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## 6.1 Introduction

The press sector plays a fundamental role in the diffusion of news and information and the fostering of debate on matters of public interest. For this reason, many European Union (EU) Member States have adopted, in the context of their media policies, a broad array of support measures targeted at the press. Although the measures introduced have displayed considerable variance in accordance with domestic sociocultural features and the differences that characterise European media markets in terms of language, size, structure, and levels of media development and media use, the objectives pursued have for the most part been similar. State support has sought to ensure widespread dissemination of news and information, promote a diversity of voices and opinions in the press, and generally guarantee a viable press sector.

Introduced in the 1950s, press support measures in Europe have been direct or indirect, selective or automatic (Picard 2007). They have ranged from preferential value-added tax rates and advantageous telecommunications and postal tariffs to operating subsidies in the form of loans or cash transfers, distribution grants, credit facilities, and several forms of fiscal relief (Humphreys 2006). Usually, they have been established to sustain new titles and publications in difficulty, promote editorial quality, enhance content diversity, and support minority group publications. More recently, aids have sought to compensate for decreasing sales and advertising revenue, promote capital investment and/or restructuring, foster journalists' training, especially in new technologies, stimulate the development of innovative information services, and enhance research that is of relevance and importance to the press industry.

The aim of this chapter is to explore the interaction of Member States' press support policies with EU law, particularly the EU rules on competition. Pursuant to

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Article 107(1) of the *Treaty on the Functioning of the European Union*, “any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market” (Treaty on the Functioning of the European Union, TFEU 2008, p. 91). However, the state aid prohibition of Article 107(1) TFEU is not an absolute one. Article 107(2) TFEU and Article 107(3) TFEU lay down provisions for specific types of aid that are or may prove to be compatible with the internal market.

Entrusted with the exclusive task of verifying national support measures’ compliance with EU law, the European Commission (EC) seeks to ensure effective management of state aid control through a complex balancing of different policy goals: preventing undue distortion of competition and intra-EU trade resulting from the selective grant of state funds to specific undertakings and safeguarding the public interest objectives that Member States, in principle, purport to achieve through the granting of public resources. The EC’s assessment is based on a system of state aid notifications, complaints, and *ex officio* enquiries. In more detail, Article 108 TFEU requires the Member States to notify the EC of all planned state aid measures and obtain its approval before implementing them. The EC may decide that such measures do not constitute state aid, approve them or launch a formal investigation when it has doubts about their compatibility with the internal market. Also, competitors and interested parties that consider certain support measures to be state aid may lodge complaints with the EC. Additionally, the EC may decide, on its own initiative, to launch an investigation into an alleged state aid measure.

The following paragraphs discuss the EC’s approach with respect to the evaluation of Member States’ press support schemes, drawing on a series of cases that have been brought to the EC’s attention. By exploring the assessment practice of the EC, the analysis identifies the considerations that guide the EC in the enforcement of EU state aid rules towards the press and explores the effects of EU competition law on Member States’ policies aimed at ensuring a sustainable press and pluralism of information.

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## 6.2 The Application of the EU State Aid Rules

Support measures for the press may fall into the scope of the EU state aid rules. To be covered by the state aid prohibition of Article 107(1) TFEU, a national measure must fulfil the following cumulative conditions:

- (a) Involve a transfer of state resources
- (b) Be selective, conferring an economic advantage to its recipient
- (c) Distort or threaten to distort competition
- (d) Affect trade between the Member States

Regarding the last two conditions, in particular, in accordance with settled case law (Court of Justice of the European Union 2004, para. 44, 2005, para. 111), it is not necessary for the aid to have a *real* effect on competition and intra-EU trade.

To suffer the state aid prohibition, an aid must have a *potential* effect on competition and trade between the Member States.

