

EXAMPLES FROM EUROPEAN UNION MEMBER STATES SIMILAR TO THE MOST IMPORTANT CRITICIZED PROVISIONS OF THE NEW HUNGARIAN MEDIA REGULATION*

The new Hungarian media regulation had to face several criticisms also from outside Hungary. In a comparative study, the National Media and Infocommunications Authority (NMHH) had collected the most controversial provisions of the Hungarian statutes, and after reviewing the media regulation of all Member States of the European Union, NMHH has found that the criticized points of the Hungarian acts are present in the regulation of several other European countries. The following is a non- exhaustive list of some of these examples.

Criticism: *“all types of media, such as printed and internet press are regulated, and this fact itself is harmful to the freedom of the press”*. In contrast, we find that there are regulations intended especially for the press in several European countries, mostly in the form of an independent press act. In several countries internet press falls under the same legal rules that are applied to the printed press.

- **Austria:** The printed press is mainly regulated by the Federal Act dated 12 June 1981 on the Press and other Publication Media (Media Act). Regulations of the Media Act addressing printed press do also apply to online newspapers and other internet portals.
- **Cyprus:** The printed press is mainly regulated by an independent legislation, the Press Law No. 145/89. Although no law expressly regulates internet press, the provisions of the printed press law also apply to journalistic material available on the internet.
- **Czech Republic:** The main regulation of the press is contained in Act No. 46/2000. Coll., on rights and duties connected to publishing of periodic press (Press Act).
- **Denmark:** The Danish printed press and online newspapers/periodicals fall under the scope of the Consolidating Act 1998-02-09 no. 85., the Media Liability Act as amended by L 2000-05-31 no. 433 and L 2005-12-21 no. 1404.
- **Finland:** The Act on the Exercise of Freedom of Expression in Mass Media 13.6.2003/460 contains detailed provisions on the exercise of the freedom of expression in the media. The Act on Television and Radio Operations 9.10.1998/744 as well as the Act on Freedom of Expression on Mass Media applies to internet newspapers and press.
- **France:** The Press Act (adopted on 29 July, 1881) provides a framework for press regulation. French courts widely find that the Press Act also applies to online communication.
- **Germany:** Printed publications are regulated by the state press laws of each of the sixteen German federal states.
- **Greece:** A noteworthy characteristic of the Greek legal system, with regards to regulation of the printed media and the electronic media, is the lack of comprehensive codification. Various laws and presidential decrees regulate the printed press.

* The study is based on a research organized by DLA Piper Hungary between March and June 2011 and contains references to sources of law which were in effect at that time.

- **Ireland:** The printed press is subject to a regulatory structure combining both statutory and self-regulation. The Press Council of Ireland is a creation of statute (pursuant to Section 44 of the Defamation Act, 2009), but it is independent of government in its funding and design.
- **Italy:** The printed press is mainly regulated by an independent legislation, i.e. the Press Act, Law No. 47 of 8 February 1948 (*Disposizioni sulla stampa*).
- **Malta:** The main law covering the printed media is the Press Act (Chapter 248 of the Laws of Malta).
- **Poland:** The press is regulated by independent legislation, i.e. the Press Act (26 June 1984). Online newspapers or news portals are subject to the general provisions set forth in the Press Act.
- **Portugal:** The printed press is mainly regulated by the Press, Radio and Television Act (Law 2/99 of 13 January 1999 as amended by Law no. 18/2003 of 11 June). The general principles of the printed press law apply also to printed publications provided on the internet.
- **Slovakia:** Printed media is subject to the regulations of Act No. 167/2008 Coll. on Periodicals and Agency News Service.
- **Slovenia:** The printed press is regulated by the Public Media Act (Official Gazette of the Republic of Slovenia, No. 35/01) (*Zakon o medijih*). It applies to publications on the internet as well.
- **Spain:** The printed press is regulated by the Press Law of 18 March 1966.
- **Sweden:** The printed press is regulated by the Freedom of the Press Act (SFS *Tryckfrihetsförordningen* 1949:105, last version 2002:908), which gives an exclusive protection and regulation for printed media. Chapter 7 Section 4 and 5 of the Freedom of the Press Act regulates the offences committed through the press.

Criticism: “*the fact itself that the printed and internet press is subject to statutory regulation system is harmful to the freedom of the press*”. In contrast, we find that there are boards, (regulatory, co-regulatory or self-regulatory) authorities for the supervision of the press market, established by statutes in several European countries.

