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Protected Party, Service Provider, Gatekeeper: The Role of Legacy Media under the Digital Services Act and the European Media Freedom Act

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Main conclusions of the opinion

- i. Legacy media have been built into the European Union (EU) system of content moderation in four mutually reinforcing roles: protected beneficiary (Article 18 of the European Media Freedom Act, EMFA), platform-financed provider of fact-checking services (the Code of Conduct on Disinformation), potential trusted flagger (Article 22 of the Digital Services Act, DSA), and participant in the review of other entities' access to protection (Commission Guidelines C/2026/901). The concentration, in a single sector, of the roles of protected party, paid service provider and gatekeeper is itself the primary structural threat identified in this opinion. It converts rules nominally addressed to platforms into an instrument consolidating the market and discursive position of incumbent media.
- ii. The media privilege of Article 18 of the EMFA (prior statement of reasons with a 24-hour reply window, priority handling of complaints, dialogue, mediation and out-of-court dispute settlement) is conditioned upon a declaration of seven elements, of which point (d) providing regulatory oversight or sectoral self-regulation 'widely recognised by and accepted in' the media sector, operates in practice as a barrier to entry controlled by incumbent structures. The resulting threat is a two-tier regime of expression: a statement identical in content receives different legal guarantees depending on the institutional affiliation of its author, which is difficult to reconcile with Articles 11 and 20 of the Charter of Fundamental Rights of the European Union (freedom of expression; equality before the law).
- iii. The verification of media declarations has been entrusted to a chain in which every node other than the platform itself is occupied either by a state organ or by an entity structurally dependent on Commission funding: platforms must consult national regulatory authorities

¹ Given the timeliness of the debate and the need to account for the rapid evolution of the source texts, AI writing assistance (Claude by Anthropic, model Fable 5) was used for source identification and citation formatting. In the editorial phase, the same tool was used for grammar checking and sentence restructuring. All identified sources and citations were independently verified by the author against primary sources. After using AI tools, the author reviewed and edited the text as needed and takes full responsibility for the publication.



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in case of doubt, the European Board for Media Services co-selects 'the most relevant organisations', and Guidelines C/2026/901 (Section 7, points 56–62) expressly designate fact-checking networks, the European Digital Media Observatory (EDMO) and the European Fact-Checking Standards Network (EFCSN), as reviewers and flaggers of declarations (points 45–46). The threat lies in the reproduction, in co-regulatory form, of a licensing logic for the recognition of 'genuine' media, a technique which European free speech doctrine has traditionally treated with suspicion.

- iv. The fact-checking networks named by the Commission are predominantly financed by the Commission itself, EDMO above all, while the EFCSN was created within a Commission-funded pilot project and is the beneficiary of a EUR 5 million EU grant. The EFCSN was co-founded by a consortium including the press agency Agence France-Presse (AFP) and counts the fact-checking desks of AFP and Deutsche Presse-Agentur (dpa) among its verified members; both agencies also participate in EDMO's national hubs. The resulting threat is a structural conflict of interest unaccompanied by statutory safeguards: entities economically dependent on the supervising authority, and competing on the information market with the declarants, are formally inscribed into the process by which access to the media privilege is reviewed. Their function, on the face of the Guidelines, is to flag and to initiate rather than to decide, while the decision to accept, reject or invalidate a declaration remains with the platform, which must in case of doubt consult the competent national authority or self-regulatory mechanism. Nevertheless, placing competitors at the flagging node of a verification chain otherwise occupied by public or Commission-funded bodies is itself a defect of institutional design.
- v. The protection of Article 18(4) of the EMFA (media privilege) is disapplied where platforms act in compliance with Articles 28 (online protection of minors), 34 and 35 of the DSA, including the vaguely defined systemic-risk regime of Articles 34–35 ('negative effects on civic discourse and electoral processes, and public security')² enforced by the Commission under the threat of fines of up to 6% of worldwide turnover. The privilege therefore evaporates precisely at the point where the political interest in moderation is greatest, and

² Vague indications to mitigate risk under Articles 34-35: "dissemination of illegal content", "actual or foreseeable negative effects for the exercise of fundamental rights", "actual or foreseeable negative effects on civic discourse and electoral processes, and public security", "actual or foreseeable negative effects in relation to gender-based violence, the protection of public health and minors and serious negative consequences to the person's physical and mental well-being".



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the documented practice of enforcement by public letter, from which the Commission subsequently distanced itself, confirms that this channel can be personalised and politicised.

- vi. The trusted flagger channel (Article 22 of the DSA) requires independence from platforms only, and not from public authorities (recital 61 expressly admits, for terrorist content, police internet referral units and Europol). The status is awarded and revoked by an organ of the Member State. It thereby offers governments and government-linked entities a potentially influential priority notice channel that is distinct from the formal order regime under Article 9 DSA (a stated legal basis, territorial limitation, information on redress). Although online platforms retain the legal assessment and final decision, the trusted-flagger mechanism may still alter the practical speed and salience of content-removal workflows. The Commission's draft guidelines of 29 May 2026 seek to narrow this route, barring order-issuing authorities from commingling those powers with the status, and requiring impartiality and freedom from political influence, but they do not exclude State-linked flaggers as such.
- vii. The opinion records the arguments of the defenders of the system. Overall, however, the mechanism creates realistic, primarily indirect, vectors of political influence over the media, because the European Commission combines the functions of initiator and author of the 2021 Guidance that shaped the Code of Conduct, funder of the fact-checking networks, author of the guidelines and supervisory authority over the platforms, while the available remedies are predominantly ex post and depend on the initiative of the affected party. The practical window for counteraction is narrow: the targeted consultation on the draft guidelines on Article 22 of the DSA is open until 10 July 2026 (initially until 26 June 2026), and the first practice of declaration verification in 2026–2027 will set the standards.

Subject matter of the opinion

1. This legal opinion examines the role that established media actors play in the EU framework of online content moderation, as shaped by Regulation (EU) 2022/2065 (the Digital Services Act, DSA)³, Regulation (EU) 2024/1083 (the European Media Freedom Act,

³Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), Official Journal of the European Union (OJ) L 277, 27.10.2022, p. 1, ELI: <http://data.europa.eu/eli/reg/2022/2065/oj>; hereinafter: 'the DSA', accessed: 11 June 2026.



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EMFA)⁴, and the Code of Conduct on Disinformation integrated into the DSA framework on the basis of Article 45 of the DSA⁵, and evaluates that role from the perspective of freedom of expression (Article 11 of the Charter of Fundamental Rights of the European Union, hereinafter 'the Charter'; Article 10 of the European Convention on Human Rights; Article 54 of the Constitution of the Republic of Poland) and equality before the law (Article 20 of the Charter). The opinion takes into account Commission Guidelines C/2026/901 of February 2026⁶.

2. The opinion takes into account and reflects the legal and factual situation as at 11 June 2026.

Origins: the dispute over the 'media exemption' in the work on the Digital Services Act

3. The current position of legacy media is the result of a legislative dispute that began in the course of the work on the DSA. Broadcasters (including the European Broadcasting Union, EBU) and publishers lobbied for a so-called media exemption to provide for the exclusion of editorial content from platform moderation⁷. This direction was supported by the European Parliament's Committee on Culture and Education (CULT), whose opinion stated that commercial online platforms should not be allowed to exercise a supervisory function over legally distributed online content originating from service providers who exercise editorial responsibility⁸.

