

European media freedom act

OVERVIEW

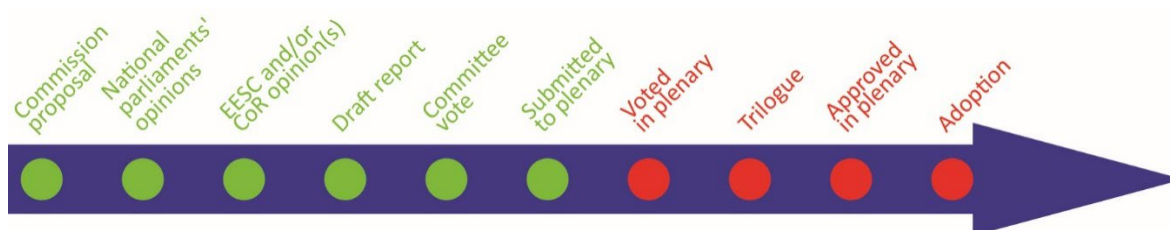
An independent media is a pillar of democracy and an important part of the economy, helping to shape public opinion and hold those in power to account. In recent years, however, there have been increasingly worrying trends across the European Union (EU), as documented in the annual rule of law reports by the European Commission and other tools such as the Media Pluralism Monitor.

Tabled on 16 September 2022, the proposed European media freedom act (EMFA) would introduce a new set of rules to promote media pluralism and independence across the EU, and would amend the Audiovisual Media Services Directive. The aim is to prevent political interference in editorial decisions and ensure transparency of media ownership. The proposed act seeks to protect journalists from having to disclose their sources and from the use of spyware against them. It also sets requirements for audience measurement systems and transparent allocation of state advertising. Media content would be better protected against online content removal, and a new European board for media services would be established.

The Council adopted its negotiating position on 21 June 2023. In Parliament, the Committee on Culture and Education (CULT) adopted its report on 7 September 2023. Parliament is expected to adopt its negotiating mandate during the October plenary session.

Proposal for a regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU

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|-------------------------------|--|---|
| <i>Committee responsible:</i> | Culture and Education (CULT) | COM(2022) 457 16.9.2022 2022/0277(COD) |
| <i>Rapporteur:</i> | Sabine Verheyen (EPP, Germany) | |
| <i>Shadow rapporteurs:</i> | Petra Kammerevert (S&D, Germany) Irena Joveva (Renew, Slovenia) Diana Riba I Giner (Greens/EFA, Spain) Andrey Slabakov (ECR, Bulgaria) Catherine Griset (ID, France) Stelios Kouloglou (The Left, Greece) | Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision') |
| <i>Next steps expected:</i> | First-reading vote in plenary | |



Introduction

According to the European Commission's [call for evidence](#), recent developments in EU countries point to increasing interference in the media sector. The European media freedom act (EMFA) is an initiative announced by the President of the European Commission, Ursula von der Leyen, in her [2021 State of the Union address](#). In her speech, she stressed the role of information as a public good, acknowledging that media companies cannot be treated as just another business and that their independence must be protected at EU level. The initiative was included in the [Commission's 2022 work programme](#).

The objective of the proposed act is to increase the transparency, independence and accountability of actions affecting media markets, freedom and pluralism within the EU. 'Media companies play a vital role but are confronted with falling revenues, threats to media freedom and pluralism, the emergence of very large online platforms, and a patchwork of different national rules', [said](#) Thierry Breton, Commissioner for the Internal Market, when unveiling the Commission proposal on 16 September 2022. 'The European Media Freedom Act provides common safeguards at EU level to guarantee a plurality of voices and that our media are able to operate without any interference, be it private or public'.

Context

In the recitals to the [proposal](#), the Commission refers to the changes that are shaping the media market in the digital age. With digital technologies, media services can be accessed more easily across borders and through various means, while competition in the digital media space is often international. Consumers access media content immediately available on their personal devices, increasingly in a cross-border setting. Furthermore, according to the Commission, the [loss of advertising revenues](#) over the last decade, owing in particular to the rise of online distribution of media content and changes in consumption habits, has drained financial resources from the traditional media sector affecting its economic sustainability and the quality and diversity of content on offer. The Commission remarks that this trend indicates how the market is failing to provide sustainable returns for independent news and quality journalism.

