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Media ownership transparency and the European Media Freedom Act: how did the EU get there?

The European Media Freedom Act (EMFA) brought a significant improvement to the disclosure of ownership information in the media sector, providing a clear framework on the types of information that media service providers should make available to the recipients of services. Given this context, this article aims at discussing the contribution that the EMFA rules on ownership transparency brings to the media environment, particularly with regards to improving media pluralism. In order to do that, the article explores the development and evolution of media ownership transparency as a concept in EU media law and policy. Then it discusses the implementation of the new rules and the challenges that it may pose to governments and the society at large.

EMFA – Media ownership – Transparency – Media pluralism

La trasparenza della proprietà dei media e il Regolamento europeo sulla libertà dei media: come ci è arrivata l'UE?

Il Regolamento europeo sulla libertà dei media (EMFA) ha apportato un miglioramento significativo riguardo la trasparenza delle informazioni sulla proprietà nel settore dei media, dettando un quadro chiaro sul tipo di informazioni che i servizi di media devono fornire alle autorità e al pubblico in generale. Alla luce di questo nuovo quadro normativo, questo articolo si propone di analizzare il contributo che le regole a tutela della trasparenza previste nell'EMFA possono apportare al settore dei media, in particolare per quanto riguarda il miglioramento del pluralismo. A tal fine, l'articolo esamina lo sviluppo e l'evoluzione della trasparenza della proprietà dei media come concetto nella legislazione e nella politica dell'Ue, nonché le sfide nell'attuazione delle nuove regole sulla trasparenza previste nell'EMFA.

EMFA – Proprietà nel settore dei media – Trasparenza – Pluralismo dei media

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This paper is part of the monographic section *EMFA under the spotlight: towards a common regulatory framework to foster media pluralism?* edited by Elda Brogi

SUMMARY: 1. Introduction. – 2. Brief historical overview of the media transparency debate at EU level: from Council of Europe resolutions to EMFA. – 3. Transparency obligations in EMFA: Article 6. – 4. Challenges ahead. – 5. Conclusions.

1. Introduction

Transparency is a complex and multidimensional concept that can be applied to the different sectors of society and in different stages of governance or decision-making processes, from the launch of an action or project to its outcomes¹.

Different from other private sectors in which transparency has been consolidated as an important concept and principle for years, such as banking and finance, in the media sector transparency has evolved gradually, and only in recent years it emerged as a relevant principle and requirement applied to media policy and regulation², gaining however an enormous relevance, due to its contribution to quality journalism and, as a consequence, to democracy.

Though transparency can also be considered a general guiding principle, its multidimensional aspect allows us to distinguish in a more specific way the different dimensions or segments of a certain business or service to which transparency can be applied. In the media sector, it is possible to identify at least three different dimensions of the application of transparency. First, transparency of ownership relates to the structure of the medium itself and aims to make visible information on the owners of media outlets, including beneficial owners. Second, transparency can be applied to the financial aspect of a media business, requiring them to disclose information on revenues, including resources re-

ceived from private donors or public funds. Third, transparency can be applied to editorial decisions, requiring newsrooms to disclose conflicts of interest that might influence content.

This article will focus on the dimension or aspect of transparency that concerns ownership. Media ownership transparency pursues several specific goals, such as, avoiding the concentration of media markets, protecting quality journalism, reinforcing audience credibility, avoiding political influence over content and conflicts of interest. Altogether, these specific goals contribute to media pluralism and diversity. But most and above all media ownership transparency contributes to “forming well-informed opinions and, consequently, for actively participating in a democracy” (Recital 32, Regulation (EU) 2024/1083). It is no coincidence that the “European Democracy Action Plan”³ proposes the strengthening of independent media as one of the three pillars to make democracy more resilient in the bloc. And one of the measures foreseen in the document is the development of a media ownership monitor. This shows that transparency and democracy are inseparable concepts. Therefore, ownership transparency becomes of crucial importance in times of important threats to democracy happening not only in Europe but all around the world.

