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Media pluralism in the EU: A prospective look at the European Media Freedom Act

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Media pluralism is central to modern democracies, allowing citizens to access and be exposed to a broad and diverse range of views and representations with an eye to making autonomous choices and serendipitous encounters. However, today media industries face major challenges. Their economic sustainability has been disrupted by the rise and domination of online platforms that act as crucial intermediaries for media services' reach of citizens. Aside from the pressure on existing business models, which results in large-scale consolidation in the European media industry, several European media players struggle with safeguarding their independence from political and economic powers. Therefore, media pluralism requires a renewed protection in the digital environment. Such protection is one of the core objectives of the [European Media Freedom Act](#) (EMFA). This policy brief presents the main results of our [study on media plurality and diversity online](#), which served as input for the EMFA.

Highlights

In September, the European Commission proposed a new regulation, the European Media Freedom Act, to protect media pluralism and independence. It amends and complements the Audiovisual Media Services Directive.

The EMFA could reinforce national regulatory authorities' power, by increasing regulatory cooperation in media merger assessments and by improving international cooperation among them beyond what is now taking place within ERGA.

The EMFA could constitute a significant step beyond in terms of media transparency, as it makes it mandatory to share information about media ownership and financing. However, it remains focused on news media and only evokes algorithmic transparency.

The EMFA could enable users to opt-out from industry practices that affect how audiovisual media content is organized, offered, and displayed which would allow users to tailor audiovisual offers according to their preferences.

1. Context of our research

On September 16, 2022, the European Commission proposed a regulation to the European Parliament and Council establishing a common framework for media services in the internal market ([European Media Freedom Act](#) or EMFA), amending Directive 2010/13/EU ([Audiovisual Media Services Directive](#) or AVMSD). Described as “a novel set of rules to protect media pluralism and independence in the EU”, the regulation was accompanied by the Commission Recommendation of 16.09.2022 on internal safeguards for editorial independence and ownership transparency in the media sector, based on “voluntary best practices collected from the sector”. In line with the EU's legislative procedure, the proposal will be considered by the European Parliament and the Council, which can propose further amendments to the regulation.

In the [study on media plurality and diversity online](#), which investigates the value of safeguarding media plurality and diversity online, SMIT led the work revolving around measures concerning media concentration and plurality. Mapping these measures in all EU27 member states shows a huge diversity of regulatory regimes in the EU, in turn reflecting the diversity of European media markets. The mapping was then used to assess the efficiency of regulatory measures, based on an exploratory data analysis and on six qualitative case studies. SMIT also contributed to the development of policy recommendations and to the analysis of exposure diversity in relation to prominence and discoverability of general interest content and services. The study on media plurality and diversity online was informed and complemented by previous research conducted by SMIT, notably the 2021 [study on the implementation of the new provisions in the revised AVMSD](#) conducted jointly with Deloitte for the European Commission. They will notably lead to further [publications](#) next year.

The study on media plurality and diversity online

Funded by the European Commission, the [study on media plurality and diversity online](#) was led by the [Centre of Media Pluralism and Media Freedom](#) of the European University Institute, responsible for the yearly [Media for Pluralism Monitor](#). Other partners were [CiTiP Centre for Information Technology and Intellectual Property, KU Leuven](#), the Institute for Information Law of the University of Amsterdam ([IViR/UvA](#)), and the [Vrije Universiteit Brussel \(imec-SMIT\)](#). The study was conducted between August 2021 and May 2022, and published on September 16 2022. Its Part A deals with the prominence and discoverability of general interest content and services, and its Part B with market plurality and the concentration of economic resources.

2. Pluralism and the EMFA

Our study reiterated **the importance of media pluralism as a pivotal normative principle** underpinning the fulfilment of fundamental rights and functioning of modern democracies. It also highlighted the necessity of its protection in today's digital media systems. The European Commission has acknowledged potential risks to media pluralism in member states, at least since the publication of the [1992 Green Paper](#) on "Pluralism and Media Concentration in the Internal Market: An Assessment of the Need for Community Action" however, has thus far never explicitly included pluralism in its media legislation.

