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## PROTECTING MEDIA FREEDOM AND PLURALISM, WHILE ESTABLISHING THE EU INTERNAL MARKET: THE IMPACT OF THE EMFA ON EU MEMBER STATES' AND CANDIDATE COUNTRIES' DOMESTIC CONSTITUTIONAL LAW

**ABSTRACT.** The protection of media freedom and pluralism can be seen as a case-study, so as to understand how the protection of fundamental rights by the European Union (EU) works. In particular, the purpose of this article is to examine the impact of the 2024 EU regulation protecting media freedom and pluralism, i.e. the European Media Freedom Act (EMFA), on domestic constitutional law of EU member states and of EU candidate countries, such as Ukraine. From the domestic perspective of the EU member states, a controversial issue will be tackled, namely the fact that national restrictions to protect media freedom and pluralism (viz., one of the main functions of domestic constitutional law) are considered by the EMFA as hampering in principle free movement within the internal market. On the other hand, it will be demonstrated that the EMFA could be seen for EU candidate countries, such as Ukraine, as a great opportunity to keep approximating their legislation with the EU law in the field of media law. That is a field, in which the European Commission recommended that Ukraine took one of the seven steps to become a member of the European Union.

**KEYWORDS:** European Union; Protection of fundamental rights; Media freedom; Media pluralism; European Media Freedom Act; Legal basis; Internal market; Ukraine.

### *1. Introduction*

Under Article 2 of the Treaty on the European Union (TEU), 'the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities'. These values are 'common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail'<sup>1</sup>. A Charter of Fundamental Rights of the European Union<sup>2</sup> (CFREU) was adopted in 2000 and adapted in 2007:

<sup>1</sup> Consolidated version of the Treaty on European Union <[https://eur-lex.europa.eu/eli/treaty/teu\\_2016/oj](https://eur-lex.europa.eu/eli/treaty/teu_2016/oj)> (accessed 27.10.2025).

<sup>2</sup> Charter of Fundamental Rights of the European Union <[https://eur-lex.europa.eu/eli/treaty/char\\_2012/oj](https://eur-lex.europa.eu/eli/treaty/char_2012/oj)> (accessed 27.10.2025).

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under Article 6.1 TEU, the CFREU shall have the same legal value as Treaties. Fundamental rights, as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>3</sup> (ECHR) and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law (Article 6.3 TEU).

However, under Article 5.1 TEU, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein (principle of conferral). Competences not conferred upon the Union in the Treaties remain with the Member States. Under Article 5.2 TEU, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level (principle of subsidiarity). The content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties (principle of proportionality). When it comes to fundamental rights, this means that the EU can (and shall) act to protect them, only at those conditions.

The protection of media freedom and pluralism will be taken here as a case-study to understand how the protection of fundamental rights by the EU works, against the aforementioned background. The principles of media freedom and pluralism are set out under Article 11.2 CFREU ("The freedom and pluralism of the media shall be respected"). On the other hand, in the Treaties there is no express conferral upon the EU, when it comes to regulating media. However, in 2024 a regulation protecting media freedom and pluralism was enacted by the European Union: the European Media Freedom Act<sup>4</sup> (EMFA).

As will be analysed here (Section 2), the legal basis (i.e., the part of the EU Treaties that gives the EU the legal right to act) that was used by the EMFA to justify itself, was Article 114 of the Treaty on the Functioning of the European Union<sup>5</sup> (TFUE), under which the EU shall adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. However, the choice of Article 114 TFEU provoked some controversial issues, as will be said.

Against this background, the purpose of this article is to examine the impact of the EMFA on domestic constitutional law of EU member states and EU candidate countries, such as Ukraine.

<sup>3</sup> Convention for the Protection of Human Rights and Fundamental Freedoms <[https://www.echr.coe.int/documents/d/chr/convention\\_eng](https://www.echr.coe.int/documents/d/chr/convention_eng)> (accessed 27.10.2025).

<sup>4</sup> 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) <<https://eur-lex.europa.eu/eli/reg/2024/1083/oj>> (accessed 27.10.2025).

<sup>5</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT>> (accessed 27.10.2025).

