

Monitoring the implementation of the European Media Freedom Act (I.)



1st report

The EMFA's relevance to Hungary and its impact on the Hungarian legal environment

August 8, 2025

In cooperation with **Mérték Media Analysis Workshop** and **Connect Europe Association**, we are continuously monitoring the process of implementing the European Media Freedom Act – EMFA – into Hungarian law, as well as its application at the national and European levels. Although the EMFA is a regulation, which in principle does not require implementation by Member States, as it is directly applicable before national courts, several provisions of the EMFA require further action by Member States due to the lack of detailed rules or because the existing national legislation differs from the EMFA. However, several provisions of the EMFA require further action by Member States, either because of a lack of detailed rules or because existing Member State legislation contains regulatory solutions that differ from those of the EMFA. The European Commission is currently consulting with Member State governments to ensure the full applicability of the EMFA. Most of the provisions of the EMFA will enter into force on August 8, 2025, and at the time of the first report, only a limited number of provisions will be in force. This also means that no data on experience with its application is yet available.

Within the framework of the project, we will therefore examine the following questions:

- Is the Hungarian parliament/government taking steps to ensure compliance with the EMFA? Primarily legislative measures, but is it even addressing the issue at the communication level?
- What legislative developments are taking place in other EU Member States?
- The steps taken by the EU Court of Justice and the Commission. The Hungarian government's submission to the Court. The Orbán press correction case before the Court. The Commission's interpretative communications to the EMFA.
- Presentation of Hungarian cases to which the EMFA could be applied if all its provisions were already in force.

The deadline for the following report is September 15, 2025. By then, all provisions of the EMFA will have entered into force. The second report will assess whether the Hungarian legal system was fully prepared for the domestic application of the provisions by the time the EMFA entered into force.

Further reports will be prepared in December 2025 and March and June 2026 as part of the project.

The first report produced under the project consists of four parts.

A summary of the regulatory framework adopted by the EMFF has been prepared, grouped, and analyzed from Hungary's perspective. The summary deals in detail with those provisions that will require changes to Hungarian legislation. The purpose of the summary is to provide a preliminary, easily understandable overview of the EMEA. It also serves as a starting point for the analysis of Hungarian legislation carried out during the project, as it allows for the prioritization of those

provisions of the EMEA that will necessarily or potentially require legislative action by the Hungarian legislator. After the EMFA enters into force, this analysis can serve as a starting point for assessing the extent to which the EMFA has fulfilled the expectations placed on it.

The second section of the report, based on the summary mentioned in the first paragraph, analyzes the current compliance of the relevant Hungarian legislation with the EMFA under Article 4 of the EMFA, with a focus on those aspects of the Hungarian legal environment that need to be amended, and – also based on the ECtHR judgment in the Pegasus case – pays particular attention to the protection of journalists and their sources, with a special focus on the use of intrusive surveillance tools, their possible scope of application and how they are authorized.

The third part of the report contains a summary of articles published on the subject by the EMFA Observatory. This part is not translated into English.

At the time of the finalization of the first report, Parliament published a draft law on transparency in public life. In the analysis below, we indicate which provisions of the EMFA appear to apply to legislation that seriously infringes on media freedom and freedom of expression, essentially rendering them null and void. Still, we are unable to elaborate further without knowledge of the final text of the law.

The report was written by Gábor Polyák and Bálint Barki.

Budapest, August 8. 2025.

Contents

The EMFA's relevance to Hungary and its impact on the Hungarian legal environment	2
1. Brief overview of the media situation in Hungary.....	4
Media relations after the collapse of the Soviet bloc.....	4
Media landscape after Fidesz's two-thirds victory in 2010	5
Current Hungarian media landscape	6
Role of advertisement of the government	6
The role of the Hungarian media ecosystem.....	6
Public service media after 2010	7
Legislation governing the media in Hungary	8
2. Evaluation of the EMFA from Hungary's perspective	8
Background.....	8
European Board of Media Services	9
The rules applicable to Member States.....	10
Source protection in EMFA.....	10
Independence of public media.....	10
Regulation of media market concentration.....	11
Regulation of public advertisements.....	11
Protecting editorial independence	12
3. Article 4 of the EMFA from a Hungarian perspective	12
Summary	19

1. Brief overview of the media situation in Hungary

The Hungarian media landscape after the regime change can be divided into two distinct phases. The Hungarian media landscape and media market have undergone radical structural changes since the 2010 election victory of the Fidesz-KDNP coalition, which won a two-thirds majority. After the 2010 elections, Fidesz-KDNP, with its two-thirds majority, has sought to control the Hungarian media as much as possible through legal and economic means.

Media relations after the collapse of the Soviet bloc

The regime change of 1989/90 brought a new era in the history of the Hungarian media system. In the first years after the regime change, constitutional guarantees for freedom of the press and the conditions for market-based media operations were established. However, it was not until 1996 that the legal framework for the media market was established and commercial television was launched. From the enactment of the regulations until 2008, the Hungarian media market developed dynamically. Circulation figures showed an upward trend, and advertisers were keen to advertise in newspapers, commercial radio, and television, thereby promoting editorial independence and freedom. This is true even though the allocation of national radio and television frequencies has

always been the subject of serious legal disputes. In the wave of privatization that followed the change of regime, Western European and, to a lesser extent, American companies acquired shares in the Hungarian media market.

A sharp change can also be observed in Hungarian public media between its operation before 2010 and after 2010, although the period following the change of regime was not without turmoil either. Between 1990 and 1994, there was a period known as the media war, which marked the struggle for political control over public media. The 1996 media law briefly alleviated the political struggles, but in 1998, during the first term of Viktor Orbán and Fidesz, the ruling party once again sought complete control over public media. Subsequently, between 2002 and 2010, editorial freedom increased noticeably, and several outstanding journalists worked in the public press, but political pressure was constant, both in terms of funding and organization.

Media landscape after Fidesz's two-thirds victory in 2010

The transformation of the Hungarian media landscape after 2010 can be divided into three phases. The first phase covers the period between 2010 and 2014, when foreign investors began to leave the country and were replaced by domestic investors with ties to the ruling party. On the one hand, the change of ownership led to several newspapers becoming pro-government, such as Metropol and Origo. On the other hand, several radio stations went silent following the Media Council's frequency decisions.

