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THE EUROPEAN MEDIA FREEDOM ACT: (ANOTHER) NEW CHAPTER IN THE DIGITAL REGULATION SAGA

Posted on 6 Maggio 2024 by [Federica Paolucci](#)

1. Journalists today face continuous challenges amid the digital landscape. The pressures extend beyond the ubiquitous influence of social media on information dissemination; they also encompass the integration of cutting-edge technologies like Artificial Intelligence (AI) systems [into the journalist profession](#). It is no news that social media plays a central role in the curation of content, design, and control of the exposure of political and democratic discourse, exercising a de facto editorial role over the public's reaching of a certain new opinion. Since the Israeli-Palestinian conflict spread in 2023, social media, especially platforms such as [TikTok](#) or [Meta](#), has played a significant role in reporting and covering the escalation of violence. As of 10 October 2023, the hashtag #Palestine has some 27.8 billion views, and the hashtag #Israel has 23 billion on TikTok. The decision to make a piece of content go viral ultimately rests with the service provider, exercising editorial control over the content delivered to user groups. This aspect might trigger the protection of freedom of expression and media pluralism – which is a precondition for enjoying most democratic freedoms, such as the electoral vote – and by orienting editorial choices and news coverage.

To tackle these issues, the European Union just published in the Official Journal [the European Media Freedom Act](#) (hereafter, EMFA), Regulation (EU) 2024/1083 that aims at seizing “opportunities within the internal market, while at the same time protecting the values that are common to the Union and to its Member States, such as the protection of fundamental rights” (Rec. 2). Saying it differently, the new rules aim at protecting media freedom while seizing new potential market expansion, [such as addressing the issue of media concentration](#) (Art. 26) and transparency of media ownership (Rec. 32 – 33). The problem is not a trivial one: in Italy, for example, as the [newsletter Charlie edited by Il Post](#) also pointed out, the ties between some companies and the newspapers are very close and are witnessed by a series of publications, especially in their economics sections.

On these and other planes of conflict, including political interference in journalism, the EMFA regulation rests. This commentary will outline the Regulation’s main features and the novelties it will introduce; in the second part, the focus will be on a potential conflict with the Digital Services Act concerning safeguarding editorial content published by media service providers on very large online platforms (VLOPs).

2. The Media Freedom Act represents [a comprehensive legislative endeavour](#) as it serves to harmonise disparate national regulatory frameworks concerning media services, thereby facilitating the seamless functioning of the internal market while preempting impediments to the operational efficacy of media service providers across EU member states. Furthermore, EMFA will need to be [coordinated](#) with existing legislative frameworks such as the Digital Services Act (DSA) and the [Digital Markets Act \(DMA\)](#), which primarily focus on regulating online services but may not comprehensively address sector-specific challenges encountered within the media landscape. The Media Freedom Act thus serves as a complementary mechanism, specifically targeting issues that remain inadequately covered by the DSA and DMA.

Noteworthy among its provisions is the establishment of a robust and enforceable framework delineating the obligations of national regulatory authorities. This framework pertains particularly to addressing entities

systematically engaged in disseminating disinformation, engaging in information manipulation, or interfering with media operations, including those financed or controlled by certain third countries. By imposing clear regulatory standards, the Act aims to mitigate the deleterious effects of such practices on the internal market and safeguard editorial autonomy. Moreover, coordination with [the European Code of Practice on Disinformation](#) will be ensured as specified by Rec. 56. As a matter of fact, it is proposed the establishment of a structured dialogue facilitated by the European Regulators Group for Audiovisual Media Services (ERGA), between key stakeholders involved in the dissemination and regulation of online content. The dialogue aims to address several objectives, such as bringing together representatives from VLOPs, media service providers, and civil society.

Among the [many aspects](#) touched by the Regulation, the Act's core aims to safeguard the integrity of journalistic practices by mitigating national restrictions that impede the free dissemination of information and encroach upon the operational autonomy of media service providers. Concurrently, it champions the preservation of editorial independence by countering instances of external interference in editorial decision-making processes and harmonising protections across diverse regulatory landscapes present among member states (Art. 5).

Moreover, the Act confronts the pervasive threat of state interference in public service media, recognising the imperative of mitigating undue influence to foster a level playing field within the single market and uphold the quality of public broadcasting (Rec. 72). It also pursues to control the use of surveillance instruments toward journalists (Rec. 25 and 26), such as 'spyware', that "should only be deployed where it is justified by an overriding reason of public interest" and "it is provided for in Union or national law in compliance with Article 52(1) of the Charter as interpreted by the Court of Justice and with other Union law" (Rec. 26).

Particularly, in the digital sphere, EMFA acknowledges the complexities brought forth by rapid digitalisation, particularly concerning the provision of media services on large online platforms: the purpose is to ensure equitable market conditions and fair competition, thereby promoting a

conducive environment for media diversity and innovation (Section 4). Furthermore, the Act aims to harmonise national regulatory measures to alleviate market fragmentation stemming from divergent regulations. Transparency in audience measurement systems emerges as another critical focal point, with the Act aiming to address opacity and potential biases that may distort market dynamics (Art. 24).

