

RECOMMENDATIONS FOR TRILOGUES ON THE EUROPEAN MEDIA FREEDOM ACT

Ensuring a balanced approach to Article 17

October 2023

As the [European Parliament](#) and [Council of the European Union](#) have respectively adopted their positions on the European Media Freedom (EMFA), the interinstitutional negotiations are starting in October 2023. Since the first iteration of the EMFA, the Computer & Communications Industry Association (CCIA Europe) has supported its goals of media freedom and plurality, crucial to any well-functioning democracy.

Article 17 of the EMFA introduces a *de facto* special treatment of media service providers' (MSPs) content on very large online platforms (VLOPs). Both co-legislators have amended this Article. CCIA Europe remains deeply concerned by certain amendments and wishes to contribute to policymakers' reflections so that no loophole for harmful content is left in this provision.

Recommendations:

1. Further reinforce safeguards in the self-declaration of MSPs
2. Remove the 24-hour stay-up obligation
3. Apply a progressive approach to content moderation restrictions
4. Ensure the DSA's implementation is not prevented

I. Further reinforce safeguards in the self-declaration of MSPs

The Council and the Parliament have introduced new safeguards to the self-declaration functionality opened to MSPs. In particular, legislators propose that MSPs should provide a way to contact “the relevant/competent national regulatory authorities or bodies or representatives of the co- or self-regulatory mechanisms”. A dialogue between VLOPs and authorities/co- or self-regulatory mechanisms can emerge depending on whether VLOPs have doubts about the application of an MSP. While this is a welcomed addition, VLOPs will likely have to frequently rely on authorities/co- or self-regulatory mechanisms to make a decision on a self-declaration. **To help in this process, lawmakers should consider including the involvement of the new Board** to help in this task and reduce the burden on authorities and co- or self-regulatory mechanisms and act as a final oversight body.

II. Remove the 24-hour stay-up obligation

A damaging amendment to Article 17 is introducing a stay-up obligation of 24 hours, which amounts to a temporary must-carry obligation. Under this provision, when VLOPs notify an MSP that certain content must be removed, they would be required to delay their actions for 24 hours. This is a considerable deviation from the Commission's initial suggestion, which merely called on VLOPs to notify MSPs prior to suspending content.

The 24-hour delay offers ample time for false information and harmful content to spread widely, potentially significantly influencing the news cycle and public discourse.

Moreover, this stance contradicts the Digital Services Act (DSA). Contrary to some arguments, the must-carry obligation isn't merely a refinement of how the DSA's general framework applies to media content; it constitutes a fundamental inconsistency. Therefore, any special treatment of media content within the EMFA should be limited to a privileged communication channel between platforms and MSPs regarding content moderation decisions, without obligatory waiting periods.

III. Apply a progressive approach to content moderation restrictions

Both legislators have proposed to include content moderation restrictions in the scope of Article 17(2), which only applied to suspensions in the Commission's proposal.

Indeed, the Commission outlined that restrictions were sufficiently tackled in Article 17(4). This progressive approach meant that VLOPs could deal in priority with content suspensions in their privileged channel of communication with MSPs, while content restrictions could be discussed in "meaningful and effective dialogue".

While we advise against deviating from the Commission's progressive approach, we would suggest that lawmakers rely on well-known legal definitions. As previous debates have shown, content restrictions can encompass various actions, some of which are essential to users' safety (e.g. protecting minors). Therefore, we believe that relying on the term "restriction of visibility" based on the DSA Recital 55 would be more suitable. We also encourage ensuring alignment of the EMFA with VLOPs obligations under the AVMSD, the Code of Practice on Disinformation and other European Codes of Conducts.

IV. Ensure the DSA's implementation is not prevented

Article 17 is intertwined with the DSA. While we appreciate that lawmakers aim to ensure alignment, we strongly support clarifications that the EMFA should not prevent the implementation of the DSA. To that effect, the references to Article 34 on risk assessment should be systematically accompanied by Article 35 pertaining to mitigation measures. Clarifications in recitals that Article 17 does not apply to these risks, would further prevent loopholes for disinformation or harmful content.

