

SUSTAINING JOURNALISM DURING COVID-19

How the EU can turn Digital Platform Regulation into a Tool for Democracy

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Trustworthy, professional, and independent journalism is not only one of the foundations of pluralistic, thriving societies – it is suddenly being rediscovered as indispensable, even life-saving, during a global pandemic. However, COVID-19 has further undermined the media sector's sustainability at a time when it is most sorely needed. This has been labelled as an 'extinction event', particularly for local news, and the risks it represents are becoming visible not only to the general public; it is also an issue and a priority for policymakers – although a structural response is not yet fully forthcoming.

The newly published report '**A Lockdown for Independent Media?**¹' examines this dilemma through the regional lens of South-Eastern Europe. Its thorough country-by-country diagnosis reveals similar patterns and leads to a rather blunt, though not surprising, finding. By and large, it seems rather unlikely that the downward spiral towards combined autocratic tendencies and so-called 'media capture' by oligarchs and state actors can be remedied on national levels alone. Given these pre-existing conditions, the pandemic struck severely at the region's press landscape, resulting in devastation amongst journalistic communities and the media sector. This necessitates even more targeted intervention.

- European COVID-19 aid packages currently under negotiation were supposed to include certain conditions for the recipient, such as on **safeguards for the rule of law**. The same logic should – and must – now be applied to EU member states, candidate countries, and states in the eastern and southern neighbourhood, focusing on the sustainability of independent journalism, media pluralism and the freedom of speech, information, and the press at large;
- In addition, the EU and individual member states' governments have already significantly supported **media development** in South-Eastern Europe since the regime

changes of the 1990s until this very day. For the media, these are means of life support, equivalent to the provision of ventilators and oxygen units. This support must continue. However, the aforementioned report has also laid bare a frustrating truth: It has seldom resulted in a lasting remedy for the media's hardships;

- Continued short-term emergency aid and ongoing, longer-term political bargaining in Brussels must be complemented by a third, more systemic approach. This article argues that, by correcting market failures through the **regulation of digital platforms**, the European Commission and EU member states have another, very powerful instrument at hand to achieve this very goal. They can thereby sustain healthy media landscapes within the union, its neighbours, and even at a global level.

A WINDOW OF OPPORTUNITY

In the wake of the COVID-19 shock and its turbulent consequences, a window of opportunity has coincidentally opened up by means of the Digital Services Act (DSA), a piece of landmark regulation accompanied by the European Democracy and Media Action Plans, announced by the European Commission earlier this year.

Technically seen as a revision of the E-commerce Directive, the DSA is supposed to focus on trade, markets, and related regulatory approaches in order to finally reign in the so-called digital intermediaries, such as the mostly US- and increasingly China-based big-tech companies that dominate the markets of search engines, online shopping and those of social media platforms.

Traditionally, the European Union was always about "the economy, stupid". Its founding mothers and fathers sought reconciliation but built it very practically on coal and steel. The EU's signature project in response to Germany's reunification and regime changes further east and south was a common currency: the Eurozone. Furthermore, the complicated relationship with the United Kingdom (*"I want my*

1 <http://library.fes.de/pdf-files/bueros/budapest/16392.pdf>

money back”) and Brexit is about payments, subsidies, and trade.

Therefore, it shouldn’t come as a surprise that cultural and media policy was not only disregarded and treated as a niche topic in Brussels but worse, as a non-topic. Technically, according to the Amsterdam Protocol, this competency is reserved for member states. To this very day, the Commission has no formal remit in the matter. For example, EU Commissioner Margrethe Vestager didn’t see “#fakenews as an antitrust issue” until not so long ago. Digital policies, though inescapably intertwined with remits on media and civil liberties, are still mainly considered a matter of infrastructure or trade, if they are considered at all. Therefore, the DSA’s stark focus on economic dimensions might not come as a surprise, while the accompanying Democracy Action Plan would mostly contain non-binding recommendations and a few “carrots” in terms of funding instruments.

Lacking a clear mandate, the commission cannot be blamed for a hotchpotch of narrow or non-existing competencies. As the core, founding member states of the union did not want to relinquish their national monopolies on media regulation some thirty-odd years ago, the EU’s leverage with governments in Ankara, Belgrade, or Budapest naturally remains limited in this domain.

However, the DSA might become a game changer in this regard.

Talking journalism, press freedom, and media policy today means regulating tech. And just like climate change, migration, or COVID–19, this works only, literally, across borders. Artificial intelligence or Facebook cannot be reined in from Berlin or Bratislava. As this notion slowly gains currency among the ranks of policymakers, a critical mass in favour of a holistic and transnational approach might finally emerge just in time for the inception of the Digital Services Act. This realisation, after all, has accelerated during the pandemic.

