



Post-Truth

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# Post-Truth

*A Multidisciplinary  
Approach*

*Edited by*  
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## Preface

In an era where information is readily disseminated through a multitude of channels, the phenomenon of post-truth has emerged as a significant challenge to the traditional paradigms of truth-seeking. The proliferation of misinformation, often masquerading as legitimate discourse, has engendered a climate of uncertainty and skepticism regarding the veracity of information. This erosion of trust in established sources of knowledge, coupled with the amplifying effects of social media and digital platforms, has contributed to the blurring of lines between fact and fiction, between trues and lies. One of the more evident consequences has been the normalization of public lies. This collection of essays, entitled *Post-truth: A Multidisciplinary Approach*, emerges as a response to the intricate challenges posed by the contemporary landscape of information dissemination. It encapsulates the insights and deliberations stemming from the International Congress of Post-truth held in Granada (June 14-16, 2023), where scholars and practitioners from diverse disciplines converged to unravel the complexities of this phenomenon. The congress was one of the results of the research project "Postruth under debate", which involved two years of discussions and meetings between groups from different disciplines.

The essays assembled in this volume attest to the multifaceted nature of the post-truth landscape, transcending disciplinary boundaries to offer a nuanced understanding of its implications. From the realms of communication, politics, technology, philosophy, history, law and education, scholars and practitioners have endeavored to dissect the underlying mechanisms driving the dissemination and reception of post-truth narratives. By interrogating the sociocultural, technological, and epistemological dimensions of this phenomenon, these contributions shed light on the intricate web of factors shaping contemporary discourse. The breadth and depth of this interdisciplinary dialogue underscore the urgency of cultivating collaborative efforts to address the proliferation of falsehoods in our societies.

The present volume is organized into three distinct sections, each dedicated to interconnected realms of inquiry. These divisions are as follows: Part I addresses Communication and Technology; Part II explores Politics, Economics, and Law; and Part III delves into Philosophy and Education. It is noteworthy to emphasize that, owing to the interdisciplinary nature of the congress, numerous contributions may intersect with multiple realms beyond those specifically delineated here.

*Part I: Communication and Technology* initiates with a contribution by María Lamuedra Graván, which establishes a conceptual framework aimed at fostering consensus across disciplinary boundaries in the examination of disinformation and post-truth phenomena. Graván introduces a unified model delineating the variables and conditions characterizing both truth and post-truth regimes.

In the second chapter, Pamela Giorgi and Lucía Ballesteros-Aguayo advocate for the imperative of media's social responsibility. Their chapter underscores the challenges inherent in contemporary media landscapes and advocates for media literacy as a means to cultivate critical thinking skills in information consumption, thereby advocating for educational initiatives in communication as a potent antidote.

The subsequent chapter offers a comprehensive overview of Foundation Models in Artificial Intelligence pertinent to post-truth contexts. It probes into the dual issues of AI systems being harnessed to advance political or economic agendas, as well as their role in shaping emotional responses, potentially exacerbating biases.

Carlos Fernández-Barbudo, in the fourth chapter, addresses the burgeoning digitalization of public spheres and the emergent role of technopolitical platforms therein. He posits that the visibility regime of such platforms reconfigures the parameters of public visibility, thereby altering the conditions for pluralistic discourse, proposing post-truth as a distinct truth regime emerging within this digital milieu.

María de los Ángeles Pérez del Amo, in the chapter five, focuses on the challenge posed by COVID-19 denialism and extends this analysis to other contexts marred by denialism. Del Amo advocates for a nuanced understanding of denialism, distinguishing between denialism rooted in issues of inequality and vulnerability versus those concerning rural identities, in order to foster improved scientific communication accessible and responsive to diverse audiences.

Elios Mendieta, in the subsequent chapter, investigates the influence of post-truth on the interpretation of visual representations, particularly within cinematic narratives. Mendieta contends that post-truth exerts a profound impact on cinematic discourse, highlighting its disruptive potential within contemporary visual culture.

In the seventh chapter, Manuel Luna Alcoba' delves into the phenomenon of hybrid warfare, specifically exploring the implications of interpretative relativism within this context. Through a military lens, Luna Alcoba elucidates how language operates to construct adversaries within hybrid warfare scenarios.

