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Rethinking European Media Law and Policy

Melinda Rucz, Kristina Irion and Martin Senftleben

This introduction outlines the key players, instruments and dilemmas that shape the overall framework of European media law and policy. Turning to the structure of the handbook, we will introduce and summarize the individual contributions addressing elements of the legal patchwork that together make up the body of regulatory interventions, policy rationales and underlying assumptions. Lastly, we will identify the overarching themes and trends that emerge from these essays, proposing improvements of regulatory responses and providing a compass for a principle-based, integrated approach to European media law and a more resilient media policy.

THE EVOLVING FIELD OF EUROPEAN MEDIA LAW AND POLICY

As a result of technological transformations, the media ecosystem is undergoing profound changes. News media and current affairs programmes today form only a fraction of a vast information sphere, where means of mass communications are available to anyone. Public interest content is increasingly drowned out in a huge information space where all kinds of information compete for human attention, including mis- and disinformation as well as (transnational) political propaganda and conspiracy theories. Media service providers such as press publishers and television channels are confronted with declining audience and market shares as well as declining revenues. Online platforms and social media, by contrast, exercise central gatekeeper functions. Their algorithms select and personalise media as part of their business model.

European media law and policy seek to react to these transformations and challenges by applying an amalgam of European-level law and policy in a dynamic relationship with national law and policy. As a result, European countries' media law and policy incorporate a shared European human rights tradition and supranational standards on media governance. Importantly, European media law and policy are not codified in unified pieces of legislation. Rather, they are a complex mix of human rights law, media law, policy measures and self- and co-regulatory instruments. These are complemented by a variety of legal instruments that do not directly address the media but nonetheless 'reach toward the media' and form part

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of the outer ramparts of European media law and policy, such as copyright law and competition law.[1]

The European Convention on Human Rights guarantees in its Article 10 the right to freedom of expression, which protects the freedom of the media. The European Court of Human Rights (ECtHR) has repeatedly found that freedom of expression is 'one of the essential foundations of a democratic society'.[2] Particular emphasis has been placed on the protection of a vibrant public debate as a core component of democratic societies.[3] The Court has been particularly critical of state measures that may undermine the freedom or pluralism of the media and journalistic activities. Moreover, the Court has ruled that European states have a positive obligation to implement measures that safeguard media pluralism; ensure the public's access to accurate information; and provide the conditions for a vibrant public debate.[4] The European Convention on Human Rights and the ECtHR form part of the Council of Europe, which has moreover adopted a number of standard-setting documents concerning specific aspects of media law and policy.

The EU constitutes another key player in European media law and policy. The EU's Charter of Fundamental Rights explicitly recognises the need to protect the freedom and pluralism of the media as part of the right to freedom of expression and information.[5] Even though EU treaties do not confer a competence to adopt legislation in the area of culture, the EU has nevertheless forged an elaborate legal framework for certain media services based on its internal market competence.[6] The Audiovisual Media Services Directive (AVMSD) and, more recently, the European Media Freedom Act (EMFA) are cases in point.[7] Increasingly, media

[1] Pier Luigi Parcu and Elda Brogi, 'Introduction to Research Handbook on EU Media Law and Policy: Understanding the EU approach to media law and policy: The scope of the Handbook and a presentation of the contributions', in Pier Luigi Parcu and Elda Brogi (eds.), *Research Handbook on EU Media Law and Policy* (Edward Elgar Publishing, 2021), pp. 1–14 at 1.

[2] European Court of Human Rights, App. No. 9815/82, *Lingens v. Austria* [1986] para. 41.

[3] Ibid., para. 42; see also: Tarlach McGonagle, 'Positive obligations concerning freedom of expression: Mere potential or real power', in Onur Andreotti (ed.), *Journalism at Risk: Threats, Challenges and Perspectives* (Strasbourg: Council of Europe Publishing, 2015), 9–35.

[4] European Court of Human Rights, App. No. 13936/02, *Manole and Others v. Moldova* [2009] para. 107; European Court of Human Rights, App. Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, *Dink v. Turkey* [2010] para. 137; McGonagle, 'Positive obligations concerning freedom of expression'.

[5] Charter of Fundamental Rights of the European Union, OJ 2012 No. C326, Art. 11.

[6] Kristina Irion and Peggy Valcke, 'Cultural diversity in the digital age: EU competences, policies and regulations for diverse audiovisual and online content', in Evangelia Psychogiopoulou (ed.), *Cultural Governance and the European Union* (Palgrave Macmillan, 2014), pp. 75–90.

[7] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, OJ 2018 No. L303/69. See also Peggy Valcke and Ingrid Lambrecht, 'The evolving scope of application of the AVMS Directive', in Pier Luigi Parcu and Elda Brogi (eds.), *Research Handbook on EU Media Law and Policy* (Edward Elgar Publishing, 2021), 282–302.

