European Economic and Social Committee

OPINION

European Economic and Social Committee

European Media Freedom Act

_____

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
[COM(2022) 457 final – 2022/0277 (COD)]

SOC/742

Rapporteur: **Christian MOOS**
Co-rapporteur: **Tomasz Andrzej WRÓBLEWSKI**

EN

www.eesc.europa.eu

www.eesc.europa.eu/facebook www.eesc.europa.eu/twitter www.eesc.europa.eu/linkedin www.eesc.europa.eu/instagram

Referral	European Parliament, 24/10/2022 Council of the European Union, 28/10/2022
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	23/11/2022
Adopted at plenary	14/12/2022
Plenary session No	574
Outcome of vote (for/against/abstentions)	156/0/3

1. Conclusions and recommendations

1.1 Media freedom and diversity are of fundamental importance for the rule of law and liberal democracy. The EESC deplores worrying developments within in the EU. Therefore, it welcomes the European Commission's initiatives for media freedom.

1.2 The EESC is concerned about whether the completion of the internal media market is a sufficient approach for protecting media freedom and pluralism. The main goal should be to preserve or restore media freedom and diversity, without forgetting that economic well-being is connected to media freedom.

1.3 The EESC welcomes the European Commission's acknowledgement that media market concentration leading to monopolies can be a massive threat to media freedom and plurality. However, market concentration can be meaningful, and does not have to have such negative effects.

1.4 Mere recommendations and a soft-law approach are not enough. Free and independent media must be a binding criterion for the rule of law report and mechanism.

1.5 The EESC welcomes proposals to strengthen and defend editorial independence. It stresses the need for upholding journalist and publishers' independence.

1.6 Public media only make sense if they are impartial and entirely independent of political influence. Adequate and stable financial resources are a crucial safeguard in this respect, if an effective system of controls guarantees the effectiveness of spending.

1.7 The EESC considers binding requirements for transparency of media ownership important. For small media outlets the established requirements must not lead to an excessive administrative burden.

1.8 The EESC is concerned about the lack of independence of some national regulatory bodies, and calls for a framework ensuring their independence.

1.9 The EESC welcomes the creation of a European board for media services, but insists on its full independence, as the EU should act as a best-practice example with a view to achieving the full independence of national regulatory bodies. The participation of national regulatory bodies that are not independent is ill-advised.

1.10 The EESC underlines the importance of transparency in all processes related to content moderation on very large online platforms.

1.11 The EESC recommends defining EU-wide minimum standards in accordance with the EU's current anti-concentration law provisions. It calls upon legislators to adopt binding regulations with due respect to entrepreneurial freedom and to avoiding unnecessary bureaucracy and costs.

1.12 Where national regulators fail to sufficiently assess the media market concentration, the European Commission should react in accordance with the existing provisions of EU anti-concentration law.

1.13 The EESC welcomes binding transparency requirements with regard to the allocation of State advertising.

1.14 The EESC welcomes annual monitoring and calls for relevant stakeholders and civil society to be consulted. It proposes widening the monitoring scope and including any other aspect relevant to the protection of media freedom and plurality.

2. General comments

2.1 The EESC reiterates its recent position on the importance of media freedom and diversity for liberal democracy and the rule of law, to which all Member States are committed by the ratification of the EU Treaties as laid down in the comprehensive own-initiative opinion on *Securing media freedom and diversity in Europe*[1], in its opinion on the *European democracy action plan*[2] and in that on strategic lawsuits against public participation[3].

2.2 European Commission President Ursula von der Leyen correctly stated in her 2021 State of the Union address[4] that information is a public good. Without free access to independent and reliable information, EU citizens cannot exercise their right to participate in the democratic life of the Union, guaranteed by Article 10 TEU.

2.3 In general, Europe remains a continent with free and diverse media. However, recent developments within the EU are alarming. The protection of journalists, most notably due to the lack of anti-SLAPP instruments, remains a major concern with regard to effective regulatory safeguards protecting media freedom. The Media Pluralism Monitor 2022[5] also found that market plurality faces the highest level of risks of all areas covered by the study. As political independence has not made any progress in recent years, the monitor highlights the lack of efficient mechanisms to protect editorial autonomy in most countries as a major obstacle to improvements in this area.

