



The Thematic Expansion of Media Regulation in the European Union

From Sectoral Oversight to the Protection of Democratic Functions

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Abstract

This paper analyses the evolution of European Union media regulation from the Television Without Frontiers Directive to the European Media Freedom Act. It shows how an initially sectoral framework focused on cross-border broadcasting and market integration has gradually expanded to address structural challenges such as platform dominance, disinformation, and algorithmic control of information flows. The study traces this shift from economic coordination toward the protection of democratic discourse and media pluralism. It examines the main objectives and mechanisms of the new framework while assessing its legal foundations and compatibility with subsidiarity and proportionality. It concludes that the European Union's expanding role in media regulation, though rooted in legitimate concerns, must be exercised with caution: without careful limits, the effort to safeguard democratic discourse could unintentionally blur the distinction between protecting the conditions of free expression and prescribing its boundaries, thereby risking the very pluralism it seeks to defend.

Keywords

Audiovisual Media Services Directive (AVMSD), European Media Freedom Act (EMFA), EU media regulation, subsidiarity, EU competences

1 Introduction

Over the past few decades, European Union (EU) media regulation has moved from a narrow, sector-specific economic project toward a far broader agenda that aspires to safeguard democratic functions. Early efforts, most notably the 1989 Television Without Frontiers (TWF) Directive and the subsequent Audiovisual Media Services Directive (AVMSD), sought primarily to harmonize rules for cross-border broadcasting within the internal market. Grounded in free-movement principles and cultural policy compromises (Micová, 2021), these instruments enabled the circulation of television services while leaving Member States room to maintain stricter domestic standards. In the past ten years, however, structural shifts (the platformization of distribution, the viral spread of disinformation, and the rise of algorithmic gatekeeping) have

exposed the limits of that sectoral model. The EU's response has been ambitious, comprising initiatives such as the European Media Freedom Act aiming explicitly the protection of editorial independence, pluralism, and fair political communication across the internal market. Yet this development also signals a more assertive EU posture in a domain long anchored in national constitutional traditions, raising questions about proportionality, subsidiarity, and the risk that protecting the conditions of discourse slides into governing its contours.

This paper offers an analysis of this thematic expansion in EU media regulation. It traces the historical trajectory from the TWF Directive to the AVMSD, showing how early EU law prioritized internal market assistance and limited, sectoral oversight of broadcasting. It then examines how contemporary challenges, such as platform dominance, the spread of disinformation, and the rise of algorithmic power, prompted a reorientation of EU media policy toward safeguarding democratic discourse. The core sections analyze the European Media Freedom Act (EMFA) and contrasts the legacy internal-market model with the emerging democracy-oriented approach in terms of scope, purpose, regulatory technique, and normative ambition. Throughout, the paper foregrounds the legal and constitutional tensions accompanying this shift: questions of treaty competence, subsidiarity, and proportionality, as well as the delicate balance between EU-level coordination and national autonomy. Methodologically, the article relies on doctrinal legal analysis of EU primary and secondary law, supported by a close reading of recitals, legislative proposals and policy strategies, and by critical engagement with the relevant academic literature. The approach is qualitative and system-oriented rather than empirical: the focus lies on identifying underlying regulatory rationales, structural tensions, and constitutional limits rather than on evaluating enforcement practice or market outcomes. The central interpretative claim of the paper is that, while the turn towards stronger EU-level safeguards for media freedom is largely explained by the cross-border character of today's information environment, the resulting regulatory expansion also marks a major shift in the understanding of EU competences. The emerging framework no longer merely supplements national media regulation through internal market coordination but increasingly enters regulatory spaces that were previously regarded as lying beyond the EU's direct constitutional remit. Nevertheless, the ensuing analysis does not consider the prior statement as its premise; rather, it is deployed as such an organizing perspective through which the successive stages of EU media regulation and the architecture of the EMFA may be examined.

2 Evolution of EU media regulation: From the TWF to the AVMS Directive

The EU's foray into media regulation began in the late 1980s with a narrow, sectoral focus on television broadcasting. The TWF Directive, adopted in 1989, was the EU's foundational legal instrument for the audiovisual sector. It was conceived as a single-market measure to enable the free circulation of broadcasting services across Member States by harmonizing national rules that might impede cross-border television transmissions (Presburger & Tyler, 1990). As such, the TWF Directive was driven primarily by economic integration motives, distinguishing it from parallel initiatives of the Council of Europe. Notably, while the Council of Europe's 1989 European Convention on Transfrontier Television was rooted in a cultural policy tradition encouraging the free flow of information, the EU's TWF Directive took a more free-market-oriented approach (Katsirea, 2014). The Directive identified and harmonized certain key areas likely to hinder the free movement of TV broadcasts, for example, European content quotas (to promote European works), limits on advertising and sponsorship, protection of minors and

public order, and rights of reply, and later added events of major importance to society in its 1997 amendment. Crucially, this harmonization was partial (covering only selected aspects of broadcasting) and minimal in nature, meaning Member States could enforce higher domestic standards so long as the basic EU rules were met. The TWF framework thus respected national diversity (e.g., countries could maintain stricter decency rules or advertising limits) while ensuring a baseline that allowed television signals and audiovisual content to flow relatively freely within the single market (Chalaby, 2025).

