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Study of the EMFA and AVMSD in Relation to Kosovo's Media
Law Framework

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ABSTRACT

Media freedom and pluralism are essential pillars of a functioning democratic society. In the European Union (EU), the legal landscape for safeguarding these values has evolved significantly in response to challenges posed by digital transformation, political interference, and growing threats to the independence of media institutions. Two key legal instruments stand at the center of this framework: the Audiovisual Media Services Directive (AVMSD), which has long governed the coordination of audiovisual content across Member States, and the more recent European Media Freedom Act (EMFA), which aims to strengthen editorial independence, transparency, and pluralism across the Union. At the same, countries outside the EU that aspire to membership or closer alignment with the Union, such as Kosovo, face the dual challenge of navigating domestic legal and political contexts while progressively approximating their legislation to EU standards. In the media sector, this often involves balancing national institutional realities with evolving supranational norms. Kosovo, in particular, has established its own regulatory framework for audiovisual media, yet questions remain about how effectively it aligns with the standards and objectives set forth by the EU.

DEUTSCHER ABSTRACT

Medienfreiheit und Medienpluralismus sind grundlegende Pfeiler einer funktionierenden demokratischen Gesellschaft. In der Europäischen Union (EU) hat sich der rechtliche Rahmen zum Schutz dieser Werte erheblich weiterentwickelt – als Reaktion auf Herausforderungen wie die digitale Transformation, politische Einflussnahme und zunehmende Bedrohungen für die Unabhängigkeit von Medieninstitutionen. Zwei zentrale Rechtsinstrumente stehen im Mittelpunkt dieses Rahmens: die Richtlinie über audiovisuelle Mediendienste (AVMD-Richtlinie), die seit langem die Koordinierung audiovisueller Inhalte in den Mitgliedstaaten regelt, und der jüngere Europäische Rechtsakt zur Medienfreiheit (EMFA), der darauf abzielt, die redaktionelle Unabhängigkeit, Transparenz und den Pluralismus in der gesamten Union zu stärken. Gleichzeitig stehen Länder außerhalb der EU, die eine Mitgliedschaft anstreben oder eine engere Anbindung an die Union verfolgen – wie etwa Kosovo – vor der doppelten Herausforderung, ihre nationalen rechtlichen und politischen Rahmenbedingungen zu bewältigen und gleichzeitig ihre Gesetzgebung schrittweise an die EU-Standards anzugleichen. Im Mediensektor bedeutet dies häufig, nationale institutionelle Gegebenheiten mit sich wandelnden supranationalen Normen in Einklang zu bringen. Kosovo hat zwar einen eigenen Regulierungsrahmen für audiovisuelle Medien geschaffen, doch bleibt fraglich, inwieweit dieser tatsächlich mit den von der EU festgelegten Standards und Zielen übereinstimmt.

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Table of Abbreviations

	Abbreviation	Full Term
I	AVMSD	Audiovisual Media Services Directive
II	CFR	Charter of Fundamental Rights
III	CJEU	Court of Justice of the European Union
IV	EMFA	European Media Freedom Act
V	ERGA	European Regulators Group for Audiovisual Media Services
VI	EU	European Union
VII	IMC	Independent Media Commission
VIII	NRA	National Regulatory Authorities
IX	OSCE	Organization for Security and Co-operation in Europe
X	PCK	Press Council of Kosovo
XI	RTK	Radio Television of Kosovo
XII	SAA	Stabilization and Association Agreement
XIII	SAP	Stabilization and Association Process
XIV	TFEU	Treaty on the Functioning of the European Union
XV	TWFD	Television Without Frontiers Directive
XVI	UNMIK	United Nations Interim Administration Mission in Kosovo
XVII	VLOP	Very Large Online Platforms
XVIII	VSP	Video Sharing Platforms

INTRODUCTION

The evolving landscape of media regulation within the European Union (EU) reflects increasing concerns about the protection of media freedom, pluralism, and editorial independence in the digital age. As traditional and digital media services converge, the EU has responded with a strengthened legal framework, most notably through the Audiovisual Media Services Directive (AVMSD) and the recently adopted European Media Freedom Act (EMFA). These two legal instruments, while distinct in scope and function, represent the EU's ongoing effort to ensure a balanced, democratic, and transparent media environment across Member States.

In parallel, Kosovo, a potential EU candidate state, has undertaken steps to align its domestic legal order with EU standards under the Stabilization and Association Agreement (SAA). One area where legal approximation is particularly crucial, concerns media governance and audiovisual regulation. While Kosovo has adopted legislation to regulate the media sector, most notably through the Law on the Independent Media Commission (IMC), its compliance with evolving EU standards remains a subject of legal and political scrutiny. The recent repeal of the 2024 IMC Law by Kosovo's Constitutional Court further underscores the volatility and legal complexity surrounding media regulation in the country.

The primary research questions guiding this thesis are:

1. What are the key regulatory goals and mechanisms of the Audiovisual Media Services Directive (AVMSD)??
2. What legal innovation and protection does the European Media Freedom Act (EMFA) introduce beyond the AVMSD?
3. In which areas do the AVMSD and EMFA intersect, overlap, or diverge?
4. What is the current legal framework regulating audiovisual media in Kosovo, and what are the powers and limitations of the Independent Media Commission (IMC)?
5. What were the main changes introduced in the 2024 IMC Law, and why was it repealed by the Constitutional Court?
6. What legal obligations does Kosovo have under the Stabilization and Association Agreement (SAA) in regard to media laws?

7. To what extent is Kosovo obligated under the SAA to approximate its domestic laws with the AVMSD and the EMFA, considering the evolving nature of the EU *acquis*?
8. What are the structural and normative differences between the EU's media regulatory framework (AVMSD and EMFA) and Kosovo's domestic media legal framework?

This thesis is organized into four chapters, each building a comprehensive understanding of the interplay between EU media law and Kosovo's legal framework. Chapter I explores the evolution of EU media regulation, focusing on the development and objectives of the Audiovisual Media Services Directive (AVMSD) and the European Media Freedom Act (EMFA). It highlights how these instruments intersect and where they diverge in terms of regulatory scope and innovations. Chapter II examines Kosovo's domestic media regulatory framework, with a focus on the Law on the Independent Media Commission (IMC), analyzing both the 2012 law and the implications of the 2024 law's repeal by the Constitutional Court. Chapter III investigates the legal obligations Kosovo has under the Stabilization and Association Agreement (SAA), particularly the requirement to approximate domestic laws with EU *acquis*. The final chapter presents a comparative legal analysis between the EU media framework and Kosovo's system, evaluating similarities and divergences in institutional independence, regulatory mechanisms, and treatment of digital media.

CHAPTER I: LEGAL FRAMEWORK FOR MEDIA REGULATION IN THE EU

1.1. Evolution of EU Media Law: From AVMSD to EMFA

Media Law has a long history that is shaped by technological changes and political interests. In societies with scribes and hand-copied texts, rulers controlled information mostly through religious or royal censorship. But even then, there were not “media laws” as we would recognize them today. Centuries later, enlightenment ideals and revolutions pushed freedom of the press into constitutional principles.

Modern media historians identify three key developments marking the transition from early to modern media: the invention of the handpress, the rise of technologies like steam power and broadcast media, and the recent emergence of the Internet.¹

Last century was an era of media development which brought new media technologies, including radio, film, and later television, which required novel regulatory approaches.² The last century further saw the codification of freedom of expression as a fundamental right documented as such in the Universal Declaration of Human Rights (1948) and in the European Convention on Human Rights (1950).³

The historical evolution of media regulation, from early censorship of print to the emergence of ranges of fields of media regulations, demonstrates how societies have continuously adapted to technological progress in redefining the legal boundaries.

¹ Brendan Dooley, ‘Media and History’ in *International Encyclopedia of the Social & Behavioral Sciences* (2nd edn, ed James D Wright, Elsevier 2015) 13

<https://doi.org/10.1016/B978-0-08-097086-8.62144-X>

² Megan Boler, Amanda Trigiani and Hoda Gharib, ‘Media Education: History, Frameworks, Debates and Challenges’ in John Ainsworth (ed), *International Encyclopedia of Education* (4th edn, Elsevier 2023) 303

<https://doi.org/10.1016/B978-0-12-818630-5.08058-1>

³ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) art 19 <https://www.un.org/en/about-us/universal-declaration-of-human-rights>; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) (adopted 4 November 1950, entered into force 3 September 1953) art 10 https://70.coe.int/pdf/convention_eng.pdf

Effective media regulation requires more than just the existence of legal frameworks, it demands their effective enforcement through independence oversight and monitoring. While laws are essential for safeguarding freedom of expression and ensuring media pluralism, they alone cannot guarantee these principles. The key lies in their proper implementation, which depends heavily on independent media watchdogs, judicial bodies, and the active involvement of civil society.⁴

The Television Without Frontiers Directive (Directive 89/552/EEC) adopted in 1989, represents the first major legislative instrument enacted at the European Union level specifically aimed at regulating audiovisual media services. As the foundational legal framework in this domain, the Directive sought to facilitate the free movement of broadcasting services across Member States within the internal market, while simultaneously safeguarding key public interest objectives.⁵ These included the promotion of cultural diversity, the right of reply, consumer protection, and the protection of minors, as well as the regulation of advertising, sponsorship, and teleshopping. In addition, the Directive introduced measures to support European audiovisual production, notably through the implementation of broadcasting quotas for European works.

The Televisions Without Frontiers Directive (TWFD) is no longer in force, having been formally succeeded by the Audiovisual Media Services Directive (AVMSD).⁶ The replacement of the TWFD was driven by a range of factors, primarily linked to the evolution of the media landscape and the rapid development of digital technologies. Notably, the TWFD, originally adopted in 1989, was designed in a context that reflected the technological and market conditions of that time, principally traditional linear broadcasting. As such, it proved increasingly inadequate in

⁴ S E Lebedeva, G V Vakku, L B Solovey and D K Goncharov, 'Historical evolution of legislative regulation of the media in the West' (2023) 12 *Amazonia Investiga* 77, 81–82 <https://doi.org/10.34069/AI/2023.71.11.6>

⁵ European Commission, *Television broadcasting activities — “Television without frontiers” (TVWF) Directive (Summary)* <https://eur-lex.europa.eu/EN/legal-content/summary/television-broadcasting-activities-television-without-frontiers-tv-wf-directive.html>.

