



The list of criteria developed in accordance with Article 17.4 EMFA

Working Group 6 – Workstream 2

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Executive summary

- The criteria aim to establish a common analytical tool for assessing third country media presence and the risk to public security, with a view to ensuring greater consistency, transparency and legal predictability of NRAs' decisions across the Union
- The criteria should support national actions, where an NRA or another body consider it appropriate, notably within the framework of its investigation and risk assessment, when considering taking relevant national measures. The criteria are also intended to assist the Board in coordinating the application of national measures at the request of NRAs from at least two Member States under Article 17.2 of the EMFA.
- Relevant measures may be considered when a non-EU media service provider's activity prejudices public security or poses a serious or grave risk to public security.
- The prejudice or the risk must be real, serious and present or foreseeable, determined in accordance with the legal standards.
- The risk should be assessed in reference to the following categories:
 - the nature of content disseminated or made available to the public;
 - the circumstances of operation of the media service provider;
 - (when relevant) the links of the media service provider with a third country. Risks may be particularly acute where media services are directly or indirectly funded or controlled by third-country public authorities or affiliated structures.
- The risk may manifest itself in various forms and should be assessed contextually, based on a combination of editorial, behavioural, and structural indicators. National security is the sole responsibility of each Member State. There may be national expert authorities assessing security risks.
- Article 17 requires assessing the existence of a "prejudice to public security", or a "serious and grave risk of prejudice to public security". NRAs might rely on and refer to national expert authorities having drawn conclusions on this and on what grounds. The illustrative list of

circumstances that may constitute a serious and grave risk of prejudice to public security could include *inter alia*:

- Incitement to terrorism (dissemination of the terrorist content as defined in Articles 2.3 and 2.7 of the Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online), act of violence, military conflict or war,
 - Foreign-sponsored (inter alia by governments or private entities from outside the Union) disinformation campaign or information manipulation in the context of electoral processes, other democratic processes, or civic discourse including those campaigns using deepfakes and other forms of AI-generated contents,
 - Systemic foreign-sponsored propaganda or consistent foreign mass-scale interference and influence campaigns concerning either the Union or Member States strategic policy issues including, but not limited to: security policy, enlargement, the protection of minority groups, migration or neighbouring policy, proposed legislative changes in the Union or national law, or national referenda,
 - Systemic mass-scale foreign-sponsored propaganda spreading hatred or undermining of rules of public international law such as the principle of sovereign equality of States, the principle of equal rights and self-determination of peoples, the principle of peaceful cooperation and fundamental rights enshrined in the Charter of Fundamental Rights of the European Union and the Convention for the Protection of Human Rights and Fundamental Freedoms,
 - Algorithmic or AI-driven amplification of content that could prejudice public security,
 - Crisis-related destabilisation, particularly during military conflict, war, pandemic, natural disaster or civil unrest.
- The risk of prejudice to public security can require an assessment of the extent of third-country control over a media service provider. It is recalled in recital 13 of the EMFA that “control can result from rights, contracts or any other means which confer the possibility of exercising a decisive influence on an entity”.
 - Indicators of control that could be exercised by third countries over media services include:
 - Ownership structure: links to third country governments or politically affiliated entities
 - Executive control and management by individuals or entities linked to third country government or politically exposed persons as defined in the Article 2, point 34 of Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.
- Moreover, indications that a closer examination is warranted by an NRA could include:
- Financing from third countries, to the extent that there are reasonable grounds to determine that it may affect editorial independence,
 - Systematic editorial line aligned with third-country interests or systematic promotion of third State-sponsored narratives,
 - Lack of adherence to EU-recognised co- or self-regulatory mechanisms governing editorial standards,

- Media service's content conveying on regular basis messages questioning the principles of public international law, including the principle of sovereign equality of the States, international humanitarian law or human rights' law.

- To determine whether a media service either directly or indirectly reaches audiences in the Union a broad scope of factual circumstances can be taken into account.
- To determine whether a media service targets audiences in the Union, regulators may take into account factors such as:
 - the use of a Member State's official language and languages widely spoken by the population of a Member State,
 - a thematic focus on national or Union -related current affairs,
 - commercial communications tailored to local consumers, or
 - the use of digital distribution channels optimised for Member States' audiences (including through geo-targeting or local platform presence), notably within FAST channels and VSP environment.

