

## Post-Event Summary

# Workshop on the European Media Freedom Act (EMFA)

Held in Athens on 20.10.2022 | 17:00 – 19:00 CET

The PromethEUs network organised a private, hybrid event under the coordination of IOBE – Foundation for Economic and Industrial Research (Greece), to enable a discussion and exchange of policy ideas on several dimensions of the European Media Freedom Act (EMFA). Stakeholders included representatives from the public administration, academia, private companies, industry associations, and think tanks.

The goal of this event was dual: first, to provide feedback on the advancements being done in the relative Policy Paper the PromethEUs network is undertaking; second, to initiate a discussion with stakeholders from Southern Europe on the EMFA and its integration into the broader EU political and geopolitical framework, the possible effect on fair and transparent financing, its contribution to the internal market operation and its expected impact on media optimal operation, on the media industry and competitiveness.

### **The new Media Freedom Act and its impact on the media industry, geopolitics, regulation, freedom, and pluralism**

The media sector is under a digital transformation process which changes the relevant business models. Paid subscriptions continue to be significant financially in the industry, but digital advertising is gradually replacing them as the main source of income for news broadcasters and publishers. COVID-19 affected most news media companies with a significant drop in revenues during the last two years, creating a paradox where news became readily available for free, but the willingness to pay for content started to fall. Regarding the potential funding mechanisms, it is expected that general schemes for partial unemployment or compensation for revenue losses could support the news media sector. Also, several EU countries have introduced measures for the news media sector. Still, freelance journalists and small media companies will likely receive lower compensation.

In the Greek case, the media sector's production value was almost 3.56 billion in 2019, driven mainly by advertising, and nearly 60,000 people are working in the sector. Using an input-output macroeconomic model, the multiplied effects of the media industry are estimated. The media industry in Greece:

- supports the production of nearly €4 billion of annual GDP (2.1% of the country's total yearly GDP)
- supports more than 100,000 jobs (2.2% of the total employment in the country)
- increases public revenue by nearly €1.3 billion (2.2% of the annual revenue of the government)
- increases the social product in the country by more than €2.8 billion

Multiple factors (financial, political, structural, and technological) are affecting media freedom as we know it in Europe. Media freedom is measured in four dimensions (media demand, supply, governance, sustainability) for the four countries that the think tanks of PromethEUs are based. Portugal has the highest general trust score in media and the highest Corruption Perception Index, while Greece has the fewest adults trusting the media. According to Statista, Greece has the highest share of people finding news or information misrepresenting reality or to be false from the group, with Italy and Portugal the lowest. Greece has the

highest percentage of people finding news or information misrepresenting reality or being false a problem for democracy, with Portugal the lowest. Portugal is the country with the best score for political independence (CMPF) but the worst score for political (Media) bias (World Bank). Spain has more fact-checking institutions than the other examined countries. Media corruption perceptions are similar among the four countries. Conditions for scrutiny of power are worst in Italy and Greece.

According to the CMPF, Portugal has the lowest media market plurality, and Greece has the highest social inclusiveness score. In addition, as reported by the World Bank, Spain has the highest level of media integrity (diverse and critical coverage of political issues). In 2022, according to the Reporters sans frontières (RSF), Portugal represents the highest press freedom score. Our world in Data indicates that Italy and Greece lost press freedom in 2003 and 2012, respectively. In 2020 Spain had the highest press protection. Greece has the highest internet use for news sites, newspapers and news magazines and the highest dependence on social networks, while Italy has the lowest online dependence. There are only a few payers for online news in all four countries. There is very little available information concerning the financial sustainability of the media industry, but the available picture is not good. The World Bank's Entertainment and Media Market scores are low, and media viability risk is high in Greece and Portugal.

Regarding the nascent geopolitics of technology, media freedom and pluralism is a prominent topic. At the EU level, the EMFA is not touching to a large extent on the issue of geopolitics. The EU has worked on the politics of technology from a dispersed perspective, so there are growingly more and more initiatives on this, but still, they are dispersed. There is no single line of governance coordination, which is equally important for the EMFA.

This topic is equally important for the EU and its relationship with third countries where EU Delegations implement different projects. Especially for countries with increased internet shutdowns concretely government-backed and blocking different communication platforms. For example, India is the country with the highest internet shutdowns in the world, followed by Myanmar and Iran. Therefore, there are implications not only on how the EU diplomatic delegation should interact with a specific government but also on how tech companies that are deploying these Services either from the US or from the European Union should tackle the EMFA and any service any product that they could offer to the EU when working with third countries.

