
An Unofficial Amicus Curiae Brief (Third Party Observations)

RE: Case C-486/24

Berlin, November 14, 2025

A. Unofficial Submission from the Civil Liberties Union for Europe

1. Civil Liberties Union for Europe (“Liberties”) has prepared this submission in relation to Case C-486/24, *Republic of Hungary v European Parliament and Council*, pending before the Court of Justice of the European Union (“Court”). This case concerns an action brought under Article 263 Treaty on the Functioning of the European Union (TFEU) by Hungary, seeking the annulment of Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024, which establishes a common framework for media services in the internal market and amends Directive 2010/13/EU.
2. The case raises fundamental questions about media freedom and pluralism across the EU, the interpretation and validity of EU legislation in light of the Treaties and the Charter of Fundamental Rights of the European Union. Its outcome will have significant consequences for the Union’s legal order, the protection of fundamental rights, and the balance between EU institutions and Member States.

B. Liberties’ interest in the case

1. Liberties is not a party to Case C-486/24 and acknowledges that, under the Statute and the Rules of Procedure of the Court, this amicus curiae intervention is not formally admissible. Nevertheless, Liberties has decided to submit this intervention in a spirit of constructive engagement, because the case raises questions of great importance for the protection of fundamental rights and the rule of law across the European Union. Liberties therefore presents itself as an amicus curiae and respectfully offers this submission with the hope that its arguments may assist the Court in its deliberations, given the erga omnes implications of the forthcoming judgment.
2. Liberties is an independent, non-governmental, not-for-profit organisation that works to protect and promote fundamental rights, democracy, and the rule of law in Europe. Liberties brings together 22 national civil liberties NGOs from across the Union, and provides them with expertise, advocacy, and coordination at the EU level. Through its network and secretariat in Berlin, Liberties engages

with European institutions, Member States, academics, and civil society to advance rights-based policy and legal frameworks.

3. An important part of Liberties' work is to safeguard democracy, the rule of law, and fundamental rights in the EU legal order, including by monitoring EU legislative initiatives and supporting litigation that touches upon systemic issues of rights protection. Liberties issues its yearly Media Freedom Report and has been involved in EU-level media legislation from its conceptualisation. In doing so, Liberties maintains a non-partisan approach and seeks to provide the Court with relevant legal perspectives drawn from its expertise.

4. Given the nature of this amicus, Liberties will set out a number of arguments, insights and evidence produced by civil society organisations, journalists' associations and academic research designed to help the Court address the legal issues of the present case. Primarily, Liberties relies on its own data collection to provide input in support of upholding the European Media Freedom Act (EMFA).

5. Accordingly, Liberties has drafted the present amicus brief independently of the parties to the case, with the sole aim of assisting the Court by offering an external perspective on the broader implications of the legal questions raised.

C. General Remarks

1. Digitalisation has fundamentally reshaped the European media environment, fostering the emergence of a more unified media system across Member States. Consumers now access and engage with media content irrespective of its national origin, as technological advancements have significantly reduced traditional territorial and linguistic barriers. The proliferation of online media and broadcasting services—including internet radio and social media platforms—has corrected the previously segmented national media markets. This evolution has catalysed the development of a more integrated single media market within the European Union, wherein cross-border content dissemination and consumption have become increasingly central.

2. While systemic challenges to media freedom and pluralism exist throughout the European Union, Hungary remains one of the most concerning cases, consistently drawing substantial criticism for its media governance practices. The country currently faces multiple pending infringement procedures¹ before the European Commission and the Court of Justice of the EU, reflecting serious concerns regarding its adherence to principles of media freedom and pluralism.

¹ Infringement cases in Hungary: <https://ec.europa.eu/implementing-eu-law/member-state-infringement-cases/en>

3. The EMFA addresses severe and systematic threats to media freedom and pluralism in the EU. Annual reports on the subject, such as the Liberties Media Freedom Report,² the monitoring reports from Media Freedom Rapid Response,³ and the Media Pluralism Monitor,⁴ show that media freedom and pluralism continue to erode across the Union. Governments continue to influence public service media, media regulatory bodies, and the processes through which public funds for media advertising are dispersed; private companies, wealthy individuals or, in some cases, politicians themselves control an outsized number of countries' media outlets, crippling pluralism; the use of spyware against journalists remains an ongoing threat to their work. Again, Hungary stands out. Regardless of the threat, the problem is often most acute in Hungary. The government directly controls the editorial positions of public service media⁵ and the decisions of the media regulatory body;⁶ it uses public money for media advertising as a tool to support friendly outlets;⁷ the national media sector is almost entirely controlled by friends of the ruling party; it is well documented that Pegasus spyware has been used against journalists.⁸ In Hungary, media markets are highly concentrated in the hands of government-aligned owners.⁹ This concentrated ownership structure places large parts of the media landscape under direct or indirect political influence. Such concentration undermines media pluralism, as independent and critical voices struggle to reach a broad audience.

