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NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council
Subject: Regulation on the European Media Freedom Act
- *Progress report*

1. On 16 September 2022, the Commission presented a 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, EMFA) and amending Directive 2010/13/EU¹. The proposal was accompanied by a Commission Recommendation on internal safeguards for editorial independence and ownership transparency in the media sector, and an Impact Assessment.

¹ Doc. 12413/22 – COM (2022) 457 final

2. On 21 September 2022, the EMFA proposal was presented at the Committee of Permanent Representatives.
 3. The Audiovisual and Media Working Party (AVMWP) examined the text of the proposal at a number of meetings between September and November 2022² under the Czech Presidency.
 4. Under the Swedish Presidency, the AVMWP continued the examination of the proposal at a number of meetings between January and April 2023, on the basis of compromise text tabled by the Presidency.
 5. The aim of the Presidency is to continue with the work on the proposal with a view to establish the Council's General Approach on the whole text by June 2023.
 6. The Committee of Permanent Representatives is invited to transmit the attached Progress Report on the EMFA proposal, as prepared by the Presidency, to the Council with a view to inform Ministers about the work accomplished and the progress made so far on it.
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² The AVMWP examined the Impact Assessment at its meeting on 29 September 2022

THE EUROPEAN MEDIA FREEDOM ACT (EMFA)

PRESIDENCY PROGRESS REPORT

I. INTRODUCTION

1. **Background**

On 3 December 2020, the Commission presented the European Democracy Action Plan (EDAP) aimed at empowering citizens and building more resilient democracies across the EU. The pillars included in the EDAP focus inter alia on strengthening media freedom and pluralism as well as countering disinformation.

In the State of Union address on 15 September 2021, the President of the European Commission, Ms. Ursula von der Leyen, emphasised that Europe needs a law that safeguards media independence and indicated that the Commission would deliver a proposal for legislation in 2022 in the form of the Media Freedom Act.

A public consultation took place from 10 January 2022 to 21 March 2022. The consultation was intended to collect views on the most important issues affecting the functioning of the internal media market.

On 16 September 2022, the Commission presented a 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, EMFA) and amending Directive 2010/13/EU³. As part of the EMFA package, a complementary Commission Recommendation on internal safeguards for editorial independence and ownership transparency in the media sector⁴ was also tabled.

³ Doc. 12413/22 – COM (2022) 457 final

⁴ OJ L 245, 22.9.2022, p. 56)

2. Commission legislative proposal and impact assessment

The EMFA Regulation proposal aims at establishing a common framework for media services in the internal market. It builds on the 2018 Audiovisual and Media Services Directive (AVMSD), while at the same time it amends certain provisions of the AVMSD,

The EMFA covers complex and sensitive areas with links to other policy areas such as Rule of Law and Justice and Home Affairs, and it is the first time that the EU aims at legislating in the fields of media freedom, media pluralism and editorial independence.

The EMFA legislative proposal is based on art. 114 TFEU (approximation of laws for the achievement of the internal market objectives). It has 28 articles and 54 recitals, and amends some provisions of the AVMSD; in particular, EMFA proposes a new European Board for Media Services (the Board) to replace the current European regulators Group for Audiovisual Media Services (ERGA) which was set out by the AVMSD.

The EMFA proposal is articulated around four specific objectives for the improved functioning of the internal media market:

- fostering cross-border activity and investment in media services
- increasing regulatory cooperation and convergence
- facilitating provision of quality media services
- ensuring transparent and fair allocation of economic resources

The impact assessment report on the EMFA justifies the need for action in light of the current problems affecting the proper functioning of the internal media market; develops the specific objectives to be reached; justifies the EU added value and the need for EU action in terms of subsidiarity; explores alternative solutions and comes to a reasoned choice; identifies relevant stakeholders; analyses the impacts in financial, technical, budget, business, competitiveness, media freedom, media pluralism and editorial independence terms; and explains the choice of the legal basis and the compliance of the proposal with the principles of subsidiarity and proportionality.

3. State of play at the European Parliament

As regards the state of play at the European Parliament (EP), the EMFA Regulation proposal was announced in the EP plenary session on 17 October 2022. Following internal discussions, the EP confirmed

- the Committee on culture and education (CULT) as the lead Committee, and Ms Sabine Verheyen (EPP/DE) as Rapporteur for the EMFA file⁵.
- the Committee on Internal Market and Consumer Protection (IMCO) as Committee to be consulted, and Mr Geoffroy Didier (EPP/FR) as Rapporteur for the Opinion.
- the Committee on Civil Liberties, Justice and Home Affairs (LIBE) as Committee to be consulted, but with exclusive competence on Articles 4(2) and 20(3). The Rapporteur for this Opinion is Ms. Ramona Strugariu (Renew/RO).

