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NOTE

From: General Secretariat of the Council
To: Audiovisual and Media Working Party (Attachés)
Audiovisual and Media Working Party

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU
- Presidency compromise proposals

With a view to the Audiovisual and Media Working Party meeting on 17 April 2023 (agenda item 4 d)), delegations will find attached in the Annex a set of Presidency compromise texts regarding the Preamble, Articles 1-6 and Recitals 1-21.

As per usual practice:

- Proposed amendments to the Commission text that have been previously tabled by the Presidency, and which the Presidency intends to maintain, are marked with **bold** and [...].
- New Presidency compromise proposals are highlighted in **bold underlined** and [...], except the underlined text in the title of Chapter II, which is underlined in order to highlight a previously tabled amendment
- Where there are no proposed amendments to the Commission text, the Presidency suggested approach is to accept it as it stands

EMFA Regulation

Presidency compromise text

Preamble, Articles 1–6 and Recitals 1–21

AVMWP Meeting on 17 April 2023

(Title and Preamble)

2022/0277 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(Recitals 1-21 are placed after Articles 1-6, and Recitals 22-54 are not considered in this text proposal)

HAVE ADOPTED THIS REGULATION:

Chapter I

General provisions

Article 1¹

Subject matter and scope

1. This Regulation lays down common rules for the proper functioning of the internal market for media services, including the establishment of the European Board for Media Services, while preserving the quality of media services.

2. This Regulation shall not affect rules laid down by:

(a) Directive 2000/31/EC;

(b) Directive 2019/790/EU;

(c) Regulation 2019/1150;

(d) Regulation (EU) 2022/**2065**;

(e) Regulation (EU) 2022/**1925**;

¹ Basis 1: AVMWP on 14 March – WK 3419/2023. Basis 2: AVMWP on 28 March – WK 3951/2023.

(f) Regulation (EU) .../... [Regulation on the transparency and targeting of political advertising [2021/0381(COD)]].

(g) Regulation (EU) 2016/679.

3. This Regulation shall not affect the possibility for Member States to adopt more detailed **or stricter** rules in the fields covered by Chapter II [...], Section 5 and [**Article 24/Article 24(2) and (3)**] of Chapter III, provided that those rules comply with Union law.

Article 2²

Definitions

(1) ‘media service’ means a service as defined by Articles 56 and 57 of the Treaty, where the principal purpose of the service or a dissociable section thereof consists in providing programmes or press publications to the general public, by any means, in order to inform, entertain or educate, under the editorial responsibility of a media service provider;

(2) ‘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;

(3) ‘public service media provider’ means a media service provider which is entrusted with a public service **remit** under national law **and** receives national public funding for the fulfilment of such a **remit**;

² Basis: AVMWP on 26 January – WK 866/2023 (para 12), AVMWP on 14 March – WK 3419/2023 (paras 1–6, 16 and 17) and AVMWP on 28 March – WK 3951/2023 (paras 7–9a, 14, 14a and 15).

(4) ‘programme’ means a set of moving images or sounds constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider;

(5) ‘press publication’ means a publication as defined in Article 2(4) of Directive 2019/790/EU;

(6) ‘audiovisual media service’ means a service as defined in Article 1(1), point (a), of Directive 2010/13/EU;

(7) [...] *(definition of editor is deleted)*

(8) ‘editorial decision’ means a decision taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of a media service provider;

(9) ‘editorial responsibility’ means the exercise of effective control both over the selection of the programmes or press publications and over their organisation, for the purposes of the provision of a media service, regardless of the existence of liability under national law for the service provided;

(9a) ‘online platform’ means a service as defined in Article 3, point (i) of Regulation (EU) 2022/2065;

(10) ‘provider of very large online platform’ means a provider of an online platform that has been designated as a very large online platform pursuant to Article 25(4) of Regulation (EU) 2022/2065;

(11) ‘video-sharing platform service’ means a service as defined in Article 1(1), point (aa), of Directive 2010/13/EU;

(12) ‘national regulatory authority or body’ means **any** authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU;

(13) ‘media market concentration’ means a concentration as defined in Article 3 of Regulation (EC) No 139/2004 involving at least one media service provider;

(14) ‘audience measurement’ means the activity of collecting, interpreting or otherwise processing data about the number and characteristics of users of media services **or users of content on online platforms** for the purposes of decisions regarding advertising allocation or **pricing** or the related planning, production or distribution of content;