Media services are knowledge- and capital-intensive, and require scale to remain competitive and to thrive in the internal market. The possibility to offer services across borders and obtain investment, including from other Member States, is therefore important. With its proposal, the Commission seeks to tackle problems affecting the functioning of the internal market for media services and the operation of media service providers, such as differing national rules and procedures relating to media freedom and pluralism.

The European Commission's [rule of law reports](#), as well as the [Media Pluralism Monitor](#), developed by the European University Institute's Centre for Media Pluralism and Media Freedom, have raised concerns over the politicisation of the media, the worsening situation regarding the right to information and protecting journalistic profession, and the lack of transparency of media ownership and independence of media regulators in several EU Member States.

Existing situation

The Commission's [impact assessment](#) of the EMFA notes that as media markets become more digital and cross-border, several problems are hindering the proper functioning of the internal media market. While the gravity of the problems varies across the EU, overall they make it difficult for media players to use the internal market to its full potential, to maintain economic sustainability and to fulfil their societal role to inform citizens and businesses properly. At the same time, the Commission cautions, instances of public and private interference weaken media independence. State resources may be used to put pressure on media, distorting competition in the internal market. Moreover,

interference in editorial and management decisions of the media, which may lead to biased media coverage, can affect investment or market entry decisions.

In its July 2022 [rule of law report](#), the Commission urged several Member States to take measures to protect media freedom and pluralism. The report was the third of its kind and, for the first time, targeted specific recommendations at individual countries, including systematic coverage on safeguarding public service media.¹ The report also noted that journalists continue to face threats and obstacles to their work, including physical attacks reported in several Member States. Violations have included verbal harassment, legal threats, physical assault, attacks on property, incitement, smear campaigns and censorship. The report highlighted that in July 2021, Amnesty International and a group of investigative journalists uncovered that several governments across the world had deployed a particularly intrusive spyware,² known as 'Pegasus'. In the EU, targets included journalists, lawyers, national politicians and Members of the European Parliament.

Reporters Without Borders' annual [World Press Freedom Index](#), released in May 2022, shows that while the worst offenders against press freedom are non-EU countries, [European countries](#) have also seen press freedom deteriorate. Political crises have lately arisen in Greece, Poland, Hungary and Spain following revelations that political opposition, civil society and journalists had been targeted with [hacking software](#). The European Commission itself has been a [victim of spyware](#). In July 2022, the Commission took Hungary to the Court of Justice for [allegedly violating laws on media freedom](#).

According to the Reuters Institute's [2022 Digital News Report](#), northern Europeans have more trust in their news media as being 'free from undue political influence', compared with southern and eastern European countries: Finland (50%) and the Netherlands (46%) have the highest proportion of people who think that the news media are politically independent, while only a small minority in Greece (7%), Spain and Italy (13%) and Hungary and Bulgaria (15%) believe this to be the case.

A July 2022 [Eurobarometer survey](#) on EU citizens' media habits shows that television is still the primary news source (75%), in particular for the older generations. Next are online news platforms (43%), radio (39%), and social media platforms and blogs (26%). The written press comes in fifth place, with 21% of respondents naming newspapers and magazines as their primary news source. Although traditional news sources are important, 88% of respondents get at least some news online via their smartphone, computer or laptop. Paying for online news content is rather the exception, with 70% of those accessing news online only using free news content. In its [European Media Industry Outlook](#), published in May 2023, the European Commission notes that under new online business models, most consumers have become accustomed not to paying for news anymore. As a result, players across the news media sectors keep innovating and testing, building on strengths such as branding and users' trust.

Parliament's starting position

In a September 2022 [resolution](#), Parliament reiterated the importance of protecting journalists from attempts to use the legal system to silence reporting. Parliament noted that online harassment, threats and lawsuits against journalists are on the increase in some Member States, and that instances of political interference in the media have been reported across the EU. Parliament expressed deep concern over the further deterioration of media freedom in Hungary, Poland and Slovenia, and over reforms that have the effect of reducing diversity and silencing critical voices within the media. Parliament was also concerned about the creation of government-controlled bodies that manage large parts of the media landscape and the 'hijacking of public service media outlets to serve partisan interests'.

In March 2022, the European Parliament set up a [committee of inquiry](#) (PEGA) to look into the use of the Pegasus spyware. In June 2023, Parliament adopted a [resolution](#), drafted by its [special committee on foreign interference](#) (ING2), stating that the EU needed a coordinated strategy against foreign interference and information manipulation. Stressing that increased interference was

expected in the run-up to the 2024 European elections, MEPs suggested establishing a rapid alert system for members of European and national parliaments to counter online disinformation.

