



Transparency of State Advertising in the EMFA Proposal

Lucie Rohrbacherová

February 2023

This policy paper takes a closer look at the provisions on state advertising under the proposal for the [European Media Freedom Act](#) (EMFA) and their shortcomings to make recommendations on this topic vital to media pluralism, media freedom, and democracy.

The recommendations we make, expanded on below, are the following:

1. Remove the **'1 million inhabitants' threshold** for state advertising transparency;
2. Establish an **EU-wide database** of state advertising provided to media service providers;
3. Determine **regular mandatory reporting obligations** applicable to state advertising;
4. Ensure **public authorities publicly disclose information** regarding exchange of goods or services other than state advertising with media service providers;
5. **Shorten the frequency** with which public authorities must publish data on resources allocated to media service providers to at least once in three months;
6. Include the **obligation for public authorities to make data available** in an electronic and user friendly manner;
7. Include a list of **concrete procedures and safeguards** for awarding media service providers with state advertising;
8. Introduce **monitoring** of state advertising and state aid allocation; and
9. Include **emergency messages** in the definition of state advertising.

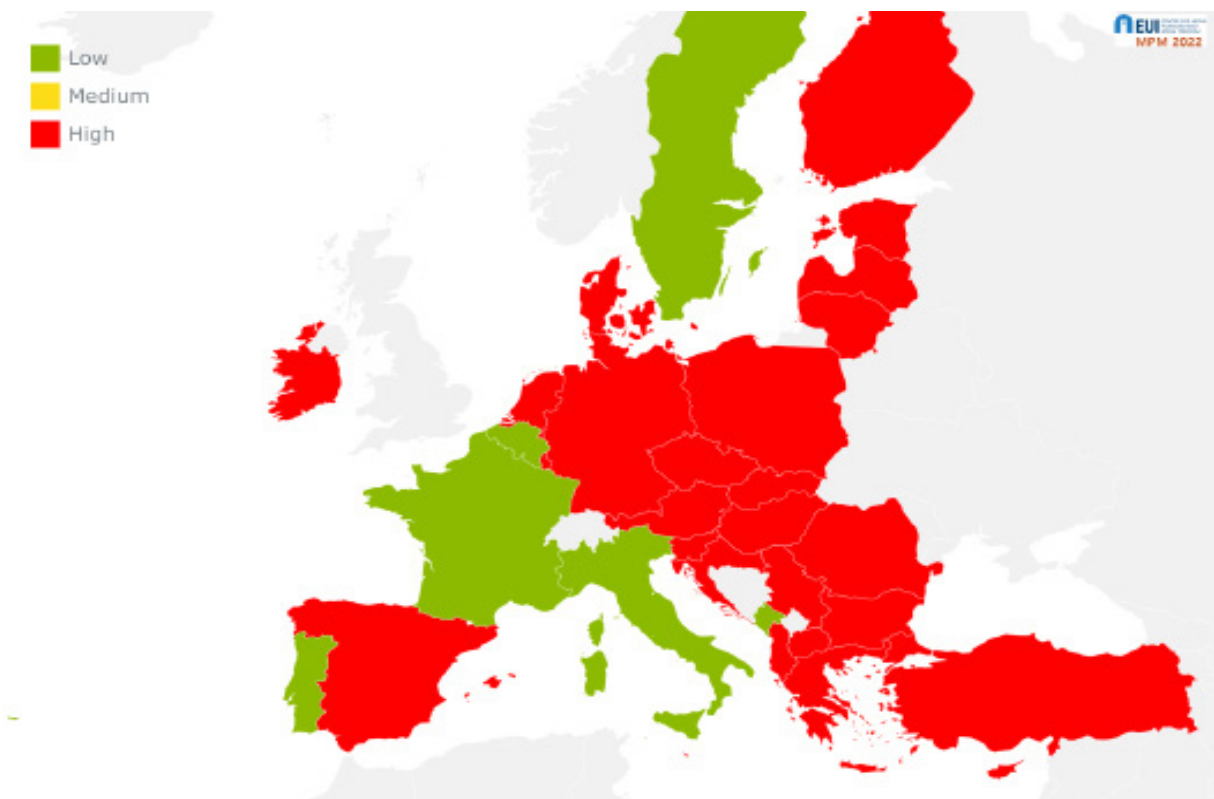
Issues with the state advertising of media in EU Member States