⁴Regulation (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), OJ L, 2024/1083, 17.4.2024, ELI: <http://data.europa.eu/eli/reg/2024/1083/oj>; hereinafter: 'the EMFA', accessed: 11 June 2026. Pursuant to Article 29(2) of the EMFA, the Regulation — including Article 18 — applies, as a rule, from 8 August 2025.

⁵Code of Conduct on Disinformation; its integration into the DSA framework on the basis of Article 45 of the DSA was endorsed by the European Commission and the European Board for Digital Services on 13 February 2025, with effect from 1 July 2025, <https://digital-strategy.ec.europa.eu/en/library/code-conduct-disinformation>, accessed: 11 June 2026.

⁶Communication from the Commission — Commission guidelines on the implementation of the declaration functionality for media service providers pursuant to Article 18(1) of Regulation (EU) 2024/1083 (European Media Freedom Act), C/2026/901, OJ C, 11.2.2026, CELEX: 52026XC00901 (published by the Commission on 6 February 2026); hereinafter: 'Guidelines C/2026/901'; European Legislation Identifier (ELI): <https://eur-lex.europa.eu/eli/C/2026/901/oj/eng>, accessed: 11 June 2026.

⁷The efforts of public service broadcasters and the European Broadcasting Union (EBU) to protect editorial content in the DSA are reported in: Public Media Alliance, The Digital Services Act (DSA): could it impact public media?, 28.01.2022 (statements of D. Ernotte Cunci and W. Gekiere), <https://www.publicmediaalliance.org/the-digital-services-act-dsa-could-it-impact-public-media/>, accessed: 11 June 2026.

⁸Opinion of the European Parliament's Committee on Culture and Education (CULT) on the draft DSA (2021; rapporteur P. Kammerevert; the Committee was chaired by S. Verheyen, later EMFA rapporteur — see footnote 14);



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4. The exemption was opposed by a coalition of fact-checking and research organisations, which argued in an open letter that it would create a loophole enabling entities masquerading as media to disseminate disinformation immune from removal⁹; this position was supported by civil society campaigns¹⁰. In the plenary vote of 20 January 2022, the European Parliament rejected Amendment 511, which would have introduced a de facto exemption¹¹. All that remained in the adopted text of the DSA was Article 14(4), which requires platforms to apply their contractual terms with due regard to, inter alia, the freedom and pluralism of the media¹².
5. The dispute did not, however, end in defeat for the media sector: the proposal resurfaced in the draft EMFA as Article 17¹³, and, following the parliamentary process, entered into force as Article 18 of the adopted text. The amendment seeking the deletion of the provision (Amendment 967, tabled by MEPs M. Semedo and A. J. Donáth) did not obtain a majority; the rapporteur S. Verheyen (of the European People's Party, EPP) consistently defended the construction of the privilege¹⁴.

CULT-AD-693943, https://www.europarl.europa.eu/doceo/document/CULT-AD-693943_EN.pdf; the passage is quoted verbatim on the page of the EDMO workshop 'Media exemption in the DSA', <https://edmo.eu/event/edmo-workshop-media-exemption-in-the-dsa-protecting-editorial-independence-or-a-loophole-for-disinformation/>, accessed: 11 June 2026; on the media-exemption debate see also DSA Observatory, The DSA and the Implications for News Media and Journalistic Content (Part 1), 29.09.2022, <https://dsa-observatory.eu/2022/09/29/digital-services-act-implications-for-news-media-journalistic-content-part-1/>; see also the programme of the European Digital Media Observatory (EDMO) workshop 'Media exemption in the DSA' (November 2021), https://edmo.eu/wp-content/uploads/2021/11/Official-programme_EDMOworkshop_Media-exemption-in-the-DSA.pdf, accessed: 11 June 2026.

⁹EU DisinfoLab, Fact-checkers and experts call on MEPs to reject a media exemption in the DSA (open letter of fact-checking and research organisations), <https://www.disinfo.eu/advocacy/fact-checkers-and-experts-call-on-meps-to-reject-a-media-exemption-in-the-dsa/>, accessed: 11 June 2026.

¹⁰People vs. Big Tech, MEPs Must Reject "Media Exemption" Loopholes in the DSA, <https://peoplevsbig.tech/meps-must-reject-media-exemption-loopholes-in-the-dsa/>, accessed: 11 June 2026.

¹¹Amendment 511 to the draft DSA, tabled on 15 January 2022 by a group of 46 Members of the European Parliament (MEPs), rejected in the plenary vote of the European Parliament on 20 January 2022 (official voting records: minutes of the sitting of 20.01.2022, P9_PV(2022)01-20(RCV), https://www.europarl.europa.eu/doceo/document/PV-9-2022-01-20-RCV_EN.pdf, item A9-0356/2021 — Am 511); see EU DisinfoLab, Disinfo Update 25/01/2022 (rejection), and — for the date of tabling and the number of signatories — DSA Observatory, The DSA and the Implications for News Media and Journalistic Content (Part 1), 29.09.2022, <https://dsa-observatory.eu/2022/09/29/digital-services-act-implications-for-news-media-journalistic-content-part-1/>; newsletter: <https://www.disinfo.eu/outreach/our-newsletter/disinfo-update-25-01-2022/>, accessed: 11 June 2026.

¹²Article 14(4) of the DSA: providers of intermediary services, when applying and enforcing the restrictions arising from their terms and conditions, shall act in a diligent, objective and proportionate manner, with due regard to the rights and legitimate interests of all parties involved, including the fundamental rights of the recipients of the service, such as the freedom of expression, freedom and pluralism of the media.

¹³Commission proposal: Regulation establishing a common framework for media services in the internal market (European Media Freedom Act), COM(2022) 457 final, 16.09.2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0457> — the media privilege figured as Article 17 of the draft.

¹⁴Amendment (AM) 967 (deletion of Article 17 of the draft EMFA), tabled by MEPs M. Semedo and A. J. Donáth (Renew Europe); official documentation of legislative procedure 2022/0277(COD), including the CULT amendments:



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Normative content of Article 18 of the EMFA

6. The declaration functionality (Article 18(1)). Providers of very large online platforms (VLOPs within the meaning of Article 33 of the DSA) are required to provide a functionality allowing recipients of their services to submit a declaration that they are media service providers fulfilling, cumulatively, the conditions listed in Article 18(1), points (a)–(g), of the EMFA¹⁵. These comprise, in essence: media service provider status, ownership transparency (Article 6(1) of the EMFA), editorial independence from Member States, political parties and third countries, regulatory oversight or recognised sectoral self-regulation, the absence of artificial intelligence content without human review, and identification details. In the event of reasonable doubt as to the self-regulation condition, the platform is required to seek confirmation from the competent national authority or self-regulatory mechanism (Article 18(1), second subparagraph)¹⁶.
7. The definition of a media service provider (Article 2(2) of the EMFA) is formally neutral as to the size and form of the entity¹⁷ — recital 9 of the EMFA and point 8 of Guidelines C/2026/901 confirm that it covers 'a wide spectrum of professional media actors, including freelancers'¹⁸ — yet the condition of Article 18(1), point (d) — regulatory oversight or self-

[https://oeil.secure.europarl.europa.eu/oeil/en/procedure-file?reference=2022/0277\(COD\)](https://oeil.secure.europarl.europa.eu/oeil/en/procedure-file?reference=2022/0277(COD)); the EMFA rapporteur in the CULT Committee was S. Verheyen (European People's Party, EPP); see Coalition for Creativity (C4C), C4C's perspective on Article 17 of the EMFA, 23.05.2023, <https://coalition4creativity.org/2023/05/23/c4cs-perspective-on-article-17-of-the-european-media-freedom-act-emfa/>; see also — for the context of the CULT debate and the rapporteurship of S. Verheyen — IRIS Merlin (European Audiovisual Observatory), <https://merlin.obs.coe.int/article/9760>, accessed: 11 June 2026 (the IRIS note does not itself mention AM 967).

