



# Balancing Act:

**PRESS FREEDOM AT RISK AS EU STRUGGLES TO MATCH ACTION WITH VALUES**



A special report by the Committee to Protect Journalists



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Founded in 1981, the Committee to Protect Journalists responds to attacks on the press worldwide. CPJ documents hundreds of cases every year and takes action on behalf of journalists and news organizations without regard to political ideology. To maintain its independence, CPJ accepts no government funding. CPJ is funded entirely by private contributions from individuals, foundations, and corporations.

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# About this report

The report looks at challenges facing the European Union as it strives to uphold its commitment to press freedom in relations with member states, international bodies, and strategic partners. It examines the impact on journalists of repressive legislation in member states; how calls for wider surveillance in the wake of terror attacks could muzzle the independent press; and how the EU has failed to take strong action against member states that backtrack on their commitments under the EU Charter for Fundamental Rights.

This report was written by **Jean-Paul Marthoz**, CPJ's EU correspondent. Marthoz is a Belgian journalist and longtime press freedom and human rights activist. He teaches international journalism at the Université catholique de Louvain in Belgium and has reported from many countries for the Brussels daily *Le Soir* and the quarterly *Enjeux internationaux*. He is vice-chair of the advisory committee of the Europe and Central Asia division at Human Rights Watch, where he was European press director from 1996 to 2006. He is the author and co-author of around 20 books on international relations, human rights, and journalism.

**Geoffrey King**, CPJ's technology program coordinator, contributed the sidebar "In times of crisis, press freedom curtailed," and assisted with research for the Digital Europe chapter. **Nina Ognianova**, CPJ's Europe and Central Asia program coordinator, and **Muzaffar Suleymanov**, CPJ's Europe and Central Asia research associate, contributed research for this report. **Lydia Tomkiw**, CPJ's 2015 Google fellow, contributed research for the graphics. The report and graphics were designed by **John Emerson** and **SooYoung VanDeMark**.

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The executive summary and report recommendations are available in Arabic, French, German, Hungarian, Russian, Spanish, and Turkish at [www.cpj.org](http://www.cpj.org).

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Cover photo: An EU flag with the world 'help' painted on it is waved outside a government building in Budapest at a February 2015 protest against repressive policies in Hungary. (AFP/Attila Kisbenedek)

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# Summary

The European Union describes itself as a model for press freedom and an exemplary global power. Although many of its 28 member states feature at the top of international press freedom rankings, there are significant challenges that undermine press freedom and new threats are emerging.

Criminal defamation and blasphemy laws, which have a chilling effect on journalism, are still on the books in several member states; large-scale surveillance threatens the confidentiality of journalists' sources; access to information remains limited; and counter-terrorism measures have led to legislation and practices that limit a journalist's rights and ability to work. Although violence is rare, journalists have been targeted by criminal organizations in Italy and Bulgaria, bullied by police in Spain, and murdered by religious extremists in France.

The EU's failure to address these challenges not only affects journalists inside member states, it undermines the EU's capacity to defend press freedom outside its borders by providing authoritarian states with ready-made alibis for their own repressive policies. As Amnesty International Belgium director Philippe Hensmans told CPJ: "How can the EU hope of convincing other governments, from Turkey to China, to improve their press freedom record if it is itself at fault?"

Journalists and press freedom advocates who spoke with CPJ for this report said the EU's priority should be ensuring member states uphold the Charter of Fundamental Rights, which lays out the values and standards to which EU policy must adhere. This report reflects their concerns and highlights instances where, by not holding member states to account, the EU has failed to forcefully and consistently defend press freedom.

The EU's commitment to its founding principles is being undermined as some member states backslide on their democratic commitments. In Hungary under Prime Minister Viktor Orbán for example, CPJ has documented how the state media have been turned into pro-government mouthpieces, state advertising has been used to reward friends and punish dissenters, independent journalists have been marginalized, and limits have been imposed on its Freedom of Information Act law, making it hard for journalists to investigate allegations of corruption. Although Orbán's challenge was viewed

as a direct attack against journalists and a fundamental EU value, it was not met with resolute action. Aside from limited infringement proceedings and parliamentary resolutions, the EU procrastinated. "I'd like the EU to be as imaginative on fundamental rights [as] it has been on austerity programs," Rui Tavares, a former Portuguese Green MEP and author of a 2013 report on Hungary, said at a conference on illiberal democracies this year.

Under pressure from member states determined to protect their sovereignty, the EU failed to activate its rule of law mechanism, which is supposed to penalize member states that backtrack on responsibilities, and which might have prevented the situation in Hungary from deteriorating further. "Viktor Orbán's growingly illiberal governance is in itself a denial of European democratic values," Miklos Haraszti told CPJ. The Hungarian academic and former OSCE Representative on Freedom of the Media said he found the EU's patience toward Hungary "perplexing."

The major EU institutions—the European Commission, the Council, the European Parliament, the Court of Justice—appear poorly equipped to address press freedom violations. They cannot quash national defamation laws or protect journalists' sources. Instead, it is often left to member states or European intergovernmental institutions such as the Council of Europe or the European Court of Human Rights to enforce action to defend press freedom.

However, the EU's power to issue directives on, for instance, public service broadcasting, the digital agenda, trade secrets, or framework decisions on racism and xenophobia, has a direct impact on journalists by determining the conditions under which they work. As does its role in coordinating member states over issues such as counter-terrorism measures and the funding of research and academic institutions. This reach, as Françoise Cunningham, executive director of the European Newspaper Publishers Association, told CPJ, means, "everything the EU does may have an impact on journalism and media freedom." And journalists have to be constantly on alert to ensure that initiatives, such as a proposed trade secrets directive defining what journalists can reveal on corporations, do not compromise their freedom to report.





A sign reads “Press freedom is a fundamental right” at a Berlin protest in support of Netzpolitik.org, which was accused of disclosing a state secret. Germany suspended the investigation. (Reuters/ Fabrizio Bensch)

Despite producing mountains of information and maintaining an impressive communications machine, EU institutions are not models of transparency. Although, as Ethical Journalism Network director Aidan White told CPJ, the EU is “less closed than 20 years ago,” access to key documents and meetings that would allow journalists to exercise their role as watchdog is unduly limited. “When you ask for information or documents which might contradict the official narrative, the gates fall and spokespersons do not really help you,” *Le Monde* correspondent Jean-Pierre Stroobants complained. Protection and support for whistleblowers is also considered weak. Only two out of nine EU institutions have implemented the required whistleblower internal rules, and disunity on the policy across member states has further hampered EU efforts in this area.

When it comes to negotiating with prospective member states, the EU appears to have made press freedom imperative. “We learnt from previous accession processes that the EU should put more emphasis on rule of law and freedoms,” Kati Piri, the European Parliament’s rapporteur on Turkey, told CPJ. It is during these negotiations that the EU has the most leverage and can require substantive changes in a candidate country’s laws and penal code, for example. For journalists struggling

to work in a repressive climate, like in Turkey or Serbia, such leverage can provide vital support. During these negotiations press freedom is seen not only as a value in itself, but also as an enabler to reach other objectives crucial to the country’s sustainability as a future member of the EU, such as fighting corruption or amending repressive legislation. However, the risk persists that the EU eventually sidelines press freedom in the name of political expediency or economic and strategic interests.

The EU’s press freedom diplomacy is anchored in treaty provisions stating that its international actions should be guided by the principles on which it was founded. To promote these principles—democracy, rule of law, human rights—the EU has a variety of instruments and policies at its disposal. It has assumed a positive role in international arenas where it supported the United Nations Plan of Action for the Safety of Journalists and the Issue of Impunity, opposed the adoption of a U.N. resolution on the defamation of religion, and defeated attempts, led mostly by authoritarian states, to put Internet governance under U.N. control. The EU also has numerous partnerships that establish human rights, and therefore press freedom, as an essential element of agreements.

However, hard-nosed *realpolitik* often trumps lofty

rhetoric. According to a September 2014 review by the Leuven Center for Global Governance Studies in Belgium, the monitoring and enforcement of human rights policies are often erratic, which can lead to double standards. Press freedom and human rights activists who spoke with CPJ said that when it comes to diplomacy in repressive countries that are important trade partners or strategic allies, the EU is inconsistent. This approach allows for situations where a country such as Burundi, with little strategic value, can be more severely reprimanded for its actions than China. For instance, the EU has said it plans to pursue a closer economic and political relationship with Azerbaijan. However, CPJ has found that this crucial energy provider is a leading jailer of journalists and human rights activists.

Although human rights is brandished as the silver thread running through all its policies, the capacity of the EU to act is limited to how much power member states are ready to concede to Brussels. “The powers that the EU has are attributed powers, in other words powers that the member states have chosen to grant to the EU,” said EU Ombudsman and former Irish journalist Emily O’Reilly in a speech to the Law Society of Ireland. “[Member states] are often unwilling to grant supranational control bodies such strong powers, especially where the exercise of such control impacts upon their own actions or vital interests.”

Although these legal and political discussions are legitimate concerns for member states, they cannot be used as alibis to let the EU’s commitment to press freedom falter. The long-term viability of the EU depends

on it firmly defending fundamental values. The future of its global influence will largely be determined by its credibility and consistency, not only in righting wrongs among member states, but by following a press freedom diplomacy based on principles and free from double standards. As human rights expert Andrea Subhan told CPJ: “The EU should consider human rights and press freedom not as a subsidiary issue or just a soft-power instrument but as a strategic asset that not only helps the EU project its values but also protects its hardcore interests abroad.”

Steps that the EU and member states can take are included in CPJ’s recommendations accompanying this report. Among these are calls for the EU to show its commitment to press freedom by using powers such as the suspension of voting rights when member states are in violation of commitments in the charter of fundamental rights. It should ensure that member states as well as those countries applying to be in the EU don’t backtrack on their responsibilities, which include allowing access to information and having a free and robust press.

By improving access to documents and information across all its institutions and member states, the EU could demonstrate its commitment to being an open and transparent body; and by supporting strong encryption, it would offer greater protection to journalists and sources. EU member states could also demonstrate their commitment to the founding principles by overturning laws that criminalize defamation, libel, and blasphemy, and by ensuring laws on hate speech and anti-extremism are not used as a way to restrict critical reporting.

# I. Challenges to press freedom in the EU

## THE EU AND PRESS FREEDOM

“The European Union should...” Nearly every day this remark is on the lips of press freedom activists who blame the EU for not doing enough for press freedom. “The EU should call Hungary to order.” “The EU should slam Russia for its repression of the independent media.” “The EU should punish Ethiopia for jailing journalists and bloggers.” These expectations and, at times, exasperation are inevitable. The EU, with its 28 member states, describes itself as a democratic haven and the largest economy and trading group in the world. Brussels, home of the major EU institutions and host of the world’s third largest international press corps, has constantly proclaimed that its internal political order and foreign policy are based on human rights, rule of law, and democracy. So shouldn’t the EU be judged according to the yardstick by which it has chosen to measure others?

Consistency in its approach to the protection of press freedom is crucial if the EU wants to retain its authority. Yet some member states have criminal defamation laws, spy on journalists, and harass media covering protests; others, such as Hungary, have been allowed to backtrack on human rights responsibilities. When the EU deals with repressive nations outside the union, strong economic or strategic partners are less likely to be reprimanded than less important countries.

EU officials often react with irritation to such criticism, claiming it reflects ignorance of the EU institutional and legal system. They are not totally wrong. The EU’s most visible institutions—the European Commission, the Council, the European Parliament, and the Court of Justice—are not as powerful as Europhobes fear and Europhiles dream of, at least when it comes to fundamental rights. The structure of the EU is sensitive to the concerns of member states and was set up to not impinge on core sovereignty, national identity, and constitutional individuality.

Many EU officials believe that its press freedom record should exempt the EU from scrutiny. “Why are you wasting your time monitoring the EU record while journalists are murdered in Mexico and beheaded in Syria?” one official asked CPJ. Seen from those countries, the EU appears like a safe haven for the press: Murders of journalists are an

exception. The killing of eight journalists in the January 2015 attack against satirical French magazine *Charlie Hebdo* raised to 18 the number of journalists killed in direct relation to their work in the region between 1992 and September 2015, according to CPJ research. (Six of the 18 killings took place in a country not yet an EU member). At the time of writing, no journalist was in jail in a member state, according to CPJ’s annual prison census. Member states are frequently found at the top of most international press freedom rankings. However, the EU cannot be complacent. Its members do not have an immaculate record and “headwinds are blowing,” as Françoise Tulkens, chair of the Council of Europe’s committee of experts on protection of journalism and safety of journalists, and former vice president of the European Court of Human Rights, told CPJ. Democracies can backtrack, as Italy did under Silvio Berlusconi or Hungary under Viktor Orbán.

“How can the EU hope of convincing other governments, from Turkey to China, to improve their press freedom record if it is itself at fault?”

Philippe Hensmans, Amnesty International Belgium

Inconsistency in policies said to be based in the defense of democracy and human rights is, at times, putting journalists at risk. For instance, member states are supposed to provide emergency visas to journalists under threat, but in May 2015 Sweden turned down a request from Bangladeshi blogger Ananta Bijoy Das over concerns that he would try to remain in the country. He was hacked



EU flags are held up in Budapest during a rally calling on the EU to help rein in Hungary's government. (AP/Tamas Kovacs)

to death a few days later in retaliation for his work.

In times of crisis, public opinion is volatile and security can be prioritized over liberty. Member states have been tempted to overreact in such circumstances, implementing counterterrorism regulations that risk muzzling the free press, CPJ found. Popular mistrust of the media also threatens to undermine their capacity to resist government regulation. "Many are skeptical of the very potential of the media in general to fulfill their function of informing citizens," a 2013 European University Institute policy paper commissioned by the European Commission found. The Leveson Inquiry in the U.K., in the wake of the *News of the World* phone hacking scandal, showed how some politicians are tempted to tame the media under the cover of journalism ethics. The transformations and transitions within the media economy, the impact of the Internet, proliferation of social media, and the domination of a few mega-companies are also viewed with concern, especially by journalists' associations. Many legacy media and public broadcasters have suffered substantial staff and budget reductions, which affect their capacity to act as watchdogs of national and European institutions,

according to the 2015 publication *European Media in Crisis: Values, Risks and Policies*. And new media have not yet taken up the slack.

The risks are all the more serious since straying member states such as Hungary and Bulgaria have been only mildly reprimanded by the institutions supposed to protect press freedom under Article 11 of the EU Charter of Fundamental Rights. The Council, which represents the member states and is an essential EU decision-maker, for example, has a Working Party on Fundamental Rights, Citizens' Rights and Free Movement of People, which is supposed to discuss responses to violations. But on politically tough issues it has been lacking. As the Human Rights and Democracy Network, a Brussels-based informal network of human rights organizations, found in August 2013, "Faced with systematic efforts by the Hungarian government to undermine the rule of law and human rights ... the council has been silent."

Although its statements sound high-minded, the council tends to adopt "the lowest common denominator on most press freedom-related issues," *Le Monde* correspondent Jean-Pierre Stroobants told CPJ,

expressing a view prevalent among members of the EU press corps with whom CPJ talked. Attached to national sovereignty, suspicious of what they view as Brussels' uber-power, and often guilty of national practices that do not conform with the Charter of Fundamental Rights, many member states have fought to keep press freedom outside of direct EU purview.

This gap between the EU's discourse and its practices partly explains the disappointment among those expecting a more principled and proactive press freedom policy. For advocates who consider press freedom a key pillar, the EU fails to bring into balance its values and policies. "I'd like the EU to be as imaginative on fundamental rights [as] it has been on austerity programs," historian and columnist Rui Tavares, a former Portuguese Member of the European Parliament (MEP) and author of a critical European Parliament report on Hungary in 2013, said half-jokingly at a June 2015 conference in Brussels on illiberal democracies.

Legally, the crucial issue when it comes to press freedom is how much power the treaties on which the EU is founded confer to its institutions—in particular, its executive arm, the European Commission. EU institutions do not have much formal power in this field. The Charter of Fundamental Rights, which became binding after the adoption of the Lisbon Treaty in 2009, applies only to member states when they are enforcing EU law. The clause allows these states to escape potential sanctions from Brussels since most of the issues raised by press freedom are not covered by specific EU legislation.

Politically, the press freedom discussion is clouded by disagreements on what the EU should be. A number of member states and some of the diverse political groups in the Parliament are loath to grant Brussels too much supranational power—not only because they fear finding themselves next in the EU's line of fire if they transgress treaties but, more fundamentally, because they oppose what they describe as a power grab by Brussels bureaucrats. Asking the EU as an institution to do more in favor of press freedom collides with the debate on how much influence Brussels should have. In the current political context marked by the row over Greece's austerity programs, the rise of nationalist and populist parties, and the prospect of a referendum in 2017 on the U.K.'s presence in the EU, the suggestion of providing more power to a "European super-state," as Britain's former Conservative Prime Minister Margaret Thatcher branded it in a 1988 speech, is not welcomed by a majority of edgy governments.

In such circumstances, media and press freedom policies will remain largely the preserve of member

states, except when they touch the raw nerve of the EU: competition and trade.

But should EU press freedom policies be determined by such a minimalist approach? "How can the EU hope of convincing other governments, from Turkey to China, to improve their press freedom record if it is itself at fault?" Amnesty International Belgium Director Philippe Hensmans asked CPJ. The EU's approach to violations by member states has opened it up to criticism from countries it seeks to reprimand, such as Russia. A report on human rights in Europe, commissioned by Russia, found that the EU "virtually ignore[s] the real state of affairs in the EU." It added: "The governing bodies of the Union show indulgence, to say the least, towards violations of human rights by member states. For example ... the investigation of undemocratic reforms in Hungary has been virtually soft-pedaled."

Of the EU's most visible institutions, the European Parliament has put press freedom on the agenda most often, even if "the active press freedom lobby in the [Parliament] is very small," Portuguese Socialist MEP Ana Gomes told CPJ. It has done so through hearings, resolutions, missions, even its Sakharov Prize for Freedom of Thought, whose laureates have included the Sarajevo daily *Oslobodjenje* in 1993, Cuban blogger Guillermo Fariñas in 2010, and Syrian cartoonist Ali Ferzat in 2011. The Parliament has also provided the commission with funding for pilot projects on media freedom.

But the European assembly is limited by its relative lack

**“Fundamental rights should not be regarded as an afterthought, but rather as the essence of what the EU stands for.”**

*First Vice-President Frans Timmermans at committee hearing*

of power and by partisanship. "The system is dominated by the two largest groups, the center-right EPP [European People's Party] and center-left S&D [Progressive Alliance of Socialists and Democrats], and they will usually not oppose countries where their partner parties are in government," Emilio De Capitani, former director of the Civil Liberties Committee unit, told CPJ.

The general defense of press freedom gathers quasi-universal support, but when a resolution puts a specific

# Press freedom protection

*Press freedom is a fundamental right protected by treaties and charters to which all EU member states must adhere.*

## Treaty on European Union

### Article 2.

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the member states in a society in which pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men prevail.

