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Europeanization of the Slovak Media Policy

Master's Thesis

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Declaration of authenticity

I hereby declare that this Master's Thesis on the topic of Europeanization of the Slovak Media Policy is my original work and I have acknowledged all sources used. I further declare that the text of this thesis including footnotes has 160 472 characters with spaces.

In Olomouc on the 12 December 2023



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List of Abbreviations

AVMS(D)	Audiovisual Media Service (Directive)
CJEU	Court of Justice of the European Union
EC	European Commission
EMFA	European Media Freedom Act
EP	European Parliament
EU	European Union
MPM	Media Pluralism Monitor
MPs	Members of the European Parliament
RMS	Council for Media Services
RTVS	Radio and Television of Slovakia
RVR	Council for Broadcasting and Retransmission
SR	Slovak Republic
SLAPP	Strategic Lawsuit Against Public Participation
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TWF	Television without Frontiers

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Introduction

Although Europe remains the safest continent in the world for journalists, conditions are deteriorating in several EU countries. Between 2014 and 2019, media freedom in Europe decreased by 8 per cent,¹ and the trend continued during and after the COVID 19 pandemic.² Most attention focused on Viktor Orbán's restrictions on media pluralism and independence in Hungary, where many private media outlets have been taken over and silenced, while public media outlets are used to propagandize the Hungarian Prime Minister.³ However, journalists have also been subject to verbal and physical assaults in more advanced democracies,⁴ including France,⁵ the Netherlands, and Belgium.⁶ The European Commission⁷ and Parliament⁸ regularly express deep concern about the situation of media freedom in individual countries. The EU wants to respond to this negative trend with its biggest media policy initiative to far - the European Media Freedom Act. This can significantly change the situation in media policy. The EU's powers in the media field are not yet explicitly laid down in the primary law Treaties. As a result, EU legislative initiatives were initially based mainly on the need for the effective functioning of the internal market (by AVMSD) and were economic character. The EU has explored ways to extend the protection of the media and journalists in the context protecting media freedom and pluralism.

¹ REPUCCI, S. Media Freedom: A Downward Spiral. *Freedom House* [online]. 2019 [viewed 1 August 2023]. Available from: https://freedomhouse.org/sites/default/files/2020-02/FINAL07162019_Freedom_And_The_Media_2019_Report.pdf, p. 2-4.

² GJORGOVA, A. Freedom of Expression and Media Freedom in Europe in Times of the COVID-19 Crisis. *Iustinianus Primus Law Review* [online]. 2021, 12(1) [viewed 1 August 2023]. Available from: <https://lnk.sk/cprt> or REPUCCI, S. and A. SLIPOWITZ. Democracy under Lockdown: The Impact of COVID-19 on the Global Struggle for Freedom. *Freedom House* [online]. 2020 [viewed 1 August 2023]. Available from: https://freedomhouse.org/sites/default/files/2020-10/COVID-19_Special_Report_Final_.pdf, p. 7.

³ RSF. Hungary. *RSF.org* [online]. 2023 [viewed 1 August 2023]. Available from: <https://rsf.org/en/country/hungary>.

⁴ V-DEM. Democracy report 2023: Defiance in the Face of Autocratization. *V-Dem* [online]. 2023 [viewed 30 August 2023]. Available from: https://v-dem.net/documents/29/V-dem_democracyreport2023_lowres.pdf, pp. 44-45.

⁵ In France, for instance, an investigative journalist was controversially imprisoned for obtaining information that allegedly constituted a 'national defence secret'.

⁶ LIBERTIES. Media Freedom Report 2023. *Liberties.com* [online]. 2023 [viewed 1 August 2023]. Available from: https://dq4n3btxmr8c9.cloudfront.net/files/lurkq7/Liberties_Media_Freedom_Report_2023.pdf, p. 5.

⁷ E.g. LETA. European Commission criticises Poland and Hungary for insufficient democracy. *BNN* [online]. 2023 [viewed 1 August 2023]. Available from: <https://bnn-news.com/european-commission-criticises-poland-and-hungary-for-insufficient-democracy-247263>.

⁸ E.g. EUROPEAN PARLIAMENT. Media freedom: EP warns of attempts to silence critics and undermine pluralism. *europarl.europa.eu* [online]. 2020 [viewed 1 August 2023]. Available from: <https://www.europarl.europa.eu/news/en/press-room/20201120IPR92117/media-freedom-ep-warns-of-attempts-to-silence-critics-and-undermine-pluralism>.

The main objective of this master's thesis is to examine how the EU influences the Member States' media policies. Using the Europeanization theory it seeks to answer the following questions:

- To what extent does the EU see the media as an important aspect in strengthening democracy, and how is this reflected in EU initiatives?
- Which EU instruments have had the most impact on media policy in Member States?
- How will the possible adoption of the EMFA affect media policies in EU?

Although the EU,⁹ but also experts and studies¹⁰ devote most attention to Hungary and Poland, I chose Slovakia as a case study. The country has experienced a number of problems in the media sector in recent years, particularly in terms of media freedom. The homicide of investigative journalist Ján Kuciak and his fiancée in 2018, which resulted in a downgrade of Slovakia's media freedom ratings, is well-known to most.¹¹ Typical are also verbal attacks on journalists by politicians, with the most notable examples being the multiple Prime Minister Robert Fico¹² and threatening messages from anonymous people.¹³ We focus on how legally binding (hard law) and non-binding (soft law) EU acts influence Slovak media policy from 2018, when the amended AVMS Directive was adopted and the murder of Ján Kuciak took place, until November 2023, when a new Slovak government elected in the September 2023 took office.

To achieve our objectives, we used an analysis of relevant literature, EU documents and semi-structured interviews with experts and leaders in the field of Slovak and European media policy

⁹ E.g. EUROPEAN PARLIAMENT. Media freedom under attack in Poland, Hungary and Slovenia. *European Parliament* [online]. 2021 [viewed 1 November 2023]. Available from: <https://www.europarl.europa.eu/news/en/agenda/briefing/2021-03-08/6/media-freedom-under-attack-in-poland-hungary-and-slovenia>.

¹⁰ WÓJCIK, A. How the EU Can Defend Media Freedom and Pluralism in Hungary and Poland. *GMF ReThink.CEE* [online]. 2022 [viewed 1 August 2023]. Available from: <https://lnk.sk/trz7>; IPI. Analysis: One year after election, media freedom in Hungary remains suffocated. *ipi.media* [online]. 2023 [viewed 1 August 2023]. Available from: <https://lnk.sk/bsxb>; FREEDOM HOUSE. Reviving News Media in an Embattled Europe. *Freedom House* [online]. 2023 [viewed 1 August 2023]. Available from: <https://lnk.sk/zaho>; ZGUT, E. Tilting the Playing Field in Hungary and Poland through Informal Power. *gmfus.org* [online]. 2021 [viewed 1 August 2023]. Available from: <https://lnk.sk/qk48>; WISEMAN, J. Democracy Declining: Erosion of Media Freedom in Poland. *ipi.media* [online]. 2021 [viewed 1 August 2023]. Available from: <https://lnk.sk/nhr2>.

¹¹ E.g. SPECTATOR. Investigative journalist killed in his house. *The Slovak Spectator* [online]. 2018 [viewed 1 August 2023]. Available from: <https://spectator.sme.sk/c/20768866/investigative-journalist-and-fiancee-killed-in-their-house.html>.

¹² E.g. SPECTATOR. Fico to journalist: We are not on the same level. *The Slovak Spectator* [online]. 2016 [viewed 1 August 2023]. Available from: <https://spectator.sme.sk/c/20394511/fico-to-journalist-we-are-not-on-the-same-level.html>.

¹³ E.g. CPJ. Slovak radio host Marta Jančárová receives death threats following bias allegation. *CJP.org* [online] 2023 [viewed 1 November 2023]. Available from: <https://cpj.org/2023/03/slovak-radio-host-marta-janckarova-receives-death-threats-following-bias-allegation/>.

and legislation. For this thesis, we consider it most appropriate to use the 'top-down' theoretical approach of Europeanization. This approach facilitates an understanding of how national policies are adjusting and endeavouring to adhere to European standards.

In this thesis we have found that there has been a significant Europeanization of Slovak media policy in recent years. We point this out in the case of the new media acts, which have incorporated the requirements of the amended AVMSD, but also other legally binding EU documents that are not directly related to the media. Soft law instruments, in particular EC recommendations, have also had an impact on this media legislation. However, the impact of soft law instruments depends to a large extent on the willingness of the government or non-governmental organisations to implement them. It is interesting to note that some of the provisions of the European Media Freedom Act, which has not yet been adopted, have also been incorporated into the legislation.

This thesis worked with fundamental works on Europeanization. It uses Radaelli's definition of the concept as presented in his article *Whither Europeanization? Concept stretching and substantive change*¹⁴ as further also elaborated by Börzel and Risse in *From Europeanisation to Diffusion: Introduction the types of logics according to which domestic actors respond to the impact of Europeanization*.¹⁵ For a comprehensive overview of media policy, competences and instruments I worked with Brogi and Parcu's chapter in the *Research Handbook on EU Media Law and Policy*¹⁶ and *The European Media Freedom Act: media freedom, freedom of expression and pluralism*.¹⁷ The authors sought to describe under which provisions and to what extent and in what areas the EU can intervene in the media field. This was more added by Holtz-Bacha in *Freedom of the media, pluralism, and transparency*.¹⁸ Several authors have written about the impact of Europeanization on national media policies, but focused strictly on exploration and Europeanization through hard instruments, i.e., only on the audiovisual sector.

¹⁴ RADAELLI, C. M. *Whither Europeanization? Concept stretching and substantive change*. *European Integration online Papers* [online]. 2000, 4(8) [viewed 12 September 2023]. Available from: <http://www.eiop.or.at/eiop/pdf/2000-008.pdf>, p. 4.

¹⁵ BÖRZEL, T. A. and T. RISSE. *From Europeanisation to Diffusion: Introduction*. *West European Politics* [online]. 2012, 35(1) [viewed 14 September 2023]. Available from: https://www.researchgate.net/publication/233108352_From_Europeanisation_to_Diffusion_Introduction.

¹⁶ PARCU, P. L. and E. BROGI. *Research Handbook on EU Media Law and Policy*. Cheltenham: Edward Elgar Publishing Limited. 2021.

¹⁷ BROGI, E. and others. *The European Media Freedom Act: media freedom, freedom of expression and pluralism*. LIBE committee [online]. 2023, [viewed 13 September 2023]. Available from: [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/747930/IPOL_STU\(2023\)747930_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/747930/IPOL_STU(2023)747930_EN.pdf).

¹⁸ HOLTZ-BACHA, CH. *Freedom of the media, pluralism, and transparency. European media policy on new paths?*. *European Journal of Communication* [online]. 2023, 19(1) [viewed 1 August 2023]. Available from: <https://discovery.researcher.life/article/freedom-of-the-media-pluralism-and-transparency-european-media-policy-on-new-paths/c75af184028a394fb28344ad1b17d3aa>.

We have not found any comprehensive literature examining the impact of the EU on Slovak media policy and legislation, so it is a very under-researched area and there is certainly much more room for research.

The thesis is divided into four chapters. The first chapter discusses the theoretical background of Europeanization. Second chapter focuses on the EU media policy in order to better understand its role in the policies of the Member States. The third chapter presents the realities of the Slovak media environment. The chapter helps the reader to better understand the situation in the Slovak media environment to describe the situation in the Slovak media landscape. The last chapter looks at how the EU has influenced media policy in Slovakia.

1 Theoretical Framework

At the beginning of the thesis, we felt it necessary to introduce our chosen theory of Europeanization, which was used in the practical part of our analysis. In the first part of the chapter we defined the origin of this theory and briefly characterised it. In this part we mainly referred to Radaelli, Börzel, Risse, Bulmer and Woźniakowski, as our research shows that their works are the most cited and recognised sources on Europeanization. In the following section, we explained our decision to examine the Europeanization of media policy from a legal perspective. We also presented a list of legal acts used by the EU to harmonise national policies. In the last section, we discussed the link between Europeanization and media policy. We also looked at the main works that have dealt with this issue.

Europeanization is a theory that, since the 1990s, has become one of the most widely used theoretical approaches in works examining the European Union and its impact on the domestic policies, institutions and political processes of member and candidate countries.¹⁹ Despite gaining popularity at the turn of the millennium, this theory is not new and has not always been associated with the Union. It was previously used by historians during the 19th century modernization movement to describe how European powers promoted their norms, customs, language or religion. However, in the 20th-21st century, the concept transformed into a new form.²⁰ Bulmer and Radaelli identified four macroeconomic processes in the EU for which the expert debate has shifted to the field of Europeanization. These are the institutionalisation of the single market, the emerging economic and monetary union, the creation of a regulated market environment, the enlargement process and the transfer of the *acquis communautaire*.²¹ Initially, Europeanization was perceived as an influence of the Member States on the EU, a mechanism referred to as 'bottom-up'. Researchers wanted to find out why sovereign states wanted to cooperate more closely and create supranational institutions to which they transferred part of their sovereignty.²² However, gradually there has been a natural shift in research. The

¹⁹ MÜLLER, P. and others. The Domestic Challenge to EU Foreign Policy-Making: From Europeanisation to de-Europeanisation?. *Journal of European Integration* [online]. 2021, 43(5) [viewed 2 September 2023]. Available from: <https://www.tandfonline.com/doi/epdf/10.1080/07036337.2021.1927015?needAccess=true>, p. 520.

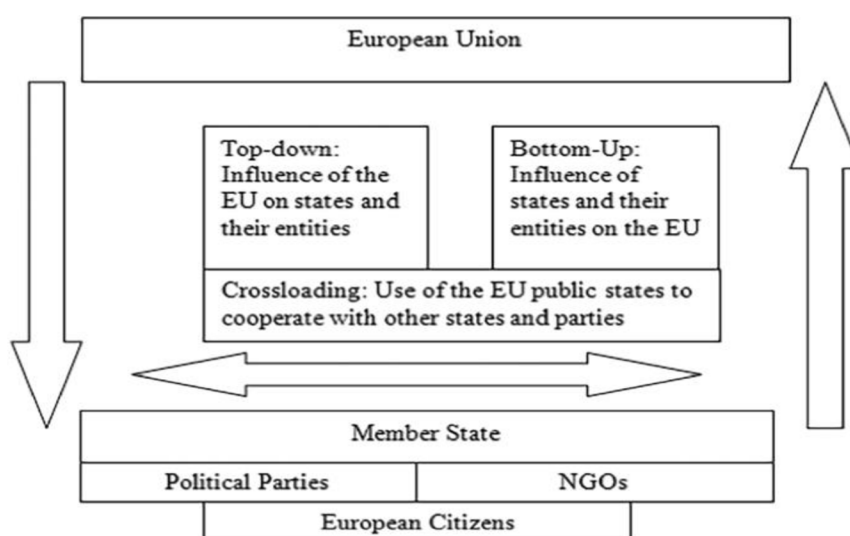
²⁰ COMAN, R. and E. TULMETS. Policy transfer within the European Union and beyond: Europeanization in times of stability and crises. In: DE OLIVEIRA, O. P (ed). *Handbook of Policy Transfer, Diffusion and Circulation*. Cheltenham: Edward Elgar Publishing, 2021, p. 337.

²¹ BULMER, S. J. and C. M. RADAELLI. The Europeanisation of National Policy?. *Queen's Papers on Europeanisation* [online]. 2004, 42(1) [viewed 1 August 2023]. Available from: https://www.academia.edu/1532633/The_Europeanisation_of_National_Policy, p. 1.

²² AUER, K. and G. TIEMANN. Europeanising European Public Spheres. *European Union* [online]. 2020 [viewed 15 September 2023]. Available from: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654628/IPOL_STU\(2020\)654628_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654628/IPOL_STU(2020)654628_EN.pdf), p. 17.

Union has grown in number of members, in the scope of competences, the completion of the single market, the currency and the shift in European defence and security policy. Therefore, the interest of scholars has moved to the 'top-down' mechanism, and thus how the institutional presence of the EU and the policies created by it, which member states have to implement, have changed national policies and governance models.²³ Later, some authors have developed the perception that Europeanization is a two-way process, with national and European public policies influencing each other.²⁴

Figure 1: The process of Europeanization.



Source: CACHIA, J. C. *Europeanisation and Party Politics: A Review*, 2023.

Radaelli, one of the most cited authors of this theory, states that Europeanization is processes of (a) construction (b) diffusion and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies.²⁵

²³ SCHMIDT, V. The EU and its Member States: From Bottom Up to Top Down. In: PHINNEMORE, D. and A. WARLEIGH-LACK (eds). *Reflections on European Integration: 50 Years of the Treaty of Rome*. London: Palgrave Macmillan, 2009, p. 194.

²⁴ BANDOVIĆ, G. and N. H. KOLMAN. Research on Europeanization in Literature: From the Top-down Approach to Europeanization as a Multi-directional Process. *Cadmus* [online]. 2018, 3(5) [viewed 13 September 2023]. Available from: <https://cadmusjournal.org/files/pdfreprints/vol3issue5/Research-on-Europeanization-in-Literature-GBandov-NKolman-Cadmus-V3-I5-Reprint.pdf>, p. 143.

²⁵ RADAELLI, C. M. Whither Europeanization? Concept stretching and substantive change. *European Integration online Papers* [online]. 2000, 4(8) [viewed 12 September 2023]. Available from: <http://www.eiop.or.at/eiop/pdf/2000-008.pdf>, p. 4.

For our research, we have adopted a 'top-down' mechanism. In this approach, the EU institutions determine what national policy decisions should look like. In this approach, the EU institutions dictate the shape of national policy decisions. This enables us to gain a better understanding of the EU's significance. Actors on the domestic scene are changing their interests and behaviour, adapting them to EU norms and challenges. Europeanisation thus involves the subordination of the domestic policy sphere to the European one.²⁶ Domestic changes in response to Europeanization may arise given two conditions. The first condition is a mismatch or incompatibility between processes, policies, and institutions at the European and national/local levels.²⁷ The second condition is the reaction of actors or institutions to the adaptive pressures that induce change.²⁸ Progress in Europeanization can be observed through harmonization and liberalization.²⁹ There are three logics of social action, which are based on varying assumptions concerning actors and their interactions with social institutions and structures. The first type is the logic of consequences, whereby (self-interested) actors want to maximize utility and follow a cost-benefit calculus. In the second type, they refer to the logic of appropriateness, where actors follow rules because they want to be part of a particular community and be socialized.³⁰ The final type is the logic of arguing, where actors confer and try to convince each other of the validity of (causal or normative) claims.³¹ The mechanisms of change in line with the direct influence diffusion model are clearly discussed by Börzel and Risse.³² The first mechanism is based on physical or legal coercion, where states comply with EU law. In the next mechanism, diffusion occurs through a utility calculation by providing negative and positive incentives. Acceptance of the idea can be induced by changing the utility function in the actors. This is usually in the form of a reward (financial, technical) or the imposition of sanctions.³³ The third mechanism relies on the logic of appropriateness. *„Rather than maximising their egoistic self-interest, actors seek to meet social expectations in a given situation. Processes of socialisation often result in complex learning by which actors redefine their interests and*

²⁶ AUER, K. and G. TIEMANN. Europeanising European Public ..., p. 18.

²⁷ We can identify two types of non-compliance - (a) between rules and regulations, (b) institutions.

²⁸ BÖRZEL, T. A. and T. RISSE. Conceptualizing the Domestic Impact of Europe. In: FEATHERSTONE, K. and C. M. RADAELLI (eds). *The Politics of Europeanization*. Oxford: Oxford University Press, 2003, pp. 57-58.

²⁹ MARASOVÁ, J. and M. HOREHÁJOVÁ. Europeizácia verejných služieb a jej efekty. *Verejná správa a spoločnosť* [online]. 2020, 21(2) [viewed 15 September 2023]. Available from: <https://zenodo.org/records/4633218>, p. 9.

³⁰ WOŹNIAKOWSKI, T. P. and others. (eds). *Europeanization Revisited: Central and Eastern Europe in the European Union*. Fiesole: European University Institute. 2018, p. 11.

³¹ BÖRZEL, T. A. and T. RISSE. From Europeanisation to Diffusion: Introduction. *West European Politics* [online]. 2012, 35(1) [viewed 14 September 2023]. Available from: https://www.researchgate.net/publication/233108352_From_Europeanisation_to_Diffusion_Introduction, p. 5.

³² The authors also describe some of these mechanisms in a non-EU context.

