

# EUROPEAN ECONOMIC AREA

## STANDING COMMITTEE OF THE EFTA STATES

Ref. 23-833

22 May 2023

### SUBCOMMITTEE II ON THE FREE MOVEMENT OF CAPITAL AND SERVICES

#### EEA EFTA COMMENT

**on the Commission 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](#))**

#### 1. EXECUTIVE SUMMARY

- *The EEA Agreement extends the Single Market to the EEA EFTA States (Iceland, Liechtenstein and Norway).*
- *The EEA EFTA States welcome the Commission's proposal for establishing a common framework for media services in the internal market (European Media Freedom Act, EMFA). The EEA EFTA States support the overall objectives of the proposal to protect media pluralism and independence in the internal market.*
- *The EEA EFTA States are among the top countries on the Reporters Without Borders 2022 World Press Freedom Index. For the EEA EFTA States, it is of crucial importance that the EMFA does not affect the Member States' possibilities to maintain or adopt stricter or more detailed national rules to protect media freedom and media pluralism.*
- *Suspension and other forms of interference with editorial content challenge the conditions for media freedom and editorial independence in fundamental ways. The EEA EFTA States therefore welcome and support the EMFA proposal in setting up clear procedures for information and transparency when providers of very large online platforms (VLOPs) decide to interfere with content provided by media service providers. The EEA EFTA States propose that these procedures also apply to very large online search engines (VLOSEs) in line with the Digital Services Act (DSA).*

- *Furthermore, the EEA EFTA States propose that the VLOP and VLOSE information and transparency procedures should cover all cases where editorial content is suspended or restricted on a VLOP or VLOSE and that media service providers should have an opportunity to contradict the decision within an appropriate period before a restriction or suspension takes effect.*

## 2. GENERAL REMARKS ON THE PROPOSAL

1. The EEA EFTA States welcome the Commission's proposal for establishing a common framework for media services in the internal market (European Media Freedom Act, EMFA). Safeguarding editorial freedom and media independence is of fundamental importance for public trust and a well-functioning democratic society. The EEA EFTA States therefore support the overall objectives of the proposal to protect media pluralism and independence in the internal market.
2. The EEA EFTA States are among the top countries on the Reporters Without Borders 2022 World Press Freedom Index. Several Member States have already adopted national rules to protect media freedom which are stricter or more detailed than the EMFA proposal. For the EEA EFTA States, it is therefore of crucial importance that the **EMFA does not affect the Member States' possibilities to maintain or adopt stricter or more detailed national rules** to protect media freedom.
3. Moderation, suspension, and other forms of interference with editorial content by online platforms challenge the conditions for media freedom and editorial independence. The EEA EFTA States welcome and support the EMFA proposal in setting up **clear procedures for information and transparency when providers of VLOPs decide to interfere with content provided by media service providers**. Since very large online search engines act as a gateway for access to media services, the EEA EFTA States are of the opinion that the obligations in Articles 17 and 18 also should apply to providers of very large online search engines. As explained below, the EEA EFTA States are inter alia of the opinion that this part of the EMFA should be **strengthened to cover all cases where editorial accounts or content is suspended or restricted by a provider of a VLOP or a VLOSE**.
4. The EEA EFTA States welcome the clear commitment of the Commission to the independence of the national authorities and the Board in Article 9 of the proposal. However, this commitment is weakened further down the line by the repeated reference to the powers of intervention and the requirement for coordination with the Commission (for example Article 12). Therefore, the EEA EFTA States would welcome **the general possibility for the Board to take action** – in addition to any requests from the Commission – on its own initiative.
5. This EEA EFTA Comment is without prejudice to further comments from the EEA EFTA States on the EMFA proposal.