(14a) ‘public authority or entity’ means a national or subnational government, a regulatory authority or body, or a state owned enterprise or other state-controlled entity at the national or regional level;

(15) ‘State advertising’ means the placement, publication or dissemination, in any media service, of a promotional or self-promotional message **or a public announcement**, normally in return for payment or for any other consideration, by, for or on behalf of [...] a public authority [...];

(16) ‘spyware’ means any product with digital elements specially designed to exploit vulnerabilities in other products with digital elements, **including intrusive software**, that enables the covert surveillance of natural or legal persons by monitoring, extracting, collecting or analysing data from such products or from the natural or legal persons using such products, in particular by secretly recording calls or otherwise using the microphone of an end-user device, filming natural persons, machines or their surroundings, copying messages, photographing, tracking browsing activity, tracking geolocation, collecting other sensor data or tracking activities across multiple end-user devices, without the natural or legal person concerned being made aware in a specific manner and having given their express specific consent in that regard;

(17) [...] *(the list of crimes has been removed)*

Chapter II³

Rights and duties of media service providers and recipients of media services

Article 3⁴

Rights of recipients of media services in the Union

Member States shall respect the right of the general public [...] to receive a plurality of news and current affairs content, produced with respect for editorial freedom of media service providers, to the benefit of the public discourse.

³ Basis: AVMWP on 14 March – WK 3419/2023.

⁴ Basis: AVMWP on 14 March – WK 3419/2023.

Article 4⁵

Rights of media service providers

1. Media service providers shall have the right to exercise their economic activities in the internal market without restrictions other than those **that are in compliance with** Union law.

2. Member States shall respect effective editorial freedom of media service providers. Member States, including their national regulatory authorities and bodies, shall not [...] interfere in or try to influence [...] editorial policies and **editorial** decisions by media service providers.

2a. Member States shall ensure an effective protection of the sources of media service providers and their employees. Member States shall not, unless this is justified by an overriding requirement in the public interest and provided for in national law in accordance with Article 52(1) of the Charter and in compliance with other Union law [...]:

(a) oblige media service providers or their employees to disclose information on their sources;

(b) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, or their employees **or** their family members, or their corporate and private premises, on the ground that **media service providers or their employees** refuse to disclose information on their sources [...]; or

(c) deploy spyware in any device or machine used by media service providers or, if applicable, their family members, or their employees or their family members **for the purpose of obtaining information on the sources of media service providers or their employees**, unless the deployment

⁵ Basis: AVMWP on 14 March – WK 3419/2023.

(i) is justified, on a case-by-case basis, on grounds of **public** security [...]; **or**

(ii) occurs in [...] investigations of one of the [...] persons **mentioned in Article 4(2)(c) for offences referred to in Article 2(2) of Council Framework Decision 2002/584/JHA⁶ and punishable in the Member State concerned by a custodial sentence or a detention order for a maximum period of at least three years.**

[...]

[...]

Member States shall not adopt a measure pursuant to point **(c) of the first subparagraph** where measures referred to point **(b) of the first subparagraph** are adequate and sufficient to obtain the information sought.

3. [...] Member States shall ensure that media service providers or, if applicable, their family members, or their employees or their family members have a right to an effective judicial remedy in cases regarding breaches of paragraph 2a. Member States shall entrust an independent authority or body with relevant expertise to assist media service providers or, if applicable, their family members, or their employees or their family members, in **such** cases [...].

⁶ **Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).**

Article 5⁷

Safeguards for the independent functioning of public service media providers

1. **Member States shall ensure that** public service media providers **are editorially independent and** provide in an impartial manner a plurality of information and opinions to their audiences, in accordance with their public service **remit as defined at national level in line with Protocol No 29 on the system of public broadcasting in the Member States, annexed to the TEU and the TFEU.**

2. **Member States shall ensure that** the head of management **or** the members of the **management** board of public service media providers **are** appointed through transparent, open and non-discriminatory procedures and on the basis of transparent, objective, non-discriminatory and proportionate criteria laid down in advance **at national level.**

The duration of their term of office shall be established **at national level**, and be adequate and sufficient to ensure effective independence of the public media service provider. They may be dismissed before the end of their term of office only [...] where they no longer fulfil the [...] conditions required for the performance of their duties [...] or for specific reasons of illegal conduct or serious misconduct, as defined in advance **at national level.**

Dismissal decisions shall be duly justified, subject to prior notification to the person concerned, and include the possibility for judicial review. The grounds for dismissal shall be made available to the public.