Suggestions for Compromise Language on Article 17 and corresponding recitals

Article 17 - Content of media service providers on very large online platforms (rows 212 to 222a)

1. Providers of very large online platforms shall provide a functionality allowing recipients of their services to:

- (a) **declare that** it is a media service provider within the meaning of Article 2(2) and complies with Article 6(1);
- (b) **declare that** it is editorially independent from Member States and third countries;
- (c) **declare that** it is subject to regulatory requirements, or adheres to a co- or self-regulatory mechanism widely recognised by and accepted in the relevant media sector in one or more Member States, for the exercise of editorial responsibility and editorial standards;
- (d) **provide the contact details of the relevant national regulatory authorities or bodies or representatives of the co- or self-regulatory mechanisms referred to in point (c); and**
- (e) **provide the name of their managing director, their professional contact details, including an email address and telephone number, and their place of establishment; and**
- (f) **Declare that they do not provide content generated by an artificial intelligence system without subjecting such content to human oversight and editorial control.**

1. a. In case of reasonable doubts concerning the media service provider's compliance with paragraph 1, the provider of a very large online platform may seek confirmation on the matter from the relevant national regulatory authority or body, the relevant co- or self-regulatory body or the Board.

1. c. Providers of very large online platforms shall acknowledge receipt of declarations submitted under paragraph 1. They shall state in the acknowledgement whether or not they accept the declaration. Where a provider of a very large online platform accepts a declaration submitted by a media service provider under paragraph 1, that media service provider shall be deemed to be a recognised media service provider.

1. d. In case a provider of very large online platforms rejects a declaration by a media service provider submitted pursuant to paragraph 1 of this Article or in case no amicable solution was found following the dialogue pursuant to paragraph 4 of this Article, the media service provider concerned may call the Board that shall issue a decision.

2. Where a provider of a very large online platform decides to suspend the provision of its online intermediation services in relation to media services provided by a media service provider that submitted a declaration and contact details pursuant to paragraph 1 of this Article **or to restrict the visibility of such media service provider**, on the grounds that such content is incompatible with the terms and conditions of the online intermediation services, without prejudice to the mitigating measures in relation to a systemic risk referred

to in Articles 34 and 35 of Regulation (EU) 2022/2065, it shall take all possible measures, to the extent consistent with their obligations under Union law, to communicate to the media service provider concerned the statement of reasons accompanying that decision, as required by Article 4(1) of Regulation (EU) 2019/1150, **and to provide the media service provider with an opportunity to reply to the statement of reasons, if possible, within an appropriate period prior to the restriction or suspension taking effect. If following, or in the absence of, such a reply, the provider of a very large online platform still intends to restrict or suspend the provision of its online intermediation services, it shall inform the media service provider concerned.**

3. Providers of very large online platforms shall take all the necessary technical and organisational measures to ensure that complaints under Article 11 of Regulation (EU) 2019/1150 by recognised media service providers are processed and decided upon with priority and without undue delay.

4. Where a media service provider that submitted a declaration pursuant to paragraph 1 considers that a provider of very large online platform **repeatedly** restricts or suspends the provision of its services in relation to media services provided by the media service provider without sufficient grounds, the provider of very large online platform shall engage in a meaningful and effective dialogue with the media service provider, upon its request, in good faith with a view to finding an amicable solution, **within a reasonable timeframe** for terminating unjustified restrictions or suspensions and avoiding them in the future. The media service provider may notify the **details and** outcome of such exchanges to the Board **and the national digital services coordinator referred to in Regulation (EU) 2022/2065. Where no amicable solution can be found, the media service provider may lodge a complaint before a certified out-of-court dispute settlement body in accordance with Article 21 of Regulation (EU) 2022/2065.**

5. Providers of very large online platforms shall make publicly available on an annual basis information on:

- (a) the number of instances where they imposed any restriction or suspension on the grounds that the content provided by a media service provider that submitted a declaration in accordance with paragraph 1 is incompatible with their terms and conditions;
- (b) the grounds for imposing such restrictions or suspensions;
- (c) the number of dialogues with media service providers pursuant to paragraph 4; and**
- (d) the number of instances in which they refused to accept declarations submitted by a media service provider under paragraph 1 and the grounds for refusing to accept them.**

6. With a view to facilitating the consistent and effective implementation of this Article, the Commission, **in consultation with the Board, shall** issue guidelines to **facilitate the effective implementation** of the **functionality referred to** in paragraph 1, including the modalities of involvement of civil society organisations and, **where relevant, national regulatory authorities or bodies in the review of the declarations under paragraph 1.**

6. a. This Article shall be without prejudice to the right of media service providers to effective judicial protection

Corresponding recitals (rows 41 to 45a):

