



Research Paper on the European Union's initiative on 'Safeguarding media freedom and pluralism in the internal market (Media Freedom Act)'

8 September 2022

Table of Contents

Executive Summary	1
1. Introduction	11
2. Recent Developments in EU Policy on Media and Pluralism	13
3.1. What do we know about the proposed European Media Freedom Act so far?	19
3.2. What we do not yet know about the proposed European Media Freedom Act	20
4. An analysis of the possible subjects that could be included in a proposal for a European Media Freedom Act	21
4.1. The possible subjects that could be included in the proposal for the EMFA.....	21
4.2. An overview of the relationship between the possible subjects of the European Media Freedom Act and the existing EU regulatory framework	23
4.3. Analysis of each possible subject of the European Media Freedom Act	24
4.3.1 Analysis regarding subsidiarity.....	24
4.3.2. State intervention in media	24
4.3.3. Protection of journalists and editorial independence	25
4.3.4. Platform moderation practices	26
4.3.5. Value exchange and licensing	27
4.3.6. Representations of European content on VOD platforms	28
4.3.7. Minimum standards of transparency of platforms	29
4.3.8. (Legal) obligations on disinformation and misinformation	31
4.3.9. Mandatory third-party verification	32
4.3.10. Algorithmic curation, ranking and/or moderation of online content	33
5. Conclusion	36

DISCLAIMER

This paper presents independent research made possible through Google funding. The views expressed herein are solely those of the authors, and full intellectual independence from any third parties - including Google - has been guaranteed.

Executive Summary

Introduction

The European Media Freedom Act ('EMFA') will be introduced in the third quarter of 2022.¹ It aims to eliminate barriers to the establishment and operation of media services and to set out a common framework for advancing the internal market in the media sector, in view of safeguarding media freedom and pluralism in that market.²

When assessing whether to introduce a new EU instrument, the Commission should consider the Better Regulation Guidelines, as well as respect the principles of subsidiarity and proportionality. This includes avoiding overregulation,³ which may cause an unnecessary burden.⁴ This paper intends to assess whether the EMFA is compatible with the existing EU instruments regulating media freedom and pluralism, taking into consideration the Better Regulation Guidelines and the principles of subsidiarity and proportionality.

Recent Developments in EU Policy on Media Freedom and Pluralism

The Audiovisual Media Services Directive ('AVMSD') presented the first effort by the Union to harmonise rules relating to the audiovisual media industry.⁵ Most of the recent developments in EU policy on media freedom and pluralism commenced from 2018 onwards. The AVMSD was revised in 2018 to include a new approach to online platforms disseminating audiovisual content.⁶ Then, in 2019, the P2B Regulation introduced new rules regarding the relationship between business users and online intermediary services and search engines⁷ and the EU Copyright Directive ('EUCD') intended to ensure 'a well-functioning marketplace for copyright'.⁸

Following the introduction of these instruments, the European Democracy Action Plan was published, setting out a roadmap to help build more resilient democracies across the Union.⁹ On the basis of the goals set out in the Action Plan, the Commission published a proposal on

¹ Safeguarding media freedom in the EU – new rules, European Commission, available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13206-Safeguarding-media-freedom-in-the-EU-new-rules_en (last accessed 10 August 2022).

² Ibid.

³ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L 123, 12.5.2016, p. 1 – 14, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016Q0512%2801%29> (last accessed 25 August 2022).

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Better regulation: Joining forces to make better laws, Brussels 29.4.2021, COM(2021) 219 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0219> (last accessed 25 August 2022).

⁵ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), OJ L 95, 14.4.2010, p. 1-24, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010L0013> (last accessed 18 August 2022).

⁶ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, OJ L 303, 28.11.2018, p. 69-92, available at <https://eur-lex.europa.eu/eli/dir/2018/1808/oj> (last accessed 18 August 2022).

⁷ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, OJ L 186, 11.7.2019, p. 57-79, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019R1150> (last accessed 18 August 2022).

⁸ Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on copyright in the Digital Single Market, COM/2016/0593 final - 2016/0280 (COD), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0593> (last accessed 26 August 2022).

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, On the European Democracy Action Plan, 3.12.2020, COM(2020) 790 final, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2020:790:FIN> (last accessed 26 August 2022).

the transparency and targeting of political advertising.¹⁰ The proposal aims to harmonise rules regarding the transparency of advertising and also aims to further protect natural persons by regulating the processing of personal data regarding targeted political advertising.¹¹ Additionally, in 2021, the Commission published proposals for the Digital Services Act ('DSA'), which sets out a framework for transparency, accountability and regulatory oversight of online intermediary services,¹² and for the Digital Markets Act ('DMA'), which imposes new rules on large digital platforms, aiming to improve competition within the digital market.¹³ The DSA also intends to strengthen the Code of Practice on Disinformation, which is a voluntary commitment and self-regulation tool intended to monitor and tackle disinformation online by adherence to best practices.¹⁴

The initiative for a European Media Freedom Act

In 2021, President von der Leyen announced plans to introduce the EMFA to safeguard the pluralism and independence of the media in the internal market.¹⁵ The Commission, as part of their Call for Evidence for an Impact Assessment,¹⁶ provided that the intended legal basis for this action is Article 114 of the Treaty on the Functioning of the European Union ('TFEU').¹⁷ The key objectives of the initiative are to: ensure that media companies can operate in the internal market subject to consistent regulatory standards, including as regards on media freedom and pluralism; ensure that EU citizens have access to a wide and varied media offer both offline and online; safeguard the editorial independence and independent management of the media; and foster undistorted competition between media companies by ensuring a transparent and fair allocation of state resources.¹⁸

An analysis of the possible subjects that could be included in a proposal for a European Media Freedom Act

This section will explore the possible subjects that could be included in the proposal for the EMFA, along with analysing their relationship with the pre-existing EU regulatory framework and, thus, their compatibility with the Better Regulation Guidelines and the principles of subsidiarity and proportionality.

¹⁰ Proposal for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising, COM(2021) 731 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0731> (last accessed 26 August 2022).

¹¹ Ibid.

¹² Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, COM/2020/825 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0825> (last accessed 18 August 2022).

¹³ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on contestable and fair markets in the digital sector (Digital Markets Act), COM/2020/842 final, available at <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608116887159&uri=COM%3A2020%3A842%3AFIN> (last accessed 18 August 2022).

¹⁴ European Commission, The 2022 Code of Practice on Disinformation, available at <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation> (last accessed 18 August 2022).

¹⁵ 2021 State of the Union Address by President von der Leyen, 15 September 2021, available at https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_21_4701 (last accessed 15 August 2022).

¹⁶ Call for Evidence for an Impact Assessment, Safeguarding media freedom and pluralism in the internal market (Media Freedom Act), Ares(2021)7899801 – 21/12/2021, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13206-Safeguarding-media-freedom-in-the-EU-new-rules_en (last accessed 15 August 2021).

¹⁷ Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47 – 390, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT> (last accessed 15 August 2022).

¹⁸ Call for Evidence for an Impact Assessment, Media Freedom Act, see footnote 16.

The possible subjects that could be included in the proposal for the European Media Freedom Act

A proposal still has not been published for the EMFA and, therefore, there is a lack of information on the potential subjects that may be included. On the basis of information provided by the Commission in press releases and the findings of the stakeholder consultation, the subjects that were considered as possibilities to be included were: state intervention in the media; protection of journalists and their editorial independence; platform moderation practices; value exchange and licensing; representation of European content on VOD platforms; minimum standards of transparency for platforms; legal obligations around misinformation and disinformation; mandatory third-party verification; and algorithmic curation, ranking, and moderation of online content.

An overview of the existing relationship between the possible subjects of the European Media Freedom Act and the existing EU regulatory framework

The pre-existing regulatory framework in relation to media freedom and pluralism includes the DSA, DMA, EUCD, AVMSD, P2B Regulation, Political Advertising Regulation, and Code of Practice on Disinformation. The table below provides an overview of the coverage of the possible subjects outlined above in the existing EU regulatory framework on media freedom and pluralism.

Table 1 - The coverage of the possible subjects of the European Media Freedom Act in the existing EU regulatory framework

Possible subjects	Existing EU Regulatory Framework on Media Freedom and Pluralism						
	DSA	DMA	EUCD	AVMSD	P2B Regulation	Political Advertising Regulation	EU Code on Dis-information
State intervention in the media				Partial			
Protection of journalists and editorial independence				Partial			
Platform moderation practices	X			X			X
Value exchange and licensing		X	X				
Representations of European content on VOD platforms				X			
Minimum standards of transparency for platforms	X		X	X	X	X	X
(Legal) obligations around misinformation and disinformation	X			X			X
Mandatory third-party verification							X
Algorithmic curation, ranking, and/or	X	X	X				X

moderation of online content							
------------------------------	--	--	--	--	--	--	--

Analysis of the possible subjects that could be included in the European Media Freedom Act

In this section, each of the abovementioned possible subjects and their relationship with the pre-existing EU regulatory framework will be discussed, with regard given to whether the inclusion of each subject in the EMFA would be compatible with the Better Regulation Guidelines and the principle of proportionality. An overall analysis of the principle of subsidiarity is provided below.

Analysis regarding subsidiarity

For most of the subjects which are considered below, our analysis revealed that, in general, these would likely adhere to the principle of subsidiarity and it is unlikely that any issues would arise if the EMFA included measures regarding each subject. This is largely owing to the fact that regulating such subjects is perhaps best achieved at the EU level, due to the cross-border nature of media activities within the Union, particularly in light of digital technologies and the internet. It should be noted, however, that the Member States have material competencies in relation to certain areas such as media and cultural policy, which would need to be borne in mind when considering the issue of subsidiarity. Additionally, a more granular assessment may be needed upon publication of the proposal for the EMFA and the specific measures proposed, in order to fully assess whether there would be any conflict with the principle of subsidiarity.

State intervention in media

At the EU level, it has long been acknowledged that free and pluralistic media is key when upholding the rule of law and encouraging democracy. The only present regulation of state intervention in the media can be found in Recital 54 of the AVMSD.¹⁹ This regulation is only considered ‘partial’; therefore, it is unlikely that it overlaps with any pre-existing EU legislation and be inconsistent with the Commission’s Better Regulation Guidelines.

It is doubtful that the inclusion of state intervention in the media in the EMFA would conflict with the principle of proportionality. The aim of any measure to restrain state intervention would be to ensure media freedom and the rule of law.²⁰ The restraint of state intervention may be regarded as necessary to attain these two objectives on the basis that excessive state intervention puts these at risk. Importantly, the EMFA should restrain those aspects of state intervention that are necessary to attain its objective; something which requires consideration of whether the measure goes beyond what is necessary to achieve the objective.

¹⁹ Revised AVMSD, see footnote 6.

²⁰ See Consolidated version of the Treaty on European Union, OJ C 202, 7.6.2016, p. 43 – 43, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016M049> (last accessed 10 August 2021), Article 2.

Protection of journalists and editorial independence

The violence, threats, harassment, pressure, (self-)censorship, public shaming and even assassination of journalists in the Union are particularly concerning phenomena.²¹ The only presence of regulation on the protection of journalists and their editorial independence is in the form of Recital 54 of the AVMSD.²² It is unlikely that the coverage of the subject in the EMFA would overlap with any pre-existing EU legislation. Therefore, it is not likely that the addition of such subject would be inconsistent with the Commission's Better Regulation Guidelines.

It is unlikely that the inclusion of the protection of journalists and their editorial independence in the EMFA would be at odds with the principle of proportionality. The aim of any measure to protect journalists and their editorial independence would be to ensure media freedom, the rule of law, democracy, human rights, and freedom.²³ The protection of journalists may be regarded as necessary to achieve these two objectives on the basis that a lack of freedom for journalists puts the objectives at risk.²⁴ The level of protection of journalists which is provided in the EMFA must be that which is necessary and is, therefore, relevant to the question of whether the measure goes beyond what is necessary to achieve the objective.