- **Cyprus:** The Press Law No. 145/89 has amended and consolidated the laws setting up a Press Authority and a Press Council Authority, and regulating the publishing, circulation and sale of newspapers and other publications.
- **Czech Republic:** Under the Press Act, the locally competent Regional Administrative Authority imposes penalties on those publishers having their seat in the area of its local jurisdiction and which breach the obligations stipulated by the Press Act.
- **Denmark:** The Press Council was established under the provisions of the Media Liability Act (2008-02-09 No. 85.). The Council handles complaints from all media under the Media Liability Act (with the exception of radio and TV commercials). Furthermore, the Council can initiate *a case of its own volition* if its Ethical Guidelines have obviously been violated.
- **Italy:** AGCOM, the convergent authority has the competence to monitor the press, the broadcasting, electronic media, and telecommunications.
- **Luxembourg:** The Act, adopted on 20 December 1979, on the recognition and protection of the professional title of journalists has created the *Conseil de Presse*. Within the Conseil de Presse exists the Commission of Complaints that is

competent to receive and handle complaints regarding information which has been published in the media. The Commission is competent to verify publications on their accordance with the code of conduct for journalists. The Commission is competent for publications in all media (periodicals, news papers, internet press, etc.).

- **Portugal:** The ERC is as an administrative authority with financial and administrative autonomy. Sanctions by ERC are provided for in connection with breaches of Press or Media Laws or regulations issued by ERC. The core competences of the ERC are the ones attributed by the Constitution, Law and its Statutes. Hence, according to the Constitution, the ERC's obligation is to assure in the Media: i) the right to information and freedom of press; ii) concentration of the media; iii) the independence of the media *vis a vis* the politic and economic powers; iv) the respect of fundamental rights; v) the respect of the laws applicable to the media; and vi) the exercise of the rights of media airtime, right of reply and politics reply.
- **Sweden:** The Swedish Press Council has established a code of ethics that its members are bound to respect. If the Council finds that a newspaper has violated the code of ethics, the newspaper is expected to publish the written decision of the Press Council and pay an administrative fine.

Criticism: „*in the Media Council there are only members who are close to the biggest party in the government*”. In contrast, we find that the members of the Hungarian media authority were elected by a two-thirds majority of the Parliament. In several European countries there are fewer guarantees of independence of the authorities' members.

- **Cyprus:** The main media authority is the Radio and Television Authority. Its members are appointed by the Council of Ministers.
- **Czech Republic:** The Broadcasting Council and the Czech Telecommunication Office are the main media and press authorities in the Czech Republic. The Broadcasting Council has 13 members appointed and removed by the Prime Minister. The Czech Telecommunication Office has a five-member council, the so called Czech Telecommunication Office Council. The chairman and the members of the Council are appointed and withdrawn by Government of the Czech Republic.
- **Denmark:** Seven members of the Radio and TV Board are appointed for a four-year period by the Minister of Culture. A further member is appointed by SLS (a Danish non-governmental organisation).
- **Finland:** FICORA (Finnish Communications Regulatory Authority) is an independent authority under the Ministry of Transport and Communications. The highest decision making power within FICORA lies with the Director-General, appointed by the Government.
- **France:** Three of the nine members of the Board of the *Conseil supérieur de l'audiovisuel* (CSA) are appointed by the President of the French Republic, while the presidents of the French Senate and of the French Assemblée Nationale are in charge of appointing three members each.
- **Greece:** The National Council for Radio and Television (NCRTV) is an independent administrative authority. It consists of seven members, selected by the (current and former) Presidents of the Parliament.

- **Ireland:** Section 8 of the Broadcasting Act provides that there shall be nine members of the Broadcasting Authority of Ireland. Five are appointed by the Government on nomination by the Minister for Communications and four are appointed by the Government on nomination of the Minister after a process of consultation has taken place with a Committee of the National Parliament.
- **Italy:** AGCOM is the convergent authority established by Law No. 249 of 31 July 1997. Each of the houses of the Italian Parliament elects four Commissioners that are formally appointed by the President of the Republic. The President of the Authority is appointed by the President of Republic upon joint proposal of the Prime Minister and the Minister of Communications.
- **Malta:** The Broadcasting Act provides that members of the Broadcasting Authority shall be appointed by the President of Malta, acting in accordance with the advice of the Prime Minister given after he has consulted the Leader of the Opposition.
- **The Netherlands:** The Dutch Media Authority is an autonomous administrative authority accountable to the Ministry of Education, Culture and Science. The Authority is presided by three Commissioners, appointed by the Minister of Education, Culture and Welfare.
- **Portugal:** The regulatory authority's (ERC) Board is composed by a President, Vice President, and three board members. Four of them are designated by the Parliament, and the fifth member is co-opted by those members designated by the Parliament.
- **Slovakia:** The Council for Broadcasting and Retransmission consists of nine members elected by the Slovak Parliament.
- **Slovenia:** The Post and Electronic Communications Agency(APEK) is an independent regulatory body. The director, assisted by two deputy directors, performs the management functions of APEK. All three positions are filled by candidates selected and appointed by the government.
- **Spain:** The Broadcasting Committee is regulated by Section 44 et seq. of the General Audiovisual Law. The members of the Broadcasting Committee are appointed by the Government, the Parliament's later approval is necessary.
- **Sweden:** The Government appoints the members of the Swedish Broadcasting Commission.
- **The United Kingdom:** The exact number of the members of the board of the media authority, the Office of Communications (Ofcom), is determined by the state secretary, who also nominates the chairman and the other members. The chairman and the non-executive members are appointed together by the minister of the Department for Culture, Media and Sport and the minister of the Department for Business, Innovation and Skills, and the executive members are appointed by the chairman and non-executives.