## EU Charter of Fundamental Rights

### Article 7. Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

### Article 8. Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

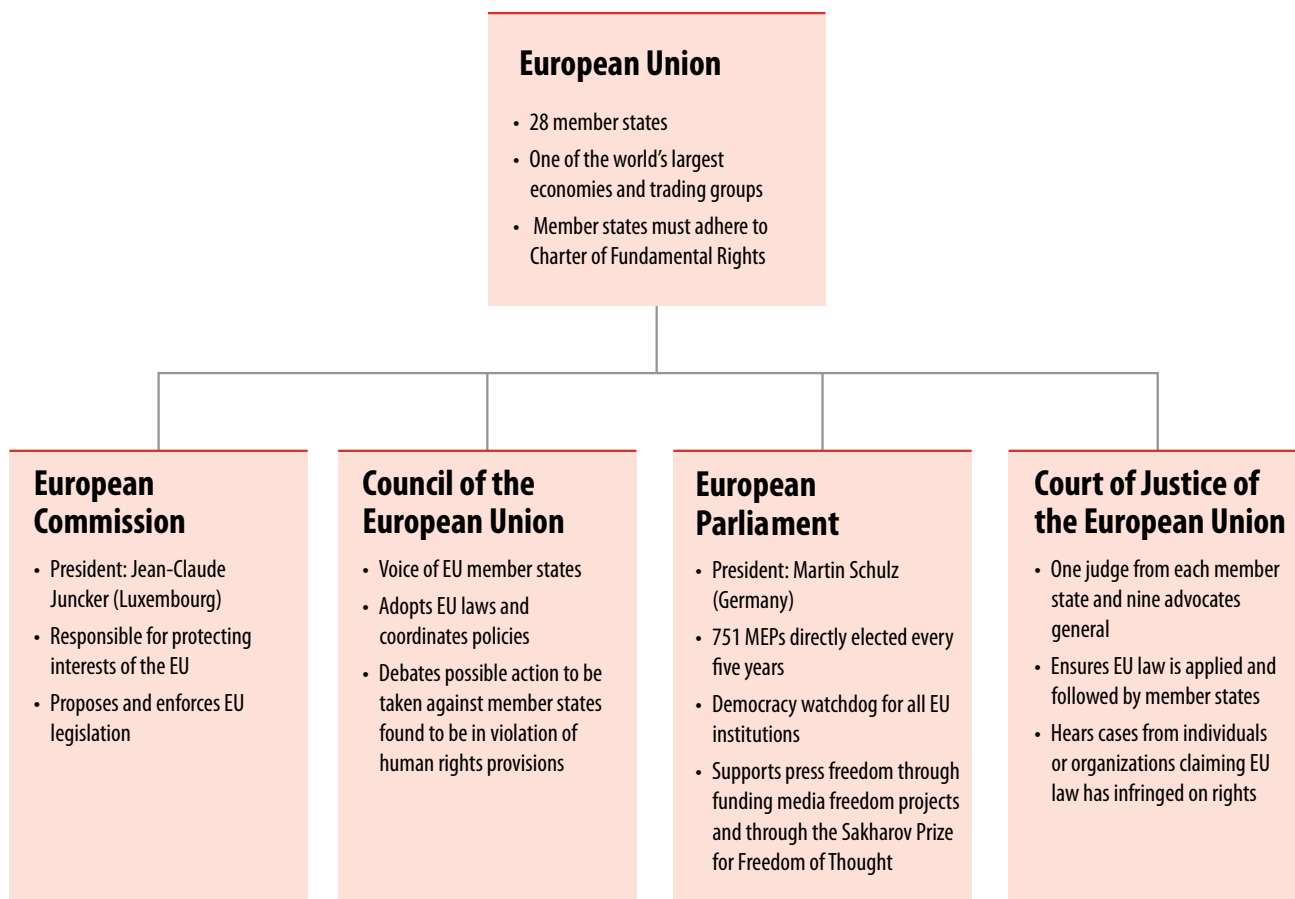
### Article 11. Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

## European Convention on Human Rights

### Article 10. Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.



Major EU institutions

government or member party in a hot seat, clannish party loyalty pops up. In July 2013, a report authored by MEP Tavares that accused Hungary of failing to meet EU standards and asked for firm action was adopted with only 370 votes in favor, 240 against, and 82 abstentions, with the EPP, a group of Christian Democrats and center-right national parties, closing ranks behind its 14 MEPs from Hungary's Fidesz. The vote followed the partisan pattern that, according to reports, protected Italy's Conservative then-prime minister and media mogul, Silvio Berlusconi, against resolutions over his domination of Italy's private and public broadcasting sector.

The European Commission, which initiates legislation, is viewed as the executive arm of the EU and some expect a lot from it. "It should provide the common narrative" and guard the EU against "member states' backstabbing and petty squabbles," said Internet freedom activist and former Swedish Pirate Party MEP Amelia Andersdotter at the May 2015 re:publica digital culture conference in Berlin. Commission officials diverge, however, when

asked to describe press freedom prerogatives. Some can be assertive, like former Justice Commissioner Viviane Reding (now a Christian Democratic MEP from Luxembourg) who, in 2009, gave her backing to the European Charter on Freedom of the Press, a non-binding document against government interference signed by 48 editors-in-chief and journalists from 19 countries. But a top commission official, who asked not to be named, told CPJ, "We are more of a facilitator through support to various projects and through awareness-raising initiatives. We should not promise what the treaties tell us we cannot deliver."

Within the commission, First Vice-President Frans Timmermans is in charge of the rule of law and fundamental freedoms, and must ensure that its decisions and initiatives comply with the Charter of Fundamental Rights. Practically, however, the European Commission Directorate General for Communications, Networks, Content and Technology (DG Connect) is the most directly concerned with the press. Its Converging Media

and Content unit deals with media policies and has been on the front line, for instance, with Hungary over its media laws. It works closely with other directorates involved in press freedom, including the Directorate-General for Justice; the Directorate-General for Competition, which guards against unfair market policies; the Directorate-General for Neighborhood and Enlargement Negotiations (DG NEAR), which negotiates with candidate countries; and the European External Action Service, the EU's fledgling ministry of foreign affairs.

The Luxembourg-based Court of Justice has also assumed a more active role. Its judgments, such as the so-called right to be forgotten ruling, which allows people to request that links be deleted from search engines, are binding and have a direct impact on member states. "Press freedom groups, professional organizations, and media companies are increasingly keeping an eye on this institution," European Federation of Journalists Director Renate Schroeder told CPJ.

Hidden by these mammoth institutions is the Vienna-based EU Agency for Fundamental Rights, which advises the EU on essential values in its actions, based on what the treaties say. In terms of press freedom, its impact has been marginal. The agency, its website states, has tackled issues such as privacy in the information society, but a number of observers told CPJ they would like it to play an enhanced role in monitoring press freedom in member states.

Outside of the EU, other European intergovernmental organizations and institutions, such as the Strasbourg-based Council of Europe, the European Court of Human Rights, and the Vienna-based Organization for Security and Co-operation in Europe (OSCE), are supposed to bolster its human rights and press freedom strategy. However, CPJ found that cooperation and outsourcing are not solutions and can even be a way for the EU to shirk its responsibilities.

Although EU bodies are officially committed to protect press freedom, political will—or the lack thereof—is the key challenge. What has been achieved in the field of internal trade or competition policy, press freedom advocates told CPJ, should be the yardstick for respect of fundamental values and, in particular, press freedom.

"Fundamental rights should not be regarded as an afterthought, but rather as the essence of what the EU stands for," Timmermans said at a Civil Liberties, Justice and Home Affairs committee hearing in Brussels in March 2015. Some press freedom groups and organizations, including the European Federation of Journalists and the Association of European Journalists, told CPJ that the apparently weak prerogatives of the EU in matters of

press freedom and the fear of "more Europe" cannot be pretexts for passivity or complacency.

The challenges, however, are enormous. The discussion on EU competencies on press freedom is "an impenetrable jungle and I fear no one really has an overall grasp of all the issues," European Journalism Centre Director Wilfried Rütten told CPJ. Despite being lumped together in the "EU" acronym, member states have a complex set of legal, cultural, and media traditions. On surveillance, for instance, U.K. public opinion backs the legitimacy of its Government Communications Headquarters (GCHQ) intelligence service, according to a 2013 YouGov poll, while the German public was reported to be more hostile, with one politician going as far as linking surveillance revelations to the Gestapo and Stasi eras.

However, if member states differ on key freedom of expression issues such as defamation, hate speech, and access to information, a common EU media identity is slowly emerging, which differentiates it from authoritarian states such as Russia and China—and also from its democratic ally, the U.S.

The U.S. is an active participant in EU media policy discussions, not only through government but also through its tech giants, lawyers' offices, and non-governmental organizations that have set up shop in the Brussels beltway. It is therefore likely that some of the debates on freedom of expression in Europe will be influenced by U.S. views and policies on, for instance, encryption, privacy, and mass surveillance.

Even if they share fundamental values, media professionals and press freedom activists on both sides of the Atlantic do not always agree. "As opposed to the U.S.-American market liberal approach ('freedom from...') there seems to be wider support in Europe for a model that actively supports and regulates press freedom and media pluralism ('freedom to...')," writes Andrea Czepek in the introduction to the 2009 book *Press Freedom and Pluralism in Europe*, which she co-authored. There are also differences in how the EU and U.S. define and repress hate speech. "The EU does not only condemn direct incitement to violence, as the U.S. does, but also incitement to racism and discrimination," Debora Guidetti, program manager of the Open Society Initiative for Europe, told CPJ. "On this issue, U.S. and EU freedom of expression and anti-racist activists find it very difficult to understand each other and to agree upon a common course and discourse."

Another dividing factor is privacy. "If Americans value freedom of speech as an inalienable right that sometimes must trump privacy, in Europe the right to privacy is so fundamental that all national laws must consider





A banner showing murdered Bangladeshi blogger Ananta Bijoy Das is held up. Das was denied a visa to Sweden days before he was killed. (AP/A.M. Ahad)

it,” Claude Moraes, U.K. Labor MEP and chair of the European Parliament Civil Liberties Committee, told *Christian Science Monitor* in January 2015.

In particular, U.S.-EU competition shapes the digital agenda. As Giovanni Gangemi, a research assistant at the European University Institute, wrote in a January 2013 essay for the Florence-based Centre for Media Pluralism and Media Freedom: “The new operators emerging from the Internet economy are almost exclusively U.S.-based, while Europe struggles to establish new players that are able to compete with them.” The revelations by former U.S. National Security Agency contractor Edward Snowden on spying in Europe, even if European intelligence agencies were exposed as being complicit, increased a feeling of vulnerability and dependence, which partly explains the commission’s “war,” as *The Wall Street Journal* described it, “against U.S. technology superpowers.”

On a cautionary note, these discussions are taking place during a decline in EU and U.S. international influence and the rise of authoritarian states such as China and Russia and brutal non-state actors such as the militant

group Islamic State. “In an increasingly challenging global environment, the relevance of universal standards is questioned and the EU’s endeavor to promote them meets with growing resistance,” the EU wrote candidly in its 2015-19 *Action Plan on Human Rights and Democracy*. This report highlights the urgency of approaching press freedom globally and of forming a worldwide coalition if one aspires, as Columbia University President Lee Bollinger put it in a 2010 essay, to defend an “uninhibited, robust, and wide-open free press for a new century.”

## PRESS FREEDOM IN MEMBER STATES

Press freedom is protected as a fundamental value by EU legislation, but journalists in the region face the threat of legal action from many member states that still have speech-chilling laws, and the threat of violence or intimidation from criminal and extremist organizations, as well as police and politicians.

The EU has condemned the misuse of criminal

defamation in countries such as Thailand as a way to suppress public interest stories, yet defamation remains a pan-European issue. Criminal defamation has been eliminated only in Cyprus, Estonia, Ireland, Romania, and the U.K. and, according to a 2014 International Press Institute survey, “of the 23 EU states in which defamation remains a criminal act, 20 retain imprisonment as a possible punishment. Bulgaria, Croatia and France are the exceptions.” The survey found that in the past five years, criminal defamation cases were brought against journalists in 14 member states. The presence of such laws, even in countries where they are seldom invoked against the press, provides authoritarian states across the world with a way to justify repressive actions. And it subjects the EU to accusations of hypocrisy, undermining the diplomacy that proclaims support for press freedom.

## €900,000

### Damages Irish paper the Sunday World is ordered to pay in defamation case

In one criminal defamation case, Italian journalist Alessandro Sallusti was sentenced in 2012 to 14 months in prison for an article published five years earlier in *Libero*, a magazine he edited at the time. Although the sentence was later commuted, it highlighted the anachronism of Italian libel laws. In a letter to Italian Prime Minister Matteo Renzi about the country’s defamation laws in 2014, CPJ noted how charges are often used to try to silence journalists reporting on corruption and organized crime. Criminal defamation laws can also be open to abuse. According to figures by press freedom group Ossigeno per l’informazione, between 2011 and 2013, more than a third of cases brought against the Italian press came from false lawsuits or other abuses of the legal system. Although a number of countries have caps on financial penalties, as illustrated by the International Press Institute report, litigation costs and the award of damages can be astronomical. Irish paper the *Sunday World* is currently appealing a 2008 order to pay €900,000 (US\$988,000) in damages, according to reports.

Perhaps the most extreme version of abuse of these laws is libel tourism, in which a claimant sues in the country most likely to provide a favorable verdict. Israeli-American journalist Rachel Ehrenfeld found herself the subject of such a lawsuit in London in 2008 when Saudi businessman Sheikh Khalid bin Mahfouz successfully sued

over a book she published in New York in 2003. Her high-profile case led to legislation in the U.S. to protect cross-border lawsuits, but the risk in EU states remains, despite the much-vaunted reform in 2013 of U.K. libel law.

In its guidelines on freedom of religion or belief, the EU has recommended blasphemy be decriminalized, yet blasphemy and insult laws exist in 19 member states, according to the End Blasphemy Campaign run by an international coalition fighting the laws. Some countries still vigorously enforce them. Filippos Loizos was charged with blasphemy in Greece in September 2012, after complaints from a lawmaker in the far-right Golden Dawn party, according to reports. The 27-year-old had set up a satirical Facebook page, “Elder Pastitsios,” about a dead Greek Orthodox priest who has become a hero in ultranationalist circles. The blasphemy charge was dropped, but Loizos was convicted of insulting religion and handed a suspended 10-month sentence, according to reports.

In Bulgaria, France, Germany, Italy, Portugal, and the Netherlands, the penalties are harsher when alleged defamation is directed at public officials. Insults against the state, state symbols, or institutions, foreign heads of state, and even intergovernmental organizations are present in many EU members’ criminal laws. Even *lèse-majesté* laws, under which harming the dignity of a monarch is a criminal offense, remain. In May 2015, Dutch prosecutors used it to charge Abulkasim al-Jaberi, an anti-racism activist, who, according to news reports, had been caught on camera “using a barrage of swear words against” King Willem-Alexander of the Netherlands and linking royalty to Dutch colonialism and *Zwarte Piet* (Black Pete), a character widely considered to be a racist stereotype. The charge was eventually withdrawn. In 2007, in Spain, two cartoonists were each fined €3,000 for offending the royal family over a cartoon published on the front page of satirical magazine *El Jueves*, according to news reports. It showed then-Crown Prince Felipe engaged in a sexual act with his wife.

Privacy laws are also open to abuse. “In many EU countries,” Mike Harris, then-advocacy head of Index on Censorship, wrote in 2014, “the media’s right to freedom of expression has been overwhelmingly compromised by the lack of a serious public interest defense in privacy law.”

And not all journalists in the EU are completely free of physical danger. Although CPJ data shows the number of journalists killed in relation to their work is low, criminal groups, riot police, protesters, and extremist groups still pose a threat. Roberto Saviano, author of *Gomorrah* and *Extra Pure*, has been under police protection in Italy since 2006 due to threats from the Naples-based crime



Roberto Saviano, author of *Gomorra*, arrives for a court hearing. The Italian writer has been under police protection since 2006 because of threats from a Naples crime syndicate. (AFP/Francesco Pischetola)

syndicate, the Camorra. His well-publicized case is only one example of Mafia harassment of Italy's journalists. From 2006 to the first six months of this year, 2,371 threats against journalists have been recorded, according to Alberto Spampinato, director of *Ossigeno per l'Informazione*, which also tracks attacks on the press. Another illustration is Pino Maniaci, the head of Sicilian TV station Telejato. In December 2014, his two dogs were found hanged close to his office. A week earlier, his car was set alight in front of the TV studio. Maniaci, who is under police protection, told the *Guardian* he believes the attacks were related to his station's coverage of drugs, a problem he said was connected to crime syndicate Cosa Nostra.

Bulgaria's press also comes under threat from criminal organizations. Its journalists have been victims of contract-style killings, beatings, and bomb attacks, CPJ has found. In 2014 in France, *Le Monde's* investigative journalist Gérard Davet was placed under police

protection after he received a number of death threats directly linked to his work, according to reports.

Across the EU, CPJ has documented violence from police and protesters, despite the ability of journalists to work freely defined as a fundamental right. In August 2011, at least six journalists covering protests in Spain said they were physically assaulted by police. In a worrying trend for press freedom, after protests against austerity measures imposed by the EU, Spain passed a law in July 2015 preventing journalists from taking photographs of rallies outside government buildings, or of police. Journalists who break what has been dubbed the "gag law" face fines of up to €30,000, according to reports. "There is serious concern that the threat of these fines will lead to self-censorship to the detriment of accountability for abusive behavior such as excessive use of force by law enforcement officers," Human Rights Watch said. Such measures allow authoritarian governments outside the EU to claim they should be immune from criticism. When

EU Enlargement Commissioner Štefan Füle criticized attacks on press freedom and on protesters in Turkey in June 2013, Turkish then-Prime Minister Recep Tayyip Erdoğan hit back, according to news reports, claiming that the EU also had a poor press freedom record and the methods of Turkish police to quell protests were little different from those used in the U.K. or the U.S.

## €30,000

### Fine for photographing police or protests in Spain

Protesters have posed a threat. Photographers and cameramen came under attack in London in 2011 by demonstrators and looters who, as the *Guardian's* Paul Lewis claimed at the time, “were absolutely against the idea of anyone recording what they are doing.” The risk of journalists being seen as the enemy increased when, in August of that year, British Prime Minister David Cameron told the House of Commons that media organizations had a responsibility to hand unused footage of rioters to the police. His claim was firmly rejected by broadcasters but in September 2011, the broadcasters BBC, ITN, and Sky News reluctantly handed unused footage to the police after Scotland Yard obtained court orders, according to news reports.

The danger from extremist and terrorist groups was brought into sharp relief by the January 2015 attacks in Paris on *Charlie Hebdo*. These killings had been preceded by assassination attempts against cartoonists and freedom of expression activists connected to the 2005-06 outcry over the depiction of the Prophet Muhammad in the Danish daily *Jyllands-Posten*. Both cases have had a chilling effect on the press. According to a March 2015 article in the French daily *Le Monde*, cartoonists contacted by *Charlie Hebdo* about becoming contributors after the attack asked if they would have to attend editorial meetings in the magazine's offices or sign under their real name. Self-censorship has not been total, but, “We have lost a battle. The terrorists have won,” former *Charlie Hebdo* editor and director Philippe Val, who left the magazine in 2009, told Swiss TV station RTS. The hostility of far-right movements to independent or inquisitive media is also a threat in some member states. CPJ documented in 2015 how journalists have been attacked by Golden Dawn militants in Greece, heckled by National Front members in France, and sued in Hungary by the ultranationalist Jobbik party. In Sweden, investigative journalists were threatened by radical right

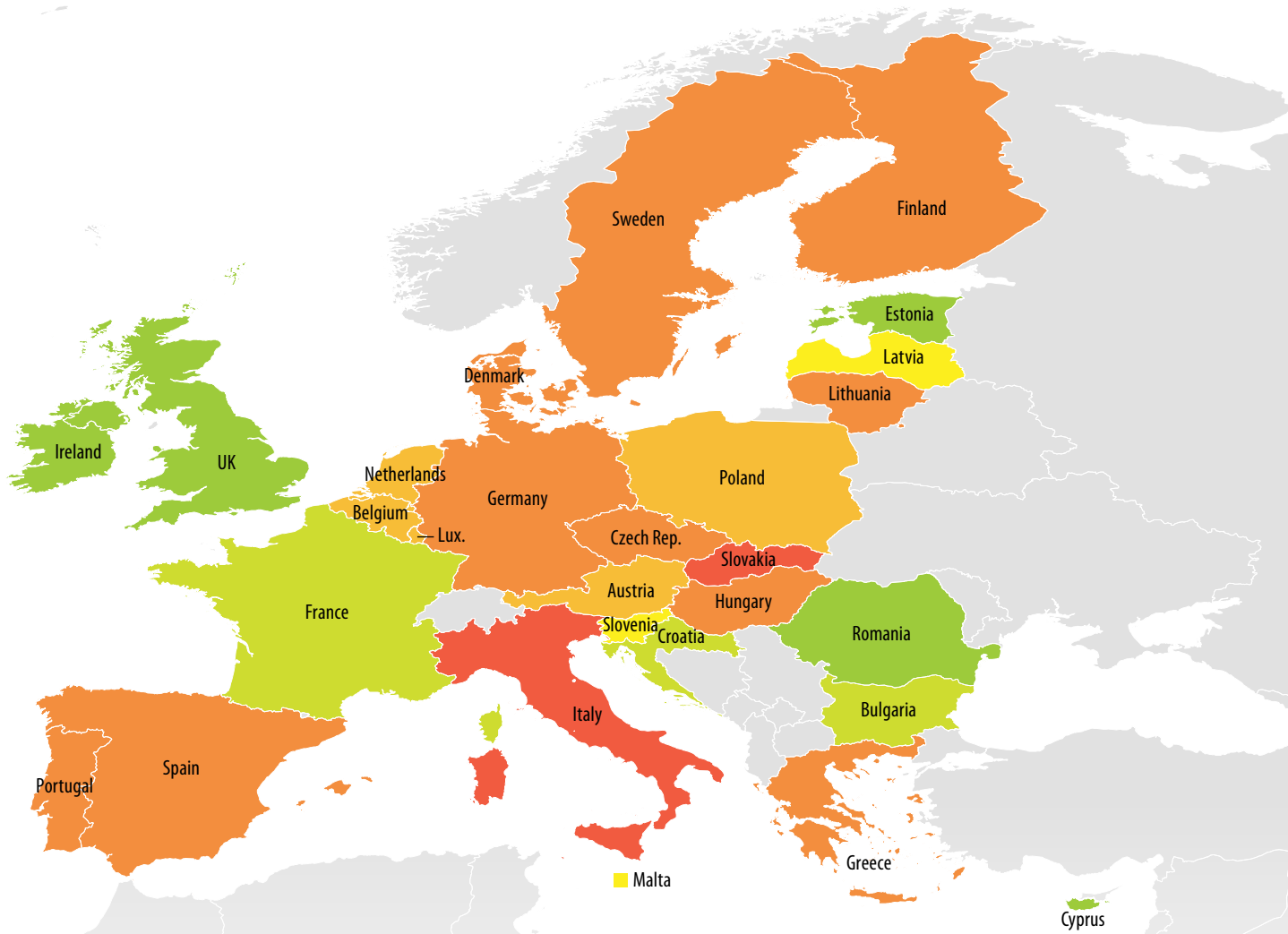
groups. Reinforced by its electoral surge both on the national scene and in the European Parliament, where it has 10 percent of the seats, the far right has hijacked freedom of expression to push its extremist agenda, leading mainstream journalists, as they admitted to CPJ, to gingerly cover issues deemed to play into the hands of the far right.

