

Contribution to the public consultation on the European Media Freedom Act

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1. Introduction

The announcement of the European Media Freedom Act (EMFA) has provided an important impulse for the development of new legal rules seeking to safeguard and support a free and pluralistic media environment in the European Union (EU). As indicated by Commissioners Věra Jourová and Thierry Breton, the initiative is set to address a wide range of persisting challenges faced by European media outlets, including political and economic pressures, unjustified interference with editorial independence, failing business models supporting journalism and issues surrounding media pluralism.¹

Considering the broad spectrum of concerns and the centrality of a pluralist media environment for the health of democracies, the European Commission's commitment to the EMFA is commendable and urgent. With this submission, we would like to take the opportunity to respond to the European Commission's public consultation on the EMFA. Our central argument is that **EU media law and policy - underpinned by robust principles and reflecting the evolving media ecosystem - can go a long way towards securing a favourable environment for a vibrant and pluralistic public debate that is vital for the resilience of European democracies.**

This position paper seeks to:

- Reflect on the key principles and objectives of media law and policy and their ongoing relevance for media-related legislative interventions, such as the forthcoming EMFA
- Elaborate on the challenges faced by journalists and media outlets in the evolving media ecosystem that the European Commission would be well advised to address with the EMFA
- Identify the EU's role in respect of the creation of an enabling media environment and potential starting points for legislative intervention

2. Key principles of media law and policy

For a well-grounded approach to EU media policy, it is imperative to first articulate the underlying principles it builds upon. Existing media and communications policy interventions arguably fall short to adequately address current challenges in the evolving media environment because they have been developed in response to particular challenges at particular points in time.² **The forthcoming EMFA provides an ideal opportunity for the European Commission to adopt a more principled approach to media policy that evolves from an understanding of the norms and values media regulation is founded on,** which can then be translated into law, policy and practice. Such principled media policy would provide for a more coherent and future-proof approach than current reactive interventions.

¹ European Commission. (2022). European Media Freedom Act: Commission launches public consultation. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_85.

² See also: Picard, R., & Pickard, V. (2017). Essential principles for contemporary media and communications policymaking. Reuters Institute for the Study of Journalism.

2.1. Enduring principles of media regulation

The principles and objectives of media regulation have largely been underpinned by the fundamental right to freedom of expression and its corollary, media freedom, and guided by the pursuance of the public interest. The public interest as an overarching objective of media policy may be understood as a combination of political, social and economic objectives.³ From a political perspective, media policy is driven by the ambition to advance democratic participation. From a societal perspective, media policy aims to further intercultural peace and social order. From an economic perspective, media policy aims to facilitate functioning media markets, including a functioning internal market for the media sector in the EU. These political, social and economic objectives inform the underlying principles that media policy should serve.

First, media policy should protect the freedom and independence of media, referring to both the negative freedom (freedom from interference and censorship) and positive freedom (freedom to participate in communication processes). Second, media policy should protect the plurality of the media and it should ensure to all groups in society equal access to imparting and receiving information. And third, media policy should facilitate the economic viability of the media so that they can fulfil their social, cultural and political functions. All three objectives need to be served and advanced by media policy in order to create a favourable environment for media and communications where a pluralistic public debate and public interest journalism can thrive and support democratic processes.

While it is not contested that media policy should still guarantee the freedom, plurality and economic viability of the media, the evolution of the media ecosystem prompts new questions about the meaning and realisation of these objectives and principles in contemporary contexts. Increasing politicisation of the media in various European states has prompted questions as to whether the EU should play a greater role in guaranteeing media freedom. Furthermore, the digital transformation of the media poses new economic and socio-technical challenges for long-held convictions in the European tradition of media policy. A more coherent approach to EU media law and policy, including through the EMFA, first has to address the challenge of repurposing enduring principles and objectives of media regulation for the new media environment.⁴

