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**EMFA under the spotlight: towards a common regulatory
framework to foster media pluralism?**

Introduction

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This paper is part of the monographic section *EMFA under the spotlight: towards a common regulatory framework to foster media pluralism?* edited by Elda Brogi

In 2024, the European Union adopted the European Media Freedom Act (Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024). This regulation establishes a unified framework for media services within the internal market and revises Directive 2010/13/EU, the Audio-visual Media Services Directive. The act's adoption represents a notable achievement of the EU, following years of debate concerning the EU's authority to legislate over media freedom and pluralism. Although the European Union (and previously the European Community) has always acknowledged the importance of media pluralism in safeguarding democratic values and ensuring the free flow of information – as shown, for instance, by Article 11 of the European Charter of Fundamental Rights and its reference to the European Convention on Human Rights – the political and legal debate on the attribution of competences between the EU and its Member States on this matter has hindered the progress towards harmonised rules to support media freedom and media pluralism on a wider European level.

The adoption of the EMFA is justified under article 114 TFEU, commonly used as a legal basis for harmonizing laws across the EU to improve the functioning of the internal market. In the case of the EMFA, Article 114 addresses the fragmentation of media regulation across Member States that could impede the free flow of media services and the undermine of media pluralism within the EU. This choice is currently being challenged before the Court of Justice of the European Union by a member state, Hungary, which argues that divergences between national rules do not, in themselves, justify recourse to Article 114 TFEU, alongside the use of a regulation instead of a directive¹.

Historically, political discussions around EU-level legislation on media pluralism have been driven by the aim of preventing the capture and concentration of media ownership, particularly in certain countries. However, it must be acknowledged that the scope of the European Media Freedom Act extends beyond this objective. It represents a first step in reaffirming the role of media in the internal market and the centrality of media as essential elements of a democratic society, especially within the context of an evolving media market affected by the rise of online platforms. The EMFA makes a first attempt to, at least partially, tackle the increasing imbalance in market and opinion power between media and very large online platforms.

Several policies affecting media pluralism have already been introduced to indirectly address this imbalance. Examples include various global initiatives aimed at safeguarding news content through copyright protections in the digital age, such as in Australia and in the EU itself, policies that prioritize public-interest content, and specific taxation measures for digital services. On top of these measures, the rapid rise of very large online platforms, the cross-border nature of online media, and the threats posed by disinformation have already forced the EU to enact several legislative and policy measures that affect media and media pluralism through horizontal regulatory approaches. These include regulations on digital platforms, digital markets, the use of AI. While these measures indirectly touch upon media pluralism, they do not provide a comprehensive, specific approach to addressing the core challenges to plurality and independence faced by the media in a democratic society. Challenges that the EMFA, in turn, strives to achieve.

1. Case C-486/24: Action brought on 10 July 2024 – *Hungary v European Parliament and Council of the European Union*, OJ C, C/2024/5088, 26 August 2024.

For example, the adoption of the Digital Services Act² demonstrates the EU's willingness to concretely tackle aspects related to media freedom and media pluralism insofar as VLOPs and VLOSEs are concerned, but it does so in a way that does not directly protect them. Articles 34 and 35 of the DSA state that risks to "freedom and pluralism of the media, enshrined in Article 11 of the Charter" should be regularly assessed by VLOPs and VLOSEs, and that measures should be deployed to mitigate such risks. How platforms will interpret these norms remains to be seen, and in the end, these measures will work to mitigate risks rather than to safeguard rights. Some concerns, therefore, arise from the fact that VLOPs (usually large technology companies from outside the EU) are tasked, under a duty of care, (or their compliance auditors in an *ex post* assessment) with defining, interpreting and implementing measures to mitigate risks to media pluralism. This effectively grants them the authority to potentially shape the scope and quality of online public discourse.

If freedom and pluralism in the media are still essential to democratic societies, providing a platform for the exchange of diverse ideas, facilitating public discussions, and enabling citizens to make informed decisions, it is therefore welcome that an ad hoc "media freedom act" exists, as it attempts to define some correctives to the "platformisation" of fundamental rights.

The European Media Freedom Act touches upon various components of a media policy, in line with a comprehensive perspective that goes beyond assessing market concentration as the main proxy for the level of plurality in a given media market. This monographic section aims to contribute to the discussion on the interpretation of several EMFA provisions and themes, and to explore how this legislation connects and interacts with other European legislation in the digital sector.