Nevertheless, not all aid schemes in support of the press fall into the ambit of Article 107(1) TFEU. Often the limited amount of the funds provided constitutes *de minimis* aid,<sup>1</sup> which is not considered to be state aid within the meaning of Article 107(1) TFEU. Further, aids to the press may fall into the scope of the *General Block Exemption Regulation* (European Commission 2008a) and therefore be deemed compatible with the internal market, without prior notification and EC approval.<sup>2</sup> More importantly, support tools to the benefit of the press may not cumulatively fulfil all the criteria listed in Article 107(1) TFEU. The case of *Jornal da Madeira* sheds light on this issue (European Commission 2012a). In 2011, *Empresa Diário de Notícias da Madeira* (EDM), the owner of the daily newspaper *Diário de Notícias Madeira*, published in Madeira, Portugal, lodged a complaint with the EC against the public funding provided to *Jornal da Madeira*, a head-to-head competitor published by *Empresa do Jornal da Madeira* (EJM). EDM alleged that *Jornal da Madeira* had been financed by the Autonomous Region of Madeira (which controlled 99.98 % of EJM's shares) via subsidies and shareholders' loans for the periods 1993–1995 and 2000–2010, respectively. According to EDM, the negative development of its business, reflected, among other issues, in its decreased average daily print run, declining sales, and reduced subscriptions, was due to unfair competition by EJM, which, on the basis of the financial assistance received, had been able to undercut prices and distribute *Jornal da Madeira* free of charge on specific locations since 2008.

In response to EDM's complaint, the Portuguese authorities counter-argued that the financial measures at hand did not constitute state aid within the meaning of EU law. *Jornal da Madeira* was published solely in Portuguese, contained only regional content, was distributed exclusively in the Madeira archipelago, and benefited from no distribution agreement for any other country within the EU. As a result, any advantage to EJM could not affect trade between the EU Member States.

Examining whether the financial support reviewed fell into the scope of Article 107(1) TFEU, the EC first investigated whether the aid was liable to affect intra-EU trade. Only insofar as this criterion was met, could the public funding examined be considered as state aid, provided that all other conditions of Article 107(1) TFEU were also met. Taking note of the arguments put forward by the Portuguese authorities, the EC found that EJM pursued its media business on a local basis. Hence, the aid granted was not liable to enhance its ability to compete with news media in other Member States. This applied in both the offline and the online environments. Regarding EJM's online activities, in particular, the online version

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<sup>1</sup> These are aids of no more than 200,000 euros granted over a period of 3 years, which do not require prior notification to be given to the EC (see European Commission 2006a).

<sup>2</sup> For instance, aids to the publishing sector that favour small and medium-sized enterprises, research, innovation, regional investment, training, employment, or entrepreneurship can benefit from automatic approval, provided that they fulfil the specific conditions set out in the General Block Exemption Regulation.

of *Jornal da Madeira*—similar to its offline counterpart—was available in the Portuguese language and focused only on matters of local interest.

Given the local profile of *Jornal da Madeira*, in the EC's view, the aid was also unlikely to entail any appreciable effect on the ability of the newspaper to attract advertising revenue that would have otherwise been available to competitors in other Member States. In fact, given the modest advertising revenue of *Jornal da Madeira* in general, any effect of the aid on the advertising market was negligible. Additionally, in view of the substantive debt that EJM had accumulated over the years, it was implausible that the aid would be used to expand EJM's activities outside the local market. In the light of these considerations, the EC concluded that although the aid could strengthen the position of *Jornal da Madeira* on the local market, it was not liable to affect trade between the Member States and, therefore, did not constitute state aid within the meaning of Article 107(1) TFEU.

In a number of other cases, aid measures in favour of the press were found to be state aid within the meaning of Article 107(1) TFEU. Notwithstanding, on most occasions, domestic support received the EC's accord. Two TFEU provisions proved of particular use in this regard: Article 107(3)(c) TFEU and Article 107(3)(d) TFEU. The former, known as the "industrial" state aid derogation, concerns "*aid to facilitate the development of certain economic activities or of certain economic areas*", whereas the latter pertains to "*aid to promote culture and heritage conservation*" (p. 92). Both types of aid can be permitted on condition that they do not affect trading conditions and competition to an extent that is contrary to the common interest. Broadly speaking, in assessing whether domestic aid measures qualify for a derogation under these two provisions, the EC examines, first, whether the aid measure reviewed is aimed at a well-defined objective of common interest, second, whether the aid is an appropriate instrument and proportional to the objective pursued, and, third, whether the distortion of competition and the effect on intra-EU trade are limited.

