

Background Study to Inform the Development of a Guidance Note on Media Regulators in a Platform-Based Environment

*Preparatory Document for
the Committee of Experts on Media Regulators in a Platform-Based Environment
(MSI-eREG)*

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The opinions expressed in this work are the responsibility of the authors and do not necessarily reflect the official policy of the Council of Europe.

Summary

This Background Study aims to serve as a foundation for initiating discussions within the Council of Europe's Committee of Experts on Media Regulators in a Platform-Based Environment (MSI-eREG) on a future Guidance Note on this topic. The forthcoming Guidance Note is intended to support member States, media regulators, and other relevant stakeholders in ensuring that media regulators can continue to fulfil their essential functions in the digital age – with independence both in law and in practice, and with the necessary remit, resources, and powers to operate effectively.

The Study highlights that any regulatory framework on media regulators in a platform-based environment must be consistent with the European Convention on Human Rights (ECHR), particularly the right to freedom of expression and media freedom under Article 10 ECHR. It covers aspects of media regulators' role and competences in a platform-based environment; the conditions necessary to ensure media regulators' independence; and the need for strengthening national cross-sectoral coordination, cross-border cooperation and international assistance. It moreover explores how the country-of-origin principle and freedom of retransmission interact with mechanisms for effective cross-border cooperation.

The Study begins with a brief overview of member States' legal frameworks and institutional arrangements, as well as the challenges relevant to independent media regulators. It then provides an extensive mapping of Council of Europe law and standards relevant to media regulators in a platform-based environment. The Study further highlights developments in European Union law and the work of other international organisations, in particular the Organisation for Security and Cooperation in Europe (OSCE) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). It also identifies preliminary challenges that have been encountered by regulators and other stakeholders in the current digital environment. It concludes by presenting a Proposal for a Guidance Note on Media Regulators in a Platform-Based Environment for consideration by the MSI-eREG.

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1. Introduction

This Background Study aims to serve as a foundation for starting the discussion in the Council of Europe’s Committee of Experts on Media Regulators in a Platform-Based Environment (MSI-eREG) on a Guidance Note on the mentioned topic.¹ The forthcoming Guidance Note aims to support member States, media regulators, and other relevant stakeholders in ensuring that media regulators can continue to fulfil their essential functions in the digital age – with independence both in law and in practice, and with the necessary remit, resources, and powers to operate effectively.

Since the adoption of the *Committee of Ministers Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector*,² the media landscape has undergone radical transformation, particularly due to digital technologies and the rise of non-traditional media actors. These developments present new challenges for media regulators. While more recent instruments, such as the *Committee of Ministers’ Recommendation CM/Rec(2022)11 on principles for media and communication governance*,³ acknowledge these shifts, a dedicated framework is needed to holistically update standards on the role and function of media regulators in a platform-based environment.

This Background Study examines the role of media regulators in the new digital environment and considers in addition to traditional media regulators also regulatory authorities of other actors involved insofar as this affects media actors, such as online platforms. It moreover uses the classification adopted in the *Committee of Ministers Recommendation CM/Rec(2011)7 on a new notion of media*, in particular the notion of traditional “media actors” and “other actors” involved in the media ecosystem, such as online platforms, which may act as “gatekeepers” and play “an active role in mass communication editorial processes”.⁴ Given the significant influence of these new actors, it is essential to also examine the role of regulatory authorities governing online platforms, as their actions can affect media players.

This Background Study is structured as follows: Section 2 contains an overview of media regulators in Council of Europe member States; Section 3 provides a mapping and analysis of relevant Council of Europe law and standards relevant to the work of MSI-eREG; Section 4 reviews European Union (EU) law requirements relevant to regulatory authorities and other international standards; Section 5 highlights the increasingly important international coordination among media regulators from Council of Europe member States; Section 6 carries a preliminary identification of challenges and difficulties that have been encountered by regulators and other stakeholders in the new platform-based environment; and finally, Section 7 sets out a draft outline for a Guidance Note on Media Regulators in a Platform-Based Environment.

¹ MSI-eREG is a subordinated body to the Steering Committee on Media and Information Society (CDMSI). For the terms of reference and more information see: <https://www.coe.int/en/web/freedom-expression/committee-of-experts-on-media-regulators-in-a-platform-based-environment-msi-reg->.

² *Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector*, 20 December 2000, <https://rm.coe.int/16804e0322>.

³ *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?i=0900001680a61712>.

⁴ *Recommendation CM/Rec(2011)7 of the Committee of Ministers, on a new notion of media*, 21 September 2011, section 6, <https://search.coe.int/cm?i=09000016805cc2c0>; see also the overview in the Annex.

2. Media regulators in Council of Europe member States

This section will revisit the ways in which Council of Europe member States have set up their media regulators and organised media supervision. It will showcase various archetypes of media regulators, provide concrete examples and highlight good practices and effective regulatory approaches in the area. It will provide the necessary orientation on media regulators in Council of Europe member States in the face of the platform-based environment.

2.1. Jurisdiction and freedom of retransmission

Media regulators are competent to supervise and enforce media legislation vis-à-vis media actors domiciled in their country rather than all incoming cross-border media. Council of Europe member States typically regulate media actors under their jurisdictions following the country-of-origin principle.⁵ For the cross-border television provision, the establishment of jurisdiction is guided by Article 6 (the duties of transmitting parties) of the *1989 European Convention on Transfrontier Television*, which establishes jurisdiction primarily based on the location of a broadcaster's head office, editorial decisions, and, where relevant, the location of a significant part of the workforce.⁶ The scope of the Convention is however limited and, for instance, it does not include video-on-demand providers and video-sharing platforms.⁷

Within EU law, particularly the Audiovisual Media Services Directive (AVMSD), jurisdiction is established based on **the country-of-origin principle**, along with the corresponding **mutual recognition principle**.⁸ Accordingly, an EU Member State has jurisdiction if a provider is considered established in its territory. This Member State, therefore, is responsible for ensuring compliance with AVMSD.⁹ Other Member States may not restrict the freedom of reception or retransmission on their territory of audiovisual media services originating from another Member State in areas coordinated by the Directive.¹⁰ The AVMSD provides for strictly circumscribed derogations from the principle of mutual recognition in the event that an audiovisual media services provider commits serious infringements of its provisions.¹¹ A comparable country-of-origin approach also applies to the determination of jurisdiction of video-sharing platform services.¹²

In this context, certain EU countries have developed into **regulatory hubs due to the concentration of media actors in their jurisdiction**. For example, the Netherlands, as the country of establishment of several pan-European media services providers for video streaming services like Netflix and Disney+, has seen its media regulator assume a central supervisory role with regard to these providers' compliance with audiovisual media law requirements.¹³ When it

⁵ Olivier Hermans, *Approaching jurisdictional issues in European audiovisual law: trends and tensions*, IRIS (Strasbourg: European Audiovisual Observatory, 2025), <https://rm.coe.int/iris-approaching-jurisdictional-issues-in-european-audiovisual-law-en/1680b68b32>.

⁶ Article 5 of the *European Convention on Transfrontier Television* (ETS No. 132), adopted in Strasbourg on 5 May 1989, <https://www.coe.int/en/web/conventions/-/council-of-europe-european-convention-on-transfrontier-television-ets-no-132-translations>.

⁷ "Attempts to further amend the Convention by means of a new protocol ultimately failed." Hermans (n. 5), 9.

⁸ See Article 2 of *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) (consolidated text), ELI: <http://data.europa.eu/eli/dir/2010/13/2025-02-08>.

⁹ Including detailed rules for determining which Member State has jurisdiction over an audiovisual media services provider.

¹⁰ See Article 3(1) of the Audiovisual Media Services Directive.

¹¹ See Article 3(2) to (6) of the Audiovisual Media Services Directive.

¹² See Article 28(a) of the Audiovisual Media Services Directive.

¹³ See Daphne Rena Idiz, Kristina Irion, Joris Ebbens, and Rens Vliedenthart, 'European Audiovisual Media Policy in the Age of Global Video on Demand Services: A Case Study of Netflix in the Netherlands' (2021) 12 *Journal of Digital Media & Policy* 425, https://www.doi.org/10.1386/jdmp_00070_1.

comes to video-sharing platforms, another country that has emerged as an important regulatory hub exercising jurisdiction is Ireland.¹⁴

There have been instances where non-EU countries have sought to change their national media laws to assert extraterritorial jurisdiction over foreign media providers whose content is received within their borders.¹⁵ However, this has certain risks. **If multiple countries were to assume jurisdiction over incoming media services without appropriate international coordination, this could create tensions with the principle of free retransmission of media content ('without frontiers')** and result in overlapping regulatory requirements applying to the same media service.

2.2. Scope of media regulation

Definitions of “media” typically focus on the **editorial responsibility of the media actor over content which is available to the general public and aims to inform, entertain or educate**. In their regulatory approach, Council of Europe member States typically **differentiate between regulated audiovisual media** – and in some cases radio – and **press and news media**, which are predominantly self-governed. Hence, online press, as news media, are generally not supervised by a media regulator but are rather governed by self-regulation through editorial and journalistic codes, often overseen by ethical boards.

The convergence of media formats and the digitalisation of media creation and distribution have led to incremental adjustments in national media regulation, expanding its scope to include new forms of audiovisual media such as **video-on-demand** and **video-sharing platforms**. Online influencers are an example of a new type of media actor, and a few countries – such as France and Italy – have extended their media laws to cover them. Consequently, **national media regulators' competences and powers have evolved and cover different, albeit not all, types of media, while definitions have become increasingly fluid**.

Digital platform regulation has emerged as a separate regulatory field alongside media regulation. It primarily addresses illegal and harmful online content hosted on publicly accessible digital platforms, using notice-and-action procedures. Illegal content, as defined under national and EU law, typically includes terrorist content, child sexual abuse material, hate speech and defamation. Harmful content constitutes a separate category, often encompassing the protection of minors and disinformation, and similar concerns. Importantly, **platform regulation should not target legitimate media content**; rather, it should include safeguards to protect media freedom and the content of media actors posted on online platforms.

2.3. Archetypes of media regulators

Across Council of Europe member States, different archetypes of media regulators can be identified, highlighting that countries can organise their media regulators in various ways while still aligning with Council of Europe standards and EU legal requirements. Some media regulators are

¹⁴ The European Audiovisual Observatory maintains the MAVISE database on audiovisual services and their jurisdiction in Europe. The database covers 42 European countries and Morocco and is an important resource for media regulators. See <https://mavise.obs.coe.int/>.

¹⁵ See for example Joan Barata Mir, 'Legal Analysis on the Law of the Republic of Azerbaijan "On Media"', Study commissioned by the OSCE, February 2022, 3, https://rfom.osce.org/sites/default/files/f/documents/d/9/512935_0.pdf.

competent to oversee **public service media**, although in certain countries this supervision is organised separately. Another important distinction is that between **stand-alone media regulators** and **converged regulators**, where the media sector is just one of several regulated sectors.

(a) Supervision of public service media

A key difference between European countries is whether the supervision of public service media is combined with that of private media or handled by distinct oversight bodies. In countries like Ireland, Spain and the United Kingdom (UK), the independent media regulator oversees both private audiovisual media services and public service media. By contrast, in Germany, the different public service media organisations are accountable to their supervisory boards and broadcasting councils.

(b) Stand-alone media regulators

A few European countries have a **stand-alone independent media regulator**, e.g. the Dutch Media Authority (*Commissariaat voor de Media - CvM*)¹⁶ or the Irish Media Regulator (*Coimisiún na Meán*).¹⁷ Certain federal legal systems and autonomous regions also have media regulators at the sub-national level. Germany is a case in point with its 14 state media authorities supervising private broadcasting and telemedia which collaborate through the Joint Management Office of the Media Authorities (GGG).¹⁸ Belgium has the Flemish Regulator for the Media (*Vlaamse Regulator voor de Media - VRM*) and for Wallonia-Brussels the Superior Audiovisual Council (*Conseil Supérieur de l'Audiovisuel - CSA*).¹⁹

(c) Converged regulator including the media sector

Notably in the last two decades, **converged regulators have emerged in several Council of Europe member States which fulfil the function of a media regulator alongside several other sectoral regulators.** In Spain, for instance, the National Markets and Competition Commission (*Comisión Nacional de los Mercados y de la Competencia - CNMC*) is a “super-cross-sectorial-regulator”,²⁰ overseeing sectors such as energy, telecommunications, postal services, transport, audiovisual media, the press, healthcare, rail and more.²¹ Within these converged regulators, the branch responsible for overseeing the media sector is then organized according to European standard-setting and, where relevant, EU legal requirements.

In the platform-based environment media regulation increasingly co-exists with digital platform regulation. In Council of Europe member States with converged regulators it is likely that new competences for the supervision of digital platforms are also assigned to the converged regulator. An example is the Italian Communications Regulatory Authority (*Autorità per le Garanzie*

¹⁶ See the Dutch Media Authority (*Commissariaat voor de Media - CvM*), <https://www.cvdm.nl/english-summary-dutch-media-authority/>.

¹⁷ The Irish Media Regulator (*Coimisiún na Meán*), <https://www.cnam.ie/about/>.

¹⁸ See <https://www.die-medienanstalten.de/en/about-the-media-authorities/>.

¹⁹ See the Flemish Regulator for the Media (*Vlaamse Regulator voor de Media - VRM*), <https://www.vlaamseregulatormedia.be/nl>, and the Superior Audiovisual Council (*Conseil Supérieur de l'Audiovisuel - CSA*), <https://www.csa.be/>.

