

## ANNEX

### FEEDBACK

#### European Commission consultation on “The future of the electronic communications sector and its infrastructure”

19 May 2023

***Imposing unjustified “fair contribution” obligations would endanger net neutrality, impact consumers, potentially conflict with national (constitutional) laws and negatively affect media companies – and media pluralism***

The European Magazine Media Association (EMMA) and the European Newspaper Publishers' Association (ENPA), representing the vast majority of European publishers of newspapers, magazines, periodicals and specialised press, including in digital, appreciate this opportunity to provide feedback on the European Commission's exploratory consultation to gather views on the potential developments of the connectivity sector and its infrastructure. Whilst this feedback should not be understood as EMMA-ENPA's final official position and does not preclude individual feedback from its members also being provided to this consultation and/or at later stages, we wish to hereby share our initial comments.

Section 4 of the questionnaire suggests the potential introduction of a “fair contribution by all digital players”, structured via either a “mandatory mechanism of direct payments” to providers of electronic communications networks (ECN) or an “EU/national digital contribution or fund”. Our comments will focus on this matter.

We would like to underscore that the vast amounts of high-quality online content produced by media companies and other content creators are a key driver of consumer demand for state-of-the-art – and more costly – Internet packages providing for higher broadband and data caps. This effort by media companies requires considerable, sustained investments in innovative, quality content which are also a guarantor of media pluralism in the EU. This firmly positions our members as active, significant contributing actors in the economic operation of the EU digital infrastructure, also benefiting ECN providers. Any contribution obligation directly imposed or indirectly bearing upon media companies would affect their ability to carry out those critical investments. This would not only hinder media's viability and competitiveness, with a major impact on the EU's media pluralism and diversity, but the detrimental effects on quality content production would also directly undermine the demand for developing a more robust EU digital infrastructure. In the process, it would put at risk the net neutrality principle, enshrined in EU law under [Regulation \(EU\) 2015/2120](#), of equal and non-discriminatory treatment of traffic (incl. data packets). **We therefore call upon the Commission to refrain from proposing the introduction of a “fair contribution” under any of the two options advanced in section 4 of the questionnaire.**

***Media companies and other content creators are active, significant contributing actors in the EU digital infrastructure's economic operation.***

***Any contribution obligation directly imposed or indirectly bearing upon media companies will impact the EU media's sustainability and pluralism, whereas the detrimental effects on quality content production directly undermine the demand for developing a more robust EU digital infrastructure.***

Particularly in the absence of any identified market failure<sup>1</sup>, any such “fair contribution” would constitute a measure ungrounded on a solid and coherent policy rationale that would

<sup>1</sup> As recognised by the Body of European Regulators for Electronic Communications (BEREC) in its 2022 [preliminary assessment](#) of the underlying assumptions of payments from large CAPs to ISPs.

negatively and unfairly affect – indeed, condition – the choices available to and the behaviour of consumers, who are the ones legitimately determining content and therefore traffic demand. It also risks decisively aggravating already existing imbalances in the digital economy and in the EU internal market. Ultimately, it can also translate into a direct, disruptive intervention in the value creation of EU media and creative industries in the internal market, greatly affecting content providers' ability to carry out critical investments in innovation and quality media content without which media pluralism and diversity are compromised.

Imposing on European companies, including media companies and other content providers, a “direct payments” mechanism towards ECN providers, following a Sending-Party-Network-Pays (SPNP) model, represents an unjustified additional payment – implicitly a “double billing” for the same service endangering the EU’s net neutrality principle of equal and non-discriminatory treatment of traffic which ensures that both new and established services may reach users under equal conditions. For instance, a large traffic generator (LTG) may, if carrying out direct payments, be potentially led into a de facto better traffic treatment position compared to that of other, smaller companies – including those providing competing services. The more indirect effects of introducing a contribution obligation under any of the envisaged options also appear to be overlooked. Indeed, even in hypothetical scenarios whereby only the main LTGs are in scope – regardless of whether they carry out direct payments or contribute into a fund –, this could trigger other forms of “double billing” with equally negative effects since LTGs may seek to offset the new charges by passing them on directly or indirectly to their consumers and business users. The resulting financial burdens of this implicit double payment can further condition consumer behaviour and have a negative impact on households’ ability to continue benefiting from, inter alia, professional and high-quality media content offers – both familiar and new ones –, thereby also contributing to a reduction in media diversity in the EU. As for companies, it may also trigger significant increases in distribution costs, including media service providers that resort to LTGs to help distribute their content, thereby hampering their ability to reach consumers and threatening their sustainability, particularly in the case of smaller companies.

***A “direct payments” mechanism towards ECN providers represents an unjustified “double billing” for the same service and endangers the net neutrality principle of equal and non-discriminatory treatment of traffic.***

***Any of the envisaged forms of contribution risk negatively impacting consumers and the sustainability of media companies.***

Finally, we draw attention to the possible conflicts of a mandatory contribution obligation under any of the envisaged options with national (constitutional) laws preventing the imposition of fees or taxes where these may entail detrimental effects, including discriminatory ones, on the distribution of media content, including online press content.

***The potential conflicts with national (constitutional) laws of any envisaged contribution that may entail detrimental effects on the distribution of media content must not be overlooked.***

In light of the above, we urge the Commission to refrain from mandating under EU law any forms of “fair contribution” unsupported by any identified market failure, endangering net neutrality, and whose potentially detrimental, even discriminatory effects would not only be in conflict with national (constitutional) laws but significantly impact media companies – and thereby media pluralism and diversity in the Union. Thus, it would also run directly contrary to the goals pursued by EU initiatives such as the European Democracy Action Plan and the European Media Freedom Act (EMFA).