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### 6.3 State Aid to the Press as Industrial Aid

In many cases, national measures devised to promote democratic debate through the press and pluralism of information were authorised on the basis of Article 107(3)(c) TFEU. One of the most important cases in this regard concerned two aid measures envisaged by the Italian authorities for the entire media sector, including the press (European Commission 2004a). The first scheme, with a total budget of around 77 million euros, consisted of contributions on interest payments on 10-year loans granted by banking institutions to publishing undertakings for projects concerning technical and economic restructuring, the acquisition and modernisation of equipment, and vocational training. The second scheme, enjoying a budget of 102 million euros, concerned the provision of a tax credit, deducted from fiscal liabilities, equal to 15 % of total investment costs for the acquisition of instrumental goods for the production of publications in the Italian language, over a period of 5 consecutive years. The Italian authorities claimed that both schemes could qualify for a

derogation under Article 107(3)(d) TFEU as mechanisms in support of the Italian language and thus of the Italian culture.

Inquiring whether the measures under review fell into the scope of the state aid prohibition, the EC paid particular attention to their effects on trade between the Member States, taking the position that these should not be ruled out. Despite the limited circulation of Italian publications outside the national market, publishing firms competed for publishing rights and advertising, especially when operating in different Member States and languages. From this perspective, the measures examined could have an impact, albeit limited, on intra-EU trade and therefore should be considered as state aid, in principle prohibited by the TFEU. Verifying then whether they could benefit from a state aid derogation provision, the EC took the position that both principally sought to boost investment in publishing in the Italian language and enhance pluralism of information—an objective expressly enshrined in Article 11 of the *Charter of Fundamental Rights of the European Union* (CFR). Accordingly, resort should be made to the industrial state aid derogation of Article 107(3)(c) TFEU rather than Article 107(3)(d) TFEU. Building on the statistical information provided by the Italian authorities, the EC confirmed that the measures were necessary and proportional to their stated objectives and that their effect on intra-EU trade would be limited, sanctioning both of them.

Similar considerations guided the EC's evaluation of two press support schemes foreseen in Belgium and Denmark (European Commission 2004b, c, 2006b). According to the information provided by the Belgian authorities, subsidies, amounting to 7 million euros over a period of 5 years, would seek to foster the editorial quality of the Flemish press. Granted by the Flemish Community via an open call for proposals, the subsidies would provide assistance covering a maximum of 50 % of total eligible costs for projects designed to expand editorial capacity.

In Denmark, two subsidy schemes for sociocultural journals and periodicals issued by non-profit associations as well as the weekly press would seek to reduce distribution costs by covering 50 % of the publications' actual distribution expenses. As explained by the Danish authorities, the low circulation of the publications of non-profit organisations, often without a subscription fee, undermined their commercial viability. The costs related to the distribution of the weekly press, through subscriptions, on the other hand, were significant, as the population was widely spread in the country, which undermined the sustainability of newspapers.

The two schemes were assessed on the basis of Article 107(3)(c) TFEU, the EC ascertaining that both were necessary to maintain pluralism and ensure the provision of varied information while being proportional to the objectives pursued. Regarding the Belgian measure, in particular, the EC disagreed with the Flemish authorities that had favoured the use of the cultural state aid derogation, observing that the aid was directed at the written press in general and not at publications specifically concerned with culture. According to the EC, the scheme sought to improve Flemish editorial practice and, quite importantly, would not lead to a significant distortion of competition between the Member States. This was because

linguistic and cultural differences in Europe substantially limited competition and cross-border trade in the field of publishing.