After incremental changes in 1997, a more sweeping overhaul of the EU's media rules occurred with the adoption of the AVMSD in 2007 (recast as Directive 2010/13/EU, and later amended in 2018). The AVMSD modernized the TWF approach to account for rapid technological developments and the converging media landscape. Its main objective was to extend EU media regulation beyond traditional television to cover new forms of audiovisual content delivery that had emerged by the early 21st century. The Directive introduced a broadened definition of audiovisual media services, encompassing not only traditional scheduled broadcasting (termed linear services) but also on-demand video services (services distributed over the internet or other networks). Under this framework, the AVMSD applied a graduated regulatory approach: it continued to modernize some rules for linear broadcast services (for instance, easing some advertising regulations to reflect market changes), while introducing basic rules for on-demand (non-linear) services. These basic rules for emerging services were relatively light-touch, covering matters such as the protection of minors, prohibition of incitement to hatred, and certain advertising standards, thereby bringing online video services into the regulatory fold albeit with less stringent obligations than traditional TV. The guiding philosophy was to adapt the regulatory framework to new media realities without stifling nascent digital services, striking a balance between consumer protection and innovation in the internal market (European Commission, 2025).

Throughout the TWF/AVMSD era, the emphasis remained on facilitating the internal market for audiovisual media while respecting national particularities (Valcke & Stevens, 2007). Content requirements, such as those of the European content quotas or advertising time limits, were justified in part by cultural objectives, but were framed within an internal market logic of removing barriers and creating a level playing field (Metzdorf, 2014). Enforcement of these directives was largely left to national authorities, coordinated to a degree by soft mechanisms. For example, independent national broadcast regulators implemented the rules, and an informal Contact Committee and later the European Regulators Group for Audiovisual Media Services (ERGA, established in 2014) served as platforms for cooperation.

The EU's role was primarily to set minimum standards and ensure that no Member State's rules unjustifiably impeded cross-border broadcasts. Importantly, these directives did not seek to regulate the press or non-audiovisual media, nor did they directly address broader issues of media freedom or pluralism. In line with the EU's limited treaty competences, regulatory attention to media pluralism or democratic discourse was, if at all, pursued, it was by indirect means or through non-binding instruments (Valcke & Stevens, 2007). In sum, by the 2010s the EU had developed a relatively cohesive sectoral oversight regime for audiovisual media, one that modernized over time, as seen with the 2018 AVMSD amendments which, for instance, imposed obligations on video-sharing platforms like YouTube to address hate speech and protect minors online. Yet this regime was still firmly rooted in internal market principles and sector-specific concerns.

3 Emerging challenges

By the late 2010s and into the 2020s, a confluence of new challenges began to expose the limits of the EU's traditional sectoral approach to media regulation. The digital transformation of the media environment created novel problems and exacerbated old ones, pressuring the EU to rethink its regulatory philosophy. Key among these challenges were: (1) the platformization of media distribution, (2) the viral spread of online disinformation, and (3) the rise of algorithmic power and informational asymmetries in the digital public sphere. These developments each highlighted the media's critical role in democracy and suggested that a purely internal-market-focused, audiovisual-only regulatory framework was insufficient for contemporary realities.

3.1 Platformization and converging media markets

The rise of large online platforms has fundamentally altered how Europeans consume news and audiovisual content (Chalaby, 2025). There is a growing tendency that citizens, especially those from younger generations, access news through social media feeds, algorithm-driven platforms, and mobile apps rather than traditional TV broadcasts or print newspapers. This is well-illustrated by recent EU surveys,¹ demonstrating that social media platforms were used more frequently than printed newspapers for accessing news, with a particularly pronounced shift among young people who often rely on whatever news appears in their platform feeds (Düvekot et al., 2024). This “platformization” means that a handful of tech companies now act as gatekeepers for media content, exercising significant influence over what information is disseminated, to whom, and under what conditions. In economic terms, the media environment has evolved into a complex two-sided market in which platforms mediate relationships between news publishers, audiences, and advertisers. Major online platforms benefit from news content, which drives user engagement on their services, even as they compete with media outlets for advertising revenues, leveraging vast troves of user data to out-compete traditional media in the digital ad market. This dynamic has disrupted the conventional media business model and upset the balance between economic and democratic values in the media sector (Eriksson & Ihlström, 2016).