⁵ Ms Verheyen is also the Chair of the CULT Committee

In line with the Council and the Commission, the EP's aim is to reach an overall agreement on the EMFA file before the EP elections in May 2024. In this perspective, the tentative EP calendar of work in 2023 is the following:

- 31 March: publication of the draft Report
- 26 April: presentation and first discussion at the CULT Committee
- 5 May: deadline for amendments
- June (date tbc): vote on the Opinions by the IMCO and LIBE Committees
- June-August: work on compromise texts among Committees and political groups, translation of draft amendments, etc
- 7 September: vote in CULT Committee⁶
- 16-19 October (date tbc): vote in EP Plenary⁷

The draft Report of the CULT Committee was published on 31 March 2023 and contains 117 amendments. It welcomes the EMFA proposal, but suggests a number of changes in order to change and/or clarify certain provisions.

The draft Opinion of the LIBE Committee was published on 16 April 2023.

The draft Opinion of the IMCO Committee was published on 3 March 2023.

⁶ The CULT Committee will not vote on the LIBE amendments for arts. 4(2) and 20(3)

⁷ The draft Report indicates that « *interinstitutional negotiations could then take place by the end of 2023 or in early 2024* ».

4. Opinions by the Union’s advisory bodies and other relevant actors

The European Economic and Social Committee

Pursuant to Article 114 TFEU, the European Economic and Social Committee (EESC) must be consulted, and therefore the Council launched the consultation process in October 2023.

The EESC Plenary adopted its Opinion on EMFA on 14 December 2022⁸, and it was subsequently presented at the AVMWP.

The European Committee of the Regions

While the consultation of the Committee of the Regions (ECoR) is optional, the Commission suggested in its proposal to consult it⁹. On 16 November 2022, and on the basis of Articles 307 TFEU and 19(7)(h) of the Council Rules of Procedure, the Committee of Permanent Representatives (Coreper) decided to consult the ECoR¹⁰.

The ECoR Plenary adopted its Opinion on EMFA on 16 March 2023¹¹, and it was subsequently presented at the AVMWP.

The European Data Protection Supervisor

While the consultation of the European Data Protection Supervisor (EDPS) is not foreseen in the Treaties, the Commission suggested in its proposal to consult it¹².

The EDPS adopted its Opinion on EMFA 11 November 2022¹³, and it was subsequently presented at the AVMWP.

⁸ Doc. 16226/22

⁹ See the Preamble

¹⁰ Doc. 14475/22

¹¹ Doc. 7783/23

¹² See recital 54

¹³ Doc. 15569/22

The Council Legal Service

At its meeting of 29 September 2022, the AVMWP requested the Council Legal Service (CLS) to analyse the legal basis of the proposal.

The CLS Opinion was published on 4 April 2023¹⁴. It focusses on the legal basis of the proposal and should not be read as an assessment of all legal aspects of the proposal¹⁵. The CLS subsequently presented its Opinion at the AVMWP.

¹⁴ Doc. 8089/23

¹⁵ The CLS Opinion published in doc. 8089/23 contains legal advice protected under Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, and not released by the Council of the European Union to the public. The Council reserves all its rights in law as regards any unauthorised publication.

II. DISCUSSIONS UNDER THE CZECH PRESIDENCY

During the Czech Presidency, there was an initial presentation of the EMFA proposal at Coreper on 21 September 2022.

Subsequently, the Audiovisual and Media Working Party (AVMWP) examined the Commission's proposal at a number of meetings held between September and November 2022.

On 29 September 2022, the Commission presented the EMFA proposal together with the impact assessment and the Commission Recommendation on internal safeguards for editorial independence and ownership transparency in the media sector to the AVMWP. A large number of Member States expressed their support for the general objectives of the EMFA but stated that further examination of specific articles is needed.

At the meetings on 13 and 25 October and on 8 and 16 November 2022, the AVMWP examined in detail Articles 1–24 of the EMFA proposal.

At the Culture, Audiovisual and Media session of the EYCS Council meeting on 29 November 2022, the CZ Presidency presented a progress report on the EMFA proposal. Ministers welcomed the objectives of the proposal and highlighted the importance of media freedom and media pluralism for democracy and for the good functioning of the EU single market. They praised the work done under the CZ Presidency and acknowledged that further discussions will be needed in order to clarify issues related to subsidiarity, the legal basis, the independence of national regulatory authorities and the scope of the proposal.