In recent years, **state advertising** has been a popular way of ensuring support for media service providers which are dealing with the outflow of advertising revenue to digital platforms and, more recently, the consequences of the COVID-19 pandemic, as [reported](#) by UNESCO. With the help of public expenditure, dwindling news rooms can continue to put out impartial content and inform the society about pressing issues, thus keeping the flame of democracy alive. However, instances of editorial capture driven by the arbitrary and opaque allocation of state advertising are wide-spread across Europe.

State resources are often used in a covert way to fund media friendly to governments. Not only civil society, but

also citizens are concerned about this. According to the [European Media Freedom Act Impact Assessment](#), 687 out of 917 respondents (75%), particularly EU citizens (639 out of 775), agreed that the level of transparency of state advertising in their Member State is insufficient. 486 out of 917 of total respondents (52%) spoke out in favour of reporting obligations of Member States on the allocation of state advertising.

Many countries in the EU do not have legislation that mandates transparent rules on the allocation of state advertising to media. The [2022 edition of the Media Pluralism Monitor](#) (MPM22) found that in **22 out of 27 EU countries** no legislation with impartial rules on the transparency of state advertising distribution to media exists. **Inadequate transparency** in the distribution of such resources was found in **24 EU Member States**.



Media Pluralism Monitor 2022: The map indicates whether a country has a legislation that provides fair and transparent rules on the distribution of state advertising to media outlets. (red: NO, green: YES)

A concrete example of what can go wrong when loopholes are left in the legislation governing state advertising of media can be found in Greece. In 2020, as reported by the International Press Institute, the Greek government distributed 20 million Euro to the media in order for them to publish messages promoting health in the wake of the COVID-19 pandemic. The distribution of these funds was outsourced to a private company, which allowed the State to evade the obligation to make public all carried out transactions. After protests against this by the media and the opposition, the government published a list of funded media and, later, a list of allocated sums. Not only did the list include non-existent websites, but media critical of the government (such as the investigative newspaper Documento) obtained less than 1 percent of the total amount of funds or nothing at all. Such media received less state advertising revenue even though they often have a larger reader base and more newsroom staff than the media bringing a more positive view of the government.

Additionally, the MPM22 reported that many countries have issues with state advertising in the media. For example, Ireland's legislation continues to lack clear rules on distribution of state advertising, which became

even more apparent during the COVID-19 pandemic. In Poland, the press media that received the most state advertising, according to incomplete data and not fully accessible data, were right-leaning Sieci (40 percent of income consisted of state advertising), Gazeta Polska (42 percent) and Do Rzeczy (21 percent), which are all positive in their reporting on the government. Meanwhile, media with a more critical stance on the government including Gazeta Wyborcza, Tok radio and Tygodnik Powszechny did not receive advertising revenues from state sources. When it comes to Hungary, private news media continue to obtain most of their advertising income from the state. These state-funded outlets support and share the government's views. According to the OSCE report on the Hungarian parliamentary elections and referendum in 2022, the pervasive bias in the news combined with extensive government advertising campaigns provided the ruling party with an undue advantage. Additionally, as detailed in the Study on media plurality and diversity online, Romania has transparency rules that apply to state advertising. However, State-owned enterprises are left out of their scope. As a result, the advertising allocation of these companies can be misused, even utilised to indirectly finance campaigns.

Transparency of state advertising - vital for democracy

As is evident, transparency is the base on which all public scrutiny stands. The citizens must be given the opportunity to access information on state spending. This is crucial for democratic societies. **Mandatory transparency** of the state enables civil society and media to be watchdogs of the government and its operations. In the specific case of media, transparency allows for the assessment of media service providers funded by the state and of any potential relationships between public authorities and those providers.

