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## What is journalism in the digital age? Key definitions in the European Media Freedom Act

The European Media Freedom Act (Regulation EU 2024/1083) amends the Audiovisual Media Services Directive, updating the list of subjects that can enjoy the safeguards provided in this EU Regulation. For example, it includes press publications in addition to audiovisual broadcasters and – defining who is a Media Service Provider (MSP) – it includes individual journalists and freelancers. The definition of what media are and who is a journalist remains contested though. It seems that EMFA's definition of MSP includes non-profit media and influencers, but excludes other watchdogs (e.g., human rights defenders and civil society organisations), as well as online platforms – thus not granting to these subjects the related rights and duties provided in this Regulation. Among them, the right to protect their sources and not to be subject to intrusive surveillance; and the duty to be independent, and to convey information of public interest following ethical and professional standards. This article will unfold a series of questions related to the nature of the subjects recognized under EMFA, as well as analyse the Act's intertwining with two other key pieces of the European legislative framework that deals with the free flow of plural and independent information: the Digital Services Act (DSA) and the Directive on Strategic Lawsuits Against Public Participation (SLAPPs).

*Journalism – Media service provider – Online platforms – Editorial responsibility – EMFA*

### Cos'è il giornalismo nell'era digitale? Definizioni chiave nello European Media Freedom Act

Lo “European Media Freedom Act” (Regolamento UE 2024/1083) modifica la Direttiva europea sui Servizi di Media Audiovisivi, aggiornando l'elenco dei soggetti che possono godere delle tutele previste da questo Regolamento. Ad esempio, include le testate giornalistiche cartacee e online, oltre alle emittenti radio e TV che erano coperte dalla Direttiva. Definisce inoltre chi è un “fornitore di servizi di media”, includendo i giornalisti freelance. La definizione di cosa siano i media e di chi sia un giornalista rimane tuttavia controversa. Sembra che includa i media no-profit e gli influencer, ma escluda altri osservatori (ad esempio i difensori dei diritti umani e le organizzazioni della società civile) e le piattaforme online, non riconoscendo così a questi soggetti i diritti e i doveri previsti dall'EMFA. Tra questi, il diritto di proteggere le proprie fonti e di non essere soggetti a forme di sorveglianza intrusiva; il dovere di essere indipendenti e di riportare informazioni di interesse pubblico seguendo standard etici e professionali. Questo articolo affronta una serie di questioni relative alla natura dei soggetti riconosciuti dall'EMFA e analizza l'intreccio del Regolamento con altri due testi chiave del quadro legislativo europeo che si occupa del libero flusso di informazioni plurali e indipendenti: il Regolamento sui Servizi Digitali (*Digital Services Act* – DSA) e la Direttiva sulle azioni legali strategiche tese a bloccare la partecipazione pubblica (*Strategic Lawsuits Against Public Participation* – SLAPPs).

*Giornalismo – Fornitori di servizi di media – Piattaforme online – Responsabilità editoriale – EMFA*

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**SUMMARY:** 1. Introduction. – 2. The evolution of the concept of journalism and media. – 3. “Media service providers” under EMFA: journalists, non-profit media, influencers and other watchdogs. – 4. Who carries editorial responsibility? The mild exclusion of online platforms. – 5. Who can enjoy the “media privilege” under Article 18 EMFA? – 6. Final remarks.

## 1. Introduction

Journalism has been undergoing profound and revolutionary changes in the last two decades: since widespread access to the Internet has been at the disposal of a great amount of people, new ways to access the news as well as new kinds of news producers emerged. From the primordial bloggers and the exchange of information on news forums, the emergence of citizen journalism and then of influencers, to the mounting and quasi-monopolistic role of social media platforms nowadays, the definition of media and journalism became blurred.

The definitory struggle is evident also from a legal perspective: as explained in paragraph 2 of this article, the Council of Europe in particular has been proposing an evolving and increasingly wide definition of media, in line with the digital evolution. Also, the EU regulators have defined what audiovisual media services are in the Audiovisual Media Services Directive (2018) and recently the European Media Freedom Act has proposed a new definition of “media service providers” (MSPs).

Paragraph 3 of this article unfolds Art. 2 EMFA in particular, and the Regulation more at large, to understand how EMFA defines journalism, and if non-profit media, influencers and other watchdogs such as NGOs fall under the MSPs’ definition. It is also crucial to explore tangent definitions, such as that of “editorial responsibility”, that ultimately lead to the conclusion that online platforms are excluded from being considered MSPs, as they do not hold editorial responsibility over the content present on their services – despite their increasingly quasi-editorial role in granting more or less visibility to the news, or to media outlets’ and journalists’ accounts through content moderation,

or even by removing certain content or accounts. This is analysed in paragraph 4 of this article.

Finally, the EMFA now entrusts platforms to a new task: identifying who are the MSPs’ – through the latter’s self-declarations of being media made to platforms – and following a privileged procedure during their content moderation practices when dealing with media content and media-related accounts. The so-called “media privilege” provided by Art. 18 EMFA is analysed in paragraph 5 of this article, focusing once again on the crucial point of being defined as news media to enjoy this privilege: this entails being independent, transparent, not AI-generated and, importantly, not to be “rogue media service providers” spreading malicious and propagandistic content.

Understanding with the highest possible amount of legal certainty who the media are and what journalism is nowadays is crucial for a smooth implementation of EMFA. As a matter of fact, MSPs are entrusted with a number of duties and rights – among them the right to protect their sources and not to be subject to intrusive surveillance; and the duty to be independent, and to convey information of public interest following ethical and professional standards. Ultimately, the aim is protecting media from the fierce competition of other actors over the information space, and guaranteeing that citizens continue having the possibility to access diverse and independent news.

