

# FREEDOM OF EXPRESSION UNDER EU LAW

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## *Abstract*

After some introductory remarks relating to national constitutional standards in the context of the EU fundamental rights system and an emphasis on the proportionality test as a general mandatory requirement for limitations of EU fundamental rights, this contribution seeks to provide an overview of the current state of freedom of expression under EU law in the light of the CJEU's case-law.

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### **1. Introductory remarks on national constitutional standards in the context of the EU fundamental rights system**

With regard to the interaction between constitutional traditions common to the Member States and Charter rights and, more specifically, to the possibility of taking national constitutional standards into account when interpreting EU fundamental rights, due regard must be had to the framework provided by EU law to that effect and, in particular, by the Charter itself and the Explanations relating to it<sup>1</sup>. Several aspects should be taken into account in this respect.

First, the Court repeatedly held that the fundamental rights now enshrined in the Charter draw inspiration from the constitutional traditions common to the Member States.<sup>2</sup> It should be noted, however, that the wording chosen in the context of this case-law differs from the Court's earlier case-law, rendered before the Charter entered into force, which stated that "in safeguarding [fundamental] rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States".<sup>3</sup> This seems to suggest that the entry into force of the Charter has strengthened the autonomy of fundamental rights enshrined in it as a written document.<sup>4</sup>

Secondly, under Article 6(3) TEU, "[f]undamental rights, as guaranteed by the [ECHR] and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law". According to this provision, which embodies longstanding case-law stating that "fundamental rights form an integral part of the general principles

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<sup>1</sup> Explanations relating to the Charter of Fundamental Rights (OJ 2007, C 303, p. 17).

<sup>2</sup> See, most recently, 29 July 2019, *Funke Medien NRW*, C-469/17, EU:C:2019:623, para 59, 29 July 2019, *Pelham and Others*, C-476/17, EU:C:2019:624, para 61, and 29 July 2019, *Spiegel Online*, C-516/17, EU:C:2019:625, para 44 and the case-law cited. According to this case-law, Charter rights also draw inspiration from the guidelines supplied by international instruments for the protection of human rights on which the Member States have collaborated or to which they are signatories.

<sup>3</sup> See, e.g., 14 May 1974, *Nold v Commission*, 4/73, EU:C:1974:51, para 13, 13 December 1979, *Hauer*, 44/79, EU:C:1979:290, para 15, and 18 December 2008, *Sopropé*, C-349/07, EU:C:2008:746, para 33

<sup>4</sup> According to Article 6(1) TEU, the Charter has the same legal value as the treaties.

of law”<sup>5</sup>, both the ECHR and constitutional traditions common to the Member States are recognized as sources of law for EU fundamental rights.<sup>6</sup> It is hence apparent that EU law does not bar the Court from providing fundamental rights protection beyond the scope of the Charter by referring to general principles of law, provided of course this proves compatible with the principle of subsidiarity.<sup>7</sup> The content of these principles may thus be determined, in principle, by having recourse to common national constitutional standards.

Thirdly, Article 52(4) of the Charter provides that “[i]n so far as [the] Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions”. Within its scope, this rule of interpretation explicitly calls for a comparative law approach when interpreting fundamental rights provided by the Charter. With regard to the level of fundamental rights protection under EU law, it should be noted that the Court repeatedly held in its early case-law that, since it is bound to draw inspiration from constitutional traditions common to the Member States, “measures which are incompatible with the fundamental rights recognised by the constitutions of those States are unacceptable in the [Union]”.<sup>8</sup> If read alongside the Explanations on Article 52 of the Charter, which state that “the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in

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<sup>5</sup> See, e.g., 14 May 1974, *Nold v Commission*, 4/73, EU:C:1974:51, para 13, and 13 May 2014, *Google Spain and Google*, C-131/12, EU:C:2014:317, para 68.

<sup>6</sup> Whereas general principles of law are, just as the Charter, to be considered as a legal source in a formal sense, the ECHR and the constitutional traditions common to the Member States may be referred to as legal sources in a material sense (as corresponding to the distinction, commonly drawn in German legal terminology, between “*Rechtsquelle*” and “*Rechtserkenntnisquelle*”).

<sup>7</sup> Such examples can be found notably in the field of procedural safeguards, see, e.g., 9 November 2017, *Ispas*, C-298/16, EU:C:2017:843, paras 26 et seq. (protection of the rights of the defense outside the scope of Articles 41 and 48 of the Charter), 20 December 2017, *Spain v Council*, C-521/15, EU:C:2017:982, paras 88 et seq. (right to good administration invoked by a Member State), and 24 June 2019, *Commission v Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531, paras 48 and 49 (effective judicial protection of individuals’ rights in the context of Article 19 TEU).

<sup>8</sup> 14 May 1974, *Nold v Commission*, 4/73, EU:C:1974:51, para 13, 13 December 1979, *Hauer*, 44/79, EU:C:1979:290, para 15, and 11 July 1989, *Schröder HS Krafffutter*, 265/87, EU:C:1989:303, para 14.

harmony with the common constitutional traditions”, this could be understood as a requirement to align EU standards with high, maybe even the highest, national standards. Such a requirement could however not constrain the autonomy and flexibility of the EU fundamental rights protection system, since the Court has also emphasised that the protection of fundamental rights must be ensured within the framework of the structure and objectives of the Union.<sup>9</sup>

Fourthly, according to the rule of interpretation provided by Article 52(3) of the Charter, “[i]n so far as this Charter contains rights which correspond to rights guaranteed by the [ECHR], the meaning and scope of those rights shall be the same as those laid down by the said Convention”. Even though this provision does not affect, as such, the autonomy of EU law, it intends to ensure the necessary consistency between the rights contained in the Charter and the corresponding rights guaranteed by the ECHR.<sup>10</sup>

Since all EU Member States are parties to the ECHR, there should hardly be any tension between the paragraphs 3 and 4 of Article 52 of the Charter. However, it seems clear from the wording and the general scheme of the two provisions that the ECHR should be used as a matter of priority before recourse is had to common national standards in application of Article 52(4) of the Charter. More specifically, Article 52(4) of the Charter seems likely to apply with regard to Charter rights that stem from constitutional traditions common to the Member States, but are not guaranteed as such by the ECHR.<sup>11</sup>

In light of the foregoing, it would seem that constitutional traditions common to the Member States may be given consideration within the EU fundamental rights system provided for by the Charter notably in three circumstances: (1) to the extent that a Charter right is based solely on the constitutional traditions common to the Member States; (2) to the extent that the content of the Charter rights deviates from equivalent provisions of the ECHR, or at least may deviate from it; and (3) to the extent that fundamental rights based on general principles of law deviate, or

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<sup>9</sup> 17 December 1970, *Internationale Handelsgesellschaft*, 11/70, EU:C:1970:114, para 4.

