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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU – <i>Mandate for negotiations with the European Parliament</i>

I. INTRODUCTION

1. On 16 September 2022, the Commission presented a proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act, EMFA) and amending Directive 2010/13/EU¹. The proposal was accompanied by a Commission Recommendation on internal safeguards for editorial independence and ownership transparency in the media sector, and an Impact Assessment.
2. On 21 September 2022, the EMFA proposal was presented at the Committee of Permanent Representatives (Coreper).
3. The Audiovisual and Media Working Party (AVMWP) examined the text of the proposal at a number of meetings between September 2022 and November 2022² under the Czech Presidency.
4. While the consultation of the European Data Protection Supervisor (EDPS) is not foreseen in the Treaties, the Commission suggested in its proposal to consult it³. The EDPS adopted its Opinion on EMFA 11 November 2022⁴, and it was subsequently presented at the AVMWP.
5. At the Education, Youth Culture and Sport (EYCS) Council meeting on 29 November 2022, the Presidency delivered a progress report⁵ to the Council in order to inform Ministers about the work accomplished and the progress made so far on the EMFA.

¹ Doc. 12413/22 – COM (2022) 457 final

² The AVMWP examined the Impact Assessment at its meeting on 29 September 2022

³ See Recital 54 of the EMFA proposal

⁴ Doc. 15569/22

⁵ Doc. 14440/22 + COR 1

6. Pursuant to Article 114 TFEU, the European Economic and Social Committee (EESC) was consulted in October 2022. The EESC Plenary adopted its Opinion on EMFA on 14 December 2022⁶, and it was subsequently presented at the AVMWP.
7. Under the Swedish Presidency, the AVMWP continued the examination of the proposal at a number of meetings between January and June 2023, on the basis of compromise texts tabled by the Presidency.
8. While the consultation of the Committee of the Regions (ECoR) was optional, the Commission suggested in its proposal to consult the ECOR⁷. On 16 November 2022, and on the basis of Articles 307 TFEU and 19(7)(h) of the Council Rules of Procedure, Coreper decided to consult the ECOR⁸. The ECOR Plenary adopted its Opinion on EMFA on 16 March 2023⁹, and it was subsequently presented at the AVMWP.
9. At its meeting of 29 September 2022, the AVMWP requested the Council Legal Service (CLS) to analyse the legal basis of the proposal. The CLS Opinion was published on 4 April 2023¹⁰, and it was subsequently presented at the AVMWP¹¹.

⁶ Doc. 16226/22

⁷ See the Preamble of the EMFA proposal

⁸ Doc. 14475/22

⁹ Doc. 7783/23

¹⁰ Doc. 8089/23

¹¹ The CLS Opinion published in doc. 8089/23 contains legal advice protected under Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, and not released by the Council of the European Union to the public. The Council reserves all its rights in law as regards any unauthorised publication.

10. At the Education, Youth Culture and Sport (EYCS) Council meeting on 16 May 2023, the Presidency delivered a progress report¹² to the Council in order to inform Ministers about the work accomplished and the progress made so far on the EMFA, and the Council held a policy debate on the basis of that progress report, and a Presidency background paper¹³ with questions to structure the discussion.
11. The aim of the Presidency is to establish a mandate for negotiations with the European Parliament (EP) at Coreper level on 21 June 2023.
12. As per usual practice, in the attached text:
- Proposed amendments to the Commission text that have been tabled by the Presidency in view of previous AVMWP meetings, and which the Presidency intends to maintain, are marked with **bold** and [...].
 - New compromise texts tabled by the Presidency in light of the last AVMWP meeting on 12 June 2023 are highlighted in **bold underlined** and [...]. These texts have therefore not been examined by the AVMWP.
 - Proposed amendments to the titles of Chapters (which are originally in bold) are **bold underlined**
 - Where there are no proposed amendments to the original Commission text, the Presidency' suggested approach is to accept it as it stands.

¹² Doc. 8679/1/23 REV 1

¹³ Doc. 8680/1/23 REV 1

II. PROVISIONS AND COMPROMISE TEXTS EXAMINED BY THE AVMWP

13. Under this section there is a short description of the main amendments that have been proposed by the Presidency and examined by the AVMWP. The Presidency considers that the texts mentioned under this section are broadly acceptable for all delegations or for a vast majority of delegations
14. No amendments are proposed to the title, preamble and legal basis (art. 114 TFEU)
15. Article 2¹⁴ (Definitions) and related recitals 7-10. The main amendments proposed are
- Deletion of the definitions of ‘editor’ (para 7) and ‘serious crimes’ (para 17)
 - Insertion of new definitions of ‘online platform’ (new para 9a) and ‘public authority or entity’ (new para 14a)
16. Article 3 (Plurality of news and current affairs content) and related recitals 6, 11 and 12. The changes aim at clarifying the scope and the role of the Member States as well as enhancing clarity on aspects related to diversity and pluralism of media services.
17. Article 6 (Duties of media service providers) and related recitals 14, 15 and 19 to 21. The main change introduced in these provisions is to enlarge the scope by the removal of the exemption of micro enterprises and by requiring all media service providers to comply with the transparency requirements of Article 6(1) and not only those ‘providing news and current affairs content’. No amendments have been proposed to recitals 14 and 15. In recital 19, which has been significantly expanded in order to enhance media ownership transparency, there are some new elements of mainly technical nature.

¹⁴ Except Art. 2(16), which is linked to Art. 4

18. Article 7 (National regulatory authorities or bodies) and related recital 22. The amendments aim at clarifying and simplifying the text, and to better link it to the definition in Article 2(12). It also gives possibilities for Member States with other responsible authorities or bodies to coordinate as appropriate.
19. While no amendments are proposed to Articles 8 (European Board for Media Services, which replaces the ERGA set up by the Audiovisual Media Services Directive) and 9 (Independence of the Board), additions in the new recital 22a aim at enhancing the independence of the Board.
20. Section 3 (Regulatory cooperation and convergence) includes Articles 13 to 16 and the related recitals 25 to 30, plus the two new recitals 30a and 30b. The amendments proposed to these provisions aim at clarifying and differentiating between the different procedures proposed. This includes to clarify the links of EMFA with the AVMSD; limiting the scope of structured cooperation requests to Chapter III of the Regulation; clarifying and strengthening the role of the Board, including in relation to the Commission and the Contact Committee of the AVMSD; enhancing the role of the national regulatory authorities or bodies; and adding possibilities of preventive voluntary cooperation to better protect the internal media market from rogue media services providers.
21. Article 17 (Content of media service providers on VLOPs) and its related recitals 31 to 35. These provisions have been amended in order to strike the right balance between the interests of media service providers and VLOPs, while minimising the risks of disinformation or manipulation of information in line with the provisions of DSA Regulation. While media service providers have been given the right to reply when content is suspended or restricted in visibility, VLOPs have been given better tools to determine the self-declarations from media service providers. One delegation maintains a scrutiny reserve on Article 17.

22. While no amendments are proposed to Article 18 (Structured dialogue), Recital 36 clarifies that the reports on the results of structured dialogues may contribute to the effective enforcement of the DSA Regulation.
23. Article 19 (Right of customisation of media offer) and related recital 37. The scope of the Article has been widened to include audio services and the role of the Member States in ensuring the enforcement has been clarified. Former paragraph 4 of article 15 relating to the role of the Board has been inserted at the end and ‘importers’ have been added to manufacturers and developers. Recital 37 has introduced further clarifications.
24. No amendments are proposed to Article 27.

III. PROVISIONS INCLUDING NEW TEXTS NOT EXAMINED BY THE AVMWP

25. Under this section there are provisions on which the Presidency has tabled new compromise texts that in principle should be acceptable to all or to a vast majority of delegations. Most of the changes to these provisions have been examined by the AVMWP but those described in italics are the new elements that have not.
26. *In recital 10 (related to the definition of ‘state advertising’ in Article 2(15)), “administrations” has been added to “national and subnational governments”*
27. In recital 11, one delegation has requested to further develop the text on practices that increase the risk of silencing journalists. *The Presidency has tabled a compromise text in order to address this request.*

28. *A new recital 51a has been introduced in order to address the concerns of one delegation in relation to the monitoring role of the Commission on the application of the EMFA Regulation..*
29. Articles 4 (Rights of media service providers) and 2(16) (Definition of ‘intrusive surveillance software’ which has replaced ‘spyware’) and their related recitals 13 to 17a. A number of significant changes have been introduced in these provisions, mainly to address policy coherence and consistency with justice and home affairs legislation, the Member States’ sole responsibility as regards national security, and the need to focus the protection of journalistic sources on the relevant people. *The new elements are the replacement of the term ‘spyware’ by ‘intrusive surveillance software’ in the definition 2(16) and Article 4(2a)(c) and its related new Recital 17a, and adjustments in Recital 16.* One delegation has strong concerns about key provisions of Article 4 in relation to the legal basis.

30. Article 5 (Safeguards for public service media providers) and its related recitals 18 to 18c.
- The main aim of the significant amendments introduced mainly in the Recitals is to make sure that these provisions fit within the scope of Article 114 TFEU. The changes of the Article aim to ensure the proper balance between Member States' prerogative to decide on the organisation, governance and financing of public service media and the aims of the EMFA provisions. A reference to Protocol No 29 has been added to Article 5. *The new elements are found in Recital 18 and new Recitals 18a, 18b and 18c and refer inter alia to Article 11 of the Charter (recital 18), media pluralism and competition with online platforms (recital 18a) and "media capture" risks (recital 18b).* One delegation has strong concerns about these provisions in relation to the EMFA legal basis.
31. Articles 10, 11 and 12 (Structure, Secretariat and Tasks of the Board) and related recitals 23 and 24. The substantial amendments to these provisions aim at enhancing the independence of the Board and clarifying its set-up and governance, as well as the role of the secretariat provided by the Commission. In Article 10(8) a new proposal to further increase the independence of the Board from the Commission in relation to its rules of procedure is introduced. Article 12 has been amended to clarify and limit the tasks of the Board and align these with the changes done in other articles of the Regulation, especially in view of the independence of the Board. *The new text proposals at the end of recital 24 aim at further clarifying the role of Commission staff and national experts in line with the request of one delegation which had the support of other delegations.*

32. Article 20 (National measures affecting media service providers) and related recitals 38 and 39. The scope of the Article has been limited to measures liable to affect media pluralism and editorial independence and the link to the internal market has been strengthened as opinions of the Board should only concern measures likely to significantly and adversely affect the internal market. The provisions on the procedures of such opinions have been simplified. *The only new additional sentence in recital 38 aims to further clarify the requirement in Article 20(2) that administrative measures should be set out in advance.*
33. Articles 21 and 22 (Media market concentrations) and related recitals 39a and 40 to 44. With the aim to clarify how the requirement to assess national media market concentrations should be understood, a number of technical amendments have been introduced in these articles and in recitals 40 to 44. The changes also aim at clarifying the nature of the peer-review that the Board is tasked with. *A new recital 39a has been introduced to justify the need for EU rules on the assessment of media market concentrations, which includes new compromise text in its last sentence.* One delegation has proposed additional text in paragraphs 2 and 3 of Article 21.
34. Article 23 (Audience measurement) and its related recitals 45 to 47. While the article has been slightly amended, recitals 45 to 47 have been significantly expanded with additional explanations, justifications and clarifications. *Following to the AVMWP on 12 June, a couple of minor/editorial changes have been introduced in recitals 45 and 47.* One delegation wishes to add a word to the text of Article 23(1).

35. Article 24 (Public funds for state advertising and purchases) and related recitals 48 and 49. A number of amendments have been introduced in these provisions in order to simplify and clarify. The definition in Article 2(15) has been divided in two, with a new Article 2(14a), and paragraph 4 of Article 24 has been merged into paragraph 1. The proposed amendments also aim to enhance transparency and to clarify the relation to public procurement rules. The threshold of 1 million inhabitants for possible exemptions granted to subnational governments was contested by a large number of delegations and deemed too high. The text has been amended not to give an automatic exemption, but allowing Member States to introduce such an exemption for entities from subnational governments with fewer than 100.000 inhabitants. The Article has also been added to those provisions where Member States retain the possibility for more detailed or stricter rules. There is large agreement on these introduced amendments. *Recital 49 includes a new compromise text to address the issue of possible exemptions.*
36. Article 25 (Monitoring exercise) and related recital 50. These provisions have been amended in order to target in a more precise way the monitoring exercise. *The new element here is a small change in recital 50.*
37. Two application deadlines in Article 28 have been extended (from 6 to 18 months and from 3 to 12 months), and Recital 51 has been aligned accordingly. *The only new element is an additional clarification regarding the application date for the entire Article 19.*

IV. OUTSTANDING ISSUES

38. Subject to the confirmation from delegations that the provisions described in Sections II and III above are acceptable, there are just two main outstanding issues, both related to Article 1 (Subject matter and scope). These outstanding issues relate to two different requests for additions to the text of Article 1 from two delegations.

39. The main changes introduced in Article 1 are the addition of a reference to Regulation (EU) 2016/679 (General Data Protection Regulation – GDPR) and the extension of the scope of the minimum harmonization to Article 24. The recitals aim at making it clear that radio and press are covered, and at enhancing the justification for the EMFA in light of the failures and weaknesses in the EU internal market for media services.
40. The two requests regarding Article 1 are the following:
- One delegation, with some support from other delegations, has requested to introduce a reference to Article 4(2) TEU (in particular, the sole responsibility of the Member States as regards national security) in Article 1, and does not consider that the corresponding references in the new Article 4(4), and the two new last sentences of recital 6 are sufficient.
 - Another delegation wishes to introduce, also in Article 1, a provision stating that Member States may maintain or adopt rules on pluralism of media services regarding aspects not covered by this Regulation in order to strengthen the safeguards given in the corresponding wording of the 6th and 7th sentences of recital 6.
41. The Presidency however considers that both concerns are sufficiently addressed by the above-mentioned compromise texts that are attached to this note.

