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# Press Freedom in the European Union and Candidate Countries: A New Regional Reality

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## **ABSTRACT**

This paper focuses on the status of press freedom and freedom of speech in the European Union and its candidate countries. Although international monitoring organizations have expressed incidental concerns about press freedom in individual European countries, recent publications indicate that press freedom may be declining across the EU on a regionally unprecedented scale. This study seeks to determine whether EU member states' and candidate countries' policies on media freedom, as well as the functional status of freedoms of speech and of the press, are determined primarily by international factors led by the EU or by domestic factors in each country. As case studies, the author examines two founding member states, France and Italy, two recent member states, Hungary and Bulgaria, and one candidate country, Croatia.

The evidence underscores the truly regional nature of Europe's problems with press freedom. Overall, the EU has failed to intervene within its member states to stop abuses of press freedom. The EU's efforts to protect press freedom are most noticeable in the enlargement process. Considering these findings, the author recommends that the EU adopt the European Charter on Freedom of the Press into the *acquis communautaire*. Moreover, the Court of Justice should continue accepting speech and press freedom cases in order to establish a body of legal precedent that could be used to hold member states accountable for abuses. Finally, the EU heads of government and state must press their counterparts to make reforms that protect the speech and press freedoms of their citizens.

## **KEYWORDS**

press, news, media, journalism, freedom, European Union

Although international monitoring organizations have historically expressed incidental concerns about press freedom in individual European countries, recent evidence indicates that press freedom may be declining across the EU on a regionally unprecedented scale. This paper explores the interaction between international and domestic factors in the status of press freedom in the European Union.

This study specifically examines the status of press freedom in four EU member states and one EU candidate country. Although these cases are among the most notable examples of press freedom issues, they are valid representatives of the EU as a whole. Italy and France are founding EU members, Hungary and Bulgaria are formerly communist countries that joined the EU in the 'ten plus two' Eastern enlargement, and Croatia is the only country on track to turn its EU candidacy into membership.

Italy is the only founding member of the EU with a "Partly Free" press freedom rating from Freedom House. Despite Silvio Berlusconi's resignation from power in November 2011, Italy continues to harbor a number of economic, political, and legal impediments to a free press. Although France has a new law that helps journalists protect their sources, political officials who use the country's strict anti-defamation laws to their advantage continue inappropriately meddling in the press. Hungary is under fire from the European Commission for new media laws that give the government near-total control over the press. Bulgaria ranks 77th out of 196 countries in the Freedom House 2011 media freedom index, the worst performance of any EU member state. The EU's recent approval of Croatia's accession while Reporters Without Borders ranks the Balkan state a dismal 68th calls into question the EU's capacity and commitment to positively influence the democratic development of its member states and candidate countries.

## **BACKGROUND INFORMATION AND KEY TERMS**

Press freedom is regarded as a defining characteristic of modern democracies. Despite the norms and formal guarantees built into EU and national laws, several EU member states have recently been criticized for limiting the rights of journalists or for restricting media outlets, including electronic and digital media. In 2007 and 2008, the Association of European Journalists issued a series of reports that found media freedom to be "in retreat" across much of Europe, including both EU member states and non-members (Association of European Journalists, 2008). Through a survey of journalists in twenty countries in Europe as well as Russia, the AEJ indicated that the European press is plagued by "political interference, economic weakness and uneven or doubtful professional standards" (Association of European Journalists, 2007). Also, fears of threats to press freedom throughout the EU prompted editors and journalists from nineteen member states to sign the "European Charter on Freedom of the Press" in May 2009. These reports reveal four major themes of threats to media freedom in Europe. First, national laws on state secrets and defamation give governments an opportunity to prosecute journalists who are critical of the government. Second, conflicts of interest between the media and the political system are increasingly evident within the realms of public broadcasting and media ownership. Third, journalists are conspicuous targets for intimidation, imprisonment, and violence for their activities. Finally, all of these factors contribute to an overarching climate of self-censorship that severely curtails the role of media and journalism in European society.

## HYPOTHESES

The research hypothesis of this paper is that international factors such as the European Union's commitment to observing press freedom in member states and candidate countries; the role of the Commission in implementing and enforcing EU laws; the role of other EU institutions such as the Council of Ministers, the European Parliament and the Court of Justice in protecting press freedoms in EU member states; and the role of non-governmental institutions in promoting press freedom have resulted in cooperation and coordination among the member states in protecting and enhancing press freedom in the EU and the candidate countries at the supranational level. The research hypothesis suggests that international factors are increasingly responsible for the policies of EU member states on press freedom. The independent variable is the international factors, and the dependent variable is the policies of EU member states and candidate countries on press freedom.

The alternative hypothesis of this paper is that national and domestic factors such as measures undertaken by national governments in the EU to regulate the media within their borders, conflicts within member states and within candidate countries over press freedom, and resistance by national governments to the intrusion of the EU with respect to press issues, have resulted in the relative independence of national governments in EU member states and candidates regarding press freedom. The alternative hypothesis suggests that national and domestic factors are increasingly responsible for the policies of EU member states and candidate countries on press freedom. The independent variable is national and domestic factors, and the dependent variable is the policies of EU member states and candidates on press freedom.

If the research hypothesis is true, we would expect to find evidence that (a) the EU treaties, the *acquis communautaire*, and the Copenhagen Criteria explicitly stipulate that press freedom is a fundamental element of EU law; (b) the Commission has taken an active role in defending press freedom; (c) actions defending freedom of the press have been taken by the Council of Ministers, the European Parliament, and the Court of Justice; (d) non-governmental organizations (NGOs) have acted to promote press freedom in the EU; and, (e) EU member states have acted cooperatively to preserve press freedom in the EU and candidate countries. If the alternative hypothesis is true, then we would expect to find evidence that (a) national governments have adopted measures regarded as inimical to freedom of the press; (b) conflicts have arisen inside these countries over alleged threats to press freedom; (c) these governments have resisted the intrusion of EU institutions and NGOs regarding media issues; and, (d) these governments have managed to get away with violations of press freedom, acting independently of the EU.

