversial decision on a local zoning plan, and a local radio station may make public announcements about important events in the community, varying from events related to local politics to big local sporting events. Similarly, a local broadcaster can, for example, broadcast debates between local politicians standing in municipal or provincial elections. More generally, local and regional media can also be a platform for community members who want to share their visions concerning sub-national issues – or national issues specifically affecting a city or region – thus allowing citizens to stay informed about and engaged with the decision-making processes that directly affect their daily lives.

However, there are not only positive accounts relating to local and regional media platforms. For example, a common issue for these outlets is that they have limited financial resources, which can restrict their coverage of certain topics or make them (more) susceptible to economic or political pressures. Several European and international bodies have signalled that local and regional media face financial challenges. The Council of Europe, for instance, mentions the loss of “diversity in terms of original, professionally produced news on some issues and areas”, especially on a local level, as a direct consequence of the development of a high-choice media environment that has increasingly become digital, mobile and oriented at social media.²⁶⁹ Moreover, as this media environment becomes more and more controlled by a handful of major players, a simultaneous trend of consolidation and cost-cutting throughout the media landscape can be noticed. This is a development that potentially gradually erodes media pluralism by diminishing the range of news production, particularly in niche areas, smaller markets and at the regional or local level.²⁷⁰ Concretely, this means there is a decrease in the amount of funding allocated towards news content at the regional and local levels.²⁷¹

Besides intergovernmental organisations, various international non-governmental organisations have expressed concerns regarding local and regional media quality and financial support in an online and pluralist environment. For example, the international press freedom organisation Free Press Unlimited points to a “lack of financial resources” in journalism.²⁷² Referring to the 2016 “Overview of the Current Challenges to the Safety and Protection of Journalists”,²⁷³ Free Press Unlimited points out that “local media and freelancers are not as likely to enjoy complete protection and safety protocols as journalists attached to the western affluent media outlet”.²⁷⁴ Likewise, the International Press Institute addresses the need for local news outlets – especially in Eastern Europe –

²⁶⁹ Nielsen, Cornia & Kalogeropoulos, “Challenges and opportunities for news media and journalism in an increasingly digital, mobile, and social media environment”, 2016, 4, <https://rm.coe.int/16806c0385>.

²⁷⁰ Ibid., 8. See also 15.

²⁷¹ Ibid., 27.

²⁷² Free Press Unlimited, “Lack of financial resources”, <https://kq.freepressunlimited.org/themes/media-and-conflict/lack-of-financial-resources/>.

²⁷³ International Women’s Media Foundation, “An Overview of the Current Challenges to the Safety and Protection of Journalists”, 2016, https://en.unesco.org/sites/default/files/iwfm_unesco_paper.pdf.

²⁷⁴ Free Press Unlimited, “Lack of financial resources”, <https://kq.freepressunlimited.org/themes/media-and-conflict/lack-of-financial-resources/>.



but also notes that “[l]ocal communities often lack the resources to support their own local media”.²⁷⁵

7.2. The work of the Congress of Local and Regional Authorities

In promoting local and regional democracy throughout Europe, the Congress of Local and Regional Authorities has explicitly addressed and stressed the role of local and regional media on several occasions, sometimes in close cooperation with the European Committee of the Regions, which represents local and regional authorities across the European Union. As mentioned in the 2016 *IRIS Special* on regional and local broadcasting in Europe, the work of the Congress of Local and Regional Authorities “complements the treaty-based approaches by spelling out the relevance of the Court’s general principles for regional [and local] media”.²⁷⁶

The Congress previously outlined its approach to both regional and local media primarily through its Recommendations and Resolutions addressing the state of regional print media in Europe, focusing on pluralism, independence and freedom (in 2002) and on regional media and transfrontier cooperation (2005).²⁷⁷ As signalled by the authors of the 2016 *IRIS Special*, these texts provide member states and other stakeholders with tailored measures, thus bridging a gap between general Council of Europe standards and policies on the one hand and member states’ practices on the other.²⁷⁸ The Congress has addressed several of the issues briefly described in the previous paragraph, including economic challenges for local and regional press and concentration of media ownership in pluralistic democratic societies. As an antidote, the Congress has proposed various measures that states and other stakeholders can undertake to further promote media pluralism on a regional and local level. The Congress’ approach was once again stressed in 2014, when a new Recommendation and Resolution on the role of regional media in building participatory democracy were launched.²⁷⁹ In Resolution 374 (2014) specifically, the Congress explicitly encouraged member states to recognise the role that regional

²⁷⁵ International Press Institute, “How journalism is innovating to find sustainable ways to serve local communities around the world and fight against misinformation”, [unkn.], <https://ipi.media/wp-content/uploads/2022/02/local-media-survival-guide-2022.pdf>.

²⁷⁶ See *IRIS Special 2016*, page 16.

²⁷⁷ Resolution 145 (2002) on the state of regional print media in Europe – Pluralism, independence and freedom in regional press, 6 June 2002; Recommendation 119 (2002) on the state of regional print media in Europe – Pluralism, independence and freedom in regional press, 6 June 2002, <https://rm.coe.int/on-the-state-of-regional-print-media-in-europe-pluralism-independence-/168071ab06>; Resolution 203 (2005) on regional media and transfrontier co-operation, 2 June 2005; Recommendation 173 (2005) on regional media and transfrontier co-operation, 2 June 2005, <https://rm.coe.int/regional-media-and-transfrontier-co-operation-rapporteurs-g-krug-germa/168071a482>.

²⁷⁸ See *IRIS Special 2016*, page 18.

²⁷⁹ Resolution 374 (2014) on the role of regional media as a tool for building participatory democracy, 15 October 2014; Recommendation 364 (2014) on the role of regional media as a tool for building participatory democracy, 15 October 2014, <https://rm.coe.int/1680718b6c>.



media play in promoting participatory democracy and to accordingly ensure (financial) support for the development of (non-profit) media.²⁸⁰ This boils down to recognising the special role that (local and regional) media can play with regard to public interest content.

Until now, the Congress of Local and Regional Authorities has not explicitly nor extensively reflected on the link between local and regional media on the one hand and public interest content on the other. There are, however, some specific references to and guidelines on public interest content. In its Recommendation 307 (2011) on citizen participation at local and regional levels in Europe, addressing local and regional affairs, the Congress stresses the importance of ensuring that public service media organisations are able to provide content that serves the public interest.²⁸¹ In this Recommendation, the Congress “reaffirms its commitment to public participation in local and regional affairs as a basic right at the heart of local democracy, giving people the ability to influence the decisions of the representative bodies that affect their lives and communities”.²⁸² In addition, the Congress recommends that the Committee of Ministers invite member states to:

- a. follow the example of certain member states and publish public sector data online, creating an “open data” source for public government information, which is a valuable element in increasing dialogue with citizens at the local and regional level;
- [...]
- c. introduce incentives to encourage local and regional authorities to use new information and communication technologies, including social networks, to increase citizen participation, and improve transparency and services to the public.²⁸³

The above recommendations highlight the importance of making public interest content easily discoverable²⁸⁴ for fostering dialogue in democratic societies. Additionally, technological advances at sub-national levels are also essential. Therefore, these recommendations indirectly suggest the need for significant financial backing to encourage an increased use of new technologies at local and regional levels.