Another facet of the multidimensional character of transparency relates to the beneficiaries or re-

1. BORGES-CHRISTOPHOROU 2024.

2. FIGUEIRA-COSTA E SILVA 2023.

3. European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions On the European democracy action plan, [COM\(2020\) 790](#).

cipients of the information disclosed. In the media sector, it is possible to identify two different dimensions. One refers to the civic dimension – also named by some authors as downwards transparency⁴ – according to which the information disclosed is scrutinized by the civil society, investors and the general public. The other is called the administrative dimension – or upwards transparency⁵ – and relates to the disclosure of information to regulatory bodies and the government in general⁶.

Given the prominence that media ownership transparency has assumed in recent years and its role in supporting democracy, this article aims to explain how the European Media Freedom Act – EMFA (Regulation (EU) 2024/1083) can enhance transparency of media ownership in the European Union. The article is structured in three parts; the first one provides a historical overview of the development and evolution of the idea of ownership transparency in EU media policy. The second part analyzes the contribution that the EMFA brings to the media environment, whereas the third part concentrates on the challenges that the implementation of media ownership transparency rules poses to governments and the society at large.

2. Brief historical overview of the media transparency debate at EU level: from Council of Europe resolutions to EMFA

The debate over ownership transparency in EU media policy is a corollary of the debate on pluralism. Indeed, the initial discussions over media own-

ership transparency were restricted to ownership structure and the avoidance of monopolies⁷. At the European level, still in the 1970's, the Committee of Ministers of the Council of Europe has adopted Resolution 74(43) on press concentrations⁸. At the EU level, the issue of concentration gained greater relevance in the mid-80's in the aftermath of the decline of state monopoly broadcasting but the first specific acknowledgement of "pluralism" came with the publication of the 1992 Green Paper on "Pluralism and Media Concentration in the Internal Market: An Assessment of the Need for Community Action" by the European Commission⁹. From the 1990's the debate on media transparency gained its own visibility; the Council of Europe issued Recommendation 94(13) on media transparency¹⁰ and Recommendation 99(1) on pluralism¹¹. These were subsequently updated with the adoption of new documents aiming at responding to emerging challenges, culminating with Recommendation CM/Rec (2018)1[1] on media pluralism and transparency on media concentrations¹². This document explicitly recognises the role played by ownership transparency – with the disclosure of ownership structures behind the media – in promoting media pluralism and democracy in general. Furthermore, Recommendation CM/Rec (2018)1[1] is a comprehensive document, including an appendix with guidelines that set out requirements and institutional frameworks for ensuring media pluralism. Within the institutional framework, the document lists supporting measures that can help states

4. CRAUFURD SMITH–KLIMKIEWICZ–OSTLING 2021.

5. *Ibidem*.

6. FIGUEIRA–COSTA E SILVA 2023.

7. TOMAZ 2024.

8. Council of Europe, Resolution 74(43) on press concentrations. Adopted by the Committee of Ministers on December 16, 1974, at the 240th meeting of the Ministers' Deputies.

9. EUROPEAN COMMISSION 1992.

10. Council of Europe, Recommendation No. R (94) 13 of the Committee of Ministers to member states on measures to promote media transparency. Adopted by the Committee of Ministers on November 22, 1994, at the 521st meeting of the Ministers' Deputies.

11. Council of Europe, Recommendation No. R (99) 1 of the Committee of Ministers to member states on measures to promote media pluralism. Adopted by the Committee of Ministers on January 19, 1999, at the 656th meeting of the Ministers' Deputies.

