



## Third Party Observations to the Case C-486/24

RE: Case C-486/24

Berlin, January 27, 2026

### A. Observation status

1. Civil Liberties Union for Europe (“Liberties”), together with academic researchers, has prepared this observation<sup>1</sup> 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's internal market, as well as the interpretation and validity of EU legislation in light of the Treaties

---

<sup>1</sup> Authors of the present observation, independent 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. At the same time, we call the attention of the Court, the policymakers, the parties in the case, and the general public to the input that civil society and academia can provide in Court cases. The fact that it is not permissible to submit third-party interventions before the Court of Justice of the European Union (CJEU) is exceptional among international Courts. At present, citizens' groups, civil society organisations, and individuals have almost no ability to intervene as third parties before the Court, significantly restricting their ability to share important information, perspectives and considerations regarding cases that may significantly impact their fundamental rights and freedoms. Third-party interventions can be an invaluable resource for judges. They provide often unique contextual information, offer new factual considerations (while still “accepting the case as [they find] it,” as required by Article 97 of the Rules of Procedures), and additional expertise that could not be offered by any other parties to the case.

and the Charter of Fundamental Rights of the European Union. Its outcome will have significant consequences for the Union’s legal order, for the internal market, the protection of fundamental rights, and the balance between EU institutions and Member States.

#### **B. The function and purpose of this observation**

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, third-party intervention is not formally admissible. Nevertheless, Liberties has decided to write this observation in a spirit of constructive engagement, because the case raises questions of great importance for the internal market, 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 analysis 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 24 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.

#### **C. General Remarks**

1. In the case at hand, Hungary challenges the European Media Freedom Act (EMFA) by arguing that it lacks a proper legal basis, oversteps EU competences, violates the principles of subsidiarity, proportionality, and legal certainty, and infringes fundamental rights, such as free expression and the right to private life. Hungary requests that the Court annul parts of the Regulation, particularly concerning media regulation and judicial oversight.
2. The EMFA protects media pluralism, independence, and transparency, while ensuring that media services can operate effectively across borders; an economic and democratic dimension

inseparable from a well-functioning internal market. It complements *ex ante* regulations such as the Digital Services Act (DSA) and the Digital Markets Act (DMA) to create a comprehensive framework for a free and functional media sector within the EU's internal market. Complementing the DSA, DMA, and AI Act that curb big tech power and build digital resilience, the EMFA strengthens the economic dimension of media markets, supporting competition, cross-border integration, and an independent information ecosystem vital for democracy.

3. Governments' interference in media market processes, such as through targeted investments or other forms of state intervention, can create an unfavourable economic environment for private investment and weaken the competitiveness of the European economy. More broadly, a lack of media freedom and pluralism further undermines competitiveness by distorting market conditions, reducing transparency, and eroding trust, all of which are essential for a well-functioning EU economy.<sup>2</sup>

4. By ensuring a free and independent media landscape, the EMFA supports the EU's broader strategic autonomy, preventing reliance on foreign-controlled information sources that could undermine democratic processes. By reducing dependence on foreign platforms and enhancing control over Europe's digital space, the EMFA advances Europe's broader digital sovereignty agenda.

5. The Digital Single Market (DSM) legislation (DSA, DMA, AI Act) together with the EMFA strengthens market integration, strategic independence, and media freedom in Europe's digital landscape. While the DSM provides the framework for cross-border digital services and EU control over platforms, the EMFA ensures fair, competitive, and resilient media markets, addressing both economic and democratic dimensions. By safeguarding media pluralism and protecting against foreign interference, the EMFA provides a framework for media services to operate effectively across borders, directly supporting a well-functioning internal market and the EU's broader agenda of digital autonomy.<sup>3</sup>

---

<sup>2</sup> Bárd, P., Bayer, J. & Carrera, S. (2016). *A Comparative Analysis of Media Freedom and Pluralism in the EU Member States: Study*. European Parliament

<sup>3</sup> Kerševan, T., Europe's fight for media pluralism: EMFA, national policies, and a shifting geopolitical landscape

6. 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 regardless of its national origin, as technological advancements have significantly reduced traditional territorial and linguistic barriers through the proliferation of online media and broadcasting services, including internet radio and social media.

7. Varying national laws do not adequately address media-specific cross-border risks, while media concentration raises concerns about economic dominance and traditional merger control. The EMFA establishes essential minimum standards to enhance the quality and competitiveness of media services, support cross-border market integration, and help safeguard the democratic foundations of a free and fair European economy. The EMFA 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 centralised.<sup>4</sup>

7. The EMFA advances the EU's digital autonomy by safeguarding media pluralism, protecting against foreign interference, and enabling media services to operate effectively across borders, thereby supporting a well-functioning internal market. Through harmonisation, the EU aims to prevent national fragmentation, strengthen "digital sovereignty," and recognise media both as a cornerstone of societal functioning and a valuable economic sector.<sup>5</sup>

8. The EMFA addresses severe and systematic threats to the development of a single media market and media freedom and pluralism in the EU. Annual reports on the subject, such as the Liberties Media Freedom Report,<sup>6</sup> the monitoring reports from Media Freedom Rapid Response,<sup>7</sup>

---

(2025) <https://cmpf.eui.eu/emfa-and-shifting-geopolitical-landscape/>.

<sup>4</sup> 2014 (page 3.)

