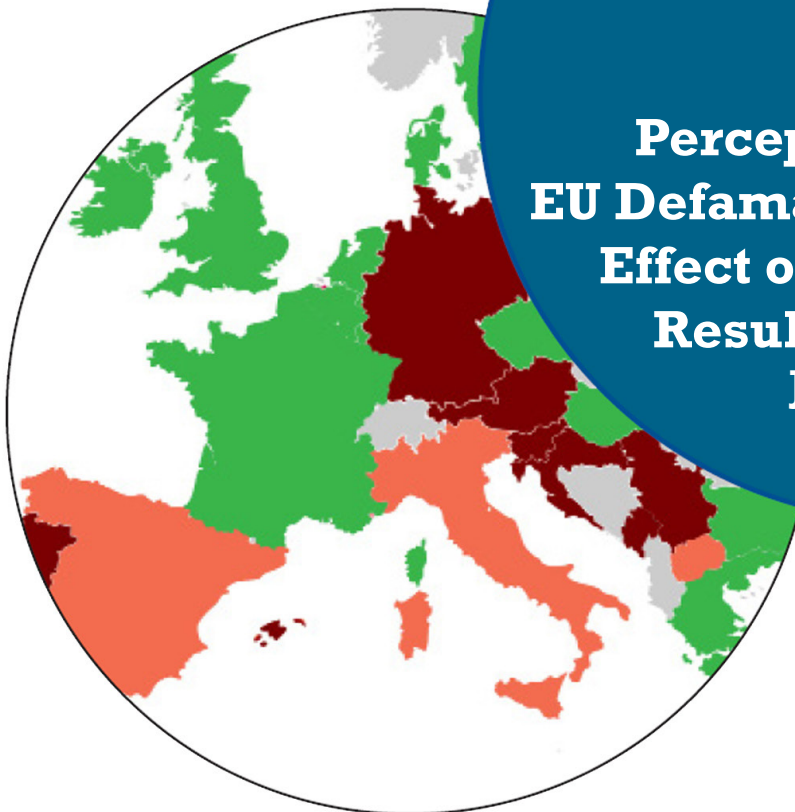




**International  
Press  
Institute**

# OUT OF BALANCE

**Perceptions Survey on  
EU Defamation Laws and their  
Effect on Press Freedom:  
Results and Analysis  
January 2015**



# Out of Balance

## Perceptions Survey on EU Defamation Laws and their Effect on Press Freedom: Results and Analysis

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### **IPI: Protecting Press Freedom for More than 60 Years**

The International Press Institute (IPI), the world's oldest global press freedom organisation, is a worldwide network of editors, media executives and leading journalists dedicated to furthering and safeguarding press freedom, promoting the free flow of news and information, and improving the practices of journalism. Based in Vienna, IPI is a politically neutral organisation with members in more than 120 countries and it holds consultative status with the United Nations and the Council of Europe.

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## About this report

This report summarises the findings of a pioneering “**perceptions survey**”, conducted by the International Press Institute (IPI) in the summer of 2014 to gauge the effect of the European Union’s defamation laws on journalists, editors and media executives.

This report complements IPI’s report on defamation law and practice in the EU, which presents the findings of extensive research conducted into the laws of the 28 EU member states plus five out of six official EU candidate countries.

Both documents form part of a broader IPI project on defamation in Europe, supported with co-funding from the European Commission under its European Centre for Press and Media Freedom pilot programme and from the Open Society Foundation. IPI’s goal is to raise awareness among EU policymakers and the general public on defamation laws and their effect on press freedom, as well as to inform journalists about their rights under international standards on free expression and thereby empower them to continue delivering news in the public interest.

The launch of the this report, together with the provisional overview, serves as the kick-off for IPI’s broader advocacy, training and capacity-building work in this field, the goal of which is to improve EU law and practice related to defamation as well as to inform journalists about their rights under international principles and thereby empower them to continue delivering news in the public interest.



# BACKGROUND

In May 2014, the International Press Institute (IPI) launched an online “perceptions survey” on defamation laws in the EU and the five EU candidate countries (as of 1 May 2014). The survey sought to understand the impact of defamation laws on press freedom from the point of view of those who are in the best position to judge: journalists, editors and media executives.

The survey contained 46 questions, most of them multiple choice, across six sections focusing on:

- The respondent’s background as a journalist
- The respondent’s general awareness of criminal and civil law on defamation, insult and blasphemy
- The respondent’s specific knowledge of criminal law and civil law
- The respondent’s personal experience with such laws
- The legal resources available to the respondent

For the purposes of the study, respondents were asked to pick the one EU or candidate country most relevant to their work and answer the survey questions based on that country. Respondents were offered opportunities to explain their answers or provide further information they deemed relevant in comment boxes.

