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CONTRIBUTION

From:	General Secretariat of the Council
To:	Audiovisual and Media Working Party (Attachés) Audiovisual and Media Working Party
N° Cion doc.:	COM (2022) 457 final
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) Interinstitutional File 2022/0277 (COD) - COM (2022) 457 final - EMFA Regulation – Articles 1 to 5 - Comments from: FR (Courtesy translation) and HU delegations.

Delegations will find attached comments on the subject mentioned above (Interinstitutional File 2022/0277 (COD) - COM (2022) 457 final) from the following delegations: France (Courtesy translation) and Hungary.

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)

Interinstitutional File 2022/0277 (COD) - COM (2022) 457 final

Articles 1 to 5

- Table for comments –

Commission proposal Interinstitutional File 2022/0277 (COD) COM (2022) 457 final	Comments and drafting suggestions from delegations
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)	
Chapter I General Provisions <i>Article 1</i> 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.	

[FRANCE – Courtesy translation]

<p>2. This Regulation shall not affect rules laid down by:</p> <ul style="list-style-type: none"> (a) Directive 2000/31/EC; (b) Directive 2019/790/EU; (c) Regulation 2019/1150; (d) Regulation (EU) 2022/XXX [the Digital Services Act]; (e) Regulation (EU) 2022/XXX [the Digital Markets Act]; (f) Regulation (EU) 2022/XXX [Regulation on the transparency and targeting of political advertising]. 	<p><u>(a)bis Directive 2014/41/EU;</u></p> <p>As this directive contains provisions on the implementation of special investigative techniques (including interception of communications with the assistance of another Member State), we suggest to add it here.</p>
	<p><u>2bis. This Regulation does not apply to the the activities concerning national security and defence, regardless of who is carrying out those activities whether it is a public authority or a private operator acting at the request of a public authority.</u></p> <p>The French delegation suggests to add this exclusion clause, similar to the one that has been integrated in the Council mandate for the ePrivacy Regulation.</p>
<p>3. This Regulation shall not affect the possibility for Member States to adopt more detailed rules in the fields covered by Chapter II and Section 5 of Chapter III, provided that those rules comply with Union law.</p>	<p>The French delegation took good note of the answers given by the Commission and the Council legal service at the Audiovisual and Media Working Party of 13th October related to the concept of "more detailed measures". The French delegation understood that this wording allows Member States to take potentially stricter measures. It is therefore suggested to modify the article as follows:</p> <p>« <u>This Regulation shall not affect the possibility for Member States to adopt more detailed or stricter rules in the fields covered by Chapter II and Section 5 of Chapter III, provided that those rules comply with Union law</u> ».</p>

[FRANCE – Courtesy translation]

	The French delegation considers that it is essential that Member States have this possibility to prevent the risk that the present regulation levels down national provisions that are already more demanding.
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<p><i>Article 2</i> Definitions</p>	<p>The French delegation questions the absence of a definition in article 2 of the concept of "news and current affairs" developed in articles 3 and 6 and which conditions its implementation. What is meant by this notion?</p> <p>Furthermore, in the absence of clear definitions of certain concepts appearing in the proposed regulation in Article 2, the French delegation considers that they could be clarified, for example in the recitals, in order to give a better indication of the real scope and impact of the provisions of the EMFA proposal. This could be particularly interesting for example for the following concepts: « significant impact on media pluralism and editorial independence » (Article 21); « disinformation, foreign information manipulation and interference » (Articles 18 and 25), « significant influence on the formation of public » (Recital 39).</p>
<p>For the purposes of this Regulation, the following definitions shall apply:</p> <p>(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;</p>	
<p>(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;</p>	
<p>(3) ‘public service media provider’ means a media service provider which is entrusted with a public service mission under national law or receives national public funding for the fulfilment of such a mission;</p>	

[FRANCE – Courtesy translation]

(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;	

[FRANCE – Courtesy translation]

