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The missing piece in the DSA puzzle? Article 18 of the EMFA and the media privilege

This article examines the provisions of Articles 18 and 19 of the European Media Freedom Act (EMFA) in relation to the digital governance framework established by the Digital Services Act (DSA), with a particular focus on the media privilege codified in Article 18 of the EMFA. Section 2 analyses the media privilege of Articles 18 and 19 of the EMFA from three perspectives: the requirements for obtaining this privilege and the media entities eligible for it; the functioning of the privilege and its intersections with the DSA provisions; and the transparency in its application, including the role of the Board under Article 19 of the EMFA. Section 3 explores the regulatory framework governing the media privilege in Article 18 of the EMFA and addresses criticisms of this online media privilege. More specifically, it focuses on two main criticisms: the risk of granting this privilege to agents of disinformation and the "constitutional" legitimacy of the privilege. The final remarks summarise the main considerations of the different sections and offer concluding observations.

Media privilege – EMFA – Freedom of expression – Media Freedom – DSA – Content moderation

Il pezzo mancante nel mosaico del DSA? L'articolo 18 dell'EMFA e il privilegio dei media

L'articolo esamina le disposizioni degli articoli 18 e 19 dell'European Media Freedom Act (EMFA) in relazione al quadro della governance digitale definito dal Digital Services Act (DSA), con particolare attenzione al privilegio mediale codificato nell'articolo 18 EMFA. La sezione 2 analizza il privilegio dei media di cui agli articoli 18 e 19 EMFA da tre punti di vista: i requisiti per ottenere questo privilegio e i soggetti mediali che possono beneficiarne; il funzionamento del suddetto privilegio e le sue intersezioni con il DSA; i meccanismi di trasparenza e il ruolo del Comitato ex articolo 19 EMFA. La sezione 3 esplora il quadro costituzionale che sottende il privilegio per i media di cui all'articolo 18 EMFA e affronta le critiche a questo privilegio mediale. In particolare, la sezione si sofferma su due critiche: il rischio di accordare questo privilegio ad agenti attivi nelle campagne di disinformazione e la legittimità "costituzionale" di tale privilegio. Le osservazioni finali riassumono le principali riflessioni e offrono alcune osservazioni conclusive.

Privilegio mediale – EMFA – Libertà d'espressione – Libertà d'informazione – DSA – Moderazione dei contenuti

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1. Introduction

This article examines the provisions of Articles 18 and 19 of the European Media Freedom Act (EMFA)[1] in relation to the digital governance framework established by the Digital Services Act (DSA)[2], with a particular focus on the media privilege codified in Article 18 of the EMFA. The DSA's regulation of online public discourse is a puzzle composed of different, complementary, regulatory tools, from codes of conduct to the GDPR[3]. The final piece of this puzzle appears to be Article 18 of the EMFA. Article 18 formalises the role of traditional media within the EU's digital governance structure, specifically in the regulation of public discourse on social media platforms and digital platforms. This Article can be seen as the missing piece in the DSA's approach to regulating online public discourse; it complements the procedur-alising of content moderation[4] by introducing a specific regulatory regime for media. The media privilege outlined in Article 18 of the EMFA builds on the debate initiated by the DSA regarding the media's role in the platformised public sphere (see Section 3) and seeks to restore a space for professional journalism in the digital environment. The European Commission's Communication *Tackling Online Disinformation: A European Approach* had already recognised the "need to rebalance the relation between media and online platforms"[5]; however, the DSA did not establish a specific regime for this purpose. The EMFA, on the other hand, establishes such a regime for media within the platformised public sphere: under Article 18 of the EMFA, compliant media have the right to receive the reasons for content removal before it occurs and may respond within 24 hours; they also have the right to have their complaints reviewed

1. Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act).
2. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).
3. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
4. Ortolani 2022.
5. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of The Regions *Tackling online disinformation: a European Approach*, COM/2018/236, p. 14.

with priority; and they can initiate direct dialogues with platforms if they believe they are being unfairly censored.

The rise of social media and the increasing reliance of EU citizens on digital platforms for news consumption have led to a situation where «professional journalism and traditional mass media, which largely organised publics, are increasingly bypassed as gatekeepers of public communication flows with the help of digital and social media»[6]. While the democratisation of communication has enhanced pluralism, it has also amplified the spread of misinformation and disinformation, leading also to growing distrust in epistemic communities (including professional journalists)[7]. The EMFA, in alignment with other EU instruments such as the Code of Practice on Disinformation[8] (see Section 3), seeks to address this challenge by granting traditional media certain privileges on Very Large Online Platforms (VLOPs). In this context, "traditional media" refers to media entities subject to regulatory or co-regulatory mechanisms within the EU Member States.

This article focuses on the specific media privilege[9] provided by the EMFA on VLOPs. This privilege aims to safeguard the presence of news content produced by professional journalism on VLOPs and identifies the specific constitutional approach of the European Union. Section 2 analyses the provisions of Articles 18 and 19 of the EMFA in comparison with the previous version of the *Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU* (hereinafter referred to as the "Proposal for a Regulation")[10]. Section 2 covers three perspectives: the media entities eligible for digital privileges; the nature of this privilege and intersections between the DSA and the EMFA; the transparency in applying these privileges, and the role of the Board as outlined in Article 19 of the EMFA. Section 3 explores the digital governance context in which these EMFA provisions operate and discusses potential critical issues. The paper concludes with some summary remarks and reflections.

2. The Regulation of Article 18 of the EMFA: the changes from Article 17 of the previous Proposal for a Regulation and the interactions with the DSA

This Section examines the intersections between the EMFA and the DSA, focusing on the provisions of Articles 18 and 19 of the EMFA as they have evolved from the earlier Proposal for a Regulation. The analysis explores these Articles from three key perspectives: the identification of media entities entitled to the privilege, the nature of the media privilege itself and its interactions with the DSA, and the transparency requirements alongside the role of the Board as outlined in Article 19 of the EMFA.

In conducting this analysis, particular attention is also given to the amendments made to the EMFA provisions compared to the Proposal for a Regulation. These changes are crucial for understanding how some of the initial criticisms of this new media privilege system, designed to "protect" traditional media on VLOPs, have been addressed by the updated provisions of the EMFA.