²⁰ Carles Llorens, '6. ES – Spain', in: Irion, K. (ed), *The independence of media regulatory authorities in Europe*, in: Capallo, M. (ed), *IRIS Special* (Strasbourg: European Audiovisual Observatory, 2019), 45-53, 45, <https://rm.coe.int/the-independence-of-media-regulatory-authorities-in-europe/168097e504.pdf>.

²¹ See the National Markets and Competition Commission (*Comisión Nacional de los Mercados y de la Competencia - CNMC*), <https://www.cnmc.es/>.

nelle Comunicazioni – AGCOM), the competencies of which are exemplified in the box below. In Germany, by contrast, the state-level media regulators are not part of the converged regulator Federal Network Agency (*Bundesnetzagentur* – BNetzA) which also oversees digital platforms.²²

Example of the Italian Communications Regulatory Authority²³

The Italian Communications Regulatory Authority (*Autorità per le Garanzie nelle Comunicazioni* – AGCOM) is an independent authority established by Law 249 of 1997.²⁴ AGCOM is a converged regulator which originally combined the competences for supervising the electronic communications sector, the postal sector as well as the audiovisual media sector and more recently online platforms competences have been added.

Decisions are taken by the Board of AGCOM on the basis of proposals submitted by its staff. The board is composed of the president and four commissioners, who are appointed for a term of seven years; the Board's mandate is non-renewable. AGCOM is organized in Directorates and Services, with two Directorates being tasked with the supervision of media regulation and online platform regulation.

AGCOM has around 350 members of staff across its two main offices in Rome and Naples (compared to the legally required staffing level of 460). AGCOM is financed by a fee levied on regulated actors. Video-sharing and digital platforms which are not based in Italy are not contributing to the financing of AGCOM.

AGCOM as a media regulator

The Directorate of Media Services and Protection of Fundamental Rights has three offices: The office for public television, radio and multimedia service, the office for the regulation, supervision and sanctions of media services, and the office of pluralism and competition in media services.

In 2021, the Italian Government adopted the Legislative Decree no. 208/2021 which is the national implementation of the EU's AVMS Directive. Under this framework, AGCOM is also competent to supervise online content on video-sharing platforms, although none of these platforms is established in Italy.

Following a public consultation, AGCOM has adopted Resolution 298/23/CONS allowing the removal of videos within 24 hours from all video-sharing platforms, regardless of their country of establishment, on grounds such as the protection of minors, discrimination, human dignity and consumer protection. In the event of a take-down order, AGCOM informs the competent national authority of the EU member state in which the platform is established relying on EU cooperation mechanisms. Besides, AGCOM has adopted Resolution No. 197/25/CONS with new guidelines and a code of conduct for influencers. Thus far, content moderation systems and algorithms have not been an issue of regulatory attention at AGCOM. The national

²² The Federal Network Agency (Bundesnetzagentur – BNetzA), <https://www.dsc.bund.de/DSC/DE/Home/start.html>.

²³ The authors thank Mr Francesco Di Giorgi from AGCOM for the support in drafting this case study.

²⁴ The Italian the Authority for Media and Communication (*Autorità per le Garanzie nelle Comunicazioni* – AGCOM), <https://www.agcom.it/competenze>.

implementation of the EMFA will add additional competences to AGCOM, such as maintaining the national media ownership register.

AGCOM as a platform regulator

Within AGCOM, the *Directorate for Digital Services and Protection of Fundamental Rights Department* deals with online platform regulation. This Directorate includes:

- the Office of the Digital Services Coordinator (DSC);
- the Platform Office, which also oversees digital services and the implementation of the EU Platform-to-Business Regulation; and
- the Copyright and Related Rights Protection Office.

Since 2023, the so-called “Piracy Shield” system has been operational. It is used to block the illegal retransmission of live broadcasting events at the level of internet service providers.

The Office of the Digital Services Coordinator acts as liaison between courts, national authorities (including law enforcement), competent authorities in other EU member states and the European Commission within the framework of the European Board for Digital Services. The office registers orders to act against illegal content (Article 9 DSA) and orders to provide information (Article 10 DSA) in the EU’s AGORA system. However, AGCOM cannot impose fines on online platforms established in another EU Member State, as these fall under the competence of the regulator in the country of establishment.

National points of contact play a particularly important role in reaching the competent authority in the country of origin of online platforms. In line with Article 53 DSA, AGCOM handles complaints submitted by Italian recipients against providers of intermediary services alleging an infringement of the Digital Services Act and transmits them to the Digital Services Coordinator of the providers’ member state of origin. For instance, AGCOM is often in contact (i.e. ca. 50 times a year), with other Digital Services Coordinators and, in particular, with the Irish competent regulator (*Coimisiún na Meán*), Ireland being the country of origin of many online platforms.

(d) Coordination between media regulators and platform regulators

Where platform regulation competences have been assigned to a different competent authority or body, the media and the platforms regulators must find ways to coordinate.²⁵

Cross-sectoral coordination can take different forms, but formalised arrangements tend to outperform *ad hoc* coordination. In the Netherlands, for instance, the Dutch Media Authority (*Commissariaat voor de Media - CvdM*) coordinates with other regulatory authorities in the Digital Regulation Cooperation Platform (SDT) which was specifically set up to “strengthen oversight of digital and online activities”.²⁶

Cross-border cooperation between media regulators of different countries is increasingly indispensable in the context of transfrontier media content and online platforms. While EU cooperation mechanisms between media regulators are formalised, cooperation among Council of Europe member States tends to be more *ad hoc*.²⁷ **The freedom of retransmission requires that media regulators in receiving countries can effectively cooperate with its counterparts that have jurisdiction over media actors and online platforms.**²⁸

2.4. Independence of media regulators

In Council of Europe member States, independent media regulators “have almost become a natural institutional form for regulatory governance”.²⁹ By a vast majority, Council of Europe member States maintain a “media regulatory authority that is independent by name and/or its constituting statutes”.³⁰ **The designation of a media regulator as independent is not influenced by whether it is organised as a stand-alone authority or a converged regulator** where the media sector is but one from several regulated sectors.

The rationale for independent media regulators is closely connected with the protection of the human right to freedom of expression and media freedom.³¹ The independence of the media regulator has to ensure that “interventions with the media are impartial and at arm’s length from government and stakeholder interests”.³² This is particularly important given “the specific and at times sensitive relationship between the media sector and elected as well as non-elected politicians (i.e. the media as the ‘fourth estate’)”.³³ Besides, rules of incompatibility should prevent

²⁵ Francisco Javier Cabrera Blázquez, Géraldine Denis, Emmanuelle Machet, Beth McNulty, Media regulatory authorities and the challenges of cooperation, *IRIS Plus*, European Audiovisual Observatory, Strasbourg, December 2021, <https://rm.coe.int/iris-plus-2021en2-media-regulatory-authorities-and-the-challenges-of-c/1680a55eb1>.

²⁶ AP, ‘Dutch regulators strengthen oversight of digital activities by intensifying cooperation’, 13 October 2021, <https://www.autoriteitpersoonsgegevens.nl/en/current/dutch-regulators-strengthen-oversight-of-digital-activities-by-intensifying-cooperation>.

²⁷ See Cabrera Blázquez et al (n. 24).

²⁸ See OECD, Best Practice Principles for Regulatory Policy (OECD, 2021), <https://www.oecd.org/gov/regulatory-policy/international-regulatory-co-operation-5b28b589-en.htm>.

²⁹ Kristina Irion and Roxanne Radu, ‘Delegation to independent regulatory authorities in the media sector: A paradigm shift through the lens of regulatory theory’, in Schulz W., Valcke P., and Irion K. (eds), *The independence of the media and its regulatory agencies* (Bristol: Intellect, 2014), 15-53, 15.

³⁰ Kristina Irion, ‘The Independence of Media Regulatory Authorities “on the Books” and “on the Ground”’, in: Puppis, M., Mansell, R., and Van den Bulck, H. (eds), *Handbook of Media and Communication Governance* (Edgar Elger, 2024), 126–140, 126, <https://doi.org/10.4337/9781800887206.00019>.

³¹ See *supra* Section 3.1.

³² Kristina Irion and Gijs van Til (2019), ‘Introduction’, in: Irion, K. (ed), *The independence of media regulatory authorities in Europe*, in: Capallo, M. (ed), *IRIS Special* (Strasbourg: European Audiovisual Observatory, 2019), 3-6, 4, <https://rm.coe.int/the-independence-of-media-regulatory-authorities-in-europe/168097e504.pdf>.

³³ Irion and Radu, ‘Delegation to independent regulatory authorities in the media sector: A paradigm shift through the lens of regulatory theory’ (n. 28), 15.

decision-making members of a media regulator from being under the influence of political powers or holding interests in media organisations or related sectors.³⁴

Existing Council of Europe standards and EU law “have consolidated a model for the proper set-up of public organizations tasked with media governance”.³⁵ The Council of Europe law and standards on such matters are detailed later in this Background study.³⁶ The next sections will highlight good practices and pertaining challenges for independence as relevant for media regulators in the platform-based environment.

(a) Legal (and functional) independence of the media regulator

Both Council of Europe standards and EU law converge about the need for the media regulator to be independent, while EU law also requires functional independence (“legally distinct from the government and functionally independent of their respective governments and of any other public or private body”).³⁷ Switzerland is a notable exception, as the Office of Communication (*Bundesamt für Kommunikation – BAKOM*) is not formally independent from the government,³⁸ yet, its competencies are complemented by the Swiss Independent Complaints Authority for Radio and Television (*Unabhängige Beschwerdeinstanz für Radio und Fernsehen – UBI*) that operates as an independent regulatory body.³⁹

The designation of a media regulator as independent, however, does not automatically translate into a media regulator acting with independence. This has already transpired in the Annex to the *2008 Declaration of the Committee of Ministers of the Council of Europe on the independence and functions of regulatory authorities for the broadcasting sector* which holds that “there does not seem to be a clear link between the amount of detail in a country’s legislation ... and the regulatory authority’s independence”.⁴⁰ For instance, “some countries, including the Netherlands and Sweden, do not have a high level of independence guaranteed by law, but have high *de facto* independence”.⁴¹ Previous country-level and comparative research that review the independence and functioning of independent media regulators further corroborate the essentiality of a culture of independence.⁴²

³⁴ See *Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector*, 20 December 2000, <https://rm.coe.int/16804e0322>.

³⁵ Irion, “The Independence of Media Regulatory Authorities “on the Books” and “on the Ground””, (n. 29), 126.

³⁶ See for details *supra* Sections 3 and 4.

³⁷ See *Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector*, 20 December 2000, <https://rm.coe.int/16804e0322>; Article 30 of 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) (consolidated text), ELI: <http://data.europa.eu/eli/dir/2010/13/2025-02-08>.

³⁸ See Office for Communications (*Bundesamt für Kommunikation - BAKOM*), <https://www.bakom.admin.ch/en/media-en>.

³⁹ See the Swiss Independent Complaints Authority (*Unabhängige Beschwerdeinstanz für Radio und Fernsehen – UBI*), <https://www.ubi.admin.ch/en/ica-homepage>.

⁴⁰ *Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector*, 26 March 2008, <https://rm.coe.int/09000016805d3c1e>.

⁴¹ Kristina Irion and Mariana Francese Coutinho, ‘14 Conclusions’, in: Irion, K. (ed), *The independence of media regulatory authorities in Europe*, in: Capallo, M. (ed), *IRIS Special* (Strasbourg: European Audiovisual Observatory, 2019), 115-122, 118, <https://rm.coe.int/the-independence-of-media-regulatory-authorities-in-europe/168097e504.pdf>.

⁴² See for more information Irion, “The Independence of Media Regulatory Authorities “on the Books” and “on the Ground”” (n. 29), 134.

(b) *Culture of independence*

While a carefully devised legislative framework can provide for institutional guarantees of independence, a culture of independence is also essential.⁴³ This culture implies that “law makers, government and other players, under the scrutiny of society at large, respect the regulatory authorities’ independence”.⁴⁴ Elected politicians and government officials also play a role in the governance system of the media regulators, such as appointing its decision-making members and approving their annual reports and budget. Consequently, **the independence of media regulators is tethered to the quality of democratic governance in a country and linked to factors such as the political and administrative culture, the rule of law and an independent judiciary, to name but a few.**

The opposite of a culture of independence is the political capture of a media regulator in order to exert control over media actors.⁴⁵ The Hungarian National Media and Infocommunications Authority (*Nemzeti Média- és Hírközlési Hatóság - NMHH*)⁴⁶ is a well-documented case in point. The European Commission’s 2024 Rule of Law Report for Hungary finds “no progress to strengthen the functional independence of the Hungarian media regulator”.⁴⁷ The European Commission has meanwhile launched two infringement procedures against Hungary: The first in relation to the NMHH’s Media Council’s refusal to renew the broadcasting license of independent radio station *Klubrádió* was confirmed by the Court of Justice of the European Union,⁴⁸ and the second concerning the failure to comply with certain requirements in relation to national media regulatory authorities under the AVMSD, among other issues.⁴⁹

Large reforms of media governance institutions in a country could also be a pretext to capture a media regulator, in particular when a political majority seeks to install new decision-makers of the media regulator. For instance, in Poland the 2016 Act on the National Media Council (*Rada Mediów Narodowych - RMN*) divested competences for supervising public services media from the National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji - KRRiT*).⁵⁰ RMN was set up in order to appoint and dismiss the member of the boards of the Polish state television and radio as well as the Polish press agency. After the 2023 change of government in Poland, RMN is largely sidelined as it no longer appoints key personnel of the public service media.⁵¹

⁴³ Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector, 26 March 2008, <https://rm.coe.int/09000016805d3c1e>.