## 2. The evolution of the concept of journalism and media

The journalistic profession is carried on by a variety of actors, working simultaneously and sometimes in a complementary way. Since the concept of

journalism and that of media exist, they have been subject to a continuous negotiation on their meaning and identity, both within but especially outside legal frameworks. First of all, we have journalists – namely persons whose main activity is that of reporting on news and current affairs. Their job consists of different tasks and “faculties”, ranging from discovery, examination, interpretation, style and presentation<sup>1</sup>. Journalism studies have engaged in a range of approaches to investigate and define this field: from theoretical and normative studies<sup>2</sup>, to empirical ones based on surveys and content analysis – aimed at understanding journalists’ self-perceptions and performances<sup>3</sup>, to ethnographic work exploring the incoherent borders of the profession<sup>4</sup>. In this regard, an “inherent porousness of journalistic work” has been noted<sup>5</sup>. Journalists can report their stories in a variety of communication means (also called “media”): the press (printed or online), the radio (FM or web), TV (cable, satellite or web), podcasts, newsletters, social media. As we will analyse later in this article, some of these platforms are explicitly defined as media service providers (MSPs) in EMFA and other EU regulations, some others (e.g., social media platforms) don’t, with consequences on the range of rights and duties that these actors enjoy. Traditionally, media referred to established institutions such as newspapers, television, and radio, which served as gatekeepers of information. These entities have always played a vital role in shaping public opinion and facilitating democratic discourse, leading to recognise that media are not common goods/services in the market, but they fulfil a democratic role that needs to be recognised in order to shape meaningful media policies. In the rapidly evolving digital age, the traditional concept of media has undergone a profound transformation. Newsrooms and newswork are part of a

profession that can best be seen as a self-organizing social system, where different actors meet and intersect and that is dependent on other systems (e.g., publishing and distribution services, or the political system more at large)<sup>6</sup>. The rise of digital platforms, social media, and online content distribution has revolutionised the way information is created, consumed, and shared.

From a policy perspective, the Council of Europe has been proposing a new notion of media from the early 2010s. Recommendation CM/Rec (2011)7 on a new notion of media<sup>7</sup> recognised that a variety of online intermediaries and platforms are “essential” for the media’s outreach and individuals’ access to media. They have become “essential pathfinders” to information, “gatekeepers”, and may have an “active role” (para. 6). The Committee of Ministers recommended that Member States adopt a “broad notion” of media, including

“all actors involved in the production and dissemination, to potentially large numbers of people, of content (for example, information, analysis, comment, opinion, education, culture, art and entertainment, in text, audio, visual, audiovisual, or other form) and applications which are designed to facilitate interactive mass communication (for example, social networks) or other content-based large-scale interactive experiences (for example, online games), while retaining (in all these cases) editorial control or oversight of the contents” (para. 7).

The Appendix to the Recommendation proposes some elements to identify the media, namely (1) “intent to act as media”; (2) having the “purpose and underlying objectives of media” (3) adhering to professional standards; (4) seeking “outreach and dissemination”, where media has traditionally been defined as “mediated public communication

1. SHAPIRO 2010.

2. HALLIN–MANCINI 2004.

3. HELLMUELLER–MELLADO 2015. See also the “[Journalistic Role Performance](#)” project’s methodology and findings.

4. DOMINGO–PATERSON 2011.

5. CARLSON–LEWIS 2015, p. 7.

6. DEUZE–WITSCHGE 2018; HALLIN–MANCINI 2004.

7. 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.

addressed to a large audience and open to all”; (5) meeting public expectation, where individuals expect the media to be “available”, and “broadly accessible”, even when paid-for services. A broad notion of media is also employed in the 2018 Council of Europe’s Recommendation on Media Pluralism and Transparency of Media Ownership<sup>8</sup>. It focuses on online media, defining them as a “wide range of actors involved in the production and dissemination of media content online and any other intermediaries and auxiliary services which, through their control of distribution of media content online or editorial-like judgments about content they link to or carry, have an impact on the media markets and media pluralism”<sup>9</sup>. The specification of these actors’ impact on media markets and media pluralism is a key novelty. Moreover, “editorial-like judgments” by intermediaries are also taken under consideration in the 2018 Recommendation on the roles and responsibilities of internet intermediaries, which emphasised that through content moderation and ranking these intermediaries “may thereby exert forms of control which influence users’ access to information online in ways comparable to media, or they may perform other functions that resemble those of publishers”<sup>10</sup>. Finally, in 2022, the Council of Europe adopted a Recommendation on principles

for media and communication governance, which also elaborated on the “new notion of media”<sup>11</sup>. It emphasises the “heavy dependence” of media on platforms, calling for a “differentiated approach” to media policy when dealing with different actors.

The objective of EMFA is guaranteeing a free and plural access to independent information: it is thus worth noting that from both an academic and a policy perspective – due to the technological development and the rise of digital platforms intermediating media content – the notion of media pluralism is also changing, and has to be reinterpreted<sup>12</sup>. This goes in parallel with a redefinition of the subjects that should be considered as “media”.

### 3. “Media service providers” under EMFA: journalists, non-profit media, influencers and other watchdogs

The crucial provisions of EMFA where the concept of “media” is developed are Art. 2 and Art. 18. Art. 2 lists a series of definitions of relevant subjects and procedures for the whole Act, ranging from the definition of media service provider (MSP) and of editorial responsibility, and encompassing the first definition of media literacy present in a legal text. How these concepts are interpreted influences the whole operationalization of EMFA. Looking closer

8. Recommendation [CM/Rec\(2018\)1](#) of the Committee of Ministers to member States on media pluralism and transparency of media ownership, 7 March 2018.

9. *Ivi*, at Appendix.

10. Recommendation [CM/Rec \(2018\)2](#) of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries, 7 March, 2018, at Para. 5. See also VALCKE–LAMBRECHT 2019, pp. 282–302.

11. Recommendation [CM/Rec \(2022\)11](#) of the Committee of Ministers to member States on principles for media and communication governance, 6 April 2022.

12. The European Parliament (EP) also added to the Commission’s EMFAProposal a definition of media pluralism, which was then deleted by the Council. The definition was proposed in Art. 2 (13), and described “media pluralism” as “a variety of voices, analyses and opinions in public discourse, including minority positions and opinions, disseminated in an unimpeded way by media service providers which are in the hands of many different owners, each independent from one another, across different media channels and media genres and the recognition of the co-existence of private commercial media service providers and public service media providers”(Amendment n. 93). One of the main criticisms moved to this definition was the lack of a reconceptualisation in light of the technological developments, e.g., to promote “exposure diversity”, which should instead be considered as a fundamental aspect of media pluralism together with internal and external pluralism (BROGI–BORGES–CARLINI et al. 2023; PARCU–BROGI–VERZA et al. 2022). The reference to an “unimpeded way of dissemination” of information could also have extended to exposure diversity online, consistently with the additional references to online platforms present in the EP amendments, including the one that adds data from “users of online platforms” among those to be collected for the scope of audience measurement (Amendment n. 94 to Art. 2 (14)), and the one that innovates the definition of “media market concentration”. For more reflections on the concept of media pluralism in the EMFA, see Ottavio Grandinetti’s article in this special issue.



to the definition of “media service” under Art. 2 (1) EMFA:

“A ‘media service’ means a service as defined by Articles 56 and 57 TFEU, where the principal purpose of the service or a dissociable section thereof consists in providing programmes or press publications, under the editorial responsibility of a media service provider, to the general public, by any means, in order to inform, entertain or educate”.