³³ BÖRZEL, T. A. and T. RISSE. From Europeanisation to Diffusion..., pp. 6-7.

identities.“ Following the logic of arguing, persuasion can be used as a final diffusion mechanism. It is the EU that often uses persuasion to promote European norms, including human rights, democracy and the rule of law.³⁴ Exactly the behaviour of domestic actors according to the logic of consequences and the logic of appropriateness was most evident in the countries of Central and Eastern Europe as they were strongly motivated by the desire to "return to Europe". This was primarily due to the advantages associated with EU membership.³⁵ Slovakia is a good place to study Europeanization because of its transition from communism, through the government of Vladimír Mečiar, when Slovakia was sidelined in EU accession negotiations, to the government of Mikuláš Dzurinda, which steered the country towards the EU through reforms.³⁶

The process of Europeanization is occurring at the political, institutional, legal, and cultural levels.³⁷ The EU is based on the rule of law and its institutions must act in accordance with EU law. The EU is a close association of Member States in the form of a community of law, and thus with a fundamental role for law in the process of the EU's functioning.³⁸ EU law is crucial for the functioning of the Union as it serves as an instrument of Europeanization and also the ultimate outcome of Europeanization processes.³⁹ The aim of this law is to harmonise the national legal means of all Member States. The law of the EU can be categorized as primary and secondary. Primary law, which is the most significant source of Union law, is composed of the Treaties. These Treaties form the legal framework within which EU institutions devise and implement policies, and delineate the division of competences between the EU and its Member States.⁴⁰ The objectives set out in the Treaties are achieved through several types of legislation (secondary law), which can be divided into legally binding (regulations, directives, decisions) and non-binding (recommendations, opinions).⁴¹ In the context of secondary acts, the concepts of hard law and soft law may arise. It is important to note the distinction between the two concepts. In European law, hard law usually denotes legally binding acts, such as EU regulations, directives and decisions. The second way of Europeanising regulation is in the form

³⁴ BÖRZEL, T. A. and T. RISSE. From Europeanisation to Diffusion ..., pp. 7-8.

³⁵ WOŹNIAKOWSKI, T. P. and others. (eds). *Europeanization Revisited* ..., p. 6.

³⁶ HARRIS, E. Europeanization of Slovakia. *Comparative European Politics* [online]. 2004, 2(2) [viewed 1 August 2023]. Available from: <https://www.proquest.com/docview/222268926>, p. 185.

³⁷ VEČEŘA, M. and T. MACHALOVÁ. *Evropeizace práva v právně teoretickém kontextu: Výklad základních pojmů*, Brno: Masarykova univerzita, 2020, pp. 86-87.

³⁸ *Ibid.*, p. 104.

³⁹ SNYDER, F. Globalisation and Europeanisation as Friends and Rivals: European Union Law in Global Economic Network. *European University Institute* [online]. 1999 [viewed 16 September 2023]. Available from: https://cadmus.eui.eu/bitstream/handle/1814/153/law99_8.pdf?sequence=1&isAllowed=y.

⁴⁰ More: The European Union's primary law: <https://lnk.sk/fsxp>.

⁴¹ More: The European Union's secondary law: <https://lnk.sk/chh4>.

of soft law, which includes non-binding legal acts. In addition to the aforementioned recommendations and opinions, this also includes sui generis acts that can be issued by EU bodies and are not provided for by primary law. These include, for example, resolutions of the European Parliament, Commission communications, European Council and Council conclusions, as well as the so-called White Papers and Green Papers.

The media area has been specific in that Member States have introduced different regulatory regimes for the management of media systems, resulting in significant differences. One of the early scholars to examine the Europeanization of media policy agrees, „*that media policy represents a limitation to policy convergence within the EU. This argument is based upon the classic literature on policy style which considers national cultural considerations [...] to diffuse the influence of European policy.*“ The policy has been shaped by cultural factors, however, there has been significant convergence over time in this particular area of the European Union.⁴² Since the 1980s, there has been a gradual process of Europeanization of this policy resulting in national policies becoming more harmonised. The adoption of the Television without Frontiers (TWF) Directive in 1989 was a significant landmark in this process.⁴³ This Directive and other EU activities that have contributed to the convergence of markets were discussed in the next chapter.

Horizontal and vertical Europeanization mechanisms have resulted in various policy instruments being employed to govern national media markets. This has prompted formal alterations to media regulations, as well as the acceptance of proposed policy instruments and regulatory approaches. The vertical mechanism involves Community standards and requirements which are formalised in legislative and non-legislative enactments. The Court of Justice of the EU plays a significant role in this regard, with its decisions serving as inspiration for legislative action. Moreover, Union standards have a horizontal impact, here it comes to sharing expertise, data, and best practices.⁴⁴ Studying all aspects of the Europeanization of media policy would be arduous due to the numerous national and transnational interactions to

⁴² HARCOURT, A. Engineering Europeanization: the role of the European institutions in shaping national media regulation. *Journal of European Public Policy* [online]. 2002, 9(5) [viewed 17 September 2023]. Available from: <https://www.tandfonline.com/doi/abs/10.1080/13501760210162339>, pp.738-739.

⁴³ PAPATHANASSOPOULOS, S. The Europeanization of the European Media: The Incremental Cultivation of the EU Media Policy. In: SOUSA, H. and others (eds.) *Comparative Media Policy, Regulation and Governance in Europe*. Bristol: Intellect Ltd. 2018, p. 120.

⁴⁴ OGNANOVA, N. Bulgarian media policy and law: How much Europeanization. *Central European Journal of Communication*. [online]. 2009, 1(2) [viewed 17 September 2023]. Available from: <http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-635ecaaf-5a08-42bd-abc3-31619666d998>, p. 28.

cover. Therefore, we have limited our research to examining the effects of legally binding and non-binding instruments in Slovakia, providing a narrower scope.

The Europeanization of media policies specific to individual countries has been investigated by numerous authors. Harcourt, was among the earliest scholars to explore this field and analyzed the procedures through which the EU has emerged as a crucial participant in national media regulation. Harcourt's study employed examples from France, Germany, Italy, Spain, and the United Kingdom. The study by the author demonstrates a definite trend of Europeanization within the aforementioned countries, primarily catalysed by the European institutions (namely, the EC, EP, and CJEU).⁴⁵ Karol Jakubowicz noted that the EU's media policy emphasises market and economic factors, resulting in greater openness to foreign investment. This, in turn, has accelerated the concentration and tabloidization of the media.⁴⁶ Nelly Ognyanova presented a comprehensive report on the Europeanization of Bulgarian media, covering the implementation of laws and creation of a national regulatory body. The report concluded that although the Europeanization of Bulgarian media policy and legislation has delivered positive outcomes, some reforms have encountered issues, and accession to the EU has not ensured an unrelenting drive towards economic and democratic liberalisation.⁴⁷ Andreasson investigated the extent to which EU accession and Europeanization of the media contributes to the enhancement of media freedom and pluralism. His study focused on Croatia and the Czech Republic. He discovered that Europeanization of media policy is more significant in the pre-entry phase. Andersson asserts that the European Union lacks a well-established legal framework and control mechanism to compel member states to adopt a consistent approach to Europeanising media policy, particularly in terms of media freedom and pluralism.⁴⁸

As a central theory, we have chosen the widespread Europeanization, specifically the 'top-down' mechanism, which has been used in recent years. Its relevance stems from its ability to follow the influence that the EU and its bodies have on individual national policies. For this thesis, we exclusively concentrate on legislative and non-legislative acts. EU law is crucial for the functioning of the Union as it serves as a tool for Europeanization and represents the end

⁴⁵ HARCOURT, A. Engineering Europeanization ...

⁴⁶ JAKUBOWICZ, K. Editor's introduction: The highways and byways of „Europeanization“ in the media. *Central European Journal of Communication*. [online]. 2009, 2(1) [viewed 17 September 2023]. Available from: <https://wuwtr.pl/cejc/article/view/6683>.

⁴⁷ OGNANOVA, N. Bulgarian media policy ..., p. 28.

⁴⁸ ANDREASSON, L. Practicing What You Preach - Development of Media Freedom and Plurality Following Accession to the European Union: A comparative analysis of pre- and post-accession Europeanization. *Lund University* [online]. 2021 [viewed 17 September 2023]. Available from: <https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=9033754&fileId=9033755>.

product of Europeanization processes. The Europeanization of media policy can be traced back to the 1980s, when the breakthrough was achieved through the adoption of the Television Without Frontiers (TWF) Directive. In our search, we did not find any in-depth literature examining the Europeanization of Slovak media policy, so we think that this is a very unexplored area and worth exploring.

2 European Media Policy

The chapter covering the EU media policy holds crucial value in attaining the objective of the thesis. It provides an overview of the EU media policy, highlights the competencies of the Union in comparison to the Member States. Particularly important is the section on its initiatives and activities (both legally binding and non-binding), which served to illustrate the impact of Europeanization in the member countries.

European media policy is increasingly important.⁴⁹ But it is very difficult to identify a single line of media policy that could be applied effectively in so many countries. This is due to the many differences that exist between national media systems, policies and markets. For instance, small countries with smaller and more limited markets have more difficulty in sustaining public service media to fulfil their primary functions. In contrast, large countries have more resources and reach in larger markets. *“It is very hard to compare the public media systems of the UK and Finland or Germany's role in the world market, and in particular in their role as a 'taster' for imports with Bulgaria's political struggles and attempts for a comprehensive regulatory provision for its media.”*⁵⁰ However, in an increasingly interconnected world, external factors play a significant role in media policies. The globalisation and financialization of late capitalism depends on the functioning of media systems that are seamlessly interconnected around the world. Europe, the richest region in the world, is at the centre of this process. Borders between countries are shrinking, but to the benefit of a media industry that is highly localised in its production. The regionalisation of Europe as a form of market integration has meant that sooner or later the media industry will become part of the EU's legislative portfolio.⁵¹

2.1 EU Competences

The EU's competences work on the basis of a system of allocated competences - the EU has only those powers conferred on it by the Treaties, leaving the rest to the Member States. They fall into three basic categories – exclusive,⁵² shared,⁵³ and supporting measures

⁴⁹ DONDERS, K. and others. Introduction: European Media Policy as a Complex Maze of Actors, Regulatory Instruments and Interests. In: DONDERS, K. and others (eds). *The Palgrave Handbook of European Media Policy*. London: Palgrave Macmillan, 2014, p. 1.

⁵⁰ SARIKAKIS, K. Serving Two Masters: The Roles of the Market and European Politics in the Governance of Media Transformations. In: PSYCHOGIOPOULOU, E. (ed). *Understanding Media Policies: A European Perspective*. London: Palgrave Macmillan, 2012, p. 254.

⁵¹ SARIKAKIS, K. Serving Two Masters ..., p. 252.

⁵² Exclusive competence covers areas where only the EU has the right to take decisions, legislation and binding measures.

⁵³ In shared competences, Member States can exercise their powers until the EU decides to intervene.

(complementary).⁵⁴ The discussion on EU competences in the field of media focuses on the distribution of competences and responsibilities between the EU and the Member States. It is important to recognise that views on how the EU should be involved in media regulation vary from country to country. Some (e.g. Portugal, Netherlands, Sweden) argue for more centralised oversight, while others (e.g. Hungary, Poland, Denmark, Germany) want greater respect for national sovereignty in this area.⁵⁵ European multi-level constitutionalism is characterised by the openness of each of the constitutional orders of the states to closer integration, but in some areas this level of integration is more problematic, including the media market. One example is the German Constitution. It sees the regulatory framework for the media as the basis for a democratic and federal understanding of the constitution, which must not be revised. Here we encounter the objections and absolute limits that German constitutional law places on media regulation in the EU and its Member State.⁵⁶ This has led to the adoption of weakened initiatives that do not address the key challenges of media diversity, concentration and independence at Union level.⁵⁷ There was only limited 'top-down' Europeanization. Several experts, such as Parcu and Brogi, therefore agree that the Union has fragmented competences in the field of media, with Member States having long resisted any direct regulation in many aspects of media policy.⁵⁸

One of the biggest issues in this area stems from subsidiarity. The Union has no competence in the field of the media, which is the prerogative of the Member States. This places considerable constraints on active EU policy intervention in the media field. The latter must justify these activities by the communication needs of the EU institutions themselves or by the interests of

⁵⁴ Supporting competence allows the EU to coordinate or complement action by Member States without replacing their competences.

⁵⁵ LÜNEMANN, L. Why EU Member States with low risks to media pluralism are so reluctant to support the European Media Freedom Act. *CMPF* [online]. 2023, [viewed 13 September 2023]. Available from: <https://cmpf.eui.eu/why-eu-member-states-with-low-risks-to-media-pluralism-are-so-reluctant-to-support-the-european-media-freedom-act/>.

⁵⁶ COLE, M. D. and others. On the Allocation of Competences between the European Union and its Member States in the Media Sector: An Analysis with particular Consideration of Measures concerning Media Pluralism. *Institute of European Media Law* [online]. 2020, [viewed 14 September 2023]. Available from: https://orbilu.uni.lu/bitstream/10993/45904/2/EMR_study_on_the_allocation_of_competencies_in_the_media_sector_English_version_ExS_and_Political_Options.pdf, p. 1.

⁵⁷ BROGI, E. and others. The European Media Freedom Act: media freedom, freedom of expression and pluralism. *LIBE committee* [online]. 2023, [viewed 13 September 2023]. Available from: [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/747930/IPOL_STU\(2023\)747930_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/747930/IPOL_STU(2023)747930_EN.pdf), p. 17.

⁵⁸ PARCU, P. L. and E. BROGI. *Research Handbook on EU Media Law and Policy*. Cheltenham: Edward Elgar Publishing Limited. 2021, p. 4.

the Single Market.⁵⁹ Cole and his colleagues are opposed to extending the EU's powers in this area and thus to more 'top-down' Europeanization.

There is no explicit legal provision at EU level, nor is it recognized in the practice of monitoring, to exert an influence in the area of ensuring media pluralism besides the field of state aid control. Evaluations of measures from a cultural, in particular media pluralism perspective outside of economic market considerations [...] are therefore not possible at EU level.⁶⁰

These arguments are also supported by Protocol 29, annexed to the Treaty of Amsterdam, which concerns the system of public service broadcasting in the Member States. It states that the tasks of public service broadcasting shall be defined and organised by each Member State. It is important to recognise that there are different media environments, cultural differences and specificities in the Union and that EU involvement in media regulation could undermine media diversity and independence.⁶¹ Several authors have also promoted their belief that adopting any kind of unified media policy through the involvement of independent regulatory bodies will be almost impossible.⁶² The reason for this may be mainly due to opposition from political and stakeholder groups with different cultural, political or economic interests.⁶³ The legal basis and competences are also difficult to change, given the difficulty of defining the character of media goods and services. The question and dispute arises as to whether the product is cultural or economic. The media industry is also part of the free movement of goods and services, as well as being the subject of competition policy.⁶⁴ The EU's competences in the area of media are therefore not explicitly expressed in the primary law treaties. Instead, media policy competences are drawn from various articles of the TFEU in order to develop policies for different media sectors. In the event of a conflict between rules in the media sector, the principle of the primacy of EU law should apply. However, the scope of this principle is disputed between national and EU constitutional law. However, as mentioned above, the EU can only act within

⁵⁹ GRASSMUCK, V. and B. THOMASS. European Media Legislation: Overview: Milestones in European Media policies and legislation, 1990-2020. *EUMEPLAT* [online]. 2022, [viewed 16 September 2023]. Available from: https://www.eumeplat.eu/wp-content/uploads/2022/03/D1.4_European-Media-Legislation.pdf, p. 10.

⁶⁰ COLE, M. D. and others. On the Allocation of Competences ..., p. 8.

⁶¹ BROGI, E. and others. The European Media Freedom Act ..., p. 18.

⁶² LLORENS C., A. M. COSTACHE. European Union Media Policy and Independent Regulatory Authorities: A New Tool to Protect European Media Pluralism?. *Journal of Information Policy* [online]. 2014, (4) [viewed 1 August 2023]. Available from: <https://lnk.sk/olx3>, p. 396.

⁶³ Ibid.

⁶⁴ EUROPEAN PARLIAMENT. Audio Visual Services Directive. *European Parliament* [online]. 2017, [viewed 1 September 2023]. Available from: [https://www.europarl.europa.eu/RegData/etudes/PERI/2017/600421/IPOL_PERI\(2017\)600421_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/PERI/2017/600421/IPOL_PERI(2017)600421_EN.pdf), p. 3.

the limits of the powers conferred on it by the Member States in the primary law treaties, but at the same time these treaties do not provide a negative list of areas that would be excluded from EU law (and thus not the area of the media).⁶⁵

The EU's power in this area can be derived from a number of treaty provisions relating to EU citizenship and, in particular, the functioning of the single internal market. They reflect the complex character of the media as goods and services, but also recognise their public function in a democracy. In relation to the free movement of goods, capital, persons, services, these include Articles 28, 30, 34-35, and 45-62 TFEU, competition policy (Articles 101-109), education and culture (Articles 165-167), industry (Article 173), and common commercial policy (Article 207).⁶⁶ One of the most important is Article 167 TFEU, which contains a supporting competence, but this is limited to culture, including its audiovisual media dimension, but does not create a specific competence or allow for the harmonisation of national measures.⁶⁷ It follows that the main purpose is not to harmonise laws and regulations, but mainly to adopt the Commission's non-legally binding recommendations. The debate in this area is therefore mainly about the legitimacy, scope and limits of the horizontal competence of Article 114 TFEU. This gives the European Parliament and the Council the possibility to adopt measures for the approximation of national rules for the establishment and functioning of the internal market.⁶⁸ The European Parliament has long pointed to the Commission's passive role, complaining in particular about its lack of competence in the field of the media and democratic values.⁶⁹ Despite the facts mentioned above, there have been several EU interventions in the media sector in recent years. However, these have mainly been adopted for economic reasons – it was about trying to support a single European market for media services, which was supposed to result in freedom to provide services. For instance, the development of state funding for public service broadcasting has been influenced by the application of European competition rules.⁷⁰

Other legislative measures included regulations on digital platforms, transparency requirements for companies and online platforms, initiatives to combat online misinformation and rules to

⁶⁵ COLE, M. D. and others. *On the Allocation of Competences ...*, p. 2.

⁶⁶ MEIJERS COMMITTEE. *Promoting and Safeguarding Media Pluralism through EU Law. Meijers Committee* [online]. 2021 [viewed 1 August 2023]. Available from: https://www.commissie-meijers.nl/wp-content/uploads/2021/10/CM2113_EN.pdf, p. 1.

⁶⁷ BROGI, E. and others. *The European Media Freedom Act ...*, p. 18.

⁶⁸ *Ibid.*

⁶⁹ E.g. EUROPEAN PARLIAMENT. *Media freedom: EP warns of attempts to silence critics and undermine pluralism. europarl.europa.eu* [online]. 2020 [viewed 1 August 2023]. Available from: <https://www.europarl.europa.eu/news/en/press-room/20201120IPR92117/media-freedom-ep-warns-of-attempts-to-silence-critics-and-undermine-pluralism>.

⁷⁰ PARCU, P. L. and E. BROGI. *Research Handbook ...*, p. 5.

protect whistleblowers. While these initiatives indirectly affect the media, they do not provide a comprehensive solution to the problem.⁷¹ As mentioned above, a number of experts and also the Commission (e.g. in the case of the proposed European Media Freedom Act) see one way to push for a more comprehensive media policy in Article 114 TFEU and the need for the effective functioning of the internal market. We have therefore focused on this issue in the following subchapter.

2.2 European Single Market

The EU has been trying to implement a media policy for decades, but its legal powers are still limited. Since its foundation (1980s), it has had to base this policy on its responsibility for the functioning of the internal market and the application of competition law, which has led to a one-sided economic view of the media.⁷² Europeanization has only taken place in the economic areas of media operation. Within the Union, there are various national rules regulating the media, but they lack a European level. This situation is not effective with regard to the free movement of services, goods and the right of establishment. It is precisely the diversity and lack of harmonisation that can undermine the functioning of the individual freedoms of the EU internal market, in particular media ownership, transparency of ownership, defamation or copyright. For example, an investor may decide to establish a company in a Member State where media regulation is more lenient.⁷³ In the context of the internal market, the adoption of provisions in media policy areas can only be justified if they are applied in areas where the legislation of different states has a negative impact on the internal market itself. However, even in this case, the principle of subsidiarity⁷⁴ must be taken into account.⁷⁵

This is supported by the aforementioned Article 114 TFEU.

Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and

⁷¹ BROGI, E. and others. *The European Media Freedom Act ...*, p. 17.

⁷² HOLTZ-BACHA, CH. Freedom of the media, pluralism, and transparency. European media policy on new paths?. *European Journal of Communication* [online]. 2023, 19(1) [viewed 1 August 2023]. Available from: <https://discovery.researcher.life/article/freedom-of-the-media-pluralism-and-transparency-european-media-policy-on-new-paths/c75af184028a394fb28344ad1b17d3aa>, p. 1.

⁷³ BROGI, E. and P. GORI. European Commission Soft and Hard Law Instruments for Media Pluralism and Media Freedom. In: CMPF. *European Union Competencies in Respect of Media Pluralism and Media Freedom*. Fiesole: European University Institute, 2013, p. 65.

⁷⁴ The EU can only act if and to the extent that the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved at Union level - Article 5 TEU.

