

Submission by the Institute for Mass Media

to the European Commission's Public Consultation process
on the **Media Freedom Act 2022** (Ref - Ares 2021 789901 - 21.12.2021).

The Institute welcomes the European Commission's initiative to legislate on safeguarding media freedom and pluralism in the European Union. It agrees with the Commission's assessment that there is practical need for collective action and for initiatives to explore all necessary legislative options.

Below some key points for consideration:

1. The Media Freedom Act and the need for Definitions

It is understandable for the Commission to come to the question of media freedom from an internal market perspective but this approach is both limiting and risky. The media are not only a business and thus should not be treated only as such. More broadly the stakes for the European vision of a democratic union are much higher than the functioning of the 'media market' and the viability of media businesses.

The digital age has already made it difficult to define what the Media is. Which is why the Media Freedom Act is a significant opportunity to first and foremost define and establish what we consider as the Media and - through those definitions - separate the news production and journalistic endeavour from the entertainment and PR businesses.

The Commission should not hesitate to address this essential problem first and proceed to delineate the Media that are founded on the core value of journalism and operate in the public interest from the Media (very often within the same corporate structures) that work for other interests and pursuits (PR and entertainment). This simple notion - of making clear distinctions - is central to how Media is understood and, by consequence, should determine the freedom that must be afforded to it and with what obligations in return.

It is the key question articulated in last year's seminal study by Professor Damian Tambini: "Who are the Media to whom we give media freedom to and what are their obligations vis a vis that freedom?" Just like in Public Service Media news divisions, all news producing *private* media should abide by codes and a fundamental degree of scrutiny, a framework of obligations. Checks and balances should safeguard independence and integrity of any entity that claims to produce news for public consumption.

A great deal of the turbulence in the sector (for example on disinformation) is due to the absence of clarity on who is seen as responsible for producing News, who the public should trust and what that responsibility of trust means. This does not only apply to questions of media ownership bias etc. but also, for example, on whether autonomous AI-generated news should be afforded media freedom?

2. The significance and effect of the Rule of Law Reports

The Commission's key tool on monitoring media freedom/pluralism, the Rule of Law country report, is valuable. This year the reports are expected to come with specific recommendations for each country. These may however remain ineffective if there is no litigation mechanism to chase countries and their obligations. However obvious a point this may be, it must be made. As the watchdog Civil Liberties Union for Europe has stated where recommendations go unimplemented, the Commission should trigger litigation and the rule of law conditionality mechanism promptly. The Commission, it said, should also include analysis of systemic fundamental rights violations in its reports. Otherwise, the many of the problems in relation to media freedom and media pluralism are not just a part of the failure to implement democratic standards, they are in many instances the cause of that failure. In this spirit the Commission should support independent academic and civil society organisations to monitor the situations and involve them in the scrutiny process.

An example which may not be reflective of all member states but is worth stating for the record and for consideration: The regulatory framework in Cyprus allows for a certain degree of transparency of media ownership in the audio-visual media sector but there is an absence of a framework guaranteeing ownership transparency both in the written press and, more pressingly, in the digital media sectors making it difficult to identify and verify ultimate owners or cross-ownership. The last Rule of Law report recorded that the Member State had reported that draft legislation on digital media was being considered but unless there is pressure to bear on the Member State the delay – continuing 12 months after the report - is benefitting established as well as unknown owners. Useful as the Rule of Law reports are they must come with sustained scrutiny and conditionality.

3. Content Moderation

Social Media companies, search platforms and other internet intermediaries have responsibilities in dealing with problematic content (hate speech, extremism and disinformation). While on the one hand appropriately as some Member States already press companies to act quickly and remove such content a lot of content is also removed which shouldn't be removed harming plurality. Alternatively, they use content moderation methods that are not developed enough to pick up on the nuance of language jeopardizing our media pluralism.

On this it must be noted that the Council of Europe in June 2021 expressed concern that existing approaches to online content moderation do not always satisfy the requirements of legality, legitimacy and proportionality guaranteed in Article 10.2 of the Convention. Digital technologies must operate within firm legal frameworks that help prevent unintended consequences, including over-takedown, bias and lack of transparency, and must be accompanied with effective complaint mechanisms. Closer coordination and cooperation are required on the basis of independent research, including through jointly developed standards.

4. Strengthening Public Service Media

On Public Service Media and the independence and sustainability of public broadcasters, we see in Cyprus, a year-on-year shrinking of the budget approved by the state for the Cyprus Broadcasting Corporation. We consider that the prevailing perception of PSMs having merely to 'survive' is dangerous; the Media Freedom Act should make this point explicitly. As competition not just from private broadcasters but also from the online domain grows, PSMs should not just be seen as a token to merely exist and survive but to be able to develop and grow. They are crucial in safeguarding the public's interest as they represent and are funded by public itself.

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