

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL ESTABLISHING A COMMON FRAMEWORK FOR MEDIA SERVICES IN THE
INTERNAL MARKET (EUROPEAN MEDIA FREEDOM ACT) AND AMENDING
DIRECTIVE 2010/13/EU
COM(2022)457 FINAL**

APPROVED FINAL DOCUMENT

The Committee on Culture, Science and Education, and the Committee on Transportation, Post and Telecommunications of Italy's Chamber of Deputies,

Having examined, pursuant to Rule 127 of the Chamber's Rules of Procedure, the Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU (Audiovisual Media Services Directive);

Taking note of the report on the proposal submitted by the Government under the meaning of Article 6(5) of Law No. 234 of 24 December 2012;

Taking cognisance of the information and assessments obtained in the course of Committee hearings held for the purpose of examining the Proposal;

Cognisant of the points raised by the Chamber's Committee on EU Policies and included in the document approved at the sitting of 12 December 2022 regarding the compliance of the proposal with the principles of subsidiarity and proportionality;

Cognisant also of the general orientation approved by the Council of the European Union on 28 June in view of the start of interinstitutional negotiations, in the course of which the original proposal will undergo numerous changes that we embrace as being mostly for the better;

Whereas:

The proposal is entirely commendable in that its general aims are: to secure the freedom, pluralism and independence of the media, including online media; to facilitate the provision of quality media services; to counter attempts at information manipulation and interference, including by third countries; to ensure the transparent and equitable allocation of economic resources; and to ensure the regular and sound operation of the market for media services, which makes up an important part of the European internal market;

Media services fulfil the important function of monitoring matters of general public interest, and thus provide EU citizens and businesses with access to a plurality of opinions and information sources;

Media services are a fast-growing and economically important sector whose major companies have generated EUR 282 billion of added value, according to European Commission estimates, and provide 4.2 million jobs in the EU;

The industry has come to be dominated by new global players, including powerful online platforms that effectively function as information intermediaries yet operate differently from the traditional producers, publishers and broadcasters of journalistic information, with which they are often in competition, including for the acquisition of advertising revenue, while at the same time enjoying the advantage of not being subject to national regulatory constraints, a fact that raises further issues of transparency and accountability;

Conscious that the media market is both increasingly digital and increasingly international, we concur that European-level regulation is needed that, through the application of harmonised provisions that are not detrimental to the peculiarities of national or local media markets, can govern the European media market and supersede national regulatory and procedural inconsistencies relating to freedom and pluralism wherever these distort the functioning of the internal market by hampering the activities of media service providers or by influencing investment conditions;

We therefore support the structural framing of the proposal, which recognises the economic importance of the market for media services and seeks to ensure its continued sound functioning by strengthening media freedom and pluralism, including through changes to national laws;

The European Commission is to be commended for its decision to present the proposal as a principle-based regulation requiring minimum harmonisation and giving Member States the option to adopt more detailed rules on various aspects, such as the rights and duties of users and suppliers of media services, the impact of market concentration on media pluralism and editorial independence, and the role of national regulatory authorities;

The Commission's chosen approach not only facilitates the uniform and immediate application and coming into force of rules designed for entities operating in more than one Member State, but also pre-empts the excessive reconfiguration of extant, well-functioning national laws such as those of Italy, which already contain highly advanced regulatory provisions and assign effective instruments of enforcement to national authorities;

Considering that:

While the proposed regulation is the first of its kind to be applied to the internal media market, it should be understood as naturally complementing a set of several such European actions for the general regulation of markets, services and digital content;

Some of the definitions and provisions contained in the proposal need to be clarified both in the name of legal certainty and in the name of the general tenability of the European legal framework governing the digital single market, which is becoming a multi-faceted and complex phenomenon;

The affirmation in Article 3 of the right of European citizens to receive a plurality of news and current affairs content that has been produced with respect for the editorial freedom of media service providers and to the benefit of the public discourse is opportune because it is important that this right be enshrined in a

legislative act of the EU, and that it should be the motive force behind the legislation itself;

The rules set out in Article 4 to protect the independence and freedom of journalists and journalistic sources are welcome, including where they prohibit the use of spyware against media providers, journalists and their families. These protections, however, will need to be strengthened in the course of the institutional negotiations for the revision of the proposal;

Of particular importance are the need to protect journalists from “strategic lawsuits against public participation” (SLAPPs) and the need for measures to counter the specious use of judicial appeals against journalistic activity, which can have a chilling effect on public discourse. The rapid approval of the proposal for a directive on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings is therefore a matter of urgency, concerning which, on 9 June 2023, the EU Council agreed on a general approach, and, on 11 July, the European Parliament adopted its negotiating mandate. The proposed directive includes provisions empowering courts of law to dismiss without delay manifestly unfounded requests and to impose dissuasive sanctions or other appropriate punitive measures on parties responsible for bringing vexatious claims;

