

European media freedom act

OVERVIEW

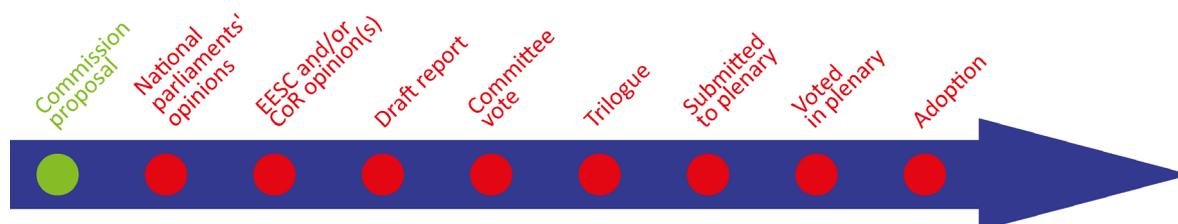
An independent media is a pillar of democracy and an important part of the economy, helping to shape public opinion and hold those in power to account. In recent years, however, there have been increasingly worrying trends across the European Union (EU), as documented in the annual rule of law reports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

Published on 16 September 2022, the European media freedom act (EMFA) proposes a new set of rules and mechanisms to promote media pluralism and independence across the EU, and amends the Audiovisual Media Services Directive (AVMSD, Directive 2010/13/EU). The aim is to prevent political interference in editorial decisions and ensure transparency of media ownership. Member States will be required to assess the impact of media concentrations. The proposed act stresses the importance of an independent and adequately funded public service media, and seeks to protect journalists from having to disclose their sources and from the use of spyware against them. It also sets requirements for fair audience measurement systems and transparent allocation of state advertising. Media content would be better protected against unjustified online content removal, and a new European board for media services would be established to assist in the implementation of the EU media law framework.

In the European Parliament, the Committee on Culture and Education (CULT) has been designated the committee responsible, with the Committees on Civil Liberties, Justice and Home Affairs (LIBE) and Internal Market and Consumer Protection (IMCO) asked to give opinions. The procedure is in its initial stages and in the preparatory phase in Parliament.

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

<i>Committee responsible:</i>	Culture and Education (CULT)	COM(2022) 457 16.09.2022
<i>Rapporteur:</i>	To be appointed	2022/0277(COD)
<i>Shadow rapporteurs:</i>		
<i>Next steps expected:</i>	Initial discussions in committee	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')



Introduction

According to the European Commission's [call for evidence](#), recent developments in EU countries affecting the ownership, management or operation of certain media outlets point to increasing interference in the media sector. The European media freedom act (EMFA) is a landmark 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 set out mechanisms 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'.

In the recitals to the proposed act, the Commission also remarks that in the final report of the [Conference on the Future of Europe](#), citizens called on the EU to further promote media independence and pluralism, in particular by introducing legislation addressing threats to media independence through EU-wide minimum standards.

Context

Media freedom and pluralism, as well as freedom of expression, are rights and principles enshrined in the [Charter of Fundamental Rights](#) of the European Union (Article 11) and in the [European Convention on Human Rights](#) (Article 10). They are essential to democracy and among the European Union's founding values, according to [Article 2](#) of the Treaty on European Union. An independent media, in particular news media, provides access to a plurality of views and provides a reliable source of information for citizens and businesses. It helps to shape public opinion and helps people and companies form views and make informed choices.

In the recitals to the media freedom act [proposal](#), the Commission refers to the changes that are continuing to shape the media market in the digital age. According to the Commission, media services play a unique role in the internal market and, given their unique role, the protection of media freedom and pluralism is an essential feature of a well-functioning internal market for media services. In the last 20 years, these markets have changed substantially, becoming ever more digital and international. With digital technologies, media services can be accessed more and more easily across borders and through various means, while competition in the digital media space is now often international. In the digital media era, 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, in turn, 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, which nevertheless are public goods and help counter disinformation.

Media services are knowledge- and capital-intensive, and they 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 is seeking 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 [2020, 2021](#) and the latest [2022 rule of law report](#) of the European Commission, as well as the [Media Pluralism Monitor](#) (2020, 2021 and 2022), developed by the European University Institute's Centre for Media Pluralism and Media Freedom, have raised concerns over the politisation of the media, the worsening situation as regards the protection of the right to information and protecting journalistic profession, the lack of transparency of media ownership and the lack of independence of media regulators in several EU Member States.