In the light of such landscape, Albert Julià-Espases, in the last chapter of part I, elucidates the mobilization of adversaries through the utilization of echo chambers within hybrid warfare contexts. Julià-Espases' analysis situates itself within the framework of contemporary methodologies of hybrid warfare, elucidating the actual effects engendered by the digitalization of public spaces and its epistemological consequences.

*Part II: Politics, Economics, and Law* commences with the ninth chapter authored by Enrique Herreras, who articulates concerns regarding the phenomenon of post-truth as a contemporary threat to democracy. Herreras underscores the necessity for a thorough comprehension of this concept, delineating its dual connotations and its anchorage within postmodernist thought. He proceeds to elucidate the perils posed by post-truth to democratic principles, highlighting the potential establishment of an emotivist democracy as its foremost danger.

In the subsequent chapter, Santiago Navajas offers a nuanced distinction between post-truth in its strong and weak manifestations. Navajas elucidates that the former aligns with the relativistic stance on truth espoused by Gorgias and Rorty, whereas the latter corresponds to the pluralistic perspective advocated by Protagoras and Popper. Drawing parallels with Mill's marketplace of ideas and advancing the liberal model, Navajas advocates for the weak post-truth paradigm as a means to counteract monopolistic conceptions of truth.

Benigno Jesús Salvador Palanques, in the eleventh chapter, engages in a reflective analysis of the construction of narratives surrounding the idea of Spain in recent history, with particular attention to the proliferation of post-truth narratives inherent within it. Similarly, Carlos Cardenas Blesa, in the subsequent chapter, examines the construction of Valencian autonomous identity through a comparable lens.

In chapter twelve, Carlos Cárdenas Blesa analyses the Valencian situation in the democratic transition from the point of view of the concept of "post-truth", establishing analogies with this political and historical context.

Jorge Tuñón-Navarro, Raquel Ruíz-Incertis, and Rocío Sánchez-del-Vas undertake an exhaustive examination of European media law in the thirteenth chapter. They offer a detailed exposition of the principal documents of the European Union, elucidating the historical context, legal foundations, and conducting a descriptive analysis of the contents of the European Media Freedom Act (EMFA). Furthermore, they identify the opportunities and shortcomings inherent within this regulatory framework, while also proposing enhancements for its refinement.

Irene Elisa Santacreu Cortés, in chapter fourteen, conducts an analysis of post-truth discourse in relation to Futurism, specifically critiquing Michel Onfray's biased portrayal of Futurism. Santacreu Cortés offers strategies for constructing counter-narratives that challenge post-truth ideologies.

Concluding the part II, Pelayo Guijarro Galindo, in chapter fifteen offers a cartography of Latin American critical emancipatory thought from the mid-twentieth century to the present day to better understand post-truth in the context of manipulation and promotion of extractive policies of the last century.

*Part III: Philosophy and Education* comprises eight chapters predominantly situated within the philosophical domain and some pedagogical contributions. Jesus Conill, in chapter sixteen, offers a robust critique of postmodernist "logophobia," which he identifies as a foundational element of post-truth philosophies. Conill begins his chapter by advocating for the rigorous pursuit of logos and the intrinsic value of the quest for truth. However, he contends that the hegemony of instrumental rationality within the social and political digital sphere is diminishing the significance of logos. Conill suggests that the restoration of logos necessitates engagement with alternative philosophies that elucidate humanity's authentic relationship with truth, such as the Nietzschean genealogy combined with Zubirian noology.

In chapter seventeen, Raúl Linares-Peralta undertakes a systematic categorization of the fundamental aspects involved in interpretations of post-truth. Linares-Peralta analyzes the key elements shaping definitions and diagnoses of post-truth, culminating in the formulation of four main interpretative frameworks: post-truth denialism, post-truth reductionism, post-truth pluralism, and post-truth essentialism.

Manuel Jacinto Roblizo, in chapter eighteen, reflects on the limitations of the hermeneutic approach in epistemological inquiries within the social sciences. Roblizo examines the conceptions of truth proposed by Gadamer and postmodernists before highlighting the inadequacies of such notions for social scientific research. He suggests that the notion of truth as the unveiling of being presents a viable alternative.

Chapter nineteen, authored by Miguel Oliva Rioboó, offers an original interpretation of Scheler's concept of functionalization applied to the analysis of post-truth. Oliva Rioboó proposes a dynamic understanding of truth intertwined with values and emotions, suggesting the possibility of adopting a positive interpretation of post-truth as a progression toward truth.