A more recent initiative by the Congress on this topic is, for instance, Recommendation 410 (2017) on regional and minority languages in Europe, which calls on local and regional public authorities to promote the use of regional or minority languages in the media.²⁸⁵ Another example is offered by Recommendation 478 (2022)

²⁸⁰ Ibid., 18-19.

²⁸¹ Recommendation 307 (2011) on citizen participation at local and regional level in Europe, 18 October 2011, <https://rm.coe.int/citizen-participation-at-local-and-regional-level-in-europe-rapporteur/1680719801>.

²⁸² Ibid.

²⁸³ Ibid.

²⁸⁴ E.g. the report “Prioritisation Uncovered. The Discoverability of Public Interest Content Online”, Council of Europe study, DGI(2020)19, <https://rm.coe.int/publication-content-prioritisation-report/1680a07a57>.

²⁸⁵ Recommendation 410 (2017) on regional and minority languages in Europe today, 20 October 2017, 30 March 2017, <https://rm.coe.int/09000016808e30b4>.



about hate speech and fake news regarding local and regional politicians, on social media.²⁸⁶ In addition, one can find some member-state-specific Recommendations related to local and regional media, such as Recommendation 399 (2017) about fair access to media in the context of local elections in Bosnia and Herzegovina,²⁸⁷ Recommendation 426 (2018) about local and regional democracy in Georgia,²⁸⁸ Recommendation 482 (2022) about partial local elections in Belgrade and several other municipalities and uneven access to the media in that context, as well as the importance of media legislation²⁸⁹ and Recommendation 491 (2023), concerning the lack of transparency regarding ownership and political affiliations of local and national outlets, which led to limited and biased coverage of the political campaign in Bosnia and Herzegovina.²⁹⁰ These and several other Recommendations by the Congress imply that the role of local and regional media should be further explored. In line with this, their importance in countering anti-democratic developments or promoting democratic ones is more frequently stressed, both on a European and on a member state level.

7.3. Current initiatives – European examples

7.3.1. General acknowledgements

Various Council of Europe member states have explicitly recognised the importance of investigative reporting on topics of public interest, including the role of local or regional media, and taken initiatives to support their role. For instance, recently, the *Eidgenössische Medienkommission* (Swiss Media Commission - EMEK) issued a position paper (January 2023) in which it is stated that media support in Switzerland should be restructured. The position paper recommended a more content-oriented media system in which three different types of funding measures would play a central role. In relation to the first type, “the creation of funds for investigative research and reporting on topics of public interest” is explicitly mentioned, whereas concerning the third type of measures, the EMEK

²⁸⁶ Recommendation 478 (2022) on hate speech and fake news, 25 October 2022, <https://rm.coe.int/0900001680a8bc64>.

²⁸⁷ Recommendation 399 (2017) – Observation of local elections in Bosnia and Herzegovina (2 October 2016), <https://rm.coe.int/16806fe048>.

²⁸⁸ Recommendation 426 (2018) on local and regional democracy in Georgia, 7 November 2018, <https://rm.coe.int/local-and-regional-democracy-in-georgia-monitoring-committee-rapporteu/16808e551a>.

²⁸⁹ Recommendation 482 (2022) on partial local elections in Belgrade and several other municipalities in Serbia, 3 April 2022, <https://rm.coe.int/0900001680a85c28>.

²⁹⁰ Recommendation 491 (2023) on cantonal elections in Bosnia and Herzegovina, 2 October 2022, <https://rm.coe.int/0900001680aa5ebb>.



advocates “support for projects run by private media providers, including start-up funding for local media startups and innovation funding”.²⁹¹

Similarly, in 2022, the *Landesmedienanstalten* (state media authorities) of Germany mentioned “the amount of time spent reporting on regional and local information” as a selection criterion for their so-called “public value list” of “media that, through their content, significantly contribute to the formation of public opinion”.²⁹² This selection criterion was already set out in Article 84(5)(2) of the *Medienstaatsvertrag* (MStV). Like the other selection criteria, this criterion is primarily focused on the television genre. It remains to be seen if the assessment of Article 84 MStV will result in the application of different criteria for various media genres. What is certain is that media authorities strongly believe that the television, radio and telemedia services that are listed on the “public value list” contribute significantly to the diversity of opinions. Moreover, being included in the public value list also offers direct advantages such as improving discoverability and potentially attracting funding. The services listed on it must be easily accessible for consumers on smart TVs and user interfaces. According to Germany’s state media treaty, there is a six-month implementation period, provided that it is technically and economically feasible.²⁹³

7.3.2. Concrete examples

Besides general acknowledgements that local and regional media are important actors in providing public interest content, it is also possible to identify a range of specific and concrete examples of initiatives by local and regional media in this respect.

During the past years, many examples could be found in the context of crises, such as the war in Ukraine and the COVID pandemic. With regard to the war in Ukraine, the Romanian *Consiliul Național al Audiovizualului* (National Audiovisual Council – CNA) has for instance paid attention to the role that audiovisual mass media on a local and regional – apart from on a national – level played in circulating radio and TV spots that warned against factually incorrect reporting regarding the war (Recommendation no. 10/2022).²⁹⁴

Regarding the COVID pandemic, the importance of public interest content and campaigns at the local and regional levels soon manifested itself, partly due to localised outbreaks requiring particular responses. In Romania, for instance, in the context of a public interest campaign – specifically addressing the vaccination against COVID-19 – audiovisual media service providers had “the obligation to ensure that information and debate programmes addressing the topic of the vaccination against COVID-19 compl[ied]

²⁹¹ IRIS 2023-3:1/24, <https://merlin.obs.coe.int/article/9678>; The second type of measures is “practical”, meant to “support the running of private and, in particular, regional journalistic services that were linked to a change in the support system”.

²⁹² IRIS 2022-10:1/19, <https://merlin.obs.coe.int/article/9599>.

²⁹³ Ibid.