Transparency of state advertising of media is one of the four specific objectives of the proposed European Media Freedom Act (EMFA). The suggested text aims to ensure *“transparent and fair allocation of economic resources in the internal media market by enhancing transparency and fairness in audience measurement and allocation of state advertising.”* As state advertising is one of the vital points of the proposal, **strong and transparent provisions** should be adopted to ensure the proposal is successful in **safeguarding media pluralism and media freedom**.

State advertising provisions in the EMFA as proposed

Recital 10 of the proposal lays out that state advertising should be understood in broad terms while **excluding emergency messages** by public authorities which are necessary, for example, in cases of natural or sanitary disasters, accidents or other sudden incidents that can cause harm to individuals.

In its Recital 49, the EMFA proposal states that to mitigate the risk of state advertising functioning as covert subsidies and of undue political influence on the media, it is necessary to establish common requirements of transparency, objectivity, proportionality and non-discrimination in the allocation of state advertising and of state resources to media service providers for the purpose of purchasing goods or services from them other than state advertising. However, **public subsidies are not included** alongside state advertising in the proposal's binding requirements.

Under Article 24 (1), **public funds** or any other consideration or advantage granted by public authorities to media service providers **for the purpose of advertising** would have to be awarded through **open, proportionate and non-discriminatory procedures and according to transparent, objective, proportionate and non-discriminatory criteria**. This also **applies to the purchases of goods or services from media service providers other than state advertising** (Art. 24. (4)).

Under Article 24 (2) of the proposal, the Commission puts in place a requirement for public authorities of **territorial entities of over 1 million inhabitants** to make **publicly available accurate, comprehensive, intelligible, detailed and yearly information** on their advertising expenditure allocated to media service providers, including legal names and sums paid. The '1 million inhabitants' exemption is also cemented in the very definition of state advertising in Article 2 (15), and in Recital 10.

As mentioned above, public funds granted by public authorities to media service providers for the purpose of purchasing goods or services other than state advertising would have to be awarded through open procedures and according to clear and proportionate criteria, according to Article 24 (4) of the proposal. However, **the obligation for public authorities to make publicly available information on the state resources paid out to media service providers does not apply to the purchase of goods and services other than state advertising**.

We welcome the proposal of the EMFA as a step in the right direction. However, for state advertising to become fully transparent and impartial, more needs to be done. The proposal leaves numerous issues unaddressed, which we will discuss below.

Our suggestions on state advertising allocation

- **Remove exemption from transparency measures for emergency messages:** Critical situations, like a health or natural disaster, require a swift response. However, this should not be an excuse to avoid transparency. As showcased above, an international health crisis can serve as a convenient reason for

covert state advertising. The definition of state advertising must therefore include emergency messages.

- **Ensure concrete safeguards:** It is commendable that the proposal obliges public authorities to award public funds for advertising according to transparent, objective, proportionate and non-discriminatory criteria and via open and transparent procedures. To achieve this objective, the proposal should **list specific procedures and safeguards to be implemented**. Without a concise list of obligatory practices, the proposal will function as a recommendation rather than a mandatory set of binding rules. The criteria and procedures must apply to all advertising paid for by the state, notwithstanding its nature or purpose.
- **Ensure regular reporting: Regular reporting on the involved parties and values exchanged** should be carried out to ensure maximum transparency. The European Regulators Group for Audiovisual Media Services (ERGA) justly [supports](#) an obligation to report on allocation of state advertising for Member States, as long as it is proportionate and not overly burdensome.
- **Remove the ‘territorial entities of more than 1 million inhabitants’ exemption:** The ‘1 million inhabitants’ exemption allowing public authorities to not provide transparent data on state advertising expenditure would **undermine transparency efforts**. In many EU Member States, only the capital city has 1 million or more inhabitants. Some capitals, like Luxembourg, are even less populated. This threshold would therefore **exclude a significant portion of the EU territory** on which public authorities or other state-controlled entities would not have to make public the information on their advertising expenditure. What is more, this exception for small territories would enable political actors looking to influence media service providers to get around the proposed obligation by simply **rerouting payments for advertising through local authorities** governing territories with less than 1 million inhabitants. We therefore echo the [call](#) of 19 civil society organisations to remove this limit.

