

January 2023

People vs. Big Tech input into the European Media Freedom Act

On behalf of SumOfUs, Transparency International EU, Hate Aid, EU Disinfo Lab and 14 other members of the People vs. Big Tech network, we welcome the European Commission's European Media Freedom Act (EMFA) proposal and the opportunity to submit feedback on the current text.

Summary:

The protection mechanism for self-declared "media" created under Article 17 of the EMFA is likely to give a free pass to a large number of so-called media outlets, de-facto exempting them from content moderation by providers of very large online platforms (VLOPs). This risks seriously undermining efforts to fight against online disinformation which leads to real world harm.

The cost and time associated with implementing the mechanism of notification prior to addressing content will likely lead VLOPs to choose to not moderate self-declared media, creating a de-facto exemption from content moderation.

This is particularly problematic given that the mechanism to identify the media who will benefit from such protection is self-declaratory and thus widely open for abuse by ill-intentioned actors.

Given that some media outlets, including well established ones, have played a major role in producing and spreading disinformation, Article 17 could effectively create a loophole where disinformation will be able to flourish online, free from content moderation.

Furthermore, the Digital Services Act (DSA) already offers protection against the arbitrary and unfair removal of content and suspension of services. Article 17 of the EMFA therefore seeks to solve issues that have already been addressed under the DSA and thus creates legal uncertainty.

Similar media exemptions were rejected in the DSA by the European Parliament and the Council of the EU. Through this submission we ask not to attempt to bring it back under the EMFA.

Our organizations recommend that the co-legislators **fully remove Article 17 from the proposed EMFA** as it risks turning the EU into a disinformation laundromat and threatens to undermine the DSA.

As journalist and Nobel Peace Prize Laureate Maria Ressa [said](#):

“Creating special media redressal mechanism may sound good but will enable industrial scale disinformation.”

People vs. Big Tech strongly opposes Article 17 as well as any form of media exemption from content moderation by social media platforms for the reasons detailed below.

De facto media exemption due to time and cost of implementation:

Article 17.2 states:

*Where a provider of very large online platform decides to suspend the provision of its online intermediation services in relation to content provided by a media service provider that submitted a declaration pursuant to paragraph 1 of this Article, on the grounds that such content is incompatible with its terms and conditions, without that content contributing to a systemic risk referred to in Article 26 of the Regulation (EU) 2022/XXX [Digital Services Act], it shall take all possible measures, to the extent consistent with their obligations under Union law, including Regulation (EU) 2022/XXX [Digital Services Act], **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, prior to the suspension taking effect.***

Article 17.2 therefore, introduces privileged treatment for self-declared media where providers of VLOPs will have to send a statement of reason to them before acting upon their content. Given the effort, cost, and number of steps required in implementing Article 17.2, in practice this is likely to encourage VLOPs to choose to not moderate content by self-declared media.

This mechanism of notification before addressing content, also prevents any meaningful action against disinformation in the first crucial hours when a story goes viral. It enables the platforms to continue pressing down on the accelerator (algorithmic amplification) but stops them from applying the brakes.

It therefore creates a de-facto exemption for self-declared media who spread disinformation and other types of harmful content. It also creates a two-tier system where content is moderated based on who says it rather than what is said.

This is particularly problematic given that the mechanism to identify the media who will benefit from such protection is self-declaratory and thus widely open for abuse by ill-intentioned actors. It also fails to recognise the evolution of the media landscape where several organisations, individual journalists and non-traditional news media outlets now act as a source of media and information for the public.

Self-declaration as media widely open for abuse:

Article 17.1 states:

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

(a) it is a media service provider within the meaning of Article 2(2);

(b) it is editorially independent from Member States and third countries; and

(c) it is subject to regulatory requirements for the exercise of editorial responsibility in one or more Member States, or adheres to a co-regulatory or self-regulatory mechanism governing editorial standards, widely recognised and accepted in the relevant media sector in one or more Member States.

Article 17.1 mandates platforms to create a self-declaration mechanism that allows anyone to claim to be a media to receive privileged treatment. Even though the mechanism that VLOPs will have to develop must require that the media declares to be editorially independent and subject to regulatory requirements, it is very unlikely that VLOPs will effectively scrutinise and question the media's self-declaration.

This self-declaratory system is therefore totally open for abuse. Any media could claim to be legitimate and be protected from content moderation spreading disinformation and propaganda, and hampering the efforts that platforms are expected to undertake to combat disinformation.

Any other mechanisms that would not be self-declaratory would not be a solution either as it would push the EU legislator towards the highly problematic territory of having to create a universal set of criteria as to whom and what should qualify as media, or to determine what is “*legitimate*” media, once again risking restrictions on some entities’ free speech while promoting others.