⁴⁴ Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector, 26 March 2008, <https://rm.coe.int/09000016805d3c1e>.

⁴⁵ The capture of the media regulator is one element of a larger media capture strategy, see Marius Dragomir, ‘Media capture in Europe’, Media Development Investment Fund, 2019, 8, <https://www.mdif.org/wp-content/uploads/2023/10/MDIF-Report-Media-Capture-in-Europe.pdf>

⁴⁶ See Hungarian National Media and Infocommunications Authority (*Nemzeti Média- és Hírközlési Hatóság - NMHH*), <https://english.nmhh.hu/>.

⁴⁷ European Commission, 2024 Rule of Law Report - Country Chapter on the rule of law situation in Hungary, SWD(2024) 817 final, 27, https://commission.europa.eu/document/download/e90ed74c-7ae1-4bfb-8b6e-829008bd2cc6_en?filename=40_1_58071_coun_chap_hungary_en.pdf.

⁴⁸ Action brought by the Commission on 17 February 2023 over the Media Council’s refusal to renew the broadcasting license of independent radio station Klubrádió; the CJEU (Grand Chamber) ruled that Hungary has failed to fulfil its obligations under EU law, see judgement of 26 February 2026, case C-92/23 (*Commission v Hungary*), [ECLI:EU:C:2026:108](https://eur-lex.europa.eu/eli/cj/oj/2026/108).

⁴⁹ European Commission, “Commission calls on Hungary to comply with European Media Freedom Act and Audiovisual Media Services Directive”, Press Release, 11 December 2025, <https://digital-strategy.ec.europa.eu/en/news/commission-calls-hungary-comply-european-media-freedom-act-and-audiovisual-media-services-directive>.

⁵⁰ Beata Klimkiewicz, ‘11. PL – Poland’, in: Irion, K. (ed), The independence of media regulatory authorities in Europe, in: Cappello, M. (ed), IRIS Special (Strasbourg: European Audiovisual Observatory, 2019), 91-98, 92, <https://rm.coe.int/the-independence-of-media-regulatory-authorities-in-europe/168097e504.pdf>.

⁵¹ See Anna Wójcik, ‘Restoring Poland’s Media Freedom’, Verfassungsblog, 20 October 2023, <https://verfassungsblog.de/restoring-polands-media-freedom/>.

(c) Concerns over expanding a media regulator's powers

Concerns have been raised over countries with a record of democratic backsliding further expanding their media regulators' competences to supervise additional media actors, media content and online platforms. Where this is the case, adding additional competences to a media regulator may become a risk for freedom of expression and media freedom in that country.

It has been noted that in some countries online platform regulation can be misdirected to curb freedom of expression and media freedom under the guise of combating defamation and misinformation.⁵² Take for instance the Albania government's 2013 proposal for a law on anti-defamation which sought to introduce a new liability for providers of electronic publication services for online publication of comments that infringe upon a person's honour, personality or reputation.⁵³ The Albanian government kept pursuing the "anti-defamation package initiative" which was eventually overturned in 2020 due to concerns regarding freedom of expression.⁵⁴ This example serves to underscore that new online content and platform regulation must be designed to respect freedom of expression and media freedom.

⁵² See Bojana Kostic and Ana Toskic Cvetinovic (eds.), "Towards the Feasible Implementation of the Digital Services Act in the Western Balkans", Partners for Democratic Change Serbia, June 2024, <https://www.partners-serbia.org/public/news/dsa-wb-new.pdf>.

⁵³ See Kristina Irion, Paolo Cavaliere, and Dario Pavli, Comparative study of best European practices of online content regulation. Law and policy of online content regulation, in particular defamation online, in the light of Albanian legislative proposals. Study commissioned by the Council of Europe, Amsterdam/ Edinburgh/Tirana, August 2015, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168047080a>.

⁵⁴ See Venice Commission, Albania - Opinion on draft amendments to the Law n°97/2013 on the Audiovisual Media Service, adopted by the Venice Commission on 19 June 2020 by written procedure replacing the 123rd Plenary Session, paras 25f, 63, <https://www.coe.int/en/web/venice-commission/-/cdl-ad-2020-013-e>.

3. Mapping of Council of Europe law and standards

This Section provides a concise mapping of Council of Europe standards currently in place to guide member States on the organisation and competences of media regulators. It begins with the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR),⁵⁵ and case law of the European Court of Human Rights (ECtHR) applicable to media regulators. Following this, relevant standard-setting instruments adopted by Council of Europe bodies, notably recommendations of the Committee of Ministers, are outlined. These documents are of utmost importance being referred to in, and therefore impacting, ECtHR jurisprudence.

3.1. ECHR and ECtHR case law

Any regulatory frameworks on media regulators in a platform-based environment must be consistent with the ECHR, particularly the right to freedom of expression under Article 10 ECHR, and freedom of the media, explicitly recognised by the ECtHR as deriving from Article 10.⁵⁶ Indeed, the ECtHR has explicitly tied the role of media regulators to freedom of expression and media freedom, emphasising the “important role” which regulatory authorities play in “upholding and promoting media freedom and pluralism”, and the need to ensure their “independence” given the “delicate and complex nature” of this role.⁵⁷

Of particular relevance, the ECtHR has delivered a number of notable judgments on the principles that derive from the ECHR which are applicable to media regulators. Most of these judgments mainly concern the awarding or revocation of broadcasting licences.⁵⁸ The first judgment to mention is the 2022 Grand Chamber judgment in *NIT S.R.L. v. the Republic of Moldova*,⁵⁹ which concerned a media regulatory authority’s revocation of a television channel’s broadcasting licence for various violations of Moldova’s Audiovisual Code. Notably, the Court examined the nature of the media regulatory authority involved, and stressed the “important role which regulatory authorities play in upholding and promoting media freedom and pluralism, and the need to ensure their independence given the delicate and complex nature of this role”.⁶⁰ In this regard, the Court held that the “selection, appointment, funding and functions” of the authority’s members were based on “detailed rules laid down in the Code”, which were “designed to secure the [regulator’s] independence and to protect its decision-making process against political pressures and interference”.⁶¹ Further, the Court emphasised three important hallmarks of a regulator’s independence: (a) the fact that the authority’s “meetings, monitoring reports and decisions were accessible to the public”; (b) that the authority was “required to provide reasons for any decision to impose a sanction on a broadcaster”; and (c) the authority’s decision “could be challenged before the national courts with a concurrent application for an interim order to suspend its enforcement pending the outcome of the proceedings”.⁶² As such, the Court concluded, by 14 votes to 3, that

⁵⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS No.005, https://www.echr.coe.int/documents/d/echr/convention_ENG.

⁵⁶ See, for example, *OOO Regnum v. Russia*, Application no. 22649/08, 8 September 2020, para. 67, <https://hudoc.echr.coe.int/eng?i=001-204319>.

⁵⁷ *NIT S.R.L. v. the Republic of Moldova* [GC], Application no. 28470/12, 5 April 2022, para. 2022, <https://hudoc.echr.coe.int/fre?i=001-216872>.

⁵⁸ See also *Meltex Ltd and Mesrop Movsesyan v. Armenia*, Application no. 32283/04, 17 June 2008, <https://hudoc.echr.coe.int/eng?i=001-87003>.

⁵⁹ *NIT S.R.L. v. the Republic of Moldova* [GC], Application no. 28470/12, 5 April 2022, <https://hudoc.echr.coe.int/fre?i=001-216872>.

⁶⁰ *Ibid.*, para. 205.

⁶¹ *Ibid.*

⁶² *Ibid.*

the media regulator's decision to restrict the applicant's freedom of expression was consistent with Article 10 ECHR.⁶³

A second notable judgment is that of *Objective Television and Radio Broadcasting Company and Others v. Azerbaijan*,⁶⁴ delivered in 2025. The judgment concerned a media regulator's refusal to grant the applicant a broadcasting licence. Importantly, the Court held that the "manner in which the licensing criteria are applied in the licensing process must provide sufficient guarantees against arbitrariness – including the proper reasoning by the licensing authority of its decisions denying a broadcasting licence".⁶⁵ Crucially, relying on *the Committee of Ministers' Recommendation Rec(2000)23 to member States on the independence and functions of regulatory authorities for the broadcasting sector*⁶⁶ (discussed further below), the Court held that "[a]ll decisions taken ... by the regulatory authorities ... [must] be ... duly reasoned".⁶⁷ It found that there had been no "duly reasoned decision", in this case which "did not provide adequate protection against arbitrary interferences by a public authority with the fundamental right to freedom of expression".⁶⁸ Further, the Court also applied the *Recommendation Rec(2000)23* in relation to members of regulatory authorities having to be appointed in a democratic and transparent manner. In particular, it noted that the members of the National Television and Radio Council, NTRC were appointed directly by the President, which did not appear to have been "in accordance" with *Recommendation Rec(2000)23*.⁶⁹ The Court noted with "serious concern" the applicants' submissions in respect to the links between the winning bidder of the licence and "the family of one of the NTRC members".⁷⁰ The Court held that the entire procedure was thus rendered "arbitrary", and found a violation of Article 10 ECHR.⁷¹

A final noteworthy judgment is *Europa Way S.r.l. v. Italy*,⁷² also delivered in 2025. It concerns the suspension, by ministerial decree, and subsequent annulment by legislation, of a bidding procedure for the allocation of frequencies for digital terrestrial television broadcasting, as set out in regulations by Italy's communications regulatory authority, AGCOM. In this case, the Court laid down a number of important principles, notably affirming that "in the audiovisual media sector, and particularly in the context of the allocation of audiovisual resources, regulatory governance by an independent authority exercising clearly defined powers delegated by the legislature constitutes one of the main safeguards against arbitrary interference with the right to impart information and ideas".⁷³ The Court further held that the "importance of independent regulatory authorities was reaffirmed in the Declaration of 26 March 2008, in which the Committee of Ministers called on member States to preserve a 'culture of independence' among members of regulatory authorities, public authorities and other relevant stakeholders, and to provide 'the legal, political, financial,

⁶³ It should be noted that the joint dissenting opinion of Judges Lemmens, Jelić and Pavli came to an opposite conclusion, finding that the "revocation decision was marred by serious procedural shortcomings that not only undermined the applicant company's ability to properly defend its interests but also raised substantial questions about the ACC's impartiality in the process". Since they deemed that the national courts also failed to promptly address and remedy these shortcomings, they concluded that there has been a violation of the applicant company's rights under Article 10 of the Convention.

⁶⁴ *Objective Television and Radio Broadcasting Company and Others v. Azerbaijan*, Application no. 257/12, 18 February 2025, <https://hudoc.echr.coe.int/fre?i=001-241829>.

⁶⁵ *Ibid.*, para. 75.

⁶⁶ *Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector*, 20 December 2000, <https://rm.coe.int/16804e0322>.

⁶⁷ *Objective Television and Radio Broadcasting Company and Others v. Azerbaijan*, Application no. 257/12, 18 February 2025, para. 77, <https://hudoc.echr.coe.int/fre?i=001-241829>.

⁶⁸ *Ibid.*, para. 82.

⁶⁹ *Ibid.*, para. 83.

⁷⁰ *Ibid.*, para. 84.

⁷¹ *Ibid.*, para. 85.

⁷² *Europa Way S.r.l. v. Italy*, Application no. 64356/19, 26 November 2025, <https://hudoc.echr.coe.int/fre?i=001-246134>.

⁷³ *Ibid.*, para. 120.

technical and other means necessary to ensure the independent functioning of broadcasting regulatory authorities, so as to remove risks of political or economic interference”.⁷⁴ Crucially, the Court held that the suspension by ministerial decree, and subsequent annulment by legislation, of an original bidding process established by AGCOM “clearly amounted to an interference with the exercise of AGCOM’s functions” which “undermined its independence”.⁷⁵ The measures had derived from “political concerns raised in parliamentary debates”, and “specifically targeted the selection procedure after it had been launched and participants had been allowed to bid”.⁷⁶ In the circumstances of the case, the Court concluded that the “legislative and administrative framework on the allocation of digital terrestrial frequencies was not foreseeable and did not provide adequate safeguards against arbitrariness required by the rule of law in a democratic society”, in violation of Article 10 ECHR.⁷⁷

Thus, the issue of the independence of media regulators is very much of concern to the ECtHR, and the case law demonstrates how influential the standard-setting instruments of the Committee of Ministers are to the ECtHR. **The forthcoming Guidance Note could draw upon this case law for overarching principles under Article 10 ECHR.**

3.2. Standard-settings instruments relevant to media regulators

The purpose of this section is to outline the Council of Europe standard-setting instruments which are relevant for ensuring media regulators can fulfil their essential role in overseeing the media sector. This includes instruments relevant for ensuring media regulators have independence, and the necessary remit, resources, and powers to operate effectively. This section also examines standard-setting instruments applicable to regulatory authorities, including media regulators, that are responsible for the overseeing various aspects of online platforms and online content.