V. CONCLUSION

42. Coreper is invited to
- examine the attached Presidency compromise text on the EMFA proposal;
 - confirm the agreement on the provisions mentioned under Sections II and III above;
 - address and solve the outstanding issues indicated under Section IV above;
 - and thereby approve the mandate for negotiations with the EP on the basis of the attached text.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

Recital 1

(1) Independent media services play a unique role in the internal market. They represent a fast-changing and economically important sector and at the same time provide access to a plurality of views and reliable sources of information to citizens and businesses alike, thereby fulfilling the general interest function of ‘public watchdog’. Media services are increasingly available online and across borders while they are not subject to the same rules and the same level of protection in different Member States. **While some matters related to the audiovisual media sector have been harmonised at the Union level through Directive 2010/13/EU of the European Parliament and of the Council¹⁵, the scope and matters covered by that Directive are limited. Moreover, the radio or press sectors are not covered by that Directive, despite their increasing cross-border relevance in the internal market.**

Recital 2

(2) Given their unique role, the protection of media freedom and pluralism is an essential feature of a well-functioning internal market for media services (or ‘internal media market’). This market, **including audiovisual media services as well as radio and press**, has substantially changed since the beginning of the new century, becoming increasingly digital and international. It offers many economic opportunities but also faces a number of challenges. The Union should help the media sector seize those opportunities within the internal market, while at the same time protecting the values, such as the protection of the fundamental rights, that are common to the Union and to its Member States.

¹⁵ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

Recital 3

(3) In the digital media space, citizens and businesses access and consume media content, immediately available on their personal devices, increasingly in a cross-border setting. **This is the case both for audiovisual media as well as for the press and radio which are easily accessible (for example via online news portals or podcasts) through the Internet. The availability of content in a number of languages and the easy access through smart devices, such as smartphones or tablets increases the cross-border relevance of media services, already established in a judgment of the Court of Justice.¹⁶ This relevance is underpinned by the growing use and acceptance of automatic translation or subtitling tools which reduces the linguistic barriers within the internal market, and the convergence of the different types of media, combining audiovisual and non-audiovisual content in the same offer. [...]** *(deleted text has been moved to Recital 4)*

¹⁶ Judgment of the Court of Justice of 12 December 2006, Germany v Parliament and Council, C-380/03, ECLI:EU:C:2006:772, paragraphs 53 and 54.

Recital 4

(4) However, the internal market for media services is insufficiently integrated, **and suffers from a number of market failures that are increased by the digitalisation. First**, global online platforms act as gateways to media content, with business models that tend to disintermediate access to media services and amplify polarising content and disinformation. These platforms are also essential providers of online advertising, which has diverted financial resources from the media sector, affecting its financial sustainability, and consequently the diversity of content on offer. As media services are knowledge- and capital-intensive, they require scale to remain competitive and to thrive in the internal market. To that effect, the possibility to offer services across borders and obtain investment including from or in other Member States is particularly important. **Second, a** number of national restrictions hamper the free movement within the internal market. In particular, different national rules and approaches related to media pluralism and editorial independence, insufficient cooperation between national regulatory authorities or bodies as well as opaque and unfair allocation of public and private economic resources make it difficult for media market players to operate and expand across borders and lead to an uneven level playing field across the Union. **Third, the good functioning** of the internal market for media services is challenged by providers **(including those controlled by certain third countries)** that systematically engage in disinformation, including information manipulation and interference, and use the internal market freedoms **for abusive purposes, thus thwarting the proper functioning of market dynamics.**

Recital 4a (new)

(4a) The fragmentation of rules and approaches which characterizes the media market in the Union negatively affects to varying degrees the conditions for the exercise of economic activities in the internal market by media service providers in different sub-sectors, including the audiovisual, radio, and press sub-sectors, and undermines their capability to efficiently operate cross-border or establish operations in other Member States. National measures and procedures could be conducive to media pluralism in a Member State, but the divergence and lack of coordination between Member States' national measures and procedures may lead to legal uncertainty and additional costs for media companies willing to enter new markets, and prevent them from benefiting from the scale of the internal market for media services. Moreover, discriminatory or protectionist national measures affecting the operation of media companies disincentivise cross-border investment in the media sector and in some cases may force media companies that are already operating in a given market to exit it. These obstacles affect companies active both in the broadcasting (including audiovisual and radio) and press sub-sectors. Although the fragmentation of editorial independence safeguards concerns all media sub-sectors, it affects the press sector especially as national regulatory or self-regulatory approaches differ more in relation to the press. The internal market for media services may also be affected by insufficient tools for regulatory cooperation between national regulatory authorities, which is key for ensuring that media market players (often active in different media subsectors) systematically engaging in disinformation, including information manipulation and interference, do not benefit from the scale of the internal market for media services. Furthermore, while biased allocation of economic resources, in particular in the form of state advertising, is used to covertly subsidise media outlets in all the media sub-sectors, it tends to have a particularly negative impact on the press, which has been weakened by decreasing levels of advertising revenues. Finally, the challenges stemming from the digital transformation reduce the ability of companies in all media sub-sectors, and in particular the smaller ones in the radio and press sector, to compete on a level playing field with online platforms, which play a key role in online distribution of content.

Recital 5

Moreover, in response to challenges to media pluralism and media freedom online, some Member States have taken regulatory measures and other Member States are likely to do so, with a risk of furthering the divergence in national approaches and restrictions to free movement in the internal market.

Recital 6

(6) [...] Natural persons who are nationals of Member States or benefit from rights conferred upon them by Union law and legal persons established in the Union should be able to effectively enjoy the freedom to receive **services, including** free and pluralistic media services **of news and current affairs content produced in accordance with editorial freedom** in the internal market, **to the benefit of cultural and linguistic diversity. This reflects the right to receive and impart information and the requirement to respect media freedom and media pluralism** pursuant to Article 11 of the Charter of Fundamental Rights of the European Union ('the Charter'), **in conjunction with Article 22 of the Charter which requires the Union to respect cultural, religious and linguistic diversity. Furthermore,** in fostering the cross-border flow of media services, a minimum level of protection of service recipients should be ensured in the internal market. In the final report of the Conference on the Future of Europe, citizens called on the EU to further promote media independence and pluralism, in particular by introducing legislation addressing threats to media independence through EU-wide minimum standards.¹⁷

¹⁷ Conference on the Future of Europe – Report on the Final Outcome, May 2022, in particular proposal 27 (1) and 37 (4).

It is thus necessary to harmonise certain aspects of national rules related to media services, **taking also in consideration Article 167 of the TFEU, which reaffirms the importance of respecting the national and regional diversity of the Member States. However, Member States should have the possibility to adopt more detailed or stricter rules in specific fields, provided that those rules comply with Union law and that Member States do not restrict the free movement of media services from other Member States which comply with the rules laid down in these fields. Member States should also retain the possibility to maintain or adopt measures to preserve media pluralism or editorial independence at national level regarding aspects not covered by this Regulation insofar as such measures comply with Union law, including Regulation 2022/2065 of the European Parliament and of the Council¹⁸. It is also appropriate to recall that Article 4(2) of the TEU reaffirms that national security remains the sole responsibility of Member States. This Regulation is without prejudice to the Member States' responsibility for safeguarding national security and their power to safeguard other essential state functions, including ensuring the territorial integrity of the state and maintaining law and order.**

¹⁸ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).

Recital 7

(7) For the purposes of this Regulation, the definition of a media service should be limited to services as defined by the Treaty and therefore should cover any form of economic activity. This definition should exclude user-generated content uploaded to an online platform unless it constitutes a professional activity normally provided for consideration (be it of financial or of other nature). It should also exclude purely private correspondence, such as e-mails, as well as all services that do not have the provision of audiovisual or audio programmes or press publications as their principal purpose, meaning where the content is merely incidental to the service and not its principal purpose, such as advertisements or information related to a product or a service provided by websites that do not offer media services. The definition of a media service should cover in particular television or radio broadcasts, on-demand audiovisual media services, audio podcasts or press publications. Corporate communication and distribution of informational or promotional materials for public or private entities should be excluded from the scope of this definition.

Recital 7a (new)

(7a) Public service media providers should be understood as those concurrently entrusted with a public service remit and receiving public funding for the fulfilment thereof. This should not cover private media undertakings that have agreed to carry out certain specific tasks of general interest in return for payment, as a limited part of their activities.

Recital 8

(8) In the digitalised media market, providers of video-sharing platforms or very large online platforms may fall under the definition of media service provider. In general, such providers play a key role in the content organisation, including by automated means or algorithms, but do not exercise editorial responsibility over the content to which they provide access. However, in the increasingly convergent media environment, some providers of video-sharing platforms or very large online platforms have started to exercise editorial control over a section or sections of their services. Therefore, such an entity could be qualified both as a video-sharing platform provider or a very large online platform provider and as a media service provider.

Recital 9

(9) The definition of audience measurement should cover measurement systems developed as agreed by industry standards within self-regulatory organisations, like the Joint Industry Committees, and measurement systems developed outside such self-regulatory approaches. The latter tend to be deployed by certain online players, **including online platforms**, who self-measure or **develop and** provide their **own** audience measurement systems to the market, **without abiding** by the commonly agreed industry standards **or best practices**. **Such systems enable to collect or otherwise process information about the use of media content and content created by users on online platforms that are primarily used to access such content.** Given the significant impact that such audience measurement systems have on the advertising and media markets, they should be covered by this Regulation.

Recital 10

(10) State advertising should be understood broadly as covering promotional or self-promotional activities undertaken by, for or on behalf of a wide range of public authorities or entities, including **national and subnational governments or administrations**, regulatory authorities or bodies as well as [...] enterprises or [...] entities **which are controlled by national or subnational governments** in different sectors [...]. **Such control can result from rights, contracts or any other means which confer the possibility of exercising decisive influence on an enterprise or entity. In particular, ownership of capital or the right to use all or part of the assets or rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an enterprise or entity are relevant factors, as laid down in Article 3(2) of Council Regulation (EC) No 139/2004¹⁹.** However, the definition of state advertising should not include **official** announcements that are justified by an overriding reason of public interest, such as emergency messages by public authorities which are necessary, **for example**, in cases of natural or sanitary disasters, accidents or **other** sudden incidents that can cause harm to individuals.

¹⁹ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1-22).

Recital 11

(11) In order to ensure that society reaps the benefits of the internal media market, it is essential not only to guarantee the fundamental freedoms under the Treaty, but also the legal certainty which [...] **is needed** for the enjoyment of [...] **benefits of an integrated and developed market. The general public should be able to access [...] quality media services in a well-functioning internal market,** which have been produced by journalists and editors in an independent manner and in line with journalistic standards and hence provide trustworthy information, including news and current affairs content **comprising a wide category of content of political, societal or cultural interest at local, national or international level. While news and current affairs content may reach the general public in diverse formats, from documentaries or magazines to content uploaded on online platforms, news and current affairs play a major role in shaping public opinion, having a direct impact on democratic participation and societal well-being. [...]** Quality media services are also an antidote against disinformation, including foreign information manipulation and interference. **Access to such services should also be ensured by preventing attempts to silence journalists [...] ranging from threats and harassments to censorship and cancelling of dissenting opinions,** which may limit the free flow of information into the public sphere by **reducing the quality and plurality of information. The right to a plurality of news and current affairs content** does not entail any correspondent obligation on any given media service provider to adhere to standards not set out explicitly by law. [...]

Recital 12

(12) This Regulation does not affect the freedom of expression **and information** guaranteed to individuals under the Charter. The European Court of Human Rights has observed that in such a sensitive sector as audiovisual media, in addition to its negative duty of non- interference, the public powers have a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism²⁰.

²⁰ Centro Europa 7 S.R.L. and Di Stefano v. Italy [GC], no 38433/09, § 134, ECHR 2012. [...]

Recital 13

(13) The free flow of trustworthy information is essential in a well-functioning internal market for media services. Therefore, the provision of media services should not be subject to any restrictions contrary to this Regulation or other rules of Union law, such as Directive 2010/13/EU [...] providing for measures necessary to protect users from illegal and harmful content. Restrictions could also derive from measures applied by national public authorities in compliance with Union law.

Recital 14

(14) The protection of editorial independence is a precondition for exercising the activity of media service providers and their professional integrity. Editorial independence is especially important for media service providers providing news and current affairs content given its societal role as a public good. Media service providers should be able to exercise their economic activities freely in the internal market and compete on equal footing in an increasingly online environment where information flows across borders.

Recital 15

(15) Member States have taken different approaches to the protection of editorial independence, which is increasingly challenged across the Union. In particular, there is growing interference with editorial decisions of media service providers in several Member States. Such interference can be direct or indirect, from the State or other actors, including public authorities, elected officials, government officials and politicians, for example to obtain a political advantage. Shareholders and other private parties who have a stake in media service providers may act in ways which go beyond the necessary balance between their own business freedom and freedom of expression, on the one hand, and editorial freedom of expression and the information rights of users, on the other hand, in pursuit of economic or other advantage. Moreover, recent trends in media distribution and consumption, including in particular in the online environment, have prompted Member States to consider laws aimed at regulating the provision of media content. Approaches taken by media service providers to guarantee editorial independence also vary. As a result of such interference and fragmentation of regulation and approaches, the conditions for the exercise of economic activities by media service providers and, ultimately, the quality of media services received by citizens and businesses are negatively affected in the internal market. It is thus necessary to put in place effective safeguards enabling the exercise of editorial freedom across the Union so that media service providers can independently produce and distribute their content across borders and service recipients can receive such content.

