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Response to the call for evidence on the Media Freedom Act (March 2022)

[News Media Europe](#) is the voice of the progressive news media industry in Europe, representing over 2,500 news brands in print, online, radio and TV.

News Media Europe contributed to the call on the Safety of Journalists Recommendation, to the public consultation on the European Democracy Action Plan¹, and to the News Media Forum structured dialogue with oral and written submissions² (2020 and 2021). News Media Europe is also member of the expert group advising the European Commission on anti-SLAPP measures³ and published a fact-finding report on the impact of SLAPPs on news media companies⁴.

We welcome the European Commission's initiative to promote media freedom in Europe. News Media Europe has consistently pointed out media freedom violations as a major concern for press publishers. Physical and psychological violence against journalists, and in the most serious cases assassination, as well as attempts by governments to capture or otherwise silence independent media, are unfortunately not isolated cases. The European Union must be uncompromising about the respect of human rights, democracy, media freedom and the rule of law across our continent.

Our response to the call for evidence – complemented by our more in-depth response to the public consultation – is meant to provide preliminary comments on the European Commission's initiative to inform the impact assessment on the Media Freedom Act.

Context and related initiatives

The attention given to news media in the recent initiatives of the European Commission, including in the transposition of the Audiovisual Media Services (AVMS) and Copyright Directives, the Media and Audiovisual Action Plan, the Rule of Law annual reports, the Safety of Journalists Recommendation and the soon-to-be-released anti-SLAPP Directive, is very positive. With the right level of ambition in the enforcement and monitoring phases, these measures will contribute to enhancing a free press at the service of European citizens.

We emphasised in our contribution to the European Democracy Action Plan consultation that media freedom and pluralism can only be achieved through financial and editorial independence, meaning the freedom to write free from external pressure, be it political or commercial. We identified risks in the Digital Services Act that external players – online intermediaries – will be able to continue to censor professional journalistic content that is already subject to editorial oversight, based on arbitrary criteria. We hope the negotiators will include clear media freedom safeguards to mitigate this risk of censorship.

¹ News Media Europe's [contribution](#) to the European Democracy Action Plan public consultation

² [News Media Forum](#) organised by the European Commission, March 2021

³ European Commission's [list of experts](#) on anti-SLAPP measures

⁴ News Media Europe's report on [The impact of SLAPPs on the news media sector](#), December 2021

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At the same time, the Digital Markets Act offers opportunities to rebalance relations between gatekeepers and business users, like press publishers, to allow journalism to flourish online. The Media Freedom Act should complement these initiatives **with the view of fixing dysfunctional markets and encouraging healthy ones.**

The MFA should therefore operate in a surgical manner and remain focused on markets where media freedom is at risk while protecting well-functioning ones. Given that EU regulation is a harmonisation instrument, this exercise is likely to carry inherent contradictions. For instance, the impact of consolidation on media pluralism requires a thorough and evidence-based examination, taking into account the dynamics and specificities of each market, and its many positive aspects

Choice of instrument

The European Commission envisages two policy options for the impact assessment: 1) a Recommendation addressed to Member States or 2) a legislative instrument underpinned by a reinforced EU network of regulators.

In our view, the European Commission should envisage a legislative proposal **only in areas where EU intervention is genuinely needed to fix anti-competitive behaviours (e.g. from big tech), state interference and single market barriers.** On the contrary, national legislation seems more suitable for areas that have historically been best dealt with at national level to accommodate cultural markets' specificities ie. media content rules, self-regulation, journalistic standards, codes of ethics, etc.

In addition, a reflection on the role of ERGA, the network of national media regulators, seems appropriate to ensure effective monitoring, information-sharing and exchange of best practices on rules applicable to media markets. That said, understanding whether it is desirable to grant ERGA additional centralised powers would need to be properly reflected upon, based on the conclusions of the impact assessment.