The set of rules and mechanisms to promote media pluralism and independence in the proposed EMFA builds upon the revised AVMSD. The latter reinforced safeguards in content moderation, strengthened the role of media literacy, introduced transparency of media ownership, and formalized the independence of media regulators. The EMFA proposal complements the EU competition rules, which do not directly address the impact that market concentrations could have on media pluralism or independence, and State aid rules, which are applied on a case-by-case basis and do not sufficiently address the problems created by the unfair allocation of state resources to media service providers.

The EMFA proposal seeks to address several key challenges to media pluralism. Based on our study's findings, this policy brief considers three aspects of media pluralism, namely regulatory cooperation in media mergers assessments, media transparency and users' right to customize their media offer, all of which can have significant impact on the operation of media service providers and the functioning of the internal market for media services.

3. Regulatory cooperation in media merger assessments

Media mergers can drastically impact both competition and pluralism. In some instances, merger control can protect pluralism. Yet, in [the reply](#) to the 1992 Green Paper, the Economic and Social Committee explicitly stated that national ownership restrictions are important for safeguarding pluralism and cannot be replaced by competition law, and in particular merger control. That is because merger control was established with an economic view in mind, unfit to protect non-economic interests such as pluralism. Our study shows that when assessing media mergers, half of the member states implement cooperation systems between regulatory

authorities, which we coined as the ‘*power pyramid of cooperation*’¹. This is yet another illustration of **a fragmented internal market** with divergent national rules. Besides, when cooperation systems are in place, pluralism becomes part of the assessment; that is because assessing mergers’ effects on pluralism is usually not an explicit goal of National Competition Authorities (NCAs). We found that the more decentralized the system is, the more split the powers are, and thus different remits are covered, including non-economic effects on pluralism and public interest. In contrast, when the power is centralized within the NCAs, the focus shifts to economic considerations. Nevertheless, in most cooperation systems, the National Regulatory Authorities (NRAs) can only formulate opinions that are not legally binding. Additionally, assessing media plurality based on unquantifiable values is a difficult endeavor even for NRAs.

In this context, Article 21 of the EMFA proposes a formal obligation for each member state to designate an NRA to take on the task to assess the impact of a notifiable concentration on media pluralism and involve this NRA in merger assessment. The objective, it seems, is to **increase regulatory cooperation in media merger assessments**. However, Article 21 does not formally empower the NRAs with a binding opinion, which could lead one to question the effectiveness of NRAs issuing opinions based on pluralism concerns. Moreover, it is questionable whether it is in NCAs’ competences to impose remedies solely to protect pluralism.

Furthermore, **the European Commission and ‘the Board’ become involved in these assessments, albeit just as advisory bodies**. According to Article 8 of the EMFA, the European Board for Media Services (‘the Board’) replaces the European Regulators Group for Audiovisual Media Services (ERGA). The Board is tasked with new missions such as giving opinions on media market concentrations, supporting, and advising the European Commission and expanding its reach beyond audiovisual media services to cover all media services. This change acknowledges the need for cooperation among NRAs. Article 21(3) empowers the Commission, “assisted by the Board”, to issue guidelines regarding the factors that ought to be considered by the NRA in its assessment.

Additionally, as stipulated in Article 21(4), the NRA shall consult the Board on any opinion or decision it aims to give on the impact on media pluralism of concentrations affecting the functioning of the internal market, and as specified in Article 21(6) “take utmost account” of the opinion issued by the Board and provide to the Board and the Commission justifications for deviating from the opinion. **Some fightback from the member states is expected** due to the European Commission’s involvement in pluralism-based assessments, albeit as advisors. That is because indirectly, the European Commission would have insights into matters that some would argue to be beyond its concern and jurisdiction. Finally, adding more layers to the merger assessments will increase the time allocated to the evaluation and will also bring unpredictable outcomes to the merging parties as assessing pluralism is not a straightforward task.

4. Media transparency

Media transparency is favourable for media pluralism as it consists in the public availability of information on potential state or commercial influence over the media. However, media transparency is only a means. For it to have any impact, it is important that target audiences engage with the information revealed. Media transparency can entail various elements such as ownership transparency of who owns or controls which media, financing transparency of media service providers’ sources of funding and revenues or algorithmic transparency of the forms of prioritization, moderation and curation resulting from algorithmic systems such as recommender systems.