Criticism: *“the mandatory registration required from the press is seriously harmful to the freedom of the press”*. In contrast, we can see that there are requirements for registration in several European countries, which, in many cases, are extended also to the internet press.

- **Cyprus:** It is mandatory, prior to the publication of a newspaper, to submit to the Minister of Interior an affidavit by the owner of the newspaper containing the information specified in the Press Law No. 145/89.
- **Czech Republic:** Pursuant to Section 7 of the Press Act the periodic press must be registered before its first publication with the Ministry of Culture, which issues the registration numbers for the registered press.
- **Italy:** The Press Law provides for registration with a public registry maintained by the competent Court, where the relevant publication is made. The above obligations have been extended also to periodic online newspapers by Section 1 of Law No. 62 of 7 March 2001. Pursuant to Section 16 of the Press Law, where a publication is published before being registered with the Court Registry, the responsible may be subject to imprisonment up to two years or a fine up to EUR 250,000.00.
- **Malta:** The Press Act imposes an obligation on whosoever becomes an editor or a publisher of a newspaper, to produce to the Press Registrar a declaration containing specific information within ten days of his becoming editor or publisher.
- **Poland:** Regarding the press (including printed and internet press), pursuant to the Articles 20-24 of the Press Act, each publisher is required to register with a public registry held by the competent court having jurisdiction over the registered office of the publisher.
- **Portugal:** As for printed press, Article 5 of the printed Press Law sets forth that printed press is required to mandatory and public previous register with the communications authority (ERC).
- **Slovakia:** According to Article 11 of the Press Act, periodicals shall be registered with the Ministry of Culture with a public Registry of Periodicals.
- **Slovenia:** Media operators (publishers) with seat or permanent domicile in Slovenia or having its editing seat in Slovenia are required to register with the Court of Registry. In addition the media itself must be registered in the Slovene Media Registry, kept by the Ministry for Culture, and operating permit issued by the media authority (APEK).
- **Sweden:** There is a mandatory registration requirement if the printed media is planning to be published more than four times a year under a distinct title. Internet press must register their websites with the Swedish Broadcasting Authority.

Criticism: *“potential sanctions are disproportionately serious, and this itself is harmful to the freedom of the press“.* In contrast, we find that media regulations in several European countries allow even imprisonment (which would be unthinkable in the Hungarian media acts). High fines and other serious sanctions are present in many European statutes.

- **Austria:** The maximum penalty for some media contents offences is either a custodial sentence up to one year or a fine of up to 360 daily rates. The amount of one daily rate depends on the economic performance of the offender and varies between EUR 2.00 and EUR 5,000.00. Theoretically, the highest possible fine is EUR 1,800,000.00, but, additionally, corporate liability and the to pay damages may apply.

- **Cyprus:** According to Radio and Television Stations Law, anyone who does not comply with the provisions of Article 19, which provides for various restrictions in relation to the issue of a license for the establishment and operation of a radio organization to companies, is guilty of a criminal offence punishable with imprisonment of up to three years or with a fine of up to EUR 85,400.00 or both. According to Article 41D(1), a person who provides media services without the required license or in breach of the terms included therein, or a person who intentionally or systematically interferes with the transmission of a television or radio organization is guilty of a criminal offence punishable with imprisonment up to three years or with a fine of EUR 34,000.00 or both.
- **Finland:** The penalty for a broadcaster is determined by a special court (the Market Court) on the proposal of the media authority (FICORA). The maximum amount of the penalty is one million euros (Act on Television and Radio Operations, Chapter 6, Section 36 a). In cases of extraordinarily serious violation, the fine can be even higher, but it cannot exceed 5% of the revenues of the broadcaster resulting from its licensed activity (Act on Television and Radio Operations, Chapter 6, Section 36 a).
- **France:** Pursuant to Article 32 of the Press Act, in case of defamation/libel committed by press means, against a person or a group of persons because of their origin or because they belong or not to a determined ethnic group, a nation, a race or a religion, the responsible party may be subject to up to 1 year of imprisonment or up to a fine of EUR 45,000.00. The most important financial penalties in connection with breaches of the 1986 law may range between 2% to 5% of the net annual turnover of the operator responsible for the breach.
- **Germany:** Pursuant to section 49 of the Interstate Treaty of Broadcasting (RStV) includes a list of 57 administrative offences where the sanctions range from a monetary fine of EUR 50,000.00 to EUR 250,000.00 to EUR 500,000.00. Section 24 of the Interstate Treaty governing the protection of minors (JMStV) lists 28 administrative offences that can be sanctioned with monetary fine up to EUR 500,000.00.
- **Ireland:** The Censorship of Publications Board may examine periodicals upon a complaint from any member of the public on the grounds or where the periodical has devoted an “unduly large proportion of space to the publication of matter relating to crime.” Periodicals may be banned for up to 12 months. The entire periodical could be banned for up to 12 months as the definition of periodical includes every edition and every issue of a periodical, not only the relevant issue. In linear media, Section 71(6) of the Broadcasting Act provides that where programme material contravenes the Prohibition of Incitement to Hatred Act, 1989, the Authority (BAI) may terminate the broadcaster’s broadcasting contract where this has happened more than once in a six-month period.
- **Italy:** Pursuant to Section 16 of the Printed Press Law, where a publication is published before being registered with the Court Registry, the responsible person may be subject to imprisonment up to two years or a fine up to EUR 250,000.00. Pursuant to Section 13 of the Press Law, in case of libel committed through the press, the responsible may be subject to imprisonment up to six years and a fine not lower than EUR 250,000.00. Pursuant to Section 14 of the Press Law, in case of publications which describe events (whether real or not) with repulsive details in a way that is against public morality, the responsible may be subject to imprisonment up to three years and a fine. AGCOM has the power to issue

