

**Too much for others, too little for us -  
The draft European Media Freedom Act from a Hungarian perspective**

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Reading the [draft of the European Media Freedom Act](#) published last September, it is clear that the European Union also wants to respond to the challenges posed by the [Hungarian media situation](#) since 2010. It can be seen as evidence that the European Commission is also aware of how unsuccessful it has been so far in curbing the systemic erosion of media freedom. At the time of publication of the draft, rule of law proceedings against Hungary were well under way. However, while the EP report on the Article 7 procedure again found a serious violation of media freedom, the conditionality procedure and the Charter of Fundamental Rights eligibility criteria inquiry leading to real sanctions did not address the media situation at all. None of the [27 “supermliestones”](#) set out in these procedures as conditions for the payment of EU funds address the situation of the media. The only indirect exception to this is the restoration of the pre-2015 conditions for access to data of public interest, which cannot, however, eliminate the risk that public authorities and other bodies with public responsibilities delay for years in complying with data requests.

In interpreting the EMFA, we need to take into account two preliminary assessments of the European Commission on the [funding of the Hungarian public service media](#) and the [allocation of state advertising](#) in Hungary. Both proceedings were initiated under the competition rules applicable to state aid, and both were based on a joint complaint by Klubrádió, the Mertek Media Monitor and former MEP Benedek Jávor. Both the 2016 complaint on public service media and the 2019 complaint on state advertising were the subject of preliminary assessments in the summer of 2022, which proposed rejecting the complaints in both cases. In each case, the complainants made further arguments to persuade the Commission not to close the procedure in accordance with these assessments. The two proceedings are therefore still pending.

Among the areas covered by the EMFA, the Hungarian media situation - and the Polish, Slovenian, Czech, Slovakian media situation, which has been imitating it for a longer or shorter period of time - is mainly affected by:

- Editorial freedom, independence of editorial decisions (Articles 4 and 6)
- Safeguards for the independent functioning of public service media providers (Article 5)
- National regulatory authorities or bodies (Article 7)
- European control of national measures affecting the operation of media service providers (Article 20)
- Assessment of media market concentrations (Article 21)
- Allocation of public advertising (Article 24)

## Uncertain legal basis, vague regulation

As a preliminary general criticism, I would just refer to two problems which themselves require more in-depth analysis. The first is the question of the legal basis. The EMFA intervenes more deeply than ever before in media regulation, including in areas which have hitherto been strictly the competence of the Member States. This inevitably leads to resistance even from those Member States that respect media freedom. The European Commission has referred to Article 114 of the Treaty on the Functioning of the European Union as the legal basis for the EMFA, which is intended to harmonise the law in connection with the establishment and functioning of the internal market. Many of the rules in the proposal, however, only indirectly address internal market and economic aspects, but rather protect freedom of expression and media freedom. From the point of view of those who are critical of the media situation in Hungary, this is, of course, a very worthy ambition. However, there is a great risk that even the minimum guarantees will not be achieved in the end, due to excessive interference with the interests of the Member States.

The other general problem is that the proposal was presented as a regulation. As a legal source, the regulation is directly applicable and does not require or allow implementation by Member States. However, the majority of EMFA rules are not sufficiently specific and detailed for direct implementation. Most of the rules oblige the Member States to legislate, just as one would expect a directive to do. This "mixed" legal solution actually makes it difficult to enforce the rules consistently and it is not clear what tools the Commission and the European Court of Justice have to enforce and control Member State legislation resulting from the regulation.

## Political influence on editorial decisions

The enforcement of rules on editorial freedom and independence of editorial decisions raises a number of questions. The draft does stipulate that Member States and their bodies may not directly or indirectly interfere in or seek to influence the editorial policies and decisions of media service providers. However, it is not clear what evidence can support a direct or, more importantly, an indirect attempt to interfere; it is not by chance that the concept of trying to indirectly influence is not more precisely defined. Typically, there is no trace of a failed attempt to intervene, as it can take place during an unrecorded telephone call or a face-to-face meeting. Incentive interventions such as state subsidies and state advertising do not necessarily lead to distortion of content, and in any event it is almost impossible to prove in a legal proceeding that there was an intention to interfere behind the subsidy. This is why state transfers must be subject to strict objective limits. Moreover, if the attempt to interfere is successful, neither the media nor the intervening public body has an interest in detecting the interference.