2.2. Transformation of the notion of media

The very notion of media has undergone massive transformation.⁵ The media used to be a small, privileged group, whose access to means of mass communication gave them a uniquely influential role to shape and facilitate public debate. As a result of technological developments, potentially everything can be media, and everyone can be a media actor. In the context of this inflated media concept, it is imperative to explore what amounts to media that deserve special protections by the forthcoming EMFA. An inclusive approach to the notion of media may be merited in order to level the playing field between the various media actors in an evolving media environment.⁶ In order to democratise the public sphere, it is necessary to secure a favourable environment for effective participation in public debate by everyone.⁷ There are, however, crucial differences in the roles and functions of different types of media and media actors. Exactly because of the expansion of the media concept, it may be necessary to create special protection mechanisms for

³ Van Cuilenburg, J., & McQuail, D. (2003). Media policy paradigm shifts: Towards a new communications policy paradigm. *European journal of communication*, 18(2), 181-207.

⁴ See further on the challenge of “adaptive replication” McGonagle, T. (2020). Free Expression and Internet Intermediaries: The Changing Geometry of European Regulation. In Frosio, G. (ed.). *The Oxford Handbook of Online Intermediary Liability*. Oxford University Press, 467-485.

⁵ Jakubowicz, K. (2009). A New Notion of Media. Keynote speech at the 1st Council of Europe Conference of Ministers Responsible for Media and New Communication Services; Jakubowicz, K. (2009). A New Notion of Media? Media and media-like content and activities on new communications services. Background text to the 1st Council 1st Council of Europe Conference of Ministers Responsible for Media and New Communication Services.

⁶ The Council of Europe Committee of Ministers advocates for such a broad notion of media. See: Council of Europe Committee of Ministers, ‘Recommendation CM/Rec(2011)7 on a new notion of media’ (21 September 2011).

⁷ ECtHR 14 September 2010, App. No. 2668/07 (*Dink*), para. 137.

quality journalism and public interest media. Although defining quality journalism is a notoriously difficult exercise, it is much needed to promote the type of public interest journalism that advances democratic culture, amidst the flood of rumour and disinformation in the contemporary information environment.

2.3. Repurposing traditional principles of media policy

The underlying principles of media policy are also increasingly challenged by socio-political and technological developments. As observed by Tambini, the evolution of the media environment has sparked global “confusion and contestation at the most fundamental level about media freedom”.⁸ Growing private censorship, fuelled by algorithmic decision-making, has raised new questions about what and who the media should be free from. With the abundance and variety of information available in the online environment, approaches to media plurality demand recalibration. Traditional understanding of media plurality as a principle of media policy primarily focused on facilitating diverse supply of media content, whereas the digitalisation of public debate increasingly requires media policy to facilitate diverse consumption of media content.⁹ The fostering of the economic viability of the media as a principle of media policy also needs critical rethinking, with new questions arising in respect of the monetisation of media content in a platform-dominated media environment, or the role of public funding in increasingly politicised media markets.

For a more principled and coherent approach to EU media policy, it needs to be first established what the regulatory object, regulatory objective and underlying principles are. Although traditional principles of media policy, including media freedom, media pluralism and an economically viable model sustaining the media still offer guidance for media regulation, their meaning needs recalibration for the far-reaching transformation of the media environment. This requires a critical engagement with what it means for media to be free, pluralistic and economically viable in the evolving media ecosystem.

3. Challenges in the evolving media ecosystem

The media ecosystem has undergone deep transformations as a result of technological developments, changing news consumption patterns, growing politicisation of the media and the increasing polarisation of public debate. This section provides an overview of this evolving media ecosystem. **If the European Commission is to adopt a more holistic approach to the protection and promotion of a favourable media environment through the EMFA, it is imperative that it appreciates the interplay between the various layers of challenges in the evolving media ecosystem.**

3.1. Political pressures

The past decade has seen worrying levels of political pressure on independent media, civil society organisations and other critical voices in society.¹⁰ On the one hand, rising levels of interference by political forces in media markets distort media environments. The independence of public service media is increasingly at risk, especially in Central and Eastern Europe, due to politically biased appointment structures, leading to politically biased coverage of public affairs.¹¹ Besides, as a result of state-led media capture, private media outlets are effectively being taken over by political actors, who use ownership and control as a means to suppress independent and critical journalism.¹² High levels of concentration of media

⁸ Tambini, D. (2021). A theory of media freedom. *Journal of Media Law*, 1-18.