During this period, Lajos Simicska was the most critical owner with the most extensive portfolio, enjoying a virtual monopoly in the pro-government media. Simicska was responsible for Fidesz's finances and was considered a long-time comrade-in-arms and good friend of Viktor Orbán, playing a decisive role in several key segments of the economy through his businesses. However, Orbán and Simicska's relationship soured in 2015, and after their breakup, the pro-government media outlets owned by Simicska changed their tone and became critical of the government. This brief period lasted until the 2018 parliamentary elections, when, after another two-thirds majority, Simicska sold his interests to entrepreneurs close to the government and withdrew from Hungarian public life.

After breaking with Simicska, Fidesz and Viktor Orbán needed to replace the media outlets they had lost and diversify the ownership structure of the pro-government media market. To this end, several entrepreneurs loyal to the government acquired ownership, none of them gaining a significant share of the Hungarian media market. It was at this point that Lőrinc Mészáros became the most important player, whose interests beyond the media market also began to grow significantly, almost exclusively through the use of public funds.

However, the second period described above can only be considered a brief transition, as the Central European Press and Media Foundation (KESMA) was established in August 2018, and three months later, on November 28, 2018, almost all media companies close to the government and Fidesz offered their services free of charge. This brought the total number of media outlets belonging to KESMA to 476, which increased the concentration of ownership in the Hungarian media market to an unprecedented level. Such a high degree of consolidation should have been investigated by the Hungarian Competition Authority, and the media law also required the media authority to examine the transaction from the perspective of media diversity. However, the government exempted both state bodies from this task when it declared the merger to be of national strategic importance in the public interest, thus removing it from the scope of the investigation. Since KESMA was established in 2018, there have been no significant changes in ownership relations in the Hungarian media market.

Current Hungarian media landscape

The Hungarian media market can currently be divided into three distinct segments. The first group includes media outlets that are pro-government and whose ownership structure is readily transparent. These are typically (but not exclusively) media outlets affiliated with KESMA, which convey the government's messages in their content, often word for word, in visible harmony with the government. It is important to note that a significant portion of these outlets' revenues, usually more than half, comes from state advertising. These media companies include the TV2 Group, Indamedia Network, which operates Index.hu, Radio Plus Kft., which operates Radio1, and MTVA-Duna Médiaszolgáltató, which in theory serves as a public service media provider.

The second group includes independent companies and media outlets that derive their income from the market and, increasingly, from subscribers and sponsors, and are not affiliated with any political party. The media outlets belonging to the second group are also easy to identify. Their owners are far removed from the political leadership, and in many cases, the journalists themselves are the owners. The share of state advertising in their revenues is negligible, if any.

The third segment of the Hungarian media market is much more difficult to define than the first two. It includes media outlets that are perceived as independent by the public and whose editorial staff also describe themselves as independent, but cannot be considered as such due to their ownership background or financing, as they are either linked to the ruling party through personal ties, receive significant revenue from government advertising, or their owners are otherwise exposed to the government. This is particularly true of ATV and Népszava. These media outlets do not function as mouthpieces for the government, as those in the first group do, but they are much less likely to expose and report on issues that are uncomfortable for the government.

Role of advertisement of the government

The distribution of state advertising is the main reason for the distorted Hungarian media market. State advertising, including advertising by state-owned companies, is distributed to pro-government media outlets. Based on several previous studies, even before 2010, state advertising was allocated to pro-government media outlets at a slightly higher rate than to outlets that were explicitly critical of the government. Still, this trend has intensified significantly since 2010. Firstly, due to the government's intensive and seemingly permanent campaigns, state advertisers are spending at an unprecedented level. In addition, the tendency to favor media outlets close to the government has intensified dramatically since the 2010 takeover. Media outlets critical of the government receive virtually no revenue from state advertising. At the same time, there are countless media outlets for which state funding has become so crucial that, in some cases, it accounts for more than 50% of their revenue.

When discussing the functioning of public advertising in Hungary, it is essential to mention the National Communication Office, which was established in 2014. The Office is responsible for coordinating government communications, conducting related public procurement procedures, and monitoring their implementation. In practice, the establishment and operation of the Office has led to an unprecedented degree of centralization of public sector communications spending.

The role of the Hungarian media ecosystem

An essential element of Fidesz's media policy is that ownership changes and expansion have taken place not only among content producers in the media market, but also among companies that are

not involved in content production but still have a significant impact on the operation of media companies. Examples include the advertising industry and content distribution companies.

The importance of the ecosystem can best be illustrated and understood through the example of the Index. In 2020, a pro-government entrepreneur acquired Indamedia Network, a holding company that played a key role in Index's operations. This holding company carried out activities necessary for Index's operation, such as advertising sales and the operation of the editorial office's IT system. In this way, the government achieved the resignation of the entire editorial staff of Index without changing the ownership structure of the portal's publisher.

Content distribution companies represent one of the most critical segments of the ecosystem, and their ownership structure also underwent significant changes in the 2010s. For example, the state nationalized the previously French-owned broadcasting company Antenna Hungária, which operates the digital terrestrial platform. Antenna Hungária is now majority-owned by the 4iG group, which is also close to Fidesz. Following the acquisition of Vodafone's Hungarian interests, 4iG became the most significant player in the cable TV distribution market and the second largest player in the mobile internet market.

Public service media after 2010

After coming to power in 2010, one of the first tasks of the second Orbán government was to restructure and take control of the public media. The system established during this period, together with the takeover of the media authority and public service media, has remained one of the main pillars of the Orbán regime ever since.

The media laws adopted in 2010 significantly restructured and centralized public service media. The main element and body of centralization is the Media Support and Asset Management Fund (MTVA). Under the law, the MTVA manages public assets and finances the production of public service content. The chair of the Media Council appoints the head of the MTVA without a competitive selection process and can be dismissed without justification. The head of the MTVA is not subject to oversight by any other body. The political exposure of the head of the MTVA and the president of the Media Council, who appoints him, is well illustrated by the fact that the ruling parties elect the president for a term of nine years.