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586621/EPRS\\_BRI\(2016\)586621\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586621/EPRS_BRI(2016)586621_EN.pdf)

<sup>5</sup> Thatcher, M. (2007), THE EUROPEAN UNION AND THE REGULATION OF MEDIA MARKETS - by Alison Harcourt. Public Administration, 85: 551-553.

<sup>6</sup> J. Day, F. Otto, E. Simon, 'Media Freedom Report 2025'. (2025) Civil Liberties Union for Europe, <https://www.liberties.eu/f/oi-aem>

<sup>7</sup> Media Freedom Rapid Response, 'Mapping Media Freedom Monitoring Report 2024'. (2025), <https://www.ecpmf.eu/wp-content/uploads/2025/02/Monitoring-Report-2024.pdf>.

and the Media Pluralism Monitor,<sup>8</sup> 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 the level playing field and pluralism in the media sector; the use of spyware against journalists remains an ongoing threat to their work.

9. 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. Hungary exemplifies some of the gravest concerns over media freedom and pluralism; addressing its situation amounts to, in effect, addressing the broader state of affairs across the EU.

10. The country currently faces multiple pending infringement procedures<sup>9</sup> 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.

11. In Hungary, the threat to media freedom and pluralism, and to a smooth functioning of the internal market of services can be observed in several fields that EMFA covers. The government has influence over the editorial positions of public service media<sup>10</sup> and the leadership and decisions of the media regulatory body;<sup>11</sup> it misuses state advertising as a tool to support friendly outlets;<sup>12</sup> it is well documented that Pegasus spyware has been used against journalists.<sup>13</sup> In

---

<sup>8</sup> The Centre for Media Pluralism and Media Freedom, 'Media Pluralism Monitor 2024',

<https://cmpf.eui.eu/media-pluralism-monitor-2024/>.

<sup>9</sup> Infringement cases in Hungary: <https://ec.europa.eu/implementing-eu-law/member-state-infringement-cases/en>.

<sup>10</sup> J. Day, F. Otto, E. Simon, 'Media Freedom Report 2025'. Civil Liberties Union for Europe, p. 29. (2025) <https://www.liberties.eu/f/oj-aem>.

<sup>11</sup> Mértek Média Monitor, The Frozen Media System, Soft Censorship, (2022), <https://mertek.eu/wp-content/uploads/2024/04/MertekBooklets36-1.pdf>.

<sup>12</sup> Mértek Médiaelemző Műhely, (2020), <https://mertek.eu/en/2023/05/05/guest-blog-advertisements-in-pro-government-and-independent-weeklies-in-2020/>.

<sup>13</sup> 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,

Hungary, media markets are highly concentrated in the hands of government-aligned owners, a situation achieved through licensing, mergers and hostile take-overs.<sup>14</sup> This concentrated ownership structure places large parts of the media landscape under direct or indirect political influence. Such concentration undermines healthy market dynamics and media pluralism, as independent and critical voices struggle to reach a broad audience.

#### **D. EMFA legal basis in the Treaties**

1. Hungary claims that “the media services governed by the regulation are of a cultural and economic nature, but the regulation does not actually govern the economic aspects of those services. ... Article 114 TFEU cannot be considered to be an appropriate legal basis. The true primary objective of the regulation is to foster the fundamental values of the European Union – democracy and the rule of law – by promoting media freedom and media pluralism, for which Article 114 TFEU does not provide an appropriate legal basis”.<sup>15</sup>
2. Our position is that Article 114 TFEU does provide an appropriate legal basis, as media freedom and economic freedom are deeply intertwined: greater economic freedom often facilitates media freedom by creating prosperous environments for diverse media, while a free press, in turn, promotes economic health and resilience by exposing corruption and bad governance and policies, improving government efficiency, and fostering innovation.<sup>16</sup>
3. The EMFA is based on Article 114 TFEU, which authorises the Union legislator to adopt measures harmonising national laws and regulations to remove obstacles and hindrances from

---

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.

<sup>14</sup> 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.eui.eu/country/hungary/>

<sup>15</sup> Action brought on 10 July 2024 – *Hungary v European Parliament and Council of the European Union* (Case C-486/24)

<sup>16</sup> Bjornskov, C. The Hayek–Friedman hypothesis on the press: is there an association between economic freedom and press freedom? *Journal of Institutional Economics*. 2018;14(4):617-638. Study 2022, <https://rsf.org/en/rsf-world-press-freedom-index-2025-economic-fragility-leading-threat-press-freedom>.

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.].

4. 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 specific 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 essential both from an economic and a societal perspective.<sup>1718</sup>

5. 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.<sup>19</sup> These are formulated as *professional standards* established by journalistic associations and by the scholarship of communication science, media science, and journalism. Malpractices observed in the European media market, such as disinformation, undue government pressure, discriminatory state advertising, and biased public service media, violate these professional standards, to the detriment of a level playing field and fair competition in the media market.

---

<sup>17</sup> Benedek, I.(2024) Transforming the Political Public Sphere: The Media System of the Orbán regime in Hungary, [https://real.mtak.hu/207780/1/BenedekI\\_TransformingthePoliticalPublicSphere\\_PartecipazioneeConflitto.pdf](https://real.mtak.hu/207780/1/BenedekI_TransformingthePoliticalPublicSphere_PartecipazioneeConflitto.pdf).