12. Council of Europe, Recommendation CM/Rec (2018)1[1] of the Committee of Ministers to member States on media pluralism and transparency of media ownership. Adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies.

achieve pluralism, including ownership control and transparency requirements, and is very specific about the information that media providers should make available to the public and authorities. In this regard, point 4.5 of Recommendation CM/Rec (2018)1[1] mentions: (i.) legal name and contact details of a media outlet; (ii.) name(s) and contact details of the direct owner(s) with shareholdings enabling them to exercise influence on the operation and strategic decision making of the media outlet. States are recommended to apply a threshold of 5% shareholding for the purpose of disclosure obligations; (iii.) name(s) and contact details of natural persons with beneficial shareholdings. Beneficial shareholding applies to natural persons who ultimately own or control shares in a media outlet or on whose behalf those shares are held, enabling them to indirectly exercise control or influence on the operation and strategic decision making of the media outlet; (iv.) information on the nature and extent of the shareholdings or voting rights of the above legal and/or natural persons in other media, media-related or advertising companies which could lead to decision-making influence over those companies, or positions they may hold in political parties; (v.) name(s) of the persons with actual editorial responsibility; and (vi.) changes in ownership and control arrangements of a media outlet.

In addition, point 4.7 of Recommendation CM/Rec (2018)1[1] encourages Member States to adopt measures to ensure high levels of transparency with regards to the sources of financing of media outlets obtained through State funding mechanisms, such as advertising, grants and loans, as well as the disclosure of information on “contractual relations with other media or advertising companies and political parties that may have an influence on editorial independence”¹³. Furthermore, according to the Recommendation, a national authority or designated body should be entrusted with the role of storing and making ownership information accessible to the public free of charge, without delay, and, for instance, in the format of online databases, in open formats (point 4.8).

At the EU level, the first specific recognition in a legal document of the need for and the role of media ownership transparency in democratic media systems appears in the 2018 amendment of the Audiovisual Media Services Directive (AVMSD). In this context, recitals 15 and 16 justify the need for disclosure of ownership information, but the previous wording of Article 5 is maintained, thus leaving it to the discretion of Member States to require information on beneficial ownership from media service providers (Article 5(2)).

At the same time, the EU invested in research on media ownership, which made possible the collection and availability of comprehensive information in the form of databases containing information on ownership and control of the most relevant news media in all EU Member States, as well as media ownership laws and relations between digital platforms and news media. This is the case, for instance, of the Euromedia Ownership Monitor (EurOMo)¹⁴ and of the Media Ownership Monitor¹⁵.

Then, in 2022, building up on the guidelines proposed by the Recommendation, the EU included transparency obligations among the obligations of media service providers under the proposal for a European Media Freedom Act Proposal (EMFA), whose final text was adopted in April 2024, containing specific rules on media ownership transparency obligations. Having this in mind, the article turns now to the analysis of the ownership disclosure requirements required by Article 6 EMFA.

3. Transparency obligations in EMFA: Article 6

Article 6 is extremely important to the proper provision of media services and to the good functioning of the media market. By imposing different transparency obligations on media providers, EMFA demonstrates its commitment to the principle of transparency in its different aspects. Transparency is not only a fundamental principle but also a requirement in democratic societies; it enables

13. Council of Europe, Recommendation CM/Rec (2018)1[1] of the Committee of Ministers to member States on media pluralism and transparency of media ownership. Adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers’ Deputies.

14. [Euromedia Ownership Monitor \(EurOMo\)](#).

15. [Media Ownership Monitor](#).

individuals to make informed decisions about the exercise of power and hold governments accountable for their exercise of power¹⁶. The transparency obligations provided by Article 6 EMFA are further promoted by Commission Recommendation (EU) 2022/1634 of 16 September 2022 on internal safeguards for editorial independence and ownership transparency in the media sector.

The obligations contained in Article 6, under the Title of Duties of Media Service Providers, aim at different objectives and to the disclosure of different types of information. While Article 6(1) and (2) are concerned with the disclosure of ownership and financial information of media service providers, Article 6(3) concerns measures to guarantee editorial independence, including the disclosure of conflicts of interest by media services providers. This paper, however, concentrates on the obligations related to media ownership and thus on Article 6(1) and (2).