As the report ‘A Lockdown for independent Media?’ illustrates in great, worrying detail, the growing pressures on media outlets and individual journalists today are mostly economic, resulting in self-censorship, closures, and eventually a reduction in pluralism and diversity. The disintegration of traditional business models and the further drop of advertising revenue during the COVID–19 crisis amount to a perfect storm, making it even easier for autocrats to control and constrain the information space.

Transnational platform regulation can offer some remedies, by providing a mechanism to directly remonetise authoritative sources of information and thus strengthen their sustainability, but also by safeguarding media pluralism at the technical, global distribution level and thus, ironically, circumventing the reach of local actors to intervene. Such a framework could even indirectly enforce the same rule of law principles that the EU’s COVID–19 aid package might eventually lack.

REVERSING THE LOGIC

In most countries, digital advertising is dominated by the duopoly of Google and Facebook, which command north of a 60 percent market share, depriving legacy media of its traditional revenue streams. A fair and transparent regime of redistributing profits back, at least partly, to the content creators has not yet materialised. Even worse, the relevant metrics are still mostly defined by “engagement” fuelled by sensationalism and clickbait, thus incentivising, rewarding and amplifying the exact opposite of rigorous and ethical journalism. Typically, a market failure of such a large scale would prompt calls for regulatory intervention to correct it.

Affirmative action is needed to support the promotion of trustworthy news and information, providing due prominence for public interest journalism online. However, two questions need to be addressed first: how is this to be defined, and how can such support for it be stipulated by law?

As soon as these two questions are combined, a challenge prevents itself. Apart from autocrats, nobody seriously supports defining what is and is not journalism by law. Fortunately, co-regulatory approaches offer a two-tier model as a way out, as do a number of best practices in other industries to look at and to learn from. According to these, the actual obligations for different stakeholders are defined by law – this constitutes the regulatory part. However, the actual definitions and specifications are sourced, governed, and enforced by means of self-regulatory industry standards and bodies.

In the media sector we are witnessing an abundance of ethical codes alongside a lack of incentive in realising them. In other words, compliance with existing professional journalistic norms is a fine idea, but one which lacks enforcement and doesn’t pay off in terms of digital reach and revenue. A co-regulatory framework is needed to reverse this logic – exactly like car manufacturers are strongly incentivised to build safe cars, even though no law in the world tells them exactly what a safe car is to look like. This is how co-regulation delivers.

Translating this to the media sector would require four crucial elements:

- First of all, the journalistic community must come up with a **unified benchmark** to subscribe to voluntarily;
- Secondly, self-assessment according to these criteria must be open to **third-party audits** in order to add a – thus far mostly missing – level of compliance and external accountability (something which would also require a deep look into the mirror for us journalists);
- Thirdly, this then must result in **machine-readable signals** to inform both human and algorithmic decision making in news distribution and consumption;
- Last not least, intermediaries and platforms must be obliged by law to take on these signals, based on a due and transparent process, and provide **preferential treatment** of compliant sources respectively.

The Journalism Trust Initiative (JTI), initiated by Reporters Without Borders (RSF) together with partners such as the European Broadcasting Union (EBU) and Agence France Presse (AFP) follows this very logic. It has already developed and published an auditable and machine-readable set of criteria under the aegis of CEN, the European Committee for Standardisation (*disclosure: the author works for Reporters Without Borders on the JTI*).

One or more of such transparently sourced and governed, non-proprietary instruments could form the self-regulatory core for a co-regulatory mechanism to come.

As concerns legislation, examples of such affirmative action already exist, such as a quota for European works in the Audiovisual Media Services Directive or ‘must-carry’ rules for broadcasting and electronic programming guides. These legal instruments remind us of times when the spectrum of distribution used to be scarce, defining the logic of media regulation accordingly. However, today’s digital technologies mean that scarcity has flipped from the supply to the demand side of the equation – that is to say, it now refers to the limited attention span and time of consumers and citizens, rather than the range of available channels. Co-regulatory solutions must respond properly to this shift of paradigm.

The upcoming Digital Services Act of the European Commission now provides a unique opportunity to enshrine this logic, even more so as it is expected to build on the EU’s traditional core competencies in trade and competition. It should not only focus on weeding out malicious actors, but equally strive to support the good by providing a tangible economic benefit for public interest journalism.

A resulting ‘must-find’ rule for search engines and social media platforms would result in elevated reach and revenue, enabling eligible content providers to capitalise directly on investments in professional journalism and ethical conduct. It could simultaneously limit the powers of local actors to exert political interest on media via corrupt advertising markets and attempts to deprive independent journalism from the profits it deserves. Last not least, self-regulatory compliance mechanisms may become a major contribution to capacity building. Media outlets, big and small, could use these self-assessment mechanisms to optimise their internal processes and performance, train staff and educate the general public about journalistic ethics in a structured way, hence elevating levels of media and information literacy.

