

Berlin, July 16, 2025

## **Submission to the Targeted Consultation on Article 18(9)EMFA**

Liberties welcomes the opportunity to contribute to the Commission's consultation on the guidelines implementing the declaration functionality for media service providers under Article 18(9) of the EMFA. As a civil society organisation committed to protecting freedom of expression and media pluralism, we believe these guidelines must guarantee openness, fairness, and full transparency of the declaration process.

### **1. No Exclusion Based on Regulatory Gaps in Member States**

We agree 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."*<sup>1</sup>

However, we strongly believe that the guidelines must explicitly clarify that the lack of co-regulation or self-regulation in a Member State cannot disqualify a media service provider from using the declaration functionality or benefitting from the Article 18 safeguards. In many South and Eastern European EU countries, such mechanisms are non-existent, dysfunctional, or lack independence.

If the declaration functionality is made contingent on the existence of formal regulatory structures, this would unjustly disadvantage media outlets operating in contexts where such frameworks have been deliberately eroded through government interference or never properly instituted. The guidelines should therefore permit a flexible and context-sensitive understanding of editorial oversight, grounded in functional rather than formal criteria.

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<sup>1</sup>[Targeted consultation - Commission guidelines on the declaration functionality for media service providers under Article 18 EMFA.pdf](#)

Furthermore, the guidelines must explicitly prevent discriminatory exclusion of smaller, independent, or non-traditional media, especially those critical of state authorities or operating in shrinking civic spaces.

## **2. Reporting and Flagging Must Be Open to All**

Liberties is of the opinion that the ability to raise concerns regarding false or misleading declarations during the review process should remain open to all individuals and organisations, and must not be confined to a narrow category of ‘recognized’ actors. A closed flagging system, restricted to entities pre-selected or approved by VLOPs or regulatory bodies, risks silencing independent voices and undermining the role of public interest watchdogs.

## **3. Full Transparency of the Declaration System and Interaction**

The declaration system must be accompanied by comprehensive transparency obligations. At a minimum, the following information must be made publicly accessible:

- The criteria and process used by VLOPs to verify or dismiss a media service provider’s declaration;
- The content of the declaration itself and any supporting documentation provided;
- The full record of interactions between VLOPs and media service providers, including dates of submission, approval, rejection, or challenge;
- The full record of raising concerns of specific declarations, including dates of submission, approval, rejection or challenge;
- The legal basis invoked for any removal or demotion of content from declared media service providers, whether requested by the platform or a third party;
- Any mechanisms or correction procedures available to both media service providers and third-parties.

In the absence of robust transparency measures, it becomes exceedingly difficult for oversight bodies, civil society organisations, researchers, and affected individuals to assess whether the declaration mechanism is being implemented fairly—or to challenge potential instances of abuse.

## **4. Consultation with Civil Society Organisations**

The success of EMFA in fostering media freedom and pluralism partly depends on sustained engagement with press associations and free expression advocates. The guidelines should

require regular consultation with 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.

Civil society input is essential to provide a necessary counterweight to potential state or corporate influence and to ensure alignment with the EMFA's overarching commitment to fundamental rights.

## **Conclusion**

If the EMFA is to serve as a meaningful safeguard for media freedom, its implementation mechanisms—including the declaration functionality—must be designed with the realities of Europe's diverse media and regulatory environments in mind. This requires:

- Avoiding exclusion based on weak national regulation;
- Ensuring open flagging mechanisms;
- Guaranteeing full public transparency;
- Committing to structured and regular consultation with freedom of expression organisations.

We remain available for further engagement and would welcome participation in any dialogue processes on this topic.

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