The same line of reasoning was followed in the Danish case. Concerning the financial assistance provided to non-profit associations, in particular, the EC expressed doubts as to whether the aid could be considered to be state aid within the meaning of Article 107(1) TFEU in the first place. Bearing in mind that the beneficiaries of the scheme were essentially active at the local level, it was highly unlikely that the aid would provide them with a significant advantage in competing for readership and advertising revenue with commercial publishers. At any rate, the EC noted, should the aid be considered as state aid within the meaning of EU law, Article 107(3)(c) TFEU (and not Article 107(3)(d) TFEU as advocated by the Danish authorities) applied because any distortion of intra-EU trade and competition in the subscription and advertising markets would be marginal. The funded publications were not substitutes for the publications without access to support, while most of them would be published in Danish and thus would be of relevance to the national market only.

Significant EC attention was also given to the modification of one of the most long-established aid measures for the press in Europe, the Finnish press support scheme. This had generally consisted of selective subsidies to newspapers, available for subscription and published at least three times a week, with a view to reducing their publishing, transport and distribution costs, and subsidies channelled to political parties represented in parliament for subsequent distribution among the press. According to the changes notified in 2007 to the EC (European Commission 2008b), parliamentary subsidies would be abolished while selective subsidies, covering a maximum of 40 % of eligible newspapers' operating costs, would henceforth be allocated to small circulation newspapers, in both print and electronic format, published in Swedish and national minority languages (i.e., Sámi and Romany).

The EC found that the revised scheme fell into the scope of Article 107(1) TFEU. This was the case despite the fact that a significant impact on trade and competition was improbable as eligible newspapers occupied a marginal position in the national press market and no direct competitors operating in the Finnish language existed. Opting subsequently for the application of the industrial state aid derogation, the EC observed that the Finnish aid sought to promote media pluralism and diversity of opinions while preserving the Swedish and minority languages in Finland, which was in line with the CFR requirements for respect for media freedom and pluralism and for cultural, religious, and linguistic diversity, as laid down in Articles 11(2) and 22 CFR, respectively. Moreover, the aid was necessary to ensure the economic viability of small circulation newspapers; proportional to the objectives pursued, as primarily evidenced by the limited readership of the subsidised newspapers and their constrained ability to attract advertising and subscription; and unlikely to impact intra-EU trade significantly given that the funded newspapers merely circulated at the local/regional level.

## 6.4 State Aid to the Press as Industrial and/or Cultural Aid

The preceding analysis clearly shows that the EC is unwilling to make use of the cultural state aid derogation when support measures targeting the press seek to promote pluralism and access to varied sociopolitical information. For the EC, the social and democratic needs that are catered for by Member States' aid measures are distinct from the promotion of culture, including when press support schemes assist in the diffusion of information in regional or minority languages. Nevertheless, the EC has occasionally built on the cultural state aid derogation—alone or in conjunction with Article 107(3)(c) TFEU—to approve state aid measures directed at the press that were considered to have a cultural component.

Telling is a scheme devised by the Spanish authorities for the publication of cultural magazines in Spanish and the official languages of the Spanish Autonomous Communities, which was approved by the EC solely on the basis of Article 107(3)(d) TFEU (European Commission 2012b). Designed to support publications of “*outstanding cultural significance*” in the field of literature and the arts, the scheme, which should operate with resources amounting to 8,760,000 euros over a period of 4 years, foresaw the provision of support grants to periodic publications, in both paper and electronic format, enjoying a minimum volume of 1,500 copies (or at least 1,500 subscribers in the case of electronic publications). According to the Spanish authorities, the amount of aid would not exceed 50 % of total publication costs (covering production, distribution, and marketing costs) while resources would be awarded via a selection process, to be carried out by an evaluation committee involving state and non-state officials, which would assess the cultural merits of the concerned publications on the basis of predetermined cultural criteria.