## LITERATURE REVIEW

Excluding survey reports from international monitoring organizations, there is a dearth of scholarly research that focuses on the state of press freedom in Europe as a regional whole. The most politically relevant perspective comes from Peter Leeson, who examines the relationship between media freedom from government control and citizens' political knowledge and participation. He concludes that, "where governments own a larger share of media outlets and infrastructure, regulate the media industry more, and do more to control the content of news, citizens are more politically ignorant and apathetic" (Leeson, 2008). Similarly, Boomgaarden and De Vreese argue that media coverage of EU affairs can significantly impact public opinion about EU enlargement (Boomgaarden & De Vreese, 2006).

These perspectives underline the significance of media freedom as an indicator of the health of a political democracy.

Other authors consider the impact of globalization on European media. Schlesinger presciently argues, “One of the prime objectives of media policy should be to help achieve genuine pluralism and a widespread democratic commitment on the part of the European Union’s peoples, present and future...the current drift of policy actually runs against this view or, at best, marginalizes it, because it is so dominated by global industrial competition considerations and, therefore, may well be blocking the possibility of building a democratic political culture in Europe” (Schlesinger, 1997). Writing in the 1990s, Schlesinger explained that the European media is historically fragmented into national markets. Thus, the protectionist tendencies that European states have over their national media are seemingly rooted in both this nationalist perspective and in the EU’s failure to effectively regulate media at a supranational level. Although not explicitly discussing government restriction of the press, Schlesinger does illustrate the historical and political foundations of a less-than-fully democratic media culture in Europe.

As in the United States, European newspapers and broadcasters are facing significant economic pressures. Bardoel and d’Haenens argue that, as European public broadcaster’s advertising revenues decrease, these channels become more reliant on the government for funding. Perhaps this dynamic is a contributing factor to what the authors describe as the ‘polarized pluralist model’ of public broadcasting, which exhibits “considerable levels of politicization, state intervention, and clientelism” in some European countries (Bardoel & d’Haenens, 2008).

#### **RESEARCH HYPOTHESIS: PRESENTATION OF THE EVIDENCE**

The first expectation of the research hypothesis is that the EU treaties, the *acquis communautaire*, and the Copenhagen criteria explicitly stipulate that press freedom is a fundamental element of EU law. The “freedom of expression and information” is explicitly incorporated into the EU Charter of Fundamental Rights (European Union, 2000). Additionally, Protocol Twenty-Nine of the Maastricht Treaty expresses the “need to preserve media pluralism” in each member state’s public broadcasting sector (Treaty on European Union, 2010). Research could not identify any specific mention of press freedom in the accession treaties for Hungary and Bulgaria. Although the recently signed accession treaty for Croatia is not yet digitally available from the Commission or the Council, one would expect to find a specific mention of press freedom in that treaty because Croatia’s *acquis communautaire* includes the chapter on information society and the media.

The *acquis communautaire* refers to the consolidated body of laws of the European Union. In practice, there are actually two versions of the *acquis*. The primary version used for general EU proceedings consists of twenty chapters. The secondary version of the *acquis*, which consists of an expanded thirty-five chapters, is used in enlargement proceedings. This is important to note because the version of the *acquis* used for enlargement includes a chapter that specifically focuses on “information society and media” (European Commission, 2010). The *acquis* used during the 2004 and 2007 enlargements contained thirty-one chapters, excluding the new chapter on information society and media. Hungary acceded to the Union in 2004 and Bulgaria followed in 2007, when specific requirements on media freedom were not included in the *acquis*. Most assume that the 1993 Copenhagen criteria, which outline the requirements for a country’s eligibility to join the EU, surely must include a commitment

to a free press and the freedom of speech. However, this requirement is not explicitly included anywhere within the original 1993 Presidency Conclusions (European Council, 1993).

The second expectation of the research hypothesis would be that the European Commission has taken an active role in defending press freedom. The 2009 Charter on Freedom of the Press has provoked the Commission to take new action on concerns about press freedom within its member states. In fact, the Charter was initially conceived through annual meetings between editors of European newspapers and the Commission's Media Task Force that began in 2005. Commissioner Viviane Reding has hailed the completed Charter as "an important reaffirmation of the basic values" of European democracy (European Commission, 2009). Substantiating reports of declining press freedom in the region, Reding elaborated, "Regarding the eastern press, and Italy, the eastern press was the basis for this [the Charter]. Journalists from the eastern press really told us horror stories about how they cannot exercise their job as a journalist any more" (Phillips, 2009). A former journalist herself, Commissioner Reding seems keen to use her position as a vice-president of the Commission to bring attention to this issue.

On October 11th, 2011, Digital Agenda Commissioner Neelie Kroes convened the first meeting of the high-level Committee on Freedom and Pluralism of the Media. The Commission's Task Force on Coordination of Media Affairs intends to provide recommendations for the respect, protection, support and promotion of media freedom and pluralism in Europe (European Commission, n.d.). First, the committee will produce a formal report for the Commission that will assess how well the legal instruments of the EU provide press freedom and media pluralism. Second, the committee will specify the level at which its recommendations should be implemented – at the EU, national, or international/intergovernmental level (European Commission, n.d.). If the Commission is successful in this endeavor, it should produce an extremely valuable report that pinpoints the structural weaknesses of the EU's capacity to promote press freedom among its member states. The report will be submitted in the fall of 2012.

In addition to Commissioners Reding and Kroes, Commission President José Manuel Barroso has also spoken out on media freedom issues within the Union. On November 8th, 2011, Barroso delivered the keynote address at the European Newspaper Publishers' Association anniversary conference. Within his speech, Barroso affirmed the EU's normative commitment to press and speech freedoms as fundamental tenets of European democracy. He stated, "Freedom of expression and the freedom of the press are two non-negotiable freedoms that lie at the very heart of our democratic societies. They are essential core values of the European Union and you can be assured that the Commission will continue to defend them vigorously" (Barroso, 2011).