In its October 2021 [resolution](#) on Europe's media in the digital decade, Parliament stressed that it was essential to guarantee the financial sustainability of public service media and to ensure and maintain the independence of private and public service media from any internal and external political and economic interference, whether from governments, powerful interest groups, third countries or other external actors. It also acknowledged the specific situation faced by Member States that are exposed to geopolitical risks arising from third-country interference in their information space.

In its November 2020 [resolution](#), Parliament pointed to attempts by governments of some Member States to silence critical media and undermine media freedom and pluralism, and warned of attempts to indirectly subdue such media by means of financial patronage. It condemned, in particular, attempts to control public service media. MEPs were particularly concerned about public broadcasting, which has become an example of pro-government propaganda in some EU countries. Parliament demanded that EU countries take action to avoid excessive concentration of ownership and to guarantee transparency.

Council starting position

In June 2022, the Council adopted [conclusions](#) on the protection and safety of journalists. It stressed the need to secure a safe environment for journalists and media professionals, in particular for female journalists, to enable them to work freely and independently.

In December 2020, the Council adopted [conclusions](#) on safeguarding a free and pluralistic media system. It acknowledged that safeguarding media pluralism falls primarily within the competences of the EU Member States and invited Member States to develop national measures to assess media pluralism, to ensure that users are exposed to a variety of content and can fully enjoy their freedom of expression and their right to information. The Council emphasised a rising volume of content, originating from both European and non-European countries, that violates the fundamental core values of European and national media systems. It also invited the Member States to provide an adequate framework for the economical sustainability of the national media landscape, including State aid, to support the recovery of the media sector and ensure a pluralistic media system in the longer term.

Preparation of the proposal

The European media freedom act (EMFA) was announced by Thierry Breton, European Commissioner for the Internal Market, in the European Parliament on 19 April 2021. In his [speech](#), the Commissioner referred to ongoing supportive measures under the [action plan for the media](#) and the [European democracy action plan](#), both adopted in December 2020. The media action plan sets out actions to strengthen financial sustainability and digital transformation of the media sector, while the democracy action plan includes measures to promote democratic participation, fight disinformation and support a free and independent media.

The [Audiovisual Media Services Directive](#) (AVMSD), last revised in 2018, governs EU-wide coordination of national legislation, providing EU-wide media content standards for both traditional broadcasts and on-demand services. It lays down rules for the independence of media regulators, promotes transparency of media ownership and recognises that editorial decisions should be free from interference. The rules aim to create a safer, fairer and more diverse audiovisual landscape and reinforce the protection of viewers, particularly of those most vulnerable, such as minors. The AVMSD extended rules regarding illegal and harmful content to video-sharing platforms, and aims to foster cultural diversity in audiovisual media.³

The recently-agreed [Digital Services Act](#) and [Digital Markets Act](#) modernise the legal framework applicable to digital services in the EU. In September 2021, the Commission also adopted a [recommendation](#) on the protection, safety and empowerment of journalists. In April 2022, the Commission put forward a [proposal](#) for a directive to protect journalists and rights defenders from strategic lawsuits against public participation (SLAPPs), to protect independent media outlets from lawsuits aimed at silencing or intimidating them.

However, both Commission Vice-President Věra Jourová and Commissioner Thierry Breton have acknowledged before the European Parliament that complementary tools are needed at EU level to counter the growing politicisation of the media in some Member States. For that reason the Commission committed to prepare the European media freedom act.

From January to March 2022, the Commission ran an [open public consultation](#) to collect views on the upcoming act. This followed a call for evidence, published in December 2021.

In September 2022, together with the proposal for the European media freedom act, the Commission published a [study on media plurality and diversity online](#), mapping existing legislative measures and making recommendations for European policymakers and Member States; and a [study supporting the impact assessment of the EMFA](#), providing evidence and comparative analysis of the costs and benefits of the various policy options for the most important stakeholder groups. Meanwhile, in February 2022, the European Audiovisual Observatory of the Council of Europe produced a special report on [governance and independence of public service media](#). [Five documents](#) published together with the proposed act compose the impact assessment of the EMFA.

