

OPEN LETTER TO EUROPEAN INSTITUTIONS REGARDING THE IMPACT OF EMFA REGULATION PROPOSAL ON CULTURAL AUDIOVISUAL POLICIES

Brussels, 9 June 2023

Dear Commissioner Breton,

Dear Minister Parisa Liljestrand,

Dear Members of the European Parliament,

The European Media Freedom Act (EMFA) proposed by the European Commission contains welcomed safeguards for the independent functioning of public service media and duties of media service providers in the internal market, with the objective to ensure the protection of media pluralism and independence across the European Union.

With the EMFA, the European Commission is setting out new “requirements for well-functioning media market measures and procedures”¹ with the objective of tackling obstacles to the functioning of the internal market for media services², such as disproportionate and inadequate national regulations affecting the media and press sectors. These national regulations are considered as “regulatory burdens” and “obstacles to the exercise of economic activities” in the European media market with the risk of creating “legal uncertainties” weakening investment in media services³.

We, organisations from the audiovisual and cultural sectors, are concerned that this approach may weaken and possibly challenge the existence of protective and ambitious cultural policies set out by Member States to promote European audiovisual creation in all its diversity.

Article 20 in the EMFA proposal states that Member States may not take measures that affect “internal market for media services” unless they are proportionate and justified. It adds that such measures should be “reasoned, adequate, transparent, and objective and non-discriminatory”. If adopted, **the broad wording of the Article 20 provision would create significant legal uncertainty at national level:** the implementation of a number of cultural policies stemming from national legislations adopted in procedural fairness and fully consistent with Article 167 TFEU could potentially be disputed by media service providers’ unilateral interpretation of their disproportionality or unjustifiability.

A wide range of measures could be called into question, such as regulated window release systems, known as media chronology and anti-concentration measures. It could also challenge the implementation measures of the 2018 Audiovisual Media Services Directive (AVMSD) such as the minimum proportions of European works in broadcasters’ retransmission time and in on-demand

¹ Title of Section 5 of Chapter III of the proposed regulation:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0457>

² The EMFA Regulation adopts here a new approach regarding the “internal market for media services” which was not foreseen in the Audiovisual Media Services Directive, and which anchors the media sector into internal market rules.

³ Impact assessment report of the EMFA, part 1/3, 16 September 2022, page 7:

<https://digital-strategy.ec.europa.eu/en/library/european-media-freedom-act-impact-assessment>

services catalogues, as well as media services' obligation to contribute financially to the production of European works. This could create a chilling effect on Member States' ability to regulate the promotion and distribution of European works at a time of sea-change for the audiovisual sector in Europe and worldwide.

In addition, the proposed Article 20 establishes a new complaint mechanism⁴ for media services providers to challenge essential measures for the creation, production and distribution of European audiovisual works and the diversity of cultural expressions solely based on internal market criteria. This new procedure would be in complete contradiction with Article 167 TFEU and the share of competences between the European Union and Member States, the long-established European audiovisual policy, notably AVMSD provisions on the promotion and distribution of European works and the State aid rules.

While welcoming the European Commission's will to dispel misunderstandings about the objectives pursued⁵, we remain deeply concerned that the regulation would embed national cultural policies into internal market rules. We believe the proposed Article 20 EMFA as drafted, will be the main tool to disrupt key policies implemented by Member States to support film and TV creation and local ecosystems at a critical time for the sustainable future of our sector across the European Union.

Protecting media pluralism and media independence must not, inadvertently or otherwise, lead to undermining cultural diversity – one of the European Union building block.

We call on the European co-legislators to revise EMFA Article 20 to ensure continued sustainable conditions for the local audiovisual creation across Europe, which is a cornerstone of well-functioning democracies and an essential mean to remain united in diversity.

SIGNATORIES

Animation in Europe

CEPI European Audiovisual Production Association

ECSA European Composers and Songwriters Alliance

EPC European Producers Club

Euro FIA European Group of the International Federation Of Actors

EUROCINEMA

EUROCOPYA

⁴ Through the creation of a new "appellate body" without setting the rules of its functioning.

⁵ On several occasions, Commissioner for the Internal Market Thierry Breton denied having any intention to "interfere with legislation on the protection of cultural diversity" and stated that the EMFA proposal was designed as an internal market tool "to prevent discriminatory or protectionist measures by Member States that hinder investment between those same Member States".

