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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act) (first reading) - Adoption of the legislative act = Statements

Statement by France

France reiterates its unwavering dedication to the freedom, independence and pluralism of the media, which are pillars of democracy and the rule of law, and its steadfast commitment to protecting the principles and fundamental values of the European Union.

The protection of these values is provided for by the Treaties, in particular Article 2 of the Treaty on European Union, and is without prejudice to Article 4(2) of the Treaty on European Union and its implementation.

In this regard, the Union ‘shall respect their [the Member States’] essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.’

In this spirit, and in line with Article 4(9) of this Regulation, France would point out that it is for Member States alone to safeguard their national security. The provisions of this Regulation should therefore in no way affect the full exercise of that responsibility and the measures taken in that context.

Furthermore, France notes that this Regulation, based on Article 114 of the Treaty on the Functioning of the European Union, may not result in the harmonisation of rules of criminal procedure. Consequently, the key concepts of criminal procedure, including serious crime, and the competent authorities mentioned in Article 4(3) and (4), are and must remain defined by the law of each Member State.

Statement by Italy

Italy firmly supports the European Union’s initiatives to promote the freedom, independence and pluralism of the media, as well as to counteract disinformation and attempts by third countries to interfere in the information system.

The protection of these values falls within the framework established in the Treaties, in particular Article 2 of the Treaty on European Union, without prejudice to the provisions of Article 4(2) of the Treaty on European Union and its implementation, which states that the Union ‘shall respect ... essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State’.

In keeping with this spirit, and in accordance with Article 4 of the Media Freedom Regulation, Italy recalls that it is exclusively within the remit of the Member States to ensure the protection of their national security. Therefore, the provisions of this Regulation cannot in any way affect the full exercise of this responsibility and any measures taken in that context.

Moreover, as highlighted by the European Commission in a statement interpreting the Regulation, Italy notes that the Regulation, based on Article 114 of the Treaty on the Functioning of the European Union, cannot have the effect of harmonising rules relating to criminal procedure. Accordingly, the key concepts of criminal procedure, including relating to serious criminal offences, and of the competent authorities referred to in Articles 4(3) and 4(5) are and must remain defined in accordance with the law of each Member State.

Statement by Hungary

Hungary is committed to the appropriate handling of the issues regulated in the EMFA proposal, such as ensuring editorial independence, excluding secret surveillance of journalists in relation to journalistic sources, or reforming the provisions on public media. We consider unrestricted access to diverse media contents as an important value. We welcome the regulation on giant platforms appearing in the proposal.

However, given the different media structures of the Member States, we still maintain our repeatedly stated position that it would be desirable to create only general, guaranteeing rules and principles for the legal areas regulated in the EMFA. Thus, a directive or a recommendation would be a more appropriate regulatory instrument than a regulation.

We have also indicated several times during the negotiations that in our opinion, the proposal represents an intervention in the sovereignty of the Member States at many points, and the specified legal basis does not provide sufficient justification for the adoption of the Regulation with regard to all its articles. The right of opinion of the European Board for Media Services to be established by the EMFA violates the competence of Member States' authorities. In our opinion, the practical feasibility of the Board's independence from the Commission also raises questions. The provisions of criminal law nature contained in Article 4 may cause legal uncertainty due to the different criminal procedure systems in the Member States. more flexibility and room for interpretation is needed in these provisions in order to deal with the differences in the criminal procedure systems of the Member States.

Statement by the Commission

The European Media Freedom Act (“EMFA”) does not aim to harmonise the key concepts of criminal procedure as referred to in Article 4(3) of EMFA, as explained in Recital 22 of EMFA.

Judicial investigation authorities acting in an independent and impartial manner, as clarified in Recital 21 of EMFA, are competent decision-making authorities under national law to resort to the coercive measures referred to in Article 4(3) of EMFA.