⁶ 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) [2010] OJ L95/1, art 34 <https://eur-lex.europa.eu/eli/dir/2010/13/oj/eng>

addressing the emergence of non-linear audiovisual services, including on-demand content and digital platforms, which began to dominate the sector in the early 2000s.⁷

Although the TWFD replaced fragmented national broadcasting laws with shared minimum standards across Europe, many of those standards were flawed. Rules on events of major societal importance were weak, rules on European content quotas were poorly designed, and regulations on advertising were overly complex and open to abuse.⁸

In 2007, the Televisions without Frontiers Directive (TWFD) was significantly revised by Directive 2007/65/EC, commonly referred to as the Audiovisual Media Services Directive (AVMSD).⁹ This revised instrument was subsequently codified as Directive 2010/13/EU in 2010. A further substantial amendment was introduced in 2018 with the adoption of Directive (EU) 2018/1808 by the European Parliament and the Council. This marked the third major revision of the original 1989 Directive, following extended deliberations and stakeholder consultations.¹⁰

Although the Audiovisual Media Services Directive (AVMSD) formally replaced the 1989 Televisions without Frontiers Directive (TWFD), the European Union has since identified persisting regulatory gaps in the area of media governance. In response, the EU legislator has introduced the European Media Freedom Act (EMFA), a legislative instrument in the form of Regulation, thereby ensuring its direct applicability across all Member States without the need for national transposition. Initially announced in 2021, the EMFA entered into force in 2024 and is set to become fully applicable as of 8 August 2025. The regulation represents a key step in advancing media freedom and strengthening the EU's legal framework on media and information technologies, highlighting the EU's commitment to expanding its media policy.¹¹

⁷ Raffaele Pappalardo, 'Navigating EU Media Foundations: Policy Insights on Digital Transformation' (European Law Center, Stanford Law School Working Paper No 50, 2020) 53

https://law.stanford.edu/wp-content/uploads/2020/10/papp_eulawwp50.pdf

⁸ Irini Katsirea, 'The Television Without Frontiers Directive' in *The Palgrave Handbook of European Media Policy* (Palgrave Macmillan 2014) 297–311, 10

https://www.researchgate.net/publication/304799205_The_Television_Without_Frontiers_Directive

⁹ Raffaele Pappalardo, 'Navigating EU Media Foundations: Policy Insights on Digital Transformation' (European Law Center, Stanford Law School Working Paper No 50, 2020) 53

https://law.stanford.edu/wp-content/uploads/2020/10/papp_eulawwp50.pdf

¹⁰ *Ibid* 57-58.

¹¹ Erik Longo, 'Grounding Media Freedom in the EU: The Legal Basis of the EMFA' (2023) *Rivista Italiana di Informatica e Diritto*, 3 <https://doi.org/10.32091/RIID0209>.

1.2. Objectives and Regulatory Mechanisms of the AVMSD

The Audiovisual Media Services Directive (AVMSD) represents the primary legal framework governing the production and distribution of audiovisual content and services within the European Union's single market. Its regulatory approach reflects a dual objective: on one hand, to promote the economic development of the audiovisual industries, and on the other, to achieve essential public interest goals such as cultural diversity, protection of minors, and accessibility for persons with disabilities.¹² The economic objective of the AVMSD is aimed through ensuring a level playing field across the Member States, facilitating the free movement of audiovisual services within the internal market, and enhancing the competitiveness of European audiovisual media providers.¹³

The directive underlines the necessity of pursuing key public policy objectives, including the promotion of European works, cultural diversity, protection of minors and consumers, accessibility, non-discrimination, and the safeguarding of freedom of expression and media pluralism.

The last revision of the Audiovisual Media Services Directive (Directive 2018/1808/EU) marked a significant shift, especially in its regulation of online services. This shift was reflected in various areas of reform.

First, the scope of the Directive was expanded to cover video-sharing platforms (VSPs) such as Youtube.¹⁴ This inclusion brought new responsibilities for these platforms, particularly regarding the regulation of harmful content and the protection of minors.¹⁵ This marked an expansion from

¹² Directive 2010/13/EU (n 6) recital 5.

¹³ *Ibid* recital 10.

¹⁴ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU 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) in view of changing market realities [2018] OJ L303/69, art 1(1)(aa)
<https://eur-lex.europa.eu/eli/dir/2018/1808/oj/eng>

¹⁵ *Ibid* art 28b.

earlier versions of the Directive, which focused primarily on traditional broadcasters and on-demand services.¹⁶

Secondly, the revision updated the rules on commercial communications, traditionally one of the most detailed parts of the Directive.¹⁷ Over time, quantitative restrictions, such as limits on advertising time, have been relaxed, while qualitative provisions, such as the nature and content of advertising, have been strengthened.¹⁸

Thirdly, the Directive introduced new requirements for promoting European content. On-demand audiovisual media service providers are required to ensure that at least 30% of their catalog consists of European works and that these works are given prominent visibility. Importantly, these rules now also apply to non-EU providers that target EU audiences, through a mechanism allowing Member States to impose such obligations even if the provider is not established in their territory.¹⁹ This move partially derogates from the traditional country-of-origin principle.²⁰ This does not mean that the country-of-origin principles has undergone changes from the codified version of the AVMSD to the amended version.²¹ The 2018 revision preserves the country-of-origin principle, but introduces exceptions and new mechanisms to address situations where providers exploit regulatory gaps by establishing in one Member State while primarily targeting audiences in another.²²

Lastly, the Directive revision introduced initial measures to enhance transparency in media ownership.²³ The Directive emphasizes that media ownership transparency is essential to help reveal potential state control over the media or media influence on political entities.²⁴

¹⁶ H Ranaivoson, S Broughton Micova and T Raats (eds), *European Audiovisual Policy in Transition* (1st edn, Routledge 2023) 7

<https://doi.org/10.4324/9781003262732>

¹⁷ *Ibid* 8.

¹⁸ Directive (EU) 2018/1808 (n 14) arts 9 and 23.

¹⁹ *Ibid* arts 13(2) and 13(6).

²⁰ Ranaivoson, Broughton Micova and Raats (eds) (n 16) 8.

²¹ Country-of-origin principle remains in the same place in both Directive 2010/13/EU, art 3(1) and Directive 2018/1808, art 3(1).

²² Directive (EU) 2018/1808 (n 14) art 3(3).

²³ *Ibid* recital 15.

²⁴ Ranaivoson, Broughton Micova and Raats (eds) (n 16) 9.

The Audiovisual Media Services (AVMSD) establishes a harmonized framework aimed at safeguarding fundamental public interest objectives within the audiovisual sector. Among its core provisions is the requirement that both traditional broadcasters and on-demand audiovisual media services refrain from disseminating content that incites hatred, violence, or terrorism.²⁵

Equally important is the Directive's emphasis on the protection of minors from content that may seriously impair their physical, mental, or moral development. Member States are required to ensure that such harmful material is only made accessible in a manner that prevents minors from ordinarily encountering it. The Directive provides guidance on appropriate protective measures, including the use of watershed periods, age verification mechanisms, and other technical tools designed to limit access effectively.²⁶

The Directive further extends its content regulation framework to encompass standards governing audiovisual commercial communications, including advertising, sponsorship, and product placement. It establishes clear principles to ensure that advertising is clearly identifiable, not misleading, and does not cause harm particularly to children. Commercial communications for certain products, such as cigarettes and tobacco, are explicitly prohibited. With regard to alcoholic beverages, the Directive mandates that such communications must not target minors and, more broadly, must not encourage excessive or irresponsible consumption.²⁷

The rules also address the scheduling and placement of advertisements within audiovisual content. Programming of certain duration may be subject to a limited number of advertising interruptions, with specific time-based thresholds guiding their permissibility. In children's programming, while advertising may be allowed under strict conditions, teleshopping content is expressly prohibited. Both advertising and teleshopping content is expressly prohibited during the broadcast of religious services.²⁸

²⁵ Directive (EU) 2018/1808 (n 14) art 6(1).

²⁶ *Ibid* art 6a.

²⁷ *Ibid* art 9.

²⁸ *Ibid* art 20.

In terms of sponsorship, the regulatory framework requires that all sponsored programmes clearly identify the sponsor and maintain full editorial independence. Sponsorship by entities involved in the manufacture or sale of tobacco products is prohibited.²⁹ Product placement as well is allowed under narrowly defined conditions. Viewers must be clearly informed of the presence of product placement, and its inclusion must not undermine editorial independence. Moreover, the content must not give undue prominence to the featured product, nor should the placement distort the programme's content or mislead the audience.³⁰

Lastly, the Audiovisual Media Services (AVMSD) explicitly provides for the right of reply as well, requiring EU Member States to ensure that individuals harmed by incorrect facts in broadcast have the ability to respond. This applies to both television and on-demand audiovisual services.³¹

1.3. Scope and Innovations by the European Media Freedom Act (EMFA)

In 2022, the EU Commission proposed a Regulation to create a common framework for media services in the internal market, aiming to protect media pluralism, editorial independence, and ensure consistent safety standards for the media industry.³² This initiative, called the European Media Freedom Act (EMFA), was agreed upon by the European Parliament and the Council in 2023 and formally adopted on 11 April 2024.

The European Media Freedom Act (EMFA) aims to facilitate the cross-border provision of media services within the EU internal market, free from undue interference, while accounting for the ongoing digital transformation of the media landscape.³³ To achieve this, the Regulation

²⁹ *Ibid* art 10.

³⁰ *Ibid* art 11(3).

³¹ *Ibid* art 28.

³² Proposal for a Regulation of the European Parliament of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52022PC0457>

³³ Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act) [2024] OJ L, 8.4.2024, 2024/1083, art 1(1)

<https://eur-lex.europa.eu/eli/reg/2024/1083/oj/eng>

introduces measures focused on safeguarding editorial independence, regulating the use of surveillance technologies against media actors, ensuring media pluralism, addressing media concentration, and protecting online media content.

The EMFA's preamble highlights the essential role of media services in upholding democratic values, economic freedoms, and fundamental rights such as equality and pluralism.³⁴ The Act defines “media services” broadly, encompassing services that inform, entertain, or educate the general public under editorial responsibility, as interpreted in light of Articles 56 and 57 of the TFEU. This definition largely aligns with that of the Audiovisual Media Services Directive (AVMSD), though it extends beyond audiovisual content to include the press.

While the definitions under the EMFA and the AVMSD are likely to be interpreted consistently by national media authorities, the instruments serve distinct legal purposes. The AVMSD seeks to establish minimum harmonized standards for audiovisual media across the EU, enabling providers to operate under the country-of-origin principle. In contrast, the EMFA pursues a broader objective: the general protection and promotion of media freedom and pluralism across the Union.³⁵

The European Media Freedom Act (EMFA) establishes a structured framework delineating the respective rights and obligations of both media service providers and recipients, reflecting a dual-tier regulatory approach. On the side of media recipients, the Regulation affirms the right to access editorially independent media content.³⁶ The Regulation positions professional and autonomous media as a vital counterbalance to disinformation and other manipulative forms of communication.³⁷

For media service providers, the EMFA affirms the freedom to carry out their economic activities across the internal market, subject only to restrictions grounded in Union law. A foundational

³⁴ *Ibid* recital 5.

³⁵ Theresa Seipp, Ronan Ó Fathaigh and Max van Drunen, ‘Defining the “media” in Europe: pitfalls of the proposed European Media Freedom Act’ (2023) 15(1) *Journal of Media Law* 39, 42 <https://www.tandfonline.com/doi/pdf/10.1080/17577632.2023.2240998>.

³⁶ Regulation (EU) 2024/1083 (n 33) art 3.