6) ‘audiovisual media service’ means a service as defined in Article 1(1), point (a), of Directive 2010/13/EU;	
(7) ‘editor’ means a natural person or a number of natural persons possibly grouped in a body, regardless of its legal form, status and composition, that takes or supervises editorial decisions within a media service provider;	<p>The French delegation questions the scope of application of the notion of « editor », as it is likely to cover several notions in French law and therefore raises the question of its articulation with the French system of criminal liability in the field of the press.</p> <p>Indeed, the definition of the term « editor » in Article 1(7) raises a difficulty in relation to Article 6(2) as the prerogatives attributed to the « editor » according to the definition in Article 1(7) correspond more to the notion of director of publication (« directeur de la publication » in French) and not to the notion of editor-in-chief (« rédacteur en chef » in French).</p> <p>More broadly, the French delegation wonders who bears the criminal liability for publications resulting from an editorial decision? What will be the respective roles and associated responsibilities of media owners, directors of publication, editors-in-chief and journalists?</p>
(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;	
(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/XXX [Digital Services Act];	The French delegation points out that there seems to be an error in the reference to the DSA in Article 2(10) of the proposed regulation, which mentions Article 25(4) of the DSA, this article

	<p>having since become Article 33(4) of the final version of the DSA, if we are not mistaken.</p> <p>With regard to the category of very large platforms in the DSA referred to in the proposal, the French delegation suggests that very large search engines should be included in the scope of application of the regulation, along with very large platforms. It considers that search engines play an important role in access to online information and that very large search engines should be subject to the same obligations as very large online platforms.</p> <p>Therefore, the French delegation believes that a paragraph (10bis) should be added after (10) for online search engine providers, modelled on (10) and referring to article 33(4) of the DSA.</p>
(11) ‘video-sharing platform service’ means a service as defined in Article 1(1), point (aa), of Directive 2010/13/EU;	<p>Regarding to the definition of « video-sharing platform service », read in conjunction with Recital 8 and in particular the last sentence of the first paragraph, « Therefore, such an entity could be qualified both as a video-sharing platform provider or a very large online platform provider and as a media service provider », the French delegation considers that it would be useful to specify that the qualification of « media service provider » applies only to the provision of this activity and not to the entire service.</p>

[FRANCE – Courtesy translation]

<p>(12) ‘national regulatory authority or body’ means the authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU;</p>	<p>The notion of « national regulatory authority or body » refers to the authorities designated in Article 30 of the AVMS Directive and automatically establishes the audiovisual regulator as the reference authority for the press sector for the application of the proposed regulation, even though it is a self-regulated sector in France.</p>
<p>(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;</p>	
<p>(14) ‘audience measurement’ means the activity of collecting, interpreting or otherwise processing data about the number and characteristics of users of media services for the purposes of decisions regarding advertising allocation or prices or the related planning, production or distribution of content;</p>	<p>This definition only covers the activities of collecting, interpreting or processing data related to the number and characteristics of users of media services, in particular for the purpose of making decisions on advertising. Thus, the French delegation wonders whether this notion covers only the methodology for calculating the number of users of a service in general or whether more refined calculation methodologies are also covered (e.g., the calculation of the audience for advertising)? Could the Commission provide examples of advertising decisions that this definition is intended to cover?</p>
<p>(15) ‘State advertising’ means the placement, publication or dissemination, in any media service, of a promotional or self-promotional message, normally in return for payment or for any other consideration, by, for or on behalf of any national or regional public authority, such as national, federal or regional governments, regulatory authorities or bodies as well as state-owned enterprises or other state-controlled entities at the national or regional level, or any local government of a territorial entity of more than 1 million inhabitants;</p>	<p>The French delegation notes that, according to its understanding, the notion of « State advertising » encompasses advertising by State-owned enterprises. It wonders whether a company such as EDF would have to comply with all the obligations set out in Article 24? Could the scope of the definition be limited to public authorities and governments as such, or could it include only the advertising of state-owned enterprises that are not intended to promote a service or good commercially offered by such enterprises?</p>