<sup>10</sup> 28 July 2016, *JZ*, C-294/16 PPU, EU:C:2016:610, para 50.

<sup>11</sup> This should apply regardless of Article 52(3) of the Charter allowing for EU law to provide more extensive protection than the ECHR. To date, there does not seem to be any significant judicial application of Article 52(4) of the Charter.

at least may deviate, from the level of protection granted by the Charter.

## **2. Proportionality as a general barrier for limitations of EU fundamental rights**

Article 52(1) of the Charter provides for general requirements with regard to the limitation of all Charter rights and reads as follows:

“Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.”

This provision hence lays down the conditions in which restrictions may lawfully be brought to the rights and freedoms recognised by the Charter, as “fundamental rights are not absolute rights but must be considered in relation to their social function”.<sup>12</sup> To that effect, it provides, *inter alia*, for the mandatory requirement of a proportionality test for limitations on all Charter rights and freedoms<sup>13</sup>, thereby codifying the Court’s case-law prior to the entry into force of the Charter on limitations of fundamental rights.<sup>14</sup> Although the exact scope of the proportionality test may vary according to the fundamental rights concerned, it is a general requirement under EU fundamental rights law.

It is settled case-law that this principle requires that an interfering measure does not exceed the limits of what is appropriate and necessary in order to meet the legitimate objectives pursued by said measure or the need to protect the rights and freedoms of others; where there is a choice between several appropriate measures, recourse must be had to the least onerous,

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<sup>12</sup> 10 July 2003, *Booker Aquaculture and Hydro Seafood*, C-20/00 et C-64/00, EU:C:2003:397, para 68.

<sup>13</sup> It should be noted that the principle of proportionality itself amounts to a general principles of EU law, see, e.g., 11 April 2019, *Repsol Butano and DISA Gas*, C-473/17 and C-546/17, EU:C:2019:308, para 39.

<sup>14</sup> 13 December 1979, *Hauer*, 44/79, EU:C:1979:290, para 23, and 11 July 1989, *Schräder HS Kraftfutter*, 265/87, EU:C:1989:303, para 15.

and the disadvantages caused must not be disproportionate to the aims pursued.<sup>15</sup>

To that effect, the EU's or a Member State's interest in attaining the relevant objectives must be balanced against the interference with the rights of the beneficiaries concerned.<sup>16</sup> Where several rights and freedoms protected by the EU legal order are at issue, the assessment of the possible disproportionate nature of a provision must be carried out with a view to reconciling the requirements of the protection of those different rights and freedoms and a fair balance between them.<sup>17</sup> In making that assessment, it is necessary to take into account all the protected interests involved<sup>18</sup>, with a view to reconcile the various interests at stake.<sup>19</sup>

### **3. The current state of freedom of expression under EU law**

Freedom of expression was first recognised as a fundamental right under EC law in 1989 in a public service dispute concerning the Commission's refusal to establish the two applicants as officials.<sup>20</sup> Today, it is well established that freedom of expression is a "fundamental pillar of a democratic society"<sup>21</sup> and an "essential foundation of a pluralist, democratic society reflecting the values on which the Union, in accordance with Article 2 TEU is based".<sup>22</sup> It constitutes a fundamental right guaranteed by Article 11 of the Charter, which reads as follows:

"Freedom of expression and information

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<sup>15</sup> On the proportionality of Union acts, see, e.g., 26 April 2022, *Poland v Parliament and Council*, C-401/19, EU:C:2022:297, para 65. On the proportionality of Member State acts, see, e.g., 22 March 2017, *Euro-Team and Spirál-Gép*, C-497/15 et C-498/15, EU:C:2017:229, para 40.

<sup>16</sup> 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, para 77.

<sup>17</sup> 22 January 2013, *Sky Österreich*, C-283/11, EU:C:2013:28, para 60.

<sup>18</sup> 10 March 2005, *Tempelman and van Schaijk*, C-96/03 and C-97/03, EU:C:2005:145, para 48.

<sup>19</sup> 9 June 2016, *Pesce and Others*, C-78/16 and C-79/16, EU:C:2016:428, para 74.

<sup>20</sup> 13 December 1989, *Oyowe & Traore v Commission*, C-100/88, EU:C:1989:638, para 16.

<sup>21</sup> 6 March 2001, *Connolly v Commission*, C-274/99 P, EU:C:2001:127, para 53.

<sup>22</sup> 6 September 2011, *Patriciello*, C-163/10, EU:C:2011:543, para 31, 21 December 2016, *Tele2 Sverige et Watson and Others*, C-203/15 and C-698/15, EU:C:2016:970, para 93, and 23 April 2020, *Associazione Avvocatura per i diritti LGBTI*, C-507/18, EU:C:2020:289, para 48.

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

2. The freedom and pluralism of the media shall be respected.”

Despite its relatively minor importance in the Court’s case-law to date<sup>23</sup>, a number of statements can be made with respect to freedom of expression under EU law, taking into account also the relevant ECtHR case-law.

### **3.1 General principles**

Freedom of expression under EU law has two main dimensions of protection and its content is largely determined by the equivalent provision of the ECHR.

#### **3.1.1 Protective dimensions of freedom of expression under EU law**

On the one hand, freedom of expression has an objective dimension, which aims at ensuring diversity of opinion as such. Freedom of expression may thus justify restrictions on the fundamental freedoms under primary law, as the maintenance of press diversity, which helps to safeguard freedom of expression, may constitute an overriding requirement justifying a restriction on free movement of goods<sup>24</sup>, as well as the protection of the freedom of expression of protesters.<sup>25</sup> The same applies to a cultural policy with the aim of safeguarding the freedom of expression of the various (in particular, social, cultural, religious and philosophical) components of a Member State, which may constitute an overriding requirement relating to the general interest justifying a restriction of the freedom to provide services.<sup>26</sup> Freedom of expression and,

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<sup>23</sup> This is due both to the relatively small number of legal acts likely to raise problems relating to the interpretation of the freedom of expression and, more generally, to the limited powers of the EU to legislate in the areas concerned. It should be recalled that, according to its Article 52(2), the Charter does not extend the field of application of EU law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

<sup>24</sup> 26 June 1997, *Familiapress*, C-368/95, EU:C:1997:325, para 18. See also 3 February 1993, *Veronica Omroep Organisatie*, C-148/91, EU:C:1993:45, para 10.