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- 2 J. Day, F. Otto, E. Simon, 'Media Freedom Report 2025'. Civil Liberties Union for Europe, April 2025. <https://www.liberties.eu/f/oj-aem>
- 3 Media Freedom Rapid Response, 'Mapping Media Freedom Monitoring Report 2024'. February 2025. <https://www.ecpmf.eu/wp-content/uploads/2025/02/Monitoring-Report-2024.pdf>.
- 4 The Centre for Media Pluralism and Media Freedom, 'Media Pluralism Monitor 2024'. <https://cmpf.eu.eu/media-pluralism-monitor-2024/>.
- 5 J. Day, F. Otto, E. Simon, 'Media Freedom Report 2025'. Civil Liberties Union for Europe, p. 29. April 2025. <https://www.liberties.eu/f/oj-aem>.
- 6 Mérték Média Monitor, 'The Frozen Media System, Soft Censorship, 2022', <https://mertek.eu/wp-content/uploads/2024/04/MertekBooklets36-1.pdf>.
- 7 Mérték Médiaelemző Műhely, 2020, <https://mertek.eu/en/2023/05/05/guest-blog-advertisements-in-pro-government-and-independent-weeklies-in-2020/>. <https://cmpf.eu.eu/country/hungary/>
- 8 European Parliament recommendation of 15 June 2023 to the Council and the Commission following the investigation of alleged contraventions and maladministration in the application of Union law in relation to the use of Pegasus and equivalent surveillance spyware (2023/2500(RSP)) Point P. Whereas the Hungarian government has weakened and eliminated institutional and legal safeguards including proper oversight and scrutiny procedures, effectively leaving persons targeted without any meaningful remedy; whereas the Pegasus surveillance spyware has been illegally deployed for political purposes to spy on journalists, opposition politicians, lawyers, prosecutors and civil society actors.
- 9 A. Szeidl and F. Szucs (2021), "Media Capture through Favor Exchange", *Econometrica*, Vol. 89, No. 1, pp. 281–310. Hungary, Media Pluralism Monitor results, 2025, <https://cmpf.eu.eu/country/hungary/>

D. EMFA legal basis in the Treaties

1. EMFA is based on Article 114 TFEU, which authorises the Union legislator to adopt measures harmonising national laws and regulations with the objective of removing obstacles and hindrances from the functioning of the internal market. The CJEU held that the recourse to Article 114(1) TFEU is only justified where measures genuinely have as their objective the improvement of the conditions for the establishment and functioning of the internal market or where there are differences between the laws, regulations, or administrative provisions of the Member States that are such as to obstruct the fundamental freedoms and thus have a direct effect on the functioning of the internal market [Case-C 543/14 Philip Morris, para 58; Case C-58/08 Vodafone, para 32; Case C-491/-1 British American Tobacco Article, paras 59 and 60; Case C-376/98 German v EP and Council, para 83.].
2. Differences between the national media markets in terms of media freedom have caused tensions in the European internal media market, as a) several companies were economically forced to leave certain markets where the market conditions significantly deteriorated for foreign companies because of interventions into media freedom and pluralism; b) competition in a market where some actors enjoy structural support and a systemic financial support of the state, while they are not required to retain the principles of journalistic ethics, becomes genuinely unfair, thereby endangering the goals of the internal market in this lucrative sector, which is important both from an economic and a societal perspective.
3. Media is a “merit good”: its value is defined, both for the market and for society, by its informativeness, authenticity, trustworthiness, accessibility, independence, and other qualitative features. These are formulated as *professional standards* established by journalistic associations, and the scholarship of communication science, media science and journalism. Malpractices that can be observed in the European media market, such as disinformation and undue government pressure, discriminative state advertising, biased public service media and so forth, violate these professional standards.
4. Article 11(2) of the Charter of Fundamental Rights (CFR) recognises the importance of free and plural media as a necessary consequence of guaranteeing freedom of expression. Media freedom is directly derived from freedom of expression and is considered a subjective right. It protects the media as an institution and, thus, as a distributor and amplifier of facts and opinions.
5. Media pluralism was recognised by the Court of Justice of the European Union (CJEU) as a legitimate policy goal [Case C-288/89, Gouda, para 23]. A right to pluralism means a right to receive information of a diversified nature that is currently being developed further by the case law of the CJEU.

6. Media pluralism requires that the public discourse feature as many voices as possible. Furthermore, media freedom and pluralism are important preconditions and safeguards for the right to receive information guaranteed in paragraph 1 [Case C-283/11 *Sky Österreich*, Paras 51-52].

7. The role of the CFR ensures the right to vote in democratic elections to the European Parliament in any Member State. EU citizens have a passive and active right to vote for the European Parliament and local elections (Article 17(2) (b) TFEU, and Articles 11 and 39(1) CFR). Free and fair elections are based on the presumption that voters get easy access to reliable information that enables their participation in democratic discourse, enabling them to form opinions on political issues and engage in the democratic decision-making process. In short, free and independent media is a precondition to exercising the right to vote, which is ensured in Article 20 TFEU and Article 39 of the Charter. The legislative protection of media freedom secures a precondition to these rights granted by the CFR.

8. CFR is also significant in fighting for the rule of law, especially in EU Member States with media systems captured by their governments or oligarchs. Free and plural media systems, along with independent and impartial courts, are prerequisites of a well-functioning democracy. As stated in the preamble of EMFA, eroding the rule of law, fundamental rights and democratic values in one Member State has a spillover effect which impacts the European institutions, among others, through the delegation of the members of the Council, the Commissioners and the national election of the Members of the European Parliament. This derogating effect will indirectly impact other Member States as well.

9. While free elections or the rule of law are not directly connected to the internal market, democratic conditions – including media freedom – are a precondition to a free and fair market, and the free flow of goods, services, capital and persons. Therefore, while safeguarding media freedom per se is not a core objective of Article 114, it is be an ancillary aspect of Article 114 TFEU as one that supports the realisation of the internal market. This flows from the principle of effectiveness, which ensures that EU legislation is fully effective and that legal provisions are interpreted in such a way that their objectives are achieved in the best possible way.¹⁰

10. Article 51 points out that the CFR neither extends the powers of the Union nor broadens the scope of Union law. However, the institutions (including all bodies and entities attributable to the Union, such as the European Parliament, the Commission and other institutions, offices and agencies, such as OLAF (European Anti-Fraud Office)¹¹) of the Union are bound by the CFR, within the

10 C-601/15. *J. N. v Staatssecretaris van Veiligheid en Justitie*, Raad van State.

11 *Streinz/Miichl* in: Streinz (ed.), *EUV/AEUV*, 2nd edition 2012, Article 51 para. 3.

meaning of the second subparagraph of Article 13(1) TEU. It does not matter whether they are based on primary or secondary law;¹² even the Union itself as a legal entity is subject to this obligation.¹³

11. In general, the European Union as a sovereign entity is subject to the obligation to ensure fundamental rights. This obligation extends to all its activities, including legislation. Therefore, compliance with fundamental rights must be observed both in the adoption of legislation and in judicial decisions and administrative acts emanating directly from the Union.¹⁴ Hence, whenever the Union is passing legislative acts in one field, for example, the internal market, it must also observe and safeguard those fundamental rights which are closely attached to that field.