[FRANCE – Courtesy translation]

<p>(16) ‘spyware’ means any product with digital elements specially designed to exploit vulnerabilities in other products with digital elements 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;</p>	<p>The technical relevance of the definition needs to be analysed; it could indeed cover a large number of techniques (Trojan, backdoors, etc.).</p> <p>The usefulness of this definition is in any case dependent on whether the provision of the regulation in which it is used (Article 4(2)(c)) is maintained.</p> <p>See also the comment of Article 4(1)(c) on the definition of spyware.</p>
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[FRANCE – Courtesy translation]

<p>(17) ‘serious crime’ means any of the following criminal offences listed in Article 2(2) of the Council Framework Decision 2002/584/JHA⁵⁸:</p> <ul style="list-style-type: none">(a) terrorism,(b) trafficking in human beings,(c) sexual exploitation of children and child pornography,(d) illicit trafficking in weapons, munitions and explosives,(e) murder, grievous bodily injury,(f) illicit trade in human organs and tissues,(g) kidnapping, illegal restraint and hostage-taking,(h) organised or armed robbery,(i) rape,(j) crimes within the jurisdiction of the International Criminal Court. <p>⁵⁸ 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. 1-20).</p>	<p>The French delegation suggests the deletion of Article 2(17) : serious crime is not - and should not become - an autonomous concept in EU law. This concept exists - or not - in the national law of the Member States and the constitutional identity of the Member States with regard to the founding principles of their criminal law has to be respected. This has been recalled by the CJEU on several occasions in recent years.</p>
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<p style="text-align: center;">Chapter II</p> <p style="text-align: center;">Rights and duties of media service providers and recipients</p> <p style="text-align: center;"><i>Article 3</i></p> <p style="text-align: center;">Rights of recipients of media services</p>	<p style="text-align: center;">PUBLIC</p>
<p>Recipients of media services in the Union shall have the right 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.</p>	<p>The French delegation, while not being unfavourable to it, finds it difficult to assess the scope and implementation methods of this article, which grants a very general right.</p>
<p style="text-align: center;"><i>Article 4</i></p> <p style="text-align: center;">Rights of media service providers</p>	
<p>1. Media service providers shall have the right to exercise their economic activities in the internal market without restrictions other than those allowed under Union law.</p>	<p>The French delegation questions the exact nature of the « restrictions » referred to in the present article. It suggests to add the last sentence of recital 13 to this paragraph.</p> <p>The French delegation also questions the relationship between the prohibition of restrictions other than those provided for by Union law and the possibility given to Member States in Article 20 of the proposed regulation to take national measures that may affect media operations in the internal market, when they are duly justified and proportionate.</p>