On the other hand, according to the draft, national regulatory authorities are responsible for the implementation of the EMFA. Should the authority sanction the media that do not oppose national influence? Or what means can the media authority use to sanction the government or certain public bodies? Effective legal remedies against such general political acts as "direct or indirect" influence are almost unimaginable. Rather, it is a more detailed legislative task to clearly define all state conduct that constitutes prohibited interference.

The rules on editorial freedom and the independence of editorial decisions also show that the European Commission is still unable to deal with the situation where some editorial offices have no desire for freedom and independence at all, and their proud loyalty to the government and the governing parties does not require any formal government intervention. In the Hungarian media system, loyalty is paid for generously by the government through discriminatory distribution of state

advertising and other public goods. However, the media concerned would not in any proceedings demonstrate that this in any way affects their editorial freedom. Even if a methodologically fully reliable content analysis could show that the beneficiaries of public advertising are also biased against the government, it would be virtually impossible to prove causality between public advertising and biased reporting. In fact, even without any positive incentive or direct influence, the editorial offices concerned are fully loyal to the government and the governing parties. In any legal proceedings, they would claim, and honestly, that their own editorial freedom is precisely to support the government.

Does it constitute an attempt to influence the preference of certain editorial offices for access to information of public interest? Or the exclusion of other editorial offices from government press conferences? Is the public praise of certain editorial offices by the government, the regular awarding of prizes to their staff, or the public shaming and humiliation of other editorial offices and journalists, an act of influence? How can a Member State authority prove the "common knowledge" that the government regularly holds private meetings with certain newsrooms to discuss reporting practices for the coming period?

### Ownership conflict of interest

The same questions are raised by the regulation that seeks to ensure the independence of editorial decisions, which sees the guarantee of independence primarily in the disclosure of "any actual or potential conflict of interest by any party having a stake in media service providers". A typical example of conflict of interest in Hungary and Eastern Europe is the fact that economic players who are the main beneficiaries of public contracts in other industries and through other companies have gained significant positions in the media market. Are these media owners, who are known simply as oligarchs, legally considered to have a conflict of interest under the draft? If so, how can this be proven and what are the consequences? Will there be an authority or a court that will order a media owner to sell its media interests because of the success of its other companies in public procurement?

We have to face the fact that editorial independence and ownership autonomy can hardly be ensured by legal means without an appropriate socio-cultural background. Rules as a matter of principle, practically *lex imperfecta*, will certainly not achieve results.

Editorial statutes between the editorial board and the media owner are a far from perfect but at least enforceable form of editorial independence. In it, the parties clarify the competences of the owner and the editorial board, agree on the code of ethics to be respected in the operation and even regulate the response to pressure from advertisers. If this statute is incorporated into journalists' employment contracts, breaches of it can be challenged in court. Of course, this solution does not guarantee the independence of editorial offices and media outlets that are loyal to the government on principle, but it does offer a real chance to break down even such situations in the longer term through the protection of labour law.

Ownership conflict of interest is only a real guarantee for strengthening media freedom if it also takes into account the owner's other economic, and thus indirectly political, interests. In any case, it is a source of risk to media freedom if the media owner's other economic interests generate a significant part of their revenues from public procurement or state or municipal contracts. In such a case, the media owner becomes counter-interested in assuming the role of watchdog even if he otherwise has no direct links with policy makers, i.e. he cannot be called an oligarch. In relation to public advertising, I will also propose that, in all cases where a media company operates with a certain degree of public funding, it should provide extra organisational guarantees of autonomous

ownership and editorial autonomy. Such extra guarantees are also justified in the case of the risk of cross-subsidisation from public funds.