sanctions against the press. Such power is mainly concerned with breaches of antitrust provisions and of the obligations to communicate to AGCOM certain information when required by the applicable law. Such sanctions include fines up to EUR 250,000.00 and sanctions calculated as a percentage of the turnover of the responsible operator.

The most serious financial sanctions are provided for in connection with breaches antitrust provisions and may range between 2% to 5% of the turnover of the operator responsible for the breach.

- **Luxembourg:** The following are liable to an imprisonment of eight days to one month and a fine of between LUF 25,000.00 to LUF 500,000.00: any person (i) transmitting a Luxembourg audiovisual media or sound service, or (ii) causing it to be transmitted, without the service provider holding a license or permission or when such license or permission was withdrawn.
- **Malta:** Under the Press Act, it is an offence for anyone to incite others, by means of the publication or distribution of printed matter in Malta, to take away the life or the liberty of the President of Malta or of any Minister. The mere incitement is punishable by conviction to imprisonment for a term not exceeding nine years and to a financial penalty.
- **Poland:** Pursuant to Article 52 of the Broadcasting Act, the transmission of a radio or television programme service without a licence is punishable by a fine, restriction of freedom or a term of imprisonment of up to two years. Retransmission of a radio or television programme service without registration is punishable by a fine, restriction of freedom or a term of imprisonment of up to one year. Pursuant to Article 45 of the Press Act, the publishing of a newspaper or magazine for which the registration with the Court Registry has not been obtained by the publisher or where publishing was suspended is subject to a fine or restriction of freedom.
- **Portugal:** Pursuant to Article 72 of the Television and On-Demand Audiovisual Services Law and Article 66 of the Radio Law, the person who practices television or radio business without being legally entitled to do so is subject to a punishment of imprisonment up to three years or a fine up to 320 days.
- **Spain:** The General Audiovisual Law sets out a range of breaches that are categorised as very serious, serious and minor. For serious breaches the fine can be up to EUR 100,000.00-500,000.00. For very serious breaches (for example, broadcast of hateful, deprecating, or discriminatory content, etc. or improper dealing with a licence) the fine can be up to EUR 500,000.00-1,000,000.00.
- **Sweden:** According to Chapter 17 of the Media Act, the Swedish Broadcasting Authority can sanction the media service provider. Such sanctions are of a financial nature and may range between EUR 500.00 and EUR 500,000.00, depending upon the seriousness violation of the breach. In some cases, the authorities have the right to confiscate property, which has been used in connection with certain offences in the Media Act if necessary to prevent any further misuse (Chapter 17, Section 4 of the Media Act). A natural or legal person that intentionally or as a result of negligence broadcasts programmes without a licence when a licence is required, under the Media Act, can be fined or sentenced to imprisonment for a maximum term of six months.
- **The United Kingdom:** The media authority (Ofcom) prepared a statement containing guidelines, in which it determined the maximum amount of penalty. In most cases, the maximum financial penalty for commercial television or radio

licensees is GBP 250,000.00 or 5% of the broadcaster's 'Qualifying Revenue', whichever is the greater. For licensed Public Service Broadcasters, the maximum financial penalty is 5% of 'Qualifying Revenue'. For the BBC or S4C, the maximum financial penalty payable is GBP 250,000.00.

Criticism: *“the obligation of journalists to reveal their sources of information and the possibility of the obligation to name their sources is harmful to the freedom of the press.”*
In contrast, we find that in specific cases it is possible in most European countries – similarly to Hungary – to oblige journalists to reveal their sources of information.