Trends in media ownership are another concern for press freedom advocates who spoke with CPJ. In a number of countries, corporations whose business depends largely on government decisions (public works, arms trade, telecommunications) have taken majority stakes in media outlets at the risk of creating conflicts of interest and of acting as private proxy censors on behalf of the state. In France, where some leading outlets are owned by industrialists, these interactions and the fears of self-censorship have been particularly strong, as *The New York Times* reported. Across Eastern Europe, *New York Times* correspondent Rick Lyman said, “Local oligarchs and investment groups—some directly connected to their countries' political leadership—are snapping up newspapers and other media companies, prompting deep concern among journalists and others about press freedom.”

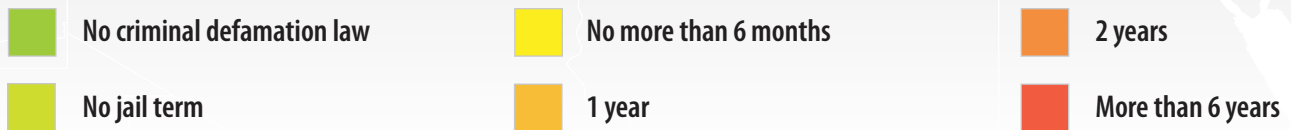
Cronyism, partisanship, and a lack of transparency in governmental allocation of subsidies, licenses, and state advertising often creates what is known as soft censorship: the use by the state of financial carrots and sticks to manipulate media coverage.

In Macedonia, a candidate for EU membership, the “situation is probably one of the most acute in the region,” Tanja Milevska, an EU freelance correspondent for Macedonian media, told CPJ. “All broadcasters and almost all print media are under government control via state advertising, a practice that's been highly criticized by both the EU and U.S. in all relevant reports,” she said. “The result has been nine years of declining press freedom and self-censorship among journalists, putting Macedonia at the bottom of all press freedom rankings, a situation that will be extremely hard to change even once this authoritarian government falls. Nine years have left deep traces in the profession, both in terms of quality and of professionalism.”

The EU likes to mention that its member states top international rankings on digital freedom. Denmark, Finland, the U.K., Sweden, France, and Belgium are among the top 10 of the 2014 World Wide Web Foundation index, which ranks each country's Internet contribution to political, economic, and social progress. But a number of EU states have a checkered record—from knee-jerk reactions in times of civil disorder to Internet blocking



Maximum jail term for criminal defamation in the EU



23

EU member states with criminal defamation laws

20

EU member states where defamation is punishable by jail

8 years

Maximum sentence in Slovakia if defamation caused "serious harm"

\* Criminal defamation and EU member states. Results include defamation, libel, and slander in the press and the maximum jail term if applicable. Compiled using data from International Press Institute, Freedom House, International Federation of Journalists

and mass surveillance. During the 2011 riots in England, Cameron proposed in a speech to the House of Commons that cellphone messaging and social media be temporarily shut down or disrupted. He also suggested social media be monitored and users pre-emptively banned if they were thought by authorities to be organizing criminal activity. “Please, Britain, don’t let Mubarak inspire your response to unrest,” Egyptian journalist Mona Eltahawy wrote in response. In an opinion piece for the *Guardian*, she highlighted the need for Britain to not undermine global freedom by providing foreign tyrants, such as then-Egyptian President Hosni Mubarak, with a way to justify their abuses. Similarly, after the attacks in Paris, a law came into force allowing French authorities to block Internet sites that they considered to be advocating for terrorism, without any judicial review, according to reports. “Internet censorship starts today,” warned leading French newsweekly *L’Obs*.

## “Make no mistake, journalists cannot protect their data from their national secret services.”

European intelligence expert

When the NSA revelations made headlines in 2013, most European leaders expressed dismay and outrage, but, as Washington-based Internet freedom advocacy group Center for Democracy & Technology found: “European governments have deployed systems of mass electronic surveillance to monitor journalists’ contacts with sources, intercept their communications, and in some cases, obstruct their freedom of movement, launch criminal investigations, or threaten legal actions against journalists based on unlawful electronic surveillance.”

*Zeit Online* journalist Kai Biermann added in an article reprinted in the *Guardian*, “The German federal intelligence service (BND) does exactly the same thing as the NSA abroad and it does so within a similar legal framework.” In the U.K., the Regulation of Investigatory Powers Act 2000 gives intelligence agencies powers for interception without a judicial warrant. In a June 2015 report, David Anderson, the independent reviewer of the U.K.’s anti-terrorism legislation, called for a “rigorous assessment” of what critics, including civil liberties advocacy group Liberty, have dubbed the “snoopers’ charter.” “Each intrusive power,” Anderson said, “must be shown to be necessary, clearly spelled

out in law, limited in accordance with international human rights standards and subject to demanding and visible safeguards.” The British government’s reaction to the *Guardian*’s coverage of NSA surveillance also raised concern among press freedom advocates. In a statement to MPs, Cameron said the paper should show “social responsibility.” Security officials forced the paper to destroy disks containing information related to the investigative report. Conservative MPs even talked of treason, “crystallizing,” as CPJ Deputy Director Robert Mahoney wrote, “the problems of an independent press trying to serve the public interest in a country that lacks robust legal safeguards of press freedom.”

In January 2014, Reding, the former commissioner responsible for Justice, Fundamental Rights and Citizenship, did not hesitate to denounce the stance of EU countries. “There has been a lot of hypocrisy in the debate,” she said in a speech in Brussels. Underlining the repercussions of such policies on the EU’s credibility abroad, Reding added, according to reports: “If the EU wants to act as an example for other continents, it also has to get its own house in order.”

In a number of EU member states, national intelligence and police agencies have shown an interest in intercepting journalists’ email messages. “Make no mistake: Journalists cannot protect their data from their national secret services,” warned a European intelligence expert, who spoke to CPJ on condition of anonymity because he was not authorized to speak publicly. According to documents revealed by Snowden in January 2015, the U.K.’s GCHQ “scooped up emails to and from journalists working for some of the U.S. and U.K.’s largest media organizations,” the *Guardian* reported. One army intelligence document described journalists as a security threat and identified those covering defense as a particular concern. In France, investigative journalists claimed they were monitored by the intelligence services while reporting on allegations of illegal funding of then-President Nicolas Sarkozy’s party, a claim Sarkozy and his spokesmen denied.

Officially, counterterrorism measures in member states are meant to respect the EU’s fundamental rights, but freedom of expression advocates who spoke with CPJ said a number of countries have adopted legislation that formalizes mass surveillance as a corollary of terrorism prevention. In June 2015, the French parliament adopted a law allowing intelligence agencies to install surveillance technology at Internet service providers and telecommunications companies. A coalition of civil liberties groups—in particular, the International Federation for Human Rights—protested, warning the law would undermine privacy and could be abused.

*Continued on page 25*



Azerbaijani President Ilham Aliyev enters a boxing ring at the first European Games in Baku in 2015. Despite Azerbaijan jailing journalists and human rights activists, the EU is pursuing a close relationship with the country. (AFP/Tobias Schwarz)

## **Adding forces or shirking responsibilities? The EU and intergovernmental bodies**

When it comes to defending press freedom, the EU should be able to count on the support of other European institutions that share its values. The collaboration and interaction between the EU and these bodies should offer greater protection to journalists, but complex working arrangements and clashes in responsibility are diminishing what could be a powerful relationship. The EU has also been criticized for what is seen as its outsourcing of core responsibilities to institutions that count repressive countries among their members and have little power to implement decisions.

EU member states belong to the Council of Europe, which has a freedom of expression mandate; are party to the European Convention on Human Rights; and are subject to the European Court of Human Rights, which acts as the final recourse for journalists who have exhausted all legal avenues when challenging national court judgments. The Organization for Security and Cooperation in Europe (OSCE) is also a participant in the EU's press freedom debates and its representatives on freedom of the media have been particularly vocal in highlighting failings in member states. But its power to discipline straying countries has been limited.

The Council of Europe has made numerous resolutions and recommendations on press freedom, from the decriminalization of defamation to Internet freedom, that "have mostly been impeccable," Giovanni Melogli, EU affairs director of the International Alliance of Journalists, told CPJ. Press

freedom is regularly on the agenda of its Parliamentary Assembly meetings, its commissioner for human rights issues regular critical reports and comments on press freedom, and it has tried to draw attention to attacks on the press through the Platform to Protect Journalism and Promote Safety of Journalists, which is made up of press freedom groups. But the Council of Europe includes members whose values contradict the EU's founding principles. Russia, for instance, has consistently attacked press freedom through repressive laws and failure to prosecute violence, and Azerbaijan continued its crackdown on dissident journalists while chair of the Committee of Ministers in 2014.

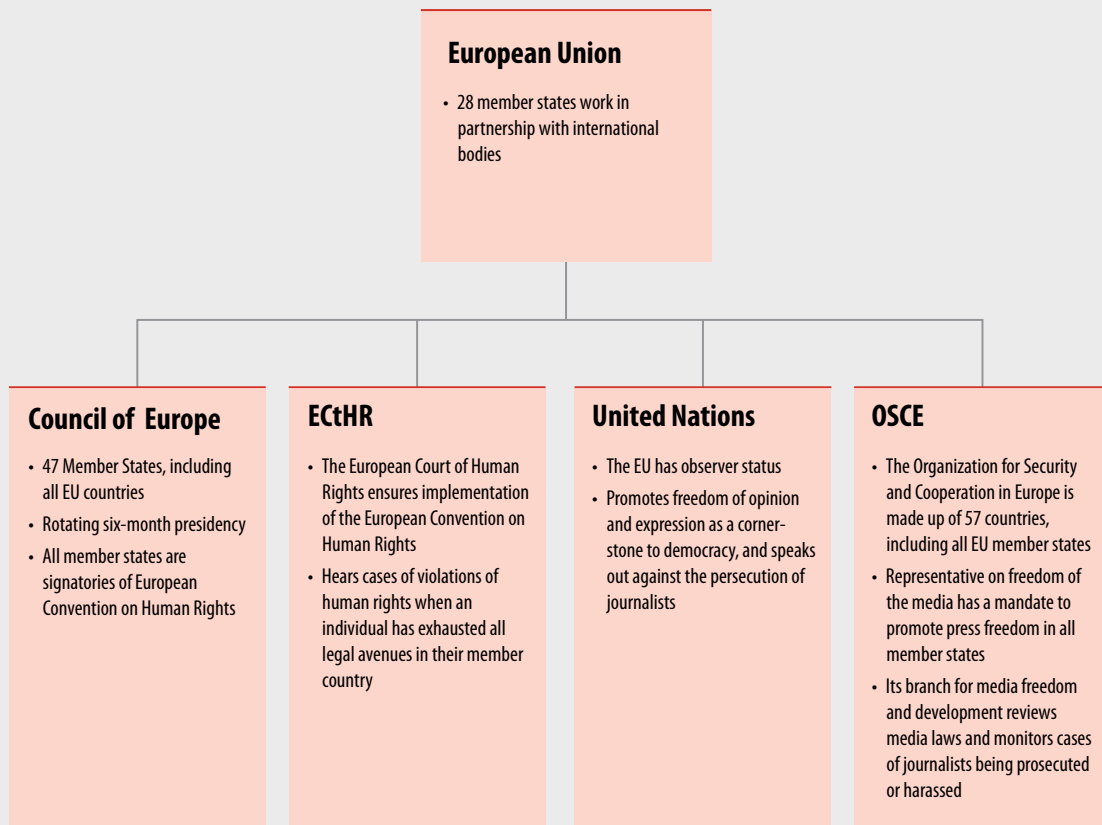
Aside from suspending a member, the Council of Europe has no way to implement decisions or make members accountable. At times, the bodies that make it up work at cross purposes too. In April 2014, for instance, the Parliamentary Assembly suspended Russia's voting rights over what the EU ruled was the illegal annexation of Crimea—a move that has all but eradicated the independent press and broadcasters in the Ukrainian region, CPJ has found. But Russia was still able to participate in the more crucial Committee of Ministers.

A 2007 EU and Council of Europe memorandum that covered freedom of expression and information “clearly states that the Council of Europe will remain the benchmark for human rights, the rule of law, and democracy in Europe,” Humbert de Biolley, deputy head of the Council of Europe office in Brussels, told CPJ. The EU is involved in council committees such as the media and information society division, and its cooperation priorities with the Council of Europe for 2014-15 specifically refers to press freedom in relation to Azerbaijan, Russia, and Turkey. The focus makes sense: CPJ has documented how journalists in those countries have been put under increasing pressure through the threat of imprisonment, legal action, and harassment from authorities. Officially Brussels and Strasbourg extol their cooperation, but the process can be “frustratingly complex,” a top Strasbourg council official, who requested anonymity, told CPJ. “The uncertainty on who is in charge in the EU can lead to canceling the work of various months because EU lawyers have suddenly judged that it did not conform to EU law. The European External Action Service for instance takes charge when the Council of Europe discusses the human rights aspect of the media, but the commission leads when the council addresses trans-border TV directives.”

A number of EU officials and observers are critical of what they consider to be the outsourcing of key constitutional issues, such as democratic governance or press freedom, to the Council of Europe. For those advocating for a more autonomous EU, the referral to the Council's legal advisory board, the Venice Commission, over Hungary merely highlighted the lack of will of the EU to assume responsibility. This mismatch between the Council of Europe prerogatives and EU power does not serve press freedom well, they say. “The vital contribution played by the Council of Europe institutions in promoting human rights in EU countries should be seen as a complement to, rather than a substitute for, stronger EU action,” the Human Rights and Democracy Network wrote in August 2013.

“True, it is not an ideal world,” Tulkens, chair of the Council of Europe's committee of experts on protection of journalism and safety of journalists, told CPJ. “But this is the world we are in. The EU cannot pretend to start from scratch. An enormous amount of work on press freedom has been done in Strasbourg. Of course the Council of Europe has no power of coercion and we know that





EU and intergovernmental bodies

the respect of human rights depends on binding rules. But in a field where progress takes a long time, you cannot minimize the corpus that has been developed over the years by the council.”

Press freedom advocates are also keen to protect and promote the European Convention on Human Rights and the role of the European Court of Human Rights. And they view any idea of competition with the Court of Justice of the European Union with concern. The way Article 10 of the convention has been applied by the Court of Human Rights and the Council of Europe “helped to upgrade and improve the level of freedom of expression and media freedom” in the EU, Dirk Voorhoof, professor of law at Ghent University in Belgium and an expert of Columbia University’s Global Freedom of Expression and Information project, wrote in a March 2015 presentation at Columbia University. Whistleblowing, access to documents, and protection of journalists’ sources were among the areas influenced by it, he said.

Tulkens, who is a former vice president of the European Court of Human Rights, warned that although “the court’s case law is still keeping high standards of freedom of expression and protection of journalists” ... “headwinds are blowing against human rights in general and the court

is not immune.” Despite having the tools to address press freedom violations, the court encounters difficulties in executing its judgments in a number of countries, as CPJ has documented in reports on Russia and Turkey. Tulkens added, “Freedom of expression is particularly sensitive to those winds which, actually, do not come only from the usual suspects, like Russia or Azerbaijan, but also from democracies where competing values like the right to reputation enter in conflict with freedom of expression. The court also ventures into dubious discussions on, for instance, ‘giving information in good faith,’ which is an issue for ethics councils and not for a court of law.”

According to the 2009 Lisbon Treaty, the EU was expected to adhere to the European Convention on Human Rights, but in December 2014 the Court of Justice ruled against the draft agreement, judging it incompatible with EU law. Tulkens described the decision to CPJ as “a catastrophe and a betrayal.”

“The EU’s accession to the ECHR [European Convention on Human Rights] would have submitted EU legislation and actions to the control of the European Court of Human Rights, an autonomous third party,” she said. Steve Peers, an EU law professor at the University of Essex in the U.K., added in a blog: “For all of us who support human rights protection, it is an unmitigated disaster.”

The tussle between the two European legal systems might take some time to work out. Meanwhile, some freedom of expression lawyers and activists told CPJ that such confusion risks playing into the hands of those governments, particularly non-EU members such as Russia, who want to reduce the powers of the European Court of Human Rights. Such an outcome would be at the expense of journalists who have consistently relied on the court to admonish their governments, overturn convictions, and uphold the commitment to press freedom. As a Belgian diplomat, who asked not to be named, told CPJ: “The protection and promotion of freedom of expression should trump a battle of turf and egos between two European institutions.”



MEPs protest against Hungarian laws that have severely curtailed the country's independent press. (AFP/Georges Gobet)

## THE RULE OF LAW MECHANISM

The Hungarian crisis in which Prime Minister Viktor Orbán brought in a succession of media laws and regulations that have crippled the independent press showed that most national governments and a significant number of MEPs underestimated Orbán's threat to the EU as an institution and a community of values. They did not believe, or refused to admit, that Hungary was more than just a temporary case of abuse of political power that would be corrected with time through elections.

The Hungarian issue also exposed a blurred vision of the EU mechanisms supposed to discipline a member state. A May 2013 European Parliament resolution noted that "although existing member states are required to comply with the Charter [of Fundamental Rights], no mechanism exists to ensure that they do." The difficulties in changing the system, however, cannot be dismissed. "Many of the proposed new mechanisms would require treaty amendments, such as lower thresholds for triggering the Article 7 mechanisms, a judicial review by the CJEU [EU Court of Justice], extended powers of the Fundamental Rights Agency, or abolishing Article 51 of the EU charter, to make EU fundamental rights directly applicable in all member states," according to a March 2015 European Parliament briefing. However, a group of lawyers and

political scientists argued in a 2014 European University Institute working paper that the treaties already provide the necessary methods to enforce laws and values.