In the twentieth chapter, José Antonio García-Lorente analyzes the value of opinions in the contemporary context of post-truth, examining Aristotle's concept of *éndoxa* and its relevance for facilitating dialogue and discussion amidst pervasive post-truth narratives.

Chapter twenty-one, authored by Juan-Antonio Nicolás, proposes a philosophical response to the challenge of post-truth based on the recovery and valorization of the experience of truth. This experience can be formulated around the principle of affection. Based on this principle, three areas of experience of truth can be considered: affection by demonstration, affection by recognition and affection by imposition.

In chapter twenty-two, José Miguel Santacreu Soler and Rafael Sebastiá Alcaraz aim to enhance societal literacy through the historical method, particularly in combating post-truth narratives. They delineate a conceptual framework utilized in the analysis of quantitative interviews conducted with university students.

Lastly, Félix García Moriyón, in chapter twenty-three, provides an exhaustive analysis of global competence as conceptualized by PISA, addressing pedagogical challenges stemming from increasing digitalization and the erosion of truth value within educational contexts.

As editors, we are indebted to the scholarly rigor and intellectual interest exhibited by our contributors, whose insights enrich this discourse. Their collective endeavor underscores the imperative of transcending disciplinary boundaries in confronting the challenges of our post-truth age. Furthermore, we express our sincere gratitude to Ana María Ramírez for her invaluable assistance in coordinating and managing all organizational and administrative aspects of this endeavor. We also express our gratitude to Cambridge Scholars Publishing for their diligent editorial efforts and their willingness to accept the publication of this book.

Moreover, this anthology seeks to serve as a catalyst for ongoing dialogue and concerted action among scholars, policymakers, educators, and media practitioners. By fostering interdisciplinary collaboration and promoting critical inquiry, we aspire to foster a more resilient and truth-oriented public sphere.

In an epoch marked by unprecedented access to information and the concomitant proliferation of misinformation, the imperative of making truth valuable assumes paramount importance. We trust that this volume will inspire readers to engage with the complexities of post-truth with nuance, rigor, and a steadfast commitment to truth-seeking.

## **PART II**

# **POLITICS, ECONOMICS AND LAW**

CHAPTER THIRTEEN

THE EUROPEAN MEDIA LAW  
UNDER SCRUTINY:  
OPPORTUNITIES, SHORTCOMINGS AND PROPOSALS FOR  
IMPROVEMENT<sup>1</sup>

JORGE TUÑÓN-NAVARRO  
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**1. Introduction**

***1.1. Background of European media law***

Concern for media freedom in Europe has deep historical roots going back to when censorship and government control over the press were common in many countries of the region. Throughout the 19th and 20th centuries, numerous events and developments have influenced the perception and protection of media freedom in Europe.

For much of European history, governments exercised strict control over the media. In many countries, publications and expressions that challenged the official narrative were censored or banned; this limited the media's ability to report independently and critically on government events and policies.

After the Second World War, many European nations transitioned to democracy after decades of authoritarian or totalitarian regimes. During this period of change, efforts were made to ensure freedom of speech and press as fundamental elements of the new democracies. For example, the 1948 Universal Declaration of Human Rights recognised the right to freedom of opinion and expression. There were also numerous post-Cold War challenges: after the fall of the Iron Curtain and the dissolution of the Soviet Union, many Eastern European countries embarked on processes of transition to democracy and market economies. In some cases, however, these processes were accompanied by threats to press freedom: the consolidation of media independence and the eradication of government interference took time in some nations in the region.

As the 21st century progressed, the expansion of the Internet and digital media provided new opportunities for free expression and the circulation of information. However, challenges also emerged in the form of disinformation, cyberbullying and threats to online privacy, raising questions about how to balance online freedom with responsibility and security (Tuñón 2021a).

***1.2. The EMFA in the current context of disinformation***

Since 2018, the European Commission seems to have become aware of the importance of combating disinformation and fake news as a public diplomacy mechanism. To this end, it has launched several specific initiatives and policy documents in recent years. The Independent High-Level Group -composed of representatives of social networks and technology companies, verifiers, media, academics or members of civil society- was first responsible for producing the 'Report of the Independent High-Level

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Group on fake news and disinformation online' (European Commission 2018b), to define and quantify disinformation from an international perspective, as well as to explore possible legal strategies and countermeasures to combat it.

