

NEWS MEDIA EUROPE

Position paper - Media Freedom Act proposal (MFA) - December 2022

[News Media Europe](#) is the voice of the progressive news media industry in Europe, representing over 2,700 news brands in print, online, radio and TV, through national associations from sixteen countries. Together, we defend key principles which are vital to us: protecting the freedom of the press, championing the digital future of our industry, and ensuring that the value of content is properly protected.

General position

We warmly welcome the European Commission's intention to protect press freedom in Europe. For many years, European press publishers have been in the frontline protecting freedom of expression and citizens' right to information through numerous [initiatives](#)¹. Media professionals from all over Europe and beyond go through great lengths to report on the current war in Ukraine². Since early March 2022, our members have taken a proactive role in supporting exiled journalists and free reporting: our Nordic members³ [created](#) the [Ukrainian Media Fund](#), reaching €772.000⁴ so far and directly supporting reporters on the ground. News Media Europe also published with the Centre for Law and Democracy a guidebook for journalists on how to document war crimes and making evidence admissible before international courts⁵. Alongside, we continue the fight against strategic lawsuits meant to silence news media professionals (SLAPPs) together with the European Commission's expert group.

However, media policy should remain a matter of national competence and the MFA should not interfere with national systems and practices. Due to different historical, cultural, political and regional backgrounds, trying to establish a common European regulatory standard for the press would be misplaced. Despite good intentions, European scrutiny, especially in countries that rank among the highest in the World Press Freedom Index, is a disproportionate measure. The creation of a European Media Services Board is particularly problematic both from a practical and legal perspective. Unfortunately, the proposed generalised measures on market concentrations seem equally misplaced. We urge policy makers to refocus their attention on where press freedom problems really are, and to ensure that news publishers can continue to operate freely, without any regulatory interference with corporate governance or editorial practices.

Should co-legislators move ahead with the proposal, the MFA must be considered at an overarching level, laying down media freedom principles and setting barriers to governmental interference, rather than regulating media policy. Our recommendations aim to solve problems where they exist, while keeping media policy a national matter. The MFA shouldn't undermine trust in media, but rather enhance it. News Media Europe will produce amendments accordingly.

Recommendations

First, we welcome some very positive elements in the MFA such as:

- **Measures against state interference in private media (Article 4):** The arms' length principle between the state (or regulators) and media's editorial decisions is crucial. We also applaud the protection of journalistic sources, in line

¹ The Swedish NWT Gruppen Trust has been funding research and media freedom projects up to €250,000 so far, see the [Marie and Gustaf Anders Trust](#)' grants and awards. In Norway, the [Tinius Trust](#) ensures the long-term sustainable development of Schibsted and the quality and independence of its publications. The Trust also subsidises projects for a free and independent press.

² AMI's press release: "[AMI premia el valor y la profesionalidad de los corresponsales españoles en la guerra de Ucrania](#)" (in Spanish), 1 December 2022

³ Danske Medier (DK), Mediebedriftene (NO), Tidningsutgivarna (SE) and Finnmedia (FI) in cooperation with the Gazeta Wyborcza Foundation (PL)

⁴ Danske Medier's press release "[International News Media Organization will contribute significantly to strengthening free and independent media in Ukraine](#)" (in Danish), 15 September 2022

⁵ News Media Europe, [Guide for Journalists on How to Document International Crimes](#), July 2022. Available in English, Ukrainian and Russian.

NEWS MEDIA EUROPE

with the ECHR Article 10 and the Council of Europe's resolutions⁶. This should translate into concrete and practical rights at national level, enforceable before national courts and complaint bodies. During the monitoring phase, Member States must be held accountable for the designation of independent, *de jure* and *de facto*, complaint bodies to enforce media companies' rights (Article 4.3).

- **Early warning mechanism for the fair treatment of press content by very large online platforms (Article 17):** Online platforms should not be allowed to police news content online, unless for the purpose of removing illegal content. Newsrooms waste considerable time and resources monitoring the internet and trying to enter in contact with platforms about unjustified take-downs of editorial content or account deletions. The early notification system should extend to all "restrictions", not just "suspensions". We also recommend that platforms' statement of reasons be "meaningful" to avoid generic email notifications (Article 17.2). Time is crucial to the news ecosystem and the decision to interfere with the availability of news content has a huge impact on publishers. Therefore, having an answer without "due delay" -whatever that means- solves little if anything and needs clear and very short deadlines.
- **A proportionality test for administrative measures affecting the free operations of media companies (Article 20):** We agree that public intervention into media markets must be strictly proportionate and non-discriminatory to put an end to media capture by the state. It is crucial to make this right enforceable at national level before independent tribunals and appellate bodies (Article 20.3). Such proportionality tests should also apply to online platforms.
- **Fair and transparent allocation of state advertising and economic resources (Article 24):** We support the obligation for public authorities to allocate advertising funds in an open, non-discriminatory and transparent manner, including through the use of public repositories. This would render the economic asphyxiation of critical media more difficult. State advertising on online platforms should also be included under this obligation. Member States must make it clear which national regulators or bodies are competent for enforcement.

Nonetheless, we have serious concerns about other measures that would:

- Make it more difficult for press publishers to operate and remain financially sustainable;
- Overlook established principles of subsidiarity and encroach on national laws and constitutions;
- Create a centralised regulatory authority for the press sector that remains and should continue to be self-regulated to guarantee its independence.