The foundational standard-setting instrument relevant for media regulators is **Recommendation Rec(2000)23 of the Committee of Ministers to member States on the independence and functions of regulatory authorities for the broadcasting sector**.⁷⁸ This instrument calls member States to establish “independent regulatory authorities for the broadcasting sector”, include

”provisions in their legislation and [adopt] measures in their policies entrusting the regulatory authorities for the broadcasting sector with powers which enable them to fulfil their missions, as prescribed by national law, in an effective, independent and transparent manner, in accordance with the guidelines set out in the appendix to this recommendation”.⁷⁹

Notably, the Guidelines in the Appendix include detailed provisions on the requirements for the general legislative framework on media regulators, with the overarching principle being that

“member states should ensure the establishment and unimpeded functioning of regulatory authorities for the broadcasting sector by devising an appropriate legislative framework for

⁷⁴ *Ibid.*, para. 121.

⁷⁵ *Ibid.*, para. 124.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector, 20 December 2000, <https://rm.coe.int/16804e0322>.

⁷⁹ Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector, 20 December 2000, section a.

this purpose. The rules and procedures governing or affecting the functioning of regulatory authorities should clearly affirm and protect their independence”.⁸⁰

The Guidelines also include detailed provisions on appointment, composition and functioning of media regulators; how to ensure financial independence; powers and competences of regulators; and how to ensure accountability. For example, it is stipulated that

“in order to protect the regulatory authorities’ independence, whilst at the same time making them accountable for their activities, it is necessary that they should be supervised only in respect of the lawfulness of their activities, and the correctness and transparency of their financial activities”.⁸¹

This foundational instrument is crucial and continues to be relied upon by the ECtHR in cases related to licensing. However, its scope is limited to broadcast media, which does not necessarily fully address the broader, more complex media ecosystem of today, and is arguably no longer aligned the evolving landscape of regulated media in the Council of Europe member States.

In 2008, *the Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector*⁸² was adopted. This Declaration was, in part, a response to concerns that the guidelines of *Recommendation Rec(2000)23* and the main principles underlining it are not fully respected in law and/or in practice in other Council of Europe member states.⁸³ This issue arose from situations where the legal framework on broadcasting regulation was unclear, contradictory or in conflict with the principles of Recommendation.⁸⁴ As such, the Declaration emphasised that a

“‘culture of independence’, where members of regulatory authorities in the broadcasting sector affirm and exercise their independence and all members of society, public authorities and other relevant players including the media, respect the independence of the regulatory authorities, is essential to independent broadcasting regulation”.⁸⁵

In this regard, the Committee of Ministers affirmed that the

“‘culture of independence’ should be preserved and, where they are in place, independent broadcasting regulatory authorities in member states need to be effective, transparent and accountable”.

It also reiterated its “firm attachment” to the “objectives of the independent functioning of broadcasting regulatory authorities in member states”.⁸⁶

A further instrument that is of relevance to the broader online media ecosystem is *Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new*

⁸⁰ *Ibid.*, Appendix to Recommendation Rec(2000)23, section I(1).

⁸¹ *Ibid.*, Appendix to Recommendation Rec(2000)23, para. 26.

⁸² *Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector*, 26 March 2008, <https://rm.coe.int/09000016805d3c1e>.

⁸³ *Ibid.*, Preamble.

⁸⁴ *Ibid.*, Preamble.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

notion of media.⁸⁷ This important instrument laid down the overarching principle that media freedom should be understood in “broad terms”, encompassing both freedom of expression and the right to disseminate content.⁸⁸ It stressed that new media actors “should be able to initiate media activities or to evolve without undue difficulty from private or semi-private communication in a public space into mass communication”.⁸⁹ These new media actors encompass all actors involved in the production and dissemination of content – potentially to large numbers of people – , while retaining editorial control or oversight. Such content includes “information, analysis, comment, opinion, education, culture, art and entertainment”.⁹⁰ Importantly, Recommendation CM/Rec(2011)7 states that “**no prior authorization**” is required in order to operate as media, and new media actors should be able to initiate media activities “without undue difficulty”. As such, any requirement for the declaration of media activities should serve the purpose of enhancing protection against interference, rather than creating unnecessary obstacles to operation. In this context, media regulators should ensure that new media actors’ authorization processes in order to engage in media activities, adhere to the principle that new media actors must be protected from unjustified interference.

In 2018, the importance of media regulators’ independence in ensuring media pluralism and transparency of media ownership was further emphasized in **Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership**.⁹¹ This Recommendation outlines that, to create a “favourable environment for freedom of expression”, media regulators (and other bodies responsible for regulating or monitoring media service providers and pluralism) “should be able to carry out their remit in an effective, transparent and accountable manner”. The “prerequisite for this is that they enjoy independence that is guaranteed by law and borne out in practice”.⁹² Building upon this principle, the Recommendation stipulates that independence should be guaranteed through:

- Open and transparent **appointment** and **dismissal** procedures;
- Adequate human and financial resources and autonomous budget allocation;
- Transparent functioning and decision-making procedures;
- Open communication with the public;
- The power to make autonomous, proportionate decisions and enforce them effectively;
- The possibility for decisions to be **appealed**.⁹³

This Recommendation also acknowledges that multiple regulatory authorities may play different roles in regulating various media actors but emphasized that regulatory independence is crucial in all cases.

In addition, **Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries**,⁹⁴ also adopted in 2018,

⁸⁷ Recommendation CM/Rec(2011)7 of the Committee of Ministers to member States on a new notion of media, 21 September 2011, <https://search.coe.int/cm?i=09125948801e494a>.

⁸⁸ *Ibid.*, para. 61.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*, para. 7.

⁹¹ Recommendation of the Committee of Ministers to member States on media pluralism and transparency of media ownership, 7 March 2018, <https://search.coe.int/cm?i=0900001680790e13>.

⁹² *Ibid.*, Appendix, para. 1.5.

⁹³ *Ibid.*

⁹⁴ Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries, 7 March 2018, <https://rm.coe.int/0900001680790e14>.

provides further guidance on the role of media regulators in relation to online content. Crucially, this Recommendation sets out the principle that

“any request, demand or other action by public authorities addressed to internet intermediaries that interferes with human rights and fundamental freedoms shall be prescribed by law, exercised within the limits conferred by law and constitute a necessary and proportionate measure in a democratic society”.⁹⁵

It further asks states not to “exert pressure on internet intermediaries through non-legal means”. In addition, it recommends that any legislation on this topic

“should clearly define the powers granted to public authorities as they relate to internet intermediaries, particularly when exercised by law enforcement authorities. Such legislation should indicate the scope of discretion to protect against arbitrary application”.⁹⁶

Furthermore, the Recommendation stipulates that when demanding intermediaries to restrict access to content,

“State authorities should obtain an order by a judicial authority or other independent administrative authority, whose decisions are subject to judicial review”.⁹⁷

In 2022, four additional recommendations were adopted which are relevant for media regulators.

The first is ***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***.⁹⁸ It emphasizes that any subsidies or other forms of financial support for media should be granted based on “objective, equitable, and viewpoint-neutral legal criteria”. These should be part of “non-discriminatory and transparent procedures” and administered by a body with **functional and operational autonomy**, such as an independent media regulatory authority.⁹⁹ Of particular importance, the Recommendations states that

“compliance with the responsibilities of online platforms concerning access, distribution and prioritisation of news and other media content should be subject to monitoring and oversight by independent actors. This could be ensured by means of regular reporting by the relevant online platforms about how decisions relating to content curation are made. The oversight function could be entrusted to independent national media regulatory authorities or other designated bodies, which should have the necessary powers, resources and decision-making authority to be able to carry out their remit in an effective, transparent and accountable manner”.¹⁰⁰

⁹⁵ *Ibid.*, Appendix, para. 1.1.1.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*, para. 1.3.2.

⁹⁸ *Recommendation 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/?i=0900001680a5ddd0>.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.* *Emphasis added.*

Second, and of particular importance, is **Recommendation CM/Rec(2022)11 on principles for media and communication governance**.¹⁰¹ It stresses that:

“media and communication governance should be independent and impartial to avoid undue influence on policy making, discriminatory treatment and preferential treatment of powerful groups, including those with significant political or economic power”.¹⁰²

Notably, the Recommendation takes a very broad approach to what media and communication entails, which includes all types of formal rules such as statutory regulation, co-regulation, industry self-regulation and private ordering initiatives by individual media and platform providers. The Recommendation calls media and communication governance “to ensure transparency of content production”, which includes the:

“obligation to provide information on the circumstances of content production, including editorial standards, as well as on the ownership and funding of media and other actors producing content in an easily accessible and regularly updated manner that is made available to the public by independent media regulatory authorities or other designated bodies”.¹⁰³

Notably, “governance” also entails “disclosure of the use of and potential bias resulting from algorithmic systems in content production, the use of which must respect human rights and fundamental freedoms”.¹⁰⁴

The **Explanatory Memorandum to Recommendation CM/Rec(2022)11** further emphasizes that:

“States should ensure the establishment and unimpeded functioning of independent regulatory authorities for audiovisual media, electronic communications networks and services and/or platforms as well as for competition with autonomy, powers as well as human and financial resources allowing them to fulfil their missions. The rules and procedures governing or affecting the functioning of these regulatory authorities should clearly affirm and protect their independence”.¹⁰⁵

Therefore, such rules should be:

“defined so as to protect the regulatory authorities against any interference, in particular by political forces or economic interests. Partisan appointments and an undue closeness between members and industry need to be avoided. Moreover, the duties and powers of regulatory authorities, as well as the ways of making them accountable, the procedures for appointment and dismissal of their members, and the means of their funding should be clearly defined in law”.¹⁰⁶

The Explanatory Memorandum adds that “States should ensure that these bodies are independent, sufficiently resourced and have adequate powers”.¹⁰⁷ It also notes the cooperative dimension of media regulation, stating that the “transnational dimension of communication, especially in light of

¹⁰¹ 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/?i=0900001680a61712>.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*, Explanatory Memorandum.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

[online] platforms, suggests that cooperation is essential for both standards development and individual case handling”.¹⁰⁸ Finally, it highlights the growing role of media authorities in overseeing online platforms, recommending that:

“States should stipulate reporting duties on content moderation to independent media and/or platform regulatory authorities or other designated bodies entrusted with maintaining and promoting pluralism and diversity in the public sphere”.¹⁰⁹

Recommendation CM/Rec(2022)13 of the Committee of Ministers to member States on the impacts of digital technologies on freedom of expression¹¹⁰ emphasizes that (media) regulators need to be given the means to adequately assess the impact of digital technologies on freedom of expression. It recommends in this sense that member states should:

“strengthen all relevant regulatory authorities and equip them with adequate resources and expertise so they can effectively monitor the impact of digital technologies on freedom of expression. States should also ensure that internet intermediaries provide the necessary information for these monitoring activities in a timely manner”.¹¹¹

Finally, **Recommendation CM/Rec(2022)12 of the Committee of Ministers to member States on electoral communication and media coverage of election campaigns**¹¹² encourages states:

“to consider and develop, in co-operation with online platforms and civil society organisations, an independent democratic oversight mechanism which should include reporting duties by online platforms to designated independent regulatory and oversight authorities”.

Crucially, these:

“can be existent independent authorities or national networks of independent authorities with relevant and complementary capacities and competences. Indeed, States should provide formal mechanisms of networking and collaboration between relevant authorities to ensure a holistic perspective in the supervision of co-regulatory rules. States can also establish new independent authorities if it is deemed necessary”.¹¹³

Given the foregoing, there is a gradual recognition under Committee of Ministers’ standards of the **growing role of media regulators in the online ecosystem**, as well as the increasing need for coordination and a clear framework to define their respective competences.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Recommendation of the Committee of Ministers to member States on the impacts of digital technologies on freedom of expression*, 17 March 2022, <https://search.coe.int/cm?i=0900001680a61729>.

¹¹¹ *Ibid.*

¹¹² *Recommendation CM/Rec(2022)12 on electoral communication and media coverage of election campaigns*, 6 April 2022, <https://search.coe.int/cm?i=0900001680a6172e>.

¹¹³ *Ibid.*

3.2. Standard-settings instruments relevant to the media environment

In addition to the standard-setting instruments discussed above, there are further instruments relevant to the media environment, including the online space. These are also relevant where media regulators may be tasked with powers related to online platforms.

The first of these is the Steering Committee for Media and Information Society's **Guidance Note on Content Moderation** that highlights the importance of independent authorities in relation to the removal of illegal content online.¹¹⁴ This Guidance Note emphasizes that a

“clear and predictable legal framework is essential to ensure that restrictions [on online content] are provided for by instruments that are law or have the quality of law [...] [and that laws on] illegal content should be as clear and as harmonised as possible on an international level. States should ensure the existence of competent, independent authorities with the right to issue takedown orders”.¹¹⁵

As such, the importance of independent authorities is essential in relation to removal orders relating to illegal content online.

A second relevant instrument adopted by the Steering Committee for Media and Information Society is the **Guidance Note on the Prioritisation of Public Interest Content Online**.¹¹⁶ This recommends that states should “refrain” from obliging platforms to carry “specific pieces of content” or specific information that States “deem to be of public interest”. Instead, States should defer to “independent third parties, such as independent national media regulatory authorities or equivalent bodies, self-regulatory bodies or independent media,” in determining what constitutes public interest content and in assigning responsibilities to various platforms in relation to prioritising such content.¹¹⁷

Further, it notes that compliance with

“state-mandated responsibilities of platforms and intermediaries should be subject to oversight. This could be ensured by means of regular reporting by the relevant platforms and intermediaries about how policies and decisions relating to prominence regimes are made. **The oversight function could be entrusted to independent national media regulatory authorities** or equivalent bodies, or to responsible co-regulatory mechanisms, which should have the necessary powers and resources to carry out their remit in an effective, transparent, and accountable manner”.¹¹⁸

In addition, it adds that “[p]rominence regimes should be subject to regular review by independent national media regulatory authorities and the wider public”.¹¹⁹ As such, where regulatory

¹¹⁴ *Guidance Note on Content Moderation: Best practices towards effective legal and procedural frameworks for self-regulatory and co-regulatory mechanisms of content moderation*, adopted by the Steering Committee for Media and Information Society, 19-21 May 2021, <https://rm.coe.int/content-moderation-en/1680a2cc18>.