From a regulatory standpoint, platformization created gaps and inconsistencies. The AVMS Directive's scope, even after its 2018 revisions, was still largely limited to audiovisual media services and certain video-platform obligations, and it did not comprehensively address social media or search engines' impact on the media ecosystem (Gosztonyi, 2022). Content appearing on platforms could often evade the content standards that apply to traditional broadcasters, and decisions by platform companies, through algorithms or content moderation policies, could materially affect media pluralism and citizens' access to diverse information. National media regulators had no jurisdiction over global online platforms' news feed algorithms or their advertising systems. This left a regulatory vacuum regarding issues like the discoverability of public-interest content, the demonetization of news, or arbitrary takedowns of journalistic material by platforms. As Wallace (2017) notes, the largest online platforms have amassed gatekeeping power over access to media content, essentially controlling visibility and monetization opportunities for news in the digital environment.

The EU responded initially with horizontal digital market rules, such as the Digital Services Act (DSA) and Digital Markets Act (DMA), which significantly updated the rules for online

¹ Eurobarometer: *Social Media Survey 2025*. Online: <https://europa.eu/eurobarometer/surveys/detail/3592>

intermediaries and gatekeepers. The DSA, adopted in 2022, imposes due diligence obligations on very large online platforms to handle illegal content and systemic risks, including risks to fundamental rights and the information environment. While not media-specific, the DSA implicitly tackles some platform issues by requiring transparency in content moderation and algorithmic accountability, and by recognizing a co-regulatory Code of Practice on Disinformation as a tool for platforms to address harmful content. Still, the need for media-specific measures remained. In particular, policymakers grew concerned about platforms' ability to remove or down-rank lawful media content (e.g., news reports) without oversight, and about the bargaining power imbalance between platforms and news publishers. These concerns directly fed into proposals like Article 18 of the EMFA, which seeks to recalibrate the platform-media relationship. In short, platformization and the changing political climate forced the EU to contemplate regulatory approaches that cut across the once-separate domains of telecom-, tech-, and media policy, integrating them in the service of protecting access to diverse, reliable information.

3.2 The disinformation phenomenon and threats to informed discourse

Alongside structural changes in the market, the EU has faced a pernicious threat to the quality of public discourse due to the viral spread of disinformation online. Disinformation, be it false or misleading information, is spread intentionally with a view to deceiving its recipients, and as a phenomenon, it has surged to the forefront of the EU agenda in the wake of events such as the 2016 U.S. elections, the Brexit referendum, and the COVID-19 infodemic (Colomina et al., 2021). Organized online disinformation campaigns, sometimes linked to foreign actors or extremist networks, have been acknowledged as a serious threat to democratic stability and political cohesion in Europe (Casero-Ripollés et al., 2023). Unlike traditional media content, which is subject to editorial checks and regulatory standards, false narratives now propagate virally across social media and messaging platforms, often targeting individuals through micro-targeted advertising or algorithmic amplification. This challenge exposed the limitations of the EU's former media rules: the TWF and AVMS directives were simply not designed to handle user-generated false content or information operations spreading across platforms (Buiten, 2022). Furthermore, under the 2000 e-Commerce Directive's framework, online intermediaries enjoyed broad liability exemptions for user content, and European law had few hard requirements for platforms to monitor false or harmful (but not illegal) information.

EU institutions gradually crafted a response that combined voluntary measures and new regulatory initiatives. In 2018, the European Commission convened a High-Level Expert Group and subsequently launched the Code of Practice on Disinformation, a self-regulatory code wherein major online platforms (Facebook, Google, Twitter, etc.) committed to steps like demonetizing disinformation sources and improving fact-checking. The Commission also reinforced cooperation among Member States on election security and promoted media literacy to strengthen societal resilience. These efforts culminated in the December 2020 European Democracy Action Plan (EDAP), which explicitly framed disinformation as a core threat to democracy requiring a stronger and more coordinated EU response. The EDAP's provisions included calling for an improved Code of Practice (which was revised in 2022 with more signatories and detailed commitments), and crucially, linking these commitments to the forthcoming Digital Services Act so that very large platforms would be legally obliged to assess and mitigate systemic risks like the spread of disinformation. In parallel, the EU proposed legislation to address specific vectors of disinformation, notably the 2021 proposal on political

advertising transparency, recognizing that opaque online political ads can be a conduit for false or manipulative messaging during elections.

The disinformation challenge thus pushed the EU toward a more assertive stance on content regulation in the digital sphere, a sensitive area given Europe's strong protections for freedom of expression. While the EU stopped short of defining or banning "disinformation" outright, acknowledging the difficulty of definition and the risks of censorship (Amriza et al., 2025), it embraced transparency and accountability measures to indirectly curb disinformation. The emerging approach treats disinformation not just as a national issue but as a cross-border phenomenon that the internal market alone cannot self-correct, thereby justifying EU-level intervention. As one analysis notes, the EU's policy on disinformation now aims to ensure a fair and open democratic process in all Member States, recognizing that fragmented national responses left gaps that malign actors could exploit (Kachelmann & Reiners, 2023). In summary, the rise of disinformation underlined the need for the EU to protect the integrity of the information space, a function adjacent to media regulation, in order to safeguard democratic debate. This represented a normative broadening of EU regulatory objectives, from merely guaranteeing market functioning to also shoring up democratic functioning.

