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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	16 September 2022
To:	General Secretariat of the Council
Subject:	REGULATORY SCRUTINY BOARD OPINION Accompanying the document 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)

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Delegations will find attached document SEC(2022) 322 final.

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Encl.: SEC(2022) 322 final



EUROPEAN COMMISSION

Brussels, 27.7.2022

SEC(2022) 322 final

## **REGULATORY SCRUTINY BOARD OPINION**

European Media Freedom Act

{COM(2022) 457 final}

{SWD(2022) 286 final}

{SWD(2022) 287 final}



Brussels,

## Opinion

**Title: Impact assessment / European Media Freedom Act**

**Overall 2<sup>nd</sup> opinion: POSITIVE WITH RESERVATIONS**

### (A) Policy context

The European Media Freedom Act aims to establish a common framework to improve the functioning and convergence of the EU media market, including by increasing transparency, independence and accountability around actions affecting media markets, media freedom and pluralism. The initiative also aims to set out EU-level coordination rules for independent and transparent media markets. It is intended to complement the existing EU framework that promotes transparency of media ownership and recognises editorial independence of the media.

### (B) Summary of findings

**The Board appreciates the improvements to the revised report in line with the Board's recommendations, notably on the problem definition, the design and content of options and the analysis of impacts.**

**However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG CNECT to rectify the following aspects.**

- (1) The report does not sufficiently exploit the existing evidence to support the problem definition, in particular the fragmentation of the single media market and its resulting negative impacts.**
- (2) The report lacks sufficient clarity on the complementarities between the different policy options and their design with regard to the problems they seek to tackle. The analysis of their effectiveness does not provide sufficient clarity as to what will make them successful.**
- (3) The analysis of single market and distributional impacts, among different media services and between Member States, is not sufficiently developed.**

**(C) What to improve**

(1) Given the absence of quantitative data to support the scale of the problems related to media pluralism frameworks in the internal market, the report should exploit to the maximum, the available evidence. It should expand the presented evidence base by using the relatively plentiful anecdotal evidence in a more systematic way throughout the problem analysis, particularly with a view to underpinning and substantiating the single market angle.

(2) The report should make systematic targeted use of the information included in the Annex containing an inventory of the varying media pluralism rules across the EU Member States, to support the argument of market fragmentation, specifically in terms of the problems these diverging rules pose to its good functioning. It should also more precisely define the concept of '*media pluralism*', providing a framework for practical interpretation and assessment of the desired situation at the EU level and better substantiating the scale of the problems to be tackled.

(3) The presentation of policy options should be clearer about the complementarities of options and measures as they increase in legal intensity. The rationale behind the demarcation between the options should be better explained, taking into account the streamlined problem definition, which appears to equalise the significance of all problems while the policy responses vary in ambition. The report should clarify whether some of the problems are indeed more critical for the functioning of the EU media markets than others and how this is reflected in the design and choice of the preferred option(s).

(4) The report should more explicitly address the drivers for effectiveness of the different policy options, explaining in detail how precisely a given measure is expected to be more effective.

(5) The report should strengthen the single market angle in the analysis of the economic impacts. The current presentation of cumulated impacts for all Member States, without much distinction between the specific problems is insufficient. Presentation of the economic impacts included in the body of the report should be more transparent. The additional explanation included in the methodological Annex should be streamlined and clarified, in particular with regard to the application of the quantitative impact scores. The report should better explain the values assigned to these scores for each policy option and be more explicit about the uncertainty related to the outputs of deterministic modelling.

(6) The distributional analysis should be further strengthened, in particular with regard to the impacts on the different market players, which are not sufficiently highlighted. The report should also establish a better link between the supporting information of the Annex and the main body of the report to sustain the analysis of all key impacts.

**(D) Conclusion**

**The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.**

**If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.**

Full title	Impact Assessment on European Media Freedom Act
Reference number	PLAN/2021/11882
Submitted to RSB on	11 July 2022
Date of RSB meeting	Written procedure

**ANNEX: Quantification tables extracted from the draft impact assessment report**

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

**Overview of benefits (total for all provisions) of the preferred Options**

Measures	Who is affected?	Who will benefit?
<b>Fostering cross-border activity and investment in the internal media market</b>		
Media pluralism measures and media market scrutiny	Media companies subject to media pluralism rules, mainly broadcasters (and other companies that invest in the media sector) Member States (media regulators and actors taking measures/decisions)	Media companies and investors. Particularly beneficial for non-national media market players: higher legal certainty, facilitation of investments across borders Citizens: richer media offer
<b>Increasing regulatory cooperation and convergence in the internal media market</b>		
Mechanism for a structured cooperation between media regulators	Audiovisual companies and VSPs Media regulators	Mainly media service providers regulated at EU level, namely audiovisual media service providers and video-sharing platforms: more legal certainty, more stable/convergent regulatory environment Media regulators: Improved cooperation in tackling cross-border challenges for the media sector. Up to 20% in annual cost savings related to cooperation within ERGA, due to a more efficient cooperation in the Board and reduced tasks as a result of the creation of a dedicated secretariat within the Commission. Relevant authorities in adjacent fields: competition, telecom and digital regulators, relevant ministries. Citizens: better enforcement of EU media rules, in particular online, thus safer online space
Collective action by the Board	Third country media Media regulators	Media companies: protected from rogue media players Audiovisual distributors: less fragmentation of regulatory action, higher level of certainty Media regulators: more effective restrictive measures Citizens: safer information space
Mechanism for monitoring media pluralism online	VLOPs Media regulators	Media companies: wider distribution online, lower risk to editorial integrity online Citizens: more diverse media offer, fewer risks to media freedom/pluralism online, lower level of disinformation