Some controversial issues of a constitutional nature arise from the EMFA, from the domestic perspective of the EU member states (Section 3). On the other hand, the EMFA could be seen for EU candidate countries, such as Ukraine, as a great opportunity to keep approximating its legislation with the EU law in the field of media law, i.e. a field in which the European Commission recommended that Ukraine takes one of the seven steps to become a member of the European Union (Section 4).

## *2. The legal basis of the EMFA (Article 114 TFEU) and the protection of media freedom and pluralism*

As mentioned, under Article 114 TFEU, the EU shall adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

The EMFA treats media services as an economic service sector. From this perspective, as the internal market for media services is ‘insufficiently integrated and suffers from a number of market failures’<sup>6</sup>, the EMFA contains measures for the approximation of the Member States’ provisions which have as their object the establishment and functioning of the internal market, in line with Article 114 TFEU. In other words, as the fragmentation of national rules and approaches in the media market negatively affects the conditions for the exercise of media services in the internal markets, Article 114 TFEU has been used as the legal basis for the approximation of national measures in the media market, contained in the EMFA.

The EMFA points out in particular the following market failures: the role played by global online platforms as a gateway to media content provided by media service providers; the role of providers, including those controlled by certain third countries, that systematically engage in disinformation; national restrictions related to media freedom and pluralism and the insufficient cooperation between national regulatory authorities or bodies<sup>7</sup>.

As to overcome those failures, the EMFA establishes an European Board for the Media Service (EBMS) (Articles 8–17), composed of representatives of national regulatory authorities or bodies, tasked with: (i) providing technical expertise to the European Commission; (ii) promoting cooperation and the effective exchange of information, experience and best practices between the national authorities or bodies; (iii) drawing up opinions with respects to regulatory or administrative measures which are likely to significantly affect the operation of media service providers in the internal market for media services, under Article 21.4 EMFA; (iv) drawing up opinions with respect to media market concentrations which are likely to affect the functioning of the internal market for media services, under Article 23.1 EMFA.

<sup>6</sup> Recital (4), European Media Freedom Act (n 4).

<sup>7</sup> Recital (4), European Media Freedom Act (n 4).

However, the EMFA undoubtedly also aims to protect media freedom and pluralism. Before the enactment of the EMFA, scholars had been recommending the establishment of an EU secondary act that directly regulates media sector for some years<sup>8</sup>. The EMFA is the first EU secondary act that plays that role. Its Article 1 clearly reads as follows: the regulation ‘lays down common rules for the proper functioning of the internal market for media services <...>, while safeguarding the independence and pluralism of media service’ (emphasis added). It sets out provisions regarding, for example, the rights of recipients of media services (Article 3), the rights of media services providers (Article 4), the safeguards for the independent functioning of public service media providers (Article 5)<sup>9</sup>, duties for media services providers, especially obligations for media transparency (Article 6)<sup>10</sup>, safeguards to access to media service in a digital environment (Articles 18–19)<sup>11</sup>. Moreover, it is worth saying that the EMFA regulates the whole media sector, thus not only audio-visual media but also the radio and press<sup>12</sup>.

Just because EMFA aims to protect media freedom and pluralism, the choice of Article 114 TFEU as the legal basis of the EMFA provoked several controversial issues, given the fact that the EU has no specific competence for regulating the media as such<sup>13</sup>. Although the principles of media freedom and pluralism are set out under Article 11.2 CFREU, the Charter cannot be treated as a legislative basis for EU law. In 2024 Hungary brought an action for annulment of the EMFA to the European Court of Justice (ECJ), stating that ‘the true primary objective of the regulation is to foster the fundamental values of the European Union – democracy and the rule of law – by promoting media freedom and media pluralism, for which Article 114 TFEU does not provide an appropriate legal basis’<sup>14</sup>. The action is still currently pending before the ECJ.

On the other hand, it has been noted that Member States cannot jeopardise media freedom and pluralism (as constitutional EU values under Article 11 CFRUE) by justifying national measures that could restrict the free movements of services<sup>15</sup>. From this perspective, the adoption of the EMFA on the legal basis of Article 114 TFEU can be seen as in compliance with the EU Treaties, because,

<sup>8</sup> R Mastroianni, ‘Freedom and Pluralism of the Media: an European Value Waiting to be Discovered?’ [2022] 1 Media Laws 100–110.