³⁷ *Ibid* recital 10.

principle of the Regulation is the obligation of Member States to respect and preserve the editorial autonomy of media service providers. In this regard, national authorities, including regulatory bodies, are expressly prohibited from exerting direct or indirect influence over editorial decisions.³⁸

Safeguards are established to ensure the editorial and functional independence of public service media, recognizing their role in promoting internal media pluralism. Public Service Media are required to operate impartially and provide diverse information, with appointments to management and governance bodies conducted through transparent, impartial, and proportionate procedures.³⁹ To preserve editorial autonomy, they must also be guaranteed stable and adequate funding. Additionally, the Regulation imposes transparency obligations on providers of news and current affairs content, requiring disclosure of their legal identity, ownership structure, and stakeholders exercising influence.⁴⁰

The EMFA reinforces the institutional framework for media regulation within the EU by addressing both national and supranational regulatory structures. Member States are required to designate independent national authorities or bodies, whose operations must comply with the standards set out in the Audiovisual Media Services Directive (AVMSD).⁴¹ At the European level, the EMFA provides for the establishment of the European Board for Media Services, which succeeds the European Regulators Group for Audiovisual Media Services (ERGA).⁴² This Board is mandated to act with full independence and is tasked with supporting the consistent and effective implementation of EU media law. Under the EMFA, the Board has been granted new competences.⁴³ It may issue opinions on matters that significantly affect media pluralism or editorial independence, including national measures and market concentrations. Additionally, it can advise on safeguards against non-EU media entities that threaten public security and on the outcomes of structured dialogues between Very Large Online Platforms (VLOPs) and media service providers regarding content restrictions imposed under platform terms of service.⁴⁴

³⁸ *Ibid* art 4.

³⁹ *Ibid* art 5.

⁴⁰ *Ibid* art 6.

⁴¹ *Ibid* art 7.

⁴² *Ibid* art 8.

⁴³ *Ibid* art 13.

⁴⁴ European Media Board, 'About Us' https://media-board.europa.eu/about-us_en.

The EMFA operates in tandem with existing provisions of the AVMSD, notably those aimed at protecting both minors and the general public from harmful or illegal content. This includes content that may impair the development of minors, incite violence or hatred, or constitute criminal conduct under Union law, such as terrorist provision, child pornography, or racist and xenophobic offences.⁴⁵

1.4. Intersections and Overlaps between Audiovisual Media Services Directive (AVMSD) and the European Media Freedom Act (EMFA)

Both the Audiovisual Media Services Directive (AVMSD) and the European Media Freedom Act (EMFA) are driven by fundamental EU values like freedom of expression, media pluralism, and democratic participation. And while both policies apply to the geographical territories of the European Union, their scope differs significantly. The AVMSD has a narrower and more specific scope, focusing mainly on audiovisual content regulation, e.g. advertising, protection of minors, and on-demand services. In contrast, the EMFA has a broader and more ambitious approach, addressing a wide range of media freedom issues, including transparency, journalist protection, editorial independence, and online platforms.⁴⁶

Although differing in scope, both the Audiovisual Media Services Directive (AVMSD) and the European Media Freedom Act (EMFA) incorporate provisions aimed at enhancing transparency, whether in terms of media ownership or content dissemination.⁴⁷ Moreover, both instruments establish mechanisms intended to safeguard against undue state or political interference in the operation of media services.⁴⁸

⁴⁵ Regulation (EU) 2024/1083 (n 33) art 15.

⁴⁶ Moa Sjökvist, *Exploring EU Media Policy in a Changing Landscape: Comparing the Development of the Audiovisual Media Services Directive and the European Media Freedom Act by Applying the Advocacy Coalition Framework* (MA thesis, Linköping University 2024) 67
<https://www.diva-portal.org/smash/get/diva2:1911743/FULLTEXT01.pdf>

⁴⁷ Directive (EU) 2018/1808 (n 14) art 5(2); Regulation (EU) 2024/1083 (n 33) art 6(1).

⁴⁸ Directive (EU) 2018/1808 (n 14) art 30, Regulation (EU) 2024/1083 (n 33) art 5.

The relationship between the European Media Freedom Act (EMFA) and the Audiovisual Media Services Directive (AVMSD) is often discussed in terms of potential overlaps. A clear overlap between the two acts is in institutional aspects. The EMFA amends the institutional aspects of the AVMSD, by transforming the European Regulators Group for Audiovisual Media Services (ERGA), which was established under the AVMSD, into a new formal EU body called the European Board for Media Services.⁴⁹

Although the EMFA formally amends the institutional aspect of the AVMSD, there is no general rule on possible collisions. In certain instances, the EMFA explicitly states it operates “without prejudice” to specific AVMSD rules, such as those concerning user autonomy and preserving Member States’ existing obligations.⁵⁰ However, tensions have arisen due to broad prohibition on editorial interference under the EMFA, which could conflict with supervisory actions permitted under the AVMSD. Although the EMFA allows restrictions on media service providers that are justified under Union law, it is unclear whether measures taken under the AVMSD, which is EU law, but implemented nationally, automatically qualify as such justified restrictions.⁵¹ Additionally, while the AVMSD allows Member States to adopt stricter rules for providers under their jurisdiction, the EMFA only allows more detailed national rules for specific parts of the Regulation.⁵²

CHAPTER II. Kosovo’s Media Regulatory Framework

2.1. Overview of the Media Law in Kosovo

There are consistent concerns regarding media freedom in the whole Western Balkan countries, despite an improving legal framework aligned with European standards. In terms of media freedom, all Western Balkan countries generally face the same problems but with different intensity.⁵³ Persistent issues stem from the application of these laws, frequent regulatory changes,

⁴⁹ Regulation (EU) 2024/1083 (n 33) art 8.

⁵⁰ European Parliament, *The European Media Freedom Act (EMFA): Background, Objectives, and Institutional Framework* (Study, Policy Department for Citizens’ Rights and Constitutional Affairs, European Parliament 2023) 21 https://orbi.lu.uni.lu/bitstream/10993/59779/1/_JPOL_STU%282023%29733129_EN.pdf

⁵¹ European Parliament, *The European Media Freedom Act* (n 50); Regulation (EU) 2024/1083 (n 33) art 4(1).

⁵² Regulation (EU) 2024/1083 (n 33) art 1(3).

⁵³ Vladimir Bratić, ‘Comparative Analysis of Regulatory Media Assistance: Lessons from Bosnia and Herzegovina and Kosovo’ (2013) 35 <https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=2713788#page=29>

and a lack of institutional capacity. Significant concerns have been raised, not only in Kosovo, but across the entire Balkan region, regarding political interference, concentrated media ownership, politicization of media regulatory bodies, and the insufficient protection afforded to journalists.⁵⁴

The development of media regulation in Kosovo has taken place in a complex environment shaped by international involvement and post-conflict institution building. Following the conflict in 1999, the Organization for Security and Co-operation in Europe (OSCE) played a pivotal role in establishing democratic structures, initially acting independently and assuming primary responsibility for media development in Kosovo and later in cooperation with the United Nations Mission in Kosovo (UNMIK).⁵⁵ Within this framework, the OSCE supported the creation of key media institutions, including the Temporary Media Commissioner - the forerunner of today's Independent Media Commission (IMC), and the Press Council of Kosovo.⁵⁶ The OSCE also played an essential part in founding Kosovo's public broadcasters, Radio Television of Kosovo (RTK), working to ensure its political, financial, and editorial independence.⁵⁷

In the years following independence, Kosovo made significant strides in establishing a legal framework for media freedom and anchoring in its Constitution the freedom of expression and freedom of the press.⁵⁸ Important reforms included the decriminalization of defamation, shifting such disputes into the realm of civil law from the Criminal Code, and the adoption of a progressive law protecting journalistic sources. The legal system also provided for the regulation

⁵⁴ *Ibid.*

⁵⁵ Council of Europe, *Media Freedom and Media Pluralism in Kosovo* (Council of Europe 2010) <https://rm.coe.int/1680483b52>

⁵⁶ OSCE Mission in Kosovo, 'Vigilance and Due Process Needed to Maintain Progress on Media Freedom' (2 July 2023) <https://www.osce.org/mission-in-kosovo/547990>; OSCE Mission in Kosovo, 'Kosovo Media Landscape 2009: Assessment of Progress in Developing Professional and Sustainable Media' (9 December 2009) <https://www.osce.org/kosovo/46679>.

⁵⁷ Tarik Jusić and others, *Media Constrained by Context: International Assistance and the Transition to Democratic Media in the Western Balkans* (Central European University Press 2018) 92 https://www.researchgate.net/publication/323178108_Media_Constrained_by_Context_International_Assistance_and_the_Transition_to_Democratic_Media_in_the_Western_Balkans

⁵⁸ Constitution of the Republic of Kosovo, art. 40 and 42 https://mapl.rks-gov.net/wp-content/uploads/2017/10/1.CONSTITUTION_OF_THE_REPUBLIC_OF_KOSOVO.pdf

of public broadcasters and electronic media through institutions such as the Independent Media Commission (IMC).⁵⁹

Despite media law being engraved in constitutional foundations in Kosovo, there remains a significant legislative gap regarding online content. Online publications, although not specifically regulated, falls under general provisions such as the Law against Defamation and Insult, which allows authors, editors, publishers, or others exerting control over content to be held accountable for defamatory or offensive material, and Press Council of Kosovo (PCK) Guidelines, for voluntary self-regulation for journalistic ethics.⁶⁰ Recent reports indicate that, while the 2012 Civil Law Against Defamation and Insult is broadly aligned with the case law of the European Court of Human Rights, its effective implementation continues to face significant challenges.⁶¹ At the national level, various journalists have expressed concerns regarding this legislation, noting deficiencies in its enforcement, the absence of consistent court practice, and the existence of several legal loopholes.⁶² It is important to emphasize that attempts were made for directly regulating the field of online media. The Assembly of Kosovo attempted to regulate online media through the new law on the Independent Media Commission the previous year (Law No. 08/L-289 of 2024), and it did so for a short period of time, until the current opposition appealed it at the Constitutional Court of Kosovo, to which the court decided in favor and repealed the new law.⁶³ Further explanation will be given in subchapter 2.3, but the main fact remains that the online media regulation is once again in square one.

⁵⁹ Elda Brogi, Alina Dobрева and Pier Luigi Parcu, *Freedom of Media in the Western Balkans* (Policy Department DG External Policies, European Parliament July 2014) 32,

[https://www.europarl.europa.eu/RegData/etudes/STUD/2014/534982/EXPO_STU\(2014\)534982_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2014/534982/EXPO_STU(2014)534982_EN.pdf).

⁶⁰ Brogi, Dobрева and Parcu (n 58) 32; Law No 02/L-65 on Civil Law Against Defamation and Insult, Official Gazette of the Republic of Kosovo No 24 (1 May 2008)

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2503&langid=2>; Press Council of Kosovo, 'Press Code for Kosovo' (Media Councils in the Digital Age, online) https://www.presscouncils.eu/codes/54_xk/.