²⁹⁴ IRIS 2022-5:1/15, <https://merlin.obs.coe.int/article/9478>.



with the legal obligations regarding the provision of correct information to the public”.²⁹⁵ This included, amongst other things, the requirement that information be taken from official and reliable sources, “so that the audiovisual media services c[ould] contribute to combating the contamination of the public with fake news published on social media networks”.²⁹⁶ A similar trend also aimed at providing the public with factual and scientifically based information about COVID-19 - although less formally established - was seen in the Netherlands, where weekly newspapers made all articles related to the virus available to the general public by releasing them from behind the paywall,²⁹⁷ thereby enhancing the discoverability of information of public interest. Additionally, mental health improvement was addressed during lockdowns, as could for instance be seen in Belgium, where the “Think positive” initiative focused on publishing a list of positive initiatives taken by local and national media, enabling the public to still access audiovisual and cultural content from their homes.²⁹⁸

In addition, measures were taken throughout Europe to support audiovisual media. For instance, on 17 April 2020, the European Parliament passed a Resolution addressing the COVID-19 pandemic and its effects, calling for coordinated action by the EU to combat it.²⁹⁹ This Resolution is explicitly mentioned and elaborated upon in the *IRIS Plus* edition “The European audiovisual industry in the time of COVID-19”.³⁰⁰ It is noted that “the Resolution stressed the particularly acute and worsening financial situation in the media, especially news media across the European Union, due to the abrupt reduction or complete loss of advertising revenues, highlighting the especially dire state of local and regional news media as well as those operating in small markets”.³⁰¹ The authors also mention several examples of member states within Europe that tried to counter this development. A number of actions taken included establishing fresh emergency funds and packages aimed at addressing the crisis within the sector, as seen in the case of Poland and Norway.³⁰²

Although the protective potential of local and regional media with regard to democracy clearly manifests itself in crisis situations, not all examples that can be provided in this context are specifically crisis-related. An example is the role played by local and regional media in covering local major sporting events, such as the role RTV

²⁹⁵ IRIS 2021-2:1/16, <https://merlin.obs.coe.int/article/9087>.

²⁹⁶ Ibid.

²⁹⁷ Cf., for instance, articles published by *De Groene Amsterdammer*; <https://www.groene.nl/lijsten/de-coronacrisis>.

²⁹⁸ Ibid., 60-61. See also www.csa.be/think-positive/.

²⁹⁹ European Parliament Resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences (2020/2616(RSP)), www.europarl.europa.eu/doceo/document/TA-9-2020-0054_EN.pdf.

³⁰⁰ Francisco Javier Cabrera Blázquez, Maja Cappello, Léa Chochon, Gilles Fontaine, Julio Talavera Milla & Sophie Valais, “The European audiovisual industry in the time of COVID-19”, *IRIS Plus* 2020-2, <https://rm.coe.int/iris-plus-2020-2-the-european-audiovisual-industry-in-the-time-of-covi/16809f9a46>.

³⁰¹ Ibid., 28.

³⁰² Ibid., 42-43. For Poland, see www.gov.pl/web/kultura/mkidn-tarcza-antykryzysowa-obejmie-ludzi-i-instytucje-kultury2; for Norway, see <https://www.regjeringen.no/no/tema/kultur-idrett-og-frivillighet/innsiktsartikler/tidslinje-koronatiltak-under-kulturdepartementet/forskrift-7-juli-2020-nr-1521-om-midlertidig-kompordning-for-redaktorstyrte-medier/id2926451/>.



Rijnmond (a regional broadcaster) played in covering the Rotterdam marathon, focusing not only on the professionals but also on the audience (local or otherwise) involved in the race, making the coverage very personal.

On a more abstract level, public broadcasting reforms are taken by member states in order to strengthen the role that local and regional media play in their democracies. An example can be found in Germany, where a revised delineation of the responsibilities of public broadcasters was formulated. In more detail, the Minister-Presidents of the German Bundesländer passed the *3. Medienänderungsstaatsvertrag* (third state treaty amending the state media treaty), which outlines the framework for public service broadcasting in Germany. The treaty defines the scope of the ARD, ZDF, and Deutschlandradio broadcasters and, among other things, provides guidelines for jointly operated channels and additional services.³⁰³ The Slovenian government, meanwhile, proposed changes to media legislation, making it possible for public interest media to be funded by means other than solely the state budget and explicitly declaring that state funding would also become available to support, among other things, “the local, regional, student and non-profit channels of special importance”.³⁰⁴

In brief, regional and local media play a role on a host of fronts, ranging from providing reliable information (in times of crisis or otherwise) to bringing events or important democratic issues close to regional or local people. While the lack of funding for these outlets is a real problem, several initiatives have been launched across Europe to further empower regional and local media so that they can better fulfil their role as public watchdog on a sub-national level.

³⁰³ IRIS 2023-1:1/21, <https://merlin.obs.coe.int/article/9626>.

³⁰⁴ IRIS 2020-8:1/21, <https://merlin.obs.coe.int/download/8971/pdf>.



8. Public service media

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This chapter examines the issue of public service media and access to, and findability of, public interest content on all platforms.³⁰⁵ While Chapters 2 and 3 above examined access to, and findability of, public interest content generally under Council of Europe (CoE) and European Union (EU) frameworks, this chapter zooms in on European law and policy, specifically on public service media and access to, and findability of, public interest content. In this regard, the chapter seeks to highlight how European law and policy link public service media with public interest content, and the role of public service media in ensuring access to, and findability, of public interest content. For example, CoE bodies such as the Commissioner for Human Rights highlight the vital role of public service media in producing “public interest content”,³⁰⁶ and the Parliamentary Assembly emphasises the “indispensable” role of public service media in delivering “high-quality journalism” on “matters of public concern”.³⁰⁷ Similarly, the Committee of Ministers highlights the “vital” role of public service media in producing “independent and impartial news and current affairs content”,³⁰⁸ and “quality journalism” content.³⁰⁹ In a similar vein, EU bodies such as the European Commission also emphasise the nature of public service media content in terms of “objectively informing public opinion”,³¹⁰ and linking public service media and provision of “high quality information” and “journalism in the public

³⁰⁵ For analysis of the broader issue of public service media governance and independence, see Cabrera Blázquez F.J., Cappello M., Talavera Milla J., Valais S., “Governance and independence of public service media”, *IRIS Plus*, European Audiovisual Observatory, Strasbourg, February 2022, <https://rm.coe.int/iris-plus-2022en1-governance-and-independence-of-public-service-media/1680a59a76>.

³⁰⁶ Commissioner for Human Rights, “Public service broadcasting under threat in Europe” (2017), <https://www.coe.int/en/web/commissioner/-/public-service-broadcasting-under-threat-in-europe>.

³⁰⁷ Resolution 2255 (2019) of the Parliamentary Assembly on public service media in the context of disinformation and propaganda, 23 January 2019, para. 2, <https://pace.coe.int/en/files/25406/html>.

³⁰⁸ Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society, 31 January 2007, Sections II.13-14, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6bc5.

³⁰⁹ Recommendation CM/Rec(2022)4 of the Committee of Ministers on promoting a favourable environment for quality journalism in the digital age, 17 March 2022, Appendix, Section A, 1.1.4, https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680a5ddd0.