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freedom and media pluralism as well as media institutions' independence are also considered central to the functioning of the EU's internal market and have therefore become more prevalent in recent legal and policy interventions of the EU.[8]

An adjacent area of EU law, copyright law, places emphasis on exclusive rights over information in protected works, which is at odds with the openness of information required by media actors. The AVMSD already has provisions that can override exclusive rights for the broadcasting of events of major importance and short news reports on television.[9] The Information Society Directive moreover provides for exemptions from copyright protection standards for quotations; broader dissemination of articles and broadcasts on current economic, political or religious topics; press reports on current affairs; and use of political speeches and public lectures.[10] As copyright law restricts the use of information in protected works, such exceptions and limitations are crucial avenues to safeguard media freedom within the EU legal framework.[11]

In the past decade, the trajectory of European media law and policy has been significantly impacted by two parallel challenges faced by the European news and media sector. First, the digital transformation of the media ecosystem has dramatically altered news consumption and communication patterns and undermined traditional news financing models. Second, politization trends in various European states have put pressures on free and independent media and have posed threats to the safety of journalists in Europe.

The Digital Transformation of the Media Leads to New Regulatory Challenges

The digital transformation of the media ecosystem has prompted much regulatory activity by the Council of Europe and the EU.[12] The ECtHR has engaged in 'adaptive replication' of its media freedom standards, meaning that it has increasingly applied well-established doctrines of freedom of expression in the digital space, while also adapting them to the specificities of this new media ecosystem.[13] In this context, the ECtHR has recognised the opportunities for exercising freedom of

[8] See Kristina Irion, 'The Independence of Media Regulatory Authorities "on the Books" and "on the Ground"', in Manuel Puppis, Robin Mansell and Hilde Van den Bulck (eds.), *Handbook of Media and Communication Governance* (Edward Elgar Publishing, 2024), 126–140; see further Chapter 1 by Tarlach McGonagle in this handbook.

[9] AVMSD, Art. 14 and 15.

[10] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, *OJ* 2001 No. L167, Art. 5(3)(c), (d) and (f). Cf. CJEU, 29 July 2019, case C-469/17, *Funke Medien NRW*, para. 57.

[11] See further Chapter 3 by Christophe Geiger and Bernd Justin Jütte in this handbook.

[12] Terry Flew, Fiona Martin and Nicolas Suzor, 'Internet regulation as media policy: Rethinking the question of digital communication platform governance' (2019) 10(1) *Journal of Digital Media & Policy* 33–50.

[13] Tarlach McGonagle, 'Free expression and internet intermediaries: The changing geometry of European regulation', in Giancarlo Frosio (ed.), *Oxford Handbook of Online Intermediary Liability* (Oxford: Oxford University Press, 2020).

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expression opened up by the Internet,[14] while it has also demonstrated awareness of the high risk of harms posed by participatory online media and addressed pressing questions about the duties and responsibilities of Internet portals for user-generated content.[15] Other Council of Europe bodies, such as the Committee of Ministers, have taken up these questions in their standard-setting work in a more comprehensive manner.[16]

The reach of EU law has slowly but continuously expanded in the media sector. The 2018 revision of the AVMSD introduced obligations regarding certain types of harmful and illegal content for 'video-sharing platform services'.[17] The Copyright for Digital Single Market Directive (CDSMD), in turn, created a new liability regime for 'online content sharing service providers' for user-generated copyright-infringing material.[18]

In its regulatory responses to the circulation of harmful and illegal content online, the European Commission placed emphasis on the responsibility of digital platforms to detect and moderate certain types of content.[19] The Digital Services Act (DSA), which regulates online intermediaries, primarily seeks to address illegal content online and protect fundamental rights of users.[20] It mandates that very large online platforms (VLOPs) identify, assess and mitigate systemic risks stemming from their services, including foreseeable negative effects on freedom of expression, media freedom and media pluralism.

Other legal and policy instruments, such as the Terrorist Content Online Regulation,[21] the Code of Conduct on Countering Illegal Hate Speech

[14] Namely, applying the freedoms and responsibilities associated with traditional media to new actors such as civil society organisations or bloggers; see European Court of Human Rights, App. No. 37374/05, *Társaság a Szabadságjogokért v. Hungary* [2009] para. 27; European Court of Human Rights, App. No. 18030/11, *Magyar Helsinki Bizottság v. Hungary* [2016] para. 168.

[15] European Court of Human Rights, App. No. 3111/10, *Ahmet Yıldırım v. Turkey* [2012] para. 54; European Court of Human Rights, App. No. 64569/09, *Delfi AS v. Estonia* [2015] para. 133.

[16] Council of Europe, Committee of Ministers, 'Recommendation CM/Rec(2011)7 on a new notion of media', 21 September 2011; Council of Europe, Committee of Ministers, 'Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries', 7 March 2018; Council of Europe, Committee of Ministers, 'Recommendation CM/Rec(2022)4 of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age', 17 March 2022; Council of Europe, Committee of Ministers, 'Recommendation CM/Rec(2022)11 of the Committee of Ministers to member States on principles for media and communication governance', 6 April 2022.

