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For the first time, EU institutions are set to debate binding legislation on media freedom online, but the question of what level of oversight should be applied to online media while ensuring the upholding of democratic standards is fuelling intense debates.

In September 2022, the European Commission suggested the European Media Freedom Act (EMFA) to protect media pluralism and independence across member states. The text will be debated in European Parliament plenary sessions in the coming days, with oversight set to be a hot topic. "It's not up to Elon Musk or Mark Zuckerberg to decide what kind of content a newspaper or a television station" in the EU should publish online, said progressive MEP Christel Schaldemose at a European Parliament event on Tuesday, 26 September.

Schaldemose, jointly with conservative MEP and rapporteur Sabine Verheyen, defended a provision in the European Media Freedom Act that, if accepted, will "ensure that EU media are protected from very large online platforms arbitrarily deleting or restricting their content."

Within a 24-hour window, media outlets will have a chance to engage with platforms and national regulators before their content can be limited, falling under the scope of the EU regulation on illegal content online, the Digital Services Act (DSA).

Disinformation loopholes

A group comprising the Club de Madrid, a forum of former democratic presidents and prime ministers fostering democracy, the Computer & Communications Industry Association (CCIA, Europe) and the European Digital Rights (EDR) voiced concerns about "dangerous loopholes" that this provision would create.

In a letter published on Tuesday, eight former heads of State and government of the Club de Madrid wrote that those "who seek to manipulate public opinion by disguising disinformation and propaganda as legitimate media content" will use the EMFA 24-hour exemption from the DSA rules in order to spread disinformation, covering their tracks by self-declaring themselves as media.

CCIA Europe also summoned MEPs to improve the definition of media service providers for better media oversight.



As a result of intense public consultation and media campaigning, the fundamental question the European Media Freedom Act must address is one of power imbalances against Media Freedom Act.

Media privilege

"We've been explained that the provisions of the European Media Freedom Act "do not affect the Digital Services Act at all" and that it did "not provide a loophole for propaganda media and third country influence".

She explained that only the list of "media service providers" will benefit from the 24-hour exemption from the DSA. The exemption, therefore, creates a safer structure also for journalists.

"Media service providers" must comply with multiple criteria such as a transparent ownership structure, an independent editorial board from internal and foreign political or corporate actors, oversight from national authority and compliance "with recognised self-regulatory standards".

In line with this point of view, Renate Schneider, director of the European Federation of Journalists, told Euractiv that the debated provision was a "media privilege", safeguarding media freedom from Big Tech "with terms and conditions decisive about deleting journalists' content".

In her view, leaving Big Tech the power to take down content is a dangerous loophole for media freedom and EU democracy.

In this line of thinking, media are privileged because they have in-house content moderators by default and do not need to immediately fall under online content moderation procedures foreseen in the DSA. Hence the 24-hour window.



The German branch of Kremlin-backed outlet Russia Today (RT DE) will shut its doors following the latest round of EU sanctions, a month after its French counterpart was forced to do the same.

Media freedom

Aurora Rabau, policy manager at News Media Europe, an organization representing publishers' interests, told Euractiv that "there is a risk that the definition of recognised 'media service providers' could be an indirect way to regulate media".

Asked by Euractiv about a possible media regulation stemming from this definition, Verheyen explained that the "media service providers" criteria are "not a question of good or bad or high quality or low quality. It's a question of structures".

She said the definition is determined by criteria of independence, third-party influence and self-regulatory structures, thus neither regulating media freedom nor market access.

Heated timeline

Verheyen said that the Spanish Presidency of the Council of the EU wanted to reach an agreement on the European Media Freedom Act by November.

She personally wished for a quick approval but stated that her deadline was February 2024 at the latest, during the Belgium Presidency.

Indeed, she wants the text to be agreed upon and implemented "without being blocked by presidencies who already declared that they do not like this piece of legislation at all", nodding to Hungary and Poland, which will, in turn, take over the EU rotating presidency from July 2024 to June 2025.

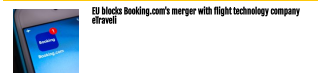
As a first step, the European Parliament's compromised text should be agreed upon during the next plenary session on 3-4 October before entering interinstitutional negotiations, also known as trilogues.



EU lawmakers are divided on whether industry-specific provisions on illegal online content should be used to enter a dialogue on whether they could complement the Digital Services Act (DSA).

[Edited by Alice Taylor]

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