<b>Facilitating free provision of diverse quality media services in the internal market</b>		
Media independence principles + recommendations to promote editorial independence, self-regulation and media ownership transparency	Media companies Journalists	Media companies: benefit from higher trust in their services, level playing field - all abide by comparable ethical standards, better possibility to take informed business/investment decisions Journalists: better safeguarded from risks of interference within media outlets, empowered by self-regulation that safeguards editorial integrity Citizens: more trustworthy media, higher quality of media services, possibility to evaluate who stands behind editorial line (media accountability)
Independence safeguards for public service media and an obligation of balanced media coverage	Public service media (audiovisual + radio)	PSM: more independence in management and editorial decisions Private media: fairer competition on the market Journalists within PSM: lower risks of political pressure Citizens: access to more diverse and independent quality news and information
Safeguards for the integrity of journalists' sources	Member States (public actors issuing surveillance orders) Journalists	Journalists: protection of their societal mission, lower risks of interference in their job across the EU Citizens/entities who provide information to media: anonymity, protection from negative consequences Citizens in general: higher trust in media
<b>Ensuring transparent and fair allocation of economic resources in the internal media market</b>		
Principles/rules on transparent, objective and inclusive audience measurement	Audience measurement service providers (including online players)	Audiovisual and press companies: fair competition with online players when selling ads, better content monetisation and potentially higher advertising income Business (at large): more informed decisions concerning advertising spending Media regulators: accurate data for market assessments
Principles/rules on transparent/fair allocation of state advertising	All (private) media Member States (authorities/state-owned entities allocating advertising expenditure to media)	Independent media companies: reduced market distortion resulting from the misuse of state advertising; media players critical of governments could benefit from more state advertising Citizens: lower risks of dependence of certain media outlets on state and hence manipulated information

### Overview of costs – Preferred option compared to baseline

	Costs for Businesses		Costs for Administrations	
	One-off	Recurrent	One-off	Recurrent
Scrutiny of media market transactions	EUR 9.1-13.7 million *	-	-	EUR 44 100 - 96 600
Regulatory cooperation and convergence in media markets			EUR 50 000	EUR 1.12 - 3.36 million
Protection of editorial independence		EUR 5.1-10.2 million (55% of SMEs)	-	-
Safeguards for Public Service Media	EUR 357 300	-	EUR 447 000-1.7 million	EUR 42 000
Transparency of Media ownership	-	EUR 0.4-4.2 million (55% of media companies)	-	-
Requirements for Audience Measurement Systems	-	-	EUR 69 000 - 415 000	EUR 592 200
Monitoring of State advertising	-	-	-	EUR 415 000 - 1.6 million
Governance (sub-option A)	-	-	-	EUR 2 - 2.3 million (8-10 FTEs and EUR 1 million operational budget)
<b>Total</b>	EUR 9.4-14 million	EUR 5.6 – 14.5 million**	EUR 566 000 - 2.16 million	EUR 4.2-8 million

\* Costs linked to familiarisation with the new provisions

\*\* The totals may include differences due to rounding.

<i>Costs related to the 'one in, one out' approach</i>							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent		
<b>Total</b>	Direct adjustment costs	-	-	EUR 9.4 – 14 million	EUR 5.6 - 14.5 million		
	Indirect adjustment costs	-	-	-	-		
	Administrative costs (for offsetting)	-	-	-	-		



EUROPEAN COMMISSION

Regulatory Scrutiny Board

Brussels,  
Ares(2022)

## **Opinion**

**Title: Impact Assessment on European Media Freedom Act**

**Overall opinion: NEGATIVE**

### **(A) Context**

The European Media Freedom Act aims to establish a common framework to improve the functioning and convergence of the EU media market, including by increasing transparency, independence and accountability around actions affecting media markets, media freedom and pluralism.

The initiative also aims to set out EU-level coordination rules for independent and transparent media markets. It is intended to complement the existing EU framework that promotes transparency of media ownership and recognises editorial independence of the media.