Regarding the specific contributions, the monographic section opens with *Quale nozione di pluralismo nell'EMFA?* an article by Ottavio Grandinetti, who analyses the definition of media pluralism provided by the EMFA. He finds that it entails elements of both "external pluralism" and "internal pluralism", with the caveat that «obligations to provide "impartial, objective, balanced" information, if placed in the wrong hands, can lead to outcomes contrary to the intended goals of regulations aimed at protecting pluralism». As for new challenges to media pluralism, such as disinformation and content prioritization, the EMFA's responses lie in guaranteeing the editorial independence and integrity of media service providers, introducing rules for the personalization of content offerings, and reaffirming the prominence of media services of general interest.

Alongside this analysis of the notion of media pluralism in the EMFA, the contribution of Antonio Manganelli and Maria Luce Mariniello (*La valutazione delle concentrazioni per la tutela del pluralismo informativo*) explores the EMFA measures that tackle market concentrations with a significant impact on media pluralism and editorial independence. The EMFA foresees each member state will enact harmonised disciplines for the control of concentrations in the media markets – the so-called Media Plurality Test. This discipline entails both substantive and procedural elements. The authors suggest that the Italian experience, stemming from the implementation of Article 51 TUSMA and the AGCOM guidelines aimed at assessing the existence of significant market power positions that may harm media pluralism, could serve as a reference model for the European Commission's future guidelines on the market plurality test required by the EMFA. The authors argue that the Italian TUSMA appears substantially aligned with the EMFA's provisions.

In her article, *From Rhetoric to Regulation: EMFA and Media Concentration in the Digital Age*, Tanja Kersevan, explores how media concentration is addressed across EU member states, with a particular focus on two small EU countries, Croatia and Slovenia, where outdated laws and insufficient data for assessing media pluralism pose significant challenges for effective and harmonized implementation of EMFA provisions. In the absence of and comprehensive guidelines and coordinated efforts to achieve

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), OJ L 277, 27 October 2022, pp. 1-102.

consistent enforcement across Member States, the regulation may fall short in addressing risks to media pluralism, especially within the fast-changing digital landscape.

As mentioned above, public service media is included in the EMFA. In *Safeguards for the independent functioning of public service media providers. The legal position of domestic legislation that is not in compliance with Article 5 EMFA*, Enrico Albanesi examines Article 5 of the EMFA on guarantees for the independent functioning of public service media providers and the legal status of domestic legislation that is not in compliance with Article 5. The analysis focuses on the legal situation of national legislation within Member States that, by the date of the article's application (August 8, 2025), does not comply with the provisions of Article 5.

In his contribution, *The missing piece in the DSA puzzle? Article 18 of the EMFA and the media privilege* Matteo Monti delves into the heated debate on Articles 18 of EMFA, which introduces the concept of “media privilege” within the content moderation framework established by the Digital Services Act. Monti's discussion highlights several key aspects. The media privilege mechanisms grant eligible media entities specific rights on digital platforms, such as advance notice of content removal and priority review in complaint processes. The article explores the operativity of the privilege and its interface with the DSA provisions; and the transparency of its application, including the role of the Board under Article 19 of the EMFA. Challenges in the implementation and criticisms, particularly concern that disinformation agents might misuse these privileges. Monti concludes by underscoring that the media privilege provisions are designed to reaffirm the importance of professional journalism in the digital era, while also stressing the need for robust safeguards to prevent potential abuse.

Building on similar reflections, Liliana Ciliberti in *DSA e EMFA: speciale responsabilità delle piattaforme online e tutela della libertà dei media*, argues that the margin of discretion under DSA granted to very large online platforms in handling media services is excessively broad. This broad discretion raises concerns not alleviated by the so-called media privilege in the EMFA, which obliges platforms to engage in prior dialogue with media service publishers before applying any restrictions, a privilege subject to significant exceptions. Ciliberti contends that strict interpretation of these exceptions is necessary. Moreover, she calls for swift intervention by national and European institutions to clarify the limits of platform actions toward media service publishers, to prevent the delegation of public powers to platforms that the new regulatory framework appears to endorse.

One of the standout provisions of the EMFA is its focus on ownership transparency (Article 6). Media providers are required to disclose their ownership structures, increasing accountability. This measure aims to build trust with audiences while addressing concerns over media concentration. However, implementing these measures may pose challenges to governments and society at large, as analysed by Danielle Borges in *Media ownership transparency and the European Media Freedom Act: how did the EU get there?*

In the next issue of RIID, the first of 2025, another monographic section will be dedicated to further examining additional themes related to the EMFA, ensuring a comprehensive analysis of this pivotal regulation and its impact on the media landscape.

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