The only aspect on which EU experts appeared to agree was that the proposed initiatives would not please member states keen on retaining their sovereignty. "The powers that the EU has are attributed powers—in other words, powers that the member states have chosen to grant to the EU," said EU Ombudsman and former Irish journalist Emily O'Reilly in a speech to the Law Society of Ireland. "[Member states] are often unwilling to grant supranational control to bodies with such strong powers, especially where the exercise of such control powers impacts upon their own actions or vital interests."

Beyond these diverging readings of the EU's current powers, the need for an unquestionable, effective, and enforceable mechanism appears imperative to those who viewed the Hungarian case as a dangerous challenge to the EU's core values.

In March 2013, foreign affairs ministers from Germany, Denmark, Finland, and the Netherlands, including the commission's current strongman, Vice President Timmermans, wrote a letter to the commission asking for a new rule of law mechanism, with monitoring and

graduated responses and sanctions, up to the suspension of EU funding, before triggering the so-called “nuclear option” of Article 7 of the Treaty on European Union. By qualifying this article as “nuclear,” the EU practically condemned itself never to use it since it was bound to be seen as an attack on a member state. In a report on fundamental rights in the EU, Belgian liberal MEP Louis Michel attempted to address what he saw as key failings of the current mechanisms. The resolution drawn from his report in February 2014 stressed “that the obligation

“The Hungarian experience showed that by [the EU] not acting fast and firmly enough on past transgressions Viktor Orbán has constantly raised the stakes.”

Ana Gomes, Portuguese MEP

to fulfill the Copenhagen criteria—the political criteria imposed on candidate countries before they are welcomed into the EU—does not lapse after accession.” The criteria include commitments on rule of law, democracy, and human rights, including press freedom, with which a candidate country must comply before becoming part of the EU. The resolution called for a “new Copenhagen mechanism” that would be binding on all member states and would find a reasonable way to objectively monitor states, with the help of a so-called Copenhagen Commission of independent experts. It would also be able to suspend funds and use other penalties if needed. The option to suspend funds has particular relevance to Hungary, which was handed a multi-billion euro grant by

the commission despite Orbán’s repressive action against press freedom and other EU values.

Further proposals to deal with straying member states were put forward until, in March 2014, the commission, under José Manuel Barroso, proposed the EU framework to Strengthen the Rule of Law in a communication to the Council and the European Parliament. “The framework seeks to resolve future threats to the rule of law in member states before the conditions for activating the mechanisms foreseen in Article 7 would be met. It is therefore meant to fill a gap,” the commission stated. It was conceived as a three-stage process: a commission assessment of alleged breaches or threats, which may lead to a “rule of law opinion” substantiating the concerns and giving the state in question the chance to respond; in case of an unsatisfactory reply, the commission would send a “rule of law recommendation” specifying the problems to be fixed within a given timeframe; if the state failed to comply, the commission would “assess the possibility of activating one of the mechanisms set out in Article 7.”

In a December 2014 meeting, however, the General Affairs Council, a gathering of EU and foreign affairs ministers, suggested instead an annual dialogue with all member states on the rule of law issue. Eventually, in a March 2015 appearance before the European Parliament, Timmermans sided with member states, according to reports. He said he was wary of another monitoring mechanism and asked MEPs to give the commission a chance to demonstrate that the current system can work.

Dimitry Kochenov and Laurent Pech objected to the initiatives in *EU Law Analysis*, a website covering EU law. The law academics wrote: “Both initiatives, and in particular, the Council’s, appear grossly inadequate to tackle the problem of ‘rule of law backsliding post EU accession.’ Portuguese MEP Gomes shares their view. She told CPJ, “Nothing has moved yet, although the Hungarian experience showed that by [the EU] not acting fast and firmly enough on past transgressions, Viktor Orbán has constantly raised the stakes.” With the EU stymied, repressive governments such as Orbán’s know they have free rein to subvert the EU norms.

## Hungary's challenge to the EU

When Viktor Orbán's center-right conservative party Fidesz won parliamentary elections in 2010, few expected that Budapest would pose one of the most crucial challenges to the EU. "Orbán's experiment is the first attempt to deconstruct the liberal system inside the EU. It is also the first time the EU has had to respond swiftly and effectively to such a legal and constitutional challenge," István Hegedűs, chairman of the Hungarian Europe Society, which promotes European common values, told CPJ. European Journalism Centre director Rütten added that Hungary "exposed the failings of the EU" when it came to dealing with member states.

The EU presumed that once admitted, member states would never backtrack. So the Commission, as guardian of the treaties, found itself underequipped in dealing with Hungary. Orbán's worrying measures went beyond press freedom. Since 2010, Hungary has implemented, then amended its constitution five times, and passed more than 600 laws, a December 2014 report by Council of Europe Human Rights Commissioner Nils Muižnieks found. The so-called 2010 media package—the Media Act and the Press Freedom Act—became a major symbol of what was going wrong. It assured the ruling party dominion over the Media Council, a supposedly independent and self-regulatory body, and imposed tax and advertising regulations that led to criticism that it was rewarding friends and punishing opposition. The government was also accused of meddling in newsrooms. In a case reported by CPJ, Gergő Sálings, editor-in-chief of *Origo*, was replaced in June 2014 after the website published an investigation about expenses claimed by Orbán's chief of staff, Janos Lazar. *Origo's* publisher denied politics was behind the dismissal. The government also clamped down on international funding for independent media, and public broadcasting was turned into a party instrument. "Putin would be happy to watch Hungarian TV," Hungarian journalist and press freedom activist Attila Mong told CPJ.

Between 2010 and 2014, digital commissioner Kroes said she was doing the utmost within the confines of her mandate. The Commission initiated infringement proceedings—legal action against legislation deemed incompatible with EU law. It required Budapest to modify four provisions of the Media Act: the disproportionate application of rules on balanced information; fines for broadcasters legally established and authorized in other member states; rules on registration and authorization of media service providers; and rules against offending individuals, minorities or majorities. Kroes also denounced, in a July 2014 blog, a new advertising tax that she said unfairly targeted leading privately owned TV broadcaster RTL Klub. The tax was linked to profits, subjecting successful companies to a 40 percent tax rate, CPJ reported. It was estimated that RTL would have been forced to contribute 81 percent of the entire revenue raised by the tax in 2014, according to news reports. In May 2015, Hungary made amendments to parts of the tax law in a move the *Financial Times* described as "a victory for independent broadcasters and EU regulators who had opposed the measure."

Kroes raised the scenario of applying Article 7 of the Treaty, the so-called "nuclear option" which, at its most severe, suspends a member state's voting rights. However, it would have needed quasi-unanimity at the council, a near impossible feat due to the reluctance by member states to accept more intrusion from Brussels. "It would also have hit all Hungarians irrespective of their support



Russian President Vladimir Putin, left, and Hungarian Prime Minister Viktor Orbán, who has passed a series of press laws that go against EU values. (Reuters/Laszlo Balogh)

to Orbán,” a top European Commission official who was not authorized to speak on the record and declined to be identified, told CPJ. “That is not something that you can take lightly.” The official added that some member states “although critical of Orbán, also feared sanctions would provoke a nationalist backlash and increase support for the government or, even worse, for the far-right Jobbik party.”

In Hungary, press freedom circles were stunned by the EU’s reaction. “Viktor Orbán’s growingly illiberal governance is in itself a denial of European democratic values, and not in a hidden way, but set to a loud anti-European propaganda tune,” Miklós Haraszti, a Hungarian human rights activist and former OSCE Representative on Freedom of the Media, told CPJ. At a June 2015 event in Brussels, Gábor Polyák, founder of Hungarian think-tank Mertek Media Monitor, said: “Orbán learned how he could handle the EU: if he complied with details of the EU complaints he did not have to change the politics itself.” Polyák claimed the Commission could have responded by using the EU telecom rules to tackle how frequencies were allocated or the Charter of Fundamental Rights to address the media package.

The EU could have also used its power over funds, critics argued. “The EU gives more than €5 billion in financial support to Budapest—some 6 percent of Hungarian GDP,” according to the BBC. The Brussels-based European Foundation Centre added that the EU funds 97 percent of public investment in Hungary. In a 2014 briefing, the foundation added: “With worrying signs of state-capture, corruption, and maladministration, European institutions and the European Court of Auditors should ensure public funds are being correctly employed.”

Haraszti told CPJ he found the EU reaction to how the government funded itself perplexing, adding that Hungary was “plundering the generous influx of European Commission money ... [and] foreign-owned firms” through high taxes. “Both tactics defy core principles of the Union,” he said.

But the funds did not stop. In September 2014, Barroso announced a €21.9 billion grant in structural funds and EU investments for Hungary for 2014-2020. “EU taxpayers are just becoming aware that they are funding oligarchs,” said Hungarian Green MEP and opposition member Benedek Jávor at a European Parliament conference in June 2015.

Infringement proceedings by the Commission were not enough to bring Orbán back to the fold. A CPJ mission in October 2014 found self-censorship in government-supported media outlets, cronyism in government-friendly commercial media, and discriminating state advertising allocations and tax regulations. “The effectiveness [of EU infringement proceedings] is very much dependent on the compliance culture of the member state,” European ombudsman and former Irish journalist O’Reilly warned in a May 2015 address at the annual conference of the Law Society of Ireland. Italian EU Affairs Minister Sandro Gozi made a similar point in November 2014 when, according to reports, he asked, “Why are we so demanding on the rule of law when we have a candidate country and once it becomes a member it becomes a black box, no questions are asked about the rule of law?”

The Orbán government has snubbed its EU critics. When international government spokesman Zoltán Kovács was faced with Hungarian non-governmental organizations, journalists, and MEPs at a January 2015 Civil Liberties Committee hearing on human rights, he compared the session to a “soap opera” and swept away criticism as “biased opinions, outright lies, and emotional outbursts.” The committee, he suggested, “should concentrate itself on more meaningful issues like terrorism, immigration, or the euro.”

In June 2015 Hungary was again the object of a European Parliament resolution—mostly triggered by plans to introduce the death penalty (a sentence outlawed in the EU) and the erection of a fence at its Serbian border to deter migrants—urging the commission “to activate the first stage of the EU framework to strengthen the rule of law.” There were grumblings even inside the EPP against their member party, but Orbán has not been deterred. In July 2015, a bill restricting freedom of information requests by introducing fees and adding exceptions to the release of documents was voted in. “It is easy to view the law as part of an anti-democratic drive pursued by the right-wing Fidesz government,” said Mong.

Confronted with Orbán’s challenges and the EU’s timidity, many in Brussels echoed Dutch Socialist MEP Kati Piri’s conviction that “change in Hungary would primarily come from its own people,” and their will to push back an illiberal government while deterring the more radical far-right nationalist and press-unfriendly Jobbik. “As Orbán’s friends control a significant part of the media, the scenario of an electoral upset is not obvious since much of the public opinion is left in the dark,” Pierre-Arnaud Perrouy, author of *A Dictatorship in Europe?*, a documentary on Hungary, and executive director of the European Humanist Federation, told CPJ. He added that it would be hard to dismantle the Fidesz state Orbán has been allowed to create.

# II. How EU policies and law influence journalism

## EU AS MEDIA REGULATOR

The 1,000-strong EU press corps does not regularly cover EU press freedom policies, except in exceptional cases when, for instance, the Hungarian prime minister raucously rebuts his adversaries in the European Parliament. “EU correspondents cover the big picture, the big stories which are rocking the EU and its member states, like the Grexit [the scenario of Greece leaving the eurozone], the Brexit [the 2017 U.K. referendum], or the towering role of Germany in the EU,” Georgios Terzis, a Brussels-based media academic who edited *Mapping Foreign Correspondence in Europe*, told CPJ. “The EU’s press freedom policies, however, are being watched closely by professional organizations, freedom of expression groups, and the media industry.”

The reason for this is “because everything the EU does may have an impact on journalism and media freedom,” Francine Cunningham, executive director of the European Newspaper Publishers’ Association, told CPJ. From the creation of a single market and cross-border trade legislation, to EU laws having to comply with the Charter of Fundamental Rights, professional media organizations and press freedom groups are always on the lookout for EU directives or regulations that could have an impact on their work.

Their circumspection is well advised: While press freedom, among other human rights, should be protected as a fundamental principle under the charter, “compliance is still treated as a political issue that is up for negotiation, rather than a legal requirement,” Israel Butler, of the Open Society European Policy Institute, wrote in 2012. Some apparently innocuous and technical directives can include provisions meant to protect, for instance, corporate secrets—a potential obstacle for journalists.

The commission has the most power in this area. “Only the commission can make legislative proposals which are submitted to the European Parliament and the council,” *Le Soir* foreign editor and longtime EU correspondent Maroun Labaki told CPJ. “It sets the political tone in

Brussels and its influence reverberates in policies and politics throughout the EU, although member states still retain the prerogative to interpret EU directives at the national level.”

The European Audiovisual Media Services Directive was the first significant intervention of the commission in the media sector. Launched in 1989 under the name *Television Without Frontiers*, and rooted in the EU’s industrial and trade policy, it was meant to set common rules and coordinate EU-wide national legislation in the broadcasting sector. The idea was to protect public service broadcasting, which is a peculiarity of the EU media landscape. Although focused mostly on technical issues, the directive addressed content. Incitement to hatred, for instance, was banned. And it opened a discussion on media pluralism which, drawn from competition rules and the will to address over-dominant providers, “has been interpreted by the EU institutions as a precondition for the existence and the exercise of freedom of expression,” according to an October 2010 background statement on media regulation published by research project *Mediadem*, an EU-funded project investigating media policies in 14 countries.

“Everything the EU does may have an impact on journalism and media freedom.”

Francine Cunningham, European Newspaper Publishers Association

A draft revision of the directive is expected in 2016. A number of media organizations and DG Connect officials hope to use it to reinforce provisions on press freedom—in particular, the independence of regulators. In a





First Vice-President of the European Commission Frans Timmermans, pictured, is responsible for ensuring the commission complies with the Charter of Fundamental Rights. (Reuters/Vincent Kessler)

number of EU countries, governments, political parties, and other interest groups still see the national state broadcasting system as a source of power up for grabs. Spain, for instance, where nominations of management are decided by the parliamentary majority, was criticized by an international press freedom delegation in December 2014 in which CPJ participated. The situation is particularly worrying in southeastern Europe. “Many governments have transformed the state media not into independent broadcasting services run by professionals to serve the public, but into their propaganda machinery,” according to Marius Dragomir and Mark Thompson of the Open Society Foundations program on independent journalism.

“Public broadcasters should be shielded from intrusive political influences through a number of mechanisms and institutions,” Nicola Frank, who heads the European affairs team of the European Broadcasting Union, an association of public broadcasters, told CPJ. “The independence of media regulators should be a core issue of the revision of the directive.” It would be in line with the European Court of Human Rights’ judgment in September 2009, under which states are obligated to ensure independence from political interference and control. A first step was taken with the creation in February 2014 of the European

Regulators Group for Audiovisual Media Services, tasked with advising the commission on the implementation of the Audiovisual Media Services Directive in what is known as a converged media environment, where traditionally separate branches of media, such as telephones, television, and the Internet, form a single network.

Although the draft directive looks purely technical or administrative, it has led some critics, particularly newspaper publishers, to say they believe it provides Brussels with a way to influence media governance in member states. “Under the cover of the converging media landscape, the EU could try to apply the new audiovisual directive to newspapers and subject them to similar regulation of the audiovisual sector which was regulated originally because of the scarcity of channels,” publishing association director Cunningham told CPJ. “The EU should not be involved in media regulation,” she added. “Industry self-regulation is the best system.”

Similar suspicions haunt the drafting of other apparently purely technical directives. Battles on intellectual property theft in the digital sphere have been vibrant in Brussels, as Parliament’s rejection in 2012 of the global Anti-Counterfeiting Trade Agreement showed. A coalition of digitally savvy activists, who claimed the

agreement would punish citizens for sharing content, upset the plans through lobbying and social media protests, according to reports. The proposed reform of copyright laws submitted by the commission also raised controversies. Newspaper and book publishers, who have been engaged in a showdown with tech giants, joined a Copyright for Freedom coalition which bases its case on the notion that “copyright is an enabler of freedom of expression.” It is mainly related to the tug of war between the legacy print media and the major search engines and news aggregators, particularly Google, and attempts to make these providers pay for copyrighted material displayed on their sites. The battle continues between rights holders, Internet consumers, and Internet service providers. “The European Commission should carefully assess whether existing EU copyright is congruent with free speech concerns, the right to inform, and the right to be informed,” according to a March 2013 policy briefing for Mediadem.

## €800,000

### Awarded to four press freedom projects by the Center on Media Pluralism and Media Freedom in 2014

Although it denies trying to overextend the treaties, the commission follows a proactive policy of issuing reports, commissioning studies, and convening experts’ meetings that aim to inspire EU policies and encourage member states. These initiatives contribute to the creation of an EU media sphere and the dissemination of common norms under the guise of coordinating or harmonizing national laws and practices. They increasingly give a European frame and color to issues that were largely supposed to remain “national.”

In 2013, for instance, the EU published guidelines on the promotion and protection of freedom of religion or belief, which recommend the decriminalization of blasphemy. Such laws, the document underlined, “restrict expression concerning religious or other beliefs; they can have a serious inhibiting effect on freedom of expression and on freedom of religion or belief.” The EU has also been trying to find common ground on hate speech. The Audiovisual Media Services Directive prohibits “any incitement to hatred based on race, sex, religion, or nationality.” It states: “EU countries can restrict the retransmission of unsuitable on-demand audiovisual

content—e.g., Neo-Nazi propaganda—that may not be banned in its country of origin.”

A Framework Decision on racism and xenophobia was adopted by the Council in November 2008 after seven years of negotiation, due mainly to disparity in member states’ legal systems and traditions on freedom of expression. It listed a number of offenses including publicly inciting violence and hatred and publicly condoning, denying, or grossly trivializing crimes of genocide—in particular, the Holocaust—crimes against humanity, and war crimes. A framework decision is binding on the objective—combating racism—but allows member states to choose the methods to achieve it. However, a 2014 assessment by the commission found that a number of countries had not fully taken on board the provisions, particularly when it came to denying or trivializing genocide, crimes against humanity, or war crimes.

The European Agenda on Security, adopted in April 2015 by the commission, is also committed to monitoring hate speech online. “In the current climate, we need urgently to move away from the culture of impunity we see on Internet and social media platforms,” Morten Kjaerum, then-director of the EU Agency for Fundamental Rights, said in a joint statement with the OSCE and the Council of Europe in March 2015. As a sign of the prominence of the issue on the EU’s agenda, the commission has dedicated its first Annual Colloquium on Fundamental Rights, to be held in Brussels in October 2015, to combating anti-Semitic and anti-Muslim sentiment in Europe. The EU’s approach to hate speech—and more particularly, to Holocaust denial—has regularly been criticized by free speech advocates, but in the wake of debates after the violent reaction to cartoons of the Prophet Muhammad in Denmark and France, it has also been denounced by Islamic governments and clerics as a sign of double standards and used, in a questionable exercise of moral equivalence, to justify calls for banning so-called “denigration of religion.”

Other initiatives confirm the will of the EU and the commission, in particular, to attempt to influence the freedom of expression and media policy agenda. In 2010, the launch of Mediadem was presented as a mainly academic exercise. But its assumptions on the role of media in promoting democracy and its defense of independent public service broadcasting could be seen as a mission statement on how to ensure media independence, pluralism, and freedom. The High-Level Group on Media Freedom and Pluralism, set up in 2011 under former Digital Agenda Commissioner Neelie Kroes, reflected to some extent the ambitions of the



A broadcast truck outside EU headquarters in Brussels. Newspaper publishers say they are wary of EU directives that may influence media regulation. (AFP/John Thys)

commission when it recommended in its January 2013 report that the EU “be considered competent to act to protect media freedom and pluralism at the state level in order to guarantee the substance of the rights granted by the treaties to the EU citizens.”