³¹⁰ Communication from the Commission on the application of state aid rules to public service broadcasting, 15 November 2001, Section 1(8), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2001:320:0005:0011:EN:PDF>.



interest”.³¹¹ As such, the chapter takes a broad approach on public service media and access to, and findability of, public interest content, and builds upon the considerable research on concepts such as “prominence of audiovisual media services of general interest” under EU law.³¹²

8.1. Council of Europe

This section examines the perspective of the CoE in relation to public service media and access to, and findability of, public interest content. And in this regard, it is helpful to begin with how the European Court of Human Rights (ECtHR) views public service media. The ECtHR explicitly emphasised in *Manole and Others v. Moldova* that the state has a “duty” to ensure the public has access through broadcasting to “impartial and accurate information”.³¹³ And, “[p]articularly”, where a public service broadcaster is the sole or dominant broadcaster, it is “indispensable” for “proper functioning of democracy” that it delivers “impartial, independent and balanced news, information and comment and in addition provides a forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed”.³¹⁴ As such the ECtHR links the role of public service media with delivering public interest content, such as impartial, independent and balanced news and being a forum for public discussion.

There have also been a number of standard-setting instruments from the CoE’s Committee of Ministers on public service media, and it is informative to highlight those linking public service media and access to, and findability of, public interest content. In this regard, a particularly important instrument is the 2007 Recommendation on the remit of public service media in the information society.³¹⁵ First, it links public service media with public interest content, by emphasising public service media’s vital role in delivering “independent and impartial news and current affairs content” and “quality content”, and being a “forum for public debate” and a “platform for disseminating democratic values”.³¹⁶

³¹¹ Communication from the Commission on tackling online disinformation: a European Approach, 26 April 2018, Section 3.4, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0236>.

³¹² Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, Article 7a, <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>. See, for example, Cappello (ed.), “Prominence of European works and of services of general interest”, *IRIS Special* (2023), <https://rm.coe.int/iris-special-2022-2en-prominence-of-european-works/1680aa81dc>.

³¹³ *Manole and Others v. Moldova*, Application no. 13936/02, 17 September 2009, para. 100, <https://hudoc.echr.coe.int/eng?i=001-94075>.

³¹⁴ *Manole and Others v. Moldova*, Application no. 13936/02, 17 September 2009, para. 101, <https://hudoc.echr.coe.int/eng?i=001-94075>.

³¹⁵ Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society, 31 January 2007, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6bc5.

³¹⁶ Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society, 31 January 2007, Sections II.13-14, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6bc5.



Indeed, public service media's role extends to fostering citizens' interest in "public affairs".³¹⁷ This derives from the high ethical and quality standards which define public service media. Second, and notably, the Recommendation also recommends member states guarantee the accessibility of public service media on new platforms. For example, it is recommended that member states "ensure that public service media can be present on significant platforms and have the necessary resources for this purpose".³¹⁸ Public service media, meanwhile, should "promote digital inclusion and efforts to bridge the digital divide", by enhancing the "accessibility of programmes and services on new platforms".³¹⁹

In a similar vein, the 2012 Recommendation on public service media governance stressed the specific role public service media play in producing high-quality content, emphasising that public service media "play a specific role" with regard to the provision of "varied and high-quality content, contributing to the reinforcement of democracy and social cohesion, and promoting intercultural dialogue and mutual understanding".³²⁰ It recognised that public service media "must use the new opportunities afforded by the Internet and other new and more interactive distribution platforms to find new ways of expressing enduring public service goals reinterpreting them as technology enables wider user choice".³²¹ Again, in the 2018 Recommendation on media pluralism and transparency of media ownership, it was emphasised that states should recognise the crucial role of public service media in "fostering public debate, political pluralism and awareness of diverse opinions".³²² And states should guarantee "adequate conditions" for public service media to continue to play this role in the multimedia landscape, including by providing them with "appropriate support for innovation and the development of digital strategies and new services".³²³ In the 2019 Declaration on the financial sustainability of quality journalism in the digital age, meanwhile, the Committee of Ministers recommended that public service media, as providers of "high-quality content", should "remain accessible to

³¹⁷ Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society, 31 January 2007, Section II.15, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6bc5.

³¹⁸ Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society, 31 January 2007, Section II.4, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6bc5.

³¹⁹ Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society, 31 January 2007, Section 2.b.11, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6bc5.

³²⁰ Recommendation CM/Rec(2012) of the Committee of Ministers to member States on public service media governance, 15 February 2012, Preamble, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cb4b4.

³²¹ Recommendation CM/Rec(2012)1 of the Committee of Ministers to member States on public service media governance, 15 February 2012, Section I.33, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cb4b4.

³²² Recommendation CM/Rec(2018)1[1] of the Committee of Ministers to member States on media pluralism and transparency of media ownership, 7 March 2018, Appendix, Section 2.8, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13.

³²³ Recommendation CM/Rec(2018)1[1] of the Committee of Ministers to member States on media pluralism and transparency of media ownership, 7 March 2018, Appendix, Section 2.8, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13.



everyone online as well as offline and should enjoy sustainable public financing.”³²⁴ Additionally, the Committee noted the need to “strengthen public policy measures at European as well as at local levels to ensure that community media have financial and legal resources and space to operate on all distribution platforms.”³²⁵

The most recent relevant recommendation from the Committee of Ministers is the 2022 Recommendation on promoting a favourable environment for quality journalism in the digital age.³²⁶ This recommendation contains several principles. First, it recognises public service media have a special role in “setting quality standards”, and member states should ensure stable and sufficient funding for public service media to “fulfil their remit and deliver quality journalism”.³²⁷ Second, public service media have a crucial role in ensuring “everyone has access to a diverse range of journalistic content”, and should be “supported in their progress towards digital transformation, including through adequate means and funding”.³²⁸ Third, public service media newsrooms are encouraged to invest in production and dissemination of “news and current affairs programming” specifically targeting children and young people.³²⁹ Finally, and importantly, the Recommendation explicitly makes a link between public service media and the term “public interest media content”. In this regard, it states that digital media distribution channels and gateways with curated or sponsored content now influence the “access to and the findability of quality content, including from public service media”.³³⁰ According to the Recommendation, states should collaborate with online platforms, media organisations, and key stakeholders, to “address the challenges related to the online distribution of public interest media content and develop appropriate regulatory responses to ensure that such content is universally available, easy to find and recognised as a source of trusted information by the public”.³³¹

³²⁴ Declaration by the Committee of Ministers on the financial sustainability of quality journalism in the digital age, 13 February 2019, Section 12, https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168092dd4d.

³²⁵ Declaration by the Committee of Ministers on the financial sustainability of quality journalism in the digital age, 13 February 2019, Section 12, https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168092dd4d.