### Independence of the public service media

Article 5 on safeguards for the independent operation of public service media providers also sets out a more principled expectation, without legal consequences. These rules are difficult to interpret as a regulation, as they explicitly set out legislative tasks, and with very vague content.

There is no real normative content to require impartiality and plurality of information and opinions. The principles listed are the defining content of public service, which all Member States impose on public service media service providers, with different substantive and procedural legal solutions. In practice, too, there are different interpretations and realisations of pluralistic and balanced information. The Commission could help the debate on interpretation within Member States by summarising good practices in a recommendation, rather than providing binding guidelines for interpretation. This would not interfere with Member States' competences, but would help to interpret impartiality and balance in Member States - notably Hungary and Poland - where there are ongoing debates on public media information practices.

The only rule in this article that imposes a real, enforceable obligation on the Hungarian legislator concerns the appointment of the head of management and the members of the governing board of public service media providers. Indeed, it is proposed that the appointment should be made in a transparent, open and non-discriminatory procedure, on the basis of transparent, objective, non-discriminatory and proportionate criteria, as defined in advance in national law. The current Hungarian media law does not meet any of these criteria. The managers of Duna Media Service Provider and the Media Services Support and Asset Management Fund (MTVA), as well as the members of the Public Service Board of Trustees, the body controlling Duna Media Service Provider, do not have to participate in any open tender procedure and do not have to meet any professional requirements. Members of the Board are partly appointed on the basis of non-public political deals and partly by the Media Council without any procedural guarantees. The head of the Duna Media Service Provider is proposed by the Media Council and the decision is taken by the Board of Trustees, which has a majority in the governing party and is partly composed of members nominated by the Media Council. The CEO of MTVA is appointed and dismissed by the President of the Media Council, without justification. These appointment rules clearly do not meet the requirements of the EMFA.

As regards the funding of public service media, the proposal requires Member States to ensure adequate and stable financial resources for the provision of public service mission. It adds that these resources must guarantee editorial independence. The 'adequate' and 'stable' nature of funding is again an expectation without any real normative content. This should be interpreted and accountable to one or more independent national authorities or bodies, as proposed. However, the scope and means of a Member State authority are limited and hardly ever extend to obliging government bodies to provide larger amounts of funding.

Until now, the European Union has banned the over-funding of public service media, subject to detailed requirements under state aid rules. Precisely because of the limited possibilities for national authorities, the European Commission is in charge of the related competition proceedings. The EMFA's approach, however, ignores the fact that overfunding also jeopardises editorial independence. The non-transparent and uncontrolled use of public money in public media, which is disproportionate to the public service mission, can also foster loyalty to the funder. The Hungarian example is clear evidence of this, although again it is not a pan-European problem but an isolated case. It is one that could be very well addressed by consistent enforcement of existing state aid rules.

In this respect, it would be appropriate to refer to the Commission Communication on the application of State aid rules to public service broadcasting. The Communication contains clear expectations regarding the transparency of funding and the independent and effective control of the use of public money. These expectations are by no means only relevant to the issue of overfunding.

### Independence of regulatory authorities

The 2018 review of the AVMSD was intended to provide European guarantees of the independence of regulators. However, it only imposed formal conditions that could be easily met by the national legislator without any real strengthening of decision-making autonomy. As long as European legislation is content to harmonise formal organisational and operational frameworks and does not create the possibility of [monitoring the decisions of media regulators](#) at European level, there will be no real means for European decision-makers to detect and sanction biased practices by the authorities.

In this regard, the EMFA further increases the weight of national regulators by establishing the European Board for Media Services, without differentiating between national regulators, regardless of whether they are truly independent. In fact, the EMFA assumes without any further qualification that the national regulatory authorities that meet the formal criteria of the AVMSD are independent. Thus, any European legislation on the independence of media regulators has only served to legitimise and, in the long term, consolidate the existing systems of authorities in the Member States, which may be subject to proven political influence.