[17] AVMSD, Art. 28(b).

[18] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, OJ 2019 No. L130, Art. 17.

[19] On the broader policy strategy, see European Commission, 'Tackling illegal content online: Towards an enhanced responsibility of online platforms', COM(2017) 555 final, 28 September 2017.

[20] 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), OJ 2022 No. L277.

[21] Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online, OJ 2021 No. L172.

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Online+,[22] the Strengthened Code of Practice on Disinformation,[23] and more recently the Artificial Intelligence Act,[24] further contribute to the EU's broad policy aim to ensure the human rights compatibility of new technologies, address the circulation of harmful material online and increase the responsibilities of technology companies.

Another area of EU policy intervention concerns the uneasy relationship between media services and digital platforms. The CDSMD attempts to address the contentious relationship between digital platforms and press publishers by awarding publishers a new neighbouring right in the digital use of their press publications. The provision is a central element of the EU's efforts to 'ensure the sustainability of the publishing industry',[25] although it is contested whether the press publishers' right is a suitable response to such a complex issue.[26] The Digital Markets Act, in turn, seeks to regulate the relationship between platforms and businesses that use them, which has the potential to improve the position of the media vis-à-vis gatekeeper services.[27]

Stepping Up Safeguards for Free and Independent Media

European media continue to face threats to their freedom and independence. In particular, trends of politicisation and re-nationalisation in the media sector as well as threats to the safety of journalists have provided further impetus for the development of protective measures in mainstream European media law and policy. In this context, the EU adopted the Anti-SLAPP Directive (SLAPP being 'strategic lawsuits against public participation') to protect public watchdogs from abusive court proceedings,[28] and the European Commission issued a recommendation dedicated to the protection, safety and empowerment of journalists.[29] In parallel,

[22] European Commission, Code of Conduct on Countering Illegal Hate Speech Online +, 20 January 2025, available via: https://digital-strategy.ec.europa.eu/en/library/code-conduct-countering-illegal-hate-speech-online.

[23] European Commission, Code of Conduct on Disinformation, 13 February 2025, available via: https://digital-strategy.ec.europa.eu/en/library/code-conduct-disinformation.

[24] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), OJ. 2024 No. L1689.

[25] CDSMD, Art. 15; Rec. 55.

[26] On this topic, see further Chapter 20 by Daniel Gervais, Chapter 17 by Eleonora Rosati and Chapter 16 by Ula Furgał and Martin Kretschmer in this handbook.

[27] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) OJ 2022 No. L265.

[28] Directive (EU) 2024/1069 of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation'), OJ 2024 No. L1069.

[29] European Commission, 'Commission Recommendation of 16.9.2021 on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union', C(2021) 6650 final, 16 September 2021.

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the Council of Europe's Committee of Ministers has addressed the protection of journalists, the countering of SLAPPs and media pluralism in its recent standard-setting work.[30]

The EU's adoption of the EMFA in 2024 introduces ambitious legal standards for a wide range of media-related issues.[31] The EMFA lays down protective measures for media service providers on topics such as editorial independence, confidentiality of sources and intrusive surveillance of media actors. With a view to safeguarding a free and pluralistic media landscape, the EMFA puts in place harmonised rules regarding the independence of public service media, media mergers, transparency of media ownership and the allocation of state advertising. The EMFA also introduces special protections to media content online, which constitute *lex specialis* to the content moderation rules that the DSA holds for VLOPs.

With the adoption of the EMFA, European media law and policy has reached a new stage of development. The EMFA has pulled many issues that were once the prerogative of European states and human rights courts inside the scope of EU law. The legal action that Hungary brought against the European legislator requesting the annulment of the EMFA[32] testifies to the growing tensions between the EU's legislative ambitions and Member States' national media systems. While the EU is becoming more deeply enmeshed in the set-up of European media law and policy, the EMFA raises a host of new challenges in addition to the persistent issues that already plague the media and public discourse today.

THE IMPERATIVE OF RETHINKING EUROPEAN MEDIA LAW AND POLICY

The logic, rationale and premises of media policymaking have been significantly reshaped by the dynamic evolution of the media ecosystem.[33] The contributors to this handbook embarked on a mission to rethink European media law and policy in relation to pressing media policy challenges. The growing urgency of rethinking European media law and policy partly arises out of the fundamental ambiguity regarding what the subject of regulation should be.

[30] Council of Europe, Committee of Ministers, 'Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors', 13 April 2016; 'Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs)', 5 April 2024; 'Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership', 7 March 2018.

[31] 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), OJ 2024 No. L1083.

[32] Case C-486/24, *Hungary v. European Parliament and Council of the European Union* [pending].

[33] Nick Couldry, 'Does "the media" have a future?' (2009) 24(4) *European Journal of Communication* 437–449.