¹⁵Article 18(1), first subparagraph, points (a)–(g) of the EMFA. The declaration of a recipient of the service comprises statements that the declarant: (a) is a media service provider within the meaning of Article 2(2) of the EMFA; (b) complies with the ownership transparency requirements of Article 6(1) of the EMFA; (c) is editorially independent of Member States, political parties, third countries and entities controlled or financed by third countries; (d) is subject to regulatory requirements for the exercise of editorial responsibility in one or more Member States and to oversight by a competent national regulatory authority or body, or adheres to a co-regulatory or self-regulatory mechanism governing editorial standards that is widely recognised by and accepted in the relevant media sector in one or more Member States; (e) does not provide content generated by artificial intelligence (AI) systems without subjecting it to human review or editorial control; (f) provides its name and contact details; and (g) provides the contact details of the supervisory authorities or the representatives of the mechanism referred to in point (d). Pursuant to the second subparagraph, in the event of reasonable doubt as to compliance with point (d), the platform shall seek confirmation from the competent national authority or the relevant co-/self-regulatory mechanism.

¹⁶ Article 18(1), second subparagraph, of the EMFA.

¹⁷Article 2(2) of the EMFA: 'media service provider' means a natural or legal person whose professional activity is to provide a media service and who has editorial responsibility for the choice of the content of the media service and determines the manner in which it is organised.

¹⁸Point 8 of Guidelines C/2026/901 in conjunction with recital 9 of the EMFA: the definition of a media service provider covers 'a wide spectrum of professional media actors, including freelancers'; the decisive factor is the professional character of the activity. See also point 51 of the Guidelines — examples of 'reasonable doubt' as to point (d): the absence of publicly available information on membership of press councils, or the provider's absence from the public registers of the authority indicated in the declaration.



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regulation 'widely recognised by and accepted in the relevant media sector' — in practice favours licensed broadcasters and publishers affiliated to incumbent structures of journalistic ethics, that is, legacy media. The platform acknowledges receipt of the declaration and indicates whether it is accepted or rejected (Article 18(3)); the information contained in the declaration is, as a rule, publicly available (paragraph 2)¹⁹.

8. Procedural guarantees. First, a platform intending to suspend the service or restrict the visibility of the content of a declared provider on grounds of incompatibility with its contractual terms must first communicate a statement of reasons and allow a reply within 24 hours (in a crisis within the meaning of Article 36(2) of the DSA — within a shorter timeframe); only upon expiry of that deadline, or upon receipt of the reply, may it implement the intended measure (Article 18(4)). This mechanism does not apply where the platform complies with its obligations under Articles 28, 34 and 35 of the DSA, Article 28b of Directive 2010/13/EU, or its obligations relating to illegal content²⁰. Secondly, complaints of declared providers — lodged under Article 20 of the DSA or Article 11 of Regulation 2019/1150 — are handled with priority (Article 18(5))²¹. Thirdly, in the event of repeated restrictions, the provider may request a bilateral dialogue with the platform; its outcome may be notified to the European Board for Media Services (hereinafter 'the Board'), which may issue an opinion (Article 18(6)) — an institution to be distinguished from the collective 'structured dialogue' organised by the Board under Article 19 of the EMFA²².
9. Fourthly — and importantly for the assessment of the position of entities whose declarations have been refused — Article 18(7) of the EMFA opens to media service providers the avenue of mediation and of out-of-court dispute settlement under Article 21 of the DSA,

¹⁹Article 18(2) of the EMFA (public availability of the information contained in the declaration, with the exception of the data under point (f)) and Article 18(3) of the EMFA (obligation to acknowledge receipt of the declaration and to indicate, without undue delay, whether it is accepted or rejected).

²⁰Article 18(4) of the EMFA. Exclusions (third subparagraph): the mechanism does not apply where the platform acts in compliance with its obligations under Articles 28, 34 and 35 of the DSA (protection of minors; assessment and mitigation of systemic risks) or Article 28b of Directive 2010/13/EU (Audiovisual Media Services Directive, AVMSD), or with its obligations relating to illegal content. In a crisis within the meaning of Article 36(2) of the DSA, the mechanism continues to apply, but the deadline for the reply is shorter than 24 hours.

²¹Article 18(5) of the EMFA: complaints lodged by media service providers under Article 11 of Regulation (EU) 2019/1150 (the 'platform-to-business' (P2B) Regulation) or Article 20 of the DSA shall be processed and decided upon with priority and without undue delay.

²²Article 18(6) of the EMFA (bilateral dialogue at the request of the media service provider in the event of repeated restrictions or suspensions without sufficient grounds; the outcome may be notified to the European Board for Media Services and to the Commission; the Board may issue an opinion). A distinct institution is the 'structured dialogue' under Article 19 of the EMFA, organised by the Board with the participation of platforms, representatives of media service providers and civil society.



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inter alia precisely in cases concerning the rejection or invalidation of a declaration²³. Fifthly, platforms are subject to annual reporting covering the number of restrictions imposed on declared providers and the number of rejected declarations together with the grounds (Article 18(8)). The Commission issues guidelines facilitating the implementation of the functionality on the basis of the mandate in Article 18(9)²⁴.

Commission Guidelines C/2026/901

10. Acting on the mandate of Article 18(9) of the EMFA, on 6 February 2026 the Commission published guidelines on the implementation of the declaration functionality (C/2026/901, Official Journal of the European Union C of 11.2.2026)²⁵. The declared aim of the guidelines — besides facilitating the roll-out of the functionality — is to minimise the risk of its abuse, in particular by providers systematically engaged in disinformation, including those controlled by third countries²⁶. The functionality is to take the form of a standardised questionnaire in all official languages of the Member States where the services are offered; the guidelines also regulate the procedure for consulting the competent national authority or self-regulatory mechanism in the event of 'reasonable doubt' as to the condition of Article 18(1), point (d) — once confirmation is obtained, the declaration must be accepted immediately²⁷. The Commission stipulates that the guidelines merely reflect its own understanding of Article 18 of the EMFA, the final interpretation resting with the Court of Justice of the European Union²⁸.