1. Introduction

Recent geopolitical and technological developments have highlighted the growing threat posed by foreign information manipulation and interference. Disinformation campaigns, often orchestrated or amplified by third-country State-actors, increasingly exploit media services to manipulate public opinion, interfere with democratic discourse, spread on a mass scale disinformation or hateful narratives against, for instance, national groups, *raison d'État* or democratic order or values with an aim to impair and weaken public security. Such content might include incitement to terrorism or criminal attacks on public infrastructure facilities, it may influence the outcome of elections, or other specific social issue with the objective to undermine democratic order, erode trust in State institutions or generate a diffuse sense of insecurity across society. Acknowledging the existence of distinct characteristics of the national frameworks, and without prejudice to Article 3 of the Directive 2010/13/EU, the European Board for Media Services (Media Board) is encouraging a common approach to the application of Article 17, in line with the EMFA's objectives and in accordance with Union law.

Insufficient coordination on the safeguards against foreign information manipulation and interference in the media sector is a challenge and the set of criteria should be an essential tool for NRAs and the Media Board, which would help them to assess and address public security-related risks posed by certain media services originating from outside the Union or provided by media service providers established outside the Union.

One of the tasks of the Media Board is to prepare a list of the criteria for the use of national regulatory authorities or bodies concerned (NRAs), as set out in Article 17.4 of the European Media Freedom Act (EMFA).

NRAs shall do their utmost to take these criteria into account when taking measures related to the dissemination of or access to media services originating from outside the Union or provided

by media service providers established outside the Union that, irrespective of their means of distribution or access, target or reach audiences in the Union and when such media services prejudice or present a serious and grave risk of prejudice to public security.

The criteria are intended to support NRAs when they exercise their regulatory powers protecting the internal media market from rogue media service providers, referred to in recitals 44 and 49 in the context of Article 17 of the EMFA, supporting a more coherent and risk-sensitive approach across the Union. The criteria will empower the NRAs with a practical guiding tool for the consistent application of the measures under Article 17.1 of the EMFA, assisting the NRAs in navigating complex assessments that may require cooperation across multiple regulatory actors.

As referred to in recital 48 of the EMFA, the objective of Article 17 is notably to allow for a more coordinated approach by the NRAs concerned in relation to restrictions on the distribution of such media services without prejudice to the competence of Member States or their NRAs in accordance with the Union law.

The criteria will also support the Media Board in fulfilling its role of issuing opinions on measures referred to in Article 17.2 of the EMFA and consequently contributing to strengthening EU resilience to external risks and safeguarding the integrity of the European information space.

On the basis of Article 17.4. the Media Board consulted the European Commission on the list of criteria for NRAs, included below at sections 3.1. and 3.2.

2. Subject-matter and territorial scope

2.1 Implications of the broad definition of the “media service” notion

- The EMFA introduces a broad and technologically neutral notion of “media service” encompassing *inter alia*:
 - linear or on-demand (VOD) audiovisual media services;
regardless of the technical form of service provision or distribution, including VOD services made available on video sharing platforms (VSP);
 - linear or on demand audio media services; including radio broadcasting or audio podcasts;
 - press publications;provided that these services meet the core criteria of editorial responsibility and the purpose to inform, educate, or entertain the public.
- The technical form of provision, distribution or access to a media service is irrelevant; all technical means of dissemination of or access to media services are relevant.
- The legal form of service providers is irrelevant; the services within scope of Article 17 of the EMFA could be provided by a wide spectrum of professional media actors, including freelancers or influencers fulfilling the qualification criteria for media service provider and

the requirement that their service constitutes a form of economic activity (service as defined by Articles 56 and 57 of the TFEU).¹

This broad scope has implications for the application of the criteria referred to in Article 17:

- The scope of coordination of measures concerning media services from outside the Union covered by the Article is not limited to the specific competences of only one type of regulatory body. Noticeably, it reflects the evolving nature of the media landscape and the variety of actors involved in shaping public discourse across the Union.
- It is acknowledged that the division of responsibilities between authorities differs across Member States and that, in some systems, certain types of media services may not fall within the remit of audiovisual media regulators. Nonetheless, Article 17 of the EMFA requires establishing the set of criteria “for the use of national regulatory authorities or bodies” regardless of existing enforcement mandates of the Media Board Members.
- The fact that certain services may fall under different national administrative structures does not preclude a common approach. The criteria are designed as a non-binding, but operationally useful tool.
- Therefore, the existence of institutional diversity across Member States does not affect the relevance or applicability of the criteria. On the contrary, it makes them even more relevant to enhance the regulatory consistency and to offer a point of reference for cooperation between media authorities, in due and effective coordination with other relevant national bodies.

2.2 Distinguishing between “media services provided by media service providers established outside of the Union” and “media services originating from outside of the Union”

In order to effectively address the issues relating to media services that prejudice or present a serious and grave risk of prejudice to public security, Article 17 of the EMFA covers both media service providers established outside of the Union in the meaning of Article 2 of the AVMSD and when relevant other EU legal instrument, and media service providers established in one of the Member States, but considered in fact being under the control of a third country.

Article 17 of the EMFA refers to two distinct notions:

- “media services provided by media service providers established outside of the Union”;
 - that refers to services provided by media service providers established in third countries in the meaning of Article 2 of the AVMSD or, where applicable, other relevant EU legal instrument, and
- “media services originating from outside of the Union”;

¹ See: Recital 9 of the EMFA

- that refers to media services already under the jurisdiction of a Member State, but considered to pose a serious and grave risk of prejudice to public security, notably if it is deemed to be under control of a third country; either foreign government or politically affiliated entities linked to a third country authorities.

The latter category might refer to variety of situations; the technical form (linear, on demand, audiovisual, audio or press) and means of service distribution (inter alia extra-EU satellite and uplinks regarding satellite broadcasting or retransmission, online distribution, websites, VSP and other online platforms) are irrelevant.

When it comes to third country satellite broadcasting, which was, in the past, probably the most prevalent way of reaching EU audiences, the Member State's jurisdiction might be established based on the uplink location or the satellite capacity belonging to one of the Member States. However, nowadays online distribution is an equally popular way of distribution of such media services and it often takes place through online platforms. In both cases, establishing Member State's jurisdiction is not always straightforward and immediate.

With regard to audiovisual media services, it has to be noted that in some cases establishing the relevant jurisdiction criteria, based solely on the supplementary criteria set in Article 2.4 or Article 2.5 of the AVMSD might also be challenging, for instance due to the presence of a media service provider in several Member States. Similar problems might arise in terms of establishing relevant jurisdiction with regard to other media services distributed online, not included in the scope of the AVMSD.

The two distinct notions provided in Article 17 of the EMFA have an impact on the subsequent procedural steps to be taken by the competent NRAs with regard to audiovisual media services. While with regard to the first category of services the legal basis for relevant measures related to the dissemination or access to media service in question lies entirely in the national law (because this issue is not covered by the AVMSD, Article 2 AVMSD jurisdictional criteria), in case of audiovisual media services established in the Member State a restriction of access to services is limited to conditions provided in the AVMSD and in accordance to the Directive's procedure (see Articles 3.2, 3.3, 3.5 and 6.1).

With regard to other media service providers than audiovisual media services under the jurisdiction of the Member State general principles of EU Law are applicable and, when relevant other EU legal instrument, for instance the Directive on electronic commerce.²

2.3. Media services that “target or reach audiences in the Union”

- EMFA specifies that a given service should either “target” or “reach” audiences in the Union. The determining factor should not be the provider's declared intent, but the actual

² Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market

exposure of the service to audience in at least one Member State i.e. de facto “reaching” audiences in the Union or “targeting” audiences in the Union.

- It is understood that it is enough that a given media service is accessible on the territory, or part of it, of at least one Member State³. There is no requirement that a given service should be specifically targeted or tailored towards audience of a given Member State.
- The expression “reaching” audiences in the EU implies a broad, inclusive understanding of that term and notably it includes accessing audiences via online platforms either directly or indirectly.