3.3 Algorithmic power and the erosion of democratic information flows in the EU

A particularly pressing catalyst for the EU's regulatory expansion was the growing realization that control over information flows had shifted from traditional media institutions to a small number of global online platforms. The algorithmic curation and personalization systems that structure visibility and engagement on these platforms created opaque hierarchies of attention and influence, largely governed by commercial logic rather than democratic accountability. This transformation not only disrupted conventional media's business models but also affected how citizens access and interpret information, fragmenting the public sphere and amplifying the risks of manipulation (Ahmmad et al., 2025).

The problem was not merely economic but systemic: digital intermediaries such as search engines, social networks, and video-sharing services had become *de facto* gatekeepers of news, controlling the terms of public visibility and monetization. Their dominance enabled the formation of what scholars have termed "algorithmic publics", information environments shaped less by editorial judgment and more by data-driven prediction and behavioral targeting (Gandini et al., n.d.). As a result, the diversity and integrity of public communication increasingly depended on proprietary algorithms rather than journalistic norms or democratic oversight (Papp, 2023).

Existing EU instruments were poorly equipped to address this structural shift. The AVMSD, even after its 2018 revision, remained focused on audiovisual media services rather than on systemic intermediaries. Competition law, for its part, targeted market dominance but not the normative consequences of informational dominance. While the DSA and DMA began to impose transparency and fairness obligations on platforms, they did not fully capture the democratic implications of algorithmic gatekeeping for media pluralism and civic discourse. In response, policymakers and civil society began to argue that ensuring democratic access to reliable information required not only economic regulation but also safeguards for editorial independence, source diversity, and algorithmic transparency. The European Commission progressively acknowledged that unregulated algorithmic amplification and opaque ranking systems could distort the marketplace of ideas, privileging sensational or polarizing content. (Council of the European Union, 2020)

In summary, the convergence of platform dominance, disinformation, and algorithmic control over public attention exposed deep vulnerabilities in the European information environment. The EU's traditional internal market instruments proved ill-equipped to confront these structural threats to democratic communication. The challenges at stake were no longer confined to economic regulation or cultural diversity but reached the very conditions of informed citizenship and public trust. The EU thus chose to move beyond the familiar terrain of market integration, extending its regulatory reach into the sensitive domain of direct media regulation. The new phase of media regulation, therefore, appears less as a carefully calibrated act of necessity and more as a politically motivated overregulation, an attempt to restore balance by means that may themselves unsettle the delicate equilibrium between effectiveness, diversity, and subsidiarity that underpins the EU.

4 The European Media Freedom Act: A new paradigm for media independence

The European Commission in September 2022 unveiled the EMFA proposal. The regulative initiative intended to elevate media freedom and pluralism from primarily national matters to the subjects of EU-level protection. Following negotiations, the EMFA was enacted in 2024 as Regulation (EU) 2024/1083, marking a significant novelty in EU media law. The EMFA builds upon the existing AVMSD but goes much further in scope and intent, as it seeks to “enhance legal certainty in the internal market for media services” while explicitly aiming to “protect media pluralism and editorial independence.” (EMFA, 60, 65) In effect, it acknowledges that a well-functioning internal media market cannot be achieved without safeguards for the democratic roles of media. The choice of a regulation rather than a directive signals the EU's desire for uniform rules and its confidence in the legal basis of Article 114 TFEU to underpin measures that, though economic in form, serve democratic ends.

4.1 Objectives and key provisions

The EMFA introduces a comprehensive set of rules and mechanisms, unprecedented in EU law, to address various facets of media freedom and pluralism. The new framework introduces a series of interlinked safeguards aimed at strengthening media freedom and accountability across the EU. It requires Member States to respect and protect the editorial independence of media service providers, shielding newsrooms from political or commercial interference. Journalists gain reinforced protections against surveillance and threats to source confidentiality, aligning with EU fundamental rights standards. To ensure public service media remain autonomous, governments must guarantee transparent appointments and stable, adequate funding, preventing their capture by ruling parties.

Ownership transparency becomes mandatory, compelling disclosure of beneficial owners to expose hidden control and conflicts of interest. Parts of the Act also extend to the digital sphere: large online platforms must respect a form of “media privilege,” refraining from arbitrary removal of professional journalistic content, while users gain the right to customize default media selections on smart devices, promoting pluralism in access. Which, although it may be a fundamentally positive initiative, as Gosztanyi and Lendvai (2024) have pointed out, could easily become a tool for abuse. Further, Member States must conduct media pluralism assessments in major mergers, ensure transparency in audience measurement to prevent market manipulation, and allocate state advertising fairly and publicly. Finally, the establishment of the European Board for Media Services (built upon the former European Regulators Group for

Audiovisual Media Services) formalizes coordination among national regulators, offering the Commission a stronger, though consultative, role in safeguarding consistency and addressing cross-border risks to media freedom.