¹¹⁵ *Ibid.*

¹¹⁶ *Guidance Note on the Prioritisation of Public Interest Content Online*, adopted by the Steering Committee for Media and Information Society, 1-3 December 2021, <https://rm.coe.int/cdmsi-2021-009-guidance-note-on-the-prioritisation-of-pi-content-e-ado/1680a524c4/>

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.* Emphasis added.

¹¹⁹ *Ibid.*

frameworks are introduced on prioritisation for public interest content on online platforms, independent media regulators are crucial.

A third relevant instrument is the Steering Committee for Media and Information Society's ***Guidance Note on countering the spread of online mis- and disinformation through fact-checking and platform design solutions in a human rights compliant manner***,¹²⁰ highlights that independent regulators are also crucial when determining measures targeting platforms in relation to disinformation. In particular, the Guidance Note states that any

“regulatory frameworks, including co-regulation, targeting platform design in relation to mis- and disinformation, should contain measures and requirements that are proportional to the risk level that platforms’ functioning involves (e.g., the adverse consequences for human rights that some of their users are likely to entail). The criteria based upon which the risk levels of different platforms are assessed may include factors such as the size (e.g., number of users and capitalisation), resources (e.g., technical and economic means), and reach (e.g., potential impact on audiences)”.¹²¹

Crucially, such criteria

“should be specified clearly, reviewed periodically, measured precisely in collaboration with independent researchers, and communicated transparently by an independent regulator with sufficient expertise and adequate resources”.¹²²

Fourth, the ***Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech*** is also relevant. It states that Member States should ensure that “independent authorities” can “assess and improve” the content moderation systems of internet intermediaries in order to “improve the detection, reporting and processing” of online hate speech.¹²³ And in particular, independent national regulatory authorities and media co-regulatory and/or self-regulatory bodies “should play a positive role in addressing hate speech”, be “independent from the government, publicly accountable and transparent in their operations”.¹²⁴

Finally, the Steering Committee on Media and Information Society also adopted an important policy instrument in late 2025 on “Resisting Disinformation”, which includes relevant recommendations in relation to media regulators. It stresses, for example, that independent institutions, such as media regulators should be empowered with the “technological and methodological tools needed to monitor and analyse the spread of disinformation and other information disorders”.¹²⁵

¹²⁰ *Guidance Note on countering the spread of online mis- and disinformation through fact-checking and platform design solutions in a human rights compliant manner*, Adopted by the Steering Committee for Media and Information Society, 29 November - 1 December 2023, <https://rm.coe.int/cdmsi-2023-015-msi-inf-guidance-note/1680add25e>.

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ *Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech*, para. 26, <https://search.coe.int/cm?i=0900001680a67955>.

¹²⁴ *Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech*, para. 42, <https://search.coe.int/cm?i=0900001680a67955>.

¹²⁵ *Resisting disinformation: 10 building blocks to strengthen information integrity*, Steering Committee on Media and Information Society, CDMSI(2025)17rev, 4 December 2025, p. 26, <https://rm.coe.int/cdmsi-2025-17rev-e-clean-resisting-disinformation-10-building-blocks-f/488029df7d>.

4. Other international standards relevant to supervisory authorities

In addition to Council of Europe standards, it is also important to examine how EU law governs media regulators, as well as other standard-setting instruments of international bodies such as the Organisation for Security and Cooperation in Europe (OSCE) and the United Nations and its agencies.

4.1. EU Law concerning media regulators and other adjacent regulators

EU law relevant to the media sector is increasingly harmonising the requirements and competences of media regulators in the EU member states. The EU legislative framework on the media comprises of the AVMSD¹²⁶ last revised in 2018 and the European Media Freedom Act (EMFA) adopted in 2024.¹²⁷ Both instruments are based on the EU's competences to adopt measures which aim for the establishment and functioning of the internal market.¹²⁸

(a) *The interaction of Council of Europe standard-setting with EU law*

Council of Europe standards and EU legislation relevant to the media regulators are separate legal systems. Through Article 52 (3) of the Charter of Fundamental Rights of the EU it is ensured that the meaning and scope of fundamental rights provided for in the Charter shall correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms.¹²⁹ Both, the Council of Europe and EU legal systems, come together at the national level since all EU member states are also Council of Europe member States. Through the EU enlargement package, EU law exerts a normative pull-on media governance in (potential) candidate countries of the EU which are in turn also Council of Europe member States.¹³⁰

(b) *Audiovisual Media Services Directive (AVMSD)*

The AVMSD applies to audiovisual media services, audiovisual commercial communication and user-generated video-sharing platform services.¹³¹ The 2018 revision of the AVMSD introduced a legally binding provision in Article 30, which focuses on ensuring the independence and effective functioning of media regulators within the audiovisual media sector. Accordingly, EU member states are required to:

- designate “one or more national regulatory authorities’ bodies” that are “legally distinct from the government” and **“functionally independent of their respective governments and of any other public or private body”**;

¹²⁶ 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) (consolidated text), ELI: <http://data.europa.eu/eli/dir/2010/13/2025-02-08>.

¹²⁷ Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act), ELI: <http://data.europa.eu/eli/reg/2024/1083/oj>.

¹²⁸ Article 114(1) of the Treaty on the Functioning of the European Union (TFEU) (consolidated version), ELI: <http://data.europa.eu/eli/treaty/tfeu/2016/2025-03-15>; see also European Commission: DG CNECT, CMPF, CiTiP, IViR and VUB-SMIT, Study on media plurality and diversity online – Final report, Publications Office of the European Union, 2022, pp. 30-40, <https://data.europa.eu/doi/10.2759/529019>.

¹²⁹ Charter of Fundamental Rights of the European Union, ELI: <http://data.europa.eu/eli/treaty/char/2012/oj>.

¹³⁰ EU candidate countries are Albania, Bosnia and Herzegovina, Georgia, Moldova, Montenegro, North Macedonia, Serbia, Turkey, Ukraine, with Kosovo as a potential EU candidate.

¹³¹ As defined in Article 1(1) AVMSD.

- ensure that national regulatory authorities “exercise their powers **impartially and transparently**” and “shall not seek or take instructions from any other body” in relation to the exercise of their tasks;
- ensure that “the competences and powers” of the national regulatory authorities, as well as “the ways of making them accountable” are **clearly defined in law**;
- ensure that national regulatory authorities “have **adequate financial and human resources and enforcement powers** to carry out their functions effectively” and “are provided with their own annual budgets, which shall be made public”;
- specify in their national law “**the conditions and the procedures for the appointment and dismissal**” of the decision-makers of national regulatory authorities and “the duration of the mandate”. Such procedures shall be “transparent, non-discriminatory and guarantee the requisite degree of independence”;
- ensure that **the head or other decision-makers of a national regulatory authority “may be dismissed** if they no longer fulfil the conditions required for the performance of their duties” and that a “dismissal decision shall be duly justified, subject to prior notification and made available to the public”;
- ensure that “**effective appeal mechanisms exist**” and that the “appeal body, which may be a court, shall be independent of the parties involved in the appeal”.¹³²

These AVMSD requirements set the contours for independent national authorities while allowing some margin for EU member states to decide on the concrete set-up and organisation of their media regulators. According to Recital 53 AVMSD:

“National regulatory authorities or bodies should be considered to have achieved the requisite degree of independence if those authorities or bodies, including those that are constituted as public authority, are functionally and effectively independent of their respective governments and of any other public or private body”.

By September 2020 EU member states (which make up 27 of Council of Europe’s 46 member States) have been required to transpose the revisions of the AVMSD into national law. A revision of the AVMSD is currently undergoing.

(c) European Media Freedom Act (EMFA)

As a regulation, the EMFA directly applies in the EU member states, with most of its provisions coming into effect in 2025.¹³³ The EMFA covers broadly all media services. According to the definition in Article 2(1) EMFA a media service

“consists in providing programmes or press publications, under the editorial responsibility of a media service provider, to the general public, by any means, in order to inform, entertain or educate”.

As a result, the EMFA’s scope of application is much broader as compared to the AVMSD.

¹³² Article 30(1) to (6) AVMSD. Emphasis added.

¹³³ Note that Hungary filed on 10 July 2024 an action for annulment of certain provisions of the EMFA, see CJEU, case C-486/24 (*Hungary v European Parliament and Council of the European Union*) (pending).

Several provisions of the EMFA are relevant to national media governance and in particular media regulators. According to Article 4(2) EMFA, **EU member states “shall respect the effective editorial freedom and independence of media service providers” and their national regulatory authorities and bodies “shall not interfere in or try to influence the editorial policies and editorial decisions of media service providers”**. Article 7(2) EMFA requires that the national regulatory authorities shall be subject to the requirements set out in Article 30 AVMSD in relation to the exercise of the tasks assigned by this Regulation. Article 5(4) EMFA requires EU member states to “designate one or more independent authorities”, or “put in place mechanisms **free from political influence by governments**”, and to monitor the EMFA’s new guarantees to ensure that public service media providers are “editorially and functionally independent”.

(d) European Board for Media Services

After the adoption of EMFA, the EU-wide coordination mechanism established pursuant to the AVMSD, the **European Regulators Group for Audiovisual Media Services (ERGA)**, was replaced by the **European Board for Media Services (EBMS)**. This Board assembles the representatives of national regulatory authorities for the media sector. According to Article 9 EMFA, “the Board shall act in full independence when performing its tasks or exercising its powers”. Articles 10 to 13 EMFA outline the provisions regarding the institutional setup and functioning of the EBMS, while Articles 14 to 17 lay down the rules for structured cooperation.

(e) Regulators of other actors in the online media ecosystem

Media actors and/or the media environment are also influenced by EU regulation in other sectors and the regulatory authorities tasked with its implementation. Matters that tend to have a bearing on media freedom include national-level radio spectrum allocation and whether media actors are affected by must-carry rules, online platforms’ content moderation practices and other additional regulatory obligations. Hence, **competent authorities tasked with implementing the European Electronic Communications Code (EECC),¹³⁴ the Digital Services Act,¹³⁵ and the Political Advertisement Regulation,¹³⁶ also have a bearing on media actors and the media environment**. For example, under the EU’s Digital Services Act, there is a somewhat complex enforcement regime regarding online platforms, that may host content by media actors or other actors in the media environment, such as influencers. The basic rule for online platforms is that the Member State which the main establishment of the provider of online platform is located shall have exclusive powers to supervise and enforce the Digital Services Act’s provisions.¹³⁷ National regulatory authorities, called Digital Services Coordinators, are tasked with supervising online platforms established in their Member State. Notably, the DSA also regulates what are called Very Large Online Platforms (VLOPs), and it is the European Commission that has exclusive powers to supervise VLOPs under the Digital Services Act’s special provisions which are applicable to VLOPs.¹³⁸ However, national Digital Services Coordinators may enforce other provisions of the

¹³⁴ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (consolidated text), <http://data.europa.eu/eli/dir/2018/1972/2024-10-18>.

¹³⁵ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), ELI: <http://data.europa.eu/eli/reg/2022/2065/oj>.

¹³⁶ Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising, ELI: <http://data.europa.eu/eli/reg/2024/900/oj>.

¹³⁷ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), Article 56(1).

¹³⁸ DSA, Article 56(2).

Digital Services Act against VLOPs established in their Member State where the “Commission has not initiated proceedings” against the VLOP, but must do so in “close cooperation” with the Commission.¹³⁹

Notably, when it comes to VLOPs under the Digital Services Act, Ireland is the place of establishment for a majority of the 25 VLOPs designated under the Digital Services Act, including YouTube, LinkedIn, Facebook, Instagram, Pinterest, TikTok, X, and WhatsApp. In this regard, the Irish Digital Services Coordinator, *Coimisiún na Meán*, has initiated regulatory action against platforms such as X, under the non-VLOP provisions of the Digital Services Act,¹⁴⁰ while at the same time, the European Commission has taken enforcement action against platforms such as X under the Digital Services Act’s provision on VLOPs,¹⁴¹ demonstrating how regulatory action can be initiated under the Digital Services Act against a platform from both national and EU level.

4.2. Organisation for Security and Cooperation in Europe

The Organisation for Security and Cooperation in Europe (OSCE) and Participating States have committed to ensuring the freedom of the media as a basic condition for pluralistic and democratic societies.¹⁴² Although OSCE commitments do not explicitly cover national media regulators, the **2025 policy manual ‘Safeguarding Media Freedom in the Age of Big Tech Platforms and AI’**¹⁴³ stresses independent authorities as a safeguard of media freedoms. However, when it comes to the question who should draw up new “visibility policies for ‘quality’ or ‘public interest’ information” the OSCE policy manual is cautious about handing this competence to the media regulator or even to the government “as visibility policies could be captured in ways that undermine independent journalism”.¹⁴⁴

4.3. Standard-setting at the United Nations and its Agencies

The United Nations Educational, Scientific and Cultural Organization (UNESCO) engages with independence guarantees for media regulators. In 2006, UNESCO commissioned an influential guiding document on broadcast regulation which explains media governance through independent media regulators and good practices.¹⁴⁵ Further, the **2023 UNESCO Guidelines for the Governance of Digital Platforms** lists a number of characteristics of independent regulatory authorities tasked with digital platform regulation, however, not specifically media regulation.¹⁴⁶ The guidelines advocate for a multistakeholder approach in regulation, emphasising not only the

¹³⁹ DSA, Article 56(5).