<sup>25</sup> 12 June 2003, *Schmidberger*, C-112/00, EU:C:2003:333, paras 74 et seq.

<sup>26</sup> 25 July 1991, *Collectieve Antennevoorziening Gouda*, C-288/89, EU:C:1991:323, paras 22 and 23, 13 December 2007, *United Pan-Europe*

more specifically, freedom of the media thus permit and justify, to a certain extent, Member State regulation in the field of media that otherwise would be contrary to fundamental freedoms under EU law.

On the other hand, freedom of expression has an individual dimension and grants a right of defence against EU or Member State interference, which can only be restricted within reasonable limits.<sup>27</sup> In this respect, it is interesting to note that, where a Member State relies on overriding requirements in order to maintain press diversity and to justify national rules which are likely to obstruct the exercise of fundamental freedoms, such justification must also be interpreted in the light of fundamental rights and, *inter alia*, freedom of expression.<sup>28</sup>

### 3.1.2 Equivalence between Article 11 of the Charter and Article 10 of the ECHR

As is clear from Article 52(3) of the Charter and the Explanations on Article 11 and Article 52, the freedom of expression and information laid down in Article 11 of the Charter has the same meaning and scope as Article 10 of the ECHR<sup>29</sup>, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from

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Communications Belgium and Others, C-250/06, EU:C:2007:783, para 41, and 11 December 2019, TV Play Baltic, C-87/19, EU:C:2019:1063, para 38.

<sup>27</sup> 13 December 1989, Oyowe & Traore v Commission, C-100/88, EU:C:1989:638, para 16, and 6 March 2001, Connolly v Commission, C-274/99 P, EU:C:2001:127, para 129.

<sup>28</sup> 26 June 1997, Familiapress, C-368/95, EU:C:1997:325, paras 24 et seq: A prohibition on selling publications offering the chance to take part in prize games competitions, which may detract from freedom of expression, must be proportionate to the aim of maintaining press diversity. See also 25 March 2004, Karner, C-71/02, EU:C:2004:181, paras 50 et seq.

<sup>29</sup> 17 December 2015, Neptune Distribution, C-157/14, EU:C:2015:823, para 65, and 4 May 2016, Philip Morris Brands and Others, C-547/14, EU:C:2016:325, para 147. See also General Court, 31 May 2018, Korwin-Mikke/Parliament, T-352/17, EU:T:2018:319, para 39 : “(...) equivalence between the freedoms guaranteed by the Charter and those guaranteed by the ECHR has been formally expressed in relation to freedom of expression (...)”.



requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Therefore, the interpretation and application of Article 11 of the Charter may, in principle and without prejudice to the requirements of an autonomous interpretation of EU law, draw on the ECtHR case-law on Article 10 of the ECHR. Although Article 52(3) of the Charter specifically states that EU law shall not prevented providing more extensive protection than the rights laid down in the ECHR, it would seem that such equivalence entails that there is only little room for the application of both Article 6(3) TEU and Article 52(4) of the Charter in the field of freedom of expression within the scope of EU law.

However, certain noteworthy differences between the two provisions cannot be dismissed out of hand.

First, as opposed to Article 10 of the ECHR, Article 11 of the Charter does not cover the freedom of the arts and sciences, which is specifically enshrined in Article 13.

Secondly, the Explanations on Article 11 of the Charter make clear that limitations which may be imposed on the freedom of expression are without prejudice to any restrictions which EU competition law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR. The Charter could therefore lead to more stringent requirements for Member States, for example in the area of state aid prohibition under Article 106 TFEU, which provides that, in the case of public undertakings and undertakings to which Member States grant special or exclusive rights, these States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties.

Thirdly, the most noteworthy difference between the two provisions lies in the express recognition of the freedom and

pluralism of the media in Article 11(2) of the Charter.<sup>30</sup> Since freedom of the media and of the press is also protected by Article 11 of the ECHR, the question therefore arises as to the extent to which the Charter differs in content from the ECHR. In the context of an autonomous interpretation of the Charter, this could also be of interest for a possible recourse to national constitutional standards, since Article 52(3) applies only in so far as the two provisions are identical in substance. In the absence of relevant case-law in this respect, this question must remain open. However, the Explanations on the Charter in particular suggest that the EU legislator did not intend to create a fundamental right separate from the ECHR, but wanted to emphasize the particular importance of freedom and pluralism of the media in EU law.

## **3.2 The scope of Article 11 of the Charter**

### **3.2.1 Scope *ratione materiae***

#### **3.2.1.1 Freedom of expression and information [Article 11(1) of the Charter]**

Article 11(1) of the Charter distinguishes, on the one hand, freedom of holding opinions and imparting information and ideas, and, on the other hand, freedom to receive information and ideas.

It is likely that, whereas “ideas” and “opinions” refer, in substance, to value statements<sup>31</sup>, “information” refer to statement of facts.<sup>32</sup> Relying on relevant ECtHR case law, the Court has stated that, based on the demands of pluralism, tolerance and broadmindedness without which there is no “democratic society”,

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<sup>30</sup> The fact that this provision only provides that freedom and pluralism of the media shall be “respected” instead of, e.g., “guaranteed”, leaves some doubt as to its exact scope.

<sup>31</sup> In its judgment of 6 September 2011, *Patriciello* (C-163/10, EU:C:2011:543), para 32, the Court considered that “opinion” for the purpose of Article 8 of the Protocol (no 7) on the privileges and immunities of the European Union must be understood in a wide sense to include remarks and statements that, by their content, correspond to assertions amounting to subjective appraisal.