2.1. Which media actors are entitled to the media privilege of Article 18? An analysis of Sections 1, 2, and 3 of Article 18 of the EMFA

This Subsection addresses the question of which media entities are entitled to the digital privilege under the EMFA when operating on VLOPs. Article 18(1)(a-b) of the EMFA mandates that VLOPs establish a mechanism allowing media to self-declare as media service providers in compliance with Article 6(1) EMFA (transparency

6. Seeliger–Sevignani 2022, p. 10.
7. Nichols 2017.
8. European Commission 2022.
9. Cappello 2017.
10. Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU, COM/2022/457.

obligations)[11]. More specifically, these media entities also have to assert their editorial independence from Member States, political parties, and third countries (or entities controlled or financed by third countries) (Art. 18, 1, c). To benefit from this media privilege, media actors have to self-declare their editorial independence and confirm that they are subject to the «regulatory requirements for the exercise of editorial responsibility» in at least one EU Member State (Art. 18, 1, d). Thus, they have to declare their commitment to editorial standards recognised within the EU and, additionally, to be subject to the oversight of the «competent national regulatory authority or body or that they adhere to a co-regulatory or self-regulatory mechanism governing editorial standards» (Art. 18, 1, d). Furthermore, Article 18(1) EMFA requires that media entities seeking this protection have to declare that they do not provide content produced by artificial intelligence (AI) without human supervision (Art. 18, 1, e). Finally, these entities have to provide both a quick contact method (Art. 18, 1, f) and the contact details of «relevant national regulatory authorities or bodies or representatives of the co-regulatory or self-regulatory mechanisms referred to in point (d)» (Art. 18, 1, g).

Compared to Article 17 of the previous Proposal for a Regulation, which required media entities to declare their status as media, their editorial independence from the Member States and third countries, and their subjection to «regulatory requirements for the exercise of editorial responsibility» (Art. 17 of the Proposal for a Regulation), Article 18 of the EMFA introduces additional elements to ensure that the media privilege is granted to entities engaged in journalism practices governed by ethical and professional standards. Notably, the requirement for independence is expanded to include independence from entities controlled or financed by third countries and political parties. The transparency obligations are also reinforced by reference to Article 6 of the EMFA, and the enactment of the AI Act brings automated journalism practices under scrutiny, requiring human oversight of AI-generated content.

The strengthened editorial independence requirements raise questions about their practical application, particularly concerning public financing of news media or their interaction with those news media in which some shares are owned by political parties[12]. However, those enhanced requirements clearly address some concerns raised by academics and journalists regarding the risk of extending the media privilege to disinformation agents. Not by chance, the provision is designed to exclude media entities indirectly controlled or financed by third countries from the protection granted by Article 18 of the EMFA[13].

As an additional safeguard to ensure that the privilege is reserved for media entities committed to professional and ethical journalism, Article 18(1) of the EMFA stipulates that if VLOPs have doubts

11. «*Duties of media service providers*. 1. Media service providers shall make easily and directly accessible to the recipients of their services up-to-date information on: (a) their legal name or names and contact details; (b) the name or names of their direct or indirect owner or owners with shareholdings enabling them to exercise influence on the operation and strategic decision making, including direct or indirect ownership by a state or by a public authority or entity; (c) the name or names of their beneficial owner or owners as defined in Article 3, point (6), of Directive (EU) 2015/849; (d) the total annual amount of public funds for state advertising allocated to them and the total annual amount of advertising revenues received from third-country public authorities or entities». Article 6, Regulation (EU) 2024/1083.

12. Van Drunen et al. 2023, p. 152.

13. The EU had already committed to combating disinformation from media linked to authoritarian governments of third countries, such as Russian media, in the context of the invasion of Ukraine (Regulation (EU) 2022/350). The EU Tribunal has also upheld this by focusing on the disinformation created by these actors: «As regards the objectives pursued by the Council, recitals 4 to 10 of the contested acts refer to the need to protect the Union and its Member States against disinformation and destabilisation campaigns conducted by the media outlets under the control of the leadership of the Russian Federation which threatened the Union's public order and security, in a context marked by military aggression against Ukraine. Those objectives thus relate to public interests which aim to protect European society and form part of an overall strategy (see paragraphs 11, 12, 14, 17 and 19 above), which is designed to put an end, as quickly as possible, to the aggression suffered by Ukraine». Judgment of the General Court (Grand Chamber) of 27 July 2022, *RT France v Conseil*, T-125/22, par. 55.

about whether a media entity meets «regulatory requirements for the exercise of editorial responsibility» or is subject to oversighting by a regulatory body, «the provider of a very large online platform shall seek confirmation on the matter from the relevant national regulatory authority or body or the relevant co-regulatory or self-regulatory mechanism». The inclusion of contact information for these national regulatory authorities or bodies, as provided by the self-declaring media, is intended to facilitate this verification process. This element clearly places some responsibilities on VLOPs to verify the legitimacy of media entities seeking to use the mechanism of Article 18 of the EMFA.

The intention to support media engaged in professional and ethical journalism is also evident in the restriction of the privilege to entities that employ human oversight in automated journalism. This requirement aims to promote the responsible use of AI in news dissemination and to prevent the spread of unreliable content generated by AI[14]. While some critics have expressed concerns that this could create a "chilling effect" by restricting unchecked AI use[15], it is important to note that the privilege afforded to the press in Europe carries with it responsibilities and duties to ensure the accuracy of the content it produces. Therefore, it seems appropriate that AI-generated content should also adhere to the standards of factual correctness that underpin journalism's role in a democratic society.

Finally, in contrast to Article 17 of the Proposal for a Regulation, Article 18(2) of the EMFA requires that, aside from the legal name and quick contact information of the media, all other elements of the self-declaration have to be made public and accessible. This enhancement of transparency mechanisms allows for the development of accountability measures involving civil society, enabling researchers and journalists to scrutinise the actual characteristics of media entities granted the media privilege under Article 18 of the EMFA and to evaluate the concrete functioning of this provision.

From a "technical" perspective, Article 18(3) of the EMFA establishes a "structure" for the acceptance of the declaration, including the provision of an email address by VLOPs to facilitate the communications between media service providers and VLOPs, thereby ensuring the smooth operation of the media privilege mechanism.

In summary, Sections 1, 2, and 3 of Article 18 of the EMFA outline the requirements for self-declaration as a media entity, including certain controls and specific transparency obligations, and establish the procedure for submitting the application. These provisions collectively define which entities are entitled to the media privilege on VLOPs. But what exactly does this media privilege entail?