<sup>18</sup> Kovács, I., Polyák, G., Urbán, Á., (2021) edia Landscape after a Long Storm, The Hungarian media politics since 2010, <https://mertek.eu/wp-content/uploads/2021/12/MertekFuzetek25.pdf>

<sup>19</sup> Bayer, J. (2024) Digital Media Regulation within the European Union - A Framework for a New Media Order. Nomos. p. 143. <https://www.nomos-elibrary.de/10.5771/9783748945352/digital-media-regulation-within-the-european-union?page=1>

6. Although the regulatory framework for the media addresses media both as cultural goods and as economic actors, a clear separation between these two dimensions is not always possible. Regulation of the market aspects of media services can therefore, in principle, be based on the internal market clause (Article 114 TFEU), even where this overlaps with cultural considerations.<sup>20</sup> Restrictions on media freedom and pluralism undermine market transparency and trust, impeding the proper functioning of the internal market. In particular, government interference in media markets, through targeted investments or other financial support, and other forms of state involvement, or dependence on dominant platforms, can distort competition, deter private investment, and weaken the EU's economic competitiveness, which depends on fair, open, and competitive conditions across Member States.<sup>21</sup> Media freedom and media pluralism are not only democratic values; they are also essential requirements for a well-functioning internal media market. By ensuring that the market serves society's need for diverse information, not just economic interests, they contribute to high-quality media services for all citizens. This is achieved by preventing market distortion through fair competition rules, facilitating innovation and cross-border media services, and safeguarding editorial independence from political or economic interference. Accordingly, the EMFA enhances the quality of media services by ensuring editorial independence, protecting sources, funding public media, and increasing transparency. The objective of improving the quality of media services is closely connected to the economic functioning of the internal market.<sup>22</sup>

7. 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, a right that is currently being further developed by the CJEU's case law.

8. EU citizens have a passive and active right to vote for the European Parliament and local

---

<sup>20</sup> Cole, M., Etteldorf, Ch., (2023) European Media Freedom Act Background Analysis, <https://www.europarl.europa.eu/resources/library/media/20230425RES82301/20230425RES82301.pdf>

<sup>21</sup> Bárd, P., Bayer, J., Carrera, S., (2016) A comparative analysis of media freedom and pluralism in the EU Member States, [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/571376/IPOL\\_STU\(2016\)571376\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/571376/IPOL_STU(2016)571376_EN.pdf)

<sup>22</sup> Preamble 14 EMFA

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 for exercising the right to vote, as ensured by Article 20 TFEU and Article 39 of the Charter.

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 for a free and fair market** and for 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 an ancillary aspect of Article 114 TFEU, supporting the realisation of the internal market. This flows from the fact, as mentioned above, that media freedom is an important aspect of the quality of media services. It is also in line with 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.<sup>23</sup>

10. The European Union has a clear legal basis to regulate media freedom and pluralism through the European Media Freedom Act. Indeed, divergences in national rules governing media services risk distorting the functioning of the internal market; this problem is solved by the EMFA rules, which justify reliance on Article 114 TFEU as a legal basis. Article 11(2) CFR recognises free and plural media as an essential component of freedom of expression. At the same time, 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. Accordingly, the EMFA rests on firm legal grounds: safeguarding the internal market and, incidentally, also the integrity of European democracy.

---

<sup>23</sup> C-601/15. *J. N. v Staatssecretaris van Veiligheid en Justitie*, Raad van State.

11. Critics sometimes refer to Article 7 of the Treaty of the European Union (TEU) as the appropriate tool for addressing violations of human rights and the rule of law. While Article 7 TEU functions 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 in the future.<sup>24</sup> For this purpose, it can mobilise tools other than Article 7, among others legislative instruments, to protect the values contained in Article 2 of the TEU.<sup>25</sup>

12. The recognition of the freedom to receive media services under European law represents a significant advancement for two key reasons. First, it reinforces the functioning of the internal market by facilitating cross-border access to media content. Second, it incidentally safeguards fundamental rights—namely, freedom of expression and access to information—which are essential to enabling recipients of media services to participate in democratic decision-making processes in an informed manner.

#### **E. The Protection of Journalistic Sources Is Crucial to Ensure the Free Production of Media Services and Is Also a Fundamental Right Anchored in EU and European Human Rights Law (Article 4)**

1. EMFA Article 4 builds on the consideration that sources are tantamount to raw material in the production of media services. The confidentiality of journalistic sources contributes to high-quality media that serves its purpose of controlling power. Furthermore, it also ensures a well-functioning internal media market. EMFA Article 4 also 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).<sup>26</sup>

2. Protecting the confidentiality of sources is crucial for the internal market as it reduces regulatory fragmentation and competitive distortions. When journalists and media companies can

---

<sup>24</sup> Case C-156/21 at 170-171.

<sup>25</sup> Case C-156/21 at 172.

<sup>26</sup> *Real Madrid v Le Monde* (Case C-633/22, 2024); *Schmidberger v Austria* (Case C-112/00, 2003).

rely on enforceable, predictable EU rules that offer a high level of protection, it lessens the “chilling effects” of silencing journalism. It also reduces the incentive to relocate investigations to jurisdictions with stronger protections for editorial operations or distribution. These legal safeguards support cross-border circulation of media services, and significantly strengthen audience and advertiser trust.<sup>27</sup> Furthermore, it creates an environment in which market outcomes are driven by quality and innovation, conditions essential to a well-functioning internal media market.