⁷⁵ BROGI, E. and P. GORI. *European Commission Soft ...*, 2013, p. 72.

the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.⁷⁶

For instance, the possibility of using this article as a legal basis to indirectly promote media pluralism has also been supported by some academics and the case law of the European Court of Justice, which has confirmed that the legislator can also pursue "non-market" objectives through Article 114 TFEU. This possibility has also been confirmed by the legal services of the Council of the EU for the planned Media Freedom Act. The Legal Service recognised the possibility of using this article where there are or will be differences in national laws which impede fundamental freedoms and thus have a direct impact on the functioning of the internal market or could significantly distort competition.⁷⁷ Some countries have stricter transparency rules than others. This results in higher administrative and economic costs for these companies, which may discourage companies established in Member States with weaker rules from offering their services in those countries. It can therefore be concluded that non-uniform legislation and the resulting differences have a direct impact on the functioning of the internal market. Therefore, Article 114 TFEU could be invoked and the EU could adopt harmonisation measures.⁷⁸ Another legal basis for intervention, according to Brogi and Gori, could be Article 50 TFEU and, in the context of citizenship, Article 25 TFEU. In both cases, the adoption of provisions would be difficult, especially on the basis of Article 25 TFEU, where the unanimity requirement is a difficult hurdle to overcome and the internal market argument is more realistic in this case.⁷⁹

But media cannot be seen as simply another business. In addition to their market dimension, media services make contributions to education, cultural development, social inclusion, and protecting fundamental rights such as freedom of expression and access to information. However, in recent years, the Union has shown an inclination towards aligning its media policy with its core values. This could be a consequence of its inability to counter Hungary's contentious media regulations, the issues in Poland, and apprehensions of a decline in other

⁷⁶ Treaty on the Functioning of the European Union, 2007, Article 114(1).

⁷⁷ BROGI, E. and others. *The European Media Freedom Act ...*, p. 18.

⁷⁸ BROGI, E. and P. GORI. *European Commission Soft ...*, p. 74.

⁷⁹ *Ibid.*

Member States' situations.⁸⁰ Neelie Kroes, former Vice-President of the Commission, established the High Level Group on Media Freedom and Pluralism in 2013. While acknowledging that Member States bear the greatest responsibility for media freedom and pluralism, she emphasised that the EU should address issues related to the single market and competition in this area, as well as promote EU citizens' fundamental rights and preserve democracy.⁸¹ The Commission has increasingly embraced this perspective, as affirmed by the initial State of the Rule of Law in the European Union report of September 2020.⁸² It offers a fresh outlook on media policy, concentrating on pluralism as well as media freedom in its individual chapter. The report acknowledges the media's exceptional function in democracy and the rule of law, which lacked in the response to the 2010 Hungarian media law.⁸³ In the following subsection we therefore review the major activities and initiatives through which top-down Europeanization has taken place since the end of the twentieth century. This is the basis for our thesis, as we have examined in particular how these legally binding and non-binding acts have been adopted by Slovakia.

2.3 Initiatives and Monitoring by the EU

The legal framework for media regulation in the secondary legislation of the European Union includes several directives. One of the first initiatives at European level in relation to media policy was the 89/552/EEC Directive from 1989, known as the **Television Without Frontiers (TWF) Directive**.⁸⁴ It is the predecessor of the Audiovisual Media Services Directive (AVMS). It was the first time ever that 'top-down' Europeanization occurred in national media policies. It was the main regulatory instrument for the audiovisual sector in Europe. It sought, in the context of the single market, to create a legal framework for the cross-border transmission of television programmes. The inspiration was to (minimum) harmonise areas that could hinder the free movement of television broadcasting across borders – thus there has been Europeanization in the areas of promotion of European works and works by independent producers (countries had to establish minimum quotas for the broadcasting of European works at national level), advertising, sponsorship and teleshopping (for example, countries had to

⁸⁰ HOLTZ-BACHA, CH. Freedom of the media ..., p. 7.

⁸¹ VIKE-FREIBERGA, V. and others. A free and pluralistic media to sustain European democracy: The Report of the High Level Group on Media Freedom and Pluralism. *European Commission* [online]. 2013 [viewed 30 August 2023]. Available from:

https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/hlg/hlg_final_report.pdf, p. 3.

⁸² 2020 Rule of Law Report: Country Chapter on the rule of law situation in Slovakia. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0580>.

⁸³ HOLTZ-BACHA, CH. Freedom of the media ..., p. 7.

⁸⁴ Television broadcasting activities: "Television without Frontiers" (TWF) Directive, 1989.

ensure that advertising and teleshopping were easily identifiable and clearly separated from the rest of the programme), protection of youth and public order (for example, Member States had to take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction did not include programmes which might seriously endanger the physical, mental or moral development of minors, in particular programmes containing pornography or undesirable violence), or the right of reply.⁸⁵ The Directive has been positively received by industry, consumer organisations and Member States. Differences between national rules have been eliminated and a genuine European market for TV services has been created.⁸⁶ However, the Directive also possessed a few flaws, including the provisions relating to cultural diversity that, in essence, safeguarded national programmes and did not foster the expansion of European programmes. Moreover, it has been subject to disapproval for the unclear application of these provisions.⁸⁷

As mentioned above, the original Television without Frontiers Directive of 1989 has been amended several times. The reasons for the revision were, for example, technological progress and the need to modernise the rules, or the problem of circumvention of the provisions. The first amendment took place in 1997. This was preceded by the invention of the Internet and the adoption of the Maastricht Treaty, which also introduced new provisions on culture into the existing Community instruments, providing, inter alia, for the promotion of artistic and literary creation, including in the audiovisual sector (now Article 167 TFEU). A further impetus for change was provided by the Bergman Report (June 1994),⁸⁸ which foresaw the transformation of the audiovisual industry into a multimedia industry. The Commission reacted to this with an action plan⁸⁹ that spoke of the necessity to review the Directive.⁹⁰ In 2007, the Directive was again revised and renamed to its current name - the **Audiovisual Media Services Directive (AVMSD)**. The biggest impulse was the development of services such as YouTube (2005), Vimeo (2004) and Dailymotion. The revised directive dealt with product placement (a form of commercial communication) or short news stories. The Commission then drafted a consolidated

⁸⁵ KATSIREA, I. The Television Without Frontiers Directive. In: DONDEERS, K. and others (eds.). *The Palgrave Handbook of European Media Policy*. London: Palgrave Macmillan, 2014, p. 297 or TAMBINI, D. *Media Freedom*. Cambridge: Polity Press, 2021, pp. 89-141.

⁸⁶ DEHOUSSE, F. and K. van HECKE. Towards an Audiovisual Media Services Directive: An Analysis of the Commission's Proposal. *Studia Diplomatica*. [online]. 2005, 58(4) [viewed 1 August 2023]. Available from: <https://www.jstor.org/stable/44839533>, p. 2.

⁸⁷ *Ibid.*

⁸⁸ More: Europe and the Global Information Society: <https://op.europa.eu/en/publication-detail/-/publication/44dad16a-937d-4cb3-be07-0022197d9459/language-en>.

⁸⁹ More: Europe's Way to the Information Society. An Action Plan: <https://op.europa.eu/en/publication-detail/-/publication/deed9eb9-0b6e-11e4-a7d0-01aa75ed71a1/>.

⁹⁰ GRASSMUCK, V. and B. THOMASS. *European Media Legislation ...*, p. 48.

text and renumbered the various articles of the Directive, which were adopted in a new revised Directive in 2010. This revised Directive, however, did not contain any substantive change.⁹¹

The Directive has also been revised in 2018. For instance, it extends certain audiovisual rules to video-sharing platforms and social media services, improves the protection of minors from harmful content or addresses the independence of audiovisual regulators. In particular, the Directive aims to address the fact that more and more people are watching content online on their mobile phones or computers and less on TV.⁹² The AVMSD is clearly the biggest EU media initiative that has Europeanized national media policies. A clear example of Europeanization is the setting of minimum quotas for the broadcasting of European works. The AVMS Directive obliges Member States to ensure that European works account for at least 30% of their broadcasting catalogues. This promotes European culture, creativity and a common market for audiovisual media. In addition, the Directive has, for instance, ensured a consistent approach to consumer and child protection, including safeguards for access to content and restrictions on advertising deemed unsuitable for children.⁹³ As we have seen, this directive has undergone considerable development and change. Its transposition into national law has also been problematic in some countries, with the European Commission⁹⁴ taking several countries to the European Court of Justice for incorrect or late transposition.

The first major impetus the Commission wanted to inject into the area of media freedom and pluralism was the adoption of a market and ownership-based approach in 1992. At the initiative of the European Parliament,⁹⁵ the Commission, adopted the Green Paper called '**Pluralism and media concentration in the single market. An assessment of the need for Community action**'. Presented in it three different possible options for the EC: no specific action at Community level, action related to transparency, and action to harmonise national laws.⁹⁶ Its aim was to analyse the problem of media concentration (television, radio, press) and to propose possible solutions. Since the publication of the book, the Commission has initiated an extensive consultation process, but has not received clear answers as to whether any action should be

⁹¹ GRASSMUCK, V. and B. THOMASS. *European Media Legislation ...*, pp. 52-56.

⁹² EUROPEAN COMMISSION. *Revision of the Audiovisual Media Services Directive (AVMSD)*. *European Commission* [online]. 2022, [viewed 16 September 2023]. Available: <https://digital-strategy.ec.europa.eu/en/node/9633/printable/pdf>, pp. 1-2.

⁹³ *Audiovisual Media Services Directive*, 2018.

⁹⁴ The Commission also reports every three years on the application of the Directive. These reports will enable us to better assess its implementation in national law.

⁹⁵ Resolution on media takeovers and mergers – No C 68/137; Resolution on media concentration and diversity of opinions – No C 284/44.

⁹⁶ Commission adopts Green Paper on Pluralism and Media Concentration – P/92/68.

taken at Community level. Although the Commission has recognised the need to protect media pluralism, it has still acted in the context of its main task, namely the completion of the internal market. Thus, if the Commission was proposing measures at Community level, it was primarily to ensure that regulation of media ownership and control did not affect the internal market. This created a tension which permeated the Green Paper and in fact limited the scope of its proposals.⁹⁷ Parliament took a distinct approach, not primarily centred on economic aspects concerning media freedom. Alongside measures to enhance pluralism, it also backed the integration of human rights-based standards.⁹⁸ MEPs called on the Commission in 2002 to initiate an extensive and inclusive consultation process on media pluralism and media concentration, and to create an updated Green Paper by the end of 2003. Regrettably, the Commission was unable to meet this deadline.⁹⁹

Aware of the failures of previous initiatives, the Commission launched a **new initiative on media pluralism** in 2007 to Europeanise and harmonise rules on media ownership and concentration. It consisted of three steps: a Commission staff Working Paper on Media Pluralism¹⁰⁰ that was published in the beginning; an independent study on media pluralism; a Commission Communication on the indicators for media pluralism in the EU Member states, on which a broad public consultation will take place. “[...] *initiative on media pluralism seems promising in terms of revitalizing research in this field, as testified to by the launch of the project independent study on indicators for Media Pluralism in the Member states—Towards a risk-Based approach.*”¹⁰¹ The third step - a Commission Communication based on the Media Monitor indicators study - was not finally realised.¹⁰² The Commission's efforts to Europeanize the rules on media pluralism have thus failed in its last steps. As previously stated, the Commission's strategy underwent a significant shift with the involvement of Commissioner

⁹⁷ HITCHENS, L. P. Media Ownership and Control: A European Approach. *The Modern Law Review [online]*. 1994, 57(4) [viewed 1 August 2023]. Available from: <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1468-2230.1994.tb01960.x>, pp. 585-587.

⁹⁸ BROGI, E. and others. The European Media Freedom Act ..., p. 20; Resolution on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights) - 2003/2237(INI).

⁹⁹ Resolution on media concentration – C 25 E/205.

¹⁰⁰ EUROPEAN COMMISSION. Commission Staff Working Document: Media pluralism in the Member States of the European Union. *European Commission [online]*. 2007, [viewed 13 September 2023]. Available from: [https://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2007/0032/COM_SEC\(2007\)0032_EN.pdf](https://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2007/0032/COM_SEC(2007)0032_EN.pdf).

¹⁰¹ GÁLIK, M. Regulating Media Concentration within the Council of Europe and the European Union. In: KLIMKIEWICZ, B. *Media Freedom and Pluralism: Media Policy Challenges in the Enlarged Europe*. Budapest: Central European University Press, 2010, pp. 229-244.

¹⁰² BROGI, E. and P. GORI. Legal Analysis of the EU Instruments to Foster Media Pluralism and Media Freedom. In: CMPF. *European Union Competencies in Respect of Media Pluralism and Media Freedom*. Fiesole: European University Institute, 2013. p. 62.

Neelie Kroes. In October 2011, she appointed a High-level expert group on Media Pluralism and Freedom to examine and provide insight on topics related to this domain. In December 2011, these experts opted to form the **EU Media Futures Forum** to contemplate the influence of the digital revolution on the European media industry. This period also saw the creation of the Centre for Media Pluralism and Media Freedom at the Robert Schuman Centre for Advanced Studies at the European University Institute with the long-term mission of accompanying the process of European integration on media pluralism and freedom.¹⁰³

The European Commission has launched annual reports on the state of the rule of law in the European Union (**Rule of Law Reports**) since 2020, following the initiative of the European Parliament.¹⁰⁴ The report assesses the independence of the justice system, the anti-corruption framework, media pluralism and freedom, and the separation of powers. The initial report highlights a shift in the Commission's stance on media policy and the inclusion of media freedom as a crucial factor in evaluating compliance with the rule of law.¹⁰⁵ This is one of the largest EU initiatives in this area to date, with the Commission looking in particular at the independence of media regulators, transparency of ownership, political influence, access to information and the dangers of threats and attacks on journalists. In the third report in 2022,¹⁰⁶ the Commission took a step forward by drawing specific recommendations for reforms from the assessments for each country and identifying the main challenges.¹⁰⁷ This indicates that the Union is trying to Europeanize media policies also in soft law instruments. The fact that these reports are produced on a state-by-state basis, with high-level dialogue and consultation between the EU and the states,¹⁰⁸ means that the final shape of these reports is therefore influenced by the states themselves. The Rule of Law Reports contribute to creating a common approach to values and standards across the EU. By monitoring and evaluating the respect for the rule of law in different countries, they can contribute to Europeanization and the creation of a common value base, which should also be the case in the media.

These reports are part of the so-called Rule of Law Mechanism, an annual dialogue on the rule of law between the Commission, the Council and the European Parliament, together with

¹⁰³ BROGI, E. and P. GORI. *Legal Analysis ...*, p. 62.

¹⁰⁴ Resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights - 2015/2254(INL).

¹⁰⁵ BROGI, E. and others. *The European Media Freedom Act ...*, p. 22.

¹⁰⁶ 2023 Rule of Law Report: Country Chapter on the rule of law situation in Slovakia. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023DC0800>.

¹⁰⁷ HOLTZ-BACHA, CH. *Freedom of the media ...*, p. 7.

¹⁰⁸ Personal interview of the author with Vladimír Bilčík, 2.11. 2023, Appendix A and Personal interview of the author with Tomáš Kozák, 3.11. 2023, Appendix B.

Member States and national parliaments. Another important measure of this mechanism is the use of the procedure under Article 7 TEU, which was introduced by the Treaty of Amsterdam. When the EU suspects that there is a risk of a breach of its values in a Member State (under Article 2 TEU), it can activate this article. It can be both preventive (if there is a risk of a breach of EU values) and punitive (if such a breach has actually occurred). These sanctions are not precisely defined in the EU Treaties, but can lead to the suspension of the voting rights of the state concerned in the Council or the European Council.¹⁰⁹ This article has been referred to as a nuclear weapon, and its full use would have devastating consequences for the state. Kochenov opposed this view, calling it a myth.¹¹⁰ After his article, this led to Article 7 of the TEU being triggered against Poland and Hungary a few months later. However, it is highly improbable that it will be fully implemented (such as the suspension of voting rights) as unanimity is required. Furthermore, a regulation concerning safeguarding the EU budget and European values came into effect in early 2021,¹¹¹ which giving the Council the possibility to reduce or suspend payments of EU funds to Member States that violate the EU's fundamental values (Rule of Law Conditionality Regulation).¹¹² It was once again Parliament that requested the development of a new system, followed by its implementation.¹¹³ It has repeatedly threatened the Commission with an action for failure to act,¹¹⁴ when it has failed to respond to growing threats to the EU's fundamental values, including, for example, attacks on journalists and media freedom.¹¹⁵ The EC brought the first ever such action against a Member State for violating fundamental European values in February 2023, accusing Hungary of violating fundamental European

¹⁰⁹ Treaty on European Union, 2007, Article 7.

¹¹⁰ KOCHENOV, D. Busting the myths nuclear: A commentary on Article 7 TEU. *European University Institute* [online]. 2017 [viewed 14 September 2023]. Available from: https://cadmus.eui.eu/bitstream/handle/1814/46345/LAW_2017_10.pdf.

¹¹¹ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget – LI 433/1.

¹¹² EUROPEAN COMMISSION. Rule of law conditionality regulation. *European Commission* [online]. 2023 [viewed 14 September 2023]. Available from: https://commission.europa.eu/strategy-and-policy/eu-budget/protection-eu-budget/rule-law-conditionality-regulation_en.

¹¹³ E.g. European Parliament resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights (2020/2072(INI)).

¹¹⁴ E.g. EUROPEAN PARLIAMENT. MEPs warn Commission to activate rule of law mechanism without delay. *European Parliament* [online]. 2021 [viewed 17 September 2023]. Available from: <https://www.europarl.europa.eu/news/en/press-room/20210304IPR99233/meps-warn-commission-to-activate-rule-of-law-mechanism-without-delay> or EUROPEAN PARLIAMENT. MEPs ready to take Commission to court for failing to protect EU budget. *European Parliament* [online]. 2021 [viewed 17 September 2023]. Available from: <https://www.europarl.europa.eu/news/en/press-room/20210322IPR00523/meps-ready-to-take-commission-to-court-for-failing-to-protect-eu-budget>.

¹¹⁵ HOLTZ-BACHA, CH. Freedom of the media ..., p. 9.

values with a controversial law which forbids the portrayal of LGBTI+ people in the media.¹¹⁶ It was precisely Hungary, together with Poland, that brought the action¹¹⁷ to the Court of Justice of the European Union due to the contingency of withdrawing funds from the EU with strict adherence to the principles of the rule of law. The Court dismissed the claim.¹¹⁸ Rule of Law Conditionality Regulation is, according to Holtz-Bach, easier to apply than the procedure under Article 7 TEU. However, he adds that the barriers to the use of sanctions are still high and the Regulation is difficult to use in the media sector.¹¹⁹ As the EU lacks effective punishment for states breaking media-related rule of law, individual countries follow a logic of appropriateness. The Commission has also focused on strengthening media pluralism and transparency. In 2020, as part of the European Democracy Action Plan¹²⁰ - **A monitor of media ownership in Europe**.¹²¹ The plan aims to increase transparency in the ownership and control of the news media. However, it currently only monitors 15 EU countries, but plans to cover the remaining 12. Monitoring ownership structures could help tackle media concentration. Previous proposals for directives in this area have failed due to strong criticism from Member States who have not allowed this area to be Europeanized.¹²² Another soft law instrument that addressed media freedom (**Recommendation on the protection, safety and empowerment of journalists**) came from the Commission in 2021. It was the first ever recommendation to improve the safety of journalists and other media workers in the EU. For instance, the EC called on states to set up independent national support services, including helplines, legal and psychological counselling or shelters for journalists and media workers facing threats.¹²³ Member States had to report after 18 months on the measures they implemented. Slovakia has already submitted the report, which we will review in [chapter 4.2](#). The Commission will evaluate the progress and continue monitoring journalists' safety in all Member States. As with the Rule of Law Report, this recommendation is not legally binding, so individual countries follow a logic of appropriateness.

¹¹⁶ ZMUŠKOVÁ, B. EÚ podala na Maďarsko historickú žalobu za homofóbny zákon. *Euractiv.sk* [online]. 2023 [viewed 14 September 2023]. Available from: <https://euractiv.sk/section/rovnost-sanci/news/eu-podala-na-madarsko-historicku-zalobu-za-homofobny-zakon/>

¹¹⁷ Advocate General's Opinion in Case C-156/21 and Case C-157/21 Hungary v Parliament and Council; Poland v Parliament and Council, 2021.

¹¹⁸ Judgments in Cases C-156/21 Hungary v Parliament and Council and C-157/21 Poland v Parliament and Council, 2022.

¹¹⁹ HOLTZ-BACHA, CH. Freedom of the media ..., p. 14.

¹²⁰ The European Democracy Action Plan, presented by the European Commission in December 2020, intends to empower citizens and make EU democracies more resilient.

¹²¹ A monitor of media ownership in Europe - <https://media-ownership.eu/>.

¹²² HOLTZ-BACHA, CH. Freedom of the media ..., p. 11.

¹²³ Commission Recommendation of 16.9.2021 on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union.

One of the most recent initiatives is the Commission's proposal for a directive that allows judges to swiftly dismiss unfounded lawsuits brought against journalists and human rights defenders. Journalists, media organisations, human rights defenders, activists, researchers and artists in the EU will thus be protected from **Strategic Lawsuits Against Public Participation (SLAPPs)** aimed at intimidating or punishing them. The plaintiff will also have to bear all costs of the proceedings, including the defendant's legal costs. In contrast, the victim of a strategic lawsuit will also be able to claim damages for psychological or reputational harm.¹²⁴ This category of legal action presents a significant risk to journalists, given its low likelihood of success and the intimidation tactics utilized to pursue exaggerated damages. Harassment suits are a problem in several Member States.¹²⁵ Case studies from France, Italy, Croatia, Hungary, Malta and Poland show that SLAPPs have become a systemic problem in these countries, significantly affecting media freedom and pluralism of opinions.¹²⁶ The number of SLAPPs is on the rise in Europe, with the situation being worst in Poland.¹²⁷ The draft directive from the Commission has been agreed by both the European Parliament and the Council, which are now trying to find a common text for the legislation.¹²⁸ At the end of April 2022, the Commission also published recommendations for countries in this context. That is to say, it sought to use a soft law instrument, which would later be replaced by a directive (hard law).¹²⁹ This allows countries to prepare for the adoption of the legislation and to Europeanize their legal systems before it comes into force.

