



NEWS MEDIA EUROPE

Brussels, 2nd May 2023

Dear Member States' representatives,

We, the undersigned European organizations, representing thousands of media outlets, journalists and all other media workers across the EU, welcome the intentions of Article 4 of the proposed European Media Freedom Act (EMFA), which “aims to guarantee that journalists and editors can work without interference, including when it comes to protecting their sources and communications”.¹

The right to protect sources is an integral part of a journalist's right to freedom of expression and is guaranteed by Article 11 of the Charter of Fundamental Rights of the European Union. **Protecting media, including journalists and their sources, against any threat to their independence and security is a non-negotiable condition for effective journalism and editorial freedom.** It constitutes a fundamental cornerstone of our democracies: the right of citizens to be informed on matters of public concern. Without proper safeguards, the media cannot fulfill its role as the fourth power in our democratic societies.

Tomorrow, we will mark World Press Freedom Day as Europe faces increasing threats to journalists alongside threats to the anonymity and safety of their sources. Under the theme ‘Shaping a Future of Rights - Freedom of expression as a driver for all other human rights’, it is understood that the work that the media and journalists do is fundamental to our democracies.

However, we consider the protections foreseen in the Commission's draft to be insufficient to **effectively shield journalists from undue interference, prohibit surveillance of journalists and protect journalistic sources and communications.** The proposed provisions are in fact a step backwards as they do not correspond to the protections as provided in Article 10 ECHR and the related case law.

¹ [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](#), p. 3.

The current compromise text, which is discussed at the Council, also needs more ambition to realize the intended benefits of Article 4. We therefore call on the Council to **strengthen the EMFA proposal along the lines of our joint amendment suggestions.**²

Your sincerely,

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and Video on Demand Services in Europe
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**Media, Entertainment & Arts sector of
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² Such suggestions are without prejudice to the individual position of and proposals by each co-signatory, which may provide for broader protections.

COM proposal	Media sector's amendment suggestions
<p>Article 4:</p> <p>1. Media service providers shall have the right to exercise their economic activities in the internal market without restrictions other than those allowed under Union law.</p> <p>2. Member States shall respect effective editorial freedom of media service providers. Member States, including their national regulatory authorities and bodies, shall not:</p> <p>(a) interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers;</p> <p>(b) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, their employees or their family members, or their corporate and private premises, on the ground that they refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest, in accordance with Article 52(1) of the Charter and in compliance with other Union law;</p> <p>(c) deploy spyware in any device or machine used by media service providers or, if applicable, their family members, or their employees or their family members, unless the deployment is justified, on a case-by-case basis, on grounds of national security and is in compliance with Article 52(1) of the Charter and other Union law or the deployment occurs in serious crimes investigations of one of the aforementioned persons, it is provided for under national law and is in compliance with Article 52(1) of the Charter and other</p>	<p>Article 4:</p> <p>1. Media service providers shall have the right to exercise their economic activities in the internal market without restrictions other than those <i>that are in compliance with</i> Union law.</p> <p>2. Member States shall respect effective editorial freedom of media service providers. Member States, including their national regulatory authorities and bodies, shall not interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers.</p> <p><i>2a. (new) Member States shall respect the confidentiality of sources and shall not:</i></p> <p><i>(a) (new) oblige media service providers, their employees, and journalists to disclose information related to the editorial processing or dissemination of this information, including on their sources;</i></p> <p><i>(b) (new) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers, their employees, and journalists or, if applicable, any other person with professional or private relations with them,</i> or their corporate and private premises;</p> <p>(c) deploy spyware <i>or other surveillance technologies, or gain access to encrypted communications</i> in any device or machine used by media service providers, <i>their employees, and journalists</i> or, if applicable, <i>any other person with professional or private relations with them, unless the deployment</i></p> <p><i>(i) is provided for in national law, in accordance with Article 52(1) of the Charter and in compliance with Union law;</i></p>

<p>Union law, and measures adopted pursuant to sub-paragraph (b) would be inadequate and insufficient to obtain the information sought. (...)</p>	<p>(ii) is necessary, justified on a case-by-case basis, and proportionate; (iii) is ordered, ex ante, by a national judge, a court or other independent and impartial judicial body; and (iv) occurs in serious crimes investigations, or in crimes investigations within the jurisdiction of the International Criminal Court.</p>
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Justification

Article 4 of the EMFA proposal is of paramount importance for a free media sector. Only if media service providers and their journalists can exercise their work freely and without interference from the State can they perform their role as public watchdog and enable citizens to properly inform themselves, both of which are prerequisites for well-functioning democracies.

In order for Article 4 to live up to the highest standard and effectively protect free media, it should be strengthened in several respects:

The Article 4 protections should be afforded to anyone broadly involved in the editorial process, including journalists, understood in the widest sense (including, e.g., free-lancers), and other employees as well as persons who as a result of their professional or personal relations may be privy to relevant information. This does not only respect the principle of equal treatment, it is also necessary to protect journalists that, at the beginning of an investigation, perform their work without knowledge of a media service provider.

Art. 4 rightly goes further than the protection of journalistic sources in the strict sense that it prohibits any interference with editorial decisions and processes. It should be clarified in new sub-paragraph (a) that the general principle of non-interference extends to information related to the editorial processing or dissemination of this information, e.g., discussions among journalists or journalists' own (desktop) research and investigations, etc.

Further, protection against disclosure of information including regarding journalistic sources should be absolute. If disclosure of sources were justified by an "overriding requirement in the public interest", a notion that is too vague and undefined, there would be serious risks that sources would not approach journalists and keep the information to themselves, which would, in turn, negatively affect the right to freedom of expression and the right of the public to be informed on matters of public concern. To fulfill their role as public watchdog, journalists must be able to protect their sources from the State.

Due to the gravity of the interference with the right to freedom of expression, and the potentially devastating effects on the source whose identity is revealed, the deployment of spyware or other surveillance technologies, or the accessing of encrypted information should only be exceptionally possible and under certain conditions outlined in (i)-(iv) of sub-paragraph (c). An important safeguard is the review by a judge or other independent and impartial judicial body carried out prior to the measure.

Finally, it is important that the EMFA establishes a high minimum level of protection allowing Member States to implement higher protections still. We note that Art. 1(3) should be slightly amended and refer to "more detailed *or stricter* rules".