²³Article 18(7) of the EMFA: a media service provider may have recourse to mediation (Article 12 of Regulation 2019/1150) or to out-of-court dispute settlement (Article 21 of the DSA), inter alia in cases concerning the rejection or invalidation of its declaration.

²⁴Article 18(8) of the EMFA (annual reporting obligations of platforms: the number of restrictions and suspensions, the grounds therefor, the number of dialogues, the number of rejected or invalidated declarations together with the grounds) and Article 18(9) of the EMFA (obligation of the Commission to issue guidelines to facilitate the effective implementation of the functionality referred to in paragraph 1).

²⁵Guidelines C/2026/901, OJ C, 11.2.2026.

²⁶Point 2 of Guidelines C/2026/901 in conjunction with recital 53 of the EMFA: the guidelines are to contribute to minimising the risk of abuse of the functionality, in particular by media service providers systematically engaged in disinformation, information manipulation and interference, including those controlled by certain third countries, taking into account the criteria to be developed by the European Board for Media Services with regard to providers from outside the European Union.

²⁷Point 14 of Guidelines C/2026/901: the functionality should take the form of a standardised questionnaire (a checkbox list for the elements under points (a)–(e), entry fields for the information under points (f)–(g)), available in all official languages of the Member States in which the platform offers its services. Points 49–55: the procedure for consulting the authority or the self-regulatory mechanism in the event of 'reasonable doubt'; following confirmation, the declaration 'should be accepted immediately' provided the other elements are fulfilled (point 55). Point 5: the guidelines reflect the Commission's understanding of Article 18 of the EMFA; the final and authoritative interpretation belongs to the Court of Justice of the European Union (CJEU).

²⁸ Point 5 of Guidelines C/2026/901.



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11. Particular attention should be paid to Section 7 of the guidelines (points 56–62), devoted in its entirety to the involvement of civil society organisations and fact-checking organisations. In it, the Commission encourages platforms to cooperate — in the review of publicly available declarations — with organisations of three categories, expressly naming fact-checking organisations 'such as those that are part of EDMO or the EFCSN'. It further recommends dedicated contact points for the flagging of issues, feedback mechanisms and a public list of cooperating organisations; the Board is to contribute to identifying 'the most relevant organisations' within the dialogue under Article 19(1) of the EMFA²⁹. Flagging by those organisations of non-fulfilment of the declared elements should, per the Guidelines, prompt the platform to seek confirmation from the competent authority or self-regulatory mechanism; the decision to accept, reject or invalidate the declaration remains with the platform (Article 18(3)), which should state its reasons and refer to the remedies under Article 18(7) of the EMFA³⁰. The role of the fact-checking organisations is thus to initiate and to verify, not to decide — nevertheless, the guidelines formally inscribe the EDMO and EFCSN networks into the process of assessing the declarations that condition access to the media privilege. Law firm commentaries indicate that the practical significance of the guidelines will become apparent in the first disputes over the rejection of declarations³¹.

Other roles of legacy media in the system

²⁹Section 7 of Guidelines C/2026/901 ('Involvement of civil society organisations and fact-checking organisations'), points 56–62. In point 57 the Commission encourages platforms to work together with organisations that have relevant expertise and knowledge in the media field and adhere to methodology, ethics and transparency standards, identifying three categories: (i) organisations active in the field of media freedom and media pluralism, (ii) media literacy organisations, and (iii) fact-checking organisations 'such as those that are part of the European Digital Media Observatory (EDMO) or the European Fact-Checking Standards Network (EFCSN)'. Points 58–59 provide for dedicated contact points enabling those organisations to flag issues identified when reviewing the publicly available declarations, and for feedback mechanisms; point 60 — transparency of the list of cooperating organisations; point 61 — the role of an intermediary between the platform and individuals, academics and other stakeholders; point 62 — the participation of the European Board for Media Services in identifying 'the most relevant organisations' in the context of the structured dialogue under Article 19(1) of the EMFA.

³⁰Points 45–46 of Guidelines C/2026/901: a media service provider's failure to fulfil the elements declared pursuant to Article 18(1) of the EMFA may be notified to the platform by the competent national regulatory authority or body or by the co-/self-regulatory mechanism, and may also be flagged by civil society organisations, including fact-checking organisations (point 57); where such flagging occurs, the platform should seek confirmation from the competent authority or mechanism. Point 44: invalidation of an accepted declaration is permissible only where the provider no longer fulfils the elements under points (a)–(e). Point 48: per the Guidelines, the platform should inform of the rejection or invalidation of a declaration without undue delay, indicating its reasons and referring to the remedies under Article 18(7) of the EMFA (the binding obligation of Article 18(3) of the EMFA itself covers acknowledgement of receipt and the indication of acceptance or rejection).

³¹Covington & Burling, European Commission Issues Guidelines on Article 18 of the European Media Freedom Act, 26.02.2026, <https://www.globalpolicywatch.com/2026/02/european-commission-issues-guidelines-on-article-18-of-the-european-media-freedom-act/>, accessed: 11 June 2026.



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12. Legacy media are among the principal providers of the fact-checking services envisaged in the Code of Conduct on Disinformation. Commitments 30–33 of the Code (the chapter 'Empowering the fact-checking community') provide for the conclusion by signatory platforms of agreements with independent fact-checkers and for their fair remuneration³². The accreditation of fact-checkers takes place within the European Fact-Checking Standards Network according to its code of standards — this is an industry accreditation, not certification within the meaning of EU law — and the verified members include, inter alia, the fact-checking desks of the press agencies Agence France-Presse (AFP) and Deutsche Presse-Agentur (dpa) as well as projects affiliated with publishers³³. The scale of Code-based financing is, however, significantly limited by the withdrawal of the largest signatories (including Google and Microsoft) from their subscriptions to the fact-checking commitments at the turn of 2024 and 2025, and by Meta's departure from the third-party fact-checking model; the EFCSN report of September 2025 documents the platforms' failure to implement the commitments of that chapter³⁴.
13. Industry organisations of the media sector may, moreover, apply for the status of trusted flagger under Article 22 of the DSA — recital 61 of the DSA expressly encourages industry associations representing their members' interests to apply for that status³⁵. It is worth noting that the draft DSA contained in its recitals an express reference to organisations of

³²Code of Conduct on Disinformation, chapter 'Empowering the fact-checking community', Commitments 30–33 (including Commitment 30: agreements between platforms and independent fact-checking organisations and 'fair financial contributions'; Commitment 33: ethical standards for fact-checkers); text: https://disinfocode.eu/assets/pdfs/2025_Code_of_Conduct_on_Disinformation.pdf, accessed: 11 June 2026.

³³European Fact-Checking Standards Network (EFCSN), European Code of Standards for Independent Fact-Checking Organisations; the register of verified members published by the EFCSN (members include, inter alia, the fact-checking desks of Agence France-Presse (AFP) and Deutsche Presse-Agentur (dpa)), <https://efcsn.com/code-of-standards/>, accessed: 11 June 2026.

