### AT Input to Questionnaire “Opportunities, challenges & threats to media in the digital age”

* 1. What are the key trends, threats or challenges to the freedom, independence, pluralism and diversity of media and the safety of journalists in your country, region, or globally in your view?
	2. To what extent have these trends, threats and challenges emerged, or have been aggravated, because of the policies and practices of digital and social media platforms?
	3. Please highlight the gender dimensions of the trends and their consequences for the equality and safety of women journalists as well as media freedom.
1. What legislative, administrative, policy, regulatory or other measures have Governments taken to promote press/media freedom, including media independence, pluralism, viability and ownership issues? What has been the impact of these measures? What changes or additional measures would you recommend?
2. What measures are Governments taking to support public service media? What has been the impact of such measures? What changes or additional measures would you recommend?

**On Questions 1:**

Generally we witness a decline in diversity of media, a trend to increased concentration of outlets, and, judging from statistics collected by relevant institutions, a trend towards increased harassment and threats to the safety of journalists worldwide. Women seem to be particularly affected. According to our assessment, digital and social media have aggravated these trends.

**On Questions 2 and 3:**

As in any democratic society, media freedom and pluralism are core elements of the Austrian constitutional and legal framework and are effectively protected by the rule of law. The existence of a wide range of TV, radio, printed press and online media, covering the diversity of opinions and content is self-evident. The Austrian newspaper market includes 12 (paid-for), 3 (giveaway) daily papers and more than 200 weekly and monthly papers (mostly regional). The dual system of broadcasting in Austria comprises public and private providers. The Austrian Broadcasting Corporation (Österreichischer Rundfunk, ORF) is the Austrian national public service broadcaster. It is obliged under national law to ensure that all Austrian residents are provided with one province-wide and three nation-wide radio channels as well as four nation-wide TV channels. In addition, there are some 80 private (commercial as well as non-commercial “community”) radio, about 60 private AV-services, including nationwide, regionally and locally acting operators.

As a necessary precondition of the freedom of information guaranteed under Art. 10 ECHR and for media to be able to serve as „public watchdogs“, the sources of journalists are specially protected. This „protection of editorial confidentiality“ (Redaktionsgeheimnis) is stipulated in sec. 31 of the Media Act: Media owners, editors, copy editors and employees of media undertaking or media service as witnesses in criminal proceedings or other proceedings before a court or an administrative authority have the right to refuse answering questions concerning the person of an author, sender or source of articles and documentation or any information obtained for their profession. This must not be by-passed by requesting the person enjoying this right to submit documents, printed matter, image, sound or data carriers, illustrations or other representations of such contents or confiscating them. The Code of Criminal Procedure governs the extent to which the surveillance of communications of subscribers who are media undertakings, or optical and acoustical observation of persons with technical devices on premises of media undertakings is admissible.

Furthermore, the independence of journalists is particularly important in the case of the public broadcaster, the ORF. Respecting this independence and self-responsibility of the persons and organs of the Austrian Broadcasting Corporation, its programming staff and its journalistic staff to freely exercise the journalistic profession is mentioned at several instances in the Federal Act on the Austrian Broadcasting Corporation (e.g. sec. 1 para. 3, sec. 4 para. 6, sec. 13 para. 3, sec. 16 para. 5, sec. 17 para. 1 lit. 1, sec. 32 para. 1). Consequently, there is a number of decisions that demonstrate that there effective proceedings and remedies to protect the independence of ORF journalists (e.g. Constitutional Court 14.03.2013, VfSlg. [19742](https://www.ris.bka.gv.at/Dokumente/Vfgh/JFT_20130314_12B00518_00/JFT_20130314_12B00518_00.pdf); Supreme Administrative Court 22.05.2013, [2012/03/0144](https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2012030144_20130522X00/JWT_2012030144_20130522X00.pdf)).

With a view to ensuring an independent and pluralistic media landscape in Austria, the federal government will support the digital transformation process in the media industry by 2027 with 20 million euros per year (in 2022 a one-off amount of 34 million euros). The aim of the funding is to maintain the diversity of providers in the print and broadcasting industries and to promote the development and expansion of digital content in the media landscape.

