

Brussels, 9 February 2022

**To the attention of Mr. Khashayar Farmanbar
Minister for Energy and Digital Development of Sweden**

Honourable Minister,

We, Xavier Bouckaert, President of the European Magazine Media Association (EMMA) and Jean-Pierre de Kerraoul, President of the European Newspaper Publishers' Association (ENPA), are writing to you in light of the ongoing trilogue negotiations on the Digital Services Act (DSA). EMMA and ENPA together represent the majority of European press publishers of newspaper, magazines, digital publications, periodical and specialised press, both in digital and in print.

We would like to start by reiterating the landmark role of the DSA in the framework of digital policy, which will affect all digital services, including those offered by press publishers. While the stakes to achieve the right balance are very high, the awareness of the far-reaching effects of the proposal shall encourage legislators to strive for the best possible outcome that would ensure the protection of fundamental rights as well as the long-term sustainability of the Digital Single Market. Nonetheless, we regret that there are unfortunately still **serious concerns with regard to the future of press and media freedom online**, including in relation to **possible censorship of legal publications by very large online platforms (VLOPS)** on the basis of their arbitrarily decided terms and conditions (T&C).

Therefore, as representatives of the press sector, we respectfully invite you to consider the considerations below:

- **Protecting press and media freedom against censorship of platforms based on T&C**

Free speech and press freedom is the foundation of our European democracies and the sharing of information contributes to a critical public opinion. Nowadays platforms, especially VLOPs, are increasingly crucial for the distribution and visibility of press content online. Therefore, it is especially concerning that **the DSA would for the first time explicitly allow such platforms to arbitrarily delete legal publications** on the basis of their T&C. The trilogue provides the last chance to address this shortcoming. Therefore, **the DSA must ensure that legal content** of European press and media with legal responsibility within the EU, and that **is freely accessible offline** at newsstands, kiosks etc., **is equally available on VLOPs, without the interference of private or public actors.**

At the very least, it must be ensured that their T&C shall respect fundamental rights such as freedom of speech and press freedom. While this fundamental rights safeguard in Article 12(1) of the European Parliament report does not provide clear protection against VLOP censorship, it is at least a minimum requirement to argue in favour of the primacy of the fundamental rights enshrined in the Charter over the arbitrary conditions of private companies in legal press and media. As such, it must be considered a redline for the trilogues.

- **Country of Origin principle**

The Country of Origin principle (COP) of the e-Commerce Directive creates a prerequisites for the cross-border online distribution of the press, safeguarding it from censorship and legal uncertainty. This important principle risks being undermined by Article 8 DSA. Essentially, **the DSA would allow a Member State to remove press articles lawfully published in another Member State on the grounds of its stricter laws** or of more restrictive interpretations of EU law beyond its territory. As such, each Member State would be able to enforce its national barriers to freedom of

expression, therefore jeopardising freedom of expression online. While it is legitimate for a Member State to be able to prohibit unlawful publications in its territory, it would be very concerning if a Member State could intervene and also demand the deletion of content published in the member state of the content provider and beyond. As such, **the COP as provided by the e-Commerce Directive must be maintained in the DSA.**

- **Data protection**

In light of the ongoing application and interpretation of the GDPR by authorities and the courts, and the ongoing negotiation of the e-Privacy Regulation, we firmly believe that **the DSA should not include any additional or even contradictory data protection regulation.** The appropriate pieces of legislation already provide a high standard of protection and more specific rules are currently negotiated in trilogue with the e-Privacy Regulation. Introducing new specific obligations for platform intermediaries in the DSA would pre-empt the ongoing e-Privacy negotiations and lead to legal uncertainty and jeopardise digital growth in the EU as businesses struggle with unfathomable compliance rules and different enforcement bodies. For this reason, we encourage the Member States to stand by the Council's General approach and to avoid any data protection regulation in the DSA.

Dear Minister, we would like to thank you for your consideration of the concerns above. We would be delighted to discuss these issues with you or your experts in the capital or in your Permanent Representation in Brussels at a date and time of convenience.

Sincerely,

Jean-Pierre de Kerraoul
President of ENPA



Xavier Bouckaert
President of EMMA



ENPA, the European Newspaper Publishers' Association is the largest representative body of newspaper publishers across Europe. ENPA advocates for 16 national associations across 13 European countries and is a principal interlocutor to the EU institutions and a key driver of mediapolicy debates in the European Union. See: <http://www.enpa.eu>

EMMA, the European Magazine Media Association, is the unique and complete representation of Europe's magazine media, which is today enjoyed by millions of consumers on various platforms, encompassing both paper and digital formats. EMMA represents 15,000 publishing houses, publishing 50,000 magazine titles across Europe in print and digital. See: <http://www.magazinemia.eu>