Recital 16

(16) Journalists and editors are the main actors in the production and provision of trustworthy media content, in particular by reporting on news or current affairs. **Sources are tantamount to “raw material” for journalists: they are the basis for the production of the news and current affairs content.** It is [...] therefore **crucial** to protect journalists’ capability to collect, fact-check and analyse information, **in particular** information imparted confidentially. [...] **Media service providers and their editorial staff, in particular** journalists (including those operating in non-standard forms of employment, such as freelancers) should be able to rely on a robust protection of journalistic sources and communications, including against deployment of surveillance technologies [...]. **Without such protection, the free flow of sources [...] to the media service providers may be deterred and thus the free exercise of the economic activity by media service providers may be hindered, also to the detriment of information to the public, including** on matters of public interest. As a result, journalists’ freedom to exercise their economic activity and fulfil their vital ‘public watchdog’ role may be undermined **by such obstacles**, thus affecting negatively access to quality media services.

In order to avoid circumvention of the protection of journalistic sources and guarantee adequate respect for private and family life, home and communication in accordance with the Charter, safeguards should also apply to persons who because of their regular private or professional relationship with media service providers or members of their editorial staff may have information that could identify journalistic sources. This should include [...] persons living in a close relationship in a joint household and on a stable and continuous basis, [...] who are only targeted due to their close links with media service providers, journalists or other members of the editorial staff. The protection of journalistic sources should also benefit employees of media service providers, such as the technical staff including cybersecurity experts, who could be targeted given their important support role to journalists in their daily work which requires solutions to ensure the confidentiality of journalists' work and the resulting likelihood that they have access to information concerning journalistic sources. The protection of journalistic sources **is consistent with** and contributes to the protection of the fundamental right enshrined in Article 11 of the Charter. **In light thereof, and in order to also strengthen the right to an effective judicial protection, it is important that media service providers, journalists as well as persons in a close professional or personal relationship to them, are able to rely on an adequate assistance in the exercise of this right, which may be of legal, financial or other nature such as providing information on available judicial remedies. Such assistance could be effectively provided, for example, by national regulatory authorities or bodies, relevant self-regulatory bodies or other national competent authorities.**

Recital 17

(17) The protection of journalistic sources is currently regulated heterogeneously in the Member States. Some Member States provide an absolute protection against coercing journalists to disclose information that identify their source in criminal and administrative proceedings. Other Member States provide a qualified protection confined to judicial proceedings based on certain criminal charges, while others provide protection in the form of a general principle. This leads to fragmentation in the internal media market. **Moreover, media professionals, in particular journalists and other media professionals involved in editorial activities,** work increasingly on cross-border projects and provide their services to cross-border audiences, and by extension providers of media services. As a result, **media service providers** are likely to face barriers, legal uncertainty and uneven conditions of competition. Therefore, the protection of journalistic sources [...] needs harmonisation and further strengthening at Union level. **This should be without prejudice to further or absolute protection at national level.**

Recital 17a (new)

(17a) Intrusive surveillance software, commonly referred to as ‘spyware’, represents a particularly invasive form of surveillance over media professionals and their sources. It can be deployed to secretly record calls or otherwise use the microphone of an end-user device, film or photograph natural persons, machines or their surroundings, copy messages, track browsing activity, track geolocation or collect other sensor data or track activities across multiple end-user devices, without the natural or legal person concerned being made aware in a specific manner and having given their express specific consent in that regard. It has dissuasive effects on the free exercise of the economic activities in the media sector. It jeopardises, in particular, the trusted relationship of journalists with their sources, which is the core of the journalistic profession. Given the digital and intrusive nature of spyware and the use of devices across borders, it has a particularly detrimental impact on the exercise of the economic activities of media service providers in the internal market. It is therefore necessary to ensure that media service providers, including journalists, operating in the internal media market rely on a robust harmonised protection in relation to the deployment of spyware in the Union. In particular, the deployment of spyware should only take place if it is justified by an overriding requirement in the public interest and provided for in national law and is in compliance with Article 52(1) of the Charter as interpreted by the Court of Justice and other Union law and occurs in investigations of offences referred to in Article 2(2) of the Council Framework Decision 2002/584/JHA²¹, and punishable in the Member State concerned by a custodial sentence or a detention order for a maximum period of at least three years or other specific offences punishable in the Member State concerned by a custodial sentence or a detention order for a maximum period of at least five years, as determined by the law of that Member State.

²¹ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

Recital 18 (part of the text has been moved to new recital 18c)

(18) Public service media established by the Member States play a particular role in the internal media market, by ensuring that citizens and businesses have access to quality information and impartial **and balanced** media coverage, as part of their **remit as defined at national level in line with Protocol No 29 on the system of public broadcasting in the Member States, annexed to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). They play an important role in upholding the fundamental right to freedom of expression and information, enabling people to seek and receive diverse information, and promoting the values of democracy, cultural diversity and social cohesion.** However, public service media can be particularly exposed to the risk of interference, given their institutional proximity to the State and the public funding they receive. This risk **is** exacerbated by uneven safeguards related to [...] balanced coverage by **and** independent governance **of** public service media **in** the Union. [...] **Both the communication from the Commission of 13 July 2022, entitled “2022 Rule of Law Report”, and the 2022 Media Pluralism Monitor by the Centre for Media Pluralism and Media Freedom, confirm the fragmentation of such safeguards and point to risks stemming from inadequate funding. As shown by the European Audiovisual Observatory in their 2022 report 'Governance and independence of public service media' (the 'EAO report'), guarantees for the independent functioning of public service media vary across the Union, with differences in their scope and the level of detail in national approaches.**

In particular, legal frameworks to ensure balanced coverage by public service media vary across the Union. Moreover, rules vary across the Union as regards the appointment and dismissal of the management of public service media. For instance, most national legal orders set out several grounds for dismissal while others do not provide for any specific rules. Where rules exist, in some cases they are insufficient or are not effective in practice. There are also cases of legislative reforms in Member States increasing the governmental control of public service media, including as regards the appointment of the members of the board governing public service media. Approaches to ensuring funding adequacy and predictability for public service media also diverge across the Member States. Where safeguards do not exist or are insufficient, there are risks of political interference in the editorial line or governance of public service media. Non-existent or insufficient safeguards for independence may also lead to lack of stability in funding, thus exposing public service media to the risk of (further) political control. This may lead to cases of partial reporting or biased media coverage by public service media, instances of interference by the government in appointments or dismissal of their management, arbitrary adjustments of or unstable funding of such media. All this negatively affects the access to independent and impartial media services, thereby affecting the right to freedom of expression as enshrined in Article 11 of the Charter, and may lead to distortion of competition in the internal market for media services, including those established in other Member States.

Recital 18a (new)

(18a) Public service media promote media pluralism and foster competition in the media sector, by producing a wide range of content that caters to various interests, perspectives, and demographics, and offering alternative viewpoints and programming options, making available a rich and unique offer. Public service media providers compete with private media companies and online platforms, including those established in other Member States, for audiences and, where applicable, for advertising resources. This concerns commercial broadcasters, in both the audiovisual and radio sub-sectors, and publishers, and is particularly true in the current digital media environment, in which all media expand into the online sphere and increasingly provide their services across borders. Where this dual and competitive media market, which is distinctive for large parts of the Union, is functioning well, it ensures a diverse and qualitative supply of media services in all subsectors. However, where public funding does not serve to fulfil the remit benefiting all viewers but to serve partisan views, due to political interference in governance and the editorial line it may [...] affect trading conditions and competition in the Union to an extent contrary to the common interest [...]. The Court of First Instance has confirmed that “public service broadcasting can have its State funding declared to be compliant with the provisions of the Treaty on State aid only inasmuch as the qualitative requirements set out in the public service remit are complied with”²².

²² Judgment of the Court of First Instance of 26 June 2008, *SIC v. Commission*, T-442/03, ECLI:EU:T:2008:228, paragraph 211.

Recital 18b (new)

(18b) While risks of what is commonly referred to as “media capture” are relevant for the entire market for media services, public service media are particularly exposed to such risks, given their proximity to the state. Diverging or insufficient safeguards for the independent functioning of public service media providers may [...] prevent or disincentivise [...] media service providers from other Member States to operate in or enter a given media market. While independent media companies invest their resources in high-quality reporting complying with journalistic standards, certain “captured” public service media providers not adhering to such standards may provide imbalanced reporting, while being subsidised by the State. The competitive advantage that independent media may obtain through independent reporting, could be lessened as such public service media retain their market position despite the lack of fulfilment of their public service remit. Politicised media markets can [...] affect advertising markets as a whole, as businesses have to factor in politics in addition to devising effective advertising campaigns. If public service media, which tend to be considered as trusted sources of information, provide biased coverage on the political or economic situation or concerning specific economic actors, this may also reduce the ability of companies to inform themselves properly about the economic situation in a given market and thus taking informed business decisions, adversely impacting the functioning of the internal market as a whole. Finally, as a result of biased reporting by certain “captured” public service media in some Member States, citizens may turn to alternative sources of information, in particular those available on online platforms, which further distorts the level playing field between professional media and such global platforms.

Recital 18c (new) (this new recital 18c is part of recital 18)

(18c) [...] It is thus necessary that Member States, building on the international standards developed by the Council of Europe in this regard, put in place legal safeguards for the independent functioning of public service media across the Union, without prejudice to national constitutional laws consistent with the Charter. This should include principles, such as those that exist in national administrative or corporate law frameworks, as applicable also to private listed companies, for the appointment and dismissal of the persons or bodies which have a role in determining editorial policies and constitute the highest decision-making authority in this respect within the public service media provider, which should be set out at national level. It is also necessary to guarantee that, without prejudice to the application of the Union's State aid rules, public service media providers benefit from **transparent and objective funding procedures, which seek to guarantee adequate and stable financial resources for the fulfilment of their public service remit and enable** predictability in their planning. Preferably, such funding should be decided and appropriated on a multi-year basis, in line with the public service mission of public service media providers, to avoid potential for undue influence from yearly budget negotiations. The requirements laid down in this Regulation do not affect the competence of Member States to provide for the funding of public service media as enshrined in the Protocol No 29 [...].

(19) It is crucial for the recipients of media services to know with certainty who owns and is behind the [...] media so that they can identify and understand potential conflicts of interest which is a prerequisite for forming well-informed opinions and consequently to actively participate in a democracy. Such transparency is also an effective tool to **disincentivise and thus to** limit risks of interference with editorial independence. **Furthermore, it contributes to an open and fair market environment and enhances media accountability vis-à-vis the general public, ultimately contributing to the quality of media services in the internal market.** It is thus necessary to introduce common information requirements for [...] media service providers across the Union that should include proportionate requirements to disclose ownership information. **These requirements should be limited to disclosing the legal name of the media service provider, the details which allow the provider to be contacted rapidly in a direct and effective manner, such as the professional email address or website, as well as the names of direct, indirect and beneficial owners. Such information is necessary for the recipients of media services to understand and be able to enquire about potential conflicts of interest, as a pre-condition for their ability to assess the reliability of information they receive and their right to receive impartial media coverage.**

This can only be achieved if the recipients of media services have user friendly and up-to-date media ownership information at their disposal at the time they are viewing, listening or reading media content, so that they can put the content in the right context and form the right impression of it. Thus, the disclosure to the general public of limited media ownership information in the form of only the names of [...] media service providers and their owners would produce benefits clearly outweighing any possible impact of the disclosure obligation on fundamental rights, including the right to private and family life and the right to protection of personal data. In this context, the measures taken by Member States under Article 30(9) of Directive (EU) 2015/849²³ should not be affected. The required information should be disclosed by the relevant providers **in an electronic format, for instance** on their websites, or other medium that is easily and directly accessible.

²³ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73-117).

Recital 20

(20) Media integrity also requires a proactive approach to promote editorial independence by news media companies, in particular through internal safeguards. Media service providers should adopt proportionate measures to guarantee [...] the freedom [...] to take **editorial decisions within the established editorial line of the media service provider**. The objective to shield [...] editorial decisions [...] on specific pieces of content [...] from undue interference contributes to ensuring a level playing field in the internal market for media services and the quality of such services. That objective is also in conformity with the fundamental right to receive and impart information under Article 11 of the Charter. In view of these considerations, media service providers should also ensure transparency of actual or potential conflicts of interest to their service recipients.

Recital 21

(21) To mitigate regulatory burdens, **media service providers should be free to tailor the internal safeguards with a view to guaranteeing the independence of editorial decisions to their needs, in particular if they are micro-, small or medium-sized undertakings** within the meaning of Article 3 of Directive 2013/34/EU of the European Parliament and of the Council²⁴ [...]. The Recommendation that accompanies this Regulation²⁵ provides a catalogue of voluntary internal safeguards that can be adopted within media companies in this regard. **This** Regulation should not be construed to the effect of depriving the owners of private media service providers of their prerogative to set strategic or general goals and to foster the growth and financial viability of their undertakings. In this respect, this Regulation **should recognise** that the goal of fostering editorial independence needs to be reconciled with the legitimate rights and interests of private media owners, **such as the right to determine the editorial line of the media service provider and shape the composition of their editorial teams**.

