

Commission issues call for evidence on proposal for a Media Freedom Act

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On 21 December 2021, the European Commission issued a call for evidence on the Commission's upcoming landmark proposal for a Media Freedom Act. This follows the announcement in September 2021 by the European Commission president, Ursula von der Leyen, that the Commission would “deliver” a Media Freedom Act in 2022, in order to safeguard the pluralism and independence of the media in the EU internal market (see also IRIS 2021-6/15). The purpose of the call for evidence is to invite stakeholders to express views on the Commission’s description of the Media Freedom Act initiative, why it is necessary, and what it aims to achieve. Crucially, the call for evidence is accompanied by an important document setting out detailed options on the Media Freedom Act initiative, which is entitled “Safeguarding media freedom and pluralism in the internal market”.

The Commission first sets out the problems the Media Freedom Act aims to tackle, namely that the internal media market in the EU is affected by (i) different national rules on media pluralism, (ii) insufficient structures for cooperation between independent media regulators; (iii) instances of public and private interference in the ownership, management or operation of media outlets, and (iv) lack of media pluralism safeguards, including online. Notably, the Commission states that “interference” in editorial and management decisions of media may lead to “biased media coverage”, and can affect investment or market entry decisions; while state resources “may be used to put pressure on media”. According to the Commission, these problems have a direct impact on the functioning of the EU single market for media, lead to regulatory fragmentation, and deprive media market players of legal and market certainty.

As such, the objective of the Media Freedom Act will be to ensure that (a) media companies can operate in the internal market subject to consistent regulatory standards, including in regard to media freedom and pluralism; (b) ensure that EU citizens have access to a wide and varied media offer both offline and online; (c) safeguard the editorial independence and independent management of the media, which is a precondition of media freedom and of the integrity of the internal market; and (d) foster undistorted competition between media companies by ensuring a transparent and fair allocation of state resources. Notably, the Media Freedom Act would build upon the revised Audiovisual Media Services Directive (see IRIS 2019-1/3), and the upcoming Digital Services Act package (see

IRIS 2021-1/13).

Crucially, the Commission then sets out the policy options for the Media Freedom Act initiative. First, the “baseline scenario” would be that the Commission would not propose any changes to the current legislative framework, and would continue monitoring national developments through its annual Rule of Law Reports. Second, “policy option 1” would be a Commission recommendation addressed to EU Member States, which would encourage Member States to “implement a number of actions” in relation to national scrutiny procedures over media market operations, “restrictions to market entry and operation, media ownership transparency, protection of editorial independence and media diversity and transparent allocation of state resources. Third, and most significantly, “policy option 2” would be an EU legislative instrument, which would “establish common principles” for national scrutiny procedures of media market transactions, and other restrictions to market entry and operation of the media; and would also envisage “measures to enhance transparency of media markets”. Importantly, the legislation would set out “principles” for the “protection of editorial independence of the media” and “transparent allocation of state resources in the media sector”. Finally, the legislation would be underpinned by an “effective and independent monitoring mechanism” at EU level, and a “structured cooperation framework for media regulators”. Notably, it could build on the “existing EU network of independent media regulators”, namely the European Regulators Group for Audiovisual Media Services (ERGA), and “potentially reinforced with necessary powers and resources”.

Input in response to the call for evidence can be provided until 21 March 2022, and the Commission will publish an impact assessment in the second quarter of 2022. The Commission states that the Media Freedom Act is “planned for adoption in the course of 2022”.

European Commission, “European Media Freedom Act: Commission starts consultations with call for evidence”, 21 December 2021

<https://digital-strategy.ec.europa.eu/en/news/european-media-freedom-act-commission-starts-consultations-call-evidence>

European Commission, Call for evidence for an impact assessment, Ref. Ares(2021)7899801, 21 December 2021

https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13206-Safeguarding-media-freedom-in-the-EU-new-rules_en