Here we encounter the first, relevant novelty of EMFA when compared to the AVMSD: EMFA applies to both print and audiovisual content, including of course the online versions of legacy media as well as digital native media<sup>13</sup>. Under para. 2 of the same Article, a “media service provider” is defined:

“Media service provider means a natural or legal person whose professional activity is to provide a media service and who has editorial responsibility for the choice of the content of the media service and determines the manner in which it is organised”.

Most of the debate regarding the definition of media in EMFA revolves around the absence of two main subjects from the binding articles of the Act, especially in the formulation of Art. 2:

- (i) First and foremost, the lack of mention of journalists and journalism<sup>14</sup>;
- (ii) Secondly, online platforms – in particular social media platforms<sup>15</sup>.

It is indeed striking to note that there is no mention of “journalism” or “journalists” in the binding text of EMFA, except for a reference to the protection of “journalistic sources” in Art. 4, shielding media service providers from undue interferences and surveillance<sup>16</sup>. Some mentions of journalism are present in the Recitals, such as Recital 19, stating that “journalists and editors are the main actors in the production and provision of trustworthy

media content, in particular by reporting on news or current affairs”. The same Recital, together with Recital 9, also includes a reference to freelancers, providing that “media service providers and their editorial staff, in particular journalists, including those operating in non-standard forms of employment, such as freelancers, should be able to rely on a robust protection of journalistic sources and confidential communication”. The democratic role of media service providers working on news and current affairs (thus aimed to inform and educate, as distinguished from entertainment) is also recognized in Recital 14, providing the right of recipients to:

“access quality media services which have been produced by journalists in an independent manner and in line with ethical and journalistic standards and which, therefore, provide trustworthy information. That is particularly relevant for news and current affairs content, which comprises a wide category of content of political, societal or cultural interest at local, national or international level. News and current affairs content has the potential to play a major role in shaping public opinion and has a direct impact on democratic participation and societal well-being. In that context, news and current affairs content should be understood as covering any type of news and current affairs content, regardless of the form it takes”.

The reference to “natural persons” in the definition of MSPs (Art. 2 para. 2) should absolutely be interpreted as including journalists; however, the lack of direct mentions of journalism in the binding articles of the Act must be underlined. This has been defined as a “narrow service-based approach”, in conflict with the “functional democratic approach” undertaken by European and international human rights law and case law standards (ECtHR, CJEU, CoE)<sup>17</sup>, described earlier in this article.

13. “‘Programme’ means a set of moving images or sounds constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider” (Art. 2 (4)); “Press publication’ means press publication as defined in Article 2, point (4), of Directive (EU) 2019/790” (Art. 2 (5)).

14. SEIPP-FATHAIGH-VAN DRUNEN et al. 2023.

15. BARATA 2022.

16. For an in-depth analysis of Art. 4, please read the article by Malferrari 2025.

17. SEIPP-FATHAIGH-VAN DRUNEN et al. 2023.

From this perspective, EMFA would seem to stick to a narrow definition focused on economic activity and professional services, as the AVMSD did, rather than embracing a broader definition recognising the functional role played by journalism in democracy. This service-based approach probably stems from EMFA's (limited) legal base, namely Art. 114 TFUE, aimed at the economic scope of harmonising the internal market<sup>18</sup>.

It is not explicitly specified if other media actors, such as civil society organisations (CSOs) and non-profit organisations acting as watchdogs on news, current affairs and public interest issues, could be considered media service providers and consequently enjoy their related rights. As a matter of fact, the SLAPP Directive (2024/1069) aims to grant protection for all “natural and legal persons who engage in public participation on matters of public interest”, listing not only journalists, publishers and media organisations, but also “whistleblowers and human rights defenders, as well as civil society organisations, NGOs, trade unions, artists, researchers and academics”<sup>19</sup>. Moreover, as outlined in Recital 9 of the Directive, no precise definition of a journalist is provided in the text, “however, it should be underlined that journalism is carried out by a wide range of actors, including reporters, analysts, columnists and bloggers, as well as others who engage in forms of self-publication in print, on the internet or elsewhere”. Basically, this definition seems to exclude only merely private speakers (such as individual social media users disseminating content about private matters) and adopts a “functional approach”, based on the democratic function performed by these actors in their actions of re-

porting on matters of public interest, as opposed to the “service-based” approach. Interestingly, the SLAPP Directive also extends its protection to the platforms disseminating the content of public interest, such as “the internet platform on which they publish their work”, “the company that prints a text or a shop that sells the text”<sup>20</sup>.

Considering the wide range of duties and rights entrusted to media service providers by EMFA, it could be considered reasonable that the range of subjects for which the Media Freedom Act is applicable is limited compared to the SLAPP Directive. However, the possible exclusion of non-profit media from EMFA's application is to be criticised. As a matter of fact, a key characteristic of the media service providers under Art. 2 (2) EMFA is indeed that the offer of news services is performed as a “professional activity”. It is questionable, however, whether this term refers only to situations when such services represent the provider's main source of income or if it should be interpreted as encompassing all media actors respecting journalistic professional standards, thus including also non-profit media. The doubt that the latter may be excluded from enjoying the rights entrusted by EMFA also stems from the reference made by Art. 2 (1), that recalls the definition of “service” as provided by Art. 57 of the Treaty on the European Union which states that such “services” are those “normally provided for remuneration”. A strict interpretation may exclude media outlets and journalists working on a voluntary basis or basing their activities on non-profit based business models (e.g., grants or donations), despite their services serving the public interest in providing quality information and respecting professional standards

18. Despite choosing art.114 TFUE as legal basis is mandated by the limitations of the EU's legislative competences, arguably this market-based rationale is not the perfect fit for comprehensively addressing complex phenomena impacting on human rights and societal dynamics (See PARCU-BROGI-VERZA et al. 2022, p. 36 ss.). It is fundamental to acknowledge that the EU is essentially an economic regulator. As van Drunen et al. argued «the more the EU enacts rules that affect public communication, the more urgent it becomes to integrate the relevant sets of expertise into EU decision making, strengthen the procedures that anticipate broader impact on the marketplace of ideas, as well as re-think more generally the legitimacy the European Union has for adopting speech-related measures under the legal bases to regulate the internal market and protection of personal data». See VAN DRUNEN-HELBERGER-SCHULZ-DE VREESE 2023.

19. Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (‘Strategic lawsuits against public participation’), Recital 6.

20. *Ivi*, Recital 22.

or adhering to journalistic ethical codes. However, under the case law of the European Court of Justice, it has been established that profit-seeking is not necessary for the qualification as a service<sup>21</sup>. Therefore, there seems to be no impediment for the recognition of non-profit media as MSPs under EMFA. But uncertainty remains as to the exclusion of civil society organizations from the MSP definition instead.

On the other hand, “professional influencers” seem to be included among the MSPs<sup>22</sup>: Recital 9 of EMFA specifies that the definition of media service provider “should exclude user-generated content uploaded to an online platform unless it constitutes a professional activity normally provided for consideration, be it of a financial or other nature”. This is confirmed by Paragraph 18 of the “Council conclusions on support for influencers as online content creators” (July 2024)<sup>23</sup>:

“The European Media Freedom Act (EMFA) lays down common rules for the proper functioning of the internal market for media services, while safeguarding an independent and pluralistic media environment, which can have an impact on the activities of influencers, for instance when influencers are qualified as media service providers”.

If influencers can be included among the MSPs – in their activities aimed to inform, entertain or educate – it would mean that they can enjoy the guarantees under, e.g., Art. 4 (*protection from surveillance*) and Art. 18 EMFA (*privileged procedure in content moderation*). However, their adherence to professional and ethical standards, and their editorial independence, could be more problematic to demonstrate than it is for newsrooms and journalists.

The adherence to professional standards should indeed be the basic requirement for the

identification of the media service providers that will enjoy the guarantees granted by the EMFA Regulation, in light of the standards elaborated by Recommendation 2022/1634 “on internal safeguards for editorial independence and ownership transparency”<sup>24</sup>, accompanying EMFA. As it will be outlined in this article, this is explicitly specified by Art. 18 EMFA as one of the criteria for media service providers to be able to self-declare as media; but the same is not straightforwardly clear under other sections of EMFA, for example in relation with the extent of application of Art. 4 – which prohibits the illegitimate surveillance of media service providers and their sources.

Thus, the principle of legal certainty with regards to the range of subjects who fall under EMFA’s implementation seems not to be fulfilled until a more detailed list of criteria for selecting them will be provided by the Commission, the European Board of Media Services (hereinafter, “the Board”) and the national regulatory authorities.

#### 4. Who carries editorial responsibility? The mild exclusion of online platforms

The digital revolution has blurred the boundaries between professional journalists and other subjects, enabling anyone with an internet connection to create and disseminate content. Influencers and other platforms’ users now play significant roles in the media landscape. Moreover, legacy media outlets – including their online versions – are no longer the gatekeepers of a two-sided market, monetising the attention of the users and sustaining their business mainly with advertising. The media market dramatically suffers from the competition of big tech companies that benefit from lower distribution costs, provide users with content collected from others, and monetise the attention of the users<sup>25</sup>.

21. See for example *European Commission v Hungary* (Case C-179/14), 23 February 2016. In paragraph 157. 7 the Court states that “The fact that the national legislation provides that the profits made by the HNRF from that activity must be used exclusively for certain public interest objectives is not sufficient to alter the nature of the activity in question or to deprive it of its economic character”.

22. BAYER 2024, p. 119.

23. “Council conclusions on support for influencers as online content creators” (C/2024/3807), 23 July 2024.

24. Commission Recommendation (EU) 2022/1634 of 16 September 2022 on internal safeguards for editorial independence and ownership transparency in the media sector.

25. BROGI-BORGES-CARLINI et al. 2023.

Art. 2 (2) EMFA provides that a media service provider holds “editorial responsibility for the choice of the content of the media service and determines the manner in which it is organised”. The mention of the organisational tasks of MSPs immediately recalls the major role of online platforms, especially social media platforms, in news’ dissemination. The same Article, under para. 8, defines “editorial responsibility” as “the exercise of effective control both over the selection of programmes or press publications and over their organisation, for the purposes of the provision of a media service”.

This reference might recall the selection and organisation of content operated by the recommender systems of social media platforms, which is also an object of regulation under the Digital Services Act. Recital 11 of EMFA adds that

“In the digital media market, video sharing platforms or providers of VLOPs could fall under the definition of MSP. In general, such providers play a key role in the organisation of content, including by automated means or by means of algorithms, but do not exercise editorial responsibility over the content to which they provide access. However, in the increasingly convergent media environment, some video-sharing platform providers or providers of very large online platforms have started to exercise editorial control over a section or sections of their services. Therefore, where such providers exercise editorial control over a section or sections of their services, they could be qualified as both a video-sharing platform provider or a provider of a very large online platform and a media service provider”.

As noted by Barata, if we were to take this language literally, it would introduce a paradigm change from the current conceptual framework

excluding platforms’ responsibility for content, under the eCommerce Directive<sup>26</sup>. Content moderation and recommendation practices could be considered a form of exercise of editorial responsibility, and therefore at least certain types of online services would be paired to “traditional” media services<sup>27</sup>. However, this does not seem to be the interpretation that the legislator had in mind. Rather, the definition is aimed at distinguishing media service providers from platform providers but it became sufficiently wide to include platform providers when they have responsibility for the choice of content and in determining the manner in which it is organised<sup>28</sup>. Private exchanges conducted with some EC representatives for the scope of writing this article, clarified that this refers to platforms such as YouTube (which are considered VLOPs under the DSA), that in the “Movies” section assembles catalogues of movies to watch. If this is the case, this mention would designate some of the services identified in the 2018 AVMSD’s definition of “video-sharing platform service” (Art. 1 (1.aa)) as possibly holding editorial responsibility.