Another essential part of the public media's organizational structure, at least from the outside, is Duna Média Nonprofit Zrt. Since 2015, this organization has been the service provider for all public service television, radio, and online content, as well as for public service journalism. The Zrt. is subject to institutional control by law and is supervised by various organizations under the Média Act, unlike the MTVA above, which is supervised exclusively by the Média Council. Another critical difference between the two institutions is that, unlike the MTVA, which spends the public funds allocated to it in an uncontrolled and non-transparent manner, Duna Média Zrt. has no resources of its own. Its activities are practically limited to ordering programs produced by the MTVA. Thus, Hungarian law surrounds a resource-less showcase organization with control mechanisms and leaves the MTVA, which has more than 100 billion forints of public money at its disposal, without external oversight.

Another critical step in the takeover and centralization of public service media and the control of information flow was the restructuring of the Hungarian news agency (MTI), which took place in parallel with the restructuring of public service media.

Until 2011, MTI was considered an average news agency, selling news on a contractual basis to media companies operating on various market bases. However, in 2011, MTI was incorporated into MTVA and its services became free of charge. With this move, the government effectively eliminated the news agency market in Hungary, as no market player could compete with the free service, giving the state news agency a monopoly. This led to a situation in the Hungarian media market where even independent outlets are sometimes forced to use MTI news.

Legislation governing the media in Hungary

One of the first legislative measures taken by Fidesz after its two-thirds victory in 2010 was to amend the previous media law and pass new laws. The importance Fidesz attached to controlling the media and creating a legal framework for this is demonstrated by the fact that the legislative process began in the summer of 2010, immediately after the elections, culminating in the amendment of the previous Act I of 1996 in the fall of 2010. The amendment abolished the previous media authority and established the Media Council, which has been in operation ever since. Under the new law, on October 11, 2010, the National Assembly elected the members of the latest Media Council, exclusively from among Fidesz candidates. The two laws adopted in 2010, Act CLXXXV of 2010 on Media Services and Mass Communication and Act CIV of 2010 on Freedom of the Press and Fundamental Rules on Media Content, sparked serious debate and criticism at the European level. However, apart from a few minor amendments, the criticism had no effect.

The MTVA was established in the wake of media laws. As a result of its operations, public media reached an all-time low in terms of professionalism after the change of regime, accompanied by unprecedented waste of resources. Media laws created a legal situation that destroyed the news market and gave the state news service a monopoly. In doing so, the Hungarian government is threatening the diversity of information at the legislative level and restricting access to information. The operation of MTI has contributed significantly to the public media system reaching an all-time low and functioning as a propaganda machine.

Media laws significantly limit the transparency of segments of the media market that are closely tied to government decisions. Examples include the allocation of frequencies, the fees for these, the broadcasting contracts of public service media providers, and the principles governing the distribution of public funds earmarked for the support of public service media.

Finally, media laws place both print and online media under the control of media authorities. The result, and probably the aim, of this control is to keep journalists, editors, and, above all, media company owners in a state of uncertainty by threatening them with heavy fines.

2. Evaluation of the EMFA from Hungary's perspective

Background

In September 2022, the European Commission published the draft text of the European Media Freedom Act (EMFA). The draft was initially met with much opposition, as Western European media companies and governments saw it as unnecessary interference aimed at solving problems that Western countries have not generally faced. European illiberal forces understandably did not support a proposal that would regulate specific pillars of media freedom at the EU level. In contrast, critics of illiberal systems did not consider the published draft to be sufficiently robust. Despite all this, the European Parliament approved the draft relatively quickly, on March 13, 2023, and it will gradually come into force from May 2024, with the rules laid down in the regulation only having to be applied in full from August 8, 2025.

According to the preamble, the regulation was prompted by the recognition that, with the rise of online platforms and digital media in general, and their emergence as primary sources of information, there was a growing need for uniform media regulation that is binding throughout the internal market. For media companies to fulfill their role in the functioning of democracies and for independent media providers to be able to provide citizens and businesses with diverse and relevant information, the previously divergent media rules in different countries must be harmonized to at least a certain extent.

To this end, the EMFA covers eight different aspects of national media regulation, namely:

1. National restrictions on journalists' sources and communications that affect the production and provision of media services.
2. Interference in the functioning of media service providers, including editorial decisions and different approaches to the protection of editorial independence.
3. The risk of state interference in public service media, which adversely affects the conditions of fair competition in the single market and the quality of public service media.
4. The market behavior of uncontrollable actors (including media service providers controlled financially or editorially by certain third countries), which causes tensions in the application of EU rules on free movement.
5. Due to the increasing digitization of media services, there are risks to the free provision of media services on large online platforms, which adversely affect equal competition in the internal market.
6. National media market measures affecting the operation of media service providers that restrict free movement within the Union, fragment the internal market, and create legal uncertainty; the same applies to national rules and procedures for assessing the impact of media market concentration on media pluralism and editorial independence.
7. Lack of transparency and potential bias in audience measurement systems and methods, leading to market distortion and adversely affecting the level playing field in the internal market.
8. Unfair and non-transparent distribution of public advertising expenditure among media service providers, to the detriment of other media service providers, including those established in other Member States.

European Board of Media Services

Before we go through the eight aspects above, it's worth mentioning that the EMFA is setting up a European Media Services Board (hereinafter referred to as the „Board”), which replaces and succeeds the European Regulators Group for Audiovisual Media Services (ERGA) established by Article 30b of Directive 2010/13/EU. The Board's task is to bring together and coordinate national authorities. The Board is composed of representatives of the national authorities and a representative delegated by the Commission, who participates in the meetings of the Board without voting rights. Among the provisions of the EMFA relating to the Board, the most important rule for the Hungarian media situation is perhaps that each national authority has one vote and the Board takes its decisions by a two-thirds majority, so that no single Member State can block the Board's decision-making mechanism by exercising its veto.