Platform moderation practices

The AVMSD, the DSA, and the Code of Practice on Disinformation all form the EU regulatory framework on content moderation. The AVMSD is relevant for platform moderation practices, considering that it imposes obligations on video-sharing platform providers to protect citizens from incitement to hatred, violence, terrorism, and child pornography.²⁵ The DSA develops this framework even further in Article 12(2) on terms and conditions and Article 26 on risk assessment. Furthermore, the Code of Practice on Disinformation intends to crack down on the deliberate deception of individuals and distortion of public opinion. In light of the pre-existing regulation mentioned above, there may be a risk of overregulation and, therefore, inconsistency with the Commission's Better Regulation Guidelines.

The overregulation regarding platform content moderation practices may also cause issues with the principle of proportionality. The intended aim of introducing measures which provide that platforms should moderate online content could encompass many things, including the provision of a greater level of media freedom and pluralism across the Union. However, the moderation of online content by platform providers via the EMFA may not be regarded as necessary to attain these two objectives due to the fragmentation of the regulatory framework.²⁶ As such, it may go beyond what is necessary to achieve the objective, due to the pre-existing framework, and a decision not to add further regulation on content moderation practices within the EMFA could, therefore, be more fitting.

²¹ European Parliament resolution of 25 November 2020 on strengthening media freedom: the protection of journalists in Europe, hate speech, disinformation and the role of platforms (2020/2009(INI)), available at https://www.europarl.europa.eu/doceo/document/TA-9-2020-0320_EN.html (last accessed 26 August 2022).

²² Revised AVMSD, see footnote 6.

²³ TFEU, see footnote 17, Article 2.

²⁴ Ibid.

²⁵ For a summary of the Audiovisual Media Services Directive, please see <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32010L0013> (last accessed 18 August 2022).

²⁶ AVMSD, EUCD, DSA, and Code of Practice on Disinformation. For more information, see Section 4.3.3.

Value exchange and licensing

Value exchange and licensing are covered in the EUCD²⁷ and will soon be encompassed within the DMA.²⁸ Article 17 of the EUCD introduces the liability and responsibility of online platforms for unauthorised copyright material on their platforms, and Article 12 contains provisions on collective licensing with extended effect. The DMA sets out an obligation regarding interoperability for gatekeepers providing messenger services concerning basic functionalities, meaning that smaller business users can operate using the services of gatekeepers.²⁹ In light of the aforementioned, there is already EU legislation that regulates value exchange and licensing and, thus, a risk of overregulation and inconsistency with the Commission's Better Regulation Guidelines.

The principle of proportionality needs to be assessed and complied with for value exchange and licensing to be included in the EMFA. The introduction of measures regulating value exchange and licensing would probably have the aim of ensuring that rightsholders obtain a fair share of value from their works. Furthermore, the inclusion of a measure pertaining to this subject could have a positive effect regarding plurality in the media, as better value exchange may encourage more rightsholders to produce and share content. However, given the extensive set of measures which already regulate value exchange and licensing included in the EUCD and the DMA, the inclusion of additional measures within the scope of the EMFA might go beyond what is necessary, and not be appropriate, to achieve the aims of media freedom and pluralism.³⁰

Representations of European content on VOD platforms

The representations of European content on VOD platforms have already been covered in the revised AVMSD. Articles 10 and 11 of the AVMSD provide that there shall be no influence to affect the responsibility and editorial independence of the media service provider. Article 17 provides that Member States should allot at least 10% of transmission time for European works created by producers who are independent of broadcasters. Therefore, the representation of VOD content is already well-covered at the EU level in the AVMSD; thus, it is important that the law does not become too fragmented via overregulation to avoid being inconsistent with the Better Regulation Guidelines.

The overlap of this possible subject of the EMFA with the AVMSD may cause doubts about compliance with the principle of proportionality. With respect to the proposed EMFA, the aim of regulating the representation of European content on VOD platforms is to ensure respect for media freedom and pluralism. The regulation of European content on VOD platforms, however, may not be regarded as necessary to attain the objectives on the basis that it is already regulated via the AVMSD. Therefore, it could be said that its inclusion would go beyond what is necessary because the objective of media freedom could be achieved with a version of the measure which is less restrictive and involves the AVMSD.

²⁷ EUCD, see footnote 16.

²⁸ DMA, see footnote 13.

²⁹ Ibid, Article 7.

³⁰ See Sections 4.3.1. and 4.3.2. on state intervention in the media and protection of journalists.

Minimum standards of transparency of platforms

There is already a variety of EU legislative instruments referring to minimum standards of transparency for online platforms. The AVMSD provides that all VODs should have mechanisms to report or flag any content that may impair the development of minors, incite violence or hatred, and/or disseminate content concerning terrorism, child pornography, or racism and xenophobia.³¹ Furthermore, all VODs have procedures for handling users' complaints for reporting and flagging content, age verification systems, rating content, and parental control systems.³² The P2B Regulation seeks to provide greater transparency to business users regarding Terms and Conditions provided by online intermediation providers ('OIPs') and search engines, and regarding search results and ranking. The EUCD has a transparency obligation under Article 19 providing that a contracting party receiving rights in protected works provide up-to-date, relevant and comprehensive information to the authors and performers on the exploitation of their works and performances. Additionally, Article 17(8) of the EUCD provides a transparency clause applicable to Online Content-Sharing Services Providers (OCSSPs), to provide information to rightsholders regarding their cooperation obligations under Article 17(4) and regarding licensing agreements, in the event that they are concluded between both parties.³³ The Political Advertising Regulation contains a 'record-keeping obligation', transparency requirements for each political advertisement, and places a responsibility on advertising publishers to allow individuals to notify that a particular advertisement does not comply with the Regulation. The DSA intends to expand this further with providers of intermediary services required to have information on policies, procedures, measures and tools used for the purpose of content moderation in their terms and conditions.³⁴ Companies should also produce a publicly available statement of reasons for decisions to remove or disable access to content. The DSA also introduces transparency reporting obligations on intermediary services, online platforms, and very large online platforms ('VLOPs'). There are also transparency obligations on advertising.³⁵ The overall aim of the Code of Practice on Disinformation is to increase transparency to combat widespread disinformation online.³⁶ The above displays a rather overregulated legal framework at the EU level, and it is very possible that any further extension of this would be inconsistent with the Commission's Better Regulation Guidelines.

The density of the legal framework at the EU level regarding transparency obligations on online platforms may cause issues with the fulfilment of the principle of proportionality. In terms of this principle, the introduction of minimum standards of transparency could aim to do a number of things, including ensuring media freedom and media pluralism. However, the introduction of minimum standards of transparency via the EMFA may not be necessary to attain the objective of media freedom considering the already dense legal framework regulating this.³⁷ As such, it could be said that its inclusion may go beyond what is necessary to attain the objective of media freedom and a less restrictive measure might be better placed to achieve this.

³¹ Revised AVMSD, see footnote 6, Article 28b(3)(d).

³² Ibid, Article 28b(3)(g).

³³ See further, Article 17(4) and 17(8).

³⁴ DSA, see footnote 12, Article 12.

³⁵ Ibid, Article 30.

³⁶ Code of Practice on Disinformation, see footnote 14.

³⁷ The AVMSD, P2B Regulation, EUCD, Political Advertising Regulation, DSA, and Code of Practice on Disinformation. For more information, please see Section 4.3.7.

(Legal) obligations on disinformation and misinformation

Online disinformation poses a substantial threat to democracy and hampers the ability of citizens to make informed decisions. The AVMSD is the only binding legislation that touches on disinformation and misinformation, with the DSA joining this framework. The AVMSD provides some mechanisms, albeit not directly for the purposes of disinformation, which can be used to target such content on VODs. Furthermore, for signatories that are VLOPs, the Code of Practice on Disinformation aims to become a mitigation measure and a Code of Conduct recognised under the co-regulatory framework of the DSA. In light of the above, there are already some pre-existing frameworks on disinformation and misinformation, albeit relatively limited.

The inclusion of this possible subject may cause issues with the principle of proportionality, as it is already regulated to some extent in the EU. The aim of introducing obligations to combat disinformation and misinformation would be to ensure media freedom and pluralism, as well as democracy.³⁸ It may be regarded as necessary to attain the objective of ensuring media freedom and pluralism due to the prevalence of these malpractices throughout the Union and the threat that they pose to democracy. However, whether it would go beyond what might be necessary to achieve this is questionable; this is because the Code of Practice on disinformation, covering a wide variety of signatories, may prove that such an objective is effectively obtained by a less restrictive measure.

Mandatory third-party verification

While there is a dearth of binding regulation regarding third-party verification, this approach features prominently within the strengthened Code of Practice on Disinformation. With the 2022 Code, signatories have agreed to cooperate with independent third-party auditors and fact-checkers towards reducing the monetisation of disinformation, collaborate with third-party partners and organisations to curb disinformation, and help empower users to recognise disinformation. The Code has an impressive list of signatories representing several key players in the media industry, such as Adobe, Twitter, Google, and Microsoft.³⁹

It is not likely that the inclusion of such rules would cause issues regarding the principle of proportionality. The aim of introducing mandatory third-party verification would be to ensure media freedom, media pluralism, and democracy. Indeed, it could be considered necessary to attain the objective of ensuring media freedom, media pluralism, and democracy; this is particularly given the current dearth of binding regulation.

It is, however, important to note that the inclusion of such binding rules within the EMFA could perhaps be achieved by a less restrictive measure. Furthermore, these could potentially contradict methods of self- and co-regulation that the EU has favoured regarding media freedom and pluralism in recent years. For instance, within the European Democracy Action Plan, in the context of strengthening media freedom and media pluralism, the Commission committed to supporting 'self-regulatory initiatives promoting professional standards, including charters of editorial independence, and discussions on the challenges faced by journalists.'⁴⁰ Moreover, the number of signatories to the Code who have market significance, the strengthening of the code, and the implementation of an improved monitoring framework

³⁸ TFEU, see footnote 17.

³⁹ Code of Practice on Disinformation, see footnote 14.

⁴⁰ European Democracy Action Plan, see footnote 9, Section 3.3.

all positively contribute towards increasing the efficacy and effectiveness of the Code, making it a convincing self-regulation tool. This efficacy, coupled with the recent favouring of self- and co-regulation regarding media freedom and media pluralism, arguably lessens the necessity and appropriateness of regulating this subject further within the EMFA.

Algorithmic curation, ranking and/or moderation of online content

The proposed DSA and DMA intend to ensure that online platforms are held accountable for their algorithms and their content moderation practices. Additionally, the EUCD includes measures which obligate OCSSPs to employ their best efforts to ensure that no unauthorised content is shared by their users, bringing additional regulation regarding the moderation of online content. The Code of Practice on Disinformation also stipulates some commitments for online platforms in relation to their algorithms. The DSA refers primarily to algorithmic curation, via imposing obligations on VLOPs that use ‘recommender systems’, in particular making these transparent and allowing the recipient to select and modify these to their preferred option. The DSA focuses on ranking services, banning ranking the gatekeeper's own products or services in a more favourable manner compared to those of third parties. Regarding the EUCD, under Article 17, in the event that authorisation is not obtained from rightsholders to have their content uploaded onto the platform, OCSSPs are obliged to take steps to avoid unauthorised uploads. The Directive expressly stipulates these steps taken to comply with Article 17 should not entail a general monitoring obligation for OCSSPs⁴¹. Furthermore, additional guidance was published by Commission regarding the implementation and application of Article 17, in order to ‘balance fundamental rights and the use of exceptions and limitations.’⁴² Finally, there is the Code of Practice on Disinformation which outlines a number of commitments for online platform providers to introduce algorithms to combat disinformation. In general, the subject of algorithmic curation, ranking and moderation of online content is well-covered at the EU level, especially with the proposed DSA and DMA, and, therefore, its inclusion in the EMFA may open it to the risk of overregulation and being inconsistent with the Better Regulation Guidelines.

The vast coverage of the subject of algorithmic curation, ranking and moderation of online content may cause issues in the fulfilment of the principle of proportionality. The aim of algorithmic curation, ranking and moderation of online content is to ensure media freedom and pluralism. As to whether the inclusion of such topic in the EMFA is necessary to attain such objective, it could be doubted due to the forthcoming adoption of the DSA, DMA, and the introduction of the (strengthened) Code of Practice on Disinformation. As such, the objective could perhaps still be attained by a less restrictive measure.