<sup>9</sup> On Article 5 European Media Freedom Act (n 4); Enrico Albanesi, ‘Safeguards for the Independent Functioning of Public Service Media Providers. The Legal Position of Domestic Legislation That Is Not in Compliance with Article 5 EMFA’ [2024] 2 Rivista Italiana di Informatica e Diritto 187–194.

<sup>10</sup> On Article 6 European Media Freedom Act (n 4); Danielle Borges, ‘Media Ownership Transparency and the European Media Freedom Act: How Did the EU Get There?’ [2024] 2 Rivista Italiana di Informatica e Diritto 262–265.

<sup>11</sup> On Article 18 European Media Freedom Act (n 4); Matteo Monti, ‘The Missing Piece in the DSA Puzzle? Article 18 of the EMFA and the Media Privilege’ [2024] 2 Rivista Italiana di Informatica e Diritto 195–212.

<sup>12</sup> Recital (1), and Article 2 (1) European Media Freedom Act (n 4).

<sup>13</sup> The debate and the legal issues are well described in: Mark D Cole, Christina Etteldorf, *The European Media Freedom Act Unpacked* (European Audiovisual Observatory 2024) 4–8 <<https://rm.coe.int/iris-2024-6-emfa-unfolded-en/1680b2a0a1>> (accessed 27.10.2025).

<sup>14</sup> Action brought on 10 July 2024, Hungary v. European Parliament and Council of the European Union. Case C-156/21. <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62021CJ0156>> (accessed 27.10.2025).

<sup>15</sup> Erik Longo, ‘Grounding Media Freedom in the EU: The Legal Basis of the EMFA’ [2025] 1 Rivista Italiana di Informatica e Diritto 9–10.

more in general, the EU's regulatory intervention aimed towards the establishment and the functioning of the internal market also involves its alignment with the fundamental principles of the EU and the CFREU.

Moreover, the inherently transnational nature of the broadcasting of media services cannot allow a purely national approach to solve the problems of media freedom and pluralism and limit the EU interventions to purely antitrust role<sup>16</sup>.

*3. A controversial issue of a constitutional nature concerning the EMFA, regarding EU Member states: national restrictions to protect media freedom and pluralism domestically can be considered as hampering free movement within the internal market*

The legitimacy of the EMFA from the perspective of the EU is not under question here, thus, although the final word will be said by the ECJ, of course. The issue to be tackled here is that of domestic constitutional law.

Under Recital (4) EMFA, as already said, national restrictions that affect media freedom and pluralism are in principle considered as hampering free movement within the internal market.

In particular, under Article 22, legislative, regulatory or administrative measures taken by a Member State that are liable to affect media pluralism of the editorial independence of media service providers operating in the editorial market, shall be duly justified and proportionate. Such measures shall be reasoned, transparent, objective and non-discriminatory. The EBMS shall, on its own initiative, at the request of the Commission or upon a duly justified and reasoned request of a media service provider that is individually and directly affected by such a measure, lay out an opinion on the measure. It goes without saying that such an assessment is different from the assessment of media market concentration under Article 22<sup>17</sup>.

However, this means that also national restrictions *to protect* media freedom and pluralism domestically, can be considered as hampering free movement within the internal market. This looks like a paradox, although in compliance with the EU law (as EU law can prevail over domestic constitutional law<sup>18</sup>, provided that the national identity under Article 4.2 TEU is not jeopardised<sup>19</sup>): the protection of media freedom and pluralism is one of the tasks of domestic constitutional law and the EMFA could jeopardise this task in the name of the establishment and functioning of internal market. As has been noted, “the media is not merely any

<sup>16</sup> Erik Longo (n 15) 10.

<sup>17</sup> On the two mechanisms: Ottavio Grandinetti, ‘Quale nozione di pluralismo nell’EMFA?’ 2 [2024] *Rivista Italiana di Informatica e Diritto* 148–150; A Manganelli, M L Mariniello, ‘La valutazione delle concentrazioni per la tutela del pluralismo informativo’ [2024] 2 *Rivista Italiana di Informatica e Diritto* 168–171.