When [announcing](#) the public consultation on the upcoming act in January 2022, the Commission Vice-President for Values and Transparency, Věra Jourová, stated that 'Media are a pillar of democracy. But today this pillar is cracking, with attempts by governments and private groups to put pressure on the media. This is why the Commission will propose common rules and safeguards to protect the independence and the pluralism of the media. Journalists should be able to do their work, inform citizens and hold power to account without fear or favour'.

Existing situation

According to the Commission's [call for evidence](#), different national rules on media pluralism are a difficulty in the EU internal market, and there are insufficient structures for cooperation between independent media regulators. A further problem are instances of public and private interference in the ownership, management and operation of media outlets, and there is a lack of media pluralism safeguards, including online. The Commission's [impact assessment](#) of the EMFA notes that as media markets become more digital and inherently cross-border, several problems hinder the proper functioning of the internal media market. These are:

- obstacles to cross-border activity and investment;
- insufficient regulatory cooperation and convergence;
- interference in the free provision of quality media services; and
- opaque and/or unfair allocation of economic resources.

The Commission notes that, 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 urges several Member States to take measures to protect media freedom and pluralism. The report is the third of its kind and, for the first time, targets specific recommendations at individual countries, including systematic coverage on safeguarding public service media.¹ The report also notes 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 highlights 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.

The 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 of the European Union for [allegedly violating laws on media freedom](#) by applying disproportionate and non-transparent conditions to the renewal of independent media outlet Klubradio's rights to use radio spectrum, and through its conduct also violating the freedom of speech.

According to the Reuters Institute [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 %) or Hungary and Bulgaria (15%) believe this to be the case. There are also big differences between EU countries in the proportion of respondents who 'trust most news most of the time': while in Finland 69 % and in Denmark 58 % of respondents tend to trust their news, in Croatia the proportion is 38 %, in Italy and Bulgaria 35 %, in Spain 32 %, and in Greece and Hungary only 27 %. Trust was weakest in Slovakia, with 26 % of respondents trusting the news most of the time.

A dedicated [Eurobarometer survey](#) from July 2022 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.

Parliament's starting position

In its September 2022 [resolution](#) on the state of fundamental rights in the EU, Parliament reiterated the importance of protecting journalists from attempts to use the legal system to silence reporting, and from threats, attacks and violence. Parliament noted that online harassment, threats and lawsuits against journalists, especially investigative journalists, are on the increase in some Member States; that instances of political interference in the media have been reported across the EU; and that journalists are continuing to face obstacles in obtaining access to public information and documents. 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 expressed concern 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'. Parliament noted that where media ownership remains highly concentrated – whether in government or private hands – it constitutes a significant risk to the diversity of information and viewpoints represented in the media. Parliament also noted that the positions of several Member States have declined in international press freedom rankings, and highlighted the irreplaceable role of public service media outlets, stressing that it is essential to ensure and maintain their independence from political interference.

In March 2022, the European Parliament set up a [committee of inquiry](#) to look into the use of the Pegasus spyware.

In their November 2021 [resolution](#), Members of the European Parliament (MEPs) proposed a series of measures to counter the threat that strategic lawsuits against public participation (SLAPPs) pose to journalists, non-governmental organisations (NGOs) and civil society in Europe.

In its October 2021 [resolution](#) on Europe's media in the digital decade, Parliament stressed that it is 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 and independent 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 called on the Commission to present a legal framework to supervise the operations of public service media providers, including whether they fulfil the criteria of prudent management and task-based financing, and whether their services fulfil expectations for fact-based, fair and ethical journalism. Parliament demanded that EU countries take action to avoid excessive concentration of ownership and to guarantee transparency.

Council starting position

On 21 June 2022, the Council adopted [conclusions](#) on the protection and safety of journalists and media professionals. 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. The Council acknowledged that safeguarding media pluralism falls primarily within the competences of the EU Member States. It 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. It invited the Commission to foster a holistic policy perspective, taking into account legal, political and economic variables that are relevant to safeguarding media pluralism and freedom. 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, at 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 and aiming at strengthening media freedom and pluralism across Europe. 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 TV broadcasts and on-demand services, in addition to video-sharing platforms. 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 the safety of those most vulnerable, such as minors. The AVMSD has extended rules regarding illegal and harmful content to video-sharing platforms, and aims to foster cultural diversity in audiovisual media.

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 Ireland³ – which is the competent jurisdiction for the largest video-sharing platforms in Europe (Facebook, Twitter and Google).

The recently-agreed [Digital Services Act](#) and [Digital Markets Act](#) have been designed to 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. It is for that reason that the Commission committed to prepare the European media freedom act.