EMFA also excludes messaging apps from being considered media service providers. Recital 9 specifies that the definition “should also exclude purely private correspondence, such as e-mails, and all services that do not have the provision of programmes or press publications as their principal purpose, meaning where the content is merely incidental to the service and not its principal purpose”. Also, private messaging apps such as Whatsapp and Telegram are not considered very large online platforms under the DSA<sup>29</sup> and, consequently, their public channels are not considered as such: for example, channels managed by a news outlet or where single users can enrol and share news content – do not reach the threshold of 45

26. BARATA 2022.

27. During the trialogue, the EP also introduced Recital 7a, not present in the final version of EMFA: “The media environment is undergoing major and rapid changes. While the role of the media in a democratic society has not changed, media have additional tools to facilitate interaction and engagement. It is important that media-related policy take those and future developments into account. Therefore, the notion of media used in this Regulation should be interpreted broadly to encompass all actors who are involved in the production and dissemination, to potentially large numbers of people, of content, who have editorial responsibility or who oversee content”. [Amendment 11](#).

28. BAYER 2024.

29. European Commission, [Supervision of the designated very large online platforms and search engines under DSA](#).



million users<sup>30</sup>. This means that such services are not required to adhere to the risk assessment and mitigation requirements under Art. 34 and 35 of the DSA for their content moderation activities, nor to apply a privileged procedure for moderating media content under Article 18 EMFA. On the other hand, messaging apps are included in the co-regulatory framework of the Code of Practice on Disinformation (CoP)<sup>31</sup>, and from a competition perspective they are taken under consideration under the Digital Markets Act<sup>32</sup>. Two messaging apps – namely Whatsapp and Messenger – are in fact considered core platform services offered by a gatekeeper (Meta)<sup>33</sup>.

The role and duties of messaging apps in the latest media policy developments deserve further scrutiny in the near future, considering the increasing role of messaging apps for news dissemination<sup>34</sup>. The DSA and EMFA need to be future proof, and it could be argued that such services should already set up risk assessment and mitigation measures as well as particular strategies to deal with media content, foreseeing that their public channels will reach the status of VLOPs in the forthcoming years.

To conclude these reflections on the role of online platforms in EMFA, one thing clearly differentiates the news media from online platforms and search engines: the imbalance of market and – increasingly – opinion power. This is one of the main issues to be addressed when defining policies

to support media freedom and media pluralism, and attempts have been undertaken worldwide to protect news content for example from the perspective of copyright in the digital society, or from the competition perspective<sup>35</sup>. The privileged procedure regarding content moderation of media service providers by VLOPs provided by Art. 18 EMFA can be added to the list.

## 5. Who can enjoy the “media privilege” under Article 18 EMFA?

As outlined by Caplan and Boyd, the relationship between news media organisations and large online platforms is “isomorphic”: the more news media are dependent on platforms for disseminating their content, the more they become more vulnerable to the latter’s choices and changes of settings<sup>36</sup>. “When dominant social media companies remove or diminish the visibility of edited content from media service providers, the investment made by these providers effectively goes to waste”<sup>37</sup> and citizens struggle to access quality information from social media platforms.

In order to tackle this issue, Art. 18 EMFA provides a specific procedure for platforms to moderate content produced by media service providers<sup>38</sup>. Following the MSPs self-declaration, in case of content moderation the latter enjoy: (i) expeditious rights to an explanation before the content gets removed; (ii) the right to reply to platforms’ action; (iii) the right to lodge a complaint and to engage in

30. See Recitals 14 and 15 of the DSA.

31. See Commitment 25: “In order to help users of private messaging services to identify possible disinformation disseminated through such services, Relevant Signatories that provide messaging applications commit to continue to build and implement features or initiatives that empower users to think critically about information they receive and help them to determine whether it is accurate, without any weakening of encryption and with due regard to the protection of privacy”. European Commission, [2022 Strengthened Code of Practice on Disinformation](#).

32. VEZZOSO 2024.

33. Commission Decision of 5 September 2023 designating Meta as a gatekeeper pursuant to Art. 3 of Regulation (EU) 2022/1925, C(2023) 6105. Meta can be considered a gatekeeper under Art. 3 (2) DMA, because it fulfils the three cumulative requirements to be designated as a gatekeeper, namely: (i) it has a significant impact on the internal market; (ii) it provides at least one core platform service (CPS) which is an important gateway for business users to reach end users; (iii) it enjoys an entrenched and durable position, in its operations.

34. REUTERS INSTITUTE 2024.

35. SEIPP–HELBERGER–DE VREESE–AUSLOOS 2024.

36. CAPLAN–BOYD 2018.

37. BAYER 2024, p. 156.

38. Please find a detailed analysis of Art. 18 EMFA in MONTI 2024.

a dialogue with the platform; (iv) the possibility to appeal to the Board; (v) platforms are required to report on such practices on a yearly basis<sup>39</sup>.

It has been argued that EMFA “aims to kill two birds with a stone”<sup>40</sup>: it both provides regulations on fostering free speech in the EU Member State and integrates the DSA obligations for VLOPs<sup>41</sup>. The ratio is that of recognising the importance of editorial processes for the selection and distribution of information for democratic deliberation, especially when compared to platforms’ logics of content recommendation and curation. Moreover, the idea of providing a “privilege” for media content is aimed at balancing the asymmetrical relation of power between media service providers, especially smaller ones, and VLOPs<sup>42</sup>.

A similar clause had been discussed as an obligatory “media exemption” or “non-interference principle” in the phase of drafting the DSA, encompassing terms and conditions and notice-and-action procedures. But at that time, no political agreement was reached on this issue; however a debate started which fed into the debate over Art. 18 EMFA<sup>43</sup>. Art. 18 itself faced heavy scrutiny during the triologue negotiations among European institutions<sup>44</sup>: 20 different amendments were pro-

posed by the EP, making the article lengthy and somehow convoluted.