Conclusion

The findings show that, were the proposal for the EMFA to include some or all of the subjects mentioned in this paper, there could potentially be concerns about overregulation in this field, due to the vast regulatory framework already in existence. Furthermore, the result of such overregulation may be a less coherent piece of legislation than desired to ensure media freedom and pluralism.

⁴¹ EUCD, Article 17(8) and Recital 66.

⁴² Communication from The Commission to The European Parliament and The Council, Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market, COM/2021/288 final, section II.

The only two possible subjects where overregulation was seen not to be a concern were state intervention in the media and protection of journalists and their editorial independence. The only coverage of the subjects was in the recitals, not substantive provisions, of the AVMSD. Therefore, the inclusion of these would result in limited concern over the burden this might create for stakeholders, as it would be easy to comply with due to the likely increased coherence of such legislation.

The paper also intends to assess the principles of subsidiarity and proportionality. It is difficult to assess these principles accurately without seeing the full proposal for the EMFA. However, as discussed above, in general, the principle of subsidiarity was complied with for almost all the possible subjects. This finding is likely related to the fact that (except for state intervention in the media and protection of journalists and their editorial independence) these possible subjects are already regulated at the EU level. In terms of the principle of proportionality, the possible subjects often seem necessary to be regulated but the question links back to overregulation and whether it is appropriate considering the vast regulatory framework that is already in existence.

To conclude, the Commission should thoroughly consider the Better Regulation Guidelines, specifically the issue potentially posed by overregulation and the principles of subsidiarity and proportionality to which this is connected, when moving forward with their plans for an EMFA. The possible subjects contained in an EMFA need to allow for the utmost coherence of the EU regulatory framework regarding media freedom and media pluralism by achieving benefits, being targeted, being easy to comply with, and not adding any unnecessary regulatory burden.

1. Introduction

On 10 January 2022, the European Commission ('Commission') published an open public consultation on the European Media Freedom Act ('EMFA'), which is planned for adoption in the third quarter of 2022.⁴³ The initiative intends to focus on eliminating barriers to the establishment and operation of media services and aims to establish a common framework for advancing the internal market in the media sector, in view of safeguarding media freedom and pluralism in that market.⁴⁴

Media freedom and pluralism have long been considered pillars of democracy; the protection of which is included in the Charter of Fundamental Rights,⁴⁵ the European Convention on Human Rights,⁴⁶ and the Copenhagen criteria for membership in the EU.⁴⁷ Free and pluralistic media allows those in power to be held to account and, therefore, allows citizens to make informed decisions based on reliable information.⁴⁸

By introducing the EMFA, the Commission's principal aim is to achieve a greater degree of harmonisation of media regulation within the EU.⁴⁹ Media freedom and pluralism are already covered in multiple EU instruments. The EMFA will be joining this crowded field of legislation and will, therefore, need to be compatible with these instruments, as per the Commission's Better Regulation Guidelines,⁵⁰ to allow for the utmost efficiency of EU policy.

The paper aims to consider the aforementioned compatibility of the EMFA with the existing EU instruments regulating media freedom and pluralism, taking into consideration the Better Regulation Guidelines and the principles of subsidiarity and proportionality. As part of their commitments to Better Law-Making, the European Parliament, the Council of the European Union and the Commission agreed to simplify Union legislation and avoid overregulation and administrative burdens for citizens.⁵¹ As such, it is important that the Commission ensures that 'regulation achieves benefits, is targeted, easy to comply with and does not add unnecessary regulatory burdens'.⁵² It is also important that the principles of subsidiarity, proportionality and fundamental rights are fully respected.⁵³

Therefore, to successfully assess the compatibility of the EMFA with pre-existing EU instruments, we will first set the scene in Section 2 with a brief overview of the developments of the EU policy on media freedom and media pluralism over the last years. Following this, in

⁴³ Safeguarding media freedom in the EU – new rules, see footnote 1.

⁴⁴ Ibid.

⁴⁵ Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391 – 407, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> (last accessed 10 August 2022), Article 11(2).

⁴⁶ European Convention on Human Rights and Fundamental Freedoms, Rome 4.X1. 1950, available at https://www.echr.coe.int/documents/convention_eng.pdf (last accessed 10 August 2022), Article 10. See, to affirm the importance of media pluralism in relation to Article 10, Guide on Article 10 on the European Convention on Human Rights, European Court of Human Rights, 30 April 2021, available at https://www.echr.coe.int/documents/guide_art_10_eng.pdf (last accessed 10 August 2022), p. 107 – 112.

⁴⁷ TEU, see footnote 20, Article 49.

⁴⁸ European Democracy Action Plan, see footnote 9.

⁴⁹ Safeguarding media freedom in the EU – new rules, see footnote 1. Charter of Fundamental Rights of the European Union, see footnote 50, Article 11.

⁵⁰ Commission Staff Working Document, Better Regulation Guidelines, Brussels, 3.11.2021, SWD(2021) 305 final, available at https://ec.europa.eu/info/sites/default/files/swd2021_305_en.pdf (last accessed 10 August 2022).

⁵¹ Better Law-Making Agreement, see footnote 3.

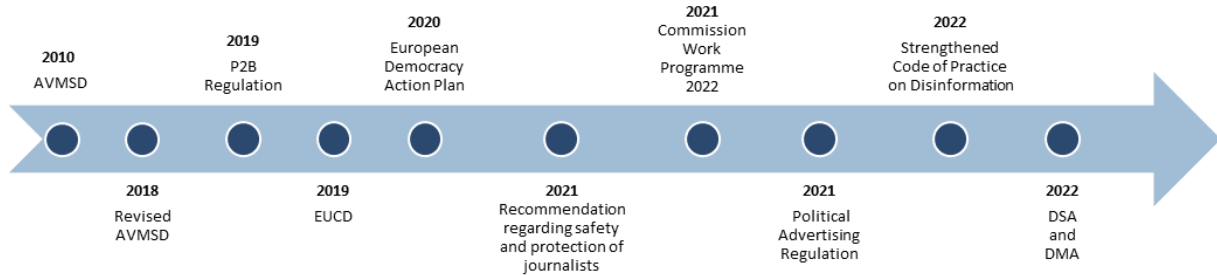
⁵² Better regulation: Joining forces to make better laws, see footnote 4.

⁵³ Better Law-Making Agreement, see footnote 3.

Section 3, we shall discuss what we know and what we do not know about the initiative for the EMFA so far. In Section 4, we will select some possible subjects that could be included in the EMFA to discuss whether the subject is already covered by the EU regulatory framework and if so, how the introduction of the EMFA may overlap with this pre-existing framework and, therefore, be inconsistent with the Better Regulation Guidelines and the principles of subsidiarity and proportionality.

2. Recent Developments in EU Policy on Media and Pluralism

Figure 1 - Timeline of Recent Developments in EU Policy on Media Freedom and Pluralism



2.1. Introduction

In recent years within the EU regulatory landscape, and particularly in response to gradual technological advancements which have taken place within the digital sphere, there have been a number of developments seeking to protect the democratic pillar of media freedom and pluralism across the Union. Grounded in Article 2 of the Treaty on European Union ('TEU')⁵⁴ and Article 11 of the Charter of Fundamental Rights of the European Union (the 'Charter'),⁵⁵ media freedom and pluralism in a broad sense are defined as including four key concepts: fundamental protection, market plurality, political independence and social inclusiveness.⁵⁶ Additionally, the Commission has stated that ensuring media pluralism implies 'all measures that ensure citizens' access to a variety of information sources, opinion, voices, etc., in order to form their opinion without the undue influence of one dominant opinion-forming power.'⁵⁷ Comprising both policy and legislative advancements, the EU acquis now contains quite an extensive collection of rules and recommendations which seek to safeguard freedom and plurality within the media. Recent and significant developments in this policy area are further discussed below.

2.2. Recent developments from a regulatory perspective

The adoption of the Audiovisual Media Services Directive⁵⁸ ('AVMSD') presented the first efforts by the Union to harmonise rules relating to the Audiovisual Media industry; it has an overarching aim of coordinating national legislation in the areas of media pluralism, cultural diversity, consumer protection, the proper functioning of the internal market and the

⁵⁴ TEU, see footnote 21. The values enshrined in Article 2 includes 'includes respect for media freedom and pluralism and the right to freedom of expression, and requires continuous efforts to protect free, pluralistic and independent media, which are a key component of democratic systems and the rule of law'.

⁵⁵ Charter of Fundamental Rights of the European Union, see footnote 50, Article 11(2): '2. The freedom and pluralism of the media shall be respected.'

⁵⁶ See further, EUI, 'Monitoring media pluralism in the digital era : application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2021', (2022), Centre for Media Pluralism and Media Freedom., available at <https://cadmus.eui.eu/handle/1814/74712> (last accessed 25 August 2022).

⁵⁷ European Commission (2007). *Media pluralism in the Member States of the European Union*. Commission Staff Working Document, SEC(2007)32, available at https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/media_pluralism_swp_en.pdf (last accessed 26 August 2022).

⁵⁸ Directive 2010/13/EU (AVMSD), see footnote 5.

promotion of fair competition.⁵⁹ Advancing technological developments, the ‘ongoing convergence of television and internet services’⁶⁰ and the increased availability of new types of content being accessed through an increased variety of ways, such as via the internet or smartphones, led to the revision of the AVMSD by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities.⁶¹ Directive 2018/1808 importantly made the AVMSD applicable to video-sharing platform services (‘VSPs’) and clarified the scope of applicability of the AVMSD to video-on-demand (‘VOD’) platforms. The revised Directive bolsters regulation regarding media freedom and pluralism, providing rules on, *inter alia*, the transparency of media ownership, the independence of media regulatory authorities, ensuring the prominence of audiovisual media services of general interest in keeping with principles such as media pluralism, independence regarding editorial decisions, and giving due consideration to Member States’ competence in this area of law. Regarding the current status of transposition of the 2018 Directive, as of August 2022, the Czech Republic, Ireland and Slovakia have yet to notify transposing measures to the Commission.⁶²

The year 2019 saw the adoption of Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services⁶³ (‘P2B Regulation’), which introduced new rules regarding the relationship between business users and online intermediation providers (‘OIPs’) and online search engines. In this context, business users include media providers, and are defined as ‘any private individual acting in a commercial or professional capacity who, or any legal person which, through online intermediation services offers goods or services to consumers for purposes relating to its trade, business, craft or profession’.⁶⁴ The Regulation seeks to provide greater transparency to business users regarding terms and conditions provided by OIPs and search engines, and regarding search results and ranking, both of which have important impacts on ensuring a greater level of plurality in the media. These include an obligation regarding the differentiated treatment of products, whereby OIPs and search engines must include a description of any differentiated treatment they give to their own products over those of other business users and a provision obliging OIPs and search engines to describe the main parameters determining the ranking of goods and services on their platforms.

Subsequently to the P2B Regulation, the highly anticipated Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (‘EUCD’)⁶⁵ was adopted in 2019. Arguably, the Directive plays an important role in the increase in media freedom and pluralism policy within the EU *acquis* regarding the digital sector, as it is based on the recognition that ‘a free and pluralist press is essential to ensure quality journalism and citizens’ access to information’,⁶⁶ and it seeks to improve the functioning of the online market, namely,

⁵⁹ Revised AVMSD, see footnote 6, Recital 53.

⁶⁰ *Ibid*, Recital 1.

⁶¹ *Ibid*.

⁶² See further, European Audiovisual Observatory, *Revised AVMSD Tracking Table*, (2022), available at <https://www.obs.coe.int/en/web/observatoire/avmsd-tracking> (last accessed 25 August 2022).

⁶³ P2B Regulation, see footnote 7.

⁶⁴ *Ibid*, Article 2(1).

⁶⁵ DMA, see footnote 13.

