

Media freedom and pluralism must equal, not undermine audiovisual policies and cultural diversity

SAA position on the European Media Freedom Act

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The Society of Audiovisual Authors welcomes the Commission's proposal for a European Media Freedom Act (EMFA) and its objective to protect media freedom, independence and pluralism, as well as journalists. Indeed, it is crucial to make sure that the public and private media are able to freely express opinions without interference from governments. However, it is important to make sure that the EMFA regulation doesn't create any legal uncertainties, especially those that may have adverse effects on European cultural diversity.

Cultural policy measures play an important role in promoting European creation and the diversity of cultural expressions, and those must not be negatively impacted by the EMFA. The cultural dimension of media law and the Member States's cultural sovereignty must be recognised by EMFA with a reference to Article 167 TFUE¹ which notably requires the Union to take cultural aspects into account in its action, in order to respect and to promote the diversity of its cultures. In the audiovisual sector, those cultural policy measures are rooted in the Audiovisual Media Services Directive (AVMSD)², the cornerstone of European media law that is fostering European creation, production and distribution.

The European Commission's proposal for a [European Media Freedom Act](#) builds on the successes of the AVMSD. It establishes the European Board for Media Services due to succeed to the European Regulators Groups for Audiovisual Media Services (ERGA) established by the AVMSD and enlarging its competences. First, we believe that it is necessary for the Board to be fully independent from the European Commission in order to fulfil its role as regulator of the audiovisual media services with the same independence as its members at national level. Second, we consider that in its current wording, the EMFA proposal raises legal uncertainties on its interplay with other provisions of the AVMSD, in particular the promotion of production and distribution of European audiovisual works (Articles 13, 16 and 17).

It is therefore essential to clarify the relationship between the EMFA and other legal acts taking into account the twofold nature of media as a cultural and economic asset³. In addition, the proposed Article 20 on national measures affecting the operation of media service providers should focus on media pluralism, editorial independence and fundamental freedoms and not create a new assessment procedure for national cultural policy measures implementing the AVMSD.

¹ [Treaty on the Functioning of the European Union](#).

² [Directive 2010/13/EU](#) on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

[Directive \(EU\) 2018/1808](#) amending Directive 2010/13/EU) on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities.

³ [Policy Recommendations](#) on EMFA by Marc D. Cole and Christina Etteldorf, research for CULT Committee, European Parliament.

Refer to the respect and promotion of cultural diversity

Article 167 TFUE

To reflect the cultural dimension of the media market, a reference to Article 167 TFUE should be introduced in the EMFA.

1. The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas: (...)

- artistic and literary creation, including in the audiovisual sector. (...)

4. The Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures.

Subject matter and scope (Article 1)

Article 1.1 EMFA explains that the Regulation lays down common rules for the proper functioning of the internal market for media services, while preserving the quality of media services. It should be added that the Regulation shall also respect and promote cultural diversity.

In Article 1.2, the Regulation acknowledges the need to not affect rules laid down by other legal Acts, including Directive 2019/790/EU on copyright and related rights in the digital single market. We welcome this list and suggest adding 2 other relevant Directives on copyright, as well as clarifying the interplay with the AVMSD:

- + Directive 2019/789/EU on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes;
- + Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society;
- + Directive 2010/13/EU and Directive (EU) 2018/1808, with the exception of the amendments made by Article 27 of this Regulation.

It should be made clear that apart from Article 27 amending the AVMSD for the European Board for Media Services, any change or impact on the rules of AVMSD should be addressed by amending or revising the AVMSD. As the CULT Committee's research⁴ recommends, the EMFA should at least clearly state that the AVMSD remains unaffected in the non-amended parts, and in case of conflict, takes precedence over the EMFA.

Evaluate national cultural policies deriving from the AVMSD through the AVMSD and not a new EMFA procedure

National measures affecting the operation of media service providers (Article 20)

The possible conflicting approaches between the EMFA proposal and the AVMSD are particularly apparent in the proposed Article 20 EMFA regarding national measures affecting the operation of media service providers. Article 20.1 requires that any national measures affecting the operation of

⁴ [Policy Recommendations](#) on EMFA by Marc D. Cole and Christina Etteldorf, research for CULT Committee, European Parliament.

media service providers shall be “duly justified and proportionate [... as well as] reasoned, transparent, objective and non-discriminatory”. Article 20.3 proposes that any media service provider subject to such measures shall have the right to appeal against that measure to an appellate body (whose composition, scope and powers are not defined).

The large scope of the proposed Article 20 would encompass national measures implementing the AVMSD and create a new way for media services providers to challenge AVMSD implementation rules they disagree with. In the context of the AVMSD, some media operators have expressed their opposition to national measures promoting European works and cultural diversity, claiming that the market provides diversity by itself. The SAA is concerned that powerful operators, particularly those from outside Europe, could take advantage of this article to undermine the important regulation in place to support creation.

Such an overlap of EMFA on AVMSD is in fact redundant as the AVMSD already provides for its own criteria of proportionality, non-discrimination and compliance with Union law in Article 13 for its measures on the promotion of European works.

As a reminder, Article 13.1 AVMSD requires Member States to ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30% share of European works in their catalogues and ensure prominence of those works. Article 13.2 allows Member States to request media service providers to contribute financially to the production of European works, including via direct investment in content and contribution to national funds.

To this day, most Member States impose on media services providers financial obligations that varies in type and amount, depending on their cultural landscape. They are legitimate under the AVMS Directive, which also permits Member States to impose financial contributions on media service providers that target audiences in their territories but are established in other Member States. It is also worth mentioning that Article 4 AVMSD allows Member States to require media service providers under their jurisdiction to comply with more detailed or stricter rules, provided that such rules comply with Union law. This includes any sub-quotas or higher quotas, as well as any national cultural policy favouring cultural matters over market considerations.

The SAA recommends that any measures imposed by individual EU countries in accordance with the AVMS Directive should only be evaluated based on the AVMSD Directive itself and not through a new EMFA procedure. Article 20 must focus on national measures liable to affect media pluralism, editorial independence or fundamental freedoms as defined in the EU Charter of fundamental rights, and not create an appellate body for national measures implementing other EU instruments such as the AVMSD, which could weaken cultural policy measures promoting European creation and cultural diversity.

Conclusion

In conclusion, the SAA firmly believes in the vital need to protecting media freedom, independence and pluralism, as well as fundamental rights in Europe. In the same line, we need to promote the creation, production and distribution of European works to encourage cultural diversity and the freedom of artistic expression of European audiovisual authors.

Maintaining a strong democratic ideal in Europe in accordance with the EMFA should equal a flourishing local creation and culture, not risk undermining cultural policies in the audiovisual sector. We therefore trust EU policymakers for taking our recommendations into consideration, to strengthen both aspects when negotiating the EMFA.