The first paragraph of Art. 18 EMFA is particularly relevant in conjunction to the question of defining what journalism is and who the media are<sup>45</sup>, as this paragraph outlines the conditions under which media service providers can self-declare to VLOPs for their content to enjoy the specific guarantees mentioned above. Among other things, MSPs have to declare that they are editorially independent from political and state actors, to adhere to certain standards for the exercise of editorial responsibility and not to “provide content generated by artificial intelligence systems without subjecting it to human review or editorial control” (Art. 18 (1.e))<sup>46</sup>.

EMFA is inherently susceptible to the paradox of media regulation: any legislative effort aimed at affording special protection to the media requires the establishment of a comprehensive definition delineating the parameters of what qualifies as “media”, which inherently introduces limitations and the potential for exerting control<sup>47</sup>. As a matter of fact, platforms can reject the MSPs’ self-declarations<sup>48</sup>. Counting on platforms’ bona fide, it is however worth reminding that these compa-

39. Newly established institution, substituting the European Regulators Group for Audiovisual Media Services (ERGA), as provided by Art. 8 EMFA.

40. POLLICINO–PAOLUCCI 2024.

41. Media pluralism and freedom have been added in the final version of the DSA among the fundamental rights that platforms need to respect according to the DSA. This might have a beneficial effect on news media organisations, e.g., preventing platforms from imposing sudden change to their recommendation algorithms that would jeopardise news media’s presence online as happened in the past, when posts by news media organisations lost prevalence in favour of user generated content by close profile. See PAPAÉVANGELOU 2023, p. 471.

42. BAYER 2024, p. 158.

43. PAPAÉVANGELOU 2023, p. 457. Notably, for the DSA, it was the Committee on Culture and Education of the EP and the Committee on Industry, Research and Energy with Henna Virkkunen as its opinion Rapporteur (now EC Commissioner and Executive Vice-President for Tech Sovereignty, Security and Democracy), to propose what became Amendment 511 in the consolidated EP proposal – namely the “principle of non-interference” with editorial content by platforms.

44. VAN DRUNEN–PAPAÉVANGELOU–BUIJS–FATHAIGH 2023.

45. PAPAÉVANGELOU 2023, p. 468.

46. With regards to the use of AI in journalism, the Council of Europe has published the “Guidelines on the responsible implementation of artificial intelligence systems in journalism”, adopted by the Steering Committee on Media and Information Society (CDMSI) on 30 November 2023, CDMSI (2023)014.

47. TAMBINI 2023 and TAMBINI 2021.

48. The VLOPs should publish on a yearly basis the number of rejections and the related grounds (Art. 18 (8.d)), and such decisions can be appealed by also relying on mediation or out-of-court dispute settlement mechanisms.

nies are driven by economic interests and cannot substitute public authorities in deciding the public interest objectives worth pursuing<sup>49</sup>.

Three key questions should be raised regarding Art. 18 EMFA and the definition of journalism and media:

- (i) What about individual journalists?
- (ii) What about other watchdogs?
- (iii) What about malicious actors?

(i) The first question – about the status of individual journalists in the system of privileges entrusted by Art. 18 – stems from the duties asked in the self-declaration process, in particular under para. 1.b, where compliance with Art. 6 (1) EMFA is required. The EP and Council added an emphasis on media ownership transparency, by explicitly linking the privilege and the self-declaration process with the transparency requirements listed in Art. 6 (1) (Art. 18 (1.b)).<sup>50</sup> This requires to be transparent regarding direct or indirect owners influencing their operations, or regarding the amount of state advertising received. It is however contestable how this requirement can be fulfilled without prejudices for small newsrooms or single (and eventually, freelance) journalists<sup>51</sup>. In case these subjects would be cut out from enjoying this prioritised procedure in content moderation practices, this would confirm the “narrow service-based” approach to defining media (and their consequent privileges). However, following exchanges with an EC representative on this point, it appears that these subjects could fulfill this requirement simply stating to have nothing to declare with regards to their owner(s) or to state advertising, because they do not have owners outside of themselves, or do not receive state advertising.

(ii) With regards to the second question, the discussion developed a few lines earlier on the stance of human rights defenders and civil society organizations in EMFA remains open. They do not seem to enjoy the privilege granted by Art. 18 EMFA – as the Act undertakes a cautious approach. Arguably, media organisations could still be considered to provide the key infrastructure for journalism to operate in a professional way<sup>52</sup>, and this criterion helps over-enlarging the number of subjects that could claim to be entitled to a special treatment when it comes to content moderation activities.

(iii) One of the main arguments of the opponents of a media exemption, already at the time of its proposal for the DSA, is that granting a privileged procedure for editorial content – especially when media are defined in a broad sense – could constitute a loophole for malicious actors to take advantage of such exemption<sup>53</sup>. As a matter of fact, the existence of a media privilege not only raises questions about who are the media, but more specifically about which of them are “good quality”, so called “trustworthy” media. The EMFA outlines a series of concepts that help making sense of what is meant by “good journalism” under the Act’s rationale: editorial independence and media integrity foremost. One of the declared scopes of EMFA is to safeguard the independence and pluralism of media services (Art. 1); as highlighted by Recital 17 EMFA: “The protection of editorial independence is a precondition for exercising the activity of media service providers and their professional integrity in a safe media environment. Editorial independence is especially important for media service providers which provide news and current affairs content, given its societal role as a public good”.

49. REVIGLIO-BLEYER-SIMON-VERZA 2024. Again, the question of the legal basis of EMFA under Art. 114 TFUE emerges: in a context characterized by the platformization of the public sphere, Art. 114 TFUE (harmonization of internal market) as the basis for regulating speech-related issues legally recognises the strong ramifications of power of private actors for citizens’ fundamental rights, public interests and social values, breaking down the traditional public-private divide (see VRIES-KANEVSKAIA-DE JAGER 2023, p. 590).

50. [Amendment 209](#).

51. No exceptions for small enterprises are provided in Art. 6 EMFA. Former para. 6 in the Proposal providing in this sense was deleted by the Council and the Parliament. (“The obligations under this Article shall not apply to media service providers that are micro enterprises within the meaning of Article 3 of Directive 2013/34/EU”). See [Amendment 142](#).

52. NENADIC-BROGI 2023.

53. PAPAEOVANGELOU 2023, pp. 471, 473 and 474. See also [Policy statement on Article 17 of the proposed European Media Freedom Act](#), 2023.