What is more, the EU Action Plan on Human Rights and Democracy 2020-2024 includes several policies regarding fostering online media literacy and capacity building in third countries relevant to detect, exposing, and raising public awareness of disinformation and information manipulation. Also, it incorporates policies to support independent and credible fact-checking and investigative journalism. The EMFA is also woven by the so-called Foreign Information Manipulation and Interference (FIMI) since it touches on political interference in editorial decisions and against surveillance. On the economic side, the EMFA also play a major role in how the EU defines its international partnerships with third countries, including issues on data flows, export controls, foreign direct investment, and promotion of regulatory convergence.

From the policy and regulation perspective, the initial European sector-specific responses that covered media sectors were the (a) ELECTRONIC COMMERCE (E-Commerce Directive), allowing platforms and public discourse to flourish and b) the AUDIOVISUAL SECTOR (Audiovisual Media Service Directive). After 2018, there were direct initiatives and indirect measures affecting the media sector. More recently, the Digital Services package (DSA and DMA) influenced the rules on media and the Next Generation EU providing modern reforms or Investments for all the original media industries as well.

Regarding the US case, since 1996, Section 230 of the Communications Decency Act has allowed almost absolute freedom of online speech, shaping the internet as we know it. While the Democrats have increasingly been challenging Section 230, asking for more regulatory tools to fight disinformation and illegal and harmful speech, the Republicans have frequently criticised de-platforming and content moderation as censure mechanisms. In 2021, Florida and Texas, ruled by Republican governors, passed two acts imposing content moderation restrictions and disclosure requirements on social media platforms. These laws have been challenged as violating the First Amendment on the grounds that they hinder platforms' ability to speak through content moderation. The US Courts of Appeals have recently taken different positions on whether these laws are likely to violate online platform constitutional free speech rights.

Finally, the Competence Conundrum is one of the controversial issues. The EMFA stretches the legal competence of the EU through a regulation (the most invasive policy instrument) in a field where the EU legislative power appears to be limited to soft law acts. On the other side, the proposal fails to clearly outline how existing and newly established media rules will be enforced. Also, some press publishers argue that the EMFA will have a boomerang effect than that of protecting media organisations from political and economic meddling.

### **Challenges and perspectives regarding the EMFA for Southern Europe**

One of the main concerns is the way that the new regulation could affect information. On the positive, in some of the provisions, information is closely correlated with a decreasing trust in the media sector. Therefore, any measure that fosters a stronger public role for the Media is welcome. Transparency in ownership and other ways of increasing trust in media are powerful provisions that go in the direction that people ask.

The most worrying part is art. 17, not as in the current formulation but just about the possibility of this becoming a new debate on a potential media exemption again. There was a notion of the advisability of creating a kind of protected category for media content in online moderation. However, big platforms are usually non-European. At the same time, a concern could be about what Media is and how we can have a general societal consensus to provide a definition that considers avoiding the possibility of dangerous Free Riders getting those protections. There is a serious risk in articulating procedures that allow for self-declaration by companies doing media outlets.

The reference to self-regulatory codes is useful, but at the same time, at the national level, polarisation exists in some countries with almost a non-existent model of self-regulation by the media but also in other parts of the Union, where those instruments exist, they are far from perfect. There could be some organisations that, hoping to avoid online moderation, could self-declare as media outlets and maybe check all the boxes in some self-regulation tools. Some of those self-regulatory exercises might not be enough. For example, as the proposal stands now, prior notice before taking action on content develops into particular time frames like 48 or 24 hours which is considered a very long time by field researchers, especially in certain occasions, such as electoral processes. Also, there are multiple caveats about EMFA proposal not being in conflict with the obligations of mitigating systemic risks on DSA and other relevant legislation.

From a first reading of the proposal, it seems, that there are provisions that need further clarification and others that are difficult to apply. In the second chapter the main issues include the time-limit of 3 months of issuing an opinion by the National Regulatory Authorities (NRA) regarding breaches that concern their rights to refuse disclosing their sources and not to be illegally surveyed, which might not be enough for the

competent NRA to perform its task. Micro enterprises are exempted from these obligations. In smaller countries such a provision might exclude a great number of media outlets, including actors involved on the internet and thus offering their services across borders. The proposal, as mentioned recently by the Commission - does not provide for any sanctions for the non-compliance of media service providers to their obligations. To that end is - legally - an incomplete provision.

Regarding the third chapter, which sets out the framework for the cooperation of Media NRAs and the well-functioning of the market, without restructuring and the necessary resources, it will be very difficult for Media NRAs to meet the expectations, as these new tasks require not only specialist knowledge and experience but also infrastructure and financial resources that, in most cases, are not available within the "old NRAs". Similarly, no sanctions are provided either to media service providers for making false declarations in relation to their compliance with the law and professional ethics or to platforms that unlawfully restrict their services to media service providers. As a general remark, the implementation of the provisions of art. 21 might have a negative impact on the media market due to the lack of clarity of the criteria to be used by MS and the complexity of the processes to be followed.