From 10 January 2022 to 25 March 2022, the Commission ran an [open public consultation](#) to collect views on the upcoming act. This followed a call for evidence, published on 21 December 2021, outlining the main aims of the initiative, possible options and impacts. The Commission considered three policy options: the first was to propose no changes to the current legislative framework and continue to monitor developments in the EU27 through the annual rule of law reports. The second was to address recommendations to Member States. The third was to pass a European legislative instrument, underpinned by a reinforced EU network of independent media regulators.

Together with the proposal for the European media freedom act on 16 September 2022, the Commission published a [study on media plurality and diversity online](#), mapping existing legislative measures and making policy 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 related 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, in particular, 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. The regulation proposes new rules that will have an impact on public and commercial media services, online platforms, governments and media regulators. It will amend the rules of the [Audiovisual Media Services \(AVMS\) Directive](#) and complement the [Digital Services Act](#) (DSA).

The proposal is built around four specific objectives:

- 1 **to foster cross-border activity and investment in media services** by harmonising diverging national media pluralism frameworks;
- 2 **to increase regulatory cooperation and convergence** through cross-border coordination tools and EU-level opinions and guidelines;
- 3 **to facilitate provision of quality media services** by mitigating the risk of undue public and private interference in editorial freedom;
- 4 **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.

The regulation would require Member States to respect the effective **editorial freedom** of media service providers. Media service providers would have to adopt proportionate 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, and take appropriate measures to guarantee the independence of individual editorial decisions. 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 ensure the effective enforcement of Union media law and prevent possible 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. In particular, national regulatory authorities would be allowed to request that the authorities of the country of establishment take necessary action regarding video-sharing platforms. Given the pan-European nature of video-sharing platforms, national regulatory bodies need a dedicated tool to protect viewers of video-sharing platforms from illegal and harmful content, including commercial communications. Coordination between national regulatory authorities is also needed to face possible public security and defence threats stemming from media service providers established outside the Union.

The proposed media freedom act also aims to protect media, journalists and their families against the **use of spyware**. The proposal narrows down any [possible exceptions](#) to this rule to grounds of national security, or in cases of investigations to a closed list of crimes, such as terrorism, child abuse or murder. In such cases, it should be duly justified on a case-by-case basis, in circumstances where no other investigative tool would be adequate. Every Member State would have to designate an independent authority to handle complaints made by media service providers concerning the use of spyware against them. These authorities would have to issue, within three months of the request, an opinion regarding compliance with the provisions of the media freedom act.

According to the proposal, the **protection of journalistic sources** needs harmonisation and further strengthening 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, while others provide protection in the form of a general principle. This leads to fragmentation in the internal media market. 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, by ensuring that citizens and businesses have access to quality information and impartial

media coverage, as part of their mission. 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, where public service media exist, their funding 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 partisan political influence, the head and the governing board of public service media should be appointed in a transparent, open and non-discriminatory manner and dismissal should be possible only in very specific circumstances.

The proposed regulation also suggests the use of a new independent **monitoring mechanism** assessing the functioning and resilience of the internal media market. 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 regarding national rules and procedures for assessing media market concentrations that could have a significant impact on media pluralism and editorial independence. 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 establish new requirements for the **allocation of state advertising to media**, so that it is transparent and non-discriminatory. 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 the misuse of public funding for partisan interests to the detriment of other market players or 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 services, including the legal names of the providers, the total amount spent and the amount per provider.

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 Digital Services Act provisions, the EMFA would **protect media content online**. It would offer additional protection against unjustified removal by very large online platforms (VLOPs) (above 45 million users in the EU) of media content produced according to professional standards. VLOPs that intend to take down certain legal media content, considered to be contrary to the platform's policies, would have to inform the media service provider about the reasons before such take-down took effect. Platforms would have to process any 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) – which was established under the AVMS Directive – with a new independent **European board for media services** (EBMS), comprised of national media authorities.⁶ The secretariat for the board would be provided by the Commission. The board would have to 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, including foreign interference: it would coordinate national measures regarding non-EU media that target audiences in the Union and present a risk to public security, to ensure that they do not circumvent

the EU rules. 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 proposal is accompanied by a [recommendation](#), setting out a catalogue of voluntary best practices geared at strengthening editorial independence and greater ownership transparency. It includes a toolbox of voluntary measures for media companies to consider, such as conditions for editorial independence, promoting journalists' participation in media companies' decision-making, and strategies for ensuring the long-term sustainability of news content production. The recommendation will apply immediately 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) is being [consulted](#) on the proposal. The EESC previously adopted an [own-initiative opinion](#) on 'Securing media freedom and diversity in Europe' in September 2021. The Committee noted with regret the alarming developments within the EU, although Europe overall remains a continent with free and diverse media. It welcomed the Commission's plan for the EMFA, to develop effective legal instruments to enforce media freedom and pluralism in the common market. The EESC is also planning a debate on media freedom in the EU during its December 2022 plenary session.