<sup>32</sup> According to the ECtHR, in order to distinguish between a factual allegation and a value judgment it is necessary to take account of the circumstances of the case and the general tone of the remarks, bearing in mind that assertions about matters of public interest may, on that basis, constitute value judgments rather than statements of fact (23 April 2015, *Morice v France* [GC], no 29369/10, para 126).

freedom of expression applies not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.<sup>33</sup> This allows to conclude that, in principle, all kind of communications contents fall within the scope of Article 11 of the Charter, without regard to the quality of the speech.<sup>34</sup>

Relying on a broad understanding of the scope *rationae materiae* of freedom of expression, the Court hence found, for example, that freedom of expression covers the dissemination of information about therapeutic or prophylactic properties of a product<sup>35</sup>, the publication of information concerning names, addresses and family relationships of individuals<sup>36</sup>, demonstrations seeking to draw attention to the threat to the environment and public health posed by the constant increase in the movement of heavy goods vehicles<sup>37</sup>, and statements made by an individual in a radio programme to the effect that he would not wish to work with homosexual persons<sup>38</sup>. The same should also apply to listings uploaded by users to eBay’s marketplace.<sup>39</sup>

As far as lawyers’ freedom of expression is concerned, this freedom protects not only the substance of the ideas and information expressed by lawyers in their written and oral submissions but also the form in which they are conveyed, so that, although it is not unlimited, it is only in exceptional circumstances that a restriction of the freedom of expression of defence counsel can be accepted as necessary in a democratic society.<sup>40</sup>

Commercial speech, such as television advertising, falls within the scope of Article 11 of the Charter.<sup>41</sup> The same applies to

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<sup>33</sup> 6 March 2001, *Connolly v Commission*, C-274/99 P, EU:C:2001:127, para 39. See also ECtHR, 7 December 1976, *Handyside v United Kingdom*, no 5493/72, para 49.

<sup>34</sup> In the light of, e.g., ECtHR, 3 April 2012, *Gillberg v Sweden* [GC], no 41723/06, para 86, a negative right to freedom of expression is also likely to be protected.

<sup>35</sup> 28 October 1992, *Ter Voort*, C-219/91, EU:C:1992:414, paras 31 and 36.

<sup>36</sup> 6 November 2003, *Lindqvist*, C-101/01, EU:C:2003:596, paras 13 and 86.

<sup>37</sup> 12 June 2003, *Schmidberger*, C-112/00, EU:C:2003:333, paras 65 and 77.

<sup>38</sup> 23 April 2020, *Associazione Avvocatura per i diritti LGBTI*, C-507/18, EU:C:2020:289, paras 47 et seq.

<sup>39</sup> Opinion of Advocate General Jääskinen in *L’Oréal and Others*, C-324/09, EU:C:2010:757, para 49.

<sup>40</sup> General Court, 14 July 2021, *DD/FRA*, T-632/19, EU:T:2021:434, para 153.

<sup>41</sup> 23 October 2003, *RTL Television*, C-245/01, EU:C:2003:580, para 68, 25 March 2004, *Karner*, C-71/02, EU:C:2004:181, para 51, and 2 April 2009, *Damgaard*, C-421/07, EU:C:2009:222, para 23 (dissemination of information on medicinal

the use by a business, on the packaging and labelling of tobacco products, of certain indications provided for under EU law.<sup>42</sup>

The scope of Article 11 of the Charter finds some limits in the prohibition of abuse of rights under Article of 54 of the Charter<sup>43</sup>, which, as is apparent from the Explanations on this provision, corresponds to Article 17 of the ECHR. It should therefore be assumed that, in the light of relevant ECtHR case-law, freedom of expression under Article 11 of the Charter cannot be relied on, in principle, in order to perform, promote and/or justify acts amounting to or characterised by violence, hatred, xenophobia or another form of intolerance<sup>44</sup>, racial discrimination<sup>45</sup>, anti-Semitism<sup>46</sup> and islamophobia<sup>47</sup>, terrorism and war crimes<sup>48</sup>, negation and revision of clearly established historical facts, such as the Holocaust<sup>49</sup>, contempt for victims of the Holocaust, of a war and/or of a totalitarian regime<sup>50</sup>, as well as totalitarian ideology and other political ideas incompatible with democracy<sup>51</sup>. The General Court has held that, whereas statements made in the political context are, in principle, particularly well protected by freedom of expression, that does not apply to acts constituting an incitement to violence, hatred and intolerance.<sup>52</sup> On the other hand,

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products). See also ECtHR, 13 July 2012, *Mouvement raëlien suisse v Switzerland* [GC], no 16354/06, para 61.

<sup>42</sup> 4 May 2016, *Philip Morris Brands and Others*, C-547/14, EU:C:2016:325, para 147.

<sup>43</sup> “Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.”

<sup>44</sup> ECtHR, 15 October 2015, *Perinçek v Switzerland* [GC], no 27510/08, para 230. In order to determine whether statements made as a whole may be so qualified, attention must be paid to the words used, the manner in which the statements were made and the context in which they were broadcast, see ECtHR, 6 July 2010, *Gözel and Özer v Turkey*, nos 43453/04 and 31098/05, para 52.

<sup>45</sup> ECtHR, 16 July 2009, *Féret v Belgium*, no 15615/07.

<sup>46</sup> ECtHR, 20 February 2007, *Pavel Ivanov v Russia* (dec.), no 35222/04.

<sup>47</sup> ECtHR, 10 July 2008, *Soulas and Others v France*, no 15948/03.

<sup>48</sup> ECtHR, 15 January 2009, *Orban and Others v France*, no 20985/05.

<sup>49</sup> ECtHR, 23 September 1998, *Lehideux and Isorni v France* [GC] 24662/94; 13 December 2005, *Witzsch v Germany* (no. 2) (dec.), no 7485/03.

<sup>50</sup> ECtHR, 24 July 2012, *Fáber v Hungary*, no 40721/08.

<sup>51</sup> ECtHR, 13 February 2003, *Refah Partisi (the Welfare Party) and Others v Turkey* [GC], nos 41340/98 et al.

<sup>52</sup> General Court, 14 July 2021, *Cabello Rondón/Council*, T-248/18, EU:T:2021:450, para 117.

the uttering of a mere vulgar, indecent, obscene and repulsive term is not excluded from the scope of freedom of expression.<sup>53</sup>

Freedom of expression covers any form of expressing opinions, both through conduct and verbal expression<sup>54</sup>, and may therefore also apply, e.g., to the display of vestimentary symbols.<sup>55</sup> In addition, freedom of information covers any means of receiving and imparting information.