Available in four different languages (English, German, Italian, and Spanish), the survey was sent to IPI members, institutional contacts, and national journalism organisations around the EU. IPI would like to thank in particular the European Federation of Journalists (EFJ) for forwarding the survey to their 60 affiliate organisations.

The survey text may be accessed by following any of the links below:

English: [www.surveymonkey.com/s/MXXBWMJ](http://www.surveymonkey.com/s/MXXBWMJ)

Spanish: <https://es.surveymonkey.com/s/RL3JKXY>

Italian: [www.surveymonkey.com/s/RFSCCLZF](http://www.surveymonkey.com/s/RFSCCLZF)

German: <https://de.surveymonkey.com/s/R7M6W3R>



# RESULTS AND ANALYSIS

## The big picture

Good defamation legislation strikes the proper balance between, on the one hand, the need to defend and promote free expression and the media’s ability to freely report on matters of public interest and, on the other, the right to protect one’s justified reputation. Both in terms of legal framing and application, great care must be taken to ensure that defamation laws do not produce a “chilling effect” that could foster self-censorship among journalists looking to avoid potential legal consequences.

Our survey results provide, at the very least, justification for concern about a chilling effect resulting from abuse of the EU’s defamation laws:

- *Over 80 percent* of respondents said that defamation laws have a medium or high impact on the press in their country;
- *85 percent* of respondents said they were aware of civil or criminal defamation proceedings brought against journalists in their country, and a further *80 percent* stated they believed that such proceedings were commonly brought for an improper purpose, such as chilling free expression or interfering with journalism;
- *Fewer than half* of respondents said that their country’s judicial system dealt with defamation proceedings fairly; and
- Perhaps most troublingly, *one-third* of respondents said that defamation cases brought against themselves or against colleagues had caused them to change their behaviour as a journalist; in comments on this question, a number of respondents spoke of having become more cautious, particularly in investigative reporting.

Footprints of a chilling effect

In addition, the survey results suggest a strong need for training to inform journalists about the state of defamation laws in their country in order to empower them to defend their rights when threatened with defamation proceedings.

- *Just half* of journalists surveyed said their level of knowledge of defamation and insult laws was somewhat high or high — and over two-thirds said the level of their colleagues’ knowledge of such laws was low or medium.
- *Two-thirds* reported that their employers do not provide them with training or other resources to understand legal provisions that affect them as journalists.
- While just under half said they were aware of alternative resources for understanding the law, *80 percent* said their colleagues had only a low or medium awareness.
- A slight majority of journalists stated that their employer would provide them with legal representation if they were targeted in defamation proceedings and *80 percent* indicated that they knew to whom they would turn for legal representation. Although this latter statistic is very positive, *75 percent* of respondents said that seeking outside legal counsel would impose a significant financial burden that would interfere with their ability to work.

Mandate for training and empowerment

## In-depth results

A mix of 102 *reporters, editors and publishers* filled out the survey, 83 percent of whom are currently working as media professionals. The respondents also came from a *diverse background in terms of type of media outlet*: 60 percent of respondents work in print, 21 percent in broadcast, 53 percent in online media, and four percent in other types, such as social media. One-third of respondents have over *twenty years of journalism experience*.

Altogether, *64 percent* of respondents so far reported that they or their colleagues had been targeted in criminal or civil proceedings.

- One respondent from **Malta** stated, *“I have faced criminal proceedings on a number of occasions. For complainants, it has become the primary route in fact; also, complainants are able to launch civil action concurrently.”*
- Another respondent shared a personal experience having been sued in civil court for thousands of euros for defamation by the **Turkish** Prime Minister. But, the respondent added, *“his claim has been refused as my article has been found not in violation of the freedom of expression”*.
- Writing about the situation in **Hungary**, a respondent told us that filing defamation claims with the police was a *“standard practice of businessmen [and] politicians ... even if it is unfounded, the police starts an investigation which is at minimum a nuisance for journalists”*.

When asked what level of impact the laws have on their personal ability to practice journalism, *73 percent indicated a medium or high impact*. An even higher percentage (*80 percent*) said that the laws had a medium or high impact on the practice of journalism in general.

- Writing about the **UK**, one respondent shared: *“Publishers in particular are vulnerable to libel proceedings, even the threat of legal action is costly in terms of legal fees. This creates enormous reluctance on their part to sanction investigative journalism of any kind. It is a serious threat to the role of the media in curbing corruption.”*

Of these types of proceedings, 78 percent of respondents said that they believed the proceedings were brought for an improper purpose, such as chilling free expression or interfering with journalism.

