

European Media Freedom Act: Media pluralism test (Article 21)

ARTICLE 19's concerns on the proposed media pluralism test for media mergers

The EMFA proposal to introduce a media pluralism test in media mergers fills a huge gap in a heavily fragmented environment across the EU. Such test is vital to keep high concentration of media markets in check, and to protect plurality, independence and freedom of the media. Yet, in about half of the EU member states this public interest element is not considered at all, while in the other half the criteria, processes and goals linked to this test are different. This scenario has undoubtedly contributed to the fact that currently, across the EU, many national markets do not see a sufficient level of diversity and plurality of media actors, and/or to the fact that media actors lose their independence because of mergers.

ARTICLE 19 welcomes the introduction of the media pluralism test as a major step to prevent the threats for media plurality and independence deriving from market concentration. Yet, we believe that for the test to work in practice and achieve its goal, a variety of elements need to be strengthened.

First, further guidance is needed for national regulators to apply the test in compliance with international and European standards on media plurality and diversity, and on editorial independence of media and journalists.

Second, the proposed Article 21 lists 3 criteria for the assessment: (i) the impact on media pluralism, (ii) the safeguard of editorial independence, and (iii) the economic conditions, i.e. if absent the merger, the economic sustainability of the entities involved could be challenged. However, this suggested rule says nothing about which criteria should take precedence or prevail in case of conflicts.

Third, further guarantees are needed to ensure that national regulators will apply the test not only in cases where the merger might affect the functioning of the internal market for media services, but also in purely national cases.

Finally, Article 21 in its current formulation applies to media market concentrations defined as concentrations 'involving at least one media service provider'.¹ Yet, in the media ecosystem there could be a variety of mergers that, even without involving a media service provider, can have a detrimental impact on media pluralism.

¹ See: 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, COM/2022/457 final, Article 2(13).

Our recommendations:

- The European Commission and the European Board for Media Services (the 'Board') should provide further guidance about the criteria to be used for the assessment of the impact of media mergers on plurality and editorial independence of media and of journalists, in line with relevant international and European standards.
- Further guidance has to be provided on how to prioritise or solve conflicts related to the criteria for merger assessment. In particular, Article 21 should make clear that the right to a pluralistic, diverse and independent information would not be sacrificed to purely economic logic.
- Article 21 should introduce, at least, the obligation for national regulatory authorities or bodies dealing with a media merger not affecting the functioning of the internal market to communicate in advance their opinion or decision to the Board.
- The scope of the application of the media pluralism test should be broadened as to cover all mergers in the media ecosystem, which can have an impact on media plurality and on the editorial independence of media and journalists.