Therefore, even if a media service is not accessible on a given territory directly but nevertheless is reaching indirectly a part of the audience of a Member State e.g. through spill-over transmission in the neighbouring State, or content of a given service is reaching part of the audience of a Member State via an online platform, measures referred to in Article 17 of the EMFA might be taken in such cases as constituting a serious and grave risk to public security.

- Particular attention should be given to audiovisual content distributed through hybrid or algorithmically optimised formats, such as free ad-supported streaming television (FAST) channels or video sharing platforms (VSP), which may ensure broad access to audiences in the Union even, without direct targeting.
- With regard to term “targeting” audience in the EU different factual elements may indicate such an action. These may include *inter alia*:
 - the use of a Member State’s official language and languages spoken by significant part of the population of a Member State,
 - a thematic focus on national or Union -related current affairs,
 - commercial communications tailored to local consumers, or
 - the use of digital distribution channels optimised for EU audiences (e.g. through geo-targeting or local platform presence).

Given the increasing use of non-traditional distribution models, including FAST and VSP ecosystems, NRAs or other relevant bodies are encouraged to consider content of media services distributed through such formats when assessing exposure to foreign influence or risks to public security.

2.4. Territorial scope of list’s application

- In accordance with Recital 48 of the EMFA, the criteria should support national actions, where an NRA or another body consider it appropriate, notably within framework of

³ However, it is acknowledged that under the Article 17 of the EMFA the NRAs from at least two Member States must request coordination of measures, for the Media Board to coordinate relevant measures.

conducted investigation and risk assessment, when considering taking relevant national measures.

- The criteria under Article 17.4 are also intended to assist the Board in coordinating the application of national measures at the request of NRAs from at least two Member States under Article 17.2 of the EMFA.
- The set of criteria should provide a practical tool for assessing the activities of respective media service providers, their compliance with the values of democracy, rule of law as envisaged under Article 2 of TEU, the EU framework governing the free and independent media and the general principles of the EU internal market.
- Overall, these criteria aim to establish a common analytical tool for assessing third-country media presence and the risk to public security, with a view to ensuring greater consistency, transparency and legal predictability of NRAs' decisions across the Union.

3. Notions “prejudice to public security” and “present a serious and grave risk of prejudice to public security”

The restriction of access to media services constitutes a measure of last resort. It should be subject to an objective and impartial legal procedure and be duly justified and necessary. The measures referred to in Article 17 should be adequate and proportionate, as well as triggered only in case of either “prejudice to public security” or presence of “a serious and grave risk of prejudice to public security”.

The effective application of Article 17 would further benefit from elaborating on understanding of the legal concepts it relies upon, in particular the terms “prejudice to public security” and “serious and grave risk of prejudice to public security”.

“Prejudice to public security” or “serious and grave risk of prejudice to public security” of one Member State could be also a prejudice or risk of prejudice to public security at the EU level.

Article 3 of the AVMSD sets out conditions for the provisional derogation from the country of origin principle and refers to “public security, including the safeguarding of national security and defence”. The Union’s jurisprudence offers guidance in that respect. It refers to a broad understanding of “public security” and links this notion with the relevant EU legal instruments; their context and purpose, *inter alia* pointing to the responsibility of the State to adequately assess a threat to public security in a given context “distinguished, by their nature and particular seriousness, from the general risk that tensions or disturbances, even of a serious nature, affecting public security will arise”⁴, as well as consistently underlying the importance of the proportionality principle.

As underlined in the jurisprudence “Article 4(2) TEU provides that national security remains the sole responsibility of each Member State. That responsibility corresponds to the primary interest

⁴ see judgment in the case C-511/18, point 137

in protecting the essential functions of the State and the fundamental interests of society and encompasses the prevention and punishment of activities capable of seriously destabilising the fundamental constitutional, political, economic or social structures of a country and, in particular, of directly threatening society, the population or the State itself, such as terrorist activities. Subject to meeting the other requirements laid down in Article 52(1) of the Charter, the objective of safeguarding national security is therefore capable of justifying measures entailing more serious interferences with fundamental rights(...).”⁵

There should be also “sufficiently solid grounds for considering that the Member State concerned is confronted with a serious threat (...) to national security which is shown to be genuine and present or foreseeable”,⁶ and “a real, immediate and sufficiently serious threat to (...) public or national security”⁷.