⁶⁶ P2B Regulation, see footnote 7, Recital 54.

by fostering transparency and cooperation.⁶⁷ These efforts to safeguard media freedom and pluralism were not without complexity, as two of its key provisions – Articles 15 and 17 – proved to be somewhat controversial during the legislative process, albeit not for reasons which solely relate to the aim of ensuring media freedom and pluralism. Despite this, the introduction of these provisions is argued by many to be an important step forward for the assurance of a free and pluralist press, and for ensuring that rightsholders have the ability to decide how online content sharing platforms may use their content online.⁶⁸

Following the EUCD, as part of the New Push for European Democracy Commission priority, the European Democracy Action Plan⁶⁹ was published. The European Democracy Action Plan sets out a roadmap to help build more resilient democracies across the Union, setting out several action points to achieve the digital transformation of European democracies. The Commission proposed a set of measures to promote democratic participation, counter disinformation, and support free and independent media and media pluralism. The plan represents a pivotal point in media freedom and pluralism policy, as the Union commits to the importance of safeguarding this democratic pillar as a political priority for the years following. As highlighted by Commissioner Jourová, ‘Democracy cannot be taken for granted; it needs to be nurtured and protected...[t]he plan proposes actions to increase protection of journalists and fight disinformation and interference, while fully protecting freedom of speech.’⁷⁰ Reflective of a key goal set out in the EU Democracy Action Plan, in 2021 the Commission published the Proposal for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising,⁷¹ contributing toward Union efforts to protect the integrity of elections and democratic debate.⁷² The proposed Regulation aims to harmonise rules regarding the transparency of advertising and targeted political advertising techniques, thereby contributing to the proper functioning of the internal market, and is also aimed at further protecting natural persons by regulating the processing of personal data regarding targeted political advertising.⁷³ In the context of media freedom and pluralism, the proposed Regulation seeks to safeguard the ‘fundamental right to be informed in an objective, transparent and pluralistic way’⁷⁴ by regulating the use of targeted advertising techniques which have the ability to hamper this right. Currently, in the process of being analysed by co-legislators, the proposed Regulation is a considerable distance from being adopted, nevertheless, it represents further important action on the part of the Union to safeguard media freedom and pluralism in the context of the political sphere.

2.3. 2022 Developments

The above policy and legislative developments bring us to the current year, in which several further developments have been witnessed towards the increase of policy and legislation regarding media freedom and pluralism at the EU level. Firstly, significant advancements were made towards the adoption of the DMA and DSA, both of which were originally proposed by the Commission in 2020 and are now in the final stages of the legislative procedure before

⁶⁷ Ibid, Recital 68 (*in fine*).

⁶⁸ European Commission Press Release, ‘New EU copyright rules that will benefit creators, businesses and consumers start to apply’, https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1807 [Last accessed 17 August 2022].

⁶⁹ European Democracy Action Plan, see footnote 9.

⁷⁰ Ibid.

⁷¹ Political Advertising Regulation, see footnote 10.

⁷² European Commission Press release, European Democracy: Commission sets out new laws on political advertising, electoral rights and party funding, (2021) < https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6118> (Last accessed 26 August 2022).

⁷³ Political Advertising Regulation, see footnote 10, Section 1.

⁷⁴ Ibid, Recital 5.

adoption. Both Regulations will lead to strengthened policy and legislation regarding media freedom and pluralism, with regard to a variety of aspects. The DMA imposes new rules on large digital platforms, or ‘gatekeepers’, by banning or restricting gatekeepers from engaging in certain practices,⁷⁵ and providing the Commission with further powers to conduct market investigations⁷⁶ and impose sanctions.⁷⁷ Some of the DMA provisions intend to improve competition within the digital market, thereby strengthening the market and plurality of media players within Europe. The DSA revises the e-Commerce Directive⁷⁸ but does not stop there. It sets out a framework for the transparency, accountability and regulatory oversight of online intermediary services, by establishing ‘due diligence’ obligations for digital service providers to address, among other things, the sharing of illegal content, online disinformation and other societal risks.⁷⁹ Considerable emphasis is given to the requirement that digital services must respect fundamental rights, including freedom of expression and the freedom and pluralism of the media.⁸⁰ In particular, very large online platforms (‘VLOPs’) and very large online search engines (‘VLOSEs’) have an obligation to carry out risk assessments regarding the design, function and use of their services and any actual or foreseeable negative effects on the exercise of fundamental rights, including the freedom and pluralism of the media.⁸¹ It is anticipated that both Regulations will be formally adopted and published by the end of 2022.

Additionally, in 2022, important changes were made to strengthen the Code of Practice on Disinformation.⁸² The Code of Practice on Disinformation is a voluntary commitment and self-regulation tool intended to monitor and tackle disinformation online by adherence to best practices. The strengthened Code seeks to ramp up commitments in several areas which go hand in hand with media freedom and pluralism, such as demonetising disinformation,⁸³ increasing independent fact-checking and third-party verification,⁸⁴ empowering users to understand and flag disinformation⁸⁵, and an improved monitoring framework.⁸⁶ Once the DSA is adopted and enters into force, the Code of Practice on Disinformation could be considered as a co-regulatory instrument, in accordance with the proposed Article 35 of the Act. In applying Article 35 to the Code, it would serve as a risk mitigation measure for VLOPs and VLOSEs to address systemic online disinformation risks that their services pose – under regulatory oversight⁸⁷.

2.4. A commitment toward a European Media Freedom Act

The above analysis leads to the final piece of regulation to be tabled which pertains to media freedom and pluralism in recent years. Following the 2021 State of the Union Address by President Von Der Leyen,⁸⁸ the 2022 Commission Work Programme listed a specific priority to table an EU Media Freedom Act by Q3 of 2022. The Commission highlights an objective to

⁷⁵ DMA, see footnote 13, Recitals 6-8 and Chapter III.

⁷⁶ See generally, *ibid*, Recitals 73-83 and Chapters IV and V.

⁷⁷ *Ibid*, Recitals 84-87 and Chapter V.

⁷⁸ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, OJ L178, 17.7.2000, p. 1-16, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031> (last accessed 18 August 2022).

⁷⁹ DSA, see footnote 12, Recitals 2 and 3.

⁸⁰ *Ibid*, Recitals 38b, 57a, 105 and Article 12(2).

⁸¹ *Ibid*, Article 26(1)(b).

⁸² Code of Practice on Disinformation, see footnote 14.

⁸³ *Ibid*, Section II, p.5.

⁸⁴ *Ibid*, Section VII, p. 31.

⁸⁵ *Ibid*, Section V, p. 18.

⁸⁶ *Ibid*, Section X, p. 39.

⁸⁷ See further, DSA, footnote 12, Article 35(4).

⁸⁸ 2021 State of the Union Address, see footnote 15.

‘improve transparency, accountability and independence around actions affecting media freedom and pluralism’,⁸⁹ and an overarching goal of harmonising media pluralism regulation at the EU level, highlighted by Commissioner Jourová in stating that ‘the Commission will propose common rules and safeguards to protect the independence and the pluralism of the media.’⁹⁰ This goal of tabling the act was followed by a Call to Evidence for an Impact Assessment published in December 2021, the Feedback Period for the Call to Evidence and for the Consultation period, both of which took place from January to March 2022.

Though the precise policy approach of the Act is not yet known, there is a potentiality that the Act will overlap with the extensive body of regulation which already exists at the EU level with regard to media freedom and pluralism, as discussed above. Major players within the media and digital industries provided comprehensive feedback during the consultation period. Several organisations and businesses welcomed the potentiality of increased regulation in several areas, including, *inter alia*, state intervention in the media, editorial independence, and protection of journalists, but also warned against the risk of lack of coherence with the existing media regulation at EU level, and the lack of discretion for member state specificities in regulating this area. For example, Arcom stated that ‘[t]he EMFA must be coherent with other EU instruments, including the DMA, DSA, AVMSD, the Political Advertising Regulation, and the Code of Practice on Disinformation.’⁹¹ Additionally, the ERGA⁹² stated that they support ‘creating common EU standards on editorial independence, media pluralism, impartial media coverage, audience measurement, transparency of state advertising and public service media. However, these rules need to be coherent with other EU legislation (AVMSD, DSA, DMA, Political Advertising Regulation) and allow for Member State specificities’.⁹³ That is to say, it is important that the EMFA does not hinder well-functioning and established Member State approaches to regulation, particularly considering material competences that the Member States have towards regulating media and cultural policy.

2.5. Conclusion

Taking into account the already crowded regulatory landscape regarding media freedom and pluralism, it will be interesting to witness the development of the EMFA in the coming months. Indeed, the Union will need to take into careful consideration the existing regulatory landscape when progressing with the new legislative initiative which is the EMFA. A level of coherence with existing legislation will need to be prioritised to ensure that the Act is most effective and does not risk being inconsistent with existing legislation in this area of law, potentially causing internal market uncertainty. This being said, where there is minimal overlap with existing legislation, a greater level of legal certainty could be a welcome development with regard to media freedom and pluralism. Further discussion regarding the possible policy actions and

⁸⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission Work Programme 2022: Making Europe Stronger Together, COM/2021/645 final, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:645:FIN&pk_campaign=Communication%20&pk_source=EURLEX&pk_medium=TW&pk_keyword=Work%20Programme (last accessed 15 August 2022).

⁹⁰ European Commission Press Release, ‘European Media Freedom Act: Commission launches public consultation’, available at https://ec.europa.eu/commission/presscorner/detail/en/IP_22_85 (last accessed 18 August 2022).

⁹¹ The audiovisual and digital services regulator of France, see further, available at <https://www.arcom.fr/larcom/presse/loi-europeenne-pour-la-liberte-des-medias-europeen-media-freedom-act-larcom-publie-sa-contribution-la-consultation-publique-de-la-commission> (last accessed 18 August 2022).

⁹² European Regulators Group for Audiovisual Media Services, see further, available at <https://erga-online.eu/> (last accessed 18 August 2022).

⁹³ See further, Consultation Feedback ERGA, available at <https://erga-online.eu/?p=1182> (last accessed 18 August 2022).



scope of the Act will be elaborated upon below, along with potential areas of overlap which may occur.

3. The Initiative for a European Media Freedom Act

3.1. What do we know about the proposed European Media Freedom Act so far?

In 2021, President von der Leyen announced plans to introduce an EMFA to safeguard the pluralism and independence of the media in the internal market.⁹⁴ The initiative is included in the 2022 Commission Work Programme,⁹⁵ with the objective of establishing a common framework for advancing the internal market in the media sector, thereby safeguarding media freedom and pluralism in that market.

In consideration of the aim of safeguarding media freedom and pluralism in the internal market, the intended legal basis for this action is Article 114 of the Treaty on the Functioning of the European Union ('TFEU').⁹⁶ This Article refers to the approximation of the provisions laid down in law, regulation, or administrative action in the Member States, having as its objective the establishment and functioning of the internal market.

The key objectives of the initiative are to: ensure that media companies can operate in the internal market subject to consistent regulatory standards, including as regards on media freedom and pluralism; ensure that EU citizens have access to a wide and varied media offer both offline and online; safeguard the editorial independence and independent management of the media; and foster undistorted competition between media companies by ensuring a transparent and fair allocation of state resources.⁹⁷

In the Impact Assessment,⁹⁸ there are three options laid out for the safeguarding of media freedom and pluralism in the media market: 1) the Commission does nothing; 2) a Recommendation addressed to the Member States; and 3) a legislative instrument. Each of these options is outlined below:

⁹⁴ 2021 State of the Union Address, see footnote 15.

⁹⁵ Commission Work Programme 2022, see footnote 89.

⁹⁶ TFEU, see footnote 17.

⁹⁷ Call for Evidence for an Impact Assessment, Media Freedom Act, see footnote 16.

⁹⁸ Ibid.