12 Furthermore, according to the Charter of Fundamental Rights, the minimum standard of protection as laid down in the European Convention on Human Rights must not be undercut. In other words, the existing level of protection must not fall below the level of protection recognised by the ECHR or the constitutions of the Member States (Article 52 [3] CFR).¹⁵

13. Therefore, the European Union has a clear legal basis to regulate media freedom and pluralism through the European Media Freedom Act. Article 11(2) CFR recognises free and plural media as an essential component of freedom of expression, while CJEU case law has established pluralism as a legitimate policy goal and a necessary safeguard for the right to receive information. Free and independent media are also indispensable for the right to vote under Article 39 CFR and Article 20 TFEU, ensuring citizens can access reliable information and participate meaningfully in democratic discourse. Divergences in national rules governing media freedom and pluralism risk undermining these rights and distorting the functioning of the internal market, which justifies reliance on Article 114 TFEU as a legal basis. Accordingly, the EMFA rests on firm legal grounds: safeguarding both the internal market and the integrity of European democracy.

14. Critiques sometimes refer to Article 7 TEU as the appropriate tool to handle transgressions of human rights and the rule of law. While Article 7 TEU is there to put an end to serious and substantial breaches of EU values, the EU is not hindered from passing legislation that can prevent or minimise the risk that those EU values are breached with regard to the future.¹⁶ For this purpose, it

12 *Borowsky* in Meyer/Hölscheidt, *Charter of Fundamental Rights of the European Union* 5th edition 2019, Article 51 para. 19

13 *Schorkopf* in Grabenwarter *Europäischer Grundrechtsschutz* 1st edition, 2014, § 3 para. 13.

14 *Cremer* in Grabenwarter *Europäischer Grundrechtsschutz* 1st edition, 2014, § 1 para. 116.

15 *Ranacher, Christian*, *The Binding of the Member States to Community Fundamental Rights. Scope - Consequences - Perspectives*, ZÖR 2003, 21.

16 Case C-156/21 at 170-171.

can mobilise other tools than Article 7, among others legislative instruments, to protect the values contained in Article 2 of the TEU.¹⁷

E. EMFA personal scope

1. The personal scope of the EMFA encompasses three distinct categories: (1) content creators—including media service providers, journalists, media professionals, and publishers; (2) state institutions and enforcement bodies; and (3) recipients of media services.
2. Article 3 establishes the rights of media service recipients, while Article 4 safeguards the rights of content creators. Together, these provisions introduce a novel and forward-looking framework for media legislation, providing a legal basis for the protection and enforcement of these rights at both the national and EU levels.
3. The recognition of the freedom to receive media services under European law represents a significant advancement for two key reasons. First, it safeguards fundamental rights—namely, freedom of expression and access to information—which are essential for enabling informed participation in democratic decision-making processes by recipients of media services. Second, it reinforces the functioning of the internal market by facilitating cross-border access to media content.
4. A systematic-grammatical interpretation of Article 3 EMFA shows that the Member States's duty is required to take appropriate measures to create the conditions to ensure that the right in question is not violated and is therefore effectively protected – in other words, Member States must create a normative environment that effectively ensures protection. According to the case law of the ECtHR, states have a positive obligation to create an appropriate legal and administrative environment in order to ensure effective pluralism.¹⁸ The choice of instruments and the means of realisation are left to the Member States, preserving Member State sovereignty and allowing Member States to incorporate national specificities and priorities into the implementation within the framework provided by EMFA.
5. Article 3 of the EMFA, adopted under Article 114 TFEU, affirms that when legislating within the framework of the internal market, EU legislators are bound by their obligation to respect fundamental rights.

¹⁷ Case C-156/21 at 172.

¹⁸ ECtHR, *Centro Europa 7 S.r.l. and Di Stefano v. Italy*, complaint no. 38433/09, judgment of 7 June 2012.

F. The Protection of Journalistic Sources Is a Fundamental Right Anchored in EU and European Human Rights Law (Article 4)

1. EMFA Article 4 builds on long-established principles of European human rights law, especially the right to freedom of expression and information as protected under Article 11 of the EU Charter of Fundamental Rights and Article 10 of the European Convention on Human Rights (ECHR).¹⁹
2. In its 2011 Recommendation on the Protection of Journalistic Sources,²⁰ the Council of Europe emphasised that such protection is a basic condition for the exercise of journalistic work and for the public's right to receive information on matters of public concern. Article 4 of the EMFA transposes this legal consensus into binding EU law, reinforcing a right that already has quasi-constitutional status in the Union.²¹

G. Article 4 Responds to a Clear and Worsening Threat to Journalistic Freedoms Across the EU

1. The legal necessity of Article 4 is evidenced by concrete data on the deterioration of media freedom and source protection in EU Member States.²²
2. The protection of journalistic sources is widely considered a fundamental right within the right to freedom of information.²³ In the 2011 Recommendations of the Council of Europe on the protection of journalistic sources,²⁴ the Council states that the protection of journalistic sources is a basic condition for the full exercise of journalistic work and the right of the public to be informed on matters of public concern.²⁵ It states that the disclosure of information identifying a source should be limited to exceptional circumstances.
3. The protection of journalistic sources remains under threat across the European Union. The 2024 Centre for Media Pluralism and Media Freedom's Media Pluralism Monitor notes that eight Member

19 *Real Madrid v Le Monde* (Case C-633/22, 2024); *Schmidberger v Austria* (Case C-112/00, 2003).