In the EU, transparency is ensured by a regulation that applies to all economic sectors. Although providing access to useful information, this regulation is not designed to meet specific media-related concerns. Complete information is generally not easily accessible and is available only upon request and against payment which prompts **a need for media-specific transparency**

¹ For a breakdown and explanation of these systems see Afllipoaie, A., & Ranaivoson, H. R. (2022). Assessing Media Merger & Acquisitions: The Power Pyramids of regulatory cooperation. *Journal of Digital Media and Policy*, 1. https://doi.org/10.13386/jdmp_00101_1

regulation. In Europe, the Council of Europe sets the most comprehensive standards to enhance media transparency. However, such standards are not mandatory.

Our study highlights the fragmentation of media transparency measures across EU member states. It shows that not all countries implement media-specific rules and when they do, the press sector is often disregarded. In addition, the findings highlight that information is often more available to competition or media authorities than to citizens. In the EU, only three countries explicitly identify media plurality as an objective of the financial reporting obligations for media companies. One of those countries is **Belgium**, where there are media-specific rules on reporting media ownership and financing, however, they do not apply to press companies, which makes it difficult for the public to find information about beneficial owners.

Circumstances such as these call for an EU-wide regulation to improve and harmonize media transparency rules. However, **the AVMSD is unlikely to help reduce the fragmentation of media transparency measures** because it leaves the decision to require reporting on the transparency of media companies' ownership structure and beneficial owners up to the EU member states. Furthermore, the AVMSD's measures leave out financing or algorithmic transparency, and do not include all media. In contrast, **the EMFA could afford some significant advancement in terms of media transparency.** Its Article 6 makes it mandatory for media service providers to provide information on their ownership, including information about beneficial owners. Additionally, section 6 provides rules on financing transparency of economic resources. However, the proposal itself is focused on news media and only evokes algorithmic transparency.

5. User right to customize audiovisual media offer

In its Article 19, the EMFA introduces a novel right for users to customize their media offer. Audiences could have the possibility to opt out from the default settings of any device or user interface that is a gateway to accessing media services. As a result, users would be able to tailor media offers according to their preferences. It will apply to audiovisual media, for example, to hardware (remote controls) or to software menus and shortcuts, smart TV interfaces and applications and search areas. When placing such devices and user interfaces on the market, manufacturers and developers will have to ensure that they include functionalities that allow users to exercise this right freely and easily. The rules shall not affect the ability of member states to ensure the proper prominence of audiovisual media services of general interest (Article 7a of the AVMSD).

Our study shows that there are **both non-legislative and legislative measures related to content prioritization processes** in today's internet-distributed audiovisual industry, that can influence which content and services are made more prominent and easier to discover for users.

In many cases, global services have higher popularity, and higher market and viewing shares, and thus tend to be able to secure better positioning for their content on different devices and interfaces. Local public service and commercial broadcasters, on the other hand, have less leverage. Article 19 would enable users to opt-out from industry-led non-legislative practices that affect how audiovisual media content is organized and offered.

6. Recommendations

Recommendation 1 – MAKE PLURALISM AN EXPLICIT OBJECTIVE

Pluralism is usually not an explicit objective of media concentration measures. Its importance needs to be reinstated. We need to adopt a harmonized definition and approach among EU member states of what is meant by pluralism and how it can be promoted.

Recommendation 2 – REINFORCE NATIONAL REGULATORY AUTHORITIES' ROLE

Every national regulatory authority needs to see its independence reinforced and be given proper power to enforce beneficial measures towards pluralism. Cooperation between these authorities needs to be sustained, which now takes place in ERGA and maybe soon in the Board. The European Commission should not substitute such cooperating entities.

Recommendation 3 – WE NEED A MORE HOLISTIC APPROACH OF TRANSPARENCY

Media transparency's scope needs to be adapted to include access of the public to information regarding ownership, financing, and algorithms. Because all media are important, these transparency requirements should extend beyond news media.

Recommendation 4 – FURTHER ASSESS EXPOSURE DIVERSITY

The effectiveness of prominence and discoverability measures aimed at advancing user agency and visibility of European content can be improved by a more comprehensive understanding on the effect of platforms' algorithmic recommendation on exposure diversity.

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