2.2. The media privilege(s) in the platformised public sphere: intersections between the DSA and the EMFA

As mentioned in the Introduction, the media privilege under Articles 18 and 19 of the EMFA operates as an exception to the general content moderation system of VLOPs. To fully grasp the scope and structure of this privilege for media entities that have submitted a declaration under Article 18(1) of the EMFA, it is essential to outline in brief the content moderation processes structured by the DSA. The DSA primarily governs the removal of content on VLOPs through two key provisions. Article 9 of the DSA mandates the removal of illegal content at the injunction of judicial or administrative authorities, while Article 14 of the DSA allows platforms to remove content considered incompatible with their terms of service. Where content removal is not requested by public authorities, such as when content is removed following the notice of a user or is taken down by platforms on their own initiative under Article 14 of the DSA, platforms are obligated to provide the affected user with the reasons for such "sanction" *after* the actual removal (Article 17 of the DSA, *Statement of reasons*). The DSA also provides for an "appeal" system for users to challenge these content moderation decisions under Article 20 of the DSA (*Internal complaint-handling system*), along with the possibility of recourse to out-of-court dispute resolution mechanisms (Article 21 of the DSA, *Out-of-court dispute settlement*). The media privilege, or rather the online media privileges outlined in Article 18 of the EMFA, operates within this scenario of content removal under Article 14 of the DSA.

14. Monti 2018, p. 139.
15. Van Drunen et al. 2023.

The first media privilege provided for by Article 18 of the EMFA requires VLOPs to notify media recognised by Art. 18(1) of the impending suspension or removal of content *before* taking action and to provide an opportunity for a quick response to prevent the content's removal or the suspension of the account. According to Article 18(4) of the EMFA, if a VLOP intends to remove content, reduce its visibility, or suspend the account of a media entity that has made a declaration under Article 18(1) of the EMFA, the platform has to communicate the reasons for this action, pursuant to Article 17 of the DSA, «prior to such a decision to suspend or restrict visibility taking effect» (Art. 18(4)(a)). Unlike the treatment reserved to "ordinary" users, traditional media entities are given a 24-hour window to respond and contest the removal or visibility restriction (Art. 18(4)(b)). In crisis situations, as defined under Article 36 of the DSA, a shorter response time may be applied[16]. This privilege for media is designed to protect the presence of media content on digital platforms, safeguarding it against unjustified removals that could impact public discourse and the right of EU citizens to be informed. In this way, the presence of content from traditional media is safeguarded by guaranteeing a right of reply before any removal of the content. The procedure provided for by the EMFA ensures the protection of content that may be of public interest on VLOPs, helping to prevent inappropriate removals. This provision establishes a clear exception to Article 17 of the DSA by mandating that platforms notify traditional media entities of the reasons for content removal *before* taking action, along with a quick redress mechanism, thereby ensuring the protection of traditional media content in the platformised public sphere. If a VLOP rejects the media entity's quick "appeal" and proceeds with the removal, the platform has to communicate this decision promptly to the media affected by it. An exception to this privilege applies when the removal complies with platforms' «obligations pursuant to Articles 28, 34 and 35 of Regulation (EU) 2022/2065 and Article 28b of Directive 2010/13/EU or with their obligations relating to illegal content pursuant to Union law» (Art. 18(4)). This exception ensures that, for instance, in the area of systemic risk management – including disinformation – the "pre-removal notice privilege" and "quick appeal mechanism" do not apply. Ultimately, Article 18(4) of the EMFA refines the provisions initially proposed in Article 17 of the Proposal for a Regulation, introducing a 24-hour response window for media and clearly defining the exceptions to the application of the privilege.

The second media privilege pertains to an expedited handling of complaints of media recognised under Art. 18(1) of the EMFA against content moderation decisions made by VLOPs under Article 14 of the DSA. Article 18(5) of the EMFA stipulates that complaints by media entities regarding content removal have to be processed «with priority and without undue delay» Additionally, Article 18(5) of the EMFA states that «media service provider may be represented by a body in the internal complaint-handling process». This privilege aligns with the first one by ensuring that media content receives greater protection than that of "ordinary" users, emphasising the special status of media content in the online public discourse. On the one hand, errors in the removal of media content can be corrected more quickly than those affecting "ordinary" users, as media content is considered more relevant to the public interest. On the other hand, representatives of the media's voices and petitions can be included in the evaluation processes of content moderation decisions. Thus, this privilege prioritises "appeals" by traditional media, creating an exception to Article 20 of the DSA, which concerns the internal "appeal" mechanism against content moderation decisions by digital platforms. Compared to the original text in Article 17 of the Proposal for a Regulation, Article 18(5) of the EMFA introduces the possibility of traditional media being represented in the Internal complaint-handling system, creating another exception to Article 20 of the DSA. This addition enhances the privilege by allowing traditional media representatives to participate in content moderation review processes, thereby assisting in the decisions made by the platforms. By prioritising media complaints and allowing for representation in the complaint process, this provision further institutionalises the role of traditional media in the online public sphere.

16. In anyway, the shorter timeframe has to allow «the media service provider sufficient time to reply in a meaningful manner», Art. 18(4)(b).

The third media privilege for media recognised under Article 18(1) relates to the establishment of a direct dialogue channel between platforms and media entities that have obtained recognition under Article 18(1) of the EMFA. Article 18(6) of the EMFA provides that if a media entity believes a VLOP has unjustifiably and repeatedly restricted or suspended its content, it can initiate a «meaningful and effective dialogue with the media service provider, at its request, in good faith with a view to finding an amicable solution, within a reasonable timeframe, for terminating unjustified restrictions or suspensions and avoiding them in the future». This provision diverges from the standard "appeal" mechanism under the DSA, offering a strengthened dialogue mechanism specifically designed to protect media entities. Therefore, Article 18(6) establishes a direct dialogue channel that departs from the appeal mechanism of the DSA, as well as from Article 23 of the DSA (*Measures and protection against misuse*), by creating a strengthened dialogue mechanism specifically designed to protect certain platform users, namely, media subjects. Instead of facing suspensions or sanctions for repeated violations under Article 23 of the DSA, media subjects can initiate a mechanism addressing the "misuse" of terms of service by platforms. In this process, media entities can also involve the Board established by the EMFA (see next Subsection) and the European Commission, further reinforcing the protection afforded to traditional media. Media can communicate the outcome of such a dialogue to the Board and the Commission. Additionally, the Board, at the request of the media involved in the dialogue, can issue an opinion and propose «recommended actions for the provider» (Art. 18(6)). The Board may, in turn, inform the Commission of this opinion. Compared to Article 17 of the previous Proposal for a Regulation, the role of the Board has been strengthened, and the involvement of the Commission has been included, further reinforcing the role of third-party actors as guarantors or advisors in this process for the protection of traditional media subjects. Once again, the purpose of this provision is to ensure the continued presence of traditional media content in the online public discourse. Should the dialogue fail to yield a solution, or if the media entity's declaration under Article 18(1) is rejected, recourse to the mechanisms under Article 12 of Regulation (EU) 2019/1150 and Article 21 of Regulation (EU) 2022/20 is available, with the possibility of notifying the Board of the outcome. In this case, too, the Board can be notified of the result achieved. This additional privilege aligns with the previous ones, empowering traditional media in the platformised public sphere against the censorship powers of digital platforms. It is clear that Article 18 of the EMFA protects a specific function of traditional media – the provision of news to the general public – and thus recognises their essential role in the functioning of democracies and public discourse.