The proposed provisions aim at new players that have emerged in the media ecosystem that do not abide by the industry benchmarks agreed within self-regulatory bodies. It should be noted, however, that Media NRAs rarely have competence – and thus knowledge – on issues related to the technical aspects of audience measurements. Hence, they might not be able to play a key role in the drafting of the relevant codes. Also, in general there are several terms such "public authorities" or "local governments" that need to be clarified or specified.

The EMFA assigns the Media NRAs with the task to monitor the allocation of state advertising in media markets. There is no explanation why this kind of state expenditure shall not be under the scrutiny of the Media or other competent NRAs. Unless safeguards are provided by other EU rules, the proposal leaves an open door by setting the principles without establishing a monitoring system for their adherence. Six months might not be enough time for Media NRAs to prepare for the performance of their new duties and especially those of art. 21 which concern the assessment of the impact of a media market concentration to pluralism and editorial independence and art. 24 which concern the monitoring of the allocation of state advertising.

What is more, journalists face difficulties regarding professionalisation due to rising phenomena of corporatisation. Media outlets are becoming more and more like firms. In the newsrooms mid-level consensus discussion arenas are disappearing if not completely gone. Pluralism inside the cross-media organisations is decreasing, in the sense of more tilted unbalanced situation in the Newsroom, due to the lack of older journalists while younger professionals live in labor insecurity under reinforced management powers of editors. Less variety of perspectives coexisting in media organisations resulting to peculiar trajectories that are derived in terms of content production in the Newsrooms. Therefore, the first point is to open the black box of media organisations in terms of the production of news items.

Secondly, we can talk about value chains in content production on news items and opinion streams, how in the end of the day the users are contacted. For example, in Portugal still today television is very important. But where do TVs get their content from? Investing in investigative journalism is expensive so many times they outsource. There are three major sources a) the print press that still exists, b) news agencies - here we go to the international division of labor since there are few and powerful in the West- and, c) digital platforms - media staff, including journalists, are hooked on their own social networks. The digital platforms are dispatching many times from the front lines of the news.

Thus, we have a loss of variety, a loss of balance and a loss of disparity in the heterogeneity of media products because of these mechanisms. When you have tight oligopoly with a few media brands in combination with structured value chain and a tale of very small outlets or small media operators, these people many times are platformized and demonetised and this is something that we must address. We have a great challenge in front of us. The key emphasis is on keeping this ecosystem having a good definition of plurality with variety of news items categories and media outlets, balance between the agents, and genuine discrepancy between the sources. So that we are not engulfed in what seems a single opinion.

In terms of drafting, the EMFA is a kind of dilemma that you can immediately read in the wordings. Basically, this is a proposal about the rule of law, and it tries to balance freedom of speech with other rights. It is related to the democratic values of European Union. However, there is not a legal basis for the rule of law in terms of regulation. Thus, the EC needed to add the legal basis on the harmonisation of national legislation for the single market.

Another problem is that it is a regulation that is basically obligatory in all its elements, but it won't first of all to try to deal with some "Democratic asymmetries" in Eastern Europe, as was clearly admitted by EC. The regulation will represent the same strength and application also in Western Europe where these issues, especially about the editorial independence, are relatively less striking. Therefore, there is a combination of a proposal of a compulsory regulation with a set of recommendations of soft law that would need to try to compensate the real targets of some provisions, which is not limited to the Eastern Europe.

The proposal is in line with the Western European Constitution in terms of pluralism. For example, according to the Italian constitutional Court in 1988, the external pluralism is very important meaning the existence of many sources that are providing different content. The ambitious goal of the proposal is the effort to deal with an issue that is very tricky. One of the issues is the independence of the editorial board, and especially the editorial director, from the newspaper ownership, which is something very delicate. Every Member State has its own attitude on this. For instance, in Italy whereas there is a clear regulation dealing with the independence of journalist vis-a-vis the editorial director there is not a public regulation related to the editorial director and the property. It is not considered related to freedom of speech but to the freedom to conduct business. The relationship between the owner of the newspaper and the editorial dimension is considered more related to freedom on the business this means that basically is regulated by only labour law.

Another challenge is the Art. 17, which should be differentiated by the mechanisms of the DSA. The DSA deals with either harmful or illegal content and there is a notice takedown mechanism for that exact content. In this case, two major differences exist and until now they have not been underlined. The first one is that, according to the wording of Art.17, the platform can remove the entire content of the newspaper or even the newspaper itself. Secondly this could not be unlawful or harmful it simply might be against the terms of platforms contracts.

Also, it is very interesting the mechanism of the structured dialogue but too much is left in the good faith of parties. In this case it's important to have some certainty, otherwise the risk over removal on the one end and clearly the collateral censorship on the other one, is worrying and it could open a Pandora box.