¹⁴⁰ *Coimisiún na Meán*, Investigation into X, 12 November 2025, <https://www.cnam.ie/coimisiun-na-mean-investigation-into-x/>

¹⁴¹ European Commission, Commission fines X €120 million under the Digital Services Act, 5 December 2025, <https://digital-strategy.ec.europa.eu/en/news/commission-fines-x-eu120-million-under-digital-services-act>.

¹⁴² Participating States have repeatedly affirmed these commitments through key OSCE documents, including the *Helsinki Final Act*, the *Copenhagen Document*, and *Ministerial Council Decision 3/18 on the Safety of Journalists*, see OSCE Representative on Freedom of the Media, *Freedom of the Media, Freedom of Expression, Free Flow of Information; Conference on Security and Co-operation in Europe (CSCE) and*

Organization for Security and Co-operation in Europe (OSCE) 1975-2017 (4th Edition), Vienna: OSCE Representative on Freedom of the Media, 2017, https://www.osce.org/sites/default/files/fi/documents/4/fi/99565_0.pdf.

¹⁴³ OSCE (2025). *Safeguarding Media Freedom in the Age of Big Tech Platforms and AI*. 6 October 2025, https://www.osce.org/files/fi/documents/e/3/598525_1.pdf.

¹⁴⁴ *Ibid.*, 62.

¹⁴⁵ Eve Salomon, *Independent regulation of broadcasting: a review of international policies and experiences*, Paris, Montevideo: UNESCO, 2016, <https://unesdoc.unesco.org/ark:/48223/pf0000246055>.

¹⁴⁶ UNESCO, *Guidelines for the Governance of Digital Platforms*, 2023, <https://unesdoc.unesco.org/ark:/48223/pf0000387339>.

independent regulatory authorities but also the importance of participatory and inclusive legislative processes.¹⁴⁷

Moreover, in 2026, UNESCO published a compilation of **good practices in digital platform governance by European media regulators**.¹⁴⁸ The report reviews current European approaches to platform governance in both EU and non-EU countries. By highlighting emerging **non-statutory practices** – that is, measures regulators can implement within their existing mandates without requiring additional legal powers – the publication aims to support discussion, policy development, and the transferability of **human-rights-compliant approaches** to platform governance in other regions of the world.¹⁴⁹

In February 2026, UNESCO also convened an **International Conference on Digital Platform Governance**. It brought together “media and communication regulators, governments, electoral bodies, digital platforms, civil society, academia, and international and regional organizations from all regions to advance human rights–based and multistakeholder approaches to digital governance, and assess progress in the implementation of the UNESCO Guidelines for the Governance of Digital Platforms”.¹⁵⁰ An outcome of the conference is **Pretoria’s Proposition for action on digital platform governance**¹⁵¹ that will be presented to MSI-eREG during its first meeting.

4.4. International cooperation

It is also important to take account of the cross-border cooperation among media regulators of Council of Europe member States, and relevant transnational networks, particularly with regard to sharing of best practices, and the development of standards on media regulators.

A first relevant body to mention is the above-mentioned **European Board for Media Services (EBMS)**, which was established under EMFA, and succeeds the **European Regulators Group for Audiovisual Media Services (ERGA)**, established under the AVMSD.¹⁵² The EBMS is composed of representatives of national media regulatory authorities or bodies in EU member states, and its purpose is to “advise and support” the European Commission on “matters related to media services within the Board’s competence and promote the consistent and effective application”¹⁵³ of the EMFA and AVMSD. Its role is also to engage in “cooperation and the effective exchange of information, experience and best practices between the national regulatory authorities or bodies on the application of the Union and national rules applicable to media services”.¹⁵⁴ Notably, **ERGA had produced guidance on independence of media regulators**, including its 2015 Report on the independence of National Regulatory Authorities.¹⁵⁵

¹⁴⁷ *Ibid.*, para. 61.

¹⁴⁸ Ingrida Milkaitė and Ethan Shattock, *Good practices in digital platform governance by European media regulators*, Montevideo: UNESCO, 2026, <https://unesdoc.unesco.org/ark:/48223/pf0000397647>.

¹⁴⁹ *Ibid.*, p. 6.

¹⁵⁰ <https://www.unesco.org/en/articles/international-conference-digital-platform-governance-2026>.

¹⁵¹ <https://www.unesco.org/en/articles/pretoria-digital-platforms-regulators-build-unescos-stewardship-accountability-and-transparency#:~:text=The%20Proposition%20for%20action%20moves,peer%20learning%20and%20follow%2Dup>.

¹⁵² *Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act)*, Article 8.

¹⁵³ *Ibid.*, Article 13.

¹⁵⁴ *Ibid.*, Article 8.

¹⁵⁵ ERGA Report on the independence of National Regulatory Authorities, 2015, <https://digital-strategy.ec.europa.eu/en/library/erga-report-independence-national-regulatory-authorities>.

Further, **European Platform of Regulatory Authorities (EPRA)**¹⁵⁶ is another relevant forum. It is comprised of 56 regulatory authorities from 47 countries, and includes all national regulatory authorities from EU member states, all NRAs from the EU candidate countries (AL, BA, GE, MD, ME, MK, RS, TR, UA), NRAs from the potential EU candidates (XK) and NRAs from countries of the EU Eastern partnership (AM, AZ).¹⁵⁷ Its purpose is to provide a forum for the “exchange of information, cases and best practices between media regulators in Europe”, seeking to provide “non-academic knowledge on the implementation of media regulation in Europe and on regulatory authorities”.¹⁵⁸ Particularly noteworthy is that EPRA has previously established a **Working Group on the independence of broadcasting regulators**.¹⁵⁹

There is also the **European Audiovisual Observatory (EAO)**, which was established by Council of Europe *Committee of Ministers Resolution (92)70 establishing a European Audiovisual Observatory*, in 1992.¹⁶⁰ The EAO is comprised of 41 member states represented by delegates from ministry of culture or communications or national regulatory authorities.¹⁶¹ The EAO has published relevant reports, including a **study on the independence of media regulatory authorities in Europe**.¹⁶²

The Mediterranean Network of Regulatory Authorities is also relevant aiming to “set up a framework for discussion, regular exchanges of information and research on issues related to audiovisual regulation”. The Network is comprised of 27 member authorities representing 24 states and territories from the Mediterranean Basin. It has adopted a **Declaration for an “overhaul of the audiovisual regulation in the digital environment”**.¹⁶³

The Francophone Network of Media Regulators (REFRAM, Réseau Francophone de Regulateur de Medias),¹⁶⁴ was established in 2007, and comprises 32 members from Africa, North America and Europe. It provides a forum for debate and the exchange of information on issues of common interest and contributes to training and cooperation efforts among its members. It has adopted *recommendations on the legal framework for the regulation of online content*, urging to “expand the scope of competence of media regulatory institutions by entrusting them with the regulation of online content and digital platforms”.¹⁶⁵

The Baltic Cooperation is another relevant agreement between regulatory authorities for audiovisual media service in Estonian, Latvia, and Lithuania.¹⁶⁶ At the 2024 meeting, the regulators emphasised that ensuring a “high-quality and safe information space in each country separately and in the Baltics as a whole is currently one of the most important priorities of all three media supervisors”.¹⁶⁷

¹⁵⁶ European Platform of Regulatory Authorities, <https://www.epra.org/>.

¹⁵⁷ EPRA, “General information on EPRA,” <https://www.epra.org/articles/general-information-on-epra>.

¹⁵⁸ *Ibid.*

¹⁵⁹ EPRA, “Independence of NRAs: EPRA highlights Key Developments”, https://www.epra.org/news_items/independence-of-nras-epra-highlights-key-developments.

¹⁶⁰ *Committee of Ministers Resolution (92) 70 establishing a European Audiovisual Observatory*, <https://rm.coe.int/1680783a7c>.

¹⁶¹ European Audiovisual Observatory, <https://www.obs.coe.int/en/web/observatoire/what-we-do>.

¹⁶² Kristina Irion (ed.), *The independence of media regulatory authorities in Europe*, in: Capallo, M. (ed), *IRIS Special* (Strasbourg: European Audiovisual Observatory, 2019), <https://rm.coe.int/the-independence-of-media-regulatory-authorities-in-europe/168097e504.pdf>.

¹⁶³ Mediterranean Regulatory Authorities Network, <https://www.rirm.org/en/documents-en/>.

¹⁶⁴ More information at <https://www.refram.org/>.

¹⁶⁵ More information at <https://www.refram.org/Ressources/Declarations/Recommandations-du-Colloque-international-du-REFRAM-a-Niamey-sur-le-cadre-juridique-de-la-regulation-des-contenus-en-ligne>.

¹⁶⁶ More information at <https://www.neplp.lv/lv/baltijas-valstu-regulatoru-sadarbiba>.

¹⁶⁷ More information at <https://www.neplp.lv/lv/baltijas-valstu-regulatoru-sadarbiba>.

The **Platform of Audiovisual Sector Regulators of Ibero-America (PRAI, La Plataforma de Reguladores del Sector Audiovisual de Iberoamerica)** is an international network that promotes the exchange of experiences and knowledge among independent bodies with regulatory functions in the audiovisual sector. It is comprised of regulatory bodies and similar institutions from Argentina, Chile, Spain, Peru, Portugal, Ecuador, Mexico, Colombia and Brazil; Costa Rica and Morocco serve as observer members.

Of particular relevance is **the Global Online Safety Regulators Network (GOSRN)**. GOSRN is the only global forum dedicated to fostering collaboration among independent online safety regulators, underscoring a shared international commitment to effective online safety regulation. The Network seeks to promote coherence and consistency in regulatory approaches worldwide by facilitating the exchange of information, expertise, and best practices. Membership is open to regulators with legislated online safety functions that meet standards of independence from political and commercial interference and demonstrate a commitment to human rights, democracy, and the rule of law. Current members include Ofcom (UK), eSafety Commissioner (Australia), Online Safety Commission (Fiji), Arcom (France), *Coimisiún na Meán* (Ireland), Korea Communications Standards Commission (Republic of Korea), Council for Media Services (Slovakia), Film and Publication Board (South Africa), and the Authority for the prevention of online Terrorist Content and Child Sexual Abuse Material (ATKM) (Netherlands). Observer status is available to organisations and stakeholders – including civil society groups, policymakers, multilateral organisations, and industry bodies – that work on online safety issues and are committed to collaborating with independent regulators.¹⁶⁸

Finally, the **Information, Communication, Technologies and Media Regulators Forum of South Africa and Social Media 4 Peace South Africa**, hosted the International Conference on Digital Platform Governance 2026, organized with the support of UNESCO, the African Communication Regulation Authorities Network (ACRAN), the Francophone Network of Media Regulators (REFRAM), the I4T Knowledge Network, and the European Union.¹⁶⁹ Notably, one of the purposes of this conference was to convene regulators, and establish mechanisms for knowledge sharing and effective strategies in platform governance.

There are thus numerous cross-border international networks and platforms of national media regulators, which demonstrate the added value of international cooperation among regulators, especially in the sharing of best practices and in addressing the expanding role of media regulators in relation to online content.

¹⁶⁸ More information at <https://www.ofcom.org.uk/about-ofcom/international-work/gosrn>.

¹⁶⁹ More information at <https://www.unesco.org/en/articles/international-conference-digital-platform-governance-2026>.

5. Preliminary identification of challenges and difficulties that have been encountered by regulators and other stakeholders

This section offers a concise overview of the challenges and difficulties that arise in relation to media regulators in a platform-based environment. This preliminary identification of issues covers media regulators' role and competences in a platform-based environment, the independence and effective functioning of media regulators, cross-sectoral coordination within a country and cross-border cooperation between media regulators.

5.1. Media regulators' role and competences in a platform-based environment

A number of challenges and difficulties arise specifically in relation the **role and competences** of media regulators in a platform-based environment. These will be discussed further below.

(a) *Delineating what is regulated media as opposed to non-regulated online content*

A first issue concerns delineating **what constitutes regulated media, as opposed to non-regulated online content, from the perspective of media regulators**. There is a wide range of media actors as the notion not only covers professional media but also those reporting on matters of public interest. Moreover, in the platform-based environment intermediary or auxiliary services including online platforms render various functionalities to media production, distribution and access. In some cases, online platform's content moderation algorithms can amount to exercising editorial control in which case it would qualify as a media actor too.