In addition to these core provisions, the EMFA was accompanied by a Commission Recommendation (EU) 2022/1634 on internal safeguards for editorial independence and ownership transparency. This non-binding recommendation, issued alongside the proposal, provided more detailed best practices, for example, encouraging media firms to adopt internal codes protecting journalists from editors' commercial pressures, or urging disclosure of ownership to a certain threshold. While the Recommendation itself does not create legal obligations, it accentuated the political importance of the issues and anticipated several requirements that the EMFA later made binding. Once the EMFA has entered into force, with the exception of Article 20, any overlapping parts of the Recommendation effectively became moot or were superseded by binding rules.

4.2 Implications and significance

The EMFA represents a swing in EU media policy. Substantively, it extends EU regulatory concern beyond the audiovisual sector to the media sector at large, including print and digital news outlets and even indirectly covering how platforms interact with news content. It thus establishes a common framework for media services in the EU's internal market with measures aimed explicitly at protecting media freedom and pluralism. In doing so, the EMFA acknowledges that media markets and media freedoms are interdependent, which is a significant departure from the earlier paradigm where the EU treated media largely as an economic sector and left press freedom issues to national law or the Council of Europe. This amounts to the Commission taking a supranational action to address issues like member-state media capture and fundamental rights concerns in the media sphere (Trevisan, 2025). The EMFA's aim is not modest: it seeks nothing less than to "increase the transparency, independence and accountability" of media-related actions across the EU.² In essence, it attempts to operationalize at the EU level the high-level values stated in Article 11 of the Charter of Fundamental Rights of the European Union by creating enforceable rights and obligations.

However, the EMFA's ambitious approach also raises practical and legal questions. For instance, while it provides tools to the Commission and the new Board to promote compliance, through opinions, investigations, and dialogues, it largely relies on national authorities for actual enforcement. Early analyses suggest that some tools favor willing cooperation over harsh sanctions, which may prove inadequate in cases of systemic non-compliance by a recalcitrant Member State or regulator (Trevisan, 2025). This precarious equilibrium reflects political realities: media regulation touches sensitive sovereignty issues, and the EMFA is, in many respects, minimum harmonization in disguise.

5 From sectoral oversight to democratic protection: Comparing old and novel approaches

The shift from the EU's older audiovisual regulatory framework to its new suite of media and democracy initiatives represents a transformation in both scope and purpose. It is instructive to compare the characteristics of the traditional "sectoral oversight" model, exemplified by

² <https://tinyurl.com/9xddnwwd>

TWF/AVMSD, with those of the emerging approach aimed at protecting democratic functions, exemplified by EMFA, the DSA, the political advertising regulation, and related measures. Key differences can be observed in the (1) scope of regulation, (2) the objectives and principles underlying the rules, (3) the regulatory techniques and enforcement mechanisms employed, and (4) the overall thematic coherence of the policy framework.

5.1 Scope of coverage

The former framework was narrowly focused on the audiovisual media sector, primarily television broadcasting and (eventually) on-demand video. Print media, radio, and purely online journalism were outside EU harmonization, and even online video content fell largely outside until the AVMSD's 2018 extension to video-sharing platforms. By contrast, the new approach significantly broadens the scope to encompass the media sector as a whole. The EMFA's definition of "media service provider" is not limited to traditional broadcast companies; it covers providers of news and current affairs in any format, which implicitly brings newspapers and online news sites under certain EU obligations or protections.

Moreover, the EMFA's platform-related rules (on content removal) acknowledge that platforms themselves are part of the media distribution ecosystem. The political advertising regulation similarly cuts across all media (online platforms, TV, print adverts, etc.), creating rules for any medium used to disseminate political ads. Thus, the scope has shifted from a sectoral (AV-centric) approach to a cross-sectoral approach covering a wide array of actors who participate in public communication. This expansion recognizes that in today's hybrid media environment, lines between "audiovisual" and other media are blurred and that threats to democratic discourse can originate anywhere in the information space, not just from television broadcasts.

5.2 Purpose and underlying rationale

The original TWF Directive was fundamentally an internal market instrument, seeking to eliminate barriers to free movement of broadcasting services while accommodating some cultural aims, like European content promotion. The AVMSD maintained this internal market rationale, aiming for a modern, flexible framework to foster the EU's media industries and support a single market for audiovisual content. Democratic or fundamental-rights rationales were secondary or implicit; for example, protection of minors and pluralism were included, but largely to the extent they were common minimum standards for market harmonization. In contrast, the new regulatory approach explicitly foregrounds democratic values and fundamental rights as core aims.

The EMFA's rationale is not just to remove market fragmentation but to protect freedom of the media, media pluralism, and editorial independence across the EU. It treats media freedom as both an economic and a democratic imperative. Essentially, the EU's media policy has shifted from a primarily market-driven logic to a dual market-and-rights logic. Holtz-Bacha (2024) described it as moving from "European media policy as industrial policy" to "European media policy as rule-of-law policy." The older framework certainly acknowledged media pluralism as desirable, but the new one treats the protection of democracy, through free media and fair political communication, as a guiding star. This change in purpose is reflected in political messaging: Commission officials in charge of the EMFA have cast it as part of the EU's response to authoritarian tendencies and geopolitical information threats, a far cry from the technocratic language of earlier directives.