III. DISCUSSIONS UNDER THE SWEDISH PRESIDENCY

Eight full-day meetings have been held in the AVMWP from 11 January to 17 April. Starting with the provisions on the Board, Articles 1–16 have been examined in conjunction with their related recitals on three different occasions, including on the basis of two sets of compromise amendments tabled by the Presidency. Articles 17–25 have been examined on two occasions, including on the basis of one set of compromise amendments.

1. The creation of the European Board for Media Services and new cooperation procedures between national regulatory authorities (Arts 7–16)

The overall assessment of the Swedish Presidency is that an agreement within the Council on this part of the Regulation is very close. Member States have largely agreed on the direction for amendments in relation to the Board and the cooperation mechanisms proposed for national regulatory authorities. There is a broad agreement to set up such mechanisms and to include the Board as a facilitator to issue non-binding opinions and to mediate between regulators or in other ways provide assistance with coordination.

Comments and suggestions of Member States have to a large extent focussed on the balance between the involvement of the Commission in the Board’s deliberations and the need to safeguard the Board’s independence. As a result, several substantive changes have been proposed in the two sets of compromise proposals concerning the set-up, governance and tasks of the Board, including the independence of its secretariat, to be provided by the Commission.

The proposed compromise amendments also aim at ensuring that the tasks of the Board are limited to the AVMSD and to those parts of the Regulation where the press is not directly targeted, i.e. Chapter III, and at giving the possibility for national coordination with other relevant authorities or self-regulatory bodies.

In addition, some Member States have asked for further clarifications and tools for the proposed voluntary mechanism for coordination in relation to third-country media services. Although some details remain to be worked out, a draft compromise proposal to further involve the Board has been welcomed by a large number of Member States.

2. General safeguards for and duties of media service providers, including public service media (Arts 1–6)

The first part of the Regulation covers several important, but also sensitive, issues for the Member States. While the safeguards for and duties of media service providers are important not only for the functioning of the internal market, they also constitute the essence of national media policy and vary according to cultural and constitutional practices in the Member States. The Presidency has listened carefully to the issues raised by Member States in relation to harmonisation in this sensitive area, while trying to answer to the need for common safeguards for media freedom and plurality. It was proposed to state more clearly that it is Member States' responsibility to ensure a plurality of news and current affairs content as well as the independence and well-functioning of public service media.

Although no formal agreement has been reached yet, the amendments proposed so far by the Presidency have been positively received, and an agreement seems at reach for most of the provisions.

On Article 4, which deals with the rights of media service providers, including as regards protection of journalistic sources, further work remains. The exact drafting on the possible use of spyware in relation to journalistic sources is still under discussion at the AVMWP. Although all Member States agree on a common strong protection of journalistic sources, the provisions giving possibilities for exceptional instances still need further discussion and fine-tuning.

3. Media services in a digital environment, national media market measures affecting the internal market, transparent allocation of economic resources and new monitoring of the internal media market (Arts 17–25)

The last part of the Regulation includes provisions of different nature. For some of the provisions Member States have had similar views on the directions of amendments, on others the views differ somewhat. Only a first set of proposals for amendments has been discussed by the AVMWP before the Council meeting.

The Presidency considers that although discussions on this part of the Regulation are slightly less advanced than the ones on the first two parts of the proposal, the direction to take is clear. The discussions at the AVMWP have been politically and technically clarifying, and the first set of proposals for amendments were welcomed. In order to address the Member States' concerns, the Presidency proposed substantial changes aimed at limiting the scope of the Board's opinions on national media policy measures, to those with significant impact on the internal market. In the same vein, the Presidency proposed amendments to limit the scope of the provisions related to media market concentrations, to those likely to affect the internal market.

The first set of amendments proposed by the Presidency also aimed to reinforce the safeguards for media service providers vis-à-vis very large online platforms (VLOPs), simultaneously tightening the conditions for benefiting from those safeguards. The objective has been to find a balanced procedure that increases respect for the integrity of content under the editorial control of media service providers, while confirming the clear obligations for VLOPs to fight disinformation and hate speech. Member States agree on the importance of giving the Board the task to strengthen the dialogue between VLOPs and media service providers.

The provisions on audience measurement and state advertising have raised questions from Member States, as national provisions on state advertising differ significantly. One key change proposed as a compromise is to allow Member States to uphold stricter or more detailed rules on state advertising at national level.

Finally, the Presidency has also tabled amendments in order to clarify the annual independent monitoring exercise foreseen by the Commission and to enhance its transparency.

IV. FOLLOW-UP

The AVMWP will continue its work on the EMFA proposal in May and June. The Presidency's aim is to reach a General Approach by June 2023.