### **(B) Main considerations**

**The Board acknowledges the additional information provided in advance of the meeting and commitments to make changes to the report.**

**However, the Board gives a negative opinion, because the report contains the following significant shortcomings:**

- (1) The report does not sufficiently explain the single market failures and regulatory gaps that the European Media Freedom Act aims to fill. It does not demonstrate with sufficient evidence the scale and relative importance of the problems to tackle and their prevalence across different media markets and Member States. It does not provide clarity on the overall objectives of the initiative and how they are linked.**
- (2) The report does not present a convincing intervention logic showing how the identified measures are expected to deliver on the objectives and tackle the problems. The presented policy options are not complete and sufficiently precise as to their content and functioning. The analysis of the choice of the legal delivery instrument is missing.**
- (3) The impacts of the policy options are not sufficiently assessed, including on the internal market aspects. The need for and effectiveness of some measures is not clearly demonstrated. The report lacks solid comparative analysis of all costs and benefits and is not sufficiently clear on who will be impacted and how.**
- (4) The report is not sufficiently transparent on the differing views between and within categories of stakeholders’.**

**(C) Further considerations and adjustment requirements**

- (1) The report should be clearer about the magnitude of the problems for the main affected single media markets and substantiate them with solid and convincing evidence. As not all problems seem equally critical for all media market actors or equally relevant across Member States, the report should present a clear problem overview and on that basis set a clear prioritisation and hierarchy of issues and reflect it accordingly in the design of policy options. The significance and evidence of some problems (e.g. lack of media pluralism, cross-border investments, innovation in the media markets, distortions resulting from opacity of audience measurement systems, problems related to the media coverage of European elections) should be further developed.
- (2) The report should also identify the precise regulatory gaps that the initiative aims to fill, better explaining the shortcomings of the existing regulatory measures applicable to the media markets. It should further develop and substantiate with clear evidence the problem of fragmentation of the single media markets, and the resulting effects on the media market players and media pluralism. It should better explain the different interpretations of regulatory concepts by different national regulators. The analysis should underpin the choice of Article 114 as legal base and better support the respect of the subsidiarity principle in view of the diverse cultural, historical and political traditions of the media frameworks in the Member States. The report should clarify the definition, practical interpretation and measurement of the notion of media pluralism.
- (3) Given the legal base the report should review the (general) policy objectives and better explain their linkages as well as the interplay between the objective of pursuing well-functioning single media markets and its link to promoting and ensuring media pluralism in the Member States. It should be clearer upfront on the balance and relative importance of further EU-level coordination versus new substantive harmonisation measures.
- (4) The report should present a fully developed intervention logic by better presenting how the options and their measures will precisely tackle the identified problems (and their drivers). It should provide further detail to clarify the design, content, functioning and rationale of the policy options and their measures. It should better explain some of the measures, including spelling out the precise legal obligations and minimum criteria linked to the principle-based design, to make the practical difference between non-binding recommendations and fully harmonised specific requirements clearer. It should also consider an explicit option combining soft and hard law measures better reflecting the scale and significance of problems and proportionality of some measures. Given the diversity of existing media regulatory frameworks in the Member States the report should discuss the pros and cons and choice of the available legal delivery instruments, at least for the preferred option.
- (5) The report should further develop the assessment of impacts, in particular on the single market. It should better assess the impact and effectiveness of some measures (e.g. non-binding Board opinions, regulatory sandboxes, etc). It should also explain in greater detail different impacts associated with the two governance options. For instance, it should better justify why the Board governance option involving an external secretariat would be clearly more effective in fostering quality media content than the one where the secretariat is provided by the Commission. In case a combination option of soft and hard law measures is considered its impacts should be assessed up-front along with the other options.

- (6) The report should present the overall impact of all measures and further develop the distributional analysis. It should be clear on the cost and benefit estimates, add an overview of costs and benefits of all measures and present combined impacts on businesses (including SMEs), Member States and the Commission. It should be clear who will be affected and how. Where impacts are different for the different market players (e.g. online platforms, audio-visual, press, corporations versus SMEs, etc.), these should be highlighted and the winners and losers clearly identified.
- (7) The report should provide a clearer comparison of options in terms of effectiveness, efficiency and proportionality and better explain and justify the qualitative scores. The comparison of options should include the estimates of costs and benefits of each option and the narrative should be clearer about the drivers of effectiveness of the various measures as well as their proportionality. This analysis should be updated to reflect other policy mixes that the report may consider (see combination option above). The comparison of options tables should synthetically include both qualitative (e.g. effectiveness scores) and quantitative elements (e.g. cost estimates).
- (8) The report should strengthen the evidence base and single market analysis throughout, from the problem definition to the design, analysis and comparison of options. It should also make a better and more targeted use of the evidence contained in the Rule of Law and Media Pluralism Monitoring reports. In parallel it should report the stakeholders views in a more transparent and balanced manner and better distinguish between the views of the different types of media market players, in particular regarding the problem definition and the design and expected impact of policy options. Dissenting views (including within the same category of stakeholders) should be more systematically included as well.

*Some more technical comments have been transmitted directly to the author DG.*

**(D) RSB scrutiny process**

**The lead DG shall ensure that the report is revised in accordance with the above-mentioned requirements and resubmitted to the Board for its final opinion.**

Full title	European Media Freedom Act
Reference number	PLAN/2021/11882
Date of RSB meeting	8 June 2022