Some media are disinformation and propaganda super-spreaders:

The protection mechanism for self-declared media created under Article 17 that will, in practice, lead to being protected from content moderation is particularly problematic given that some media outlets, including [well-established ones](#), have played a major role in producing and spreading disinformation.

For example:

- Some of the most serious and blatant forms of disinformation stem from state-controlled broadcasters that manage to take advantage of limitations in regulation to disseminate propaganda. Europe too is vulnerable to the spread of state-controlled media propaganda. Hungary is a sad illustration of how the media landscape can quickly change to a now almost fully state-controlled media where, according to [Reporters Sans Frontières](#), “*The ruling party, Fidesz, has seized de facto control of 80% of the country’s media through political-economic manoeuvres and the purchase of news organisations by friendly oligarchs.*”
- Private media under supposed robust self-regulation have also spread large disinformation campaigns and shown a poor track record of upholding journalistic standards. In the UK, tabloids like *The Sun* and *The Daily Mail* have pushed climate scepticism and denial. *The Daily Mail* is so loose with facts that [Wikipedia’s](#) editors concluded that there is: “*established consensus that the Daily Mail was not a reliable source, and that its use in most Wikipedia articles was prohibited.*” In [France](#), *France Soir*, previously a well-respected newspaper, is now pushing disinformation, conspiracy theories, and anti-vax content, leading YouTube to close FranceSoir’s channel.

Under Article 17, these media would likely be protected from content moderation and allowed to continue to spread disinformation.

The DSA already offers protection against the arbitrary and unfair removal of content:

Rules introduced in the DSA already give considerable new protections for those concerned about unfair removals or over moderation. Article 17 is thus a solution in need of a problem that the DSA has already addressed. It also introduces legal uncertainty as to which legislation will apply.

- Article 17.3 of the EMFA requires providers of VLOPs to process complaints submitted by self-declared media with priority and undue delay. However, DSA's Article 86 on Representation already provides an avenue for certain organisations, including business users including media representative organisations, to have their complaints addressed with priority and without undue delay.
- Article 17.4 calls for meaningful and effective dialogue between platforms and media service providers to find "*an amicable solution*." This is already very well covered by Article 21 of the DSA and its out-of-court dispute settlement mechanism.
- Article 17.5 requires providers of VLOPs to annually make public information regarding restrictions and suspension that they have taken. The DSA already requires platforms to provide information on restrictions and suspensions and the grounds for imposing such restrictions under various transparency obligations, including Article 15, 24, and 42.
- Article 17 of the DSA also requires platforms to justify why they would want to moderate a specific piece of content or close an account.

The DSA therefore already creates a strong incentive for platforms to be far more accountable and deliberative than they may have been in the past in their content moderation, and already offers protection against unfair or arbitrary removal of content as well as overall suspension of services

Conclusion: The risk that media exemptions, even watered-down, create for our information landscape is well established. Nobel Peace Laureates Maria Ressa and Dmitry Muratov, who are champions of journalism and free speech, also strongly oppose media exemptions in technology or media legislations.

In September 2022 they published a [10 Point Action Plan to address our information crisis](#). Point number 8 clearly calls on rights respecting governments to:

*"Protect media freedom by cutting off disinformation upstream. This means there should be **no special exemptions or carve-outs for any organisation or individual in any new technology or media legislation**. With globalised information flows, this would give a blank check to those governments and non-state actors who produce industrial scale disinformation to harm democracies and polarise societies everywhere."*

This [10-point action plan](#) has been endorsed by 10 other Nobel laureates and 106 expert individuals and organisations who are experts on technology and media. That is why we

strongly recommend that the co-legislators fully remove Article 17 from the proposed EU Media Freedom Act and oppose any attempts to bring back any version of fully fledged media exemption in the legislative process.

About People vs Big Tech:

[People vs Big Tech](#) is an open network established in 2021 of civil society organisations and concerned citizens working together to challenge the power and abuses of Big Tech. 113 organisations from 23 of the 27 EU member states and the UK – with a collective membership of 71 million citizens – signed on to the [People's Declaration](#) demanding our rights against the abusive business models of Big Tech platforms.

Contact: info@peoplevsbig.tech

Eighteen organizations from the People Vs. Big Tech Tech network endorse this submission:

1. Alliance4Europe
2. Centre for Peace Studies, Croatia
3. Coalition For Women In Journalism
4. Defend Democracy
5. DigiQ, Slovakia
6. EU DisinfoLab
7. Eticas Tech, Spain
8. Fair Vote UK
9. Global Witness
10. HateAid, Germany
11. 'NEVER AGAIN' Association, Poland
12. Open Britain, UK
13. Stichting The London Story, the Netherlands
14. SumOfUs
15. Transparency International EU
16. Uplift, Ireland
17. Waag Futurelab, the Netherlands
18. #jesuislà, France