²⁴ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19-76).

²⁵ OJ C , , p. .

Recital 22

(22) Independent national regulatory authorities or bodies are key for the proper application of media law across the Union. **While** national regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU **often do not have competences related to the press sector, they** are best placed to ensure the correct application of the requirements related to regulatory cooperation and a well-functioning market for media services **in general, as envisaged in [...] this Regulation.** **National regulatory authorities or bodies should have the resources necessary for the fulfilment of their tasks in terms of staffing, expertise, and financial means. They should be provided with technical resources, for instance relevant digital tools. They should also have appropriate powers, in particular to request information from any natural or legal person to which this Regulation applies, or which, for purposes related to their trade, business or profession, may reasonably be in possession of the information needed, in respect of the rights and interest of such persons.**

Recital 22a (new) *(split from recital 22)*

(22a) In order to ensure a consistent application of this Regulation and other Union media law, it is necessary to set up an independent advisory body at Union level gathering such authorities or bodies and coordinating their actions. **In the performance of its tasks and the exercise of its powers, this body should neither seek nor take instructions from any government, institution (either national, supranational, or international), and public or private person or body.** The European Regulators Group for Audiovisual Media Services (ERGA), established by Directive 2010/13/EU, has been essential in promoting the consistent implementation of that Directive. The European Board for Media Services ('the Board') should therefore build on ERGA and replace it. This requires a targeted amendment of Directive 2010/13/EU to delete its Article 30b, which establishes ERGA, and to replace references to ERGA and its tasks as a consequence. The amendment of Directive 2010/13/EU by this Regulation is justified in this case as it is limited to a provision which does not need to be transposed by Member States and is addressed to the institutions of the Union.

Recital 23

(23) The Board should bring together senior representatives of the national regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU, appointed by such authorities or bodies. In cases where Member States have several relevant regulatory authorities or bodies, including at regional level, a joint representative should be chosen through appropriate procedures and the voting right should remain limited to one representative per Member State. **For the purposes of their activities within the Board, national regulatory authorities or bodies should be able to consult and coordinate with relevant competent authorities or bodies and, where relevant, with self-regulatory bodies in their Member States.** This should not affect the possibility for the other national regulatory authorities or bodies to participate, as appropriate, in the meetings of the Board. **The Commission does not have a member in the Board but designates a representative without voting rights.** The Board should [...] have the possibility to invite, **on a case-by-case basis, [...] external experts [...]** to attend its meetings. **It should also have the possibility to invite**, in agreement with the Commission, **permanent** observers, including in particular regulatory authorities or bodies from candidate countries or potential candidate countries, [...] or ad hoc delegates from other competent national authorities. Due to the sensitivity of the media sector and following the practice of ERGA decisions in accordance with its rules of procedure, the Board should adopt its decisions on the basis of a two-thirds majority of the votes.

(24) Without prejudice to the powers granted to the Commission by the Treaties, it is essential that the Commission and the Board [...] cooperate closely, **enabling the Board to advise and support the Commission on matters related to media services within its competence.** The Board should actively support the Commission in its tasks of ensuring the consistent application of this Regulation and **implementation of Directive 2010/13/EU.** For that purpose, the Board should in particular advise and assist the Commission on regulatory, technical or practical aspects pertinent to the application of Union law, promote cooperation and the effective exchange of information, experience and best practices and draw up opinions [...] in the cases envisaged by this Regulation, **taking, into account, where relevant, the situation regarding media freedom and pluralism in the concerned media markets. [...]** Such opinions would not be legally binding but useful as guidance for the national regulatory authorities or bodies concerned and could be taken into account by the Commission in its tasks of ensuring the consistent application of this Regulation and implementation of Directive 2010/13/EU. **By making best efforts to implement the opinion of the Board, or by properly explaining any deviation therefrom, national regulatory authorities or bodies should be considered to have done their utmost to take the opinion of the Board into account.** In order to effectively fulfil its tasks, the Board should be able to rely on the expertise and human resources of a secretariat provided by the Commission **and devoted to the activities of the Board.** The secretariat should be able to rely on the expertise and resources of national regulatory authorities or bodies. **This would be key to assist the Board when it is preparing its deliverables.** Therefore, the secretariat should include an appropriate number of staff seconded by those national regulatory authorities or bodies to benefit from their competences and experience. The [...] secretariat should **also** provide administrative and organisational support to the Board, and **assist the Board when it is** carrying out its tasks **[...] by conducting relevant research or information-gathering activities.**

Recital 25

(25) Regulatory cooperation between independent media regulatory authorities or bodies is essential to make the internal market for media services function properly. However, Directive 2010/13/EU does not provide for a structured cooperation framework for national regulatory authorities or bodies. Since the revision of the EU framework for audiovisual media services by Directive 2018/1808/EU of the European Parliament and of the Council⁵², which extended its scope to video-sharing platforms, there has been an ever-increasing need for close cooperation among national regulatory authorities or bodies, in particular to resolve cross-border cases. Such a need is also justified in view of the new challenges in the EU media environment that this Regulation seeks to address, including by entrusting national regulatory authorities or bodies with new tasks.

(26) Aware of these challenges, and in order to respond to the need for closer cooperation in the field of audiovisual media services, ERGA members have agreed a Memorandum of Understanding, which sets out non-binding mechanisms for cross-border cooperation. However, to ensure the effective enforcement of Union media law, [...] to avoid the raising of additional barriers in the internal market for media services and to prevent the possible circumvention of the applicable media rules by rogue media service providers, it is essential to provide for a clear, legally binding framework for national regulatory authorities or bodies to cooperate effectively and efficiently. Such a framework is crucial for upholding the country of origin principle, which is a cornerstone of Directive 2010/13/EU as well as for ensuring that regulatory authorities or bodies are able to exercise oversight over relevant media service providers. The objective should be to ensure the consistent and effective application of this Regulation and the implementation of Directive 2010/13/EU, for instance by ensuring a smooth exchange of information between national regulatory authorities or bodies or allowing to quickly address queries related to jurisdiction issues. Where national regulatory authorities or bodies exchange information, all relevant Union and national law on exchange of information, including relevant data protection law, should be respected. Such cooperation, and in particular the accelerated cooperation, is of key relevance to support actions to protect the internal market from such rogue media service providers, while ensuring compliance with fundamental rights, in particular freedom of expression. In particular, such accelerated cooperation is needed to prevent that media services suspended in certain Member States under Articles 3(3) and 3(5) of Directive 2010/13/EU continue to be provided via satellite or other means in those Member States, and thus to contribute to the ‘effet utile’ of the relevant national measures, in compliance with Union law. The opinions of the Board will be important for the effective functioning of the cooperation mechanism.

Recital 27

(27) Due to the pan-European nature of video-sharing platforms, national regulatory authorities or bodies need to have a dedicated tool to protect viewers of video-sharing platform services from certain illegal and harmful content, including commercial communications. In particular, a mechanism is needed to allow any relevant national regulatory authority or body to request its **counterpart** to take necessary and proportionate actions to ensure enforcement of obligations [...] by video-sharing platform providers **under Articles 28b(1) to 28b(3) of Directive 2010/13/EU. This is key for ensuring that audiences, and in particular minors, are effectively protected across the Union when accessing the content on video-sharing platforms and that they can rely on the appropriate level of transparency when it comes to commercial communications online. Mediation and possible opinions by the Board will be conducive to ensure mutually acceptable and satisfactory results for the national regulatory authorities or bodies concerned.** In case the use of such mechanism does not lead to an amicable solution, the freedom to provide information society services from another Member State can only be restricted if the conditions set out in Article 3 of Directive 2000/31/EC of the European Parliament and of the Council²⁶ are met and following the procedure set out therein.

²⁶ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17.7.2000.

Recital 28

(28) Ensuring a consistent regulatory practice regarding this Regulation and Directive 2010/13/EU is essential. For this purpose, and to contribute to ensuring a convergent implementation of EU media law, the Commission may issue guidelines on **cross-border** matters covered by both this Regulation and Directive 2010/13/EU when needed. When deciding to issue guidelines, **and in light of the relevant discussions with the contact committee established by Directive 2010/13/EU**, the Commission should consider in particular regulatory issues affecting a significant number of Member States or those with a cross-border element. [...] In view of the abundance of information and the increasing use of digital means to access the media, it is important to ensure prominence for content of general interest, in order to help achieving a level playing field in the internal market and compliance with the fundamental right to receive information under Article 11 of the Charter [...]. Given the possible impact of the national measures taken under Article 7a **of Directive 2010/13/EU** on the functioning of the internal media market, guidelines by the Commission would be important to achieve legal certainty in this field. It would also be useful to provide guidance on national measures taken under Article 5(2) of Directive 2010/13/EU with a view to ensuring the public availability of accessible, accurate and up-to-date information related to media ownership. In the process of preparing its guidelines, the Commission should be assisted by the Board. The Board should in particular share with the Commission its regulatory, technical and practical expertise regarding the areas and topics covered by the respective guidelines.

Recital 29 (moved to new recital 37a)

(29) [...]

Recital 30 (parts of this recital have been moved to recital 26)

(30) **National** regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU have specific practical expertise that allows them to effectively balance the interests of the providers and recipients of media services while ensuring the respect for the freedom of expression. This is key in particular when it comes to protecting the internal market from activities of media **services from** outside the Union that target **or reach** audiences in the Union where, inter alia in view of the control that may be exercised by third countries over them, they may prejudice or pose risks of prejudice to public security [...]. **Such risks could take, for instance, the form of systematic, international campaigns of media manipulation and distortion of facts in view of destabilising the Union as a whole or particular Member States.** In this regard, the coordination between national regulatory authorities or bodies to face together possible public security [...] threats stemming from such media services needs to be strengthened and given a legal framework to ensure the effectiveness and possible coordination of the national measures adopted in line with Union media legislation. [...]

Recital 30a (new) (split from recital 30)

(30a) [...] It is necessary to coordinate the national measures that may be adopted to counter public security threats by media services **originating or** established outside of the Union and targeting audiences in the Union, including the possibility for the Board, in **consultation** with the Commission, to issue opinions on such measures, as appropriate, **in particular where a situation affects several Member States.** In this regard, risks to public security [...] need to be assessed with a view to all relevant factual and legal elements, at national and European level. **The objective should be to allow for a more coordinated approach for the concerned national regulatory authorities or bodies in relation to restrictions on the distribution of such media services, without prejudice to the competences of Member States or their national regulatory authorities or bodies in line with Union law.** This should be without prejudice to the competence of the Union under Article 215 of the Treaty on the Functioning of the European Union.

Recital 30b (new)

(30b) In order to further support national regulatory authorities or bodies in their role of protecting the internal media market from rogue media service providers, the Board should draw up a list of criteria concerning the media service providers established or originating from outside of the Union. Such a list would help national regulatory authorities or bodies in situations when a relevant media service provider seeks jurisdiction in a Member State, or when a media service provider already under the jurisdiction of a Member State, appears to pose serious and grave risks to public security. Elements to be covered in such a list could concern, inter alia, ownership, management, financing structures, editorial independence from third countries or adherence to a co-regulatory or self-regulatory mechanisms governing editorial standards in one or more Member States.

(31) Very large online platforms act for many users as a gateway for access to media services. Media service providers who exercise editorial responsibility over their content play an important role in the distribution of information and in the exercise of freedom of information online. When exercising such editorial responsibility, they are expected to act diligently and provide information that is trustworthy and respectful of fundamental rights. **The effective and independent exercise of editorial responsibility is also crucial to guarantee that the media content is compliant** with the regulatory or self-regulatory requirements they are subject to in the Member States. Therefore, also in view of users' freedom of information, where providers of very large online platforms consider that content provided by such media service providers is incompatible with their terms and conditions, **without prejudice to the mitigating measures in relation** to a systemic risk referred to in Article 34 of Regulation (EU) 2022/2065 [...], they should duly consider freedom and pluralism of media, in accordance with Regulation (EU) 2022/2065 [...] and provide, as early as possible, the necessary explanations to media service providers as their business users in the statement of reasons under Regulation (EU) 2019/1150²⁷. To minimise the impact **that any suspension or restriction of visibility of content may have** on users' freedom of information, very large online platforms should endeavour to submit the **clear and detailed** statement of reasons prior to the **suspension or** restriction taking effect without prejudice to their obligations under Regulation (EU) 2022/2065 **and give an opportunity to the concerned media service provider to respond to such a statement of reasons.**

²⁷ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57-79).

The use of labelling or age-gating should not be understood as a restriction of visibility for the purposes of this Regulation. Following the reply of the media service provider, or in the absence of such a reply within an appropriate period of time, the provider of a very large online platform should inform the media service provider concerned if it intends to proceed with such a restriction or suspension. The length of the period of time for the response by the media service provider should be determined in line with the principle of proportionality taking into account the time sensitivity and seriousness of the potential harm to users. This Regulation should not prevent a provider of a very large online platform to take expeditious measures either against illegal content disseminated through its service, or in order to mitigate systemic risks posed by dissemination of certain content through its service, in compliance with Union law, in particular pursuant to Regulation (EU) 2022/2065. Nothing in this Regulation should be construed as deviating from Regulation (EU) 2022/2065, and in particular from the obligations that apply to very large online platforms. Moreover, this Regulation should be without prejudice to measures taken by video-sharing platforms under Article 28b of Directive 2010/13/EU, in particular those to protect minors.