20 <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17943>

21 *Magyar Helsinki Bizottság v. Hungary* (2016) paras 156-157; *Chauvy and Others v. France* (2005) para 66.

22 Press Freedom Fact Sheet, 2025, <https://www.mappingmediafreedom.org/wp-content/uploads/2025/04/MFRR-Fact-Sheet-on-Monitoring-5000-alerts-between-2020-and-2025.pdf>.

23 *Goodwin v. United Kingdom* (1996) para 39.

24 The protection of journalists' sources, 2011, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17943>.

25 *Voskuil v. the Netherlands* (2007), para 65.

States score ‘medium risk’ in this regard, and one Member State, Greece, scores ‘high risk’.²⁶ In Greece, journalists do not enjoy similar privileges concerning professional confidentiality as, for example, doctors. This means that if they are witnesses in a criminal proceeding, they do not have the right to refuse to answer questions that could reveal information they have gathered as part of their work. The persistent vulnerability and differences between the laws of the Member States obstruct fundamental freedoms, having a direct effect on the functioning of the internal market; therefore, there is an urgent need for legal intervention at the EU level to ensure robust safeguards.

4. The Media Freedom Rapid Response Monitor reported 17 alerts in 2024 regarding violations of the protection of sources and anonymity in EU Member States. Notably, the number of alerts increased sharply from 2023 (two alerts) to 2024 (17 alerts). This trend is continuing, with 2025 already showing more alerts than the years 2021 to 2023 combined.

5. Moreover, similar concerns were raised in earlier judgments of the ECtHR, where the detention or coercion of journalists was found to violate Article 10 ECHR. In *Voskuil v The Netherlands* (2007), the ECtHR found a violation of Article 10 where a journalist was detained and pressured to disclose source information, with no sufficient public-interest justification. Also, in *Tillack v Belgium* (2007), the Court considered excessive interference when authorities tried to force a journalist to assist in revealing sources, breaching Article 10.

H. The Use of Spyware Against Journalists Undermines Core EU Values and Requires Targeted Legislative Safeguards

1. Article 4(3) of the EMFA includes safeguards against the use of spyware. The inclusion of spyware safeguards is critically important for upholding fundamental rights and EU values, including the rule of law. Since 2021, we have witnessed confirmed cases of spyware being used against journalists in Poland, Hungary and Greece. Now, we have evidence that spyware has been used against journalists in Italy,²⁷ and a Parliamentary Question from MEPs in 2025 brought attention to evidence, that unidentified actors are using spyware against individuals in many more EU Member States, including Austria, Belgium, Cyprus, Czechia, Denmark, Germany, Greece, Latvia, Lithuania, the

26 The Centre for Media Pluralism and Media Freedom, Media Pluralism Monitor 2024, <https://cmpf.eu/me-media-pluralism-monitor-2024/>

27 H. Neumann, ‘Paragon in Italy: A New European Spyware Scandal’, 19 March 2025. <https://hannahneumann.eu/en/paragon-in-italien-ein-neuer-europaeischer-spyware-skandal/#>.

Netherlands, Portugal, Spain and Sweden.²⁸ The targets include journalists and civil society organisations critical of national governments.

2. The use of spyware against media professionals poses a serious risk of exposing sources and chilling the work of journalists. Journalists have for years been warning of the risk of spyware, saying they feel threatened by the possibility of spyware exposing them or their sources, which could lead to self-censorship.^{29,30} Research investigating this threat has found that the threat of spyware undermines the editorial planning of newsrooms and journalists, discouraging them from carrying out sensitive investigative reporting.³¹ The use of spyware against journalists violates their right to privacy, stifles freedom of expression, threatens media freedom, and results in a darkened media landscape that deprives the public of valuable information it would otherwise have access to.³²

3. Furthermore, when journalists are surveilled, it is extremely difficult to hold governments, state actors, or other perpetrators accountable—as we have already seen in several EU Member States, in particular in Hungary. This lack of accountability directly undermines the rule of law. Violations of fundamental rights and the rule of law that allowed the use of spyware against journalists are compounded by further violations in the failure to deliver justice to the victims and accountability to the perpetrators.

4. It is worth highlighting that Member State bodies have also emphasised the connection between the use of surveillance technologies against journalists and the rule of law, and have invoked this link to support decisions related to spyware use. In Greece, for example—where journalists have been targeted with spyware—the Council of State, the country’s supreme court of administrative law, in 2024 declared unconstitutional a 2021 legislative amendment that barred the independent Electronic Communications Authority from informing citizens of state surveillance on “national security”

28 European Parliament - Parliamentary Question, “Paragon spyware scandal and the surveillance of European journalists and civil society organisations”, 10 February 2025. https://www.europarl.europa.eu/doceo/document/P-10-2025-000589_EN.html.

29 Committee to Protect Journalists, ‘Spyware and Press Freedom’. Policy Brief, March 2021. https://cpj.org/wp-content/uploads/2021/03/spyware_policy_brief.pdf.

30 *Weber and Saravia v. Germany*, para 145 - recognised the effect of surveillance on freedom of expression.

31 Committee to Protect Journalists, ‘Zero Click Spyware: Enemy of the Press.’ Report, October 2022. <https://www.techpolicy.press/to-protect-democracy-policymakers-must-protect-journalists-from-spyware/>.