Choice of legal basis

The legal basis for such legislative proposal is broad, namely the establishment and functioning of the internal market (Article 114 TFEU). The initiative would “build upon the revised AVMSD” but also “complement competition tools” and “will be complementary to the Digital Services Act”. Based on these considerations, the reach of the MFA seems very broad, spanning from audiovisual and internet regulation to competition instruments. Here we would like to strongly caution **against**:

- A revision of the AVMS rules before the transposition of the Directive has produced its complete effects (ie. independence of national regulators, regulatory alignment between social media and traditional media, promotion of European content, etc.). Here we call first and foremost for a tight monitoring of the **AVMSD implementation and enforcement** by competent authorities.

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- The temptation to make the MFA a content regulation instrument. Media content is already subject to a myriad of EU and national rules as well as effective self-regulation. When it comes to press publishers' social media presence, efforts to clarify content moderation decisions by online platforms should be invested **in the Digital Services Act**, where our sector has been clear and vocal on the risks associated with platforms' arbitrary terms and conditions on media pluralism and on content availability. The MFA, on the contrary, should remain a market-level instrument and should shy away from adding an additional layer of content regulation.
- An inappropriate harmonisation of media and cultural services in markets where audiences remain national or regional based. Proposing a regulation, with little interpretation margin for Member States, and harmonising rules for media markets (eg. press publications) that largely operate on a territorial and local language basis, is likely to be inappropriate. It even risks harming well-functioning media environments in some Member States.

Hence the principles of **subsidiarity and proportionality** should be thoroughly assessed in the impact assessment to avoid exploring policy options ill-suited for the specificities of national markets at stake.

Policy objectives

We welcome the two-fold objective of the Media Freedom Act (MFA), to enforce internal market freedoms for the media sector on the one hand (free movement of services, capitals, establishment) and to protect media freedom and pluralism on the other. We see an internal market component (eliminating the barriers to the operation of media services) and fundamental right one (freedom of expression and information, Article 11 of the Charter) which seem of crucial importance for the future of the media sector.

Looking more specifically at the policy objectives, we observe that the Commission aims to tackle a broad range of issues to:

- a) Ensure that media companies can operate in the internal market subject to consistent regulatory standards, including as regards on media freedom and pluralism;
- b) Ensure that EU citizens have access to a wide and varied media offer both offline and online;
- c) Safeguard the editorial independence and independent management of the media, which is a precondition of media freedom and of the integrity of the internal market;
- d) Foster undistorted competition between media companies by ensuring a transparent and fair allocation of state resources.

While we agree with these policy objectives, we should not lose sight of the broader picture, namely European media's competitiveness and influence across the globe. The objective of the European Commission to create digital champions and participate in the global race for innovation should also apply to the media sector.

In the short term, an overview of the most pressing issues faced by the industry – which will be further detailed in response to the consultation - point to:

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- **Creating the scale and efficiencies to innovate and propose rich, diverse and quality content to citizens**, and continue investing in investigative journalism.
- **Establishing fair competition on merit with tech giants** as these companies have unrivalled market dominance, audience reach and data capture that deprive press publications of their legitimate sources of income;
- **Preserving editorial independence from external pressure**, be it political or commercial e.g. specifically more recently, from social media's arbitrary content moderation decisions.
- **Tackling the abuse of media for political or economic gain by those in power**. This abuse can lead to an imbalance in competitiveness between private and public media.
- **Ensuring full transparency over state aid and the misuse of state advertising** meant to crowd out private media from the market in some Member States, an issue that persists across many Member States.

Conclusion

We support the European Commission initiative and hope the MFA will point to the real problems and supports news media professionals to perform their work free from political, economic or financial pressure. We hope the MFA will create opportunities for news media companies to operate freely within the Single Market, based on the free movement principles. The enforcement of such freedoms should serve the purpose of serving citizens with a quality media landscape. Finally, we hope the MFA will support the press sector's competitiveness in a context of increasing digital disruption and competition with international players.

We remain at the disposal of the European Commission and its study team for the purpose of the impact assessment and the public consultation follow-up.

Sincerely yours,

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