



media,  
entertainment  
& arts

## NEWS MEDIA EUROPE

### Media Sector calls on the EMFA Negotiators to support a strong Article 17

Brussels, 28 November 2023

Dear EMFA Negotiators,

Tomorrow's trilogue will be decisive to determine the final shape of most provisions of the European Media Freedom Act (EMFA). At this critical juncture, we - the undersigned European organizations representing media outlets, journalists, and media workers - join together to call on you to protect legal editorial content from unjustified and arbitrary actions by Very Large Online Platforms (VLOPs), which represent a transversal threat to the freedom of expression of the media and journalists.

Media freedom and journalistic integrity are not only vulnerable to governments' attempts to silence critical voices. As VLOPs have become key distribution channels for professional media, unilateral and arbitrary restrictions to legal editorial content on platforms can gravely affect the pluralism and diversity of information available to European citizens and can have a chilling effect on free speech, as editorial teams have to consider private terms and conditions while doing their job.

The European Commission has identified this situation as causing risks to the freedom of the media and proposed a procedural guarantee in Article 17 EMFA. While VLOPs unfortunately remain able to remove or restrict access to legal editorial content on the basis of terms and conditions, Article 17 must at least afford media service providers, including journalists, an indispensable minimum standard of protection. We agree with the co-legislators that the procedure proposed by the European Commission is insufficient to effectively protect regulated media from arbitrary interference by very large online platforms (VLOPs) and that certain improvements are necessary.

- **Establishing a meaningful procedure with clear timeframes**

That being said, Article 17 must allow media service providers to react to an intended content moderation decision of a VLOP. Such a right to reply, combined with concrete deadlines, can help establish a solution-oriented conversation between the parties. As such, the 24-hour stay-up period for editorial content proposed by the European Parliament is also justified to ensure legal certainty. Also, in the interest of citizens, platforms should handle media complaints within 24 hours, as suggested by the European Parliament. Another element that can contribute to a meaningful procedure is the involvement of the national regulatory authorities or self- or co-regulatory bodies for the media. The EMFA must first and foremost protect the freedom of the media and shelter them from the commercial or ideological interests of platforms, that for the sake of democracy should not have the final say over European editorial content.

- **Article 17 is not a media exemption**

Even though there is general agreement on the potential negative effects of VLOPs on the media freedom and pluralism, some stakeholders expressed concerns in relation to the procedural safeguard. The criticism seems, however, unfounded and we would take this opportunity to clarify persisting misunderstandings.

Article 17 is not a free pass, it rather establishes a procedure for the moderation of editorial content by VLOPs. It should also be underlined that media service providers, including journalists, and the editorial content they produce will continue to be subject to national and EU law, co- and self-regulatory mechanisms and ethical codes. Second, Article 17 is aligned with the obligations that VLOPs have under the DSA (Digital Services Act), including the fight against content that derives from systemic risks, such as disinformation. It will simply complement and further inform the requirements in the DSA for platform operators to respect the freedom and pluralism of the media. Third, Article 17 will only benefit media service providers that meet stringent criteria, including being editorially independent from governments and being subject to regulatory requirements in the EU.

- **Streamlining the self-declaration system**

Regarding the criteria and specifically the AI use condition introduced by the European Parliament in the self-declaration, we agree that "pure AI media offerings" should not be protected. However, if media outlets provide an AI-generated weather, sports or stock ticker, this should not lead to a loss of protection for all their content. It should also be noted that AI used in newsrooms is human edited and under the editorial responsibility of the editor, so this type of content should be protected as well.

Furthermore, we think that the EMFA should not refer to or even promote specific measures that platforms may take under the Code of Practice on Disinformation or one particular standard, as suggested in recital 33. The Code and standardisation mechanisms will further evolve over time and may change in the future.

Platform censorship is at odds with EU and national laws and journalistic standards. Just like unilateral removals, any restriction of the visibility of legal editorial content by VLOPs, including down-ranking, shadow-banning, etc., is incompatible with media freedom and pluralism, and would have the same effect on the media's ability to reach their audiences and the citizen's right to access to information. Legal editorial content that can be freely distributed offline should also be available online without restrictions and on a fair footing. In fact, professional media and journalists play an irreplaceable democratic role, including against disinformation.

We remain at your disposal for any further clarification you might need.

Kind regards,

**AER** - Association of European Radios

**EBU** - European Broadcasting Union

**EFJ** - European Federation of Journalists

**EGTA** - Association of Television and Radio Sales Houses

**EMMA** - European Magazine Media Association

**ENPA** - European Newspaper Publishers' Association

**EPC** - European Publishers' Council

**NME** - News Media Europe

**UNIMEI** - Media, Entertainment & Arts sector of UNI Europa