32 CJEU, *Tietosuoja- ja valtuutettu v. Satakunnan Markkinapörssi Oy*, para 56 ; CJEU, *RT France v. Council of the European Union*, paras 132-134.

grounds. The Council of State held that a blanket prohibition on informing individuals that they had been subjected to surveillance constituted a threat to the rule of law.³³

5. Creating harmonised, EU-wide protections against the use of spyware directly bolsters media freedom and pluralism in all Member States and falls squarely within the competences of the European Union. It is important to note that Article 4 of the EMFA does not usurp Member State competences; Article 4(9) holds that “[t]he Member States’ responsibilities as laid down in the TEU and the TFEU are respected.” Despite what Hungary may argue, the text of Article 4(9) explicitly protects the existing powers and areas of authority granted to Member States and, in fact, does so in such a way that civil society organisations remain concerned that Article 4(9) is vague enough that Member States may be able to abuse its scope, e.g. by employing an overly broad understanding of what might constitute a national security issue and potentially opening the door for national governments to deploy spyware against journalists under the pretense of national security.³⁴

6. This would be in conflict with the very aim of the EMFA, the safeguards of which are targeted to protect journalists, other media professionals, and their families from spyware. They then protect the identities of journalists’ sources, protecting their privacy and safety and creating a safe environment in which to share information. At the same time, it allows journalists to do their job without fear of being surveilled.

I. Article 4 Respects the Principle of Subsidiarity While Addressing a Clear Cross-Border Problem

1. The inconsistent protection of journalistic sources across the EU creates a fragmented legal landscape that hinders the functioning of the internal market in media services and journalism.

2. Given that many media outlets operate cross-border, and that journalists often collaborate internationally, uneven national protections create uncertainty, a chilling effect on reporting and investigating cases, and potentially distort competition. Only EU-level legislation, such as the EMFA, can ensure a uniform minimum standard of protection necessary to safeguard fundamental freedoms while maintaining a level playing field in the media ecosystem.

33 Council of State of Greece, Case No. 465/2024 *Anonymous v. Hellenic Authority for Communication Security and Privacy*, 5 April 2024.

34 J. E. Kremer, “How far does Article 4 of the European Media Freedom Act go in banning state surveillance of journalists?”, The Centre for Media Pluralism and Media Freedom, 26 November 2024. <https://cmpf.eui.eu/emfa-and-state-surveillance-of-journalists/>.

3. The aforementioned considerations demonstrate that Article 4 of the EMFA responds to empirical evidence of systemic risks and reflects longstanding international and European standards. It is an essential and legally sound provision that advances the Union's commitment to freedom of the press, media pluralism, and the rule of law.

J. Public Service Media (Article 5)

1. Independent public service media (PSM) are an integral part of democratic societies within the EU. Their task is to deliver reliable, fact-based, public-interest information—thereby empowering citizens to make informed decisions—and hold those in power accountable. With many people relying on PSM as a trusted source of information, it is essential that the provisions of the EMFA address the threats to the independence of PSM.

2. The necessity for independent PSM outlets and their oversight boards has been long established. In the 2012 Recommendation of the Committee of Ministers to Member States on public service media governance,³⁵ the Council of Europe acknowledges the “challenge of securing the right level of independence from the state” as a key problem for public service media. Similarly, structures tasked with supervising PSM should represent the interests of the public. To fulfil this task effectively, they need their own resources, like personnel and predictable funding, and they should not be dependent on the government or state.³⁶

3. The lack of independence of public service media across the Union remains a problem. The 2025 Liberties Media Freedom Report³⁷ shows that PSMs struggle for independence and financial stability. Governments still influence leadership appointments, financing frameworks and, in some cases, editorial decisions. Similarly, the Centre for Media Freedom and Media Pluralism research³⁸ shows a ‘medium risk’ for the independence of public service media across EU countries, a score that remains unchanged. Eleven EU Member States, however, show a ‘high-risk’ level. Amongst them are Hungary, Romania and Malta.

35 Recommendation of the Committee of Ministers to Member States on public service media governance, 15 February 2012, <https://search.coe.int/cm/#%7B%22CoEIdentifier%22:%5B%2209000016805cb-4b4%22%5D,%22sort%22:%5B%22CoEValidationDate%20Descending%22%5D%7D>.

36 European Audiovisual Observatory, Governance and independence of public service media, 2022. <https://rm.coe.int/iris-plus-2022en1-governance-and-independence-of-public-service-media/1680a59a76>.

37 J. Day, F. Otto, E. Simon, ‘Media Freedom Report 2025’. Civil Liberties Union for Europe, p. 29. April 2025. <https://www.liberties.eu/f/oj-aem>.

38 Monitoring media pluralism in the European Union : results of the MPM2025, <https://cadmus.eui.eu/entities/publication/15a6ae3c-f325-4435-a6a9-54687d595b85>.

4. This development underscores the necessity for robust safeguards to guarantee the editorial and operational independence of PSM, as outlined in Article 5(1) of EMFA. The provisions governing the appointment and dismissal of public service media leadership (Article 5 (2)), and the requirement for adequate, sustainable and predictable financial resources (Article 5(3)) impose clear and binding obligations on Member States. These measures directly address systemic challenges observed in several jurisdictions, where undue political influence and lack of transparency continue to undermine the autonomy of public service media institutions.

5. The financial condition of the public service media is key to its independence and social accountability. The foundational principles for this have been laid down by the European Commission in the Communication on State Aid for Public Service Broadcasting in 2001, and updated in 2009, responding to the changing technological environment.³⁹ Respecting these principles is necessary to ensure fair market conditions across the internal media market and to ensure that state funding of the public service media does not come close to being regarded as illegal state aid.