The Commission presented in September 2022 a proposal for a Regulation establishing a common framework for media services in the internal market (**European Media Freedom**

¹²⁴ EUROPEAN COUNCIL. Stronger press freedom and free speech protection: Council agrees position on anti-SLAPP law. *European Council* [online]. 2023 [viewed 14 September 2023]. Available from: <https://www.consilium.europa.eu/en/press/press-releases/2023/06/09/stronger-press-freedom-and-free-speech-protection-council-agrees-position-on-anti-slapp-law/>.

¹²⁵ ŽUFFOVÁ, M. and R. CARLINI (eds.). *Safety of journalists in Europe: Threats and best practices to tackle them*. Fiesole: European University Institute, 2021, p. 18.

¹²⁶ BÁRD, P. and others. Ad-Hoc Request: SLAPP in the EU context. EU-CITIZEN: Academic Network on European Citizenship Rights [online]. 2020, [viewed 13 September 2023]. Available from: https://commission.europa.eu/system/files/2020-07/ad-hoc-literature-review-analysis-key-elements-slapp_en.pdf.

¹²⁷ BLEYER-SIMON, K. and others. *Media Pluralism in the Digital Era: Application of the Media Pluralism Monitor In the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2022*. Fiesole: European University Institute, 2023, p. 42.

¹²⁸ EUROPEAN COUNCIL. Stronger press freedom and free speech protection: Council agrees position on anti-SLAPP law. *European Council* [online]. 2023 [viewed 14 September 2023]. Available from: <https://www.consilium.europa.eu/en/press/press-releases/2023/06/09/stronger-press-freedom-and-free-speech-protection-council-agrees-position-on-anti-slapp-law/>.

¹²⁹ Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation').

Act)¹³⁰ and which amends Directive 2010/13/EU. The new regulation should ensure that both public and private media can operate more easily across borders in the internal market, without undue pressure and taking into account the digital transformation of the media.¹³¹ The Media Freedom Act also aims to – no interference in editorial decisions of media; no spyware against journalists; independent and adequately funded public service media; transparency of ownership; transparent and fair audience measurement systems and allocation of state advertising; establishment of a new European Board for Media Services; more protection for media against unjustified online content removal and an assessment of market concentrations and requirements on national measures affecting the media.¹³² It is important because, for the first time at European level, it seeks to define in a coherent way the principles of protection, freedom and independence of the media. It does so in a modern context, which means that it also touches on current issues such as the functioning of the media environment in the online space.¹³³ The final step - adoption by the Council under the ordinary legislative procedure - is now needed for the regulation to enter into force. The aim is to reach an agreement on the form of this legislation as soon as possible, ideally during the current Spanish Presidency, i.e. by the end of 2023. Vladimír Bilčík, shadow rapporteur for the EMFA proposal, expects that the adoption of the legislation will not be delayed, because a qualified majority is sufficient for its adoption and there is majority agreement on the wording of the proposal.¹³⁴

The proposal for a regulation was born out of the European Commission's attempt to respond to a number of negative trends concerning the independence of the media and the working conditions for journalists. It was also inspired by the bad situation in Hungary, Poland and the murders of investigative journalists from Slovakia and Malta.¹³⁵ As we have pointed out, there is a legal framework at EU level for intervention in the media sector, particularly from an economic point of view. It is therefore not surprising that the Commission has chosen a 'market-based' approach as the legal basis for this regulation, namely Article 114 TFEU.¹³⁶ This corresponds to the general objective of the proposal, which is to improve the functioning of the

¹³⁰ More: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU.

¹³¹ EUROPEAN COMMISSION. European Media Freedom Act. *European Commission* [online]. 2023 [viewed 20 September 2023]. Available from: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/european-democracy-action-plan/european-media-freedom-act_sk.

¹³² Ibid.

¹³³ Personal interview of the author with Vladimír Bilčík, 2.11. 2023, Appendix A.

¹³⁴ Personal interview of the author with Vladimír Bilčík, 2.11. 2023, Appendix A.

¹³⁵ JOUROVÁ, V. In discussion Think Tank Európa: Ochrana plurality a nezávislosti médií na Slovensku a v EÚ, 16.11. 2022. Available from: <https://www.facebook.com/events/660117478902992>.

¹³⁶ For more on competences and Article 114 TFEU in relation to the media sector, see [chapter 2.1](#) and [2.2](#).

internal media market. The Commission has justified this by, for example, different approaches to the protection of editorial independence or different laws aimed at regulating media content, which have a negative impact on the conditions for the exercise of economic activities and, ultimately, on the quality of media services received by citizens and businesses in the internal market.¹³⁷ In the case where internal market harmonisation is used as a legal basis, the legal instrument needs to pass the subsidiarity (and proportionality) test,¹³⁸ since, as the CJEU has stated in the past,¹³⁹ Article 114 TFEU does not confer exclusive competence to regulate economic activity in the internal market.¹⁴⁰

This means that the EMFA text would have to pass the threshold of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality and the scrutiny criteria shaped over time by the Court of Justice of the European Union (CJEU). In this regard, the CJEU has long sustained that any divergence needs to significantly distort the internal market, not abstract risks.¹⁴¹

The principles of subsidiarity and proportionality have also been debated in the national parliaments of the Member States. Parliaments from the Czech Republic, Italy, the Netherlands, Germany, Portugal and Ireland have submitted contributions to the proposal. Concerns about the legal basis of EMFA under Article 114 TFEU were also raised by some MEPs.¹⁴² However, the proposal points out that the increasingly digital and cross-border production, distribution and consumption of media content makes it easier to achieve the objectives at EU level.¹⁴³ The EMFA also takes into account the Amsterdam Protocol and will not interfere with Member States' competences in relation to public service media, nor is it intended to interfere with national identities or media regulatory traditions.¹⁴⁴ Until now, the European Commission has proposed directives in the field of media, but with the Media Freedom Act it has opted for a

¹³⁷ BLÁZQUEZ, F. J. C. The proposal for a European Media Freedom Act. *European Audiovisual Observatory* [online]. 2022 [viewed 20 September 2023]. Available from: <https://rm.coe.int/note-emfa/1680a9af14>, p. 11.

¹³⁸ We have already pointed this out in [chapter 2.3](#).

¹³⁹ *Vodafone and Others - C-58/08*, CJEU, Judgement, 8 June 2010.

¹⁴⁰ GAMITO, M. C. *Consistent regulatory and self-regulatory mechanisms for media freedom in the Digital Single Market. The European Media Freedom Act (EMFA) as meta-regulation*. Fiesole: European University Institute. 2022, p. 11.

¹⁴¹ GAMITO, M. C. *Consistent regulatory ...*, p. 11.

¹⁴² More: <https://lnk.sk/tkrt>.

¹⁴³ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU, pp. 8-9.

¹⁴⁴ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU, p. 5.

regulation. This has provoked opposition in several countries (e.g. Germany and Poland).¹⁴⁵ The regulation is called into question because of the bad experience with the AVMS Directive, which was ready for full implementation in August 2020, but has still not been fully and correctly implemented in all countries. As a result, the directive's purpose and effectiveness are sometimes unacceptably reduced.¹⁴⁶ The legal basis for EMFA has been endorsed by the influential Legal Service of the Council of the EU.¹⁴⁷ It is clearly the EU's biggest attempt to Europeanize and intervene in media policy and therefore needs to be given sufficient space. In this case, it is possible to examine the initial reactions of individual countries to the proposal and to show how national regulations would have to be adapted if the EMFA were adopted.

2.4 Summary

The European Union's media policy is characterised by the lack of explicit powers in this area in the founding treaties. One of the prime reasons for such a circumstance is the reluctance of the Member States to enable the Union's intervention in this particular sphere. With limited scope to intervene in the media sector, the EU has had to defend its actions based on the necessity for the effective functioning of the single internal market (through Article 114 TFEU). Thus, the Union's activities in this area were solely of an economic dimension. This was also the case for the first major initiative in EU media policy, where we saw the Europeanization of 'top-down'. The first time it partially harmonised media policy was with the adoption of the Television without Frontiers Directive in 1989. This Directive, now the Audiovisual Media Services Directive, has been amended several times and still forms the basis of the EU's audiovisual media policy.

Although the competences in the field of media policy have not changed, there has been a shift in the Commission's focus. This can be seen in the previous sub-chapter, where we tried to capture the most important hard and soft law initiatives of the Union. The Commission has begun to focus more on values, and thus on media freedom and pluralism. A partial change has already taken place with the arrival of Commissioner Neelie Kroes. From the information given above, the European Parliament has been the most active in defending media freedom, and has constantly called on the Commission to take a more active role in protecting the media and

¹⁴⁵ KILLEEN, M. EU Council lawyers confirm legal basis of Media Freedom Act. *Euractiv.com* [online]. 2023 [viewed 22 September 2023]. Available from: <https://www.euractiv.com/section/media/news/eu-council-lawyers-confirm-legal-basis-of-media-freedom-act/>.

¹⁴⁶ JOUROVÁ, V. In discussion Think Tank Európa ...

¹⁴⁷ KILLEEN, M. EU Council lawyers confirm ...

journalists. This is confirmed by Bilčík, who sees the EP's role as crucial in this context.¹⁴⁸ However, the Commission has long been cautious and worried about overstepping its powers. Since 2020, there has been a noticeable upward trend in the Commission's media policy activities, with a distinct emphasis on media freedom and pluralism. The Rule of Law Reports, the Recommendation on the protection, safety and empowerment of journalists in the form of soft law instruments and the proposal for a European Media Freedom Act reflect the Commission's view that a free and pluralistic media is a crucial component of democracy. The Union is also seeking to respond in this area to the new challenges posed by the fight against disinformation,¹⁴⁹ regulating social networks¹⁵⁰ or artificial intelligence.¹⁵¹

¹⁴⁸ Personal interview of the author with Vladimír Bilčík, 2.11. 2023, Appendix A.

¹⁴⁹ EUROPEAN COMMISSION. 2022 Strengthened Code of Practice on Disinformation – Factsheet. *European Commission* [online]. 2022 [viewed 30 October 2023]. Available from: <https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation-factsheet>.

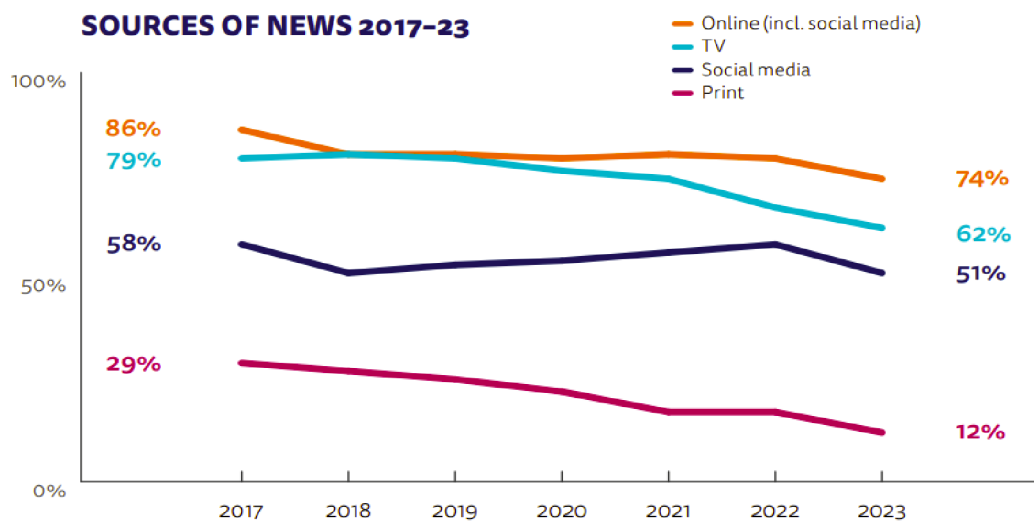
¹⁵⁰ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

¹⁵¹ Proposal for a Regulation of the European Parliament and of the Council: Laying Down Harmnised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts - 2021/0106(COD).

3 Media System of Slovakia

Slovakia has a dual system of public service and commercial broadcasting. Radio and Television of Slovakia (RTVS), the public service broadcaster, has a relatively strong market position. RTVS television news has long been perceived by society as the most objective.¹⁵² However, trust in the news media is one of the lowest in Slovakia within the EU, with only 27% of the population trusting the media. Only Hungary (25%) and Greece (19%) are worse off.¹⁵³

Figure 2: Source of news in Slovakia.



Source: Reuters Institute: Digital News Report 2023.

As shown in the table above, the readership of conventional newspapers is decreasing considerably, leading to financial losses. Consequently, the majority of newspapers have decided to shift their focus towards the digital environment and are gradually implementing paywalls. The willingness to pay for media on the internet is gradually increasing, but the rise is slow. More successful are media that have a long history (SME daily) or can convince readers (Denník N) that they offer something extra.¹⁵⁴ Television is the most-watched medium, with TV Markíza boasting the highest viewership percentage.¹⁵⁵ Significant players on the media market (especially on the television market) are Czech media, which can be derived from a

¹⁵² TASR. Prieskum: Najobjektívnejšie televízne spravodajstvo má opäť RTVS. *Teraz.sk* [online]. 2023 [viewed 30 October 2023]. Available from: <https://www.teraz.sk/slovensko/prieskum-najobjektivnejsie-televizne/745753-clanok.html>.

¹⁵³ NEWMAN, N. and others. *Reuters Institute: Digital News Report 2023*. Oxford: Reuters Institute. 2023, p. 24.

¹⁵⁴ ŽIGO, M. Analýza reakcie čitateľov na spoplatnené články v internetových médiách. *Univerzita Palackého* [online]. 2021 [viewed 30 October 2023]. Available from: <https://library.upol.cz/arl-upol/cs/csg/?repo=upolrepo&key=98218700720>.

¹⁵⁵ TASR. Prieskum: Markíza, Expres a Nový Čas sú naďalej najpopulárnejšie médiá. *Teraz.sk* [online]. 2023 [viewed 30 October 2023]. Available from: <https://www.teraz.sk/najnovsie/prieskum-markiza-expres-a-novy-cas/716921-clanok.html>.

common past and linguistic affinity.¹⁵⁶ In recent years, there has been a concerning trend of media concentration, where the market is dominated by a few major players. The financial group Penta holds a significant share of both online and print media, and its power continues to grow. In October of this year, Penta further increased its influence by acquiring the most widely read Slovak daily, *Nový Čas*. The News and Media Holding publishing house, owned by Penta, possesses additional media outlets such as the tabloid daily *Plus 1 deň*, the portal *Pluska.sk*, the weekly *Trend*, *Plus 7 dní*, and more. This may pose a concern for media pluralism in Slovakia.¹⁵⁷ Strong influence in Slovakia is also exerted by Central European Media Enterprises, JOJ Group and Ringier Slovakia Media.

The media systems in Central and Eastern European countries share common elements, but can be divided into three types based on their differences.¹⁵⁸ The table below gives an overview.

Table 1: Comparison of Central and Eastern European countries in the EU.

Country	Media System	Index
Bulgaria	the media are linked to politicians	71.
Hungary	the media are linked to politicians	72.
Romania	the media are linked to politicians	53.
Czech rep.	strong public service media, minimal foreign ownership	14.
Croatia	strong public service media, minimal foreign ownership	42.
Poland	strong public service media, minimal foreign ownership	57.
Slovenia	strong public service media, minimal foreign ownership	50.
Estonia	high level of foreign ownership, low political parallelism	8.
Latvia	high level of foreign ownership, low political parallelism	16.
Lithuania	high level of foreign ownership, low political parallelism	7.
Slovakia	high level of foreign ownership, low political parallelism	17.

Source: The author compiled based on information in BOSNAKOVA, D. and D. DANKOVA. *The Media in Eastern Europe and Reporters without Borders Index 2023*.

The table shows that countries with higher levels of foreign ownership have greater media freedom. However, this may not be the rule as the Czech Republic, a country with low level of

¹⁵⁶ URBÁNIKOVÁ, M. *Application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, Republic of North Macedonia, Serbia & Turkey in the Year 2022: Slovakia*. Fiesole: European University Institute, 2023, p. 6.

¹⁵⁷ STRUHÁRIK, F. MediaBrifing: Penta posilnila svoj atómový kufrík, nákup Nového Času nemohol protimonopolný úrad zastaviť. *DennikN.sk* [online]. 2023 [viewed 31 October 2023]. Available from: <https://lnk.sk/fzx3>.

¹⁵⁸ BOSNAKOVA, D. and D. DANKOVA. *The Media in Eastern Europe*. In: PAPATHANASSOPOULOS, S. and A. MICONI (eds.). *The Media Systems in Europe: Continuities and Discontinuities*, Berlin: Springer Cham, 2023, p. 163.

foreign ownership, ranks higher than Slovakia and Latvia. On the contrary, it is evident that countries with high media-political connections are among the countries with the lowest media freedom in the EU. So we can say that the characteristics of the media system have a great influence on media freedom, but they do not necessarily predetermine press freedom, which depends on the individual situation in each country.

The Slovak Republic's constitution ensures freedom of expression and the right to information in Article 26 concerning the media industry. All individuals possess the right to convey their opinions through words, writing, print, pictures, or other media. Moreover, the publication of press material does not require any approval; however, this exemption does not apply to broadcasting. Censorship is forbidden, but restrictions to freedom of expression and information dissemination may be put in place by law when measures are deemed necessary to safeguard the rights and freedoms of others, national security, public order, public health, and morals.¹⁵⁹ The media sector is regulated by several laws, with a significant change in 2022, when two key media laws were adopted - Act No. 264/2022 Coll. on Media Services and on Amendments and Additions to Certain Acts (Act on Media Services)¹⁶⁰ and Act No. 265/2022 Coll. on Publishers of Publications and on the Media and Audiovisual Register and on Amendments and Supplements to Certain Acts (Act on Publications).¹⁶¹ The Acts replaced the pre-existing legislation in this area - the Act on Broadcasting and Retransmissions,¹⁶² Act on Digital Broadcasting,¹⁶³ Act on Compulsory Copies¹⁶⁴ and Press Law.¹⁶⁵ These acts were previously enacted and frequently revised to adhere to the EU standards.¹⁶⁶ The new legislation has received a favourable assessment, resulting in Slovakia's advancement in media freedom rankings. Kamenec, who played a role in its development, shares a positive opinion of the laws. The primary reason for the improvement in media freedom is viewed as the effective execution of the directive and the inclusion of supplementary measures that surpass its requirements. However, he is argued that the laws had even greater potential, yet alterations in parliament and the government's hesitancy depreciated the laws' modernity from their original form.¹⁶⁷

¹⁵⁹ Slovenská republika. Ústava Slovenskej republiky - 460/1992 Zb., 1992.

¹⁶⁰ Act No. 264/2022 Coll., on Media Services.

¹⁶¹ Act No. 265/2022 Coll., on Publications.

¹⁶² Act No. 308/2000 Coll., on Broadcasting and Retransmission.

¹⁶³ Act No. 220/2007 Coll., on Digital Broadcasting.

¹⁶⁴ Act No. 212/1997 Coll., on Compulsory Copies of Periodical Publications.

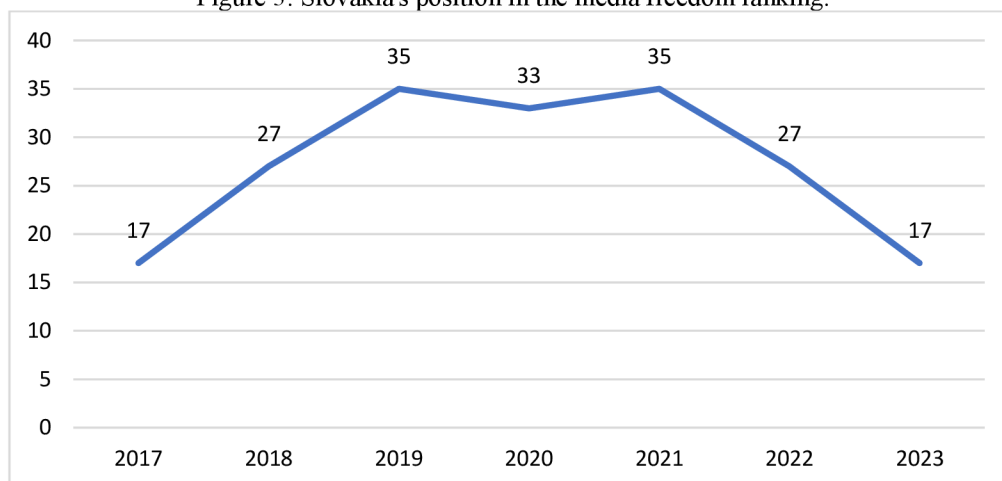
¹⁶⁵ Act No. 167/2008 Coll., on Periodicals and Agency News Services and on Amendment and Supplementing of Certain Acts (Press Law) provides a protection of sources and content of information.