Le Film Français, « Entretien avec Thierry Breton, commissaire européen au Marché intérieur », 20 May 2023, p. 12 :

<https://www.lefilmfrancais.com/161845/au-sommaire-du-quotidien-de-cannes-nfilm-francais-n-4>

Hearing at the European Parliament CULT Committee, 24 May 2023:

https://multimedia.europarl.europa.eu/fr/webstreaming/committee-on-culture-and-education_20230524-1500-COMMITTEE-CULT

Europa International
European Coalitions for Cultural Diversity
FERA Federation of European Screen Directors
FIAD International Federation of Film Distributors' and Publishers' Associations
FSE Federation of Screenwriters in Europe
SAA Society of Audiovisual Authors
UNI MEI UNI - Media, Entertainment and Arts
UNIC International Union of Cinemas

AECine Asociación estatal de cine (Spain)
AIPA, k.o. - Collecting society of authors, performers and producers of audiovisual works (Slovenia)
ANAC Associazione Nazionale Autori Cinematografici (Italy)
AnimFrance (France)
APA Audiovisual Producers Association (Italy)
API Association des producteurs indépendants (France)
APIT Association of Independent Television Producers from Portugal (Portugal)
ARAS Asociace režisérů, scenáristů a dramaturgů (Czech Republic)
ARF/FDS Association Suisse des Réalisateur-trices et scénaristes (Switzerland)
ARP Société civile des Auteurs Réalisateur Producteurs (France)
Association LATGA (Lithuania)
Austrian Commission for UNESCO
Coalition Française pour la diversité culturelle (France)
Coalition Suisse pour la diversité culturelle (Switzerland)
Coligação Portuguesa para a Diversidade Cultural (Portugal)
DAVP Association of audiovisual producers of Slovenia (Slovenia)
DDG Dutch Directors' Guild (Netherlands)
deAuteurs (Belgium)
DILIA (Czech Republic)
Dire Distributeurs Indépendants Réunis Européens (France)
Directors Guild of Latvia (Latvia)
DSR Directors' Guild of Slovenia (Slovenia)
EAAL - Estonian Association of Audiovisual Authors (Estonia)
F&MA Film and Music Austria (Austria)
FilmJUS (Hungary)
Film&TV- Producenterna (Sweden)
FPS Filmski Producenti Slovenije (Slovenia)
Greek Directors' Guild (Greece)
KIPA Polish Producers Alliance (Poland)

KLYS Swedish Joint Committee for Artistic and Literary Professionals (Sweden)
La GARRD Guilde des Auteurs Réalisateur de Reportages et Documentaires (France)
La SRF La Société des Réalisatrices et Réalisateur de Films (France)
LaScam* (France, Belgium)
LITA, Society of Authors (Slovakia)
MediaPro (Spain)
MFPA Macedonian Film Professional Association (North Macedonia)
Norwaco (Norway)
PROCIREP (France)
Sabam (Belgium)
SACD (France, Belgium)
SATEV Syndicat des Agences de Presse Audiovisuelles (France)
Scen & Film Swedish Union for Performing Arts and Film (Sweden)
Screen Directors Guild of Ireland (Ireland)
SKKD Slovak Coalition for Cultural Diversity (Slovakia)
Sociedade Portuguesa de Autores (Portugal)
Société Suisse des Auteurs (Switzerland)
SPECT Syndicat des Producteurs et Créateurs de Programmes Audiovisuels (France)
SPIO Spitzenorganisation der Filmwirtschaft (Germany)
SPI Screen Producers Ireland (Ireland)
SPI Syndicat des Producteurs Indépendants (France)
Suissimage (Switzerland)
UKCCD British Coalition for Cultural Diversity (United Kingdom)
UPC Union des Producteurs de Cinéma (France)
USPA Union Syndicale des Producteurs Audiovisuels (France)
VdFS (Austria)
Virke Producentforeningen (Norway)
VOFTP Vlaamse Onafhankelijke Film and Televisie Producenten (Belgium)
ZAPA (Poland)

ae cine
asociación estatal de cine

aipa
THE COLLECTING SOCIETY OF AUTHORS
PERFORMERS AND FILM PRODUCERS OF
AUDIOVISUAL WORKS OF SLOVENIA, i.o.