⁶¹ European Commission, Progress Report Kosovo 2015,

https://enlargement.ec.europa.eu/document/download/b7b3e119-fd2a-4e17-8d3d-d16665fdb5f4_en?filename=20151110_report_kosovo.pdf

⁶² SafeJournalists.net, *Kosovo Indicators on the Level of Media Freedom and Journalists' Safety Index 2023* (SafeJournalists.net, 2024)

<https://safejournalists.net/wp-content/uploads/2024/12/KOS-ENG-2024.pdf>

⁶³ Constitutional Court of Kosovo, *Judgment in Cases KO152/24 and KO158/24: Assessment of the Constitutionality of Law 08/L-289 on the Independent Media Commission* (Official Gazette 21 May 2025) pt V of dispositive <https://gzk.rks-gov.net/ActDetail.aspx?ActID=105942>

Public service broadcasting in Kosovo is organized through the Radio Television of Kosovo (RTK), which operates television, radio, and broadcasting services and is regulated under the Law on Public Broadcasting, specifically the Radio Television of Kosovo Law.⁶⁴ Furthermore, the legal system safeguards journalistic practice by protecting journalistic and their sources through the dedicated Law on the Protection of Sources.⁶⁵

A center pillar of audiovisual media regulation is the Independent Media Commission (IMC), whose existence and mandates are foreseen in the Constitution and the detailed functioning and powers of the IMC are further elaborated within Kosovo's legislative framework through the Law on the Independent Media Commission.⁶⁶

The adoption of this law occurred within a broader context of Kosovo's aspirations for European integration, which places emphasis on aligning domestic legislation with the *acquis communautaire*.⁶⁷ In the field of media, this alignment is particularly significant given the European Union's focus on the protection of freedom of expression, media pluralism, and regulatory independence, all of which are central principles embodied in both the AVMSD and the emerging framework of the European Media Freedom Act (EMFA).

2.2. Legal Structure and Powers of the Independent Media Commission (IMC)

The broadcaster media sector in Kosovo is regulated by the Independent Media Commission (IMC), an independent regulatory body established by the Assembly of Kosovo pursuant to its own dedicated statutory framework.⁶⁸ The Commission constitutes a cornerstone of Kosovo's legal regime governing the audiovisual sector and is entrusted with the management and supervision of broadcast frequencies.⁶⁹ At its core the Law on the Independent Media

⁶⁴ Law No 04/L-046 on Radio Television of Kosovo, *Official Gazette of the Republic of Kosovo* No 7 (27 April 2012) <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2812>

⁶⁵ Law No 04/L-137 on the Protection of Journalism Sources, *Official Gazette of the Republic of Kosovo* No 30 (23 August 2013) <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8864>

⁶⁶ Constitution of the Republic of Kosovo (n 57) art 141.

⁶⁷ Brogi, Dobrev and Parcu (n 58) 41.

⁶⁸ Jusić and Irion (eds), *Media Constrained by Context* (2018) (n 56) 106.

⁶⁹ OSCE Mission in Kosovo, *Media Sustainability in Kosovo* (April 2014) 8 <https://www.osce.org/files/f/documents/4/0/122390.pdf>

Commission (IMC) seeks to balance two fundamental objectives: to ensure the freedom of expressions and information, and maintaining a regulatory environment in the media sector.⁷⁰

The substantive scope of the law is explicitly limited to audiovisual media services. It covers linear services, and video-on-demand as a non-linear audiovisual media service.⁷¹ The law does not extend its regulatory reach to print media, online written press, or purely internet-based news portals that do not constitute audiovisual services. It does not explicitly state that it does not apply to print media or online text publications, but this conclusion is implicit in the purpose of the law and throughout the definitions in Article 2, in which no “print media” is mentioned in the article or anywhere throughout the law.⁷²

This distinguishes Kosovo’s law from broader European regulatory instruments such as the European Media Freedom Act (EMFA). Whereas the EMFA is designed to encompass all forms of media, including print, online, and audiovisual services, the Kosovo law is explicitly confined to the regulation of audiovisual media alone, as explained in the paragraph above. Although Kosovo’s law predates the EMFA, having been adopted in 2012 compared to the EMFA’s proposal in 2022, the Kosovar media law demonstrates a clear orientation toward European legal standards. This is reflected within the law which establishes that: “The Broadcasting Policy defined by IMC shall be in accordance with recognized international broadcasting and human rights standards, the relevant EU legislation and especially the European Commission Directive AVMS...”⁷³ Such alignment is particular to the Audiovisual Media Services Directive (AVMSD).

The legal status of the IMC is recognized as an independent institution responsible for regulation, management, and oversight of the broadcasting frequency spectrum, as well as for licensing and supervising audiovisual media services.⁷⁴

⁷⁰ Law No 04/L-044 on the Independent Media Commission (Official Gazette of the Republic of Kosovo, No 5, 5 April 2012), arts 5(3) and 9(1)

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2809&langid=2>

⁷¹ *Ibid* arts 2(7) and 2(19).

⁷² *Ibid* arts 1 and 2.

⁷³ *Ibid* art 9(1).

⁷⁴ *Ibid* art 3.

A central feature of the IMC's legal status is its institutional and operational independence. The law explicitly states that members and staff of the IMC shall not receive instructions from any person or entity, including government institutions, and prohibits any influence over their decision-making processes.⁷⁵ This independence is further underscored by provisions requiring the IMC to establish its own internal Code of Ethics and to manage its own budget line, which is allocated separately within the state budget to safeguard its functional autonomy, respectively from the Ministry of Finance.⁷⁶ Although noted as an “independence” because the law explicitly states: “The IMC shall have its own budget line which shall guarantee its independence...”, there have been many criticisms regarding state funding of the IMC. In 2023, the European Commission reported that the budget of the IMC remaining dependent on central government processes, raises concerns about the practical independence of the regulator.⁷⁷

In theory, the independence of the IMC in Article 6 aligns with European standards, notably the requirements of the Audiovisual Media Service Directive (AVMSD), which mandates that national regulatory authorities shall be legally distinct and functionally independent from government or other external influences.⁷⁸ However, in practice, the independence of the IMC has ongoing critiques about political interference.⁷⁹

2.2.1. Substantive Powers of the IMC

The IMC possesses a broad range of substantive powers that enable it to regulate the audiovisual media landscape effectively. Chief among these is its authority to issue, renew, and revoke licenses for audiovisual media services and broadcasters.⁸⁰ The law does not explicitly address revoking, nevertheless it provides instead that the IMC can terminate or refuse the continuation of the broadcasting license.⁸¹

⁷⁵ *Ibid* art 6.

⁷⁶ Jusić and Irion (eds), *Media Constrained by Context* (2018) (n 56) 106; Law No 04/L-044 (n 69) arts 3(2.10) and 45.

⁷⁷ European Commission, *Kosovo 2023 Report* SWD(2023) 702 final, 20; OSCE Mission in Kosovo, *Media Law Review 2020*; IREX, *Media Sustainability Index 2023 – Kosovo*, 97 https://enlargement.ec.europa.eu/kosovo-report-2023_en

⁷⁸ Directive 2018/1808 (n 14) art 30(1).

⁷⁹ Jusić and Irion (eds), *Media Constrained by Context* (2018) (n 56) 111.

⁸⁰ Law No. 04/L-044 (n 69) arts 21 and 23.

⁸¹ *Ibid* art 30(1.6).

The IMC holds significant enforcement powers beyond licensing. The IMC can initiate procedures itself, or from receiving a complaint, against any broadcasting provider that fails to comply with the conditions of their licenses, the Code of Conduct, or other legal obligations.⁸² If proven that a licensee has failed to comply with any of the above, the law gives the power to IMC to impose sanctions that range from written warnings to substantial monetary fines of up to 100,000 Euros, suspension of programming schedules, and even the termination of licenses.⁸³

Furthermore, the IMC has regulatory powers to develop and issue sub-legal acts, which establish detailed rules governing various aspects of audiovisual broadcasting, including licensing, protection of children, copyright, obligations of media service providers during the election campaign, and logical channel numbering.⁸⁴ Through these normative instruments, the IMC provides clarity and consistency in the regulatory environment.⁸⁵

2.2.2. Procedural Responsibilities

Beyond its substantive regulatory functions, the IMC bears procedural responsibilities as well, aimed at ensuring transparency, accountability, and stakeholder participation in its operations. The law imposes obligations on the IMC to operate transparently, requiring that its meetings be open to the public except in limited circumstances, and that its decisions, licenses, and sub-legal acts be publicly accessible.⁸⁶ Public consultation is a cornerstone of the IMC's regulatory process. Before adopting key instruments such as strategies, licensing plans, and sub-legal acts,

⁸² *Ibid* art 29.

⁸³ *Ibid* art 30.

⁸⁴ *Regulation on the Issuance of Licences* (KPM-2013/04), issued pursuant to art 3.2.6 of Law No. 04/L-44 on the Independent Media Commission; *Regulation on the Protection of Children and Minors in Audio and Audiovisual Media Services* (KPM-2023/01), adopted pursuant to art 3(2)(6) and (11) and art 33 of Law No. 04/L-44 on the Independent Media Commission, and art 45(8), (18) of Law No. 06/L-84 on Child Protection; *Regulation on Copyright* (KPM-2013/02), issued pursuant to art 3.2.6 of Law No. 04/L-44 on the Independent Media Commission; *Regulation on the Obligations of Media Service Providers During the Election Campaign* (KPM-2024/03), issued pursuant to art 3(2)(6) of Law No. 04/L-44 on the Independent Media Commission and Chapter VIII of Law No. 08/L-228 on General Elections in the Republic of Kosovo; *Regulation on the Logical Channel Numbering* (KPM-2017/05), adopted pursuant to art 18(5) of Law No. 05/L-027 on Digitalisation of Terrestrial Broadcasting Transmissions and art 3(2)(6) and (11) of Law No. 04/L-44 on the Independent Media Commission.

⁸⁵ Law No. 04/L-044 (n 69) art 3(2.6).

⁸⁶ *Ibid* art 7.

the IMC must make draft texts publicly available and allow a period of at least fifteen working days for comments and feedback.⁸⁷

Additionally, the IMC is required to report regularly on its activities through an annual report to the Assembly of the Republic of Kosovo by 31st of March each year, detailing its licensing activities, policy developments, complaints handled, sanction imposed, and financial operations.⁸⁸

2.3. Repeal of the 2024 Independent Media Commission Law and Implications

In July 2024, the Assembly of Kosovo adopted a new Law on the Independent Media Commission (IMC, Law No. 08/L-289), prompting significant concern from the international community. Prior to its adoption by the Assembly, the European Union observed that the Draft Law on the Independent Media Commission (IMC) failed to incorporate the majority of the recommendations set forth in the legal opinion issued by the Council of Europe, including the IMC's competences and funding mechanisms, the election procedures, as well as the proportionality of the sanctions envisaged.⁸⁹

Additionally, concerns were raised from the Organization for Security and Co-operation in Europe (OSCE) which criticized the legislation for introducing several substantive changes. These included provisions that affected the composition, mandate, and appointment procedures of the IMC's members.⁹⁰

The Assembly of Kosovo adopted the new law in its second reading, with 59 votes in favor, none against, and two abstentions. A week later, the opposition MPs filed a constitutional referral and argued that the law had been adopted without genuine public consultation and contained provisions that undermined media independence.