Finally, the Commission hosted a Brussels conference in May entitled, 'Speak Up! Freedom of Expression and Media.' While this conference was a valuable opportunity for journalists and NGOs to speak face-to-face with EU commissioners about their concerns, it also revealed the Commission's limited capacity to act to defend press freedom. "The European Commission will accept no deviation on the part of candidate countries from European Union standards on freedom of expression and the media," Commissioner Štefan Füle stated at the conference. However, Commissioner Füle, who directs EU enlargement, qualified this sentiment by cautioning, "You have to know that the Commission is not God and cannot do everything. We will try to find ways to promote projects" (European Commission, May 2011). This admission indicates that the Commission is limited in its options to incentives

and strongly worded statements to affect the behavior of its candidate countries that violate their citizens' press and speech freedoms. Similarly, Commissioner Kroes stated that the *acquis* gives EU institutions limited scope to tell candidate and potential candidate countries what to do regarding freedom of expression and the press (European Commission, May 2011, 1). However, Dunja Mijatović, OSCE representative on freedom of the media, countered that the tools the European Commission has at its disposal to make candidate countries respect the freedom of speech and media are not fully utilized. "In order to get some results I think we all have to jointly use our forces and do our job the best we can," Mijatović stated. "On the other side, I also think that the governments of these so-called problematic countries need to do more" (European Commission, May 2011, 1). This perspective illustrates the frustrating predicament of NGOs working to promote press freedom in candidate countries.

The third expectation of the research hypothesis is that actions defending freedom of the press have also been taken by the Council of Ministers, the European Parliament, and the Court of Justice. These EU bodies have mainly played a supporting role in press freedom issues by expressing solidarity with the Commission's actions and carrying out its proposals. The 2010 update of the Audiovisual Media Services Directive is a prime example of the European Parliament and Council acting on proposal from the Commission. This directive renames and modernizes the Television Without Frontiers directive to include more flexible regulation policies for information and media services, and also updates TV advertising rules (European Parliament, 2010). While this directive is not a specific action on press freedom, it does indicate that the Parliament and the Council have a record of approving the Commission's proposals on media issues. Jerzy Buzek, president of the European Parliament from 2009 to 2012, underscored this point by issuing a joint statement with Commissioners Kroes and Füle in November that affirmed that media freedom is high on the EU agenda. "The Commission can count on the support of all EP relevant committees and delegations in raising standards and awareness on this issue both within the EU and in its neighborhood," President Buzek stated (Europa Press Office, 2011).

Political groups within the European Parliament have also brought attention to issues of press freedom. A March 2011 conference organized by the Socialists & Democrats party brought Members in the European Parliament (MEPs) and media professionals together in Brussels. This group warned that press freedom has "deteriorated badly" in Hungary, Romania, Bulgaria, Italy, and France, and called on EU institutions to spearhead a wide-ranging "reconquest" of basic rights across the EU (Media experts, 2011). In January 2012, Guy Verhofstadt, leader of the Alliance of Liberals and Democrats for Europe party in the EP, called on the Commission "to take action" against Hungary for failing to respect fundamental rights (Brand, 2012). The Parliament's ability to convene a consensus on the deterioration of press freedom in these critical countries indicates that the EU may face pressure from a variety of its institutions to take serious action to protect these freedoms within its member states. However, the Council of Ministers has yet to take any notable action on press freedom.

The European Court of Justice (ECJ) recently made what appears to be its first significant ruling defending the freedom of speech. A decision issued on November 24th, 2011 stated that web-filtering systems used to prevent illegal downloading on peer-to-peer networks were incompatible with fundamental human rights (Landmark digital, 2011). This decision has yet to be fully analyzed by legal scholars, but it may force changes to existing supranational and national EU laws that seek to protect intellectual property from piracy. Moreover, human rights groups in Hungary are currently challenging the country's restric-

tive media laws at the ECJ, giving the Court a new opportunity to make a definitive ruling on press freedom.

The fourth expectation of the research hypothesis is that NGOs have acted to promote press freedom in the EU. Monitoring organizations such as Reporters Without Borders (RSF), the Association of European Journalists, the International Press Institute, and Freedom House have issued reports on the state of press freedom in the region and specific countries that have been instrumental in bringing this issue to the EU's attention. In addition to the five countries that are the focus of this paper, several EU members and four of the EU's five candidate states score surprisingly poorly in the latest Worldwide Press Freedom Indices produced by Reporters Without Borders (Reporters Without Borders, 2010). With these reports, RSF is one of the first organizations to indicate the regional, rather than national, character of declining press freedom in Europe. These numbers also illustrate the wide range of the status of press freedom across Europe, as the region contains the best performing countries in the world as well as some of the worst offenders. Referring to Bulgaria, Greece, and Italy, the 2011–2012 report states that these countries continue to slide in the rankings “above all because of a lack of political will” among its leaders and the EU to improve the situation (Reporters Without Borders, 2011). The report's findings are reproduced in the Appendix.

The fifth expectation of the research hypothesis is that EU member states have acted cooperatively to preserve press freedom in the EU and candidate countries. In this regard, it is important to note that this paper is focused on examining four EU member states and one candidate country in order to illustrate the scope of press freedom in the region. As manifested by the RSF data, a number of European countries are among the greatest champions of press freedom in the world. A paper that explores the balance of cooperative and uncooperative actions on press freedom by all EU countries would be another project entirely.