¹⁶⁶ More about the new acts: RYBANOVÁ, L. Nové mediálne zákony. *Pravnenoviny.sk* [online]. 2023 [viewed 31 October 2023]. Available from: <https://www.pravnenoviny.sk/nove-medialne-zakony>.

¹⁶⁷ Personal interview of the author with Tomáš Kamenec, 6.11. 2023, Appendix C.

In the following section, we have focused on the situation of media freedom in the political context since 2018, as it is relevant for the later analysis of soft law instruments, in which the Union has mainly focused on undermining media freedom. Media freedom in Slovakia has been in crisis in recent years. A turning point was the murder of investigative journalist Ján Kuciak and his fiancée in 2018. Immediately after the murder, it was revealed that Kuciak had worked on serious topics of tax fraud and had written about the Italian mafia's links to some politicians.¹⁶⁸ Several of Kuciak's articles covered the then most powerful political party, Smer-SD, and Prime Minister Robert Fico. Following the journalist's killing, the civic initiative Za slušné Slovensko led an extensive wave of protests, with the Slovakian public expressing their anger towards corruption in high-ranking institutions, as well as the government officials' collusion with the mafia.¹⁶⁹ After public pressure, Robert Fico and the entire government decided to abdicate.¹⁷⁰ Fico had verbally attacked journalists, referring to them as 'dirty anti-Slovak prostitutes' back in 2016.¹⁷¹ Slovakia has dropped from 17th to 27th place in the Reporters Without Borders media freedom rankings after a turbulent period in 2018.¹⁷²

Figure 3: Slovakia's position in the media freedom ranking.



Source: The author compiled based on Reporters without Borders Index.

¹⁶⁸ SME.SK. Kuciak robil na prepojeniach talianskej mafie s politikmi. *Sme.sk* [online]. 2018 [viewed 31 October 2023]. Available from: <https://domov.sme.sk/c/20769356/jan-kuciak-vrazda-novinar-maria-troskova-robert-fico-taliansko-mafia.html>.

¹⁶⁹ TÓDOVÁ M. and R. GEHREROVÁ. Organizátori veľkého pochodu za Jána Kuciaka zvolali na piatok nové zhromaždenie. *DenníkN.sk* [online]. 2018 [viewed 31 October 2023]. Available from: <https://dennikn.sk/1050241/organizatori-velkeho-pochodu-za-jana-kuciaka-zvolali-novu-demonstraciu/?ref=list>.

¹⁷⁰ TASR. VIDEO: R. Fico podal demisiu na post premiéra, nahradil ho Pellegrini. *Teraz.sk* [online]. 2018 [viewed 31 October 2023]. Available from: <https://www.teraz.sk/slovensko/fico-podal-demisiu-na-post-predsedu-vla/314016-clanok.html>.

¹⁷¹ SPECTATOR. Fico to journalist: We are not on the same level. *The Slovak Spectator* [online]. 2016 [viewed 1 August 2023]. Available from: <https://spectator.sme.sk/c/20394511/fico-to-journalist-we-are-not-on-the-same-level.html>.

¹⁷² Reporters without Borders – Index (2018). Available from: <https://rsf.org/en/index?year=2018>.

Despite the 2020 parliamentary elections being won by the opposition and a significant change in Slovakia's political situation, there were further attacks on journalists and media personnel. Prime Minister Igor Matovič (OLANO/Slovakia)¹⁷³ continued his pattern of verbal insults and placing the blame on the media for his decreasing popularity. “*Denník N, SME [...] and a lot of other minions, for whom hatred of OLANO and especially Matovič has been the engine of their degenerate hatred for the last three years, can be very satisfied with their performance,*” was one of Matovič's statements.¹⁷⁴ Criticism of the media by politicians affects the mood of society. As previously noted, trust in the media in Slovakia is among the lowest in the EU. According to the Reuters Institute, Slovakia exhibits a strong correlation between higher criticism of the media by politicians and low public trust in the media.¹⁷⁵

The fact that Slovakia is not an ideal and completely safe environment is also proven by a survey by the Investigative Centre of Ján Kuciak, which found that up to two-thirds of the 400 journalists surveyed in Slovakia faced threats or attacks in 2022. Direct verbal attacks are the most frequent, especially attacks in the online environment.¹⁷⁶ The information presented was confirmed by the case of Slovak radio moderator, Marta Jančárová. It arose when RTVS refused to allow opposition politician Ľuboš Blaha of Smer-SD to appear on the programme after he appeared unannounced, while another politician from the aforementioned party was expected to appear on the show. The moderator received various threats of physical and sexual assault against her and her family through electronic mails and phone calls, after a deluge of hatred cascaded on social media.¹⁷⁷ Despite the above-mentioned events and the fact that the situation with regard to media freedom is far from ideal, Slovakia is once again rising in the media freedom rankings and is one of the best countries in the world. Reporters Without Borders cited several positive trends, including progress in the investigation into the murder of Ján Kuciak, the adoption of important acts (in 2022) that strengthen legal protection of the confidentiality of journalistic sources, as well as transparency and funding of the media. The protection of sources and the right to information are now extended to online media, where

¹⁷³ In 2023, the OLANO party was renamed to Slovensko (Slovakia). For the clarity of the paper we will continue to use the original abbreviation OLANO.

¹⁷⁴ JABŮRKOVÁ, N. Igor Matovič pokračuje v útokoch na novinárov. Nič sa nevyrieši, pokiaľ bude celá vláda ticho, reaguje politológ. *Noviny.sk* [online]. 2023 [viewed 1 November 2023]. Available from: <https://plus.noviny.sk/757053-igor-matovic-pokracuje-v-utokoch-na-novinarov-nic-sa-nevyriesi-pokiaľ-bude-cela-vlada-ticho-reaguje-politolog>.

¹⁷⁵ NEWMAN, N. and others. *Reuters Institute: Digital News Report 2023 ...*, p. 41.

¹⁷⁶ ICJK. Výskum: Cítia sa slovenskí novinári bezpečne?. *ICJK.sk* [online]. 2023 [viewed 1 November 2023]. Available from: [https://www.icjk.sk/229/Výskum-Cítia-sa-slovenskí-novinári-bezpečne](https://www.icjk.sk/229/Výskum-Cítia-sa-slovenskí-novinári-bezpečne?).

¹⁷⁷ CPJ. Slovak radio host Marta Jančárová receives death threats following bias allegation. *CJP.org* [online]. 2023 [viewed 1 November 2023]. Available from: <https://cpj.org/2023/03/slovak-radio-host-marta-jancarova-receives-death-threats-following-bias-allegation/>.

these rights were not previously guaranteed by law. All media outlets are required to register as public sector partners, regardless of whether they do business with the state or not. This will allow the public to know their real owners. They will also have to show who funds them. They will now publish a list of all investors and donors who have given them more than €2,000 during the year.¹⁷⁸ Other positives include the replacement of the former Director General of RTVS, which saw the termination of more than 30 journalists, and the adoption of an amendment to the Act on Freedom of Information, which prohibits lawsuits against journalists for disclosing information obtained through freedom of information requests.¹⁷⁹ However, there have also been some recent negative changes in relation to media policy. For example, several are concerned about the independence of the public broadcaster RTVS after the abolition of licence fees in 2023 and the introduction of a new state-funded system of financing RTVS.¹⁸⁰

In September 2023, the Smer-SD party won the early parliamentary elections and Robert Fico became Prime Minister again. It forms a coalition with the Hlas-SD party (the core of the party is made up of Smer-SD defectors) and the Slovak National Party (which was also part of the coalition with Smer in 2016-2020). There are already concerns about the direction that media policy, and especially media freedom, will take in the coming years. Filip Struhárik summarises these succinctly in an article in which he lists a number of possible negative trends. These include fears of the control of the public media, ongoing assaults on journalists or the control of the media regulator. Also, all coalition parties have announced that they want to change recently adopted media laws, which have been perceived positively, or there is a fear of blocking European regulations.¹⁸¹ The first restrictions of the media can be seen right after the elections, for instance, the Slovak National Party does not allow journalists from Denník N, the daily SME and the Aktuality.sk portal to attend its press conference,¹⁸² and these media also have restricted access to the Office of the Government of the Slovak Republic.

The chapter's data demonstrate that the Slovak media system features significant foreign ownership and limited political parallelism. Slovakia ranks as the 17th best country worldwide

¹⁷⁸ Act No. 265/2022 Coll., on Publications.

¹⁷⁹ RSF. Slovakia: Fifth anniversary of Kuciak and Kusnirova's killing marked by fragile press freedom progress. *RSF.org* [online]. 2023 [viewed 1 November 2023]. Available from: <https://rsf.org/en/slovakia-fifth-anniversary-kuciak-and-kusnirova-s-killing-marked-fragile-press-freedom-progress>.

¹⁸⁰ NEWMAN, N. and others. *Reuters Institute: Digital News Report 2023* ..., p.96.

¹⁸¹ STRUHÁRIK, F. MediaBrifing: Osem spôsobov, ako môže Ficova vláda škodiť médiám. *DenníkN.sk* [online]. 2023 [viewed 1 November 2023]. Available from: https://dennikn.sk/3648885/mediabrifing-osem-sposobov-ako-moze-ficova-vlada-skodit-mediám/?trk=feed_main-feed-card_feed-article-content.

¹⁸² ŠÁLEK, M. Danko nepustil Denník N a ďalšie dve médiá na tlačovku, novinári zostali pred vrátanicou (video+foto). *SITA.sk* [online]. 2023 [viewed 1 November 2023]. Available from: <https://sita.sk/danko-nepustil-dennik-n-a-dalsie-dve-media-na-tlacovku-novinari-zostali-pred-vratnicou-videofoto/>.

concerning media freedom. However, the media therein confronts multiple difficulties, such as frequent political assaults on journalists, the related low public trust in the objectivity of the media, and growing media concentration that undermines pluralism. In 2022, significant changes to media policy were adopted through the new media laws (Act on Media Services and Act on Publications), which replaced the previous legislation. This regulatory framework has been received positively and is also credited with promoting media freedom.

4 Europeanization of the Slovak Media Policy

The fourth chapter is crucial for fulfilling the thesis objective, demonstrating the impact of the European Union on media policy in Slovakia. The chapter is organised into four parts - Hard Law, Soft Law, Discussion and EMFA. The first part - Hard Law – we examined the Audiovisual Media Services Directive, which serves as the foundation of existing EU media policy. Unlike non-binding guidelines, the impact of Union documents that are legally binding is unmistakable since member states, in this instance the AVMS Directive, are compelled to enact them. Nonetheless, challenges have arisen and still persist. Therefore, this section has concentrated on the pivotal factors that have affected Slovak media regulations and examines the AVMS Directive's implementation in Slovakia. We briefly discussed the impact of the Directive on Slovak media policy upon the country's accession to the EU, as well as its amendments. However, the most of our attention was paid to the most recent amendment of the Directive, which was adopted in 2018. Furthermore, it is important to note that media policy can also be affected by other legally binding documents that are not specifically related to the media. The following section pertains to soft law instruments. As mentioned in the introduction, we have focused most on the impact of these instruments, as they have been used most in EU media policy in recent years. Also, the impact of the Union's instruments is not as clear-cut here as it is for hard law instruments. We focused in particular on the Rule of Law Reports and the EC Recommendations on journalists' safety.

In the third section, we summarised our findings regarding the effect of both EU hard law and soft law instruments on the media policy of Slovakia. Our analysis drew from examined documents and responses from interviewees. In the last part we looked at the most debated EU initiative at the moment - namely the proposed European Media Freedom Act.

The individual parts of the chapter have been analysed on the basis of literature, EU documents and interviews with experts and leaders in the field of media policy and legislation. We interviewed Radoslav Kutaš (former State Secretary of the Ministry of Culture of the Slovak Republic, who participated in the preparation of the new media acts),¹⁸³ Ľuboš Kukliš (16 years worked in RVR/RMS, but also in other regulatory bodies),¹⁸⁴ Vladimír Bilčík (MEP and shadow rapporteur for the proposed EMFA),¹⁸⁵ Tomáš Kamenec (advocate, specialising in

¹⁸³ Personal interview of the author with Radoslav Kutaš, 9.11. 2023, Appendix D.

¹⁸⁴ Personal interview of the author with Ľuboš Kukliš, 9.11. 2023, Appendix E.

¹⁸⁵ Personal interview of the author with Vladimír Bilčík, 2.11. 2023, Appendix A

media law)¹⁸⁶ and Tomáš Kozák (Director General of the European Affairs Section at the Ministry of Foreign and European Affairs of the Slovak Republic).¹⁸⁷ We requested interviews with the current staff of the RMS and the Media Law and Audiovisual Section of the Ministry of Culture of the Slovak Republic. However, they either declined due to time constraints or did not respond to our inquiries.

4.1 Hard Law

Slovakia had to fulfil individual requirements in the accession negotiations before joining the Union, which were translated into the so-called chapters. One of these chapters was Culture and Audiovisual Policy. The main point in this case was the creation of appropriate conditions for the implementation of the Television without borders Directive.¹⁸⁸ This was achieved by Slovakia in 2001.¹⁸⁹ During the pre-accession period, Slovakia and its representatives responded to Europeanization by applying the logic of appropriateness and the logic of consequences. The country was cognizant of the significant advantages of joining the EU, alongside a desire to belong and integrate into the modern community that the Union represented.

As soft law instruments have only started to be significantly used in media policy since 2020, the situation in Slovakia has been affected in the following years mainly by the legally binding activities of the EU. Most of all, it was definitely the amendments to the AVMSD.¹⁹⁰ Each amendment had to be implemented into law, with the most prominent points being the regulation of advertising, but also the regulation of content and the protection of certain affected groups.¹⁹¹ The latest amendment to the AVMSD (2018/1808) entered into force in December 2018, with states required to implement it by 19 September 2020. However, Slovakia had a problem with its implementation and was even taken to the CJEU by the EC in May 2022¹⁹² for non-implementation.¹⁹³ The late implementation was caused by external factors, such as the Ministry of Culture dealing with the pandemic and the war in Ukraine. Additionally, the

¹⁸⁶ Personal interview of the author with Tomáš Kamenec, 6.11. 2023, Appendix C.

¹⁸⁷ Personal interview of the author with Tomáš Kozák, 3.11. 2023, Appendix B.

¹⁸⁸ Later renamed the Audiovisual Media Services Directive and extended to other areas.

¹⁸⁹ Regular Report (2001) from the Commission on Slovakia's Progress Towards Accession, p. 13.

¹⁹⁰ Personal interview of the author with Tomáš Kamenec ... and Personal interview of the author with Ľuboš Kukliš ...

¹⁹¹ Personal interview of the author with Tomáš Kamenec ...

¹⁹² On the contrary, Slovakia was one of the three countries that managed to implement the AVMSD adopted in 2007 on time.

¹⁹³ MEIJER, B. Eu sues five countries over failure to implement standards for audiovisual media. *Reuters.com* [online]. 2022 [viewed 20 November 2023]. Available from: <https://www.reuters.com/world/europe/eu-sues-five-countries-over-failure-implement-standards-audiovisual-media-2022-05-19/>.

ambition to comprehensively recodify media policy necessitated more time.¹⁹⁴ The transposition of the Directive in Slovakia was achieved only in the summer of 2022 with the adoption of Act No. 264/2022 Coll. on Media Services.¹⁹⁵ As the recent legislation has recodified the entire media law, the latest amendment of the AVMSD has impacted the entire media policy in Slovakia.¹⁹⁶ Once again, it is evident that the logic of appropriateness and the logic of consequences complement each other. Slovakia enjoys the advantages of a single market, but ultimate non-implementation of the Directive would result in the country facing sanctions. Furthermore, Slovakia has enacted advanced media regulations that exceed the Union's demands, indicating the country's aspirations to be at the forefront of modern media policy.

The biggest change in the revision of the Directive was that it brought video distribution platforms into the regulatory framework. However, the Act on Media Services went even further by including other things that relate to the online space, such as illegal content and how to deal with it.¹⁹⁷ The most significant impact of Europeanization through the amended AVMSD was in the new Slovak law on media services in the area of marketing communications, which was liberalised and marked a major shift for broadcasters.¹⁹⁸ There have also been big changes for TV broadcasters, whereby they can be more flexible in a maximally competitive market. *"The time when the original AVMSDs were adopted, linear television was the absolute queen of the world. However, those days are gone and the competitive pressure from streaming services or other platforms is high."*¹⁹⁹ The European Union has also Europeanized Slovak media legislation concerning audience protection. According to Kamenec, there has been an alignment of regulations between traditional linear TV services and those of other online platforms. He maintains that reconciling this discrepancy is vital as online portals, such as Youtube, can distribute alarming content without any oversight. The EU's interest in implementing limits and regulations in this area is important, as failure to do so presents a significant threat to democracy.²⁰⁰

¹⁹⁴ Personal interview of the author with Radoslav Kutaš ...

¹⁹⁵ For more information on the Act, see [chapter 3.1](#).

¹⁹⁶ Personal interview of the author with Radoslav Kutaš ...

¹⁹⁷ Personal interview of the author with Ľuboš Kukliš, ...

¹⁹⁸ Personal interview of the author with Tomáš Kamenec ...

¹⁹⁹ Ibid.

²⁰⁰ Personal interview of the author with Tomáš Kamenec ...

4.2 Soft Law

In the section about soft law instruments, our focus is on the Rule of Law Reports issued by the European Commission since 2020. As we mention in [chapter 2.3](#), a significant part is devoted to media freedom and pluralism. However, we also looked at other soft law instruments that have been used in the context of Slovakia and the media.

In the **first Rule of Law Report**, the Commission recognises that Slovakia has a sound legal framework under the Constitution and secondary law to protect freedom of expression, the right of access to public information and the establishment of structures to ensure media pluralism.²⁰¹ However, the Commission also pointed out a number of shortcomings. The biggest concern, with reference to the Media Pluralism Monitor (MPM),²⁰² is the absence of a systematic regulatory framework to ensure transparency of media ownership.

Act on the Register of Public Sector Partners²⁰³ allows for the indirect disclosure of ultimate owners of major media outlets, media that do not do business with the state or do not receive public funding are not listed therein. While both the Council for Broadcasting and Retransmission and the Ministry of Culture gather partial information on the owners of traditional media, they lack the legal tools to obtain information with regard to ultimate owners and beneficiaries.²⁰⁴

The Commission highlighted the absence of a legal framework concerning political independence in media. Notably, the problem is most severe among local newspapers, which are frequently financed by local municipal authorities and utilised for their promotion.²⁰⁵ However, the EC adds that major newspapers and news agencies have resisted political pressure.²⁰⁶ The Commission identified an issue with the lack of legal regulations surrounding the allocation of state advertising. The Broadcasting and Retransmission Act does not provide a clear definition of 'state advertising,' making it challenging to differentiate from private

²⁰¹ 2020 Rule of Law Report: Country Chapter on the rule of law situation in Slovakia. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0324>, p. 1.

²⁰² BROGI, E. and others. *Monitoring Media Pluralism in the Digital Era: Application of the Media Pluralism Monitor in the European Union, Albania, Turkey in the years 2018-2019*. Fiesole: European University Institute, 2020.

²⁰³ Act no. 315/2016.

²⁰⁴ 2020 Rule of Law Report ..., p. 10.

²⁰⁵ We can point for example to the local newspaper Pezinčan - ŽIGO, M. Pezinčan skončil medzi najhoršími. Čo na to primátor Oliver Solga?. *SME.sk* [online]. 2018 [viewed 2 November 2023]. Available from: <https://mypezinok.sme.sk/c/20934500/pezincan-v-rebrickoch-medzi-najhorsimi.html>.

²⁰⁶ 2020 Rule of Law Report ..., p. 10.

advertising.²⁰⁷ The Commission notes the persistence of harassment of journalists, including verbal attacks, negative communication campaigns against journalists and surveillance of journalists. It also draws attention to the act,²⁰⁸ that gives politicians the right to reply if they believe an article or report has offended their honour or dignity.²⁰⁹

In 2020, when this report was published, Slovakia held parliamentary elections that significantly changed the political forces in the country.²¹⁰ The Government's Programme Statement for 2021-2024, published in April 2021, also includes media policy. In doing so, the new government declares that it wants to change several aspects of this policy, which are also criticised in the Commission's report. The government has committed itself to prepare a fundamental recodification of media law to "*ensure a functioning pluralistic media market with free, independent, transparent and competitive media.*" The government has also committed to bring forward legislation that would correspond with the proposed AVMS Directive and regulate transparency of media ownership.²¹¹

The second Rule of Law Report from 2021 highlights the independence of the Council for Broadcasting and Retransmission, although it adds that some political appointments are problematic. According to the EC, the resources allocated to the Council are adequate to fulfil its tasks.²¹²

Table 2: Approved budget of the RVR/RMS (in €).

	2012	2014	2016	2018	2020	2022
Revenue	185.111	340.000	350.000	250.000	250.000	100.000
Expenses	1.190.487	1.114.864	1.120.323	1.402.536	1.632.573	1.566.888

Source: The author compiled from the annual reports of the RVR/RMS.