The concept of “editorial independence” has been substituted to that of “quality” along the legislative process<sup>54</sup>, which is to welcome considering the vagueness and possible arbitrariness in interpreting what “quality content” consists in. However, the concept still appears connected to a series of similar but not completely corresponding concepts, such as those of “editorial integrity” and “media integrity” that will be outlined here following.

The interpretation of the concept of “editorial independence” is particularly relevant in relation to Art. 18 EMFA, being one of the key criteria for MSPs to be able to submit a self-declaration to VLOPs (being independent “from Member States, political parties, third countries and entities controlled or financed by third countries” (Art. 18 (1.e))<sup>55</sup>. The same notion is also crucial for the application of Art. 22 EMFA, providing an “assessment of media market concentrations affecting media pluralism and editorial independence”, the so-called “media plurality test” to be performed by national regulatory authorities. However, criticism has been raised regarding the lack of transparency and safeguards of the criteria that should operationalise this notion<sup>56</sup>, whose borders are blurred between absence of ownership control, absence of conflicts of interests and the respect for editorial standards based on self-regulatory measures internal to the newsrooms/ respected by individual journalists. Recital 11 of Recommendation 2022/1634, accompanying the EMFA Proposal, states that “Editorial independence shields editors and journalists from conflicts of interest and helps them to resist undue interference and pressure. Therefore, it is a prerequisite for the production and circulation of unbiased information and an essential facet of media freedom”. The Recommendation however lists a series of good practices “such as editorial charters or codes or committees of ethics” that could be of inspiration for voluntary self-regulatory measures by news outlets.

The concept of editorial independence is also strictly related to that of media integrity, as Recital 34 EMFA outlines that:

“media integrity also requires a proactive approach to promoting editorial independence by media undertakings providing news and current affairs content, in particular by means of internal safeguards. Media service providers should adopt proportionate measures to guarantee the freedom of editors to take editorial decisions within the established long-term editorial line of the media service provider. The objective to shield editorial decisions, in particular those taken by editors-in-chief and editors, on specific pieces of content from undue interference contributes to ensuring a level playing field in the internal market for media services and the quality of such services. Those measures should aim to ensure the respect for independence standards throughout the entire editorial process within the media, including with a view to safeguarding the integrity of journalistic content. That objective is also in compliance with the fundamental right to receive and impart information under Article 11 of the Charter. In view of those considerations, media service providers should also ensure the transparency of actual or potential conflicts of interest vis-à-vis the recipients of their media services.”

The 2022 Recommendation however does not mention “media integrity”, but rather “editorial integrity”, where it provides that “media service providers are encouraged to lay down internal rules to protect editorial integrity and independence from undue political and business interests which may affect individual editorial decisions” (Section 1.5). They may include “editorial mission statement, policies to foster a diverse and inclusive composition of newsrooms, or policies on responsible use of sources”, “rules aimed to prevent or disclose conflicts of interest”, “policies on cor-

54. See the Amendments adopted by the European Parliament on 3 October 2023 on 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), [Amendment 69](#).

55. Some of these amendments were then rejected by the Council, such as the requirement of independence of the media service providers not only from Member States and third countries, but also from “any Union institution, body, office or agency”. See [Amendment 210](#).

56. SEIPP-FATHAIGH-VAN DRUNEN 2023.



rections, including complaint mechanisms”, “rules ensuring the separation between commercial and editorial activities” (Section 1.7). These measures seem to fall under the requirement of Art. 18 (1.d) EMFA, requiring that in order to self-declare, MSPs have to “declare that they are subject to regulatory requirements for the exercise of editorial responsibility in one or more Member States and to oversight by a competent national regulatory authority or body or that they adhere to a co-regulatory or self-regulatory mechanism governing editorial standards that is widely recognised by and accepted in the relevant media sector in one or more Member States”. All the measures suggested in the 2022 Recommendation however have a self-regulatory nature and are difficult to envisage as effectively in place in the short-time, especially in countries, contexts and media systems where such practices are not common nor part of the journalistic culture and professional routines<sup>57</sup>.

It is thus rather expectable that – for some time after the entrance into force of EMFA in August 2025 – most of the efforts related to the self-declarations under Art. 18 EMFA would focus on preventing “rogue media service providers” (the most insidious category of non-independent MSPs) from accessing the “media privilege”. This urge is increased by the understanding that in various recent electoral appointments in the EU, including the 2024 European elections, shortcomings in the rule of law as well as in the free flow of independent information undermined the democratic functioning.

In this regard, Recital 49 of EMFA provides that a list of criteria should be drafted by the Board “to further support national regulatory authorities or bodies in their role of protecting the internal market for media services from rogue media service providers”. The list would concern:

“media service providers established or originating from outside of the Union. Such a list would help the national regulatory authorities or bodies concerned in situations where a relevant media service provider seeks jurisdiction in a Member State or where a media service provider already under the jurisdiction of a Member State appears to pose a serious and grave risk to public security. Elements to be covered in such a list could concern, inter alia, ownership, management, financing structures, editorial independence from third countries or adherence to co-regulatory or self-regulatory mechanisms governing editorial standards in one or more Member States”.

This formulation recalls the binding one of Art. 18 (1.d) EMFA, but only referring to foreign MSPs<sup>58</sup>. According to Recital 53 EMFA, it should be the Commission to instead provide guidelines regarding the implementation of the self-declaration functionality “minimising the risks of abuse” by rogue MSPs established and originating from within the EU. Standards and goals need to be developed, and the journalistic community will need to be actively involved, and to take a stance.

In order to facilitate the recognition of MSPs that are independent and adhere to professional standards, various attempts of certifications and labelling are being experimented. As a matter of fact, the quality of news services could be considered as an essential characteristic for the economic product of media services, to provide a basis for mutual recognition in the internal market. In this regard, parallels with the certifications and labels for products’ standards, e.g., in the food safety chain, have been suggested.<sup>59</sup> In particular, the Journalism Trust Initiative (JTI) has decided to

57. Moreover, increasingly news media also combine news and current affairs with entertainment content, combined with click-baiting tactics, easily sharing unverified, oversimplified and disinformation narratives. This damages the reputation of journalism and makes it harder to argue in favor of a media privilege towards these subjects. However, when sustainable, independent, and trusted, media are best positioned to debunk disinformation narratives by providing accurate and complete information to citizens. See NENADIC-BROGI 2023.