K. Transparency of Media Ownership is essential for media pluralism and media freedom (Article 6 (3))

1. Media ownership transparency is essential for strengthening accountability of media service providers.⁴⁰ It can help to inform the public about possible interference in editorial work and can help regulators to spot and possibly prevent ownership concentration.⁴¹

2. The public's desire for greater ownership transparency was also shown in the public consultation process for the EMFA, when it was identified as the most important area of action.⁴²

39 Communication from the Commission on the application of State aid rules to public service broadcasting, 2009/C 257/01

40 *Manole and Others v Moldova*, App No. 13936/02 (ECtHR, 17 September 2009) - ECtHR found that the lack of safeguards for editorial independence in a public broadcaster violated Article 10 ECHR; *Centro Europa 7 S.r.l. and Di Stefano v. Italy*, App No. 38433/09 (7 June 2012), paras 134, 141-143. *Társaság a Szabadságjogokért v Hungary* (14 April, 2009) - the ECtHR stated that the law could not allow arbitrary restrictions which may become a form of indirect censorship, should the authorities create obstacles to the gathering of information.

41 L. Rohrbacherová and E. Simon, "Transparency of Media Ownership within the EMFA Proposal". Civil Liberties Union for Europe, European Partnership for Democracy, August 2023. <https://www.liberties.eu/f/3rgtsq>.

42 <https://cmpf.eu/media-ownership-transparency-as-a-shield-against-foreign-interference/>

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3. The Committee of Ministers of the Council of Europe has repeatedly underlined the importance of media ownership transparency for safeguarding public debate. In a 2018 published recommendation, it states that states should ensure transparency of ownership, organisation and financing.⁴³
4. The European Court of Human Rights has in the past recognised the importance of the media to fulfil its role as a public watchdog.⁴⁴ In the *Centro 7* ruling, the Court directly referred to a 2007 recommendation by the CoE Committee of Ministers on media and pluralism and diversity of media content.⁴⁵ The Recommendation calls on Member States to adopt regulatory and financial measures to guarantee media transparency and structural pluralism.⁴⁶
5. Two pieces of EU legislation have already supported this initiative and demonstrated a positive impact on the creation of ownership databases: the Anti-Money-Laundering Directive and the Audiovisual Media Services Directive. Therefore, a precedent has already been set, and the stipulations of the EMFA can further the positive developments. Under the Anti-Money-Laundering rules, some Member States had already required media service providers to publish information, such as the information called for under Article 6 of the EMFA.⁴⁷
6. The 2025 Liberties Media Freedom Report⁴⁸ shows, however, that transparency is inadequate and databases of beneficial ownership either do not exist at all or suffer from gaps in data or are irregularly updated. For example, in Italy, the media market is dominated by outlets whose beneficial owners remain hidden in complex ownership structures. Similarly, the 2024 Centre for Media Pluralism and Media Freedom report shows a ‘medium-risk’ for ownership transparency, with eight EU Member States scoring a ‘high-risk’.⁴⁹
7. There was no harmonising legislation; the situation varied greatly between Member States. The EMFA now fills this gap and sets a standard for what information must be made public.
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43 <https://search.coe.int/cm?i=0900001680790e13>

44 *Thoma v. Luxembourg*, 29 March 2001, Application no. 38432/97, para 45

45 Media ownership transparency in Europe: Closing the gap between European aspiration and domestic reality, <https://journals.sagepub.com/doi/full/10.1177/0267323121999523#bibr10-0267323121999523>

46 Ibid 34.

47 Ownership transparency obligations under Article 6 of the European Media Freedom Act: opportunities and challenges, <https://cmpf.eu.eu/ownership-transparency-obligations-under-article-6-of-the-european-media-freedom-act-opportunities-and-challenges/>, 2024.

48 J. Day, F. Otto, E. Simon, ‘Media Freedom Report 2025’. Civil Liberties Union for Europe, April 2025. <https://www.liberties.eu/f/oj-aem>.

49 Media Pluralism Monitor 2024, <https://cmpf.eu.eu/media-pluralism-monitor-2024/>.

8. It follows from the aforementioned considerations that the requirements set out in Article 6(3) for media ownership transparency are vital to enhance accountability, inform the public about potential interference, and help regulators prevent ownership concentration. The EMFA creates only the critically necessary minimum standards for the disclosure of ownership information across Member States.

L. National Regulatory Authorities (Article 7)

1. Independent, well-functioning National Regulatory Authorities (NRA) are essential for a free and pluralistic media sector. NRAs in several Member States have taken measures that constrain editorial autonomy and undermine media independence. In numerous instances, governments have exerted political pressure on public service broadcasters, regulatory bodies, and independent journalists, thereby compromising the integrity of the media landscape.⁵⁰

2. The need for Article 7 is also based on the inadequate transposition of Article 30 of Directive (EU) 2018/1808, the Audiovisual Media Services Directive (AVMSD).⁵¹ The Report on the implementation of the revised Audiovisual Media Services Directive⁵² urged the Member States to fulfil their obligation under Article 30(4) of the AVMSD regarding the financial and human resources of national regulatory authorities or bodies in the light of their increasingly complex tasks and to promote cross-border cooperation; it insists on the need to safeguard the independence required by the AVMSD.