5.3 Regulatory techniques and instruments

There is also a significant change in the regulatory techniques employed. The TWF and AVMS directives were minimum harmonization directives, giving the Member States considerable leeway in implementation and additional measures. They relied on national execution, each country's laws and regulators, and the Commission's infringement powers only if a country failed to transpose or enforce minimum requirements. By contrast, the EMFA is a regulation, directly binding in its entirety, which suggests a push for uniform application. The choice of a regulation also reduces the space for divergent national measures, theoretically ensuring more consistent standards, though, as noted, the EMFA still contains areas of flexibility.

Another new technique is the creation of European-level bodies or networks (the European Board for Media Services) to oversee and coordinate enforcement, whereas previously coordination was informal or at most advisory (ERGA). Moreover, the new approach interweaves co-regulation and self-regulation within the legislative framework: e.g., the Code of Practice on Disinformation is voluntary but gained quasi-regulatory status via the DSA; EMFA expects media to adhere to editorial standards and encourages industry codes (like the Journalism Trust Initiative) as complements. The use of transparency obligations and due diligence requirements (e.g., in political ads and EMFA's platform provisions) is a modern regulatory style distinct from the older command-and-control rules about content quotas or advertising minutes.

In essence, the toolkit has diversified: from straightforward content rules and market access provisions to more complex governance, transparency, and accountability mechanisms that involve multiple stakeholders, regulators, companies, and civil society. Enforcement, too, has a new multi-level character. The older directives left enforcement to Member States, with the Commission mostly on the sidelines, except in extreme cases. The new instruments contemplate a stronger Commission role: under EMFA, the Commission can issue opinions on national measures or directly request the Board to investigate issues, and under the DSA (complementing EMFA), the Commission has direct oversight of very large online platforms.

However, this evolving enforcement model is still being tested and defined, and as critics have pointed out, it may lack teeth if not strengthened. A telling example is that the EMFA currently does not set out an EU-level sanctioning regime; it relies on national authorities to impose penalties for breaches, which could be problematic if those authorities are the very entities compromised by political interference.

5.4 Thematic coherence and integration

Under the old paradigm, EU media regulation was somewhat siloed: focusing on audiovisual content while other relevant domains, such as electoral law, online services, competition in media markets, etc., were handled separately. The new approach is characterized by a greater thematic coherence, better suited for promoting democracy. The European Democracy Action Plan provides a strategic umbrella linking various initiatives: from anti-disinformation actions and political ad rules to media freedom measures. The EMFA itself is explicitly situated as part of a broader regulatory ecosystem, designed to integrate with instruments like the AVMSD, the DSA, the DMA, the TTPA, and competition law. For example, the EMFA amends certain provisions of the AVMSD to align them, and its recitals clarify that it does not prejudice the application of other laws like antitrust or data protection, yet it fills gaps that those laws do not cover (e.g., pluralism tests, which competition law alone would not require).

This indicates a more holistic regulatory vision: whereas the AVMSD primarily dealt with content standards and market access for TV/VOD, the new framework addresses content and conduct (e.g., disinformation, editorial independence), market structure (concentrations, ownership), and infrastructure (platform gatekeeping) in a coordinated way. The thematic thread uniting these is the preservation of an open and democratic public sphere. In terms of narrative, the EU now speaks of media policy in the same breath as it speaks of democratic resilience, rule of law, and fundamental rights. This is a clear thematic broadening. That said, one could argue there are still some fragmentation risks: the initiatives are spread across different regulations and directives, such as EMFA, DSA, Political Ads Regulation, Anti-SLAPP Directive, etc., each with its own scope and enforcement mechanisms. Ensuring these measures work together coherently is an ongoing challenge (Papp, 2024). But from an overall perspective, they do share a common *ethos* that was largely absent from the purely economic integration mindset of thirty years ago.

The comparison reveals a trajectory from a limited, industry-focused regulatory model to a wide-ranging, democracy-focused model. The EU's role has expanded from "market referee" to also being a guardian or supporter of media freedom values. However, this expansion is not absolute; it is constrained by legal competences and political sensitivities, which means the new approach must continually balance EU-wide rules with respect for national specificities. The next sections explore those very legal and constitutional constraints that shape and potentially limit the EU's newfound activism in media regulation.

6 Legal and constitutional tensions in the shift to democratic media regulation

The EU's move into the sensitive territory of media freedom and democratic safeguards has not been entirely smooth, as it raises fundamental legal and constitutional questions. Traditionally, direct regulation of media plurality or political campaigning lay outside EU competence. As a result, the recent initiatives must be carefully navigated within the bounds of the treaties' provisions and must respect principles like those of subsidiarity and proportionality. This section examines the key tensions, that is, the choice of legal basis and the limits of EU competence, the scrutiny of subsidiarity, and proportionality concerns. It also touches on specific treaty clauses like the Amsterdam Protocol on public broadcasting, and the potential for conflicts with Member States' constitutional identities and sovereignty in media matters.