³⁴EFCSN, Statement on Platforms' Reduced Commitments to the Code of Practice on Disinformation, 22.01.2025 (complete withdrawal of Google, YouTube and LinkedIn from the fact-checking chapter of the Code), https://efcsn.com/news/2025-01-22_efcsn-statement-on-platforms-reduced-commitments-to-the-code-of-practice-on-disinformation/, accessed: 11 June 2026; see also M. Botan, M. Aslama Horowitz (Global Policy), Assessing the EU's Code of Practice on Disinformation: Platform Responses to Information Disorders, 2.12.2025, <https://www.globalpolicyjournal.com/blog/02/12/2025/assessing-eus-code-practice-disinformation-platform-responses-information-disorders>; EFCSN, The Moment of Truth for the Code of Conduct on Disinformation, 11.09.2025, <https://efcsn.com/policy/report-released-the-moment-of-truth-for-the-code-of-conduct-on-disinformation/>, accessed: 11 June 2026.

³⁵Recital 61 of the DSA: trusted flagger status may be awarded to public entities (e.g., for terrorist content, internet referral units of national law enforcement authorities or of the European Union Agency for Law Enforcement Cooperation (Europol)), to non-governmental organisations and to private or semi-public bodies; 'in particular, industry associations representing their members' interests are encouraged to apply for the status of trusted flaggers'.



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right-holders as candidates for the status in the field of intellectual property, which was not retained in the adopted text³⁶.

Positions of the European Union institutions and of participants in the debate

14. The position of the EU institutions on the role of the media in the system is consistently affirmative. In its press release of 6 February 2026, the Commission indicated that the aim of the guidelines is to ensure that 'professional journalism is recognised and protected across the world's largest digital platforms'³⁷. Vice-President V. Jourová, co-author of the Union's anti-disinformation policy, framed the role of the media directly: 'social media is not a replacement for quality journalism', announcing the expansion of support for fact-checkers and the European Digital Media Observatory³⁸.
15. Commissioner T. Breton, responding to allegations concerning the DSA's threats to freedom of speech, wrote in July 2023: 'The DSA is here to protect free speech against arbitrary decisions, and at the same time protect our citizens and democracies'³⁹. His enforcement practice nevertheless met with criticism from free speech organisations⁴⁰, and the Commission subsequently distanced itself from his letter to the platform X of August 2024 (preceding an interview with a candidate for the presidency of the United States), its

³⁶The draft DSA (COM(2020) 825 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020PC0825>, recital 46) expressly indicated that, in the area of intellectual property rights, the status could be awarded to 'organisations of industry and of right-holders' — this wording was, however, not retained in the recitals of the adopted text (a finding based on a comparison with recital 61 of Regulation 2022/2065 made for the purposes of this opinion); for the draft's wording see Lausen Rechtsanwälte (K. Bäcker), The trusted flaggers in the Digital Services Act, 23.05.2022, <https://lausen.com/en/the-trusted-flaggers-in-the-digital-services-act/>, accessed: 12 June 2026.

³⁷European Commission, press release: Commission issues guidelines to protect media content on online platforms, 6.02.2026 ('They also outline procedures for VLOPs to consult regulatory authorities when in doubt, and involve civil society organisations, including fact-checkers, in reviewing declarations'), <https://digital-strategy.ec.europa.eu/en/news/commission-issues-guidelines-protect-media-content-online-platforms>, accessed: 11 June 2026.

³⁸V. Jourová, From pandemic to infodemic, speech of June 2020, SPEECH/20/1000: 'social media are not a replacement for quality journalism', https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1000, accessed: 11 June 2026.

³⁹Letter of Commissioner T. Breton to Access Now of 27 July 2023: 'The DSA is here to protect free speech against arbitrary decisions, and at the same time protect our citizens and democracies'; text and context: Access Now, Civil society gets its confirmation from EU Commissioner: no internet shutdowns under DSA, <https://www.accessnow.org/press-release/commissioner-breton-responds-dsa/>, accessed: 11 June 2026.

⁴⁰The Future of Free Speech et al., Open Letter to Thierry Breton on The DSA's Threats to Free Speech, <https://futurefreespeech.org/open-letter-to-thierry-breton-on-the-dsas-threats-to-free-speech/>, accessed: 11 June 2026.



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spokesperson stating that 'the timing and the wording of the letter were neither coordinated or agreed [sic] with the President nor with the College'⁴¹.

16. In the European Parliament, the dividing line in the dispute over the media privilege ran across political groups: the rapporteur S. Verheyen defended it as a guarantee of press freedom vis-à-vis the platforms, while some Renew Europe members (M. Semedo, A. J. Donáth) demanded the deletion of the provision as a gateway for media controlled by states or oligarchs⁴². The coalition of fact-checkers and disinformation researchers opposed the media exemption in the DSA⁴³.

Legal assessment

17. The role of legacy media in the system will — in the view of the author of this opinion — be that of a privileged and at the same time infrastructural layer. The content of these media enjoys a presumption of professionalism and procedural protection (Article 18 of the EMFA); their self-regulatory structures co-determine the threshold of entry for other entities (Article 18(1), point (d)); their verification desks operationalise the concept of disinformation in the implementation of the Code under Article 45 of the DSA; their industry organisations may join the corps of trusted flaggers; finally — through the fact-checking networks — they participate in the review of media declarations. In the literature, the construction of Article 18 has been described as 'the missing piece in the DSA puzzle', restoring to the media the position they failed to obtain in the DSA itself⁴⁴; it has been pointed out that it revises the

⁴¹Statement of the Commission spokesperson of 13 August 2024, as reported by the press: 'The timing and the wording of the letter were neither coordinated or agreed [sic] with the President nor with the College'; see Fortune, EU warns Elon Musk over X compliance, 13.08.2024, <https://fortune.com/2024/08/13/elon-musk-european-union-commission-thierry-breton/>; the matter is the subject of parliamentary question E-001542/2024, https://www.europarl.europa.eu/doceo/document/E-10-2024-001542_EN.html; see also Euronews, EU's Breton reminds Musk of legal obligations ahead of Trump interview, 12.08.2024, <https://www.euronews.com/my-europe/2024/08/12/eus-breton-reminds-musk-of-legal-obligations-ahead-of-trump-interview>, accessed: 12 June 2026.

⁴² Amendment 967 to the draft EMFA (M. Semedo, A. J. Donáth); official procedure file 2022/0277(COD): [https://oeil.secure.europarl.europa.eu/oeil/en/procedure-file?reference=2022/0277\(COD\)](https://oeil.secure.europarl.europa.eu/oeil/en/procedure-file?reference=2022/0277(COD)); see Coalition for Creativity (C4C), C4C's perspective on Article 17 of the EMFA, 23.05.2023, <https://coalition4creativity.org/2023/05/23/c4cs-perspective-on-article-17-of-the-european-media-freedom-act-emfa/>, accessed: 12 June 2026.

⁴³ EU DisinfoLab, Fact-checkers and experts call on MEPs to reject a media exemption in the DSA, <https://www.disinfo.eu/advocacy/fact-checkers-and-experts-call-on-meps-to-reject-a-media-exemption-in-the-dsa/>, accessed: 12 June 2026.

⁴⁴M. Monti, The missing piece in the DSA puzzle? Article 18 of the EMFA and the media privilege, 'Rivista italiana di informatica e diritto' 2024, No 6(2), <https://www.rivistaitalianadiinformaticaediritto.it/index.php/RIID/article/download/269/210>, accessed: 11 June 2026.