3. One of the most problematic countries regarding the independence of the media authority is Hungary. The body designated as Hungary's NRA is the National Media and Infocommunications Authority. Legally, this body is defined as independent; in practice, however, it operates under extreme government influence⁵³ and has long used its power to favour government-friendly media outlets and punish those that are critical of the ruling Fidesz party, for example, in the approval or revocation of broadcasting licenses.⁵⁴ The Hungarian entities that the EMFA requires to be functionally

50 K Irion, 'The independence of media regulatory authorities 'on the books' and 'on the ground'' In: Puppis, M., Mansell, R., & Van den Bulck, H. (Eds.). *Handbook of Media and Communication Governance*, Edward Elgar Publishing, 2024, Cheltenham, UK

51 European Union Directive (EU) 2018/1808 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018L1808>

52 Point 44. (2022/2038(INI)), https://www.europarl.europa.eu/doceo/document/A-9-2023-0139_EN.html

53 J. Day, F. Otto, E. Simon, 'Media Freedom Report 2025'. Civil Liberties Union for Europe, April 2025. <https://www.liberties.eu/f/oj-aem>

54 International Press Institute, 'Media Capture Monitoring Report: Hungary'. November 2024. <https://ipi.media/publications/media-capture-monitoring-report-hungary/>

independent are not so, making both the law and its enforcement critical to the resuscitation of media freedom and pluralism in the country, and the future existence of a free and fair media market. The EMFA is particularly vital in this area because threats to the independence of media regulatory bodies are observed in many other EU countries, including Bulgaria, Croatia, Greece, Malta, Poland, Slovakia and Slovenia.⁵⁵

4. It follows from the aforementioned considerations that Article 7 is a necessary measure to ensure the fair and independent regulation of media markets and protect media freedom and pluralism. Article 7 of the EMFA builds on the AVMSD to support its designation of national media regulators responsible for implementing regulatory cooperation and maintaining a functioning media market. In order to perform their duties under the law and to protect EU law and values, these authorities must function independently.

M. The Independence of the European Board for Media Services (Articles 8 and 9)

1. Enhancing the role of the European Regulators Group for Audiovisual Media Services (ERGA) represents a critical advancement in ensuring consistent media regulation and effective enforcement of EU law across the single market.

2. The new European Board for Media Services (Board) works in “full independence” and “neither seek[s] nor take[s] instructions from any government, institution, person or body”.⁵⁶ This independence is necessary as the Board will be the Commission’s primary ‘eyes and ears’ on the enforcement of the EMFA.

3. It is an important safeguard to ensure the Board is not exposed to any instruction or other form of influence from any government actors or the business sector. It is important to highlight, both in order for the Board to perform its duties properly and in light of arguments against the EMFA put forward by Hungary, that the EMFA includes independence from the European Commission, the European Parliament and other EU officials that may be in a position to offer instruction to or influence over the Board. The Board plays a key role in harmonising media market decisions across Member States, reinforcing cross-border cooperation, and advancing the development of the EU’s single market for media services.

⁵⁵ J. Day, F. Otto, E. Simon, ‘Media Freedom Report 2025’. Civil Liberties Union for Europe, April 2025. <https://www.liberties.eu/f/oj-aem>.

⁵⁶ Article 9 of the EMFA.

4. It follows from the aforementioned considerations that the European Board for Media Services has been lawfully established and serves a critical function that helps uphold fundamental rights and EU values.

N. Fair and transparent allocation of public funds for state advertising

1. The biased, non-transparent allocation of public funds for media advertising by governments severely distorts the information ecosystem, directly threatens media pluralism, and may serve to manipulate the democratic process and taint the fairness of elections by affecting the diversity of information that is available to voters. This remains an ongoing problem in some EU Member States, and nowhere more so than in Hungary.

2. State advertising has emerged as a key source of distorting the media landscape and jeopardising both fair competition and media independence in various EU Member States. The unequal distribution of state advertising, for example, by the Hungarian government transformed and distorted the media market, created censorship and built an uncritical media power aligned with the government.⁵⁷

3. Over the years, several complaints have been filed with the European Commission about the Hungarian government's support for pro-government media across newspapers, online, and television.⁵⁸ These cases illustrate how state advertising can be misused to exert political influence over individual outlets and the market as a whole. Vague allocation criteria and opaque practices enable unfair channelling of funds, fostering media capture. Given the economic vulnerability of many outlets, state advertising can operate as a hidden subsidy, amounting to potential illegal state aid and distorting competition.⁵⁹

4. Article 25 of the EMFA, addressing state advertising, provides an important complement to the EU state aid rules. Compared to the state aid rules in Article 107 of the TFEU, EMFA Article 25 addresses the allocation of state advertising in general and in an *ex ante* manner, while the EU state

57 Bátorfy, A. & Urbán, Á. (2019) 'State Advertising as an Instrument of Transformation of the Media Market in Hungary', *East European Politics*, 36(1), 44–65.

58 Mérték/Átlátszó (2020) Complaint in the case of state advertising spending in Hungary. https://mertek.eu/wp-content/uploads/2020/09/EC_state-aid_PSM-2016_v1.pdf; State aid complaint against Hungary by Magyar Hang, 2025, https://hang.hu/data/articles/175/1755/article-175565/Final_Non-Confidential_State_Aid_Complaint_against_Hungary.pdf.

59 Nenadić, I. (2022) *What is State Advertising, and Why is it Such a Big Problem for Media Freedom in Europe?* Centre for Media Pluralism and Media Freedom, <https://cmpf.eui.eu/what-is-state-advertising-and-why-is-it-a-problem-for-media-freedom/>.

aid rules operate *ex post* (though notification is *ex ante*), and on a case-by-case basis. By addressing the problems created by the unfair allocation of state resources to media service providers, Article 25 ensures that state advertising is systematically subject to *ex ante* rules on transparency, notably as regards the beneficiaries and the amounts spent, and on fair allocation of such advertising. It aims to prevent the misuse or distorted use of such advertising to influence editorial choices and media content by ensuring transparency, non-discrimination, proportionality and objectivity in the allocation of state advertising to media outlets.⁶⁰

5. The requirements set down in Article 25(1) of the EMFA form a minimum—and critically necessary—standard for ensuring that public money for media advertising is dispersed in a manner that is fair, transparent, and not dependent on a media entity’s editorial decisions. Article 25(1) mandates that Member States must follow “transparent, objective, proportionate and non-discriminatory criteria” in the allocation of public funds for state advertising and supply or service contracts.