⁹ Helberger, N. (2012). Exposure diversity as a policy goal. *Journal of Media Law*, 4(1), 65-92.

¹⁰ Platform to Promote the Protection of Journalism and Safety of Journalists, Council of Europe. (2021). Wanted! Real action for media freedom in Europe. Annual Report 2021.

¹¹ Brogi, E., Carlini, R., Nenadic, I., Parcu, P., and Cunha, M. (2020). Monitoring Media Pluralism in the Digital Era: Application of the Media Pluralism Monitor in the European Union, Albania and Turkey in the years 2018-2019. Centre for Media Pluralism and Media Freedom.

¹² Dragomir, M. (2019). Media capture in Europe. Media Development Investment Fund (MDIF).

ownership in the hands of government-friendly forces stifle the plurality and independence of media markets.¹³ Political pressure hindering the independence and impartiality of media supervisory authorities further facilitate the creation and maintenance of an unbalanced and biased media environment in some EU member states.

On the other hand, those engaging in critical journalism, including independent media, civil society organisations, whistleblowers or citizen journalists, face rising levels of abuse, harassment and distrust.¹⁴ The physical safety of journalists remains a key concern in Europe,¹⁵ as the Council of Europe's Platform to Promote the Protection of Journalism and Safety of Journalists records high levels of attacks on journalists, often accompanied by a culture of impunity.¹⁶ Harassment, discreditation and smear campaigns directed at journalists and other media actors become increasingly entrenched practices to undermine independent media. In some European states, journalists and other media actors expressing critical views of the government are often described as foreign agents, traitors or fake news peddlers, including by state authorities. The Covid-19 crisis intensified these anti-press sentiments, with high levels of attacks and suspicion towards journalists and other media actors reporting on pandemic-related matters.¹⁷ Journalists and other media actors continue to face abusive legal proceedings, including strategic litigation against public participation (SLAPPs), which are initiated with the sole aim of intimidating critical voices into silence.¹⁸ The combination of these attacks on media actors engenders 'chilling effects' and undermine a favourable environment for public debate and quality journalism.¹⁹

3.2. Economic challenges

Due to the digital transformation, especially news publishers have seen a dramatic decrease in sales and a near collapse of advertising revenues.²⁰ Traditionally, news media used to be financed by a combination of advertising revenue, payment for content from news users and external funding.²¹ In the digital era, the competition for audience attention intensifies because of wider reach of news content and wider availability of information. Similarly, the competition for advertisement revenues rises, with digital platforms attracting the majority of digital advertisement spending. As a result, while news media derive value from digital platforms by expanding reach to audiences, the rise and dominance of digital platforms make it exponentially difficult for news media to monetise its content.²² The financial sustainability of news media is thus increasingly threatened, and small, local and niche outlets are especially at risk.

The Covid-19 pandemic further accelerated the economic downturn of news media, with a near collapse of the advertising market.²³ In this context, there are growing calls to redirect revenue streams from digital

¹³ Council of Europe, Committee of Ministers. (2018). Recommendation CM/Rec(2018)1 to member States on media pluralism and transparency of media ownership.

¹⁴ Clark, M., and Horsely, W. (2018). A mission to inform: Journalists at risk speak out. Council of Europe.

¹⁵ European Commission. (2021). Commission recommendation on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union.

¹⁶ Platform to Promote the Protection of Journalism and Safety of Journalists, Council of Europe. (2021). Wanted! Real action for media freedom in Europe. Annual Report 2021.

¹⁷ Jamie Wiseman, International Press Institute. (2020). Media Freedom in Europe in the Shadow of Covid-19. Available at: <https://ipi.media/wp-content/uploads/2020/12/IPI-FNF-Monitoring-Report-Media-Freedom-in-Europe-in-the-Shadow-of-Covid-19-Dec11.pdf>.