The document suggested focusing on transparency of news and its circulation online (creation of credibility algorithms); media and digital literacy; empowerment of users and journalists to combat disinformation (collaboration with independent verifiers); sustainability of the media ecosystem (removal of advertisements on websites propagating disinformation); and evaluation and monitoring of the solutions offered to verify their effectiveness (Tuñón *et al.* 2019a, 148). Despite being non-binding, the report, which was mostly reflected in the subsequent European Commission Communication of 26/04/2018 on 'Fighting disinformation online' (European Commission 2018a), was the starting signal for all the European legislative initiatives that flourished during 2018 and 2019, mainly in the run-up to the last European Parliament elections.

Although it was initially a “gentlemen's agreement” with no legally binding force, the European Commission welcomed the self-regulatory agreement of the “European Code of Practice on Disinformation” (European Commission 2018c). In this agreement, digital platforms, social networks or advertisers such as Facebook, Google, Mozilla or Twitter committed in September 2018 to promote transparency in political propaganda; shut down fake accounts or discredit disinformation providers; invest in technologies and programs such as 'trust indicators'; use technological means that prioritise “relevant, authentic and authoritative information”; or work with civil society or governments to “improve critical thinking and digital media literacy” (Tuñón 2021b).

The EU's interest in disinformation has also brought with it concerns about the vulnerability of democracies to manipulation of their electoral processes by foreign powers (Tuñón *et al.* 2023). In March 2015, the European Council invited the High Representative of the Union for Foreign Affairs and Security Policy, Federica Mogherini, to prepare an action plan on strategic communication to counter disinformation campaigns from outside the Union, in particular from Russia (Department of Homeland Security 2022). This led to the creation of a strategic communications division (StratCom) and the first of its working groups within the European External Action Service (EEAS). Meanwhile, also within the European Commission but not within the EEAS, it should be recalled that already in 2017, the European Commission set up an expert group to advise on the fight against disinformation, which presented its commented report in March 2018, which would lay the groundwork for the Commission's communication on combating disinformation online (European Commission 2018b).

Concurrently, at the end of 2018, and at the suggestion of the European Council, the High Representative and the Commission presented the EU Action Plan against Disinformation, which includes ten specific actions based on four pillars of action (European Commission 2018d). The Commission's Election Package and the EU Action Plan address cases of information manipulation affecting the EU by refuting false statements in online communicative environments and raising public awareness of the challenges and risks posed by disinformation (European Commission 2020a). This is a systemic proposal in which competent authorities in member states, civil society organisations, verifiers and digital platforms join forces. However, the document paid little attention to the role of journalists and the media (Tuñón *et al.* 2019).

Despite the shortcomings of the Action Plan against Disinformation, it is useful concerning certain issues arising from the European fight against disinformation itself, such as the relationship between the fight against disinformation and the rise of populism; the effectiveness and legitimacy of the intervention of platforms and private companies as a barrier against the spread of hoaxes; the debate on whether verification is the best weapon against disinformation or whether an alternative strategy should be promoted, such as the promotion of new discursive frameworks; and the evolution of disinformation techniques (Tuñón 2021).

In June 2020, the European Commission and EU High Representative Josep Borrell published a communication entitled Combating disinformation about COVID-19: Cross-checking the facts, which was “a monitoring and transparency measure to ensure accountability to the public of the efforts made by the 2018 Code's signatory actors to limit pandemic-related disinformation online” (Department of Homeland Security 2022, 128).

Throughout the pandemic, the EU has encouraged digital platforms to contribute to the fight against fake news and other attempts to spread misinformation on social media. However, the report evaluating the Code of Good Practice (European Commission 2020b) highlights some shortcomings regarding the opacity of signatory platforms in their policies against disinformation. Timely, in December 2020, the European Commission published a proposal for a Digital Services Act that defines a clearer transparency framework and “accountability for online platforms tailored to their respective role, size and impact in the online ecosystem”, in response to emerging digital risks (European Commission 2020c).

Also in 2020, the European Digital Media Observatory (EDMO) was launched. It is a European network (European Commission 2020d) that brings together fact-checkers, media literacy experts and academic researchers to understand and analyse disinformation. All members have significant experience in analysing the phenomenon of online misinformation, as well as experience working with policymakers, as well as public and private actors (including media organisations, journalists, media literacy experts and online platforms) with a multidisciplinary applied approach. They also collaborate with media organisations, online platforms and media literacy practitioners, while maintaining the independence and impartiality of project implementation partners.