<sup>18</sup> In 1970 the ECJ stated that ‘the validity of a Community measure or its effect within a Member State cannot be affected by allegations that it runs counter to either fundamental rights as formulated by the constitution of that State or the principles of a national constitutional structure’. Cfr. European Court of Justice, 11 December 1970, *International Handelsgesellschaft mBh c. Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, C-11/70, para. 3 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61970CJ0011>> (accessed 27.10.2025).

<sup>19</sup> Enrico Albanesi, ‘National identity (under Art. 4(2) TEU) and constitutional identity (as counter-limits) are not the same’, in Belov M (ed), *Peace, Discontent and Constitutional Law. Challenges to Constitutional Order and Democracy* (Routledge 2021) 108–126.

other business”: beyond their market dimension, ‘media services play a vital role in education, cultural development, and societal inclusiveness, while safeguarding fundamental rights such as freedom of expression and access to information. When operating independently and pluralistically, media service contribute to informed citizenship, which is indispensable for both a thriving democracy and a thriving economy’<sup>20</sup>.

This apparent paradox can be easily explained, provided that, at the same time, some precautions are taken.

First, as mentioned above, the EU’s regulatory intervention aimed towards the establishment and the functioning of the internal market also involves its alignment with the fundamental principles of the EU and the CFREU.

Secondly, as said, the aforementioned failures of media market, that can negatively affect the principles of media freedom and pluralism, have a transnational dimension and can be tackled in the digital environment only at the supranational (i.e. EU) level. This is true for the role played by global online platforms as a gateway to media content provided by media service providers; and the role of providers, including those controlled by certain third countries, that systematically engage in disinformation: only a regulation at a supranational level can be an answer to transnational phenomena, as the ones mentioned.

However, some precautions should be taken.

National measures protecting media freedom and pluralism can be considered as obstacles to the internal market, provided that an actual added value is offered at the EU level, i.e. the EU level proves to be more efficient<sup>21</sup> in light of the principles of subsidiarity and proportionality already mentioned.

In particular, under Article 22 EMFA the EBMS is tasked with drawing an opinion on legislative, regulatory or administrative measures taken by EU member states that are liable to affect media pluralism. In carrying out this task, the EBMS should take into account the actual existence of any measure at the EU level and their added value, when it comes to protection of media freedom and pluralism. In other words, before leaving media freedom and pluralism unprotected at domestic level in the name of market freedom, the EBMS should check whether the EU actually offers a more efficient level of protection for media freedom and pluralism than that offered at domestic level.

Only in this case, can the domestic measures be considered as an obstacle for the internal market. Otherwise, in the name of the internal market, the EU would jeopardise the principles of media freedom and pluralism: this could not be legitimate because, as demonstrated here, EU’s regulatory intervention aimed

<sup>20</sup> Elda Brogi, Iva Nenadić, Pier Luigi Parcu, Peggy Valcke, ‘The Future of Monitoring and Safeguarding Media Pluralism in Europe’ in Brogi E, Nenadić I, Parcu P L (eds), *Media Pluralism in the Digital Era. Legal, Economic, Social, and Political Lessons Learnt from Europe* (Routledge 2025) 195.

<sup>21</sup> This reflection was done by some Authors more in general, with regards to the competence of the EU to adopt the EMFA. See Mark D Cole, Christina Etteldorf (n 13) 5 but can be applied also with regard to single measures taken by the EU in the field of media freedom and pluralism.

to the establishment and the functioning of the internal market also involves its alignment with the fundamental principles of the EU and the CFREU.

#### 4. *The EMFA as a model for the approximation of EU candidate countries' legislation with EU law*

On the other hand, the EMFA can be seen as a new standard for the EU candidate countries<sup>22</sup>. This is particularly true for Ukraine: the adoption of 'a media law that aligns Ukraine's legislation with the EU audio-visual service directive<sup>23</sup> and empowers the independence media regulator' was one of the seven steps that on 17 June 2022 the European Commission recommended that Ukraine should take in order to be granted candidate status<sup>24</sup>. On this basis, the European Council granted Ukraine candidate status on 24 June 2022.

