



EPD reaction to the European Commission's Proposal for a European Media Freedom Act

On 16 September 2022, Vice-President and Commissioner for Values and Transparency Věra Jourová and Commissioner for the Internal Market Thierry Breton presented the European Commission's proposal for a European Media Freedom Act along with a recommendation on internal safeguards for editorial independence and ownership transparency in the media sector. In light of a steady decline in media freedom and pluralism across the EU, shrinking civic space and deep and fast transformation of the news media business model, this initiative is a long-awaited action by the European Commission.

Below, we share our initial reaction to the proposed legislation and provide our general assessment of the regulation. We identify:

- ✓ Positive aspects of the regulation;
- ✗ Shortcomings of the proposal and
- 👉 Opportunities for improvement for the co-legislators

Executive summary

- ✓ The European Commission's proposal is a step in the right direction to strengthen the free and pluralistic media system in Europe. It seeks to enhance the transparency of state advertising and media ownership and to safeguard the editorial independence of editors.
- ✗ The proposal neither includes binding rules on transparency of ownership of media services, nor does it sufficiently safeguard the independence of public service media and national regulatory authorities. This creates a risk that EMFA will be ineffective in addressing identified problems.
- 👉 Therefore, we propose to improve this regulation by including:
 - **Binding** rules on **media ownership transparency**
 - Greater **scope of transparency of state advertising** and public funds allocated to media service providers
 - **Greater safeguards** to the **independence of national regulatory authorities and public service media**

Fair Allocation of Public Resources to Media Service Providers

- ✓ The proposal establishes open procedures and transparent, objective, proportionate and non-discriminatory criteria for public funds provided to media service providers for advertising. This will increase the transparency of a significant portion of state advertising paid to media service providers.
- ✗ The exemption established in Article 24(1) and also included in the very definition of state advertising in Article 2(15). Political parties seeking to exert undue influence on media service providers could easily bypass the transparency obligation, i.e. by requesting advertising services from media service providers for large sums of money by local authorities with less than **1 million inhabitants** governed by the respective party.

- ✘ As indicated in recital 49 of the EMFA proposal, public subsidies and **state advertising** for media service providers are so closely linked that state advertising can be used as **covert public subsidies** seeking to exert undue political influence on media organisations. It is necessary to regulate the allocation of public subsidies to ensure the effectiveness of the transparency obligations and obligations of any other type over state advertising.
- ☞ To increase media sustainability and pluralism and adequate **common minimum standards**, it is key to ensure fairness in the allocation of public resources to media providers. In addition, transparency measures that take due account of the specific situation of both online and offline media and national, regional and local media are necessary.

Media Ownership

- ✓ The Commission's recommendation on internal safeguards for editorial independence and ownership transparency in the media sector attaches much importance to media ownership transparency vis-à-vis the general public. This is because media services are public goods that require appropriate and comprehensive state approaches.
- ✘ Measures for media ownership transparency are merely a recommendation to media service providers. This will likely result in minimal improvements in the information available to the public on media.
- ☞ Section III of the Recommendations should be included in the European Media Freedom Act as set of binding rules.

Independent National Regulatory Authorities, EBMS, and PSM

- ✓ EPD welcomes the provisions on the independence of National Regulatory Authorities (Article 7), the European Board for Media Services (Article 9) and of Public Service Media (Article 5).
- ☞ In light of the increasing threat to the political independence of regulatory authorities and public service media in various EU member states, EPD calls for more ambitious rules to guarantee the independence of regulators.
- ☞ Further public debate on possible further action is necessary. EPD will be an integral part of this debate leading to policy proposals aimed at strengthening and safeguarding the independence of public service media and national regulatory authorities across the EU.

Other issues

- ✓ EPD welcomes the proposed measures in the recommendation for international safeguards for editorial independence.
- ✘ The narrow focus on spyware in Article 4(2)(c) ignores issues of surveillance of journalists that do not involve the use of spyware.
- ✘ Article 17 reintroduces the media exemption, under which self-declared media are exempt subject to different content moderation rules by very large online platforms. EPD recalls the European Parliament rejecting similar provisions that were tabled as amendments to the Digital Services Act (DSA) less than a year ago. No evidence has yet been presented of the problems that Article 17 seeks to address and that justify the reintroduction of this form of media exemption.

- ✦ Although the EMFA includes additional content moderation obligations to those of the DSA, provisions to improve the diversity of access to multiple news sources by users of (very large) online platforms are not part of the Commission's proposal. Provisions for interoperability of third-party recommender systems that would have a significant impact on news delivery to the public should be considered throughout the legislative process.
- ✦ Issues related to the sustainability of the news media sector in the digital world are largely unaddressed in the proposed EMFA. Additional EU intervention, particularly in relation to the business model of news aggregators and the ad tech industry is needed to ensure that news media organisations remain viable during the digital transition.
- ✦ Issues related to the working conditions of journalists (and their impact on media pluralism and media freedom) are largely unaddressed in the proposed EMFA. Additional EU intervention to guarantee adequate minimum standards of working conditions of journalists are advised.

Final remarks

- ✦ EPD calls on the co-legislators to pay due attention to the proposal and to work towards strengthening it in order to achieve a regulation that serves media freedom, media pluralism and democracy in the EU.
- ✦ The European Media Freedom Act should not be seen as a single EU measure to protect media freedom and media pluralism, but as part of a larger package of initiatives included in the European Democracy Action Plan (EDAP). Although EMFA is a welcomed starting point, more initiatives to safeguard democracy, media freedom and media pluralism in Europe are necessary. They would include measures against SLAPP and financial support for the news media sector.