EDMO aims to become a platform to support the work of a multidisciplinary community with expertise in the field of online disinformation, contributing to a deeper understanding of the actors, vectors, tools, methods, dissemination dynamics, targets and impact of disinformation in society.

Key activities include the management of a secure online platform supporting academic analysis of disinformation campaigns and providing public information to raise awareness of disinformation; training and outreach; support in the coordination of independent fact-checking activities in Europe, as well as academic research on disinformation in Europe; collaboration with public authorities in monitoring the measures put in place by online platforms to limit the spread and impact of disinformation. In addition, May 2021 saw the launch of the national centres of the European Digital Media Observatory, the second phase of the project, which aims to set up national and/or regional digital media research centres across Europe.

### ***1.3. The relevance of media regulation in Europe***

The European Media Freedom Act (EMFA) aims to ensure the smooth operation of both public and private media across borders within the European Union (EU) internal market. The aim is to facilitate this process without undue pressure and in line with the ongoing digital transformation in the media field. Alongside this proposal, a Recommendation is included which offers a set of voluntary best practices drawn from the industry, to foster editorial independence and increase transparency regarding media ownership. This Recommendation provides a set of voluntary tools and measures for media companies to consider, ranging from conditions for the autonomous creation of editorial content to strategies to ensure the long-term sustainability of news production (European Parliament 2023).

Since independent media represent a crucial element in public control, the role they play is fundamental to democracy and constitutes a dynamic part of the economy. As well as serving as the essence of the public sphere, they influence public opinion and foster accountability of those in power. At the global level, the European Union maintains its position as a bastion in defence of free and independent media.

In parallel, increasingly alarming trends are emerging across the EU. The Commission has followed these developments closely through tools such as the Rule of Law Report and the Media Pluralism Monitor. The challenges identified in previous Rule of Law reports have led to several initiatives at the EU level, including a recommendation on the safety of journalists and measures to address abusive claims against public participation (SLAPP).

In context, the European Media Law was announced by President von der Leyen in her State of the Union address in 2021. It builds on the Commission's reports on the rule of law and the revised Audiovisual Media Services Directive, which seeks EU-wide coordination of national legislation in this area. In addition, this law builds on the Digital Services Act (DSA) and the Digital Markets Act (DMA), together with the new Code of Practice on Disinformation. These actions are part of the EU's efforts to boost democratic participation, tackle disinformation and support media freedom and plurality, in line with the European Action Plan for Democracy (European Commission 2022).

This proposal complements the recently adopted Recommendation on the protection, safety and empowerment of journalists and the Directive aimed at protecting journalists and rights defenders from abusive litigation. Furthermore, the European Media Law also links with initiatives related to the viability, resilience and digital transformation of the media sector, adopted under the Media and Audiovisual Action Plan and the revisions of copyright regulations. The formulation of this proposal is based on a broad stakeholder consultation, including a public consultation.

The future debate and legislative process of the Commission's proposal for a Regulation now lies with the European Parliament and the Member States, under the ordinary legislative procedure. Once adopted, the regulation will be directly applicable throughout the European Union. The Commission will encourage discussions, notably through the European Media Forum, to discuss the voluntary practices of media companies linked to the Recommendation annexed to the law (European Commission 2022a).

## **2. European Media Law**

### ***2.1 First approximations***

On 16 September 2022, the European Commission published the Proposal for a Regulation establishing a common framework for media services in the internal market (European Media Law), which amends Directive 2010/13/EU (European Commission 2022b). This new regulatory text revolves around the following axes: the protection of editorial independence; the prohibition of the use of spyware against the media; the editorial independence of independent public service media; the promotion of media pluralism; the guarantee of transparency of state advertising; the protection of online media content; and the right of users to personalise their media offer (European Commission 2022a).

In addition, with this regulation, the Commission proposes to create a new independent European Media Services Board composed of national media authorities. This body would have the following tasks: On the one hand, it would be responsible for the effective and consistent implementation of the EU media legislative framework, in particular by assisting the Commission in the preparation of guidelines on media regulatory issues. In addition, it may issue opinions on national measures and decisions affecting media markets and media concentrations. Similarly, the Council will also coordinate national regulatory measures concerning non-EU media which present a risk to public safety, to ensure that such media do not circumvent EU rules. Finally, this body will be responsible for organising structured dialogues between large online platforms and the media industry. This is intended to promote access to a diverse media offer and to monitor platforms' compliance with self-regulatory initiatives, such as the EU Code of Practice on Disinformation.