Recital 32

(32) It is furthermore justified, in view of an expected positive impact on freedom to provide services and freedom of expression, that where media service providers adhere to certain regulatory or self-regulatory standards, their complaints against decisions of providers of very large online platforms are treated with priority and without undue delay.

(33) To this end, providers of very large online platforms should provide a functionality on their online interface to enable media service providers to declare that they meet certain requirements, while at the same time retaining the possibility not to accept such self-declaration where they consider that these conditions are not met. **When a media service provider declares itself subject to regulatory requirements or adhering to co- or self-regulatory mechanisms, it should be able to provide contact details of the relevant national regulatory authority or body or of the representatives of the co- or self-regulatory mechanism, including those provided by widely-recognised professional associations representing a given sub-sector and operating at national or European level. In case of reasonable doubts, this would enable the very large online platform to confirm with these authorities or bodies that the media service provider is subject to such requirements or mechanisms. Where relevant, providers of very large online platforms should** rely on information regarding adherence to these requirements, such as the machine-readable standard of the Journalism Trust Initiative or other relevant codes of conduct. **Civil society organisations, fact-checking organisations and other relevant professional organisations recognising the integrity of media sources on the basis of standards agreed with the media industry should also have the possibility to flag to the very large online platforms any potential lack of compliance by media service providers with the relevant requirements for the self-declaration.** Guidelines by the Commission **would be key** to facilitate an effective implementation of such functionality, **in particular by contributing to the wide** involvement of relevant civil society organisations in the review of the declarations, **ensuring consultations with the national regulatory authorities or bodies or co- or self-regulatory bodies. The guidelines should also contribute to minimising risks of** potential abuse of the functionality, **in particular by providers engaging systematically in disinformation, information manipulation and interference, including those controlled by certain third countries, taking account of the criteria to be developed by the Board in accordance with article 16(3) and the role of relevant civil society organisations in detecting such potential abuses.**

Recital 34

(34) This Regulation recognises the importance of self-regulatory mechanisms in the context of the provision of media services on very large online platforms. They represent a type of voluntary initiatives, for instance in a form of codes of conduct, which enable media service providers or their representatives to adopt common guidelines, including on ethical standards, correction of errors or complaint handling, amongst themselves and for themselves. Robust, inclusive and widely recognised media self-regulation represents an effective guarantee of quality and professionalism of media services and is key for safeguarding editorial integrity.

Recital 35

(35) Providers of very large online platforms should engage with media service providers that respect standards of credibility and transparency and that consider that restrictions **or suspensions** on their content are **repeatedly** imposed by providers of very large online platforms without sufficient grounds **within a limited period of time**, in order to find an amicable solution for terminating any unjustified restrictions **or suspensions** and avoiding them in the future. Providers of very large online platforms should engage in such exchanges in good faith, paying particular attention to safeguarding media freedom and freedom of information.

Recital 36

(36) Building on the useful role played by ERGA in monitoring compliance by the signatories of EU Code of Practice on Disinformation, the Board should, at least on a yearly basis, organise a structured dialogue between providers of very large online platforms, representatives of media service providers and representatives of civil society to foster access to diverse offers of independent media on very large online platforms, discuss experience and best practices related to the application of the relevant provisions of this Regulation and to monitor adherence to self-regulatory initiatives aimed at protecting society from harmful content, including those aimed at countering disinformation. **The reports on the results of such structured dialogues may contribute to the effective enforcement of Regulation (EU) 2022/2065.** The Commission should, where relevant, **take into consideration such** reports [...] when assessing systemic and emerging issues across the Union under Regulation (EU) 2022/2065 and may ask the Board to support it to this effect.

(37) Recipients of [...] media services **providing programmes** (audiovisual and audio media services) should be able to effectively choose the [...]content they want to watch **or listen to** according to their preferences. Their freedom in this area may however be constrained by commercial practices in the media sector, **such as** agreements for content prioritisation between **media service providers and** manufacturers of devices or providers of user interfaces controlling or managing access to and use of audiovisual **and audio** media services, such as connected televisions **or car audio systems**. Prioritisation can be implemented, for example, on the home screen of a device, through hardware or software shortcuts, applications and search areas, which have implications on the recipients' [...] behaviour, who may be unduly incentivised to choose certain [...] media offers over others. **User choice may also be limited by closed circuits of pre-installed applications.** Service recipients should have the possibility to change, in a simple, **easily accessible** and user-friendly manner, the default settings of a device or user interface controlling and managing access to, and use of, [...] media services. **This right should not extend to individual items, such as programmes, within an on-demand service catalogue [...] and is** without prejudice to measures to ensure the appropriate prominence of audiovisual media services of general interest implementing Article 7a of Directive 2010/13/EU, taken in the pursuit of legitimate public policy considerations. **Manufacturers and developers should be able to demonstrate the effective user-friendliness of the functionality required when placing their relevant products on the market. Member States should ensure, through appropriate measures, that devices and interfaces placed on their market, by relevant market players, comply with the relevant requirements set out in this Regulation. This could be achieved through monitoring of the application and the effectiveness of the actions taken by such market players.**

Recital 37a (*former Recital 29*)

(37a) In order to ensure a level playing field in the provision of diverse audiovisual **and audio** media services in the face of technological developments in the internal market, it is necessary to find common technical prescriptions for devices **and user interfaces** controlling or managing access to and use of audiovisual **and audio** media services or carrying digital signals conveying the [...] content from source to destination. In this context, it is important to avoid diverging technical standards creating barriers and additional costs for the industry and consumers while encouraging solutions to implement existing obligations concerning [...] media services.

Recital 38

(38) Different legislative, regulatory or administrative measures, **including those taken by national regulatory authorities or bodies, could be justified and conducive to media pluralism. However, some measures may hinder or render less attractive the exercise of the freedom of establishment and the freedom to provide services in the media sector, to the detriment of media pluralism or editorial independence of media service providers in the internal market. This could be the case, for example, with rules to limit the ownership of media companies by other companies active in the media sector or non-media related sectors; they also include decisions related to licensing, authorisation or prior notification for media service providers. In order to mitigate their potential negative impact on media pluralism or editorial independence and enhance legal certainty in the internal market for media services [...], it is important that such measures comply with the principles of objective justification, transparency, non-discrimination and proportionality. Administrative measures that are liable to affect media pluralism or editorial independence should be adopted within predictable timeframes.**

(39) **Without prejudice to the application of the Union's competition and State aid rules as well as national measures taken in compliance with such rules, it is [...] key that the Board is empowered to issue an opinion [...] where national measures are likely to significantly and adversely affect the operation of media service providers in the internal market. Such opinions should focus on national measures that have the potential to disrupt the activities of media service providers across borders, for instance by preventing or obstructing their operation in such a way that the provision of their media services in a given market is seriously undermined. This could be the case when a national administrative measure is addressed specifically to a media service provider providing its services towards more than one Member State, or when it concerns a media service provider that, because of, inter alia, its market shares, audience reach or level of circulation, has a significant influence on the formation of public opinion in that Member State, and it prevents such media service providers from effectively operating in a given market or entering a new one.**

Recital 39a (new)

(39a) Media market concentrations are assessed differently across the Union from the media pluralism standpoint. The rules and procedures vary across the Union. Some Member States rely on competition assessments only, whereas others have dedicated frameworks for specific media pluralism assessment of concentrations. In the latter case, there are considerable differences. In some cases, all media transactions are scrutinised, irrespective of whether they reach certain thresholds, while in other cases an assessment is conducted only when specific thresholds are exceeded or certain qualitative criteria are met. For instance, for the purposes of such assessment some Member States apply revenue multipliers in order to ensure that competitive threats do not pass undetected and are brought under scrutiny even when the outlets involved have low revenues. Where they exist, there are also differences in the procedures applicable to the scrutiny of market transactions for media pluralism purposes. This scrutiny is often carried out independently by the media regulator (through a self-standing assessment) or with the involvement of the media regulator by the competent authority (through an opinion, that could be a stand-alone contribution or written views or comments in the context of an ongoing assessment). Certain national rules enable Ministries or governmental bodies to intervene in the media market scrutiny on non-economic grounds, ranging from protection of media pluralism to the safeguarding of public security or other general interests. The divergence and lack of coordination between Member States' rules and procedures applicable to media market concentrations can result in legal uncertainty as well as regulatory, administrative or economic burdens for media companies willing to operate across borders, thus distorting competition in the internal market for media services. In some cases, national measures in this area can effectively prevent a media company established in the Union from entering another national market, without being genuinely aimed at promoting media pluralism.²⁸ Ultimately, instead of achieving greater media plurality, this may reinforce the oligopolistic dynamics in the media market. In order to lower obstacles hindering the media service providers' ability to operate in the internal market, it is important that this Regulation sets out a common framework for assessing media market concentrations across the Union.

²⁸ Case C-719/18, Vivendi SA v Autorità per le Garanzie nelle Comunicazioni.

Recital 40

(40) Media play a decisive role in shaping public opinion and **promoting** citizens' **participation** in democratic processes. This is why Member States, **independently from competition law assessments**, should provide for rules and procedures in **national law** to ensure assessment of media market concentrations that could have a significant impact on media pluralism or editorial independence. **In this context, media pluralism should be understood as the possibility to have access to a variety of media services and media content.** National rules and procedures can have an impact on the freedom to provide media services in the internal market and need to be properly framed and be transparent, objective, proportionate and non-discriminatory. Media market concentrations subject to such rules should be understood as covering those which could result in a single entity controlling or having significant interests in media services, **also taking into consideration access to or distribution of such services, in particular via online platforms, and, thus**, substantial influence on the formation of public opinion **at national level** in a given media market [...] in one or more Member States. An important criterion to be taken into account is the reduction of competing views within that market as a result of the concentration.

Recital 41

(42) National regulatory authorities or bodies, who have specific expertise in the area of media pluralism, should be involved in the assessment of the impact of media market concentrations on media pluralism and editorial independence where they are not the designated authorities or bodies themselves, **for example by taking into account the views of media regulators in the competition assessment.** In order to foster legal certainty and ensure that the rules and procedures are genuinely geared at protecting media pluralism and editorial independence, it is essential that objective, non-discriminatory and proportionate criteria for notifying and assessing the impact of media market concentrations on media pluralism and editorial independence are set out in advance.

Recital 42

(42) When a media market concentration constitutes a concentration falling within the scope of Council Regulation (EC) No 139/2004, the application of this Regulation or of any rules and procedures adopted by Member States on the basis of this Regulation should not affect **and should be distinct from** the application of Article 21(4) of Regulation (EC) No 139/2004. Any measures taken by the designated or involved national regulatory authorities or bodies based on their assessment of the impact of media market concentrations on media pluralism and editorial independence should therefore be aimed at protecting legitimate interests within the meaning of Article 21(4), third subparagraph, of Regulation (EC) No 139/2004, and should be in line with the general principles and other provisions of Union law. **This Regulation should be without prejudice to more detailed national rules applicable to media market concentrations taking place, in particular, at regional or local level.**

(43) The Board should be empowered to provide opinions on draft **assessments** by the designated or **draft opinions by the** involved national regulatory authorities or bodies, where the **media market** concentrations **are likely to** affect the functioning of the internal media market. This would be the case, for example, where such concentrations involve **acquisitions by or of an** undertaking established in another Member State or operating **across borders**, or result in media service providers having a significant influence on formation of public opinion in a given media market **with potential cross-border effects on audiences of such providers**. Moreover, where the **media market** concentration has not been or **could not be** assessed for its impact on media pluralism and editorial independence by the relevant authorities or bodies **at the national level**, or where the national regulatory authorities or bodies have not consulted the Board regarding a given media market concentration, but that media market concentration is considered **to fulfil the elements mentioned above and is therefore** likely to affect the functioning of the internal market for media services, the Board should be able to provide an opinion, upon request of the Commission. **Where such concentrations are likely to affect the functioning of the internal market for media services**, the Commission **should also retain** the possibility to issue its own opinions following the opinions drawn up by the Board.

Recital 44

(44) With a view to ensuring pluralistic media markets, the national authorities or bodies and the Board should take account of a set of criteria. In particular, **the expected** impact on media pluralism should be considered, including notably the effect on the formation of public opinion, taking into account [...] the online environment. Concurrently, it should be considered whether other media outlets, providing different and alternative content, would still coexist in the given market(s) after the media market concentration in question. Assessment of safeguards for editorial independence should include the examination of potential risks of undue interference by the prospective owner, management or governance structure in the [...] editorial decisions of the acquired or merged entity. The existing or envisaged internal safeguards aimed at preserving independence of the [...] editorial decisions within the media undertakings involved should also be taken into account. In assessing the potential impacts, the effects of the concentration in question on the economic sustainability of the entity or entities subject to the concentration should also be considered and whether, in the absence of the concentration, they would be economically sustainable, in the sense that they would be able in the medium term to continue to provide and further develop financially viable, adequately resourced and technologically adapted quality media services in the market.