¹⁸ Borg Barthet, J., Lobina, B., & Zabrocka, M. E. (2021). The Use of SLAPPs to Silence Journalists, NGOs and Civil Society. European Parliament.

¹⁹ Council of Europe, Committee of Ministers. (2022). Recommendation CM/Rec(2022)4 of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age.

²⁰ Nielsen, R. (2016). The business of news. In Witschge, T., Anderson, C. W., Domingo, D., and Hermida, A. (Eds.). The SAGE handbook of digital journalism (pp. 51-67). Sage.

²¹ Nielsen, R. K. (2019). Economic contexts of journalism. In The handbook of journalism studies (pp. 324-340). Routledge.

²² Organisation for Economic Co-operation and Development. (2021). Competition issues concerning news media and digital platforms: Background Note by the Secretariat, available at: [https://one.oecd.org/document/DAF/COMP\(2021\)16/en/pdf](https://one.oecd.org/document/DAF/COMP(2021)16/en/pdf).

²³ Bleyer-Simon, K., & Carlini, R. (2021). Media economy in the pandemic: a European perspective. European University Institute.

platforms to news media, through stronger competition enforcement, reinforced neighbouring right protection for news content or the rebalancing of the bargaining position of news media. The introduction of a new press publisher's right in the Copyright in the Digital Single Market Directive (CDMSD) can be seen as an exponent of this broader trend.²⁴

As current digital media revenues cannot offset the decline of traditional revenues, there is more attention to the potential of public funding to reinvigorate public interest journalism.²⁵ While publicly funded media systems have been found to bring about various democratic benefits, public funding can also channel state interference with media content in the absence of 'arm's length' structures. In some European states, public funding has turned into a powerful instrument to promote government-friendly media and stifle critical media.²⁶ With biased allocation of state advertising, subsidies or emergency recovery funds exclusively to loyal outlets, the financial resources of independent journalism can be dried up, further aggravating the economic challenges of news media.

3.3. Quality and diversity of public debate

Due to technological developments, public debate has become an expanded space with many different voices.²⁷ Notwithstanding the early optimism about the democratising force of the online communications environment, the digital era also enabled the viral spread of seriously harmful and divisive discourse.²⁸ Hate speech, disinformation and conspiracy theories have proliferated with alarming success on social media due to certain key characteristics of digital platforms, such as the low entry barriers and algorithmic amplification of engagement. In this new media environment, the power to set the agenda and the terms of access to public debate has to a large extent shifted from traditional media to digital platforms. As the objective of digital platforms is primarily to enhance engagement rather than to stimulate responsible democratic citizenship, their dominant role in the facilitation and organisation of public debate may have adverse effects on the quality of public debate. With platforms' driving logic of captivating attention, regardless of quality, the incentives to produce professional journalism decrease.²⁹

Algorithmic curation, ranking and moderation of online content raise pertinent questions about editorial control and transparency over decisions with far-reaching implications for the exercise of the right to freedom of expression. Algorithmic recommender systems that serve personalised content and self-selection effects on part of media users can lead to less diverse media consumption, growing polarisation and a fragmented public sphere, undermining the creation of a shared background knowledge that is necessary to negotiate societal affairs. Facilitating diversity of exposure and the prominence and

²⁴ As to the underlying debate during the legislative process, see Geiger, C., Bulayenko, O. and Frosio, G. (2016). Opinion of the CEIPI on the European Commission's copyright reform proposal, with a focus on the introduction of neighbouring rights for press publishers in EU law. Strasbourg: Centre for International Intellectual Property Studies 2016, available at: <https://ssrn.com/abstract=2921334>; Hilty, R.M., Köklü, K. and Moscon, V. (2016). Position Statement of the Max Planck Institute for Innovation and Competition on the "Public consultation on the role of publishers in the copyright value chain", Munich: Max Planck Institute for Innovation and Competition 2016, available at: <https://www.ip.mpg.de/en/research/research-news/position-statement-public-consultation-on-the-role-of-publishers-in-the-copyright-value-chain-1.html>; Kretschmer, M., Dusollier, S., Geiger, C. and Hugenholtz, P.B. (2016). The European Commission's Public Consultation on the Role of Publishers in the Copyright Value Chain: A Response by the European Copyright Society, *European Intellectual Property Review* 38 (10), 591-595; Xalabarder, R. (2016). Press Publisher Rights in the New Copyright in the Digital Single Market Draft Directive. CREATe Working Paper 2016/15. Glasgow: Centre for Copyright and New Business Models in the Creative Economy 2016.