Figure 2 - The policy actions proposed by the Commission in the Impact Assessment

Option 1: No action	Option 2: Recommendation addressed to the Member States	Option 3: Legislative instrument
<ul style="list-style-type: none"> • No changes to the current legislative framework. • Continuing the monitoring of the national developments via the Rule of Law Reports. • The AVMSD would continue to be the only instrument of EU media law. • No possibility for the EU to intervene in media market transactions. • Independent media regulators within ERGA would continue to play a role in ensuring the enforcement of existing EU media law, but without structured cooperation channels. 	<ul style="list-style-type: none"> • A recommendation to encourage Member States to implement actions in relation to, amongst others: <ul style="list-style-type: none"> • national scrutiny procedures over media market operations; • restrictions to market entry and operation; • media ownership transparency; • protection of editorial independence and media diversity; and • transparent allocation of resources. • Monitoring mechanism for the Commission to encourage its application by Member States. 	<ul style="list-style-type: none"> • EU legislation establishing: <ul style="list-style-type: none"> • common principles for national scrutiny procedures of media market transactions and other restrictions to market entry and operation of the media; • measures to enhance transparency of media markets; • principles for the protection of editorial independence of the media and the transparent allocation of state resources in the media sector; • consistent regulatory and self-regulatory standards relevant for media pluralism, offline and online; • a framework for media companies to foster innovation and cooperation across borders. • An effective and independent monitoring mechanism and a structured cooperation framework for media regulators.

On the basis of what we know so far, it would seem that the Commission’s preferred course of action is indeed a legislative instrument, as outlined above under Option 3. From the Impact Assessment, it is clear what type of regulation is intended; however, in terms of possible subjects that will be included in a proposal for the EMFA, it is less clear. The possible subjects that may be included in a proposal for the EMFA will be discussed in the next section.

3.2. What we do not yet know about the proposed European Media Freedom Act

Prior to the commencement of the below analysis which will consider potential subjects that may be included within the EMFA, it is important to firstly consider the lack of information currently available on the proposed EMFA. As will be explained in the next Chapter, we have selected some possible subjects on the basis of statements made by the Commission and provided as part of the stakeholder consultation. As such, due to the uncertainty at this stage of what will be included as part of the EMFA, the following analysis is an exercise of a theoretical nature and once the Commission sheds further light on the scope of the proposed Act, it could be helpful to review the findings of the subsequent analysis on the basis of this information.

4. An analysis of the possible subjects that could be included in a proposal for a European Media Freedom Act

4.1. The possible subjects that could be included in the proposal for the EMFA

There are many subjects that could be included in a proposal for an EMFA. As such, for the purposes of this paper, on the basis of the information provided by the Commission in press releases and the findings of the stakeholder consultation, we have selected a few subjects that we think are likely to be included in a proposal for an EMFA. The possible subjects selected, as well as the reasoning for their selection, as per the findings in the information from the Commission and from the stakeholder consultation, are listed below:

- **State intervention in the media:** Vice-President of the Commission Vera Jourová provided in an interview with Radiožurnál that the main objective of the EMFA is to protect media independence from state intervention.⁹⁹ It was also confirmed in Jourová’s speech at the European News Media Forum that there have been many attempts by governments to interfere with the media, undermine their independence and distort the market, which shall be addressed in the EMFA.¹⁰⁰
- **Protection of journalists and their editorial independence:** Vice-President Jourová also provided in her interview with Radiožurnál that provisions will be introduced in the EMFA to protect journalists against pressure to declassify sources, and to ban the use of spying technology.¹⁰¹ Furthermore, both the European Regulators' Group for Audiovisual Media Services ('ERGA')¹⁰² and the European Federation of Journalists¹⁰³ mentioned in their stakeholder consultation that they support the creation of common EU standards on editorial independence.
- **Platform moderation practices:** Recent media reports have referred to an obligation on online platforms to notify publishers when their content will be removed.¹⁰⁴ Furthermore, in its consultation response, the European Publishers Council asked platforms to 'establish due process for how platforms deal with lawful content under

⁹⁹ Radio Prague International, “It includes many things that states may not like” – Jourová on EU’s upcoming Media Freedom Act’, 8 September 2022, available at <https://english.radio.cz/it-includes-many-things-states-may-not-jourova-eus-upcoming-media-freedom-act-8758221> (last accessed 25 August 2022).

¹⁰⁰ Speech by Vice-President Jourová at the European News Media Forum, 29 November 2021, available at https://ec.europa.eu/commission/commissioners/2019-2024/jourova/announcements/speech-vice-president-jourova-european-news-media-forum-0_en (last accessed 25 August 2022).

¹⁰¹ Radio Prague International, Jourová on EU’s upcoming Media Freedom Act, see footnote 99.

¹⁰² ERGA is the advisory body consisting of the heads and high-level representatives of the EU national regulatory authorities for audiovisual media services, as established by the European Commission. See the response to the consultation, available at <https://erga-online.eu/?p=1182> (last accessed 25 August 2022).

¹⁰³ The European Federation of Journalists is recognised by the EU as the representative voice of journalists in Europe. See the response to the consultation, available at <https://europeanjournalists.org/blog/2022/03/25/efj-contribution-to-the-european-media-freedom-act/> (last accessed 25 August 2022).

¹⁰⁴ Matthew Newman, EU media freedom act proposal on track for Sept. 13 publication after scrutiny board go-ahead, 10 August 2022, available at <https://mlexmarketinsight.com/news/insight/eu-media-freedom-act-proposal-on-track-for-sept-13-publication-after-scrutiny-board-go-ahead> (last accessed 28 August 2022).

the editorial control and legal liability of the publisher (or broadcaster) under their content moderation policies and terms and conditions'.¹⁰⁵

- **Value exchange and licensing:** In their stakeholder consultation, News Media Europe¹⁰⁶ referred to the need for fair competition with tech multinationals to be restored, including preserving press publishers' sources of revenue (copyright, advertising).
- **Representations of European content on VOD platforms:** In their stakeholder consultation, the European Video On Demand Coalition¹⁰⁷ stated that public service media is often wrongly confused with state-funded content, even though commercial on-demand services can equally be recognised as contributing to the plurality offer.
- **Minimum standards of transparency for platforms:** Vice-President Jourová also provided in her interview with Radiožurnál that transparency criteria regarding media ownership will also be introduced, to elicit information about transactions which could affect media plurality.¹⁰⁸
- **Legal obligations around misinformation and disinformation:** In June 2022, Jourová's statement during the Special Committee on foreign interference in all democratic processes in the European Union, including disinformation, that the work done by the Committee so far to protect media independence and fight foreign interference will be key issues in the EMFA.¹⁰⁹ The reference to 'fighting foreign interference' can assume to also encompass disinformation,¹¹⁰ especially in the context of the war in Ukraine.
- **Mandatory third-party verifications:** In their stakeholder consultation response, Article 19 refers to an obligation for online platforms to provide access to third-party content curation providers on a fair and non-discriminatory basis.¹¹¹
- **Algorithmic curation, ranking, and moderation of online content:** This was mentioned by multiple stakeholders. The European Federation of Journalists stated that the way in which online intermediaries serve news via algorithms is not transparent.¹¹² Ofcom also mentioned this as an issue, as well as the control of prominence given to various news stories by online intermediaries,¹¹³ and Article 19 called for the unbundling of hosting and content curation activities.¹¹⁴ Finally, the European Broadcasters Union called for

¹⁰⁵ European Publishers Council represents many newspaper and magazine publishers in Europe. See the response to the consultation, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13206-Safeguarding-media-freedom-in-the-EU-new-rules/F2948113_en (last accessed 25 August 2022).

¹⁰⁶ News Media Europe represents the progressive European news media industry. See the response to the consultation, available at <http://www.newsmediaeurope.eu/issues/media-freedom-act-contributions/> (last accessed 25 August 2022).

¹⁰⁷ European VOD Coalition represents video-on-demand and digital entertainment companies. See the response to the consultation, available at <https://www.europeanvodcoalition.com/positions/position-paper-european-media-freedom-act/> (last accessed 26 August 2022).

¹⁰⁸ Radio Prague International, Jourová on EU's upcoming Media Freedom Act, see footnote 99.

¹⁰⁹ European Parliament resolution of 9 March 2022 on foreign interference in all democratic processes in the European Union, including disinformation (2020/2268(INI)), available at https://www.europarl.europa.eu/doceo/document/TA-9-2022-0064_EN.html (last accessed 25 August 2022).

¹¹⁰ Ibid.

¹¹¹ Article 19 is an international human rights organisation that works to defend and promote freedom of expression and freedom of information worldwide. See the response to the consultation, available at <https://www.article19.org/resources/eu-article-19s-recommendations-european-media-freedom-act/> (last accessed 25 August 2022).

¹¹² The European Federation of Journalists, Response to consultation, see footnote 103.

¹¹³ Ofcom is the UK's regulatory and competition authority for broadcasting and postal industries. See the response to the consultation, available at https://www.ofcom.org.uk/_data/assets/pdf_file/0019/234145/ofcom-consultation-response.pdf (last accessed 25 August 2022).

¹¹⁴ Article 19, Response to consultation, see footnote 111.

‘safeguards’ against the algorithmic ranking, content recommendation systems, community standards and terms and conditions which allow global online platforms to determine who sees what and when.¹¹⁵

In light of the above, this analysis will be conducted in consideration of these possible subjects, due to the references made by the Commission, as well as by stakeholders.

4.2. An overview of the relationship between the possible subjects of the European Media Freedom Act and the existing EU regulatory framework

There is already an EU regulatory framework that exists referring to media freedom and pluralism; this is in the form of the DSA, DMA, EUCD, AVMSD, the P2B Regulation, the Political Advertising Regulation, and the Code of Practice on Disinformation. The table below provides an overview of the coverage of the possible subjects outlined above in the existing EU regulatory framework on media freedom and pluralism.

Table 1 - The coverage of the possible subjects of the European Media Freedom Act in the existing EU regulatory framework

Possible subjects	Existing EU Regulatory Framework on Media Freedom and Pluralism						
	DSA	DMA	EUCD	AVMSD	P2B Regulation	Political Advertising Regulation	EU Code on Dis-information
State intervention in the media				Partial			
Protection of journalists and editorial independence				Partial			
Platform moderation practices	X			X			X
Value exchange and licensing		X	X				
Representations of European content on VOD platforms				X			
Minimum standards of transparency for platforms	X		X	X	X	X	X
(Legal) obligations around misinformation and disinformation	X			X			X
Mandatory third-party verification							X
Algorithmic curation, ranking, and moderation of online content	X	X	X				X

¹¹⁵ The European Broadcasters Union is an alliance of public service media organisations whose countries are within the European Broadcasting Area (EBA). See the response to the consultation, available at <https://www.ebu.ch/news/2022/03/european-media-freedom-act-the-ebus-response-to-the-public-consultation> (last accessed 25 August 2022).

4.3. Analysis of each possible subject of the European Media Freedom Act

In the following analysis, each of these possible subjects will be touched upon in relation to their relationship with the abovementioned pre-existing EU regulatory framework. In the case of overlaps, regard will be given to whether the inclusion of such subject in the EMFA would be compatible with the Commission's Better Regulation Guidelines. Furthermore, a more general discussion will be allocated to the possible subjects' compliance with the principle of proportionality were they to be included in the EMFA. An overall analysis of the principle of subsidiarity is provided below.

4.3.1 Analysis regarding subsidiarity

For most of the subjects which are considered below, our analysis revealed, in general, the likely adherence to the principle of subsidiarity and an unlikelihood that any issues would arise in the event that the EMFA included measures regarding each subject. This is largely owing to the fact that regulating such subjects is perhaps best achieved at the EU level, due to the cross-border nature of media activities within the Union, particularly in light of digital technologies and the internet. For example, with respect to the protection of journalists and editorial independence, it would seem that the principle of subsidiarity is complied with since the objective of the proposed action cannot be sufficiently achieved by the Member States acting alone; something which may be proven by the continued growth of physical, legal, and online threats to and attacks on journalists and other media professionals.¹¹⁶ To provide another example regarding platform moderation practices, with respect to the principle of subsidiarity, regulating such practices may not be achieved sufficiently by the Member States acting alone due to the cross-border nature of the dissemination of online content, and could, therefore, be seen as better achieved at Union level due to the scale and effect of the impact of disinformation on democracy and free and fair political processes¹¹⁷.

It should be noted, however, that the Member States have material competencies in relation to certain areas such as media and cultural policy, which would need to be borne in mind when considering the issue of subsidiarity. Additionally, a more granular assessment may be needed upon publication of the proposal for the EMFA, and the specific measures proposed, in order to fully assess whether there would be conflict with the principle.