The commission also plays a proactive role in funding press freedom projects. As well as co-funding the Centre on Media Pluralism and Media Freedom, tasked with improving the protection of media pluralism in Europe, it allocated €800,000 to four projects in 2014: the Safety Net for European Journalists, focused on Italy, southeast Europe, and Turkey; a criminal defamation project; real-time mapping of violations of press freedom and pluralism in EU member states and candidate countries; and the strengthening journalism in Europe project with the Centre for Media Pluralism and Media Freedom and the Center for Media and Communications Studies. In 2015, it announced funding for the European Centre for Press and Media Freedom, based in Leipzig, Germany. The commission sees the center’s purpose as being to

unite the press freedom community and tackle violations in the EU and beyond.

“Up to now, touchy member states have not reacted negatively,” an EU official and one of the initiators of the project, told CPJ. The official, who asked to remain anonymous, added, “Of course such centers have no implementing power but they will subject the EU and its member states to the monitoring system and, therefore at times, to naming and shaming.”

Are these EU-backed projects a subtle way to improperly guide and influence the media sphere? There are regular insinuations, mainly from Euroskeptics, that the EU tries to buy itself the acquiescence of non-governmental organizations and journalists by funding media projects. The commission and grantees, however, reject such claims. Other press freedom advocates who spoke with CPJ fear that some projects are overlapping and creating rivalries between press freedom and professional organizations as well as with Council of Europe projects, such as the newly established Platform to Promote the

Protection of Journalism and Safety of Journalists. Some media professionals told CPJ they were wary that the commission might be tempted, under EU values, to favor a specific doctrine of journalism anchored in the concepts of social responsibility and public interest. The high-level

## “Public broadcasters should be shielded from intrusive political influences.”

Nicola Frank, European Broadcasting Union

group convened by Kroes in 2011 suggested exactly that: In its January 2013 report, it advised that the commission be granted the role of a media super-regulator with power to monitor an EU-wide network of independent media councils and judge whether they were in compliance with EU values. The suggestion was rejected by press freedom and professional groups. “Attempts to define, limit, and take away journalistic status or let political bodies oversee the media will undermine both our media freedom and our democracies,” Kirsty Hughes, then chief executive of Index on Censorship, wrote in *European Voice*, the EU-focused paper taken over in 2015 by *Politico*. “The high-level group should go back to the drawing board.”

### ACCESS TO INFORMATION

In August 2004, Belgian police raided the house and office of Hans-Martin Tillack, a Brussels-based reporter for German magazine *Stern*, in what his lawyer claimed was an attempt to reveal the identity of a whistleblower. This raid, although exceptional, is emblematic of challenges facing EU correspondents, who say they face hurdles in accessing documents, covering secretive trade deals, and investigating officials’ expenses.

Transparency is essential for democratic accountability and for journalists to perform their duty as a watchdog. Despite its mammoth communications apparatus, the EU is often accused by citizens as well as civil society actors of being complex, opaque, and distanced from the European people. The complexity of the EU institutions and decision-making process makes transparency a challenge in Brussels, but the policy of openness also depends on the approaches of member states. The Scandinavian tradition of open government

contrasts with the obsession in France and the U.K. with executive privilege or state secrecy. With the exception of Cyprus and Luxembourg, which have draft laws, all member states have adopted freedom of information legislation even if the law is not necessarily enforced properly. According to Transparency International, only Luxembourg, Romania, Slovenia, and the U.K. have legal frameworks for protecting whistleblowers that are considered to be advanced. In Italy, public bodies fail to respond to 73 percent of freedom of information requests, a 2013 study by transparency group Diritto Di Sapere and Access Info Europe found. These laws can suffer a backlash when governments consider them too intrusive: The Conservative government in the U.K. started a cross-party review of the country’s Freedom of Information Act in July 2015 which, according to the *Guardian*, is likely to be viewed as an attempt to curb public access to government documents.

Access to EU institutional documents is established in the treaties and by the Court of Justice. Article 42 of the Charter of Fundamental Rights states that “any citizen of the Union, and any natural or legal person residing or having its registered office in a member state, has a right of access to European Parliament, Council and Commission documents.” A European ombudsman hears individual complaints and can investigate transparency issues.

Have such commitments turned Brussels into a transparency paradise? Journalists covering the EU’s budgets, trade deals, and draft directives find its commitment to transparency has a limit. Despite being responsible for handling a budget of about €145 billion a year, the EU appears reluctant to fully disclose its workings.

“Compared to member states, EU institutions are average in terms of transparency,” Access Info Europe Director Helen Darbishire said. “Worse than Sweden, better than Spain.” There are clearly no-go areas. “Key documents remain off limits or are not even registered, as EU institutions brandish the traditional arguments of diplomacy, trade secrecy, national security, and corporation or personal privacy,” Darbishire told CPJ. EU officials are particularly reluctant to give access to preparatory documents from the decision-making process. “They overuse the argument of personal privacy to refuse documents,” Darbishire added. “The information, for instance, on commissioners’ expenses only provides the total amount, with no details, on grounds of privacy.” A July 2015 for global civil society organization Open Knowledge found transparency on public money varied depending on which EU authority was handling the funds.



Hans-Martin Tillack, of Stern magazine, pictured left during a raid on his office by Belgian police after reporting on allegations made by a whistleblower. (AFP/Tierry Monasse)

## 73% Freedom of Information requests to which Italy failed to respond in 2013

The labeling of EU classified information—top secret, secret, confidential, restricted—is serious business in Brussels. Many journalists and MEPs object to what they call a culture of over-classification, which places public interest documents out of reach. “Information on infringement proceedings, in case of breaches of EU law by a member state, is particularly hard to get,” Darbishire said. The EU human rights country strategies are not disclosed publicly, which makes it hard for press freedom groups and the European Parliament to apply a proper degree of scrutiny. Access to sensitive documents, particularly on external affairs and defense matters, is further hampered by the right of member states to refuse

consent if the documents or information originate from them, or by the obligation to respect NATO security standards under a 2003 EU-NATO agreement. In January 2015, European Ombudsman O’Reilly revealed in a speech that she had been denied access to a report on Europol’s compliance with EU law because “the commission and the U.S. required Europol to obtain the permission of the U.S. authorities. The U.S. authorities have refused such permission to Europol.”

*EU Observer* journalist Andrew Rettman told CPJ, “The release of documents is also denied because EU officials simply want to avoid embarrassment or hide their double talk.” In a restricted document on EU-Russia human rights talks that he reviewed and reported on in 2010, Rettman found: “EU diplomats at the time said that it was classified to protect victims’ names.” But, he said, “The report also showed that EU officials think the talks amount to little, even though EU leaders say the opposite in public.” The EU did not react publicly to his claim.

Public interest groups and inquisitive journalists constantly fight to open up the system and prevent



Protests in Berlin against the Transatlantic Trade Investment Partnership. EU correspondents claim access to documents from trade negotiations is often restricted. (Reuters/Hannibal Hanschke)

institutions from hiding documents from public view. For them, the challenge is to institutionalize transparency and make more documents available as a matter of routine so that checks and accountability do not depend on legal procedures, whistleblowers, and undercover journalism. Unconventional methods can help push the limits. In 2011, investigative reporters from British paper *The Sunday Times* posed as lobbyists and convinced four MEPs to accept payment to amend legislation, according to reports. This “cash for amendments” scandal led to the adoption in 2012 of a Code of Conduct obliging parliamentarians to declare outside interests (financial holdings, board membership, outside revenues). Transparency International has used these declarations of interest to create a database, part of its EU Integrity Watch project, to monitor potential conflicts of interest. The code, however, contains loopholes, and Transparency International has been advocating for stricter rules to allow greater monitoring.

Access to information also differs between institutions. “The Council of Ministers, which represents member states, is obviously difficult to crack open, but the European Parliament, contrary to common perceptions, is less

cooperative than the commission in sharing information on itself,” Alison Coleman, of the Transparency International EU office, told CPJ. There can be defeats, too. In 2003, after the commission denied access to court documents related to the “Open Skies” commercial air transport between the EU and U.S., the International Press Association argued that the commission was obliged under its transparency commitments to provide journalists with access to documents submitted to the court. This right was rejected by the court in 2010.

International trade negotiations are an area where access is often restricted. The commission and council are secretive, not only because of concerns about strategies but because these negotiations often contain provisions that are politically sensitive. “The council refused to publicize the mandate of the commission in the [Transatlantic Trade and Investment Partnership] negotiations, which the Trade Commissioner did in part. Most states are dead set against transparency,” *Le Soir* foreign editor and EU affairs veteran Maroun Labaki told CPJ. As Andreas Maurer, a professor of European studies at Innsbruck University in Austria, underlined in a European Parliament think-tank document published

in April 2015, MEPs have been complaining about the difficulty in exercising oversight without clear rules on how to access negotiation documents held by the commission and the council.

In a July 2014 judgment on a case submitted five years earlier by Dutch liberal MEP Sophia in 't Veld against the council, the court instructed the European Commission to be more transparent. The court “has sent a clear signal that EU institutions cannot abuse the argument that negotiations of international agreements require documents to remain secret,” wrote Kostas Rossoglou, then-senior legal officer with European consumers union BEUC, in a July 2014 blog. “Although the court did not go as far as imposing disclosure as the rule, it has set out a certain number of conditions which must be met for the documents to remain undisclosed.”

Darbishire and Pamela Bartlett Quintanilla of Access Info Europe echoed this point in a July 2014 article: “The EU institutions have to work harder to justify why a particular document would be likely, ‘foreseeably and more than purely hypothetically,’ to cause harm.”

European Ombudsman O'Reilly has endorsed the campaign for greater transparency. In January 2015, she made 10 suggestions to the commission that covered common negotiating texts, greater proactive disclosure of Transatlantic Trade documents, and enhanced transparency of Transatlantic Trade meetings. “By following these suggestions,” she said, “the commission would ensure that the [Transatlantic Trade] negotiating process can enjoy greater legitimacy and public trust.”

The commission remains suspected by transparency advocates of discriminating in favor of corporate lobbies and against public interest groups by granting the former access to sensitive documents that it refuses to the latter. In June 2015, the Court of Justice rejected an appeal by advocacy group Corporate Europe Observatory (CEO) to force the commission to release documents, including meeting reports, emails, and a letter, related to trade negotiations with India. “The documents in question had already been shared with industry groups such as employers’ federation BusinessEurope but were deemed ‘sensitive’ and ‘confidential’ when access was requested by CEO in the public interest,” the advocacy group complained in a June 2015 press release. EU correspondents told CPJ their work was hampered by this two-tier system of access to information.

In 2003, the drafting of the Insider Trading and Market Abuse Directive, which the commission said would protect investors while preserving press freedom, led media professionals to call for a “journalist exception.” A similar concern was expressed in early 2015 against an EU

Trade Secrets Directive which threatened to corral crucial business information and impose unspecified penalties over revelations, according to journalists and civil society organizations. “We want to be sure that its provisions will not intimidate journalists who investigate business and that there is a clear reference to the respect of the Charter of Fundamental Rights,” Guenaëlle Collet, European Broadcasting Union’s European affairs manager, told CPJ. The commission took great pains to rebut these fears in May 2015. “Journalists would be allowed to investigate companies, and corporations would not be able to hide information on matters of public interest, like health, the environment or consumers’ protection,” it stated.

Press freedom groups are not reassured and, like

“Information on Commissioners’ expenses only provides the total amount, with no details, on grounds of privacy.”

Helen Darbishire, Access Info Europe

Elise Lucet, the producer of the France 2 show “Cash Investigation,” whose online petition against trade secrets gathered 450,000 signatures by July 30, 2015, they continue railing against the vagueness of draft provisions. Some journalists with which CPJ spoke highlighted the response to the 2014 LuxLeaks stories, which exposed a massive tax engineering system put in place in Luxembourg in favor of multinational corporations when current European Commission Chair Jean-Claude Juncker was prime minister. In April 2015, a Luxembourg court indicted French journalist Edouard Perrin, of Paris-based production company Premières Lignes Télévision, who broke the LuxLeaks story for “Cash Investigation,” according to reports. A statement from the Luxembourg prosecutor’s office alleged that Perrin had not limited himself “to gathering information offered by the accused ... and would have played a more active role in the committing of these offenses.” His production company responded with a statement that said such investigations were in the public interest and “in accordance with the role of journalists as watchdogs of democracy as acknowledged by the European Court of Human Rights.”

A reform of the transparency model is not expected during the current commission which, a number of journalists and transparency advocates told CPJ, has

proven to be “more restrictive than its predecessors and more determined to keep a tight leash on the EU information machinery.” The European ombudsman and a number of MEPs and rights groups appear determined to keep advocating for more transparency. In May 2015, O’Reilly opened a new front by challenging the lack of transparency of the so-called trilogues: the secretive haggling between the commission, council, and Parliament on future legislation. “Trilogues are where

## €145 billion Budget the EU handles each year

the deals are done that affect every EU citizen,” she said. “European citizens, businesses, and organizations should be able to follow each stage of the law-making procedure.”

Brussels hosts an impressive number of lobbyists, public affairs companies, lawyers’ offices, and interest groups, which play an often decisive role in the drafting of EU legislation. Although, as the *Guardian’s* Europe editor, Ian Traynor told CPJ, “Some are useful sources and help journalists circumvent the commission’s silences,” they have mostly operated away from public and media scrutiny. A voluntary lobby register introduced under the Barroso commission in 2011 failed to institute a reliable and accountable system. Under pressure from civil society organizations, the Juncker Commission tightened the lobby system with a transparency register that banned meetings of senior representatives—commissioners, cabinet heads, and directors-general—with unregistered lobbyists. The ban covers about 300 people out of a staff of 33,000, many of whom are key contacts for lobbyists. According to the Alliance for Lobbying Transparency and Ethics Regulation, a coalition of about 200 nonprofits, academics, and unions, the measures did not go far enough. The ban did not cover the council, where major decisions are made, and excluded casual contacts. “The level of detail provided currently to the register, and its limited capacity to monitor and sanction, is simply not enough,” O’Reilly said at a May 2015 conference in Brussels.

These weaknesses mean information on the EU’s decision-making process is hidden. “Campaigners, journalists, and all EU citizens have a right to know who is lobbying our decision-makers, on which dossiers, and how much money they spend on lobbying,” said Darbishire, of Access Info Europe, in January 2015. “Full transparency is essential for getting a true picture of

lobbying in Brussels and for ensuring balanced input of the views of all stakeholders.”

Since January 2014, all EU institutions have been obliged to introduce internal whistleblowing rules. In March 2015, however, the ombudsman warned that only two, the commission and the Court of Auditors, out of nine institutions had adopted these rules. An effective EU whistleblower system would work only if all member states had similar rules at the national level. This was the sense of a 2013 European Parliament Resolution but, in a June 2015 Parliament hearing, a commission representative announced that a general directive on whistleblowers would not be drafted because of the difficulty in harmonizing 28 disparate legislations, a challenge the commission does not seem afraid of when drafting a trade secrets directive.

The commission has had a whistleblowing system in place since 2004, but the number of cases has been few: five per year, on average, according to anti-fraud agency OLAF. Rights groups have questioned whether this is because the commission is a model of virtue or because its functionaries are scared of being penalized or sidelined if they reveal wrongdoing. In the past two decades, Brussels has had its quota of controversies in which institutions have allegedly attempted to gag or discredit suspected whistleblowers. A case reported by the EU Observer in November 2014 involved corruption allegations at EULEX, the rule of law mission in Kosovo. Maria Bamieh, a British prosecutor seconded to the EU mission, had filed internal requests to start an investigation but was dismissed after being accused of leaking documents to Pristina newspaper Koha Ditore. Bamieh and the paper denied the accusations. In August 2015, EULEX requested a gag order to prevent reporting on proceedings after Bamieh filed a case at the London Central Employment Tribunal, according to reports. The request, which at the time of writing had not been ruled on, was denounced by Transparency International Kosova as an act of intimidation.

But do EU accredited correspondents who, with more than 900 members, form the third largest press corps in the world after London and Washington, need whistleblowers to cover Brussels? The EU has a huge communications machine and prides itself on being open to the press ... to a point. “A huge number of documents have been made available,” *Le Monde’s* Stroobants told CPJ. Aidan White, executive director of the Ethical Journalism Network, added: “Things have changed for the better. Twenty years ago, the EU was a closed body.”

There is no strong tradition of investigative journalism in the Brussels press corps, but “journalists do get





Journalists cover an EU press conference in Brussels in December 2014. Correspondents say daily press briefings are being replaced by broadcasts from the EU information channel. (AFP/John Thys)

things,” Darbshire told CPJ. Journalists wanting to follow in the footsteps of legendary U.S. investigative journalist I.F. Stone and who are ready to devour public documents, read obscure committee hearings, and attend byzantine debates can extract meaningful public interest information. Relying on official EU data enabled investigative journalists, for instance, to document a number of cases of fraud in European Commission regional aid funds.

“Things have changed for the better. Twenty years ago the EU was a closed body.”

Aidan White, Ethical Journalism Network

The EU communications machine has become more defensive, according to reporters who spoke with CPJ. “Gone are the days when EU correspondents shared the visions of the EU officials and saw themselves as

torch carriers of a supranational project,” a nostalgic former director-general of the commission told CPJ in confidence. Referring to the commission, *Le Monde* correspondent Stroobants told CPJ, “When you ask for information or documents which might contradict the official narrative, the gates fall and spokespersons do not really help you.”

Alexander Winterstein, deputy chief spokesman of the Spokesperson’s Service of the European Commission, told CPJ the service was “committed to providing all available information to all accredited journalists—in full transparency and without any distinction.” Winterstein added that all requests are answered “comprehensively, truthfully and timely,” and when information is not immediately available, a reply confirming that the request is being investigated is sent to the journalist.

The service encourages background briefings and the service has created the role of a cabinet communications adviser to improve its ability to do this, Winterstein said. The service also holds regular meetings with the International Press Association in Brussels to improve links between communications advisers, political cabinets, and the press.

Some journalists suggested the EU was trying to circumvent the press. The midday briefings have been replaced by live broadcasting via the Internet or the EU's information channel, Europe by Satellite. "The briefings have been nullified," *Le Soir* long-time EU correspondent and current foreign editor Labaki told CPJ. "They have been turned much more into a sort of PR exercise instead of a privileged moment where professional journalists can ask probing questions and spokespersons can talk 'off the record.'" The International Press Association, which represents EU accredited correspondents, denounced it as a trick to bypass correspondents and weaken their role. As a result, a number of "off-the-record" background meetings have been restored, but for accredited press only.

Accreditation also dictates levels of access for the press. Accreditation is for professionals living close to Brussels, whose main source of income is from journalism and whose main beat is the EU. Temporary press access badges are available for non-accredited professionals. Despite these limits, "Brussels remains quite open for international correspondents, compared to Paris or Washington," the *Guardian's* Traynor told CPJ. He added that journalists can also rely on leaks. "If someone at the commission or the council refuses to give you the information, you can most often find it among representatives of 28 member states which have an interest in talking to you."

The use of whistleblowers and leaks can cause problems for the press. The Tillack case remains, as *The Washington Post's* Glenn Frankel wrote, "a cautionary tale." Tillack, who wrote critically on the EU for *Stern* magazine, was accused by the EU's anti-fraud office OLAF of bribing an official to gain access to confidential documents, according to reports. Belgian police raided the EU correspondent's home and office, removing files and computers to search for evidence of the bribe, which Tillack denied offering. Tillack's lawyer, Christoph Arhold, claimed in the September 2006 edition of *The European Lawyer* that OLAF wanted to use the raid to identify the source of the leak. Tillack took his case to the European Court of Human Rights, which ruled in November 2007 that Belgium had violated Tillack's right to freedom of expression and ordered it to pay moral damages and legal costs. The court found that OLAF had no factual basis for the bribery accusation.

In spite of the positive judgment, the case had a chilling effect. The Berlaymont—the building hosting the commission at the heart of Brussels' European district—is not, as Traynor described to CPJ, "the Kremlin," but the history of EU correspondence includes a number of cases in which journalists during the Barroso era have

been subjected to reprimands and reprisals from touchy officials, some EU journalists claimed in conversation with CPJ. "The [commission] hates that correspondents disseminate information obtained on the sly from the inside," Lorenzo Consoli, EU correspondent for Italy's *TMNews* and former president of the Brussels-based International Press Association, told CPJ.