⁸⁷ *Ibid* art 8.

⁸⁸ *Ibid* art 3(2.8).

⁸⁹ Arjana Berisha, 'Shpërfillen kritikën, Kuvendi miraton Ligjin për Komisionin e Pavarur të Mediave' *Kallxo* (11 July 2024) <https://kallxo.com/lajm/shperfillen-kritikat-kuvendi-miraton-ligjin-per-komisionin-e-pavarur-te-mediave/>

⁹⁰ OSCE Mission in Kosovo, 'OSCE Mission in Kosovo statement on the new Law on the Independent Media Commission' (11 July 2024) <https://www.osce.org/mission-in-kosovo/572641>

On 23 April 2025, the Constitutional Court issued a ruling declaring multiple provisions of the law incompatible with the Constitution.⁹¹ The Court annulled the law in its entirety and rejected interim relief.⁹² The Court raised several principal grounds of alleged incompatibility.

In regard to the claim that the contested law was adopted without adequate public consultation, the court held that while public consultation is an important component of good legislative practice, it is not a constitutional requirement per se. The Constitution of Kosovo delineates the formal procedures for law adoption, including the functioning of parliamentary committees, but leaves the regulation of public consultation procedures to sub-constitutional acts, such as the Rules of Procedure of the Government and the Assembly. Thus, the Court deemed the procedure followed for the adoption of the contested law not in breach of constitutional provisions.⁹³

In relation to the manner of electing the Chairperson and members of the Independent Media Commission (IMC), the Court assessed whether the process established by Article 15 (Election of IMC Members) of the contested law aligns with the constitutional requirement of institutional independence under Article 141 (Independent Media Commission) of the Constitution.⁹⁴ The Court acknowledged that Article 141 of the Constitution guarantees the IMC's status as an independent constitutional institution, while delegating the regulation of its election and mandate to legislation, on the condition that such regulation ensures transparency and does not undermine independence.⁹⁵ The Court clarified that while the Constitution in Article 80 (Adoption of Laws) permits decision-making by simple majority unless otherwise specified, the independence of institutions under Chapter XII (Independent Institutions), where the IMC participates along with the Ombudsperson, Auditor General, and Central Bank, is typically safeguarded through more

⁹¹ Constitutional Court of Kosovo, *Notification of the Decision in Cases no. KO152/24 and KO158/24* (21 May 2025)

<https://gjk-ks.org/notifications/details/3295?title=Njoftim+për+vendim+në+rastin+KO152/24+dhe+KO158/24>

⁹² Constitutional Court of Kosovo, *Judgment in cases no. KO152/24 and KO158/24 – Referrals submitted by Abeldar Tahiri and 9 other deputies of the Assembly of the Republic of Kosovo; and by Arben Gashi and 9 other deputies – Assessment of the constitutionality of Law No. 08/L-289 on the Independent Media Commission* (21 May 2025)

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=105942>

⁹³ *Ibid* paras 150–152.

⁹⁴ *Ibid* 39.

⁹⁵ *Ibid* 178.

inclusive procedures, either by requiring a higher voting threshold, presidential involvement, or diversified nominating bodies.⁹⁶ In contrast, the contested law permits the proposal of IMC members by a committee likely dominated by the majority and their appointment by a simple majority vote of the Assembly. The Court held that this concentration of control within the parliamentary majority fails to ensure adequate institutional independence, as required by Article 141 of the Constitution, the spirit of Chapter XII, and relevant Venice Commission standards. Accordingly, the article of the contested law governing the proposal and election of IMC members, was deemed unconstitutional.⁹⁷

Regarding the gender representation in the Independent Media Commission (IMC) (Article 15(2)), the Court clarified that although Article 6(8) of the Law on Gender Equality establishes a 50% gender quota, this does not function as an automatic or self-executing quota in all legal contexts.⁹⁸ However, in this specific case, the explicit reference in the contested law to “principles of gender equality in accordance with the relevant legislation” indicated the legislator’s intent to make the 50% standard binding for the composition of the IMC.⁹⁹ Accordingly, the Court interpreted the law as requiring that at least five of the eleven IMC members must be of the underrepresented gender, thereby meeting the 50% threshold mandated by the Law on Gender Equality.¹⁰⁰ On this basis, the Court found that Article 15(2) of the contested law is not unconstitutional, and complies with both Article 7 (Values) and Article 24 (Equality Before the Law) of the Constitution.¹⁰¹

Regarding the extension of the mandate of the members of the Independent Media Commission (IMC, Art 17(2)), the Constitutional Court held that Article 141 of the Constitution does not fix the term length for IMC members and leaves this matter to be regulated by law.¹⁰² The extension provision in the contested law serves a legitimate aim, preventing an institutional vacuum, in cases where the Assembly fails to elect new members in a timely manner.¹⁰³ Lastly, the Court

⁹⁶ *Ibid* para 193.

⁹⁷ *Ibid* para 203.

⁹⁸ *Ibid* 40; Law No 05/L-020 on Gender Equality, Art 6(8) <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10923>

⁹⁹ Constitutional Court of Kosovo, *Judgment in Cases KO152/24 and KO158/24* (21 May 2025) para 216.

¹⁰⁰ *Ibid* paras 222-223.

¹⁰¹ *Ibid* paras 224-225.

¹⁰² *Ibid* para 236.

¹⁰³ *Ibid* para 237.

held that the legal framework is clear and foreseeable, meaning that the standard term is four (4) years, extendable only until successors are lawfully elected, unless a dismissal or resignation occurs.¹⁰⁴ Thus, the Court found no constitutional violation in Article 17(2) and the temporary extension of mandates is constitutionally permissible, but the Assembly remains legally obliged to ensure timely appointments.¹⁰⁵

Regarding the dismissal of the Chairperson and members of the IMC, the Court addressed two key issues. One, regarding the scope of dismissal criteria, the Court clarified that Article 18(1) of the contested law confirms that both the Chairperson and members are subject to dismissal under the criteria listed in Article 18(3), even though the Chairperson is not explicitly mentioned in that paragraph.¹⁰⁶ The Court explained that a joint reading of both provisions confirms their applicability to all IMC members, including the Chairperson.¹⁰⁷ Two, regarding the clarity and constitutionality of dismissal grounds, the court emphasized that clear and narrowly defined dismissal criteria are crucial for safeguarding the independence of constitutional institutions like the IMC. Dismissal should occur only in serious and legally defined cases, and such decisions must be subject to judicial review. Dismissals based on concepts such as “undermining integrity”, “biased positions”, or “loss of confidence”, were deemed vague and lacking clarity and legal precision, and as such the Court ruled the article 18(3) was incompatible with Article 7 and 141 of the Constitution.¹⁰⁸

Regarding the Appeals Council of the Independent Media Commission (IMC), the Constitutional Court examined whether the structure and role of this internal appellate body, as defined in Article 4(2.21) of the contested law, complies with the constitutional right to legal remedies under Article 32 (Right to Legal Remedies) of the Constitution.¹⁰⁹ The Court acknowledged that the contested law does not establish a distinct and independent appellate body within the IMC structure.¹¹⁰ However, it emphasized that the contested law together with Kosovo’s broader administrative legal framework, particularly the Law on General Administrative Procedure,

¹⁰⁴ *Ibid* 40.

¹⁰⁵ *Ibid* paras 240-241.

¹⁰⁶ *Ibid* 40-41.

¹⁰⁷ *Ibid* para 248.

¹⁰⁸ *Ibid* paras 265, 268, 269, 271.

¹⁰⁹ *Ibid* 37.

¹¹⁰ *Ibid* paras 275, 283.

ensures access to judicial remedies.¹¹¹ Specifically, the contested law itself foresees the right of affected parties to challenge IMC decisions before the competent courts, thereby satisfying the constitutional requirement under Article 32 (Right to Legal Remedies).¹¹²

Regarding the provisions on Media Education and Broadcasting Policy, the Constitutional Court examined whether Article 10 and Article 12(7) of the contested law violate the freedom of the media guaranteed by Article 42 (Freedom of Media) of the Constitution.¹¹³ The Court referred to the constitutional and international standards, especially Article 10 ECHR and relevant ECtHR case law, which recognize the negative obligation of the state not to interfere with media freedom, and the positive obligation to promote pluralism and ensure public access to diverse and educational content.¹¹⁴ Taking into account the public interest in media literacy, the limitation burden imposed on broadcasters (in terms of duration and frequency), the differentiated treatment between public and private broadcasters, and the state's obligation under EU law and the Stabilization and Association Agreement (SAA), the Court concluded that the challenged provisions pursue a legitimate aim, are proportionate, and fall within the scope of acceptable state regulation in a democratic society.¹¹⁵

Regarding the transfer of ownership and cross-ownership restrictions in the contested law, for Ownership Transfer Approval, the Court examined the constitutionality of Article 43 of the Contested Law, which required prior approval from the IMC for any ownership transfer exceeding 10% of shares in licensed/registered media entities and prohibits one licensed/registered entity from owning more than 10% of another such entity.¹¹⁶

In relation to ownership transfer approval, the Court found that 43(2) requires approval only for ownership changes over 10%, whereas other provisions (e.g., Article 4(2.4) and Article 25(5)) ambiguously refer to “any ownership change”, regardless of threshold. The Court emphasized

¹¹¹ *Ibid* para 287.

¹¹² *Ibid* paras 295, 296.

¹¹³ *Ibid* 37, 38.

¹¹⁴ *Ibid* para 303.

¹¹⁵ *Ibid* paras 324-325.

¹¹⁶ *Ibid* 43.

that this internal inconsistency creates a lack of clarity and foreseeability, violating the principle of legal certainty under Article 7(1) of the Constitution.¹¹⁷

Regarding the restrictions on cross-ownership, with respect to the 10% ownership cap between licensed/registered parties, the Court finalized its decision in three main points: one, the provision was prescribed by law, two, the provision was proportionate, as it applies only to inter-entity transfers and does not prohibit all forms of ownership, and three, the provision pursued a legitimate aim of preventing media concentration and ensuring pluralism.¹¹⁸ As a result, the Court found Article 43(4) of the contested law, was in compliance with Article 42 (Freedom of the Media), and 119 (General Principles) of the Constitution.¹¹⁹

Lastly, the Court accessed the constitutionality of Article 60 of the contested law regarding the sanctions and fines for violations of the contested law. The Court found that the range of fines, from €500 to €4,000 for natural persons and €500 to €20,000 for legal persons, including the possibility of doubling in certain cases, is in line with the Law on Minor Offences, particularly for offences in areas such as public information.¹²⁰ However, the Court identified several inconsistencies and vague formulations within the contested law itself where it found duplication and contradiction in the sanctioning of the same conduct under Article 60.¹²¹ Items were deemed overly broad and unspecific and failed the test of foreseeability, a requirement under Article 7 (Values) of the Constitution.¹²²

In conclusion, while the Constitutional Court confined its constitutional review to the claims brought up from the applicants' claims, it also noted various concerns raised by international institutions and other stakeholders. The Court stressed that the Government and the Assembly bore the responsibility to ensure that any revised Law on the IMC would be adopted through a transparent, inclusive, and consultative process, fully aligned with the Judgement, the Stabilization and Association Agreement, the imperatives of media pluralism, legal certainty, and

¹¹⁷ *Ibid* para 355-357.