³²⁶ Recommendation CM/Rec(2022)4 of the Committee of Ministers on promoting a favourable environment for quality journalism in the digital age, 17 March 2022, https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ddd0.

³²⁷ Recommendation CM/Rec(2022)4 of the Committee of Ministers on promoting a favourable environment for quality journalism in the digital age, 17 March 2022, Appendix, Section A, 1.1.4, https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ddd0.

³²⁸ Recommendation CM/Rec(2022)4 of the Committee of Ministers on promoting a favourable environment for quality journalism in the digital age, 17 March 2022, Appendix, Section A, 14, https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ddd0.

³²⁹ Recommendation CM/Rec(2022)4 of the Committee of Ministers on promoting a favourable environment for quality journalism in the digital age, 17 March 2022, Appendix, Section A, 2.1.6, https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ddd0.

³³⁰ Recommendation CM/Rec(2022)4 of the Committee of Ministers on promoting a favourable environment for quality journalism in the digital age, 17 March 2022, Appendix, Section A, 2.1.6, https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ddd0.

³³¹ Recommendation CM/Rec(2022)4 of the Committee of Ministers on promoting a favourable environment for quality journalism in the digital age, 17 March 2022, Appendix, Section A, 2.2.1,



A further CoE body that must be mentioned is the Parliamentary Assembly, which adopted a number of resolutions on public service media. One of the most relevant in relation to public service media and public interest content is the 2019 Resolution on public service media in the context of disinformation and propaganda.³³² The Assembly emphasised that public service media have an “indispensable mission to fulfil in democratic societies”, being a “forum for pluralistic public debate”, delivering “high-quality journalism” focusing on “matters of public concern” and providing “reliable information”.³³³ Notably, the Assembly recognised the role of public service media in “counteracting disinformation and propaganda”.³³⁴ The Assembly called on internet intermediaries to co-operate with “public” European news outlets in order to improve the “visibility” of reliable, trustworthy news and facilitate users’ access to such sources.³³⁵ The accessibility and findability of public interest content online by public service media is thus crucial in addressing disinformation.

Finally, it is also informative to mention reports of the CoE’s Commissioner for Human Rights. Notably, the Commissioner has recognised that public service broadcasting is defined as a service funded by the state or the public with boards appointed by public bodies and which produce and broadcast “public interest content”.³³⁶ Similarly to the Parliamentary Assembly, the Commissioner stressed that an important answer to disinformation is ensuring the public has “access to impartial and accurate information through public broadcasters which enjoy their trust”, and developing “good quality public service broadcasting”, with high professional standards and “truthful, responsible and ethical reporting”.³³⁷ As such, the remit of public service media is specifically linked to public interest content, and its role in combatting online disinformation.

8.2. European Union

In addition to the CoE framework, EU law and policy is also instructive on public service media and access to, and findability of, public interest content. And it is helpful to first mention the 1997 Protocol on the system of public broadcasting in the member states,

https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ddd0.

³³² Resolution 2255 (2019) of the Parliamentary Assembly on Public service media in the context of disinformation and propaganda, 23 January 2019, <https://pace.coe.int/en/files/25406/html>.

³³³ Resolution 2255 (2019) of the Parliamentary Assembly on Public service media in the context of disinformation and propaganda, 23 January 2019, para. 2, <https://pace.coe.int/en/files/25406/html>.

³³⁴ Resolution 2255 (2019) of the Parliamentary Assembly on Public service media in the context of disinformation and propaganda, para. 4, <https://pace.coe.int/en/files/25406/html>.

³³⁵ Resolution 2255 (2019) of the Parliamentary Assembly on Public service media in the context of disinformation and propaganda, para. 8.2, <https://pace.coe.int/en/files/25406/html>.

³³⁶ Commissioner for Human Rights, “Public service broadcasting under threat in Europe” (2017), <https://www.coe.int/en/web/commissioner/-/public-service-broadcasting-under-threat-in-europe>.

³³⁷ Commissioner for Human Rights, “Public service broadcasting under threat in Europe” (2017), <https://www.coe.int/en/web/commissioner/-/public-service-broadcasting-under-threat-in-europe>.



annexed to the Treaty of the European Community.³³⁸ The Amsterdam Protocol expressly recognised that public service broadcasting is “directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism”.³³⁹ In addition, the Council of the EU adopted the 1999 Resolution on public service broadcasting, emphasising how public service broadcasting has “vital significance” for ensuring democracy and pluralism, due to the democratic functions which it discharges.³⁴⁰ Notably, the Resolution stressed the importance of accessibility on all platforms, noting that public service broadcasting “must continue to benefit from technological progress”, and “broad public access” to various channels and services is a “necessary precondition for fulfilling the special obligation of public service broadcasting”.³⁴¹ Moreover, public service media have an important role in bringing the public benefits of new audiovisual and information services and news technologies, and undertake “development and diversification of activities in the digital age”.³⁴²

Further, the European Commission’s 2001 Communication on the application of state aid rules to public service broadcasting is also relevant.³⁴³ It states that public service broadcasting has access to a “wide sector of the population, provides it with so much information and content, and by doing so conveys and influences both individual and public opinion”.³⁴⁴ It also emphasised the nature of public service media content in “objectively informing public opinion”, and broadcasting is generally perceived as a “very reliable source of information”, and “enriches public debate and ultimately ensures that all citizens participate to a fair degree in public life”.³⁴⁵ Thus, the Commission links public service media with content on matters of public interest. Notably, in the Commission’s 2009 Communication on the application of State aid rules to public service broadcasting,³⁴⁶ the Commission considered that public service broadcasters “should be able to use the opportunities offered by digitisation and the diversification of distribution

³³⁸ Protocol on the system of public broadcasting in the Member States, 11997D/PRO/09, 10 November 1997, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A11997D%2FPRO%2F09>.

³³⁹ Protocol on the system of public broadcasting in the Member States, 11997D/PRO/09, 10 November 1997.

³⁴⁰ Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 25 January 1999 concerning public service broadcasting, para. (B) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A41999X0205>.

³⁴¹ Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 25 January 1999 concerning public service broadcasting, para. 4, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A41999X0205>.

³⁴² Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 25 January 1999 concerning public service broadcasting, para. 3-5, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A41999X0205>.

³⁴³ Communication from the Commission on the application of State aid rules to public service broadcasting, 15 November 2001, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2001:320:0005:0011:EN:PDF>.

³⁴⁴ Communication from the Commission on the application of State aid rules to public service broadcasting, 15 November 2001, Section 1(6), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2001:320:0005:0011:EN:PDF>.

³⁴⁵ Communication from the Commission on the application of State aid rules to public service broadcasting, 15 November 2001, Section 1(8), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2001:320:0005:0011:EN:PDF>.