²⁵ Neff, T., & Pickard, V. (2021). Funding Democracy: Public Media and Democratic Health in 33 Countries. *The International Journal of Press/Politics*, 19401612211060255.

²⁶ Dragomir, M. (2018). Control the money, control the media: How government uses funding to keep media in line. *Journalism*, 19(8), 1131-1148.

²⁷ McGonagle, T. (2013). The Council of Europe against online hate speech: Conundrums and challenges. Expert paper. Belgrade: Council of Europe Conference of Ministers responsible for Media and Information Society.

²⁸ Rowbottom, J. (2012). To rant, vent and converse: Protecting low level digital speech. *The Cambridge Law Journal*, 71(2), 355-383.

²⁹ Geradin, D. (2019). Complements and/or substitutes? The competitive dynamics between news publishers and digital platforms and what it means for competition policy.

discoverability of public interest content become increasingly important concerns in this platform-mediated media environment.³⁰ Media and information literacy, endowing individuals with the skills to navigate the chaotic online information environment, gains a central role in facilitating recognition and appreciation of quality journalism.³¹

3.4. A perfect storm

The overlap of the challenges has created a perfect storm for independent media, critical journalism and public debate. Those engaging in professional journalism struggle to find financial stability, face growing hostility from political elites and audiences, and are exposed to increasing competition from unscrupulous (media) actors spreading propaganda and disinformation. Where media outlets are under pressure by both private interests and state authorities, European citizens find it increasingly difficult to identify quality, diverse and independent journalism that is necessary for informed democratic participation. In this context, media law and policy reform take on a particularly important role.

4. Towards a European Media Freedom Act

The seriousness of the challenges facing a favourable environment for inclusive and pluralistic public debate underscores the urgency to develop suitable regulatory responses. The announcement of the EMFA is a promising development in this regard that in our view can be achieved on the basis of the competences conferred to the EU. The question remains how the EMFA could provide structural solutions to the complex range of challenges outlined above. This section situates this question in relation to the institutional position of the EU and broader legal and policy developments pertaining to the media.

4.1. The competence question

The legislative competences of the EU define the scope within which the EU may regulate the media. Media freedom and journalism are topics that are firmly rooted in the constitutional heritage of every Member State. The media and communications landscape is tightly connected to national cultural traditions, and the EU has limited competence to legislate in the area of culture.³² The media as a cultural concept thus remains within the regulatory competence of Member States. Moreover, although the EU's Charter of Fundamental Rights stipulates the protection of the right to freedom of expression, media freedom and media pluralism, these references cannot be construed to modify or extend the competences of the EU.³³

However, the media are more than a cultural concept, opening up different entry points for EU regulation. The EU holds exclusive competence to regulate in the area of competition, leaving scope for the EU to address competition issues in media markets such as mergers, ownership concentrations or state aid. In light of the EU's shared competence to regulate the internal market, the EU may harmonise national laws pertaining to the media when national divergences distort the internal market. In this respect, research points to the disintegration of the internal media market since the late 2000s, with an "exodus of foreign media owners", particularly in Central and Eastern Europe, and the re-nationalisation of the media.³⁴ The declared

³⁰ Mazzoli, E. M., & Tambini, D. (2020). *Prioritisation Uncovered: The Discoverability of Public Interest Content Online*. Council of Europe.

³¹ Chapman, M., & Oermann, M. (2020). *Supporting Quality Journalism through Media and Information Literacy*. Council of Europe.

³² European Union. Treaty on the Functioning of the European Union. Article 167. See Irion, K. and Valcke, P. (2015) 'Cultural Diversity in the Digital Age', in Psychogiopoulou, E. (ed.) *Cultural Governance and the European Union*. Palgrave S. Houndmills: Palgrave Macmillan, pp. 75–90.