2.4 In addition to internal threats to media freedom, the EU is confronted with external interference trying to manipulate public debates in Europe. Against the backdrop of rising geopolitical tensions, the protection of media freedom and media pluralism is an important contribution to the EU's resilience against external threats.

---

1 SOC/635.

2 SOC/672.

3 SOC/734.

4 European Commission, 2021, State of the Union Address by President von der Leyen, Strasbourg, 15 September 2021.

5 European University Institute, Centre for Media Pluralism and Media Freedom, *Application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2021, San Domenico di Fiesole 2022*.

2.5 However, a few positive developments also show that EU legislation can make a difference. The Media Pluralism Monitor 2022 found a positive development with regards to the indicator 'Protection of the right to information' in four countries, attributing this improvement to the transposition of EU Directive 2019/1937[6] on the protection of whistleblowers.

2.6 Therefore, the EESC welcomes in principle the Commission initiative for a European Media Freedom Act[7] and the Commission recommendation on internal safeguards for editorial independence and ownership transparency in the media sector[8] as the next consequential step towards protecting media freedom and media pluralism, and thus liberal democracy in the EU.

2.7 The EESC underlines the importance of the European Media Freedom Act being a regulation with direct effect, while questioning whether the soft-law approach of the recommendation is an effective way to achieve its objectives. Mere recommendations are not enough to guarantee media freedom and diversity in the Member States. Free and independent media must be binding criteria for the rule of law report and for triggering the mechanism in Member States where governments violate media freedoms and independence.

2.8 The legal basis for the regulation is Article 114 TFEU, which allows for the approximation of national laws aimed at the establishment and functioning of the internal market. Since the underlying problems and shortcomings are highly political in nature and related to the functioning of democratic systems based on the rule of law, the EESC is concerned about whether the completion of the internal media market is a sufficient approach to protecting media freedom and pluralism.

2.9 The proposal for a regulation has five distinct objectives: a) to harmonise national rules and procedures to overcome obstacles that hinder media companies from operating and investing in the internal market; b) to remove glass ceilings that restrict foreign publishers from investing in local national markets; c) to strengthen editorial freedom of all media, without at the same time restricting the rights of private publishers; d) to guarantee the independence of public media by a construction of permanent mechanisms free from the influence of politicians; and e) to regulate the allocation of economic resources, i.e. state advertising. The EESC questions the hierarchy of the listed objectives. It believes that the main goal should be to preserve or restore media freedom and diversity, rather than focusing on economic issues unless they are clearly related to media freedom.

2.10 It is clear from the regulation that the Commission wants to focus on the "distortions" of the internal market and open up the media market to greater cross-border competition, especially for audio-visual media services and video exchange. Therefore, the actual scope of the regulation is much narrower than its title suggests. The EESC believes this approach to be insufficient to effectively defend and where necessary restore media freedom and plurality which is under

6 OJ L 305, 26.11.2019, pp. 17.

7 COM(2022) 457.

8 C(2022) 6536.

attack in almost all Member States and basically abolished in some severe cases with all the devastating consequences this entails for the work and security of journalists and the integrity of public debate and information. With the opening of the market, it is necessary to ensure the same standards of protection of free speech to ensure that wider market access does not entail monopolisation of the market by foreign players, particularly in the case of poorer countries.

2.11 The EESC welcomes proposals to strengthen and defend editorial independence. It also stresses the need for upholding journalists' and publishers' independence, i.e. the right of publishers to formulate an editorial line of publication. The EESC has observed more and more political and economic influence in several EU countries, both in public media and in private media with close links to power. This is incompatible with the role of the media as the fourth estate. The regulation does not specify how editorial independence can be reconciled with the legitimate rights and interests of publishers/private media owners.

2.12 The EESC supports measures enhancing resilience against foreign information manipulation and interference, as long as this does not affect freedom of expression inside the European Union.

2.13 The European Media Freedom Act identifies the need for funding of the media sector, as suggested by the EESC in its opinion on *Securing media freedom and diversity in Europe*[9]. However, the given tools are as yet insufficient to secure quality journalism and media diversity in the Member States. At the same time, the EESC believes that the best conditions for media freedom are a regulatory framework that allows media outlets to finance themselves through their offer on the market. Public media only make sense if they are impartial and entirely independent of political influence, otherwise public financing can lead to all sorts of abuses and government manipulations. Any media financing project should be based on very transparent rules and guarantees of political independence for journalists.

