

Increase ambition and consistency of the European Media Freedom Act (EMFA)

RSF supports the proposed European Media Freedom Act in its objectives to "*promote pluralism and independence of the media in the European Union*".

RSF's 2023 World Press Freedom Index¹, entitled "*journalism threatened by fake content industry*", spotlights the rapid effects that the digital ecosystem's fake content industry has had on press freedom, including in the EU, which risks severely weakening European democracy in the long run. Its findings demonstrate the urgent need for the EU to protect media freedom across the Union, in order to safeguard its values of freedom, democracy, and the rule of law of which press freedom is an essential condition.

The EMFA contains **mechanisms that, if adapted and strengthened, could contribute to curb these findings across the EU**, by establishing guarantees for editorial independence (art. 6-2), by reinforcing media's protection online (art. 17), by providing the EU with more effective tools to resist deliberate manipulation by external powers (art. 16), and by ensuring that public fundings to the media are not discriminatory (art. 24). **Accordingly, RSF formulates the following updated recommendations:**

- **Article 6-2 should establish mechanisms to secure the honesty, pluralism and independence of information**

Article 6-2 requires media service providers to guarantee the freedom of editorial managers to make independent editorial decisions. Undue interference and conflicts of interests in the information sphere must indeed be prevented.

However, in its current wording, this article seriously risks undermining mechanisms for editorial control and liability that have demonstrated their efficiency at the national level, while it does not provide for a more satisfactory solution.

Article 6-2 should establish concrete mechanisms to secure the honesty, pluralism and independence of the information from private interests - rather than defining the powers and responsibilities of owners, editors...

- The adoption of internal codes should be mandatory for all media service providers, to define the rights of owners, editors, the editorial decision-making processes, etc.
The code should be developed jointly by publishers, editors and representatives of journalists and be opposable to all these actors and all members of the editorial team.
It should be specified that the Code shall be drafted in line with the highest standards of ethical and professional journalism and include provisions concerning independence and internal pluralism.
The Code should provide for the right of editorial teams to oppose the appointment of the head of the editorial department, or at least an obligation to inform the editorial team when changes of the editor in chief is being considered and to motivate this consideration.
- Article 6-2 should provide for the establishment by media service providers of internal Committees tasked with overseeing the compliance with the Code and handling complaints for violation of the Code, or violation of the principles of honesty, independence of pluralism of news and information, filed by recipients or staff of media service providers.
- Article 6 should also provide that member States shall ensure the sanctioning of influence peddling in the news and information field (based for instance on existing legislation criminalising influence

¹ https://rsf.org/en/2023-world-press-freedom-index-journalism-threatened-fake-content-industry?data_type=general&year=2023

peddling by persons vested with public authority). Such an offence would punish anyone who solicits or grants an advantage to influence the editorial production of a media publishing news and current affairs.

- **Article 17 must ensure that only media that comply with the highest journalistic standards can benefit from safeguards against content moderation**

Article 17 aims at safeguarding the media against content moderation operations by Very Large Online Platforms. RSF strongly supports article 17 in its purpose : Platforms cannot justifiably impose their own extra layer of regulation over content published by media that are already subject to specific laws and self-regulatory rules.

However, in its current form, article 17 completely misses the purpose : it does not strengthen media freedom but the power of the platforms (as platforms could accept - or not - a self-declaration), and it does not provide for actual guarantees (platforms would be able to remove editorial content without contradiction).

The identification of the media that are eligible to the safeguards of article 17-2 cannot be left to a decision of VLOPs and VLSEs. Alternative mechanisms such as proposed in EP committees, for instance to leave the decision to a national regulatory authority aren't satisfactory either. **Only an independent self-regulatory body should be able to decide who may be granted the "media privilege".**

In addition, the criteria for self-declaration in article 17-1 must be strict enough to ensure that only the media that comply with the highest standards of ethical and professional journalism are eligible to the safeguards of article 17-2. If this is not the case, article 17 would end up being dramatically counterproductive, by preventing platforms from performing the efforts that are expected of them against disinformation and propaganda.

Article 17 must be redrafted to ensure that only journalism "worthy of the name" benefits from specific safeguards against content moderation by platforms, while preserving the platforms' ability to combat disinformation. And to that end, the criteria of article 17-1, c) be strengthened :

- **Sub-paragraph c) should specify that media must be subjected to public regulatory supervision AND self-regulatory mechanisms** : this would avoid a propaganda organ's declaration being accepted when the requirements/supervision it is subjected to either by self regulatory or national body is too weak.