On 8 November 2023 the European Commission, among other things, noted that Ukraine "aligned its media law with EU law"<sup>25</sup>, by approving Law No. 2849-IX, Law of Ukraine "On Media"<sup>26</sup>, passed by the Ukrainian Parliament on 13 December 2022<sup>27</sup>. On this basis, the European Council decided to open accession negotiation with Ukraine on 15 December 2023<sup>28</sup>. The Intergovernmental Conference on the accession of Ukraine in the EU actually started on 25 June 2024 but in the Negotiating Framework of 21 June 2024 it is clearly noted that 'the continuation of the implementation concerning the relevant steps set out in the <...> Commission recommendation <...> of 8 November 2023 will be closely monitored'<sup>29</sup>.

Therefore, in the light of that and the new 2024 standard in the field of media law, namely the EMFA, it is now Ukraine's task to keep approximating its legislation to the EMFA as well. The Ukrainian Parliament is currently debating the Draft Law No. 12111, Draft Law of Ukraine "On Amendments to Certain

<sup>22</sup> Elda Brogi, Iva Nenadić, Pier Luigi Parcu, Peggy Valcke (n 20) 202.

<sup>23</sup> Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provisions of audiovisual media services (Audiovisual Media Services Directives) in view of changing market realities) <<https://eur-lex.europa.eu/eli/dir/2018/1808/oj>> (accessed 27.10.2025).

<sup>24</sup> European Commission, Communication from the Commission to the European Parliament, the European Council and the Council – Commission Opinion on Ukraine's application for membership of the European Union COM(2022) 407 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022DC0407>> (accessed 27.10.2025).

<sup>25</sup> European Commission, Communication from the Commission to the European Parliament, the European Council and the Council – 2023 Communication on EU Enlargement Policy COM(2023) 690 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52023DC0690>> (accessed 27.10.2025).

<sup>26</sup> Про медіа: Закон України від 13 грудня 2022 року № 2849-IX <<https://zakon.rada.gov.ua/laws/show/2849-20?lang=en#Text>> (accessed 27.10.2025).

<sup>27</sup> On the media freedom and pluralism in Ukraine, after the adoption of the media law, Dariia Opryshko, *Monitoring media pluralism in the digital era: preliminary study to the implementation of the media pluralism monitor 2024 in Ukraine* (European University Institute 2024) <[https://freespeech.dslua.org/wp-content/uploads/2024/09/DSLU\\_EMFA\\_Implementation\\_Plan\\_EN.pdf](https://freespeech.dslua.org/wp-content/uploads/2024/09/DSLU_EMFA_Implementation_Plan_EN.pdf)> (accessed 27.10.2025).

<sup>28</sup> European Council, *Conclusions*, EUCO 20/23 <<https://www.consilium.europa.eu/media/68967/european-councilconclusions-14-15-12-2023-en.pdf>> (accessed 27.10.2025).

<sup>29</sup> Conference on Accession to the European Union – Ukraine, *Accession Document. General EU Position*, AD 9/24, para. 36 <<https://www.consilium.europa.eu/media/hzmfw1ji/public-ad00009en24.pdf>> (accessed 27.10.2025).

Laws on Media Activity”<sup>30</sup>, registered on 10 October 2024, and this could be taken as the chance to do so.

A number of EMFA provisions are already part of Ukraine’s legislation after the adoption of the 2023 Law “On Media”. However, as has been noted, their implementation ‘is far from perfect and requires further attention, but they are generally compliant with the current acquis’<sup>31</sup>.

Among other issues<sup>32</sup>, three issues that Ukraine has in particular to address, so as to align its legislation to the EMFA, will be underlined here.

First, Ukraine shall ensure that journalistic sources and confidential communications are effectively protected, as Article 4 EMFA reads. One should bear in mind that Ukraine was condemned by the European Court of Human Rights in 2021 for a violation of Article 10 ECHR with regards to the lack of protection of journalistic sources<sup>33</sup>.