The table below reproduces an overview summarising the Council of Europe Recommendation on a new notion of media, and European Court of Human Rights case law on media freedom.¹⁷⁰

Table 1: Definitions of media actors and other actors in the media ecosystem

Media actors	intent to act as media; have purpose and underlying objectives of media; editorial control; adhere to professional standards; seek outreach and dissemination and satisfy public expectation.
<ul style="list-style-type: none"> • Print media (e.g., newspapers and periodicals) • Broadcast media (e.g., radio, television, public service media, local, regional, and non-profit community broadcasting) • Non-linear audiovisual media (e.g., video-on-demand) • Online newspapers, news websites, online news portals, online news archives • Publishers (print and online) • Professional journalists 	
Other media actors and public watchdogs reporting on matters of public interest	others who contribute to public debate and who perform journalistic activities or fulfil public watchdog functions

¹⁷⁰ European Commission, CMPF/EUI, CiTIP/ KU Leuven, IViR/UvA and VUB- SMIT), Study on media plurality and diversity online – Final report, Publications Office of the European Union, 2022, <https://data.europa.eu/doi/10.2759/529019>.

<ul style="list-style-type: none"> • Bloggers • NGOs • Citizen journalists • Whistleblowers • Well-known social media users • Podcasters 	
<p>Other actors, intermediary and auxiliary services, in the media ecosystem</p>	<p>intermediary or auxiliary services which contribute to the functioning or accessing a media, but do not or should not exercise editorial control, and therefore have limited or no editorial responsibility, may not be considered to be media</p>
<ul style="list-style-type: none"> • Electronic communications networks and services (e.g., content delivery networks, hosting services) • Intermediary services (e.g., search engines, social media, video-sharing platforms) • Communication devices' manufacturers (e.g., Smart TVs, mobile devices, digital home assistants) • Advertisers and advertising agencies 	

Source: European Commission, CMPF/EUI, CiTiP/ KU Leuven, IVIR/UvA and VUB- SMIT), Study on media plurality and diversity online – Final report, Publications Office of the European Union, 2022, <https://data.europa.eu/doi/10.2759/529019>.

In this complex environment, **media regulators may face difficulties determining which actors and content fall within their competences, and which do not, as well as distinguishing regulated media content from non-regulated content.** This challenge is further complicated by the fact that some media actors are subject to an explicit positive-law regulatory framework, while others are not, yet nonetheless benefit from protection as media under the right to freedom of the media. The ECtHR has confirmed that, in light of the “advent of new information technology”, the guarantees of media freedom must be “expanded” to the “new electronic media”.¹⁷¹

Media regulators must therefore navigate these complexities, while ensuring that they remain independent from platforms and adhere to the principle of regulation being technology neutral when defining their role, tasks and competences. This is especially so in relation to content that may qualify as media content but is not published by traditional media actors. It is also further complicated by the fact that competences to regulate such content may be divested between media regulators and platforms regulators. And finally, media regulators must also navigate the challenges arising in connection with AI generated content, in particular, regarding how to distinguish AI generated content that mimics media content, and how to deal with AI summaries of media content.

(b) *The country-of-origin principle, and the resulting “hub-ification” of media regulation*

Another issue concerns the country-of-origin principle, and the resulting “hub-ification” of media and media regulation. In practice, some jurisdictions host a concentration of major platforms – for example, Netflix, Disney+ and Discovery+ in the Netherlands – requiring that the media regulator (*Commissariaat voor de Media* - CvdM) may need to enforce the applicable rules, such as those under the AVMSD across the EU, and to act upon requests from other regulators. Thus, these

¹⁷¹ *OOO Regnum v. Russia*, Application no. 22649/08, 8 September 2020, para. 60, <https://hudoc.echr.coe.int/eng?i=001-204319>.

media regulators act as a regulatory hub in supervising these providers' compliance with audiovisual media law requirements.

While the country-of-origin principle facilitates the provision of cross-border services, it also gives rise to challenges relating to **the need for heightened cross-border coordination and cooperation among regulators, and willingness and capacity to act**. A related issue concerns media content originating from outside the EU or Council of Europe, and how to determine the applicable rules and regulatory jurisdiction. The EU AVMSD sets out specific rules on derogations from the country-of-origin-principle but in relation to Council of Europe member States the standards and guidance on cross-border coordination and co-operation are patchy. Further, and as mentioned above, the national Digital Services Coordinators may enforce certain provisions of the Digital Services Act against VLOPs established in their Member State where the "Commission has not initiated proceedings" against the VLOP, but they must do so in "close cooperation" with the Commission.¹⁷²

This dynamic was evident in the recent controversy around Grok, the generative AI chatbot that was integrated with X, where the European Commission opened an investigation, to inquire whether X "properly assessed and mitigated risks associated with the deployment of Grok's functionalities into X in the EU".¹⁷³ This included risks related to the dissemination of illegal content, including manipulated sexually explicit images, including content that may amount to child sexual abuse material. Notably, prior to opening the investigation, the Commission "closely collaborated" with *Coimisiún na Meán*, the Irish Digital Services Coordinator in the country of establishment in the EU. Moreover, the *Coimisiún na Meán* will be involved in the investigation as the national Digital Services Coordinator (and not as a media regulator).

(c) The oversight by media regulators of content disseminated on platforms, including the monitoring of algorithms and content moderation practices

Another challenge relates to the **often-limited role of media regulators in overseeing content disseminated on platforms, as well as monitoring algorithms and content moderation practices**. There is a recognised lack of transparency from platforms on these issues, which legislation, such as the EU's Digital Services Act, is only now trying to remedy. Key questions therefore arise as to how to ensure that media regulators possess the necessary competences and expertise to make investigations into online platforms' content moderation in light of media-policy objectives, and how to effectively coordinate regulatory approaches.

Further, challenges relating to oversight of content disseminated on platforms may emerge **when platform regulators that are not media regulators may not be fully aware of media-freedom and media-policy objectives** when engaging in regulation that may nevertheless affect media actors and the media environment. Thus, as mentioned in Section 6.3 below, cross-sectoral coordination between media regulators and platform regulators within Council of Europe member States becomes essential.

¹⁷² DSA, Article 56(5).

¹⁷³ European Commission, "Commission investigates Grok and X's recommender systems under the Digital Services Act", 26 January 2026, https://ec.europa.eu/commission/presscorner/detail/en/ip_26_203.

(d) *The effective regulation of illegal and harmful (media) content*

A pressing issue is **how to ensure the effective regulation of illegal and harmful (media) content**. Although most illegal and harmful content does not consist of media disseminated by media actors, difficulties nonetheless arise when media content itself is illegal or harmful. This may particularly be the case with disinformation or propaganda originating from outside Council of Europe member States; therefore, media regulators should be equipped to deal with this problem. A related issue arises where disinformation or propaganda is addressed through regulatory frameworks other than media regulation – such as sanctions regimes¹⁷⁴ – which may create enforcement challenges for media regulators and may circumvent the steps required to legitimately interfere with the human right's protection of media freedom.

(e) *The conferral of additional competences on media regulators*

Another issue arises where additional competences are conferred upon media regulators in relation to the online environment, but without a proportionate increase in its resources or staff. **Where the mandates of media regulators are expanded, it is essential that they are also allocated the adequate technical resources and that their staff possess the necessary skills and expertise to ensure effective and independent regulation.**

(f) *New media policy interventions for visibility of media content/
general interest content*

The **Guidance Note on the Prioritisation of Public Interest Content Online** adopted by the Steering Committee for Media and Information Society recommends that states refrain from defining which media and general interest content should be given visibility on platforms and intermediaries.¹⁷⁵ The Guidance Note lists media regulators as appropriate bodies to draw up visibility policies, among others. However, both the **2023 UNESCO Guidelines for the Governance of Digital Platforms**¹⁷⁶ and the **2025 OSCE policy manual 'Safeguarding Media Freedom in the Age of Big Tech Platforms and AI'**¹⁷⁷ are careful not to assign this as new competences to the media regulator but rather advocate for multistakeholder decentralised processes with the regulator only being tasked with overseeing the implementation. It may be advisable for the future guidance document to show awareness of over-estimating the functional independence of media regulators and the associated risk of political capture in relation to new competences for visibility policies, among others.

¹⁷⁴ See, for example, *Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine*, ELI: <http://data.europa.eu/eli/reg/2022/350/oj>.

¹⁷⁵ Guidance Note on the Prioritisation of Public Interest Content Online, CDMSI(2021)009, 2 December 2021, <https://rm.coe.int/cdmsi-2021-009-guidance-note-on-the-prioritisation-of-pi-content-e-ado/1680a524c4>.

¹⁷⁶ UNESCO, *Guidelines for the Governance of Digital Platforms*, 2023, <https://unesdoc.unesco.org/ark:/48223/pf0000387339>.

¹⁷⁷ OSCE, *Safeguarding Media Freedom in the Age of Big Tech Platforms and AI*, 6 October 2025, https://www.osce.org/files/f/documents/e/3/598525_1.pdf.

5.2. Independence and effective functioning of media regulators

Formal independence needs to be matched by actual independence and effective functioning if media regulators are to fulfil their mandate of safeguarding freedom of expression and media freedom and of upholding media pluralism and diversity. At the same time, Council of Europe standards should retain sufficient flexibility to accommodate the diverse institutional arrangements of media regulation across member States. Against this background, several interrelated issues can be identified as discussed below.

(a) *The need to clarify aspects of the legal framework on independent media regulators*

A first issue that could be further developed in Council of Europe standards concerns the legal framework which has to be put in place in order to safeguard the independence of media regulators. For instance, as confirmed in the ECtHR judgment in the case *Objective Television and Radio Broadcasting Company and Others v. Azerbaijan*,¹⁷⁸ appointment procedures must be laid down by law and carried out “in a democratic and transparent manner”.¹⁷⁹ Yet, what “*democratic and transparent manner*” implies in relation to appointments of decision-making members of the media regulators could be further clarified.

(b) *A declining culture of independence and the risk of political capture of media regulators*

Another issue arises where a declining culture of independence affects the independence and effective functioning of media regulators, which may lead to their capture and inability to discharge their functions impartially. This challenge requires urgent attention, as it could have cascading effects on media actors within a country and negatively impact freedom of expression, media freedom as well as media pluralism and diversity. In this context, **it may be necessary to articulate more clearly the characteristics of independence and effective functioning of media regulators.** As noted above, adding additional competences to oversee media actors in the platform-based environment to media regulators should not presuppose their independence but require a more careful assessment.

(c) *Advising on and monitoring the independence and effective functioning of media regulators*

Another issue concerns **how to continue advising member States on media regulation and supervision and assist them with monitoring the independence and effective functioning of media regulators.** The international independent advice on draft media laws has been a very important factor to defend media freedom and promote good practices. International organizations and other relevant actors could coordinate to draw up common standards and a methodology that can be deployed in media assistance programmes and monitoring exercises to assess the independence and effective functioning on media regulators. As a starting point, the 2011 INDIREG

¹⁷⁸ See *Objective Television and Radio Broadcasting Company and Others v. Azerbaijan*, Application no. 257/12, 18 February 2025, para. 83, <https://hudoc.echr.coe.int/fre?i=001-241829>.

¹⁷⁹ *Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector*, 20 December 2000, <https://rm.coe.int/16804e0322>.

study provides a scientifically backed methodology to assess formal and actual independence of a given media regulator.¹⁸⁰

(d) The implications of advancing EU legal harmonization for media regulators

A matter that requires further consideration relates to the diverging trajectories of legal development between countries subject to EU law and other Council of Europe member States. Ongoing EU harmonisation of media regulation not only influences the competences and powers of media regulators, but also definitions of media and core concepts. EU law moreover exerts a normative pull on (potential) candidate countries of the EU, which frequently invoke EU law to justify domestic media law reforms. **Ensuring coherence between Council of Europe standards, which are grounded in human rights and democratic principles, and EU law, which is based on internal market rules, therefore has to be considered.**

(e) The expansion of powers and competences where a media regulator does not exercise its existing powers independently

A final issue concerns situations in which media regulators do not exercise their current powers independently. In such cases, conferring additional competences to supervise further media actors or additional types of media content risks exacerbating existing problems for freedom of expression and media freedom in that country. This concern is particularly acute given the expanding scope of EU media regulation, which introduces new competences and powers for media regulators in EU member states and is often also transposed into the legal frameworks of (potential) EU candidate countries. **Independence and effective functioning should therefore be firmly established before expanding a media regulator's mandate**, which may require a phased approach to the conferral of additional powers and competences.

5.3. Cross-sectoral coordination within countries

Media today coexists with other online content formats, while online platforms and social media networks exert significant influence over the functioning of the media and the broader media environment. Alongside media regulators, other regulatory authorities now play an increasingly important role, including those responsible for digital services, competition law and consumer protection. In this context, cross-sectoral coordination among regulators within Council of Europe member states becomes essential, due to a number of factors, including:

- (a) the growing number of regulatory authorities affecting media actors and the media environment;
- (b) The need for media regulators to fulfil their role in a platform-based environment;
- (c) The alignment and streamlining of media policy objectives across regulatory domains, and
- (d) cooperation in investigations and in the exchange of information, including with regard to data access and analytical methods (given that platforms have assumed an “active

¹⁸⁰ Hans Bredow Institute, ICRI (KU Leuven), CMCS (CEU), Cullen International, and Perspective Associates (2011 eds.): INDIREG, “Indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive”, Study conducted on behalf of the European Commission, Final Report (Brussels: Publications Office of the European Union, 2011), https://ec.europa.eu/newsroom/document.cfm?action=display&doc_id=4703.

curatorial or editorial role” in the dissemination of media content, including through the use of algorithmic systems).¹⁸¹

5.4. Cross-border cooperation between Council of Europe member States

The importance of cross-border cooperation in the field of media regulation is ever increasing. This development raises a number of issues, including:

(a) The cross-border regulatory cooperation on issues affecting two or more Council of Europe member States

First, there is a distinct **need for cross-border regulatory cooperation** on issues affecting two or more Council of Europe member States. As stated in the Explanatory Memorandum to *Recommendation CM/Rec(2022)11 on principles for media and communication governance*, the “**transnational dimension of communication, especially in light of platforms, suggests that cooperation is essential for both standards development and individual case handling**”.¹⁸² This need is particularly acute given the emergence of new regulatory frameworks at the European level, including EU legislation, which also adhere to the country of origin principle. Such frameworks establish procedures applicable in some Council of Europe member States whereby national regulatory authorities in one member State may issue orders addressed to online platforms established in another member State concerning illegal content online.¹⁸³ Even when executing orders originating from a request by a media regulator abroad the competent media regulator should be alert that doing so upholds the human right of freedom of expression and media freedom under Article 10 ECHR.¹⁸⁴

In addition, the territorial scope of such orders is subject to “general principles of international law” which include Council of Europe freedom of expression standards.¹⁸⁵ Further, given the increasing role of supranational bodies, including bodies established under EU legislation (e.g. the European Commission and the Council of the EU), in tackling illegal and harmful content online, including State-media propaganda, there is a corresponding need to ensure coordination between media regulatory authorities in the Council of Europe member States affected by such regulatory activity.