National parliaments

The subsidiarity deadline for national parliaments to [submit](#) their reasoned opinions is 12 December 2022.

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 to strengthen a free and pluralistic media system and the commitment to protect journalists and editorial independence within the EU. '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 Broadcasting Union, 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 during the legislative process it will be important to strike the right balance between single market objectives and national competencies in shaping media pluralism and independence, social and cultural issues. The EBU wants to work with policymakers on improving the proposed draft, and 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 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 [believes](#) that current threats to media freedom and pluralism combined with an unprecedented rise in disinformation, especially in certain Member States, amply shows that the Commission is right to

bring forward a media freedom act. 'EMFA should establish common principles and minimum standards of transparency, regulatory independence and media pluralism particularly to address the threat posed by politically driven media capture', it says.

The NGO Civil Liberties Union For Europe (Liberties) [sees](#) the proposal as an excellent opportunity to improve the way media freedom is protected in Europe. For example, the act would require a transparent European public database containing information about the entire beneficial ownership chain of media outlets. Liberties warns that the existing rules are insufficient to tackle the problems arising in many EU Member States, with government capture of public service media. 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. For Article 19, the EMFA [shows that](#) the Commission is not afraid to act on the issues eroding media freedom in parts of the EU. It welcomes the safeguards introduced via impact assessment of media mergers on media plurality, but warns that the advisory nature of those provisions (relying on peer pressure from national regulatory authorities, the board and the Commission) risks creating a toothless mechanism not achieving its goals. Article 19 objects to the criteria used for the allocation of state advertising, i.e. the safeguards applying only to public funds granted by public administrations of territorial entities with more than 1 million inhabitants, noting that those provisions would cut out a huge proportion of EU territory.

The European Regulators Group for Audiovisual Media Services (ERGA), [fully shares](#) the proposal's general objectives. ERGA welcomes the proposed new structure, which would transform ERGA into the European Board for Media Services. The new board should replace the current coordinating group and receive new tasks and responsibilities, therefore being granted a central role in the implementation of the new framework. ERGA highlights that the new board should be independent from any kind of interference, be it at national or European level, and stresses that the board and all its members should be equipped with adequate human and financial resources to carry out their new tasks effectively.

Contrary to 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'. They call on the Member States not to accept unjustified and problematic centralisation of media policy.

According to the European Publishers Council (EPC), there is [deep concern](#) among Europe's publishers about crossing the line into controlling the press in countries where press freedom flourishes. One of the most problematic aspects of the proposal 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. 'The moment a statutory regulator is given powers to scrutinise any aspect of how newspapers, magazines and other independent publications operate, including a say over editorial functions, the press is no longer free from government oversight', they say.

Legislative process

The Commission proposal is following the ordinary legislative procedure in the European Parliament and the Council. The feedback period on the proposal is open on the Commission's ['Have your say'](#)

webpage until 10 January 2023.⁸ Parliament's Committee on Culture and Education has been designated the committee responsible, with the Committees on Civil Liberties, Justice and Home Affairs (LIBE) and Internal Market and Consumer Protection (IMCO) asked to give an opinion.

In the Council, the proposal is currently being [discussed](#) within the Audiovisual and Media Working Party.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

[Safety of journalists and the fighting of corruption in the EU](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, July 2020.

[Europe's media in the digital decade – An action plan to support recovery and transformation in the news media sector](#), Policy Department for Structural and Cohesion Policies, European Parliament, May 2021.

[Media Action Plan: Key challenges related to media pluralism, media freedom and democracy](#), Policy Department for Structural and Cohesion Policies, European Parliament, May 2021.

[Media Action Plan: policy recommendations](#), Policy Department for Structural and Cohesion Policies, European Parliament, May 2021.

[The Use of SLAPPs to Silence Journalists, NGOs and Civil Society](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, June 2021.

[Strategic lawsuits against public participation \(SLAPPs\)](#), EPRS, European Parliament, September 2022.

OTHER SOURCES

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

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 MFA).
- ³ The Online Safety and Media Regulation Bill [has completed](#) the Lower house of the Oireachtas, [third stage](#). The final adoption is undetermined.
- 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 MFA, 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'.
- ⁸ According to the webpage, the 8-week feedback period is extended every day until the adopted proposal is available in all EU languages.

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First edition. The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.