Therefore, we urge European policy makers to:

1. **Make the MFA an instrument to protect news media, not to regulate them (Chapter II).** By covering a broad definition of "media service providers" including press publications, the proposal shifts from the traditional self-regulatory approach. This is a slippery slope, and we emphasise that there is no one-size-fits-all for media in Europe. The Single Market legal basis (Article 114 TFEU) should not be misused to justify European regulation and go beyond what is necessary to achieve the original intention of the MFA, namely to promote and protect press freedom in Member States where this freedom is under threat.
2. **Preserve the national enforcement of media laws:** The nature of press products, based on language, culture and national news consumption habits, make the plea for harmonisation extremely far-fetched. We understand the need for more cooperation between national authorities in cross-border situations and to accordingly rationalise

⁶ [Council of Europe, Ministers' Recommendation no. R \(2000\) 7](#) and [Parliamentary Assembly's Recommendation 1950 \(2011\)](#)

the mandate of the existing European Regulatory Group for Audiovisual services “ERGA” (Article 13). However, we must oppose giving a new European Board for Media Services any powers over national media legislation. Creating such entity would provide oversight powers to national audiovisual authorities with little to no independence over other perfectly healthy and free European press markets. We also see a risk of granting to the European Commission regulatory powers in countries where self-regulation works well and press freedom is high.

3. **Keep media concentration assessments simple and close to the transaction (Articles 12 and 21):**

Media concentration and consolidation is a matter of economic viability and oftentimes the difference between life or death for news brands. Scale, technology transfer and pooling resources mean that in particular local and regional news brands remain financially viable where they compete for revenues with the broader media sector as well as online platforms.

- **Keeping national competition authorities in the frontline:** The EU is not the right level of intervention to conduct media pluralism assessments. The multiplication of players involved - national competition authorities, audiovisual regulators, the Board of Media Services and the European Commission combined - in the assessment of media transactions will play at the detriment of newsrooms and slow down consolidation that is necessary to compete with global technology players and to provide a diverse news offering. The availability of high quality local and regional news might particularly suffer as a result.
- **Keeping concentration rules flexible:** Where concentration rules are more relaxed at national level, markets have achieved more efficient outcomes, such as in the Nordics. The Nordics, but also Ireland, Belgium and the Netherlands, are concentrated in terms of ownership but characterised as thriving and plural markets where media freedom is high. We therefore disagree with imposing at EU-level the concentration rules of certain countries on others. Instead, we strongly recommend that the MFA provides greater flexibility and facilitates concentrations where they are needed - e.g. for media survival, competitiveness and fixing market power asymmetries with global technology companies. All in all, we must strike a balance that distinguishes between healthy concentration for media viability – which is greatly needed – and concentration for media capture by oligarchs - which we strongly oppose.

4. **Give teeth to the governmental non-interference principle (Articles 4 and 5):** First, we applaud the arms’ length principle to keep the state away from press publishers’ editorial decisions. Concretely, press publishers must be able to quickly challenge administrative decisions that are unfair or disproportionate before national courts and independent human rights ombudsmen. The role of these appellate bodies to support the press must be further clarified (Article 4.3). Second, we question the obligation on Member States to “ensure adequate and stable financial resources” to public service media (Article 5.3): the funding of public service broadcasters must always be subject to EU state aid rules (Recital 18, Article 2.3⁷) and carefully monitored by a truly independent body (Article 5.4).

5. **Promote self-regulation, a key component of free press (Article 6, Recitals 20-21):** Self-regulation and transparency are key ingredients to promote trust in media and media freedom. To avoid any risks of intervention in press publishers’ editorial policies, we support initiatives driven and applied by the industry, such as the [editor-](#)

⁷ The definition of “public service media provider” as a public mission entity that “receives national public funding” should not dilute state aid requirements.

NEWS MEDIA EUROPE

[publisher agreement](#) in Norway⁸, the [Press Council and the Office of the Press Ombudsman in Ireland](#), and [more](#)⁹. But it is not for the MFA to privilege certain journalistic standards above others (Recital 33) and certainly not to regulate the day-to-day operations of news media companies, as instructed in the EU Recommendation. Finally, the MFA should promote non-judicial remedies available to citizens via self-regulatory bodies that are simpler, cheaper, more effective and respectful of media freedom, to avoid feeding into a litigation culture against the press. In light of the above, Article 6 should be thoroughly reviewed.

6. **Encourage investments in professional media:** The news media sector takes the EU's objective for a greener future very seriously. At company level, this translates into commitments to the United Nations's [Environmental, Social and Governance](#) framework to lead change with sustainable, ethical and responsible management. In recognition of the relevance of news media for both the green and digital transition and its contribution to democracy and equality, the MFA should accompany this change and be more ambitious in clearly incentivising investments in professional media companies that implement eco-friendly and social values. This way, the MFA would refocus where problems are (e.g. attracting advertising revenues and investors) and complement the objective of the Media Action Plan (innovation and financial viability).
7. **Audience measurement (article 23):** We observe that in certain markets smaller local and regional media do not have the size to be measured properly by audience measurement companies. This inadvertently negatively affects the bottom line of these media. It is therefore extremely important to ensure that the EMFA recognises this shortcoming in current audience measurement practices and establishes remedies to overcome them.

Contact:

Wout van Wijk, Executive Director: wout.vanwijk@newsmediaeurope.eu

Aurore Raoux, EU Policy Manager : aurore.raoux@newsmediaeurope.eu

⁸ Agreement between the Norwegian press publishers' association (MBL) and the association of Norwegian editors to ensure editorial independence, freedom of expression, public access to government's documents, protection of sources and press ethics, June 2011: <https://www.nored.no/Association-of-Norwegian-Editors>

⁹ Ask for News Media Europe's case studies, media freedom act consultation, March 2022.