⁷ Basis: AVMWP on 14 March – WK 3419/2023.

3. Member States shall ensure that public service media providers have adequate and stable financial resources for the fulfilment of their public service **remit**. Those resources shall be such that editorial independence is safeguarded, **and shall be allocated through a transparent process**.

4. Member States shall **put in place mechanisms** to monitor **the application of** paragraphs 1 to 3.

Article 6⁸

Duties of media service providers providing news and current affairs content

1. Media service providers providing news and current affairs content shall make easily and directly accessible to the recipients of their services the following information:

(a) their legal name and contact details;

(b) the name(s) of their direct or indirect owner(s) with shareholdings enabling them to exercise influence on the operation and strategic decision making;

(c) the name(s) of their beneficial owners **as defined in** Article 3, point (6) of Directive (EU) 2015/849 [...].

2. Without prejudice to constitutional **or other** national [...] laws consistent with the Charter, media service providers providing news and current affairs content shall take measures that they deem appropriate with a view to guaranteeing [...] editorial independence [...]. In particular, such measures shall aim to:

⁸ Basis: AVMWP on 14 March – WK 3419/2023 (para 1) and AVMWP on 28 March – WK 3951/2023 (paras 2 and 3).

(a) guarantee that [...] editorial decisions **can be taken freely within the established editorial line of the media service provider**; and

(b) ensure disclosure of any actual or potential conflict of interest by any party having a stake in media service providers that may affect the provision of news and current affairs content.

[...] (*paragraph 3 is deleted*)

(No amendments are proposed to Recitals 1–5)

Recital 6⁹

[...] Natural persons who are nationals of Member States or benefit from rights conferred upon them by Union law and legal persons established in the Union should be able to effectively enjoy the freedom to receive free and pluralistic media services **of news and current affairs content produced in accordance with editorial freedom** in the internal market. In fostering the cross-border flow of media services, a minimum level of protection of service recipients should be ensured in the internal market. That would be in compliance with the right to receive and impart information **and the requirement to respect media freedom and media pluralism** pursuant to Article 11 of the Charter of Fundamental Rights of the European Union (‘the Charter’). It is thus necessary to harmonise certain aspects of national rules related to media services. In the final report of the Conference on the Future of Europe, citizens called on the EU to further promote media independence and pluralism, in particular by introducing legislation addressing threats to media independence through EU-wide minimum standards¹⁰.

⁹ Basis: AVMWP on 14 March – WK 3419/2023.

¹⁰ Conference on the Future of Europe – Report on the Final Outcome, May 2022, in particular Proposal 27 (1) and 37 (4).

(No amendments are proposed to Recitals 7-8.)

Recital 9¹¹

The definition of audience measurement should cover measurement systems developed as agreed by industry standards within self-regulatory organisations, like the Joint Industry Committees, and measurement systems developed outside such self-regulatory approaches. The latter tend to be deployed by certain online players, **including online platforms**, who self-measure or **develop and** provide their **own** audience measurement systems to the market, **without abiding** by the commonly agreed industry standards or best practices. **Such systems enable to collect or otherwise process information about media content and content created by users on online platforms that are primarily used to access such content.** Given the significant impact that such audience measurement systems have on the advertising and media markets, they should be covered by this Regulation.

¹¹ Basis: AVMWP on 28 March – WK 3951/2023.

Recital 10¹²

State advertising should be understood broadly as covering promotional or self-promotional activities undertaken by, for or on behalf of a wide range of public authorities or entities, including **national and subnational** governments, regulatory authorities or bodies as well as state-owned enterprises or other state-controlled entities in different sectors, at national or regional level [...]. **The notion of control should be construed in light of Article 3(2) of Council Regulation (EC) No 139/2004.** However, the definition of state advertising should not include emergency messages by public authorities which are necessary, for example, in cases of natural or sanitary disasters, accidents or other sudden incidents that can cause harm to individuals.

