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Preventing Media Capture in Europe: Government-sponsored advertising under the European Media Freedom Act

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Abstract
An independent media is essential to democratic societies. Safeguarding freedom of expression and freedom of the press represents a foundational pillar of Europe's constitutional heritage, alongside fundamental human rights, legal procedures grounded in the rule of law, and democracy. Over the past few decades, key policy priorities at the European level have included preventing media capture by public and private stakeholders, reducing interference in editorial decision-making, enhancing the regulatory independence of national media authorities, addressing the lack of transparency in media ownership, and improving transparency in the allocation of state advertising to media organizations. These priorities have been reflected in various European laws, recommendations, and communications, culminating in the European Media Freedom Act (EMFA), which came into force on May 7, 2024. The EMFA seeks to address media capture, a phenomenon in which governments use public media organizations as tools for state propaganda, exert control over national media regulatory bodies, misuse state advertising to reward allied media, silence critics, and undermine media pluralism. State advertising is a pivotal factor in evaluating the extent of media capture, as it significantly impacts editorial independence, market fairness, and pluralism. This article examines state advertising rules in Europe, drawing on key insights from prior research to provide a comprehensive perspective on how these rules affect media pluralism and independence in practice.

Keywords: Europe, regulation, state advertising, media organizations, EMFA

Introduction, Objectives and Research Questions

State advertising represents an indirect form of state aid, wherein public funds are directed to media outlets in exchange for specific advertising services. This funding mechanism is regarded both as a tool to promote media pluralism and as a potential avenue for media capture by governments, facilitating political clientelism (Mutu & Martori, 2022; Pickard, 2013). Under the European Media Freedom Act (EMFA), introduced in the European Parliament on April 19, 2021, and effective as of May 7, 2024, new rules on state advertising are imposed on European Member States. The EMFA builds upon ongoing efforts initiated under the Media Action Plan (European Commission, 2020a) and the European Democracy Action Plan (European Commission, 2020b), both adopted in December 2020. Grounded in Article 114 of the Treaty on the Functioning of the European Union (TFEU), the EMFA establishes a harmonized set of rules that apply directly across Member States, removing the need for additional national legislation to enforce them. This legislative framework creates a more predictable, transparent, and competitive environment for media companies, fostering their growth and strengthening their editorial independence. Prior to adopting the EMFA, the European Commission conducted a public consultation (Cabrera Blázquez, 2022) to gather insights on the EU internal media market, media independence, and pluralism. Among the 917 responses received, 81% of participants expressed dissatisfaction with the existing safeguards for media independence and pluralism within their Member States. Regarding the allocation of state resources in media markets, 79% of respondents identified instances of state interference in public service media operations in some EU countries, while 70% believed such interference significantly impacts competition within the EU media market. Furthermore, approximately 75% rated transparency in state advertising as inadequate at both national and EU levels. Key concerns included discriminatory allocation practices, unclear allocation criteria, and the heavy dependence of certain media companies on state advertising. Against this backdrop, this article examines the allocation and distribution of state advertising under the European Media Freedom Act (EMFA). The analysis is based on key insights from prior academic and policy research.

Literature Review

The regulation of state advertising as a form of indirect state sponsorship has received limited attention in prior research (Sanders et al., 2011). State aid to the media through institutional advertising is defined as "any advertising that is paid for by governments and state-owned institutions and companies, to the media" (Media Pluralism Monitor, 2021, p. 84). The Media Pluralism Reports (MPM), published annually by the Center for Media Pluralism and Media Freedom at the European University Institute, provide insights into this issue by measuring the indicator "state regulation of resources and support to the media sector", which encompasses both direct and indirect aids to media organizations. Similarly, the European Commission's annual Rule of Law Reports include information on national media regulatory authorities, transparency of media ownership, and state advertising practices.

Prior research has examined the connection between public sector communication and its role in building public value, as well as the relationship between public sector organizations and citizens mediated by institutional advertising. The terminology used to describe this type of state aid varies across national legal systems and includes terms such as institutional advertising, institutional communication, marketing communications, public government advertising, state assistance for the media, government-sponsored advertising, and government communications (Mutu, 2023; Mutu & Martori, 2022). Evidence suggests that public administrations are often the primary investors in the media ecosystem. However, in some countries, there is neither specific legislation nor obligations to ensure institutional transparency regarding the amounts of state advertising funding allocated to private media outlets. This regulatory gap raises concerns about the equitable distribution of state resources and the potential for undue influence on media independence.

