

## What democracy won and lost in the EMFA trilogues

13 March 2024

The [European Media Freedom Act](#) (EMFA) proposal has been keeping stakeholders busy for quite some time. Proposed in September 2022, the EMFA has quickly gone through the Council and the European Parliament. On 15 December 2023, the interinstitutional negotiations were concluded. The final text was formally adopted by the European Parliament on 13 March 2024. Below, EPD takes a closer look at what the agreed file means for media freedom and democracy in general.

### Protection of journalists

According to the [provisional agreement](#) on the EMFA, Article 4 no longer literally allows deploying surveillance against journalists on the basis of national security. The Article requires Member States to ensure that journalistic sources and confidential communications are effectively protected. States are only allowed to deploy intrusive surveillance software against journalists in specific situations, which must be justified on a case-by-case basis by an overriding public interest, and have prior authorisation by a judicial authority.

Regrettably, the absolute prohibition of spyware against journalists that EPD [advocated for](#) was not included in the final text. However, the agreed-upon solution is much preferable to the vague notion of “national security”.

### Media ownership

Under Article 6.1, media ownership transparency will apply to all media service providers, not just those providing “news and current affairs content”. Furthermore, the published information must be up-to-date and include data on direct or indirect ownership by the state or a public authority or entity. EPD has [strongly voiced](#) that this was a necessity to ensure the proposed transparency was meaningful. We

therefore welcome this broader scope. The establishment of national media ownership databases is also an urgently needed step to shed light on shady ownership structures.

EPD regrets that the creation of an EU-wide database and a broader scope of information to be made available were not included in the final text. Such steps would have ensured that citizens, journalists and civil society have access to data vital for understanding media ownership in their respective countries.

## **The role of the European Board for Media Services (the Board)**

The much-discussed independence of the Board was resolved in an apparent compromise. The Board retains its Commission-based “assisting” secretariat, as originally proposed, while gaining a sliver of independence in its ability to act. For example, whereas the Board's rules of procedure previously had to be adopted in agreement with the Commission, they now only have to be consulted with the Commission.

EPD has previously [voiced its concerns](#) about the need for widespread hands-on expertise within the Board and called for a balanced and representative Expert Group. Unfortunately, the possibility of an Expert Group was removed from the final text and replaced by a “consultation mechanism”. This provision outlines a vague process whereby, when dealing with matters outside of the audiovisual sector, the Board must consult representatives from other relevant media sectors, such as the press sector, to ensure professional expertise. How such an exercise will work in practice and how the representatives will be chosen remains an unpleasant secret.

## **'Media privilege'**

Article 17, with its provision on the 'media privilege', was one of the most hotly debated topics of the EMFA. In the end, those in favour of an exemption of a carve-out for media service providers celebrated a victory: very large online platforms (VLOPs) must give declared media 24 hours to reply to any intended suspension or restriction of content.

EPD has since the beginning of the negotiations been [vocal against](#) this Article in principle. Unfortunately, the concerns of the digital rights community did not sway the EU institutions which decided to abandon the equality of freedom of speech for the uncertain advantage to traditional media. Especially the 24-hour must-carry obligation, which forces VLOPs not to remove content until the media has responded but at least 24 hours, [carries an enormous risk](#) of viral spread of hate speech and other harmful content.

## Transparency of state advertising

According to the provisional text of the EMFA, transparency obligations on the allocation of public funds for state advertising and supply or service contracts will apply to all public authorities or entities. The originally proposed exemption from these requirements for territorial entities of less than 1 million inhabitants was removed. Instead, Member States may only exempt subnational governments of less than 100 thousand inhabitants from publishing data regarding the legal names of the business groups of which the media service providers are part. While absolute transparency would achieve the best results, EPD welcomes this achievement.

The emergency messages that EPD [proposed](#) should be included in the definition of state advertising, were unfortunately only specified in Recital 10 and not defined in an article. However, it can be seen as a victory for transparency that once an emergency situation has ended, the relevant official announcements will once again be considered state advertising.

## Conclusion

Even if the above-mentioned paints a picture of a missed opportunity, the whole picture must be taken into account. In February 2023, strong voices were raised in both the EP and the Council calling for the EMFA to be either abandoned altogether or redrafted as a Directive. This would have given Member States far more freedom to enforce and possibly water the text. Today, the adoption of a Regulation, a legal text directly applicable to all citizens of the EU, is imminent. Ultimately, the realistic conclusion remains that it is better to have a real EMFA than a perfect but non-existent idea. EPD will continue to monitor the EMFA and its implementation, as well as all other issues related to media freedom, in order to ensure the promotion of democratic principles.