- **Belgium:** The journalists can be obliged to reveal their sources, if this is absolutely necessary to prevent a crime, provided that the requested information cannot be obtained in any other way.
- **Denmark:** If the court is considering a question of a serious offence with a maximum penalty of at least four years imprisonment, the editor/editorial employee can be required to answer all questions relevant to the criminal offence. This exception, however, only applies if the editor's/editorial employee's information is essential to prove the crime, i.e. there is no alternative method of demonstrating that a crime has been committed and if the interest of the case obviously outweighs the journalist's interest in protecting his or her source.
- **Finland:** A journalist may be ordered to answer questions in a case otherwise protected by confidentiality of source. This is required only in a case which concerns an offence punishable by imprisonment for six years or more, or to attempt of or participation in such an offence, or information that has been given in violation of a duty of confidentiality.
- **Germany:** Section 53(2) of the Criminal Procedural Code (StPO) stipulates that the right to refuse testimony is omitted if the testimony serves the solving of a crime (criminal acts which are punished with imprisonment up to one year or above) or some other specific offences listed in this paragraph, and if the investigation of the facts or the whereabouts of the accused would be otherwise without success or obstructed considerably.
- **Greece:** There is no explicit legal recognition of the confidentiality, on the contrary, explicit procedural rules (Penal and Civil Courts Procedural Codes) seem to disregard it.
- **Ireland:** Every time a journalist asserts privilege in order to protect sources, then this will be balanced against the factors in Article 10(2) of the European Convention of Human Rights including “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 the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”. Therefore, the assertion of such privilege depends on the facts of the case and the interpretation and balancing of these factors by the court.
- **Italy:** A judge can order a journalist to reveal the source of information covered by the duty of professional confidentiality only in the event that both of the following circumstances arise: (i) the news is essential to prove the crime, i.e. there is no alternative way to demonstrate that a crime has been committed; and (ii) the

truthfulness of the news can be ascertained only by knowing the source or the information of the journalist.

- **Malta:** Section 46 of the Press Act provides as follows: “No court shall require any [author, editor or publisher] to disclose, nor shall such person be guilty of contempt of court for refusing to disclose, the source of information contained in a newspaper or broadcast for which he is responsible unless it is established to the satisfaction of the court that such disclosure is necessary in the interests of national security, territorial integrity or public safety, or for the prevention of disorder or crime or for the protection of the interests of justice”.
- **Poland:** The Code of Criminal Procedure provides exceptions that may be applied only by the court. Pursuant to Article 180 of the Code of Criminal Procedure, journalists may be questioned as to the facts covered by the confidentiality of the journalist profession, only when it is necessary for the proper administration of justice, and when the facts cannot be established on the basis of other evidence.
- **Portugal:** The court can order the journalist to reveal the sources of its information, whenever such disclosure is justified according to the principle of prevalence of overwhelming interest, particularly given the indispensability of the testimony to establish the truth, the seriousness of the crime, and the need for protection of legal rights.
- **Spain:** There are no specific legislative provisions for the protection of sources. The FAPE Code, which binds all journalists who are members of FAPE and associated press associations and represents an industry standard, states that the confidentiality of information sources is both a journalist's right and represents an obligation to keep confidential his or her sources, if so requested by those sources. Nevertheless, that obligation does not apply in such exceptional situations where there is irrefutable evidence showing that the source has consciously falsified the information or where revealing the source is the only way of avoiding serious and imminent harm to persons.
- **Sweden:** Pursuant to the Freedom of the Press Act, the identity of the sources can be revealed only in exceptional cases: (i) if the person in whose favour the duty of confidentiality operates has given his or her consent to the disclosure of his or her identity; (ii) if the information is related to a case in which an attack on the freedom of the press was realized; (iii) if the matter concerns an offence against the state specified in the Act; and (iv) when, in any other case, a court of law deems it to be of exceptional importance, with regard to a public or private interest, for information concerning identity to be produced on examination of witnesses or of a party in the proceedings under oath (Chapter 3, Articles 1-6).
- **The United Kingdom:** According to Section 10 of the Contempt of Court Act (1981) „No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime.”

Criticism: *“the media authority has too strong powers for exploring the facts of a particular case (power to enter the premises, seizure, possibility of copying documents, etc.).”* In contrast, we find similar tools used in administrative procedures in several European countries.