The aforementioned terms are not uniformly defined in Members States’ national law or EU law and their interpretation often depends on contextual, case-specific assessments rooted in domestic legal tradition and legal culture.

In view of this, it is essential to identify an indicative set of factors to take into consideration in NRAs’ assessments of similar cases. The following sections present an open and non-exhaustive list of risk factors and circumstances, taking into account data collected from NRAs, which considered either separately or collectively, may assist competent NRAs or bodies in determining whether a media service from outside the Union presents a risk to public security.

The list of criteria developed in accordance with Article 17.4 EMFA⁸

3.1. Threats to public security

Article 17 requires assessing the existence of a “prejudice to public security”, or a “serious and grave risk of prejudice to public security”. NRAs might rely on and refer to national expert authorities having drawn conclusions on this and on what grounds. The illustrative list of circumstances that may constitute a serious and grave risk of prejudice to public security could include *inter alia*:

- Incitement to terrorism (dissemination of the terrorist content as defined in Articles 2.3 and 2.7 of the TCO Regulation⁹), act of violence, military conflict or war,
- Foreign-sponsored (inter alia by governments or private entities from outside the Union)_disinformation campaign or information manipulation in the context of electoral

⁵ *ibidem* points 135-136

⁶ *ibidem*, point 137

⁷ see judgement in case C-528/21, point 67

⁸ The list of criteria is without prejudice to rules governing application of direct or indirect EU sanctions, established in other EU legal acts, such as the Council Regulation (EU) 2022/2474 of 16 December 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine.

⁹ See Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online

processes, other democratic processes, or civic discourse including those campaigns using deepfakes and other forms of AI-generated contents,

- Systemic foreign -sponsored propaganda or consistent foreign mass-scale interference and influence campaigns concerning either the Union or Member States strategic policy issues including, but not limited to: security policy, enlargement, the protection of minority groups, migration or neighbouring policy, proposed legislative changes in the Union or national law, or national referenda,
- Systemic mass-scale foreign -sponsored propaganda spreading hatred or undermining of rules of public international law such as the principle of sovereign equality of States, the principle of equal rights and self-determination of peoples, the principle of peaceful cooperation¹⁰ and fundamental rights enshrined in the Charter of Fundamental Rights of the European Union and the Convention for the Protection of Human Rights and Fundamental Freedoms,
- Algorithmic or AI-driven amplification of content that could prejudice public security,
- Crisis-related destabilisation, particularly during military conflict, war, pandemic, natural disaster or civil unrest.

Given the increasing use of non-traditional distribution models, including ecosystems of free ad-supported streaming television (FAST), as well as video sharing platforms (VSPs) constituting ubiquitous distribution platform for a number of media services, NRAs or other relevant bodies are encouraged to pay special attention to content of media services distributed through such formats when assessing exposure to foreign influence and risk to public security referred to, *inter alia*, in recitals in 47 – 49 of the EMFA.

3.2. Indicators of the control that could be exercised by third countries over media services

The risk of prejudice to public security can require an assessment of the extent of third-country control over a media service provider. It is recalled in recital 13 of the EMFA that “control can result from rights, contracts or any other means which confer the possibility of exercising a decisive influence on an entity”.

Indicators of control that could be exercised by third countries over media services include:

- Ownership structure: links to third country governments or politically affiliated entities,
- Executive control and management by individuals or entities linked to third country government or politically exposed persons as defined in the Article 2, point 34 of Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

¹⁰ See Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, UN General Assembly resolution 2625(XXV) of 24.10/1970.

Moreover, indications that a closer examination is warranted by an NRA could include:

- Financing from third countries, to the extent that there are reasonable grounds to determine that it may affect editorial independence,
- Systematic editorial line aligned with third-country interests or systematic promotion of third country-sponsored narratives,
- Lack of adherence to EU-recognised co- or self-regulatory mechanisms governing editorial standards,
- Media service's content conveying on regular basis messages questioning the principles of public international law, including the principle of sovereign equality of the States, international humanitarian law or human rights' law.