2.14 The EESC supports the final report of the Conference on the Future of Europe[10] and its strong plea for the promotion of media independence and pluralism (proposals 27(1) and 37(4)), which the Commission quotes without following the prioritisation these proposals entail.

3. Specific comments

3.1 The EESC welcomes the right of the recipients of media services and media service providers "to receive a plurality of news and current affairs content, produced with respect for editorial freedom of media service providers, to the benefit of the public discourse", as laid down in Article 3.

3.2 The EESC questions the narrow scope of Article 4(2)(c) addressing only the deployment of spyware (only "product[s] with digital elements"), and proposes to prohibit the deployment of any device or technology which can be used for surveillance.

9 SOC/635.

10 Conference on the Future of Europe, *Report on the final outcome*, May 2022.

3.3 The EESC underlines the importance of safeguards for the independence of public service media providers and adequate and stable financial resources for them (Article 5), however, there should be an effective system of controls safeguarding the effectiveness of spending the resources. The EESC considers an independent body the best option to define the adequate amount of funding which is necessary to allow public service media providers to fulfil their mission, provided it may not be politically appointed. Current tendencies to politicise the question of funding for public service media providers is a considerable threat to media freedom.

3.4 The EESC considers that the duties of media service providers as defined in Article 6(1) fall short of providing transparency of media ownership. Intransparency in media ownership is an important reason for lack of editorial freedom and quality journalism (in line with journalistic standards). Media service providers as well as online platforms must make their ownership transparent to the media users. The protection of data and of privacy must not hinder media ownership transparency. For small media outlets the established requirements must not lead to an excessive administrative burden.

3.5 The EESC recommends complementing the binding transparency requirements mentioned in No. 20 of the Commission Recommendation with additional requirements mentioned in No. 4.1 to 4.6 of the appendix to the Recommendation of the Committee of Ministers of the Council of Europe to Member States on media pluralism and transparency of media ownership[11].

3.6 The EESC sees some danger of the soft-law approach of the Commission Recommendation resulting in a regulatory patchwork undermining the integrity of the common market and the objectives of the directive.

3.7 The EESC considers the reference of Article 7 to the requirements set out in Article 30 of Directive 2010/13/EU[12] as too vague to ensure the independence of national regulatory authorities or bodies. Therefore, recommends defining a framework ensuring the independence of national regulatory bodies and instruments to remedy any lack of independence of a national regulatory body.

3.8 The EESC considers it unacceptable for a representative of a national authority or body, which is not fully independent, to participate in the decision-making of the proposed European Board for Media Services. In order to assess the independence of national authorities or bodies, clear criteria need to be defined in the regulation.

3.9 The EESC does not consider the proposed European Board for Media Services to be independent from the European Commission, and calls upon the European legislator to ensure full independence of the board. If the board is not fully independent of the European Commission, it may not exercise any supervisory or regulatory tasks.

11 OJ L 13, 18.12.2018, p. 1.

12 OJ L 13, 18.12.2018, p. 1.

3.10 The EESC recommends reformulating Article 10(5) as follows: "The Commission shall designate a representative to the Board. The representative of the Commission can participate in the meetings of the Board, without voting rights".

3.11 The EESC recommends reformulating Article 10(6) as follows: "The Board may invite experts and observers to attend its meetings".

3.12 With regard to Article 11, the EESC rejects the Commission's decision for sub-option A to establish the European Board for Media Services supported by a Commission secretariat. Only sub-option B to establish the European Board for Media Services, assisted by an independent EU office, can guarantee the board's independence.

3.13 The EESC welcomes the structured dialogue with all stakeholders and explicitly civil society, as mentioned in Article12(l). The EESC, representing the most important sectors of civil society (including the social partners), can contribute with its expertise to this structured dialogue.

3.14 The EESC welcomes structured cooperation, including mutual assistance, between national regulatory authorities and bodies. However, the EESC recommends broadening the scope of Article 13(2) beyond risks to the functioning of the internal market for media services and public security and defence, and also include other risks to the freedom and diversity of media, as well as risks to the political independence of the regulatory authorities and bodies.

3.15 The EESC welcomes efforts for better protection of the content of media service providers on very large online platforms as laid down in Article 17, and underlines the importance of transparency in all processes related to content moderation on very large online platforms, providing that the obligations referred to in this paragraph do not disturb the functioning of the large online platforms. The EESC welcomes the structured dialogue provided for in Article 18, and underlines the importance of involving civil society in the review of the application of Article 17.