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Defining and redefining the responsibilities of media actors can be a challenging task in an expansive media ecosystem. The definition of core concepts such as 'the media', 'journalist' and 'journalism' is particularly challenging for regulatory interventions.[34] Existing media regulatory frameworks that were tailored to the mass media paradigm are increasingly inadequate to effectively address the key players in this modern, expanded communications landscape.[35] New media actors such as citizen journalists, bloggers and influencers have become established sources of information with tremendous potential for creating more diversity in public communications. Contemporary media policies face a dual challenge and are pulled in opposite directions: they have to establish robust protective mechanisms that respond to the increasingly heterogeneous and diverse media ecosystem, while simultaneously maintaining a focus on those media actors with particularly high public interest values.

New technologies such as generative AI introduce further complex challenges for media law and policy. By enabling the automated production of news content, generative AI blurs the boundaries between human-made and machine-generated content. Traditional media regulatory frameworks attribute editorial responsibility to media actors for their content, which is contested when factoring in content produced by generative AI. Moreover, the capacity of generative AI to mass-produce disinformation and deepfakes raises particular challenges for the information order, testing the abilities of existing regulatory tools to protect the integrity of the public sphere.

Moreover, European media regulation has been traditionally characterised by a fundamental bifurcation in the regulatory approach to audiovisual media and the press.[36] Audiovisual media was thought to have a greater and more immediate impact on the public, which justified the imposition of licensing requirements and a certain measure of content regulation. The press, in contrast, has been largely governed by self-regulatory ethical standards. Convergence in the media sector renders this bifurcated approach increasingly obsolete and moreover challenges European media law and policy to adapt traditional concepts, such as the concept of editorial control.[37]

The rationales for media regulation are also in flux as a result of transformations of the media ecosystem. As the abilities to engage in the provision of audiovisual

[34] See e.g. Peter Coe, *Media Freedom in the Age of Citizen Journalism* (Edward Elgar Publishing, 2021); Damian Tambini, *Media Freedom* (Polity, 2021); Theresa Seipp, Ronan Ó. Fathaigh and Max van Drunen, 'Defining the "media" in Europe: Pitfalls of the proposed European Media Freedom Act' (2023) 15(1) *Journal of Media Law* 39–51.

[35] Karol Jakubowicz, *A New Notion of Media? Media and Media-Like Content and Activities on New Communication Services* (Strasbourg: Council of Europe Publishing, 2009).

[36] Irini Katsirea, *Press Freedom and Regulation in a Digital Era: A Comparative Study* (Oxford University Press, 2024), pp. 13–33.

[37] Terry Flew, Fiona Martin and Nicolas Suzor, 'Internet regulation as media policy: Rethinking the question of digital communication platform governance' (2019) 10(1) *Journal of Digital Media & Policy* 33–50.

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services is no longer restricted by the scarcity of available frequencies, new questions arise regarding how regulatory intervention in the media sector can be justified and what obligations states have to safeguard media pluralism. In particular, the positive obligation of states to ensure a pluralistic media environment can hardly be divested from the declining economic resilience of media actors and the overall decline of news media outlets, particularly at the local level.

A further overarching challenge for European media law and policy concerns the role of digital platforms in making decisions about content. As outlined earlier, various regulatory interventions have established obligations for providers of digital platforms concerning illegal or harmful content. However, outsourcing content moderation to digital platforms can be problematic from the perspective of safeguarding users' fundamental rights and democratic legitimacy. State-mandated standards, in contrast, raise particular concerns given the 'ambiguous relation' between states and media freedom.[38] These dilemmas regarding the role of states and their regulatory apparatus in safeguarding the European media ecosystem are exacerbated in the context of democratic backsliding and concerns about the independence of media regulatory authorities and public service media organisations.

Within the European media sector there is uneven development among national media systems, which can require different regulatory responses. Creating legal and policy standards that are equally suitable and desirable across Europe faces significant obstacles. Take, for example, Central and Eastern European countries, where a substantial share of public and private media outlets is controlled by the political elite; in this context, digital platforms are perceived as a safe haven for independent and pluralistic public discourse. In other parts of Europe, with stronger tradition of independent legacy media, there is more emphasis on the regulation of digital platforms and preserving the livelihood of media actors. The risk is that a one-size-fits-all policy intervention that is used to combat harmful content in one European country may well turn into a tool for censorship in another.[39]

The expanding influence of European regulatory standards and European regulatory authorities in media governance, in turn, reveals acute tensions between the necessity of supranational responses to an increasingly globalised media landscape, and the legitimacy of these supranational approaches in light of vastly different national approaches to the media across Europe. Ultimately, without effective national implementation and enforcement of supranational legal and policy standards, more reliance on European media regulation can hardly solve media policy issues that manifest at national levels.

[38] Jan Van Cuilenburg and Denis McQuail, 'Media policy paradigm shifts: Towards a new communications policy paradigm' (2003) 18(2) *European Journal of Communication* 181–207 at 183.