The political influence of the Hungarian national regulatory authority, the Media Council, has been clearly demonstrated by analyses related to the tendering of frequencies for broadcasting and the control of mergers in the media market. The Media Council bears a heavy responsibility for the political occupation of the Hungarian media system. However, in implementing the AVMSD, the Hungarian legislator did not have to touch a single section of the AVMSD that affects the independence of the Media Council. The formal guarantees of independence were already perfectly listed in the Hungarian media law, but without consequences.

So at the moment there is no guarantee that the European Board for Media Services will be able to operate independently. The Board can only be as independent as the national regulatory authorities. And there are no effective means of enforcing the independence of national authorities. There is therefore a real risk that unilateral political influence will be brought to bear on the Board's decisions through certain national regulators. This is a serious risk for the Member States as a whole.

The creation of a permanent civil and academic advisory body alongside the European Board for Media Services, with an appropriate representation of the experience and knowledge of the Eastern European Member States, would serve to broaden professional perspectives and at least partly correct the bias of the national regulatory authorities. The proposed institution of structured dialogue is a step in this direction, but its focus is narrow, its operation ad hoc, the selection of participants unregulated and there is no guarantee that the results of the dialogue will be genuinely fed into decision-making.

### Limiting media concentration

From the perspective of current Hungarian regulation and practice, the proposed regulation to limit media concentration seems to be particularly relevant. The Hungarian Media Council issues a binding resolution on all mergers in which members of at least two groups of undertakings have editorial responsibility and whose primary purpose is to provide media content to the public. The Media

Council will examine whether "the post-merger level of independent sources of opinion also ensures the exercise of the right to a pluralist information in the relevant media market". The Media Council has used this power in a seriously abusive way, both to ensure that the expansion of pro-government media is unhindered and to prevent the emergence of strong independent players. There is no publicly published and professionally sound methodology behind the decisions. In fact, the decisions to support the expansion of pro-government media have been taken in the form of decisions without any justification and without any professional criteria.

In comparison, the EMFA expects media concentration to be regulated in a transparent, objective, proportionate and non-discriminatory way, and the assessment of the impact of media concentration on media pluralism and editorial independence is subject to a publicly available, objective, non-discriminatory and proportionate set of criteria. The proposal therefore requires the application of a clear methodology that is known in advance to stakeholders. It provides additional criteria and allows the Commission to develop a more detailed methodology and publish it as guidelines. An important guarantee is the mandatory consultation between the national authority and the European Media Services Authority in all national procedures. While the Board or, where appropriate, the European Commission cannot veto a decision by a national authority, their opinion can be taken into account by national courts, including in national appeal procedures.

Regulating limitations on media concentration could therefore significantly reduce the risk of arbitrary application of the law in Hungary. However, it does not foresee that the government may in certain cases take away the powers of the competition authority and the media authority to assess concentrations. In 2013, the Fidesz majority amended the Hungarian Competition Act to allow the government to classify certain mergers as "of national strategic importance" and thus exempt them from the obligation to be examined by the competition authority. This specific Hungarian situation is, of course, not something that a European-level regulation should respond to. However, the EMFA also provides another opportunity for the Commission to examine whether the relevant provisions of Hungarian competition law are in line with European competition rules.

However, if we look at the proposed rules of the EMFA from a non-Hungarian perspective, we should also see that currently the assessment of media mergers is only required in a few Member States. Where there is no such procedure, the EMFA deeply interferes not only with media regulation but also with competition regulation. In the 1990s, even a much more modest proposal to limit media concentration failed because of opposition from Member States. And from the examples of those Member States where such regulation still exists today - Germany in particular - we can see that the methodology, even with the best professional intentions, leads to serious conflicts both along market interests and constitutional considerations. Perhaps the least conflicting methodology is the one developed by Ofcom, the UK regulator, well before Brexit.