The changes the proposal would bring

The [proposal for a regulation](#) establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU (Audiovisual Media Services Directive), aims to ensure that the media – public and private – can operate more easily across borders in the EU internal market, taking into account the digital transformation of the media space. The proposal aims to address the fragmented national regulatory approaches to media freedom and pluralism and editorial independence, fostering a common approach at EU level. The definition of a 'media service', according to recital 7 of the proposal, should cover television and radio broadcasts, on-demand audiovisual media services, audio podcasts and press publications.

The legal basis for the proposal is [Article 114](#) of the Treaty on the Functioning of the European Union (TFEU), which provides for the adoption of measures for the approximation of the provisions in Member States, which have as their object the establishment and functioning of the internal market. Taking the form of a regulation, a common set of rules will be directly applicable in the Member States, without the need for implementing legislation. It will amend the rules of the [Audiovisual Media Services \(AVMS\) Directive](#) and complement the [Digital Services Act](#) (DSA).

The regulation would require Member States to respect the effective **editorial freedom** of media service providers. Media service providers would have to adopt measures to guarantee, once the overall editorial line has been agreed between their owners and editors, the freedom of the editors to take individual decisions in the course of their professional activity.

Media service providers would have to ensure **transparency of ownership** by publicly disclosing such information on their websites or another medium that is easily and directly accessible. The proposal would complement the existing framework⁴ by requiring all media services providing news and current affairs content to provide information on ownership - direct, indirect and beneficial owners - to recipients of media services.

According to the proposal, to prevent circumvention of the rules by rogue media service providers, it is essential to provide for a clear, legally binding **framework for national regulatory authorities** or bodies **to cooperate** efficiently. National authorities could request that the authorities of the country of establishment take necessary action regarding video-sharing platforms, to protect

viewers from illegal and harmful content. Coordination between national authorities is also needed to face possible public security threats stemming from media service providers established outside the Union.

The proposed act also aims to protect media, journalists and their families against the **use of spyware**. The proposal narrows down any [possible exceptions](#) to grounds of national security, or, in cases of investigations, to a closed list of crimes, such as terrorism, child abuse or murder. Such exceptions should be duly justified on a case-by-case basis, where no other investigative tool would be adequate.

According to the proposal, the **protection of journalistic sources** needs harmonisation at EU level, because regulations differ in the Member States. While some countries provide absolute protection against coercing journalists to disclose information identifying their sources in criminal and administrative proceedings, others provide protection confined to judicial proceedings based on certain criminal charges, and others provide protection in the form of a general principle. As a result, journalists, who work increasingly on cross-border projects and provide their services to cross-border audiences, are likely to face legal uncertainty and uneven conditions of competition. The proposed rules [clarify that](#) journalists should not be prosecuted for protecting their sources' confidentiality.

Public service media, established by the Member States, play a particular role in the internal media market, ensuring that citizens and businesses have access to quality information and impartial media coverage. However, public service media [can be particularly exposed](#) to the risk of political interference, given their institutional proximity to the state and the public funding they receive. According to the proposal, funding of public service media should be adequate and stable, in order to ensure editorial independence. Preferably, the funding should be decided and allocated on a multi-year basis. To ensure greater independence from political influence, the head and the governing board of public service media should be appointed in a transparent manner, and dismissal should be possible only under very specific circumstances.

Member States would be required to assess the impact of **media market concentrations**. The regulation would [not prevent or set specific thresholds](#) for media market concentrations; it would however provide a framework for national procedures for assessing market concentrations that could have a significant impact on media pluralism. It would also require that any legislative, regulatory or administrative measure taken by a Member State that could affect the media, be duly justified and proportionate.

The EMFA would set requirements for the **allocation of state advertising** to media. State advertising is an [important revenue source](#) in the media sector.⁵ The rules aim at avoiding undue state influence, by minimising the risk of misuse of public funding to favour and covertly subsidise certain media outlets that provide government-friendly views. Public authorities (national or regional level, or local governments of territorial entities of more than 1 million inhabitants) would have to publish information each year on their advertising expenditure on media.

The act would also enhance the transparency and objectivity of **audience measurement** systems, which have an impact on media advertising prices, in particular online. Complementing the Digital Markets Act, the regulation would require providers of audience measurement tools to give media service providers and advertisers detailed information on the methodology used.

Building on the Digital Services Act, the EMFA would **protect media content online**. Very large online platforms (VLOPs) (above 45 million users in the EU) that intend to take down media content would have to inform the media service provider before such take-down takes effect. Platforms would have to process complaints lodged by media service providers as a priority. The proposal would also require 'a meaningful and effective dialogue' between parties to avoid unjustified content removals, and oblige VLOPs to report annually.