Also worthy of praise are the provisions of Article 5 which extend the scope of application of Protocol No 29 (TEU and TFEU) on the system of public broadcasting in the Member States to encompass the new European media market. Member States remain free to shape, organise and fund their public service media, but may not exercise this prerogative in a manner contrary to the common good by, for example, using it to disseminate information that has been produced without respect for the principle of independence from government and political interference;

A careful review should be made of Article 5(2), which essentially inoculates members of the governing bodies of public service media providers from the risk of dismissal. Without prejudice to the indispensable condition that public service

media providers shall enjoy editorial independence and autonomy, including from any form of external *ex-ante* control over their activities, the governing body must also be accountable for its choices to its shareholder(s) and to the relevant parliamentary supervisory body, which can also orient the public service media provider towards actions to safeguard its autonomy and rectify possible distortions;

The establishment, by articles 8-12 of the proposed regulation, of a European Board for Media Services to replace and succeed the European Regulators Group for Audiovisual Media Services (ERGA) warrants full support, but the design and functioning of the Board and, especially, its organisational and decision-making autonomy leave room for perplexity on a number of counts;

Changes need to be made to Article 17 where it refers to specific guarantees to prevent VLOPs from the unjustified removal of audiovisual content that has been published by media service providers with recognised professional standards. The purpose of the article's provisions is, on the one hand, to limit the discretion of the platforms to decide whether an entity qualifies as a media service provider, and, on the other, to fortify the defences of media service providers against the unjustified removal of content or the denial of access by digital platforms. Yet the mechanism described in Article 17 for the purpose described above cannot be allowed to be used by the same platforms to evade their obligation to remove harmful or illegal content that self-declared media providers might disseminate;

Action is also needed to stop the growing use of new models of media and information production and dissemination to spread false and misleading news in the public domain, and, especially, to prevent the propagation of such material through digital platforms based on non-public algorithms or other non-transparent systems;

Article 19 merits favourable mention for its provisions regarding the prominence of audiovisual media services of general interest, its aim being to prevent powerful technology companies from setting up barriers, filters or other similar market-distorting mechanisms to control the devices through which users access content;

The scope of Article 21 requiring Member States to carry out mandatory assessments of media concentrations that could significantly affect pluralism and editorial independence needs to be expanded to encompass not only print publications and the "traditional media", but also online, web and television platforms. The extension of Article 21 is suggested by the need to ensure that the regulations governing the media sector remain up to date with the latest technological and market developments, as well as by the need to ensure the discourse around pluralism is not confined to the media understood only in the narrowest sense;

Greater precision of wording is needed in Article 21(2)(c), which, with reference to assessing the impact of business mergers on conditions of pluralism, includes the proviso that account should be taken of "whether, in the absence of the concentration, the acquiring and acquired entity would remain economically sustainable, and whether there are any possible alternatives to ensure its economic sustainability." The foregoing wording is open to contradictory interpretation as it could mean either that concentration will be permitted if its absence jeopardises the financial sustainability of the acquired company or that concentration will be prohibited if its absence has no effect on the ability of the acquired entity to continue as a going concern;

Article 23, which regulates audience measurement systems, must be framed to ensure that every type of service will be measured by instruments that are unbiased, transparent, verifiable and suitably attuned to the peculiarities of each service type;

Mindful that the present final document needs to be forwarded in good time to the European Commission as part of the political dialogue, as well as to the European Parliament and the Council,

does hereby express a

FAVOURABLE ASSESSMENT

with the following conditions:

- 1) With particular regard to the meaning of the terms “media service” and “media service provider,” the definitions set out in Article 2 need to be rendered consistent with the definitions already contained in the current European regulatory framework, of which the Digital Services Act and the Audiovisual Media Service Directive are part;
- 2) The meaning of "editor" likewise needs to be defined with more comparative precision to analogous positions contemplated under other national systems. Italy, for instance, uses the concepts of “direttore responsabile” [‘editor-in-chief,’ with implications of legal liability] and “direttore editoriale” [‘editorial director,’ in charge of the general editorial line of the publication]. Greater exactitude of definition in this article is necessary also to clarify the scope of Article 6(2), according to which “editors” shall be free to take individual editorial decisions in the exercise of their professional activity;
- 3) More generally, in the name of a rational and sound set of rules that avoids contradiction and causes no problems of interpretation or implementation, the provisions of the proposal need to be consistent with recent EU legislation in the area, which includes the Digital Services Act, the Digital Markets Act, the Audiovisual Media Services Directive, and European copyright, data protection, and privacy laws;
- 4) The provisions of Article 4 for the protection of journalists and their sources and for limiting the use of coercive measures, such as the deployment of spyware to obtain intelligence, need to be further strengthened in line with the general approach agreed by the Council;

