

ACT RESPONSE TO TARGETED CONSULTATION ON ARTICLE 18 EMFA GUIDELINES

We welcome the opportunity to share our views on the modalities of the media privilege foreseen in article 18 EMFA. Our comments below cover a number of elements in the consultation document, namely the clarity of the legal text, the functionalities proposed by the EC, the importance of standardization, regulatory control, the involvement of third parties and makes a number of other suggestions not covered by the consultation document. Addressing these elements will help ensure the article 18 EMFA media privilege is used effectively by MSPs while preventing abuses.

A clear text. In our view, article 18(1) EMFA is clear and straightforward. The purpose of the guidelines should not be to simplify adopted provisions to the benefit of Very Large Online Platforms (VLOPs) as §3 and §4 suggest. Rather, the guidelines should adhere closely to the adopted provisions, not introduce additional leeway or flexibility for VLOPs. The guidelines should preserve the carefully balanced compromise reached during the legislative process. Article 18(1) represents a deliberate policy choice that should not be diluted through implementation guidelines that favor platform convenience over media rights.

Functionalities. In this light, the functionality described in §5 of the consultation – a standardized questionnaire that media service providers (MSPs) can access through their accounts – appears adequate. Such a functionality should allow MSPs to make the declarations foreseen in 18(1)a to 18(1)e and to provide the information foreseen in 18(1)f and 18(1)g. A checkbox list seems particularly appropriate for the declarations, while an entry box would be appropriate to provide the information foreseen in 18(1)f and 18(1)g.

However, we recall that art. 18(1)a to 18(1)e merely ask that MSPs make declarations (that they are MSPs, are independent from Member States, etc.). It does not require that MSPs substantiate or elaborate and it certainly does not allow VLOPs to validate this information. Indeed, proving independence from a Member State, for instance, is not something one can do by just uploading a document. Even giving the option to do so, as suggested in §6, would create an expectation (since those declarations will all be public) that all MSPs do so, which could de facto lead to significantly increasing the administrative burden necessary to benefit from art. 18. Furthermore, VLOPs are only allowed to investigate compliance with 18(1)d by seeking confirmation with National Regulatory Authorities (NRAs) or self-regulatory bodies. Therefore, the optional feature foreseen in §6 and the “clarifications” foreseen in §7 are neither useful, nor in line with the provisions foreseen in EMFA.

Standardization. Different technical/content requirements by individual VLOPs would create a patchwork and would lead to disproportionate administrative effort for media service providers. A uniform approach across services would therefore be welcome.

Regulatory control. We welcome the recognition in §8 that the two criteria foreseen in 18(1)d (oversight by a competent NRA and adherence to a self-regulatory mechanism governing editorial standards) are alternative and not cumulative.

Furthermore, we agree that as a general rule VLOPs would need to accept the declarations of all MSPs able to point to an NRA (§5). The guidelines should explicitly clarify that MSPs operating under the formal regulatory oversight of NRAs have clear pathways for demonstrating compliance with Article 18(1)d. For such regulated entities, VLOPs should be able to readily verify their status through publicly available information already approved by regulators, ensuring efficient processing of their declarations.

Involvement of third parties. We do not see the rationale for an involvement of third parties in art.

18, particularly “fact checking organizations”. Ultimately, the first - and best - fact checkers are journalists and other editorial staff. While fact-checking organizations may be commendable and their role can be important, they are not substitutes to professional journalists. Furthermore, we are wary that in some situations they are not sufficiently independent from the platforms they monitor. In many instances, these organizations receive direct or indirect funding from the platforms in question.¹In our view the only stakeholder that should be involved in the review of declarations and compliance with obligations should be NRAs and the Board for Media Services.

Other suggestions.

- *Interfaces for media companies.* During the dialogues, it was suggested that the guidelines could propose a mechanism allowing MSPs to list all their social media accounts on a given platforms in one place to have one centralized declaration mechanism, limiting administrative burden. We consider that this approach merits consideration. Furthermore, to avoid manual processes, the guidelines could mandate the use of an application programming interface (API) which large media service providers could rely on to upload their declarations centrally and automatically to all relevant VLOPs.
- *Link with the DSA.* Platforms are explicitly required to take into account media freedom and pluralism to meet their obligations under article 34(1)b and 35 of the DSA to carry out risk assessments and roll out risk mitigation measures. However, major platforms brazenly disregarded this aspect to date as media pluralism impacts are barely, if at all, referenced in the reports published by VLOPs to date. The guidelines are an opportunity to remind platforms of their obligations in this regard.
- *Protection against abuses.* The guidelines should clarify that declarations may not be abused or relied on against MSPs by VLOPs (e.g. by algorithmically downranking despite a successful declaration).
- *Transparency register.* A publicly accessible overview of all registered MSPs on individual VLOPs via a transparency register can strengthen trust and control.

¹ Google alone contributed 13.2 million to the International Fact-Checking Network. Other major funders include Google, Meta, WhatsApp, TikTok and YouTube.