In sum, this array of privileges aims to ensure that traditional media can effectively contribute to online public discourse and maintain their crucial role in informing citizens. These privileges are balanced by "accountability" mechanisms, including transparency requirements and the oversight role of the Board under Article 19 of the EMFA.

2.3. Transparency mechanisms in the application of the media privilege(s) and the Board: section 8 of Article 18 and Article 19 of the EMFA

Transparency mechanisms are regulated primarily by the final Section of Article 18 and by Article 19 of the EMFA. Article 18(8) of the EMFA introduces several transparency requirements concerning the number of removals of media content (18.8.a), the reasons for these removals (18.8.b), the number of "amicable" dialogues initiated (18.8.c), the cases in which Article 18(1) of the EMFA declaration was rejected (18.8.d), and the instances where it was invalidated (18.8.e). This provision expands the disclosure requirements compared to Article 17 of the Proposal for a Regulation, which only mandated reporting the number of restrictions and the reasons for them. All these data have to be made publicly available on an annual basis (Article 18.8). This ensures that civil society, journalists, researchers, and others can evaluate the effectiveness of the media privilege of Article 18 of the EMFA. By increasing transparency on the management of content moderation by digital platforms regarding traditional media products and by clarifying which entities have been granted the media privilege, this provision is crucial for evaluating public policy in this field.

Article 19 of the EMFA, on the other hand, establishes an additional form of scrutiny over VLOPs'

content moderation of media products: the presence of the Board. The Board is tasked with organising structured dialogues between platforms, media, and civil society representatives to develop best practices under Article 18 of the EMFA, to foster online media pluralism, and to monitor the adherence of platforms to initiatives aimed at countering harmful content, such as disinformation[17]. In this regard, the Board is a critical component in the new governance framework for news content in the platformised public sphere. Its role extends beyond mere monitoring, serving as a forum for the "structuring" of online public discourse, including the strengthening of journalism and media pluralism in the online world. The outcomes of these dialogues on best practices and the activities mentioned in Article 19(1) are to be communicated to the Commission and should be made publicly available when possible. The most notable difference between Article 18 of the Proposal for a Regulation and Article 19 of the EMFA is the inclusion of the possibility to publicise the results of these dialogues. This element further enhances transparency by making this information accessible to civil society, journalists, researchers, and others. The practical impact of the Board on the governance of digital content remains to be seen, but Article 19 of the EMFA lays the groundwork for a system that could help reestablish the role of traditional media and journalism in digital public discourse.

3. The innovations of Article 18 of the EMFA against the previous regulatory tools and criticism of the media privilege provision

The EMFA not only regulates the media system in the European Union's offline public sphere but also takes a step further by engaging with the platformised public sphere. It does so by building a mechanism based on a series of safeguards for traditional media in the context of digital governance, as well as by attempting to rebuild – or at least protect – the role of traditional media in the new online context dominated by platforms and private powers. The solution identified by the EMFA, through Articles 18 and 19, is to guarantee a "new" media privilege tailored to the specific characteristics of the platformised public sphere.

This privilege aligns with certain previous provisions of the Code of Practice on Disinformation, which, in both its 2018 and "strengthened" 2022 versions, provided for the prioritisation of content from reliable sources and transparency mechanisms designed to increase the impact of traditional media in online public discourse. The 2018 version of the Code of Practice on Disinformation[18] prescribed, in particular, that platforms should «consistently with Article 10 of the European Convention on Human Rights and the principle of freedom of opinion, invest in technological means to prioritize relevant, authentic, accurate, and authoritative information where appropriate in search, feeds, or other automatically ranked distribution channels»[19]. Additionally, the Code included a commitment to develop transparency mechanisms that should facilitate «the assessment of content through indicators of the trustworthiness of content sources, media ownership, and verified identity. These indicators should be based on objective criteria and endorsed by news media associations, in line with journalistic principles and processes»[20].

These two measures were reinforced by the 2022 version of the Code[21], which, concerning the prominence of authoritative sources, recom-

17. Recital 56 of the EMFA is very clear in pointing out that, «Building on the useful role played by ERGA in monitoring compliance by the signatories of the EU Code of Practice on Disinformation, the Board should, at least on a yearly basis, organise a structured dialogue between providers of very large online platforms, representatives of media service providers and representatives of civil society to foster access to diverse offerings of independent media on very large online platforms, discuss experience and best practices related to the application of the relevant provisions of this Regulation, including as regards the moderation processes by very large online platforms, and to monitor adherence to self-regulatory initiatives aimed at protecting users from harmful content, including those which aim to counter disinformation».
18. European Commission 2018.
19. *Ivi*, p. 3.
20. *Ivi*, p. 7.
21. European Commission 2022.

mended implementing «recommender systems designed to improve the prominence of authoritative information and reduce the prominence of disinformation based on clear and transparent methods and approaches for defining the criteria for authoritative information»[22]. Regarding transparency mechanisms, it stipulated that «Relevant Signatories will make it possible for users of their services to access indicators of trustworthiness – such as trust marks focused on the integrity of the source and the methodology behind such indicators – developed by independent third parties, in collaboration with the news media, including associations of journalists and media freedom organizations, as well as fact-checkers and other relevant entities, that can support users in making informed choices»[23].

Many authors pointed out that the Code of Practice on Disinformation did not contemplate a role for traditional media in the fight against online disinformation. Nevertheless, the two versions of the Code did, to some extent, focus on traditional media, by contemplating trustworthy flagging systems for media actors on digital platforms and by recommending algorithmic systems prioritising authoritative sources. By creating algorithmic or recognition privileges for traditional media, these mechanisms follow the same logic of the EMFA in providing a space in the online public discourse for journalism. While the discipline of the Code of Practice on Disinformation is not as explicit as that of the EMFA in establishing this privilege mechanism, it follows the same underlying rationale: to guarantee an online space for the main "watchdog of democracy"[24], i.e. the media. This approach also echoed the Steering Committee for Media and Information Society of the Council of Europe's recommendation to States to «make public interest content more prominent, including by introducing new obligations for platforms and intermediaries, and also impose minimum standards such as transparency»[25], and the Organization for Security and Co-operation in Europe's recommendation to «privilege independent quality media and public interest content on their services in order to facilitate democratic discourse»[26].