4.3.2. State intervention in media

At the EU level, it has long been acknowledged that free and pluralistic media is intrinsic in upholding the rule of law and encouraging democracy. Since 2020, as part of the Rule of Law Mechanism,¹¹⁸ the EU has been reporting on media pluralism and media freedom to identify any challenges and developments in the Member States in this regard.

¹¹⁶ European Parliament resolution of 25 November 2020, see footnote 21.

¹¹⁷ For more on the scale of disinformation in the EU, see Action Plan Against Disinformation, March 2019, available at https://www.eeas.europa.eu/sites/default/files/disinformation_factsheet_march_2019_0.pdf (last accessed 18 August 2022).

¹¹⁸ 2022 Rule of law report – Communication and country chapters, European Commission, 13 July 2022, available at https://ec.europa.eu/info/publications/2022-rule-law-report-communication-and-country-chapters_en (last accessed 12 August 2022).

It is acknowledged at the EU level that free and pluralistic media are important to values enshrined in Article 2 TEU.¹¹⁹ However, the EU's competence is limited in this area,¹²⁰ considering the culturally and politically sensitive aspects of media regulation. As such, there has been no legislation introduced to regulate this at the EU level. The only regulation of state intervention in media at the EU level can be found in Recital 54 of the AVMSD, which provides that 'Member States are free to take whatever measures they deem appropriate with regard to audiovisual media services which come from third countries and which do not satisfy the conditions laid down in Article 2, provided they comply with Union law and the international obligations of the Union'.¹²¹ Despite the partial regulation contained in the AVMSD, it can be determined that were state intervention in the media to be included in the EMFA, it is unlikely that there would be any overlap with pre-existing EU legislation and be inconsistent with the Commission's Better Regulation Guidelines.

Although it is difficult to assess the principle of proportionality without seeing a full proposal for the EMFA, considering the lack of coverage in existing EU legislation on this topic, it is doubtful that the inclusion of state intervention in the media would cause any conflict with this principle.¹²² The aim of any measure to restrain state intervention would be to ensure media freedom and the rule of law.¹²³ The restraint of state intervention may be regarded as necessary to attain these two objectives on the basis that excessive state intervention puts these at risk. Importantly, the EMFA should restrain those aspects of state intervention that are necessary to attain its objective; something which requires consideration of whether the measure goes beyond what is necessary to achieve the objective.

4.3.3. Protection of journalists and editorial independence

The violence, threats, harassment, pressure, (self-)censorship, public shaming and even assassination of journalists in the EU, especially towards women, have been shown to be particularly concerning and on the rise.¹²⁴ The European Parliament has acknowledged in Resolutions that urgent action is required to uphold the essential role of the media in ensuring the principles of the rule of law.¹²⁵

In terms of binding EU legislation, the only presence of regulation is in the form of Recital 54 of the AVMSD, which provides that 'Member States are free to take whatever measures they deem appropriate with regard to audiovisual media services which come from third countries, and which do not satisfy the conditions laid down in Article 2, provided they comply with Union law and the international obligations of the Union'.¹²⁶ Other than this, there is no pre-existing legislation regulating the protection of journalists and their editorial independence and, as such, it is unlikely that the coverage of the protection of journalists and their editorial independence in the EMFA would overlap with any pre-existing EU legislation. This would also mean that it may be inconsistent with the Commission's Better Regulation Guidelines.

¹¹⁹ TEU, see footnote 20.

¹²⁰ See Thierry Breton's Speech, For a 'European Media Freedom Act', available at https://ec.europa.eu/commission/commissioners/2019-2024/breton/announcements/european-media-freedom-act_en (last accessed 25 August 2022).

¹²¹ Revised AVMSD, see footnote 6.

¹²² Better Regulation Guidelines, see footnote 50.

¹²³ TEU, see footnote 21, Article 2.

¹²⁴ European Parliament resolution of 25 November 2020, see footnote 21.

¹²⁵ See, for instance, *ibid.*

¹²⁶ Revised AVMSD, see footnote 6.

In relation to the principle of proportionality, considering the lack of coverage on this topic at the EU level, it is unlikely that the inclusion of the protection of journalists and their editorial independence in the EMFA would cause any infringements. Although, again, it should be reiterated that this is difficult to fully assess without seeing a full proposal of the EMFA. The aim of any measure to protect journalists and their editorial independence would be to ensure media freedom, the rule of law, democracy, human rights, and freedom.¹²⁷ The protection of journalists may be regarded as necessary to achieve these two objectives on the basis that a lack of freedom for journalists puts the objectives at risk by not allowing, *inter alia*, citizens to access a plurality of sources of information, allowing them to form opinions and scrutinise governments.¹²⁸ The level of protection of journalists which is provided in the EMFA must be that which is necessary and is, therefore, relevant to the question of whether the measure goes beyond what is necessary to achieve the objective.

4.3.4. Platform moderation practices

The EU regulatory framework on content moderation has become increasingly complex and differentiated over the years. It has moved from the e-Commerce Directive¹²⁹ to the AVMSD,¹³⁰ and so on. This is intended to develop further in the form of the proposed DSA.¹³¹ There are also a variety of self-regulatory initiatives that have been agreed upon by the main online platform, such as the Code of Practice on disinformation¹³² and the Code of Conduct on countering illegal hate speech online.¹³³

On the basis of the above, it is clear that there is a broad and complex framework for online content moderation that is already in existence. The AVMSD is relevant for the purposes of platform moderation practices, considering that it imposes obligations on video-sharing platform providers to protect citizens from incitement to hatred, violence, terrorism, and child pornography.¹³⁴ This framework is intended to develop even further in the DSA, which also aims (under Article 35) to convert the Code of Practice on Disinformation into a Code of Conduct. In the DSA, considerable emphasis is given to the requirement that online platforms must respect fundamental rights, freedom of expression, and the freedom and pluralism of the media. Specifically, in the DSA, Article 12(2) provides that online intermediary services shall act in a diligent, objective, and proportionate manner in applying and enforcing the restrictions, having due regard to freedom and pluralism of the media, freedom of expression, and fundamental rights enshrined in the Charter. Under Article 26, significant responsibility is placed upon VLOPs in particular, regarding systemic risk assessment. Article 26(1)(b) provides that VLOPs must carry out risk assessments regarding the design, function, and use of their services and any actual or foreseeable negative effects on the exercise of fundamental rights, including the freedom and pluralism of the media. It is clear from the provisions of the proposed DSA that it is already planned for online platforms to moderate their platforms in consideration of the freedom and pluralism of the media and, as is clear from the Code of Practice (soon to be Code of Conduct) against disinformation, which intends to crack down on the deliberate deception

¹²⁷ TFEU, see footnote 17, Article 2.

¹²⁸ *Ibid.*

¹²⁹ E-Commerce Directive, see footnote 78.

¹³⁰ Revised AVMSD, see footnote 6.

¹³¹ DSA, see footnote 12.

¹³² Code of Practice on Disinformation, see footnote 14.

¹³³ The EU Code of conduct on countering illegal hate speech online, 30 June 2016, available at https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en (last accessed 18 August 2022).

¹³⁴ Summary of the Audiovisual Media Services Directive, see footnote 25.

of individuals and distortion of public opinion. In light of the pre-existing regulation mentioned above, there may be a risk of overregulation and, therefore, be inconsistent with the Commission's Better Regulation Guidelines.

In terms of the principles of proportionality, considering the coverage of content moderation in the AVMSD, DSA, and the Code of Practice on Disinformation, there could be issues regarding this (again, however, this does depend on the exact content as per the full proposal). The aim of measures providing that platforms should moderate online content could encompass many things, including media freedom and pluralism and respect for fundamental rights. The moderation of online content by platform providers via the EMFA may not be regarded as necessary to attain these two objects due to the fragmentation of the regulatory framework, with the AVMSD, DSA, and Code of Practice on Disinformation already providing different forms of online platform moderation connected to media freedom and pluralism. As such, it may go beyond what is necessary to achieve the objective, due to the pre-existing framework, and a less restrictive measure may be more fitting.

4.3.5. Value exchange and licensing

Value exchange and licensing are covered in the EUCD¹³⁵ and will soon be encompassed within the DMA.¹³⁶ The EUCD harmonises aspects of copyright law across Europe, while the DMA intends to strengthen pluralism of the media, by aiming to improve competition within the digital market, thereby strengthening the market of media players within Europe.

In terms of the EUCD, Article 17 introduces a special mechanism for liability and responsibility of online platforms for unauthorised copyright material which is uploaded to their platforms. Specifically, it contains obligations for Online Content-Sharing Services Providers ('OCSSPs') to make their best efforts to seek authorisation from rightsholders to make their content available (by way e.g. of licensing agreements), and to prevent the uploading of protected content that rightsholders do not wish to make accessible. Article 12 of the EUCD contains provisions on collective licensing with extended effect. Specifically, it provides that the Member States may provide, where a collective management organisation ('CMO') enters into a licensing agreement for the exploitation of works or other subject matter, that such an agreement can be extended to apply to the rights of rightsholders who have not authorised that CMO to represent them, or that the organisation has a legal mandate or is presumed to represent rightsholders who have not authorised the organisation accordingly. In the DMA, there is an obligation regarding interoperability for gatekeepers providing messenger services concerning basic functionalities will also be adopted, meaning that smaller business users can operate using the services of gatekeepers.¹³⁷ In light of the aforementioned, it is clear that there is already EU legislation that regulates value exchange and licensing and, thus, a risk of overregulation and inconsistency with the Commission's Better Regulation Guidelines.

The principle of proportionality would need to be assessed and complied with for value exchange and licensing to be included in the EMFA. This is something that cannot be fully assessed until we bear witness to the full proposal for the EMFA; although, some preliminary thoughts can be registered. Should the EMFA contain measures regulating value exchange and licensing, this could be a legitimate aim to ensure that rightsholders obtain a fair share of value

¹³⁵ EUCD, see footnote 16.

¹³⁶ DMA, see footnote 13.

¹³⁷ Ibid, Article 7.

from their works. Furthermore, including a measure pertaining to this subject could have a positive effect regarding plurality in the media, as better value exchange may encourage more rightsholders to produce and share content. However, given the extensive set of measures which already regulate value exchange and licensing included in the EU CD and the DMA, including additional measures within the scope of the EMFA might go beyond what is necessary, and not be appropriate, to achieve the aims of media freedom and pluralism.¹³⁸

4.3.6. Representations of European content on VOD platforms

The representations of European content on VOD platforms have already been covered at the EU level in the revised AVMSD. As referred to above, the AVMSD aims to create and ensure the functioning of a single European market for audiovisual media services, while contributing to the promotion of cultural diversity and providing an adequate level of consumer and child protection.¹³⁹

As to the relationship with the EMFA, the revised AVMSD lays down rules for the independence of media regulators, promotes transparency of media ownership and recognises that editorial decisions should be free from interference. Firstly, Article 10 of the AVMSD provides that the audiovisual media services' content and, in the case of television broadcasting, scheduling 'shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider'. Article 11 goes on to provide the same (with the addition of content within a catalogue in the case of on-demand audiovisual media services) regarding programmes containing product placement. Article 17 provides that the Member States should allot at least 10% of transmission time for European works created by producers who are independent of broadcasters. Therefore, indicating that the representation of VOD content is already well-covered at the EU level in the AVMSD; thus, to ensure the clarity and consistency of EU law, is important that the law does not become too fragmented via overregulation to avoid being inconsistent with the Better Regulation Guidelines.

Furthermore, the EMFA may build on the role of the ERGA¹⁴⁰ whose role is stipulated in Article 30b of the AVMSD. The ERGA contains the independent national regulatory authorities as per Article 30 of the AVMSD. The AVMSD provides that Member States must ensure that the regulators have adequate financial and human resources and enforcement powers to carry out their functions effectively and contribute to the work of the ERGA.¹⁴¹ An increased role for the ERGA would mean an increased role for the national regulatory authorities ('NRAs') also (to allow them to keep up with any extended responsibilities provided). This provision would likely have to be provided again in the EMFA. Furthermore, the Decision on the ERGA¹⁴² would need to be amended due to the limitation of the competences to audiovisual media services. Therefore, to ensure that the role of the NRAs and the ERGA is clear, consistent, and coherent and that the ERGA is competent, it is very necessary that the interactions between the EMFA and AVMSD are considered in-depth.

