EFJ input into EC targeted consultation on the implementation of the self-declaration functionality for media service providers pursuant to Article 18(9) EMFA

23 July 2025

Introduction

The European Federation of Journalists (EFJ) welcomes the opportunity to contribute to the European Commission's targeted consultation concerning the guidelines the Commission must issue on the implementation of the self-declaration functionality for media service providers (MSPs), as required under Article 18(9) of the European Media Freedom Act (EMFA). As the largest organisation in Europe representing journalists committed to protecting media freedom, media pluralism and enabling a safe and sustainable environment for journalists in Europe, we believe these guidelines must guarantee fairness and full transparency of the declaration process.

The EFJ has fought for a strong Article 18 that aims to reestablish some space for journalism and editorial media by providing specific guarantees for media content on digital platforms. The current eco-system dominated by terms and conditions of the digital platforms and their attention driven opaque algorithms work against journalism as a public good.

Though media privileges differ across European legal systems, they share a common goal: to protect media freedom robustly and ensure journalism's role in the public sphere. Media laws and ethical codes make journalists and media liable for the content they produce. This creates trust and distinguishes editorial content from so-called citizen journalists or any content circulating online. The EMFA can be considered as remedying overeagerness to provide only "proper" content, in order to sustain public debate on matters that are both important and difficult. It is crucial to remind in this context that shocking, or disturbing content may be important in the public discourse if prepared according to editorial standards and covered by freedom of expression.

Article 18 rightly adds new requirements to benefit from this privilege, including being subject to self-regulatory or co-regulatory authorities or bodies. This in our view is an excellent stimulus for the media to be part of self-regulatory mechanisms if this is not yet the case. A challenge is how to restrict this privilege to entities that surely adhere to professional journalism standards and which self-regulatory body is truly independent and does not only exist on paper. The transparency provisions of Articles 18 and 19 should enable researchers, civil society, fact-checkers, self-regulatory bodies and journalists' organisations to monitor whether media privileges are being granted to deserving actors. The structured dialogue with academics, civil society experts and journalists organizations under Art 19 covers the issue of monitoring adherence to self-regulatory initiatives, and deserves in our view more attention.

We need to keep in mind that media regulatory bodies are not competent for journalistic content (or are rarely competent in this matter) while journalistic self-regulatory bodies are and we appreciate the recognition of self-regulatory mechanisms in EU legislation.

EFJ Recommendations

1. Co-and self-regulatory mechanisms

The EFJ agrees that *"the guidelines could clarify that the two conditions set out in Article 18(1)(d) (...) are alternative and not cumulative. The guidelines could also clarify that co-regulatory or self-regulatory mechanisms considered relevant could be national media and press councils, as well as professional orders or associations overseeing the journalistic profession, provided that they govern editorial standards."*[1]

The need for the conditions set out in Article 18(1)(d) to be alternative and not cumulative is justified given that not all media service providers may meet the dual requirement (the press has historically not been regulated). It therefore seems more appropriate to give preference to a single reference body. Since the choice of the body provided for in point (d) is left to the media service providers, the latter must be well informed of the choice they are making and of the consequences to which they are exposed.

The optional functionality for media service providers to upload any information related to the fulfilment of the conditions can be supported. The guide should even recommend that media service providers should be able to produce direct evidence that they are subject to self-regulation (or otherwise) (e.g. by producing a certificate from the press/media/ethics council or by referring to the 'members' page of the council's website) to avoid misuse in this regard.

The specific nature of each mechanism (regulation, co-regulation, self-regulation) should also be clearly defined: these mechanisms are distinct and cannot be confused. The possible articulations between regulation by national media regulators and self-regulation by press councils vary from one Member State to another.[1] We believe that journalistic content is best served by self-regulatory mechanisms but we are certainly aware that not all EU member states have independent press or media councils. Other self-regulatory mechanisms, such as associations of journalists with an ethics committee, which handle complaints regarding ethical standards (ethical councils) are rightly referred to by the Commission. As the text also mentions professional orders, it must be said such a professional order only exists in Italy and it does not

[1] Articulations between self-regulation and regulation in the field of of information and journalism, September 2023 Press Councils EU

correspond to the usual definition of a press council.[2] The Ordine is created by law and its membership is compulsory. The Order, which is a state body, differs from press councils as journalism is subordinated to registration. The EFJ is generally opposed to the creation of a professional order with mandatory membership that is regarded as contrary to press freedom.

The EFJ believes that Article 18 can be a motor and motivation for media organisations and journalists to agree on self-regulatory mechanisms which are efficient, independent and as inclusive as possible including media ombudsmen or company codes of ethics agreed by employers and journalists' organisations/journalists.

If the declaration functionality is made contingent on the existence of formal regulatory structures, this may indeed disadvantage media outlets operating in contexts where such frameworks may have been deliberately eroded through government interference or never properly instituted, as also outlined by Liberties.

2. Definition and Scope of Media Service Providers

A **Media Service Provider (MSP)** refers to any organisation, including legal entities such as corporations, non-profits, civil society organisations, or individuals, disseminating content under **editorial responsibility** to the general public for the purposes of **informing, educating, or entertaining**, as defined in **Articles 2(1), (2), and (3) and Recitals 2 and 9 of the EMFA**.

Guidance and Clarifications:

Definition of Economic Activity:
According to Recital 9, "*since the operation of media service providers in the internal market can take different forms, the definition of media service provider should cover a wide spectrum of professional media actors falling within the scope of the definition of media service, including freelancers*." The EFJ and most press and media councils adopt a broad and functional definition of the notion in line with the Council of Europe: a journalist refers to anyone who engages in the activity of gathering, producing, processing, and/or disseminating information in the public interest.

