



Council of the  
European Union

Brussels, 21 June 2023  
(OR. en)

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Interinstitutional File:  
2022/0277(COD)

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10570/23  
ADD 1

LIMITE

AUDIO 60  
DIGIT 117  
CODEC 1129  
MI 528  
DISINFO 44  
FREMP 189  
COMPET 624  
EDPS 7  
DATAPROTECT 174  
JAI 853  
SERVICES 24  
POLGEN 64

**NOTE**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	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  – <i>Statement by Estonia to art. 17 of the EMFA Regulation</i>

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Delegations will find attached the text of the statement by the EE delegation to the minutes of Coreper on 21 June 2023 on the above mentioned topic.

**European Media Freedom Act****Statement by Estonia**

**Estonia welcomes the aim of the Regulation to protect the independence and pluralism of the media. We fully support safeguarding and enhancing the content of quality media.**

**However, we have concerns that the exception for media content provided in Article 17 may hinder the fight against disinformation and disrupt the aims and objectives set out in other laws and codes such as Digital Services Act and the Strengthened Code of Practice on Disinformation.** We are concerned that this exception might impede very large online platforms and search engines (VLOPs and VLOSEs) from disrupting the spread of harmful content rapidly if needed. Since content can become viral very fast, taking immediate action is crucial. We must seriously consider the warnings of disinformation NGOs that allowing media privileges would enable disinformation to spread more widely.

While the EMFA mandate foresees several safeguards against potential abuse of the functionality of Article 17, its effective implementation and verification of self-declarations by VLOPs will be key. According to the text, VLOPs must assess in each individual case whether content may increase a systemic risk as defined in the Digital Services Act (threat to public discussion, election processes, security, public health, minors, etc.). For example, in the case of inauthentic behaviour by bots or false accounts that is not allowed according to its terms of use, a VLOP must additionally assess what type of systemic risk this behaviour poses. There is also a risk for exploitation by automatic means, as AI could be used to create massive amounts of fake media outlets with self-declarations. These could then be used to spread false information, and separate verification by VLOPs would take too much time.

Furthermore, we are concerned about the legal uncertainty that this obligation creates for VLOPs, who must comply with both the DSA and EMFA and the resulting difficulties in enforcement for regulatory authorities supervising the implementation of the DSA. On the one hand, VLOPs are obliged to mitigate systemic risks. On the other hand, VLOPs have a burden of proof when acting against content spread by media service providers. If the regulator finds that a VLOP has infringed its obligations, they must prove which systemic risk this content poses. However, by then the content has spread and achieved its disruptive aim.

**Therefore, we would like to draw the attention to the potential risks in the implementation of the media exception in the upcoming negotiations with the European Parliament.**

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