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assumption of equal treatment of users fundamental to the DSA⁴⁵, and — with regard to the draft — warnings were raised against the risk of 'VIP customer management' and of the privatisation of fundamental rights protection⁴⁶.

18. From the perspective of freedom of expression, the principal objection concerns the entrenchment of a two-tier regime: a statement by a journalist of a newsroom affiliated to a recognised self-regulatory structure obtains procedural protection against moderation, whereas a statement identical in content by an independent commentator, a think tank or a civil society organisation obtains no such protection and may be the object of a priority notice and a verification label. Such a speaker is left without the special procedural guarantees reserved for media service providers, retaining only the general remedies of Articles 20–21 of the DSA and recourse to the courts, which those mechanisms do not exclude⁴⁷. The objection is, in the first place, one of equality before the law (Article 20 of the Charter) rather than of freedom of expression as such: Article 11 of the Charter does not, in general, oblige the Union to confer upon every speaker an identical set of procedural privileges against the moderation decisions of a private platform, so that the gravamen of the complaint is not that the independent speaker is silenced but that two speakers in a materially identical position are treated unequally without adequate justification. So framed, the argument must meet the test that the Court of Justice applies under Article 20: a difference in treatment is compatible with the principle of equality where the situations are not comparable, or where the differentiation is objectively justified and proportionate to a legitimate aim. The defenders of Article 18 will contend that a media service provider — bound by editorial responsibility, ownership-transparency duties and regulatory or recognised self-regulatory oversight — is simply not in a situation comparable to that of an anonymous user; that contention has force, but it does not dispose of the objection, because the decisive differentiator under Article 18(1), point (d), is not the professional or

⁴⁵K. Klafkowska-Waśniowska, Taking Extra Care of the Media? Media Content Moderation under the European Media Freedom Act, *Verfassungsblog*, 16.07.2024, <https://verfassungsblog.de/taking-extra-care-of-the-media/>, accessed: 11 June 2026.

⁴⁶M. van Drunen, N. Helberger, R. Fahy, The platform-media relationship in the European Media Freedom Act, *Verfassungsblog*, 13.02.2023 (criticism of the proposed privilege, including the risk of 'VIP customer management' and the privatisation of fundamental rights protection; the text concerns the draft, in which the privilege was Article 17), <https://verfassungsblog.de/emfa-platforms/>, accessed: 11 June 2026.

⁴⁷Article 20 of the DSA (internal complaint-handling system) and Article 21 of the DSA (certified out-of-court dispute settlement); pursuant to the third subparagraph of Article 21(1) of the DSA, that mechanism is without prejudice to the right of the recipient of the service to initiate proceedings before a court.



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verifiable character of the content but the institutional affiliation of its author. Where a think tank, an academic body or an independent commentator publishes content subject to comparable editorial control and verifiable as to authorship and funding, the criterion withholds the procedural guarantee on a ground that is, in substance, one of incumbency rather than of reliability, and the same protective aim could be pursued by less restrictive means; it is on that narrower ground — the proportionality of the chosen differentiator, not the bare fact of differentiation — that the construction is difficult to reconcile with Articles 20 and 21 of the Charter. A separate problem is the participation of fact-checking organisations — originating to a considerable extent from the legacy media sector and economically linked to it — in the review and flagging of competitors' declarations (Section 7 and points 45–46 of Guidelines C/2026/901)⁴⁸. This objection is reinforced by the funding structure of the networks expressly named in the guidelines: EDMO is financed predominantly by the European Commission⁴⁹, and the EFCSN owes both its creation and a substantial part of its budget to Commission grants⁵⁰. The EFCSN's founding consortium included the press agency AFP, and its verified membership includes the fact-checking desks of AFP and dpa; both agencies also participate in EDMO's national hubs. The Commission thus points platforms towards reviewers whom it itself finances and who are economically linked to the privileged sector. By contrast, any link between those networks and private donors such as

⁴⁸ Section 7 (points 56–62) and points 45–46 of Guidelines C/2026/901.

⁴⁹The European Digital Media Observatory (EDMO) is financed by the European Commission: the central platform initially under the Connecting Europe Facility (CEF), then with EUR 4 million under the Digital Europe Programme in 2022 and approximately EUR 2.5 million under the DIGITAL 2025 work programme, while the network of national and regional hubs has received, in successive phases, CEF and Digital Europe grants totalling approximately EUR 38 million; see European Commission, European Digital Media Observatory — EDMO, <https://digital-strategy.ec.europa.eu/en/policies/european-digital-media-observatory>; European Commission, European Digital Media Observatory continues its activities, <https://digital-strategy.ec.europa.eu/en/news/european-digital-media-observatory-continues-its-activities>, accessed: 11 June 2026.

⁵⁰The European Fact-Checking Standards Network (EFCSN) was created within a pilot project funded by the European Commission (2020 work programme on the financing of pilot projects and preparatory actions in the field of 'Communications Networks, Content and Technology') by a consortium led by Fundación Maldita.es and comprising, inter alia, the press agency Agence France-Presse (AFP), Correctiv, Demagog, Pagella Politica/Facta and EU DisinfoLab; following the end of the project (December 2023) the network has been financed from membership fees and external donations, and was subsequently awarded a EUR 5 million grant by the Commission (the 30-month FACTEUR project, over 60% of which is redistributed as sub-grants to fact-checking organisations); see EFCSN, Consortium (the page now redirects to the homepage; the composition of the consortium is documented at: Maldita.es, <https://maldita.es/nosotros/20211210/european-fact-checkers-code-professional-integrity/>, and EU DisinfoLab, <https://www.disinfo.eu/projects/european-fact-checking-standards-project/>), <https://efcsn.com/consortium/>; EFCSN, EFCSN receives €5 million grant to support Europe's independent fact-checkers, <https://efcsn.com/funding-opportunities/efcsn-eu-grant-facteur/>; EFCSN, About, <https://efcsn.com/about/>, accessed: 11 June 2026.



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the Open Society Foundations is, on the present state of documentation, at most indirect⁵¹. The assessment of this construction should be formulated primarily on the basis of the principles of equality before the law and non-discrimination (Articles 20–21 of the Charter), while qualifying it as a competition problem would require a separate, cautious market analysis.

19. In fairness, the arguments of the defenders of Article 18 of the EMFA should be recorded: the provision protects editorial independence against arbitrary private moderation; the declaration is available to any entity fulfilling the functional criteria, irrespective of its size and editorial line; Article 18 does not exclude moderation but proceduralises it, and the exclusion clauses (illegal content, systemic risks, protection of minors) limit the risk of instrumentalization of the privilege; entities whose declarations have been rejected have access to mediation and out-of-court dispute settlement (Article 18(7))⁵². The dispute will be resolved in the practice of application: the decisive factors will be the interpretation of the condition of 'widely recognised' self-regulation and the manner in which platforms make use of the opinions of authorities and civil society organisations when verifying declarations.