3. In its 2011 Recommendation on the Protection of Journalistic Sources,<sup>28</sup> 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.<sup>29</sup>

#### **F. 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.<sup>30</sup>

2. The protection of journalistic sources is widely considered a fundamental right within the right to freedom of information.<sup>31</sup> In the 2011 Recommendations of the Council of Europe on the protection of journalistic sources,<sup>32</sup> the Council states that the protection of journalistic sources is a basic condition for the whole exercise of journalistic work and the right of the public to be informed on matters of public concern.<sup>33</sup> It states that the disclosure of information identifying a

---

<sup>27</sup> Strömbäck, J. et al, (2020) News Media Trust and its Impact on Media Use: Toward a Framework for Future Research, [https://academic.oup.com/anncom/article/44/2/139/7906093?utm\\_source=chatgpt.com&login=false](https://academic.oup.com/anncom/article/44/2/139/7906093?utm_source=chatgpt.com&login=false)

<sup>28</sup> Recommendation 1950 (2011) The protection of journalists’ sources, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17943>.

<sup>29</sup> *Magyar Helsinki Bizottság v. Hungary* (2016) paras 156-157; *Chauvy and Others v. France* (2005) para 66.

<sup>30</sup> 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>.

<sup>31</sup> *Goodwin v. United Kingdom* (1996) para 39.

<sup>32</sup> The protection of journalists’ sources, 2011,

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

<sup>33</sup> *Voskuil v. the Netherlands* (2007), para 65.

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 States score 'medium risk' in this regard, and one Member State, Greece, scores 'high risk'.<sup>34</sup> 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.

Moreover, similar concerns were raised in earlier judgments of the ECtHR, in which 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 found an excessive interference when authorities sought to compel a journalist to reveal sources, in breach of Article 10.

## **G. The Use of Spyware against Journalists Undermines the Exercise of the Media Profession and also the Quality of Media Services, While Being a Core EU Value and Requiring Targeted Legislative Safeguards**

1. Article 4(3) of the EMFA includes safeguards against the use of spyware. The inclusion of spyware safeguards is essential for protecting the free exercise of the media profession and upholding fundamental rights and EU values, including the rule of law. Since 2021, we have

---

<sup>34</sup> The Centre for Media Pluralism and Media Freedom, Media Pluralism Monitor 2024, <https://cmpf.eui.eu/media-pluralism-monitor-2024/>

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,<sup>35</sup> 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 Netherlands, Portugal, Spain and Sweden.<sup>36,37,38</sup> 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 journalists' work. Journalists have for years warned of the risk of spyware, saying they feel threatened by the possibility that it could expose them or their sources, leading to self-censorship.<sup>29,30</sup> 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.<sup>39</sup> 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.<sup>40</sup>

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, particularly 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

---

<sup>35</sup> H. Neumann, (2025) 'Paragon in Italy: A New European Spyware Scandal', <https://hannahneumann.eu/en/paragon-in-italien-ein-neuer-europaeischer-spyware-skandal/#.>

<sup>36</sup> 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](https://www.europarl.europa.eu/doceo/document/P-10-2025-000589_EN.html).

<sup>37</sup> Committee to Protect Journalists, 'Spyware and Press Freedom'. Policy Brief, March 2021. [https://cpj.org/wp-content/uploads/2021/03/spyware\\_policy\\_brief.pdf](https://cpj.org/wp-content/uploads/2021/03/spyware_policy_brief.pdf).

<sup>38</sup> *Weber and Saravia v. Germany*, para 145 - recognised the effect of surveillance on freedom of expression.

<sup>39</sup> 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/>.

<sup>40</sup> CJEU, *Tietosuojavaltuutettu v. Satakunnan Markkinapörssi Oy*, para 56 ; CJEU, *RT France v. Council of the European Union*, paras 132-134.

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” 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.<sup>41</sup>

5. Creating harmonised, EU-wide protections against the use of spyware directly bolsters media freedom and pluralism across all Member States and falls squarely within the European Union’s competences. It is important to note that Article 4 of the EMFA does not usurp Member State competences.

## **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.
3. The aforementioned considerations, read together with the Commission’s Impact

---

<sup>41</sup> Council of State of Greece, Case No. 465/2024 [\*Anonymous v. Hellenic Authority for Communication Security and Privacy\*](#), 5 April 2024.

Assessment,<sup>42</sup> 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 important service providers in the market, and also 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, the provisions of the EMFA must address threats to PSM's independence, as that independence is a crucial aspect of the quality of public media services and an imperative to ensure an even playing field.
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,<sup>43</sup> 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 public's interests. 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.<sup>44</sup>
3. The lack of independence of public service media across the Union remains a problem. The

---

<sup>42</sup> European Commission, Impact Assessment (2022) <https://digital-strategy.ec.europa.eu/en/library/european-media-freedom-act-impact-assessment>.

<sup>43</sup> Recommendation of the Committee of Ministers to Member States on public service media governance, 15 February 2012, [https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset\\_publisher/aDXmrl0vvsU/content/recommendation-cm-rec-2012-1-of-the-committee-of-ministers-to-member-states-on-public-service-media-governance-adopted-by-the-committee-of-ministers-o](https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrl0vvsU/content/recommendation-cm-rec-2012-1-of-the-committee-of-ministers-to-member-states-on-public-service-media-governance-adopted-by-the-committee-of-ministers-o)

<sup>44</sup> 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>.

2025 Liberties Media Freedom Report<sup>45</sup> shows that PSMs struggle to maintain 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 research<sup>46</sup> 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.