**Legislation in force:**

* **Federal Act on the Austrian Broadcasting Corporation** (Bundesgesetz über den Österreichischen Rundfunk, [ORF-Gesetz](https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10000785/ORF-G%2C%20Fassung%20vom%2022.04.2020.pdf)), Federal Law Gazette No. 379/1984, as amended by: Federal Law Gazette I No. 247/2021, date of the [translated version](https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1984_379/ERV_1984_379.pdf): 1 August 2017;
* **Federal Act on Audiovisual Media Services** (Bundesgesetz über audiovisuelle Mediendienste, [AMD-G](https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/20001412/AMD-G%2C%20Fassung%20vom%2022.04.2020.pdf)), Federal Law Gazette I No. 84/2001, as amended by: Federal Law Gazette I No. 190/2021, date of the [translated version](https://www.ris.bka.gv.at/Dokumente/Erv/ERV_2001_1_84/ERV_2001_1_84.pdf): 1 January 2016;
* **Federal Act on the establishment of an Austrian Communications Authority** (KommAustria Act [KommAustria-Gesetz, [KOG](https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/20001213/KOG%2C%20Fassung%20vom%2022.04.2020.pdf)]), Federal Law Gazette I No. 32/2001, as amended by: Federal Law Gazette I No. 244/2021, date of the [translated version](https://www.ris.bka.gv.at/Dokumente/Erv/ERV_2001_1_32/ERV_2001_1_32.pdf): 19 December 2019;
* **Media Act** ([Mediengesetz](https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10000719/MedienG%2C%20Fassung%20vom%2022.04.2020.pdf)), Federal Law Gazette No. 314/1981, as amended by: Federal Law Gazette I No. 148/2020, date of the [translated version](https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1981_314/ERV_1981_314.pdf): 25 February 2015;
* **Federal law on measures to protect users on communication platforms** (Kommunikationsplattformen-Gesetz, KoPl-G), Federal Law Gazette No. 151/2020, date of the [translated version](https://www.ris.bka.gv.at/Dokumente/Erv/ERV_2020_1_151/ERV_2020_1_151.html): 1 January 2021;
* [**Federal Constitutional Act of 10 July 1974 on Guaranteeing the Independence of Broadcasting**](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV_1974_396)(Bundesverfassungsgesetz über die Sicherung der Unabhängigkeit des Rundfunks vom 10. Juli 1974), Federal Gazette No. 396/1974, date of the [translated version](https://www.ris.bka.gv.at/Dokument.wxe?ResultFunctionToken=7dfc3654-ad4a-49cf-9ddf-8098339c11d4&Position=1&SkipToDocumentPage=True&Abfrage=Erv&Titel=&Quelle=&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=Independence+Broadcasting&Dokumentnummer=ERV_1974_396): 1 January 2015.
1. What measures have a) Governments b) social media companies c) media companies taken to promote the safety of journalists? What has been the impact of these measures? What more can/should be done and by whom? Please also mention any specific laws or measures to address online violence, threats and harassment and what result they have produced.
	1. What measures have Governments taken to investigate and prosecute attacks against journalists, including online violence and harassment against female journalists?  What are the barriers to fighting impunity? What changes would you recommend?
	2. The UN Plan of Action on the Safety of Journalists and the Issue of Immunity will mark its 20th anniversary in 2022. How do you assess its results and what suggestions would you make to improve it?  How can it be more relevant to gender concerns and to the threats posed by digital technology?

**On Questions 4a and 5a:**

In order to improve protection against violence and hatred online, including against journalists, Austria passed the Combating Hate Online Act (Hass-im-Netz-Bekämpfungs-Gesetz, BGBl. I Nr. 147/2020), which entered into force on 1 January 2021. Inter alia, the following measures have been taken to improve protection against violence and hatred online:

Measures in the **Austrian Media Act** include

* **an increase in the indemnity for the insult suffered up to a maximum amount of EUR 40 000-, in special cases up to a maximum amount of EUR 100 000,-;**
* **an expansion of the scope of withdrawal from circulation (sect. 33 Media Act) and confiscation (sect. 36 and 36a Media Act):** The new provision has been drafted in order to enable the enforcement of the withdrawal and confiscation against host providers, if the media owner’s registered office is abroad or the media owner cannot be prosecuted due to other reasons. Host providers will then be obliged to delete the parts of the website constituting the penal act.
* **an expansion of the scope of psycho-social and legal support for the proceedings for victims of online hate speech:** The new provision has been drafted in order to guarantee psycho-social and legal support to victims of online hate speech not only in civil and criminal proceedings but also in proceedings under the Media Act.

The amendments to the Media Act - together with the provisions proposed in civil law - are intended to achieve better and more effective protection of personality rights and, in particular, against hatred on the internet, focussing on the primary concern of the victims that the messages or presentations concerned are taken off the internet as quickly and effectively as possible.