Finally, **users** would get the **right to customise** their media offer on devices and interfaces used to access audiovisual media services (such as connected TVs), enabling users to change the default settings to reflect their own preferences. This would apply, for example, to hardware (e.g. remote controls) or software shortcuts, applications and search areas.

The Commission proposes to replace the [European Regulators Group for Audiovisual Media Services](#) (ERGA) (established under the AVMSD) with a new **European board for media services** (the 'Board'), comprised of national media authorities.⁶ The secretariat for the board would be provided by the Commission. The board would ensure consistent application of the EU media law framework by assisting the Commission in preparing guidelines on media regulation. It would also issue opinions on national measures affecting media markets and concentrations. The board would play a specific role in the fight against disinformation and foreign interference: it would coordinate national measures regarding non-EU media that target audiences in the Union. The board would organise structured dialogue between very large online platforms, the media sector and representatives of civil society, and monitor platforms' compliance with self-regulatory initiatives, such as the [EU Code of Practice on Disinformation](#).

The proposed act is accompanied by a [recommendation](#), setting out a catalogue of best practices geared at strengthening editorial independence and greater ownership transparency. It includes a toolbox of voluntary measures for media companies to consider. The recommendation would apply on a voluntary basis and is, according to the Commission, expected to lead to positive developments in the internal media market in the short term.

Advisory committees

The European Economic and Social Committee (EESC) adopted its [opinion](#) on 14 December 2022, welcoming the EU initiatives aimed at addressing the worrying developments in the area of media freedom in recent years. The EESC opinion includes recommendations for measures to ensure the independence of national regulatory bodies in the context of the European board for media services. It also considers that EU anti-concentration law should be used where national regulators fail to address media market concentration.

The Council also launched an optional consultation of the Committee of the Regions, which in turn adopted its [opinion](#) on 16 March 2023. The CoR stresses that introducing a new regulation at EU level could have negative effects of over-regulation on the well-established media systems across the Member States in which media freedom and pluralism are ensured. Therefore, a legal act in the form of a directive, instead of a regulation, would better serve the subsidiarity, proportionality and multilevel governance principles.

The European Data Protection Supervisor (EDPS) adopted his [opinion](#) in November 2022, recommending, inter alia, adding an explicit reference to journalists to the regulation, so as to clarify that any journalist, including freelance or self-employed journalists, would fall within its scope and could therefore also rely on robust protection of journalistic sources.

National parliaments

The deadline for national parliaments to [submit](#) their reasoned opinions was 12 December 2022. Four reasoned opinions were sent.

The [German Bundesrat](#) takes the view that the proposal does not have a sufficient legal basis, interferes with national sovereign rights and does not comply with the principles of subsidiarity and proportionality. In its efforts to improve the situation in states that have deficits in securing media diversity and independence, the initiative must not at the same time harm functioning media systems such as the German one, the Bundesrat says. The Bundesrat emphasises the central importance of the cultural sovereignty of the Member States of the European Union, which in Germany is exercised by the Länder.

The [Danish Parliament](#) (Folketinget) finds that the European Commission with its proposal is seeking to regulate in an area with shared competence, where Member States could regulate better themselves, in accordance with national traditions. This is in particular true because news media – as far as language, culture and choice of topics are concerned – is largely targeted at audiences within each individual Member State. Because of this, the Folketing is of the opinion that there is no significant cross-border element that necessitates harmonisation using Article 114 TFEU. In line with Protocol No 29 ('the Amsterdam Protocol') on the system of public broadcasting in the Member States, the Folketing finds that it is up to the Member States to regulate and finance public service media nationally.

The [French Senate](#) argues, inter alia, that by relying solely on Article 114 TFEU, to eliminate 'barriers to the optimal functioning of the internal media market', which would encompass all media services including printed media, the proposed regulation postulates the existence of such a market on the scale of the European Union. According to the Senate, the work carried out in 2022 by the Senate's committee of inquiry, in order to highlight processes that could lead to a concentration in the media in France, shows that the media market is essentially structured on a national, regional or local basis.

The [Hungarian National Assembly](#) also adopted a reasoned opinion. Its objections concerned, inter alia, the legal basis of the proposal, the lack of Union competence in certain fields of media, as well as the form of the legal instrument.