Risk of abuse of power: vectors of political influence over the media

20. State actors inside the flagging channel. Article 22(2) of the DSA requires of a *trusted flagger* independence from platforms only and not from public authorities. Recital 61 expressly admits, that 'such entities can be public in nature', and (for terrorist content) internet referral units of national law enforcement authorities and of Europol may become *trusted flagger*⁵³. A government body may thus obtain a priority channel for content removal

⁵¹Direct funding of EDMO or the EFCSN by the Open Society Foundations (OSF) has not been documented. What is confirmed is the OSF's co-financing of the global International Fact-Checking Network (IFCN) at the Poynter Institute (USD 300 000 within a USD 1.3 million package together with the Omidyar Network, 2017) and OSF grants to individual media and fact-checking organisations; under the EFCSN Code of Standards, member organisations are required to disclose their sources of funding. See <https://www.prnewswire.com/news-releases/13-million-in-grants-from-omidyar-network-open-society-foundations-will-expand-poynters-international-fact-checking-network-300481553.html>; OSF awarded grants database (covering grants awarded in 2016–2023), <https://www.opensocietyfoundations.org/grants/past>, accessed: 12 June 2026.

⁵²M. Monti, In defence of Article 18 of the EMFA, Centre for Media Pluralism and Media Freedom (CMPF, European University Institute), 1.11.2024, <https://cmpf.eui.eu/in-defence-of-article-18-of-the-emfa/>; I. Nenadić, The interplay of the Digital Services Act and the European Media Freedom Act, CMPF, 18.10.2024, <https://cmpf.eui.eu/digital-services-act-and-european-media-freedom-act/>, accessed: 12 June 2026.

⁵³Article 22(2) of the DSA requires of a trusted flagger independence from providers of online platforms only; no condition of independence from public authorities is laid down, and recital 61 of the DSA expressly admits public entities (internet referral units of national law enforcement authorities or of Europol). Pursuant to Article 22(6)–(7) of the DSA, the suspension and revocation of the status likewise rest with the Digital Services Coordinator, an organ of



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requests that operates outside the formal-order regime of Article 9 of the DSA. A notice from a state-linked trusted flagger is not a binding order: it triggers none of the safeguards which Article 9(2) attaches to formal orders — a stated legal basis, a territorial scope limited to what is strictly necessary, information on redress — and the removal decision is taken by the platform under its own terms and conditions, with only an ex post statement of reasons owed to the affected user under Article 17 of the DSA, while the platform's liability exposure under Article 6 creates a strong incentive to comply. Since the Digital Services Coordinator — itself an organ of the Member State — both awards and revokes the status, a politically captured coordinator can favour aligned organisations and discipline inconvenient ones⁵⁴. It should be acknowledged that the Commission's draft guidelines on Article 22 of the DSA (29 May 2026)⁵⁵ themselves propose to address part of this concern. The draft restricts the participation of State bodies that wield ordering powers: authorities empowered to issue orders to act against illegal content under Article 9 of the DSA must not commingle those powers with trusted-flagger status, so that only authorities without ordering powers (or operationally autonomous departments having no such powers) may be awarded the status (point 31). It further requires the Digital Services Coordinator to verify a "sufficiently high degree of impartiality and of freedom from political or other influence" capable of undermining the objectivity of the notices (point 42(a)), to ensure the absence of a conflict of interest at the award stage (point 30), and provides for funding disclosure, annual transparency reporting and procedures for the suspension and revocation of the status. The residual difficulty is that the draft stops short of a categorical requirement of structural independence from public authorities: public bodies — in particular the internet referral units of national law enforcement authorities — remain expressly eligible (point 29), and the impartiality test is tied to the objectivity of individual notices rather than to the institutional independence of the flagger from the State.

21. The systemic-risk channel as a bypass of the media privilege. The risk categories of Article 34(1) of the DSA, including 'negative effects on civic discourse and electoral processes, and public security', are open-textured, and their enforcement vis-à-vis very large online

the Member State. Removal orders issued by national authorities are subject to the separate regime — and the safeguards — of Article 9 of the DSA, which the trusted flagger channel does not provide.

⁵⁴ Article 22(6)–(7) of the DSA.

⁵⁵ Commission Guidelines on the trusted flagger mechanism under Article 22 of Regulation (EU) 2022/2065, DG CONNECT draft for targeted public consultation (29 May – 10 July, initially until 26 June 2026); <https://digital-strategy.ec.europa.eu/en/library/draft-commission-guidelines-trusted-flaggers>; accessed: 15 June 2026.



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platforms belongs to the Commission, backed by fines of up to 6% of worldwide annual turnover and, in a crisis, by the power to require specific measures⁵⁶. The documented practice of enforcement by public letter (Commissioner Breton's warnings to the platform X before politically sensitive events, from which the Commission subsequently distanced itself) shows that this channel can be personalised and politicised, and that the internal checks upon it are weak⁵⁷. Crucially, the protection of Article 18(4) of the EMFA is disapplied precisely where the platform acts in compliance with Articles 34–35 of the DSA⁵⁸: pressure routed through the systemic-risk channel therefore reaches even declared media service providers, whose privilege evaporates at the very point where political interest in moderation is greatest.

22. Gatekeeping of media status. The verification chain for declarations under Article 18 of the EMFA places, at every node other than the platform itself, either a state organ or an entity structurally dependent on Commission funding: the national regulatory authority or recognised self-regulatory body confirms the condition of Article 18(1), point (d)⁵⁹; Commission-funded networks (EDMO, EFCSN) are expressly envisaged by the Guidelines as reviewers and flaggers of declarations⁶⁰; and the Board (composed of national regulators) contributes to identifying 'the most relevant organisations'. In a Member State whose media regulator is politically captured, the confirmation requirement may become an instrument of selective recognition of 'genuine' media; at Union level, the predominant role of Commission funding in the named fact-checking networks (see paragraph 18 above) creates structural alignment incentives. The system thus reproduces, in a co-regulatory form, the licensing logic that European free speech doctrine has traditionally treated with suspicion.
23. Conclusion of the assessment. In the author's view, the mechanism does create a realistic possibility of political influence over the media. Primarily indirect, operating through the

⁵⁶Articles 34–35 of the DSA: obligation of providers of very large online platforms to assess and mitigate systemic risks, including 'any actual or foreseeable negative effects on civic discourse and electoral processes, and public security' (Article 34(1)(c) of the DSA); supervision and enforcement vis-à-vis VLOPs rests with the European Commission (Article 56(2) and Articles 65–74 of the DSA), with fines of up to 6% of worldwide annual turnover (Article 74(1) of the DSA). Under Article 36 of the DSA, in a crisis the Commission may, upon a recommendation of the European Board for Digital Services, require VLOPs to take specific crisis-response measures.

⁵⁷ See footnotes 39, 40.

⁵⁸ Article 18(4), third subparagraph, of the EMFA.

⁵⁹ Article 18(1), second subparagraph, of the EMFA.

⁶⁰ Section 7 of Guidelines C/2026/901, points 56–62.