Italy has not taken any significant actions as a government to preserve press freedom, but some notable Italian media outlets have been created in the last few years that claim to ensure editorial independence from political influences. For example, television channel LA7 is owned by the private company Telecom Italia, yet its news program is generally perceived to be more independent than the news shows on the RAI and Mediaset channels (the later of which is owned by Berlusconi). Although these media are small compared to the major national newspapers and television channels, both outlets are steadily gaining viewers and readers and seem to be economically viable for the foreseeable future. As will be discussed in the alternative hypothesis section, many of Italy's violations of press freedom are directly related to Berlusconi's conflicting roles as prime minister and media magnate. It has yet to be seen how Monti's government will act to regain the measures of press freedom lost under Berlusconi's rule.

France maintains its status as a “free” press environment due to constitutional protections, a robust and independent media market, and generally safe conditions for journalists. France has also acted cooperatively by enacting a law in January 2010 that explicitly gives journalists the right to protect their sources. The law essentially states, “The confidentiality of sources can be directly or indirectly affected only if an overriding public interest justifies it” (International Federation of Journalists, 2011). However, France has a mixed record of upholding this law in practice, especially in regards to the ongoing Woerth-Bettencourt affair. In September 2010, *Le Monde* published a report accusing Sarkozy's presidential aides of wiretapping reporters to identify a French official who was leaking information about a

judicial investigation related to the affair (Reporters Without Borders, September 2010). The French counterespionage agency ultimately admitted that it had investigated the paper for its reporting on the issue. Following this admission, a French appeals court recently ruled in favor of the *Le Monde* journalists and upheld that the government had infringed upon the protection of sources law (International Federation of Journalists, 2011, 1). This indicates that the French government is still testing the extent of this relatively new but significant law.

EU leaders found many aspects of Hungary's new media laws to be in conflict not only with EU policy but also with Hungary's duty to act as a role model while holding the council presidency from January through June 2010. The content of Hungary's media laws are discussed at length in the alternative hypothesis section. The Commission has only succeeded in making Hungary amend minor procedural aspects of the media laws, but the most restrictive measures remain in place. Prime Minister Orbán has publicly demonstrated his displeasure with being forced to change his country's laws to satisfy the Commission. At the end of Hungary's EU presidency, Orbán defended his country's media laws, stating that, "from the beginning, the Hungarian Presidency has been in the crossfire of the international Left" (Orbán: Hungary, 2011). In this instance, although Hungary acted with the EU, albeit in a limited way, to preserve press freedom, its leaders did not earn themselves a reputation for cooperation.

Considering that Bulgaria has the worst press freedom score of any EU member state, it is difficult to find a recent example of the government's cooperation to preserve press freedom. The only notably positive step for press freedom that the Bulgarian government has taken since joining the EU is a law that requires full disclosure of ownership for any sort of periodical media. As will be discussed further in the alternative hypothesis section, nearly all of Bulgaria's issues regarding media ownership are related to a pervasive lack of transparency. Overall, Reporters Without Borders has found that press freedom has "diminished considerably" in Bulgaria since the country joined the EU in 2007 (Reporters Without Borders, 9 February 2011).

Freedom House states in its 2011 press freedom report that Croatia's EU accession process has, in fact, exerted pressure on the Croatian government to crack down on corruption and to provide conditions conducive to an independent media (Freedom House, 2011). Notably, the Croatian constitution now recognizes the right to information and the freedom of the press. The Croatian government also passed an Information Access Act in 2003, although journalists still face significant obstacles in accessing even publicly available information (Croatian Parliament, 2003). 2010 also marked some progress for Croatia's capacity to bring past cases of harassment against journalists to justice. In November, six people were sentenced to prison for the murder of journalist Ivo Pukanic, who was killed by a car bomb in October 2008. In December, more than two years after journalist Dusan Miljus had been attacked, four individuals were arrested and one charged with the assault. Both Miljus and Pukanic were investigating corruption and organized crime within the country (Freedom House, 2011).

### ***Preliminary conclusion for research hypothesis***

Although freedoms of speech and the press are enshrined in its founding treaties, the EU has been slow to modernize the enlargement process to stipulate that these rights be a prerequisite to accession. It is no coincidence that the eastern European member states were not required to demonstrate a sufficient level of press freedom and now experience the most

significant problems with this issue in the region. However, this does not explain why charter members of the EU such as Italy and France have fallen behind their fellow founding states in protecting speech and press freedoms.

The second expectation of this hypothesis ultimately begs the question, how likely are future accession negotiations that will actually result in new EU members? The Commission's new initiatives are promising in terms of making press freedom a priority for the Union's agenda for its member states. If the Commission can incorporate the Charter on Freedom of the Press into its accession requirements, it may have more success in influencing the policies of candidate and potential candidate countries. However, the Commission's effectiveness in this respect will be limited by these countries' willingness to be influenced. As the EU confronts a host of internal problems, namely the potential implosion of its monetary system, membership in the Union may become less attractive to candidate countries. The EU must maintain its own credibility as a model supranational democracy in order to influence not only candidate countries but also its own member states.

The EU institutions seem to be relatively coordinated in their recent actions defending freedom of the press among the member states, and this cooperation seems to be growing. The Commission's new media freedom committee, combined with the Parliament's vocal concern about this issue and the Court of Justice's precedent of ruling in favor of media freedom, should indicate that the EU is willing to seriously tackle these concerns. However, Barroso's leadership on these issues seems to consist of more rhetoric than action, and his failure to date to make Hungary amend the most offensive parts of its media law indicates that he may have even less success in pressuring member states such as Italy and France.

NGOs have brought previously unnoticed press freedom violations to the attention of EU officials and the international community. Still, NGOs do not have much capability to affect the behavior of these governments, which is why the EU's new actions to protect press freedom within the Union have come at a critical time. Overall, it is clear that international factors have the potential to affect the status of press and speech freedoms within the EU and its candidate countries. However, it seems that, up to this point, the EU has either lacked the willingness or the capacity to exercise the full range of its supranational influence over member states' policies.