<p>2. Member States shall respect effective editorial freedom of media service providers.</p> <p>Member States, including their national regulatory authorities and bodies, shall not:</p> <p>(a) interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers;</p> <p>(b) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, their employees or their family members, or their corporate and private premises, on the ground that they refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest, in accordance with Article 52(1) of the Charter and in compliance with other Union law;</p> <p>(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, unless the deployment is justified, on a case-by-case basis, on grounds of national security and is in compliance with Article 52(1) of the Charter and other Union law or the deployment occurs in serious crimes investigations of one of the aforementioned persons, it is provided for under national law and is in compliance with Article 52(1) of the Charter and other Union law, and measures adopted pursuant to sub-paragraph (b) would be inadequate and insufficient to obtain the information sought.</p>	<p>This article provides derogations to the prohibition of surveillance measures against journalists, but it does not contain clauses excluding from its scope matters that do not fall within the competence of the Union - such as safeguarding national security. This is why the French delegation is asking for the addition of an explicit exclusion clause and refuses to allow national security issues to be dealt with under a derogation.</p> <p>The French authorities are particularly attached to the principle of protecting the confidentiality of journalists' sources in the exercise of their mission to inform the public, which is particularly well established in national law. On the other hand, the necessity and proportionality of extending the benefit of such a provision to all « employees » of media service providers (who would not be journalists but could be employees of these companies in charge of administrative or technical functions), as well as to the family members of journalists and these employees, raises questions. It would be useful for the Commission to clarify who precisely these different categories of persons cover and to explain the arguments that led it to conclude that such an extension is necessary and proportionate.</p> <p>Finally, the notion of spyware is defined in a particularly broad way and it would be advisable to know if it can possibly cover interceptions of correspondence emitted by the means of telecommunications (telephone tapping), geolocations, or even the special investigation technique of computer data capture, decided in the framework of criminal investigations.</p> <p>The scope of measures covered by litera c) should be clarified in order to identify those that will be affected and to assess the appropriateness of such a restriction. In addition, the scope of the persons concerned (family members, employees) seems</p>
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	<p>particularly broad, whereas the derogations provided for in litera c) seem particularly restrictive.</p> <p>The French delegation therefore suggests the following amendments:</p> <p>2. Member States shall respect effective editorial freedom of media service providers <u>and journalists</u>.</p> <p>Member States, including their national regulatory authorities and bodies, shall not: (a) interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers <u>and journalists</u>.</p> <p><u>2a. The sources and journalistic communications of media service providers and journalists shall be confidential.</u></p> <p><u>- Any form of detention, sanction, interception, surveillance of media service provider and journalists ;</u></p> <p><u>- Any search, seizure, or inspection of their corporate and private premises</u></p> <p><u>shall not be ordered on the ground that they refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest, and provided for under Union law or Member States law.</u></p>
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[FRANCE – Courtesy translation]

<p>3. Without prejudice and in addition to the right to effective judicial protection guaranteed to each natural and legal person, Member States shall designate an independent authority or body to handle complaints lodged by media service providers or, if applicable, their family members, their employees or their family members, regarding breaches of paragraph 2, points (b) and (c). Media service providers shall have the right to request that authority or body to issue, within three months of the request, an opinion regarding compliance with paragraph 2, points (b) and (c).</p>	<p>The French delegation suggests the following amendments:</p> <p>3. Without prejudice and in addition to the right to effective judicial protection guaranteed to each natural and legal person, Member States shall designate an independent authority or body to handle complaints lodged by media service providers or, if applicable, their family members, their employees or their family members journalists regarding breaches of paragraph 2, points (b) and (c) 2a. Media service providers and journalists shall have the right to request that authority or body to issue, within three months of the request, an opinion regarding compliance with paragraph 2a.</p>
<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;">Safeguards for the independent functioning of public service media providers</p>	
<p>1. Public service media providers shall provide in an impartial manner a plurality of information and opinions to their audiences, in accordance with their public service mission.</p>	<p>While the French delegation welcomes the will to establish essential principles at the European level aimed at guaranteeing the independence of public service media, it nonetheless calls for vigilance regarding the compliance of such rules with the Amsterdam Protocol, which grants a large flexibility to Member States in the organization and definition of public service missions and their financing.</p>

[FRANCE – Courtesy translation]

<p>2. The head of management and the members of the governing board of public service media providers shall be appointed through a transparent, open and non-discriminatory procedure and on the basis of transparent, objective, non-discriminatory and proportionate criteria laid down in advance by national law.</p> <p>The duration of their term of office shall be established by national law, 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 exceptionally where they no longer fulfil the legally predefined conditions required for the performance of their duties laid down in advance by national law or for specific reasons of illegal conduct or serious misconduct as defined in advance by national law.</p> <p>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.</p>	<p>Some public broadcasting corporations, such as Arte or TV5 Monde, were created by international treaties that do not respect the provisions of the article, insofar as the conditions for the appointment and dismissal of directors are not provided for by national law but in <i>ad hoc</i> texts. It should therefore be clarified how the provisions of the article could be applied to these structures.</p>
<p>3. Member States shall ensure that public service media providers have adequate and stable financial resources for the fulfilment of their public service mission. Those resources shall be such that editorial independence is safeguarded.</p>	
<p>4. Member States shall designate one or more independent authorities or bodies in order to monitor compliance with paragraphs 1 to 3.</p>	<p>The French delegation questions the scope of the control to be exercised by the independent authorities mentioned to guarantee the respect of the principles established by the article, because in France, it is up to the legislator to ensure, each year, through the adoption of the finance bill, the</p>