Having confirmed that the measure reviewed constituted state aid within the meaning of Article 107(1) TFEU, the EC held that the Spanish measure supported a well-defined cultural objective, that is, the promotion of culturally valued magazines in Spanish, Basque, Catalan, Galician, and Valencian, which enriched the Spanish cultural heritage and thus cultural diversity. Promoting cultural diversity, the EC stressed, was in line with Article 22 CFR, Article 167(1) TFEU, which states that “*the Union shall contribute to the flowering of the cultures of the Member States while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore*” (p. 121), and Article 167(4) TFEU, which provides that “*the Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures*” (p. 122). Also, it was congruent with the requirements of the *UNESCO Convention on the protection and promotion of the diversity of cultural expressions* (UNESCO 2005) to which the EU is party. Taking note of the limited commercial potential of the magazines involved and their poor financial viability, the EC found that the measure was necessary to pursue its proclaimed objective. Without the aid, the targeted cultural magazines would not be able to maintain their volume or periodicity while some of them would be required to exit the market. In view of the aid's intensity, the safeguards in place to pre-empt over-financing, the arrangements made to ensure an open, non-discriminatory

selection of beneficiaries, and the fact that other available magazines were not substitutes of the funded publications, the EC held that the aid was also proportionate to the objective pursued and that its effect on competition and intra-EU trade would be limited. On this basis, it approved the scheme.

In a number of other instances, both Articles 107(3)(c) and 107(3)(d) TFEU have served for the authorisation of state aid schemes for the press. In 2005, for instance, the EC sanctioned a Slovene scheme envisaging the granting of subsidies for projects targeting the creation of media content, including those for the printed press and electronic publications (European Commission 2005a). With a total budget of approximately 5.8 million euros for a period of 6 years, this scheme would cover total production costs at a rate ranging from 20 % to 50 %, with the exception of projects of particular relevance for the promotion of culture, science, and education, for which the amount of aid could reach an upper limit of 80 %. Selection would be made by means of public tender on the basis of predefined criteria concerning, among others, the importance of the project for the development of the Slovenian culture; the quality and the originality of the content produced; the promotion of media diversity; and the contribution of the project to journalists' employment and training.

Affirming that the aid constituted state aid within the meaning of Article 107(1) TFEU, the EC examined whether it could qualify for derogation, drawing a distinction between the subsidies directed at the production of cultural content and those for the creation of non-cultural content. For the former, which were assessed on the basis of Article 107(3)(d) TFEU, the EC based its evaluation on the criteria used for the assessment of state aids to audiovisual production. According to the *Communication on certain legal aspects relating to cinematographic and other audiovisual works* (European Commission 2001), these are the following: in addition to conforming to TFEU provisions in fields other than state aid (for instance, the principle of non-discrimination), support to audiovisual creation must be directed at the production of a cultural product, verified on the basis of precise criteria established by the Member States; the beneficiary must be free to spend 20 % of the project's budget in a Member State other than that providing the aid without suffering any reduction in the amount of aid; the amount of aid must not exceed 50 % of the total project costs, with the exception of "difficult" and low-budget audiovisual production projects, determined according to national parameters; and aid supplements must not be allowed for specific audiovisual production activities. According to the EC, the Slovene scheme fulfilled all these conditions: it was non-discriminatory; it was directed at the production of cultural content; it did not constrain expenditure in other countries than Slovenia; it was limited to covering 50 % of the production costs, with the exception of specific projects; and it contained no aid supplements. Turning then to the subsidies concerning the creation of non-cultural content, the EC drew on Article 107(3)(c) TFEU, declaring that the scheme pursued a legitimate objective, namely the promotion of scientific and educational material in the media, covering also the press. The aid was necessary and proportional to the objective pursued and would not affect competition and intra-EU trade significantly. Accounting for this was the



limited spread of the Slovenian language and the fragmentation of media markets in Europe.