## **ALTERNATIVE HYPOTHESIS: PRESENTATION OF THE EVIDENCE**

### ***Italy***

The Italian government has undertaken a number of measures inimical to press freedom that have been ignored by the EU and that have caused conflicts within the country. Enacted in 2004, both the Gasparri Law and the Frattini Law were intended to resolve conflicts of interest, but actually enabled Berlusconi to maintain his personal control of the private media market through his ownership of the Mediaset group (Freedom House, 2011). Mediaset owns three national television channels and a variety of other entertainment businesses (International Press Institute, 2010). Television is the focal point of Italy's press freedom battles, as the International Press Institute reports that television may be the only source of information about politics for 75% of Italians (International Press Institute, 2010, 8). The IPI's report helps to identify two specific conflicts of interest that were inherent within Berlusconi's Italy. First, Berlusconi's political power allowed him to make political decisions that directly affected his business interests. In furthering Mediaset's interests, Berlusconi curtailed the Italian public's ability to access independent information. Second, Berlusconi's company,

Publitalia 80, holds a large percentage of the television advertising market (International Press Institute, 2010, 12–13). Recalling Bardoel and d’Haenens theory about broadcasters becoming more reliant on government funds as their advertising revenues decrease, this evidence reveals an untenable situation in which Italian broadcasters’ only sources of revenue, advertising and government funds, were both controlled by Berlusconi.

Additionally, in June 2010, the Italian Senate passed a bill that would fine and imprison journalists for publishing content of police wiretaps before the implicated defendant would go to trial. The controversial bill was seen primarily as an effort to keep embarrassing information about politicians out of the news. Journalists expressed frustration that they would be unable to do investigative journalism, especially on subjects relating to political corruption or criminal investigations. The government put a hold on the draft law following a national strike and international condemnation. The UN Special Rapporteur on Freedom of Expression, Frank LaRue, stated that, if adopted, the wiretap law would be in violation of the International Covenant on Civil and Political Rights (International Press Institute, 2010, 19). The IPI declared this law “an attempt to regulate the media and, as such, a notable failure to appreciate the role of a free press in a democratic society” (International Press Institute, 2010, 5).

The IPI has also noted that Italy’s legal system has insufficient guarantees for a free press. Italy lacks a national law to deal with conflicts of interest between media ownership and holding political office. The Italian government also influences the selection of public broadcasting officials. Moreover, the licensing procedures for journalists, particularly Italy’s *Ordine dei Giornalisti* (Order of Journalists), can facilitate official influence over journalists and prevent foreign correspondents from working in the country. In order to work as a journalist within Italy, one must pass an examination conducted by ten journalists and four magistrates whom are officials of the state. Enzo Iacopino, president of the Order of Journalists, defends the examination process as an important test of journalistic ethics and professionalism (International Press Institute, 2010, 35). The IPI points out that “the fact that the entity empowered to define who is a professional journalist and set ethical standards for the media is established by law goes against the notion of self-regulation” (International Press Institute, 2010, 36). Finally, Italy’s strict defamation laws make it easy for offended officials to sue the journalists or media outlets to which they are in opposition, similar to the situation in France. Milena Gabbanelli, the target of a 2010 Berlusconi libel suit, stated that the pressure to refrain from criticizing the government has increased since 2008. “No other mature democracy would let a guy who already owns the biggest [private] TV network to control the state TV as well...No surprise if investigative journalism is strangled in this country” (Momigliano, 2009).

### **France**

As previously mentioned, the French government has struggled to abide by the new law on protection of journalists’ sources throughout the Woerth–Bettencourt affair. However, inappropriate political influence over the French media seems to extend beyond the scope of this particular scandal. For instance, France has strict anti-defamation laws, and it is a criminal offense to justify war crimes and to incite discrimination and violence. In practice, these laws have been used to defend the reputations of political officials from accusations of impropriety launched by investigative journalists. In June 2010, journalist Augustin Scalbert of the news website Rue89 was indicted for publishing a video of President Sarkozy

behaving rudely before an interview. The following November, Sarkozy's chief of staff and domestic intelligence chief sued newspapers *Mediapar* and *Le Canard Enchaîné*, respectively, for accusing the officials of spying on journalists and wiretapping phone calls (Freedom House, 2011).

The French government has adopted additional measures that may facilitate further political interference in freedom of speech. In September 2010, the High Authority for the Dissemination of Creative Works and Protection of Rights on the Internet (HADOPI) law went into effect. The hallmark provision of HADOPI is the so-called 'three strikes' law, which disables individual internet connections after three accusations, not convictions, of copyright infringement (Masnick, 2011). Robert Tollot, a 54-year old teacher who believes his internet connection was wrongly disconnected under the HADOPI law, is the first French citizen to challenge to the law. Tollot is taking his complaint to the Commission for the Protection of Rights, but has said that he will turn to the European Court of Justice if denied a challenge in France (First victim, 2011).

### **Hungary**

The Hungarian government, led by Prime Minister Orbán and President Schmitt, passed a series of restrictive media laws in 2010 that have drawn condemnation from international monitors and EU leaders. First, Orbán has made it illegal to deny any number of unspecified crimes committed by the previous Hungarian communist regime. Second, the government has passed media secrecy laws that could force journalists to reveal their sources in matters of national security or public safety. There is also a 'witch hunt' aspect to this law, as journalists would be legally required to report to the government if a source revealed state secrets or face a fine of up to \$230,000. Third, President Schmitt has created the National Media and Infocommunications Authority (NMHH), whose component bodies have the power to fine television and radio stations for 'unbalanced' coverage and to ban public funds for media outlets. The NMHH has united all public media stations under the authority of its president, who is a political appointee of the Hungarian president and who holds office for a renewable nine-year term. Freedom House states that this structure threatens the financial and political independence of Hungarian public broadcasting (Freedom House, 2011). The greatest example of this is that public broadcasters are no longer allowed to produce their own news content; they must broadcast only what the Hungarian News Agency produces. Fourth, under the new Media Act, the government could fine or suspend outlets for 'unbalanced' reporting. The Media Act also required all news outlets, including online sources, to be officially registered with the government, and the NMHH could revoke those licenses at any time. To consolidate all of these changes, the center-right government removed an article from the Hungarian constitution that had banned information monopolies. The Commission was able to force Hungary to modify small aspects of these laws, including softening the ban on 'offensive' content. However, the most significant changes brought by the government's reforms are still the law in Hungary. International monitoring organizations' evaluations of the country since the laws were enacted indicate that press freedom in the country is imperiled since the passage of these laws.