¹³⁸ See Sections 4.3.2. and 4.3.3. on state intervention in the media and protection of journalists.

¹³⁹ Summary of the Audiovisual Media Services Directive, see footnote 25.

¹⁴⁰ Commission Decision of 3.2.2014 on establishing the European Regulators Group for Audiovisual Media Services, Brussels, 3.2.2014, C(2014) 462 final, available at https://erga-online.eu/wp-content/uploads/2016/10/Decision_2014_en.pdf (last accessed 18 August 2022). Also, see European Regulators Group for Audiovisual Media Services, About ERGA, available at https://erga-online.eu/?page_id=7 (last accessed 18 August 2022).

¹⁴¹ Revised AVMSD, see footnote 6, Article 30(4).

¹⁴² Commission Decision establishing the ERGA, see footnote 139.

In terms of the principle of proportionality, due to the overlapping nature of this possible subject of the EMFA with the AVMSD, it may be doubtful that this principle would indeed be complied with for this subject. To reiterate, this is difficult to fully assess without bearing witness to a full proposal for the EMFA. Taking the principle into consideration, the aim of regulating the representation of European content on VOD platforms is to ensure respect for media freedom and pluralism. The regulation of European content on VOD platforms, however, may not be regarded as necessary to attain the objectives on the basis that it is already regulated via the AVMSD. Therefore, it could be said that its inclusion would go beyond what is necessary because the objective of media freedom could be achieved with a version of the measure which is less restrictive and involves the AVMSD.

4.3.7. Minimum standards of transparency of platforms

At the EU level, there is already a variety of EU legislative instruments referring to minimum standards of transparency for online platforms. The first instrument of this kind was the AVMSD.¹⁴³ This was then followed by the P2B Regulation¹⁴⁴ and the EUCD.¹⁴⁵ All three of these instruments will be soon followed by some expansive obligations as contained in the Political Advertising Regulation,¹⁴⁶ the DSA,¹⁴⁷ and the Code of Practice on Disinformation.¹⁴⁸

Firstly, in the AVMSD, it is provided that the Member States shall ensure that all VODs under their jurisdiction establish and operate transparent and user-friendly mechanisms for users to report or flag any content that may impair the development of minors, incite violence or hatred, and/or disseminates content concerning terrorism, child pornography, or racism and xenophobia.¹⁴⁹ Furthermore, Member States must ensure that all VODs have transparent, easy-to-use, and effective procedures for handling users' complaints in relation to the implementation of reporting and flagging content, age verification systems, rating content, and parental control systems.¹⁵⁰

Secondly, in the P2B Regulation, the main provisions seek to provide greater transparency to business users regarding Terms and Conditions provided by OIPs and search engines, and regarding search results and ranking, both of which have important impacts on freedom and pluralism in the media. Terms and conditions with business users must be drafted using plain and unintelligible language, must be available to business users at all stages of the commercial relationship,¹⁵¹ and must include information on a number of specific points, such as, *inter alia*, search results and rankings, and differentiated treatment of products.¹⁵² Regarding the differentiated treatment of products, OIPs and search engines must include a description of any differentiated treatment they give to their own products over those of other business users and the description should refer to the main 'economic, commercial or legal considerations' which explain such treatment.¹⁵³

¹⁴³ Revised AVMSD, see footnote 6.

¹⁴⁴ P2B Regulation, see footnote 7.

¹⁴⁵ EUCD, see footnote 16.

¹⁴⁶ Political Advertising Regulation, see footnote 10.

¹⁴⁷ DSA, see footnote 12.

¹⁴⁸ Code of Practice on Disinformation, see footnote 14.

¹⁴⁹ Revised AVMSD, see footnote 6, Article 28b(3)(d).

¹⁵⁰ *Ibid*, Article 28b(3)(g).

¹⁵¹ P2B Regulation, see footnote 7, Article 3.

¹⁵² *Ibid*, Article 5.

¹⁵³ *Ibid*, Article 7.

Thirdly, in the EUCD, under Article 19, there is a transparency obligation. This Article requires a contracting party receiving rights in protected works to provide up-to-date, relevant and comprehensive information to the authors and performers on the exploitation of their works and performances. The information should be provided at least once a year and includes modes of exploitation, all revenues generated, and the remuneration due on those revenues. Additionally, Article 17(8) of the EUCD provides for a transparency clause applicable to OCSSPs. The Article requires OCSSPs to provide information to rightsholders regarding their cooperation obligations to obtain authorisation set out in Article 17(4), and in the event where licensing agreements are concluded between OCSSPs and rightsholders, to provide information on the use of content covered by said agreements.³⁶

Fourthly, the Political Advertising Regulation focuses on ensuring a high level of transparency of political advertising and related services. The Regulation, under Article 6, requires that the providers of political advertising will have a 'record-keeping' obligation; they will have to keep information collected on political advertising, the amounts invoiced for the advertising and the identity of the sponsor and its contact details for a period of five years. Article 7 outlines the transparency requirements for each political advertisement. Each political advertisement must contain (a) a statement that it is a political advertisement; (b) the identity of the sponsor of the advertisement; and (c) a 'transparency notice' to enable the 'wider context of the political advertisement and its aims to be understood'. This transparency notice shall be kept up to date and be easily accessible; it should be included in each political advertisement or be easily retrievable from it and must include: the identity of the sponsor and contact details; the period during which the political advertisement is intended to be published and disseminated, financial information on the aggregate amount spent on the advertisement, and the political advertising campaign it is part of. Furthermore, under Article 9, advertising publishers must put in place mechanisms to allow individuals to notify that a particular advertisement does not comply with the Regulation.

Fifthly, the DSA provides a variety of obligations with the intention of increasing the transparency of online platforms. Firstly, this can be seen by bringing in rules that govern the terms of the use of digital services. In regard to terms and conditions, Article 12 provides that providers of intermediary services should provide any information on policies, procedures, measures and tools used for the purpose of content moderation in their terms and conditions, displayed in 'clear and unambiguous language and [...] publicly available in easily accessible format'. Article 15 then requires companies to produce a statement of reasons for decisions to remove or disable access to content, which should be publicly available in a database managed by the Commission. Secondly, this can be seen by the introduction of transparency reporting obligations. Under Article 13, all intermediary services are obliged to publish, at least once a year, transparency reports on activities related to their content moderation authorities. This obligation is further extended for online platforms under Article 23 and shall include information about disputes submitted to the out-of-court dispute settlement bodies, suspensions of accounts as part of measures against misuse under Article 20, and the use of automatic means in content moderation. The reporting obligations for VLOPs are even more so, with the data required under Article 13 and 23 required every six months, and being required to provide a risk assessment report,¹⁵⁴ audit reports,¹⁵⁵ and audit implementation reports.¹⁵⁶ Thirdly, and finally, under Article 24, there are some obligations that advertising shall

¹⁵⁴ DSA, see footnote 12, Article 26.

¹⁵⁵ Ibid, Article 27.

¹⁵⁶ Ibid, Article 28.

display to users that they see an ad, a natural/legal person on whose behalf the ad is displayed, and meaning information about the parameters that determine why the user sees the ad. For VLOPs, there is additional advertising transparency required, in particular, they shall create a publicly available repository including information on the content of the ad, the natural/legal person on whose behalf it was displayed, the main parameters used for targeting, and the number of users reached.¹⁵⁷

Finally, the Code of Practice on Disinformation, despite not being binding EU legislation, also provides obligations in relation to transparency. The Code's main aim is to increase transparency to combat widespread disinformation online. For instance, *inter alia*, it intends to increase the transparency of political advertising; ensure the integrity of services; empower users, researchers, and the fact-checking community; introduce a transparency centre and task force; and strengthen the monitoring framework.¹⁵⁸

The above displays a rather overregulated legal framework at the EU level, and it is very possible that any further extension of this would be inconsistent with the Commission's Better Regulation Guidelines.

Regarding the principle of proportionality, the density of the legal framework at the EU level regarding transparency obligations on online platforms may cause issues with the fulfilment of the principle. The aim of introducing minimum standards of transparency could aim to do a number of things, including ensuring media freedom and media pluralism. However, the introduction of minimum standards of transparency via the EMFA may not be necessary to attain the objective of media freedom considering the already dense legal framework regulating this – the AVMSD, P2B Regulation, EUCD, Political Advertising Regulation, DSA, and Code of Practice on Disinformation. As such, it could be said that its inclusion may go beyond what is necessary to attain the objective of media freedom and a less restrictive measure might be better placed to achieve this.

4.3.8. (Legal) obligations on disinformation and misinformation

Online disinformation poses a substantial threat to democracy and hampers the ability of citizens to make informed decisions. Following the COVID-19 pandemic, disinformation has increased in importance on the EU agenda. Before the COVID-19 pandemic, there was the AVMSD which touches on disinformation. Furthermore, the Code of Practice on Disinformation was introduced in 2018 and, as of 2022, this has been strengthened and will become a Code of Conduct following the passage of the DSA, which introduces more measures to combat disinformation in the Union.

The AVMSD is currently the only binding legislation that touches on any obligations on disinformation and misinformation, with the DSA to join this with more elaborate provisions to tackle these phenomena. With regard to the AVMSD, there are some mechanisms, albeit not directly for the purposes of disinformation, which can be used to target such content on VODs. Under Article 3(4)(a)(i), Member States may take measures to restrict transmissions on their territory where it is necessary for public policy, public health, public security, or the protection of consumers. This Article was relied on as part of the Commission's decision-making when

¹⁵⁷ Ibid, Article 30.

¹⁵⁸ Code of Practice on Disinformation, see footnote 14.

sanctioning RT and Sputnik due to their disinformation and propaganda.¹⁵⁹ The DSA intends to introduce a ‘notice and action’ mechanism, as well as safeguards, for the removal of illegal products, services or content online.¹⁶⁰ The notice should be acted upon ‘without undue delay, taking into account the type of illegal content that is being notified and the urgency of taking action’.¹⁶¹ In addition, VLOPs will be subject to specific obligations regarding the dissemination of both illegal and harmful content; this is outlined above with regard to transparency and the mandatory risk assessments, risk mitigation measures, and independent audits.¹⁶² For signatories that are VLOPs, the Code aims to become a mitigation measure and a Code of Conduct recognised under the co-regulatory framework of the DSA.

In light of the above, there are already some pre-existing frameworks on disinformation and misinformation; however, until the entry into force of the DSA, this is relatively limited.

As to the principle of proportionality, the possible subject of legal obligations on disinformation and misinformation is already covered to some extent, with the AVMSD being used for sanctions due to disinformation and propaganda, as well as new provisions proposed to be introduced by the DSA. However, the type of regulation that may be envisaged under this subject would be hard to conclude without seeing a full proposal of the EMFA. The aim of introducing obligations to combat disinformation and misinformation would be to ensure media freedom and pluralism, as well as democracy.¹⁶³ It may be regarded as necessary to attain the objective of ensuring media freedom and pluralism due to the prevalence of this throughout the Union and the threat that it poses to democracy (for instance, 30% of Europeans come across news or information they believe misrepresents reality every day or almost every day). However, whether it would go beyond what might be necessary to achieve this is questionable; this is because the Code of Practice on Disinformation, covering a wide variety of signatories (Adobe, Google, Meta, Microsoft, TikTok, Twitter, etc.), may prove that such objective is effectively attained by a less restrictive measure.

