

ACTION PLAN ON THE IMPLEMENTATION OF THE EUROPEAN MEDIA FREEDOM ACT IN UKRAINE

INTRODUCTION

European Media Freedom Act (EMFA) is the regulation adopted by the EU in April 2024 to safeguard media pluralism and editorial independence in an environment undergoing rapid digital transformation. After its full-fledged entry into force on 8 August 2025, EMFA, together with the Audiovisual Media Service Directive, will become the key regulatory instrument for the Union's media market. Its adoption was the EU's answer to a number of negative tendencies on its internal market, including the growing influence of online platforms on access to media content, disproportionate distribution of advertising revenues between the media market players, and the heterogeneous national regimes of radio and online press regulation, which overburden their attempts at entering the new national media markets inside the EU. An additional worrying factor was the actions of certain states which harmed media pluralism, such as the underfinancing of public service media, the use of spyware for surveilling journalists, and the lack of effective cooperation between the national media regulators.

EMFA is directly applicable to the EU Member States but nevertheless requires them to introduce certain legislative guarantees in their national laws to enforce EMFA. EMFA has also been included in the list of acts for screening Ukraine's compliance with *acquis communautaire*, which makes its transposition here a matter of utmost importance given the EU's heightened attention to media reform.

A portion of EMFA's norms mirrors the requirements of the EU Charter on Fundamental Rights and the Council of Europe standards in the sphere of freedom of expression. Thus, it is not surprising that a number of EMFA's provisions (most norms on regulator's independence, standards of public service media functioning, and transparency of media ownership) are already a part of Ukraine's legislation after the adoption of the Law on Media in 2022. The implementation of the respective provisions is far from perfect and requires further attention, but they are generally compliant with the current *acquis*. They might be modified in certain areas to further their compliance with EMFA, such as the change of the National Broadcasting Council's constitution and appointment procedures, and the modification of governance systems of the international and parliamentary broadcaster, which might be considered public service media due to their remit. The application of sanctions to Ukrainian natural and legal persons, which was used to limit media freedoms in the past, the expansion of norms on journalistic sources' protection, and the extension of certain norms on the transparency of media ownership towards the new types of media are also on the agenda. The novel provisions for the Ukrainian legislation are the requirements for the providers of audience measurement, cooperation between the very large online platforms and media, regulation of state advertising, norms on the right to customise the media offering, and the requirements for the assessment of media market concentrations for their influence on media pluralism and editorial independence.

Digital Security Lab Ukraine analyzed the norms of Ukrainian legislation, which will require harmonization with the European Media Freedom Act, and prepared the recommendation in 10 key spheres that reflect EMFA's provisions to be implemented prior to EU accession. This analysis does not include the provisions describing the functionality of the European Board for Media Services (Articles 8-13), regulatory cooperation (Articles 13-17) and other provisions that will remain inapplicable for Ukraine until its accession to the Union.