6.1 EU competence and legal basis

Since the EU treaties do not provide an explicit competence for media freedom or press regulation, the European Commission has anchored the EMFA and the political advertising regulation in its internal market competence (Article 114 TFEU). Article 114 allows the EU to harmonize laws for the smooth functioning of the internal market, typically to remove barriers to free movement or distortions of competition. The Commission contends that disparate national rules (or lack thereof) on media safeguards and political advertising lead to fragmentation that impedes the internal market for media services and related goods. For instance, a media company operating in multiple countries faces different regimes on ownership disclosure or editorial independence, and an online platform dealing with political ads may confront 27 sets of rules, which justify an EU-level solution.

However, many EMFA provisions, like those on public service media governance or editorial independence, primarily pursue non-economic aims and only tenuously link to internal market concerns. Article 114 TFEU can only be used if the measures genuinely aim to improve internal market functioning, not if they are essentially about guaranteeing fundamental rights. Preamble justifications and impact assessments try to demonstrate internal market obstacles, for example, political control of media in one country could lead to unfair competition or reduce cross-border investment in the media sector, thus harming the internal market. The Commission also noted that disproportional regulation can allow cross-border influences, like propaganda outlets funded from one state operating in another, to exploit regulatory gaps (European Commission, n.d.).

While these arguments have some merit, the risk remains that if a measure's primary motivation is seen as political or cultural (beyond economic), its legal basis might be challenged (Koltay et al., 2024). A specific legal instrument illustrating competence tension is the Amsterdam Protocol on public service broadcasting (1997), which is annexed to the EU treaties. This Protocol affirms that the maintenance of public service broadcasting is primarily a task of the Member States, and that EU provisions shall not prejudice that competence, provided funding of public service media is for the common good as defined by Member States and does not distort trade unduly.

Some have argued that EMFA rules on independent functioning and funding of public service media, while noble in intent, tread into matters reserved by the Protocol to national definition (Longo, 2025). However, the counterargument is that EMFA does not prevent states from defining the public service mandate or funding it; it simply requires that whatever the mandate, the outlet's editorial decisions remain independent and that funding procedures are transparent and sufficient.

6.2 Subsidiarity concerns

According to the principle of subsidiarity, even if the EU has competence, it should act only if objectives cannot be sufficiently achieved by Member States alone, and if EU action brings added value. Media policy, being so tied to national culture and political systems, is a textbook case where subsidiarity scrutiny is intense. The Commission, in its proposal justifications, tried to preempt these concerns by documenting the transnational aspects of the media problems. It highlighted that media companies increasingly operate across borders, so divergent regulations create inefficiencies, that disinformation campaigns do not stop at national borders, so a patchwork response is inadequate, and that poor media freedom in one country can enable illicit actors to establish outlets there and then broadcast or publish into neighboring countries (OSCE, 2022). Additionally, from a values perspective, one could argue there is a "European dimension" to media freedom, as the Court of Justice held in *Centro Europa 7 s.r.l. v. Italy*, a case on broadcasting rights, as freedom of expression is a fundamental condition for the functioning of the EU internal market of ideas, not just goods. Still, subsidiarity remains a political question as much as a legal one.

During the negotiations, to satisfy subsidiarity worries, drafters made some EMFA provisions more flexible or explicitly minimum harmonizing. For example, regarding editorial independence, the Regulation allows Member States to adopt more detailed or stricter rules, a clause effectively nodding to subsidiarity by letting local best practices continue.

6.3 Proportionality and overreach

Under Article 5 of TEU, the principle of proportionality requires that EU action not exceed what is necessary to achieve the objectives. From a legal standpoint, proportionality is assessed on whether the measures are suitable and the least restrictive to achieve aims. The EMFA's measures, such as transparency obligations or cooperation structures, are generally moderate; they do not, for example, dictate media content or establish an EU censor or anything draconian. As such, they are mostly proportionate to the aim of ensuring a fair media internal market.

However, it is debatable whether a regulation was indispensable as opposed to a directive. Some argue that a directive transposed nationally could have achieved the objectives with more flexibility; hence, it would have been more proportional to diverse national contexts. Whereas a directly binding regulation is an excessive instrument (Koltay, 2025). The Commission chose a regulation likely to avoid delays and patchy transposition, which is justified by the urgency and cross-border nature, but this choice itself can be considered controversial.

Media systems in Europe are diverse. Historically, they are shaped by national culture, language, and political structures, and there can be apprehension that uniform EU rules will erode this diversity or impinge on sovereign choices. For example, countries with strong public broadcasting traditions worry that EU oversight, even indirect, could interfere with how they structure and fund these broadcasters.

In essence, while the EU's new media regulatory framework holds promises, its success is not guaranteed. The journey from law to reality is fraught with political, legal, and practical obstacles. Overcoming these will require sustained commitment, dialogue with Member States, adequate resourcing of regulatory bodies, and, perhaps most importantly, a continued normative consensus that, despite all challenges, protecting media freedom and democratic discourse is a cause worth the effort. The very expansion of EU action in this field is a testament to that emerging consensus, but it will be tested in the years to come.