Of course, there is a question as to how far the Board's decisions can influence the internal media situation in a given Member State. Still, it is undoubtedly a step forward that the Commission has

recognized the problem and, with the two-thirds decision-making mechanism, has prevented any single Member State from blocking its operation. The effectiveness of the Board's operation can therefore only be assessed once it begins to function, if only because it will be able to monitor the media situation in the Member States within a broad, albeit not precisely defined, scope, with particular regard to the functioning of the state bodies responsible for monitoring the media, which in Hungary is the Media Council. However, its decisions have no legal consequences; it can only express opinions. Nevertheless, these public opinions may serve as a strong basis for national courts and the European Court of Justice in proceedings challenging decisions of national authorities.

The rules applicable to Member States

The eight provisions listed above, which essentially concern national regulations of Member States, can be divided into three groups in terms of their relevance to Hungarian media regulation, which also determines the content of this summary. The first group includes provisions that explicitly contradict or override current Hungarian legislation. In contrast, the second group consists of provisions that are critical of the domestic media situation from the perspective of Hungarian media relations, but do not have normative force. The third type of provisions is those that are essentially irrelevant to the domestic media system. Such provisions include, for example, regulations on audience measurement or the promotion and prioritization of media service providers on giant platforms. I will therefore not deal with these two regulations in this paper.

Source protection in EMFA

The first group includes regulations on the protection of journalistic sources and confidential communications, which are perhaps the most important, especially since the outbreak of the Pegasus scandal. Among the EMFA provisions in this regard, it is worth highlighting the otherwise strong restrictions on the use of intrusive surveillance systems. Under the EMFA, the use of such investigative tools may be authorized by a court or an „independent and impartial decision-making authority,” particularly in justified cases, with the possibility of ex post authorization. As a result, the domestic legislation currently in force, which in some instances referred the authorization of intrusive surveillance measures to the competence of the minister responsible for justice, will no longer be appropriate following the application of the EMFA. At the same time, it is worth noting that the EMFA complies with Hungarian legislation ab ovo in other respects. Furthermore, since the EMFA does not define precisely how and by whom the „independent and impartial decision-making authority” referred to in the text of the Regulation is to be established, it leaves room for national legislators to circumvent the rule of law guarantee of judicial authorization, as it indirectly refers the establishment of this authority to the competence of legislative bodies. The provisions of the EMFA on the protection of journalists are further weakened by the fact that it does not define precisely what is meant by the phrase „sufficiently justified exceptional and urgent cases” as a condition for ex post authorization, which may also leave room for certain abuses.

Independence of public media

The EMFA deals specifically with promoting the independence of public media, both from an editorial and functional perspective. The regulation stipulates that the heads of public service media organizations and their board members must be selected through an open and transparent application process, which forces the Hungarian legislature to take action, as the current Hungarian media law does not provide for any application process or selection criteria for the position of CEO of Duna Média Zrt. or the Média Support and Asset Management Fund (MTVA), thus making their selection somewhat opaque and open to abuse. However, the decree does not specify the application procedure, the conditions for application, or the body responsible for making the decision, leaving

this to the national legislature. From Hungary's point of view, it is therefore questionable to what extent this provision promotes the independence of public media in practice, as the two-thirds parliamentary majority is effectively given a free hand in designing the application system. Not to mention that, in Hungary today, no one is likely to have more experience in managing public service media than the current leaders.

Regulation of media market concentration

Regulation of media market concentration is the third area where Hungarian media regulation needs to be changed. Although the current Media Act empowers the Media Council to monitor concentrations affecting the media market—something that the EMFA now expects from all member states—changes are needed in Hungarian legislation in terms of both legal regulation and implementation. The involvement of the Media Council in the monitoring process serves to ensure that, in addition to market and competition considerations, media policy implications and the impact on the diversity of information are also taken into account. The provisions of the EMFA are sufficient to prevent possible abuses and non-transparent decisions serving the interests of a particular political party, as the regulation stipulates that the criteria for assessing concentration must be objective, non-discriminatory and proportionate, and in most cases must be coordinated with the Body established by the EMFA, whose opinion must be taken into account „to the greatest extent possible.” Although the EMFA regulation is forward-looking and took the situation in Hungary into account during its drafting, the most significant market-distorting concentration in our country occurred almost a decade ago with the establishment of KESMA, so its practical impact is likely to be very limited in Hungary.

Regulation of public advertisements

Although the most critical issue in the current Hungarian media market is the spending on state advertising, which is a priority for the EMFA, the relevant rules in the decree do not have any normative consequences. There are several reasons for this about state advertising. On the one hand, the regulation requires all media service providers to disclose how much state advertising they receive. Still, the regulation does not contain any strict quantitative limits, so the published data has no legal consequences. Furthermore, even though the exact figures have not been made public, the Hungarian public has been aware for years of the state's advertising policy and which media outlets it favors so that no political consequences can be expected from these rules.

The decree also stipulates—and this does indeed bring about a change in the Hungarian situation—that the distribution of state advertising must be based on specific and public criteria. This raises the question of how the state will differentiate between media outlets that are currently heavily supported and those that are presently completely neglected. but apart from the existing legal consequences – i.e. the initiation of infringement proceedings and their protracted nature – the provision does not contain any further sanctions. Hence, the practical impact of this part of the provision is also questionable, to say the least.

The regulation also stipulates – and this does bring about change in the Hungarian situation – that the distribution of state advertising must be based on specific and public criteria. This raises the question of how the state will differentiate between media that are currently heavily subsidized and those that are presently completely neglected. Still, apart from the existing legal consequences – i.e. the initiation of infringement proceedings and their protracted duration – the provision does not contain any further sanctions. Hence, the practical impact of this part of the provision is also questionable, to say the least.

In addition, the question arises as to what can be done under the regulation if the state does not directly finance certain media outlets but instead supports civil society organizations—let us call them CÖF for the sake of argument—which then support media outlets of their choosing on their authority and according to their criteria.

Protecting editorial independence

Compared to state advertising, provisions protecting editorial independence are even more symbolic. The decree stipulates and expressly supports the editorial independence and freedom from political influence of both market-based media outlets and public media. Although this principle is, of course, very important and worthy of support, attempts to exert influence of this kind and actual influence are practically never exercised within a formal framework. In contrast, informal influence is naturally exercised behind closed doors and is therefore unverifiable and impossible to prove.