### Placement of public advertisements

The most Hungarian-specific proposals of the EMFA are the rules on the distribution of public advertising. The importance of public advertising in a functioning media market is insignificant, at 2-3% of the advertising market. Hungary is an extreme example: the state is by far the largest player in the Hungarian advertising market, through government advertising and advertising by state-owned companies. Next to the state, the largest advertisers in the market are also dwarfed. It is also a proven fact that 80% of state advertising appears in the pro-government media. State advertising thus not only serves to spread the message of political communication (propaganda), but also completely removes the pro-government media from the risks of market operation.

I am convinced that an extreme situation such as the distribution of state advertising in the Hungarian advertising market should not be solved by legislation, but by individual executive decisions. In line with this, Mertek Media Monitor, Klubrádió and Benedek Jávör submitted a complaint to the European Commission in 2019 about the discriminatory, highly market-distorting allocation of state advertising. According to the complaint, state advertising is prohibited state aid because it favours the market players concerned, completely independently of their actual market performance, in a way to which they would not be entitled on the basis of their performance.

The European Commission sent its preliminary assessment to the complainants in 2021. It recommends rejecting the complaint on the basis of far from convincing arguments. The Commission's DG Competition allows itself to claim that "the value of advertisement depends on a number of elements, such as timing, length and possibly other factors, which may justify the differences between the aggregated value and advertisement time for different media outlets". The 'possibly other factors' referred to in the explanatory memorandum must be such as to lead to a tenfold difference in the placement of public advertising between, for example, television channels with the same audience share in the commercial television market. The importance of such 'possibly other factors' in any event deserves a thorough explanation, which the Commission makes no attempt to provide, not even a single explanatory sentence. Indeed, according to the Commission, "as the beneficiaries allegedly advantaged by the State advertisement all provided a service/product, i.e. the placement of advertisement in their outlets, at prices that are not specifically alleged to be at above market level prices for individual outlets, there appears to be no advantage at the level of individual private media outlets." On the contrary, it is clear that a media product whose advertising revenues derive 70-90 % from public advertising either cannot sell its advertising space to market advertisers or it is not worth selling it to market advertisers, as it would receive less revenue from them.

The draft EMFA stipulates that public funds or any other consideration or advantage granted by public authorities to media service providers for the purposes of advertising shall be awarded according to transparent, objective, proportionate and non-discriminatory criteria. This again leaves it to national legislation to specify the principle categories of transparency, objectivity, proportionality and non-discrimination. However, it is difficult to interpret these criteria in any other way than that a given medium may receive public advertising in proportion to its market performance, audience share and other objective, measurable characteristics, and there is certainly no room for political sympathy here. On this basis, all media have an equal, non-discriminatory chance to receive public advertising revenue. This can only be achieved if all media market players are aware of transparent, quantifiable criteria on the basis of which public advertising is placed. However, the European Commission's DG Competition did not follow this interpretation in the Hungarian case.

According to the draft, public advertising can only be allocated through open, proportionate and non-discriminatory procedures. It adds that this does not affect public procurement rules. The latter addition, read in conjunction with the Commission's assessment in the Hungarian case, means that public procurement complies in principle with the requirements of an open, proportionate and non-discriminatory procedure.

Meanwhile, the Hungarian practice is for the state to award a public procurement contract to the three media agencies that then have the exclusive right to sell state advertising. This public procurement is routinely won by the same pro-government business group, which had no relevant media agency experience before the distribution of state advertising. But even a fair public procurement would not guarantee that the state would not put pressure on the media agency to



favour certain media. Public procurement is therefore no guarantee at all that advertising will ultimately be allocated according to transparent, objective, proportionate and non-discriminatory criteria.