Article 45 of the DSA could incorporate the Code of Practice on Disinformation within the digital governance framework designed by the Regulation, along with the aforementioned mechanisms of algorithmic favour and flagging for media actors. Otherwise, the DSA pays little attention to the issue of media in the new platformised public sphere. Apart from a few references to media freedom and pluralism[27], the DSA does not provide any specific discipline for media in the communication ecosystem of digital platforms. The only references to traditional media in the DSA can be found in Recital 47, concerning the terms of service of digital platforms and the need to respect media pluralism[28], and Recital 81, concerning the systemic risks that large platforms including media freedom

22. *Ivi*, p. 20.

23. *Ivi*, p. 23.

24. The "vital public-watchdog role of the press" (*Goodwin v. the United Kingdom* judgment of 27 March 1996, Application no. 17488/90) is recognised by a lot of different judgements of the European Court of Human rights (ECtHR). See also: ECtHR, *Bladet Tromsø and Stensaas v. Norway*, judgment of 20 May 1999, Application no. 21980/93.

25. Council of Europe 2021, p. 2.

26. OSCE 2023, p. 8.

27. Media pluralism which, according to some authors, is linked to Article 18 of the EMFA because «The goal is to ensure "unimpeded" dissemination of media service providers' content that links Art. 18 to the concept of media pluralism», Klafkowska-Waśniowska 2024. Besides, Recital 50 of the EMFA states that «Therefore, also in view of users' right to receive and impart information, where a provider of a very large online platform considers that content provided by such media service providers is incompatible with its terms and conditions, it should duly consider media freedom and media pluralism, in accordance with Regulation (EU) 2022/2065».

28. «When designing, applying and enforcing those restrictions, providers of intermediary services should act in a non-arbitrary and non-discriminatory manner and take into account the rights and legitimate interests of the recipients of the service, including fundamental rights as enshrined in the Charter. For example, providers of very large online platforms should in particular pay due regard to freedom of expression and of information, including media freedom and pluralism». Recital 47, DSA.

and pluralism have to consider[29]. These recitals could be important elements when interpreting the Regulation, but they do not outline any protection or guarantee system for traditional media on VLOPs.

In the discussion over the DSA proposal, there was much debate over what was called the "non-interference principle" or "media privilege" for traditional media on digital platforms[30]. Eventually, Amendment 511 to the DSA sought to introduce a media privilege in the regulation of online content: «Intermediary service providers should pay utmost regard to relevant rules applicable to the media and put in place specific procedures, ensuring that the media are promptly informed and have the possibility to challenge any content moderation measure before its implementation»[31]. The amendment partly echoed the content of the current Article 18 of the EMFA but was not adopted. Alongside Amendment 511, Amendment 513 proposed that «In their terms and conditions, providers of intermediary services shall respect the freedom of expression, freedom and pluralism of the media, and other fundamental rights and freedoms, as enshrined in the Charter, as well as the rules applicable to the media in the Union»[32]. This amendment also aimed to make media content more accessible and visible to the public on digital platforms, boosting media pluralism. It was evident that this amendment tried to create a kind of exception for the media in the content moderation systems on VLOPs[33], but also this amendment was not adopted. These two amendments were rejected and were strongly criticised by the academic and journalistic communities involved in fact-checking and countering disinformation[34]. Critics argued that the amendments would have protected disinformation actors falsely claiming to be media, thereby undermining platforms' efforts to combat disinformation. This type of media privilege on VLOPs was eventually taken up by the EMFA, and the criticisms that had been made of this privilege in the debate over the proposal of the DSA were reproduced with respect to the EMFA: «All these arguments have been put forward again in the context of the debate around the media privilege»[35]. In particular, the drafting of the media privilege in the Proposal for a Regulation, Article 17 of the Proposal, has been criticised in several

29. «A second category concerns the actual or foreseeable impact of the service on the exercise of fundamental rights, as protected by the Charter, including but not limited to human dignity, freedom of expression and of information, including media freedom and pluralism, the right to private life, data protection, the right to non-discrimination, the rights of the child and consumer protection. Such risks may arise, for example, in relation to the design of the algorithmic systems used by the very large online platform or by the very large online search engine or the misuse of their service through the submission of abusive notices or other methods for silencing speech or hampering competition». Recital 81, DSA.

30. For a detailed analysis see: Papaevangelou 2023, p. 466. Several publishers' associations were in favour of this exception/privilege: the European News Publishers Association (ENPA), the European Magazine Publishers Association (EMMA), the Association of European Radios (AER), the European Publishers Council (EPC), the European Broadcasting Union (EBU), News Media Europe (NME), and the Association of television and radio sales houses (EGTA). As reported by Cesarini–De Gregorio–Pollicino 2023, p. 7.

31. A9-0356/511.

32. A9-0356/513.

33. «Article 12 should explicitly recognize that the restrictions provided in terms and conditions are drawn up, applied and enforced in compliance with rules applicable to the media, including content standards that serve to protect, for example, minors as well as, more broadly, the freedom of expression and information and the freedom of the media (Article 11 of the Charter). The impact of intermediaries' T&Cs and decisions taken in relation to lawful media content (e.g. content removal/suspension, suspension of business accounts, re-labelling content suitable for certain age groups, shadow banning, etc) is a very concrete issue, experienced by a variety of media on a variety of platform services regardless of size. The unilateral and unpredictable nature of such decisions represents a hurdle on citizens' access to information and on media freedom». A9-0356/513.

34. Bertuzzi 2021. These amendments were also described as "good intentions leading to hell" by Věra Jourová (*ibidem*). See also: EU DisinfoLab 2022; Pailleux 2021.

35. Cesarini–De Gregorio–Pollicino 2023, p. 10. For an overview of the debate and some critical remarks: Gosztonyi–Lendvai 2024, p. 72.

ways, which can be grouped into two main strands: the problem of who should be granted the media privilege and the legitimacy of granting a media privilege in the public discourse.

