EMFA: European Parliament adopts its position

IRIS 2023-9:1/12

Justine Radel-Cormann
European Audiovisual Observatory

Following CULT MEPs' adoption of their European Media Freedom Act (EMFA) report (see IRIS 2023-8:1/9), the EP adopted in plenary its position (negotiating mandate) on the European Commission's proposal for the EMFA on 3 October 2023, with 448 votes in favour, 102 against and 75 abstentions.

The EP's position suggests 295 amendments to the European Commission's proposal, covering the entire proposal.

The EP's position has made both positive and negative waves. Before the summer, a coalition of organisations from the audiovisual and cultural sectors (independent producers, directors, actors, composers, cinema exhibitors, distributors, trade unions and collecting societies) addressed the EU institutions on the content of the EMFA's proposal (see IRIS 2023-7:1/13). For instance, two proposed articles were concerning for the audiovisual sector:

The Article 20 of the proposal requires member states to ensure the measures they take affecting media service providers to be justified and proportionate. According to the coalition, the wording of this Article was too broad, undermining cultural policies and possibly allowing audiovisual media service providers to challenge national measures enforcing audiovisual policies if considered unjustified and non proportionate. In its position, the European Parliament modified the wording of this Article, ensuring that the targeted measures are related to media pluralism and editorial independence. The EP position now reads as "Any legislative, regulatory or administrative measure taken by a Member State that is liable to affect media pluralism and the editorial independence of media service providers regarding either the provision or the operation of their media services in the internal market shall be duly justified and proportionate. Such measures shall be reasoned, transparent, objective and non-discriminatory".

The proposed Article 4 could introduce an exception to the general ban on deploying spyware against journalists, when the national security of a member state is at stake. The EP's position wording implements a stricter framework under which the member states could use spywares when carried out "as last resort" measures (see AM. 114, Art.4(2b)), but does not completely ban the use of spywares, as reported by the European Federation of Journalists in its latest

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position on the EMFA.

Otherwise, MEPs decided to go further than the Commission regarding media services' editorial responsibility and independence. On editorial responsibility: MEPs' position reflects the need to make it clear for users who bear the editorial responsibility (especially for online content) (see proposed Art. 6(1)(ac) and related Amendment (AM) 129, and proposed Art. 19 and related AMs 235-237). Besides, MEPs' text ensures protection to recognised editors' responsibility for editorial content in the digital world by requiring providers of VLOPs to safeguard media freedom and pluralism when dealing with content moderation and taking any other actions (see proposed Art. 17 and related AMs. 208-228).

On the independence of media services, additional occurrences of the word "independence" have been spread throughout the text, starting with the future Regulation's objective in the proposed Art. 1(1) (AM. 69): the Regulation establishes "common basic principles to serve as minimum standards, while ensuring the independence of media services". Other amendments also corroborate this, for example, the proposed Art. 4(2) (AM 105) "The Union, Member State and private entities shall respect the effective editorial freedom and independence of media service providers", as in the proposed Art. 5(1) (AM 118) providing for Member States to ensure public service media providers a "full autonomy and editorial independence from governmental, political, economic or private vested interests".

The Council of the European Union adopted its negotiating position on 21 June 2023. Now that both the Council and the European Parliament have adopted their positions, the Council, the Commission and the Parliament will negotiate in the upcoming trilogue.

EC Proposal for a Regulation establishing a common framework for media services in the internal market (EMFA)

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A0457%3AFIN

Amendments adopted by the European Parliament on the proposal for a Regulation of the European Parliament and of the Council establishing the EMFA

https://www.europarl.europa.eu/doceo/document/TA-9-2023-0336_EN.html

Council of the EU's mandate for negotiations with the EP on the proposal for a Regulation of the European Parliament and of the Council establishing the EMFA

https://www.consilium.europa.eu/en/press/press-releases/2023/06/21/european-media-freedom-act-council-secures-mandate-for-negotiations/

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EFJ's position following the EP's position on EMFA

https://europeanjournalists.org/blog/2023/10/04/emfa-efj-applauds-european-parliaments-vote-for-strengthened-regulation-deplores-conditional-use-of-spyware/

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