METHODOLOGY

This study presents a qualitative analysis of the regulatory frameworks governing the allocation and distribution of state advertising across Europe. The analysis is based on a review of academic literature and legal texts, including the EMFA, the European Commission's Annual Rule of Law Reports, national legislation, and industry reports. The study's limitations stem from challenges related to access and availability of public data.

Preliminary Findings

Paragraph 6 of the EMFA emphasizes the need for regulatory cooperation among national media regulatory authorities to safeguard the internal market for media services. A key concern is the biased allocation of state advertising, which covertly subsidizes certain media outlets. This practice disproportionately harms the press, already weakened by declining advertising revenues. Paragraph 13 defines state advertising "as covering promotional or self-promotional activities, public announcements or information campaigns undertaken by, for or on behalf of a wide range of public authorities or entities, including national or subnational governments, regulatory authorities or bodies and entities controlled by national or subnational governments. (…) However, the definition of state advertising should not include official announcements that are justified by an overriding reason of public interest, such as emergency messages by public authorities or entities which are necessary, for example, in cases of natural disasters or health crises, accidents or other sudden incidents that can cause harm to individuals". Paragraph 32 of the EMFA emphasizes the need for common transparency standards for media service providers across the EU, which include proportionate and targeted obligations requiring media providers to disclose key information, such as their ownership structures and any advertising revenues received from public authorities or entities. Paragraph 72 of the EMFA underscores the significance of public funds allocated for state advertising and service or supply contracts as a critical source of revenue for media service providers and online platforms, supporting their financial sustainability. To ensure fairness in the internal market, access to these funds must be granted non-discriminatorily to all eligible media service providers and platforms across the EU, provided they can effectively reach relevant audiences. The allocation of public funds carries risks, such as exposing media providers to undue state influence or partial interests. Such influence can undermine editorial freedom, enable the "capture" of media outlets, or covertly subsidize providers to secure unfair political or commercial advantages, including favorable coverage. Current regulations, including the fragmented framework of media-specific measures and EU public procurement rules, offer insufficient safeguards against biased or preferential distribution of these funds. Furthermore, existing rules on state advertising vary widely between Member States, creating regulatory inconsistencies that can lead to information asymmetries, distort competition, discourage investment, and harm cross-border economic activities within the internal media market. Paragraph 73 of the EMFA sets out common rules for transparency, fairness, and accountability in the allocation of public funds for state advertising and other services provided by media outlets and online platforms, aiming to prevent covert subsidies and undue political influence, while ensuring fair competition and media plurality. Key provisions include transparent and objective criteria and procedures for allocating public funds, broad distribution, scope of coverage, recipient disclosure, and monitoring and reporting obligations towards national regulatory or independent bodies. Article 6(d) clarifies that media service providers “shall make easily and directly accessible to the recipients of their services up-to-date information on (…) 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”. Article 25 establishes that funds, whether allocated directly or indirectly by public authorities, must be awarded based on transparent, objective, proportionate, and non-discriminatory criteria. Public authorities must disclose annual reports on state advertising expenditure, detailing the names of the media service providers and online platforms involved, their business groups (if applicable), and the total annual spending as well as amounts spent per provider. Smaller subnational governments, specifically those with fewer than 100,000 inhabitants, may be exempt from some disclosure requirements.

Cross-country comparative research shows variations concerning the legislation on the distribution of state advertising. In Denmark there are no specific laws pertaining to the allocation of state advertising, except for the obligation to comply with the general rules in the Radio and Television Broadcasting Act and the secondary legislation in connection with the Act (European Commission, 2023). In Ireland and Luxembourg there are no specific rules on state advertising in media. In Croatia, the allocation of state advertising is regulated for state administration and entities predominantly owned by the state. In France, the allocation of state advertising is regulated by the Public Procurement Law and the Law on the Government Information Service.

The 2024 Media Pluralism Report (Bleyer-Simon et al., 2024) offers a detailed analysis of state advertising regulation across the European Union. The report assesses the legal framework for distributing state-managed resources to the media, highlighting concerns over the lack of clear, transparent rules, which can lead to favoritism and political dependency. The absence of data on how these resources are allocated is also a significant risk, as it may conceal biased funding practices. The report reveals that the distribution of state advertising is a major risk factor, with most countries scoring high, and half of them receiving the highest risk score (97%). Three countries—Greece, Finland, and the Netherlands—are considered medium-risk, while only six have low-risk scores. Compared to previous years, the EU’s risk level has slightly decreased, largely due to improvements in Austria, Denmark, and Slovenia, which lowered their risk scores. In many countries, clear regulations are absent or insufficient. For example, Croatia has some provisions, but they are considered inadequate, while Luxembourg lacks both rules and data. Estonia, though not prone to misuse, has weak regulations, making it difficult to identify who receives state advertising contracts.