- 5) The same considerations urge the rapid approval of the proposed “Anti-SLAPP” Directive for the protection of journalists and human rights defenders from manifestly unfounded claims or abusive court proceedings, by providing for, among other things, the early dismissal by courts of proceedings of this sort;
- 6) With reference to Articles 8 to 12, the effective independence of the new European Board for Media Services from all bodies and institutions, including the European Commission, needs to be assured by, in particular, explicitly enabling it to exercise its official functions autonomously rather than only upon request or only when in accord or working with the European Commission. For the same purpose, consideration should be given to the possible elimination of the provision that the Board’s secretariat should be provided by the Commission. The Board must also be adequately resourced;
- 7) With respect to the question of prominence, provisions are needed to ensure that the identity of media service providers is clearly visible (e.g. through the display of a logo or symbol) alongside the content and services they offer to users by means of digital devices or interfaces that control or manage access and use of the media services;
- 8) With regard to Article 17, a solution needs to be found to the problem of VLOPs having the power to decide, with reference to the procedural guarantees provided for by law, whether or not a given entity qualifies as a "media service provider." To this end, an assessment needs to be made of whether, as mooted by the Council of the EU in its general orientation, an independent national regulatory authority needs to be established or, alternatively, whether:
 - a dialogue needs to take place between the platforms themselves and all the parties (media regulators, government bodies that issue licences and certify press publishers and radio broadcasters, official press associations

and unions of journalists, and the ombudsman) with the power to decide what qualifies an entity as a "media service provider";

- an entity that self-identifies as a "media service provider" needs to be publicly identified as such by means of a "label" providing details about the entity and the media channel through which it operates;

- it needs to be established with reference to Article 17(2) and in line with the general approach of the EU Council that a media service provider that has been suspended or whose content has been restricted will be given the opportunity to argue its case before suspensions or restrictions are applied;

9) Also in line with the general approach of the Council is Article 17(4), which stipulates that a media service provider may have recourse to the mediation mechanism referred to in Article 12 of Regulation (EU) 2019/1150 if a structured dialogue relating to the repeated suspension or restriction of its content fails to result in an amicable solution;

10) With reference to the right of users enshrined in Article 19 to customise any device or user interface controlling or managing access to and use of audiovisual media services, the default settings must enable users to manage access to audiovisual media services without affecting their ability to opt for different configurations. In Article 19(2), the adverb "easily" in the phrase "enabling users to freely and easily change the default settings" is generic and needs to be better defined. Specific guidelines from the European Commission, published after consultation with the Board, would be useful for this purpose;

11) Consideration should be given to extending the scope of application of Article 21 on media market concentrations so that it encompasses not only "traditional" media but also any entities that display advertising online or on

various platforms, including direct advertising, or that generate advertising revenue through search engines, social media and sharing platforms;

12) Articles 21 and 22 need to specify that the powers of national authorities to decide on the adoption of specific measures for specific media markets will not be compromised where the markets are purely national or local in reach and therefore of no relevance for the media single market;

13) Article 23 requires additional provisions to ensure the adequacy of audience-measuring instruments for non-linear audiovisual media services, audiovisual sharing platforms, and any other platforms, such as social networks, that distribute audiovisual material;

and with the following remarks:

a) With reference to the conditions for and limits to the dismissal of the director and members of the governing bodies of public service media providers, the wording that appears in the Council's general approach document is preferable to the wording of Article 5(2) of the proposal because it is clearer and more congruent with the different models of governance of various Member States. In fact, under the general approach, adequate motivations must be given for a dismissal, with specific indication of why the party subject to dismissal has been deemed as no longer capable of fulfilling his or her functions;

b) As regards the European Media Services Board (EMSB), consideration should be given to the possible codifying of the consolidated changes that have taken place over the years in how national authorities cooperate with one another. The EMSB should be allowed to express its views on issues that, even if not strictly pertinent to the proposal under examination, fall under the broad category of digital media regulation, or even to act as

interlocutor and supplier of technical-regulatory expertise, not only for the European Commission, but also for other European institutions, in particular the European Parliament and the Council of the EU;

- c) The wording of Article 21(2)(c) may need to be changed for the sake of clarity and to specify that when assessing a business merger from the perspective of pluralism, the question of “whether, in the absence of the concentration, the acquiring and acquired entity would remain economically sustainable, and whether there are any possible alternatives to ensure its economic sustainability” is also taken into account.