However, the Hungarian example also requires an addition to the text of the EADR, according to which the enforcement of the rules on public advertising is not affected if the state does not distribute advertising itself, but by commissioning one or more media agencies. DG Competition even questioned whether the distribution of public advertising is a state decision at all, precisely because of the involvement of a media agency. It did so in such a way that the complainants had shown that the campaign plan of the media agency had in all cases been definitively approved by a public authority.

EMFA sees the guarantee of fair use of public advertising primarily in ensuring transparency. It is proposed to publish accurate, comprehensive, intelligible, detailed and yearly information on public advertising expenditure, naming at least the media service providers involved and disclosing the total annual amount spent as well as the amounts spent per media service provider. Media service providers under the proposal are not only undertakings providing audiovisual media services, but also publishers of press publications (Article 2(1)). It would also be important to add to the transparency rules the obligation for media publishing public advertising to disclose the amount of revenue they have received from public advertising.

The Hungarian experience also shows that transparency alone is not a solution. Analyses and articles on the allocation of public advertising are published regularly, but they do not influence the government's behaviour at all. Therefore, stronger measures are needed.

In the case of public service media, it is clear to everyone that running on public money comes with increased social responsibility. For commercial media, which receive significant public funding from public advertising and sponsorship, the same expectation applies. The use of public money to finance private media becomes particularly objectionable when it is used in a discriminatory way to serve the interests of a single party. It is therefore reasonable to expect some form of public service guarantee mechanism for the private media concerned above a certain proportion of public advertising.

Determining the proportion of public advertising revenue within total advertising revenue that is already at risk of political influence is necessarily arbitrary. In line with the previous practice of the Mertek Media Monitor, I propose to set the limit at one third (33%) of advertising revenues. If one third of a medium's advertising revenue comes from a single source, the loss of this source would already seriously threaten the viability of the medium. If, moreover, this dependence is towards the state and public money, there is no way that the medium in question can fulfil its function of controlling power.

The simplest and most easily accountable way to mitigate the risks arising from such situations is to have a supervisory body alongside the media outlet concerned, whose members have no dependency relationship with either the media outlet or the advertiser, i.e. no public body that has published advertising with the media outlet in the last three years. This proposal is based on the premise that all publicly funded media are required to meet, at least in part, public service expectations. The most important task of the supervisory body would therefore be to monitor and objectively assess whether the media outlet is carrying out its information activities in a politically impartial manner. The supervisory body would draw up a set of criteria for the assessment, a kind of public service code, for which the Commission would publish a model code. The panel's annual report would be given serious weight if a negative assessment, below a certain score, would automatically exclude a media company from public advertising. The supervisory body would also



deal with complaints from the public about media content. It would also have the task of adopting and monitoring the implementation of a plan to continuously reduce the proportion of public advertising. The media company could appeal against the decisions of the monitoring body in court. The mandate of the board will be for three years and will be renewed for another three years on a rotating basis if the proportion of public advertising is not reduced during this period.

This organisational solution is of course not a perfect response to political influence. There is no perfect regulatory solution to the problem. A reasonably set intervention threshold is a sufficient guarantee for media companies operating on a real market basis, as there is no chance that they will ever be subject to regulation. The organisational solution does not directly interfere with the exercise of editorial freedom and even leaves open the possibility that the significant use of public money does not necessarily imply political bias. Its weak point is the development of an appropriate, objective evaluation criteria system, for which, however, the national regulations on public service media and the national regulations on balanced, impartial information provide a good starting point.

In fact, this concept can also be derived from the EMFA proposal. The proposal defines as public service media providers all media providers which receive national public funding for the fulfilment of public service missions (Article 2(3)). Public funding is therefore linked to the fulfilment of public service missions. Public advertising is a form of public funding and, in line with the above reasoning, when public advertising is no longer a single service but a funding solution to ensure the stability of operations, it is absolutely justified to link it to the provision of public services.

