

ACT POSITION PAPER ON THE EUROPEAN MEDIA FREEDOM ACT

INITIAL REMARKS

ACT supports the European Commission’s ambition of promoting and protecting media pluralism, independence, and sustainability to ensure a well-functioning media market in the EU. We believe that the European Media Freedom Act (EMFA) has the potential to be an important milestone in an increasingly digital environment. It is important that the conditions set out under the EMFA do not risk undermining those national media markets that currently function well, which is the case for most countries.

It is essential that the framework provided by the EMFA strikes a balance between rights and duties. Undue procedures, applied solely to media companies, are likely to fall short as they ignore the impact of video sharing platforms (VSPs) and more generally very large online platforms (VLOPs) on media pluralism. To ensure a healthy and pluralistic media ecosystem the EMFA should fully take into account not only audiovisual media services, radios and the press, but also large tech platforms and the impact of their operations on media pluralism. If these core issues are not addressed, the proposal could end up reinforcing existing regulatory asymmetries instead of supporting a healthy and pluralistic media ecosystem. In parallel, the sustainability of the media sector's digital transformation requires a comprehensive and coherent policy approach with sound legal protections for right holders. It is crucial that the EU deliver robust and future proof legislation addressing the issue of piracy, notably of live events.

To succeed, the EMFA must create added value for Europe’s media landscape. In our view, to do so the EMFA must facilitate a common principle-based approach to measures restricting media companies’ freedom; increase predictability and legal certainty; promote fair competition; enhance cross border investment and improve the quality of media services provided in the EU. However, there are some issues in the way the regulation and the obligations are laid out and scoped that may be detrimental when it comes to adding such value.

We believe that the most effective way for the EMFA to achieve its aims is by putting in place a principle-based framework that helps guide a coherent approach to media pluralism, independence and stability across the EU whilst respecting local market differences but without establishing additional minimum requirements at EU level. As such, we welcome the Commission’s choice to legislate via a regulation and not a directive.

KEY MESSAGES

PRINCIPLES AND FRAMEWORK OF MEDIA FREEDOM

ACT welcomes the intention of the EMFA of laying down principles and a framework aimed at fostering checks and balances in all Member States, with a view to ensuring minimum standards and good governance, whilst protecting media companies from states using media pluralism rules to unduly interfere with their activities.

- **Scope.** It is essential that social media and video-sharing platforms be included in the scope. Otherwise, the EMFA will likely lead to additional burdens for an already heavily regulated industry. The EMFA would miss its primary objective of securing media pluralism in an increasingly digital environment where platforms have a predominant role on opinion building.
- **Principles.** We support the explicit recognition that national measures restricting media companies’ freedom must always be justified, transparent, non-discriminatory, and proportionate. However, strengthening this language by further clarifying its interaction with

the Audiovisual Media Services Directive (AVMSD) and introducing the concepts of objectivity and adequacy could better address existing market asymmetries that favour global online platforms over media service providers.

- **Framework.** In principle, the evolution of ERGA into the European Board for Media Services can be positive. It may help foster a dialogue between National Regulatory Authorities (NRAs) and facilitate better coordination of EU media regulation. However, this new body should be politically independent in its decision making, as is the case for NRAs.

BALANCING MEDIA RIGHTS AND DUTIES

- **Media markets.** European broadcasters need to be able to build scale and partner to ensure effective competition against global platforms. As such, consolidation is often necessary. Legal safeguards on media concentration already do exist via EU competition law and are complemented by sectoral regulation in certain member states. An additional procedural layer would make current procedures even more burdensome and time-consuming, thus increase the imbalance with other players. We therefore do not believe that harmonised EU regulation in this area is needed as it could be detrimental to national markets that function well. The EMFA could, however, usefully set out guidance on common criteria for media pluralism to guide Member States which choose to introduce procedures in the future or review existing ones and ensure that a coherent approach across the EU is maintained.
- **Editorial integrity and independence.** Broadcasters hold themselves to the highest ethical standards and are already highly regulated and controlled. Whilst we can support a principle-based approach, new obligations should not undermine existing and well functioning rules at the national level. Oversight by independent regulators would not be an issue, but it is essential that the specifics be left to media companies themselves and not be delegated to legislators.
- **Protection of media content on VLOPs.** Very large online platforms have a massive impact on the way information is shared, processed and distributed. Measures to protect media content on platforms are therefore necessary and need to be strengthened. However, platforms should not be able to use these measures to justify inaction vis-à-vis illegal content and disinformation.
- **Audience measurement.** The proposal misses the mark as it enshrines in law what broadcasters already do whilst opening the door for disproportionate obligations related to sensitive internal information. Yet, it does not cover actors that are most problematic. The provision should lay out principles for audience measurement methodologies, focus only on advertising and fully apply to online platforms to ensure all audience measurement systems abide to the same high-quality standards as those followed by broadcasters.
- **State financing transparency.** Measures to improve the transparency of state advertising are welcome but should be widened to include direct financing and not just advertising, to ensure all relevant authorities are in scope, and should be broadened to also have transparency on funds allocated to online platforms.
- **Safeguards on the protection of employees and sources.** We welcome the introduction of provisions to protect employees of media service providers and their sources from Member States and their authorities. However, these provisions could be strengthened.
- **Standardization.** The EMFA could be an opportunity to promote the harmonisation of standardisation at European level.