Recital 11¹³

In order to ensure that society reaps the benefits of the internal media market, it is essential not only to guarantee the fundamental freedoms under the Treaty, but also the legal certainty which the recipients of media services need for the enjoyment of the corresponding benefits. **The general public** should have access to quality media services **in a well-functioning internal market**, which have been produced by journalists and editors in an independent manner and in line with journalistic standards and hence provide trustworthy information, including news and current affairs content **comprising a wide category of content of political, [...] societal or cultural interest at local, national or international level. While news and current affairs content may reach the general public in diverse formats, from documentaries or magazines to content uploaded on online platforms, news and current affairs play a major role in shaping public opinion, having a direct impact on democratic participation and societal well-being.** Such right does not entail any correspondent obligation on any given media service provider to adhere to standards not set out explicitly by law. Such quality media services are also an antidote against disinformation, including foreign information manipulation and interference.

¹² Basis: AVMWP on 28 March – WK 3951/2023.

¹³ Basis: AVMWP on 14 March – WK 3419/2023.

Recital 12¹⁴

This Regulation does not affect the freedom of expression **and information** guaranteed to individuals under the Charter. The European Court of Human Rights has observed that in such a sensitive sector as audiovisual media, in addition to its negative duty of non-interference, the public powers have a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism¹⁵.

(No amendments are proposed to Recitals 13–15.)

¹⁴ Basis: AVMWP on 14 March – WK 3419/2023.

¹⁵ *Centro Europa 7 S.R.L. and Di Stefano v. Italy* [GC], no 38433/09, § 134, ECHR 2012.

Recital 16¹⁶

Journalists and editors are the main actors in the production and provision of trustworthy media content, in particular by reporting on news or current affairs. It is essential therefore to protect journalists' capability to collect, fact-check and analyse information, including information imparted confidentially. In particular, media service providers and **their employees, in particular** journalists (including those operating in non-standard forms of employment, such as freelancers) should be able to rely on a robust protection of journalistic sources and communications, including against deployment of surveillance technologies, since without such protection sources may be deterred from assisting the media in informing the public on matters of public interest. As a result, journalists' freedom to exercise their economic activity and fulfil their vital 'public watchdog' role may be undermined, thus affecting negatively access to quality media services. **In order to avoid circumvention, this protection should also encompass family members of the media service providers and journalists. Spouses, persons living in a committed intimate relationship in a joint household and on a stable and continuous basis, parents, children and siblings could be targeted due to their close relationship to media service providers, journalists or other employees.** The protection of journalistic sources contributes to the protection of the fundamental right enshrined in Article 11 of the Charter.

Recital 17¹⁷

The protection of journalistic sources is currently regulated heterogeneously in the Member States. Some Member States provide an absolute protection against coercing journalists to disclose information that identify their source in criminal and administrative proceedings. Other Member States provide a qualified protection confined to judicial proceedings based on certain criminal charges, while others provide protection in the form of a general principle. This leads to fragmentation in the internal media market. As a result, journalists, which work increasingly on cross-border projects and provide their services to cross-border audiences, and by extension providers of media services, are likely to face barriers, legal uncertainty and

¹⁶ Basis: AVMWP on 14 March – WK 3419/2023.

¹⁷ Basis: AVMWP on 14 March – WK 3419/2023.

uneven conditions of competition. Therefore, the protection of journalistic sources [...] needs harmonisation and further strengthening at Union level.

Recital 17a¹⁸

Spyware represents a particularly invasive form of surveillance over journalistic communications. It jeopardises the trusted relationship of journalists with their sources, which is the core of the journalistic profession. It is therefore necessary to ensure that media service providers and journalists operating in the internal media market rely on a robust harmonised protection in relation to the deployment of spyware across the Union. In particular, the deployment of spyware should take place only on a case-by-case basis, on the grounds of public security or in the context of the relevant investigations of offences referred to in Article 2(2) of the Council Framework Decision 2002/584/JHA¹⁹, if those criminal offences are punishable in the Member State concerned by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined in the law of that Member State. This should be without prejudice to further protection at the national level.

¹⁸ Recital 17a contains first Presidency text proposals.