ANACI
Associazione Nazionale
Autori Cinematografici

ANIMATION in EUROPE

anim FRANCE

AFA | **AUDIOVISUAL PRODUCERS ASSOCIATION**
SERIES • FILM • ENTERTAINMENT • DOC • ANIMATION

API ASSOCIATION
DES PRODUCTEURS
INDÉPENDANTS

APIT
INDEPENDENT TV PRODUCERS
ASSOCIATION FROM PORTUGAL

ARAS

ARFDS
Verband Filmregie und Drehbuch Schweiz
Association suisse des réalisateurs.trices et scénaristes
Associazione svizzera regia e sceneggiatura film
Associaziun svizra reschia e scenari da film

les cinéastes de
LARP Association of Audiovisual Producers Slovenia

CEPI
EUROPEAN AUDIOVISUAL PRODUCTION

COALITION FRANÇAISE POUR LA DIVERSITÉ CULTURELLE

DDG deAuteurs,
DUTCH DIRECTORS GUILD
voor auteurs, door auteurs

Dilia

DIRE
DISTRIBUTEURS
INDÉPENDANTS
RÉUNIS EUROPÉENS

DSR DRUŠTVO SLOVENSkih REŽISERJEV IN REŽISERK
DIRECTORS GUILD OF SLOVENIA

EAAL
EESTI AUDIOVISAALAUORITE LIIT

ecsa european composer & songwriter alliance

EURO FIA
EUROPEAN GROUP OF THE
INTERNATIONAL FEDERATION OF ACTORS

EURO CINEMA
Association de producteurs
de cinéma et de télévision

EUROCOPYA
European Federation of Joint Management Societies
of Producers for Private Audiovisual Copying

EUROPA INTERNATIONAL

European Coalitions
for Cultural Diversity

EEA
ΕΤΑΙΡΕΙΑ
ΕΛΛΗΝΩΝ
ΕΚΗΘΟΕΤΩΝ

F & M A

FERA Federation of European Screen Directors
Fédération Européenne des Réalisateurs de l'Audiovisuel

FIAD

FILM&TV PRODUCENTERNA
SWEDISH FILM&TV PRODUCERS ASSOCIATION

filmjus

DRUŠTVO
FPS
FILMSKI
PRODUCENTI
SLOVENIJE

fse FEDERATION OF SCREENWRITERS IN EUROPE

GARRD

GUILDE DES AUTEURS-RÉALISATEURS
DE REPORTAGES & DE DOCUMENTAIRES

KIPAA
POLISH PRODUCERS ALLIANCE

KLYS

la | s | r | f
société des réalisatrices
et réalisateurs de films

LaScam* Latga

FF

lita

SOCIETY OF AUTHORS

LATVIJAS KINOREŽISORU ĢILDE

Macedonian Film Professional Association

MEDIAPRO

Norwaco

PROČIREP
Société des Producteurs
de Cinéma et de Télévision

SAA sabam
Society of Audiovisual Authors

SACD

S@TEV
LE SYNDICAT DES AGENCES
DE PRESSE AUDIOVISUELLES

Scen & Film

SCREEN DIRECTORS GUILD OF IRELAND

Screen Producers Ireland

SKKD

SPAUTORES
SOCIEDADE PORTUGUESA DE AUTORES

SPECT
SYNDICAT DES PRODUCTEURS
CRÉATEURS DE PROGRAMMES AUDIOVISUELS

SPI
Le Syndicat
des Producteurs
Indépendants

SPIO Spitzenorganisation
der Filmwirtschaft

SSA société suisse des auteurs

suissimage

The European Producers Club

UK Coalition for Cultural Diversity

UNIC

UNION INTERNATIONALE DES CINÉMAS
INTERNATIONAL UNION OF CINEMAS

UAI global union
media,
entertainment
& arts

UPC Union
des producteurs
de cinéma

USPA Union
Syndicale
de la
Production
Audiovisuelle

VdFS Collecting
Society
of Audiovisual
Authors

VIRKE

VOFTP
VLAAMSE ONAFHANKELIJKE
FILM & TELEVISIE PRODUCENTEN

ZAPA