Lastly, it establishes the European Board for Media Services (Art. 8-12), which will replace the ERGA; the Act designs its independence (Art. 9), its governance system (Art. 10-11) and entrusts it with specific tasks (Art. 12). As it has been observed by the [commentators](#), the competences of the Board are going to be even broader than the one of the ERGA, as under Art. 12 is required to (a) “support the Commission, through technical expertise”; (b) “promote cooperation and exchange”; (c) “advise the Commission”, upon its request on “regulatory, technical or practical aspects”; (d) provide opinions on “technical and factual issues”.

3. The comprehensive horizontal framework of the EMFA establishes a very detailed sectorial regulation that, however, is not immune to criticism. They are mostly related to the [tasks of the Board](#) and its independence, as well as the [legal basis](#) and [the role of the VLOPs](#).

On this last point, the relations between private actors and journalists come at stake precisely with respect to the removal (*i.e.*, suspension) of content from the platform itself. Thus, Art. 17 outlines a provision safeguarding editorial content published by media service providers on very large online platforms (VLOPs). In the event that such providers assert compliance with specific conditions to a VLOP, they are entitled to preferential treatment for their content within the moderation practices of that platform. A comparable provision had been previously deliberated within the DSA, proposed as a mandatory “media exemption” encompassing general terms and conditions and notice-and-action mechanisms. This provision now [undergoes renewed consideration outside the DSA](#), without formal amendment to the DSA itself, by introducing the new EMFA provision. In more granular terms, Article 17(1) mandates VLOP to offer a self-declaration functionality for the specific category of their “recipients” (*i.e.*, users). These users must be identified as

belonging to the group of media service providers who are independent and subject to some form of regulatory oversight in their function.

This provision is worrisome for two reasons: substantive and procedural. Within the first issue, Art. 17 states that VLOPs shall take «all possible measures» to communicate to the media service provider the reasons for the decision to suspend the provision of its service concerning content provided by that media service provider that is incompatible with its terms and conditions (Article 17(2) EMFA). The substantive problem is compliance: it is not well clarified if, where and when platforms should act, and, in terms of contrasting disinformation, this might create pitfalls in the circulation of fake news. On a procedural level, Art. 17 does not provide any procedural mechanism or mention any sort of procedural safeguard for the media service providers to contrast the VLOPs' decision. This aspect seems to contrast with the logic of the DSA, which, instead, establishes specific obligations on VLOPs for dispute settlements (Art. 20 – 21). Instead, Art. 17(4) only specifies that:

«where a media service provider that submitted a declaration pursuant to paragraph 1 considers that a provider of very large online platform frequently restricts or suspends the provision of its services in relation to content provided by the media service provider without sufficient grounds, the provider of very large online platform shall engage in a meaningful and effective dialogue with the media service provider, upon its request, in good faith with a view to finding an amicable solution for terminating unjustified restrictions or suspensions and avoiding them in the future. The media service provider may notify the outcome of such exchanges to the Board».

It says nothing about what happens if the entire service is suspended, [as also observed by scholars](#). The issue is not insignificant: the lack of *ad hoc* procedural mechanisms and the presence of interpretative doubts as to the extent of the ability of VLOPs to suspend contents opens up several issues relating to the application of the rule and, consequently, to the practical and expeditious protection of the persons concerned. Journalists and media service providers have given their delicate role in protecting freedom of expression and information. The risk is of fragmenting VLOP's

obligations and, as a result, of the protection of rights, creating a loophole mechanism that harms the very scope of the EMFA: securing the market against undemocratic positions coming from the political world and stagnating in and by the digital realm.

4. In conclusion, the European Media Freedom Act (EMFA) stands as a landmark legislative effort within the European Union to address the multifaceted challenges confronting media freedom, pluralism, and editorial independence. Its soon entering into force – expected on 7 May 2024 – marks a significant step toward harmonising regulatory frameworks across Member States and fostering a conducive environment for vibrant media ecosystems. By establishing clear obligations for national regulatory authorities and tackling issues such as disinformation, external interference in editorial decision-making, and state interference in public service media, the EMFA seeks to safeguard the integrity of journalistic practices and promote media diversity and innovation in the digital age. However, the Act is not without its criticisms, particularly regarding provisions related to the relationship between journalists and very large online platforms (VLOPs). Concerns about substantive compliance and procedural safeguards highlight the need for further refinement and clarification to ensure the effective protection of freedom of expression and information. As the EMFA comes into force, it is imperative for stakeholders to engage in [meaningful dialogue](#) and collaboration to address these concerns and uphold the core principles of media freedom and democracy within the digital landscape. Only through concerted efforts can EMFA fulfil its mission of securing the market against undemocratic influences and advancing the fundamental rights enshrined in the European Union.