**"The briefings have been nullified. They have been turned much more into a sort of PR exercise."**

Maroun Labaki, *Le Soir*

Consoli and others raised the case of Jean Quatremer. The correspondent of Paris-based daily *Libération* and author of a widely followed blog, *Les Coulisses de Bruxelles* (*Backstage Brussels*), claimed he was boycotted by the Barroso commission between 2005 and 2014. He said he was not invited to informal briefings and was passed over while trying to ask questions in press conferences. In a right of reply to *Libération* in October 2008, a commission spokesman brushed away the allegations. But a policy of favoritism and payback seems to persist in Brussels, according to journalists who spoke with CPJ. "If you publish things they really do not like, they will tell you they are unhappy or they will freeze you out of privileged meetings with top officials," Stroobants told CPJ. In an email to CPJ, the Spokesperson's Service of the European Commission denied claims that journalists are obstructed in their work, or that a culture of favoritism exists.

## DIGITAL EUROPE

The EU has been striving to recover what Commissioner for Digital Economy and Society Günther Oettinger described at a May 2015 press conference as digital sovereignty in a global market dominated by U.S. companies, but if this ambition is not strictly framed by human rights standards, press freedom on the Internet may be at risk.

The digital agenda involves constant arbitration between different rights and national legislations. Journalists and press freedom groups who met with CPJ said they have been warily watching developments, as the EU and individual member states firm up their stance



Google's chief legal officer, David Drummond, pictured at a hearing on the right to be forgotten decision. The search engine is resisting attempts by the European Court to enforce the ruling globally. (AFP/Eric Piermont)

on issues including the so-called right to be forgotten, which allows people to request that links be deleted from search engines; calls by member states for backdoors to encryption and greater control over online content; and debates over source protection and data protection.

"It is a whole new game for journalists and whistleblowers," Alain Lallemand, a Belgian member of the Washington-based International Consortium of Investigative Journalists, told CPJ. "Journalists do not know what means can be legally used against them, how the law specifically protects them."

Although journalists told CPJ the negative impact of the right to be forgotten ruling has not yet been widely felt in newsrooms, press freedom and transparency advocates have warned that it has serious implications for journalism and that moves by the EU to try to enforce the ruling globally oversteps the body's mandate. The Court of Justice's ruling stemmed from a complaint to a Spanish data protection agency from a lawyer demanding that Barcelona daily *La Vanguardia* delete two news items on his past financial troubles and that Google remove links to these articles resulting from searches for his name. The

court backed the data agency, which ruled in favor of *La Vanguardia's* right to keep the articles on its website but against Google's insistence not to filter search results.

The court's decision meant it was left to search engine operators to determine whether search results on an individual's name were, as formulated in the ruling, "inadequate, irrelevant or no longer relevant, or excessive." Google Chief Legal Officer David Drummond complained in an opinion piece in the *Guardian* in July 2015 that the decision means the search engine was being asked to make "difficult and debatable judgments."

The court had "opened the door to censorship" and overemphasized privacy over free expression, as CPJ Technology Program Coordinator Geoffrey King warned in a statement released after the ruling. The U.K.'s House of Lords EU Committee came to a similar conclusion. In a July 2014 report, it stated: "We do not believe that individuals should have a right to have links to accurate and lawfully available information about them removed, simply because they do not like what is said."

Google's transparency report shows that since the court's decision in May 2014 to the end of July 2015,

288,256 requests covering 1,048,795 URLs were received, and 41.3 percent of URLs had been removed. Analysis by the *Guardian* of data hidden in the source code of Google's report found that 95 percent of requests came from the public and "not from criminals, politicians, and public figures," and that social media sites including Facebook and YouTube were more affected than news websites. Although business magazine Quartz claimed in October 2014 that the press had not been greatly affected, British daily *The Telegraph* tracked its deleted links to show how requests were being used to edit out negative reports. In July 2015, it reported that since May 2014, 85 search results linking to its website had been removed, including reports on court cases, death notices, and scandals involving politicians and other high-profile figures.

The EU Article 29 data protection working party, which represents member states' privacy agencies and judges how search engines handle de-listing requests,

## "How can a search engine strike the right balance between the interest of the person making the 'deletion' request and the public's right to know?"

Jens-Henrik Jeppesen, Center for Democracy and Technology

concluded in June 2015 that most denials were justified. But Internet freedom and privacy groups are concerned by this evolution of entrusting private behemoths, often acting on behalf of government regulators and in the absence of court oversight, with the right to decide what can or cannot be posted. "The public should be able to find out how digital platforms exercise their tremendous power over readily accessible information," 80 academics wrote in an open letter to Google that called for greater transparency. "As their terms of service are open-ended, they restrict in unpredictable ways the right of journalists to use social media," Joe McNamee, director of Brussels-based network European Digital Rights, told CPJ. "It means a disintegration of the concept of law."

There is uncertainty, too, on whether the ruling should apply globally or only to the national domain where the deletion request was made. Google has argued that

extending the policy to its global domain would affect countries not covered by the European court. However, the Article 29 working party stated that it should apply to Google's global domain. On July 29, 2015, Google asked France's data watchdog to withdraw a notice ordering it to comply globally, with the search engine highlighting again, in a blog, that the ruling was an EU, not a global, ruling.

Many press freedom advocates have been nervous about the ruling despite the European Commission's reference to the public interest and assurances from the Article 29 working party that access to the original information will remain. "How can you make sure this decision is not going to interfere with legitimate reporting?" Jens-Henrik Jeppesen, EU representative of the Washington-based Center for Democracy & Technology, said to CPJ. "How can a search engine strike the right balance between the interest of the person making the 'deletion' request and the public's right to know? Will it not be tempted to err on the side of removing content in order to avoid legal procedures and fines, and therefore to exclude from search results items that are clearly in the public interest?"

Ricardo Gutierrez, general secretary of the European Federation of Journalists, an organization viewed as a barometer for press attitudes in Europe, told CPJ that the federation has not yet taken a position on the ruling, adding, "The right to be delisted does not appear to be seen as a generalized attack on press freedom." Gutierrez said that the federation had not yet received complaints from journalists about deletion requests.

The court's ruling highlights the danger to press freedom posed by intermediary liability, a crucial element of a free and untrammelled Internet being discussed in the EU in the context of hate speech, or of copyright law that pits rights holders against Internet users. General monitoring and filtering is banned under the so-called *E-Commerce Directive* confirmed in November 2011 by the court. Targeted blocking, however, is accepted. Hosting companies are required to take down information as soon as they learn that it may be unlawful, or face liability. Some Internet freedom groups endorsed the E-Commerce Directive's exemptions as protective. "It has done an excellent job of defining the responsibilities of Internet platforms with respect to hosting user-generated content. It enables free expression online, cross-border commerce, and social development, and provides a clear framework for dealing with illegal content," Jeppesen told CPJ. Aleksandra Kuczerawy, of the Leuven University Interdisciplinary Centre for Law and ICT in Belgium, was less reassured. In a January 2015 essay in *Computer Law and Security Review*, she found that the directive

may lead to self-censorship and highlighted the legal uncertainty caused by it not being uniformly adopted by member states.

The commission has been reviewing the directive, particularly in the context of the launch in May 2015 of a Digital Single Market strategy meant to boost, integrate,

## 288,256

### Requests for Google to remove links, from May 2014 to July 2015

and regulate the EU digital sector. Internet freedom groups such as the Center for Democracy & Technology are suspicious in particular of the “duty of care” provision to be imposed on third-party content. “According to commission documents I have seen, plans for this duty of care include forcing Internet platforms to actively scan user-uploaded content for illegal information,” warned Julia Reda in a May 2015 blog on her website. The German MEP for the digital rights Pirate Party and vice-president of the European Green Group added, “This would increase groundless mass surveillance, outsource law enforcement to private companies, and introduce huge barriers to entry on the intermediaries market, preventing competition. Because there simply aren’t enough copyright lawyers in the world to check all the videos and pictures uploaded every day, platforms would have to increasingly rely on automatic detection algorithms that are known for their unreliability and would introduce huge barriers to market entry.” She has a point. On YouTube alone, 300 hours of video are uploaded every minute, its statistics show.

Another issue with implications for press freedom is net neutrality, the principle that service providers should grant access to all content and applications regardless of the source and without discriminating against or blocking products or websites, press freedom advocates told CPJ. Although the commission and Parliament officially endorsed net neutrality, European telecoms companies had been lobbying against it and the position of the Council was undecided. The text adopted in July 2015 by the three institutions, according to digital freedom organization Access Now, “lacks elements that would provide a solid footing for net neutrality in Europe.” The draft is expected to be presented for approval at the end of 2015.

“To abandon net neutrality is to abandon both the

freedom to impart and receive information without interference,” Jeppesen told CPJ. Pierre-Arnaud Perrouty, executive director of the European Humanist Federation, added, “Without net neutrality, journalists would be deprived of equal rights to information access and distribution.”

Another case that has raised concerns about the regulation of online content is the June 2015 ruling on Estonian news outlet *Delfi* by the European Court of Human Rights. In *Delfi AS vs Estonia*, the outlet was sued by an individual named only as L who claimed to have been the subject of threats in the comments section of a news story. After being ordered to pay damages by an Estonian court, *Delfi* went to the court of human rights, to which all EU member states are a party, but lost its case twice. The Grand Chamber of the Strasbourg court concluded that *Delfi*, as a content provider, was not a “passive hoster” and therefore was the publisher of the comment and liable. “Holding content hosts liable for their users’ speech is a shortcut to censorship for governments and private litigants who cannot easily identify an anonymous speaker or seek a judgment against her,” Emma Llansó, director of the Free Expression Project at the Center for Democracy & Technology, wrote in a blog. “The threat of liability creates strong incentives for content hosts to preview and approve all user comments—and to censor with a broad brush.”

## 85

### Deleted links to reports in UK daily *The Telegraph* from May 2014 to July 2015

Surveillance and counterterrorism efforts have been brought to the forefront in the EU by revelations by former NSA contractor Snowden of mass government surveillance and calls for greater restrictions under the guise of anti-terror measures after the *Charlie Hebdo* attack. French Interior Minister Bernard Cazeneuve’s proposals for Web giants to work directly with the government in tracking and taking down material deemed by authorities to have links to terrorism illustrate the risk of knee-jerk reactions compromising press freedom. Demands for backdoors to encryption by the EU and its member states are of particular concern for CPJ.

In 2009, the right to safety from surveillance was affirmed in the European Charter on Freedom of the Press, a non-binding document adopted by 48 European



Former NSA contractor Edward Snowden appears via video link at the EU. Revelations of mass surveillance have had an impact on member states. (AFP/Frederick Florin)

editors-in-chief and journalists. “Surveillance or electronic eavesdropping on or searches of newsrooms, private rooms, or journalists’ computers with the aim of identifying sources of information or infringing on editorial confidentiality are unacceptable,” the charter stated. In the wake of the Snowden revelations, Parliament adopted a resolution, “Surveillance Bodies in Various Member States and Their Impact on EU Citizens’ Privacy,” which reaffirmed the need to strike a balance between security and liberty and underlined how it was crucial for journalists to be protected against surveillance in the NSA program. The findings are expected by the end of 2016 of an investigation Parliament asked the Fundamental Rights Agency to carry out into large-scale surveillance by intelligence agencies in the EU and any instances of democratic oversight. The reaction by member states to the NSA revelations was criticized in a report published in June 2015 by Council of Europe Human Rights Commissioner Muižnieks. The report found: “Security operations which have violated human

rights should have prompted reforms in this field, but progress has been disappointingly slow.”

However, when they address counterterrorism, MEPs are doing little more than shadow boxing because the Treaty on European Union states that “national security remains the sole responsibility of each member state.” As German Green MEP Jan-Philipp Albrecht, rapporteur on Data Protection Regulation, said at a European Parliament briefing, “No EU rules bind the security services, and national security is the black hole of European law.”

Has the EU acted as a standard bearer of liberal norms that might temper the alleged illiberalism of some national anti-terrorism laws? “The security mindset is percolating through the whole EU system,” a commission official, who requested anonymity because of the sensitivity of the issue, told CPJ. In 2002, the EU had already adopted a Framework Decision on Terrorism, followed in 2010 by an Internal Security Strategy in Action. But these vaguely worded documents did not please many freedom of speech groups. “It could potentially affect freedom of

expression,” Jeppesen, of the Center for Democracy & Technology, told CPJ. “There is indeed a clear difference between propaganda and broadcasting or reporting on it.”

A cyber security strategy presented by the commission in 2013 called on member states to respect EU data protection law and take full account of individuals’ rights when sharing information related to cyber security. A commission directive to ensure harmonized network and information security across the EU is under discussion.

The EU counterterrorism strategy has a renewed urgency in the aftermath of a number of attacks in Europe and amid controversy around EU citizens returning from fighting with the Islamic State and other radical groups in Syria and Iraq. The EU has been trying to get a trans-border role, with Counter-Terrorism Coordinator Gilles de Kerchove coordinating the response with EU law enforcement agency Europol. In July 2015, at the initiative of the Council, Europol set up an Internet referral unit modeled on the Counter Terrorism Internet Referral Unit in the U.K., to flag terrorist or violent extremist content and work with the industry to remove it. “Ninety-three percent of the sites flagged by Scotland Yard are removed by Google,” de Kerchove said at a European Policy Centre event CPJ attended in Brussels in July 2015. “The idea is to build on ChecktheWeb, a high-security portal launched in 2007 at Europol to coordinate the collection of data on terrorist organizations.”

In April 2015, the commission submitted a five-year Agenda for Security to the Parliament to combat terrorism, organized crime, and cybercrime. The document starts with a solemn reminder of the Lisbon Treaty commitment to fundamental rights and democratic oversight over EU policies on internal security. It delved into the media factor and announced details of a forum with IT companies, law enforcement, and civil society. This EU Internet forum, the document added, “will focus on deploying the best tools to counter terrorist propaganda on the Internet and in social media. In cooperation with IT companies the forum will also explore the concerns of law enforcement authorities on new encryption technologies.”

De Kerchove confirmed that approach. In an internal document obtained by civil liberties group Statewatch, he wrote: “The European Commission should be invited to explore rules obliging Internet and telecommunications companies operating in the EU to provide under certain conditions as set out in the relevant national laws and in full compliance with fundamental rights access of the relevant national authorities to communications (i.e., share encryption keys).” IT companies will increasingly be expected to play the game, “whereas after Snowden they have been developing new systems to avoid being

seen as working with the NSA,” de Kerchove added at the Brussels event.

Many counter-extremism measures, including censoring Internet speech and publishing government propaganda such as Cameron’s strategy in the U.K. to create de-radicalization programs, are viewed by civil society and researchers as limited in their effectiveness. The proposals on encryption have implications under international law, notably for the absolute right to freedom of opinion, as David Kaye, U.N. special rapporteur on freedom of opinion and expression, discussed in his June 2015 report on international legal protection for encryption.

Some journalists told CPJ they are nervously observing these maneuvers. How far will the surveillance bureaucracy go? Their own privacy and sources’

“Journalists do not know what means can be legally used against them, how the law specifically protects them.”

Alain Lallemand, International Consortium of Investigative Journalists

confidentiality are increasingly undermined by legal and illegal surveillance and even by the perception that no information is safe from peeping services. “In a privacy-unfriendly world, you are safe as long as you don’t stand out,” McNamee, of European Digital Rights, told CPJ. “If a journalist is searching on criminality or corruption, there is a chance that he/she will attract attention. The awareness about unchecked surveillance carries a risk of serious self-censorship.”

Lallemand, of the International Consortium of Investigative Journalists, added, “Sources are overwhelmed by technological advances in surveillance and have sometimes only a vague idea of the traceable information they can involuntarily leave when contacting journalists. And the danger often comes less from the national police or intelligence services but from snipers [detectives, pirates] and foreign secret services. It implies a change of mindset to be up to the new threats.”

When it comes to the protection of sources, journalists are unable to rely on support from EU-wide legislation. In 2000, the Council of Europe’s Committee of Ministers

issued a recommendation on how to implement protection in domestic legislation, but it is left to member states to set their own laws. Since 2005, Belgium, seat of the most important EU institutions, has gone from being one of the worst countries to one of the best in this area. The obligation to reveal sources there is limited to information absolutely necessary to prevent an infraction that would risk a person's integrity and when there is no other way to get that information. Other member states, however, have some distance to travel, even if journalists can count on the usually protective rulings of the European Court of Human Rights.

"Protection of journalistic sources is one of the basic conditions for press freedom," the court stated in its 1996 landmark decision in the *Goodwin v. United Kingdom* case. The U.K. was condemned for ordering William Goodwin, a trainee journalist with *Engineer* magazine, to reveal the identity of his source on a company's confidential corporate plans. "Both the order requiring the journalist to disclose his source as well as the fine imposed on him for refusing to do so gave rise to a violation of his right to freedom of expression under Article 10 of the European Convention on Human Rights," the court wrote. In its ruling, the court found: "Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result, the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected."

The Strasbourg court is still considered a stalwart defender of the protection of sources, despite a 2009 ruling that included a caveat for when a journalist may be forced to reveal an identity. In the *Financial Times and Others v. The United Kingdom* judgment, the European Court of Human Rights qualified its support for protection of journalists' sources by warning that "malicious intent" may in certain circumstances justify an order to disclosure.

The debates on counterterrorism measures and source protection are closely related to Data Protection and Data Retention. EU legislation on privacy, as spelled out in Articles 7 and 8 of the Charter of Fundamental Rights and in the EU Data Protection Directive, is protective of individual's rights. In his strategy paper, presented in March 2015, Giovanni Buttarelli, the new European data protection supervisor, said the EU must "lead by example as a beacon of respect for data protection and privacy." The battle is not won, though. A data protection reform package is currently being discussed but, according to a blog by a coalition of Brussels-based digital rights

organizations, the council's proposals are like "a wolf in sheep's clothing," and would lower the existing level of data protection below the standards required to be in line with the EU treaties.

How can privacy concerns, so essential for the protection of sources, be reconciled with the journalists' right to report and investigate? The current directive,

**"In a privacy unfriendly world you are safe as long as you don't stand out."**

Joe McNamee, European Digital Rights

under Article 9, provides that exemptions have to be made where personal data are processed solely for journalistic purposes. In 2014, with the reform of the directive in mind and prior to the European Parliament elections, the European Federation of Journalists, which represents journalist unions, underlined in its manifesto the need for a journalistic exemption in EU data protection law. The European Newspaper Publishers Association is on the same page. "The journalistic exemption should be binding," its director, Cunningham, told CPJ.

The Data Retention Directive was pushed through by the 2005 U.K. Council presidency and adopted in March 2006. Drafted in the aftermath of terror attacks in Madrid in 2004 and London in 2005, it was meant to facilitate the EU response in investigating organized crime and terrorism. The directive stated that telecoms companies had to store data—phone numbers, IP addresses, and other key telecom and Internet traffic data—for a minimum of six months and a maximum of 24 months, and make them available to police.

This directive sparked concerns from privacy and press freedom groups and underlined the differences between EU and U.S. legislation. The U.S. has no mandatory retention law. As private companies, Internet service providers are free to store or delete data as they see fit. In the U.S., a court order can be used to make service providers deliver data on users. "Government-mandated data retention impacts millions of ordinary users by compromising online anonymity which is crucial for whistleblowers, investigators, journalists, and those engaging in political speech," wrote the U.S.-based Internet freedom advocacy group Electronic Frontier Foundation.

In 2014, judging on a constitutional challenge to the Irish data retention law by privacy advocacy group Digital Rights Ireland, the Court of Justice struck down





A protester with a bandanna wrapped around his mouth protests Spain's gag law. Privacy concerns are often used as an excuse to pass restrictive legislation. (AFP/Pierre-Philippe Marcou)

the directive as invalid and in violation of fundamental rights. The court's advocate general, Pedro Cruz Villalón, said it interfered with the right to privacy and protection of personal data. It also considered that the directive did not provide enough safeguards to ensure protection against the risk of abuse and any unlawful access to these data. CPJ welcomed that decision, saying in an April 2014 statement that it "underlines the dangers to privacy posed by the mass collection of transactional data."