Recitals 32 and 33 EMFA explain the motivation behind the disclosure of ownership information and structure to the recipients of media service providers. The recitals refer to the economic and non-economic aspects of transparency: on the one hand, the disclosure of ownership and financial information of media providers allows users of services to know who owns and is behind a media outlet media, thus enabling them to identify potential conflicts of interest; on the other hand the availability of information on media ownership, its structures and financial aspects contributes to a fair and healthy media market environment, enhances accountability and control, as it allows governments and national authorities to verify compliance with competition rules, contributing to the quality of media services and to the EU internal market as a whole. Moreover, this motivation also demonstrates that EMFA encompasses both the civic and administrative dimensions of transparency, also called downwards and upwards transparency¹⁷.

Therefore, the wording of these Recitals shows that the objective of ensuring ownership transparency in the media market is not restricted only to

the economic, corporate or criminal aspect, as is the case of commercial and anti-money laundering laws, such as Directive 2015/849. As claimed by Craufurd-Smith, Klimkiewicz and Ostling¹⁸, corporate transparency requirements are not specifically tailored to address media-related concerns. Therefore, Article 6 has a strong commitment with protecting editorial independence and the readership/audience, reinforcing the right of citizens to choose their source of information freely and consciously and allowing also other actors, such as journalists, watchdogs and researchers, to independently monitor possible misconduct, conflicts of interest and abuse of power in the media sector.

With these aims expressed by legislators, Article 6(1) EMFA requires media service providers to make the following information easily and directly accessible to the recipients of their services: (a) their legal name or names and contact details; (b) the name or names of their direct or indirect owner or owners with shareholdings enabling them to exercise influence on the operation and strategic decision making, including direct or indirect ownership by a state or by a public authority or entity; (c) the name or names of their beneficial owner or owners as defined in Article 3, point (6), of Directive (EU) 2015/849; (d) the total annual amount of public funds for state advertising allocated to them and the total annual amount of advertising revenues received from third-country public authorities or entities.

The information required under Article 6(1) is quite similar to that mentioned under point 4.5 and 4.7 of Recommendation CM/Rec (2018)1[1]. In effect, even before the EMFA adoption, some Member States had already put in place legislative frameworks that required media service providers to disclose such information. Some countries, for instance, improved their media ownership transparency requirements by adopting/changing their laws to comply with the Anti-Money Laundering Directive. However, in the absence of a harmonised media specific framework, the situation remained fragmented across the EU in terms of the disclosure of media ownership information as

16. BORGES-CHRISTOPHOROU 2024.

17. CRAUFURD SMITH-KLIMKIEWICZ-OSTLING 2021.

18. *Ibidem*.

demonstrated by the Media Plurality and Diversity Online Study¹⁹. Another problem pointed out by the study is the different levels of disclosure in different Member States, with problems such as missing information; outdated information; information not made available to the general public; or information not presented in friendly format files.

In this regard, Article 6(2) can be considered an important measure to tackle the differences in the disclosure of ownership information found across the EU. It builds up on point 4.8 of Recommendation CM/Rec (2018)1[1] and on Section III of Recommendation (EU) 2022/1634. EMFA does not specify which authority is responsible for storing this information, stating that “Member States shall entrust national regulatory authorities or bodies or other competent authorities or bodies with the development of national media ownership databases containing the information set out in paragraph 1.” Therefore, Member States have the possibility to use other databases already existing in their legal framework, such as the one under Article 30 of the Anti-Money Laundering Directive (Directive 2015/849/EU) or commercial registers databases, adding and adapting the specific information required under Article 6(1) points (a) to (d).

Therefore, as this section shows, by requiring media service providers to provide their users with easy and direct access to ownership information, including beneficial owners, EMFA strengthens the right of citizens to freely and consciously choose their source of information, to be aware of the potential inclination or bias (political or economic) of a media service in light of its ownership, and to enable journalists, researchers, and national authorities to monitor possible misconduct or abuse of power in the media sector.

Nevertheless, the full implementation of the transparency obligations analysed in this section across the EU may not be an easy task and will require a major coordination effort by the European Commission, the European Board for Media Services, and national authorities and governments. In the next section, therefore, the article attempts to discuss the challenges ahead in terms of the implementation of the EMFA ownership transparency rules.