### **Bulgaria**

Bulgaria's dubious distinction as the EU member state with the worst press freedom record can be analyzed as a combination of three issue areas: political pressure, ownership,

and intimidation of and attacks on journalists. The Bulgarian chapter of the Association of European Journalists (AEJ) recently conducted a survey of 113 Bulgarian journalists working in print media, radio, television stations, and online outlets. The majority of the journalists surveyed rated freedom of speech in Bulgaria as “bad” out of a five-point scale that ranged from “excellent” to “very bad.” They rated political pressure to be the greatest problems facing Bulgarian journalists, followed by economic pressure. Seventy-two percent of journalists surveyed had been direct witnesses to attacks on freedom of speech, and 50% stated that there are restraints on writing critically about large media advertisers (AEJ-Bulgaria, 2011).

One of the most distinctive features of the Bulgarian situation is that Prime Minister Borisov is directly implicated in allegations of political pressure on journalists. In response to allegations that Borisov and his officials speak with editors on a daily basis to manipulate editorial content, Borisov recently posed a rather bizarre question to a group of Bulgarian media editors: “Do I manipulate you?” (Association of European Journalists, 2010). Anecdotes from the AEJ survey of Bulgarian journalists seem to confirm these reports. Journalists in the survey testified to witnessing “direct telephone calls from senior officials” with instructions not only on what could be placed in publications, but also the order in which the information should be presented (AEJ-Bulgaria, 2011). Also on the point of political pressure, the Bulgarian Parliament adopted a set of amendments on freedom of access to Bulgaria’s Business Registry that could hinder journalists’ ability to do investigative reporting (Novinite, 2011). Prior to the amendments, access to the databases, which contain information on company contracts and shareholders, were unrestricted to all. Now, the government must approve requests for journalists who want to access the sections of the database that contain sensitive information.

Bulgaria has also struggled with issues of media ownership and transparency. For instance, the Bulgarian parliament overrode a presidential veto to amend the Television and Radio Act, reducing the membership of the regulatory body from nine representatives to five. Freedom House expresses concern that this could further expose the Bulgarian media licensing process to political influence and corruption (Freedom House, 2011). Additionally, the AEJ Bulgaria survey provides direct insight from journalists granted anonymity to speak freely on issues of media ownership. One journalist states, “Nowadays, the economic dependence of the privately owned media determines directly the journalistic work, as well as the connections of the media owners with economic groups and companies... If a certain company is an advertiser for their publication, mainly paid material is being written.” Another survey respondent points out that there is a “widespread dependence” on large advertisers for revenue. “There was a crackdown on the IT system of a big telecommunication company that concerned millions of consumers, but it was never covered by the media” (AEJ-Bulgaria, 2011). Moreover, the AEJ survey confirms that journalism is a particularly low-paying field in Bulgaria. Many journalists for major press outlets hold second jobs as media consultants for politicians or companies, compounding the lack of transparency in ownership and influence over media content in the country.

Finally, Bulgaria seems to have a significant problem with journalist safety. For one, the scope of an anti-hate speech law has recently been expanded so journalists who are convicted of defamatory speech can be sentenced to up to four years in prison (Novinite, 2011). A recent high-profile case of intimidation concerned Sasha Dikov, anchor of a popular political broadcast on public channel Kanal 3, who was the victim of a car bombing during Barroso’s visit to Sofia in mid-October. The bomb accidentally detonated while Dikov was already in

his house, so no one was hurt. As international monitoring groups condemned the attack, Borisov downplayed the incident, stating, “No, no, [the attack] is not against a journalist—it is against the car of a journalist” (Committee to Protect Journalists, 2011). Borisov claimed that he, in fact, was the true victim of the attack, stating, “The blast benefits those who do not like the fact that the successes of the government are recognized in Europe” (Committee to Protect Journalists, 2011, 1). The Committee to Protect Journalists argues that the attitude of government leaders determines how seriously attacks against journalists are investigated. In Bulgaria’s case, the prime minister’s dismissive and self-centered attitude indicates that journalists cannot count on the current center-right government for protection. Freedom House confirms this assessment, reporting that attacks on journalists are common in Bulgaria, and the “perpetrators often operate with impunity” (Freedom House, 2011).

### **Croatia**

The first problem in terms of Croatia’s policies on freedom of the press is the inherent politicization and opacity of the country’s media institutions. The Croatian Telecommunications Agency, which grants broadcasting licenses, has been criticized for involving government politics in its operations and decisions. This politicization is not only an institutional concern, but it also alarms the Croatian public. The chief executive and the news editor of HRT, the public broadcasting channel, were both fired in 2010 after a national petition signed by thousands of citizens accused the two officials of censorship and other press freedom violations (Freedom House, 2011).

One of the greatest problems hindering press freedom in Croatia is the intimidation and harassment of journalists. For instance, since 2009, Croatian Interior Minister Tomislav Karamarko has conducted an ongoing campaign of legal harassment against journalist Zeljko Peratovic. Peratovic has faced unsubstantiated charges of “disseminating information likely to upset the population,” pedophilia, and child neglect (Freedom House, 2011). A Zagreb criminal court dismissed the charges against Peratovic in 2011 (Reporters Without Borders, 1 February 2011). Despite the country’s Access to Information Act, there have been many instances of journalists being prosecuted for accessing public government records. In April 2010, Zagreb police searched the home of Marko Rakar and interrogated him after he published a list of Croatian war veterans on his blog. The journalist was covering a public scandal in which people fraudulently registered as war veterans were receiving pensions from the Croatian government. Also, an egregious incident of journalist harassment seems to have received little media coverage in Croatia. At a public event in Čavoglave commemorating a Croatian military victory, two journalists were the victims of stoning by a group of at least twenty people. The mayor of Zagreb was reportedly present and did nothing, and police made no arrests (Freedom House, 2011).