The 2024 Rule of Law Report in Austria (European Commission, 2024) reiterates the 2023 recommendation to reform the framework for allocating state advertising, emphasizing the need to improve fairness and transparency. In response, an amendment to the Federal Law on Transparency of Media Cooperation and Funding was enacted by Parliament in April 2023 and published in the Federal Law Gazette on May 19, 2023. Additionally, the report mentions a new draft law for funding quality journalism in print and online media, which was approved by Parliament after the European Commission raised no objections. This law allocates annual funding of EUR 20.0425 million, including EUR 230,000 to support self-regulatory mechanisms and EUR 62,500 for the Press Council. In 2022, Austrian public authorities spent EUR 201 million on advertising (a 10% decrease from the previous year), with EUR 29.6 million directed to a single media group, which stakeholders view as a potential risk to media independence (European Commission, 2023). The Rule of Law Report for Belgium (European Commission, 2024) notes that since 2013, the Flemish Government has maintained a framework contract with a media agency to manage advertising space purchases across various types of media types. The Rule of Law Report for Italy (European Commission, 2024) explains that Article 49 of the Italian AVMS Code (Legislative Decree No. 208/2021) retains the provisions from Article 41 of the previous 2005 Decree, requiring approximately 24,000 public administration entities that purchase media advertising to report their annual ad spending to AGCOM. Each year, from September 1 to September 30, these entities must submit this data through AGCOM's website. Article 49 also mandates that public ad spending must adhere to specific criteria: at least 15% must go to ads on private local TV and radio within EU territories, and at least 50% must be allocated to daily newspapers and magazines. AGCOM, supported by CO.RE.COM (Regional Committees), oversees compliance with these guidelines.

The Media Capture Monitoring Report for Romania (Media and Journalism Research Center, 2024a) highlights significant issues in the allocation of state advertising funds. Legislation lacks adequate transparency and fairness safeguards, enabling local and regional authorities to award funds preferentially to media outlets that align with their political or financial interests. Authorities exploit legal loopholes to bypass public procurement rules, often using intermediaries like public companies they control. These practices misuse public resources, consolidate media ownership, and undermine independent outlets. Additionally, political parties legally channel state funds to media outlets to promote their activities, further entangling media with political interests. This system distorts the media market, fostering dependency and commercial pressures that weaken editorial independence. In Hungary (Media and Journalism Research Center, 2024b), no independent or transparent mechanism exists specifically to monitor state advertising expenditure. In Slovakia (Media and Journalism Research Center, 2024c), there is no regulatory oversight or comprehensive register tracking the allocation of state advertising budgets to media providers.

Conclusion, Implications, and Future Research

The provisions of the EMFA will shape the legal environment in which journalists, media organizations, media authorities, political actors, and digital market players operate in the coming years. While the legislation is robust, its effective implementation will depend on political will, strong cooperation and coordination among Member States, and adherence to transparent and accountable media and journalistic practices. The anticipated outcomes of the

EMFA's implementation may be challenged by the complexity of specific national media contexts, as the provisions must be applied within diverse social, political, economic, and cultural frameworks. Key challenges include harmonizing criteria for the institutional independence of national media regulators, ensuring journalistic transparency and accountability to mitigate media capture by state governments, reducing political parallelism, ensuring transparency in media ownership, and addressing media market concentrations that could undermine media pluralism. Additional objectives include promoting transparency in the allocation of state aid, safeguarding audiences' and journalists' rights, and reducing practices that hinder fair competition. Member States have some discretion in how they implement the new provisions, reflecting the diversity of practices across the Union. Future research could explore how the European Media Freedom Act can best support an independent and pluralistic media sector.

