



# Introduction to the proposal for a European Media Freedom Act (EMFA)

APE Breakfast discussion  
24 November 2022

**Maja CAPPELLO**

Head of Department for Legal Information  
European Audiovisual Observatory



# Prelude

# Prelude

## **The speech**

The State of the Union's address

The consultations

# Prelude

## The speech

The EU should “*prepare a **European Media Freedom Act** to complement our legislative arsenal in order to ensure that **media freedom and pluralism** are the pillars of our democracies.*”

Commissioner Thierry Breton  
19 April 2021

# Prelude

## The speech

... “very vigilant” about respecting EU rules on the independence of media regulators, and expressed the need for a **complementary tool** in the area of media freedom, as the current toolbox is limited.

Commissioner Thierry Breton  
19 April 2021

# Prelude

## The speech

The EU would need a mechanism to increase **transparency, independence and accountability** around actions affecting control and freedom of the press.

Commissioner Thierry Breton  
19 April 2021

# Prelude

## The speech

... reflect on how best to **strengthen the governance of public media**, around a common framework to better prevent the **risks of politicisation** and to better **ensure diversity and pluralism**.

Commissioner Thierry Breton  
19 April 2021

# Prelude

## The speech

... reflect on the **funding** supporting pluralism and media freedom, and on the **structures** that carry this funding.

Commissioner Thierry Breton  
19 April 2021



# Prelude

The speech

**The State of the Union's address**

The consultations

# Prelude

## The State of the Union's address

- a **Recommendation** to give journalists better protection;
- a **Media Freedom Act** to stop those who threaten media freedom and safeguard the independence of media companies.

President of the Commission Ursula von der Leyen  
15 September 2021

# Prelude

The speech

The State of the Union's address

**The consultations**

# Prelude

## **The consultations**

**The call for evidence**

**The public consultation**

December 2021 – March 2022

# Prelude

## Call for evidence – accompanying doc

### Problems

- **different national rules** on media pluralism;
- **insufficient** structures for **cooperation between NRAs**;
- public and private **interference in the ownership, management or operation** of media outlets;
- lack of **media pluralism safeguards**, including online.

# Prelude

## Call for evidence – accompanying doc




### Objectives

- **consistent** regulatory standards;
- **wide and varied** media offer both offline and online;
- editorial **independence** and independent management of the media;
- **transparent and fair** allocation of state resources.

# Prelude

## Call for evidence – accompanying doc

### Three options

-  • **Baseline scenario:** no changes + monitoring
-  • **Recommendation to Member States:** implement a number of actions + monitoring mechanism
- **Legislative instrument + reinforced ERGA** 

# Prelude

## Public consultation

- **views, evidence and data** gathered from citizens, in particular journalists, media, academics, civil society, public authorities, businesses and all interested parties
- **917 replies**



# The EMFA proposal

# The EMFA proposal

## Legal basis

**Treaty on the Functioning of the European Union (TFEU)  
Article 114(1)**

*1. Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. [...]*

# The EMFA proposal

## Legal basis

**Treaty on the Functioning of the European Union (TFEU)  
Article 26**

*1. The Union shall adopt measures with the aim of establishing or ensuring the **functioning of the internal market**, in accordance with the relevant provisions of the **Treaties**.*

*[...]*

# The EMFA proposal

## Legal basis

**Treaty on the Functioning of the European Union (TFEU)  
Article 114(1)**

*1. [...] The **European Parliament and the Council** shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, **adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.***

# The EMFA proposal

## Internal Market issues

- national restrictions related to **sources and communications of journalists** as service providers, affecting the production and provision of media services;
- interference in the **operation of MSPs**, including their editorial decisions, and diverging approaches to protection of editorial independence;
- the risk of **state interference in public service media**, to the detriment of a level playing field in the single market and quality of public service media;

# The EMFA proposal

## Internal Market issues

- the market operations of **rogue operators** (including MSPs that are **state-controlled**, be it financially or editorially, by certain third countries) that create tensions in the application of the free movement rules within the Union;
- given the increasing digitalisation of media service distribution, the **risks to free provision of media services on VLOPs**, to the detriment of a level playing field in the internal market;

# The EMFA proposal

## Internal Market issues

- national **media market measures** affecting the operation of MSPs restricting the free movement in the Union;
- national rules and procedures for the assessment of the **impact of media market concentrations** on media pluralism and editorial independence;
- opacity and possible biases in **audience measurement systems** and methodologies;
- unfair and un-transparent allocation of **state advertising** expenditure to MSPs.

