

European Media Freedom Act: the European Board for Media Services

ARTICLE 19's concerns on the proposal of the European Board for Media Services

With the European Media Freedom Act (EMFA) proposal, the European Commission has proposed common rules for the proper functioning of the internal market for media services. Inherently, this proposal is an attempt to improve and harmonise media freedom, plurality and independence across the EU. As recognised by Recital 22, to ensure consistent application of the EMFA and other Union media law, it is necessary to set up an independent advisory body at the Union level, gathering national regulatory authorities of bodies and coordinating their actions. To this aim, the proposed Section 2 of the EMFA sets the European Board for Media Services (Board), which builds on the successful experience of the European Regulators Group for Audiovisual Media Services (ERGA), and describes the Board's tasks and powers. Once more, the European Commission has chosen the peer-to-peer pressure approach to improve and harmonise rules as well as their enforcement across national media markets.

ARTICLE 19 welcomes this approach. A key element for the Board to properly perform its role is its independence. We acknowledge that this independence will rest mainly on two components: the independence of the Board members from their respective national governments, and the overall independence of the Board from the European Commission. With regards to the latter, we believe that the EMFA proposal needs to be improved.

While welcoming the first statement in Article 9 of the proposal, we raise concerns about the decision to have an EC-based Secretariat for the Board. We believe that an agency-based Secretariat will better guarantee the Board functional and economic independence and be more in line with international and European relevant standards in the respective area.

From comparison perspective, international and European standards on freedom of expression set a number of requirements through which the independence of the media regulatory bodies should be achieved. These include explicit legislative guarantees of political, operational and financial independence and institutional autonomy of the regulator; a participatory and transparent appointment process for its governance and managerial structures; the ability to employ its own qualified staff; sufficient mandate and power of the regulator, as well as its public accountability and adequate funding. These standards should guide the EMFA proposal for the creation of the Board and its structures.

In addition, we note that in many instances the Board will need to act 'in agreement' with the European Commission, for example under Article 10 (6, 8) and Article 12 (e, f, g). The proposed Article 10(6) concerns the possibility to invite experts and observers to attend the Board meetings. This provision will be key to expose the Board to a variety of voices and perspectives, to the benefit of adequate understanding of the challenges and the pros and cons of likely solutions, and of a sound and evidence-based decision and policy making. We see no reason why the European Commission

should be called to agree, and thus be able to filter, the voices and perspectives the Board might be exposed to.

Furthermore, under Article 10(8), the Board will need the European Commission's agreement on the adoption of its rules of procedure. We believe this provision to be incompatible with the relevant international and European standards on the functional independence.

Our recommendations:

- Section 2 of the EMFA should guarantee the operational, financial and functional independence of the Board, in compliance with relevant international and European standards.
- Article 11 should provide the Board with an agency-based Secretariat.
- The possibility for the Board to invite experts and observers to its meetings shall not be subject to the agreement with the European Commission.
- The adoption of the Board's rules of procedure shall not be subject to the agreement with the European Commission.