³⁴⁶ Communication from the Commission on the application of State aid rules to public service broadcasting, 27 October 2009, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XC1027\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XC1027(01)).



platforms on a technology neutral basis, to the benefit of society”.³⁴⁷ And to “guarantee the fundamental role” of public service broadcasters in the “new digital environment”, public service broadcasters “may use State aid to provide audiovisual services over new distribution platforms, catering for the general public as well as for special interests, provided that they are addressing the same democratic, social and cultural needs of the society in question”.³⁴⁸ As such, the Commission recognised the importance of guaranteeing access to public service media across different distribution platforms in light of their democratic role.

Finally, it is important to note that the Commission has linked the promotion of public service media and countering disinformation. In this regard, the 2018 Recommendation on tackling online disinformation notes that public support to public service media is “very important to the provision of high quality information and the protection of journalism in the public interest”.³⁴⁹ And again, public service media is linked with public interest content in the form of high-quality content and public interest journalism.

In terms of EU legislation on public service media and access to and findability of public interest content, the Audiovisual Media Service Directive (AVSMD) is quite notable.³⁵⁰ However, this was already discussed in Chapter 3 above, and suffice to say that Article 7a AVMSD 2018 provides that “Member States may take measures to ensure the appropriate prominence of audiovisual media services of general interest”.³⁵¹ As also mentioned in Chapter 3 above, there has been considerable research on Article 7a, including a recent IRIS *Special*.³⁵² Notably, various reports have detailed implementation of Article 7a, noting that most member states have chosen “not to avail” of the possibility to take measures under Article 7a. However, of those member states that have implemented specific measures, these include obliging certain operators that set the conditions for the provision of services on user interfaces to ensure adequate visibility of services of general interest, which mainly covers public service media;³⁵³ and obliging user interfaces (e.g,

³⁴⁷ Communication from the Commission on the application of State aid rules to public service broadcasting, 27 October 2009, Section 81, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XC1027\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XC1027(01)).

³⁴⁸ Communication from the Commission on the application of State aid rules to public service broadcasting, 27 October 2009, Section 81, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XC1027\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XC1027(01)).

³⁴⁹ Communication from the Commission on Tackling online disinformation: a European Approach, 26 April 2018, Section 3.4, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0236>.

³⁵⁰ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 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), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32010L0013>.

³⁵¹ Directive (EU) 2018/1808, Article 7a, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32018L0013>.

³⁵² Cappello (ed.), “Prominence of European works and of services of general interest”, *IRIS Special* (2023), <https://rm.coe.int/iris-special-2022-2en-prominence-of-european-works/1680aa81dc>.

³⁵³ See Cole and Etteldorf, “Implementation of the revised Audiovisual Media Services Directive” (European Parliament, 2022), p. 50, [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2022\)733100](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)733100).



Smart TVs) and software-based applications to give appropriate prominence to broadcasting services providing content of general interest.³⁵⁴

In addition, the recently proposed European Media Freedom Act (EMFA) must also be briefly mentioned.³⁵⁵ The EMFA has already been discussed in Chapter 3 above, but certain provisions should be highlighted in relation to public service media and public interest content. In this regard, Recital 18 EMFA specifically connects public service media with “quality” content, noting that public service media “play a particular role in the internal media market, by ensuring that citizens and businesses have access to quality information and impartial media coverage, as part of their mission”.³⁵⁶ Crucially, Article 5 EMFA seeks to provide safeguards for the “independent” functioning of public service media providers. In this regard, Article 5(1) states public service media providers must provide in an “impartial manner a plurality of information and opinions to their audiences, in accordance with their public service mission”.³⁵⁷ And under Article 5(3), member states must ensure that public service media have “adequate and stable financial resources for the fulfilment of their public service mission”.³⁵⁸ Notably, member states must designate independent authorities or bodies to monitor compliance with these rules.³⁵⁹ Thus, Article 5 seeks to protect public service media in delivering “balanced coverage” in their content, and ensuring they have “stable funding to fulfil their [public service] mission”.³⁶⁰ Finally, it should be highlighted that EMFA’s explanatory memorandum noted public broadcasters specifically supported “guidance on the appropriate prominence of audiovisual media services of general interest” under Article 7a AVMSD, and in this regard, as mentioned in Chapter 3 above, the Commission may now issue guidelines on appropriate prominence of audiovisual media services of general interest under Article 7a AVMSD.³⁶¹

8.3. Other standard-setting bodies

In addition to the CoE and EU, the Organization for Security and Co-operation in Europe (OSCE) is particularly relevant, with helpful perspectives on public service media and public interest content. Indeed, it is important to highlight that the OSCE Representative on Freedom of the Media (RFoM) in 2022 issued a report on the role of public service

³⁵⁴ ERGA, “Ensuring Prominence and Access of Audiovisual Media Content to all Platforms (Findability)”:: Overview document in relation to Article 7a of the Audiovisual Media Services Directive, p. 16, https://erga-online.eu/wp-content/uploads/2021/01/ERGA_SG3_2020_Report_Art.7a_final.pdf.

³⁵⁵ Proposal for a Regulation establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EUCOM/2022/457 final, Recital 28, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0457>.

³⁵⁶ Proposed EMFA, Recital 18, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0457>.

³⁵⁷ Proposed EMFA, Article 5(1).

³⁵⁸ Proposed EMFA, Article 5(1).

³⁵⁹ Proposed EMFA, Article 5(4).

³⁶⁰ Proposed EMFA, Recital 18.

³⁶¹ Proposed EMFA, Article 15(2).



media in countering disinformation,³⁶² which contains instructive principles. First, the RFoM notes that “[a]s a public good”, public service media is an “important platform for promoting citizens’ democratic rights”, and public service media are “especially relied upon in tackling disinformation”, keeping individuals informed of the dangers disinformation may pose, and “providing quality, trustworthy information”.³⁶³ The RFoM specifies that “key values” of public service media include providing “quality, trustworthy information” and being “accessible to all sections of the population”.³⁶⁴ Moreover, states should “guarantee the editorial independence” of public service media to ensure they can continue producing “accurate, reliable news and information as well as quality journalism, as an antidote to the scourge of disinformation”. As such, similarly to bodies such as the CoE’s Parliamentary Assembly, the RFoM emphasises the role of public service media in delivering quality news content and quality journalism, which should be broadly accessible, and are an important counterbalance to online disinformation.

8.4. Conclusion

This chapter has sought to provide a brief overview of European law and policy specifically on public service media and access to, and findability of, public interest content. It has sought to highlight how European law and policy specifically link public service media with public interest content, and the essential role of public service media in ensuring access to, and findability of, public interest content across platforms. First, there is a clear line running through European law and policy standards regarding the crucial role of public service media in delivering “public interest content”,³⁶⁵ “high-quality journalism” on “matters of public concern”,³⁶⁶ and “independent and impartial news and current affairs content”.³⁶⁷ Second, there is a discernible trend in ensuring public service media’s public interest content is accessible and findable across all platforms. Notably, there is a further link between adequate funding for public service media, and ensuring that public service media can contribute to the accessibility and findability of public interest content on all platforms, including the online environment. Indeed, states should

³⁶² OSCE Representative on Freedom of the Media, “Report on the sixth expert roundtable: The role of public service media in countering disinformation”, 20 June 2022, <https://www.osce.org/representative-on-freedom-of-media/522343>.