4.3.9. Mandatory third-party verification

To date, despite the considerable amount of regulation which exists at the EU level regarding media freedom and pluralism, there is a dearth of binding regulation regarding third-party verification. At present within the landscape of media regulation, third-party verification features prominently within the strengthened Code of Practice on Disinformation, which is briefly described above in Section 2. With the 2022 Code, signatories have agreed to commitments toward cooperating with independent third-party auditors and fact-checkers towards reducing the monetisation of disinformation, and to collaborating with third-party partners and organisations to curb disinformation and to help empower users to recognise disinformation. Additionally in this context, it is important to note that the Code of Practice on Disinformation is a voluntary commitment to best practice guidelines, and therefore does not have a legally binding effect. The Code has, however, an impressive list of signatories

¹⁵⁹ Björnstjern Baade, ‘The EU’s “Ban” of RT and Sputnik: A Lawful Measure Against Propaganda for War’, *VerfBlog*, 2022/3/08, available at <https://verfassungsblog.de/the-eus-ban-of-rt-and-sputnik/> (last accessed 18 August 2022). See also Ukraine: Sanctions on Kremlin-backed outlets Russia Today and Sputnik, Press Release, 2 March 2022, Brussels, available at https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1490 (last accessed 18 August 2022).

¹⁶⁰ DSA, see footnote 12, Article 14.

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*, Articles 26-28.

¹⁶³ TFEU, see footnote 17.

representing several key players in the media industry, such as Adobe, Twitter, Google, and Microsoft.¹⁶⁴

Taking into account the potential inclusion of rules regarding third-party verification and the impact of this in light of the principle of proportionality, it is not likely that the inclusion of such rules would cause issues. Regarding proportionality, the aim of introducing mandatory third-party verification would be to ensure media freedom and pluralism and democracy. It may be considered necessary to attain the objective of ensuring media freedom, pluralism and democracy; this is particularly given the current dearth of binding regulation.

It is, however, important to note that the inclusion of such binding rules within the EMFA could perhaps be achieved by a less restrictive measure. Furthermore, these could potentially contradict methods of self- and co-regulation that the EU have favoured regarding media freedom and pluralism in recent years. For example, within the AVMSD, co-regulation was considered and favoured regarding several aspects of the Directive. In particular, Regarding freedom of the media and media pluralism specifically, Recital 49 of the AVMSD highlights that co-regulation should be ‘encouraged’ and that video-sharing platform providers should be able to take stricter measures on a voluntary basis, ‘respecting the freedom of expression and information and media pluralism.’¹⁶⁵ Additionally, within the European Democracy Action Plan, in the context of strengthening media freedom and media pluralism, the Commission specifically commit to supporting ‘self-regulatory initiatives promoting professional standards, including charters of editorial independence, and discussions on the challenges faced by journalists.’¹⁶⁶ The Code of Practice on Disinformation is an important self-regulatory initiative which is supported by the Union, and in this regard, regulating measures which are already included in the Code could contradict to some extent the encouragement of self- and co-regulation.

4.3.10. Algorithmic curation, ranking and/or moderation of online content

The proposed DSA and DMA intend to ensure that online platforms are held accountable for their algorithms and their content moderation practices. Additionally, the EUCD includes measures which obligate OCSSPs to employ their best efforts to ensure that content shared by their users is uploaded in keeping with copyright rules, thereby preventing potential infringements. In turn, this brought additional regulation regarding the moderation of online content. Furthermore, the Code of Practice on Disinformation also stipulates some commitments for online platforms in relation to their algorithms.

Firstly, the DSA refers primarily to algorithmic curation. It imposes obligations on VLOPs that use ‘recommender systems’.¹⁶⁷ For the VLOPs that use recommender systems, they are required, under Article 29, to set out in their terms and conditions, in a clear, accessible and easily comprehensible manner, the main parameters used in their recommender systems, as well as any options for the recipients of the service to modify or influence those parameters. VLOPs are also required, where several options are available, to provide an easily accessible functionality on their online interface allowing the recipient of the service to select and modify

¹⁶⁴ Code of Practice on Disinformation, see footnote 14.

¹⁶⁵ Revised AVMSD, see footnote 6, Recital 49.

¹⁶⁶ European Democracy Action Plan, see footnote 9, Section 3.3.

¹⁶⁷ Article 2(o) of the DSA: “recommender system” means a fully or partially automated system used by an online platform to suggest in its online interface specific information to recipients of the service, including as a result of a search initiated by the recipient or otherwise determining the relative order of prominence of information displayed.”

at any time their preferred option. In addition, under Article 13, it is stipulated that providers of intermediary services are required to include any information in relation to any algorithmic decision-making in a clear, unambiguous, and easily accessible manner in their terms and conditions. VLOPs will also be required under the DSA to conduct risk assessments which take into account how their content moderation systems, recommender systems and systems for selecting and displaying advertisement influence any systemic risks; these risks should also be mitigated against. During inspections, they should also be able to provide explanations and access to their databases and algorithms.¹⁶⁸

Secondly, in the DMA, the focus is on ranking services. Under Article 6(1), the gatekeeper of core platform services shall refrain from treating more favourably in ranking services and products offered by the gatekeeper itself or by any third-party belonging to the same undertaking compared to similar services or products of third-party and apply fair and non-discriminatory conditions to such ranking. They should also provide any third-party providers of online search engines with access to fair, reasonable and non-discriminatory terms to ranking, query, click and view data in relation to free and paid search generated by end users on online search engines of the gatekeeper, subject to anonymisation for the query, click and view data that constitutes personal data. In addition, under Article 19, the Commission may request access to databases and algorithms of undertakings and request explanations on those by a simple request or by a decision and, under Article 21, to explanations on its organisation, functioning, IT system, algorithms, data-handling and business conducts. Where these requests are not complied with, the gatekeeper may be fined¹⁶⁹ or a penalty payment imposed.¹⁷⁰

Thirdly, regarding the EUCD, under Article 17, in the event that authorisation is not obtained from rightsholders to have their content uploaded onto the platform, OCSSPs are obliged to take steps to avoid unauthorised uploads. The Directive expressly stipulates these steps taken to comply with Article 17 should not entail a general monitoring obligation for OCSSPs¹⁷¹. Furthermore, additional guidance was published by the Commission regarding the implementation and application of Article 17, in order to 'balance fundamental rights and the use of exceptions and limitations.'¹⁷²

Finally, there is the Code of Practice on Disinformation which outlines some commitments for online platform providers to introduce algorithms to combat disinformation. One commitment is that the signatories will establish or confirm that they have algorithms in place for the detection, moderation and sanctioning of impermissible conduct and that the content on their services is trustworthy, respects the rights of end-users and does not constitute prohibited manipulative practices.¹⁷³ Another commitment is the development and enforcement of publicly documented, proportionate policies to limit the spread of harmful false or misleading information and take action on webpages or actors that persistently violate these policies.¹⁷⁴

In general, the subject of algorithmic curation, ranking and moderation of online content is well-covered at the EU level, especially with the proposed DSA and DMA, and, therefore, its

¹⁶⁸ DSA, see footnote 12, Articles 54(3) and 57.

¹⁶⁹ DMA, see footnote 13, Article 26.

¹⁷⁰ *Ibid*, Article 27.

¹⁷¹ EUCD, Article 17(8) and Recital 66.

¹⁷² Communication from The Commission to The European Parliament and The Council, Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market, COM/2021/288 final, section II.

¹⁷³ Code of Practice on Disinformation, see footnote 14, Commitment 15.2.

¹⁷⁴ *Ibid*, Commitment 18.2.

inclusion in the EMFA may open it to the risk of overregulation and being inconsistent with the Better Regulation Guidelines.

In terms of the principle of proportionality, the vast coverage of the subject of algorithmic curation, ranking and moderation of online content may cause issues in terms of adhering to this principle. The aim of algorithmic curation, ranking and moderation of online content is to ensure media freedom and pluralism. As to whether the inclusion of such topic in the EMFA is necessary to attain such objective, it could be doubted due to the forthcoming adoption of the DSA, DMA, and the introduction of the (strengthened) Code of Practice on Disinformation. As such, the objective could perhaps still be attained by a less restrictive measure.

5. Conclusion

The purpose of this paper was to consider the compatibility of the EMFA with the existing EU instruments regulating media freedom and pluralism, taking into consideration the Better Regulation Guidelines and the principles of subsidiarity and proportionality. To recap, under the Better Law-Making from the European Parliament, the Council of the European Union, and the Commission, it was agreed that Union legislation should avoid overregulation and administrative burdens for citizens.¹⁷⁵ Furthermore, regulation should achieve benefits, be targeted, be easy to comply with and not add unnecessary regulatory burdens.¹⁷⁶

The possible subjects considered for the purposes of this paper were as follows: state intervention in the media; protection of journalists and their editorial independence; platform moderation practices; value exchange and licensing; representations of European content on VOD platforms; minimum standards of transparency of platforms; legal obligations on disinformation and misinformation; mandatory third-party verification; and algorithmic curation, ranking and moderation of content.

The findings show that were the proposal for the EMFA to include some or all of the subjects included in this paper, there could potentially be concerns about overregulation in this field. Such overregulation, as mentioned above, would result in an administrative burden. The vast regulatory framework already in existence is formed by the DSA, DMA, EUCD, AVMSD, P2B Regulation, Political Advertising Regulation, and the Code of Practice on Disinformation. A full overview table of each subject and their existing coverage in the EU regulatory framework can be found under Section 4.2.

In terms of each individual subject, some are more likely to cause overregulation and fragment this area of EU law. Arguably, the most likely to fragment the framework would be further minimum standards of transparency for platforms, which are covered by the DSA, EUCD, AVMSD, P2B Regulation, Political Advertising Regulation, and the Code of Practice on Disinformation. It was also found that there is pre-existing coverage in the EU regulatory framework of platform moderation practices, value exchange and licensing, representations of European content on VOD platforms, legal obligations on disinformation and misinformation, mandatory third-party verification, and algorithmic curation, ranking and moderation of content. The consequence of such overregulation and fragmentation of EU law may be a less coherent piece of legislation than desired; therefore, not achieving the intended benefits of the action.

The two possible subjects where overregulation was seen not to be a concern were state intervention in the media and protection of journalists and editorial independence. This was because the only coverage of this in the pre-existing EU regulatory framework was found in the recitals, not substantive provisions, of the AVMSD. Therefore, were these two possible subjects to be incorporated into the proposal for the EMFA, there would be limited concern over the burden this might have on citizens, as the increased coherence of such legislation would make it easier to comply with.

¹⁷⁵ Better Law-Making Agreement, see footnote 3.

¹⁷⁶ Better regulation: Joining forces to make better laws, see footnote 4.

As well as assessing the issue of overregulation when looking at the compatibility of the Better Regulation Guidelines with the EMFA, the paper intended to assess the compatibility of the EMFA with principles of subsidiarity and proportionality. It is worth noting that it is difficult to assess these principles accurately without seeing the full proposal for the EMFA. However, in general, it would seem that the principle of subsidiarity would likely be complied with for the inclusion of the possible subjects and, therefore, the objectives of the possible subjects could not be achieved by the Member States acting alone and would be better achieved at the Union level by the reason of the scale or effects of that action. This finding is likely linked to the fact that (except for state intervention in the media and protection of journalists and their editorial independence) these possible subjects are already regulated at the EU level and, thus, there was a prior reason to concur with the action being better achieved at the Union level. In terms of the principle of proportionality, the possible subjects often seem necessary to be regulated but the question links back to whether they are appropriate considering the vast regulatory framework that is already in existence. Were there to be overregulation, it would likely be considered inappropriate as it would not achieve the intended benefits, be targeted, be easy to comply with and would add unnecessary regulatory burdens.¹⁷⁷

To conclude, the Commission should thoroughly consider the Better Regulation Guidelines, specifically the issue potentially posed by overregulation and the principles of subsidiarity and proportionality to which this is connected, when conducting their impact assessment and, potentially, providing a proposal for an EMFA. It needs to be ensured that the possible subjects contained allow for the utmost coherence of the EU regulatory framework regarding media freedom and media pluralism, particularly by achieving intended benefits, being targeted, being easy to comply with, and not adding any unnecessary regulatory burdens.

¹⁷⁷ Better regulation: Joining forces to make better laws, see footnote 4.



📍 Spark Legal Network (EU) BV
Rue des Comediens 22,
1000 Brussels, Belgium

☎ +44 (0) 78 723 79 184
+32 (0) 234 50 749

🌐 [spark_legalnetwork](#)
🐦 [spark_legalnet](#)
🌐 www.sparklegalnetwork.eu