¹⁹ **Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).**

Recital 18²⁰

Public service media established by the Member States play a particular role in the internal media market, by ensuring that citizens and businesses have access to quality information and impartial **and balanced** media coverage, as part of their **remit as defined at national level in line with Protocol No 29 on the system of public broadcasting in the Member States, annexed to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU)**. However, public service media can be particularly exposed to the risk of interference, given their institutional proximity to the State and the public funding they receive. This risk may be exacerbated by uneven safeguards related to independent governance and balanced coverage by public service media across the Union. This situation may lead to biased or partial media coverage, distort competition in the internal media market and negatively affect access to independent and impartial media services. It is thus necessary, building on the international standards developed by the Council of Europe in this regard, to put in place legal safeguards for the independent functioning of public service media across the Union. **This should include principles for the appointment and dismissal of the persons or bodies which have a role in determining editorial policies and constitute the highest decision-making authority within the public service media provider, which should be set out at national level.** It is also necessary to guarantee that, without prejudice to the application of the Union's State aid rules, public service media providers benefit from **adequate** and stable funding to fulfil their **remit that is allocated in a transparent process and that** enables predictability in their planning. Preferably, such funding should be decided and appropriated on a multi-year basis, in line with the public service mission of public service media providers, to avoid potential for undue influence from yearly budget negotiations. The requirements laid down in this Regulation do not affect the competence of Member States to provide for the funding of public service media as enshrined in the Protocol No 29 [...].

Recital 19²¹

It is crucial for the recipients of media services to know with certainty who owns and is behind the news media so that they can identify and understand potential conflicts of interest which is a prerequisite for forming well-informed opinions and consequently to actively

²⁰ Basis: AVMWP on 14 March – WK 3419/2023.

²¹ Basis: AVMWP on 14 March – WK 3419/2023.

participate in a democracy. Such transparency is also an effective tool to **disincentivise and thus to** limit risks of interference with editorial independence. **Furthermore, it contributes to an open and fair market environment and enhances media accountability vis-à-vis the general public, ultimately contributing to the quality of media services in the internal market.** It is thus necessary to introduce common information requirements for all relevant media service providers across the Union that should include proportionate requirements to disclose ownership information. **These requirements are limited to disclosing the legal name of the media service provider, the details which allow the provider to be contacted rapidly in a direct and effective manner, such as the professional email address or website, as well as the names of direct, indirect and beneficial owners. Such information is necessary for the recipients of media services to understand and be able to enquire about potential conflicts of interest, as a pre-condition for their ability to assess the reliability of information they receive and their right to receive impartial media coverage. Thus, the benefits of media ownership transparency for the general public outweigh a possible limited impact of the disclosure obligation on fundamental rights, including the right to private and family life and the right to protection of personal data.**

In this context, the measures taken by Member States under Article 30(9) of Directive (EU) 2015/849²² should not be affected. The required information should be disclosed by the relevant providers on their websites or other medium that is easily and directly accessible.

²² Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73-117).

Recital 20²³

Media integrity also requires a proactive approach to promote editorial independence by news media companies, in particular through internal safeguards. Media service providers should adopt proportionate measures to guarantee [...] the freedom [...] to take **editorial decisions within the established editorial line of the media service provider**. The objective to shield [...] **editorial decisions** [...] on specific pieces of content [...] from undue interference contributes to ensuring a level playing field in the internal market for media services and the quality of such services. That objective is also in conformity with the fundamental right to receive and impart information under Article 11 of the Charter. In view of these considerations, media service providers should also ensure transparency of actual or potential conflicts of interest to their service recipients.

Recital 21²⁴

To mitigate regulatory burdens, **media service providers should be free to tailor the internal safeguards with a view to guaranteeing the independence of individual editorial decisions to their needs, in particular if they are micro-, small or medium-sized undertakings** within the meaning of Article 3 of Directive 2013/34/EU of the European Parliament and of the Council²⁵ [...]. The Recommendation that accompanies this Regulation²⁶ provides a catalogue of voluntary internal safeguards that can be adopted within media companies in this regard. **This** Regulation should not be construed to the effect of depriving the owners of private media service providers of their prerogative to set strategic or general goals and to foster the growth and financial viability of their undertakings. In this respect, this Regulation **should recognise** that the goal of fostering editorial independence needs to be reconciled with the legitimate rights and interests of private media owners.

²³ Basis: AVMWP on 28 March – WK 3951/2023.

²⁴ Basis: AVMWP on 28 March – WK 3951/2023.

²⁵ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19-76).

²⁶ OJ C , , p. .