[39] Ronan Ó Fathaigh, Natali Helberger and Naomi Appelman, 'The perils of legally defining disinformation' (2021) 10(4) *Internet Policy Review*.

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These cross-cutting challenges arising from the transformations of the media ecosystem require a fundamental rethinking of the basic principles, aims and visions of European media law and policy. However, the European regulatory responses described in the first section of this chapter have mostly reacted to specific developments and have provided for a certain harmonized level of regulation with a free and pluralistic media ecosystem as an auxiliary policy goal. These incremental, path-dependent approaches fail to keep pace with the dramatic changes that the media ecosystem is undergoing, and often do not provide structural solutions for securing the conditions that are necessary for a free, pluralistic and sustainable media ecosystem. In addition, as media-relevant standards evolve from various areas of law, such as human rights law, audiovisual policy, copyright law and competition law, there is a growing fragmentation in terms of legislative aims, definitions and regulatory concepts. This fragmentation undermines the potential of European media law and policy to contribute to the maintenance of an economically viable and pluralistic media landscape. How European media law and policy could be rethought in a more fundamental fashion is the chief objective of this handbook, with these dilemmas and challenges featuring centrally in the contributions to this volume.

AIMS AND OUTLINE OF THE HANDBOOK

This handbook takes as its starting point the insight that European media law and policy has evolved in a reactive fashion and has sought to patch up certain issues from the perspective of specific legal fields. Rethinking European media law and policy calls for critical reflection on the key objectives, concepts and regulatory approaches currently in use. This handbook adopts a fresh, integrated and forward-looking perspective when tracing the contours of a principle-based, integrated approach to media regulation.

The handbook is organised in five parts. Part I is dedicated to the fundamental rights foundations; Part II to rethinking European media governance; Part III to countering the information disorder; Part IV to coping with digital transformations; and Part V to new directions for preserving journalism.

Fundamental Rights Foundations of European Media Law and Policy

The contributions in Part I of this book are devoted to reconsidering the fundamental rights foundations of European media law and policy. In particular, the contributions explore how fundamental rights are, and should be, internalised in media-relevant regulatory instruments, how they forge links between different regulatory interventions and the work of different institutions, and how they may inform the design of a more integrated approach.

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Chapter 1 by **Tarlach McGonagle** opens Part I with an analysis of the historical and contemporary roles of fundamental rights in European media law generally, and in EU media law specifically. While the traditional centrepiece of EU media law, the AVMSD, recalls the importance of fundamental rights, it is primarily geared towards safeguarding the internal market in audiovisual media services. With recent regulatory interventions, such as the EMFA, the focus on fundamental rights in EU media policymaking has become somewhat more prominent. McGonagle critically assesses the current place and influence of fundamental rights in EU regulatory and policy instruments and identifies ways to strengthen human rights protection in (future) EU media law and policy.

With recent EU initiatives, there is a growing substantive overlap between the EU's regulatory activities and the standard-setting work of the Council of Europe in the media field. Chapter 2 by **Urška Umek** and **Max van Drunen** explores the relationship between these two regulatory frameworks in the area of media freedom and pluralism. The authors evaluate the coherence between these regulatory frameworks and argue for closer coordination of activities between EU bodies and the Council of Europe. The chapter proposes organisational and legal mechanisms that could be leveraged in order to ensure closer cooperation and coherence between the EU and the Council of Europe.

In Chapter 3, **Christophe Geiger** and **Bernd Justin Jütte** take a close look at the EU copyright acquis and ask to what extent fundamental rights considerations underpin the media-relevant aspects of EU copyright law. As copyright law impacts the possibilities to access, use and distribute information, copyright exceptions and limitations that support the work of journalists constitute crucial avenues to ensure that the media can carry out their democratic functions. However, the authors find that copyright laws are not adequately informed by this fundamental rights consideration. Particularly focusing on the absence of journalistic exemptions in the context of the CDSMD's provisions on text and data mining and online copyright enforcement, Geiger and Jütte argue that the framework of digital constitutionalism would allow for a better internalisation of the fundamental right to media freedom in EU copyright law.

Chapter 4 by **Andrei Richter** and **Anna Smulders** interrogates the extent to which fundamental rights considerations were sufficiently incorporated in a specific EU intervention: the sanctions imposed on certain Russian media outlets in the wake of the Russian invasion of Ukraine. While the sanctions have spurred heated debate about media freedom and censorship, the authors argue that there is a pressing need to address harmful propaganda, especially in the context of war. They propose a framework to assess the compatibility of EU sanctions with the right to freedom of expression, focusing on the content of the messages, the extent to which the media outlet aligns with the values of quality journalism, and the level of involvement of the aggressor state.

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Rethinking European Media Governance

The contributions in Part II assess classical problems of media law, which signify that regulatory design and intervention logics require careful calibration in order for them to deliver the desired outcomes.