Stakeholder views⁷

Civil society organisations defending media freedom and human rights broadly support the proposal. In a [joint statement](#), 19 organisations, including the Association of European Journalists, the European Centre for Press and Media Freedom, and Reporters Without Borders, welcome the Commission's initiative. 'Matters relating to the media have traditionally been the competence of Member States, however such is the threat posed to media freedom that an EU-wide action has become necessary to protect Europe's democratic values', they say. However, for the EMFA to become effective and ensure editorial independence from the impact of vested commercial and political interests, they argue that the act should introduce rules governing all financial relations between the state and the media (in addition to advertising); guarantee the independence of national regulators and the independence of the European Board for Media Services; and fully protect journalists from all forms of surveillance (as well as spyware).

The European Federation of Journalists (EFJ) [warns](#) that the protection of journalists, the independence of public media or regulators and media pluralism are deficient in more than half of European states. It criticises EU countries for remaining passive in the face of deteriorating working conditions for journalists and the decline of press freedom. The International Press Institute (IPI), together with 16 other organisations, [points out](#) that current threats to media freedom and pluralism combined with an unprecedented rise in disinformation, especially in certain Member States, amply show that the Commission is right to bring forward a media freedom act. In January 2023, the IPI published its detailed position, [noting](#) that the success of the EMFA would be measured by the extent to which its ambitions could be backed up by concrete tools to stem the forces of media capture, that turn broadcasters into government propaganda, fill media regulatory bodies with political appointees, and abuse state resources in favour of pro-government media.

The non-governmental organisation (NGO) Civil Liberties Union For Europe (Liberties) [sees](#) the proposal as an excellent opportunity. For example, the act would require a transparent European public database containing information about the entire beneficial ownership chain of media outlets. Article 19, an NGO defending freedom of expression and information, [cautions](#) that search engines and social media platforms now hold a decisive influence over the searchability, visibility and accessibility of media and other content. Article 19 [objects](#) to state advertising safeguards applying only to public administrations with more than 1 million inhabitants, noting that this would cut out a huge proportion of EU territory.

The European Broadcasting Union (EBU), the alliance of public service media, [is pleased](#) that the EMFA recognises the vital role of public service media in Europe. It underlines, however, that it will be important to strike the right balance between single market objectives and national competencies. The EBU advocates in particular ensuring that general interest content is visible and findable online, and securing effective recourse in the face of takedowns and suspension of media content by online platforms.

The Association of Commercial Television and Video-on-Demand Services in Europe (ACT) [cautions](#) that detailed new procedures on how media companies should operate is not necessary for commercial broadcasters. This should be left to media companies themselves, or independent regulators, but definitely not dealt with by legislators. There is also a risk of impacting existing competition frameworks, thereby preventing legitimate consolidation in order to better compete with tech giants, ACT warns.

The European Regulators Group for Audiovisual Media Services (ERGA) [welcomes](#) the proposal and the proposed new structure, which would transform ERGA into the 'European board for media services'. The new board should receive new tasks and responsibilities, therefore being granted a central role in the implementation of the new framework. ERGA stresses that the new board should be independent from any kind of interference, be it at national or European level.

Contrary to most of those above, press publishers' organisations, European Magazine Media Association (EMMA) and European Newspaper Publishers Association (ENPA), are [very critical](#), calling the proposal a historic threat to press freedom. The free and independent press has traditionally been excluded from regulatory oversight by media authorities, they say, allowing differentiated rules tailored to the characteristics of each national media market. They see no justification for further harmonising media law at EU level and putting the printed and digital press under the regulatory supervision of a European board for the first time. They claim that the EMFA interferes with publishers' editorial freedom, and that 'it goes against core pillars of a free press to deprive publishers of their freedom to choose the editorial line and to participate in the daily management of their own publications'.

According to the European Publishers Council (EPC), there is [deep concern](#) amongst Europe's publishers about crossing the line into controlling the press in countries where press freedom flourishes. One of the most problematic aspects for the EPC is the establishment of a new European media services board, convened and guided by the European Commission. According to the EPC, this is a controversial change from the current group of independent broadcasting regulators established under the AVMSD.

Legislative process

The Commission proposal is subject to the ordinary legislative procedure in the European Parliament and Council. Parliament's Committee on Culture and Education (CULT) is the committee responsible. The Committee on Civil Liberties, Justice and Home Affairs (LIBE) is associated committee under Rule 57 of Parliament's Rules of Procedure, with exclusive competence on article 4(2) and article 20(3). The Committee on Internal Market and Consumer Protection (IMCO) is associated committee with shared competence over the entire proposal (Rule 57).