- **Austria:** The Austrian Communications Authority (KommAustria) respectively the Broadcasting and Telecommunications Regulatory Authority (RTR) has power to enter offices or other premises in specific cases.
- **Cyprus:** The Radio Television Authority has the power, following due notice, to enter into the offices of radio and television organizations in order to carry out inspections, and such organizations are obliged to allow such inspections and to facilitate the authority in every way possible.
- **France:** Pursuant to Article 19 of the Act of 30 September 1986 on the Freedom of Communication, *Conseil supérieur de l'audiovisuel* (CSA) can have investigations conducted in the premises of companies broadcasting audiovisual media services in order to monitor whether providers comply with their obligations set forth in the 1986 Act and in the convention entered into with the CSA, if any.
- **Germany:** According to Section 22 of the Interstate Treaty of Broadcasting (RStV), the competent State Media Authority may conduct all investigations and collect all evidence necessary to fulfill its obligations according to Sections 26-34 RStV. For this purpose, the State Media Authorities may, in particular, obtain information, hear involved parties as witnesses or experts, collect documents and files, and personally judge those obtained information and documents.
- **Italy:** AGCOM has the power to carry out inspections, to access the offices of the regulated entities or other relevant third parties as well as to collect documentation and information (see Section 2(12)(g) of Law No. 481 of 14 November 1995). The denial, refusal and/or the delay in providing the required information and documentation may be subject to monetary sanctions.
- **Malta:** The Malta Communications Authority is entitled to enter, at any reasonable time, any place, other than a place of residence, where such activity takes place, or the MCA suspects that such activity takes place, and search and inspect the said place and any books, documents or records found therein; require any person to produce for inspection and take extracts from any books, documents or records relating to such activity, which are under the control of that person and, in the case of information in a non-legible form to reproduce it in a legible form, and to give to the MCA such information as the MCA may reasonably require in relation to any entries in such books, documents or records; and remove and retain such books, documents or records for such period as may be reasonable for further examination.
- **The Netherlands:** Based on Article 7:19 of the Dutch Media Act 2008 in conjunction with Article 5:17 of the General Administrative Law Act, the Media Authority is authorized to enter a home against the will of its occupant, to seize the required equipment, and place seals on business spaces and objects, as far as required for inspection and copying of the documents.
- **Portugal:** The communications authority (ERC) has the power to carry out inspections, to access the offices, equipment and services of the regulated entities, request documents for review, request written information, and identify any and all individuals who break the laws and regulations.
- **Slovenia:** The Slovene Ministry of Culture and its officers have the right to carry out inspections, to access the offices of the regulated entities or other relevant third parties as well as to collect documentation and information in accordance with the rules on administrative procedure.

- **Spain:** Under Article 48 of the General Audiovisual Law, the Broadcasting Commission has the power to require service providers to provide information proving compliance with their obligations and carry out inspections, for which purposes it shall act as a public authority and have the corresponding powers under administrative law.

Criticism: “*the obligation of radio and television organizations to ensure balanced communication is harmful to the freedom of the press.*” **In contrast, we find that similar provisions exist in most European states.**

- **Austria:** Section 41 of the Audiovisual Media Services Act states that television programmes have to comply with the fundamental principles of objectivity and diversity of opinions. In an appropriate manner, and in particular, they have to present cultural and economic life to the public in their service area and also to give the major groups from society and organizations from this area the opportunity to air their views.
- **Belgium:** According to Article 5 of the Decree of 27 June 2005 of the German Community, the audiovisual media services must express and respect a diversity of opinions: all important political, philosophical, and ideological opinions must be represented, while minority opinions must also be taken into account.
- **Cyprus:** Article 45 of the Radio and Television Stations Law provides for the obligation of all radio/television organizations (broadcasters) to ensure the equal treatment, especially during electoral periods, of all political parties and political candidates, as well as the citizens in general, in order to ensure that all the information reaching the general public is substantial and that all citizens have the greatest amount of knowledge about the candidates and political parties during electoral periods, as well as the greatest amount of knowledge in general, without, however, affecting the rights of journalists to evaluate the facts and circumstances according to their value and importance as news.
- **Czech Republic:** Based on Section 31 of the Radio and Television Broadcasting Act, radio and television broadcasters are obliged to provide objective and balanced information as needed for opinions to be freely formed.
- **France:** Pursuant to Article 13 of the Act of 30 September 1986 on the Freedom of Communication, the *Conseil supérieur de l'audiovisuel* shall monitor whether pluralism obligations have been complied with. Particular attention is given to political and general information programs.
- **Germany:** Sections 25-34 of the Interstate Treaty of Broadcasting (RStV) serve the granting of diversity of opinion, this time in regard to private broadcasting. The diversity of opinions has to be displayed and the meaningful political, ideological, and social powers and groups have to receive an appropriate chance to speak.
- **Greece:** Balanced communication is regulated by the Greek laws under the light of proportional equality. This legislation regarding balanced communication focuses mainly on equal access of the candidates of various political parties during pre-election periods to the electronic media. During non-electoral periods, Article 3 of law No. 2328/1995 provides for all broadcasters to ensure the presentation of all political views to the public.
- **Ireland:** Regarding the linear media, there is obligation under Section 39 (1) of the Broadcasting Act 2009 on a broadcaster that all news is reported and presented in

an objective and impartial manner and without any expression of the broadcaster's own views. Where the broadcast concerns a treatment of current affairs, it must be "fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner". In the press, the Code of Standards contains principles relating to balanced communication. Principle 1 of the Code requires truth and accuracy and Principle 3 imposes a fairness and honesty requirement.