(45) Audience measurement has a direct impact on the allocation and the prices of advertising, which represents a key revenue source for the media sector. It is a crucial tool to evaluate the performance of media content and understand the preferences of audiences in order to plan the future production of content. Accordingly, media market players, in particular media service providers and advertisers, should be able to rely on objective audience data stemming from transparent, unbiased and verifiable audience measurement solutions. However, certain new players that have emerged in the media ecosystem, **such as online platforms, [...] do not abide by the industry standards or best practices agreed within the relevant self-regulatory bodies and** provide their own measurement services without making available information on their methodologies. This could result in **non-comparable measurement systems**, information asymmetries among media market players and in potential market distortions, to the detriment of equality of opportunities for media service providers in the market. **Therefore, in order to help achieving a level playing field and fostering the clarity and contestability of the relevant information that is provided to the market, it is key that the audience measurement results are made available. To this end, it is important that audience measurement systems and methodology ensure an appropriate level of transparency, impartiality, inclusiveness, proportionality, non-discrimination and verifiability.**

(46) **Relevant market players have traditionally agreed upon a set of measurement methodologies in order to carry out audience measurement in a transparent and reliable manner and develop impartial and trusted benchmarks to be used when assessing the performance of media and advertising content. These measurement methodologies are either reflected in relevant industry standards and best practices or are organised and consolidated by self-regulatory bodies, such as the Joint Industry Committees, which are established in several Member States and bring together all the key stakeholders operating in the media and advertising industry.** In order to enhance the verifiability and reliability **and thus comparability** of audience measurement methodologies, in particular online, transparency obligations should be laid down for providers of audience measurement systems that do not **follow the relevant industry standards and best practices or do not** abide by the industry benchmarks agreed within the relevant self-regulatory bodies. Under these obligations, such actors, when requested and to the extent possible, should provide advertisers and media service providers or parties acting on their behalf, with information describing the methodologies employed for the measurement of the audience. Such information could consist in providing elements, such as the size of the sample measured, the definition of the indicators that are measured, the metrics, the measurement methods and the margin of error as well as the measurement period.

The enhanced methodological transparency resulting from these obligations should enable media service providers and advertisers to better assess the performance of their content, as they would be able to compare more easily the results of the different audience measurement systems available on the market. However, the need to increase the transparency and contestability of audience measurement systems should be reconciled with the freedom of providers of audience measurement systems to develop their own measurement systems, as part of their freedom to conduct business. For this reason, the transparency obligations by which the providers of audience measurement systems should abide pursuant to this Regulation should not entail the disclosure of information which is the result of research and development investments, such as data science technologies protected by intellectual property rights. The obligations imposed under this Regulation should **also** be without prejudice to any obligations that apply to providers of audience measurement services under Regulation (EU) 2019/1150 or Regulation (EU) 2022/1925 of the European Parliament and of the Council²⁹, including those concerning ranking, self-preferencing, **or providing access to performance measuring tools and the relevant data.**

²⁹ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, p. 1-66).

(47) Codes of conduct, drawn up either by the providers of audience measurement systems or by organisations or associations representing them, **could** contribute to the effective application of this Regulation and should, therefore, be encouraged. Self-regulation, **including relevant existing codes of conduct, have** already been used to foster high quality standards in the area of audience measurement. Its further development could be seen as an effective tool for the industry to agree on the practical solutions needed for ensuring compliance of audience measurement systems and their methodologies with the principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination and verifiability. When drawing up such codes of conduct, in consultation with all relevant stakeholders and notably media service providers **and providers of online platforms,** account could be taken in particular of the increasing digitalisation of the media sector and the **need to make increasingly comparable the different audience measurement systems and methodologies available on the market. In fact, comparability of audience measurement results is key for** achieving a level playing field among media market players **as it enables media service providers and advertisers to better gauge the success of their offer, which users increasingly consume across different devices and platforms. For this reason, the relevant industry players should be encouraged to make use of codes of conduct and other self-regulatory mechanisms to foster the development of audience measurement solutions which are comparable across [...]** different media and platforms.

(48) State advertising is an important source of revenue for many media service providers, contributing to their economic sustainability. Access to it must be granted in a non-discriminatory way to any media service provider from any Member State which can adequately reach some or all of the relevant members of the public, in order to ensure equal opportunities in the internal market. Moreover, state advertising may make media service providers vulnerable to undue state influence to the detriment of the freedom to provide services and fundamental rights. Opaque and biased allocation of state advertising is therefore a powerful tool to exert influence or ‘capture’ media service providers. The distribution and transparency of state advertising are in some regards regulated through a fragmented framework of media-specific measures and **Union public procurement rules concerning the award of public contracts and concession contracts**, which, however, may not cover all state advertising expenditure nor offer sufficient protection against preferential or biased distribution. In particular, Directive 2014/24/EU of the European Parliament and of the Council³⁰ does not apply to public service contracts for the acquisition, development, production or co-production of programme material intended for audiovisual media services or radio media services. Media-specific rules on state advertising, where they exist, diverge significantly from one Member State to another.

³⁰ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65-242).

(49) In order to ensure undistorted competition between media service providers and to avoid the risk of covert subsidies and of undue political influence on the media, it is necessary to establish common requirements of transparency, objectivity, proportionality and non-discrimination in the allocation of **public funds or other** state resources, to media service providers for the purpose of **state advertising or purchasing goods or services from them other than state advertising, for example, audiovisual productions, market data and consulting or training services. As regards state advertising the common requirements should cover the allocation taking place both directly or indirectly, for instance through specialised intermediaries. It is also necessary to establish common requirements** to publish information on the beneficiaries of state advertising expenditure and the amounts spent. It is important that Member States make the necessary information related to state advertising publicly accessible in an electronic format that is easy to view, access and download, in compliance with Union and national rules on commercial confidentiality. **Where such an obligation would pose a disproportionate and unjustifiable burden to the administrative capacities of regional or local administrations, Member States should have the possibility to exempt subnational governments of territorial entities of less than 100,000 inhabitants, and entities controlled, directly or indirectly, by such subnational governments, from the obligation to make publicly available information about their state advertising expenditure. The monitoring of the allocation of state advertising should be performed ex post by national regulatory authorities or bodies or other competent independent authorities or bodies.** This Regulation **should** not affect the application of the **Union public procurement and State aid rules [...].**

(50) Risks to the functioning [...] of the internal media market should be regularly monitored as part of the efforts to improve the functioning of the internal market for media services. Such monitoring should aim at providing detailed data and qualitative assessments [...], including as regards the degree of concentration of the market at national and regional level and risks of foreign information manipulation and interference. It should be conducted independently, **by a specialised academic entity in collaboration with researchers from the Member States**, on the basis of a robust list of key performance indicators **and methodology**, developed and regularly updated by the Commission, in consultation with the Board. Given the rapidly evolving nature of risks and technological developments in the internal media market, the monitoring should [...] assess the prospective **economic viability** of the internal media market, to alert about vulnerabilities around media pluralism and editorial independence, and to help efforts to improve governance, data quality and risk management. In particular, the level of cross-border activity and investment, regulatory cooperation and convergence in media regulation, obstacles to the provision of media services, including in a digital environment, as well as transparency and fairness of allocation of economic resources in the internal media market should be covered by the monitoring. It should also consider broader trends in the internal media market and national media markets as well as national legislation affecting media service providers. In addition, the monitoring should provide **a general** overview of measures taken by media service providers with a view to guaranteeing the independence of [...] editorial decisions, including those proposed in the accompanying Recommendation, **and an analysis of their potential to reduce risks for the functioning of the internal market for media services**. In order to ensure the highest standards of such monitoring, the Board, as it gathers entities with a specialised media market expertise, should be duly involved. **Where relevant, the results of such monitoring could also be used by the Board in its deliberations on possible opinions.**

Recital 51

To prepare the ground for a correct implementation of this Regulation, its provisions concerning independent media authorities, the Board and the required amendments to Directive 2010/13/EU (Articles 7 to 12 and 27 of this Regulation) should apply **12** months after the entry into force of the Act. [...]. **All other provisions of this Regulation will apply 18 months after the entry into force of this Regulation, except for Article 19, which will apply 48 months after the entry into force.** In particular, this is needed to ensure that the Board will be established in time to ensure a successful implementation of the Regulation.

Recital 51a (new)

(51a) (new) It should be recalled that the Commission [...], has the duty to monitor the application of this Regulation in line with its responsibility according to Article 17 of the Treaty on European Union. In this regard, the Commission has stated in its communication of 19 January 2017 entitled “EU law: Better results through better application”, that it is important that it focuses and prioritises its enforcement efforts [...] on the most important breaches of Union law, affecting the interests of Union’s citizens and businesses.

Recital 52

Since the objectives of this Regulation, namely ensuring the proper functioning of the internal market for media services, cannot be sufficiently achieved by the Member States, because they cannot or might not have incentives to achieve the necessary harmonisation and cooperation acting alone, but can rather, by reasons of the increasingly digital and cross-border production, distribution and consumption of media content as well as the unique role of media services, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

Recital 53

This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter, in particular Articles 7, 8, 11, 16, 47, 50 and 52 thereof. Accordingly, this Regulation should be interpreted and applied with due respect to those rights and principles. In particular, nothing in this Regulation should be interpreted as interfering with freedom of information, **editorial freedom** or freedom of the press **as enshrined in national constitutional laws consistent with the Charter**, or incentivising Member States to introduce requirements for editorial content of press publications.

Recital 54

The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council³¹ and delivered an opinion on **11 November 2022**³²,

³¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

³² **OJ C 487, 22.12.2022, p. 9.**

HAVE ADOPTED THIS REGULATION/

Chapter I

General provisions

Article 1

Subject matter and scope

1. This Regulation lays down common rules for the proper functioning of the internal market for media services, including the establishment of the European Board for Media Services, while preserving the independence and pluralism of media services.
2. This Regulation shall not affect rules laid down by:
 - (a) Directive 2000/31/EC;
 - (b) Directive 2019/790/EU;
 - (c) Regulation 2019/1150;
 - (d) Regulation (EU) 2022/**2065**;
 - (e) Regulation (EU) 2022/**1925**;
 - (f) Regulation (EU) .../... [Regulation on the transparency and targeting of political advertising **[2021/0381(COD)]**].
 - (g) **Regulation (EU) 2016/679.**
3. This Regulation shall not affect the possibility for Member States to adopt more detailed **or stricter** rules in the fields covered by Chapter II [...], Section 5 and **Article 24** [...] of Chapter III, provided that those rules comply with Union law.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘media service’ means a service as defined by Articles 56 and 57 of the Treaty, where the principal purpose of the service or a dissociable section thereof consists in providing programmes or press publications to the general public, by any means, in order to inform, entertain or educate, under the editorial responsibility of a media service provider;
- (2) ‘media service provider’ means a natural or legal person whose professional activity is to provide a media service and who has editorial responsibility for the choice of the content of the media service and determines the manner in which it is organised;
- (3) ‘public service media provider’ means a media service provider which is entrusted with a public service **remit** under national law **and** receives national public funding for the fulfilment of such a **remit**;
- (4) ‘programme’ means a set of moving images or sounds constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider;
- (5) ‘press publication’ means a publication as defined in Article 2(4) of Directive 2019/790/EU;
- (6) ‘audiovisual media service’ means a service as defined in Article 1(1), point (a), of Directive 2010/13/EU;
- (7) [...] *(definition of editor is deleted)*

- (8) ‘editorial decision’ means a decision taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of a media service provider;
- (9) ‘editorial responsibility’ means the exercise of effective control both over the selection of the programmes or press publications and over their organisation, for the purposes of the provision of a media service, regardless of the existence of liability under national law for the service provided;
- (9a) ‘online platform’ means a service as defined in Article 3, point (i) of Regulation (EU) 2022/2065;**
- (10) ‘provider of very large online platform’ means a provider of an online platform that has been designated as a very large online platform pursuant to Article 33(4) of Regulation (EU) 2022/2065;
- (11) ‘video-sharing platform service’ means a service as defined in Article 1(1), point (aa), of Directive 2010/13/EU;
- (12) ‘national regulatory authority or body’ means **any** authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU;
- (13) ‘media market concentration’ means a concentration as defined in Article 3 of Regulation (EC) No 139/2004 involving at least one media service provider;
- (14) ‘audience measurement’ means the activity of collecting, interpreting or otherwise processing data about the number and characteristics of users of media services **or users of content on online platforms** for the purposes of decisions regarding advertising allocation or **pricing** or [...] planning, production or distribution of content;

- (14a) *(new)* ‘**public authority or entity**’ means a national or subnational government, a regulatory authority or body, or an entity controlled, directly or indirectly, by a national or subnational government [...];
- (15) ‘State advertising’ means the placement, publication or dissemination, in any media service, of a promotional or self-promotional message **or a public announcement or an information campaign**, normally in return for payment or for any other consideration, by, for or on behalf of [...] a public authority **or entity** [...];
- (16) ‘**intrusive surveillance software**’ means any product with digital elements specially designed to exploit vulnerabilities in other products with digital elements [...] that enables the covert surveillance of natural or legal persons by monitoring, extracting, collecting or analysing data from such products or from the natural or legal persons using such products [...];
- (17) [...] *(the definition and list of ‘serious crimes’ has been removed)*

Chapter II

Rights and duties of media service providers and recipients of media services

Article 3

The right to a plurality of news and current affairs content

Member States shall respect the right **of the general public** [...] to receive a plurality of news and current affairs content, produced with respect for editorial freedom of media service providers, to the benefit of the public discourse.