REFERENCES

Bleyer-Simon, K. et al. (2024). Monitoring media pluralism in the digital era: application of the media pluralism monitor in the European member states and in candidate countries in 2023, EUI, RSC, Research Project Report, Centre for Media Pluralism and Media Freedom (CMPF). https://hdl.handle.net/1814/77028

Cabrera Blázquez F.J. (2022). The proposal for a European Media Freedom Act, European Audiovisual Observatory, Strasbourg. https://rm.coe.int/note-emfa/1680a9af14

Cappello M. (2021). Transparency of media ownership. IRIS Special, European Audiovisual Observatory. Strasbourg.

Consolidated version of the Treaty on the Functioning of the European Union. EUR-Lex - 12016E114 - EN - EUR-Lex

European Commission (2020a). Digital Decade: Commission launches Action Plan to support recovery and transformation of the media and audiovisual sectors. https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2239

European Commission (2020b). European Democracy Action Plan: making EU democracies stronger. https://ec.europa.eu/commission/presscorner/detail/es/ip_20_2250

European Commission (2023). Questions & Answers: European Media Freedom Act. https://ec.europa.eu/commission/presscorner/detail/es/qanda_22_5505

European Commission (2024). Rule of Law Report Country Chapter on the rule of law situation in Austria. https://commission.europa.eu/document/download/9395be67-3e7f-4893-a439-7fa1b9f18d1c_en?filename=99_1_58546_input_mem_austria_additional_en.pdf

European Commission (2023). Rule of Law Report Country Chapter on the rule of law situation in Austria. https://commission.europa.eu/document/download/8f5af879-8756-44af-9641-2c07310a2426_en?filename=46_1_52626_coun_chap_austria_en.pdf

European Commission (2024) Rule of Law Report Country Chapter on the rule of law situation in Italy. https://commission.europa.eu/document/download/811614d6-508a-42ac-9b05-6b51b704fb8a_en?filename=83_1_58152_input_mem_italy_en_it.pdf

European Commission (2024). Rule of Law Report Country Chapter on the rule of law situation in Belgium. https://commission.europa.eu/document/download/d60ca7ce-3628-4c22-9245-67c77a93a093_en?filename=7_1_52566_coun_chap_belgium_en.pdf

European Court of Human Rights (2022). Guide on Article 10 of the European Convention on Human Rights. Freedom of expresión. https://rm.coe.int/guide-on-article-10-freedom-of-expression-eng/native/1680ad61d6

Konrad Bleyer-Simon, Elda Brogi, Roberta Carlini, Iva Nenadic, Marie Palmer, Pier Luigi Parcu, Sofia Verza, Mario Viola de Azevedo Cunha, Mária Žuffová (2021). Monitoring media pluralism in the digital era. Application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, Republic of North Macedonia, Serbia & Turkey in the year 2020. European University Institute. https://cadmus.eui.eu/bitstream/handle/1814/71970/CMPF_MPM2021_final-report_QM-09-21-298-EN-N.pdf?sequence=1&isAllowed=y

Media and Journalism Research Center (2024a). Media Capture Monitoring Report. Country Report Romania. https://journalismresearch.org/wp-content/uploads/2024/11/Romania-Media-Capture-Monitoring-Report.pdf (p. 24).

Media and Journalism Research Center (2024b). Media Capture Monitoring Report. Country Report Hungary. https://journalismresearch.org/wp-content/uploads/2024/11/Hungary-Media-Capture-Monitoring-Report-Final-1.pdf (p. 27).

Media and Journalism Research Center (2024c). Media Capture Monitoring Report. Country Report Slovakia. https://journalismresearch.org/wp-content/uploads/2024/11/Slovakia-Media-Capture-Monitoring-Report.pdf

Mutu, A. (forthcoming, 2024). Prevenir la captura de los medios de comunicación en Europa: disposiciones sobre la propiedad de los medios y la publicidad estatal bajo la Ley Europea de Libertad de los Medios de Comunicación (EMFA). Cuadernos de periodistas. Revista de la Asociación de la Prensa de Madrid.

Mutu, A. & Martori Muntsant, A. (2022). Regulating the distribution of State advertising to private news media organizations: a cross-country comparative analysis. Derecom, 33, 47-70.

Mutu, A. (2023), The allocation of state advertising to private media corporations in Europe: legal and regulatory frameworks. Yearbook of the German Communication Association. https://doi.org/10.21241/ssoar.90871, p. 4.

Pickard, V. (2013). The United States of America: Unfounded fears of press subsidies. In P. Murschetz (Ed.), State Aid for Newspapers, Media Business and Innovation (pp. 357-372). New York, London: Springer.

Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act).