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, creating an uneven playing field.

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.<sup>47</sup> 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, as it is stated in recitals 27 et seq. EMFA.

---

<sup>45</sup> J. Day, F. Otto, E. Simon, ‘Media Freedom Report 2025’. (2025) Civil Liberties Union for Europe, p. 29., <https://www.liberties.eu/f/oj-aem>.

<sup>46</sup> Monitoring media pluralism in the European Union : results of the MPM2025, <https://cadmus.eui.eu/entities/publication/15a6ae3c-f325-4435-a6a9-54687d595b85>.

<sup>47</sup> Communication from the Commission on the application of State aid rules to public service broadcasting, 2009/C 257/01

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

1. Media ownership transparency is essential for the proper functioning of the internal market for media services and also for strengthening the accountability of media service providers.<sup>48</sup> It can help to inform the public about possible interference in editorial work and can help regulators to spot and possibly prevent ownership concentration.<sup>49</sup> By ensuring transparency about the conditions influencing media content, the EU supports both a level playing field and the quality of media services. Just as food products must carry labels indicating production conditions, media products should provide information on factors such as ownership, state involvement, or platform dependencies that could shape their editorial decisions and content, thereby reinforcing trust, competition, and the proper functioning of the internal market.
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.<sup>50</sup>
3. The Committee of Ministers of the Council of Europe has repeatedly underlined the importance of transparency in media ownership for safeguarding public debate. In a 2018 published recommendation, it states that states should ensure transparency of ownership, organisation and financing.<sup>51</sup>
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.<sup>52</sup> In the *Centro 7* ruling, the Court directly referred to a 2007

---

<sup>48</sup> *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.

<sup>49</sup> Rohrbacherová, L. and Simon, E., (2023) "Transparency of Media Ownership within the EMFA Proposal". Civil Liberties Union for Europe, European Partnership for Democracy, <https://www.liberties.eu/f/3rgtsg>.

<sup>50</sup> Opryshko, D., (2025) Media ownership transparency as a shield against foreign interference: the Ukrainian experience, <https://cmpf.eui.eu/media-ownership-transparency-as-a-shield-against-foreign-interference/>.

<sup>51</sup> CM/Rec(2018)1 - Recommendation of the Committee of Ministers to member States on media pluralism and transparency of media ownership (Adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies) (2018) <https://search.coe.int/cm?i=0900001680790e13>.

<sup>52</sup> *Thoma v. Luxembourg*, 29 March 2001, Application no. 38432/97, para 45

recommendation by the CoE Committee of Ministers on media and pluralism and diversity of media content.<sup>53</sup> The Recommendation calls on Member States to adopt regulatory and financial measures to guarantee media transparency and structural pluralism.<sup>54</sup>

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

6. The 2025 Liberties Media Freedom Report<sup>55</sup> shows, however, that transparency is inadequate and beneficial ownership databases 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’.<sup>56</sup>

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, helping investment decisions in the single market, market oversight on behalf of authorities and the audience to understand the potential influence over media content.

8. It follows from the aforementioned considerations that the requirements set out in Article 6(3) for media ownership transparency are vital to enhancing accountability, informing the public about potential interference, and helping regulators prevent ownership concentration. The EMFA establishes only the minimum standards necessary for the disclosure of ownership information

---

<sup>53</sup> Smith, R.C., Klimkiewic, B., Ostlin, A., (2021) Media ownership transparency in Europe: Closing the gap between European aspiration and domestic reality, <https://doi.org/10.1177/026732312199952>

<sup>54</sup> Ibid 34.

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

<sup>56</sup> Media Pluralism Monitor 2024, <https://cmpf.eui.eu/media-pluralism-monitor-2024/>.

across Member States.

#### **L. National Regulatory Authorities (Article 7)**

1. Independent, accountable, and effectively functioning National Regulatory Authorities (NRA) are essential for a well-functioning media market and for a free and pluralistic media sector.<sup>57</sup> NRAs are the primary enforcers of EMFA, and Member States are obliged to facilitate their work in full independence, with sufficient resources, and in sincere cooperation with each other. They are central to on-the-ground enforcement. They monitor compliance with rules on media independence and pluralism, oversee media providers, coordinate enforcement at the national level, and, through the European Media Board, ensure consistent application and the exchange of best practices. In doing so, NRAs safeguard media freedom and address risks such as spyware, opaque ownership, and content moderation practices.
2. They reinforce constitutional checks and balances by monitoring media markets, preventing the concentration of media and economic power, and ensuring fair competition. They can indirectly restrain the political power of special interests, act as a check on majoritarian excesses, and enforce the rule of law.<sup>58</sup> NRAs are public bodies tasked with protecting public values such as fair competition, media pluralism, and non-discrimination. They operate at the intersection of private economic activity and the public interest; they respond to increasing legal and technical complexity by supplying expertise. Beyond expert decision-making, these authorities enhance credibility, stability, and long-term consistency, offering reliable commitments to investors, market actors, and consumers while insulating sensitive policy areas from short-term political pressures. Their independence is justified by high-quality, technically informed decision-making and is a defining feature of regulatory governance globally. They function as essential checks within democracies, limiting corruption and abuse of power, reinforcing accountability in media markets and strengthening the rule of law.<sup>59</sup>

---

<sup>57</sup> Ribeiro, T., Report on the third expert roundtable: The role of independent national media regulatory authorities in regaining trust in the media, (2021), <https://www.osce.org/sites/default/files/f/documents/2/b/505060.pdf>

<sup>58</sup> Cseres, K. J., (2026) Non-Majoritarian Regulators in Democratic Systems: The Case of competition authorities, forthcoming in *European Papers*.