- **Sub-paragraph c) should also make an explicit reference to ISO-type standards of professional and ethical journalism, such as the CEN Workshop agreement CWA 17493:2019 of the Journalism Trust Initiative (JTI).** The JTI², an independent, self-regulatory, certifiable standard of journalistic processes, developed under the aegis of the European Committee for Standardization in accordance with EU directive on standardization, is a mechanism that would:

- allow identifying media that comply with the highest standards of journalism and which should benefit from the safeguards of art. 17-2
- make it possible to take away from platforms or public authorities the decision on who should benefit from such safeguards: the independent certifier could attest of the certification and confirm a self-declaration
- ensure the eligibility criteria are strict enough to prevent propaganda and disinformation media to benefit from such safeguards,

² The Journalism Trust Initiative (JTI) aims at providing a systemic response to disinformation by translating existing ethical and professional standards of journalism into an **industry standard of journalistic** processes, developed by a group of international experts under the aegis of the European Committee for Standardization, in accordance with EU directive on standardization. The JTI is now an ISO standard ([CEN Workshop Agreement 17493](#)), which allows media to self-assess and be certified. To date, over 100 media outlets worldwide have adopted the JTI standard by publishing transparency reports. The JTI allows reliable journalism to clearly distinguish itself from the hotchpotch of commercial messages, propaganda and pseudo journalism that is flooding the information space, and to provide trustworthy sources of information with a competitive advantage, in particular online.

The mechanisms of article 17 should be redrafted to :

- Ensure the reference to the Journalism Trust initiative (JTI) is maintained in Recital 33 (“*Providers of very large online platforms may rely on information regarding adherence to these requirements, such as the machine-readable standard of the Journalism Trust Initiative or other relevant codes of conduct.*”)
- in 17-1, c), specify that media must be subjected to public regulatory supervision **AND** self-regulatory mechanisms.
- in 17-1, c), explicitly mention ISO-type standards of professional and ethical journalism, developed under the aegis of the European Committee for Standardization, such as the CEN Workshop agreement CWA 17493:2019 of the Journalism Trust Initiative (JTI)

● **The safeguards against content moderation must be strengthened (art 17-2)**

Platforms should not have the ability to suspend or restrict, on the ground of their own terms and conditions, legal content published by media that meet the criteria of article 17-1 (consolidated according to RSF recommendations) - unless the platform can demonstrate it is manifestly illegal or it contributes to a systemic risk according to the DSA and any case be subject to appeal as per ordinary law..

- Online suspensions or restrictions of content published by media that meet the criteria of article 17-1 (consolidated according to RSF), and the legality of which is disputed, should be decided by a judge after a contradictory debate allowing the media to oppose a request by a platform. At the very least, if not to a judge, the decision should be given to the out-of-court dispute settlement body provided for by the DSA, or a dedicated body, under the control of a judge.
- To that end, platforms should have to give prior notice with a statement of reason before the suspension or restriction taking effect, giving the media the ability to reply within 48h.

● **An additional mechanism should complement article 17 to ensure the due prominence of reliable sources of information**

Although negative curation (suspension and restriction of content) is necessary to fight illegal content and disinformation, it will never be sufficient and cannot ensure the public’s freedom of opinion - to which the right to reliable information is a prerequisite. **Positive curation** must complement this logic, in order for information produced by journalistic entities complying with professional and ethical norms, in view of its importance in a democratic society, to be given a competitive advantage to balance the unfair competition suffered from the functioning of online platforms. **To that end platforms should bear an obligation to ensure the prominence, visibility and findability of such reliable sources of information online.**

The JTI is a tool that could be used to that end : a **machine-readable code**, it allows platform’s algorithms to identify trustworthy sources of information and ensure they enjoy a competitive advantage online.

Such an approach is already being supported by member States and proposals made in EP committees:

- IMCO’s draft opinion article 3, which proposes to provide that “*Member States shall take measures to ensure the appropriate prominence of media services of general interest, based on general principles*”, acknowledges the need to ensure the prominence of reliable sources of information ;
- France, in a Position on the CULT draft report dated 25 April, “*proposes to require very large online platforms to promote the visibility of certain media services, as long as they meet a certain number of criteria listed in Article 17*” ;
- The representative of Slovakia, in a position presented to the General Affairs Council on 21 March 2023 and supported by 8 member States³, called for “*a legal obligation on social network and search engines platforms to amplify reliable sources*”, and made a direct reference to the JTI.