EC with reference to MPM 2021²¹³ again notes the high risk of transparency in the ownership structure due to the lack of legislation. However, Slovakia is expected to adopt an amendment

²⁰⁷ 2020 Rule of Law Report ..., p. 10.

²⁰⁸ Act no. 313/2019.

²⁰⁹ 2020 Rule of Law Report ..., p. 11.

²¹⁰ We write about this in [chapter 3](#).

²¹¹ Programové vyhlásenie vlády Slovenskej republiky na obdobie rokov 2021 – 2024. Available from: https://www.vlada.gov.sk/share/uvsr/pvvsr_2020-2024.pdf, p. 128.

²¹² 2021 Rule of Law Report: Country Chapter on the rule of law situation in Slovakia. Available from: <https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:52021SC0727>, p. 16.

²¹³ BLEYER-SIMON, K. and others. *Monitoring Media Pluralism in the Digital Era: Application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia Turkey in the year 2021*. Fiesole: European University Institute, 2022.

to the Act on Broadcasting and Retransmission by the end of September 2021,²¹⁴ which will solve this problem.²¹⁵ As regards the dissemination of state advertising, this area remains unregulated.²¹⁶ The report reprimanded the persistent verbal assaults on the media by politicians from both the government and the opposition.²¹⁷ Journalists have often been blamed by politicians for undermining government action during the COVID-19 pandemic or, conversely, several opposition politicians have blamed journalists for scaremongering.²¹⁸ Overall, studies have confirmed that a number of countries have experienced attacks and a weakening of media freedom during the pandemic.²¹⁹ The proposed legislation aimed at enhancing journalists' protection has been delayed. While the legislation is expected to reinforce their position, it has not been implemented yet. Furthermore, there has been no introduction of any initiatives to assist the media in mitigating the detrimental effect of the pandemic on their sector.²²⁰

Table 3: Situation in the areas most criticised in 2020.

Area	Situation
transparency of media ownership	no change, but legislation is forthcoming
legal safeguards for political independence	no change
framework for the regulation of state advertising	no change
harassment of journalists	no change, but a willingness to change the situation

Source: The author compiled based on the Rule of Law Report 2020 and 2021.

It is evident that each year, the Commission extends its reports and examines in more detail the positive and negative aspects of individual countries. The Commission has also added specific recommendations in individual areas. In **the third report**, it appreciates the adoption of the Act on Media Services and the Act on Publications in 2022. These, according to the EC, promote media pluralism and improve the previously criticised transparency of media ownership.²²¹

²¹⁴ However, as we already know from the theoretical part, the amendment of the law was adopted only in 2022.

²¹⁵ 2021 Rule of Law Report ..., p. 16.

²¹⁶ Ibid., p. 1.

²¹⁷ Ibid., p. 16.

²¹⁸ E.g. AKTUALITY. Koronavírus: Matoviča zaočkovali Sputnikom, útočil na ŠÚKL i médiá. *Aktuality.sk* [online]. 2021 [viewed 20 November 2023]. Available from: <https://www.aktuality.sk/clanok/ymc62e5/koronavirus-matovica-zaockovali-sputnikom-utocil-na-sukl-i-media/>.

²¹⁹ REPUCCI, S. and A. SLIPOWITZ. Democracy under Lockdown: The Impact of COVID-19 on the Global Struggle for Freedom. *Freedom House* [online]. 2020 [viewed 1 August 2023]. Available from: https://freedomhouse.org/sites/default/files/2020-10/COVID-19_Special_Report_Final_.pdf, p. 7.

²²⁰ 2021 Rule of Law Report ..., p. 17.

²²¹ 2022 Rule of Law Report: Country Chapter on the rule of law situation in Slovakia. Available from: <https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=SWD:2022:525:FIN&from=EN>, p. 1.

The new Act on Media Services²²² renamed the Council for Broadcasting and Retransmission to the Council for Media Services, and the EC expressed the expectation that the number of staff would increase. This is due to new additional tasks in the areas of research, contacts with digital media platforms or media literacy. The independence of the Council is guaranteed, but purely political nominations are still possible, as candidates are selected by Parliament.²²³ The aforementioned Act on Publications has strengthened the transparency of media ownership, including for end-users of the benefits. However, these rules were also laid down in the AVMS Directive and Slovakia was therefore obliged to implement the Directive.²²⁴

The concentration of news media in Slovakia is deemed as a high-risk zone, particularly with regards to the ownership structure in the television and media industry.²²⁵ The EC outlined concerns about the politicisation of the appointment and removal of directors and board members in public service media. Also referring to MPM 2022, it pointed to a high-risk area in relation to the law on Radio and Television of Slovakia, which does not provide for fair and transparent procedures to ensure adequate funding of RTVS. In this context, the Commission made one of two recommendations concerning the media sector - to reinforce regulations and mechanisms that favour the editorial autonomy of public service broadcasters in line with European norms.²²⁶ Slovakia was also criticised for again delaying the adoption of proposed legislation that would have strengthened the protection of journalists, as well as the adoption of criminal defamation reform. The EC noted that verbal attacks on journalists have continued and even worsened. There has also been no programme to support the news media and mitigate the impact of the COVID-19 pandemic on them.²²⁷ The second of the recommendations in the area of media was that the country should make progress in establishing legislative and other safeguards to improve the safety of journalists, including reform of the defamation law, taking into account European principles.²²⁸

²²² This Act was also adopted based on the need to implement the revised AVMS Directive.

²²³ 2022 Rule of Law Report ..., p. 18.

²²⁴ *Ibid.*, p. 19.

²²⁵ *Ibid.*

²²⁶ *Ibid.*, p. 2.

²²⁷ *Ibid.*, p. 19.

²²⁸ *Ibid.*, p. 2.

Table 4: Situation in the areas most criticised in 2021.

Area	Situation
transparency of media ownership	adoption of legislation
RMS political nominations	no change
framework for the regulation of state advertising	progress ²²⁹
harassment of journalists	no change, deterioration of the situation
mitigation of the impact of COVID-19	no change

Source: The author compiled based on the Rule of Law Report 2021 and 2022.

In its **fourth Rule of Law Report**, the Commission continues to recognise the independence of the RMS, although it again adds that there may be purely political nominations of candidates as members of the RMS. Following the aforementioned legislative changes, media ownership transparency is seen as a low-risk area, with all media required to provide information on their end-users through a public register. There has been a slight progress in relation to the concentration of the news media, where the RMS does not have to give its approval to a market operation if it would lead to a fundamental erosion of pluralism in the country. Nevertheless, the MPM still considers this area to be at high risk, with *"audience concentration in the newspaper, audiovisual and radio sectors remaining very high."*²³⁰

Slovakia has also made progress in strengthening editorial independence and independent management of public service media. The Act on Media Services has brought several innovations - the election of the Director General of RTVS is public and is not conducted by secret ballot in the National Assembly of the Slovak Republic; the parliamentary committee in charge establishes an advisory commission for the selection procedure. However, there is still concern about the politicisation of the appointment and dismissal of directors and board members. There are also concerns about the financing of RTVS following the abolition of licence fees. There has also been some progress on guarantees to improve the freedom of the media and journalists. The Commission appreciated that an amendment to the defamation law was tabled in Parliament to reduce the penalties, which were among the highest in the EU.²³¹ It should be added here, however, that the vote on this amendment was postponed in Parliament at the 2nd reading and Parliament did not meet further. So the amendment has not been approved and, as there is a new parliament in Slovakia, it cannot even discuss the old points. However, the Rule of Law Report was one of the reasons why Slovakia tried to amend this issue.²³²

²²⁹ More information in: Personal interview of the author with Radoslav Kutaš, 9.11. 2023, Appendix D.

²³⁰ 2023 Rule of Law Report: Country Chapter on the rule of law situation in Slovakia, 22.

²³¹ Ibid., pp. 22-23.

²³² Personal interview of the author with Radoslav Kutaš ...

Greater protection of media freedom can also be seen in the ranking by Reporters Without Borders, with Slovakia moving from 35th place in 2019 to 17th place in 2023.²³³ However, there are still many attacks on journalists, as well as criminal defamation cases against journalists and a growing number of SLAPP lawsuits.²³⁴

Table 5: Situation in the areas most criticised in 2022.

Area	Situation
RMS political nominations	no change
number of RMS employees	increase from 32 to 49
concentration of the news media	slight shift, but insufficient
politicisation of appointments and dismissals in the public media	no change
editorial independence of RTVS	strengthened legislation
funding of RTVS	rather a deterioration of the situation
harassment of journalists	progress, but still problems
defamation law	the amendment of the law has been postponed

Source: The author compiled based on the Rule of Law Report 2022 and 2023.

According to Kozák, one of the biggest initiatives that helped to improve the state of media freedom in Slovakia is the **EC Recommendation 2021 on guaranteeing the protection, safety and empowerment of journalists and other media professionals in the European Union**.²³⁵ This is a set of 30 more specific measures. In September 2023, Reporters Without Borders came out with an article that member states have done little to implement these recommendations. One of the countries they focused on was Slovakia. The Slovak authorities said they were preparing procedures to protect journalists during protests, a review of the training of judges and the creation of a permanent working group to coordinate and evaluate the effectiveness of these measures.²³⁶ As mentioned in [chapter 2.3](#), Member States were asked to publish a report 18 months after the Recommendation was issued, outlining how each Recommendation had been implemented. The Ministry of Culture of the Slovak Republic has submitted such a report.

²³³ See the chart in [chapter 3](#).

²³⁴ 2023 Rule of Law Report ..., p. 23.

²³⁵ Personal interview of the author with Tomáš Kozák ...

²³⁶ RSF, Member states must do more to implement European Commission's recommendation on journalists' safety. *RSF.org* [online]. 2023 [viewed 20 November 2023]. Available from: <https://rsf.org/en/member-states-must-do-more-implement-european-commissions-recommendation-journalists-safety>.

Table 6: Adoption of the recommendations from the EC in 2021.

Implementation status	Number of recommendations
Fulfilled	4
Partly	18
Unfulfilled	6
Ambiguous	2

Source: The author compiled based on report from the Ministry of Culture.

We have summarised the manner in which the individual recommendations have been taken up in an overview table, and it can be seen that Slovakia has made progress towards protecting journalists, but there are still many areas that need to be improved.²³⁷ The impact of this initiative on Slovakia is confirmed not only by Kozák's words, but also by the Ministry of Culture of the Slovak Republic itself, which informed that these recommendations were an important source for the adopted Act on Media Services.²³⁸

4.3 Discussion

On the basis of the above, it can be concluded that the AVMSD has had the most significant impact on the media policy in Slovakia. This is particularly evident in relation to the most recent amendment, where Slovakia opted to create entirely new legislation rather than further amend existing media laws to implement the Directive. It can therefore be concluded that the AVMSD has had a profound impact and has significantly Europeanized the entire Slovak media policy. Slovakia has chosen the path of full modernisation of media law, even at the cost of late implementation of the Directive. Thus, not only the AVMSD, but also some of the planned provisions of the EMFA and EU soft law instruments have been transposed into the new Slovak legislation, as we will point out in the next part of the paper.²³⁹ However, modern provisions that were not covered by any EU instruments have also been transposed into media laws, such as the provisions on illegal content in the online space.²⁴⁰ An interesting finding was that the Act on Media Services was shaped by a total of twelve directives, some of which had only

²³⁷ Predbežná informácia k plneniu cieľov Odporúčania Komisie (EÚ) 2021/1534 zo 16. septembra 2021 k zaručeniu ochrany, bezpečnosti a posilneniu postavenia novinárov a iných pracovníkov médií v Európskej únii. Available from: <https://rokovania.gov.sk/RVL/Material/28819/1>.

²³⁸ MC. Ministerstvo kultúry dnes informovalo vládu SR o tom, ako prebieha implementácia opatrení pre ochranu novinárov. *culture.gov.sk* [online]. 2023 [viewed 20 November 2023]. Available from: <https://lnk.sk/obz8>.

²³⁹ Personal interview of the author with Radoslav Kutaš ...

²⁴⁰ Personal interview of the author with Ľuboš Kukliš ...

partial relevance to broadcasting.²⁴¹ For instance, the Directive establishing a Community code relating to medicinal products for human use, the Directive on infant formulae, the Directive laying down quality and safety standards for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells, and the Directive dealing with the presentation and sale of tobacco products.²⁴² Some parts of the regulations have also entered Slovak legislation. For example, the regulation on sanctions for the war in Ukraine, where the transmissions of Russian broadcasters were banned, and also the regulation on the prevention of the dissemination of terrorist content, where the coordinating competence was given to the RMS within the framework of broadcasting, entered into our legislation.²⁴³ The Act on Media Services should be amended in the near future, as the Digital Services Act (DSA) was not yet envisaged at the time of its drafting. However, this concerns mainly large online platforms, which will have an indirect impact, and the EC will be the regulator here, so this directive will not have such a significant impact on Slovak media policy.²⁴⁴

It can be deduced from the preceding information in the hard law sub-chapter that Slovakia has reacted to the influence of Europeanization on EU documents with binding legal force using both the logic of appropriateness and the logic of consequences. The presence of the logic of consequences is evident in the implementation of legally binding EU documents, as states run the risk of being taken to the ECJ by the European Commission for infringement, which can lead to sanctions. On the contrary, Slovakia is aware of the benefits of EU membership. In this case, we can also observe the presence of logic of appropriateness in the reaction of Slovak actors. As stated in the explanatory memorandum of the draft of the new Slovak media legislation, the creation of the new acts was mainly prompted by the need to implement the AVMSD.²⁴⁵ However, the Ministry of Culture, the Government of the Slovak Republic, in cooperation with experts, used this opportunity to completely recodify and modernise the entire Slovak media policy. This has resulted in laws that go beyond the requirements of the AVMSD, while also incorporating elements of soft law instruments. Slovakia thus wants to be in line with EU standards and to be one of the most modern countries in the field of media regulation. This is also confirmed by the statement of the then Minister of Culture Natália Milanová (OLANO)

²⁴¹ Personal interview of the author with Radoslav Kutaš ...

²⁴² More information and transposed directives in the appendix of Act No. 264/2022 Coll.

²⁴³ Personal interview of the author with Radoslav Kutaš ...

²⁴⁴ Personal interview of the author with Ľuboš Kukliš ...

²⁴⁵ Dôvodová správa k návrhu zákona o mediálnych službách, 2021. Available from: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=502806>, p. 1.

–“I am very pleased that Slovakia is currently one of the countries that can serve as an inspiration for the European Union in the field of media regulation.”²⁴⁶

As already mentioned, the influence of the European Union in Slovakia has also been realised through soft law instruments. All our respondents perceive soft law instruments in the field of media policy as very positive and useful. In the first Rule of Law Report, the issue of media freedom and pluralism was less covered than the other aspects surveyed, but each subsequent report has provided a more comprehensive analysis of the media landscape. This is appreciated by Bilčík, who was initially critical of these reports, mainly because of the EC's lesser involvement in this area.²⁴⁷ In the case of the Rule of Law Reports, respondents appreciate that the EC produces reports on a country-by-country basis and consults with them regularly and at a high level on specific issues.²⁴⁸ We can therefore observe the Member States' impact in the final form of the reports. This helps to make the reports issued more accurate and reflective of the real situation in the countries. As a result, countries, in our case Slovakia, are more willing to take on board individual recommendations. We have seen an increase in the impact of the implementation or improvement of specific areas in the Rule of Law Reports. While the analysis of the 2021 Report showed that Slovakia did not improve in any of the areas criticised, the situation improved towards Europeanization standards in the following years. Kozák²⁴⁹ and Bilčík²⁵⁰ agreed that the Rule of Law Reports and other recommendations of the EU institutions have contributed to the efforts to investigate the murder of Jan Kuciak and his fiancée. The EC also warned after the murder that the protection of journalists had deteriorated, not only in terms of physical attacks but also online threats. Gradually, also following the EC's 2021 recommendations, steps have been taken, including in cooperation with the NGO sector, to ensure that journalists have a contact person in each district to deal with harassment of journalists.²⁵¹ In cooperation with the Slovak Embassy and the Investigative Centre of Ján Kuciak, the 'Bezpečná.žurnalistika.sk' initiative was also created to monitor attacks against journalists and to help those who become targets of attack.²⁵² Soft law is thus often used not

²⁴⁶ SITA. Milanová označila reformu mediálnych zákonov za tú najdôležitejšiu. Ochráni novinárov a vôbec nezáleží, kto bude pri moci. *Sita.sk* [online]. 2022 [viewed 28 November 2023]. Available from: <https://sita.sk/milanova-oznacila-reformu-medialnych-zakonov-za-tu-najdolezitejsiu-ochrani-novinarov-a-vobec-nezalezi-kto-bude-pri-moci/>.

²⁴⁷ Personal interview of the author with Vladimír Bilčík ...

²⁴⁸ Personal interview of the author with Vladimír Bilčík ... and Personal interview of the author with Tomáš Kozák ...

²⁴⁹ Personal interview of the author with Tomáš Kozák ...

²⁵⁰ Personal interview of the author with Vladimír Bilčík ...

²⁵¹ Personal interview of the author with Tomáš Kozák ...

²⁵² Ibid.

only in legislative but also in practical ways.²⁵³ However, as Kutaš points out, soft law instruments have been significantly incorporated into the new media law adopted in 2022. This is particularly the case in areas that are not covered by legally binding documents, i.e. issues related to the protection of journalists and the press.²⁵⁴ After pressure from the EC through another instrument, for example, the interpretation of sponsorship was changed²⁵⁵ or source protection was included in the legislation.²⁵⁶ These regulations have been transposed into the Act on Publications. Thus, we observe a 'top-down' process of Europeanization, evident also in the case of soft law instruments. However, not all of the areas criticised by the EC can be effectively remedied. The political nomination of members to the RMS is often criticised in reports, but Kamenec does not see how the process can be changed to make it more efficient and completely depoliticised.²⁵⁷

From the above information, it appears that the government in power has a great influence on how the recommendations are translated into media policy. As soft law is an important element of freedom, it is up to individual countries to decide how to implement the recommendations. There are advantages and disadvantages. The advantage is that it is a kind of inspiration and a space to think about how individual countries will solve the problem. The downside is that countries may not act in the media field, even on important issues where a legally enforceable law would be more appropriate.²⁵⁸ Bilčík also saw a difference between the way the Smer-SD-led government and the OĽANO-led government took criticism from the EU. He gives the example of improved ratings of media freedom and the media environment in Slovakia in the last two years.²⁵⁹ Even according to the previous information above, the first steps to protect journalists after the murder of Ján Kuciak did not take place until 2021, when a new government was in power after the victorious elections in 2020. As noted in chapter 3, following the murder of Ján Kuciak, there have been several revelations of the weakening of the media, surveillance of journalists and corruption scandals. These events resulted in a major protest against the current government, led by the Smer-SD party, and later a surprising victory for OĽANO, whose main priorities were fighting corruption and improving conditions for journalists.²⁶⁰ The

²⁵³ Personal interview of the author with Radoslav Kutaš ...

²⁵⁴ Ibid.

²⁵⁵ Personal interview of the author with Tomáš Kamenec ...

²⁵⁶ Personal interview of the author with Radoslav Kutaš ...

²⁵⁷ Personal interview of the author with Tomáš Kamenec ...

²⁵⁸ Ibid.

²⁵⁹ Personal interview of the author with Vladimír Bilčík ...

²⁶⁰ Election programme of the OĽANO movement, 2020, Available from: https://www.obycajniludia.sk/wp-content/uploads/2020/02/OĽANO_program_2020_FINAL_online.pdf.

programme statement of the newly established government also included the objective to present a legislative modification of the new regulatory framework that would reflect the EU requirements. This has also been largely achieved.²⁶¹ And even the caretaker government was keen to continue this trend - when the Ministry of Culture said in its statement that it was seeking to implement the measures set out in EU instruments and also supported the EMFA, it wanted to actively extend the protection of journalists from all forms of dangerous harassment, especially in the online environment, the widest possible protection of the source, the preservation of the principle of editorial independence, etc. It was further stated that the aim was to ensure the increase of the protection and safety of journalists, in particular through the implementation of the measures stemming from the Commission Recommendation (EU) 2021/1534.²⁶² But as mentioned above, for example in the case of the 'Bezpečná.Žurnalistika.sk' initiative, the non-governmental sector also plays an important role in soft law. Another important element is experts who can work together with the government. An example is the work on tackling disinformation, where neither the EU nor Slovakia had any legislation. *"We started to be very active in this area because we realised that there was a problem with disinformation in Slovakia."* There was cooperation with The European Regulators Group for Audiovisual Media Services (ERGA) and later with the Ministry of Culture. The result was legislation that allows the RMS to deal with the subject and this is one of its competences.²⁶³

Kamenec's overall assessment of soft law instruments is that the EU's influence on Slovakia's media policy has been real. The Union's commitment to the principles of democracy, the rule of law and the protection of media freedom has been considerable. He cited Hungary and Poland as examples where the Union has responded in some way to problems.²⁶⁴ It must be noted, however, that Slovak media legislation was influenced not only by the soft law instruments of the EU, but also by the Council of Europe, an example being the adoption of the right of reply (currently the right of expression).²⁶⁵ The effectiveness of soft law instruments, more specifically Rule of Law Reports, is also discussed by the EC itself. It proves this with statistics, according to which 65% of recommendations have been progressed since Rule of Law Report 2022. According to the Commission, these reports are a key driver for change and positive

²⁶¹ Programové vyhlásenie vlády Slovenskej republiky na obdobie rokov 2021 – 2024. Available from: https://www.vlada.gov.sk/share/uvsr/pvvsr_2020-2024.pdf, 128.