58. Moreover, MSPs originating from outside the Union can also be subject to “coordinated measures” by the Board and national regulatory authorities, under Art. 17 EMFA.

59. BAYER 2024, p. 115; similar proposals have been formulated regarding algorithmic recommender systems and parallels with the use of nutrition labels. Detraction points consist in the dynamic nature of algorithmic systems, as well as the lack of a consolidated science and enforcing body in this field. The same could be said with regard to labelling media outlets and media content. See also [New research from NYU shows NewsGuard helps those](#)

translate existing ethical and professional standards of journalism into an industry standard of journalistic processes<sup>60</sup>: group of international experts have come up with a general standard that is now listed as an ISO standard, one which allows media outlets to self-assess and to be certified. It translates into a machine-readable code that allows platforms' algorithms to recognise the content and to increase its visibility. Recital 53 suggests that, where relevant, VLOPs should rely on this standard<sup>61</sup>.

All this said, the “media privilege” is in practice not more than a fair procedure: to provide a reasoned notification prior to take-down and the right of the interested party to reply within 24 hours. Procedural fairness is a prerequisite for safeguarding freedom of expression<sup>62</sup>, but the right to prior informing is hardly more than a symbolic gesture to media service providers<sup>63</sup>. Some civil society organizations proposed to expand the privilege to actually promote the visibility of independent MSPs' content<sup>64</sup>. The actual impact on the quality of the information environment remains to be seen for the near future. For example, it appears that the cases when Art. 18 could be applied are limited: it is specified that this would be the case only outside the systemic risks scenarios under Art. 28, 34 and

35 of the DSA, for example in relation to content moderation practices tackling disinformation, or illegal content such as hate speech, cyber violence, or measures aimed at the online protection of minors (Art. 18 (4)). It seems legitimate to wonder then: when will Art. 18 be actionable?<sup>65</sup>

As it stands now, and without the possibility of evaluating its practical implementation yet, Art. 18 appears to be a convoluted procedure to guarantee procedural safeguards. However, indeed, Art. 18 EMFA opened the way for developing a “new social contract”, defining the status of the media in the digital society<sup>66</sup>. It stands as the only legislative attempt at the EU level to explicitly promote the principle that media and journalism, as key democratic institutions, should not be censored by VLOPs and VLOSEs. It therefore becomes fundamental to preserve this normative principle as well as to provide sufficient clarity and flexibility for the Article to make its applicability effective and long-lasting<sup>67</sup>.

## 6. Final remarks

Who are the media, who decides upon this and why should they be granted special privileges are problematic questions that require normative choices to be answered.

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[most exposed to misinformation – NewsGuard](#) (newsguardtech.com) and [What ‘Nutrition Facts’ Labels Leave Out | TIME](#)

60. [The Journalism Trust Initiative](#). Another initiative is [IWA 44](#), a unique identifier for media outlets (similar to DOI).

61. Recital 53 EMFA: “Where relevant, providers of very large online platforms should rely on information regarding adherence to those requirements, such as the machine-readable standard of the Journalism Trust Initiative, developed under the aegis of the European Committee for Standardisation, or other relevant codes of conduct. Recognised civil society organisations, fact-checking organisations and other relevant professional organisations recognising the integrity of media sources on the basis of standards agreed with the media industry should also have the possibility to flag to the providers of very large online platforms any potential issue regarding compliance by media service providers with the relevant requirements for the self-declaration.

62. BAYER 2022.

63. BAYER 2024, p. 161.

64. REPORTERS WITHOUT BORDERS 2023.

65. With regards to content moderation practices towards media service providers, EMFA results to be a *lex specialis* in relation to the DSA. Connections with the DSA can be found in relation with: (i) the definition of editorial responsibility under Art. 2 (8) of EMFA – mentioning the control both over the choice of content and its organisation as criteria for identifying such responsibility; (ii) the mentioning of VLOPs and video-sharing platforms as possibly having editorial responsibility under Recital 11; (iii) The special status of media service providers vis-à-vis VLOPs' content moderation practices under Art. 18 EMFA. See POLLICINO-PAOLUCCI 2024, p. 8.

66. TAMBINI 2023.

67. NENADIC-BROGI 2023.

Ultimately, the scope of media policies is guaranteeing the thriving of free and diverse media service providers, consequently enabling citizens to access independent information meeting their information needs, enabling them to evaluate the world they live in, and undertaking informed choices in their daily life and in the context of their civic participation. This is why defining who are the media to be protected – and from which to pretend a certain degree of transparency and the respect of editorial independence and professional standard – is crucial.

It appears that EMFA puts in place, by means of inclusion or exclusion in the category of “media service provider”, different categories of media: independent MSPs, not independent MSPs, rogue MSPs (the most insidious category of non-independent MSPs). This is done through the use of tangent categories, such as the definition of “service” under the Treaty on the Functioning of the EU and the concepts of “editorial responsibility” and “editorial independence”. As a consequence, non-profit media and influencers seem to fall under the definition of MSPs, while other watchdogs like civil society organizations are excluded. Social media platforms are also excluded, not holding editorial responsibility despite the increasingly editorial role in content moderation practices. However, they are required to identi-

fy the MSPs operating on their services, and to grant them with a special procedure when their content is subject to content moderation. Despite such a privileged procedure appears to be weak in protecting and enhancing the prominence of independent journalism, it stimulates discussions regarding a new definition of what constitutes trustworthy media or journalism<sup>68</sup>, looking at the list of criteria provided by Art. 18 EMFA for MSPs’ self-declarations to platforms: being independent from political entities, being transparent about their funding, adhering to professional standards, not providing AI-generated content without human oversight.

EMFA is a principle-based Regulation, thus its implementation – mostly starting in August 2025 – remains to be observed. However, as a Regulation, it is directly and literally applicable not only to Member States but to other legal subjects as well, including legal entities and natural persons; namely, it will be directly applicable by and on media companies, journalists and online platforms too, among others. That is why speculating on the interpretation of concepts put forward by EMFA, and in particular on the very subjects of this Regulation, is crucial and must be done before its entrance into force, so that the field is clear, and all stakeholders could make the most out of this regulatory effort.

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68. BAYER 2024, p. 159.

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