³⁶³ OSCE Representative on Freedom of the Media, “Report on the sixth expert roundtable: The role of public service media in countering disinformation”, 20 June 2022, p. 1, <https://www.osce.org/representative-on-freedom-of-media/522343>.

³⁶⁴ OSCE Representative on Freedom of the Media, “Report on the sixth expert roundtable: The role of public service media in countering disinformation”, 20 June 2022, p. 2, <https://www.osce.org/representative-on-freedom-of-media/522343>.

³⁶⁵ Commissioner for Human Rights, “Public service broadcasting under threat in Europe” (2017), <https://www.coe.int/en/web/commissioner/-/public-service-broadcasting-under-threat-in-europe>.

³⁶⁶ Resolution 2255 (2019) of the Parliamentary Assembly on Public service media in the context of disinformation and propaganda, 23 January 2019, para. 2, <https://pace.coe.int/en/files/25406/html>.

³⁶⁷ Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society, 31 January 2007, Section II.4, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6bc5.



“ensure” that public service media can be present on “significant platforms” and have the “necessary resources for this purpose”,³⁶⁸ and public service media should be “supported in their progress towards digital transformation, including through adequate means and funding”.³⁶⁹ Notably, the EMFA also seeks to guarantee public service media funding. Further, there are strong standards on the need to ensure appropriate regulatory responses to ensure that public service media’s public interest content is accessible and findable online, “address the challenges related to the online distribution of public interest media content”, and ensure “public interest media content” is “universally available, easy to find and recognised as a source of trusted information by the public”.³⁷⁰ Finally, there is also evidence of a marked shift towards viewing public service media’s public interest content as an essential bulwark against online disinformation, with a push to ensure platforms collaborate with public service media to improve findability of reliable and trustworthy news content and facilitate users’ access to such sources.³⁷¹

³⁶⁸ Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society, 31 January 2007, Section II.4, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6bc5.

³⁶⁹ Recommendation CM/Rec(2022)4 of the Committee of Ministers on promoting a favourable environment for quality journalism in the digital age, 17 March 2022, Appendix, Section A, 14, https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680a5ddd0.

³⁷⁰ Recommendation CM/Rec(2022)4 of the Committee of Ministers on promoting a favourable environment for quality journalism in the digital age, 17 March 2022, Appendix, Section A, 2.2.1, https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680a5ddd0.

³⁷¹ Resolution 2255 (2019) of the Parliamentary Assembly on Public service media in the context of disinformation and propaganda, para. 8.2.



9. Summary and conclusions

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Ensuring the availability, accessibility and findability of public interest content has long been a staple ingredient of European and national media regulation and policy. But despite the perennial presence of this goal, the notion of public interest (content) has tended to be definitionally elusive. The introduction to this *IRIS Special* performs some conceptual groundwork, clarifying that the public is not a unified concept, but a nebulous one. The public is made up of various constituent parts and is more than the sum of those parts. The public interest is accordingly not just the sum total of the different interests of the different groups that make up a given society; it is the organisation of those different interests according to a broader normative principle, such as the values of pluralistic democratic society.

Part 1 of this *IRIS Special* maps out how the guiding goal of ensuring/promoting public interest content via a comprehensive range of platforms is advanced through the regulatory and policy frameworks of the Council of Europe and the European Union.

In the Council of Europe framework, Article 10 of the European Convention on Human Rights and the corresponding case-law of the European Court of Human Rights are the conceptual drivers of other standard-setting work. In the relevant case-law, we can see a clear commitment to the informational rights and needs of the public in pluralist democratic societies. The public has the right to be informed about matters of general interest and the media have the task of informing the public accordingly. This approach is grounded in a commitment to the importance of robust public debate as a central feature of democratic society. In order to be able to make informed opinions and decisions and participate in public debate and public affairs, the public must first be able to access information and opinions on matters of general interest from a pluralistic offering of sources. Through such an optic, the intrinsic value of public interest content and the instrumental value of its accessibility and findability, converge.

Although the Court has consistently underscored the importance of public interest content along these lines, it has tended to hover around the meaning of public interest, without pinning it down in definitional terms. The Court is not fixated on the term ‘public interest’, so its engagement with public interest issues is wider than those judgments in which it uses the specific term. In recent years, the Court has recurrently used a description of the public interest as “ordinarily [relating] to matters which affect the



public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community”.³⁷² What is in the public interest is thus not simply what interests the public; the latter “cannot be reduced to the public’s thirst for information about the private life of others, or to an audience’s wish for sensationalism or even voyeurism”.³⁷³ Here we see how the normative quality of the public interest, briefly set out in the introduction, also has practical implications for shaping the public interest in the case-law of the Court.

Besides insisting on the importance of serving the public interest and providing public interest content, the Court also insists on the importance of the public being able to receive such content. That is not a given in a digital world and “attention economy”,³⁷⁴ which is characterised by fierce competition for users’ limited attention. Sometimes particular individuals can only effectively receive particular kinds of public interest content when they have access to particular media or platforms. The media are not straightforwardly interchangeable; they have different functionalities and are used differently by different persons.

The Committee of Ministers has breathed further life into these principles from the case-law of the Court. It has set out extensive recommendations to member states on how public service media, media pluralism and quality journalism can enhance the availability, accessibility and findability of public interest content.

The main pillars of the EU’s approach to ensuring the availability, accessibility and findability of public interest content, as discussed in Chapter 3, are: the European Electronic Communications Code, the Audiovisual Media Services Directive, the Digital Services Act and the draft European Media Freedom Act. Together, these regulatory pillars address issues of prominence of public interest content from structural and substantive perspectives, spanning must-carry provisions, requirements to ensure access to particular types of content and the impacts of content moderation. The chapter notes a regulatory shift from audiovisual media services of general interest, an important focus in the Audiovisual Media Services Directive (and which remains very relevant), towards the accessibility and findability of public interest content online, especially in light of the impact of online platforms.

Against the backdrop of the European-level regulatory and policy frameworks, Part 2 of this IRIS Special explores the availability, accessibility and findability of public interest content through various thematic lenses: media markets, specific groups in society, the role of public service media, and the local and regional dimensions.

³⁷² *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 171, 27 June 2017, <https://hudoc.echr.coe.int/?i=001-175121>. See also, *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 101-103, ECHR 2015 (extracts), <https://hudoc.echr.coe.int/?i=001-158861>.