3. Article 4 of the EMFA from a Hungarian perspective

The EMFA considers the proper functioning of media services and the press to be of paramount importance, not only from an internal market perspective, but also for European democracies, so that they can fulfill their role as „guardians of the public,” which is not limited to monitoring political power. Access to quality media services can also help combat disinformation and attempts by third countries to influence public opinion through information manipulation. To this end, there is a clear legislative intention to prevent attempts to silence journalists, ranging from harassment and threats to censorship and the deletion of dissenting opinions, through provisions specifically designed to protect journalists.

On the other hand, it is the express intention of the legislator to strengthen and standardize source protection and to lay down minimum rules in this regard, since source protection is of fundamental importance, particularly for investigative journalists, who play a key role in maintaining democratic societies and the rule of law and in monitoring their functioning. To fulfill this task, journalists and other media service providers must be able to protect and treat their sources of information as confidential and be able to establish and maintain confidential communication channels. To this end, both editorial offices and journalists working in atypical employment relationships or as freelancers must be protected from unjustified interference and the use of surveillance techniques. The preamble to the EMFA emphasizes that legal protection of sources should not only extend to editorial staff and other persons working for media service providers in connection with their activities, but also to persons who, through their private or professional relationship, may have close ties with them and thus have access to information about the employees of the media service provider concerned. This protection should be extended in particular to persons living in the same household as employees of media undertakings, who may easily become the target of surveillance.

Based on the above, the legislator said that rules on gathering info on journalists should be harmonized at the EU level, and regulations should be set to protect journalists and other media workers from different types of surveillance. One of these conditions, which is already highlighted in the preamble by the legislator, is that

„measures to obtain such information shall be authorized by a court, a judge, a prosecutor acting in a judicial capacity, or another authority competent under national law to authorize such measures,” judge, a public prosecutor acting in a judicial capacity or another authority empowered by national law to authorise such measures, which is able to assess independently and impartially whether the authorisation is justified on grounds of compelling public interest” (EMFA, Preamble, 21)

Article 4 of the EMFA contains the detailed rules, but in the Hungarian context it is worth highlighting the section of the preamble which emphasizes that the collection of such information must be authorized by an authority capable of assessing independently and impartially whether the surveillance is justified on grounds of public interest. As I will explain later, under Hungarian law, secret surveillance may currently be authorized by the courts and, in certain cases, by the Minister of Justice. This provision clearly does not comply with the provisions of the preamble, and therefore requires an amendment to Hungarian law.

The EMFA – presumably in the wake of the Pegasus scandal – deals specifically with intrusive surveillance systems, i.e. spyware, and the development of uniform regulations for their use. The EMFA refers the decision on the applicability of intrusive surveillance systems to the courts or other independent authorities. The regulation does not define precisely what is meant by an independent authority in this context, nor does it specify who should be selected as members of the authority and on what basis, which gives Member States considerable leeway to relax the rule of law controls over the use of intrusive surveillance tools deemed necessary by the EMFA by designating an independent authority.

Specific provisions of Article 4 of the EMFA on the protection of journalists and sources

The expectations and principles set out in the Preamble regarding the protection of journalists and information sources are specified in Article 4 of the EMFA. It is important to note that, as the EMFA Regulation is a regulation, the rules adopted in this article are automatically incorporated into the Hungarian legal system, and they are binding and can be invoked in any proceedings after the Regulation enters into force. Thus, the provisions of Article 4 must be analyzed to identify what constitutes an innovation compared to current Hungarian legislation, and the rules that are contrary to current Hungarian legislation must also be examined. Finally, the parts of Article 4 that create legislative obligations must also be examined, and it is also worth analyzing the extent to which the regulation allows Member States' legislative bodies room for maneuver in particular the extent to which it can transform the current situation in Hungary and prevent any abuse that may arise in connection with the surveillance of journalists.

Article 4 of the EMFA contains both prohibitions and positive obligations, which indirectly impose legislative tasks on Member States. In addition, it is essential to compare Hungarian regulations with EMFA regulations, as the EMFA contains minimum standards, so it is important to see which Hungarian regulations will be superseded by the EMFA after it enters into force in August.

Therefore, it is worth starting the analysis with the provisions that require abstention from certain conduct, as this is probably the part of the Hungarian legislation that corresponds most closely to this.

The first paragraph of Article 4 states that „1. Media service providers shall exercise their economic activities in the internal market without any restrictions other than those permitted under Union law.” This means that Member States may not adopt legislation that restricts the economic activities of media service providers beyond the existing Community legislation. At the time of writing, there is no legislation in force that conflicts with this provision of the EMFA, but the fact that there are no legal restrictions on the economic activities of media service providers does not mean that the conditions for the free market are necessarily fulfilled in practice. Neither previous regulations nor the current text of the EMFA can address the possibility that, although formally any advertiser can advertise with any media service provider, but government-critical, independent service providers can easily come up against barriers, and advertisers prefer not to take the political risk of advertising with government-critical media outlets. This behavior naturally leads to serious distortions in the

media market, but there is no legislation forcing advertisers to act in this way, so even the EMFA cannot prevent this market-distorting attitude on the part of advertisers, which stems from the behavior of those in political power. An even more elusive and unenforceable rule is Article 4(2), which states that

“2. Member States shall respect the effective editorial freedom and independence of media service providers in the exercise of their professional activities. Member States, including their national regulatory authorities and bodies, shall not interfere in or try to influence the editorial policies and editorial decisions of media service providers.”

Although it is undoubtedly an important principle that state bodies and political leaders should not exert any pressure on the editorial policies and work of media service providers, such pressure is practically never exerted in a formal manner, and attempts at informal influence are only very rarely made public—although several Hungarian examples show that this number is not zero. However, even in these cases, it is almost impossible to prove that concrete political pressure was exerted. Not to mention those cases where certain media outlets clearly represent the position of the authorities in public, yet it cannot be clearly stated that any pressure has been exerted, as in the vast majority of cases these editorial offices voluntarily side with the authorities.