All together, these conditions contribute to a climate of self-censorship in Croatia. Large media companies exert a significant degree of influence over Croatian media outlets. For example, the newspaper *Jutarnji list* lost its largest advertising contract with the insurance company Osiguranje after the paper published articles critical of the company, and has since struggled to remain economically viable. Additionally, Freedom House reports that many Croatian media outlets specifically avoid discussing government fiscal policy (Freedom House, 2011). The poor economic environment for media outlets and the fear of unemployment limit journalists’ ability to report openly and pressure media outlets to censor their content.

***Preliminary conclusion for alternative hypothesis***

The evidence draws attention to the legal underpinnings of press freedom issues in Europe. All of the countries discussed, with the exception of Croatia, have attempted or succeeded in passing laws deemed restrictive of speech and press freedoms. Croatia seems to be excluded here because its EU accession process prioritized media issues. However, the EU has not given the same scrutiny to its newest member states in Eastern Europe and its founding members in the West. The Hungary case marks the EU's only intervention in a member state's affairs to protect press freedom. Even so, the Commission has failed to change the fundamentally restrictive aspects of Hungary's new media laws.

The evidence also indicates that aspects of these countries' media environments are inherently hostile to a free press. In addition to the legal concerns, media outlets face fundamental problems with funding and licensing that often make them vulnerable to undue political pressure. Moreover, many European governments are inherently distrustful of the press. The combination of these conditions has increased self-censorship in the European press and decreased its capacity to conduct investigative journalism.

**CONCLUSIONS**

One of the most striking observations from the evidence is that the countries discussed above seem to have such similar problems with speech and press freedoms despite their historical and cultural differences. Press freedom may be the only policy issue that presents the same scope of problems for founding EU members, previously communist EU states, and candidate countries alike. The evidence underscores the truly regional nature of Europe's problems with press freedom. The headline of Reporters Without Borders' 2010 world press freedom index, "Europe falls from its pedestal," corroborates this assessment (Reporters Without Borders, 2010).

The second conclusion from the evidence is that the EU has failed to intervene within its member states to stop abuses of press freedom. At best, its approach has been uneven. The Commission has made an example of Hungary by pressuring Orbán's government to amend its media laws, but without substantial success. Even though Bulgaria has the worst record on press freedom of all the EU member states, the EU has barely acknowledged the restrictive situation inside the country. The EU made no effort to stop Berlusconi's harassment of Italian journalists, although it has yet to be seen if there will be any progress on media issues with Monti's government. The EU's efforts to protect press freedom are most noticeable in the enlargement process. The addition of the *acquis* chapter on information society and the media allowed the Commission to press Croatia to make substantial reforms prior to its accession. Croatia's significant improvement stands in stark contrast to the situations of EU member states Hungary and Bulgaria, who were not pressed to reform their media environments prior to admission.

As the EU starts to focus its collective attention on the situation in Hungary, perhaps observers will begin to view Hungary's problems as symptomatic of the larger issue of declining press freedom throughout Europe. The Council for the Protection of Journalists' Senior European Adviser, Jean-Paul Marthoz, recently warned, "The EU is excessively inward-looking and forgets that allowing ... a free pass for its member states not only weakens its ambition to be a beacon for democracy and human rights abroad but also provides authoritarian states with an alibi to adopt flawed policies" (Ognianova, 2012). Understanding press freedom not as a singular issue but rather as a lynchpin in the EU's broader mission of

democracy promotion will be key to tackling these issues on a regional scale.

### **Analysis**

Governments change as political parties enter and exit power. This begs the question, how persistent are press freedom levels over time? Although politicians in power often instigate shifts in media policy or implementation, the evidence indicates that press freedom over time depends more on the legal underpinnings of a society than on political circumstances. Recall the IPI's finding that Italy has almost no legal protections for journalists, and anachronistic institutions such as the Order of Journalists have impacted press freedom in the country since the rule of Mussolini. Although French media laws have changed over time and do offer important protections for the press, France also has a unique notion of official privacy and a host of strict anti-defamation laws. This, in turn, seems to motivate government officials of all political stripes to selectively target journalists whose investigations may offend them. Additionally, governments in Hungary, Bulgaria, and Croatia are all crafting their records on press freedom mainly through their legal systems. Although Orbán is personally distrustful of the press, his government's media laws are the actual battleground for the current power struggle between the European Commission and Hungary. Bulgaria's lack of a coherent legal structure protecting rights does nothing to prevent politicians such as Borisov from intimidating journalists. Croatia's improved record on press freedom is due mainly to its constitutional reforms and other EU-approved changes to its legal code.

If there is a measurable degree of stability in press freedom levels over time, why is press freedom in Europe declining now? Are EU countries becoming more authoritative and less democratic? Here again, political factors are the effect rather than the cause. Economic factors stemming from the global economic crisis and the European sovereign debt crisis that began in 2007 seem to have initiated the current decline of press freedom in Europe. In fact, it is no coincidence that the first major report of this decline came from the Association of European Journalists in 2007.

European voters have been reactionary in electing their national leaders in the midst of economic crisis. A majority of EU countries are now governed by center-right or far-right parties that have brought more leaders who are hostile to a free press into power. The electoral pendulum seems to be swinging in the opposite direction now, as French voters recently voted to throw out Sarkozy's center-right government in favor of Hollande's socialist leadership, and Danish voters elected Thorning-Schmidt's center-left coalition over Rasmussen's center-right government in 2011. If more EU countries shift back to center-left governance in upcoming elections, observers will have to judge the effect of their leadership on the status of press freedom in these countries.