### ***2.2 Legal basis and subsidiarity***

The legal basis for the EMFA, based on the Treaties and the case law of the Court of Justice of the European Union (CJEU), is Article 114 of the Treaty on the Functioning of the European Union (TFEU), which provides for the adoption of measures for the establishment and functioning of the internal market and the approximation of the laws, regulations and administrative provisions of the Member States for the same purpose. Furthermore, Article 114 TFEU constitutes, according to the Commission, an appropriate legal basis for the creation of new structures under EU law, such as the aforementioned European Media Services Council.

As regards the subsidiarity and proportionality of this regulation, the European Commission points out that the initiative focuses exclusively on areas where additional EU intervention becomes indispensable to ensure the proper functioning of the internal media market. This is restricted to matters where Member States cannot find satisfactory solutions independently. The Union may therefore adopt measures following the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union (Cabrera-Blázquez 2022).

In this sense, the EMFA is very likely to have a marginal impact on the more advanced national legal systems that already comply with the rules proposed in the Act. In contrast, it will have a more widespread effect in those countries that have greater difficulties in introducing rules that support the free movement of media services, media pluralism and media freedom (Brogi et al. 2023).

Moreover, the proposal takes the form of a Regulation of the European Parliament and the Council. The Commission chose this legal instrument as it considered it more suitable than a directive to ensure consistent protection across the European Union and to reduce regulatory divergences that could hinder the independent provision of media services in the internal market. Similarly, by introducing direct applicability clauses, the Regulation aims to ensure effective and efficient collaboration between national media authorities and regulators in the Member States.

### ***2.3 Descriptive analysis of the content of the EMFA***

The Proposal for a European Media Freedom Act has twenty-eight articles, organised into four sections. Chapter I deals with the general provisions of the Regulation. It sets out the subject matter and scope (Article 1) and seventeen definitions of key terms mentioned throughout the text (Article 2). Chapter II sets out the rights of recipients (Article 3) and providers (Article 4) of media services, as well as

safeguards for the independent operation of public media service providers (Article 5) and the respective obligations of news media (Article 6).

Chapter III establishes a framework for regulatory cooperation and the proper functioning of the media services market. It is the longest chapter and is divided into six sections. Section 1 stipulates that independent national regulatory authorities are responsible for the implementation of this chapter, giving them adequate investigative powers to carry out their tasks effectively (Article 7). Section 2 establishes a European Media Services Committee to promote the effective application of the Regulation (Article 8), which will act independently in the performance of its tasks (Article 9). It also explains the organisational structure of this new body (Articles 10-11) and its corresponding functions (Article 12).

Furthermore, Section 3 identifies issues of regulatory cooperation and convergence, addressing structured cooperation with national bodies or authorities (Article 13); requests for enforcement of obligations by video distribution platforms (Article 14); guidance on media regulation (Article 15); and coordination of measures concerning media service providers established outside the EU (Article 16).

Section 4 focuses on the provision of media services in the digital environment. In particular, it regulates the content of media service providers on large-scale digital platforms (VLOPS), specifying their obligations, rules on the suspension of content, the handling of complaints, dialogue mechanisms and public information (Article 17). It also provides that the Council shall regularly organise a structured dialogue between audiovisual media service providers, media service providers and representatives of civil society (Article 18). It also points to the right of personalisation of the audiovisual media bid on any device for access to audiovisual media by users (Article 19).

Section 5 deals with requirements for the proper functioning of media market measures and procedures. This addresses national measures affecting the functioning of media service providers (Article 20) and establishes criteria at a national level relating to market concentrations, to ensure media pluralism and editorial independence (Article 21). It also specifies that in the absence of an assessment or consultation under Article 21, the Committee -at the request of the Commission- shall draw up opinions on concentrations in the media market (Article 22).

Section 6 focuses on the transparent and equitable allocation of economic resources, in particular audience measurement services, which must be governed by the principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination and verifiability. Providers of audience measurement systems are also required to share accurate information with media service providers, advertisers and authorised third parties (Article 23). Article 24 is devoted to the allocation of funds and remuneration granted by public authorities to the media for state advertising. Finally, Chapter IV sets out the final provisions of the Regulation concerning its monitoring (Article 25), evaluation and reporting (Article 26), amendments to Directive 2010/13/EU (Article 27) and entry into force and application of the Regulation (Article 28).