7 Conclusion

The evolution of EU media regulation from the 1990s to the mid-2020s reflects a profound broadening of both vision and responsibility. What began as a narrow project to facilitate cross-border television broadcasting under internal market logic has altered into a multifaceted endeavor to safeguard the democratic fabric of European societies. The TWF Directive and the AVMS Directive laid the groundwork by removing internal market barriers in the audiovisual sector and modestly promoting cultural diversity, but they deliberately stayed within a sectoral lane, deferring to Member States on deeper questions of media freedom and pluralism. Over time, however, the rise of global digital platforms, the onslaught of disinformation, and worrying trends of media capture have made it evident that such questions can no longer be treated as a solely national preserve or as ancillary to market integration. The EU found itself compelled to extend its regulatory reach to ensure that media across the EU can fulfill their essential democratic functions: providing trustworthy information, democratic control, and enabling informed public debate.

The introduction of the EMFA marked a watershed in this regard. It signals that media policy has definitively arrived on the EU agenda not just as an economic or cultural matter, but as a pillar of the EU's democratic governance and rule-of-law architecture. The shift from the old to the new framework can be characterized as moving from sectoral oversight to the protection of democracy.

The scope has expanded from regulating television broadcasts to addressing the media ecosystem at large. The purpose has widened from ensuring market access and minimal content standards to actively safeguarding pluralism, the integrity of information, and fair political competition. Regulatory techniques have become more sophisticated, blending hard law and co-regulation, national and supranational coordination, and transparency and accountability mechanisms, all of which are tools necessary to cope with the complexity of digital-era communication.

Thematically, there is now a more coherent narrative that unites various EU actions: whether it is the DSA's platform rules, the EMFA's media safeguards, or the political ads regulation, all are justified in terms of protecting democratic processes and fundamental rights in the internal market. This represents a new integrative approach to policy-making and breaking silos between media policy and other domains. Yet, as the analysis in this paper has also demonstrated, this expansion is not without tension. The EU must constantly mitigate the subtle balance between EU intervention and national autonomy. Legal limits act as a guardrail, ensuring that EU actions remain anchored in internal market rationales and do not trespass on cultural sovereignty. Political acceptance of the new framework varies across the Member States, requiring ongoing dialogue and confidence-building. The principle of subsidiarity remains a compass: the EU should act only to the extent that objectives cannot be achieved by Member States alone.

Looking forward, the success of the EU's thematic expansion in media regulation will hinge on several factors. First, effective implementation and enforcement are paramount. The creation of the European Board for Media Services and the networks for enforcing the political ads rules provide a framework, but these bodies must be empowered, active, and seen as legitimate. The Commission will need to use its political and legal tools decisively when standards are flouted, while avoiding unnecessary intrusion where national systems are performing well.

Second, a degree of regulatory restraint will be essential. In recent years, the EU's growing intervention in media matters, though motivated by genuine democratic concerns, has shown signs of overextension. As the EU multiplies instruments, oversight mechanisms, and reporting obligations, there is a risk of regulatory fatigue and institutional overlap that could blur responsibilities and erode national ownership of media governance. To preserve legitimacy and diversity, the EU must recognize that not every perceived risk to pluralism or integrity demands a new rule or centralized supervision. Consolidating and streamlining existing frameworks, rather than continuously expanding them, may ultimately serve the cause of media freedom more effectively than constant regulatory modernization.

Third, flexibility and adaptability should be maintained. The media and tech landscape evolves rapidly; the EU may need to recalibrate its measures in response to new developments, be it novel forms of online propaganda or emerging technologies like deepfakes, which were not explicitly addressed in current laws. The thematic coherence of the approach should make it easier to plug gaps as they become apparent, since all measures share the ultimate aim of enshrining democracy.

When viewed as a whole, the EU's trajectory from the era of TWF to that of the EMFA reflects that the EU is increasingly inclined to expand its reach in the name of protecting democratic values. While this evolution is rooted in legitimate concerns about disinformation, media capture, and algorithmic power, it also raises questions about proportionality, subsidiarity, and institutional restraint. What began as an effort to safeguard the integrity of democratic discourse now risks converting into an overly interventionist framework that blurs the boundaries between regulation and governance of opinion. The ambition to secure trustworthy information and a resilient democracy is commendable, yet it carries an inherent paradox.

In seeking to guarantee truth and reliability through regulation, the EU risks positioning itself, however unintentionally, as an arbiter of legitimate public discourse. Such an approach,

even when grounded in democratic values, may blur the line between protecting media freedom and prescribing its content. The coming years will show whether this expanding regulatory vision strengthens democratic resilience or subtly erodes it by conflating freedom with conformity. The stakes remain high, and while the EU's growing role reflects a genuine commitment to democracy, it equally demands vigilance to ensure that the defense of pluralism does not become its undoing.

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