FUTURE STEPS FOR THE EUROPEAN MEDIA FREEDOM ACT'S IMPLEMENTATION

Right of recipients of media services (Article 3)
<p>National legislation already guarantees the principles of media pluralism and editorial independence. Therefore, there is no need to implement any new provisions, though it is important to monitor any future amendments to the media legislation not to infringe on such guarantees and comply with the EMFA provisions.</p>
1. Rights of media service providers (Article 4):
<ul style="list-style-type: none"> ✓ To extend the list of persons subject to additional protection from identifying journalistic sources or confidential communications to the editorial staff and persons who, because of their regular or professional relationship with a media service provider or its editorial staff, might have such information to disclose it
<ul style="list-style-type: none"> ✓ To amend the national legislation on guaranteeing effective judicial review in all cases of access to information about journalistic sources or confidential communications
<ul style="list-style-type: none"> ✓ To regulate the use of spyware in accordance with the EU conditions and requirements (when all the alternative measures are insufficient, only in cases of investigating serious crimes committed by a person, and when this use is subject to prior authorisation by a judicial authority or an independent and impartial decision-making authority or, in duly justified exceptional and urgent cases, is subsequently authorised by such an authority without undue delay) or impose a prohibition on the use of such spyware
2. Safeguards for the independent functioning of public service media providers (Article 5):
<ul style="list-style-type: none"> ✓ To review the approach towards defining public service media in Ukraine based on the correct interpretation of the term «<i>public remit</i>» and the practice of the EU Member States
<ul style="list-style-type: none"> ✓ In case international and parliamentary broadcasters are considered public service media - to enhance the institutional independence of the management bodies of the international broadcaster and to ensure the editorial independence of the parliamentary broadcaster
<ul style="list-style-type: none"> ✓ To implement the requirements of adequate and sustainable financing of public service media by ensuring the provision on the sums enshrined in the legislation or amending its financing model, accounting for the need of mid-term budget planning
<ul style="list-style-type: none"> ✓ To provide the National Broadcasting Council with the powers to monitor the independence indicators for public service media as the independent authority already engaged in assistance to the public service media functioning in Ukraine
3. Duties of media service providers (Article 6):
<ul style="list-style-type: none"> ✓ To supplement the Law on Media with the requirements for print and online media to publish information on their beneficial owners and owners with shareholdings enabling them to exercise influence on the operation and strategic decision making on their websites
<ul style="list-style-type: none"> ✓ To introduce the regulation on the transparency of state advertising and advertising revenues received from third-country public authorities or entities and include the respective information to the Register of Subjects in the sphere of media
<ul style="list-style-type: none"> ✓ To add the general obligation for the media service providers providing news and current affairs content to take measures that they deem appropriate with a view to guaranteeing the independence of editorial decisions, including the disclosures of conflicts of interest and the guarantees for their editorial freedom

4. National regulatory authorities or bodies (Article 7):
<ul style="list-style-type: none"> ✓ To amend the Constitution of Ukraine after the cessation of the martial law on the name, constitution, and formation of the National Broadcasting Council to enhance its independence ✓ To sustain adequate financing for the media regulator, including through the legislative norms on its members' salaries and guaranteeing these sums' expenditure in practice
5. Content of media service providers on very large online platforms (Article 18):
<ul style="list-style-type: none"> ✓ To supplement Article 23 of the Law on Media with the norm on the additional obligations of the video-sharing platforms, which will be designated as very large online platforms after the Digital Services Act is implemented in Ukraine ✓ To negotiate the publication of the media regulator's or co-regulatory authorities' contacts on online platforms as a part of memoranda, the National Broadcasting Council may conclude with the foreign online platforms
6. Right to customise the media offering (Article 20):
<ul style="list-style-type: none"> ✓ To regulate the users' possibility to adapt the services to their own needs by adopting legislation similar to the Digital Services Act and to separately regulate the activities of manufacturers, developers and importers of devices and user interfaces, towards which EMFA applies
7. National measures affecting media service providers (Article 21):
<ul style="list-style-type: none"> ✓ To prevent the application of the Law on Sanctions to the Ukrainian residents and legal persons that are the subjects in the sphere of media ✓ To account for the proportionality requirements while applying the fines to media in breach of the limitations on gambling advertising under the Law on State Regulation of Gambling (if such advertising will not be entirely prohibited) ✓ To account for the influence of any proposed media-related legislative or regulatory measure on media pluralism and editorial independence of media service ✓ To permanently monitor the practice of applying content restrictions contained in the Law on Media on account of their justification and proportionality
8. Assessment of media market concentrations (Article 22):
<ul style="list-style-type: none"> ✓ To establish in the national legislation the requirements to assess media market concentrations' impact on media pluralism and editorial independence, which shall be separated from the assessment under the Law on Protection of Economic Competition ✓ To supplement the powers of the National Broadcasting Council with the assessment of the media market concentrations' impact on media pluralism and editorial independence and allocate adequate resources for such procedure
9. Audience measurement (Article 24):
<ul style="list-style-type: none"> ✓ To set up the principles for the providers of audience measurement systems in the national legislation, including the provision of guarantees for equal access to information on audience shares by the media and advertisers ✓ To clarify the sphere of audience measurements as the one liable to self-regulation under the Law on Advertising

10. Allocation of public funds for state advertising and supply or service contracts (Article 25):

- ✓ To establish the principles of non-discrimination for state advertising allocation in numerous Laws of Ukraine in their spheres of media and election
- ✓ To create the mechanism for publication of the information on funds allocated for advertising and media support by the public authorities and entities established by them, which will be accessible and transparent
- ✓ To empower the advertising regulator with the powers to request the amounts of funds allocated for state advertising from the public authorities and entities established by them and exchange such information with the other regulators