In Chapter 5, **Josef Trappel** sets the stage with a critical assessment of an old challenge on the European media policy agenda: the concentration of media ownership. The chapter traces the multi-decade trajectory of media ownership policy in the EU, stretching from resolutions adopted by the European Parliament in the 1980s to the legally binding standards stipulated in the EMFA. Through this historical analysis, Trappel demonstrates a shift in focus from ownership concentration to ownership transparency, which may however prove insufficient in restricting ownership concentrations and fostering media pluralism.

Digital media governance continues to grapple with the scope and application of regulation, which is continuously challenged by evolving media formats, new modes of content production and the diversification of actors. Chapter 6 by **Nadia Feci** and **Peggy Valcke** considers the growing role of influencers in the media ecosystem and demonstrates how this challenges the AVMSD's scope of application. By examining the constitutive elements of the definition of an 'audiovisual media service', the authors argue that the AVMSD remains deeply rooted in the twentieth-century media ecosystem and is not able to effectively pursue its goals in the influencer era.

The growing involvement of the EU in the governance of the European media ecosystem raises intricate questions regarding enforcement on national levels and the democratic legitimacy of such supranational approaches. **Tanja Kerševan's** Chapter 7 engages with this topic by critically reflecting on the redistribution of competences in media policy between Member States and the EU as a result of the EMFA. The author analyses the role of, and interplay between, national regulatory authorities and the newly established European Board for Media Services. Kerševan argues that the discrepancies in how supranational standards are interpreted and applied, as well as differences in the resources that national regulatory authorities have available, risk undermining the intended aims of the EMFA.

Media capture, or the systematic co-option of the media landscape so that it serves the interests of a political and economic elite, has put a strain on media freedom in various European states. Chapter 8 by **Marius Dragomir** and **Zsuzsa Detrekői** critically assesses the role of EU media law in addressing this phenomenon. The authors posit that notwithstanding the fact that media regulation is primarily the responsibility of states, the EU has regulatory tools at its disposal to provide for a strong pushback against media capture. Dragomir and Detrekői explore a wide range of EU media law instruments in order to identify gaps and possibilities for reform in light of media capture.

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EU media policy can extend beyond its Member States to European countries aspiring to join the EU. Chapter 9 by **Krisztina Rozgonyi** investigates the transfer of EU media policy to candidate and potential candidate countries, including Serbia, Ukraine and Georgia. Rozgonyi highlights that conformity with the AVMSD is prescribed in accession and association agreements, without ensuring the implementation of sufficient safeguards for appropriate local governance and accountability mechanisms. The author identifies shortcomings and proposes reforms for the Europeanisation of media governance.

Countering the Information Disorder

The contributions in Part III of the handbook engage with legal and policy strategies countering the information disorder. Addressing hate speech, disinformation and propaganda has been a central goal in a variety of legal and policy tools, with pressing dilemmas about the definition of harmful speech, the responsibilities of platforms and the legitimacy of legal and policy responses.

The concept of harm in the digital media ecosystem is contested. Chapter 10 by **Sally Broughton Micova** unravels the understandings and assumptions of harm underpinning EU media regulatory instruments. Surveying the (former) Television without Frontiers Directive, AVMSD and EMFA, she identifies a shift from individual conceptions of harm to societal conceptions of harm. Broughton Micova argues that this shift requires EU media law and policy to rethink how the responsibility for mitigating harm is distributed in society.

The challenges associated with tackling disinformation, as a particular type of harm in the digital media ecosystem, is the focus of Chapter 11 by **Elda Brogi** and **Iva Nenadić**. Regulatory approaches to disinformation have to find a balance between the need to protect the integrity of public discourse from rampant disinformation and the need to protect the free flow of information, including from the media. Brogi and Nenadić critically analyse how the DSA, the Strengthened Code of Practice on Disinformation and the EMFA grapple with this dilemma and highlight the variation in their approaches to the balancing between the protection of the media and the prevention of disinformation.

Policy debates on the need to address disinformation often have a dominant focus on the responsibilities of digital platforms. Chapter 12 by **Minna Aslama Horowitz** and **Marius Dragomir** argues that the unique role of public service media (PSM) in this debate should also receive attention. The authors explore a variety of EU policy instruments pertaining to PSM and present case studies of the PSM landscape in Finland and Hungary. They conclude that the potential of PSM to counter the information disorder has not been adequately tapped. Horowitz and Dragomir pay particular attention to the EMFA's relevant provisions and assert that EU media law and policy should more explicitly connect the responsibilities of PSM to information resilience.

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Eugenia Siapera's Chapter 13, in turn, takes a closer look at particular drivers of the information disorder: alternative platforms, or alt tech, that host far-right and extremist discourse. Siapera investigates how these platforms work and concludes that European media law and policy fail to effectively regulate them because legal and policy tools were not designed with this extreme public sphere in mind. The author advances a whole-society approach to counter the harms associated with these platforms, consisting of efforts to increase societal trust, mitigate social tensions and address inequalities and discrimination.