Article 4

Rights of media service providers

1. Media service providers shall have the right to exercise their economic activities in the internal market without restrictions other than those **that are in compliance with** Union law.
2. Member States shall respect effective editorial freedom of media service providers. Member States, including their national regulatory authorities and bodies, shall not [...] interfere in or try to influence [...] editorial policies and **editorial** decisions by media service providers.
- 2a. **Member States shall ensure an effective protection of journalistic sources. Member States shall not, unless this is justified by an overriding requirement in the public interest and** provided for in national law and is in compliance with Article 52(1) of the Charter and other Union law:
 - (a) **oblige media service providers or their editorial staff, or any persons who, because of their regular relationship with a media service provider or its editorial staff, may have information that could identify journalistic sources to disclose such information;**

- (b) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or **their editorial staff or any persons who, because of their regular relationship with a media service provider or its editorial staff, may have information that could identify journalistic sources, or the corporate and private premises of those persons**, on the ground that **they** refuse to disclose **such** information [...]; or
- (c) deploy **intrusive surveillance software** in any device or machine used by media service providers **or their editorial staff or any persons who, because of their regular relationship with a media service provider or its editorial staff, may have information that could identify journalistic sources, for the purpose of obtaining such information**, unless the deployment [...] occurs in [...] investigations of one of **those** [...] persons, **for offences referred to in Article 2(2) of Council Framework Decision 2002/584/JHA³³ and punishable in the Member State concerned by a custodial sentence or a detention order for a maximum period of at least three years, or other specific offences punishable in the Member State concerned by a custodial sentence or a detention order for a maximum period of at least five years, as determined by the law of that Member State.**

Member States shall not adopt a measure pursuant to point (c) of the first subparagraph where measures referred to point (b) of the first subparagraph are adequate and sufficient to obtain the information sought.

3. [...] **Member States shall ensure that media service providers or their editorial staff, or any persons who, because of their regular relationship with a media service provider or its editorial staff, may have information that could identify journalistic sources have a right to an effective judicial protection in cases regarding breaches of paragraph 2a. Member States shall entrust an independent authority or body with relevant expertise to provide assistance to those persons with regard to the exercise of such right where no self-regulatory bodies or mechanisms are in place to provide such assistance.**

³³ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

4. **(new) This Article is without prejudice to the Member States' responsibility for safeguarding national security.**

Article 5

Safeguards for the independent functioning of public service media providers

1. **Member States shall ensure that public service media providers are editorially independent and** provide in an impartial manner a plurality of information and opinions to their audiences, in accordance with their public service **remit as defined at national level in line with Protocol No 29 on the system of public broadcasting in the Member States annexed to the TEU and the TFEU.**
2. **Member States shall ensure that the procedures for the appointment and the dismissal of the head of management or the members of the management board of public service media providers, including the duration of their term of office, seek to guarantee the independence of the public service media providers.**

The appointment of the head of management or the members of the management board of public service media providers shall be based on transparent, open and non-discriminatory procedures and [...] transparent, objective, non-discriminatory and proportionate criteria laid down in advance **at national level.**

Decisions **on dismissal of the head of management or the members of the management board of public service media providers** shall be duly justified, **provide reasons for which such persons no longer fulfil the conditions required for the performance of their duties, and be** subject to prior notification to the person concerned [...].

3. Member States shall ensure that **funding procedures for public service media are transparent, objective and seek to guarantee that** public service media providers have adequate and stable financial resources **corresponding to** the fulfilment of their public service **remit.** Those resources shall be such that editorial independence is safeguarded.

4. Member States shall **put in place mechanisms** to monitor **the application of** paragraphs 1 to 3.

Article 6

Duties of media service providers [...]

1. Media service providers [...] shall make easily and directly accessible to the recipients of their services **up-to-date** information **on**:
 - (a) their legal name and contact details;
 - (b) the name(s) of their direct or indirect owner(s) with shareholdings enabling them to exercise influence on the operation and strategic decision making; **and**
 - (c) the name(s) of their beneficial owners **as defined in** Article 3, point (6) of Directive (EU) 2015/849 [...].
2. Without prejudice to constitutional **or other** national [...] laws consistent with the Charter, media service providers providing news and current affairs content shall take measures that they deem appropriate with a view to guaranteeing [...] editorial independence [...]. In particular, such measures shall aim to:
 - (a) guarantee that [...] editorial decisions **can be taken freely within the established editorial line of the media service provider**; and
 - (b) ensure disclosure of any actual or potential conflict of interest by any party having a stake in media service providers that may affect the provision of news and current affairs content.

[...] (paragraph 3 is deleted)

Chapter III

Framework for regulatory cooperation and a well-functioning internal market for media services

Section 1

Independent media authorities

Article 7

National regulatory authorities or bodies

1. The national regulatory authorities or bodies as defined in Article 2(12) shall ensure, where applicable through consultation or coordination with other relevant authorities or bodies, or, where relevant self-regulatory bodies in their Member States, the application of Chapter III. [...]
2. The national regulatory authorities or bodies shall be subject to the requirements set out in Article 30 of Directive 2010/13/EU in relation to the exercise of the tasks assigned to them by this Regulation.
3. Member States shall ensure that the national regulatory authorities or bodies have adequate financial, human and technical resources to carry out their tasks under this Regulation.
4. Where needed for carrying out their tasks under this Regulation, **Member States shall ensure that** the national regulatory authorities or bodies **are empowered to request the** natural or legal persons to which Chapter III applies to provide, within a reasonable time period, information **and data** that is proportionate and necessary for carrying out the tasks under Chapter III. [...]

Section 2

European Board for Media Services

Article 8

European Board for Media Services

1. The European Board for Media Services ('the Board') is established.
2. The Board shall replace and succeed the European Regulators Group for Audiovisual Media Services (ERGA) established by Directive 2010/13/EU.

Article 9

Independence of the Board

The Board shall act in full independence when performing its tasks or exercising its powers. In particular, the Board shall, in the performance of its tasks or the exercise of its powers, neither seek nor take instructions from any government, institution, person or body. This shall not affect the competences of the Commission or the national regulatory authorities or bodies in conformity with this Regulation.

Article 10

Structure of the Board

1. The Board shall be composed of representatives of national regulatory authorities or bodies **as defined in Article 2(12)**.
2. Each member of the Board shall have one vote.

2a.(new). The Board shall take decisions by a two-thirds majority of its members.

3. Where a Member State has more than one national regulatory authority or body, those regulatory authorities or bodies shall coordinate with each other as necessary and appoint a joint representative which shall exercise the right to vote.
4. The Board shall be represented by its Chair. The Board shall elect a Chair **and Vice-Chair** from amongst its members [...]. The term of office of the Chair shall be **one year, renewable once**.
5. The Commission shall designate a representative to the Board. The representative of the Commission shall participate in **the deliberations** of the Board, without voting rights. The Chair of the Board shall keep the Commission informed about the [...] activities of the Board. The Board shall consult the Commission in preparation of its work programme [...].
6. The Board [...] may invite experts and, in agreement with the Commission, **permanent** observers to attend its meetings.

[...] (paragraph 7 has been deleted)

8. The Board shall adopt its rules of procedure [...], in **consultation** with the Commission.

Article 11

Secretariat of the Board

1. The Board shall have a secretariat, which shall be provided by the Commission **and be adequately resourced**.
2. The main task of the secretariat shall be to contribute to the **independent** execution of the tasks of the Board laid down in this Regulation and in Directive 2010/13/EU. **In particular, it shall provide administrative and organisational support to the activities of the Board.**
3. **The secretariat shall coordinate closely with the Board and its Chair. When assisting the Board with drawing up its deliverables, the secretariat shall act on the instructions of the Board and its Chair as regards their content.**

Article 12

Tasks of the Board

1. Without prejudice to the powers granted to the Commission by the Treaties, the Board shall advise **and support** the Commission [...] on [...] matters related to media services within its competence [...] **as well as** promote the effective and consistent application of **Chapter III of** this Regulation and **the implementation of** Directive 2010/13/EU throughout the Union. The Board shall therefore:
 - (a) **provide** technical expertise **to** the Commission **in its task to ensure** the consistent application of **Chapter III of** this Regulation and the consistent implementation of Directive 2010/13/EU across all Member States, without prejudice to the tasks of national regulatory authorities or bodies;

- (b) promote cooperation and the effective exchange of information, experience and best practices between the national regulatory authorities or bodies on the application of the Union and national rules applicable to media services, including this Regulation and Directive 2010/13/EU, in particular as regards Articles 3, 4 and 7 of that Directive;

[...] (sub-paragraph (c) has been deleted, and its contents have been inserted in paragraph 1.)

- (d) when requested by the Commission, provide opinions on the technical and factual issues that arise with regard to Article 2(5c), Article 3(2) and (3), Article 4(4), point (c) and Article 28a(7) of Directive 2010/13/EU;
- (e) in **consultation** with the Commission, draw up opinions with respect to:
 - (i) requests for cooperation [...] between national regulatory authorities or bodies, in accordance with Article 13(7) of this Regulation;
 - (ii) requests for enforcement measures in case of disagreement between the requesting authority or body and the requested authority or body, **including recommended** actions [...], pursuant to Article 14(4) of this Regulation;
 - (iii) national measures concerning media **services from** outside of the Union, in accordance with Article 16(2) of this Regulation;
- (f) upon request of the Commission, draw up opinions with respect to [...] media market concentrations which are likely to affect the functioning of the internal market for media services, in accordance with Article 22(1) of this Regulation;

- (g) draw up opinions on
- (i) national measures which are likely to **significantly and adversely** affect the **operation of media service providers in** the internal market, in accordance with Article 20(4) of this Regulation;
 - (ii) draft national **assessments or draft opinions** on the impact on media pluralism and editorial independence of a notifiable media market concentration where such a concentration **is likely to** affect the functioning of the internal market, in accordance with Article 21(5) of this Regulation;
- (h) assist the Commission in drawing up guidelines with respect to:
- (i) the application of this Regulation and **the implementation of** Directive 2010/13, in accordance with Article 15(2) of this Regulation.
 - (ii) **elements** to be taken into account when applying the criteria for assessing the impact of media market concentrations, in accordance with Article 21(3) of this Regulation;
 - (iii) the application of Articles 23(1), (2) and (3) pursuant to Article 23(4) of this Regulation.
- (i) upon request of at least one of the concerned authorities, mediate in the case of disagreements between national regulatory authorities or bodies, in accordance with Article 14(3) of this Regulation;

- (j) foster cooperation on **harmonised** standards related to [...] design of devices or user interfaces, in accordance with Article 19(4) of this Regulation;
 - (k) coordinate national measures related to the dissemination of or access to content of media **services from** outside of the Union that target **or reach** audiences in the Union, where **such media services** prejudice or present a serious and grave risk of prejudice to public **security**, [...] in accordance with Article 16(1) of this Regulation **and in consultation with the Commission draw up a list of criteria in accordance with 16(3) of this Regulation**;
 - (l) organise a structured dialogue between providers of very large online platforms, representatives of media service providers and of civil society, and report on its results to the Commission, in accordance with Article 18 of this Regulation;
 - (m) foster the exchange of best practices related to the deployment of audience measurement systems, in accordance with Article 23(5) of this Regulation.
2. **Where the Commission requests advice or opinions from the Board, it may indicate a time limit, unless otherwise provided for in Union law, taking into account the urgency of the matter.**
3. **The Board shall forward its deliverables to the contact committee established by Article 29 of Directive 2010/13/EU.**

Section 3

Regulatory cooperation and convergence

Article 13

Structured cooperation

1. A national regulatory authority or body ('requesting authority') may request cooperation [...] at any time from one or more national regulatory authorities or bodies ('requested authorities') for the purposes of exchange of information or **mutual assistance** relevant for the consistent and effective application of **Chapter III** of this Regulation or the [...] **implementation of** Directive 2010/13/EU.
2. [...] (*para 2 has been moved to new para 8*)
3. Requests for cooperation [...] shall contain all the necessary information, including the purpose of and reasons for it.
4. The requested authority may refuse to address the request only in the following cases:
 - (a) it is not competent for the subject matter of the request or **to provide the type of cooperation requested [...]**;
 - (b) execution of the request would infringe this Regulation, Directive 2010/13/EU or other Union legislation or **national** law compliant with Union law to which the requested authority is subject.
 - (c) **the scope or the subject matter of the request is unjustified or disproportionate [...]**.

The requested authority shall, **without undue delay**, provide reasons for any refusal to address a request. **In cases under point (a) of the first subparagraph, it shall, where possible, indicate the competent authority.**

5. [...]

6. The requested authority shall do its utmost to address and reply to the request without undue delay [...] **and, where possible, provide** regular updates on the progress of the execution of the request. [...] *(partially moved to para 8)*

7. Where the requesting authority **considers that the requested authority has not sufficiently addressed or replied** to its request, it shall inform the requested authority without undue delay, explaining the reasons for its position. If the **requesting authority and** the requested authority **do not come to an agreement**, [...] either authority may refer the matter to the Board. **In accordance with timelines to be established by the Board in its rules of procedure**, the Board shall issue, in **consultation** with the Commission, an opinion on the matter, including recommended actions. The **authorities concerned** shall do **their** utmost to take into account the opinion of the Board.