³ Belgium, Estonia, Finland, France, Germany, Greece, Latvia, Lithuania

→ A new subparagraph should complement article 17 to provide that VLOPs and VLSEs have the obligation to promote, in their recommender systems, content published by media service providers that meet the criteria of article 17-1 (consolidated according to RSF recommendations). This subparagraph could read as follows :

“Very Large online platforms and Very Large Search Engines shall take necessary measures to promote the visibility, findability and prominence, in their recommender systems or feed, of content published by Media service providers that can demonstrate they comply with professional and ethical standards of journalism. Certification under ISO-type standards of professional and ethical journalism developed under the aegis of the European Committee for Standardization such as the CEN Workshop Agreement CWA 17493:2019 of the Journalism Trust Initiative shall serve as the reference criteria to that end.”

- **Article 16 should be complemented to establish in the EU the System of protection of democratic information spaces based on universal principles**

“Closed” countries control their own information space by barring content from abroad while at the same time they export their own propaganda and manipulative content. The information spaces of democratic countries, on the other hand, are open to the world. This asymmetric situation benefits authoritarian regimes and undermines democracies.

Reducing this asymmetry entails imposing requirements on structuring entities such as VLOPs and VLSEs, as the EU has begun to do with the DSA. But further action is needed, and RSF supports in that regard the purpose of article 16. It is however far from being sufficient to meet the objective of protecting the EU information space against authoritarian regimes propaganda and manipulation, while promoting freedom of expression and freedom of the press on a global scale.

RSF proposes a comprehensive mechanism against propaganda and manipulation from media service providers based outside the EU : a principle-based system of protection of the EU information space.

Article 16 should **establish the System of protection of democratic information spaces** :

→ Article 16 should be complemented to impose the same obligations on all audiovisual media, regardless of their distribution channels and their country of establishment. These obligations would, in particular, concern prior commitment to respect for pluralism, honesty and independence of information, as well as respect for the dignity of individuals.

→ A new article should be added allowing to condition the access to the EU of media or online players based in a third country on (1) the degree of openness of the third country and (2) the degree of independence from the authorities of this country of the said media or online players.

The evaluation of the degree of openness could be entrusted to an independent body such as the Forum on Information and Democracy⁴.

On the basis of this evaluation, the Commission or the Board should be empowered to coordinate national measures related to temporary restrictions to distribution or suspension of such media services or online players.

- **The provisions for a “transparent and fair allocation of economic resources” should be complemented with measures to ensure media sustainability**

Article 24 of the EMFA aims at ensuring that State advertising to the media are “*transparent, objective, proportionate and non-discriminatory*”. RSF commends this provision, even though it considers that the

⁴ The [Forum on Information and Democracy](#) is an international entity founded by 11 independent organizations from different backgrounds and regions, to develop and implement the principles of the [International Partnership for Information and Democracy](#) and issue recommendations to signatories of the Partnership to that end. The Partnership is an intergovernmental non-binding agreement impelled by RSF and endorsed by 50 countries around the world (including 25 EU member States) to promote and implement democratic principles in the global information and communication space. It was formally signed during the 74th UN General Assembly in September 2019.

article should address all forms of public fundings to the media, and ensure such fundings are **granted in priority to media service providers that comply with the highest standards of journalism**. ISO-type standards such as the JTI could serve as a normative benchmark to that end.

In addition, the **EMFA should aim at securing additional revenues to the media**, to address the dramatic decline in revenues of the media as a result of the move to a more digital, mobile, and platform dominated media environment, and due in particular to the loss of advertising revenues.

A new article 24a should be added to **compel platforms and advertisers to contribute to the financing of media service providers** - in particular those that meet the criteria of article 17-1 (consolidated according to RSF recommendations). It must be noted that the World Federation of Advertisers supports the JTI as a solution to earmark advertising investments in the media.

Several mechanisms could be considered to that end :

- An obligation of advertisers to contribute to the financing of trustworthy media by directing a portion of advertising investments towards media service providers complying with the highest standards of journalism - benchmarked through mechanisms such as the JTI
- Creation of a tax on online advertising or platforms and the proceeds of which would be allocated to the financing of trustworthy media.
- Creation of a tax incentive for advertisers to direct their advertising investments towards trustworthy media, for example through the introduction of a tax credit the benefit of which would be reserved for advertising investments in these media.