

Statement in the European Parliament's CULT Committee:

Lucie Rohrbacherová on behalf of European Partnership for Democracy

On 27 February, our Policy Officer Lucie Rohrbacherová brought forward a presentation at a stakeholders' meeting held by the European Parliament's Committee on Culture and Education (CULT) on our position regarding the European Media Freedom Act. The CULT Committee is the Committee in charge of the file, with the Committee on Internal Market and Consumer Protection (IMCO) and Committee on Civil Liberties, Justice and Home Affairs (LIBE) being Committees for opinion.

We strongly believe that the European Media Freedom Act can be, if amended ambitiously, a strong tool for the protection of media freedom and pluralism and in the end for the safeguarding of democracy.

Regarding the choice of instrument, the European Media Freedom Act (EMFA) must be a Regulation, to avoid fragmentation of the rules applying to the media market and reduce the implementation time that a Directive would normally demand, as previously echoed also by the Commission. In November 2020, the Commission [had to send](#) letters of infringement to 23 out of the then 28 EU Member States for failing to transpose the revised Audiovisual Media Services Directive. We have seen that a Directive on these matters does not yield results. We need the EMFA to be strong and we need it now.

The EMFA contains a multitude of interwoven topics that are, in our opinion, crucial for sustaining and promoting democracy. In her statement, Lucie Rohrbacherová, brought forward some of these issues.

Rights of media service providers and journalists

The rights of journalists are especially crucial. Journalists' protection and needs must be taken seriously. In the proposal, the wording of Article 4 does not correspond to the protection of journalistic sources as provided in Article 10 of the European Convention on Human Rights and the relevant ECHR case law. We recommend that the guarantees of source protection in the EMFA should at least match those that can be invoked in application of Article 10 of the Convention.

Media ownership

Anyone who has experienced living in a country where media ownership is concentrated in very few powerful hands can attest to the fact that media ownership transparency is vital. The public must know who owns the media so they can read, listen and watch while having all the relevant information.

The proposed wording of Article 6 (1) is not satisfactory in this regard. We propose that the provision must apply to all media service providers instead of media service providers "providing news and current affairs content". There is no way of knowing that a magazine about history will not push the agenda of a specific politician, like it is [happening](#) in Russia, as reported by Politico Europe. If the Article retains its

wording, we will need a definition of which media service providers qualify as “providing news and current affairs content”. An EU-wide database of media ownership is also necessary. Only easy and transparent access to information on media owners will allow civic watchdogs, like journalists and NGOs, to continue doing their vital work.

The European Board of Media Service

The European Board of Media Services must be as independent as possible from national governments and the Commission. Here, we join the call of the European Regulators Group for Audiovisual Media Services for the setting-up of a secretariat separate from the Commission and for the possibility of the Board to act on its own initiative. Furthermore, we recommend that the Board is allowed to invite experts and civil society on its own accord. In this regard, we covet the Council compromise which adds civil society to the list of actors with whom best practices should be exchanged.

Safeguards for media from unjust removal of content by very large online platforms

In relation to unjust removal of content, we are aware that Very Large Online Platforms (VLOPs) have tremendous power over the information flow, in particular over the visibility of certain content, which raises challenges for the sustainability of media and democracy in general. But we believe that, while the intentions were surely honourable, Article 17 does not provide a solution for these issues. Instead, a privileged process is created with regards to the suspension or removal of content coming from self-declared media service providers due to its uneven protection of the right to freedom of expression of different persons. For these reasons we recommend that the Article be repealed in its entirety.

State advertising

State advertising is a tool that many media service providers depend on to ensure their survival. It can however be misused by governments to perpetuate their agenda. This is made easier by the lack of transparency requirements. According to the [Media Pluralism Monitor](#), this is not an isolated issue. There is inadequate transparency of state advertising in 24 out of the 27 EU Member States and 22 Member States have no legislation with impartial rules regarding the distribution of such resources. No Member State is immune. The EMFA is a welcome step forward in this regard and will, if ambitiously amended, shed much needed light on the attribution of state advertising to media. [We propose several recommendations to improve transparency of state advertising.](#)

1. State advertising definition

Recital 10 of the EMFA proposal excludes “emergency messages” from the definition of state advertising. We understand that critical situations, like a health or natural disaster, require a swift response. However, this is no excuse to avoid transparency. We have seen that an international health crisis can serve as a convenient reason for covert state advertising. The definition of state advertising must therefore include emergency messages.

2. Publication of state advertising allocation criteria prior to distribution

The specific criteria that will be used to choose who receives the advertising resources, such as readership or newsroom size, must be published prior to the distribution of funds.

3. Wider transparency requirements

We believe that the transparency requirements already set forth in the proposal must be widened to encompass more public authorities and more of the exchanges of revenue between them and media service providers. The EMFA proposal requires public authorities, including local governments of territorial entities of more than 1 million inhabitants, to make publicly available information on state advertising attributed to media service providers. The 1 million threshold would exclude a significant portion of the EU territory and enable political actors looking to influence media to simply reroute payments through local authorities. We agree with the several Member States who, according to the Council's Progress Report, called for the threshold of 1 million inhabitants to be preferably removed or, at least, lowered, for the sake of increased transparency. In addition to the names of recipients of state advertising and the amounts spent, public authorities should make public a thorough explanation of how the criteria chosen to decide on the recipient of the resources were implemented. Lastly, the transparency requirements should apply to State purchases of goods or services other than state advertising from the media.

4. Reporting on state advertising

We propose that the process of reporting on state advertising be centralised and streamlined through more timely and ordered reporting obligations. Civic watchdogs would hardly be able to decipher hundreds of thousands of data, scattered across the Union, much less make connections between them. Here we want to support ERGA's [call](#) for an obligation to report on allocation of state advertising for Member States, as long as it is proportionate and not overly burdensome. Public authorities allocating state advertising to media service providers should report to national regulatory authorities or bodies. Regulators should then report to an EU-wide database. For the reporting itself to fulfil its goal - transparency -, the frequency of reporting must be shortened from once a year to at least once in three months and for the publication to be done over an online interface and in a user-friendly manner. This would allow for more immediate scrutiny and a lesser chance of covert expenditure being lost among a high number of other records accumulated over a long period of time. Only this way will we achieve meaningful transparency, not transparency for transparency's sake.

5. Monitoring of state advertising and state aid allocation

The effectiveness of the proposed provisions on state advertising depends on the regulation and practices regarding an interrelated factor that is outside of the provision's scope - the allotment of public subsidies. The absence of clear rules on the transparency of state aid leaves a major loophole. Restricting non-transparent state advertising could result in governments relying more heavily on covert public subsidies. Hence, in the aftermath of the adoption of European rules on the allocation of state advertising, state subsidies to media should be closely monitored.

Citizens and the civil society need a strong and ambitious European Media Freedom Act, which would be an inspiration to democratic societies and a golden standard for media freedom and pluralism around the world. We urge all stakeholders to ensure that the EU continues to be a champion of democracy.