



**Joint industry statement on the European Media Freedom Act:
Call to remove provisions undermining the fight against harmful content**

Brussels, 30 August 2023

The undersigned industry associations Adigital, Afnun, Anitec-Assinform, CCIA Europe, DOT Europe, Infobalt, NLdigital, Technology Ireland, and techUK, are writing to you in the context of the upcoming vote by the European Parliament's CULT committee on the proposed European Media Freedom Act (EMFA). Our associations represent the online services industry.

We support the overarching objective of the EMFA and our members are committed to the principles of media plurality. However, we remain seriously concerned by the overlaps and potential contradictions between EMFA and the established legislative frameworks on the one hand, and changes to Article 17 that would turn the provision into a media exemption on the other.

We acknowledge and welcome efforts to strengthen the self-declaration process in order to clarify the scope of a Media Service Provider (MSP) and mitigate against potential abuses of self-declaration. Yet, several elements of Article 17 as currently discussed in the Parliament run the risk of undermining the fight against harmful content and the work to present young users with age-appropriate content. Therefore, we draw your attention to the pending changes to Article 17 that would inadvertently go against what we understand to be the objectives behind EMFA:

- The Digital Services Act (DSA) already requires Very Large Online Platforms (VLOPs) to put in place different tools enabling users, including MSPs, to challenge content moderation decisions made by VLOPs and to understand these decisions. Per Article 20 of the DSA, appeals to content moderation decisions must be decided in a timely

manner, and content that was erroneously removed must be reinstated “without undue delay”.

- Hence, there is no need for duplication of obligations to the same effect in the EMFA. That would just make content moderation more difficult and less effective.
- The EMFA should also clearly state that this provision only applies to VLOPs that disseminate news and current affairs content to avoid confusion.
- The scope of Article 17(2) was expanded from suspensions to also cover restrictions. It is unclear what restrictions are intended to cover.
 - If the intention is to ensure that content removals, account suspensions, and repeat offender sanctions are all covered, we would advocate for clearly defining suspensions to cover these actions instead.
- An obligation was added under Article 17(2) for VLOPs to carry restricted or suspended content for 24 hours in order to give MSPs time to reply to the statement of reasons.
 - This must-carry obligation is completely in contradiction with DSA's Article 14 for platforms to take action against content that violates their terms and conditions, and global legislative frameworks governing internet services. It runs the risk of allowing harmful content to sit on a platform for 24 hours and proliferate, creating an ecosystem for risk that the DSA was designed to tackle.
 - Furthermore, the arbitrary 24-hour deadline goes against the acknowledgement that the speed at which a violating piece of content must be taken-down is context-dependent.
 - This advantage is solely based on the kind of user who uploaded the content rather than on the nature of the content itself (which may be harmful - e.g. disinformation or content that is inappropriate for certain audiences).
- We caution against giving competent authorities the power to decide on content moderation decisions, which is what the current CULT agreement suggests. Such third parties are not best placed to apply an online platform's terms and conditions.
 - In the same vein, the LIBE [opinion](#) introduced a ban on suspension or restriction by VLOPs of content from an MSP when the latter has “reasonably demonstrated” that the content is in accordance with national law. This may lead to a situation where a VLOP has to keep content online which violates its terms of service (e.g. nudity, self-harm, disinformation) just because it has been published by an MSP and because the content is not illegal in a Member State.
- New provisions require VLOPs to ensure that no content moderation decisions (even if unrelated to media content) negatively impact media freedom and pluralism and that VLOPs have adequate human resources to cover all EU languages.
 - As previously mentioned, our members are strong supporters of such values. Nonetheless, this obligation fails to acknowledge the complex balancing and trade-offs between media pluralism and media freedom and other fundamental rights, such as users' personal rights or the protection of minors.
 - This goes beyond what the EMFA is trying to achieve and largely overlaps and adds to the requirements of the DSA. Given the fact that the DSA has not come into effect, it seems very premature to add a new layer of obligations without being sure they are necessary and proportionate.

- Several parts of the final agreements on the proposal's Article 17 also run the risk of creating unnecessary duplication of the processes under the Platform to Business Regulation (P2B) and the DSA when it comes to complaint handling. Different tools enable users, including MSPs, to understand content moderation decisions but also challenge them through appeals, complaints mechanisms, and out-of-court dispute settlement.
 - Creating an additional, overlapping process (such as new Articles 17(1c) and 17(4) in the CULT amendments) and effectively prioritising MSPs, regardless of the content or context at stake, seems premature and counter-productive.
 - Finally, there is no justification as to why MSPs, as a specific category of users, should benefit from a special treatment. This constitutes a media exemption which was intentionally not entertained within the DSA¹.

We therefore urge MEPs to consider the negative impact these provisions will have on VLOPs' ability to effectively tackle harmful and infringing content on their services and how they adversely risk affecting freedom of speech online. An extension of Article 17's scope to cover 'restrictions', and what amounts to a 24-hour must-carry obligation would undermine the EMFA's goals of media freedom and plurality. Finally, the proposal should not be at the cost of, or duplicate unnecessarily, the horizontal framework we have just recently established via the DSA.

Last but not least, we encourage MEPs to ensure that the final report represents the diverse views within the House, both within and beyond the Committee, so that it can truly represent the European Parliament's position going into trilogue negotiations.

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¹ See the EP mandate for negotiations adopted in January 2022, where amendment 511, calling for a media exemption, was rejected:
https://www.europarl.europa.eu/doceo/document/TA-9-2022-0014_EN.html