### 3. REMARKS ON SPECIFIC PROVISIONS IN THE PROPOSAL

6. To ensure that the EMFA does not weaken a higher level of media freedom protection than what follows from the proposal, it should be clarified in Article 1 (3) that Member States may adopt both “stricter or more detailed rules in the fields covered by Chapter II and Section 5 of Chapter III [...]”.
7. The EEA EFTA States emphasise that the protection of journalistic sources is one of the cornerstones of freedom of the press. Article 4 (2) (b) is in line with established European Court of Human Rights (ECHR) standards through the requirement that interventions must be “justified by an overriding requirement in the public interest”. It should be clarified that the proposal does not entail weaker protection of journalistic sources than what follows from ECHR case law. The EEA EFTA States propose that the issue of "deploying spyware" should be regulated under Article 4 (2)(b) and thus assessed in accordance with the ECHR's case law whether the deployment of spyware may be justified by an overriding requirement in the public interest.
8. The EEA EFTA States believe that **judicial control in court is sufficient** and that an independent body for complaints suggested in Article 4 (3), may delay or in other ways affect judicial processes. The EEA EFTA States therefore propose that Article 4 (3) is deleted.
9. Public service media play an important role for society and democracy by ensuring impartial and high-quality media content. The EEA EFTA States therefore welcome the introduction of safeguards for the independent functioning of public service media (PSM) in Article 5. It should however for the sake of clarity be added to recital 18 that the EMFA does not affect the competence of Member States to **define a broad and dynamic public service remit**, to organise and provide for the funding of public service media.
10. In some Member States, privately owned commercial enterprises receive national public funding for the fulfilment of a public service mission. As a principle, **Member States should not lay down the criteria for the appointment and dismissal of the head of management and the governing board in private media enterprises**. The EEA EFTA States therefore propose that the obligations in Article 5 (2) should make an exclusion for privately owned enterprises.
11. The EEA EFTA States welcome the objective to shield editors from undue interference in their decisions taken on specific pieces of content in Article 6 (2). This is inter alia important for the public's trust in that media service providers can manage their role as a “public watchdog” unaffected by outside interests. The EEA EFTA States therefore consider that it is necessary to clarify and **strengthen the independence of the editor and editorial decisions** in Article 6 (2). Firstly, Article 6 (2) should state that an editor must, within the framework of the medium's fundamental principles and purpose, manage the editorial work and make decisions on editorial issues. Secondly, Article 6 (2) should clarify that the publisher, owner, or other company management cannot instruct or overrule the editor on editorial issues, nor can they demand to see print, text or pictures/images, or demand to hear or see programme material before it is made available to the public. Finally, it should be stated that no derogations may be made

from the two above mentioned principles by means of an agreement or other legal basis to the disadvantage of the editor. Similar provisions exist for example, in Section 7 of the Norwegian Media Liability Act.<sup>1</sup>

12. The EMFA will establish a European Board for Media Services (the Board), which shall replace and succeed the European Regulators Group for Audiovisual Media Services (ERGA). In recital 23, it is stated that the Board, in agreement with the Commission, should have the possibility to invite experts and observers to attend its meetings, including in particular regulatory authorities or bodies from EEA countries. It is the EEA EFTA States understanding that the Board should be categorised as a committee that falls under Article 101 of the EEA Agreement. This means that **the modalities of the EEA EFTA States participation in the Board should be regulated in a mutually agreed upon Joint Committee Decision** when incorporating the act into the EEA Agreement, and not directly in a legal text as published by the European Union. Furthermore, the EEA EFTA States should be ensured full participation in the Board, in line with the established practice. The EEA EFTA States therefore propose that Recital 23 of the EMFA proposal is amended so that references to the EEA EFTA States are deleted.
13. The EEA EFTA States support the procedures for requests for enforcement of obligations by video-sharing platforms in Article 14. The EEA EFTA States propose that the information duty in Article 14 (2) also includes a duty, where applicable, to justify the reasons for which action was not taken. In the same manner, it should be clarified that Article 14 (3) also covers cases when a Member State decides not take actions pursuant to paragraph 1.
14. The information requirement in Article 17(2) in its current wording only applies where a provider of a VLOP decides to “suspend” the provision of its online intermediation services in relation to content provided by a media service provider. In the view of the EEA EFTA States, the information requirement **should also apply in cases where a provider of a VLOP or a VLOSE decides to restrict content** provided by a media service provider. This will align the EMFA with Article 4(1) of Regulation (EU) 2019/1150. The terms “restrict or suspend” should in the context of EMFA cover practices such as removal of content, downranking content, limiting visibility of content and labelling content (for example as misleading or harmful). Furthermore, the EEA EFTA States propose that Article 17 (2) gives media service providers the opportunity to contradict the decision within an appropriate period before the restriction or suspension takes effect. If the provider of a VLOP still intends to restrict or suspend the provision of its online intermediation services, it shall inform the media service provider as soon as possible. The EEA EFTA States propose that the Articles 17 and 18 also apply to very large online search engines (VLOSE), in line with the DSA.
15. The EEA EFTA States propose to amend Article 21 and propose that the national regulatory authority or body **should not be obliged to consult the Board regarding assessment of media market concentrations**. This is essential to avoid delaying procedures at the national level, and to preserve the competence to the national authority. The EEA EFTA States therefore propose to delete Article 21 (4) (5) and (6).

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<sup>1</sup> [Media Liability Act](#)

Furthermore, we propose that Article 12 (g) is deleted and Article 12 (f) (ii), Article 22 and recital 43 are amended in accordance with the proposed changes in Article 21.

16. Since the EEA Agreement extends the Single Market to the EEA EFTA States, Iceland, Liechtenstein and Norway remain dedicated to continuing as constructive partners in the ongoing legislative process regarding the EMFA.