3.16 The EESC welcomes users' right to customise audio-visual media default settings, as laid down in Article 19. To put this right into practice, the user-friendliness of devices and/or user interfaces is of crucial importance. However, the operational ability of the manufacturers and developers should not be infringed, or their future development limited. They have to be designed in a user-friendly way, in simple language.

3.17 The EESC proposes also granting the European Board for Media Services (under Article 20(4)) the right to draw up an own-initiative opinion where a national legislative, regulatory or administrative measure is likely to affect the functioning of the internal market for media services.

3.18 The EESC reiterates its previously expressed concern that a purely market-based approach to securing the plurality and freedom of media in Europe is not sufficient. While acknowledging that the size of companies in the market for media services can contribute to the economic

sustainability of media service providers, the EESC welcomes the European Commission's acknowledgment that media market concentration can be a substantial threat to media freedom and plurality.

3.19 The EESC welcomes the measures proposed in Article 21 to increase the transparency of market concentration as a first step to containing threats to media freedom and media pluralism resulting from concentration in the media market. Market concentration does not necessarily have a negative effect on media freedom and diversity where, for example, it helps smaller media outlets to survive, but it is necessary to act against concentration where it leads to information monopolies. The EU must take action in particular against media capture by media moguls and oligarchs who are often in close relations with leading politicians in the country, or even governments of third countries.

3.20 The EESC reminds of the fact that media markets remain highly fragmented, and calls for measuring market concentration not only in reference to the national market for media services, but also for fragmented markets on the subnational or district level. Media market concentration in districts with only one regional media outlet poses a substantial threat to media freedom and pluralism.

3.21 The EESC considers Commission guidelines "on the factors to be taken into account when applying the criteria for assessing the impact of media market concentrations" as insufficient for ensuring the comparability of assessments across the whole EU. The EESC recommends defining EU-wide minimum standards for the assessments, which need to be respected in all Member States. Member States are invited to provide more detailed and in-depth assessments in addition to EU minimum requirements.

3.22 However, non-binding transparency requirements fall short regarding the current threat posed by market concentration to media freedom and media plurality. Therefore, the EESC calls upon European legislators to adopt binding regulations concerning the concentration of media, with due respect to the freedom of entrepreneurial decisions. This cannot, however, burden media or media institutions with additional bureaucracy and costly procedures.

3.23 The EESC recommends also granting the European Board for Media Services (under Article 22) the right to draw up an own-initiative opinion "[i]n the absence of an assessment or a consultation pursuant to Article 21". It is insufficient to delegate the task of market concentration assessment to the Member States, since some governments are actively supporting market concentration in order to silence critical voices and oppositional media outlets.

3.24 The EESC reminds of the fact that distortions in the internal market for media services also affect the freedom and plurality of media, if these distortions are limited to specific parts of the common market, on national, regional or even district level. In all these cases, the Board must have the right to initiate an assessment of the media concentration if national regulatory authorities or bodies fail to do so.

3.25 The EESC recommends assigning the European Board for Media Services the task to conduct assessments addressing other threats to media freedom and pluralism if national regulatory authorities or bodies fail to do so.

3.26 The EESC welcomes the binding transparency requirements of Article 24 with regard to the allocation of state advertising. However, it considers the exemption for territorial entities of more than 1 million inhabitants from the requirements as a loophole to avoid transparency. Acknowledging the fact that the administrative burden related to reporting requirements has to be proportionate, the EESC proposes defining a minimum threshold for the amount of spending by one national, regional, or local government. If the total annual spending on state advertising by one entity remains below the threshold, transparency requirements are not applicable.

3.27 The EESC welcomes the annual monitoring provided for in Article 25, and calls for the consultation of relevant stakeholders and civil society during the monitoring exercise. Limiting the subject of the monitoring exercise to the functioning of the internal market for media services is, however, insufficient. Therefore, the EESC proposes widening the scope of the monitoring exercise to also cover any other aspect relevant to the protection of media freedom and plurality. The EESC recommends assigning the European Board for Media Services the task to develop a set of indicators for the monitoring exercise.

Brussels, 14 December 2022

Christa Schweng
The president of the European Economic and Social Committee