Secondly, Ukraine has to strengthen safeguards for the independent functioning of public media providers, in accordance with Article 5 EMFA. In particular, it has to solve the problem of underfunding the activities of the public service media providers<sup>34</sup>: as the European Commission noted, it has to ‘provide adequate funding for the public service broadcaster, that would allow the independent public service media to carry out its role enshrined in Ukraine’s legislation’<sup>35</sup>. In particular, Ukraine has to ensure that ‘funding procedures for public service media providers are based on transparent and objective criteria laid down in advance’; it has also to ‘guarantee that public service media providers have adequate, sustainable and predictable financial resources corresponding to the fulfilment of the capacity to develop within their public service remit’ (in accordance with Article 5.3 EMFA)<sup>36</sup>.

Thirdly, Ukraine should regulate the relations between the National Council of Ukraine on Television and Radio Broadcasting (National Broadcasting Council), i.e. the Ukrainian national regulatory authority in the field, and the EBMS, which is regulated under the aforementioned Articles 8–17 EMFA and which will replace the European Regulators Group for Audiovisual Media Services (ERGA). Is it true that Ukraine will be part of the EBMS only when it becomes an EU Member State. However, as an EU candidate country, Ukraine is currently a permanent observer at the ERGA and, as noted by the Council of Europe, this will likely also be the case

<sup>30</sup> Проект Закону про внесення змін до деяких законів України щодо діяльності медіа № 12111 від 10.10.2024 <<https://itd.rada.gov.ua/billinfo/Bills/Card/45014>> (дата звернення 27.10.2025).

<sup>31</sup> Digital Security Lab, *Action Plan on the Implementation of the European Media Freedom Act in Ukraine* (2024) <[https://freespeech.dslua.org/wp-content/uploads/2024/09/DSLUEMFA\\_ImplementationPlan\\_EN.pdf](https://freespeech.dslua.org/wp-content/uploads/2024/09/DSLUEMFA_ImplementationPlan_EN.pdf)> (accessed 27.10.2025).

<sup>32</sup> See: Дарія Опришко, ‘Вступ до ЄС: що ще повинна зробити Україна у сфері медіа на цьому шляху’ (21 Листопада 2023) <<https://zmina.info/articles/vstup-do-yes-shho-shhe-povynna-zrobyty-ukrayina-u-sferi-media-na-czomu-shlyahu>> (дата звернення 27.10.2025).

<sup>33</sup> European Court of Human Rights, Judgment 1 July 2021, case Sedletska v. Ukraine, Application No. 42634/18 <<https://hudoc.echr.coe.int/eng?i=001-208882>> (accessed 27.10.2025).

<sup>34</sup> This issue is noted by Дарія Опришко (n 32) 21–22.

<sup>35</sup> European Commission, *Commission Staff Working Document. Ukraine 2024 Report*, SWD(2024) 699 final, p. 7 and p. 39 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52024SC0699>> (accessed 27.10.2025).

<sup>36</sup> On funding procedures under Art. 5.3 EMFA, see Enrico Albanesi (n 9) 191–192.

at the EBMS meetings: this is the reason why regulating the relations between the National Broadcasting Council and the EBMS would be recommended, given the aforementioned important tasks of the EBMS. As noted by the Council of Europe, this would be important especially in the light of the EBMS tasks concerning the coordination of relevant measures by the national authorities or bodies concerned related to the dissemination of or access to media services originating from outside the Union or provided by media services in the Union or provided by media service providers established outside the Union: those media services that, irrespective of their means of distribution or access, target or reach audiences in the Union where, inter alia, in view of the control that could be exercised by third countries over them, such media services prejudice or present a serious and grave risk of prejudice to public security (Article 17)<sup>37</sup>.

Ukraine does not start from scratch, thanks to its 2023 Law on Media. However, as a new EU standard (the EMFA) was adopted in 2024 and became part of the acquis, Ukraine (as many other EU member states) has much to do in the field of protection of media freedom and pluralism.