(b) Information sharing and exchange of best practices

There is also a **need for information sharing and exchange of best practices, including with regard to data access and analytical methods**. This is particularly the case, given the increased role of media regulators in relation to the scrutiny of the operation of online platforms and the dissemination of media content online. Data access is crucial for effective oversight of online platforms, particularly as the Committee of Ministers, has recognized that platforms have assumed

¹⁸¹ *Recommendation CM/Rec(2022)11 of the Committee of Ministers to member States on principles for media and communication governance*, Preamble, <https://search.coe.int/cm?i=0900001680a61712>.

¹⁸² *Recommendation CM/Rec(2022)11 of the Committee of Ministers to member States on principles for media and communication governance*, 6 April 2022, Explanatory Memorandum, <https://search.coe.int/cm?i=0900001680a5bd7c>.

¹⁸³ See, for example, *Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC* (Digital Services Act), Article 9 (orders to act against illegal content), <http://data.europa.eu/eli/reg/2022/2065/oj>.

¹⁸⁴ See Gabor Polyák and Tanja Kerševan, ‘More coordination between national media regulators and implications for their independence in the digital environment’, in H. R. Ranaivoson, S. Broughton Micova and T. Raats (eds.) *European Audiovisual Policy in Transition* (Abingdon, New York: Routledge, 2023), 35–55.

¹⁸⁵ See, for example, DSA, Article 9(b).

an “active curatorial or editorial role” in the dissemination of media content, including through the use of algorithmic systems.¹⁸⁶ Media regulators can therefore have a crucial role in ensuring algorithmic systems involved in content production online respect human rights and fundamental freedoms.¹⁸⁷ To enable this role effectively, media regulators must have appropriate procedures and methods for access to data and scrutinizing of algorithmic systems of online platforms which will be often established in another country. Establishing a system for sharing information and best practices is therefore essential. Notably, media regulators in certain member States where a significant number of online platforms are established (leading to the process of “hub-ification”), and which may consequently have more extensive interaction with such platforms, are well placed to share best practices and experience with other media regulators.

(c) Maintaining international networks for regulatory cooperation

Furthermore, **maintaining of international networks for regulatory cooperation is a crucial aspect of the new regulatory environment involving media regulators.** As described above in Section 5, there are a plethora of international networks for regulatory cooperation, the maintenance and support of which are essential to ensure media regulators have the expertise, best practices and support networks necessary for effective regulation. In particular, due to the cross-border nature of the online environment, and the dissemination of media content across borders, including from outside of Council of Europe member States, these international regulatory networks are crucial. Media regulators in certain Council of Europe member States, which may interact more often with online platforms in relation to media content, illegal content, and harmful content, may be able to share best practices within these international networks, and contribute to ensuring platforms operate according to human rights standards within, and beyond, the Council of Europe. European bodies, at both Council of Europe and EU levels, could also cooperate more closely, including bodies such as the Steering Committee on Media and Information Society, the European Platform of Regulatory Authorities, the European Board for Media Services, and the European Board for Digital Services.

(d) Cooperating with regulators of adjacent fields

Finally, it is essential to **invite regulators of adjacent regulatory fields that can affect the media and its ecosystem to engage in cooperation frameworks.** For example, there are cooperative models in place in some Council of Europe member States, such as the Netherlands, where the Media Authority cooperates with the Data Protection Authority, the Authority for Consumers and Markets, and the Authority for the Financial Markets, to “strengthen oversight of digital and online activities”.¹⁸⁸ These models of cooperation among regulators in adjacent regulatory fields can be built upon across Council of Europe member States. This is particularly relevant, given that some new European regulatory frameworks, such as EU legislation on political advertising, are applicable to both media actors and other actors in the online media environment, and require

¹⁸⁶ Recommendation CM/Rec(2022)11 of the Committee of Ministers to member States on principles for media and communication governance, Preamble.

¹⁸⁷ *Ibid.*, Appendix.

¹⁸⁸ AP, “Dutch regulators strengthen oversight of digital activities by intensifying cooperation”, 13 October 2021, <https://www.autoriteitpersoonsgegevens.nl/en/current/dutch-regulators-strengthen-oversight-of-digital-activities-by-intensifying-cooperation>.

coordinated regulatory oversight between media regulators, data protection authorities, and other authorities regulating online platforms.¹⁸⁹

¹⁸⁹ Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising, Article 23 (Cross-border cooperation), <http://data.europa.eu/eli/reg/2024/900/oj>.

6. Proposal for a Guidance Note on Media Regulators in a Platform-Based Environment

This section sets out the potential scope of a future *Guidance Note on Media Regulators in a Platform-Based Environment*, by clarifying key terminology, and proposing a clear and logical structure for the Guidance Note, accompanied by a detailed mapping of pertinent legal, regulatory, and policy sources. The Guidance Note should ideally promote the regulators' independence, their continued role in safeguarding freedom of expression and pluralism, while ensuring that harmful content is properly addressed, and provide guidelines on how to equip them with the legal, financial and operational tools that are necessary to address challenges posed by the digital environment dominated by powerful digital gatekeepers.

A potential structure of the future Guidance Note is outlined below for consideration by the MSI-eREG.

Preamble

The preamble could recall relevant standards and commitments of the Council of Europe, explain the rationale for addressing the role of media regulators in a platform-based environment, clarify the purpose and scope of the Guidance Note, define key terminology where necessary, and reaffirm the core principles of human rights, democracy and the rule of law that should guide regulatory action in this evolving digital context.

It could be accompanied by a **glossary** defining key terminology, including the following:

“regulation”: referring to a set of binding rules developed and enforced by the State to achieve a public policy objective;

“co-regulation”: referring to co-operative forms of regulation, jointly developed by the State and private actors to achieve a public policy objective;

“the media”: referring to actors that have the intention to act as a media outlet, have the purpose to produce and disseminate content, have editorial control over content, follow professional standards, seek outreach and are subject to the expectations of the public, as proposed by *Recommendation CM/Rec(2011)7 on a new notion of media*.

Notions of “media actors” and “other actors in the media ecosystem”:

- media actors who are subject to an explicit positive-law regulatory framework
- other media actors who are not regulated, yet nonetheless benefit from protection as media under the right to freedom of the media
- as regards to platforms, clarify that when their content moderation algorithms effectively amount to exercising editorial control, the platform might qualify as a media actor.

“platforms”: understood as those providers of digital services that connect participants in multisided markets, set the rules for such interactions and make use of algorithmic systems to collect and analyse data and personalise their services (in the field of communications, such platforms include search engines, news aggregators, video-sharing services and social networks);

“algorithmic systems”: understood as applications that perform one or more tasks such as gathering, combining, cleaning, sorting, classifying and inferring data, as well as selection, prioritisation, the making of recommendations and decision making, as defined in *Recommendation CM/Rec(2020)1 on the human rights impacts of algorithmic systems*;¹⁹⁰

“independent media regulator”: the national regulatory authority competent to supervise and enforce media legislation and which is constituted following a legislative framework that ensures its independence from government and stakeholder interests and performs its competences impartially and functions effectively.

The Guidance Note could then have three main sections, as suggested below.

Section 1 - Guiding principles for member States

This section could address the **policy, institutional and legal frameworks as well as any additional pre-conditions for the independence and effective functioning of media regulators in a platform-based environment**. It could provide guidance on regulatory possibilities and responsibilities with regard to digital platforms, while clarifying the limits imposed by the European Convention on Human Rights, in particular Article 10.

This section could also emphasize that **media policy objectives – including media freedom, pluralism and editorial independence – should consistently inform and transcend adjacent regulatory frameworks**, ensuring coherent action among all regulators operating within the broader media ecosystem.

More concretely, this section could highlight a number of key elements which could lie the core of sub-sections:

First, it could reaffirm the importance of respecting human rights and the rule of law, reiterating that media regulation must remain fully consistent with the standards of the **European Convention on Human Rights**, particularly the right to freedom of expression under **Article 10 ECHR**, as well as the protection of media freedom as recognised by the case law of the **European Court of Human Rights**.

Second, the section could address **the continued relevance of the country-of-origin principle and the freedom of retransmission in the context of cross-border media content distributed “without frontiers”**. It could explain these principles and clarify the limited circumstances in which national media regulators may intervene in relation to media content originating from another jurisdiction, together with the procedural safeguards that should accompany such interventions.

Third, the Guidance Note could propose a **phased and carefully calibrated approach to the conferral of additional powers and competences on media regulators in the platform-based environment**. Such an approach would stress the need for adequate financial, human and technical resources, the importance of platform-independent and technology-neutral oversight, and

¹⁹⁰ See also Article 2 – Definition of artificial intelligence systems of Council of Europe’s Framework Convention on AI: “...“artificial intelligence system” means a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations or decisions that may influence physical or virtual environments. Different artificial intelligence systems vary in their levels of autonomy and adaptiveness after deployment”.

the necessity of ensuring that independent media regulators are firmly established before their mandates are expanded. It could also underline that regulatory frameworks governing digital platforms should not encroach upon the core functions of media regulation.

Finally, this section could **highlight the central importance of the independence of media regulators and the development of a broader culture of independence**. This would include safeguards in legal frameworks to protect regulators from political or commercial interference, as well as institutional practices that support their effective functioning and reinforce their credibility as independent guardians of media freedom and pluralism.

Section 2 – Guiding principles for media regulators and adjacent regulators within a member State

The second section could focus on **the role of media regulators themselves, as well as their interaction with other national regulatory authorities and actors whose mandates affect the digital media environment**. The focus could here be on the legal system of a Council of Europe member States. It could set out principles for media regulators to discharge their tasks impartially and engage in national and cross-national cooperation in areas such as sharing of best practices, data and information collection and enforcement action.

In particular, the section could emphasise the importance of **cross-sectoral coordination between media regulators and other regulators** operating in the platform-based environment, such as authorities responsible for digital services, competition, telecommunications or data protection. Within this coordination, the protection of media freedom and pluralism should remain a guiding principle.

The Guidance Note could also highlight the need for **media oversight to be impartial, transparent and accountable**, ensuring that regulatory decisions are taken in a fair and evidence-based manner and are subject to appropriate safeguards and oversight mechanisms.

Furthermore, the section could **clarify the respective roles of media regulators and platform regulators**. While platform regulators are not media regulators, their actions may nonetheless have significant implications for media actors and media content in the digital environment. The Guidance Note could therefore stress that regulatory frameworks governing digital platforms should be implemented in a manner that respects freedom of expression, media freedom and the specific role of media actors.

In this context, the section could also address the importance of ensuring that **media regulators are able to obtain relevant data and information from digital platforms**, including information relating to content moderation practices and algorithmic systems that affect the visibility, distribution and accessibility of media content.

Section 3 – Guiding principles for cross-border cooperation and coordination with other relevant actors

The third section could address the growing importance of cross-border cooperation in a digital media ecosystem characterised by global platforms and transnational media services. It would outline **principles to support stronger collaboration among regulators, as well as between**

regulatory authorities and other relevant actors, such as civil society, academia and international partners to strengthen enforcement and share best practices.

The section could highlight the **synergies between Council of Europe standards – grounded in human rights and democratic principles – and European Union law**, which is primarily based on internal market considerations. Strengthening cooperation and information exchange between institutions operating within these frameworks could enhance regulatory coherence and effectiveness.

In addition, the Guidance Note could **encourage stronger cross-border coordination between media regulators themselves**, including the exchange of information, data and best practices. Particular attention could be given to the delicate balance between the country-of-origin principle and the freedom of retransmission, and the need for effective mechanisms of coordination in situations where regulatory hubs or cross-border media services raise complex jurisdictional questions.

The section could **also explore the importance of cooperation between media regulators in one jurisdiction and platform regulators in another**. In this context, issues such as access to platform data, transparency obligations and algorithmic accountability may be particularly relevant for investigations into media markets and the regulation of media content in the digital environment.

Finally, the Guidance Note could emphasise the **value of continued international media assistance programmes**. Such initiatives may include advising on media law reforms in Member States, monitoring and strengthening safeguards for the independence of media regulators and promoting engagement with international networks of media regulators in order to share expertise and reinforce common standards.

Explanatory report

Finally, the Guidance Note could contain an explanatory report providing additional information to the three sections outlined above.