The first strand of criticism focused on the "declaration" required for media entities to obtain the media privilege outlined in Article 17 of the Proposal for a Regulation. According to some authors, that article lacked strict criteria and could result in the acquisition of media privileges by entities involved in disinformation or controlled by authoritarian governments. These criticisms had already been raised during the attempts mentioned above to amend the DSA[36]. The risks of granting media privileges to entities engaged in disinformation campaigns are addressed in the modified version of Article 18 of the EMFA, which introduces additional requirements for obtaining the media privilege compared to Article 17 of the Proposal for a Regulation. Specifically, independence from entities related to third states and political parties was added to the list of independence requirements. In line with the exclusion from the EU news market of media entities associated with Russia during the Russian-Ukrainian conflict as provided by Regulation (EU) 2022/350 and the fight against disinformation as provided by the Code of Practice on Disinformation, Article 18 of the EMFA seeks to grant media privileges only to those entities that comply with the standards of professional journalism and engage in journalistic practices consistent with the right of EU citizens to be correctly informed. The requirement for media entities seeking this privilege to be subject to regulatory or co-regulatory authorities or bodies, along with the possibility for VLOPs to contact these authorities, adds another layer to the "brake system" in the attribution of the media privilege. As a consequence, the tools to assess a self-declared media's adherence to the standards of journalism seem present. Confining the media privilege to actors subject to regulatory or co-regulatory mechanisms should further limit the risk of attributing this privilege to actors engaged in disinformation campaigns. Of course, relying on the monitoring activities of national authorities in the EU Member States does not preclude the attribution of the privilege to media actors that no longer adhere to the parameters of journalism, given the democratic backsliding and rule-of-law crises witnessed in some EU Member States. It is not impossible that some media actors turn into propaganda megaphones for governments with the complicity of a Member State's regulatory authorities. However, this is a problem that other EMFA provisions seek to address[37]. Indeed, it would have been excessive to require Article 18 of the EMFA to address this issue as well. From the perspective of attributing media privileges, Article 18 of the EMFA will need to be evaluated in its practical application[38]. However, the tools to ensure the proper attribution of media "status" appear to be in place.

In this sense, the "content-based" requirements for media entities of Article 18(1) align with Recommendation CM/Rec(2011)7 "on a New Notion of Media", which is based on parameters such as the intent to act as a media outlet, journalism best practises, editorial control, and professional standards. However, Article 18 of the EMFA fails to address the transformations journalism has undergone in the digital age and to expand the range of media subjects beyond classical publishers, as was attempted by Recommendation CM/Rec(2011)7[39]. The approach in Article 18 of the EMFA appears to guarantee this privilege only to media entities subject to regulatory or co-regulatory regimes, i.e., traditional media companies.

Regarding the risk of favouring disinformation actors, it should also be noted that Article 18 of the EMFA does not apply to systemic risk, including disinformation. Media privilege does not apply to content moderation conducted by VLOPs in compliance with «obligations pursuant to Articles 28, 34, and 35 of Regulation (EU) 2022/2065 and Article 28b of Directive 2010/13/EU or their obligations relating to illegal content under Union law»

36. EU DisinfoLab 2021.

37. The enforcement of EMFA is something that many authors have discussed: Bayer–Cseres 2023.

38. A series of interesting considerations can be read in relation to Article 17 of the Proposal for a Regulation in Barata 2022.

39. Council of Europe, Recommendation CM/Rec(2011)7 of the Committee of Ministers to Member States on a New Notion of Media, 21 September 2011.

(Art. 18(4) of the EMFA). Recital 51 of the EMFA makes this point explicit, stating: «This Regulation should not affect the obligations of providers of very large online platforms to take measures against illegal content disseminated through their services, to take measures in order to assess and mitigate systemic risks posed by their services, for example through disinformation». After mitigating the risks of granting privilege to actors involved in disinformation campaigns, a reasonable balance appears to have been achieved between the need to counter disinformation and the need to protect traditional media from potential unfair censorship by platforms[40]. In this perspective, Article 18 of the EMFA seems well-equipped to avoid becoming a vehicle for disinformation.

The second strand of criticism pertains to a deeper constitutional issue regarding the very legitimacy of a media privilege, questioning why such a privilege should be guaranteed to media in the online public sphere[41]. This criticism reflects a more profound set of constitutional concerns, often influenced by the US approach to freedom of expression[42]. In the US legal system, the dominant interpretation of the First Amendment does not recognise any autonomy for the Press Clause separate from the Speech Clause[43], encompassing all expressions under the umbrella of political free speech. As a result, no special protections exist for the press at the federal level, and no discrimination can be made between different speakers[44]. This constitutional approach precludes recognising a special role for the press in the public discourse, although, in practice, this primacy has been constructed in alignment with the media system. On the contrary, in the European Union system and in many of its Member States the exact opposite can be affirmed[45]: «The US Supreme Court has tended to resist special institutional protection for journalism or the media, but in Europe, the role of the press in a democracy justifies such support, including through positive interventions by the state»[46]. This was also one of the foundational assumptions of the Committee of Ministers of the Council of Europe recommendation on new forms of media: «Since their emergence as a means of mass communication, media have been the most important tool for freedom of expression in the public sphere, enabling people to exercise their right to seek and receive information. Media animate and provide a space for public debate. Media offer comment and opinion as part of political dialogue, contribute to setting the political agenda and the shaping of public opinion, and they often seek to promote certain values. Media facilitate the scrutiny of public and political affairs and private or business-related matters, thereby increasing transparency and accountability»[47]. Consequently, «Historically, media regulation has been justified by and graduated having regard to its potential high impact on society and on individual rights; regulation has also been a means of managing scarce resources in the public interest. Given their importance for democracy, media have been the subject of extensive Council of Europe standard-setting activity. The purpose has been to ensure *the highest protection of*

40. «[T]he fight against disinformation should not completely overshadow the fact that the media found themselves in a worryingly subordinate position in relation to VLOPs and that Article 17 of the EMFA is the only mechanism that seeks to promote the principle that technology companies with little or no editorial responsibility should not censor journalism». Nenadić–Brogi 2023.

41. As well summarised by the question «Above all, how will the new legislation be applied in practice and how will it work to ensure that it neither undermines the equality of speech and democratic debate nor endangers vulnerable groups?». Allioui 2024.

42. It is no coincidence that references to the risk of "undermining the equality of free speech" originate from US NGOs: Collings–Schmon 2023.

43. West 2014.

44. Outside the commercial speech category, an "unrestrained epistemic egalitarianism" (Post 2013, p. 32) is in fact established under the First Amendment. Horwitz 2012, p. 471.

45. For a recognition with also references to various national legal systems: Cappello 2017.

46. Tambini 2021, p. 523.

47. Council of Europe, Recommendation CM/Rec(2011)7 of the Committee of Ministers to Member States on a New Notion of Media, 21 September 2011, p. 5.

media freedom and to provide guidance on duties and responsibilities»[48] (emphasis added).