On several occasions, the Court ruled on aspects of freedom of expression and the Internet. It is commonly accepted that ideas, opinions and information may be expressed, received and imparted via the Internet and any means of electronic communication.<sup>56</sup> Interpreting substantial EU law on copyright and related rights, the Court emphasised that the Internet is in fact of particular importance to freedom of expression and of information and that hyperlinks contribute to its sound operation as well as to the exchange of opinions and information in that network characterised by the availability of immense amounts of information.<sup>57</sup> In contrast, the publication on a website without the authorisation of the copyright holder of a work which was previously communicated on another website with the consent of that copyright holder does not contribute, to the same extent, to that objective.<sup>58</sup>

According to the ECtHR, Article 10 of the ECHR applies when the relations between employer and employee are governed by private law, and that the State has a positive obligation to protect the right to freedom of expression even in the sphere of relations between individuals.<sup>59</sup>

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<sup>53</sup> General Court, 9 March 2012, *Cortés del Valle López v OHMI (¡Que bueno ye! HIJOPUTA)*, T-417/10, EU:T:2012:120, para 26, and 14 November 2013, *Efag Trade Mark Company v OHMI (FICKEN)*, T-52/13, EU:T:2013:596, paras 34 and 40.

<sup>54</sup> ECtHR, 17 July 2018, *Mariya Alekhina and Others v Russia*, no 38004/12, para 21.

<sup>55</sup> ECtHR, 8 July 2008, *Vajnai v Hungary*, no 33629/06, para 47.

<sup>56</sup> 24 November 2011, *Scarlet Extended*, C-70/10, EU:C:2011:771, para 50, 8 April 2014, *Digital Rights Ireland and Others*, C-293/12 and C-594/12, EU:C:2014:238, para 28, and 21 December 2016, *Tele2 Sverige and Watson and Others*, C-203/15 and C-698/15, EU:C:2016:970, para 101.

<sup>57</sup> 8 September 2016, *GS Media*, C-160/15, EU:C:2016:644, para 45, and 29 July 2019, *Spiegel Online*, C-516/17, EU:C:2019:625, para 81.

<sup>58</sup> 7 August 2018, *Renckhoff*, C-161/17, EU:C:2018:634, para 40.

<sup>59</sup> ECtHR, 5 November 2019, *Herbai v Hungary*, no 11608/15, para 47.

### 3.2.1.2 Freedom and pluralism of the media [Article 11(2) of the Charter]

The Court has emphasised the particular importance of the freedom of the media in the areas of radio and television broadcasting.<sup>60</sup> In particular, freedom of the media includes the freedom of the press, both print and online<sup>61</sup>. Article 11(2) of the Charter highlights the importance of freedom and pluralism of the media in EU law and contains a general provision in favour of diversity of opinion, which may justify restrictions on economic activities and, more specifically, the freedom of media operators.<sup>62</sup> In order to distinguish this provision from Article 11(1) of the Charter, it should be assumed that only media-specific services are protected. In this regard, the Court held that, in the context of journalism, not only publications but also the preparatory steps to a publication, such as the gathering of information and the research and investigative activities of a journalist are inherent components of the freedom of the press.<sup>63</sup>

According to the Explanations on Article 11 of the Charter, freedom of the media under Article 11(2) of the Charter is based in particular on the Court's case-law regarding television<sup>64</sup>, Protocol (no 29) on the system of public broadcasting in the Member States annexed to the Treaties, and what is now the Audiovisual Media Services Directive<sup>65</sup>.

In respect of journalistic reporting on political issues and other matters of public concern, notably in the audiovisual media, the ECtHR has stated that the protection of the right of journalists to impart information on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual

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<sup>60</sup> 22 January 2013, *Sky Österreich*, C-283/11, EU:C:2013:28, para 52.

<sup>61</sup> 29 July 2019, *Spiegel Online*, C-516/17, EU:C:2019:625, para 45.

<sup>62</sup> See 26 June 1997, *Familiapress*, C-368/95, EU:C:1997:325, para 18, and 3 September 2020, *Vivendi*, C-719/18, EU:C:2020:627, para 57.

<sup>63</sup> 15 March 2022, *Autorité des marchés financiers*, C-302/20, EU:C:2022:190, para 68.

<sup>64</sup> 25 July 1991, *Collectieve Antennevoorziening Gouda*, C-288/89, EU:C:1991:323, according to which freedom of the media may constitute an overriding requirement relating to the general interest justifying a restriction of a fundamental freedom.

<sup>65</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ 2010, L 95, p. 1).

basis and provide reliable and precise information in accordance with the ethics of journalism; or in other words, in accordance with the tenets of responsible journalism. Given the influence wielded by the media in contemporary society and the vast quantities of information circulated via traditional and electronic media, monitoring compliance with journalistic ethics takes on added importance.<sup>66</sup>

According to the ECtHR, it is “(...) incumbent to [the press] to impart information and ideas on political issues just as on those in other areas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them (...). Freedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society (...).”<sup>67</sup> Therefore, it is up to the Member States to ensure, first, that the public has access through television and radio to impartial and accurate information and a range of opinion and comment, reflecting, *inter alia*, the diversity of political outlook within the country and, secondly, that journalists and other professionals working in the audiovisual media are not prevented from imparting this information and comment. The choice of the means by which to achieve these aims must vary according to local conditions and, therefore, falls within the Member States’ margin of appreciation.<sup>68</sup>

### 3.2.2 Scope *ratione personae*

Any natural person, both EU citizens and third country nationals, may invoke freedom of expression under Article 11 of the Charter. This also applies, in principle, to legal persons. Whereas EU officials may rely on freedom of expression even in areas falling within the scope of the activities of their employing institution and even if their opinion is contrary to the latter’s position on a specific topic<sup>69</sup>, the Court has stated that Member States cannot rely on their

<sup>66</sup> ECtHR, 22 April 2022, *NIT S.R.L. v Moldova* [GC], no 28470/12, paras 180 and 181. In this respect, see, most instructively, General Court, 27 June 2022, *RT France v Council*, T-125/22, EU:T:2022:483, paras 186 et seq.