At the same time, this general provision may be very important from one point of view: the entire functioning of the Sovereignty Protection Office and the law on discrediting it, which was made public at the time of writing, clearly violate actual editorial freedom and constitute serious interference in the editorial policy and decisions of media service providers. When the EMFA was adopted, the Sovereignty Protection Agency did not yet exist, and the European legislator had no reason to believe that such an organization with a unique legal status but constantly disparaging the independent media through state means could be established in any Member State. The activities of the Office should definitely be subject to an investigation to determine whether they are in line with the EMFA.

From a legislative point of view, the section ranging from Article 4(3) to (6) promises to be more interesting, as it approaches the protection of journalists from the perspective of source protection. It is therefore worth comparing the provisions of the following three sections with existing Hungarian legislation, as these sections could result in substantive changes in the field of media law in Hungary.

Article 4(3) also imposes prohibitions on Member States. Under point (a) of paragraph 3, Member States shall not take measures that oblige media service providers or persons closely associated with them to disclose their sources of information or information about communications with their sources. Paragraph 3(b) states that no measures may be taken that would allow for any sanction, coercive measures, or searches or surveillance, whether at the premises of the media service provider or at the private residence of an employee, in order to disclose the media service provider's sources of information or to obtain information about the media service provider's communication channels. Finally, paragraph 3(c) imposes the same prohibition as above, specifically in relation to the use of intrusive surveillance systems.

Before addressing the exceptions to the prohibitions in paragraph 3, it is necessary to refer to the Hungarian legislation. First, the current Hungarian legislation does not contain any provisions that would contradict Article 4(3) of the EMFA. In Hungarian law, source protection is regulated by Section 6(1) and (2) of Act CIV of 2010 on the freedom of the press and the fundamental rules of media content (hereinafter: Smtv.) as follows:

6. § (1) Media content providers and persons employed by them or in any other legal relationship with them for the purpose of performing work shall be entitled, in accordance with the provisions of the

law, to keep confidential in court and administrative proceedings the identity of persons who provide them with information in connection with their activities as media content providers (hereinafter referred to as „information sources”), and to refuse to hand over any documents, records, objects or data carriers that may be suitable for identifying the information source.

(2) In order to investigate a criminal offense, the court may, in exceptionally justified cases specified by law, order the disclosure of the source of information and the handover of any documents, records, objects, or data carriers that may be suitable for identifying the source of information to the media content provider and to any person who is in an employment relationship or other legal relationship with the media content provider for the purpose of performing work. objects or data carriers that may be suitable for identifying the source of information.

The law states that journalists have the right to refuse to reveal their sources of information even in court, or to hand over any documents, data carriers, etc. that could reveal the source of the information. The law also states that, in exceptional cases specified by law, a court may compel a journalist or media content provider to disclose their sources in order to investigate criminal offences. It follows indirectly from the text of the law that journalists or media content providers cannot be compelled to reveal their sources beyond what is specified in the law, and that this information cannot be obtained by any other means. Hungarian legislation therefore complies with the negative obligation imposed by the EMFA.

After the general rule, the exceptions under Article 4(3) must be interpreted and analyzed separately. Pursuant to paragraph 4, the provisions of paragraph 3(a) and (b) are exempted, meaning that Member States may take the measures provided for therein if they are required by national or Union law it complies with Article 52(1) of the Charter – the restriction is necessary and proportionate – the derogation is justified on grounds of a pressing public interest and is authorized in advance by a judicial authority (i.e., a court) or an independent and impartial decision-making authority. Prior authorization may be waived in particularly justified cases, but the authorizing authority must grant authorization without delay, ex post facto. In Hungarian law, exceptions to the general rules on source protection laid down in the Smtv are regulated by Act XC of 2017 on Criminal Procedure (hereinafter: Be.).

Article 174 of the Criminal Procedure Code stipulates that media content providers and persons employed by them may refuse to testify if doing so would reveal the identity of a person who provided information (information source) in connection with the media content provider’s activities. An exception to this rule is if the judge orders the witness to testify. A media content provider’s employee is obliged to testify if the disclosure of the identity of the information source is essential for the investigation of criminal offenses punishable by more than three years’ imprisonment, the evidence expected from the information cannot be obtained in any other way, and the public interest in detecting the crime clearly outweighs the interest in keeping the source of the information secret.

The provisions of the Be. on source protection are essentially in line with the EMFA requirements, but two differences and one distinction discussed in relation to intrusive measures are worth highlighting. The first difference is that the EMFA does not make the derogation from Article 4(3)(a) and (b) conditional on the detection of specific criminal offenses or specific penalties, but merely refers to national or EU law. In contrast, the Be allows the judge to compel the person concerned to testify in any criminal case punishable by at least three years’ imprisonment. This is a significant relaxation compared to the current Hungarian legislation, and it is questionable to what extent this may give rise to abuse in practice, particularly in conjunction with the provision on the licensing authority discussed in the following paragraph.

The other significant change under the EMFA is that, in addition to the courts, media content providers may also be required, on the basis of a permit issued by an undefined impartial and independent authority mentioned above, to disclose the relevant sources of information and the forms of communication used with them. This is a milder regulation than the current Hungarian legislation, as under Hungarian law, the measures specified in Article 4(a) may only be derogated from by a court order.

The third difference concerns the use of various covert surveillance tools. First, it is important to note that, unlike Hungarian legislation, the EMFA regulates separately the search of premises, personal surveillance, the seizure of data carriers, and the use of intrusive devices. The EMFA applies less stringent rules to the search of premises and the authorization of covert surveillance than to intrusive surveillance systems, as the former are subject to the same rules as the obligation to disclose information sources laid down in Article 4(3)(a). By contrast, the Regulation only exempts the use of intrusive means from the prohibition on the use of intrusive means under Article 4(5) if, on the one hand, the case in question meets the conditions laid down in paragraph 4 and, on the other hand, the use of intrusive means is necessary for the detection of one of the criminal offences listed in the second subparagraph of Article 2 of Framework Decision 2002/584/JHA.584\IB, provided that the act is punishable in the country concerned by a custodial sentence of at least three years or, in the case of offences not listed, by a custodial sentence of at least five years. The EMFA also stipulates that the necessity of using any form of covert surveillance (including the use of intrusive devices) must be reviewed regularly by a court or independent authority to determine whether the conditions for its use continue to exist. The EMFA also stipulates that media service providers and persons close to them who have been subject to surveillance Member States must ensure effective legal protection and entrust an independent authority or body with the necessary expertise to assist those concerned in exercising their rights.