We also agree with the several Member States which, according to the Progress report of the Council of the

EU (Council), rightly [call for](#) the **threshold of 1 million inhabitants to be either removed or lowered**, for the sake of increased transparency. This met with resistance from certain Member States who are worried about the administrative burden possibly put on smaller territorial entities. However, **local governments are already required to keep records** of funds spent. It is arguable if simply making these maintained records available to the public would create any significant additional burden.

This provision is not only critical for democracy, but also non-factual. There is no explanation on why the threshold was set at this specific number, and no information about supporting evidence. Even if the number of 1 million inhabitants was justified by data, it would still be inappropriately set to achieve the goal of preventing covert state advertising. Therefore, the threshold must be removed or lowered. Alternatively **different more adequate limitations**, such as the size of the country or the amount of money spent, must be taken into account.

- **Include all exchanges of resources in transparency requirements:** As mentioned above, public funds granted by public authorities to media service providers for the purpose of purchasing goods or services other than state advertising would have to be awarded through open procedures and according to clear and proportionate criteria, according to Article 24 (4) of the proposal. However, **the obligation for public authorities to make publicly available information** on the funds paid out to media service providers **does not apply to goods and services other than advertising**. This would lead to non-transparent transactions and therefore the obligation to publicly disclose information on the expenditure of public authorities paid to media service providers **must contain any exchange of resources**, including purchasing of goods or services, other than state advertising.
- **Establish a database for state advertising expenditure:** To ensure that transparency of state advertising allocated to media service providers is as high as possible, the EU should set up an **EU-wide database for state advertising expenditure**. This would allow civil society, media and watchdog

organisations to understand more complicated patterns, especially if they occur in several Member States. All information which is mandated to be published should be included in this database.

- **Shorten time frame of publication of state advertising data:** Article 24 (2) also specifies that public authorities must publish information related to funds allocated to media service providers **yearly**. This is an inordinate amount of time which would not allow for appropriate civil control. We urge the legislators to **shorten this time** frame considerably, so that state advertising data is published at least once in three months.
- **Mandate the establishment of an online interface:** The obligation to make publicly available data on state advertising granted to media service providers **does not include the format** in which this information is to be published. We believe a requirement of **electronic availability** must be enshrined in the Act, so as to ensure easy access and full transparency.
- **Introduce monitoring of state advertising and state aid allocation:** Overall, the introduction of rules regarding state advertising in the media is an important step forward. However, the effectiveness of the proposed provisions depends on the regulation and practices on the allotment of public subsidies - a factor outside of the provision's scope. These two revenue streams for media service providers are interrelated. This is apparent to the Commission as it closely links state advertising and public subsidies in Recital 49 of the proposed EMFA.

The absence of clear rules on the transparency of state aid leaves **a major loophole** because public actors can exert undue political influence on media by using covert subsidies. Restricting non-transparent state advertising could result in governments relying more heavily on public subsidies. This could pose a problem as state subsidy schemes have in the past been used to **control and reward media** service providers who align their reporting with the government's interests, according to the [expert report on State financial support for print media: Council of Europe Standards and European practices](#). In its [Recommendations on promoting a favourable environment for quality journalism in the digital age](#), the Council of Europe encourages Member States to ensure that subsidies and any other type of financial support are administered on the basis of objective and impartial criteria.

Hence, in the aftermath of the adoption of European rules on the **allocation of state advertising, state subsidies to media services should be closely monitored**. Should this monitoring highlight issues with national allotment of state aid in the media sector, an EU intervention would be proportionate and necessary.

Proposed amendments

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(...)