On 23 January 2023, the Commission [presented the proposal](#) to the members of the CULT committee. Many of the members questioned the independence of the European board for media services. Members wondered how the board could be independent if its secretariat were provided by the Commission, and even experts could not be invited to the board's meetings without the Commission's agreement. Some members also questioned the legal basis chosen by the Commission, and the choice of a regulation rather than a directive. The Commission replied that the existence of differences in national legislation in the area of media freedom is resulting in distortion of competition, justifying the choice of the internal market as legal basis.

In January 2023, the LIBE committee organised a [hearing](#) on the EMFA, and in February 2023, the CULT committee held a [public hearing](#) as well. At the hearings, experts assessed how to enhance the proposal. Some were very critical as regards the legal basis and EU competence to legislate on media issues, and many expressed concern regarding the independence of the proposed board. Article 17 of the proposal raised concern as well, as some were worried that it would be easy for rogue actors to self-declare as media services, opening the door to disinformation, misleading citizens. An exchange of views was [held](#) in the CULT committee on 28 March 2023.

On 26 April, [background analysis](#) requested by the CULT committee was presented, highlighting questions on the legal basis and coherence with the existing regulatory framework, the scope of specific articles, as well as the need to further reinforce some key definitions and their scope. [Policy recommendations](#) supplementing the background analysis were published in May 2023.

Also at the [meeting](#) of 26 April, CULT rapporteur and committee chair, Sabine Verheyen, presented her [draft report](#) and outlined the main amendments. She welcomed the proposal and its overall objectives, but considered that significant improvements were required. The rapporteur proposed 117 amendments, focusing on: maintaining the balance between national and Union competences; ensuring coherence with the AVMSD; securing the independence of public service media providers while upholding the [Amsterdam Protocol](#); guaranteeing full independence of the European board; and clarifying the relationship between media service providers and very large online platforms. The proposed board should have a secretariat that is independent from the Commission, and should be able to adopt its opinions and rules of procedure on its own initiative. According to the rapporteur, rules concerning state advertising (article 24) should also be extended to online platforms.

By the 5 May 2023 deadline set for amendments, CULT members had submitted 1 354 amendments to the Commission proposal. The IMCO committee adopted its [opinion](#) on 29 June, and the [LIBE committee](#) adopted its opinion on 18 July 2023 (bringing an additional 194 and 237 amendments respectively). A total of 1 785 amendments were tabled to the Commission's proposal.

Technical meetings and shadow rapporteurs' meetings were held during the summer of 2023 to advance the work and to find compromise amendments ahead of the vote in CULT on 7 September.

In the Council, the proposal was [discussed](#) within the Audiovisual and Media Working Party. The Czech Presidency of the Council presented a [progress report](#) on 29 November 2022 at the Education, Youth, Culture and Sport Council (EYCS), covering articles 1 to 24. Several Member States raised the issue of subsidiarity, noting that the EMFA introduces considerable harmonisation within an area not previously subjected to EU regulation. Some delegations were less reluctant and welcomed better European cooperation in this area. They also argued that the EMFA could be a valuable instrument in the fight against disinformation from third countries. The Council legal service was asked to examine the proposed legal basis.

Under the Swedish Presidency, the working party continued the examination on the basis of compromise texts tabled by the Presidency. The legal service of the Council gave its requested [opinion](#) in early April 2023, considering that recourse to Article 114 TFEU as the legal basis of the proposal was possible.

A second [progress report](#) was transmitted by the Swedish Presidency in May 2023, and a [policy debate](#) took place at the EYCS Council meeting on 16 May 2023.

The Council [agreed on its position](#) on 21 June 2023. A main point of controversy is the Council's proposition to introduce a new paragraph in Article 4 stating that rules to protect journalists and their sources from state surveillance are 'without prejudice to Member States' responsibility for safeguarding national security'. According to those opposing this proposal, this would give governments too much leeway to spy on journalists. The Council also states that Member States could adopt more detailed or stricter rules on article 24 (state advertising), as well as on Chapter II (rights and duties of media service providers and recipients) and on Section 5 of Chapter III (well-functioning media market). The Council text keeps the self-declaration mechanism for media

services to benefit from privileges (article 17), but adds that platforms could ask a national regulatory authority to confirm the status if there were 'reasonable doubts' about it being a recognised media service. In article 24, the Council proposes a change whereby an exemption concerning state advertising rules could be made for territorial entities of less than 100 000 inhabitants (as opposed to 1 million proposed by the Commission).