**Measures in the Austrian Criminal Procedure Code (= CCP)** include

* the extension of the psycho-social and legal support in criminal proceedings for victims of hate on the internet and also for minor witnesses of family violence;
* the facilitated investigation of perpetrators of offences that are prosecuted only at the request of an authorized person like “Criminal defamation “ (§ 111 CC), “Accusation of prior offences that have been served or waived” (§ 113 CC) or “Insult” (§ 115 CC) if the offence was committed by means of telecommunication or using computer systems;
* the elimination of the risk of having to bear the legal costs in the case of an acquittal or a discontinuation of investigation proceedings when the offence is prosecuted at the request of an authorized person like “Criminal defamation” (§ 111 CC), “Accusation of prior offences that have been served or waived” (§ 113 CC) or “Insult” (§ 115 CC) if the offence was committed by means of telecommunication or using computer systems with the exception of cases where false accusations were made intentionally
* ensuring legal protection for the accused in the event of excessive access to files and
* the explicit inclusion of “other service providers” (corresponding to § 3 subpara. 2 of the E-Commerce-Act) in the provision of § 76a CCP in order to ensure that information on subscriber and access data can also be obtained from internet services, in particular OTT services, which are not providers of communications services.

The amendments to the Code of Criminal Procedure are intended to achieve a further improvement in the area of victim protection, taking into account in particular the special needs of victims affected by online hate.

Measures in the **Austrian Criminal Code (= CC)** include

* an extension of the provision of “cyberbullying” (§ 107c CC) in order to make even single cyberbullying-postings punishable;
* an extension of the provision of “hate speech” (§ 283 CC) by also including insults that offend the human dignity and are directed against individual members of protected groups;
* the introduction of a new criminal offence against unauthorised image recording in § 120a CC (especially so-called “Upskirting”).”

Therefore, the measures taken in substantive criminal law included extensions in the area of cyber-crimes as well as the protection of unauthorized image recording.

Finally, in the area of **civil law**, the Act contains the following innovations

* the creation of regulations regarding the protection of personal rights, the scope of the claimant’s standing to sue and to be sued;
* a simplified injunction procedure for hate posts including the possibility of immediate enforceability;
* the introduction of a non-contentious application for the release of user data in accordance with § 18(4) of the e-Commerce Act [E-Commerce-Gesetz].”

The **Federal law on measures to protect users on communication platforms**,Federal Law Gazette No. 151/2020, provides platforms with an effective and transparent procedure for reporting illegal (criminal) content. This ensures that users can report content, that this content is quickly checked and, if necessary, blocked or deleted (obviously illegal, i.e. criminal content within 24 hours, other illegal, i.e. criminal content within seven days). The platform must inform the affected user of its decision regarding deletion or blocking and save the deleted or blocked content and the data required to identify the author for evidentiary purposes (including criminal prosecution purposes) for ten weeks. In addition, a verification procedure must be provided, whereby the user filing a report and the user whose content has been blocked or deleted can bring about a review of the decision on (lack of) blocking or deletion by the platform. Providers of the communication platforms must provide information on how they deal with reports of illegal content in an annual report, or semi-annually in the case of communication platforms with more than one million registered users. To ensure accessibility (including an address that can be delivered), the providers must appoint a responsible representative to ensure accountability. The supervisory authority shall impose a fine on a provider, depending on the severity of the violation of the law, if one of the obligations created by this law has been violated in a systemic way.

All measures described do not refer specifically to journalists, but to all persons who are exposed to hatred or incitement on the internet. Therefore, they also serve to protect journalists in this context.

**On Question 4b**:

Statistics show that the UN Plan of Action with its comprehensive set of recommendation has had an impact, some figures have declined. Generally, though, data show that the current situation gives rise for concern and much more needs to be done. Austria is therefore committed to active engagement in various global and regional international fora, addressing these questions. The occasion of the 10th anniversary of the Plan of Action constitutes a welcome opportunity to shed more political light on the issues and possibilities to take actions. Austria will therefore organise a high level multi-stakeholder conference around the International Day to End Impunity for Crimes Against Journalists (2nd Nov. 2022) in order to renew the commitment towards the goals set out in the Plan of Action as well as to identify possibilities to a more effective implementation. Special attention will be given to gender aspects and digital media.

1. What do you believe has been the impact of digital and social platforms on press/media freedom, independence, viability and safety of journalists? What specific recommendations would you make to a) Governments and b) the companies to address or mitigate the detrimental impact?
2. What policies, procedures or other measures have the media (broadcast, print and digital) sector taken to promote press/media freedom, independence, pluralism, diversity and viability? What has been most successful? What additional measures would you suggest? What steps should the media sector take to promote gender equality?
3. Do you see any major gaps in the international human rights legal framework? Are there any specific recommendations that you would suggest to address such gaps or to improve implementation of existing standards?
4. The Special Rapporteur would welcome examples of good practice by Governments, companies, the media sector, civil society and other stakeholders, and your recommendations on how best to address the challenges and threats to  press/media freedom, independence, diversity, pluralism, and safety of journalists. Please share any relevant documents, reports, news or academic articles that you believe should be considered in the preparation of her report.