Yet despite the whims of voters from one election to another, a clear and enduring impact of the economic crisis in Europe has been stagnating or decreasing integration between the EU and national governments. To the extent that the EU is a positive force for promoting democracy among its member states, less integration has hurt and will further imperil the status of press freedom in EU countries. The preoccupation with the economic crisis also helps to explain why there has not been more action at the EU level on press freedom.

If national factors continue to overwhelm supranational factors in press freedom and other issue areas, this will pose serious existential consequences for the EU. The press freedom issues discussed in this paper show national governments exhibiting behaviors ranging from benign ignorance to explicit defiance of the EU's rules and agenda. The backdrop for

these political struggles is the continuing euro crisis, and the risk of further European fracture as Greece faces pressure to exit the eurozone. As previously discussed, the EU's struggles with press freedom reflect the region's economic and financial conditions. Until the eurozone can be remade into a stronger and more integrated economy and society, national factors will outweigh the EU's supranational capacity in nearly every question of policy.

### **SCENARIOS AND RECOMMENDATIONS**

The next developments on press freedom in the EU will likely come from the Commission. The Commission's media task force began examining Hungary's media laws in January 2012 to decide if Hungary is in specific violation of EU law (Brand, 2012). Hopefully, the task force will quickly move beyond this procedural task and begin to pinpoint the factors contributing to declining press freedom not only in Hungary but also in other member states. Commissioner Kroes began this process during the media committee's meeting on January 25th, stating that the concern that stood out most in the Hungarian situation was "the extraordinary concentration of competencies and responsibilities in the [Hungarian] Media Council" (Kroes, 2012). Commissioner Kroes also warned that if Hungary fails to amend its laws to the EU's satisfaction, the Commission would consider action under article seven of the EU treaty, which permits the Council to suspend voting rights of a member state if the state is in serious breach of the common values of the Union (Kroes, 2012). This scenario would mark a watershed moment in the EU's approach to protecting press freedom within its member states. If the EU does move to suspend Hungary's voting rights over this matter, it would likely compel other member states to make reforms before the EU examines their own countries' media situations with the same attention it has given to Hungary.

Additionally, the Commission will likely be successful in adopting the European Charter on Freedom of the Press into the requirements for future accession cases. However, the Commission needs to be diligent in ensuring that the Charter is adopted into both versions of the *acquis* so that its requirements apply to both member states and candidate countries.

It goes without saying that the EU's resources are currently focused on confronting the euro crisis rather than on protecting press freedom. However, the EU can still take action now to protect press freedom that will not come at great cost to the Union or its member states. NGOs and international monitoring organizations should partner with Commission in their efforts to protect press freedom. Moreover, the Court of Justice should continue accepting speech and press freedom cases in order to establish a body of legal precedent that could be used to hold member states accountable for abuses. Finally, the Council should lead by example. The EU heads of government and state must press the leaders of poorly performing countries to make reforms to protect the speech and press freedoms of their citizens.

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## APPENDIX

**Table 1. Reporters Without Borders 2010 and 2011–2012 Worldwide Press Freedom Indices: Europe Snapshot**

Country	2010 Press Freedom Score	World Rank 2010	2011–2012 Press Freedom Score <sup>b</sup>	World Rank 2011–2012	Change in Rank <sup>c</sup>
Finland	0.00	1	-10.00	1	--
Netherlands	0.00	1	-9.00	3	Down
Estonia	2.00	9	-9.00	3	Up
Austria	0.50	7	-8.00	5	Up
Luxembourg	4.00	14	-7.00	6	Up
Iceland*	0.00	1	-7.00	6	Down
Denmark	2.50	11	-5.67	10	Up
Sweden	0.00	1	-5.50	12	Down
Czech Republic	7.50	23	-5.00	14	Up
Ireland	2.00	9	-4.00	15	Down
Cyprus	13.40	45	-3.00	16	Up
Germany	4.25	17	-3.00	16	Up
Belgium	4.00	14	-2.00	20	Down
Poland	8.88	32	-0.67	24	Up
Slovakia	11.5	35	0.00	25	Up
United Kingdom	6.00	19	2.00	28	Down
Lithuania	2.50	11	4.00	30	Down
Portugal	12.36	40	5.33	33	Up
Slovenia	13.44	46	9.14	36	Up
France	13.38	44	9.50	38	Up
Spain	12.25	39	9.75	39	--
Hungary	7.50	23	10.00	40	Down
Romania	16.00	52	14.00	47	Up
Latvia	8.50	30	15.00	50	Down
Malta	4.00	14	19.50	58	Down
Italy	15.00	49	19.67	61	Down
Croatia <sup>a</sup>	17.50	63	23.33	68	Down
Greece	19.00	70	24.00	70	--
Bulgaria	19.00	70	29.00	80	Down

Country	2010 Press Freedom Score	World Rank 2010	2011-2012 Press Freedom Score <sup>b</sup>	World Rank 2011-2012	Change in Rank <sup>c</sup>
Macedonia (FYROM) <sup>a</sup>	18.40	68	31.67	94	Down
Montenegro <sup>a</sup>	28.50	104	39.00	107	Down
Turkey <sup>a</sup>	49.25	138	70.00	148	Down

<sup>a</sup>EU Candidate Country

<sup>b</sup>The 2011-2012 Index allows for negative scores and has a wider overall spread of scores (-10 to 142, with previous years having 0 to 115.5).

<sup>c</sup>'Up' indicates improvement; 'Down' indicates deterioration. Boldface 'Up' or 'Down' indicates a significant change of ten or more places on the index.

Source: Reporters Without Borders. (2011). World Press Freedom Index (2011-2012).