Employing the European Convention on Human Rights (ECHR) system as a reference, which, according to Article 52(3) of the European Union Charter of Fundamental Rights (EU CFR), serves as a parameter for interpreting fundamental rights within the European Union, including Article 11 of the EU CFR, we can detect a different European constitutional approach compared to the US. In Europe, traditional media have been recognised as "watchdogs of democracy"[49], meaning their activities contribute to holding political power accountable and to accurately transmitting news to citizens[50]. As such, they are considered deserving of special protection in the regulation of public discourse. Even within the European Union, beyond the EMFA, the role of the press and journalism has been recognised as deserving of special protection, as evidenced by various exceptions provided in many regulations for the journalistic media, such as Article 85 of the GDPR[51].

The advent of the digital world has, of course, disrupted the communicative paradigm on which news transmission in the public sphere was based, leading to an epochal change in the production of culture with the «transformation of audiences (...) into practitioners»[52]. In other words, the new tools of the digital world «radically alter the previously predominant pattern of communication in the public sphere by empowering all potential users in principle to become independent and equally entitled authors»[53]. This structural change in the production of culture has also impacted news production, leading to a crisis of journalism in the United States, where no regulatory instruments exist to legislatively or judicially guarantee a presence for traditional media online[54]. Nevertheless, private actors, such as platforms, have attempted to ensure this space for traditional media since

48. *Ivi*.

49. This role is also carried out through media privileges such as journalists' sources protection: «The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and that the safeguards to be afforded to the press are of particular importance. The protection of journalistic sources is one of the cornerstones of freedom of the press. Without such protection, sources may be deterred from assisting the press in informing the public about matters of public interest. As a result, the vital public-watchdog role of the press may be undermined, and the ability of the press to provide accurate and reliable information may be adversely affected». ECtHR, *Weber and Saravia v. Germany*, Application no. 54934/00.

50. For example: ECtHR, *Pedersen and Baadsgaard v. Denmark* (Application no. 49017/99), 2004; protection is to be extended to non-professional journalists, such as regular opinion writers: ECtHR, *Falzon v. Malta*, 2018, (Application no. 45791/13).

51. Art. 85 of the GDPR (EU Regulation 2016/679): «Member States shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression». Already the pre-GDPR Directive 95/46/EC provided in Article 9: «Member States shall provide for exemptions or derogations from the provisions of this Chapter, Chapter IV and Chapter VI for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression only if they are necessary to reconcile the right to privacy with the rules governing freedom of expression». In addition, media privileges were also evident in relation to Article 15 of the Copyright Directive (Directive (EU) 2019/790) or the special focus on the protection of journalistic material in Recital 12 of Regulation (EU) 2021/784 on online terrorist content.

52. Sacco 2011, p. 7.

53. Habermas 2022, p. 159.

54. «The media exemption discloses further difficulties with the law now under consideration. There is no precedent supporting laws that attempt to distinguish between corporations which are deemed to be exempt as media corporations and those which are not. "We have consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers." (…) With the advent of the Internet and the decline of print and broadcast media, moreover, the line between the media and others who wish to comment on political and social issues becomes far more blurred». *Citizens United v. FEC*, 558 U.S. 130 S. Ct. 876 (2010).

they are not "state actors" or "common carriers"[55] bound by First Amendment rules and can therefore "discriminate" between different speakers in their private spaces[56]. In the European Union, this structural change in news content production has led to various queries about the magnitude of this transformation. Eventually, it has led, as mentioned above, to the enactment of soft- and hard-law instruments attempting to guarantee the presence of media and journalism in the online public discourse. After all, if the European Court of Human Rights (ECtHR) has recently acknowledged the extension of the watchdog of democracy role to so-called "citizen journalism"[57], the Council of Europe institutions have similarly emphasised the need to strengthen the role of traditional journalistic media in the platformised public sphere[58]. In a 2022 recommendation, the Committee of Ministers pointed out the need to ensure both the availability of journalism products[59] and their prioritisation in the digital world[60]. The media privilege in Article 18 of the EMFA responds to this constitutional logic and aligns with the provisions of the Code of Practice on Disinformation on granting a special space to media in the online public discourse. Thus, Article 18 of the EMFA reproduces and reflects a European constitutional approach towards media that has consistently "guaranteed" a special role for media entities in the public sphere. The EMFA simply attempts to replicate part of this approach in the digital public sphere: «Media service providers that exercise editorial responsibility over their content play a key role in the distribution of information and in the exercise of the right to receive and impart information online. When exercising such editorial responsibility, media service providers are expected to act diligently and provide information that is trustworthy and respectful of fundamental rights, in line with the regulatory requirements or co-regulatory or self-regulatory mechanisms to which they are subject in the Member States» (Recital 50 of the EMFA). Attributing media privilege to traditional media thus seems in line with the European constitutional paradigm of freedom of expression[61].

Regarding the media privilege of the EMFA, however, there may be issues about the restricted

55. Even in its recent ruling on the Florida and Texas laws, the Supreme Court did not frame digital platforms as common carriers: *Moody v. NetChoice, LLC and NetChoice, LLC v. Paxton*, 603 U.S. ___ (2024).

56. Think of the fact-checking done with traditional media on Donald Trump's Twitter statements; or the emergency communication implemented during the pandemic period relying heavily on the products of traditional media and journalism.

57. ECtHR, *Cengiz and Others v. Turkey*, Applications nos. 48226/10 and 14027/11, 2016.

58. «All types of media, in their increasing variety, have an important role to play in fulfilling the promise of journalism at a time when the ever-growing amount of information accessible to large audiences, coupled with the difficulty of determining the sources of all this information, stretches the ability of societies to assess its accuracy and reliability. Journalistic practices that uphold this role, and the values and principles set forth above, should be acknowledged as a public good», Recommendation CM/Rec(2022)4 of the Committee of Ministers to Member States on promoting a favourable environment for quality journalism in the digital age.

59. «Digital media distribution channels and gateways with curated or sponsored content now influence the access to and the findability of quality content, including from public service media, through their personalised selection and recommendations based on users' expressed or inferred preferences. States, in collaboration with online platforms and other relevant internet intermediaries, media organisations and other key stakeholders that represent the whole diversity of society, should address the challenges related to the online distribution of public interest media content and develop appropriate regulatory responses to ensure that such content is universally available, easy to find and recognised as a source of trusted information by the public», *ivi*.

60. «Prioritisation of public interest journalism: effective access to quality journalism should be supported by independent and transparent self-regulatory media initiatives, open to multi-stakeholder participation, that develop criteria for identifying reliable content», *ivi*.