<sup>67</sup> ECtHR, 8 July 1986, *Lingens v Austria*, no 9815/82, paras 41 and 42.

<sup>68</sup> ECtHR, 17 September 2009, *Manole And Others v Moldova*, no 13936/02, para 100.

<sup>69</sup> 6 March 2001, *Connolly v Commission*, C-274/99 P, EU:C:2001:127 para 43

officials' freedom of expression to justify an obstacle to free movement of goods and thereby evade their own liability under EU law.<sup>70</sup>

It should also be noted that, although Article 16 of the ECHR specifically allows for restrictions on the political activity of aliens, it is apparent from the Explanations on Article 52 of the Charter that EU citizens of the European Union may not be considered as aliens within the scope of EU law, because of the prohibition of any discrimination on grounds of nationality.

### 3.3 Limitations to freedom of expression

#### 3.3.1 General principles

In order to assess whether there has been an interference with the exercise of freedom of expression, and in accordance with the wording of Article 10(2) of the ECHR, the ECtHR takes into account any kind of formality, condition, restriction or penalty, bearing in mind the context of the facts of the case and of the relevant legislation.<sup>71</sup> This corresponds with the Court's approach, which generally takes into account any legal or factual measure affecting, directly or indirectly, the freedom of expression.<sup>72</sup>

With regard to the possibility of justifying restrictions to the freedom of expression, the Court recalled that, as is apparent from Article 52(1) of the Charter, freedom of expression is not an absolute right and its exercise may be subject to limitations, provided that these are provided for by law and respect the essence of that right and the principle of proportionality, namely if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.<sup>73</sup> In addition, the Explanations on Article 11 of the Charter make clear that limitations which may be imposed on the freedom of expression must not exceed, in principle, those provided for in Article 10(2) of the ECHR.<sup>74</sup> As stated above, the equivalence of

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<sup>70</sup> 17 April 2007, AGM-COS.MET, C-470/03, EU:C:2007:213, para 72.

<sup>71</sup> ECtHR, 28 October 1999, *Wille v Liechtenstein* [GC], no 28396/95, para 43.

<sup>72</sup> See, e.g., 28 October 1992, *Ter Voort*, C-219/91, EU:C:1992:414, para 36.

<sup>73</sup> 23 April 2020, *Associazione Avvocatura per i diritti LGBTI*, C-507/18, EU:C:2020:289, para 49.

<sup>74</sup> Before the Charter entered into force, the Court examined restrictions on freedom of expression in the light of Article 10(2) of the ECHR, see 2 April 2009, *Damgaard*, C-421/07, EU:C:2009:222, paras 25 et seq. (freedom of expression)



Article 10 of the ECHR and Article 11 of the Charter with respect to the freedom and pluralism of the media is not yet clearly established.

Sitting as a Grand Chamber, the General Court recently summarised the principles applicable when justifying restrictions on the freedom of expression. It held that, in the light of the fundamental importance of freedom of expression, interferences with the freedom of expression are permitted only if they satisfy four conditions. First, the limitation must be “provided for by law”, in that sense that measures liable to restrict a natural or legal person’s freedom of expression must have a legal basis to that effect. Secondly, the essence of freedom of expression must not be impaired. Thirdly, the limitation in question must be intended to achieve an objective of general interest, recognised as such by the EU. Fourthly, the limitation must be proportionate.<sup>75</sup>

Limitations may be considered as provided for by law only if the provision is formulated with sufficient precision to be predictable in its effects and to enable the persons addressed to adjust their conduct accordingly.<sup>76</sup>

With regard to the respect for the essence of the freedom of expression in the specific context of restrictive measures adopted by the Council, the General Court noted the temporary and reversible nature of these measures and the fact that they do not prevent any activity inherent in the freedom of information and expression.<sup>77</sup>

As is apparent from Article 10(2) of the ECHR, measures may be considered as intended to achieve an objective of general interest when taken in the interests of national security, territorial integrity

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and 12 September 2006, *Laserdisken*, C-479/04, EU:C:2006:549, para 64 (freedom of information). See also 25 March 2004, *Karner*, C-71/02, EU:C:2004:181, para 50: “(...) freedom of expression is (...) subject to certain limitations justified by objectives in the public interest, in so far as those derogations are in accordance with the law, motivated by one or more of the legitimate aims under that provision and necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued.”

<sup>75</sup> General Court, 27 June 2022, *RT France v Council*, T-125/22, EU:T:2022:483, para 145.

<sup>76</sup> General Court, 31 May 2018, *Korwin-Mikke v Parliament*, T-352/17, EU:T:2018:319, para 44; 27 June 2022, *RT France v Council*, T-125/22, EU:T:2022:483, para 150.

<sup>77</sup> General Court, 27 June 2022, *RT France v Council*, T-125/22, EU:T:2022:483, para 154, 157 and 159.

or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. In addition, may also be taken into account, e.g., the pluralism of the media as mentioned in Article 11(2) of the Charter<sup>78</sup>, as well the objective of safeguarding EU competition law rules. The objective of protecting the reputation or rights of others may, for example, include the protection of religious opinions and beliefs of individuals<sup>79</sup>, or the rights of an EU institution that that are charged with the responsibility of carrying out tasks in the public interest with a view of preserving the relationship of trust which must exist between the institution and its officials or other employees.<sup>80</sup>

Regarding the principle of proportionality, the limitation of freedom of expression must be appropriate and necessary, and all interests involved must be weighed, having regard to all the circumstances of the case in order to determine whether a fair balance was struck between those interests.<sup>81</sup> In this respect, the discretion enjoyed by EU and national authorities in determining the balance to be struck between freedom of expression and the objectives in the public interest varies for each of the goals justifying restrictions on that freedom and depends on the nature of the activities in question.<sup>82</sup> When the exercise of the freedom does not contribute to a discussion of public interest and, in addition, arises in a context in which the Member States have a certain amount of discretion, review is limited to an examination of the reasonableness and proportionality of the interference.<sup>83</sup> On the

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<sup>78</sup> 26 June 1997, *Familiapress*, C-368/95, EU:C:1997:325, para 26, and 22 December 2008, *Kabel Deutschland Vertrieb und Service*, C-336/07, EU:C:2008:765, para 38 (preservation of the pluralist nature of a television channel service).