The Hungarian legal system does not treat intrusive surveillance tools and other surveillance tools separately, so the legislation must be compared with both the less stringent and more stringent rules laid down by the EMFA. For the purposes of this analysis, it is important to note that sectoral laws lay down the conditions and mechanisms under which various law enforcement and investigative bodies may request the use of covert surveillance tools. However, the regulations relevant to the EMFA are contained in Act CXXV of 1995 on National Security Services (hereinafter referred to as the Nbtv.), so the rest of this analysis will focus on the rules of the Nbtv. It is also important to note that the Nbtv. and other Hungarian legislation do not contain any provisions other than those described above with regard to media companies and their employees, so the investigation can mainly be based on whether the currently valid, generally applicable Hungarian laws are in line with the EMFA provisions, or at least whether the EMFA provides stronger protection for media companies and their employees.

Article 53 of the Nbtv. stipulates that secret information gathering is carried out by national security agencies – with the exception of the National Information Office – in order to perform their duties as defined by law. In practice, this also means – and this is why the analysis focuses only on the Nbtv. – that the National Security Service carries out secret information gathering for other law enforcement and investigative agencies on the basis of a written request, the procedure for which is laid down in the Nbtv. and the conditions for the use of the tools are laid down in the Be. Following the logic of the EMFA, it is worth first looking at the conditions that need to be met for secret information gathering to be allowed. I would like to emphasize again that the following rules apply generally to all secret information gathering, not just to investigations involving media content providers, and that no different rules apply to these, except for the rules on refusal to testify mentioned above.

The use of covert measures subject to judicial authorization is regulated by Article 234 of the Criminal Procedure Code. Based on this, the court authorizes the use of such measures in cases of criminal offenses punishable by at least five years' imprisonment, and in certain criminal offenses specified by law, punishable by three years' imprisonment. This regulation is essentially identical to the provisions of the EMFA, so no change is expected in this area. The difference, however, is that under the EMFA, this may also be authorized by an independent and impartial authority, which may mean that judicial authorization will not be required in the case of surveillance of journalists. However, it is important to note that this provision specifically refers to the gathering of information in criminal proceedings, as Article 214(3) of the Criminal Procedure Code states that Section (2) shall not apply to the gathering of secret information by the national security services and the police counter-terrorism unit for the purpose of performing their law enforcement tasks under the Act on National Security Services. The other measures of the Be. that are relevant to the EMFA only apply to criminal proceedings, so if the national security services do not collect information in the context of criminal proceedings, they can exempt themselves from the provisions of the Be. and the Nbtv. becomes the governing law.

Based on the Nbtv., any national security service may only collect classified information if the necessary information cannot be obtained by other means. The law divides such information gathering into two categories: classified information gathering not subject to authorization and classified information gathering subject to authorization. In this analysis, we examine the legal provisions relating to the second group, as all information gathering listed by the EMFA falls into this category under Hungarian law, so it can be established in advance that, in this respect, Hungarian legislation is in any case in line with the EMFA provisions in that such information gathering is subject to authorization by an external body or authority, not only for journalists but for any citizen.

Pursuant to Section 57 of the Nbtv., the proposal necessary for secret surveillance may be submitted by the Information Office, the Constitution Protection Office – the Military National Security Service, which is less relevant to the subject matter – and, in cases specified by law, the Director-General of the National Security Service. The EMFA does not specify the authorization procedure, but I consider it important to emphasize that civilian information gathering may be initiated by a total of three directors-general.

The Hungarian regulation that most contradicts the provisions of the EMFA relates to the authorisation of secret surveillance. If information gathering does not fall within the scope of the Be., the Nbtv. imposes rather narrow conditions on the need for judicial authorisation. In the case of civilian secret services, Article 58 of the Nbtv requires judicial authorization for the tasks specified in Article 5(b), (d), (h) and (j) of the Nbtv. According to the law, these are as follows:

b) detects and prevents covert attempts to change or disrupt the legal order of Hungary by unlawful means;

d) detects and prevents covert attempts to undermine Hungary's economic, scientific, technological and financial security, as well as illegal drug and arms trafficking;

h) conducts the investigation until it is ordered

ha) crimes against the state under Act IV of 1978 on the Criminal Code (hereinafter referred to as Act IV of 1978), which was in force until June 30, 2013 (Chapter X of Act IV of 1978), crimes against humanity (Chapter XI of Act IV of 1978), or, within the scope of their activities, fleeing abroad (Article 343 of Act IV of 1978), rebellion (Article 352 of Act IV of 1978) and endangering combat readiness (Article 363 of Act IV of 1978),

hb) – in connection with the tasks referred to in points e) and f) and with regard to the bodies falling within the scope of internal security and crime prevention control pursuant to Article 5/B(1) – bribery (Articles 250-255/A of Act IV of 1978), failure to report bribery (Article 255/B of Act IV of 1978), trafficking in influence (Article 256 of Act IV of 1978), buying influence (Article 256/A of Act IV of 1978), bribery in international relations (Articles 258/B-258/D of Act IV of 1978), trafficking in influence and bribery in international relations (Article 258/E of Act IV of 1978), failure to report bribery in international relations (Article 258/F of Act IV of 1978),

hc) crimes against humanity under Act C of 2012 on the Criminal Code (hereinafter: Criminal Code) (Chapter XIII of the Criminal Code), war crimes (Chapter XIV of the Criminal Code), crimes against the state (Chapter XXIV of the Btk.), as well as, within the scope of its activities, escape (Article 434 of the Btk.), mutiny (Article 442 of the Btk.) and endangering the state of readiness (Article 454 of the Btk.),