4. Challenges ahead

One of the challenges for the full enforcement of this new provision in EMFA is the argument raised in the recent decision of the Court of Justice of the European Union (CJEU) on Joined Cases C-37/20 and C-601/20 which declared invalid point (c) of the first subparagraph of Article 30(5) of the Anti-Money Laundering Directive requiring Member States to ensure that information on beneficial ownership is accessible to the general public in all cases. However, it is important to note that granting the general public access to information on beneficial ownership can potentially interfere with fundamental rights, such as the protection of personal data and the respect for private life. Although ownership transparency in EMFA has a broader scope than combating money laundering and journalists are not affected by the mentioned CJEU decision, there is a possible risk for the future enforcement of EMFA's Article 6 when it comes to the disclosure of media ownership to the general public.

In order to avoid this fundamental rights' conflict, Recital 32 EMFA explains that, in the context of media systems, “the disclosure of targeted media ownership information would produce benefits clearly outweighing any possible impact of the disclosure obligation on fundamental rights, including the right to private and family life and the right to protection of personal data. In that context, the measures taken by Member States under Article 30(9) of Directive (EU) 2015/849 of the European Parliament and of the Council (11) should not be affected.”

Another challenge will be on how to standardise the provision of ownership information. Recital 32 provides some guidance, stating that “The required information should be disclosed by the relevant media service providers in an electronic format, for instance on their websites, or another medium that is easily and directly accessible.” This task may be easier at national level, but if the aim is for national authorities to build databases that allow for cross-country/cross-jurisdictional searches, this will require coordination efforts at EU level. In effect, considering that Article 6 EMFA will also affect the disclosure of ownership information in

19. EUROPEAN COMMISSION 2022.

the audiovisual sector and thus have an impact on the application of Article 5(2) AVMSD (Directive 2010/13/EU), Recital 46 EMFA recognises that the implementation of this provision of the AVMSD in conformity with Article 6 EMFA will require guidelines from the EC with the assistance of the European Board for Media Services, in order to achieve legal certainty in that field.

Finally, while acknowledging the progress made by the ownership rules provided by EMFA, it can be said that there is still important information that is not included in Article 6 (1). According to Tomaz²⁰, in terms of the financial information to be disclosed by media providers, EMFA has focused mainly on public funding (Article 6(1) (d)), but the absence of comprehensive systematic information on news media revenues, including private funding, may reveal an extremely partial and distorted picture in this respect.

5. Conclusions

Ownership transparency applied to the media sector started to be discussed during the 1970s. However, it was only in recent years that it gained shape and importance, pushed by academic studies on media pluralism and the Council of Europe work in the field. The evolution of the idea of media ownership transparency gradually made clear its relevance as a crucial element for the effective functioning of democracies. It contributes to pluralism in various ways by preventing abuses of media power, editorial influence, and media

concentration, besides strengthening trust and respect in journalism. Transparency also empowers citizens to fully exercise their right to freedom of expression and gain a more critical understanding of the information they receive. In turn, the heightened ability to evaluate information enables citizens to make informed choices, a necessary element in democratic societies²¹.

While EMFA represents a major advancement on the harmonisation of the disclosure of media ownership information, there are some challenges ahead on the implementation of the transparency rules. To begin with, there is the possibility of this provision being challenged before courts for alleged conflict with other fundamental rights, especially privacy and private life, under similar arguments as the one raised on Joined Cases C-37/20 and C-601/20. Secondly, major coordination efforts will be required from the Commission and the European Board for Media Services, in order to provide guidance and avoid legal uncertainty in the implementation of the rules at national level. Thirdly, there will likely still be some gaps regarding the information on news media revenues, as EMFA does not require the provision of information of private funding.

Transparency of ownership in the media sector is, after all, a piece of a larger puzzle of building media pluralism; it is certainly an important piece, but not the only one contributing to diversity, freedom of information, quality journalism and, as a consequence, to an informed citizenry.

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21. BORGES-CHRISTOPHOROU 2024.

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