<sup>59</sup> Cseres, K. J., 2026.

3. 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.<sup>60</sup>

4. 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).<sup>61</sup> The Report on the implementation of the revised Audiovisual Media Services Directive<sup>62</sup> urged the Member States to fulfil their obligation under Article 30(4) of the AVMSD regarding the well-functioning internal media market with a high level of consumer protection, the independence and adequate financial and human resources must be guaranteed to fulfil their complex tasks, and cross border cooperation, to fulfil their responsibilities and to effectively strengthen consumer rights and consumer choice. It follows from the aforementioned considerations that EMFA's rules, by establishing a European media board, are justified to enhance cooperation between national regulators and are essential to further support the aforementioned aims.

5. 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 influence<sup>63</sup> 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.<sup>64</sup> The Hungarian entities that the EMFA requires to be functionally independent are not so, making both the law and its enforcement critical to the

---

<sup>60</sup> Irion, K., (2024) The independence of media regulatory authorities 'on the books' and 'on the ground' In:Puppis, M., Mansell, R., & Van den Bulck, H. (Eds.).  
areaHandbook of Media and Communication Governance, Edward Elgar Publishing, Cheltenham, UK

<sup>61</sup> European Union Directive (EU) 2018/1808

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018L1808>

<sup>62</sup> Point 44. (2022/2038(INI), [https://www.europarl.europa.eu/doceo/document/A-9-2023-0139\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2023-0139_EN.html)

<sup>63</sup> J. Day, F. Otto, E. Simon, (2025)

<sup>64</sup> International Press Institute, 'Media Capture Monitoring Report: Hungary'. November 2024.

<https://ipi.media/publications/media-capture-monitoring-report-hungary/>

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.<sup>65</sup>

6. 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 by designating national media regulators responsible for implementing regulatory cooperation and maintaining a functioning media market. To perform their duties under the law and protect EU law and values, these authorities must operate 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) is a critical step toward 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”.<sup>66</sup> This independence is necessary, as the Board will be the Commission’s primary ‘eyes and ears’ for enforcement of the EMFA.

3. Hungary claims that the provisions of the regulation relating to the European Board for Media Services are contrary to Article 5 TEU and Article 167(5) TFEU, and breach the principle of proportionality.

4. The core function of the Media Board in the EMFA is to coordinate and facilitate consistent and effective application of EMFA by national regulators, acting as an independent advisory body that supports the European Commission. The Board supports and advises the European

---

<sup>65</sup> J. Day, F. Otto, E. Simon, (2025)

<sup>66</sup> Article 9 of the EMFA.

Commission on media-related matters and promotes cooperation among national regulators. It strengthens cross-border cooperation, for instance, when media services from non-EU countries may pose risks to public security and can issue opinions on national measures that raise concerns, particularly in cases affecting media freedom, editorial independence, or the internal market. The Board also plays a dedicated role in protecting pluralism and editorial independence in media market concentrations, facilitates the exchange of best practices such as audience measurement to ensure fair access to advertising revenue, and fosters cooperation on harmonised technical standards for devices and digital signals.

5. The Board carries out these functions in full respect of Article 5 TEU and Article 167(5) TFEU, and in line with the principle of proportionality. By advising and supporting national regulators rather than replacing them, the Board respects Member States' competences and institutional autonomy (Article 5 TEU), while facilitating the internal market by ensuring consistent application of EU media rules. Article 167(5) TFEU foresees that the EU may support and complement national policies in the cultural and media sectors without harmonising them; the Board's role — exchanging best practices, issuing opinions, and coordinating cross-border cooperation — does precisely this, reinforcing pluralism, editorial independence, and media quality without overstepping national authority. All measures and opinions are applied proportionately, addressing only the risks that affect media freedom, market fairness, or public security, avoiding unnecessary interference in national regulatory decisions.

6. It is an important safeguard that the Board is not exposed to any instruction or other form of influence from government actors or the business sector. To ensure that the Board can perform its tasks effectively, it is essential to highlight that the EMFA guarantees the Board's independence. The Board plays a key role in keeping media market decisions consistent across Member States, reinforcing cross-border cooperation, and advancing the development of the EU's single market for media services.

7. It follows from the aforementioned considerations that the European Board for Media Services has been lawfully established and serves a critical function in upholding fundamental

rights and EU values.

## N. Media concentration (Article 22)

1. Due to their highly salient political and social significance,<sup>67</sup> media concentrations are assessed not only from an economic perspective, evaluating market power, but also through the lens of opinion power,<sup>68</sup> given their capacity to influence public opinion, shape public discourse, and affect the epistemic welfare<sup>69</sup> of an informed citizenry.<sup>70</sup>
2. Media are simultaneously economic entities with exchange value and socio-political institutions with use value. This duality implies that media operate not only in an economic market but also in a 'marketplace of ideas'.<sup>71</sup> From this perspective, media concentrations raise both competition and media pluralism concerns, including the risk that dominant firms may raise prices or increase profits by cutting costs, but also that cost-cutting may lead to a deterioration in product quality, for example, through the homogenisation of content, increased editorial cooperation, or the standardisation of production processes. Beyond the economic effects, media concentration can seriously undermine pluralism, democratic discourse, and the diversity of viewpoints essential to a functioning democracy.<sup>72</sup>
3. It is often argued that competition law, and specifically merger control, is insufficient to assess the full impact of media concentration, as it focuses on economic dominance in media