²⁶² MC. Ministerstvo kultúry dnes informovalo Vládu SR o tom, ako prebieha implementácia opatrení pre ochranu novinárov. *culture.gov.sk* [online]. 2023 [viewed 20 November 2023]. Available from: <https://lnk.sk/obz8>.

²⁶³ Personal interview of the author with Ľuboš Kukliš ...

²⁶⁴ Personal interview of the author with Tomáš Kamenec ...

²⁶⁵ Personal interview of the author with Radoslav Kutaš ...

reforms.²⁶⁶ Despite the positive changes, it should be noted that the individual recommendations, as can be seen summarised in the tables in this chapter, are overwhelmingly only partially taken up, so the process of change and response to the recommendations has not been vigorous and rapid. However, in the case of Slovakia, there has been a gradual improvement over the last three years with regard to media freedom and pluralism and the protection of journalists.

Compared to the EU's hard law instruments, soft law continued to lag behind in its impact on media policy. However, it is important to note that the EU has gradually increased its use of soft law in this area, which has become more and more influential. In Slovakia, in the last three years, we have seen quite a significant impact of soft law instruments, which have been translated into new media legislation, as well as non-legislative instruments, such as the 'Bezpečná.Žurnalistika.sk initiative'. The murder of Ján Kuciak was the turning point. Society united and the dominant Smer-SD party lost the next parliamentary election. This led to a major political change. The new government, made up of OĽANO, SaS, Sme rodina and Za ľudí, aimed to improve conditions for journalists and the media. As a result, the country became more open to the EU's impact on soft law instruments and incorporated some of the Union's recommendations into Slovak media policy. It is evident that the process of making media policy more European is affected not only by the Union itself but also by domestic actors. However, in addition to the government's willingness to respond to individual recommendations, Europeanization has also been shaped by the activities of the non-governmental sector and experts. In the case of non-binding instruments, the prevalence of the logic of appropriateness was evident in Slovakia, where its leaders have demonstrated a desire to be among countries with the most advanced laws in the realm of media policy and a high level of media freedom. After the early elections in September 2023, it will be interesting to see what impact the EU will have on Slovak media policy, also in the context of soft law instruments, when Robert Fico (Smer-SD), who called Rule of Law Reports a political tool, becomes Prime Minister.²⁶⁷

²⁶⁶ EUROPEAN COMMISSION. Rule of Law Report 2023: Progress on 65% of recommendations, but further action needed. *European Commission* [online]. 2023 [viewed 20 November 2023]. Available from: <https://digital-strategy.ec.europa.eu/en/news/rule-law-report-2023-progress-65-recommendations-further-action-needed>.

²⁶⁷ TASR. R. Fico: Správa o právnom štáte sa používa ako politický nástroj. *Teraz.sk* [online]. 2023 [viewed 20 November 2023]. Available from: <https://www.teraz.sk/slovensko/r-fico-sprava-o-pravnom-state-sa-p/726712-clanok.html>.

4.4 European Media Freedom Act – Future Perspective

Although it can be expected that the adoption of the EMFA will take place in the coming weeks, even days, after the submission of the thesis, we do not yet know the final text of the regulation. Nevertheless, we will try to outline how the EMFA could affect Slovak media policy through an interview with experts.

It is clear that the EMFA would have an impact and Europeanize Slovak media policy, as it is a legally binding regulation. It is a follow-up and supplement to the national legal acts that already exist in Slovakia.²⁶⁸ EMFA opens up the possibility for European legislation to intervene in areas where it has not done so before. So this is a symbolic moment. Some parts of media policy that have been in the hands of member states alone will now be brought to the European level.²⁶⁹ The Regulation will directly guarantee rights and obligations that can be enforced in the Member States. The EC could launch infringement procedures against states. This will also be interesting, says Kamenec, in relation to some governments that are not entirely sympathetic to free journalism and the dissemination of information.²⁷⁰ Kukliš takes a similar view, adding that the regulation may have a significant impact in the case of some endangered democracies, as countries will have to apply individual provisions from the EMFA if they wish to remain in the EU.²⁷¹ Kozák adds, however, that EMFA sets only minimum standards and therefore it is not a complete harmonisation. But he thinks that this initiative by the EU can only help Slovakia. *„Slovakia has experience of how the media operated in the past [...] and this is an opportunity, through these minimum standards, not to avoid them, but not to go back to those times. This is precisely the case with media freedom and measures to ensure the safety of journalists.“*²⁷²

Specific articles will affect the functioning of Slovak national institutions, such as the RMS, which will receive additional guarantees for its independent role in the media market in Slovakia. Other institutions, such as the Antimonopoly Office, will also be affected. According to Bilčík, the latter can be an institution that will control a sufficient plurality of ownership relationships to avoid excessive concentration. The regulation will also have an impact on the advertising market, so that it is not concentrated in the hands of a few players.²⁷³ As regards pluralism and media freedom, there are a number of provisions that require media pluralism to

²⁶⁸ Personal interview of the author with Vladimír Bilčík ...

²⁶⁹ Personal interview of the author with Ľuboš Kukliš ...

²⁷⁰ Personal interview of the author with Tomáš Kamenec ...

²⁷¹ Personal interview of the author with Ľuboš Kukliš ...

²⁷² Personal interview of the author with Tomáš Kozák ...

²⁷³ Personal interview of the author with Vladimír Bilčík ...

be reviewed. There is also a ban on surveillance of journalists, with which Slovakia has relatively recent experience. A controversial point is the protection of media services in the online space, which can be a double-edged sword. If it goes too far, for example, the possibility of regulating the impact of disinformation may be lost. This is an area that needs to be balanced so that we do not overprotect the media, even media that are not trying to pursue the public interest but particular interests, such as capitalising on disinformation.²⁷⁴

As noted above, the new media legislation went beyond some of the provisions of the last amended AVMSD. As a result, the laws already contain some measures (e.g. on transparency of ownership) that are likely to be included in the EMFA.²⁷⁵ It is therefore paradoxical that the impact of the EMFA on Slovak media legislation occurred before the adoption of the Regulation. Slovakia is therefore better prepared for the new legislation and will not see as many changes as other EU countries after the eventual adoption of the regulation. Nevertheless, this regulation is also important for Slovakia to ensure that the minimum standards set by EMFA are not "undermined" and threatened in the future.

If EMFA is adopted, there will be a major extension of the EU's competences in the media field. We have therefore discussed with respondents whether it would be effective to extend these powers further. Tomáš Kozák is against further extension of the EU's competences in the field of media. He believes that the EU will be enlarged by more countries and should be reformed. In his opinion, the EU will not move towards deeper integration in this area and he believes that the right way is to use soft law instruments and the EMFA regulation, which will set minimum standards.²⁷⁶ On the contrary, according to Bilčík, we can see empowerment and the willingness to go further is not only the will of the EU, but also of the majority of member states. According to him, Europe is facing a number of problems, such as disinformation and the erosion of media freedom, for which there are no ideal national solutions.²⁷⁷ Kamenec points out that media and the distribution of information in today's world is no longer just a national problem.

The question is whether the EU, as a supranational entity of a certain size, population and bargaining power, should not be the one to largely implement the regulation of the global media. Today we see that the global media have as much, if not more, power than the traditional national media. Politicians today do not need to go to the most watched

²⁷⁴ Personal interview of the author with Ľuboš Kukliš ...

²⁷⁵ Personal interview of the author with Vladimír Bilčík ... and Personal interview of the author with Radoslav Kutaš ...

²⁷⁶ Personal interview of the author with Tomáš Kozák ...

²⁷⁷ Personal interview of the author with Vladimír Bilčík ...

TV channel to debate because social media is enough for them, and that is saying something.²⁷⁸

We concur with Kukliš's opinion that after EMFA is implemented, it will be imperative to await the regulation coming into effect and being adequately enforced.²⁷⁹ We do not anticipate any further measures being taken in the near future that would substantially enlarge competences in this field. However, the EU could play an important role in situations where member states are incapable of tackling negative trends, such as disinformation or the control of big platforms. The European Union should also explore ways of sanctioning states in the rule of law in the field of media.

²⁷⁸ Personal interview of the author with Tomáš Kameneč ...

²⁷⁹ Personal interview of the author with Luboš Kukliš ...

Conclusion

In the theoretical part of the thesis, we have confirmed the assumption that the European Union started to Europeanize and intervene in the media sector in the 1980s, with the first initiatives being justified mainly by the efficiency of the functioning of the internal market and having an economic character. In the second half of the 2010s, however, we have seen a slight shift in which the Union (and thus the EC, often under pressure from the EP) has also addressed non-economic aspects of the media, confirming that it was also trying to address countries' value issues in this area. Since 2020, we can see this trend has become even more pronounced, and we can see the EU's media policy shifting from a purely economic focus (logic of consequences) to a more values-based focus - media freedom and pluralism (logic of appropriateness).

In the thesis we asked several questions that helped us to achieve the main objective, which was to find out how the EU influences Member States' media policies. The first question sought to find out to what extent the EU considers the media to be an important aspect of strengthening democracy and how is this reflected in EU initiatives. The answer can be found in our [chapter 2](#), where the clear perception of the media as an important part of democracy can be seen, especially in the activities since 2020. The Rule of Law Reports, where the EC devotes a significant section to media freedom and pluralism, but also the EC Recommendation on the protection of journalists of 2021 or the EMFA proposal reflect the EU's view that a free and pluralistic media is a key part of democracy.²⁸⁰

The second research question was to find out which EU instruments have had the most impact on media policy in Member States. We classified the instruments into hard and soft law and analysed their impact on the Europeanization of media policy in the case of Slovakia. In this context, all interviewees agreed, and this was also evident from the analysis of the relevant literature, that the individual amendments to the AVMSD exerted the most significant influence and contributed most to the Europeanization of legislation.²⁸¹ This was most evident in the case of the last amendment, when Slovakia decided to implement the Directive not only through further amendments to the original media laws, but also through the creation of completely new legislation. It can therefore be said that the AVMSD has had a significant impact on Slovak media policy as a whole. It is interesting to note that the Act on Media Services was influenced by a total of 12 directives, some of which were only partially related to broadcasting. These

²⁸⁰ For further reasoning and information, see [Chapter 2.4 Summary](#).

²⁸¹ Personal interview of the author with Tomáš Kameneč ... and Personal interview of the author with Luboš Kukliš ...

included, for example, the directive on infant food or on the handling of human tissues and cells. Some parts of the regulations have also been incorporated into Slovak legislation.²⁸² This includes, for example, the regulation on sanctions for the war in Ukraine, which banned broadcasts by Russian broadcasters.²⁸³ Slovakia has responded to the impact of Europeanization on EU instruments with binding legal force with both the logic of appropriateness and the logic of consequences. However, there has also been a 'top-down' Europeanization of media policy through soft law instruments.²⁸⁴ The use of soft law instruments in the media field by the EU has become more and more frequent, and their effectiveness in Slovakia has increased in recent years. Of the soft law instruments, the Rule of Law Reports and the Recommendation on the protection, safety and empowerment of journalists have had the greatest impact on media policy,²⁸⁵ with some of the recommendations being carried over into new media acts.²⁸⁶ However, soft law has often been used not only in legislative but also in practical terms. An example is the 'Bezpečná.žurnalistika.sk' initiative, which monitors attacks against journalists and helps those who are targeted. However, despite the positive changes, it should be noted that the individual recommendations have been overwhelmingly only partially adopted, so the process of change and the response to the recommendations is not vigorous and rapid. Thus, in comparison with the EU's hard law instruments, it can be added that non-binding acts have continued to lag behind in their impact on media policy. However, their impact has been shaped by several aspects, including the government's willingness to respond to individual recommendations, but also by the activity of the non-governmental sector and experts. In the case of non-binding instruments, the logic of appropriateness prevailed in Slovakia. Actors have shown a desire to be among the countries with the most advanced media policy laws and a high level of media freedom.

As we wanted to reflect on current events and point out the possible direction of EU media policy, the final research question was how the forthcoming EMFA could influence media policies in EU. The new media laws in Slovakia went beyond some of the provisions of the last amended AVMSD. As a result, the legislation already contains some measures (e.g. on ownership transparency) that are likely to be included in the EMFA. It is therefore interesting to note that the impact of the EMFA has already been felt prior to the adoption of this

²⁸² Personal interview of the author with Radoslav Kutaš ...

²⁸³ For further explanation and more examples, see [chapter 4.3 Discussion](#).

²⁸⁴ As this question is very complex and we have very limited space in the conclusion, we recommend the reader to read [chapter 4.3 Discussion](#).

²⁸⁵ Personal interview of the author with Tomáš Kozák ...

²⁸⁶ Personal interview of the author with Radoslav Kutaš ...

regulation.²⁸⁷ Slovakia is therefore better prepared for the new legislation and will not see as many changes as other EU countries after the eventual adoption of the regulation.

Answering the questions helped us to achieve our main objective, which was to analyse the European Union as an actor in the process of Europeanization of Slovak media policy. From the information presented throughout the thesis, it was possible to conclude that the 'top-down' Europeanization of Slovak media policy and legislation was clearly taking place, especially in the audiovisual sphere. The greatest merit in this respect was the hard law, in which the AVMSD excels. However, it should also be added that a number of legally binding acts, both the AVMSD and the eventual EMFA, set only minimum standards. This allows the state to prepare more modern regulations that go beyond EU legislation, as was the case with the new Slovak media laws. Media policy has also been increasingly influenced by soft law, but this has largely depended on the government's willingness to respond to individual recommendations, as well as on the activities of the NGO sector and experts. These soft law instruments have had the greatest impact in areas where the EU does not intervene legally, namely in the area of the press and the protection of journalists. Looking at the analysis of literature, documents and interviews, we could conclude that in recent years Slovak actors and institutions have reacted according to the logic of appropriateness and the logic of consequences in the case of hard law instruments, and the logic of appropriateness has prevailed in the case of soft law instruments.

The likely adoption of the EMFA will lead to a significant extension of the EU's competences in the field of media policy. We agree with Kukliš's view that once the regulation is adopted, it will take some time for it to take effect. We do not expect other initiatives to follow in the near future that would extend powers in this area.²⁸⁸ But the EU could take a closer look at how to sanction states in the rule of law also in the field of media.

We believe that our work is very important. This is because we have not found any comprehensive literature that examines the impact of the EU on Slovak media policy and legislation in such depth. It is therefore a very under-researched area and there is certainly much more room for research. More could be done on the impact of the EU on different types of media - electronic, print and new media. The impact of individual EU instruments on Slovakia could be explored in more detail, or the difference between individual governments and their

²⁸⁷ For more information on the impact of EMFA, see [chapter 4.4 European Media Freedom Act – Future Perspectives](#).

²⁸⁸ Personal interview of the author with Ľuboš Kukliš ...

willingness to be inspired by non-legally binding EU documents. Our work provides a comprehensive insight into the issue, which can be a starting point for further research.

Thanks in part to EU influence, Slovakia has moved towards more modern legislation since 2021, when new media laws were proposed. This has also pushed the country up the media freedom rankings. The question is what direction Slovakia will take after early elections in 2023, when top state officials will not allow selected media to attend press conferences,²⁸⁹ have the permissions of these media outlets checked to enter the government office,²⁹⁰ and mention the change in media legislation.²⁹¹

²⁸⁹ ŠÁLEK, M. Danko nepustil Denník N a ďalšie dve médiá na tlačovku, novinári zostali pred vrátnicou (video+foto). *SITA.sk* [online]. 2023 [viewed 1 November 2023]. Available from: <https://sita.sk/danko-nepustil-dennik-n-a-dalsie-dve-media-na-tlacovku-novinari-zostali-pred-vratnicou-videofoto/>

²⁹⁰ SITA. Fico dal preveriť akreditácie SME, Denníka N, Markízy a Aktualít, sú neželanými hosťami. *SME.sk* [online]. 2023 [viewed 13 November 2023]. Available from: <https://domov.sme.sk/c/23243859/fico-dal-preverit-akreditacie-sme-dennika-n-markizy-a-aktualit-su-nezelany-mi-hostami.html>.

²⁹¹ STRUHÁRIK, F. MediaBrífing: OĽaNO chce „lex Penta“, PS by zastavilo štátnu reklamu u konšpirátorov (volebné programy a médiá). *DennikN.sk* [online]. 2023 [viewed 1 November 2023]. Available from: <https://dennikn.sk/3583225/mediabrifing-olano-chce-lex-penta-ps-by-zastavilo-statnu-reklamu-u-konspiratorov-volebne-programy-a-media/>.

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Interviews

Personal interview of the author with Vladimír Bilčík, 2.11. 2023, Appendix A.

Personal interview of the author with Tomáš Kozák, 3.11. 2023, Appendix B.

Personal interview of the author with Tomáš Kamenec, 6.11. 2023, Appendix C.

Personal interview of the author with Radoslav Kutaš, 9.11. 2023, Appendix D.

Personal interview of the author with Ľuboš Kukliš, 9.11. 2023, Appendix E.

Abstract

ŽIGO, Martin. Europeanization of the Slovak Media Policy. [Master's Thesis]. Palacký University in Olomouc. Faculty of Law. Supervisor: Mgr. Lucie Tungul, Ph.D., MA. Olomouc: Palacký University, 2023, 64 p.

The topic of the thesis was the Europeanization of the Slovak media policy. The main aim of this master thesis is to examine the role of the European Union as an actor in the process of Europeanization of national media policies - and thus to find out how the EU influences the media policies of the Member States. The thesis consisted of four chapters in total. In this thesis we found that in recent years there has been a significant Europeanization of Slovak media policy. We point this out in the case of new media acts, which have incorporated the requirements of the amended AVMS Directive, but also other legally binding EU documents that do not directly concern the media. This media legislation has also been influenced by soft law instruments, in particular EC recommendations. However, the impact of soft law instruments depends to a large extent on the willingness of the government or NGOs to implement them. Interestingly, some provisions of the European Freedom of the Media Act, which has not yet been adopted, have also been incorporated into the legislation. The thesis is important because there is no comprehensive literature examining the impact of the EU on Slovak media policy and legislation.

Key words: European Media Policy, Slovakia, Europeanization, legislation, hard law, soft law.

Abstrakt

ŽIGO, Martin. Europeizácia slovenskej mediálnej politiky. [Diplomová práca]. Univerzita Palackého v Olomouci. Právnická fakulta. Vedúci práce: Mgr. Lucie Tungul, Ph.D., MA. Olomouc: Univerzita Palackého, 2023, 64 s.

Témou práce bola Europeizácia slovenskej mediálnej politiky. Hlavným cieľom diplomovej práce bolo preskúmať úlohu Európskej únie ako aktéra v procese europeizácie národných mediálnych politík - a teda zistiť, ako EÚ ovplyvňuje mediálne politiky členských štátov. Diplomová práca pozostávala celkovo zo štyroch kapitol. V práci sme zistili, že v posledných rokoch dochádza k výraznej europeizácii slovenskej mediálnej politiky. Poukazujeme na to v prípade nových mediálnych zákonov, do ktorých boli zapracované požiadavky novelizovanej smernice AVMS, ale aj ďalších právne záväzných dokumentov EÚ, ktoré sa priamo netýkajú médií. Túto mediálnu legislatívu ovplyvnili aj nástroje soft law, najmä odporúčania EK. Vplyv soft law nástrojov však do veľkej miery závisí od ochoty vlády alebo mimovládnych organizácií implementovať ich. Zaujímavé je, že do legislatívy boli zapracované aj niektoré ustanovenia Európskeho zákona o slobode médií, ktorý ešte nebol prijatý. Práca je dôležitá, pretože komplexná literatúra, ktorá by skúmala vplyv EÚ na slovenskú mediálnu politiku a legislatívu neexistuje.

Kľúčové slová: Európska mediálna politika, Slovensko, europeizácia, legislatíva, hard law, soft law.

Appendices

Appendix A - Interview with Vladimír Bilčík

Vladimír Bilčík has been a Member of the European Parliament (EPP fraction) since 2019 and is currently the shadow rapporteur for the forthcoming European Media Freedom Act (EMFA). His priorities as an MEP are the protection of the rule of law, the fight against disinformation and EU enlargement in the Balkans. The interview took place on 2.11. 2023 through the Zoom app.

1) What is the role of the shadow rapporteur for the EMFA?

The role is to negotiate the best possible wording of the legislation from the point of view of the political group I represent in the EP. We have a common position and red lines that are important to us. I was shadow rapporteur for the Committee on Civil Liberties, Justice and Home Affairs, so we had exclusivity on certain parts and articles of this legislation, for example Article 4. It was very important to negotiate a text that was acceptable to our group.

2) Why do you think the EMFA is important?