6. Potential bias and a lack of transparency in the disbursement of public funds for media advertising have been an ongoing concern reported by civil society organisations across the Union, but Hungary stands out. Hungary has long abused public money for state advertising that serves to both support friendly media outlets and flood the public information space with government propaganda.⁶¹

7. The scale of this abuse is reported to exceed €1 billion, despite it having been highlighted by European lawmakers.⁶² Annual monitoring reports from civil society organisations have contained the same findings year after year: Hungary’s government is spending public funds on advertising only at outlets that are friendly towards it, withholding it from all other publications, and doing so in a manner almost completely devoid of transparency and accountability.^{63,64}

60 Government alignment of state advertising has also been shown by A. Szeidl and F. Szucs (2021), “Media Capture through Favor Exchange”, *Econometrica*, Vol. 89, No. 1, pp. 281–310.

61 *Vereinigung Demokratischer Soldaten Österreichs and Gubi v. Austria* (ECtHR, 1994) (paras 36–38) – state interference with press distribution was found to breach pluralism, relevant to propaganda/biased dissemination.

62 See, Evidence for Illegal Selective State Aid to Media Outlets in Hungary, Economic analysis to State aid complaint against Hungary by Magyar Hang, 2025. https://hang.hu/data/articles/175/1755/article-175565/Final_-_Economic_report_non-confidential_version_.pdf European Parliament – Parliamentary Question, “The abuse of state advertising for political influence and enforcement of the European Media Freedom Act (EMFA)”. 4 July 2025 https://www.europarl.europa.eu/doceo/document/E-10-2025-002736_EN.html

63 J. Day, F. Otto, E. Simon, ‘Media Freedom Report 2025’. Civil Liberties Union for Europe, April 2025. <https://www.liberties.eu/f/oj-aem>

64 C-78/18, *Commission v Hungary* (Transparency of Associations) – shows how Hungary’s practices undermine transparency and EU rights; *Khlyustov v. Russia* (ECtHR, 2007) – interference with access to diverse sources of information can breach Article 10; *United Communist Party of Turkey v. Turkey* (ECtHR, 1998) – stresses democracy requires pluralism and diversity of voices, compromised by discriminatory state practices.

O. Public expenditures for state advertising must be transparent (Article 25)

1. In order to ensure that public expenditures for state advertising are dispersed in a fair and objective manner, it is necessary for this process to be fully transparent. Article 25(2) of the EMFA creates a minimum set of standards that will ensure that there can be both transparency and accountability over state advertising expenditures.⁶⁵

2. Media-specific measures and general public procurement laws concerning the distribution and transparency of state advertising are not present in all Member States. Where such rules exist, they vary significantly and do not cover all state advertising expenditure nor offer sufficient protection against biased distribution.⁶⁶ At present, there are no regulations in place for the transparency of state advertising expenditures in Hungary.⁶⁷ It has been established, however, that the scale of state advertising expenditures in Hungary is disproportionately large, benefiting only pro-government companies that loyally promote government propaganda.⁶⁸

3. The lack of transparency around media funding is significant in Hungary. A key player in this area is the Megafone Centre, which is technically a public relations company but in practice operates as a communications agent for the government, spending large amounts of money—much of it believed to be public money—to disseminate government propaganda, with little transparency over its operations. Between 31 December 2023 and 15 June 2024, a total of 4.151 billion HUF (€10,185,665) was spent on political ads on Facebook and Google by the governing Fidesz party and government-aligned organisations like Megafon, with a significant portion of this believed to have come from public funds.⁶⁹

4. The annual reporting requirements established by Article 25(3) oblige national regulatory authorities to diligently monitor and report annually on the allocation of state advertising expenditures to media service providers. Moreover, this article requires that these annual reports be made publicly

65 *Centro Europa 7 S.r.l. and Di Stefano v. Italy* (ECtHR, 2012, Grand Chamber) – The Court stressed that state measures in the media sector must be transparent, pluralistic, and proportionate, because media diversity is essential for democratic debate.

66 EMFA Recital 72

67 J. Day, F. Otto, E. Simon, ‘Media Freedom Report 2025’. Civil Liberties Union for Europe, April 2025. <https://www.liberties.eu/f/oj-aem>

68 Mérték Media Monitor, Government Advertising Database (Állami hirdetések adatbázisa), Atlatzo, <https://mertek.atlatzo.hu/allamihirdeteseik/>

69 Ibid.

available in an easily accessible manner, which will allow not only other public bodies but also civil society experts to verify the fairness and lawfulness of this process.

5. Without mandatory transparency, as set down by Article 25(2) and Article 25(3) of the EMFA, Hungary's government will continue to use public money to support friendly media outlets while starving independent, critical voices of a vital revenue stream through an opaque process that prevents any meaningful verification or accountability. This would continue to distort Hungary's media sector, threaten the existence of many smaller, independent media outlets—and thus media pluralism—and severely restrict the information that is publicly available.

6. It follows from the aforementioned considerations that Article 25 addresses significant and persistent threats to fundamental rights and EU values, particularly focusing on the transparency and fairness of public funds allocated for media advertising. It aims to protect freedom of expression, democracy, and the rule of law by establishing minimum standards for transparent, objective, and non-discriminatory distribution of public advertising funds.

P. Conclusion

In view of the above analysis, Liberties respectfully submits that Hungary's action lacks legal merit and should be dismissed in its entirety.

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The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 21 national civil liberties NGOs from across the EU.

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