<sup>79</sup> ECtHR, 31 January 2006, *Giniewski v France*, no 64016/00, para 40.

<sup>80</sup> 6 March 2001, *Connolly v Commission*, C-274/99 P, EU:C:2001:127, paras 44 and 46.

<sup>81</sup> 12 June 2003, *Schmidberger*, C-112/00, EU:C:2003:333, para 81.

<sup>82</sup> See General Court, 27 June 2022, *RT France v Council*, T-125/22, EU:T:2022:483, paras 192 et seq, concerning the prevention of forms of expression aimed at justifying and supporting an act of military aggression, perpetrated in violation of international law.

<sup>83</sup> 25 March 2004, *Karner*, C-71/02, EU:C:2004:181, para 51, 12 December 2006, *Germany v Parliament and Council*, C-380/03, EU:C:2006:772, para 155, and 2 April 2009, *Damgaard*, C-421/07, EU:C:2009:222, para 27.

other hand, it is settled case-law of the ECtHR that there is little scope under Article 10(2) of the ECHR for restrictions on debate on questions of public interest.<sup>84</sup>

According to the ECtHR, the justification of a restriction to the freedom of expression should depend on whether a statement of fact or a value judgment is at stake. Whereas the existence of facts can be demonstrated, the requirement to prove the truth of a value judgment is impossible to fulfil and infringes Article 10 of the ECHR. However, where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient “factual basis” for the impugned statement and, if there is not, that value judgment may prove excessive.<sup>85</sup>

### 3.3.2 Specific case-law

A large amount of discretion, entailing only limited judicial review, is recognised in the field of the commercial use of freedom of expression, particularly in a field as complex and fluctuating as advertising.<sup>86</sup> The Court has also acknowledged that freedom of expression plays a role in trademark law and must be taken into account when applying relevant provisions of EU law in order to reject an application for registration of a word sign as a EU trade mark.<sup>87</sup> The same applies to copyright law, where a balance between intellectual property protected under Article 17 of the Charter (Property) and freedom of expression has to be guaranteed, for example in cases concerning the embedding, in a third party’s website, of a copyright-protected work by means of the process of framing<sup>88</sup>, the downloading of a file containing a protected work via a peer-to-peer network<sup>89</sup>, and the liability of video- and file-sharing platform operators for infringements of intellectual property rights by its users.<sup>90</sup>

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<sup>84</sup> ECtHR, 12 February 2008, *Guja v Moldova* [GC], no 14277/04, para 74.

<sup>85</sup> ECtHR, 23 April 2015, *Morice v France* [GC], no 29369/10, para 126.

<sup>86</sup> 2 April 2009, *Damgaard*, C-421/07, EU:C:2009:222, para 27 ; see also General Court, 16 March 2016, *Dextro Energy v Commission*, T-100/15, EU:T:2016:150, para 81.

<sup>87</sup> 27 February 2020, *Constantin Film Produktion v EUIPO*, C-240/18 P, EU:C:2020:118, para 56.

<sup>88</sup> 9 March 2021, *VG Bild-Kunst*, C-392/19, EU:C:2021:181, para 54.

<sup>89</sup> 17 June 2021, *M.I.C.M.*, C-597/19, EU:C:2021:492, para 58.

<sup>90</sup> 22 June 2021, *YouTube et Cyando*, C-682/18 and C-683/18, EU:C:2021:503, para 138. See also 26 April 2022, *Poland v Parliament and Council*, C-401/19, EU:C:2022:297.

In the field of data protection, restrictions to the freedom of expression may be justified with regard to other fundamental rights, in particular Article 6 (Liberty and security), Article 7 (Respect for private and family life) and Article 8 (Protection of personal data) of the Charter, for example concerning the disclosure of fiscal data for journalistic purposes<sup>91</sup>, data retention<sup>92</sup>, data transmission for the purpose of the safeguarding of national security<sup>93</sup>, and the online publication of video recordings<sup>94</sup>. Relying on relevant ECtHR case-law, the Court recalled that, in order to balance the right to privacy and the right to freedom of expression, a number of relevant criteria must be taken into account, *inter alia*, contribution to a debate of public interest, the degree of notoriety of the person affected, the subject of the news report, the prior conduct of the person concerned, the content, form and consequences of the publication, and the manner and circumstances in which the information was obtained and its veracity.<sup>95</sup>

Concerning political debate in the context of the European Parliament, it is apparent from Article 8 of the Protocol (no 7) on the privileges and immunities of the European Union<sup>96</sup> that Members of the European Parliament may rely on the freedom of expression, provided that the connection between the opinion expressed and parliamentary duties is direct and obvious.<sup>97</sup> Drawing largely on ECtHR case-law, the General Court held that in a democracy, Parliament or such comparable bodies are the essential fora for political debate, and that very weighty reasons must therefore be advanced to justify interfering with the freedom of expression exercised therein. Accordingly, interferences with the

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<sup>91</sup> 16 December 2008, *Satakunnan Markkinapörssi et Satamedia*, C-73/07, EU:C:2008:727, paras 52 et seq.

<sup>92</sup> 21 December 2016, *Tele2 Sverige et Watson e.a.*, C-203/15 et C-698/15, EU:C:2016:970, 6 October 2020, *La Quadrature du Net et al.*, C-511/18, C-512/18 and C-520/18, EU:C:2020:791, 2 March 2021, *Prokuratuur (Conditions of access to data relating to electronic communications)*, C-746/18, EU:C:2021:152, and 5 April 2022, *Commissioner of An Garda Síochána e.a.*, C-140/20, EU:C:2022:258.

<sup>93</sup> 6 October 2020, *Privacy International*, C-623/17, EU:C:2020:790.

<sup>94</sup> 14 February 2019, *Buivids*, C-345/17, EU:C:2019:122.

<sup>95</sup> 14 February 2019, *Buivids*, C-345/17, EU:C:2019:122, para 66.

<sup>96</sup> "Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties."