### **3. Valuative conclusions**

#### ***3.1. Reasons for developing a European Media Law***

The European Commission's (EC) proposal for a European Freedom of the Media Act involves a novel regulatory instrument aimed at protecting media pluralism and independence in the EU. The proposed Regulation (which, at the time of writing, is under scrutiny by the European Council itself (2023) includes, among other things, safeguards against political interference in editorial decisions and against spying on journalists themselves. It emphasises the independence and stable funding of public service media, as well as transparency of media ownership and the allocation of state advertising. It also establishes measures to protect the independence of editors and to disclose conflicts of interest. Furthermore, the regulatory proposal addresses the issue of media mergers and proposes a new independent European Media Services Council, composed of national media authorities. In addition, the EC also adopted a complementary Recommendation to promote internal safeguards for editorial independence (European Commission 2022).

In a context marked by growing polarisation, the rise of populism is mostly derived from the notable representation obtained lately in some European states by extreme right-wing parties (Carral and Tuñón 2020; Carral et al 2023; Tuñón and Bouzas-Blanco 2023), and the impact of disinformation strategies (both internal and external to the EU, which have rebounded on the occasion of crises such as those derived from the pandemic and war in Ukraine) (Gullo and Tuñón 2009; Tuñón and Carral 2021; Tuñón and López 2022; Tuñón and Oporto 2023; Jiménez and Tuñón 2023; Sánchez-del-Vas and Tuñón 2023); the EU aims to become a bulwark of free and independent media to safeguard the European public sphere. This interest, also in safeguarding the rule of law itself, had already led the EU to develop certain

initiatives, including a recommendation on the safety of journalists and measures to address abusive claims against public participation (SLAPP).

The European Press Freedom Act, announced by President Von der Leyen in her 2021 State of the Union address, builds on the EC Rule of Law reports and the revised Audiovisual Media Services Directive, which provides for EU-wide coordination of national audiovisual media legislation. The proposal also draws on the Digital Services Act (DSA), the Digital Markets Act (DMA), as well as the new Code of Best Practice on Disinformation. It is part of the EU's efforts to foster democratic participation, tackle disinformation and support media freedom and pluralism, as also set out in the European Action Plan for Democracy (European Commission 2022).

Based on a broad public consultation, this regulatory proposal complements the recently adopted Recommendation on the protection, safety and training of journalists and the Directive to protect journalists and rights defenders against abusive litigation (anti-SLAPP package). It also works in tandem with the initiatives related to the viability, resilience and digital transformation of the media sector adopted under the Audiovisual and Media Action Plan and the revised copyright rules.

### ***3.2. Implications and the way forward for European Media Law***

First of all, it is necessary to underline that the proposed European Media Law is a very relevant step towards the functioning of the internal market as regards media services (Centre for Media Pluralism and Media Freedom 2023). It also constitutes a concrete development of media policy at EU level, including as regards EU competencies in the field of media.

A recent study by the European Parliament (2023), argues that "there is a clear need for harmonised intervention in the internal media market to avoid fragmentation caused by different national regulations in EU Member States. This fragmentation not only poses risks for media companies due to a lack of legal certainty, but also undermines guarantees of editorial independence, the work of journalists and, ultimately, freedom of information in the Union. Moreover, the rise of digital platforms, in particular social media and search engines, has amplified the role of the media in the information society. Equally, search engines are no longer just providers of traditional media, but rather information intermediaries shaping public opinion, as well as determining the media's access to their audiences. This evolving landscape calls for a reconceptualisation of media and information pluralism from theoretical and scientific perspectives. It also poses a constitutional challenge for legislators and policymakers, as these global players often transcend national regulations designed for traditional media and rely heavily on advertising, the economic lifeblood of private media for nearly a century.

The debate on the EU's competence to legislate in the media sector and the benefits of harmonising rules at the European level remains open and is of particular interest to stakeholders, academics and policymakers from countries with widely plural media systems (Tuñón 2008; Tuñón et al. 2019a). The proponents of the proposal emphasise, however, that it does not infringe on national competencies but rather promotes cooperation at the European level between national regulators, public scrutiny of vital information and the establishment of additional security measures at the EU level.

