

EUROPEAN MEDIA FREEDOM ACT POSITION PAPER

The Association of Commercial Television and Video on Demand Services ([ACT](#)) welcomes the European Commission's intent to safeguard the pluralism, independence and sustainability of the media in the EU. Below is an outline of the actions we believe can help achieve these goals.

Subsidiarity: a focus on common criteria or conditions for justified restrictions based on media pluralism grounds and an obligation for restrictions to be objectively justified, transparent, non-discriminatory, and proportionate, coupled with an obligation to justify any restrictions is the most appropriate approach. Media pluralism rules are fundamentally a national competence and each Member State has its own specificities, which are often deeply rooted in its history. Whilst the Commission's intent to support our sector is welcomed, we do not believe that the objective should be to impose a single set of rules for all and definitely not new rules at EU level. In our view, an approach which supports common criteria or conditions would be the least intrusive option to ensure minimum standards and good governance whilst protecting media companies from some states using media pluralism rules to unduly interfere with their activities.

Online platforms, pluralism, and consolidation: the future European Media Freedom Act should support growth for European broadcasters and in no way hinder it. Very large online platforms have a massive impact on the way information is shared, processed and distributed. They are also the main source of disinformation. Although some online platforms possess strong content recognition capabilities via AI tools which allow them to recognise content precisely and then define its virality, their relative editorial control is still not recognised as such into the current regulation nor in the DSA. In contrast, European commercial broadcasters remain a key source of reliable information and are heavily regulated. To be able to compete with VLOPs, and more generally gatekeepers, to ensure a healthy information ecosystem for Europe, and to be able to voice European pluralism and values, European broadcasters need the possibility to grow in scale or join forces. To safeguard the future of Europe's media, this proposal should under no circumstances become an anti-concentration tool nor should it prevent the sector from innovating, scaling up and seeking new sources of revenues. Any measure aimed at restricting the concentration capacities of European broadcasters would ultimately limit European pluralism and reinforce the dominance of actors who do not support European values.

Outdated regulatory constraints: the MFA could help the sector diversify and grow by revisiting and limiting the use of intrusive rules for traditional media whilst ensuring closer scrutiny of VLOPs', and more generally gatekeepers', own acquisitions affecting media pluralism. Media companies can be forbidden by law to expand and invest into new sectors on media pluralism grounds. Some of these rules are outdated and unnecessarily prevent media companies from innovating, scaling up and seeking new sources of revenues. Furthermore, these rules do not bring any solution to the real threat to media pluralism which lies in the practices of VLOPs, and more generally gatekeepers, notably in terms of acquisitions in the media sector. The lax approach of competition law with regards to VLOPs, and more generally gatekeepers', acquisitions coupled with the overly strict restrictions for European media companies is harmful to the long-term sustainability of the sector (for instance, Amazon's acquisition of MGM).

Regulatory asymmetry and a harmonized media space: to reach the objective of improving the functioning of the internal market for media, existing rules for the audiovisual sector should be applied proportionately. Each year broadcasters invest millions in professional and fact checked news disseminated across our thousands of generalist channels and dedicated news channels in Europe (a majority of which are operated by commercial entities). This role is crucial towards ensuring media

pluralism and a healthy democratic discourse in our societies. Whilst a certain level of regulation is needed, there are severe regulatory asymmetries which limit the sustainability of AV media. For instance, detailed and inflexible AVMS rules on commercial communication impact TV players' ability to compete and fund original European content in competition with non-AVMSD services which do not invest in such content. More generally, implementation at national level of the minimum requirements foreseen in the AVMSD is sometimes disproportionate and can erect new barriers, undermining AVMS providers' ability to move into new markets. Examples of this can for instance relate to disproportionate EU and national sub-quotas or financial contribution obligations, additional investment requirements having to be spent on "independent works", and provisions regarding the retention of rights by the involved independent producers. We would therefore caution against establishing additional minimum requirements at EU level which would have the potential of repeating the overall negative experience of the AVMSD.

Visibility: we would welcome proposals to ensure the visibility of commercial broadcasters' news and content and call on measures to ensure that very large online platforms do not interfere, or render invisible, their content. Commercial TV has historically been, and continues to be, a main driver of media pluralism and freedom of expression. In some markets they are the only source of credible and independent media. Whilst we welcome the idea of extending existing regulatory frameworks related to the prominence of general interest services online, we are concerned to see a definition of general interest synonymous with public service media and, only maybe, some commercial broadcasters, being put forward. The situation in Hungary and Poland illustrates how problematic such an approach can be. Independent private media must remain visible and findable online and offline in the same way as public service media. Prominence obligations for services of general interest should expand obligations that currently apply to traditional distributors to new interface such as large platforms.

Audience measurement: to ensure coherence and reflect the different nature of the services, players subject to different regulatory regimes should not be included in the same "audience measurement basket", but rather should be measured with separate but comparable currencies. A stable and plural media landscape requires separate but comparable "currencies" for all players, online and offline. Independent and neutral, but also reliable audience measurement systems, for all players be they online or offline, are essential in this respect, even if this means using tools and metrics adapted to the nature of their service.

Transparency: measures to improve the transparency of media ownership and state advertising could be useful. This includes for instance strong transparency and non-discriminatory provisions on the allocation of public/state advertising, although adding layers of bureaucratic rules should be avoided. This would be especially pertinent in the light of the specific situation in some Member States. They should allocate their advertising expenditure in a neutral way. All broadcasters should also have an equal access to public/government information sources.

A holistic view of media pluralism: any new regulations with a direct or indirect impact on audiovisual media should be assessed in the light of general principles such as the sustainability of media pluralism, to avoid that regulatory conflicts or lack of coherence have a negative impact on the media landscape. Media services are affected by a growing range of regulations, with diverse and sometimes conflicting objectives. This lack of consistency has a negative impact on our ability to invest or produce journalistic content. A good example of this is the Commission's relentless push to undermine territorial exclusivity, a strong driver of media pluralism in Europe, in the Audiovisual sector. This approach was suggested by the Hans Bredow Institute in a [study](#) carried out during Germany's Council Presidency.