A number of member states, including Belgium and Germany, have complied with the ruling; others are procrastinating. If they do not comply, they expose themselves to infringement proceedings from the commission. "Over a year after the court ruling, it is finally time for the commission to act," said McNamee, of European Digital Rights in July 2015. "EU member states cannot be allowed to break European law with impunity."



Leaders of member states join a solidarity march in Paris for the *Charlie Hebdo* victims. Several EU countries made calls for repressive legislation and greater surveillance in the months after the attack. (APF/Eric Feferberg)

## In times of crisis, press freedom curtailed

The EU's commitment to press freedom was tested by the attack on Charlie Hebdo in France. The initial show of solidarity, where heads of state marched through the streets of Paris, gave way to the acceleration of laws harmful to press freedom under the rationale of fighting terrorism.

Some of the most enthusiastic and vociferous proponents of greater Internet censorship and surveillance were France, Germany, and the U.K. In France, access to websites deemed by the Interior Ministry to condone terrorism was ordered blocked and sweeping authority was given to security services to monitor citizens. In Germany, Chancellor Angela Merkel sought to resurrect expansive powers that would allow the government to store telephonic and Internet metadata even of citizens not under suspicion, despite these powers already being rejected by the high courts of Germany and the EU. Such a measure would put every journalist, source, and reader under scrutiny. In the U.K, Prime Minister David Cameron demanded in public speeches and parliament that Internet companies allow authorities access to all encrypted communication, despite the position of leading computer security experts that introducing such vulnerabilities cannot be accomplished without endangering the systems on which all computers rely.

In addition to influencing the norms of more repressive countries, the actions of EU member states portend a troubling slide.

While the *Charlie Hebdo* attacks helped catalyze an illiberal trend plaguing many parts of Europe, they did not create it. Data retention was required of EU member states under a policy formed during the U.K.'s presidency of the Council, until the Court of Justice struck down the mandate in 2014. The court found that the mandate was a serious interference with privacy. For years, journalists in Europe have found themselves under surveillance, investigation, and harassment based on their work, according to news reports. Claims of concern over privacy in the EU and other countries have been abused to muzzle the press through court decisions and legislation, such as a law that came into force in 2014 in Hungary requiring photographers to gain the consent of anybody who appears in a picture, and Spain's gag law, which carries a €30,000 fine for the unauthorized use of images depicting police.

The shift toward greater surveillance and censorship contradicts ideals on which the EU was founded. Website blocking such as that imposed in France abandons principles of free expression as fundamental as the prohibition on prior restraint of speech. Similarly, Internet filtering in the U.K. has resulted in the widespread censorship of newsworthy speech, according to research by online freedom organization Open Rights Group. Such blocking is especially dangerous because it is taking place in the absence of robust prior judicial review.

Cameron's proposals that would undermine strong encryption—a push joined by officials in France, Spain, and other EU member states, has revealed deficiencies in its proponents' understanding of technology, experts say. In addition, as United Nations special rapporteur on freedom of expression and opinion David Kaye warned in a report on encryption presented to the U.N. Human Rights Council in June 2015, undermining encryption likely violates international law. If successful, such efforts would put journalists and their sources at risk of discovery, exposure—or worse. For example, strong encryption protects computer networks as well as devices. Attempts to undermine it would enable authoritarian regimes that are willing to use such abilities against their own people or even across borders.

Journalism helps preserve democratic freedoms by ensuring public debate remains uninhibited, robust, and wide-open. If the richest, most liberal countries in the EU cannot live up to their own principles—as well as those protected under EU charters and international law—press freedom and journalist safety will increasingly be at risk not just inside Europe, but anywhere the EU has influence.

# III. The EU's international record on press freedom

## EU AS A GLOBAL ACTOR

On World Press Freedom Day (May 3), the highest EU officials line up to deliver their message of support for a free press. But press freedom and human rights activists who spoke with CPJ said that when it comes to meaningful diplomacy in repressive countries that are important trade partners or strategic allies, the EU is often inconsistent. “The real nature of human rights diplomacy can be judged on the determination to confront countries that have a real importance for the EU,” Portuguese socialist MEP Gomes told CPJ. “The EU does not really pass the test.”

The Treaty on European Union states that the EU's foreign policy must be guided by the principles of democracy and rule of law that inspired its creation. Human rights, as former High Representative Catherine Ashton said, must be the “silver thread” running through the European External Action Service, a commitment endorsed by her successor, Federica Mogherini. In a reflection of this lofty ideal, the EU has developed what is best described as a human rights toolbox so it can present itself, as Stephan Keukeleire and Tom Delreux wrote in *The Foreign Policy of the European Union*, as “a values-driven normative power.”

Officially human rights, and therefore press freedom, are part of all EU foreign initiatives. Trade and cooperation agreements signed between the EU and about 130 states have, since 1995, included a human rights clause referring to the UN declaration of human rights, and therefore freedom of expression, as an “essential element.” The clause is theoretically legally binding and paired with a mechanism that allows for measures including, as a last resort, the suspension of an agreement in cases of persistent and serious violations of its provisions. Substantive references to the importance of press freedom also appear in progress reports monitoring the compliance of candidate countries with the accession criteria, country reports, and most country-specific Parliament resolutions. In 2014, the EU adopted Guidelines on Freedom of Expression Online and Offline, a 28-page document meant to inspire the policies of

the European External Action Service and push its representatives into action. Combating violence against journalists and fighting impunity tops its priorities.

The EU has imposed sanctions for human rights breaches in a number of instances. Trade preferences under the GSP+ (an extension to the Generalized Scheme of Preferences), for instance, have been withdrawn on three occasions for human rights violations: Myanmar (1997-2013), Belarus (2007-present), and Sri Lanka (2010-present). All three feature in CPJ's database of journalists killed in relation to their work. Myanmar and Belarus are featured in CPJ's lists of most censored countries and in the most recent census of journalists imprisoned for their work.

But in reality, the EU's defense of press freedom has been tailored to traditional foreign policy criteria, such as national interest, trade relations, or conflict resolution. The EU has been particularly anxious not to upset important trade partners or geopolitical allies. Rights groups have documented how influential trade partners with a poor human rights record have been less severely reprimanded than less strategic partners; companies in member states have provided surveillance technology to repressive regimes; and inconsistencies in aid exist, such as in the issuing of emergency visas to journalists at risk.

A September 2014 review by the Leuven Center for Global Governance Studies described the monitoring and enforcement of human rights policies as erratic, adding that it led to “suspicions of pusillanimity and double standards.” Quiet diplomacy, or *realpolitik*, prevails, except when it is not too costly for the EU to take an apparently principled stance. In other words, an impoverished country such as Burundi, with no real strategic value, is more likely to be reprimanded than China.

Azerbaijan is a clear example of contorted EU diplomacy. Despite officially acknowledging its poor state of human rights and press freedom, and condemning the arrests and imprisonment of human rights defenders and



Supporters of imprisoned photojournalist Shawkan protest in Egypt. The EU has condemned the imprisonment of journalists in Egypt while acknowledging the country's regional importance. (Reuters/Mohamed Abd El Ghany)

journalists, the EU has been pursuing, in its own words, “an increasingly close relationship with Azerbaijan, going beyond co-operation, toward gradual economic integration and a deepening of political co-operation.” Azerbaijani rights groups were incensed by the EU’s reaction to the April 2015 jailing of human rights defender Rasul Jafarov. “That most of the grantees of European Union human rights funds from Azerbaijan are today either behind bars or outside of the country did not change the EU’s stance on Azerbaijan,” wrote Florian Irminger, Human Rights House Foundation’s head of advocacy, in April 2015. As an energy provider in a crucial geo-strategic region, President Ilham Aliyev’s regime knows it can challenge Brussels’ statements of concern.

The Middle East and North Africa are also illustrative of EU ambiguities. Until President Zine el-Abidine Ben Ali’s last days, Tunisia continued to be courted and was even offered advanced status within the European Neighborhood Policy while press freedom activists were denouncing increased repression. The same ambiguity

prevails today with the Egyptian government. In June 2015, Egypt had 18 journalists in jail, the highest number recorded in the country since CPJ began keeping records. Its counterterrorism and cybercrime laws arbitrarily threaten journalists and bloggers. After being late in denouncing the Mubarak regime, the EU observed the Mohammed Morsi government with concern and first watched the Abdel Fattah el-Sisi military intervention with some relief. It expressed concern at journalists’ detentions, asked for the release of the three jailed Al-Jazeera journalists, condemned death sentences, and, in effect, suspended the formal EU-Egypt dialogue under the European Neighborhood Policy. “There was a real cooling of the relations,” an EU official who asked not to be named, said. “But the EU changed its negative stand when it had to admit that President el-Sisi was there to stay.”

The EU also sent an observation mission to the May 2014 presidential elections despite signs that the polls were not meeting standards of fairness and freedom. A March 2015 European External Action Service working

document reflected the EU's ambiguities: It mixed critical remarks on the state of human rights with the acknowledgment of Egypt's importance in the region and the need to normalize relations in the name of geo-strategy, counterterrorism, and economic interests. The EU, through the European Endowment for Democracy, has been cautiously funding some pro-democracy projects but by sending such a mixed message to the government the EU, in effect, undermined its own attempts to intervene against violations of human rights including press freedom.

The EU balancing act of conventional state-to-state diplomacy and an approach inspired by human rights often leads to ineffectiveness. In January 2015, for instance, a European External Action Service spokesman issued a statement calling on Saudi Arabia to suspend the sentence handed to Raif Badawi. The blogger, who founded an online forum for liberal comment, had been sentenced to 1,000 lashes. But in March, when news outlets reported how Saudi Arabia had prevented Margot Wallström, Sweden's foreign minister who condemned the sentence, from giving a speech on human and women's rights at an Arab League meeting, the EU expressed only regret and offered to mediate between Stockholm and Riyadh.

Due to such inconsistencies, a Memorandum of Understanding to cooperate on counterterrorism signed in January 2015 by the EU and the League of Arab States raised suspicions in human rights circles of a return to the era of pre-Arab Spring complicity with illiberal states, when the EU and its member states were taken off guard by massive protests. In March 2015, after a battle of motions among political groups that revealed conflicting views on how security and liberty should be balanced, the European Parliament voted in a resolution calling on the EU "to build clear safeguards into its cooperation with third countries, to ensure it does not directly or indirectly support or legitimize the repression of legitimate organizations and individuals in the name of countering terrorism."

The overall impression on EU foreign policy from journalists and press freedom advocates CPJ met in Europe and outside was that human rights was not as high on the EU's agenda as it claims. As a European External Action Service official, not allowed to speak on the record, candidly told CPJ, "Human rights are not really central to EU foreign policy."

A retired EU ambassador added, "If it were the case, it would be applied across the board. EU action often depends on who is who in a delegation or at a country desk." The former ambassador, who asked for anonymity

because of the sensitivity of the issue, told CPJ, "Focal points on human rights have been set up in EU delegations but they are often ineffective. Some diplomats will attend a journalist's trial; others will play golf with the interior minister. There are nice human rights guidelines, but there is no imperative order to apply them."

In recent years, Internet freedom has been the focus

**“The real nature of human rights diplomacy can be judged on the determination to confront countries that have a real importance for the EU.”**

Ana Gomes, MEP

of the EU's international press freedom diplomacy. Parliament passed a proposal in March 2008 to consider Internet censorship by national governments a trade barrier. In December 2011, spurred by the Arab Spring's "Internet revolutions," Kroes, then digital agenda commissioner, launched the No Disconnect Strategy to support Internet users in authoritarian states. It included Internet survival kits to help activists circumvent censorship and surveillance; host content banned in non-democratic states; and provide information on fighting surveillance with anonymizing tools. It also called for an end to sales of repressive technology. The effectiveness of the strategy, however, has been questioned; in July 2015, Dutch liberal MEP Marietje Schaake submitted a written query to the commission asking what progress has followed the 2011 decision.

A February 2013 communication by the European External Action Service on global cyber-security condemned the misuse of surveillance and, in June 2013, the commission published an ICT sector guide on implementing UN principles on business and human rights. The EU has also adopted rules on the export of dual-use technology that has the potential to impact human rights, a policy spurred by the concern over the role played by EU corporations in providing authoritarian states with repression technology.

An investigation by digital freedom groups Privacy International and netzpolitik, for instance, found German

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Flowers are left at the apartment of murdered journalist Anna Politkovskaya. Between 2000 and 2015, at least 26 journalists have been killed in direct relation for their work in Russia. (AFP/Natalia Kolesnikova)

## Reaction to Russia is too little too late

Russia demonstrates the reality of EU human rights and press freedom diplomacy. In the early 2000s, while focused on economic and geopolitical priorities, the EU largely turned a blind eye to Putin's rising authoritarianism and, with the exception of the European Parliament, did not react strongly to attacks on the press. Between 2000 and 2015, 26 journalists were killed in direct relation to their work, according to CPJ research, and Russia has consistently featured on CPJ's Global Impunity Index, a list of counties where journalists are slain and their killers go free. Based on the 1994 Partnership and Cooperation Agreements and the 2010 Rostov Partnership for Modernization, part of the EU-Russia relationship must be based on freedom, security, and justice, including human rights. But this policy was not exploited. The EU's approach followed a two-track policy: courting the Kremlin for contracts and engaging it on foreign policy issues such as Iran or Syria, while cautiously supporting Russian civil society. EU diplomats attended trials of journalists, kept in touch with independent media, and funded press freedom organizations, in particular through the European Instrument for Democracy and Human Rights. In 2011, for instance, according to a European Commission statement, grants from €96,000 to €149,000 were handed to the Press Development Institute-Siberia, the Lawyers for Constitutional Rights and Freedoms group, a conference center under the Russian Union of Journalists, and the Mass

Media Defense Centre. The European Parliament also used its Sakharov Prize for Freedom of Thought to show support for the press. In 2007, Anna Politkovskaya, a *Novaya Gazeta* journalist murdered the year before, was a finalist for the prize and, in what was seen as a clear challenge to Moscow, the 2009 prize was awarded to Oleg Orlov, Sergei Kovalev, and Lyudmila Alexeyeva on behalf the Russian human rights organization Memorial.

EU officials also use human rights dialogues to raise individual cases, particularly when it comes to impunity in murder cases, but Rettman, who reported on such meetings for the *EU Observer*, told CPJ that such efforts did not amount to much. “The Russians sent the wrong people, not Interior Ministry officials who could follow cases, but low-level diplomats who sermoned on the rights of Russian speakers in Latvia,” he said.

Until the Ukraine conflict, the EU was divided in its approach to the Kremlin. According to think-tank experts in Brussels, many Central and Eastern European countries, in particular Poland and the Baltic states which were part of the Soviet zone of influence, asked for a tougher position. The U.K., Denmark, Sweden, and the Netherlands shared similar concerns while Germany, a key EU actor, tried to find a balance, and France, Spain, Italy, Hungary and, even more, Greece and Cyprus were more likely to minimize Russia’s authoritarian drift to protect economic, energy, and financial interests.

The targeting of independent journalists at this time reinforced those advocating a hard line on Russia and the EU has undoubtedly become more vocal. In June 2015, the report on the State of EU-Russia Relations drafted by Lithuanian MEP Gabrielius Landsbergis (EPP) advocated for a critical reassessment and was adopted by a majority. But for some observers it came too late. “The EU is paying today for its negligence in the 2000s, when it did not adopt an early, firm, and united stand towards Putin’s drift into authoritarianism,” an European External Action Service official, not authorized to speak on the record, told CPJ.

If statements have become increasingly more muscular and sanctions have been imposed over Russia’s role in the Ukraine and the annexation of Crimea, Brussels officials feel powerless as they witness the cascade of laws and regulations, in particular the so-called foreign agents law, suffocating independent journalism and non-governmental activism in Russia.

The few remaining independent news outlets have come under legal, economic, and political pressure. Those reporting a conflicting narrative from the Kremlin’s on Ukraine face the most pressure. In March 2014, Galina Timchenko, editor of *Lenta*, was replaced after a Russian media watchdog warned that the independent news website was heading toward extremism, according to reports. CPJ documented how in the same year, Dozhd TV was dropped from satellite and cable companies in a move that reduced its audience from 18 million to 2 million homes. The offices of the independent station, which aired live coverage of anti-government protesters in Kiev that Russia’s state-run television had presented as extremists and thugs, were raided by tax officials, and the company from which Dozhd rented the building refused to extend the lease.

Russian authorities have also passed laws and regulations that curb independent and opposition news. Among them is a May 2015 presidential decree banning coverage of military casualties





Television screens show Vladimir Putin. The EU is investigating ways to counter Russian propaganda by providing alternatives to state-run broadcasting. (AFP/Alexander Nemenov)

in peacetime, passed as reporters were investigating claims that Russian soldiers were being killed in the Ukrainian conflict—a claim denied by Moscow. The broadcasts, branded dubious by Ukrainian media and international observers, included claims that soldiers were being offered land and slaves for fighting against pro-Russia separatists. To counter Russia’s dominance in the broadcasting sector, the European Endowment for Democracy, supported by a grant from the Dutch government, launched a feasibility study in December 2014 on Russian-language media initiatives. “This is about providing Russian-language alternatives to Russian state broadcasting for societies in the Eastern Partnership countries and beyond,” said Endowment director Jerzy Pomianowski in an interview with Carnegie Europe’s Judy Dempsey.

Russia has not reacted passively to the EU’s tougher stance. In 2012, its Ministry of Foreign Affairs released a report on the deterioration of human rights in the EU, focusing, as the *EU Observer* reported, on the rise of neo-Nazis, xenophobia, racism, and discrimination against Russian-speaking minorities in the Baltic states. Konstantin Dolgov, Special Representative for human rights, democracy and the rule of law, who was sent to Brussels to confront the EU, accused it of double standards at a 2012 dinner with his counterpart Lambrinidis that CPJ attended in Brussels. Moscow has also boosted its presence in Brussels. Embassy staff have increased from 20 in 2005 to more than 120 in 2015, the *EU Observer* reported and, according to a 2015 report by Brussels-based watchdog Corporate Observatory Europe, it has partnered with several major public relations companies. Independent Brussels-based specialized *Europolitics* magazine noted: “The Kremlin can count on at least 76 openly pro-Russian MEPs”—10 percent of the assembly.



Ethiopian migrants living in Malta protest outside the prime minister's office, calling on the European Union to stop supporting the Ethiopian government. (Reuters/Darrin Zammit Lupi)

company Trovicor had exported surveillance technology to Ethiopia's National Intelligence and Security Service. The hacking of U.S.-based Ethiopian Satellite Television was allegedly made possible because of software sold by Hacking Team, a company based in Italy that, according to internal documents leaked in July 2015, has clients that include government agencies in Russia, Ecuador, Sudan, Bahrain, and Saudi Arabia known to spy on journalists. Such revelations are concerning given Ethiopia's poor press freedom record. Despite the release in July 2015 of six jailed journalists, including two affiliated with the Zone 9 blogging collective who were jailed for taking part in an encryption course, the country is the second worst jailer of journalists in Africa, after Eritrea, according to CPJ research, with most jailed on anti-state charges. Ethiopia is also ranked fourth on CPJ's list of most censored countries. It remains, however, one of the major aid recipients of the EU and of some of its member states, including the U.K. and Germany.

In December 2012, the European Parliament adopted a Digital Freedom Strategy in the EU's foreign policy. Authored by MEP Schaake, it provided a roadmap for the EU on how to defend and promote Internet freedom abroad. It pleaded, in particular, that "all trade and association agreements, development programs,

and accession negotiations should be made conditional on respect for digital freedoms." It also called on the EU to ban technologies that authoritarian regimes may use to track and trace human rights activists, journalists, and dissidents. Internet freedom groups welcomed it as a well-intentioned objective but, as CPJ has found, technology export regulations are difficult to draft. Written narrowly, such controls are often ineffective. But even worse are controls that are overly broad, because they can unintentionally restrict legitimate security research and even a journalist's access to anti-censorship tools.

The autonomy of member states is one of the biggest challenges to the EU's Common Foreign and Security Policy. EU diplomacy is often the end result of haggling among member states with diverging worldviews and interests. When a fledgling common diplomacy emerges, critics warn that it is often based on the highest common denominator in proclaimed values and the lowest common denominator in action. "Human rights are both one of the most exploited rhetorical commitments in political declarations and one of the least consistently developed areas of foreign policy," according to a 2012 European Policy Centre issue paper.