4. Substantive conditions for taking national measures

The criteria under Article 17.4 of the EMFA serve to support NRAs and bodies in assessing the risk to public security and where necessary taking proportionate regulatory response to address threats to public security. The following elements should be considered in this process.

4.1 Justification of the Findings

- Before any restrictive measure is undertaken, a case-specific assessment should be carried out.
- This assessment should be based on verifiable evidence; preferably: detailed analysis, either internal or based on findings of another competent State body or agency, reports coming from academia or non-governmental organisations specialised in detection of disinformation or in online inauthentic behaviour identification, as well as fact-checking organisations), not on generalised concerns or abstract risks.
- The evidence in question should include analysis of the disseminated content, patterns of media service providers' activity including frequency or reoccurrence of infringements, as well as institutional affiliations (e.g. regarding ownership structure, financing, or governance links) that could imply a risk of third-country influence.
- NRAs or other competent bodies may assess whether the service demonstrates characteristics such as systematic promotion of foreign state-aligned narratives, coordinated disinformation, or other forms of hostile interference in public discourse.
- It should be noted that such a comprehensive and multidimensional evidence-based analysis supports both transparency and robustness of national decision-making, regardless of which body is formally designated to act.

4.2 Proportionality test of the regulatory response

- The relevant measures under Article 17 should be proportionate to the identified risk.

- The relevant measures should be tailored, necessary and not excessive in light of the severity, scope and context of the threat.
- Elements such as the seriousness and recurrence of violations, the intent and intensity of disinformation campaigns, or the scale of potential public harm should be included in the proportionality analysis.
- National systems often combine qualitative criteria (e.g. related to the type of content or influence) with quantitative indicators (e.g. related to the frequency, repetition of harm), especially when intrusive or urgent measures are under consideration.
- Gradual approach, when possible, should be applied. This could follow a gradation starting from formal notices, dialogue, monitoring and resorting to restrictions only when less severe tools proved ineffective.

4.3 Providing Adequate Procedural Safeguards

Respect for fundamental rights, including media freedom and pluralism and legal certainty, requires that application of measures referred to in Article 17 should be accompanied with clear procedural safeguards, reinforcing the legitimacy, accountability and fairness of the process.

While the nature of the risks addressed may at times justify urgent responses, all national measures must remain adequate and proportionate, clearly reasoned, and be subject to judicial review. This includes the possibility for media service providers to respond to and challenge any decision taken.

National procedures should ensure that, at a minimum:

- Media service providers are informed in a timely manner about the measure, the grounds for it and justification;
- Media service providers are given the opportunity to respond, except where urgent action is necessary;
- Media service providers have access to relevant evidence and to legal remedies, including judicial or administrative review.

5. Final remarks

The implementation of Article 17 of the EMFA presents an important but sensitive regulatory task. While the strategic concern - to address the threat to public security posed by certain third-country media services — is widely acknowledged, the national institutional readiness, certain aspects of the legal frameworks and regulatory practices remain varied across Member States.

In this context, it is proposed to:

- Establish a regular review cycle

To maintain the relevance and effectiveness of the criteria, a structured review should be regularly undertaken. This would allow for reflection on practical experiences, the evolving

risks, as well as new market and technology developments, and the adjustment of guidance based on emerging regulatory insights.

- Promote structured cooperation and exchange of good practice

Given the diversity of institutional models across Member States, regular information exchange among NRAs is important including regular national updates. Facilitating a dialogue, consultation, discussion on risk assessments, promotion of best practices and early identification of common challenges should be encouraged. The Media Board could consider establishing a dedicated exchange platform/forum to facilitate rapid and seamless consultation in crisis situations.

- Continuous monitoring of the risks to the EU information space

In order to ensure full effectiveness of the coordination mechanism under Article 17, the Board should actively contribute to the work under the monitoring exercise established under Article 26 of the EMFA, which would be crucial for detecting risks to the Union's information space.