Currently, two prevalent options are open concerning the path of the European Media Law. On the one hand, the proposed law could end in deadlock due to political opposition from some Member States. On the other hand, negotiations could be successfully resumed to end up agreeing, with the proper legal basis, on well-defined competencies, and therefore be approved in 2023, perhaps during the Spanish Presidency. This would represent a fundamental step for European media legislation and a new cornerstone of European democracy, anchored in a genuine trans-European debate (Tuñón and Bouza 2021; Tuñón and Carral 2019; Tuñón et al. 2019b) on ensuring pluralism and freedom of the media both in the EU and in its Member States (Tuñón 2021b).

The proposed European Media Law is not only an important step towards the functioning of the internal market for media services, but also a step forward in EU media policy, as it has triggered a public debate on the role and future of the media. While the horizontal approach of the Digital Services Act (DSA) aims to address challenges in the digital field, there is a risk that large online platforms will continue to be allowed to exercise the power to determine what constitutes a risk to pluralism and media freedom. Monitoring the implementation of the DSA could prove challenging, allowing these platforms to still have a significant impact on the media landscape (European Parliament 2023).

### ***3.3. Possible improvements to the European Media Act***

If adopted, the proposed Regulation for a European Media Freedom Act will be an innovative step towards strengthening media freedom and pluralism in the European Union. Indeed, the pursuit and protection of media freedom requires multidimensional policies and tools, which must be adapted and



updated, and which far from taking any achievement for granted must be protected, both old and new threats, due to the evolution of the situation and times. The search for and protection of pluralism and media freedom require a holistic perspective, in a globalized world and in a globalized and digitized media market, where national policy tools risk not being effective or only partially effective, or even counterproductive (Tuñón and Sánchez-del-Vas 2022). This is why the analysed proposal addresses this problem by introducing new tools and safeguards for media freedom at a supranational level, reason enough for readjusting its scope to the cross-border dimension of media systems and markets. It thus extends the complex architecture of the EU's digital strategy, including freedom of the press (European Parliament 2023).

Notwithstanding, like any regulatory text of the complexity of the present, maintaining the option of an intervention on media systems at the EU level through the proposed law/regulation, anchored in the provisions of Article 114 of the Treaty on the Functioning of the European Union (TFEU) as a legal basis, the same may be improved to address possible deficiencies or deficiencies in its implementation.

Without being exhaustive, the proposal could well be worked on and refined around: 1) Strengthening the inclusiveness of protections and safeguards (particularly significant is that relating to the protection of online content, as regards the safeguarding of the media against the cancellation of content produced in accordance with journalistic standards by large platforms, which can only be done with a notice and possibility of appeal by the media themselves, in a process not foreseen for the rest of online content, which may well generate perverse effects such as greater protection for misinformation from the media or the formal conversion of mere propaganda and disinformation tools into the media); 2) Strengthen transparency obligations for media service providers by adding disclosure of ownership to public bodies (Article 6); 3) Independence of the new European Media Council (we note with concern that one of its mandates is to "coordinate national regulations regarding non-EU media that may pose a risk to public safety, to ensure that they do not circumvent the rules applicable on European territory", what may well be understood as a legal basis to justify in the future assumptions such as the paradigmatic censorship of Russia Today and Sputnik on European territory (European Council 2022)); 4) Monitoring the implementation of Art. 17, as regards the importance of addressing the relationship between media service providers, large online platforms and major search engines; 5) Publication of transparent and objective guidelines for assessing media market concentrations in order to implement Article 21 of the proposal; 6) Avoid the threshold set for the allocation of state advertising (more than one million inhabitants) becomes a loophole to avoid compliance with the new criteria, and/or to maintain a potential area of political pressure on local media; 7) To extend the provisions for a fair and transparent allocation of State advertising to public subsidies (direct and indirect) to the media; or 8) Maintain exposure to diverse content as a fundamental principle of media pluralism, which could be pursued more proactively, with both legislative and non-legislative measures (European Parliament 2023).

Equally, and related not to what can be improved, but to what could well be included to improve the effectiveness of the regulatory instrument, we can also propose: 1) Create a new environment for more balanced and transparent relations between media content providers and digital intermediaries; 2) Strengthen the political independence of the media; 3) Seriously strengthen the funding of journalism as a public good; 4) Establish an *ad hoc* independent monitoring system regarding the implementation of articles 34 and 35 of the Digital Services Act (DSA); 5) To investigate media pluralism and freedom within the framework of the systemic risks of DSA.

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