

Provisions from latest EMFA proposal are cause for concerns for audiovisual and cultural actors and journalists

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*Eric Munch
European Audiovisual Observatory*

On 9 June, a broad coalition of European and national organisations from the audiovisual and cultural sectors addressed the European Commission, the Council of the European Union and the European Parliament, voicing their concern about the content of the EMFA proposal by the Commission.

Their concern stems from the current EMFA proposal's Article 20 and its paragraph 1 in particular, which states that "Any legislative, regulatory or administrative measure taken by a Member State that is liable to affect the operation of media service providers in the internal market shall be duly justified and proportionate. Such measures shall be reasoned, transparent, objective and non-discriminatory."

In their 9 June open letter to the Institutions, the coalition members argue new "'requirements for well-functioning media market measures and procedures' with the objective of tackling obstacles to the functioning of the internal market for media services, such as disproportionate and inadequate national regulations affecting the media and press sectors. These national regulations are considered as 'regulatory burdens' and 'obstacles to the exercise of economic activities' in the European media market with the risk of creating 'legal uncertainties' weakening investment in media services. According to them, this approach "may weaken and possibly challenge the existence of protective and ambitious cultural policies set out by Member States to promote European audiovisual creation in all its diversity."

A new complaint mechanism, introduced in Article 20 paragraph 4, would also allow media service providers to challenge essential measures for the creation, production and distribution of European audiovisual works based on internal market criteria only.

On 21 June, the Council of the European Union came to an agreement regarding the EMFA proposal, with its Article 20 slightly modified, now reading: "Legislative, regulatory or administrative measures taken by a Member State that are liable to affect media pluralism or editorial independence of media service providers in the internal market shall be duly justified and proportionate. Such measures shall be

reasoned, transparent, objective and non-discriminatory.”

On the same day, the European Federation of Journalists (EFJ) also voiced concern regarding another provision from the latest proposal. While the EFJ refers to EMFA as a “much needed” piece of legislation, it does not see favourably the intention of European member states to introduce an exception to the general ban on deploying spyware against journalists – a provision introduced by France earlier in June to Article 4. The provision adds that the effective protection of journalistic sources “is without prejudice to the Member States’ responsibility for safeguarding national security.” The EFJ considers that the inclusion of a national security exemption would turn “the protections originally afforded into empty shells.”

It also points out that the exhaustive list of crimes justifying an exemption initially set by the European Commission – which was already cause for concern – has been replaced in this draft by the list established in the European Arrest Warrant Framework Decision, making the deployment of spyware against journalists and journalistic sources even easier to justify.

The 21 June press release also raises the contradiction between this exemption and the important case law of the Court of Justice of the European Union (CJEU), which makes it clear that safeguarding national security cannot render EU law unapplicable and does not exempt member states from their obligation to comply with the rule of law.

“We are disturbed about the dangerous loopholes in the Council’s position, which shows a disregard for media freedom principles”, said EFJ Director Renate Schroeder, before summarising: “This EMFA was supposed to generate trust. The Member States are generating mistrust.”

EFJ Press release - EMFA : EU Member States show dangerous disregard for media freedom principles

<http://eye.sbc37.com/m2?r=wAXNBUM4NWQzYWMzMDcxMWNINjlxN2VjZGYzOWExxBDQvNCpZNDX8tDSRQBh0NAZO9CoSfwltmRkdGpJRmZla1dXQ0FxV1Q2MUNscme5ZnjhbmNpc2NvLmNhYnJlcmFAY29lLmludKCoQzNlaGJGSUOQtIFOdIM4cFZQRHNYU2pUMIFkTjNOdHeg>

EFJ - EU Member States should not use national security as a pretext to weaken the Media Freedom Act

<https://europeanjournalists.org/blog/2023/06/13/eu-member-states-should-not-use-national-security-as-a-pretext-to-weaken-the-media-freedom-act/>

Open letter to EU Institutions regarding the impact of the EMFA Regulation proposal on cultural audiovisual policies

<https://screendirectors.eu/open-letter-to-european-institutions-regarding-the-impact-of-the-emfa-regulation-proposal-on-cultural-audiovisual-policies/>