It is very important in the sense that it seeks for the first time to define the principles of media protection, freedom and independence in a coherent way at European level. It does so in a modern context, which means that it also touches on current issues, such as the functioning of the media environment in the online space. But, in particular, it creates additional safeguards at European level in the face of the protection, freedom and independence of journalistic work, trying to protect journalists against any kind of spying that may be related to their profession, including spyware. It defines important principles for sustainable and quality public service media, but it also touches on private media, and there are very important things that talk about market principles, where there must not be excessive concentration of ownership. This regulation has market principles on the one hand, and on the other hand it protects the public interest and the accountability of the media. It is also important that it is legislation, meaning that the individual provisions are legally binding. It is an additional safeguard when we see that, across global trends, but also within the EU, we have a growing problem with the freedom and independence of the media and the protection of journalists.

3) Will the possible adoption of the Regulation have an impact on Slovakia?

Definitely yes, because it is a legally binding regulation. It builds on and complements the national legislation we already have. The specific articles will certainly affect the functioning

of our national institutions, whether it is the RMS, whose role has been generally strengthened in recent years and will have additional guarantees for its independent role within the media market in Slovakia. But it will also affect other institutions, such as the Antimonopoly Office, which may be the very institution that in the future will monitor sufficient plurality of ownership to prevent excessive concentration. The regulation will also have an impact on the advertising market, so that it is not concentrated in the hands of a few players.

4) When do you expect the Council to agree?

The aim is to reach an agreement on the shape of this legislation as soon as possible, ideally during the current Spanish Presidency, i.e. by the end of 2023. Negotiations have already started, the first trilogue has taken place and at least two more are planned before the end of the Presidency. This is so that the regulation can protect the entire media space before the European Parliament elections in June 2024. I think there is a broad will to reach an agreement, and with qualified majority voting working in the Council and the Parliament's position having gained quite a good majority, I think the scope for an early agreement is realistic. I do not see the legislation being delayed for long. If EMFA cannot be adopted during the Spanish Presidency, it will certainly be a priority in the first weeks of the next Belgian Presidency.

5) The Commission has been publishing Rule of Law Reports since 2020, with a significant section devoted to media freedom and pluralism. How do you view this initiative?

Very positively. I think we need a regular dialogue on the state of the rule of law in the EU. The issue of the rule of law is a problem that we face not only outside the EU, but also increasingly inside the EU. We see this in Slovakia, but also in other countries, and not only in Central and Eastern Europe. It is important that all states are on an equal footing in this dialogue.

6) Can you recall cases when the European Union recommended certain measures to Slovakia or criticised a certain area and Slovakia subsequently implemented them in legislation?

When we talk about rule of law reports, I was a bit critical at the beginning that the issue of media freedom was not sufficiently covered in them. But I think the reports have improved in this respect. For me, it was important to see a clear, systematic fight against disinformation, which is a problem that concerns us very much. More importantly, I think that some of the recommendations on the rule of law have led to concrete changes in the case of Slovakia in the area of the judiciary and judicial reform. That was probably the biggest thing in the last few years.

In the case of the media, from a political point of view, it was the effort to investigate and bring to justice the murders of Ján Kuciak and Martina Kušnírová. What I think has also moved forward to some extent in Slovakia, thanks to these reports, is the strengthening of the RMS, which is supposed to be responsible for several areas, not only monitoring the media environment, but also combating disinformation. This is something I welcome. But I think it is the media area that deserves even more attention in future reports, and the monitoring should be more thorough. The way in which the EMFA is received in Slovakia and other countries will also need to be looked at.

In my opinion, the reports have rather helped us to take effective EU-wide action, because Slovak and any other national legislation is too short for that. These reports are not only about how to change legislation in the national environment, but they also help to push forward pan-European solutions.

7) What is the role of the European Parliament in enforcing media policy and media freedom?

I think it is absolutely crucial. The EP is a loud voice for the freedom, independence and quality of the media environment. The EP has been the European institution that has been very vocal and has called strongly, quickly and clearly for an investigation into the worst attacks on journalists, such as the murder of a Maltese and a Slovak journalist. We have set up a permanent monitoring group on democracy, the rule of law and fundamental rights. This group monitors the situation in countries where there is a problem with media freedom consistently and over a long period of time. There have also been other special committees on the media, for example on foreign interference and disinformation.

8) Was there a difference in the way the government led by Smer-SD and the government led by OĽANO/Slovensko reacted to EU criticism in the field of media policy?

The reports on the rule of law only started in 2020, and they only concerned one government, the one led by OĽANO. It was a very constructive dialogue. I think the media environment has improved in recent years, and this is reflected in several independent rankings where Slovakia has moved up.

I also experienced the previous government for a while as a member of the European Parliament, and I can say that the atmosphere and the willingness to listen and cooperate on the part of Slovakia was much lower than after 2020. The difference was noticeable, and I think this is also

something we are seeing now, after the early elections in 2023. For me, it will be important to see how much the legislative environment towards the media changes, but also how much the practical implementation of the media changes. It should be noted that today we have a coalition in which the Slovak National Party has a significant influence on the media environment and is in charge of the Ministry of Culture.

9) In your opinion, will the EU's competences in the field of media policy be strengthened?

The strengthening of competences is already happening today, and this is not only my choice, but also the choice of the majority of Member States and European institutions. It is important that the European policy space should have a similar level of protection of information security and public interest vis-à-vis independent and free media. In a democratic society, these are the guarantors of a healthy level of information security for citizens, not only before elections, but also in everyday life when making decisions. So, yes, we need to protect these principles at European level, and the laws we are adopting during this period are proof of that, whether it is the Digital Services Act, but also EMFA, and the fact that the issue of media independence and freedom has been included in the regular dialogue on the Rule of Law Reports.

We also now have legislation linking the allocation of EU funds to respect for the rule of law. The issue of media freedom is not directly involved here, but it is linked to principles relating to abuse of power and corrupt practices, which is why, for example, Hungary has also had its EU funding cut. The sensitivity to this issue is much greater than in the past.

But it is not only countries like Hungary, Poland, Slovakia, but others as well. We have abolished concession fees not only in Slovakia, but also in France, and we had a debate about it. Misinformation is also a problem that affects every country. We have to fight it, and there are no ideal national solutions, but we need common solutions at European level. I am clearly in favour of continuing to do so. But it must be added that Europe will never solve these things for us. It can be an additional insurance or a supplement to what we have at home. The freedom and independence of the media must first and foremost be protected at home, it is the task of public institutions, of politicians, but also of the entire structure of national laws, culture, communication, etc.

Appendix B - Interview with Tomáš Kozák

Tomáš Kozák has been Director General for European Affairs Section of the Ministry of Foreign and European Affairs of the Slovak Republic since February 2021. He works on European policies, regional cooperation and the development of relations with states in Europe. Part of his work includes media policy and the proposed EMFA. Before taking up this post, he worked several times as a diplomat at the Permanent Representation of the Slovak Republic to the European Union in Brussels. The interview took place on 3.11.2023 through the MS Teams app.

Tomáš Kozák did not agree to the transcription of the entire interview, but gave permission for his answers to be paraphrased and quoted in our thesis. We have the full voice recording to verify the interview.

Appendix C - Interview with Tomáš Kamenec

Tomáš Kamenec is an advocate at the law firm Paul Q, specialising in media law. He is a member of the Print-Digital Council of the Slovak Republic. He has represented, for example, Televizia Markíza in the case of forging promissory notes, and often appears in the media as a respondent on the topics of media freedom and disinformation. The interview took place on 6.11. 2023 through the Zoom app.

1) Which EU initiatives, legally binding and non-binding, have had the most impact on media legislation in Slovakia?

So far, legally binding initiatives have had the greatest impact on the situation in Slovakia, with the AVMSD having the greatest impact. Individual directives have had to be transposed into law, including the regulation of advertising, but also the regulation of content and the protection of certain groups. These are important initiatives affecting the legal environment in Slovakia. I expected that the anti-SLAPP initiative, which is an informal initiative, would also have an impact on the Slovak legal environment. So far, however, nothing has happened in this area because the previous government, despite great proclamations, did not consider it a significant moment to plant it in the legal order. We look with hope to the EMFA, which should guarantee a number of rights and obligations for media market players.

2) So how would the proposed EMFA change the Slovak legislation?

We will have to wait for the final text and see. There are a number of instruments that are implemented to some extent in Slovakia. It is difficult for me to comment on this question when

we do not have the final text to assess. It should directly guarantee the rights and obligations that can be invoked in the Member States. This will also be interesting in relation to some governments that are not entirely sympathetic to free journalism and the dissemination of information. Certainly, this regulation will bring more positive than negative effects. The new Slovak media legislation, such as the Act on Media Services, already contains some measures that are likely to be included in the EMFA. For example, on transparency of ownership.

3) Which areas of Slovak media legislation have been most affected by the amended AVMS Directive?

There has certainly been a liberalisation of marketing communications, which has been a big change for broadcasters. It was also interesting that the AVMSD does not apply to radio broadcasting by default, as this is in the hands of the Member States due to the limited scope of radio broadcasting. However, in Slovakia, previous versions of the AVMSD were also strictly applied to radio. Fortunately, the Ministry of Culture has abandoned this strange doctrine in the new law and its implementation, and the rules have been liberalised for radio.

There have also been major changes for television broadcasters, allowing them to be more flexible in this highly competitive market. The time when the original AVMSDs were adopted, linear television was the absolute queen of the world. However, those days are gone and the competitive pressure from streaming services or other platforms is high.

Another important change in terms of viewer protection is the attempt to put linear TV services and their regulation on an equal footing with the regulation of other online platforms. It is important to level this disparity, because if television is under massive pressure from national regulators, it is almost absurd in relation to online platforms such as YouTube. These online portals are able to disseminate such horrific content without any control. It is important that the EU is interested in setting limits and rules in this area. Regulation needs to be stronger and more effective, otherwise it is a major threat to democracy.

4) What are the advantages and disadvantages of soft law instruments in the media sector?

I think soft law tools are very important, such as the move towards self-regulation in the case of advertising, and they are proving their effectiveness across Europe. The disadvantage is that if you have to defend yourself, legally enforceable law, law that is guaranteed by some state authority, is more effective.

5) Can you recall any cases where the European Union has recommended action or criticised the media, and Slovakia has subsequently translated this into legislation?

I remember a case in Slovakia where a certain interpretation of sponsorship was applied and only after pressure from the Union was it changed.

6) What is the role of the government in media legislation?

I can mention a case where the Ministry of Culture prepared a draft constitutional law on media freedom. The draft was discussed and prepared at the working level, but it was never discussed at the political level. This is mainly because the political establishment under the governments of Igor Matovič and Eduard Heger said that they did not want it. The proposal came when they had a constitutional majority. The whole government was not so interested in strengthening media freedom.

7) In 2022, however, new media laws were passed under this government, which were positively evaluated by Reporters Without Borders, for example. The changes were already planned under the previous government, so why were they adopted under the OLANO government?

It must be acknowledged that this is one of the achievements of Igor Matovič's government, along with the reform of the judiciary. But the potential and the expectations were greater. Because after entering the government with a constitutional majority, for the first two months they claimed how they were going to protect journalists, Matovič and Heger went to Brussels and said how we were going to strengthen the protection of journalists, and within a year this enthusiasm faded and was replaced by major attacks on journalists. I was involved in the preparation of these laws, the law on media services was prepared for a year and a half, and what came out of the Ministry of Culture was really better and more modern than what was finally approved in Parliament.

8) Commission reports often state that purely political appointments to the regulator are possible. Can this be changed so that members are not selected by Parliament?

There will certainly be no moves to depoliticise the regulator in the current legislature, and political parties have appointed members in the past. But the process is now largely transparent, the candidates are heard and it is scrutinised. I do not know whether it would really help to improve the current situation if, for example, nominations were transferred to the President of the Republic or elsewhere. That is a big question.

9) Slovakia has improved its score for media freedom. What steps have contributed most to this? And is there a role for the EU?

Quite good implementation of the amended AVMSD and also the addition of some measures that go beyond the scope of this directive, some of which are already in the EMFA. There is certainly some influence from the Union and if not formal then informal pressure from the EU and its commitment to the principles of democracy, the rule of law and the protection of media freedom is considerable. We can see this in the examples of Hungary and Poland, where the Union is in some way responding to the problems.

10) Do you think that the EU's competences in the field of media policy will be strengthened? Would this be effective?

The principle of subsidiarity will still apply, i.e. Member States will still have the primary right to regulate within their national problems, but the question is whether media and the dissemination of information is really a national problem in today's world. So the question is whether the EU, as a supranational entity of a certain size, population and bargaining power, should not be the one to largely implement the regulation of the global media. Today we see that the global media have as much, if not more, power than the traditional national media. Politicians today do not need to go to the most watched TV channel to debate because social media is enough for them, and that is saying something.

Appendix D – Interview with Radoslav Kutaš

Radoslav Kutaš worked until June 2023 as State Secretary of the Ministry of Culture of the Slovak Republic, where he participated in the preparation of new media laws, which were adopted in 2022. He has been working in the field of media continuously since 1999. He previously worked as an analyst at the Council for Broadcasting and Retransmission (RVR) and later at the Ministry of Culture as a member of working groups, commissions and advisory bodies on media and audiovisual services and digital broadcasting at national and European level. He has professional experience as an independent consultant in the field of media, electronic communications, audiovisual and intellectual property. The interview took place on 9.11. 2023 through the Zoom app.

1) Which EU initiatives, both legally binding and non-binding, have had the greatest impact on media legislation in Slovakia?

If we talk about the new laws, i.e. the Act on Media Services, this is the result of the implementation of the AVMSD. So, the most important influence on this legislation has been the legally binding acts of the EU. In the case of the Act on Media Services, there are up to 12 directives that have been implemented. So we had to go back to all the directives that affect and regulate broadcasting in some way. The new law also incorporates other legally binding EU acts that were only partially related to broadcasting.

Author's note: These included the Directive establishing a Community code on medicinal products for human use, the Directive on infant formulae, the Directive laying down quality and safety standards for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells, and the Directive on the presentation and sale of tobacco products. Further information and the transposed directives can be found in the Annex to Act No. 264/2022 Coll.

Regulations are a separate category. You do not implement them, but some parts of a regulation can be incorporated into legislation, where you need to determine the authority that is responsible for implementing a particular regulation in Slovakia, or you need to determine the type and amount of penalties. For example, we transposed the regulation on sanctions for the war in Ukraine, where Russian broadcasters were banned from broadcasting, and we also transposed the regulation on preventing the dissemination of terrorist content, where the RMS was given the coordinating competence within broadcasting.

We have incorporated some of the provisions of the EMFA into these laws, because we were already aware of the EMFA when the new laws were being drafted.

We have also introduced soft law instruments into the legislation in areas that are not covered by the legally binding documents, and these are issues relating to the protection of journalists and the press. In this respect, however, we have also incorporated the recommendations of the Council of Europe to a significant extent.

2) Could you summarise which areas of Slovak media policy have been most affected by the amended AVMSD?

With the new laws we have basically recodified the entire media law, so the Directive has affected the entire Slovak media policy. The implementation came at the right time, when we could recodify the entire media legislation and it was not possible to amend the original laws,

as was the case with the previous individual amendments to the AVMSD. The directive introduced a new set of entities - video-sharing platforms.

3) Why was Slovakia one of the last countries to implement the AVMSD?

This was partly due to external factors - the Ministry of Culture was more concerned with the pandemic and the war in Ukraine. Another reason for the slow implementation was the ambition to make a comprehensive recodification of media policy in Slovakia. This took some time.

4) How are soft law instruments used in the media sector in Slovakia?

The EC uses soft law instruments where competences are shared or where it has no competence in this area. Soft law is often used not in a legislative but in a practical way. For example, in the case of the recommendation on the protection of journalists, the Ministry of Culture initiated tools within the police and the portal Bezpečná.Žurnalistika.sk was created as a response to the soft law tool. Here the state is not directly involved, but it has created the environment for such an instrument to exist. For example, the protection of sources has been incorporated into the legislation from the EC recommendations. Slovakia has also adopted soft law from the Council of Europe, for example the right of reply (currently the right of expression).

5) In the first two Rule of Law Reports, the Commission criticised the absence of a definition of "state advertising".

There is no place for such a definition in the Act on Media Services because it is a more complex regulation and the media of state advertising can be different, for example a billboard. What has been done is to shed some light on the various manifestations of advertising in commercial media communication. In doing so, we have managed to define a term that includes Euro Fund campaigns, which in our view are not traditional commercial communications. We have defined the terms public interest campaign and information campaign, where the definition implies that it is advertising financed from the state or local government budget. However, we do not have a rule that tracks, for example, the flow of state advertising money to the media. However, media funding through state advertising should also be covered by EMFA, so there will still be a shift.

6) The Commission has repeatedly criticised the high penalties in defamation cases involving journalists. In Slovakia, the law should have been changed and the penalties reduced. Was this due to pressure from the Commission?

There was a recodification of the Criminal Code, which was excellently drafted. The amendment was almost two years in the making and was supposed to solve this problem. The amendment reached Parliament, but Parliament postponed the vote on the second reading of the amendment and did not meet again. So the amendment was not adopted and, as we have a new Parliament, it cannot even discuss the old issues. But the Rule of Law Report was one of the reasons why we tried to amend this issue.

Appendix E – Interview with Ľuboš Kukliš

Ľuboš Kukliš currently works at the European Commission, where his role is to define the regulatory mechanisms for the Digital Services Act (DSA), which will come into force in 2024 and affect platforms such as Meta and Google. He was Director of the RVR/RMS from 2006 to 2022. He has also chaired the European Platform of Regulators (EPRA) and the European Regulators Group for Audiovisual Media Services (ERGA). He has worked with international organisations on issues such as the spread of misinformation, the protection of children online and regulatory issues in the digital environment. The interview took place on 9.11. 2023 through the MS Teams app.

1) Which EU initiatives, legally binding and non-binding, have most influenced media legislation in Slovakia?

The most influential were the various amendments to the AVMSD. There should also be changes in the new Act on media services following the adoption of the Digital Services Act Directive, but this mainly concerns large online platforms, which will have an indirect impact and the EC will be the regulator here. As far as non-binding initiatives are concerned, the EC recommendations on the protection of journalists, the Rule of Law Reports, have had some impact in Slovakia, but other directives or recommendations are certainly also influential.

2) Could you summarise which areas of Slovak media policy have been most affected by the amended AVMS Directive?

The biggest change was that the directive brought video distribution platforms into the regulatory framework. Our new law went even further by including other things related to the online space, such as illegal content and how to deal with it.

3) What are the advantages and disadvantages of soft law in the media?

Soft law is a somewhat more complex tool, as countries may have different sensitivities to certain recommendations or criticisms. In Slovakia, for example, the previous government reacted positively to the EC Recommendation on the protection of journalists.

4) Can you recall any cases in which the European Union recommended certain measures or criticised the media and Slovakia subsequently implemented them in legislation?

I can't say whether it was explicit pressure or criticism that forced us to do something concrete. For example, in relation to the online space, we took advantage of the opportunities that arose. The will did not come from outside, it was internal and we tried to make the innovations in a way that they were in line with the European framework.

5) Does this willingness depend on the government in power?

Yes, but in addition to this political level, there is also a professional level where there are people who are aware of what can be achieved. An example is the work on fighting disinformation, where we had no regulation in Slovakia and neither did the EU. We started to be very active in this area because we realised that there was a problem with disinformation in Slovakia. And the platforms are not addressing this area because Slovakia is a small market. So it was in cooperation with ERGA and then the Ministry of Culture got involved. The result was a law that allows the regulator to deal with this issue and it is one of its competences.

6) Since 2020, the Commission has been publishing Rule of Law Reports, in which it devotes a significant part to media freedom and pluralism. What do you think of this initiative?

It gives a good picture and feedback for each country. Of course, these reports have no direct impact on the countries, unless the EU takes some disciplinary measures, as is being discussed in the case of Hungary or Poland.

7) Commission reports often mention the possibility of purely political appointments to the regulator. Can this be changed so that members are not selected by the Parliament?

There is certainly a way to make the selection of candidates more professional and this would be beneficial. Of course, this requires political will, where political actors are willing to give up some influence. I do not expect this willingness in the near future.

8) How would the forthcoming EMFA affect Slovak legislation and why is it important for Slovakia?

The EMFA opens the possibility for European legislation to intervene in areas where it has not intervened before. So it is a symbolic moment. Some parts of media policy that have been in the hands of member states alone will now be brought to the European level. This could have a positive impact on some of the democracies at risk, as countries that want to remain in the EU will have to apply these rules. In terms of pluralism and media freedom, there are some provisions where media pluralism is to be reviewed, and there is also a ban on the surveillance of journalists, with which Slovakia has relatively recent experience. A controversial issue is the protection of media services in the online space, which can be a double-edged sword. If it goes too far, for example, the possibility of regulating the impact of disinformation may be lost. This is an area that needs to be balanced so that we do not overprotect the media, even media that are not trying to pursue the public interest but particular interests, such as capitalising on disinformation.

9) In your opinion, will the EU's competences in the field of media policy be strengthened?

If the EMFA is adopted, there will already be a significant increase in EU competences. However, I do not expect a dramatic increase. For the time being, we will have to wait for the regulation to become established and I do not foresee any further initiatives in the immediate aftermath.