ADVERTISING AS THE ELEPHANT IN THE ROOM

In times when the media’s traditional advertising-based business has already declared dead, the year 2020 might also have some surprises on offer when it comes to new leverage for advertisers vis-à-vis Facebook. It remains to be seen whether their boycott of the platform is driven purely by corporations’ social responsibility or are mere PR stunts

to disguise already planned budget cuts – or maybe a mix of both.

However, so far it appears that episode has a few, perhaps promising, lessons to teach:

- Although the pandemic has led to a renewed appreciation of the value of professional journalism, the field is economically starved. Nevertheless, there is still **a lot of money** in the system. Maybe advertising as a business model for media is not as dead as it seems;
- Tens of billions of Euros are **wasted** every year due to ad fraud and unintentional targeting – which means that spending ends up where advertisers don’t want to see it, filling the coffers of the wrong people and thereby fuelling and **monetising hate**, polarisation and division, going on to damaging the reputation of the advertisers’ brands in the first place;
- While the products which feature in advertisements and the factories which produce them are subject to numerous of laws and rules, to keep them from poisoning our rivers and our children, their advertising expenditures continue to fuel the poisoning of our information space – unintentionally or not – and are subject to exactly **zero regulation**. This needs to change;
- We should also not forget that the space for advertising is shrinking – not just in terms of advertising offers, but in terms of the recipients’ attention. This is where the bottleneck is located in the value chain these days. Eyeballs and viewing time are physically limited, geared more and more towards Netflix and other paywalled, ad-free offers – even more so in lockdown during the pandemic. This development elevates the marketers’ demand even more for environments that are accessible and also safe for their brands in the reputational sense.

Advertisers will not save journalism and they should not have to. But creating both legal incentives and technological means to align their spending to comply with professional journalistic norms could make a difference for both – and for societies at large. However, fixing these now all to obvious design flaws and market failures of programmatic advertising necessitates for legislative action as well.

Politically speaking, this is all about will, interests of key players and the specific instruments at hand. The experiences of the recent European Council summit suggest that it may be easier for the EU to reign in oligarchy in Silicon Valley than to prevent **autocratic-oligarchic alliances on its doorstep, even among its own member states**. Targeted platform and ad-tech regulation, including due prominence rules based on co-regulatory mechanisms, could become a game changer globally, also significantly improving the healthiness of societies and their information ecosystems in member states and the wider European neighbourhood. Already existing or planned support schemes should of course complement such a framework, particularly focusing on legal support, cross-border collaboration and transparency of media ownership.

In terms of a critical mass, **another promising development is the Alliance for Multilateralism**. Spearheaded by Germany and France, it allows additional middle powers such as Australia, Canada, and Mexico to share not only their grievances, but an existential desire to define common ground, caught somewhere between the two increasingly undesirable extremes of the United States and China. Not surprisingly, the fight against disinformation – and for press freedom, the safety of journalists, and a

pluralistic information space – is high up on the agenda of this Alliance.

While the COVID–19 pandemic brings out the worst and the best in us ordinary citizens, it definitely brings out the worst when it comes to autocrats and their power. Hopefully it can also bring out the best of these coalitions of the willing, namely the European Union during the German presidency of the council. This will be a defining moment to make – or to break.

The Alliance for Multilateralism

The “Alliance for Multilateralism” launched by the French and German Foreign Ministers is an informal network of countries united in their conviction that a rules-based multilateral order is the only reliable guarantee for international stability and peace and that our common challenges can only be solved through cooperation. It aims to renew the global commitment to stabilize the rules-based international order, uphold its principles and adapt it, where necessary.

The Alliance revolves around concrete initiatives to reach its objectives and facilitates results-based partnerships of which one is the International Partnership for Information and Democracy. Its declaration sets forth goals and principles for guaranteeing free, pluralistic, quality reporting despite the changes resulting from new digital communication forms. For example, it opposes the manipulative use of fake news to undermine democracy. Among other things, the signatory states undertake to defend freedom of opinion and freedom of the press, as well as to protect journalists.

source: Alliance for Multilateralism – multilateralism.org

The Digital Services Act (DSA)

As part of the European Digital Strategy, the European Commission has announced a Digital Services Act package to modernise the current legal framework for digital services, which has been unchanged since the adoption of the e-Commerce Directive in the year 2000.

The Commission would propose clear rules framing the responsibilities of digital services to address the risks faced by their users and to protect their rights. The legal obligations would ensure a modern system of cooperation for the supervision of platforms and guarantee effective enforcement.

The DSA would also propose ex ante rules covering large online platforms acting as gatekeepers, which now set the rules of the game for their users and their competitors. The initiative should ensure that those platforms behave fairly and can be challenged by new entrants and existing competitors, so that consumers have the widest choice and the Single Market remains competitive and open to innovations.

source: European Commission

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