<sup>97</sup> 6 September 2011, *Patriciello*, C-163/10, EU:C:2011:543, para 35.

freedom of expression of an opposition member of parliament, like the applicant, call for the closest scrutiny on the part of the courts.<sup>98</sup>

With regard to EU civil service disputes, Article 17a of the EU Staff Regulations provides that officials have the right to freedom of expression, with due respect to the principles of loyalty and impartiality. It is settled case-law that the duty of allegiance to the EU imposed on officials cannot be interpreted in such a way as to conflict with freedom of expression.<sup>99</sup> In particular, this provision permitting, in exceptional cases, to refuse a request to publish writings dealing with the work of the EU potentially interferes to a serious extent with freedom of expression and must therefore be interpreted restrictively.<sup>100</sup>

However, in a case concerning disciplinary measures taken against a civil servant for publishing a critical work without prior authorization, the Court held that it is also legitimate in a democratic society to subject public servants, on account of their status, to certain obligations which are intended primarily to preserve the relationship of trust which must exist between the institution and its officials or other employees. The scope of those obligations must vary according to the nature of the duties performed by the person concerned or his place in the hierarchy, and this issue is subject to strict judicial review by the EU courts.<sup>101</sup> In this case, the Court found the restriction to the official's freedom of expression justified because he did not only express a dissentient opinion, but because he had published, without permission, material in which he had severely criticised, and even insulted, members of the Commission and other superiors and had challenged fundamental aspects of Community policies which had been written into the Treaty by the Member States and to whose implementation the Commission had specifically assigned him the responsibility of contributing in good faith. In those circumstances, the official committed an irremediable breach of the trust which his employing institution was entitled to expect from its officials' and, as

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<sup>98</sup> General Court, 31 May 2018, *Korwin-Mikke v Parliament*, T-352/17, EU:T:2018:319, paras 45 and 46.

<sup>99</sup> 13 December 1989, *Oyowe & Traore v Commission*, C-100/88, EU:C:1989:638, para 16.

<sup>100</sup> General Court, 15 September 2017, *Skareby v SEAE*, T-585/16, EU:T:2017:613, para 81.

<sup>101</sup> 6 March 2001, *Connolly v Commission*, C-274/99 P, EU:C:2001:12744, paras 44, 45 and 48.

a result, made it impossible for any employment relationship to be maintained with the institution.<sup>102</sup>

In the context of restrictive measures providing for the freezing of funds and economic resources, restrictions to the freedom of expression of targeted persons may be justified by the objective of consolidating and supporting democracy and the rule of law.<sup>103</sup> This also applies to the objective of protecting public order and security in the EU, as well as to the objective of preserving peace, preventing conflict and strengthening international security.<sup>104</sup>

Concerning the freedom of the media, it is settled case-law that the purpose of the freedom of the press, in a democratic society governed by the rule of law, justifies it in informing the public, without restrictions other than those that are strictly necessary.<sup>105</sup> For example, restrictions to the freedom of the media may be justified if aiming at ensuring the financial sustainability of regional and local television broadcasters.<sup>106</sup>

Whereas, as stated above, fundamental rights may justify restrictions to the freedom of the media, the freedom of the press may, in turn, command a large interpretation of the “media privilege” under EU law, according to which Member States provide for exemptions and derogations from data protection requirements for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression.<sup>107</sup> In the light of the freedom of the press, the exercise

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<sup>102</sup> 6 March 2001, *Connolly v Commission*, C-274/99 P, EU:C:2001:12744, para 62.

<sup>103</sup> General Court, 14 July 2021, *Cabello Rondón/Council*, T-248/18, EU:T:2021:450, para 122.

<sup>104</sup> General Court, 27 June 2022, *RT France v Council*, T-125/22, EU:T:2022:483, paras 161 and 163 (restrictive measures against media outlets engaged in propaganda mounted by the Russian Federation).

<sup>105</sup> 1 December 2011, *Painer*, C-145/10, EU:C:2011:798, para 113, and 29 July 2019, *Spiegel Online*, C-516/17, EU:C:2019:625, para 72.

<sup>106</sup> 3 February 2021, *Fussl Modestraße Mayr*, C-555/19, EU:C:2021:89, paras. 81 et seq.

<sup>107</sup> 16 December 2008, *Satakunnan Markkinapörssi et Satamedia*, C-73/07, EU:C:2008:727, para 56, 14 February 2019, *Buivids*, C-345/17, EU:C:2019:122, para 51, and 15 March 2022, *Autorité des marchés financiers*, C-302/20, EU:C:2022:190, para 66. See Article 9 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995, L 281, 31, and Article 85 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of

of the right to freedom of expression of users of a work protected by copyright may be favoured over the interest of the author in being able to prevent the reproduction of extracts from his work which has already been lawfully made available to the public.<sup>108</sup> More generally, the ECtHR has developed a sophisticated case-law in this field, underlining the vital role of the press as “public watchdog”<sup>109</sup> and emphasizing that, where freedom of the press is at stake, national authorities have only a limited margin of appreciation to decide whether restrictions can be justified under Article 10(2) of the ECHR.<sup>110</sup> As far as audiovisual media are concerned, media pluralism may justify severe restrictions to the ownership rights of cable network operators, which are required, under EU law, to provide access to their cable networks to all television programmes allowed to be broadcast terrestrially.<sup>111</sup> The same reasoning applies with respect to national rules that aim to prevent that financial resources available to the national broadcasting organizations to enable them to ensure pluralism in the audio-visual sector be diverted from that purpose and used for purely commercial ends.<sup>112</sup> However, a national rule requiring foreign broadcasters to use certain national companies to produce their programmes cannot be justified on grounds of media pluralism<sup>113</sup>.

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natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016, L 119, 1).

<sup>108</sup> 1 December 2011, *Painer*, C-145/10, EU:C:2011:798, paras 134 and 135, as well as 29 July 2019, *Funke Medien NRW*, C-469/17, EU:C:2019:623, para 60.

<sup>109</sup> For instance, ECtHR, 7 February 2012, *Axel Springer v Germany* [GC], no 39954/08, para 79.

<sup>110</sup> ECtHR, 10 December 2007, *Stoll v Switzerland* [GC], no 69698/01, para 105.

<sup>111</sup> 22 December 2008, *Kabel Deutschland Vertrieb und Service*, C-336/07, EU:C:2008:765, paras 28 et seq.

<sup>112</sup> 3 February 1993, *Veronica Omroep Organisatie*, C-148/91, EU:C:1993:45, para 11.

<sup>113</sup> 25 July 1991, *Commission v Netherlands*, C-353/89, EU:C:1991:325, para 31.