---

<sup>67</sup> Van der Burg, M. Van den Bulck, H., (2015) Economic, political and socio-cultural welfare in media merger control: An analysis of the Belgian and Dutch competition authorities' reviews of media mergers, <https://www.sciencedirect.com/science/article/abs/pii/S0167624515000232>

<sup>68</sup> Carlini, R., (2025) Market power and opinion power. Assessing the risks for media pluralism and editorial independence deriving from ownership's concentration, <https://cadmus.eui.eu/server/api/core/bitstreams/923b2722-a637-40df-aeb1-6f311b6ab105/content>

<sup>69</sup> Hyzen, A. et al, Epistemic welfare and algorithmic recommender systems: overcoming the epistemic crisis in the digitalized public sphere (2025) [https://academic.oup.com/ct/advance-article/doi/10.1093/ct/qtaf018/8240891?\\_cf\\_chl\\_rt\\_tk=DiYalfNO6.PmqHe\\_R8PebSRzyHSLw.jsAdTtpuklnfQ-1769109851-1.0.1.1-ZgEoHHbEzScB5MijlGPoIT3WOhowxs4l8Jo\\_5LAz4M](https://academic.oup.com/ct/advance-article/doi/10.1093/ct/qtaf018/8240891?_cf_chl_rt_tk=DiYalfNO6.PmqHe_R8PebSRzyHSLw.jsAdTtpuklnfQ-1769109851-1.0.1.1-ZgEoHHbEzScB5MijlGPoIT3WOhowxs4l8Jo_5LAz4M)

<sup>70</sup> Cseres, K. J., Ciusca, A-C, *The EU's Chance to Curb Media Capture: Blikk Acquisition in Hungary and the Boundaries of the New European Media Freedom Act*, VerfBlog, 2025/12/11, <https://verfassungsblog.de/curb-media-capture-hungary/>.

<sup>71</sup> Stucke, M.E., Grunes, A.P., (2021) Antitrust and the Marketplace of Ideas. *Antitrust Law Journal*, Vol. 69,

<sup>72</sup> Van der Burg, Van den Bulck, 2015, 3-4. M.E. Stucke, AP. Grunes, Antitrust and the Marketplace of Ideas. *Antitrust Law Journal*, Vol. 69, 2001.

markets but fails to capture *opinion power*: the ability of a media company, through users' exposure to its content, to shape and potentially dominate the ideas and viewpoints expressed in public discourse.<sup>73</sup>

4. While merger control does have a constitutional function, as it can decentralise economic power and enable economic opportunities for firms by encouraging a democratic political order, national systems of merger control differ greatly and are deeply influenced by their constitutional traditions and ideas, as well as by local varieties of capitalism.<sup>74</sup>

5. Moreover, the European Commission only has exclusive competence over mergers with a so-called Community dimension. In contrast, Member States retain authority over all others, which fall outside EU jurisdiction under the EU Merger Regulation. Merger control lacks an established system of cooperation between the Commission and national competition authorities.

6. Hence, Member States have significant discretion to authorise national champions and to accommodate public-interest considerations under national law, a discretion that is particularly pronounced in the media sector, where economic regulation intersects with constitutional values.

7. Therefore, while merger control rules can be understood as constitutionally relevant legal instruments<sup>75</sup> with significant implications for both democracy and the rule of law, these merger control rules operate with limited direct oversight from the EU due to national varieties of capitalism and constitutional structures. This means that EU-level and national merger control over media concentrations operate as constitutionally decoupled systems. The European Media Freedom Act can address this legal challenge, and its Article 22 calls for assessments of the economic and rule-of-law concerns raised by such media mergers.

---

<sup>73</sup> C. Neuberger, (2006) Meinungsmacht im Internet aus Kommunikationswissenschaftlicher Perspektive. 2018, *UFITA*, 82(1), p. 53 - 68. Baker CE. *Media Concentration and Democracy: Why Ownership Matters*. Cambridge University Press.

<sup>74</sup> Concentrated economic power can reinforce the political power of capital and directly impact citizens' economic as well as non-economic interests, such as fundamental rights related to media pluralism or access to reliable information. Cseres and Ciusca 2025.

<sup>75</sup>Cseres, K., (2024) European competition law, an overlooked element of the EU's rule of law toolbox  
[https://sieps.se/media/h4gie2gg/2024\\_23epa.pdf](https://sieps.se/media/h4gie2gg/2024_23epa.pdf)

8. The recent Dutch DPG/RTL case<sup>76</sup> illustrates both the emerging influence of the EMFA, under which Member States, including national competition authorities, are under a general obligation not to undermine its objectives, even during the ongoing transposition period,<sup>77</sup> and the continued reality that merger control operates with limited EU oversight and remains embedded in national constitutional contexts, resulting in constitutionally decoupled EU and national regimes.

9. The European Media Freedom Act now addresses this gap, which strengthens the constitutional and public-interest functions of national merger control and establishes a regulatory framework to address media-specific risks arising from concentrations. The EMFA obliges all Member States to introduce, into their national legal frameworks, an assessment of media market concentration based on common criteria and procedures.