The industrial and cultural state aid derogations have also been applied in a series of individual subsidies provided to single publications in Slovakia.<sup>3</sup> The case of *Os-Fórum občianskej spoločnosti*, in particular, concerned a subsidy of approximately 35,000 euros, which would cover 71 % of the publication costs of a periodical reporting on the sociocultural situation in Slovakia, Poland, Hungary, and the Czech Republic (European Commission 2006d). In examining this case, the EC initially raised doubts as to whether the subsidy fell into the scope of Article 107 (1) TFEU given the limited amount of the financial aid envisaged, the modest number of the editions of the periodical (six in total), and its publication in the Slovak language. Stressing, however, that the periodical could also target readers from Slovak minorities outside its place of establishment, especially in the Czech Republic and Hungary, the EC did not exclude the possibility of intra-EU trade being affected. Examining then whether the aid could qualify for a derogation, the EC noted that the aid could partly benefit from an application of Article 107(3)(d) TFEU because it sought to support the provision of information on cultural topics. At the same time, the funded periodical also reported on sociopolitical issues and therefore contributed to democratic debate and media pluralism. According to the EC, this rendered an examination of the applicability of Article 107(3)(c) TFEU necessary. Taking into consideration the limited readership and the circulation of the periodical, the modest amount of the aid foreseen, and the limited spread of the Slovakian language, the EC concluded that the aid was proportional to the objective pursued and that any potential distortion of trade and competition would be negligible, and approved the scheme.

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## 6.5 Evolving Evaluation Patterns

While it is evident from the analysis in the previous sections that the EC has generally developed a favourable approach to press aid schemes supporting democratic debate and pluralism of information, its recent assessment practice might denote a more interventionist stance with respect to the principal features and characteristics of Member States' aid measures, particularly as regards compliance with the principle of proportionality. The Swedish aid scheme, introduced in the early 1970s for the so-called “*secondary newspapers*”, that is, the second largest and smaller circulation newspapers in a city/county, merits particular attention (European Commission 2010a). In 2008, following complaints concerning its operation, the EC initiated an investigation into the scheme. Having established that excessive amounts were directed at metropolitan newspapers enjoying a wide circulation without a specific threshold in relation to their total publication costs, the EC held that the aid was not compatible with EU competition rules and

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<sup>3</sup> See for instance European Commission (2005b, 2006c).

suggested a series of modifications to bring it into conformity with EU law. In particular, the EC advocated a decrease in the amount of aid for metropolitan newspapers, arguing for a progressive revision of the applicable aid ceiling, and called for the establishment of a specific aid amount threshold in relation to the total publishing costs of the funded newspapers. Whereas low-frequency newspapers could benefit from a rate of 75 %, aid directed at high- and medium-frequency newspapers should not exceed 40 % of publication costs. Further, the EC advised on limiting the duration of the scheme to 6 years and reviewing its impact on both media pluralism and competition before deciding on possible renewal.

In the light of the EC's proposals, the Swedish authorities suggested a gradual reduction in the maximum aid assistance channelled to metropolitan newspapers from 63.9 million Swedish *Kronas* (SEK) to 45 million SEK (approximately 4.8 million euros) during a period of 5 years, starting from 2011; agreed on the introduction of a 40 % cap on the total operating costs for the publication of high and medium frequency newspapers; and accepted conducting an evaluation of the scheme before introducing any changes in 2017. Regarding metropolitan newspapers, however, the Swedish authorities argued for the aid covering, in addition, up to 40 % of the extra costs incurred for the publication of a wider volume of content, when compared with provincial papers, 7 days a week. As for the introduction of a control system, they informed the EC of their intention to mandate beneficiaries to annually inform the granting authority, the *Press Subsidies Council* (PSC), on the use of the aid. The PSC should then examine aid usage and report to the EC on an annual basis.

The EC took the position that the proposed aid ceiling for metropolitan newspapers set at 40 % of their operating costs and at 40 % of their additional costs was rather high, yet accepted the arguments advanced by the domestic authorities for its establishment: metropolitan newspapers had to comply with increased requirements on daily output of high editorial quality. Considering then that the scheme, as modified, prevented undue distortion of competition and trade, the EC authorised it, noting that although in the era of online news, "traditional newspapers are still important for media pluralism and for the cultural, democratic and public debate in Europe, running a newspaper is also a commercial activity", which has to be carried out in compliance with EU law (European Commission 2010b).