¹¹⁸ *Ibid* paras 359-366.

¹¹⁹ *Ibid* para 367.

¹²⁰ *Ibid* para 377.

¹²¹ *Ibid* para 380-382.

¹²² *Ibid* para 384.

European compliance. For these reasons, the Court held the provisions concerning the election and dismissal of IMC members, ownership regulation, and certain sanctions, unconstitutional.¹²³

2.4. Content Standards: Sponsorship, Product Placement, Protection of Minors, and The Right of Reply

In its regulatory mandate, the IMC operates within legal boundaries designed to ensure both accountability and the protection of fundamental rights. The IMC operationalizes its mandate through specific regulatory mechanisms concerning sponsorship, product placement, protection of minors, and the right of reply.

2.4.1 Sponsorship

The law sets a rigorous framework governing sponsorship in audiovisual media services. As a regulatory matter, sponsorship can pose risks of covert influence over editorial choices and content priorities. Accordingly, the law treats sponsorship as a permissible practice only under strict conditions: it must not influence editorial content or scheduling in a manner compromising independence, and the existence of sponsorship must be clearly disclosed to viewers.¹²⁴ The framework introduces content-based prohibitions, excluding certain sectors, such as tobacco and prescription-only medicinal products, from engaging in sponsorship due to heightened public health and consumer protection concerns.¹²⁵

2.4.2. Product Placement

Product placement is generally prohibited according to the law, signalling a regulatory preference for maintaining a clear boundary between content and commercial interests. However, recognizing the evolving media market and European norms, the law permits exceptions in certain genres such as films, series, sports, and entertainment programming, provided these are

¹²³ *Ibid* 109.

¹²⁴ Law No. 04/L-044 (n 69) art 31(1).

¹²⁵ *Ibid* arts 31(2) and 31(3).

not aimed at children.¹²⁶ Even where allowed, regulatory controls are stringent: product placement must not exert editorial influence, must avoid excessive promotional emphasis, and must be clearly disclosed to ensure transparency.¹²⁷ Additionally, absolute bans remain in place for sectors like tobacco and prescription-only products, reflecting broader public policy priorities.¹²⁸

2.4.3. Protection of Children and Juveniles

The law imposes obligations on broadcasters to prevent airing of content that could seriously harm children and juveniles, particularly pornography and extreme violence. The provision extends its protective ambit to other types of potentially harmful content, unless effective mechanisms are implemented, such as time-of-day scheduling or technical restrictions, to ensure that minors cannot normally access such materials.¹²⁹

2.4.4. The Right of Reply (The Right of Reaction)

Lastly, the law foresees the right of individuals to seek the correction of broadcast information or to exercise a right of reply in response to broadcast content. This right must be exercised in conformity with the Broadcasting Code of Ethics, ensuring that the mechanisms for rectification or reply are governed by transparent and principle standards.¹³⁰

2.4.5. Hierarchy of the IMC

The institutional architecture comprises two principle decision-making bodies: the IMC, and the Appeals Board. The composition of the IMC is expressly required to mirror the multi-ethnic character of Kosovo's society and uphold gender equality, thereby aligning regulatory oversight with broader constitutional principles of representation and non-discrimination.¹³¹ Moreover, the

¹²⁶ *Ibid* arts 32(1) and 32(2).

¹²⁷ *Ibid* art 32(3).

¹²⁸ *Ibid* art 32(5).

¹²⁹ *Ibid* art 33.

¹³⁰ *Ibid* art 35.

¹³¹ Law No. 04/L-044 (n 69) art 10(5); Constitution of the Republic of Kosovo (n 57), arts 7 and 61.

law mandates that at least two members of the Commission possess professional qualifications in the relevant fields. However, the Kosovo Assembly has prioritized political appointees over fully meeting the required criteria when selecting members of the Commission.¹³² Leaving the authority to the Assembly of Kosovo, to select the members for the IMC, has been a shortcoming highlighted by the international community.¹³³

The decisions of the IMC are subject to oversight through the Appeals Board, an independent body tasked with adjudicating appeals related to licensing decisions, imposition of sanctions, and other regulatory measures taken by the IMC.¹³⁴ The law entrusts the composition of the Media Appeals Board to legal professionals, explicitly requiring the bar exam and a period of five (5) years of professional work experience in the field of law.¹³⁵

Although the law provides that the decisions of the Appeals Board are final within the administrative hierarchy of the IMC, it simultaneously preserves the right to judicial review involving the Supreme Court of Kosovo.¹³⁶

CHAPTER III: LEGAL APPROXIMATION UNDER THE STABILIZATION AND ASSOCIATION AGREEMENT (SAA)

The Stabilization and Association Agreement (SAA) between Kosovo and the European Union was signed on 27 October 2015 after nearly three years of negotiations, and it officially entered into force in early 2016. This agreement marked a significant milestone in formalizing the relationship between Kosovo and the EU, with then-EU High Representative Federica Mogherini emphasizing its importance in opening a new chapter of increased stability and prosperity.¹³⁷

¹³² Jusić and Irion (eds), *Media Constrained by Context* (2018) (n 56) 108.

¹³³ Law No. 04/L-044 (n 69) art 11; OSCE Mission in Kosovo, *OSCE urges Assembly of Kosovo to ensure independent media regulation through legislation in line with international standards* (OSCE, 11 July 2024) <https://www.osce.org/mission-in-kosovo/572641>

¹³⁴ Law No. 04/L-044 (n 69) art 36.

¹³⁵ *Ibid* art 37.

¹³⁶ *Ibid* art 44.

¹³⁷ Sazan Isufi, Veli Lecaj & Visar Hoxha, *Kosovo and the EU Stabilization and Association Agreement* (UBT International Conference, 30 October 2021) <https://knowledgecenter.ubt-uni.net/conference/2021UBTIC/all-events/97/>

The SAA establishes a contractual framework of mutual obligations, with the main goal of bringing Kosovo closer to the EU's internal market and standards. It covers a wide range of sectors with EU rules in areas such as free trade, competition law, state aid, intellectual property, and various socio-economic and political reforms.¹³⁸

Although Kosovo is part of the EU's Stabilization and Association Process (SAP) and has signed the Stabilization and Association Agreement (SAA), it does not guarantee EU membership. The SAA facilitates a gradual approximation and harmonization of Kosovo's legislation with EU law, offering a European perspective.¹³⁹

As a signatory to the SAA with the European Union, Kosovo has undertaken the obligation to gradually align its national legislation, including in the area of media law, with the EU acquis.¹⁴⁰ The SAA sets out a binding framework for Kosovo's European integration process, requiring the approximation of national laws to EU standards across a broad range of sectors, including the freedom of expression, media regulation, and audiovisual policy.¹⁴¹ This includes the alignment of Kosovo's media legislation with key EU directives such as the Audiovisual Media Services Directive (AVMSD), which governs areas like media pluralism, content standards, advertising, and the independence of regulatory authorities.¹⁴²

The approximation process also implies strengthening the legal guarantees for freedom and independence of the media, enhancing transparency in media ownership, and ensuring non-discriminatory access to media markets, in line with EU values and fundamental rights.

¹³⁸ *Ibid.*

¹³⁹ Safet Beqiri, 'Approximation and Harmonization of Kosovo Legislation with European Union Legislation', 92 https://www.researchgate.net/profile/Adelina-Nexhipi/publication/371101580_Mbeshtetja_financiare_e_BE_-_se_per_Shqiperine_pergjate_procesit_te_integritetit/links/6472197f6a3c4c6efbe3c44f/Mbeshtetja-financiare-e-BE-se-per-Shqiperine-pergjate-procesit-te-integritetit.pdf#page=92

¹⁴⁰ European Union, *Stabilisation and Association Agreements* (EUR-Lex) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum%3A4314927>

¹⁴¹ Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part [2016] OJ L71/3, art 109 [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22016A0316\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22016A0316(01))

¹⁴² Council of Europe, *Legal Opinion on the Draft Law on the Independent Media Commission of Kosovo* (Division for Co-operation on Freedom of Expression, May 2024) 22 <https://rm.coe.int/legal-opinion-on-the-draft-law-on-the-independent-media-commission-of-/1680afd33b>

Although progress has been made, Kosovo must continue improving the institutional and legal framework for media to meet the SAA obligations, which are essential not only for deepening its cooperation with the EU but also for advancing its broader European integration path.¹⁴³

Kosovo's process of aligning with EU legislation is divided into two key periods: before the SAA (1999-2014), where Kosovo had to ensure its laws did not conflict with EU laws and that they were in line with the *Acquis Communautaire*, and after the SAA (from 2014 onward), where the SAA outlines a 10-year timeframe for full alignment with EU legislation. The Process post-SAA became binding with dedicated institutions like the Committee on European Integration (Assembly) and Ministry of European Integration (Government) leading the effort.¹⁴⁴

Kosovo has developed tools and mechanisms to support this process such as the National Program for the Implementation of the SAA (NPISAA), European Reform Agenda (ERA), Compatibility tables (EU - Kosovo and Kosovo - EU), along with declaration of compliance, and Translation Procedures for EU legislation into Kosovo's official languages.¹⁴⁵

Despite the legacy of past conflicts and institutional challenges, Kosovo has made considerable strides in its development and reform efforts. Much of this progress has been made possible through the support of international actors, particularly the European Union, and through a growing political will within Kosovo itself. Continued engagement with the EU and integration into broader European structures is seen as the most viable path forward for Kosovo to improve governance, strengthen the rule of law, and enhance its overall socio-economic situation.¹⁴⁶

CHAPTER IV: COMPARATIVE LEGAL ANALYSIS: EU MEDIA LAW AND KOSOVO'S FRAMEWORK

¹⁴³ European Parliament, *Report on the 2023 and 2024 Commission Reports on Kosovo* (A-10-0075/2025) paras 33–36

https://www.europarl.europa.eu/doceo/document/A-10-2025-0075_EN.html

¹⁴⁴ *Ibid* 98.

¹⁴⁵ *Ibid* 99.

¹⁴⁶ Isufi, Lecaj & Hoxha, *Kosovo and the EU SAA* (n 136).