- *“People prefer to duck down [to] not lose their jobs or they start self-censoring,”* said another respondent, writing about **Turkey**. *“Dozens of journalists [have been] fired in the last couple of years because they criticise the government. Media ownership in Turkey is changing hands and the new owners, who are also big or growing business tycoons that participate to the state tenders, don’t want to cover any story that can damage their relations with the government.”*

*Fewer than half* of respondents so far said that their country’s judicial system dealt with defamation proceedings fairly. Indeed, several respondents pointed to low judicial awareness of principles of free expression and problems implementing case law of the European Court of Human Rights (ECtHR).

- A **Slovenian** respondent said that the main problem related to defamation there was inconsistent court rulings. *“In proceedings that I participated in [,] decisions of different courts were very different and there appears to be no consistency in dealing with similar cases. Awareness of free expression rights among judges and prosecutors is rather low.”*

➤ A respondent from **Lithuania** expressed similar concerns: “There are hundreds of cases in Lithuania where §154 S [libel] and §155 S [insult] of criminal code are used ... Courts are blamed by media experts for not being familiar with a practice of [the] ECHR.”

➤ A **Turkish** respondent added: “While replying [to the] questions about defamation, blasphemy, etc. and legal procedures I was thinking the problem in Turkey is not always the laws, it is the implementation, lack of implementation and permissive implementation and favoritism [sic] while implementing the law.”

Worryingly, a third of journalists surveyed said that libel cases against them or their colleagues had caused them to change their behaviour as journalists.

➤ A **Maltese** journalist said that Maltese courts’ “narrow interpretation [of] our strict libel laws” leads Maltese journalists to “err on the side of caution which hampers quality journalism - especially of an investigative nature. It also gives public figures more ability to gag us despite our best efforts. To boot, proceedings are lengthy [and] are extremely time consuming - which proves to be a deterrent in itself.”

➤ A respondent from **Hungary** noted: “Some journalists especially in investigative journalism have to be very much aware of the dangers and this changes the style of their reporting (less edgy, much more careful).”

Here is what others had to say about how their behaviour or that of their colleagues has changed as a result of defamation cases:

➤ “Something like self-censorship, investigative journalism became ‘dangerous’ for the journalists and media outlets” (**Slovakia**)

➤ “Sometimes journalists have become more cautious” (**Finland**)

➤ “More cautious” (**UK**)

➤ A respondent from **Belgium** observed simply: “You may feel fully independent: you will learn the lesson...”

However, 52 percent did answer that their employer provided them with legal representation.

If a journalist was involved in legal proceedings, 73 percent responded that it would impose a significant financial burden that could interfere with their work.

IPI also found it troubling that 70 percent of survey respondents said that their employer does not provide training in regards to civil and criminal defamation proceedings. Indeed, several respondents commented on the importance for journalists of being aware of the law and of reporting guidelines that can help avoid liability.

“My journalism work is small at this time, so I feel these issues were not on my priority. I recommend that all media practitioners must know these issues by heart.” (**Finland**)

“[I have been confronted] [n]umerous times by people who believe that threatening libel action might prevent me publishing true stories about them. I have never actually been taken to court, because I take care to make sure my reporting is correct.” (**UK**)

“In the quality of a journalist, I am aware that I must be careful in my articles not to insult or libel against anybody. My background as a journalist is even stronger as far as my knowledge of laws is concerned, as I have studied Law [...]. At first [I] studied Economy, which has helped me to possess a broad knowledge. I believe and I am convinced that ... journalis[m] is based on evidence and facts, thus there is no reason to insult or defame on anything.” (**Macedonia**)

## Outlook

These findings suggest at a minimum that criminal and civil defamation laws need to be revised in order to reverse the effects they are having on journalism in the EU. Journalists must be able to report and criticise freely without fearing that their reports could cause them to be fined or arrested.

The survey results suggest:

- An *urgent need to reform EU defamation law* to ensure that cases are not brought for improper purposes, such as to chill free expression or investigative journalism
- A *need for stronger judicial awareness of principles of free expression*, including the case law of the ECtHR; journalists must be able to trust that their rights will be upheld in court
- A *need to educate and train journalists* on their rights and editorial standards that can help them to continue reporting in the public interest while also avoiding liability

IPI aims to address these points through its ongoing advocacy work on the issue of criminal defamation as well as its training and capacity-building initiatives, which included a series of seminars for journalists and lawyers in four EU and candidate countries between Oct. 2014 and Jan. 2015.