Focusing on the challenges posed by 'awful but lawful' content, Chapter 14 by **Stephan Dreyer** proposes a new model of regulation. He recommends strategies that move beyond the binary of either state regulation or self-regulation and explores the potential of co-regulatory governance structures to come to terms with 'awful but lawful' content. Dreyer proposes the establishment of a public-interest-bound, discourse-oriented body that would ensure that truths are negotiated in a collective, open public debate, in order to restore the foundations of deliberative democracy.

Coping with Digital Transformations

The contributions in Part IV critically reflect on the impact of the dominant role of digital platforms and platform providers in the area of news media. Rebalancing the relationship between digital platforms and news media has been an important goal in various European legal and policy interventions, and these are examined from different angles in the contributions in Part IV.

Chapter 15 by **Melinda Rucz** and **Kristina Irion** analyses the lobbying activities of Meta, Alphabet and Microsoft in EU media policy. Given the differential exposure of the three technology companies to legislative interventions aiming to strengthen the protection of the media, the authors identify a split in their political activities. In particular, Rucz and Irion analyse the strategic positioning of Microsoft as a supporter of journalistic freedoms in the media policy dialogue.

The press publishers' right, stipulated in the CDSMD, aims to empower publishers to negotiate with digital intermediaries about the use of their press publications. However, as Chapter 16 by **Ula Furgał** and **Martin Kretschmer** demonstrates, the directive leaves it to the discretion of Member States to operationalise the process of bargaining. Furgał and Kretschmer systematise the main approaches pursued in Member States and posit that bargaining frameworks sit as complex institutional constraints between pure private ordering and the law.

Chapter 17 by **Eleonora Rosati** delves deeply into the variety of national approaches taken to implement the press publishers' right. Exploring individual facets of the harmonised right at EU level, such as the concept of 'very short extracts' that are excluded from the scope of the press publishers' right, Rosati demonstrates that Member States have taken vastly different approaches to implementing the new

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right in their national legal systems. As this divergence undermines the harmonising objective underlying the provision, Rosati reflects on ways out of the dilemma: from the disapplication of non-compliant national provisions to new regulatory strategies at EU level.

New Directions for Preserving Journalism

The contributions in Part V of the handbook address known and new challenges to the long-term viability of quality journalism arising from technological developments. While quality journalism is a necessary precondition for democratic public debate, its future seems uncertain in the age of platformisation, global tech giants and generative AI. Against this background, the contributions in Part V propose new directions in European media law and policy for preserving quality journalism in the ever-evolving media ecosystem.

State interventions in media markets are justified when market conditions alone fail to provide for the media environment that is needed in democratic societies. In this context, Chapter 18 by **Joost Poort** interrogates the market failures that digital platforms and generative AI may cause in the matrix for news media, particularly focusing on externalities, information asymmetries and market power issues. Assessing the suitability of European digital media policy critically from an economic perspective, Poort proposes new avenues of government intervention that better address the market failures resulting from the dominance of digital platforms and generative AI.

Andrew T. Kenyon's Chapter 19 similarly advocates for positive interventions in the context of the platform-dominated media ecosystem. He analyses how the system of public speech, sustained by journalism, has been disrupted by the growing importance of platforms as sites for public debate. Kenyon pays particular attention to recommender systems and explores how public-interest-oriented recommender systems could be developed in order to create a democratically legitimate context for public speech in the platformised media environment.

The critical reflection on the viability of quality journalism carries on in Chapter 20 by **Daniel Gervais**. The author pinpoints various shortcomings of the press publishers' right in creating a genuinely supportive environment for the type of journalism democracy depends on. As Gervais's analysis shows, the granting of a related right that press publishers need not acquire from human authors may strengthen tendencies to replace human journalistic work with AI-generated content. It may also lead to the use of human productions as information resources for AI variations of the same news. In light of this, Gervais argues for proactive legal interventions that safeguard human journalism in the face of platformisation and generative AI, including through competition law and public funding for quality journalism.

Chapter 21 by **Martin Senftleben** continues the discussion of regulatory measures to soften the corrosive effect of AI-generated content in the media sector. Seeking

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to support the work of human journalists, Senftleben discusses the obligation to pay equitable remuneration for the use of human journalistic works in AI training. Recommending a departure from the existing rules in the CDSMD and the AI Act that focus on copyright clearance at the AI development stage, Senftleben outlines the contours of an alternative, output-based approach that would require the payment of remuneration once fully developed AI systems are brought to the market and used in the media sector. He explores legal avenues to ensure that payment reaches individual journalists, and paths to provide special supportive measures to public interest journalism.

CHARTING AVENUES FOR FUTURE-PROOF AND INTEGRATED EUROPEAN MEDIA LAW AND POLICY

The contributions in this handbook offer a principle-based and future-oriented vision of European media law and policy. While the individual chapters focus on a wide variety of issues and regulatory strategies, several overarching proposals emerge. Together, these can serve as a blueprint for rethinking European media law and policy to better support independent and diverse media and a vibrant public debate.