In the Parliament, the CULT committee adopted its report on 7 September 2023. The committee proposes to grant the European board for media services the status of an EU body with a legal personality, its own secretariat and a separate budget, and allowing it to issue opinions on its own initiative. A new expert group, consisting of representatives from the media sector, would be set up to support the Board on issues going beyond the audiovisual sector or relating to press.

A 24-hour stay-up period would be given for media to respond before big online platforms (VLOPs) can take down their content.

On state advertising, the exception for territorial entities below 1 million inhabitants would be removed. Member States would be allowed to adopt more detailed or stricter rules on state advertising. The committee report adds the inclusion of online platforms, search engines, as well as EU institutions and bodies in the scope of the advertising rules. A new proposal is to cap public advertising allocated to a single media provider, online platform or a search engine to 15 % of the total advertising budget allocated by that authority in a given EU country.

According to the report, public service media (PSM) should have funding that is adequate, sustainable and predictable, allocated on a multiannual basis and sufficient for developing new content and media forms for technical development.

As proposed by the LIBE committee, Member States, the EU institutions and private entities would be prohibited from obliging media service providers and their employees to disclose their sources, or accessing encrypted content data on their devices. Protection would be extended to a broader circle of people including professional and occasional contacts of media service providers. The use of spyware would only be justified on a case-by-case basis and if ordered by an independent judicial authority to investigate a serious crime, such as terrorism, child pornography or human trafficking.

A vote on and the adoption of Parliament's negotiating position is scheduled for the first plenary session in October 2023 (2-5 October), after which trilogue negotiations could start.

The joint aim of the Commission, Council and Parliament is to conclude the negotiations on the EMFA regulation before the upcoming European Parliament elections in June 2024.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Brogi E. et al., [The European Media Freedom Act: media freedom, freedom of expression and pluralism](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, July 2023.

Cole M. and Etteldorf C., [European Media Freedom Act – Background Analysis](#), Policy Department for Structural and Cohesion Policies, European Parliament, April 2023.

Cole M. and Etteldorf C., [European Media Freedom Act – Policy recommendations](#), Policy Department for Structural and Cohesion Policies, European Parliament, May 2023.

Rakstelyte A., [Safeguarding media freedom and pluralism in the internal market \(Media Freedom Act\)](#), Initial appraisal of a European Commission impact assessment, EPRS, European Parliament, February 2023.

OTHER SOURCES

[Common framework for media services in the internal market \(European Media Freedom Act\)](#), European Parliament, Legislative Observatory (OEIL).

ENDNOTES

- ¹ As defined in the proposed media freedom act (Article 2), a 'public service media provider' is one that is entrusted with a public service mission under national law or receives national public funding for the fulfilment of such a mission.
- ² Spyware can be defined as a product with digital elements that enables the covert surveillance of natural or legal persons by monitoring, collecting or analysing data, for example by secretly recording calls or otherwise using the microphone of an end-user device; by filming, photographing, tracking browsing activity or tracking geolocation without the natural or legal person concerned being made aware and having given their consent (see Article 2 of the proposed EMFA).
- ³ In [May 2022](#), the Commission referred five Member States to the Court of Justice of the EU over their failure to transpose the AVMSD, exceeding the deadline set for 19 September 2020. By October 2022, four of those countries had transposed the directive and notified the Commission accordingly, with the exception of Ireland – which is the competent jurisdiction for the largest video-sharing platforms in Europe (Facebook, Twitter and Google). The [Online Safety and Media Regulation Bill](#) was finally signed into law by the President of Ireland on 10 December 2022.
- ⁴ The Anti-Money Laundering Directive (Directive (EU) 2015/849) is the main instrument to ensure beneficial ownership transparency, while the EU Company Law Directive (Directive (EU) 2017/1132) governs the information that limited liability companies need to disclose in business registers. The AVMSD encourages Member States to adopt measures to make information accessible on the ownership structure of audiovisual media.
- ⁵ 'State advertising', according to Article 2 of the proposed EMFA, means the placement, publication or dissemination of a promotional message, normally in return for payment, 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.
- ⁶ This requires a targeted amendment of Directive 2010/13/EU to delete its Article 30b, which establishes the ERGA, and to replace references to the ERGA and its tasks.
- ⁷ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

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