As suggested by the GFMD, a clearer interpretation is needed, particularly regarding whether entities such as community journalism organisations or non-profit media fall within the scope of "media services" and whether their activities can be interpreted as economic activities. We recommend that the guidance explicitly include these organisations but also bloggers and

[2] L. Ugolini and G. Ciofalo: Paradoxes es difficulté de L'Ordine der Giornalisti, Recherches en Communication, vol 54,2022

influencers acting in a professional and ethical manner (for example, by being subject to the authority of an ethical self-regulatory body) or any other media workers who deal with information in a professional matter within the scope of the EMFA and their activities as equal to provision or media services. The media service provider is defined as the person 'who assumes editorial responsibility for the choice of content of the media service and determines the way in which it is organised'. Whether this includes the question of influencers depends on the situation in context (which most media councils can easily analyse in terms of membership).

Use of AI: A suggested standard on the use of Artificial Intelligence to provide content should be in compliance with the CoE Guidelines on the Responsible Implementation of Artificial Intelligence Systems in Journalism adopted by the Steering Committee on Media and Information Society (CDMSI) on 30 November 2023.

3. Design and operation of the self-declaration functionality

VLOPs should design the self-declaration process in a simple and clear manner, while protecting it from abuse. We welcome the Commission's overall objective of ensuring "simplification and legal certainty" and agree that the relevant functionality should be "prominent, user-friendly and easily accessible" for media and journalists. For such cases, a post evaluation must be possible within full transparency for all stakeholders involved. The contact person by the VLOPs must be humans (not AI generated chat boxes) with some knowledge about national media laws and the national media ecosystems. In addition, there should be clear deadlines for VLPS to respond to requests regarding self-declarations.

The guidelines should outline what kind of information MSPs shall provide to support their self-declarations. We agree that information from reliable and publicly available EU-wide or national databases on media ownership, as to be provided under Article 6.1 should be used. We welcome the mention by the European Commission of the European Media Ownership Database, which hopefully will be integrated in a more sustainable and structural way.

If the form is based on standardized questions with a pre-compiled checkbox list, these should be accompanied by explicit information bubbles on the purpose of the request and the various possible options. To avoid automatic completion, a dated and signed declaration of compliance may be requested.

The note stresses that "As a general principle, providers of VLOPs would need to accept declarations by media service providers that have filled in all the relevant fields of the questionnaire". This sentence implies that exceptions are possible. The guide should provide for exceptional situations and indicate how they can be resolved. It seems logical that the regulatory

or self-regulatory body designated in the self-declaration should be one of the preferred contacts for VLOPs when addressing this exception.

4. Consultation with Civil Society Organisations (Modalities of involvement)

The success of EMFA in fostering media freedom and pluralism partly depends on sustained engagement with journalists and media organisations and free expression advocates. The guidelines should require regular consultation with civil society organisations, media experts and media council representatives including independent media development organisations, fact-checking organizations recognised as members of the European Fact-Checking Standards Network (EFCSN), journalists organizations (unions and associations), self-regulatory bodies such as press, media and ethics councils, and rights-based civil society organisations, that specialize in media freedom, access to information, and digital rights. Such engagement must be embedded throughout the lifecycle of the declaration mechanism—during its initial design, subsequent updates, and in the review of contentious cases. Structural dialogue, as also referred to in Article 19 is essential to provide a necessary counterweight to potential state or corporate influence, to ensure alignment with the EMFA's overarching commitment to fundamental rights and to foster mutual trust. MSPs themselves should also be considered eligible to make notifications when they detect bad actors and flag them to VLOPs , for instance when they have been made aware of imposter / Doppelgänger accounts. Similarly, if a stakeholder is not represented at European level but stands out at national level because of its expertise, it should be able to take part in the discussion. Lack of representation at European level should not be a criterion for exclusion.

The European Board for Media Services could indeed play a coordinating role in identifying relevant organisations and supporting the consistency of this process across Member States.

5. Enforcement of Article 18

As other submissions may have outlined, there is growing concern in the journalism and media sector about the apparent lack of compliance by VLOPs with EU legislation, as numerous cases and investigations conducted by the European Commission under the DSA, but also the Digital Markets Act (DMA) show. For instance, ongoing investigations have highlighted failures in adequately addressing illegal content and lack of transparency in advertisement practices, which suggests a worrying trend of non-compliance. These investigations also reveal that the current procedures under Article 18 EMFA may lack clarity, effectiveness and potential sanctions, creating loopholes that VLOPs may exploit to their advantage. This gap must be addressed to ensure that VLOPs are held accountable and that the principles of the EMFA are effectively upheld to guarantee a fair and transparent media environment across the EU.

6. Other relevant issues in relation to the application of Article 18

In accordance with the EBU, Article 18(4) grants VLOPs too much discretion as it merely requires them to "inform the [MSP] concerned without undue delay" once a decision has been reached and action has been taken against an MSP's content. The guidelines should clarify that VLOPs must provide MSPs with an explanation of their reasons (in a statement drafted and reviewed by a human and not generated entirely by algorithmic means) when making the final decision, and set out a precise timeframe for doing so. MSPs need this essential information if they want to initiate legal proceedings against a VLOP's decision.

In conclusion, if oversight mechanisms, data access, transparency, structured dialogues and consultations with stakeholders and experts—provided under both the DSA and EMFA—are well-coordinated and used, they can help address these challenges effectively. To that end, investing in research and strengthening civil society are essential.[3] We also wish to underline the need for the European Commission to hold formal consultation processes on these guidelines with all relevant stakeholders mentioned above. Public consultations on implementing guidelines are a key part of the EU law-making process, helping to ensure transparency, legitimacy, and broad stakeholder engagement in the implementation of the law.

[3] https://cmpf.eui.eu/digital-services-act-and-european-media-freedom-act/