'State advertising' means the placement, publication or dissemination, in any media service, of a promotional or self-promotional message, normally in return for payment or for any other consideration, by, for or on behalf of any national or regional public authority, such as national, federal or regional governments, regulatory authorities or bodies as well as state-owned enterprises or other state-controlled entities at the national or regional level, or any local government of a territorial entity of more than 1 million inhabitants;

and corresponding recital:

(10) State advertising should be understood broadly as covering promotional or self-promotional activities undertaken by, for or on behalf of a wide range of public authorities or entities, including governments, regulatory authorities or bodies as well as state-owned enterprises or other state-controlled entities in different sectors, at national or regional level, or local governments of territorial entities of more than 1 million inhabitants. However, the definition of state advertising should not include emergency messages by public authorities which are necessary, for example, in cases of natural or sanitary disasters, accidents or other sudden incidents that can cause harm to individuals.

Article 12

Tasks of the Board

Without prejudice to the powers granted to the Commission by the Treaties, the Board shall promote the effective and consistent application of this Regulation and of national rules implementing Directive 2010/13/EU throughout the Union. The Board shall:

(...)

(n) draw up and make available to national regulatory authorities and bodies established according to Directive 2010/13/EU a template for reporting on the allocation of state resources according to Article 24(2a) of this Regulation.

(o) establish and operate a European Database of State Advertising allocated to media service providers.

Article 24

Allocation of state advertising

1. Public funds or any other consideration or advantage granted by public authorities to media service providers for the purposes of advertising shall be awarded according to transparent, objective, proportionate and non-discriminatory criteria and through open, proportionate and non-discriminatory procedures. This Article shall not affect public procurement rules.

1a. Prior to granting resources to media service providers for the purposes of advertising, public authorities shall ensure that the specific criteria employed to determine the allocation of state advertising according to paragraph 1 are made available to the public in a user-friendly manner over an online interface.

2. Public authorities, including national, federal or regional governments, regulatory authorities or bodies, as well as state-owned enterprises or other state-controlled entities at the national or regional level, or local governments of territorial entities ~~of more than 1 million inhabitants~~, shall make publicly available **through electronic and user-friendly means** accurate, comprehensive, intelligible, detailed and ~~yearly~~ information about their advertising expenditure allocated to media service providers **on a quarterly basis**, which shall include at least the following details:

(a) the legal names of media service providers from which advertising services were purchased;

(b) the total annual amount spent as well as the amounts spent per media service provider.

(c) a thorough explanation of how the criteria outlined in paragraph 1a were implemented in the allocation of the state funds for the relevant quarter.

2a. Public authorities allocating public funds or any other consideration or advantage granted for the purposes of advertising shall report on these exchanges to the national regulatory authorities or bodies established in accordance with Directive 2010/13/EU on a quarterly basis.

2b. National regulatory authorities or bodies established in accordance with Directive 2010/13/EU shall submit data provided according to paragraph 2a to the European Database of State Advertising.

3. National regulatory authorities or bodies shall monitor the allocation of state advertising in media markets. In order to assess the accuracy of the information on state advertising made available pursuant to paragraph 2, national regulatory authorities or bodies may request from the entities referred to in paragraph 2 further information, including information on the application of criteria referred to in paragraph 1.

4. The allocation of state resources to media service providers for the purpose of purchasing goods or services from them other than state advertising shall be subject to the requirements set out in paragraph 1, **1a, 2 and 2a**. This Article shall not affect the application of the State aid rules.

Article 25

Monitoring exercise

(...)

3. The monitoring exercise shall include:

(a) a detailed analysis of the resilience of media markets of all Member States, including as regards the level of media concentration and risks of foreign information manipulation and interference;

(b) an overview and forward-looking assessment of the resilience of the internal market for media services as a whole;

(c) an overview of measures taken by media service providers with a view to guaranteeing the independence of individual editorial decisions,;

(d) a detailed assessment of the allocation of state advertising; and

(e) an assessment of the rules and practices in the allotment of public subsidies to media services.

Research for and publication of this policy brief is supported by a Grant from the Open Society Initiative for Europe within the Open Society Foundations.