(31) Very large online platforms act for many users as a gateway for access to media services. Media service providers who exercise editorial responsibility over their content play an important role in the distribution of information and in the exercise of freedom of information online. When exercising such editorial responsibility, they are expected to act diligently and provide information that is trustworthy and respectful of fundamental rights. **The effective and independent exercise of editorial responsibility is also crucial to guarantee that the media content is compliant** with the regulatory or self-regulatory requirements they are subject to in the Member States. Therefore, also in view of users' freedom of information, where providers of very large online platforms consider that content provided by such media service providers is incompatible with their terms and conditions, **without prejudice to the mitigating measures in relation** to a systemic risk referred to in Articles 34 and 35 of Regulation (EU) 2022/2065, they should duly consider freedom and pluralism of media, in accordance with Regulation (EU) 2022/2065 and provide, as early as possible, the necessary explanations to media service providers as their business users in the statement of reasons under Regulation (EU) 2019/115013. To minimise the impact **that any suspension or restriction of visibility may have** on users' freedom of information, very large online platforms should endeavour to submit **clear and detailed** statements of reasons prior to the suspension **or restriction** taking effect without prejudice to their obligations under Regulation (EU) 2022/2065 and give an opportunity to the concerned media service provider to respond to such a statement of reasons.

The use of labelling, age-gating, down-ranking, and any other actions intended to protect users should not be understood as a restriction of visibility for the purposes of this Regulation. Following the reply of the media service provider, or in the absence of such a reply within an appropriate period of time, the provider of a very large online platform should inform the media service provider concerned if it intends to proceed with such a restriction or suspension. The length of the period of time for the response by the media service provider should be determined in line with the principle of proportionality taking into account the time sensitivity and seriousness of the potential harm to users. This Regulation should not prevent a provider of a very large online platform from taking expeditious measures either against illegal content disseminated through its service, or in order to mitigate systemic risks posed by dissemination of certain content through its service, in compliance with Union law, in particular pursuant to Regulation (EU) 2022/2065. **Nothing in this Regulation should be construed as deviating from Regulation (EU) 2022/2065, and in particular from the obligations that apply to very large online platforms. Moreover, this Regulation should be without prejudice to measures taken by video-sharing platforms under Article 28b of Directive 2010/13/EU, in particular those to protect minors.**

(32) It is furthermore justified, in view of an expected positive impact on freedom to provide services and freedom of expression, that where media service providers adhere to certain regulatory or self-regulatory standards, their complaints **and, where applicable, complaints filed by their representative bodies in accordance with Regulation (EU) 2022/2065** against decisions of providers of very large online platforms are treated with priority and without undue delay.

(33) To this end, providers of very large online platforms should provide a functionality on their online interface to enable media service providers to declare that they meet certain requirements, while at the same time retaining the possibility not to accept such self-declaration where they consider that these conditions are not met. **When a media service provider declares itself subject to regulatory requirements or adhering to co- or self-regulatory mechanisms, it should be able to provide contact details of the relevant national regulatory authority or body or of the representatives of the co- or self-regulatory mechanism, including those provided by widely recognised professional associations representing a given sub-sector and operating at national or European level. In case of doubts, this would enable the very large online platform to confirm with these authorities, bodies or the Board that the media service provider is subject to such requirements or mechanisms and thus should be a recognized media service provider under the EMFA.**

(34) This Regulation recognises the importance of self-regulatory mechanisms in the context of the provision of media services on very large online platforms. They represent a type of voluntary initiatives, for instance in a form of codes of conduct, which enable media service providers or their representatives to adopt common guidelines, including on ethical standards, correction of errors or complaint handling, amongst themselves and for themselves. Robust, inclusive and widely recognised media self-regulation represents an effective guarantee of quality and professionalism of media services and is key for safeguarding editorial integrity.

(35) Providers of very large online platforms should engage with media service providers that respect standards of credibility and transparency and that consider that restrictions **or suspensions** are **repeatedly** imposed by providers of very large online platforms without sufficient grounds **within a limited period of time**, in order to find an amicable solution for terminating any unjustified restrictions **or suspensions** and avoiding them in the future. Providers of very large online platforms should engage in such exchanges in good faith, paying particular attention to safeguarding media freedom and freedom of information.

About CCIA Europe

The Computer & Communications Industry Association (CCIA) is an international, not-for-profit association representing a broad cross section of computer, communications, and internet industry firms.

As an advocate for a thriving European digital economy, CCIA Europe has been actively contributing to EU policy making since 2009. CCIA's Brussels-based team seeks to improve understanding of our industry and share the tech sector's collective expertise, with a view to fostering balanced and well-informed policy making in Europe.

For more information, visit: twitter.com/CCIAEurope or www.ccianet.org

For more information, please contact:

CCIA Europe's Head of Communications, Kasper Peters: kpeters@ccianet.org