4.1. Key points of comparison: institutional independence, regulatory scope, oversight mechanisms

4.1.1. Institutional Independence

In matters of institutional oversight, the Audiovisual Media Services Directive (AVMSD) requires as a legal obligation from the Member States to designate a national audiovisual media regulator. Kosovo, although not a Member State with only the status of a Potential Candidate, nevertheless has the obligation of bringing its national laws into line with the EU *acquis*, especially including, in the audiovisual field, the Audiovisual Media Services Directive.¹⁴⁷ The directive imposes the requirement that such authority must be legally distinct from governments and any other public or private body, and functionally independent.¹⁴⁸

The European Media Freedom Act (EMFA) elaborates in greater detail on the rights and obligations of media service providers and recipients, as well as establishes a new EU-level board for media services.¹⁴⁹ However, with regard to the institutional independence of national regulators, the EMFA merely refers to the provision set forth in the AVMSD, without introducing additional regulatory measures.¹⁵⁰

From the perspective of Kosovo, the Law defines the Independent Media Commission (IMC) as an independent regulatory authority. However, it subsequently circumscribes the exercise of such independence through restrictive provisions.¹⁵¹ As explained in Chapter II, subchapter 2 and 4 of this thesis, the state funding and the appointment process of the IMC, creates space for political influence, which is less insulated than required under the AVMSD and the EMFA.

¹⁴⁷ Novitet Xh Nezaq, *The Development of Kosovo and Its Relationship with the EU* (Europa-Kolleg Hamburg Institute for European Integration, Discussion Paper No 4/15, 2015) 17 <https://www.econstor.eu/bitstream/10419/110956/1/827020082.pdf>; Friedrich-Ebert-Stiftung (FES), *European Media Law and Policy Framework* (Institute of European Media Law, Sofia, May 2011) 41 <https://library.fes.de/pdf-files/bueros/sofia/08490.pdf>

¹⁴⁸ Directive (EU) 2018/1808 (n 14) art 30.

¹⁴⁹ Regulation (EU) 2024/1083 (n 33) art 8.

¹⁵⁰ *Ibid* art 7(2).

¹⁵¹ Law No 04/L-044 (n 69) art 31(1).

4.1.2. Regulatory Scope

The Audiovisual Media Services Directive defines both linear services and non-linear services including video sharing platforms.¹⁵² In addition to delineating its regulatory scope, the Directive imposes specific obligations on such platforms. Contrarily, the European Media Freedom Act (EMFA) is not principally a content regulation instrument. Its regulatory ambit can be discerned through provisions aimed at protecting editorial independence, ensuring transparency in media ownership, and safeguarding media operations against political interference.¹⁵³

From Kosovo's perspective, the Independent Media Commission's (IMC) competencies primarily cover linear services. Although video-on-demand as a 'type' of non-linear audiovisual media service are defined within the law, and as such put under its scope, the Kosovar law lacks comprehensive provisions for other forms of non-linear services and video-sharing platforms as required under the AVMSD.¹⁵⁴

With regard to the extent of the intersections between the EMFA and the Independent Media Commission Law, safeguards such as editorial independence and transparency of ownership, as envisaged by the EMFA, are not explicitly addressed in Kosovo's IMC legislation. Taking into consideration the decade-long difference between the IMC Law and the EMFA, the EMFA's new obligations are not yet reflected in Kosovo's legal framework.

4.1.3. Oversight Mechanisms

In an EU perspective, the Audiovisual Media Services Directive (AVMSD) imposes obligations on the national regulatory authorities (NRAs), after the obligation of creating such authorities for the Member States.¹⁵⁵ Among others, the Directive obliges cooperation between the NRAs and the European Regulators Group for Audiovisual Media Services (ERGA) as a network of national authorities that support the European Commission in ensuring consistent application of

¹⁵² Directive 2018/1808 (n 14) arts 1(1)(e), (g) and 1(1)(b)(aa).

¹⁵³ Regulation 2024/1083 (n 33) arts 4(2), 5(4) and 7(4).

¹⁵⁴ Law No 04/L-044 (n 69) art 2(1.19); Directive 2018/1808 (n 14) art 28(a), 28(b).

¹⁵⁵ Directive 2018/1808 (n 14) art 30(1).

the Directive and promoting cooperation among regulators. On the other hand, with the European Media Freedom Act (EMFA) coming into power, the regulation replaced the ERGA with the European Board for Media Oversight (the ‘Board’).¹⁵⁶

The law on the Independent Media Commission (IMC) does not explicitly establish a hierarchical regulatory structure. However, its initial provisions delineate the composition and institutional framework of the IMC, while subsequent articles regulate the establishment and functioning of the Appeals Board.¹⁵⁷ Taken together, these provisions indicate the existence of a two-tier system of review, with the chance to further recourse to the Supreme Court of Kosovo.¹⁵⁸

Ultimately, in relation to institutional independence, Kosovo’s Independent Media Commission (IMC) is independent, or at least formally, but the process of appointment and budget allocation falls short of the safeguards in the Audiovisual Media Services Directive (AVMSD) and the European Media Freedom Act (EMFA). In terms of the regulatory scope, Kosovo’s IMC Law largely focuses on traditional broadcasting and does not yet fully regulate non-linear services, unlike the AVMSD suggests, and the EMFA’s obligations are not yet fully reflected in Kosovo’s legal framework. In relation to oversight mechanisms, Kosovo’s IMC has basic oversight functions with the IMC being a first-instance mechanism, the appeals board serving as a second-instance mechanism, along with the chance of involving the courts. Kosovo cannot participate as a member in a EU-level mechanism such as the ERGA, now the European Media Board for Media Services (Media Board), as the successor of the ERGA, because the membership is strictly for national regulatory authorities or bodies of the Member States, but it does participate as an observer or guest.¹⁵⁹

¹⁵⁶ Directive 2018/1808 (n 14) art 30(4); Regulation 2024/1083 (n 33) art 8.

¹⁵⁷ Law No 04/L-044 (n 69) arts 10 and 37.

¹⁵⁸ *Ibid* art 44.

¹⁵⁹ European Commission, ‘European Regulators Group for Audiovisual Media Services (ERGA)’ <https://digital-strategy.ec.europa.eu/en/policies/erga>; Directive 2018/1808 (n 14) arts 3(7) and 30b(2)

4.2. Structural and Normative Convergences / Divergences

4.2.1. Structural Aspects

4.2.1.1. Legislative Form

It is a foundational principle of EU law that different legal instruments - regulations, directives, and national laws - operate within a defined hierarchy and serve distinct purposes. Directives, such as the Audiovisual Media Services Directive (AVMSD), set out objectives that Member States must achieve but leave discretion as to the form and method of implementation, thus requiring transposition into national law.¹⁶⁰ Kosovo, although not a European Union Member State, has aligned with this approach by adopting the Law on the Independent Media Commission (IMC Law), which reflects key elements of the AVMSD.¹⁶¹ In contrast, the European Media Freedom Act (EMFA), as an EU regulation, has direct applicability and does not require transposition.¹⁶² Its structural and legal force is stronger and more immediate within the EU legal order. Whether Kosovo will follow or adapt to the standards introduced by the EMFA, remains to be seen.

4.2.1.2. Regulatory Scope

The regulatory scope of EU law, particularly as embodied in the Audiovisual Media Services Directive (AVMSD), plays a crucial role in guiding Member States in the establishment and operation of National Regulatory Authorities (NRAs). The AVMSD sets out clear objectives and standards aimed at ensuring consistent regulation of audiovisual media services across the EU, including provisions on independence, transparency, and enforcement powers of the NRAs.¹⁶³ Although Kosovo is not a EU Member State, by instituting the IMC as an independent regulatory authority, Kosovo aligns its national regulatory architecture with the principles and goals promoted by the AVMSD.

¹⁶⁰ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, art 288.

¹⁶¹ FES, *European Media Law and Policy Framework* (n 143) 41.

¹⁶² Narine Ghazaryan, 'Who Are the 'Gatekeepers'?: In Continuation of the Debate on the Direct Applicability and the Direct Effect of EU International Agreements' (2018), 6 <https://academic.oup.com/yel/article-abstract/doi/10.1093/yel/yey003/5025740>

¹⁶³ Directive 2018/1808 (n 14) art 30.

4.2.1.3. Judicial Review

Judicial oversight is a fundamental structural component of both the EU and Kosovo legal system. At the EU level, secondary legislation such as the Audiovisual Media Services Directive (AVMSD) and the European Media Freedom Act (EMFA), is subject to review by the Court of Justice of the European Union (CJEU), ensuring compliance with the Treaties and the protection of fundamental rights.¹⁶⁴ Similarly, in Kosovo, laws can be subject to review from the Constitutional Court of Kosovo.¹⁶⁵ The most recent example of this power is the repeal of the new Law on the Independent Media Commission (No. 08/L-289), which was annulled by the Constitutional Court for non-compliance with constitutional standards.¹⁶⁶ Moreover, decisions issued by the IMC, particularly through its Appeals Board, are subject to judicial review by the Supreme Court of Kosovo. The existence of these parallel mechanisms of judicial review accountability reflect a structural convergence between the EU's regulatory model and Kosovo's national framework.

4.2.2. Normative Aspects

4.2.2.1. Fundamental Rights Orientation

EU media law is firmly grounded in Article 11 of the Charter of Fundamental Rights of the European Union (CFR), which guarantees the freedom of expression and information, including the freedom and pluralism of the media. This fundamental rights orientation underpins the regulatory approach of both the AVMSD and the EMFA, which explicitly promotes editorial independence, media pluralism, and protection against political interference.¹⁶⁷

While the EU Charter applies primarily to EU institutions and Member States when implementing EU law, its direct legal effect does not extend to third countries such as Kosovo.¹⁶⁸

¹⁶⁴ Consolidated Version of the Treaty on the Functioning of the European Union (n 156) art 263.

¹⁶⁵ Constitution of the Republic of Kosovo (n 57) art 113.

¹⁶⁶ Constitutional Court of Kosovo, *Judgment in Cases KO152/24 and KO158/24 (n 91)* pt II, III, IV, and V of dispositive

¹⁶⁷ Directive 2010/13/EU (n 14) recital 16; Regulation (EU) 2024/1083 (n 33) recitals 8, 20 and 77.

¹⁶⁸ Charter of Fundamental Rights of the European Union [2012] OJ C 326/391, art 51(1).

Nonetheless, the influence of the Charter is normative and aspirational as it serves as a model for legal and institutional reforms in candidate and potential candidate countries.¹⁶⁹ Kosovo, in seeking alignment with EU standards and broader European values, has embedded similar guarantees in its own constitutional and legal framework. The Constitution of Kosovo guarantees freedom of expression and freedom of the press, reflecting core values shared with the EU legal order.¹⁷⁰ The IMC Law, as a regulatory instrument, operates within this constitutional framework and thus similarly reflects a rights-based orientation toward media governance.¹⁷¹

4.2.2.2. Editorial independence

Editorial Independence is a core normative principle in EU media law and is explicitly protected under the European Media Freedom Act (EMFA), by providing that media service providers shall be free to make editorial decisions without interference, particularly from public authorities.¹⁷²

In Kosovo's legal framework, editorial independence is not explicitly stated in the Independent Media Commission Law (IMC Law) in the same direct and legally binding terms as in the EMFA. However, editorial independence is constitutionally supported in Kosovo in the absence of a direct legal guarantee at the statutory level. Despite the constitutional base, this suggests a divergence between the European media framework and the IMC Law.