61. In its "media freedom" sub-category: «media freedom is partly a derivative right from freedom of expression, and partly a self-standing right. For adhering to its duties and responsibilities, media freedom affords particular privileges to the media, which do not apply to freedom of expression in general: the media speech privilege and the protection of the media as an institution», Oster 2015.

attribution of this privilege, especially given the attempts to broaden the recognition of journalistic actors and watchdogs of democracy in Europe. The aforementioned Recommendation CM/Rec(2011) of the Committee of Ministers of the Council of Europe acknowledged the importance of "journalistic" actors not traditionally categorised as media, which seems to be a challenge that Article 18 of the EMFA has not addressed. This is despite the fact that within the European Union, case law has increasingly begun to consider the role of journalists more broadly[62]. However, Article 18 of the EMFA does not extend the recognition of the media privilege to "citizen journalism" (or NGOs[63]) or the other new forms of internet journalism[64] protected under ECtHR jurisprudence. Thus, the media privilege under Article 18 of the EMFA may be more questionable due to its limited attribution to "traditional" media[65] alone, rather than from the perspective of the legitimacy of a media privilege itself. However, extending this privilege to entities not "formally" categorised as traditional media, and thus not regulated by national authorities or bodies etc., would undoubtedly have made the attribution of this privilege more problematic. It would have increased the risks of granting it to disinformation agents, aggravated the controls imposed on VLOPs, and complicated the mechanisms of representation in the Board and the structured dialogues. Although part of the literature has raised concerns about the exclusion of new media actors and the potential discrimination against them compared to traditional media, extending the privilege to these new actors would have been challenging on a practical level[66]. However, in this context, as mentioned earlier, even the mere extension of the privilege to traditional media may be problematic in the context of democratic regression and rule of law crisis in some EU Member States[67]. Such a provision could theoretically protect media entities that have abandoned journalism standards, such as Fox News or FranceSoir, which have turned into agents of populist disinformation/conspiracy theories[68]. Monitoring media adherence to journalism and professional standards is left to national authorities by Article 18 of the EMFA. In contexts of democratic backsliding, this provision could therefore be problematic, but it cannot be a responsibility of Article 18 of the EMFA to address this issue. Instead, it has to be dealt with within the broader framework of the EMFA.

4. Final Remarks

The review of Articles 18 and 19 of the EMFA demonstrates that the adjustments made to the media privilege mechanism, particularly in response to criticisms of Article 17 of the previous Proposal for a Regulation, should alleviate many of the concerns previously raised. The media privilege established by the EMFA is clearly designed to protect spaces for journalism within the online public sphere, particularly on VLOPs. The attribution of media privilege depends heavily on the recognition of media entities by the national regu-

62. See the extension of exemptions for the processing of personal data (Art. 9 Directive 95/46/EC) to anyone engaged in "journalistic activities": CJEU, *Sergejs Buivids v. Datu valsts inspekcija*, Case C-345/17; CJEU, *Satakunnan Markkinapörssi and Satamedia*, C-73/07.

63. ECtHR, *Animal Defenders v. the United Kingdom*, Application no. 48876/08.

64. See: ECtHR, *Delfi v. Estonia*, App. 64669/09; ECtHR, *Magyar Helsinki Bizottság v. Hungary*, Application no. 18030/11.

65. Cf. Seipp–Fathaigh–van Drunen 2023, p. 39. Part of the criticism regarding transparency in the attribution of the privilege has been addressed in the new version of Article 18 of the EMFA, which, as discussed above, introduces enhanced transparency mechanisms.

66. Cesarini–De Gregorio–Pollicino 2023, p. 16, which stress how «in principle, in order to avoid legal challenges, the media privilege should adopt a functional and broader MSP definition. However, such an adjustment would substantially expand the range of potential beneficiaries, thereby increasing the risks of circumventions by malicious actors. Moreover, the process of verification by VLOPs of the self-declarations submitted by potential beneficiaries would become extremely cumbersome if not impossible to implement, taking into account the fluid and fast-changing landscape of media actors in the digital space».

67. See the sections on *Media pluralism and media freedom* of European Commission 2024.

68. Cesarini–De Gregorio–Pollicino 2023, p. 9.

latory authorities in the EU Member States. In this sense, the provision also assigns responsibilities to VLOPs, allowing them to contact the relevant national regulatory authorities if they have doubts about the accuracy of the self-declaration.

However, Article 18 of the EMFA limits the attribution of media privilege to traditional media, excluding those new forms of journalism that have been recognised by the ECtHR caselaw. Despite the criticism of the provision, «proposals like the non-interference principle are far from perfect but they are erring towards the right direction»; indeed addressing «how platforms moderate content, especially the kind that is vital for democratic deliberation like news, is timely considering the ongoing structural transformation of the public sphere. Who gets to partake in its governance is crucial to the public interest»[69]. Given the practical difficulties in extending media privilege to other forms of journalism and other democratic watchdogs, granting this privilege to traditional media can be justified by the fact that «the media organisations still provide the key infrastructure for journalism to operate in a professional way»[70]. Since it is crucial to grant this privilege to actors who operate under specific professional standards and adhere to the practices of ethical and responsible journalism, the solution provided by Article 18 of the EMFA appears to be the only viable option. Nonetheless, there could be issues with granting the privilege to media subjects that meet formal requirements but fail in substance, such as those that do not adhere to the practices of journalism or are not independent from governments. For example, media entities subject to regulatory authorities in Member States experiencing democratic backsliding and rule-of-law issues might, in practice, act as propaganda tools for governments. However, it seems unreasonable to expect a provision designed to protect media in the online environment to also address such broad issues. These concerns are better addressed by other articles within the EMFA. The strengthening of media protections under the general provisions of the EMFA will likely have a positive impact on the online realm as well.

Ultimately, the enactment of Article 18 of the EMFA strengthens the EU's paradigm of freedom of expression with respect to the media's special role in constitutional democracies. It also represents the missing piece in the digital governance framework envisioned by the DSA, ensuring a stronger media presence in the digital public sphere. Of course, these theoretical considerations have to be tested in the actual implementation of Article 18 of the EMFA. The transparency requirements embedded in this provision and in Article 19 of the EMFA will enable researchers and policymakers to evaluate the effectiveness of this public policy and contribute to its potential reformulation or improvement. In the meantime, the media privilege outlined in Articles 18 and 19 of the EMFA aims to restore the role of journalism in the platformised public sphere and ensure its continued contribution to public discourse.

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