³³ European Union. Charter of Fundamental Rights. Article 51(2).

³⁴ Dragomir, M. (2019). *Media capture in Europe*. Media Development Investment Fund (MDIF).

goal of the Polish government to “repolonise” the media is a case in point.³⁵ Moreover, economic freedoms and economic development are generally closely intertwined with respect for democracy, the rule of law and the freedom of the media.³⁶ Recognising this close linkage, the Court of Justice of the European Union recently found a “clear relationship” between the respect for the rule of law and the efficient implementation of the EU’s budget.³⁷ A similar argument can be made for the link between economic freedom and media freedom, which moreover can help reduce corruption and can underpin the effectiveness of other social accountability mechanisms.³⁸

The protection of the internal market and the economic freedoms in the EU, therefore, are important and viable entry points for EU media regulation. **Legislative interventions geared towards the economic role of media services may, however, not be optimally attuned to the fundamental rights dimension of the media,** and may need to be complemented by additional policy approaches.

These competence issues partly explain the patchwork nature of the EU’s regulatory framework, with most legislative interventions developed for the economic aspect of the media sector. The EU’s legal order for the media is characterised by significant regulatory diversity. The current legal order consists of legal and policy instruments with varied protective aims, driving rationales, legal bases and inconsistent regulatory notions, leaving the regulatory order fragmented, undermining the coherence of the European media system, and limiting its potential to address current challenges in a platform-dominated media environment.³⁹

4.2. Relevant legal and policy developments in the EU

While the EMFA is an important and much-needed initiative, it is important to note that the EU has already been increasingly active in the regulation of (digital) media in the past years. **Coherence and consistency between existing initiatives and the EMFA will be crucial in order to pave the way for a more integrated approach to EU media law and policy.**

The first relevant development concerns the treatment of digital platforms as regulatory objects in the digital communications landscape. The 2018 amendment of the Audiovisual Media Services Directive (AVMSD), the recently adopted CDMSD and the upcoming Digital Services Package all testify to the growing recognition of the influential role of digital platforms as gatekeepers in the digital media environment. It remains to be seen to what extent these initiatives will contribute to making the digital information environment more democratic, inclusive and pluralistic, rather than amplify the opinion power of large technology companies.⁴⁰

The second relevant area of regulatory activism concerns the quest for financial stability for news media. With the adoption of the CDMSD, the EU introduced a new neighbouring right for press publishers with

³⁵ Shotter, J. (2019). Poland’s ruling party plans to ‘repolonise’ media if re-elected. Financial Times. Available at: <https://www.ft.com/content/1a4f9232-9358-11e9-aea1-2b1d33ac3271>; Reporters Without Borders. (2021). With firing of four editors, “repolonisation” under way in Poland. Available at: <https://rsf.org/en/news/firing-four-editors-repolonisation-under-way-poland>.

³⁶ Kim, A. B., Tyrell, P. (2018). Why a Free Press is actually good for the economy. The Heritage Foundation. Available at: <https://www.heritage.org/international-economies/commentary/why-free-press-actually-good-the-economy>.

³⁷ Court of Justice of the European Union, 16 February 2022, Case C-156/21, para. 130.

³⁸ See e.g. Kim, A. B., Tyrell, P. (2018). Why a Free Press is actually good for the economy. The Heritage Foundation; Brunetti, A.; Weder, B. (2003). A Free Press is Bad News for Corruption. *Journal of Public Economics* 87(7-8): 1801-1824; Chowdhury, S.K. (2004). The Effect of Democracy and Press Freedom on Corruption: An Empirical Test. *Economic Letters* 85(1): 93-101; Camaj, L. (2013) The Media’s Role in Fighting Corruption. Media Effects on Governmental Accountability. *The International Journal of Press/Politics* 18(1): 21-42.

³⁹ Dreyer, S., Heyer, R., Seipp, T. J., & Schulz, W. (2020). The European Communication (Dis) Order: mapping the media-relevant European legislative acts and identification of dependencies, interface areas and conflicts (Vol. 52, p. 54). DEU.