³⁷³ *Ibid.*

³⁷⁴ The term, ‘attention economy’, was coined by Michael H. Goldhaber in 1997: Michael H. Goldhaber, “The Attention Economy and the Net”, *First Monday*, Volume 2, Number 4 - 7 April 1997, <https://firstmonday.org/ojs/index.php/fm/article/download/519/440>.



Chapter 4 analyses prominence in audiovisual and online media from an economic perspective. It outlines the difficulties in defining audiovisual media services of general interest, as envisaged under Article 7a of the Audiovisual Media Services Directive and a variety of technical and other ways in which prominence can be operationalised. The challenge of regulating prominence at a service level (as opposed to at a content level) is laid bare.

Chapters 5 and 6 focus on the availability, accessibility and findability of public interest content that specifically benefits particular groups in society: national minorities and children, respectively.

Chapter 5 tries to clarify the nature of public interest content that is of specific relevance for persons belonging to national minorities. Various international and European instruments, like the Framework Convention for the Protection of National Minorities (FCNM), include provisions on the relationship between media content and the informational rights, needs and preferences of persons belonging to groups with shared ethnic, linguistic, religious, cultural and other characteristics. But the societal value of such public interest content is not limited to its benefit to the members of the national minority groups: it can also contribute to wider societal goals such as fostering cohesion, intergroup understanding and dialogue, etc. The FCNM sees and advances the dual purpose of public interest content – for minorities and for societal integration, cohesion and stability. The OSCE High Commissioner on National Minorities' Tallinn Guidelines on National Minorities and the Media in the Digital Age foregrounds the complementarity of both purposes, in light of the High Commissioner's mandate for conflict prevention. The Tallinn Guidelines pay particular attention to the digital environment and the dynamic interplay between traditional and newer forms of media and platforms.

The central message of Chapter 6 is that, according to international and European law and policy standards, public interest content for children should satisfy their information needs, which means that they should be able to access and find public interest content that is age-appropriate. Children have the right to seek and receive information and ideas, but they also have the right to be protected from content that could harm them. There is often a tension between these rights in practice, making it difficult to strike the right balance. The Convention on the Rights of the Child (CRC) provides that the balancing should be guided by the evolving capacities of the child and the best interests of the child. The CRC also provides that states should encourage the media to provide suitable content for children. The Council of Europe and the European Union take their cue from the CRC, but they lay different emphases in different regulatory instruments.

The Committee of Ministers of the Council of Europe has adopted various Recommendations to member states dealing with children's right to access information online. Those standards reflect the dual concerns of the CRC: on the one hand, they seek to empower children as they navigate the online world, but on the other hand, they also seek to ensure that various moderation and reporting mechanisms give effective protection to children in their online exploration. CM/Rec(2018)7 on Guidelines to



respect, protect and fulfil the rights of the child in the digital environment is the flagship recommendation on these issues,³⁷⁵ but other recommendations contain very specific recommendations on how states can ensure that a wide variety of public interest content is accessible to children across all relevant media and online platforms. Recommendation CM/Rec(2022)4 on promoting a favourable environment for quality journalism in the digital age, is a succinct, detailed blueprint for what needs to be done.³⁷⁶

The European Union's approach appears less concerned with children's self-fulfilment through the exercise of their right to freedom of expression and information. The texts surveyed – the Audiovisual Media Services Directive and two Recommendations on the protection of minors in the context of the European audiovisual and online information services industry – reflect a predominant concern for the protection of children from content that could impair their physical, mental or moral development. Content that is suitable for, and not harmful to, children, can be qualified as protective public interest content for children. Unlike the typical approach to public interest content for the public in general, which aims to make the widest range of content available through the widest range of platforms, public interest content for children is deliberately subjected to certain substantive and distribution restrictions.

Chapter 7 unfurls the tapestry of European-level regulatory and policy provisions that enable public service media to fulfil their potential to be the leading providers of public interest content. Public service media are mandated to serve everyone and all groups in society, in particular by providing high-quality educational, informational and entertainment content and to harness technological innovation to do so. The Committee of Ministers and the Parliamentary Assembly of the Council of Europe have adopted numerous standard-setting texts that set out a wealth of different ways in which public service media can produce, deliver and give prominence to, public interest content. The EU's approach is conditioned by, *inter alia*, the Amsterdam Protocol's recognition of the important role of public service broadcasting at the national level, and EU state aid rules. While the Audiovisual Media Services Directive lacks prescriptive detail on the role of public service media, the forthcoming European Media Freedom Act expressly links public service media to pluralistic, quality information.

The eighth and final chapter in this IRIS Special examines the dynamics of public interest content at the local and regional levels. At these levels, public interest content is coloured by its relevance to local and regional communities, and is thus distinct from the offering of public interest content at the national level. The media and platforms operating at the local and regional levels have to be very much in touch and in tune with the communities they serve, providing them with relevant information and content and enabling discursive exchanges. This chapter distils and analyses a selection of examples

³⁷⁵ Recommendation CM/Rec(2018)7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment, 4 July 2018, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016808b79f7>.

³⁷⁶ 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, 17 March 2022, https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ddd0.



from the standard-setting texts of the Council of Europe's Congress of Local and Regional Authorities and from national practice. The picture that emerges is that much is already being done to promote the production and dissemination of public interest content at the sub-national level, despite the frequent absence of formal coordination.

By way of concluding remarks, it is fitting to return to the metaphorical description of the media's task to serve the public interest as a regulatory and policy lodestar – a goal to be continuously pursued, but perhaps never fully attained. The goals of producing public interest content, ensuring its availability, and sustaining public debate, have fundamental underpinnings in the European Convention on Human Rights. They are essential for an informed citizenry in democratic society. Yet the production and distribution of public interest content is shaped in practice by technological, societal, market and other dynamics. Personalisation, prioritisation and recommendation systems affect the prominence and findability of public interest content. The dominance of online platforms can influence the (free) availability and accessibility of public interest content. The position and workings of online actors using artificial intelligence for content moderation have considerable bearing on how the public interest content produced by different types of media and other actors is circulated.

Different groups in society, or different sectors of the public, may have different needs when it comes to finding, accessing and using public interest content. Regulation and policy at the European and national levels need to ensure that public interest content is not only general in nature, serving the needs of the public in a broad sense. Public interest content must also be sufficiently differentiated to serve the needs of the constituent groups of the broader public. Regulation and policy require a high level of technological attunement if they are to ensure that public interest content, general and differentiated, is to be accessible and findable for all groups in society. This is an increasingly lofty ambition and an increasingly complex exercise. It is the authors' hope that the various contributions to this IRIS *Special* help to unpack the complexity and clarify the challenges associated with following the public interest lodestar.

A publication
of the European Audiovisual Observatory