hd) – in connection with the performance of the tasks referred to in points e) and f), and with regard to the bodies falling within the scope of internal security and crime prevention control pursuant to Article 5/B(1) – bribery (Article 290 of the Criminal Code), acceptance of bribery (Article 291 of the Criminal Code), bribery in public office (Article 293 of the Criminal Code), acceptance of bribery in public office (Article 294 of the Criminal Code), bribery in court or administrative proceedings (Article 295 of the Criminal Code), acceptance of bribery in court or administrative proceedings (Article 296 of the Criminal Code), buying influence (Article 298 of the Criminal Code), influence peddling (Article 299 of the Criminal Code), failure to report corruption offences (Article 300 of the Criminal Code)

the investigation of criminal offences;

j) obtains information

ja) violence against members of national, ethnic, racial or religious groups pursuant to Act IV of 1978, which was in force until June 30, 2013 (Act IV of 1978, Article 174/B), misuse of strictly confidential and classified data (Section 221 of Act IV of 1978), endangering public safety (Section 259 of Act IV of 1978), violation of international economic sanctions (Section 261/A of Act IV of 1978), seizure of aircraft, railway, water, road public transport or vehicles suitable for mass transport of goods (Section 262 of Act IV of 1978), incitement against the community (Article 269 of Act IV of 1978), spreading alarm (Article 270 of Act IV of 1978) and threatening public safety (Article 270/A of Act IV of 1978),

jb) – in connection with the tasks referred to in points e) and f) and with regard to the bodies falling within the scope of internal security and crime prevention control pursuant to Section 5/B(1) – bribery (Article 250-255/A of Act IV of 1978), failure to report bribery (Article 255/B of Act IV of 1978), trafficking in influence (Section 256 of Act IV of 1978), buying influence (Article 256/A of Act IV of 1978), bribery in international relations (Articles 258/B-258/D of Act IV of 1978), trafficking in influence and buying influence in international relations (Article 258/E of Act IV of 1978), failure to report bribery in international relations (Article 258/F of Act IV of 1978),

jc) violence against a member of the community (Article 216 of the Criminal Code), misuse of classified data (Section 265 of the Criminal Code), seizure of a vehicle (Section 320 of the Criminal Code), causing public danger (Section 322 of the Criminal Code), violation of international economic sanctions (Section 327 of the Criminal Code), failure to report a violation of international economic sanctions (Section 328 of the Criminal Code), incitement against the community (Section 332 of the Criminal Code), spreading alarm (Section 337 of the Criminal Code) and threatening public safety (Section 338 of the Criminal Code),

jd) – in connection with the performance of the tasks referred to in points e) and f), and with regard to the bodies falling within the scope of internal security and crime prevention control pursuant to Section 5/B(1) – bribery (Section 290 of the Criminal Code), acceptance of bribery (Section 291 of the Criminal Code), bribery in public office (Section 293 of the Criminal Code), acceptance of bribery in public office (Section 294 of the Criminal Code), bribery in court or administrative proceedings (Section 295 of the Criminal Code), acceptance of bribery in court or administrative proceedings (Section 296 of the Criminal Code), buying influence (Section 298 of the Criminal Code), influence peddling (Section 299 of the Criminal Code), failure to report corruption offences (Section 300 of the Criminal Code) with regard to criminal offences.

In all other cases, the law refers the authorization to the minister responsible for justice.

From the EMFA's point of view, there are several problems with the above regulation – apart from the fact that the current text of the legislation does not refer to the Criminal Code in force – firstly, that the crimes listed in detail do not in most cases meet the minimum penalty criteria described by the EMFA, yet surveillance can still be carried out. In this respect, at least as far as journalists are concerned, the EMFA will definitely bring about change.

Another striking problem is that in all other cases, the right to grant authorisation is referred to the minister responsible for justice, who, as a member of the government, clearly does not meet the criteria of an independent and impartial authority or body. Furthermore, the definition of the tasks of the bodies responsible for gathering information leaves room for interpretation, so it is up to the minister responsible for justice to decide whether the gathering of information in question actually falls within the remit of the service concerned, whether the information is really necessary, without any truly independent body being able to review his decision.

In addition to the above, Hungarian legislators have a legislative obligation to ensure effective legal protection, as required by the EMEA, which must be provided by an independent, impartial and professionally competent authority or body. The existence of effective legal protection in Hungary raises questions in itself, but in principle it is guaranteed for everyone. However, the authority or body required by the EMFA does not yet exist, so it must be established by the legislator. A further EMFA requirement is the regular review of the need for surveillance. Under the legislation in force, secret information gathering is permitted for 90 days and may be extended once for 90 days after review. Since the EMFA does not lay down specific rules on review, this rule can be considered adequate, although it is conceivable that the spirit of the EMFA would call for a more rigorous review system. However, in the absence of specific rules, its interpretation will be determined by practice.

Summary

The first and most important finding is that the Hungarian legal system only lays down special rules on source protection in relation to the refusal to give testimony and the obligation to disclose information sources. These rules are otherwise in line with, and in some respects even stricter than, the new provisions introduced by the EMFF. This highlights one of the biggest flaws in the EMFA's provisions on source protection, as the EMFA allows not only courts but also an independent and impartial authority to authorize various measures against media service providers and their employees. The practice in Hungary over the past 15 years leaves little doubt as to the extent to which a supposedly independent authority can take independent decisions that run counter to the interests of those in power. The EMFA thus gives the Hungarian government a power that it did not previously have under Hungarian law.

It is also important to note that Hungarian legislation, which regulates not only the gathering of information about journalists but also the gathering of information in general, is in fact largely in line with the provisions of the EMFA, so the Hungarian government can say that the level of protection under domestic law is so high that in most cases, no changes are needed specifically for media content providers. On the one hand, the scope of criminal offenses for which national security services may collect secret information in cases not covered by the Be. will definitely change and become more limited, which is definitely a step forward.

On the other hand, authorization must be removed from the jurisdiction of the minister responsible for justice. However, this raises the issue of impartiality and independence, as although on paper the new authority will be more independent than the minister responsible for justice, this may not be reflected in practice.

Based on this, Article 4 of the EMFA does indeed improve the situation of the independent press in Hungary to a certain extent, but in the absence of sanctions and precisely defined definitions of responsibilities and selection mechanisms, there is a risk that the government will be able to comply with all the adopted rules without any real change in media relations in Hungary, not even with regard to the monitoring of journalists.