# The EMFA proposal

## Legal basis

### Protocol on the system of public broadcasting in MS (Amsterdam Protocol)

*[...] competence of MS to provide for the **funding of public service broadcasting** [...] such funding is granted to broadcasting organisations for the fulfilment of the **public service remit** [...] insofar as such funding **does not affect trading conditions and competition** in the Community [...]*



# The EMFA proposal

## Legal basis

### Article 4(2) Treaty on European Union

*The Union shall respect [...the MS] **national identities**, inherent in their **fundamental structures**, political and constitutional, inclusive of regional and local self-government. It shall respect their **essential State functions** [...]*

# The EMFA proposal

## Proportionality

The **EMFA**:

- builds on **existing legal frameworks**
- Is limited to issues on which **Member States cannot achieve satisfactory solutions on their own.**

# The EMFA proposal

## Legal form

**EU Regulation** more suitable to:

- ensure a **consistent level of protection** throughout the EU (quick application, avoiding lengthy transposition, preventing divergences)
- ensure **effective and efficient cooperation among NRAs.**

# The EMFA proposal

## Measures

- Editorial independence of media service providers
- Safeguards regarding spyware against media and journalists
- Protection against interference in public service media
- Media pluralism test in oversight on media mergers
- Transparency obligations on State advertising and audience measurements
- Protection of professional media content distributed by global platforms
- User right to customise media offer

# The EMFA proposal

## Editorial independence

**Member States** will have to:

- respect the **effective editorial freedom** of media service providers (MSPs);
- improve the **protection of journalistic sources**.

# The EMFA proposal

## Editorial independence

**Media Service Providers** will have to:

- ensure **transparency of ownership** by publicly disclosing such information;
- take measures with a view to **guaranteeing the independence** of individual **editorial decisions**.

# The EMFA proposal

## Spyware against media

The **EMFA** includes **safeguards** against the use of **spyware against media, journalists and their families.**

# The EMFA proposal

## Public service media

- **Funding** of public media should be **adequate** and **stable**, in order to ensure editorial independence.
- **Head and governing boards** will have to be appointed in a **transparent, open and non-discriminatory manner**.
- Public service media providers shall provide a **plurality of information and opinions**, in an **impartial** manner, in **accordance with their public service mission**.



# The EMFA proposal

## Media pluralism

Member States will have to:

- assess the **impact of media market concentrations** on media pluralism and editorial independence (media pluralism test)
- Legislative, regulatory or administrative **measures** that could affect the media will have to be **duly justified and proportionate**.

# The EMFA proposal

## State advertising and audience measurements

The EMFA will:

- Introduce new **requirements** for the allocation of **state advertising** to media, so that it is **transparent and non-discriminatory** (threshold of 1 mill inhabitants)
- enhance the **transparency and objectivity** of **audience measurement systems**, which have an impact on media advertising revenues, in particular online.

# The EMFA proposal

## Protection of media content online

The EMFA will build on the Digital Services Act (DSA):

- include **safeguards** against the unjustified removal of content produced according to professional standards.
- In cases not involving systemic risks, very large online platforms (VLOPs) will have to **inform the MSPs** before take down takes effect.
- **Complaints** will be **processed with priority**.

# The EMFA proposal

## User right to customise media offer

The EMFA will introduce a **right of customisation of the media offer** on devices and interfaces enabling users to **change the default settings to reflect their own preferences.**

# The EMFA proposal

## European Board for Media Services

Composition:

- **national media authorities** (NRAs)
- **European Commission** (without voting rights)
- **experts and observers** (in joint agreement NRAs + CION)
- **Secretariat** ensured by the European Commission

# The EMFA proposal

## European Board for Media Services

Missions:

- Promoting the effective and consistent **application of the EU media law framework**, in particular by **assisting the Commission** in preparing **guidelines**.
- Issuing **opinions** on national measures and decisions affecting **media markets and media market concentrations**.

# The EMFA proposal

## European Board for Media Services

Missions:

- **Coordinating measures** regarding **non-EU media** that present a **risk to public security** to ensure that those media do not circumvent rules in the EU.
- Organising a **structured dialogue** between VLOPs and the media sector to promote access to diverse media offers and to monitor platforms' compliance with self-regulatory initiatives.

# The EMFA proposal

## Next steps

- EMFA will now follow the **ordinary legislative procedure**
- It will be **directly applicable** across the European Union.
- The Commission will encourage **discussions**, notably as part of the European News Media Forum, on **voluntary practices** by media companies linked to the **accompanying Recommendation**.



# Issues raised in the ongoing debate

- The inclusion of the **press** in the scope of the regulation, and the non-inclusion of tech companies
- The limited **threshold** (1 mill inhabitants) for transparency obligations regarding state advertising,
- The focus only on **news media** with regard to media transparency obligations on ownership and financing,
- The lack of **media-specific** general transparency rules (limited to algorithmic transparency)

# Issues raised in the ongoing debate

- The practical functioning of the so-called “**media privilege**”,
- The powers of the European **Board** for Media Services
- The effective outcome of **cooperation** between national competition authorities (NCAs) and NRAs in assessing mergers,
- The link between national **mergers** and Community mergers as to the pluralism test.

# Thank you!

Questions?

[maja.cappello@coe.int](mailto:maja.cappello@coe.int)

A presentation of  
The European Audiovisual Observatory