[FRANCE – Courtesy translation]

	adequacy between the financing allocated to public bodies and the missions assigned to them.
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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)

Interinstitutional File 2022/0277 (COD) - COM (2022) 457 final


Articles 1 to 5

- Table for comments –

<p>Commission proposal Interinstitutional File 2022/0277 (COD) COM (2022) 457 final</p>	<p>Comments and drafting suggestions from delegations</p>
<p>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)</p>	<p>According to Hungary's position, in the areas affected by the regulation, the creation of general, guarantee rules and principles would be acceptable at most, without the general formulation of the goals and conditions to be achieved, and without the elaboration of detailed rules for their implementation. For this reason, in our opinion, a directive or a recommendation would be the appropriate legal technical instrument and form of regulation.</p>
<p>Chapter I General Provisions <i>Article 1</i> Subject matter and scope</p>	<p>Regarding Article 1, Hungary maintains its position expressed in relation to the legal basis of the regulation and subsidiarity issues, and that Article 1 does not reflect with full clarity that the EMFA intends to regulate media relations only in its internal market aspects, therefore paragraph 1 (which contains the reference to the internal market) needs to be supplemented.</p>
<p>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.</p>	<p>We think that ERGA provides the adequate forum for the cooperation of regulatory authorities, therefore we do not support the replacement of ERGA by a new organisation, the European Board for Media Services.</p>



HU COMMENTS

<p>2. This Regulation shall not affect rules laid down by:</p> <ul style="list-style-type: none">(a) Directive 2000/31/EC;(b) Directive 2019/790/EU;(c) Regulation 2019/1150;(d) Regulation (EU) 2022/XXX [the Digital Services Act];(e) Regulation (EU) 2022/XXX [the Digital Markets Act];(f) Regulation (EU) 2022/XXX [Regulation on the transparency and targeting of political advertising].	
<p>3. This Regulation shall not affect the possibility for Member States to adopt more detailed rules in the fields covered by Chapter II and Section 5 of Chapter III, provided that those rules comply with Union law.</p>	

HU COMMENTS

<p><i>Article 2</i></p> <p>Definitions</p>	<p>Hungary can only support the definitions contained in Article 2 with reservations. We believe that serious interpretation issues and meaning concerns may arise in the case of several notions, such as in the case of state advertisements or media market concentration, so we recommend revising the text of the article in order to make the definitions clearer.</p>
<p>For the purposes of this Regulation, the following definitions shall apply:</p> <p>(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;</p>	
<p>(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;</p>	
<p>(3) ‘public service media provider’ means a media service provider which is entrusted with a public service mission under national law or receives national public funding for the fulfilment of such a mission;</p>	
<p>(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;</p>	
<p>(5) ‘press publication’ means a publication as defined in Article 2(4) of Directive 2019/790/EU;</p>	

HU COMMENTS

6) ‘audiovisual media service’ means a service as defined in Article 1(1), point (a), of Directive 2010/13/EU;	
(7) ‘editor’ means a natural person or a number of natural persons possibly grouped in a body, regardless of its legal form, status and composition, that takes or supervises editorial decisions within a media service provider;	
(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;	
(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/XXX [Digital Services Act];	
(11) ‘video-sharing platform service’ means a service as defined in Article 1(1), point (aa), of Directive 2010/13/EU;	