⁴⁰ Helberger, N. (2020). The political power of platforms: How current attempts to regulate misinformation amplify opinion power. *Digital Journalism*, 8(6), 842-854.

regard to the digital use of their publications, generally to support the financial sustainability of news publishers. It is doubtful, however, whether an additional layer of copyright protection is sufficient or suitable to achieve this goal and the outcomes should be closely monitored.

And the third area where the EU has shown increasing awareness of the challenges to the media sector concern the growing politicisation of the media. Topics relating to media freedom and pluralism feature centrally in ongoing policy efforts at the EU, including the annual Rule of Law reports or the Democracy Action Plan. The European Commission's recommendation on the safety of journalists and the upcoming anti-SLAPP initiative also seek to protect media actors from politically motivated attacks. This, however, remains a particularly sensitive area of regulatory action, where EU legal and policy initiatives may face the criticism of interfering with Member States' constitutional sovereignty, and where national implementation and enforcement may be lacking in the absence of political will to introduce effective safeguards against political interference with the media.

4.3. The potential of the European Media Freedom Act

Existing legal and policy interventions of the EU relating to the media are largely piecemeal, reactive and often inconsistent. **The EMFA carries the potential to usher in a new era of EU media law and policy that approaches media regulation in a more fundamental way with the aim to secure the conditions for independent media, professional journalism and inclusive public debate to thrive.** By way of summarising the analysis above, the following considerations should inform the European Commission's laudable work on the EMFA:

- The European Commission would be well advised to adopt a more future-proof and principled approach to media law and policy with the EMFA. A starting point for devising such future-proof and principled approach is to critically explore what media freedom, media pluralism and economic viability mean in the evolving media ecosystem and how the EMFA could advance these principles.
- The notion of the media has significantly expanded due to the participatory nature of the digital communications environment. A central concern for the EMFA should be how to promote the circulation and the economic viability of the type of public interest journalism that advances democratic culture, without introducing arbitrary categories and definitions that interfere with the right to participate in public debate for all.
- Media freedom, critical journalism and inclusive public debate have been facing a range of challenges, including interference with public service media, state-led capture of private media outlets, growing concentration of media ownership, political interference with media supervisory authorities, attacks on journalists and other media actors, anti-press sentiments in public discourse, SLAPPs, collapsing business models, biased allocation of state funding, spread of online hate speech and disinformation, and the fragmentation and polarisation of public debate.
- EU legislative competences in the field of culture are limited, however, the media are more than a cultural concept. Economic competences remain an important and viable entry point for EU media regulation. Economic freedoms and economic development are generally closely intertwined with respect for democracy, the rule of law and the freedom of the media.
- In the past decade, the media in various EU Member States have been in the process of re-nationalisation, leading to the disintegration of the internal media market.
- Stand-alone internal market- or competition-based interventions may not be optimally attuned to the fundamental rights dimension of the media and may need to be supported by other policy interventions.

- Given the proliferation of legal and policy interventions relating to (digital) media and the growing fragmentation of the EU media regulatory order, the European Commission should strive for consistency and synergy between the EMFA and pre-existing EU legal and policy instruments.
- As the EMFA will inevitably address politically sensitive issues, national implementation and enforcement may be problematic in EU Member States where a free and pluralist media environment has been consistently and deliberately dismantled. For the EMFA, it needs to be a key concern how to ensure that rules promoting media freedom and pluralism also provide effective safeguards in these media environments.

5. Conclusion

This position paper sought to outline considerations that should inform the European Commission’s work in preparing the EMFA. The EMFA has been announced at a time when the European media environment has been facing a highly precarious situation. Media policies have generally struggled to keep pace with the dramatic transformation of the media ecosystem, and the question of how to safeguard the independence and plurality of media environments in the context of the platformisation and politicisation of the media remain unresolved. At this critical juncture of European media law and policy, the EMFA represents a crucial opportunity to rethink how European Union legislation and policy could contribute to the securing of an enabling environment for a vibrant public debate and quality journalism that support European democracy.