4.2.2.3. Media Pluralism and Ownership Transparency

Media Pluralism and Ownership Transparency as key normative values are explicitly embedded in the European Media Freedom Act (EMFA). In Kosovo, the Independent Media Commission Law (IMC Law) includes a general principle regarding media pluralism in which it accords the IMC the duty and responsibility to support the freedom and pluralism of audiovisual media services.¹⁷³

¹⁶⁹ Stabilisation and Association Agreement (n 140).

¹⁷⁰ Constitution of the Republic of Kosovo (n 57) arts 40 and 42.

¹⁷¹ *Ibid* art 141.

¹⁷² Regulation (EU) 2024/1083 (n 33) art 4.

¹⁷³ Law No 04/L-044 (n 69) art 5(3).

With regard to ownership transparency, the Law on the Independent Media Commission (IMC Law) does not explicitly impose disclosure obligations concerning the ownership structures of audiovisual media service providers. The law obliges licensed media service providers to submit periodic reports to the IMC, including information on compliance with licensing conditions and financial performance.¹⁷⁴ While these obligations suggest a degree of institutional oversight, the law does not clearly define the scope of information that may be required beyond these categories.

This regulatory gap has become particularly visible in the case involving Klan Kosova (a private cable television channel) and the Ministry of Industry, Entrepreneurship and Trade of Kosovo, in which the suspension of the broadcaster's business certificate was linked to alleged irregularities in the ownership registration data, as opposed to the principles outlined in the Constitution of the Republic of Kosovo.¹⁷⁵ Although the case did not arise from the IMC or any media-related regulatory body, it illustrates how concerns related to media ownership transparency are increasingly surfacing in judicial proceedings, albeit through institutions primarily tasked with commercial registration rather than media governance.

In October 2023, the Independent Media Commission (IMC) of Kosovo released a draft Regulation on the Concentration of Ownership for public consultation. The draft aimed to promote media pluralism, ownership transparency, and editorial independence, while safeguarding freedom of expression and access to objective information. Instead of passing the draft regulation, the Kosovo parliament in July 2024 adopted a revised Law on the Independent Media Commission which included a specific article establishing the legal basis for regulating ownership concentration.¹⁷⁶ The law as explained in subchapter 3 of Chapter III, was challenged by opposition parties and ruled unconstitutional by the Constitutional Court in April 2025.

¹⁷⁴ *Ibid* art 28(1).

¹⁷⁵ Commercial Court of Kosovo, Klan Kosova v Ministry of Industry, Entrepreneurship and Trade, judgment DH 1 KA 315/23 (2023)

https://komerciale.gjyqesori-rks.org/wp-content/uploads/verdicts/DH_1_KA_315_23_SQ.pdf

¹⁷⁶ European Stability Initiative, *Absence of Regulation on Media Ownership Concentration* (Media Ownership Monitor – Kosovo) https://kosovo.mom-gmr.org/en/findings/ownership-concentration/?utm_source=chatgpt.com

4.3. Comparison in Content Standards: Sponsorship, Product Placement, Protection of Minors, and Right of Reply

Both the Audiovisual Media Services Directive (AVMSD) and the Independent Media Commission Law (IMC) regulate sponsorship in nearly identical rules, showing Kosovo's effort to align its media legislation with the EU *acquis*. The key similarities lay on several grounds. In editorial independence, both laws prohibit any influence over content or scheduling that would compromise the editorial responsibility of the media provider. Both laws prohibit sponsored content from directly encouraging the purchase or rental of goods or services through promotional references, and require transparency in clearly disclosing to viewers the sponsor's name, logo, or symbol, and showing at the beginning, during, or end. Similarities can be evidenced in the restrictions in the medical sector, where both permit sponsorship from medical product companies, but prohibit promotion of prescription-only medicines, ban on sponsoring news, and restrictions for children and religious content.¹⁷⁷ Minor distinctions between the AVMSD and the IMC Law, in regulating sponsorship, is that the latter explicitly extends the same rules *mutatis mutandis* to radio services, while the AVMSD applies to audiovisual media only.¹⁷⁸

While Kosovo's IMC Law draws significantly from the AVMSD, distinctions emerge in their regulatory approaches. The two frameworks separate in their regulatory presumptions concerning product placement. The AVMSD adopts a permissible stance, allowing product placement across most programme types except in news, current affairs, children's programming and religious programmes, while in contrast, the IMC Law established a general prohibition on product placement, permitting it only under narrowly defined exceptions such as in cinematography works, serials, sports, and entertainment programmes.¹⁷⁹ Both instruments prohibit product placement and sponsorship for certain sensitive product categories, such as tobacco and prescription-only medicinal products.¹⁸⁰

¹⁷⁷ Directive 2018/1808 (n 14) art 10; Law No 04/L-044 (n 69) art 31.

¹⁷⁸ Directive 2010/13/EU (n 6) recital 23; Law No 04/L-044 (n 69) art 31(6).

¹⁷⁹ Directive 2018/1808 (n 14) art 11(2); Law No 04/L-044 (n 69) art 32(1-2).

¹⁸⁰ Directive 2018/1808 (n 14) art 11(5); Law No 04/L-044 (n 69) art 32(4).

Both the AVMSD and the IMC Law seek to protect minors from content that may impair their physical, mental, or moral development. The legal frameworks adopt a protection model whereby content that may impair minors' development is not absolutely prohibited, but may be permitted under controlled conditions. These conditions typically involve technical or scheduling measures that aim to prevent minors from seeing or hearing such content. Although, it should be mentioned that while the AVMSD provides a more structured and nuanced framework, including guidelines on risk assessment and regulatory flexibility, the IMC Law remains broader and more rigid, lacking gradation in the treatment of different types of harmful content.¹⁸¹

In terms of the Right of Reply/Reaction, the AVMSD provides a detailed, rights-based, and enforceable right of reply, and simultaneously emphasizing accessibility, transparency, and judicial oversight. In contrast, the IMC Law refers to the right more briefly and generically, delegating details to a code of ethics, which may weaken its enforceability and leave individuals with less procedural clarity and protection.¹⁸²

¹⁸¹ Directive 2018/1808 (n 14) art 6a; Law No 04/L-044 (n 69) art 33.

¹⁸² Directive 2010/13/EU (n 6) art 28; Law No 04/L-044 (n 69) art 35.

CONCLUSION

This thesis has examined the interplay between European Union (EU) standards, namely the Audiovisual Media Services Directive (AVMSD) and the European Media Freedom Act (EMFA), and Kosovo's domestic media law framework, with a particular focus on the Independent Media Commission (IMC) Law. The comparative analysis aimed to identify both the convergences and divergences between EU-level regulatory models and Kosovo's national legal and institutional context. Through a multi-dimensional inquiry encompassing institutional independence, regulatory scope, oversight mechanism, structural features, normative commitments, and substantive content standards, this study has demonstrated the degree to which Kosovo's media regulation aligns with or departs from the evolving EU *acquis* in the audiovisual and media freedom domains.

From an institutional standpoint, the IMC in Kosovo exhibits a formal degree of independence, as stipulated in its founding legal instruments. However, this formal independence does not fully translate into functional autonomy, particularly when assessed against the criteria and safeguards established under the AVMSD and further strengthened in the EMFA. The process for appointing IMC members, as well as the framework for budgetary allocations, remain susceptible to political influence and lacks the institutional guarantees required to secure genuine operational independence. While the AVMSD emphasizes the need for independent regulatory authorities free from external pressures, and the EMFA codifies these principles through binding obligations on Member States, Kosovo's current system reflects only a partial and structurally fragile implementation of these standards.

Regarding regulatory scope, Kosovo's IMC Law continues to exhibit a traditionalist orientation by focusing predominantly on linear broadcasting services. In contrast, the AVMSD, especially following its 2018 revision, has broadened its scope to include on-demand audiovisual media

services and video-sharing platforms, thereby responding to the convergence of media technologies and changing patterns of media consumption. The EMFA further builds upon this expanded scope by addressing new challenges such as digital accountability, algorithmic transparency, and cross-border media plurality. Kosovo's framework has not yet fully internalized these expanded regulatory horizons, leaving online and most on-demand media services underregulated, thereby creating normative and practical gaps in user protection, content moderation, and editorial responsibility.

The oversight mechanisms in Kosovo's media governance model are relatively modest but nonetheless structured. The IMC functions as the first-instance decision making body, with an appeals board providing a secondary review channel, followed by access to the regular judiciary. This multilayered mechanism reflects the requirements set out in European frameworks concerning the establishment and functioning of a national regulatory authority. Additionally, Kosovo has the right to observe forums such as the European Regulators Group for Audiovisual Media Services (ERGA), now succeeded by the European Board for Media Services. While this status allows for limited engagement and some alignment with EU regulatory practices, full participation remains unattainable due to Kosovo's non-membership in the European Union.

Structurally, both the AVMSD and the IMC Law are legislative instruments grounded in hierarchical legal systems. The AVMSD, as a directive, permits flexibility in national implementation while establishing uniform minimum standards across the EU. Kosovo's IMC Law, is a stand-alone national statute. In terms of judicial review, both systems offer avenues for legal redress. The EU legal order provides for supranational judicial supervision by the Court of Justice of the European Union (CJEU), an instrument Kosovo does not have access to due to its non-membership in the EU, but nonetheless redress is possible through its Constitutional Court.

Normatively, the AVMSD and the EMFA are deeply rooted in the protection and promotion of fundamental rights, particularly freedom of expression and media pluralism, as enshrined in the Charter of Fundamental Rights of the European Union. The IMC Law also echoes these principles but tends to operationalize them in a more declaratory than substantive manner. Editorial independence as an example, while formally protected, enforcement mechanisms

remain underdeveloped in Kosovo's legal framework. Media pluralism and ownership transparency, both essential to safeguarding democratic discourse, are more robustly regulated under the EMFA, which introduced obligations for transparency in media ownership structures and mechanisms to prevent political interference. However, given the decade-long gap between the enactment of the IMC Law and the adoption of the EMFA, Kosovo has not yet taken concrete steps to fully reflect the newer requirements introduced by the EMFA. It therefore remains to be seen how, and within what timeframe, Kosovo will move toward aligning its media framework with the standards and mechanisms set out in the EMFA.

In relation to content standards, the comparative analysis reveals both alignment and divergence. On sponsorship and product placement, Kosovo's IMC Law adopts general provisions that reflect AVMSD principles. The protection of minors, a central concern in both the AVMSD and the EMFA, is addressed in Kosovo's media framework, yet enforcement mechanisms and technological safeguards remain underdeveloped. The right of reply, a key remedy to balance media power and individual rights, is recognized in both systems. However, the AVMSD provides a more detailed procedural framework, ensuring timely and effective recourse, whereas Kosovo's implementation tends to be more limited in scope and enforcement.

While Kosovo's media regulatory framework demonstrates partial convergence with EU standards, the full realization of the objectives enshrined in the AVMSD and EMFA requires substantive legal reform, institutional strengthening, and greater integration with EU-level regulatory practices. Strengthening the IMC's independence, expanding the regulatory scope, enhancing judicial review mechanisms, and adopting more rigorous content standards will be essential steps toward achieving a media environment that is both pluralistic and resilient, and imperative not only for EU compliance but also for democratic consolidation in Kosovo.

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