HU COMMENTS

<p>(12) ‘national regulatory authority or body’ means the authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU;</p>	
<p>(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;</p>	<p>The definition gives an unreasonably and disproportionately broad scope to the regulation of concentration transactions. Regulation (EC) No 139/2004 only covers mergers with community dimension, but this Regulation only refers to Article 3 of Regulation (EC) No 139/2004, so essentially any change in ownership structure affecting control rights can be considered as a concentration in the media market. So, by definition, all legal transactions should be examined (if the reference to the "community dimension" is missing from the definition), but national regulatory authorities do not have the means to investigate it. The examination by the current definition, could constitute a disproportionate restriction of freedom of press. It is therefore necessary to clarify in the definition that a concentration in the media markets is a concentration with community dimension as defined in Articles 1 and 3 of Regulation (EC) No 139/2004, where at least one media service provider is affected. We note that the draft EMFA also restricts the concept of media concentration by requiring in Article 21 that Member States regulate the assessment of mergers that "may have a significant impact on media pluralism and editorial independence." We also propose to include this clause in the definition.</p> <p>In addition, it should be noted that the wording of "significant impact" is not precise enough, its exact meaning is uncertain based on the draft EMFA.</p> <p>We recommend that the internal market impact and nature of the merger (cross-border nature) should be included in the definition, so that only concentrations that have a (significant) impact on the internal market and affect cross-border service provision are included in the concept of media market concentration.</p>

HU COMMENTS

(14) ‘audience measurement’ means the activity of collecting, interpreting or otherwise processing data about the number and characteristics of users of media services for the purposes of decisions regarding advertising allocation or prices or the related planning, production or distribution of content;	
(15) ‘State advertising’ means the placement, publication or dissemination, in any media service, of a promotional or self-promotional message, normally in return for payment or for any other consideration, by, for or on behalf of any national or regional public authority, such as national, federal or regional governments, regulatory authorities or bodies as well as state-owned enterprises or other state-controlled entities at the national or regional level, or any local government of a territorial entity of more than 1 million inhabitants;	

HU COMMENTS

(16) ‘spyware’ means any product with digital elements specially designed to exploit vulnerabilities in other products with digital elements 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;



HU COMMENTS

(17) ‘serious crime’ means any of the following criminal offences listed in Article 2(2) of the Council Framework Decision 2002/584/JHA⁵⁸:

- (a) terrorism,
- (b) trafficking in human beings,
- (c) sexual exploitation of children and child pornography,
- (d) illicit trafficking in weapons, munitions and explosives,
- (e) murder, grievous bodily injury,
- (f) illicit trade in human organs and tissues,
- (g) kidnapping, illegal restraint and hostage-taking,
- (h) organised or armed robbery,
- (i) rape,
- (j) crimes within the jurisdiction of the International Criminal Court.

⁵⁸ 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. 1-20).



<p>Chapter II</p> <p>Rights and duties of media service providers and recipients</p> <p><i>Article 3</i></p> <p>Rights of recipients of media services</p>	<p>The requirements in Article 3 are basically already covered by the AVMS directive, therefore the article formulates a general provision which formal statement at the level of a regulation is symbolic. Hungary can support Article 3 in terms of content.</p>
<p>Recipients of media services in the Union shall have the right 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.</p>	
<p><i>Article 4</i></p> <p>Rights of media service providers</p>	<p>According to Hungary's position, Article 4 of the proposal is partly redundant, partly violates the sovereignty of the member states, and partly does not meet the requirement of legal certainty. This article seeks to intervene directly into the legislation affecting the rights of the media service provider, as well as in the regulation affecting the national security of the member state, limiting the authority of the member state related to crime detection at the level of the regulation. At the same time, it leaves a relatively broad scope for Member States to carry out monitoring activities under certain exceptional circumstances. According to our interpretation, with the exceptions, this article contains statements and goals at the principle level, in addition to the fact that the provisions on Member States' monitoring typically had to meet these conditions until now. We recommend that, in view of the purpose of Article 4, it ensures the basic guarantees and does not restrict the Member States' scope for investigation and law enforcement.</p>
<p>1. Media service providers shall have the right to exercise their economic activities in</p>	