10. The media plurality test under Article 22 of EMFA mandates that a concentration be assessed in terms of its effects on aspects such as editorial independence, ownership influence, and the diversity of information. However, the media plurality test is not self-executing.<sup>78</sup> Its effectiveness depends on whether Member States designate an independent media authority, adopt clear and transparent procedures and provide a concrete methodology for the assessment of media pluralism.<sup>79</sup>

## **O. 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 media markets by directly affecting the exercise of media services and access to

---

<sup>76</sup> Summary of decision on acquisition of RTL Nederland by DPG Media (2025) <https://www.acm.nl/en/publications/summary-decision-acquisition-rtl-nederland-dpg-media>

<sup>77</sup> Gerbrandy, A., Kozak, M., Media Pluralism and Competition Law, (2025) Utrecht University, <https://www.acm.nl/system/files/documents/gerbrandy-and-kozak-10-march-2025-media-pluralism-and-competition-law.pmedia> dffecting

<sup>78</sup> Carlini, R., Parcu, P. L., How article 22 aims to tackle market power in the platformed media environment. A critical test for European media (2024) <https://cmpf.eui.eu/media-plurality-test-emfa/>

<sup>79</sup> Cseres, K. J., Ciusca, A.-C., The EU's Chance to Curb Media Capture Blikk Acquisition in Hungary and the Boundaries of the New European Media Freedom Act (2025), <https://verfassungsblog.de/curb-media-capture-hungary/>

the market for media service providers. It also distorts the information ecosystem, directly threatens media pluralism, and may manipulate the democratic process and taint the fairness of elections by affecting the diversity of information 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 distortion in the media landscape and a threat to fair competition and media independence across 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.<sup>80</sup>

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.<sup>81</sup> 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.<sup>82</sup>

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 *ex ante*, whereas the EU state aid rules operate *ex post* (though notification is *ex ante*) and on a case-by-case basis. By addressing the

---

<sup>80</sup> Bátorfy, A. and Urbán, Á. (2019) 'State Advertising as an Instrument of Transformation of the Media Market in Hungary', *East European Politics*, 36(1), 44–65.

<sup>81</sup> Mértek/Átlátszó (2020) Complaint in the case of state advertising spending in Hungary. <https://mertek.eu/wp-content/uploads/2021/03/State-advertising-Hungary.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](https://hang.hu/data/articles/175/1755/article-175565/Final_Non-Confidential_State_Aid_Complaint_against_Hungary.pdf). SA.118825 – (2025/FC) – HU – Alleged advertising State aid in the media

<sup>82</sup> 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/>.

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, which creates an uneven level playing field; it is also liable to influence editorial choices and media content by ensuring transparency, non-discrimination, proportionality and objectivity in the allocation of state advertising to media outlets.<sup>83</sup>

5. The requirements set out in Article 25(1) of the EMFA constitute a minimum, and critically necessary, standard for ensuring that public money for media advertising is distributed in a manner that is fair, transparent, and independent of 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.<sup>84</sup>

7. The scale of this abuse is reported to exceed €1 billion, despite it having been highlighted by

---

<sup>83</sup> 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.

<sup>84</sup> *Vereinigung Demokratischer Soldaten Österreichs and Gubi v. Austria* (ECtHR, 1994) (paras 36–38) - state interference with press distribution was found. European lawmakers have highlighted the pluralism, relevant to propaganda/biased dissemination.

European lawmakers.<sup>85,86,87</sup> 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 entirely devoid of transparency and accountability.<sup>63,64</sup>

#### **P. Public expenditures for state advertising must be transparent (Article 25)**

1. To ensure that public expenditures for state advertising are distributed fairly and objectively, the process must 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.<sup>88</sup>
2. Media-specific measures and general public procurement laws governing the distribution and transparency of state advertising are not in place 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.<sup>89</sup> At present, there are no regulations in place for the transparency of state advertising expenditures in Hungary.<sup>90</sup> 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.<sup>91</sup>

---

<sup>85</sup> 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](https://www.europarl.europa.eu/doceo/document/E-10-2025-002736_EN.html)

<sup>86</sup> J. Day, F. Otto, E. Simon, (2025)

<sup>87</sup> 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.

<sup>88</sup> *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.

<sup>89</sup> EMFA Recital 72

<sup>90</sup> J. Day, F. Otto, E. Simon, (2025)

<sup>91</sup> Mértek Media Monitor, Government Advertising Database (Állami hirdetések adatbázisa), Atlatszo,

3. The lack of transparency around media funding is significant in Hungary. A key player in this area is the Megafon Centre, which is technically a public relations company but, in practice, operates as a communications agent for the government, spending large sums—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.<sup>92</sup>

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 available in an easily accessible manner, allowing 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 publicly available information.

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.

## **Q. Conclusion**

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

Respectfully,

Ilina Neshikj, Interim Executive Director

Civil Liberties Union for Europe

Experts:

Eva Simon, Civil Liberties Union for Europe

Franziska Otto, Civil Liberties Union for Europe

Jonathan Day, Civil Liberties Union for Europe

Judit Bayer, Budapest University of Economics and Business

Katalin Cseres, Amsterdam Centre for European Law and Governance, University of Amsterdam

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 24 national civil liberties NGOs from across the EU.

c/o Publix, Hermannstraße 90, 12051 Berlin, Germany

[info@liberties.eu](mailto:info@liberties.eu)

[www.liberties.eu](http://www.liberties.eu)