- **Italy:** During non-electoral periods, all broadcasters have the general obligation to ensure on a fair and non-discriminatory basis the possibility to express the various political opinions and positions at debates, roundtables, interviews, and other types of programmes that provide the different political positions. During electoral periods the rules are stricter and more detailed.
- **Latvia:** The Media Act provides among the fundamental principles (Section 3) that news programmes of the broadcasters have to be objective and impartial. All the broadcasters are obliged to the balanced communication (Article 5).
- **Malta:** Article 13 of the Broadcasting Act obliges the authority to ensure that so far as possible the programmes of broadcasting services in Malta comply with certain special requirements. Thus, sufficient time shall be given to news and current affairs and that all news given in the programmes (in whatever form) shall be presented with due impartiality. Due impartiality shall be preserved in respect of matters of political or industrial controversy or relating to current public policy.
- **Portugal:** According to Article 40 of the Portuguese Constitution, political parties, trade unions, and other organizations are entitled, according to their importance and representation and according to the criteria and objectives set by law, to airtime in the radio and television public service.
- **Sweden:** The regulatory obligation for media to ensure balanced communication is contained in Chapter 4, Section 8 of the Media Act, which states that licence to broadcast television (or teletext) may be conditioned upon the requirement that the right to broadcast shall be exercised impartially and objectively.
- **The United Kingdom:** The Broadcasting Code of Ofcom, which contains details about the provisions of the Communications Act 2003, provides the requirement of balanced communication. The Code has separate chapters about "due impartiality", "due accuracy" and "undue prominence of views and opinions" (Sections 319(2)(c) and (d), 319(8), and 320 of the Communications Act 2003, and Section 5 of the Broadcasting Code).

Criticism: *"limitation of media content is possible also on the grounds of undefined, imprecise notions (e.g. human dignity)". In contrast, we find that media and press laws in European countries (containing necessarily general wording) determine several different provisions that constitute a limitation of media contents.*

- **Cyprus:** Pursuant to Section 26(1) of the Radio and Television Stations Law, audiovisual media providers must ensure that their broadcastings respect the rights and freedoms of individuals. In specific they must respect the individual's personality, reputation, and privacy and the ideals of democracy.
- **Czech Republic:** In the case that the Broadcasting Council become aware that a radio or television broadcaster has breached the Radio and Television Broadcasting Act (including infringement upon inherent (personal) rights), it is

entitled to impose a fine on the radio and television broadcaster and is also entitled to withdraw the broadcasting license of such radio and television broadcaster.

- **France:** Article 15 of the Act of 30 September 1986 on the Freedom of Communication includes, among the fundamental principles of the audiovisual media services, that the content must not contain, among others, any incitement to hatred on grounds of race, religion, sex, or nationality.

Article 1 of the 1986 Act states that “*this freedom may be limited only, to the extent required, for the respect of human dignity.*” As a consequence, the media authority (CSA) ensures that programs made available to the public by an audiovisual media service provider respect the principle of human dignity.

Pursuant to Article 27 of the Press Act, in case of publication in bad faith of false news which is likely to disturb public order, the responsible party may be subject to a fine up to EUR 45,000.

- **Ireland:** Section 39 of the Broadcasting Act 2009 imposes an obligation on broadcasters not to broadcast anything that “*may reasonably be regarded as causing harm or offence, or as being likely to promote, or incite to, crime or as tending to undermine the authority of the State.*”

Part 5 of the Defamation Act provides that a person who publishes or utters blasphemous matter shall be guilty of an offence.

The Censorship of Publications Board may examine periodicals upon a complaint from a member of the public or if the periodical has devoted an “*unduly large proportion of space to the publication of matter relating to crime.*”

In the area of linear media, Section 71(6) of the Broadcasting Act provides that where programme material contravenes the Prohibition of Incitement to Hatred Act 1989, the authority (BAI) may terminate the broadcaster’s broadcasting contract if this has happened more than once in a six month period.

Principle 8 of the Code of Conduct states that newspapers and magazines shall not publish materials intended or likely to cause grave offence or stir up hatred against an individual or group on the basis of their race, religion, nationality, colour, ethnic origin, membership of the traveling community, gender, sexual orientation, marital status, disability, illness, or age.

In the area of linear media, Section 39(1)(e) of the Broadcasting Act 2009 provides that in the broadcasting of programmes, the privacy of any individual “*is not unreasonably encroached upon*”.

- **Italy:** Any limitation of freedom of expression can be justified by the protection of public morality, as specifically mentioned in Section 21 of the Italian Constitution, but also of the right to privacy, state secrets, honor and reputation. Pursuant to Section 14 of the Printed Press Law, in case of publications describing events (whether real or not) with repulsive details in a way that is against public morality, the person responsible may be subject to imprisonment up to three years and a fine. Sections 3 and 32 of the Media Code include, among the fundamental principles of the audiovisual media services, the protection of ethnic and cultural diversity. Pursuant to Section 10, the authority (AGCOM) must ensure that audiovisual media services respect fundamental human rights. Also on the basis of this provision, AGCOM issued some decisions aiming at reinforcing that audiovisual media services must respect and protect fundamental rights.

- **Lithuania:** The Media Act contains provisions for the protection of personality, and prohibits certain behavior for the protection of personality rights, human dignity, and reputation.