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compliance incentives of platforms rather than through direct censorship orders. The constitutional defect lies in the cumulation of functions: The Commission initiated and authored the 2021 Guidance that substantially shaped the strengthened Code of Practice on Disinformation⁶¹ (later integrated into the DSA framework as a benchmark for compliance), finances the fact-checking networks, issues the guidelines and supervises the platforms, without the separation between rule-maker, funder and enforcer that the rule of law normally requires. The available counterweights are predominantly ex post and depend on the initiative of the affected party: the statement of reasons under Article 18(4) of the EMFA, out-of-court dispute settlement, transparency reports, opinions of the Board, and ultimately judicial review before national courts and the Court of Justice of the European Union. In case C-401/19 the Court upheld the preventive content-control mechanism of Article 17 of the Copyright Directive precisely because it was accompanied by effective safeguards for lawful speech: the protection of permissible uses, the prohibition of a general monitoring obligation and the availability of complaint and redress mechanisms. That judgment is therefore authority both for the proposition that such mechanisms can be compatible with Article 11 of the Charter where adequate safeguards exist, and for the standard against which the present construction must be measured⁶²; the levers of influence described above, by contrast, operate ex ante and structurally. It should be recorded, for balance, that the EMFA's declared purpose is the opposite one, to protect media against state capture at national level (Articles 4 and 5 of the EMFA), and that the defenders of the system point to those very provisions as evidence of its anti-authoritarian design. The analysis above shows, however, that the safeguards against national capture have no specific equivalent addressed to the Union executive itself, which remains bound only by the general guarantee of Article 11 of the Charter, applicable to the institutions under Article 51(1) thereof.

24. The draft of 29 May 2026 opens by restating the regulation's stated aim: "Regulation (EU) 2022/2065 of the European Parliament and the Council of 19 October 2022 fully

⁶¹European Commission, Guidance on Strengthening the Code of Practice on Disinformation, COM(2021) 262 final, 26.05.2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021DC0262>, accessed: 12 June 2026. The strengthened Code of 16 June 2022 was drawn up by its signatories on the basis of this Guidance.

⁶²Judgment of the Court of Justice of the European Union (Grand Chamber) of 26 April 2022, C-401/19, Republic of Poland v European Parliament and Council, ECLI:EU:C:2022:297, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62019CJ0401>, accessed: 12 June 2026, paragraphs 67 et seq.: mechanisms of preventive content control must be accompanied by effective safeguards for freedom of expression, including the protection of lawful speech.



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harmonises the rules applicable to intermediary services in the internal market with the objective of ensuring a safe, predictable and trusted online environment in which the fundamental rights enshrined in the Charter of Fundamental Rights (the 'Charter') are effectively protected. It aims to address the dissemination of illegal content online and other societal risks." This aim, by its very nature, stands in inevitable tension with freedom of speech; the acceptability of any such regime therefore depends on how that tension is managed. The problem identified in this opinion is not the aim but the way it is pursued. Broad and vague terms — "societal risk", "systemic risk" — are enforced by an authority that both funds the verifying networks and supervises the platforms, within a system that draws public bodies and established media into judging the speech of others. When clauses this wide are combined with an institutional set-up of this kind, the general right to free expression — the basis of political freedom and of democracy — can in practice be narrowed into a space of supervised and conditional speech. That danger deserves our attention.

Recommended actions

25. The targeted consultation on the draft Commission guidelines on Article 22 of the DSA (trusted flaggers) is open until 10 July 2026 (initially until 26 June 2026)⁶³; the adoption of the guidelines is planned for the second half of 2026. Participation in the consultation is currently the most effective avenue for influencing the shape of the conditions of 'expertise', 'independence' and 'objectivity' of future trusted flaggers⁶⁴, in particular, for arguing that the criterion of independence should be extended into a categorical requirement of structural independence from public authorities. The draft of 29 May 2026⁶⁵ moves partly in this direction as it bars authorities empowered to issue Article 9 orders from holding trusted-flagger status (point 31) and requires impartiality and freedom from political or other influence (point 42(a)) but it does not exclude State-linked flaggers as such, the internet referral units of national law enforcement authorities remaining expressly eligible (point 29).

⁶³ Targeted consultation: <https://digital-strategy.ec.europa.eu/en/consultations/targeted-consultation-draft-guidelines-trusted-flaggers-under-digital-services-act-dsa>, accessed: 12 June 2026.

⁶⁴ European Commission, Commission seeks feedback on draft trusted flaggers guidelines under the Digital Services Act (draft guidelines of 29.05.2026; consultation open until 26.06.2026; adoption planned for the second half of 2026), <https://digital-strategy.ec.europa.eu/en/news/commission-seeks-feedback-draft-trusted-flaggers-guidelines-under-digital-services-act>, accessed: 11 June 2026.

⁶⁵ Commission Guidelines on the trusted flagger mechanism under Article 22...



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26. Civil society organisations and media not affiliated to incumbent self-regulatory structures should consider: (i) monitoring the practice of acceptance and rejection of declarations under Article 18 of the EMFA and the annual reports of platforms (Article 18(8)), which will for the first time reveal the scale of refusals and their grounds; (ii) examining the possibility of creating, or acceding to, a self-regulatory mechanism fulfilling the condition of Article 18(1), point (d); (iii) making use of mediation and out-of-court dispute settlement (Article 18(7) of the EMFA, Article 21 of the DSA) in cases of rejected declarations.
27. At the Polish national level, the fate of the new draft acts implementing the DSA (adopted by the Council of Ministers of the Republic of Poland in June 2026⁶⁶ following the veto of 9 January 2026⁶⁷) remains of fundamental importance; until their entry into force, Polish entities cannot obtain trusted flagger status domestically, whereas all the EU-wide mechanisms discussed in this opinion operate vis-à-vis Polish users irrespective of the state of national implementation.

⁶⁶Ministry of Digital Affairs of the Republic of Poland, Silniejsza ochrona użytkowników internetu — Rząd przyjął dwa projekty ustaw wdrażające DSA [Stronger protection of internet users — the Government has adopted two draft acts implementing the DSA], 2.06.2026, <https://www.gov.pl/web/cyfryzacja/silniejsza-ochrona-uzytownikow-internetu---rzad-przyjal-dwa-projekty-ustaw-wdrazajace-dsa>, accessed: 11 June 2026; see also the announcement of 26.01.2026: Polska potrzebuje wdrożenia DSA — Ministerstwo Cyfryzacji przygotowało nowe przepisy, <https://www.gov.pl/web/cyfryzacja/polska-potrzebuje-wdrozenia-dsa--ministerstwo-cyfryzacji-przygotowalo-nowe-przepisy>, accessed: 11 June 2026.

⁶⁷Veto of the President of the Republic of Poland of 9 January 2026 against the Act of 18 December 2025 amending the Act on Providing Services by Electronic Means and certain other acts — the DSA implementing act (Sejm paper No 1757), motivated inter alia by risks to freedom of speech; official sources: Official website of the President of the Republic of Poland, Trzy ustawy zawetowane przez Prezydenta RP [Three acts vetoed by the President of the Republic of Poland], 9.01.2026, <https://www.prezydent.pl/prawo/ustawy-zawetowane/trzy-ustawy-zawetowane-przez-prezydenta-rp.112918>, accessed: 12 June 2026; Sejm of the Republic of Poland, record of legislative process No 1757, <https://www.sejm.gov.pl/Sejm10.nsf/PrzebiegProc.xsp?nr=1757>, accessed: 11 June 2026.