However, there is an issue that, although strictly related with the EMFA, goes beyond it. The biggest current challenge for Ukraine is finding a fair balance between the protection of media freedom and pluralism, and the need to protect its security, in time of war and beyond. In particular, some concerns have arisen about the *United Telemarathon*, i.e. the unification (since the beginning of the Russian full-scale invasion of Ukraine in 2022) of nation-wide information TV channels into a 24-hours/7-day information marathon within which the TV channels show the same content at the same time. Such an initiative was justified at the beginning of the full-scale invasion of Ukraine in the name of the security of Ukraine, as a format of protection of the information space, able to provide the population with access to important up-to-date and verified information, contributing to the cohesion of society<sup>38</sup>.

However, especially due to the fact that three TV channels are prevented from participating in the *United Telemarathon*, such initiative carries risks for external media pluralism in Ukraine, at least when it comes to TV broadcasting<sup>39</sup>. Moreover, if one pays attention to the results of the permanent monitoring of the *United Telemarathon*, also internal pluralism is apparently at risk<sup>40</sup>.

Not surprisingly, the European Commission recommended that Ukraine continues 'its efforts to maintain and gradually restore a transparent, pluralistic

<sup>37</sup> See Council of Europe Project "Safeguarding Freedom of Expression and Freedom of the Media in Ukraine" (SFEM-UA), *Legal Opinion: On the Draft Law of Ukraine "On Amendments to Certain Laws on Media Activity"*, LEX\_2025\_1, 10 January 2025, para. 5.1.3 <<https://rm.coe.int/lex-01-ukraine-legalopinion-medialaw-amendments-to-certain-laws-on-med/1680b3f154>> (accessed 27.10.2025).

<sup>38</sup> Дарія Опришко (n 32) 5.

<sup>39</sup> Дарія Опришко (n 27) 28. See also: *Shadow Report on Chapter 23 "Justice and Fundamental Rights" of the European Commission's Report on Ukraine in 2023 (2024)* 306–308 <<https://ti-ukraine.org/en/news/ti-ukraine-and-coalition-of-csos-release-shadow-report-to-the-european-commission-s-2023-report-on-ukraine>> (accessed 27.10.2025).

<sup>40</sup> Дарія Опришко (n 27) 28–29.

and independent media landscape, ensuring that restrictions imposed on security grounds are in compliance with key public rights and interests, such as access to information and media freedom<sup>41</sup>.

As has already been noted in a *Working paper* concerning the protection of minorities in Ukraine on the path of EU accession, ‘Ukraine’s accession process <...> is *unique* given the war context’<sup>42</sup> and a fair balance between different constitutional values should be established in time of war and even beyond<sup>43</sup>.

However, as said, such an issue would go beyond the scope of this article.

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**ЗАХИСТ СВОБОДИ МЕДІА І ПЛЮРАЛІЗМУ  
ПРИ СТАНОВЛЕННІ ВНУТРІШНЬОГО РИНКУ ЄС:  
ВПЛИВ ЕМФА НА КОНСТИТУЦІЙНЕ ПРАВО ДЕРЖАВ-ЧЛЕНІВ  
ТА КРАЇН-КАНДИДАТІВ**

АНОТАЦІЯ. Захист свободи медіа і плюралізму може розглядатися як кейс-стаді для розуміння механізмів захисту основоположних прав Європейським Союзом. Зокрема, метою цієї статті є дослідити вплив регламенту ЄС 2024 р., що захищає свободу медіа та плюралізм, а саме Європейського акта про свободу медіа (European Media Freedom Act – EMFA), на конституційне право держав – членів ЄС та країн – кандидатів на членство в ЄС, зокрема України. З позиції внутрішнього права держав-членів буде розглянуто спірне питання про те, що національні обмеження, спрямовані на захист свободи медіа та плюралізму (одна з основних функцій національного конституційного права), EMFA розглядає як такі, що в принципі перешкоджають вільному руху в межах внутрішнього ринку. З іншого боку, буде показано, що для країн-кандидатів, таких як Україна, EMFA може становити значну можливість для подальшого наближення їхнього законодавства до права ЄС у сфері медіа, що є однією з рекомендацій Європейської комісії щодо одного з семи кроків на шляху до членства в ЄС.

Ключові слова: Європейський Союз; захист основоположних прав; свобода медіа; плюралізм медіа; Європейський акт про свободу медіа; правова основа; внутрішній ринок; Україна.