- **Luxembourg:** According to article 26bis of the Media Act, audiovisual media services may not offer any incitement to hatred on grounds of race, gender, opinion, religion, or nationality. Pursuant to article 1(2)(c) of the Media Act, the respect of human beings and their dignity are fundamental principles in the sector of audiovisual media services. It is the National Programme Board which is competent to monitor the content of audiovisual programmes, especially focused on the protection of minors and human dignity. Anyone who feels prejudiced by the content of an audiovisual programme may file a complaint with the Board that will then analyze the file and render an advice.
- **Malta:** The freedom of the press can be limited by law if it imposes restrictions on public officers or if it is reasonably required in the interests of defence, public safety, public order, public morality or decency, or public health or for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings. The freedom of the press can also be limited for preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of the Parliament etc.

The Press Act lists a set of press offences which are committed by whosoever by means of the publication or distribution in Malta of printed matter, from whatsoever place such matter may originate, or by means of any broadcast. The said offences include, inter alia: Incitement to take away the life or liberty of the President of Malta or of any Minister; Imputation of ulterior motives to acts of the President of Malta; Contempt toward the National Flag of Malta; Racism and similar offences; Obscene libel; Divulging professional secrets; Malicious publication of false news; Negligent publication of false news; Defamatory libel; Publication of matter with intent to extort money; Instigation to commit an offence; Justification of crimes; Incitement to disobey the law; and Where the instigation or incitement to commit an offence has produced its effect.

Article 13 of the Broadcasting Act makes it clear that the Broadcasting Authority is obliged to ensure that nothing is included in programmes that offends against religious sentiment, good taste or decency, or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feelings.

- **The Netherlands:** Civil courts have the authority to decide whether in the event a person causes damage through a humiliating, blasphemous, or discriminatory publication, the unlawful publication in the press needs to be rectified and whether imposing a fine is necessary. Furthermore, civil courts have the authority to order the payment of compensation for damages.
- **Portugal:** The freedom of expression is also subject to certain limitations, resulting from the collision with other fundamental rights with equal importance as the right to good name and reputation, image, word, privacy of family life and private and personality development. Also the right of State safety and the realization of justice, which protect the community general interests, may limit the freedom of expression. Media Laws state that broadcasts must respect human dignity and the fundamental rights, freedom and guarantees and shall not instigate the commission of crimes. As for Printed Press Law, according to the provisions of Article 3, press freedom is limited in order to guarantee the rights to good reputation, privacy of private life, image and the defence of public interest and the democratic order.
- **Slovenia:** Article 6 of the Media Act formulates the protection of human personality and dignity as one of its general principles. Moreover, if through a

media outlet human dignity is violated, or if discrimination on grounds of race, sex or ethnicity is carried out, or political or religious intolerance is incited, or if a person's behavior damages public health, safety, the environment or cultural heritage, or offence is made on grounds of religious or political beliefs, or if consumer interests are damaged, then the Culture and Media Inspectorate of the Republic of Slovenia can impose fines upon the publisher and the responsible person (Article 129 of the Media Act).

- **Sweden:** The Sweden Freedom of the Press Act lists those acts that shall be regarded as offenses against the freedom of the press if they are committed by way of printed matter and if they are punishable under law (Chapter 7, Articles 4 and 5): (i) high treason, including any attempt, preparation, or conspiracy to commit such high treason; (ii) instigation of war; (iii) espionage, including any attempt, preparation, or conspiracy to commit such espionage; (iv) unauthorized trafficking in secret information including any attempt or preparation to commit such trafficking in secret information; (v) carelessness with secret information, whereby through gross negligence a person commits an act referred to unauthorized trafficking in secret information; (vi) insurrection, including any attempt, preparation or conspiracy to commit such insurrection; (vii) treason or betrayal of country, including any attempt, preparation or conspiracy to commit such treason or betrayal of country; (viii) carelessness injurious to the interests of the Realm, whereby a person through negligence commits treason or betrayal of country; (ix) dissemination of rumours which endanger the security of the Realm, whereby, when the Realm is at war or provisions of law relating to such offence otherwise apply; (x) sedition; (xi) agitation against a population group or other such group with allusion to race, color, national or ethnic origin, religious faith or sexual orientation; (xii) offenses against civil liberty, whereby a person makes unlawful threats with intent to influence the formation of public opinion or encroach upon freedom of action within a political organization or professional or industrial association, thereby imperiling the freedom of expression, freedom of assembly or freedom of association, including any attempt to commit such an offence against civil liberty; (xiii) unlawful portrayal of violence, whereby a person portrays sexual violence or coercion in pictorial form with the intent to disseminate the image, unless the act is justifiable having regard to the circumstances; (xiv) defamation; (xv) insulting language or behavior; (xvi) unlawful threats; (xvii) threats made against a public servant, including any attempt or preparation so to threaten a public servant, unless the offence, if realized, would have been deemed to be trifling; (xviii) perversion of the course of justice.