HU COMMENTS

the internal market without restrictions other than those allowed under Union law.	
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<p>2. Member States shall respect effective editorial freedom of media service providers.</p> <p>Member States, including their national regulatory authorities and bodies, shall not:</p> <p>(a) interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers;</p> <p>(b) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, their employees or their family members, or their corporate and private premises, on the ground that they refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest, in accordance with Article 52(1) of the Charter and in compliance with other Union law;</p> <p>(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, unless the deployment is justified, on a case-by-case basis, on grounds of national security and is in compliance with Article 52(1) of the Charter and other Union law or the deployment occurs in serious crimes investigations of one of the aforementioned persons, it is provided for under national law and is in compliance with Article 52(1) of the Charter and other Union law, and measures adopted pursuant to sub-paragraph (b) would be inadequate and insufficient to obtain the information sought.</p>	<p><u>Suggestion:</u></p> <p>(a) without prejudice to public security and the protection of health and life of humans interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers;</p> <p><u>Reasoning:</u></p> <p>To paragraph 2(a), the phrase "in any way":</p> <p>Point 2(a) completely excludes Member States' intervention or influence in the editorial policy and decisions of media service providers, but such a general restriction is contrary to the EU law.</p> <p>On one hand, this prohibition precludes the legislative regulatory interference allowed by EU law in the sector concerned. For example, in addition to the minimum standards set by the AVMS Directive, Member States may develop more detailed rules on the protection of minors, and the age rating system, rules on media content that can be broadcast in a specific time slot or with technical protection, programme quota obligations and other conditions for programme content may restrict and influence the editorial choices of media service providers in accordance with EU law.</p> <p>In addition, in certain cases Member States may apply a selection procedure when authorising market entry if the media service is provided using a limited resource (frequency). Under the selection system, Member States may also set conditions that may affect the operation of media service providers in an objective, proportionate and transparent procedure, in accordance with EU law.</p> <p>On the other hand, the rule also excludes the possibility for Member States to intervene in the context of enforcement,</p>
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HU COMMENTS

	i.e. where a national regulator uses its supervisory power under the EU law to monitor the operation of media service providers and to determine the conditions for their lawfulness in case of illegality.
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<p>3. Without prejudice and in addition to the right to effective judicial protection guaranteed to each natural and legal person, Member States shall designate an independent authority or body to handle complaints lodged by media service providers or, if applicable, their family members, their employees or their family members, regarding breaches of paragraph 2, points (b) and (c). Media service providers shall have the right to request that authority or body to issue, within three months of the request, an opinion regarding compliance with paragraph 2, points (b) and (c).</p>	
<p><i>Article 5</i></p> <p>Safeguards for the independent functioning of public service media providers</p>	<p>We think that the provisions in Article 5 aimed at the independence of public service media cannot be supported in the form proposed by the Commission. In our view, the content of the article violates the principle of subsidiarity, unreasonably extending the EU legislation to an area that is already properly regulated within the existing legal framework. As an alternative solution, we recommend that instead of the provision contained in Article 5, the European Commission could develop a recommendation on the independence of public service media.</p>
<p>1. Public service media providers shall provide in an impartial manner a plurality of information and opinions to their audiences, in accordance with their public service mission.</p>	

HU COMMENTS

<p>2. The head of management and the members of the governing board of public service media providers shall be appointed through a transparent, open and non-discriminatory procedure and on the basis of transparent, objective, non-discriminatory and proportionate criteria laid down in advance by national law.</p> <p>The duration of their term of office shall be established by national law, 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 exceptionally where they no longer fulfil the legally predefined conditions required for the performance of their duties laid down in advance by national law or for specific reasons of illegal conduct or serious misconduct as defined in advance by national law.</p> <p>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.</p>	
<p>3. Member States shall ensure that public service media providers have adequate and stable financial resources for the fulfilment of their public service mission. Those resources shall be such that editorial independence is safeguarded.</p>	
<p>4. Member States shall designate one or more independent authorities or bodies in order to monitor compliance with paragraphs 1 to 3.</p>	