The first cross-cutting theme concerns the re-aligning of regulatory interventions with the democratic purposes of media policy. The core problem with the digital media ecosystem is that the digital infrastructures for public debate are not fostering the type of discourse that is necessary for democratic culture. Current European interventions tend to focus on the regulation of illegal content, individual expressive rights and the empowerment of platform users. This narrow focus overlooks the deeper, structural issues that media policy should ultimately address, namely challenges to the overall health of public discourse. In this context, several contributions in this book offer valuable inspiration for re-aligning media law and policy with foundational democratic and discursive missions. The roots of such an approach can be found in the positive obligation for Member States to ensure a safe and favourable environment for participation in public debate, as set out by McGonagle (Chapter 1). Picking up on this theme, Kenyon (Chapter 19) advocates for reorienting European media law and policy to create 'democratically legitimate conditions for public speech', while Horowitz and Dragomir (Chapter 12) call for adopting information resilience as the guiding principle for regulatory interventions. Dreyer (Chapter 14) argues for re-connecting media policy to societal processes of negotiating truth, and Siapera (Chapter 13) proposes to embed digital media policy in broader strategies to enhance tolerance in society.

The second theme that emerges from several contributions to this book is the fragmentation of the European regulatory space for the media. Given the growing overlap of the activities of the Council of Europe and the EU in media policy, it is problematic that legal and policy standards do not always pull in similar directions. Economic legislative rationales and democratic legislative rationales produce

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different policy imperatives, while regulatory interventions stemming from different fields of law operate with distinct logics that might not always be compatible with one another. More concerted cooperation between the Council of Europe and the EU could provide for more coherence and effectiveness in the shared European regulatory space. The legal and organisational steps developed in Chapter 2 by Umek and van Drunen provide fruitful starting points to enhance cooperation between the two legal frameworks. A more explicit and systematic implementation of fundamental rights in EU legal and policy instruments can provide a unified normative grounding for European media law and policy, as explored by the contributions by McGonagle (Chapter 1) and by Richter and Smulders (Chapter 4). The framework of digital constitutionalism, developed in the contribution by Geiger and Jütte (Chapter 3), can provide a productive theoretical lens to enable the fundamental rights approach to permeate the whole spectrum of European digital media policy.

The third overarching focus across the chapters is the desirability of multi-stakeholder approaches in European media law and policy. Current European regulatory responses tend to entrust the governance of digital media either to states or to digital platforms. The contributions by Brogi and Nenadić (Chapter 11) and by Horowitz and Dragomir (Chapter 12) make compelling cases to strengthen the role of other actors, including civil society and public service media, in safeguarding a healthy information ecosystem. Dreyer's proposal for a discourse-oriented body (Chapter 14) can provide useful inspiration for re-imagining a co-regulatory framework for the media ecosystem with an active role for civil society. Broughton Micova's recommendations for making a multi-stakeholder approach genuinely inclusive (Chapter 10) offer paths to ensure that civil society actors can meaningfully contribute to the governance process, even when they are in a disadvantaged position in comparison to technology companies.

The fourth theme emerging from across the contributions concerns the curbing of the socio-political power of global digital platforms. Digital policy tends to focus on the economic power of technology companies, inadequately addressing their socio-political power. The contributions of Kenyon (Chapter 19), Rucz and Irion (Chapter 15), and Furgał and Kretschmer (Chapter 16) shed light on how the socio-political power of tech companies can manifest in opinion power, lobbying power and bargaining power. Bringing transparency to these often subtle ways that technology companies exercise influence in the public sphere is an important first step towards understanding and addressing their socio-political power. The proposal of Brogi and Nenadić to carefully evaluate European regulatory interventions so that they do not unintentionally strengthen the political power of technology companies (Chapter 11) can also be a productive starting point for ensuring European media law and policy does not delegate further power to private platforms over the governance of democratic public debate.

The last cross-cutting theme in the handbook underscores the increasing role of the EU in governing national media systems. Dragomir and Detrekői (Chapter 8)

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advocate for uploading national-level policy issues to the EU in order to come to terms with politicised media and regulatory capture. The chapter by Horowitz and Dragomir (Chapter 12) urges the EU to give better recognition to Member States' public service media organisations, as they have an important role to play for information resilience. Both Rozgonyi (Chapter 9) and Kerševan (Chapter 7) draw attention to the issue that the EU's one-size-fits-all approach to media governance may not be well attuned to the specifics of countries' national media systems and the capacities of their media governance institutions.

The chapters compiled in this handbook have in common that they rethink the role of European media law and policy in ensuring an enabling media environment. This forward-looking approach ensures that the handbook provides important impulses to the academic debate and towards an integrated approach to media law and policymaking. We hope that this handbook will serve as a useful resource for education, academic discussion, law- and policy-making and the application of media law in practice.

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