Under the EMFA proposal, it is the national regulatory authorities or bodies that monitor the allocation of public advertising in media markets. This is clearly the wrong solution. Even a truly independent national authority is not in a position to review government decisions. Just as the control of state aid in general cannot fall within the competence of a Member State, the control of the distribution of state advertising can only be controlled at the level of the European Commission. The use of public money in the media market must also be examined primarily from the point of view of competition law and market distortion, which is outside the competence of media regulators. Under the EMFA proposal, it is the national regulatory authorities or bodies that monitor the allocation of public advertising in media markets. This is clearly the wrong solution. Even a truly independent national authority is not in a position to review government decisions. Just as the control of state aid in general cannot fall within the competence of a Member State, the control of the distribution of state advertising can only be controlled at the level of the European Commission. The use of public money in the media market must also be examined primarily from the point of view of competition law and market distortion, which is outside the competence of media regulators.

### General authorisation to control state measures affecting the media market

As if to compensate for the weak guarantees of the independence of the regulatory authorities, the EMFA has included an Article 20 entitled National measures affecting the operation of media service providers. This is the broadest and least specific intervention rule in the proposal. It is proposed that any legislative, regulatory or administrative measure taken by Member States that is liable to affect the operation of media service providers in the internal market must be duly justified and proportionate. These measures must be reasoned, transparent, objective and non-discriminatory.

According to recital 39, national measures may affect the functioning of the internal market, *inter alia*, if the measure is addressed to a media service provider providing its services towards more than one Member State, or when the concerned media service provider has a significant influence on the formation of public opinion in that Member State. According to the latter interpretation, any measure affecting a media organisation in a Member State which plays a substantial role in the

provision of public information may be subject to EU law control. This includes a large part of the media market, from local newspapers to radio networks and news broadcasters, to private television stations that broadcast news with high ratings.

All in all, a very large proportion of national measures affecting the media market are therefore the focus of regulation. The main consequence of this is the European scrutiny of national measures. The EMFA provides that a national authority or body adopts a measure that affects individually and directly a media service provider and is likely to affect the functioning of the internal market for media services, it must communicate, upon request by the European Media Services Authority and the European Commission, without undue delay, any relevant information, including a summary of the facts, the grounds on which the national authority or body has based its measure, and, where applicable, the views of other authorities concerned.

In this rule, the Hungarian reader will perhaps first be reminded of the Klubrádió case. The national measure consisted in the Media Council's refusal to renew Klubrádió's media service licence on grounds that were not applied to other radio stations. Although the Commission opened infringement proceedings against Hungary, an important public forum has now disappeared from the airwaves and can only be listened to online. If the Hungarian Media Council had had to take this decision under European control, it would not have been in an easy position. While an ex-post, lengthy procedure certainly cannot undo the effect of a state measure, an ex-ante European control can be a quick and effective means of preventing abuse.

The allocation of frequencies for broadcasting purposes, the modification of media service licences, but also the related legislation, or even the introduction of a special tax on the media sector - of which Hungary is again an example - could be the subject of European scrutiny.

The proposal's biggest flaw at this point is precisely that it does not draw the line for European intervention. This rightly arouses alarm and opposition from otherwise democratically functioning Member States. The current constitutional situation in Hungary is very much in favour of stronger European control, which is a serious guarantee for market players. The same can be said of Poland, and sometimes of other Member States. But again, the question is whether individual extreme situations should be dealt with by general standards, rather than by using the existing instruments, the infringement procedures and the competition procedures, quickly and effectively.

## Conclusion

Overall, the European Media Freedom Act is a very ambitious attempt at regulation that responds to real problems. It is clear from the draft text that the specificities of the Hungarian and Eastern European media markets were taken into account in its preparation. At the same time, the proposal opens up the possibility of European intervention in areas that are highly sensitive from the point of view of national sovereignty, which predictably and justifiably leads to resistance from Western European Member States. It would be possible to argue convincingly in favour of the EMFA if the European Commission and other European bodies had already exhausted all the instruments at their disposal against Member States that disrespect media freedom. But this has not yet happened.

A [shorter version](#) of this article appeared on Verfassungsblog.