Compared with past evaluation practice, the Swedish case discloses a refinement of the EC's assessment procedures towards stricter control of the compatibility of press support schemes with the principle of proportionality. Although the EC did not challenge the objective of media pluralism as a legitimate policy goal pursued by the Swedish aid, it requested substantive modifications before approving the scheme to prevent disproportionate distortion of competition and intra-EU trade. At the same time, it is plain that despite initial strong pressure, the EC eventually sided with the Swedish position, accepting that the changes made reflected its observations. This arguably shows that although committed to ensuring respect for the EU state aid rules, the EC does not feel particularly at ease when questioning Member States' press support measures and in any case does not wish to contest

them outright. The economic crisis plaguing Europe, which has markedly affected the press, and the opportunities and challenges posed by technological developments and the broad uptake of online information services, might explain the EC's reluctance to fundamentally dispute the Member States' aid measures. Indeed, while there exists a variety of national support measures for the press in Europe, many of which are presently subject to reappraisal on account of technological innovations and the harsh economic conditions characterising the press market, in the wake of the Swedish case the EC has generally abstained from openly disputing the Member States' press support strategies. Aware of the fact that a viable press sector contributes to media pluralism and the effective exercise of the right to free speech and the freedom of information, the EC has been rather hesitant to systematically address the issue, opting for ad hoc interventions following specific scheme notifications or complaints.

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### Conclusion

Over the years, the EC has ascribed substantial weight to the Member States' efforts to formulate and implement policies in support of the press and pluralism of information. On a number of occasions, the EC has examined and approved aid measures designed to stimulate the press, so as to foster democratic debate and promote media pluralism. In authorising national support measures, the EC has generally drawn on the industrial state aid derogation of Article 107(3)(c) TFEU. State measures in support of newspapers and other information material are usually assessed as industrial aid facilitating the development of the economic activity of publishing. True, the EC has occasionally based its assessment on Article 107(3)(d) TFEU alone or in conjunction with Article 107(3)(c) TFEU. In interpreting and applying the cultural state aid derogation, however, it has generally followed a narrow approach. Only aid schemes that are specifically intended to promote the diffusion of cultural information can qualify for an exemption under Article 107(3)(d) TFEU. Press support measures underpinned by democratic and sociopolitical policy considerations cannot be treated as cultural.

Although favourably disposed to national action aimed at strengthening the press, the EC has generally displayed an expansive attitude when investigating whether press support measures fall into the scope of Article 107(1) TFEU. In a number of cases, the EC has contentiously concluded that state support constituted state aid within the meaning of Article 107(1) TFEU, despite having unclear views as to whether the measures concerned distorted or threatened to distort competition and affect intra-EU trade. Linguistic barriers, as repeatedly recognised by the EC itself, have essentially confined the press within national frontiers. This is a factor that largely undermines the potential of state support measures to affect competition and trade. Rather than leading to the conduct of a controversial legal test, failure to meet all Article 107(1) TFEU criteria should preclude EC intervention.

Besides this expansive approach, the EC's recent evaluation practice also provides indications of a stricter control of the Member States' support schemes, particularly as regards compliance with the principle of proportionality. The Swedish case examined above is illustrative. Contrasting earlier practice, in this case, respect of proportionality became the object of rigorous investigation and the aid was approved by the EC only after the Swedish authorities had agreed to substantive modifications, intended to counter undue distortions of competition and trade. At the same time, it is clear that the EC is hesitant to compellingly dispute the Member States' press support policies. The economic downturn that has profoundly impacted the press, coupled with the challenges brought by technological developments and the absence of a comprehensive EU policy on media pluralism, mainly due to subsidiarity concerns, might explain the EC's stance. In a period of profound reflection about the new environment in which the press functions, reconciling competition objectives with policy considerations pertaining to the democratic role of the press might indeed be a particularly thorny exercise.

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