Member states also have their own priorities, philosophies, focuses, and selective outrages, according

to EU watchers who spoke with CPJ. France is friendly with autocrats in Francophone Africa. Britain is allegedly soft on Turkey and Ethiopia. The Czech Republic has long focused on Cuba's authoritarian regime. Such selectivity undermines the consistency and efficiency of press freedom diplomacy. The 28 member states regularly work at cross purposes. "Germany's government [a coalition of Christian Democrats and Social Democrats] will not condemn Ethiopia because it does not want to upset its own international development agency, which has heavily invested in the country," MEP Gomes told CPJ. "Portugal, where Angola interests are ubiquitous even in the media, will protect Luanda."

The creation of a special representative for human rights was supposed to correct this disunity. Since 2012, Stavros Lambrinidis has been meeting human rights defenders and authoritarian rulers across the world, but his choice of soft diplomacy and engagement has not been fully endorsed by human rights organizations who repeatedly told CPJ they fear it has allowed the EU to put human rights in a silo. "Human rights is decoupled from the really important meetings where heads of state or government can talk so-called serious business," a European External Action Service official, who took part in such dialogues where human rights were sidelined, and who asked not to be named, told CPJ. "To some extent, EU support for media freedom expresses itself either in grand statements in U.N. fora or in concrete micro-actions in favor of specific media and journalists. This is not insignificant but in between, where real policies happen, the fear to confront countries of importance to the EU prevails."

Human rights talks held behind closed doors are considered ineffective and even counter-productive by many analysts. In "The EU's Human Rights Dialogue with China: Quiet Diplomacy and its Limits," a study of these talks between 1995 and 2010, Katrin Kinzelbach described how Chinese officials had become "human rights dialogue professionals." The associate director of Berlin-based Global Public Policy Institute added, "[T]he regular confidential talks behind closed doors have served as intensive training for a small number of Chinese officials on how to engage with—and effectively counter—human rights-related inquiries, criticism and recommendations."

Brussels officials do not take this criticism easily and have defended quiet diplomacy. "The EU must engage even with governments that are guilty of grave and widespread human rights violations, some of which, in spite of all appearances to the contrary, are often sensitive about their international reputation," Lambrinidis stated

in an October 2014 EU diplomacy lecture at the College of Europe in Bruges. They also highlight the support given to independent media, in particular through the European Instrument for Democracy and Human Rights and the European Endowment for Democracy. Through the European Instrument for Democracy and Human Rights, the commission is able to work directly with civil society and focus on sensitive political issues independently of authorities. Under its emergency funding rules, Russian journalist Mikhail Beketov, for instance, was given financial aid to cover hospital costs after he was attacked in a Moscow suburb in 2008. (His injuries led to his death more than four years later). Media support represented about 4 percent of the Instrument for Democracy budget between 2000-10, a December 2012 report produced by media consultants Andrew Puddephatt and Per Oesterlund, for the commission, found. According to the report's figures, 40 percent of the funding went to the Western Balkans, 24.3 percent to Sub-Saharan Africa, and 12.5 percent to Middle East and North Africa.

The European Endowment for Democracy has

## €15 million Average European Commission spends each year on media development

accentuated the Instrument for Democracy's approach of direct support. "The [Endowment] allows us to take up the defense of journalists in jail" by assuring, for instance, access to a lawyer, German liberal MEP Alexander Graf Lambsdorff, vice president of the Parliament and chair of the Endowment's Executive Committee, said at a European Parliament event in June 2015. It is also more daring in its support for political groups. Hundreds of individuals and civil society associations have been assisted by these instruments, which do not require the consent of the host state and often support opposition groups.

European Commission data shows it has spent €148.4 million, an average of €15 million a year, between 2000-10 in media development and freedom of expression support. Many observers who spoke with CPJ lauded EU assistance, but there are critics too. A Brussels-based media development expert, who asked for anonymity because his association has received money from the EU, said media support was fragmented, not sufficiently coordinated with member states' own programs, and that "the complexity of tenders excludes small NGOs and



As part of efforts to make Internet censorship a trade barrier, Digital Agenda Commissioner Neelie Kroes, pictured, set up a No-Disconnect strategy to support and protect activists and journalists online. (AP/Elisa Day)

leads to an overrepresentation of big hitters in the media support community.”

The policy of directly helping victims, such as Beketov, in an authoritarian regime while still negotiating with that government on trade or other issues has also been criticized as a contradiction. But EU officials claim that this approach is the reflection of the crossroads of ethical foreign policy and realpolitik.

Support for press freedom was further enhanced by the EU’s adoption in 2004 of Guidelines on Human Rights Defenders, which focuses on vulnerable groups, including journalists, according to a December 2013 concept note on the revision of Instrument for Democracy rules. Its objectives included “promoting the protection of journalists and bloggers from harassment, intimidation, and assassination due to the exercise of their professional or personal duties.” EU missions are ordered to take proactive measures in favor of human rights defenders: meeting with them, attending trials, raising their cases.

“The EU needs to really consider the defense of press freedom ... as a strategic asset.”

Andrea Subhan, human rights expert

Human rights organizations consider these guidelines a key test of EU human rights diplomacy. “The record, however, has been checkered,” Lotte Leicht, Human Rights Watch EU’s advocacy director, told CPJ. “In March 2015 at a Human Rights Council meeting in Geneva, EU foreign ministers publicly pledged themselves by waving placards [that read] #Idefend human rights defenders, but this promise is thrown under the carpet when other interests prevail—in Bahrain, for instance, or Saudi

Arabia.”

The EU’s press freedom diplomacy has been the victim of member states’ often short-sighted migration and visa policies. Emergency or fast-tracked visas have been provided to a number of journalists under threat, Olivier Basile, former Reporters Without Borders EU representative, told CPJ. However, some member states have denied visas to threatened journalists. A journalist for Russia’s independent newspaper *Novaya Gazeta*, who cannot be named for security reasons, was twice refused a visa by the British embassy in Moscow in August and December 2013, according to Article 19. The freedom of expression association justified the need for emergency protection because the journalist’s life was considered to be at risk. According to Article 19, the first application was refused because U.K. authorities said the journalist would be working, albeit on a voluntary basis, which was banned under the category of visa applied for. The second application was denied over concerns that the journalist may try to remain in the U.K. because of a continued security risk in Russia.

In early 2015, another case of visa denial turned to tragedy: Bangladeshi blogger Ananta Bijoy Das requested a visa from the Swedish embassy so he could attend a World Press Freedom Day event organized by the Swedish PEN Center in Stockholm to discuss the deteriorating situation of freedom of expression in his country. The embassy rejected his demand on the basis that there was a risk he may not leave at the end of the visit, according to PEN. The embassy added: “The purpose of your trip is not urgent enough to grant you visa.” On May 12, days after the visa denial, Ananta was hacked to death in the city of Sylhet. He was the third of four bloggers murdered in Bangladesh since the start of the year, according to CPJ research.

The EU has followed a more consistent press and Internet freedom diplomacy path at the UN, where it has observer status. As a coordinator of member states, the European Commission has usually taken positions in support of press freedom. It opposed the declaration of defamation of religion, actively endorsed the U.N. Plan of Action on the Safety of Journalists and the Issue of Impunity, and defended a free and multi-stakeholder approach to Internet governance, distancing itself from countries such as China, Russia, and Iran, which maneuver to put the Internet under the control of the International Telecommunications Union, a U.N. agency where states hope to exercise their power to regulate, control, and discipline the Web. EU influence in the U.N., in particular at the Human Rights Council, however, is limited, according to University of Leuven professors

Jan Wouters and Katrien Meuwissen. “Human rights is a subject matter that cuts across different EU competences and must be negotiated with member states who are the only ones who can vote,” they wrote in a December 2013 working paper.

Moreover, the EU has been losing influence in relation to less liberal-democratic actors and, apart from its key contribution to defend special procedures and special rapporteurs, it has often defensively pushed consensus-seeking, as documented in a 2011 European Parliament report calling on the EU to develop a more proactive, consistent, and ambitious strategy at the Human Rights Council.

“Turning press freedom and, more generally, human rights into a substantive and essential element of the EU’s foreign relations requires a change in paradigm,” Andrea Subhan, a human rights expert previously with the directorate-general for research at the European Parliament, told CPJ. “The EU needs to really consider the defense of press freedom not as a subsidiary issue or a soft power instrument but as a strategic asset which helps project its values but also protects its hardcore interests abroad.”

## JOINING THE CLUB: ACCESSION AND PRESS FREEDOM

Accession to the EU is often described as one of the most effective democracy promotion projects in the world. Countries vying for membership must prove themselves on a range of political and legal criteria that include provisions on standards for human rights, freedom of expression, and press freedom. Currently, five countries—Albania, Macedonia, Montenegro, Serbia, Turkey—are negotiating with Brussels, with Bosnia Herzegovina and Kosovo as so-called potential candidates. None has a respectable press freedom record. “They score significantly below the EU average,” notes

**“You cannot just clean the legal codes. You have to tackle journalism culture.”**

Guillaume Klossa, European Broadcasting Union

Jennifer Dunham, project manager at the U.S.-based watchdog organization Freedom House. CPJ research has documented systemic press freedom failings, all



A Turkish and EU flag are set up before a meeting. Turkey is one of five accession countries working toward EU membership. (Reuters/Francois Lenoir)

confirmed in the European Commission’s annual progress reports, which assess the countries’ conformity with EU norms.

In theory, the accession process is supposed to lead aspiring countries to respect the values on which the EU is founded—with freedom of expression an “intrinsic part,” according to the commission. Press freedom is directly covered in chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security) of the process. However, it is also shaped by public procurement (chapter 5), competition policy (Chapter 8), information society and media (Chapter 10), and social policy and employment (Chapter 19), which may have an impact on press freedom because they cover politically sensitive issues such as government policies on state advertising, regulation of public broadcasting, or even relations with private media owners.

The accession process is the moment when the EU has the most leverage and can require substantive changes in the candidate country. “We learned from previous accession processes that the EU should put more emphasis on chapters 23 and 24,” Dutch Socialist MEP and Turkey

Rapporteur Piri told CPJ. “Since the EU does not have good mechanisms of follow-up once a country is inside, we have to be stricter during the pre-accession stage.” The calls for a stricter approach came after criticism over the lack of reform in Romania and Bulgaria after they were admitted to the EU. But it was also the result of the Hungarian crisis and what is known as enlargement fatigue among part of the public opinion of EU member states. In September 2014, at a seminar with political editors from Serbia, Albania, and Kosovo, Hans-Joachim Falenski, an expert with the German ruling Christian Democratic Union party, warned that “compliance with common standards would be examined more closely for new EU candidates than it was before,” according to the website of the political foundation Konrad-Adenauer-Stiftung.

The democratizing effectiveness of the process depends largely on the seriousness of the EU in requiring reforms. Press freedom was introduced as a prerequisite during negotiations with Croatia before its accession in July 2013, and it had an impact. “Press freedom was indeed an explicit requirement in the Croatian membership

discussions,” Marc Pierini, Carnegie Europe scholar and former EU ambassador, told CPJ. “Therefore, the Croatians took the measures that were expected—mainly, changes in their legislation—because they knew it was the indispensable key to their acceptance in Brussels.” In other words, candidate countries should have no doubt that they will be rigorously monitored and that there will be no shortcut on the road to Brussels.

Preparing a candidate country for accession is

“Since the EU does not have good mechanisms of follow up once a country is inside, we have to be stricter during the pre-accession stage.”

Turkey Rapporteur Kati Piri

challenging and complex. In a 2014 workshop on media reform in the Western Balkans, a DG NEAR official explained that EU initiatives, as delineated in the 2014 Guidelines for Support to Media Freedom and Media Integrity in Enlargement Countries, cover a wide spectrum: “media laws, market rules, transparency of ownership, criminal and civil codes, training of the judiciary.” They are far from being painless since they often happen “in the context of highly politicized and polarized

nations where media professionals are deeply divided along ethnic or religious lines and powerful circles are resentful of Brussels impositions,” as a Serbian journalist put it at an EU Economic and Social Committee seminar in Brussels in April 2015. (Both were speaking under Chatham House rules, according to which a speaker’s identity cannot be published).

“You cannot just clean the legal codes. You have to tackle journalism culture,” Guillaume Klossa, a director of the European Broadcasting Union, told CPJ. Ides Debruyne, director of Journalismfund.eu, who has been funding cross-border investigations on corruption and trafficking, particularly in the Balkans, added, “The EU priority should be investing in quality journalism more than in the media.”

Press freedom is seen not only as a value in itself and a barometer of the general state of affairs in a candidate country, but as an instrument to attain broader objectives, such as good governance and the rule of law. In 2015, for instance, DG NEAR and the Guardian Foundation, a charity linked to the British newspaper, announced a new award for investigative journalism in the Western Balkans and Turkey in recognition of the role that watchdogs and the independent press play in fighting corruption.

Press freedom and professional groups remain vigilant, though. They do not want to be seen as barring accession, because, as they told CPJ, independent journalists in the candidate countries see EU membership as an essential step to break from authoritarian and corrupt ways. The history of European integration, however, taught them that political or economic expediency may trump values.



Cartoons of Turkey's attempt to silence critics by blocking Twitter are held up by protesters. Turkey will need to improve its press freedom record before being admitted into the EU. (AP/Burnhan Ozbilici)

## How Turkey backtracked on accession responsibilities

Press freedom was not a prominent issue during discussions on Turkey becoming a candidate country in 2005. In part, this was because reform was in the air in Ankara: Recep Tayyip Erdoğan's Islamist Justice and Development Party (AKP) adopted a number of reforms that appeared to demonstrate its commitment to the Copenhagen criteria. From 2008 onwards, however, Turkey started backtracking.

As well as the threat of imprisonment, CPJ has documented how critical journalists have been harassed, insult laws have been used to silence independent news outlets, and social networks such as Twitter and Facebook are forced to suspend services and remove content in times of political uncertainty. After Turkey became the world's largest jailer of journalists—CPJ's 2012 prison census found at least 49 journalists imprisoned at the height of the crackdown—and introduced repressive actions that targeted press freedom, the EU protested more loudly. In a speech at Istanbul Bilgi University in September 2014 Kroes, then vice-president of the European Commission Digital Agenda, condemned Turkey's "troubling trends" on free speech and free media. Pier Luigi Parcu, director of the European Commission-funded Centre for Media Pluralism and Media Freedom,



was more blunt. In a statement posted on the European University Institute website in December 2014, he said: “The Turkish government should remember that no state that jails journalists can join the European Union.”

The European Parliament’s powerful Foreign Affairs Committee stressed in Brussels in May 2015 that the Turkish government must guarantee press freedom. And in a report adopted in June 2015, the European Parliament’s rapporteur for Turkey, Dutch Socialist MEP Piri, found that the government’s repressive action against the press “conflicts with the spirit of the negotiation process.”

However, the EU’s leverage is weakened by the perception that Turkey will never be part of the EU. Some, favorable to a swift accession to the EU, blame opposition from member states and political parties allegedly wary of including a big Muslim country or a country with an increasingly authoritarian government. Others, suspicious of the AKP’s conservative and nationalist agenda, claim Erdoğan has grown wary of joining the EU because membership, which requires adherence to the EU Charter of Fundamental Rights, contradicts his political ambitions. Turkey, as prominent Turkish journalist Yavuz Baydar underlined in a February 2015 discussion paper for the Shorenstein Center on Media, Politics and Public Policy, “has refused to open the negotiation chapters (on public procurement or competition) related to the problems surrounding journalism and the media industry” i.e. the chapters that would force the government to cut links with servile media moguls.

“The EU margin of maneuver is dramatically limited as its capacity to defend press freedom can no longer use the prospect of membership as a lever,” Carnegie Europe visiting scholar and former EU ambassador Marc Pierini, author of “Press Freedom in Turkey,” told CPJ. Although Erdoğan’s party lost its majority in June 2015 parliamentary elections, the pro-EU constituency, the liberal urban sector that sees EU membership as a political project and not just an economic opportunity, remains a minority and is on the defensive. “It is essential that the EU maintain its emphasis on freedom and independence of the media as a key barometer of Turkish democracy. It is also of vital importance that the EU provides greater resources in support of media independence and help develop new business models for alternative media, particularly in the digital domain,” said Baydar.

Although Turkey has backtracked on its commitments, many observers are convinced that Turkey’s elite is determined to join the EU and that the EU therefore still has leverage that could force authorities to halt their onslaught on the press. Until all the chapters on which accession are based have met the required standards, Turkey will be barred from membership. And, as a final precaution, any member state can refuse to ratify the final stage of accession.

Brussels appears determined to engage with Turkey’s reformists and progressives, even if in doing so, it places them in the line of fire of a government that sees any dissident voice as unpatriotic. The EU seems convinced that it can only accept a Turkey freed, as Ahmet Insel wrote in a 2015 essay, from nationalism and the AKP’s “myth of a conservative Muslim restoration,” both of which restrict press freedom and are anathema to the EU’s proclaimed fundamental values. The risk that realpolitik will interfere with the EU’s proclaimed press freedom and human rights agenda however, has not disappeared. Such a policy of accommodation would leave independent journalists and press freedom advocates isolated and vulnerable.

# CPJ's Recommendations

## TO THE EU AS AN INSTITUTION

### In its internal policy:

1. Swiftly establish a clear, objective, and legally enforceable Rule of Law mechanism, in consultation with multiple stakeholders, to hold member states responsible for keeping to their commitments under the EU treaties, in particular under Article 2 of the Treaty on European Union on fundamental values and under Article 11 on freedom of expression and media freedom in the Charter of Fundamental Rights.
2. Monitor the conformity of member states with the EU Charter—with a focus on freedom of expression, freedom of the press, and media pluralism—through the creation of a Copenhagen Commission composed of independent high-level experts or through advancing the mandate of the Fundamental Rights Agency.
3. Utilize Article 7 and the suspension of voting rights against member states that break press freedom commitments as determined by the mechanism established in recommendation 1.
4. In the review of the Data Protection Directive and the adoption of the Trade Secrets Directive, grant an exception for reporting in the public interest.
5. Prevent data and privacy protections from being used to censor or deny access to information that is lawfully in the public domain, and institutionalize transparency practices that improve access to public documents. Provide effective protection for whistleblowers.
6. Clarify and limit intermediary liability and refrain from turning private companies into proxy censors. Ensure that the EU Internet Forum with technology companies is transparent, involves civil society and press freedom groups, and ensures the protection of fundamental rights.
7. Support strong encryption everywhere and prohibit cryptographic backdoor requirements.

### In its foreign policy:

8. Advocate within the U.N. for policies and norms that uphold media freedom.
9. Make press freedom an explicit and essential element of accession negotiations. Mandate the scrapping of all media laws that unduly restrict press freedom as well as the adoption of standards in line with the Charter of Fundamental Rights and the European Convention on Human Rights.
10. Scrupulously apply the EU Guidelines on Freedom of Expression online and offline and make them a criterion in the performance assessment of EU delegations and European External Action Service officials.
11. Increase support for independent journalists and media outlets under threat by authoritarian governments or violent non-state actors. Review and renew the No Disconnect Strategy to promote Internet freedom and protect journalists, including bloggers. Strengthen coordination with individual member states to investigate crimes against journalists and expedite relocation and asylum proceedings for those under threat.

12. Rigorously and impartially implement the human rights clauses in international agreements. Apply a clear sense of proportionality to the use of conditionality clauses in order to defend press freedom and include appropriate measures, from leveling sanctions up to suspending partnership agreements.

## **TO EU MEMBER STATES**

13. Revise or repeal laws that infringe on freedom of expression and freedom of the press, in particular those pertaining to criminal libel, insult, lèse majesté, and blasphemy.
14. Review hate speech and anti-extremism laws to ensure that they are in line with international standards and not abused to restrict independent or critical reporting.
15. Legally prohibit mass surveillance and regulate targeted surveillance to ensure that it does not compromise journalists' rights to privacy or the confidentiality of their sources.









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