8. Where a national regulatory authority or body considers that there is a serious and grave risk of **limitation of the freedom to provide or receive media services in the** internal market [...] or a serious and grave risk of prejudice to public **security** [...], it may request other national regulatory authorities or bodies to provide accelerated cooperation [...], **including for the purposes of ensuring effective application of national measures under Article 3 of the Directive 2010/13/EU**. In case of requests for accelerated cooperation [...], the requested authority shall **do its utmost to address such requests** within 14 calendar days. **Paragraphs 3, 4 and 7 of this Article shall apply accordingly.**

Article 14

Requests for enforcement of obligations of video-sharing platform providers

1. Without prejudice to Article 3 of Directive 2000/31/EC, a national regulatory authority or body (**‘requesting authority’**) may **submit a duly justified** request to another national regulatory authority or body (**‘requested authority’**), **which is competent for the subject matter of the request**, to take necessary and proportionate actions for the effective enforcement of the obligations imposed on video-sharing platform **providers** under Article 28b(1) to 28b(3) of Directive 2010/13/EU.
2. The requested [...] authority [...] shall, without undue delay and within **timelines to be established by the Board in its rules of procedure**, inform the requesting [...] authority [...] about the actions taken or planned pursuant to paragraph 1.
3. In the event of a disagreement between the requesting [...] authority [...] and the requested [...] authority [...] regarding actions taken **or planned** pursuant to paragraph 1, either authority may refer the matter to the Board for mediation in view of finding an amicable solution.
4. If no amicable solution has been found following mediation by the Board, the [...] requesting authority [...] or the [...] requested authority [...] may request the Board to issue an opinion on the matter. In its opinion the Board shall assess whether [...] **the request referred to in paragraph 1 has been sufficiently addressed**. If the Board considers that the requested authority has not **sufficiently addressed** such a request, the Board shall recommend actions to **address** the request. The Board shall issue its opinion, in **consultation** with the Commission, without undue delay.
5. The [...] requested authority [...] shall, without undue delay and within **timelines to be established by the Board in its rules of procedure**, inform the Board, the Commission and the requesting authority [...] of the actions taken or planned in relation to the opinion.

Article 15

Guidance on media regulation matters

1. The Board shall foster the exchange of best practices among the national regulatory authorities or bodies, consulting stakeholders [...] where appropriate, [...] on regulatory, technical or practical aspects pertinent to the consistent and effective application of **Chapter III** of this Regulation and [...] **implementation of** Directive 2010/13/EU.
2. Where the Commission issues guidelines related to the application of **Chapter III** of this Regulation or the [...] **implementation of** Directive 2010/13/EU, the Board shall assist it by providing expertise on regulatory, technical or practical aspects, as regards in particular:
 - (a) the appropriate prominence of audiovisual media services of general interest under Article 7a of Directive 2010/13/EU;
 - (b) making information accessible on the ownership structure of media service providers, as provided under Article 5(2) of Directive 2010/13/EU.

Where the Commission issues guidelines related to the implementation of Directive 2010/13/EU, it shall consult the contact committee established pursuant to Article 29 of that Directive.

3. Where the Commission issues an opinion on a matter related to the application of Chapter III of this Regulation and implementation of Directive 2010/13/EU, the Board shall assist the Commission.

Article 16

Coordination of measures concerning media services ~~from~~ outside the Union

1. **Without prejudice to Article 3 of Directive 2010/13/EU**, the Board shall, **upon request of the national regulatory authorities or bodies from at least two Member States**, coordinate relevant measures by ~~the~~ national regulatory authorities or bodies **concerned**, related to the dissemination of or access to media services **originating from outside the Union or** provided by media service providers established outside the Union that, **irrespective of their means of distribution or access**, target **or reach** audiences in the Union where, inter alia in view of the control that may be exercised by third countries over them, such media services prejudice or present a serious and grave risk of prejudice to public security [...].
2. The Board, in **consultation** with the Commission, may issue opinions on appropriate national measures under paragraph 1. **Without prejudice to their powers under national law**, the competent national authorities **concerned**, including the national regulatory authorities or bodies, shall do their utmost to take into account the opinions of the Board.
3. **The Board, in consultation with the Commission, shall draw up a list of criteria that national regulatory authorities or bodies may take into consideration when exercising their regulatory powers over media service providers referred to in paragraph 1.**

Section 4

Provision of and access to media services in a digital environment

Article 17

Content of media service providers on very large online platforms

1. Providers of very large online platforms shall provide a functionality allowing recipients of their services to [...]:
 - (a) **declare that** it is a media service provider within the meaning of Article 2(2) **and complies with Article 6(1)**;
 - (b) **declare that** it is editorially independent from Member States and third countries; [...]
 - (c) **declare that** it is subject to regulatory requirements [...], or adheres to a co-[...] or self-regulatory mechanism [...] widely recognised **by** and accepted in the relevant media sector in one or more Member States, **for the exercise of editorial responsibility and editorial standards; and**
 - (d) **provide the contact details of the relevant national regulatory authorities or bodies or representatives of the co- or self-regulatory mechanisms referred to in point (c).**

In case of reasonable doubts concerning the media service provider's compliance with point (c), the provider of a very large online platform shall seek confirmation on the matter from the relevant national regulatory authority or body or the relevant co- or self-regulatory body.

2. Where a provider of a very large online platform decides to [...] suspend the provision of its online intermediation services in relation to content provided by a media service provider that submitted a declaration **and contact details** pursuant to paragraph 1 of this Article **or to restrict the visibility of the content provided by such media service provider**, on the grounds that such content is incompatible with **the terms and conditions of the online intermediation services**, without **prejudice to the mitigating measures in relation to a systemic risk** referred to in Article 34 of [...] Regulation (EU) 2022/2065, it shall take all possible measures, to the extent consistent with their obligations under Union law [...], to communicate to the media service provider concerned the statement of reasons accompanying that decision, as required by Article 4(1) of Regulation (EU) 2019/1150, [...] **and to provide the media service provider with an opportunity to reply to the statement of reasons within an appropriate period prior to the restriction or suspension taking effect. If following, or in the absence of, such a reply, the provider of a very large online platform still intends to restrict or suspend the provision of its online intermediation services, it shall inform the media service provider concerned.**
3. Providers of very large online platforms shall take all the necessary technical and organisational measures to ensure that complaints under Article 11 of Regulation (EU) 2019/1150 by media service providers that submitted a declaration pursuant to paragraph 1 of this Article are processed and decided upon with priority and without undue delay.

4. Where a media service provider that submitted a declaration pursuant to paragraph 1 considers that a provider of very large online platform **repeatedly** restricts or suspends the provision of its services in relation to content provided by the media service provider without sufficient grounds, the provider of very large online platform shall engage in a meaningful and effective dialogue with the media service provider, upon its request, in good faith with a view to finding an amicable solution, **within a reasonable timeframe** for terminating unjustified restrictions or suspensions and avoiding them in the future. The media service provider may notify the **details and** outcome of such exchanges to the Board.
- 4a (new). In case a provider of very large online platforms rejects a declaration by a media service provider submitted pursuant to paragraph 1 of this Article or in case no amicable solution was found following the dialogue pursuant to paragraph 4 of this Article, the media service provider concerned may use the mediation mechanism under Article 12 of Regulation (EU) 2019/1150. The media service provider concerned may notify the outcome of such mediation to the Board.**
5. Providers of very large online platforms shall make publicly available on an annual basis **detailed** information on:
- (a) the number of instances where they imposed any restriction or suspension on the grounds that the content provided by a media service provider that submitted a declaration in accordance with paragraph 1 [...] is incompatible with their terms and conditions; [...]
 - (b) the grounds for imposing such restrictions **or suspensions; and**
 - (c) **the number of dialogues with media service providers pursuant to paragraph 4.**
6. With a view to facilitating the consistent and effective implementation of this Article, the Commission **shall** issue guidelines to **facilitate** the **effective implementation** of the **functionality referred to** in paragraph 1, **including the modalities of involvement of civil society organisations and, where relevant, national regulatory authorities or bodies in the review of the declarations under paragraph 1.**

Article 18

Structured dialogue

1. The Board shall regularly organise a structured dialogue between providers of very large online platforms, representatives of media service providers and representatives of civil society to discuss experience and best practices in the application of Article 17 [...], to foster access to diverse offers of independent media on very large online platforms and to monitor adherence to self-regulatory initiatives aimed at protecting society from harmful content, including disinformation and foreign information manipulation and interference.
2. The Board shall report on the results of the dialogue to the Commission.

Article 19

Right of customisation of [...] media offer

1. Users shall have a right to easily change the default settings of any device or user interface controlling or managing access to and use of [...] media services **providing programmes** in order to customise the [...] media offer according to their interests or preferences in compliance with **Union** law. This provision shall not affect national measures implementing Article 7a of Directive 2010/13/EU.
2. When placing the devices and user interfaces referred to in paragraph 1 on the market, manufacturers, [...] developers **and importers** shall ensure that **such devices and user interfaces** include a functionality enabling users to freely and easily change the default settings controlling or managing access to and use of the [...] media services offered.

3. **Member States shall take appropriate measures to ensure that manufacturers, developers and importers comply with paragraph 2.**
4. The Board shall foster cooperation between media service providers, standardisation bodies or any other relevant stakeholders in order to facilitate the development of **harmonised** standards related to [...] design of devices or user interfaces controlling or managing access to and use of [...] media services **providing programmes or those devices related to carrying the digital signals.** *(former art 15(4))*

Section 5

Requirements for well-functioning media market measures and procedures

Article 20

National measures affecting [...] media service providers

1. [...] Legislative, regulatory or administrative **measures** taken by a Member State that **are** liable to affect **media pluralism or editorial independence** of media service providers in the internal market shall be duly justified and proportionate. Such measures shall be reasoned, transparent, objective and non-discriminatory.
2. Any national procedure used for the purposes of [...] the adoption of [...] **an** administrative measure as referred to in paragraph 1 shall be [...] set out in advance **and carried out without undue delay**.
3. [...] Any media service provider subject to **a** regulatory or administrative measure referred to in paragraph 1 that concerns it individually and directly shall have the right to appeal against that measure to an appellate body. That body, **which may be a court**, shall be independent of the parties involved and of any external intervention or political pressure liable to jeopardise its independent assessment of matters coming before it. It shall have the appropriate expertise to enable it to carry out its functions effectively.

4. [...] If a [...] regulatory or administrative measure **referred to in paragraph 1** is likely to **significantly and adversely** affect the **operation of media service providers** in the internal market, **the Board may [...] draw up an opinion on the measure**. Following **that** opinion [...], and without prejudice to its powers under the Treaties, the Commission may issue its own opinion on the matter. [...] The Board and [...] the Commission shall **make their opinions** publicly available.
5. [...] **For the purposes of drawing up an opinion under paragraph 4**, the Board, and where applicable, the Commission [...], **may request** relevant information **from a national authority or body that adopts a regulatory or administrative measure referred to in paragraph 1 that concerns**, individually and directly, a media service provider. **The national authority or body concerned shall provide that information** without undue delay and by electronic means.

Article 21

Assessment of media market concentrations

1. Member States shall provide, in **national law**, substantive and procedural rules which **allow for** an assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence. These rules shall:
 - (a) be transparent, objective, proportionate and non-discriminatory;
 - (b) require the parties **involved in the** concentration [...] to notify **such** concentration in advance to **the** relevant national authorities or bodies **or provide such authorities or bodies with appropriate powers to obtain information from those parties necessary to assess the concentration**;
 - (c) designate the national regulatory **authorities or bodies** as responsible for the assessment [...] or ensure **their** involvement [...] in such assessment;
 - (d) set out in advance objective, non-discriminatory and proportionate criteria for notifying **such** media market concentrations [...] and for assessing the impact [...] on media pluralism and editorial independence.

The assessment referred to in [...] this paragraph shall [...] be distinct from **Union and national** competition law assessments, including those provided for under merger control rules. It shall be without prejudice to Article 21(4) of Regulation (EC) No 139/2004, where applicable.

2. In the assessment referred to in paragraph 1, the following elements shall be taken into account:
 - (a) the **expected** impact of the **media market** concentration on media pluralism, including its effects on the formation of public opinion and on the diversity of media **services and media offer** on the market, taking into account the online environment and the parties' interests, links or activities in other media or non-media businesses;
 - (b) the safeguards for editorial independence, including the [...] measures **taken** by media service providers [...] with a view to guaranteeing the independence of [...] editorial decisions;
 - (c) whether, in the absence of the **media market** concentration, the [...] **entities concerned** would remain economically sustainable, and whether there are any possible alternatives to ensure **their** economic sustainability.
3. The Commission, assisted by the Board, may issue guidelines on [...] **the elements referred to in paragraph 2.**
4. [...] Where a **media market concentration is likely to** affect the functioning of the internal market **for media services**, the national regulatory authority or body shall consult the Board in advance on **its draft assessment or its opinion, as relevant.**
5. Within **the timelines to be established by the Board in its rules of procedure**, the Board **may** draw up an opinion on the draft [...] **assessment or draft opinion of the consulting national regulatory authority or body**, taking account of the elements referred to in paragraph 2 and transmit that opinion to **such authority or body** and the Commission.
6. The national regulatory authority or body referred to in paragraph 4 shall take utmost account of the opinion referred to in paragraph 5. [...]

Article 22

Opinions on media market concentrations

1. In the absence of an assessment or a consultation pursuant to Article 21, the Board, upon request of the Commission, shall draw up an opinion on the impact of a media market concentration on media pluralism and editorial independence, where a media market concentration is likely to affect the functioning of the internal market for media services. The Board shall base its opinion on the elements set out in Article 21(2). The Board may bring **such** concentrations to the attention of the Commission.
2. Following the opinion of the Board, and without prejudice to its powers under the Treaties, the Commission may issue its own opinion on the matter.
3. [...] The Board and [...] the Commission shall **make their** opinions publicly available.

Section 6

Transparent and fair allocation of economic resources

Article 23

Audience measurement

1. **Providers of** audience measurement systems and methodologies shall **ensure that their systems and methodologies** comply with **the** principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination and verifiability.
2. Without prejudice to the protection of undertakings' business secrets, providers of [...] audience measurement systems **developed outside relevant self-regulatory organisations or whose methodologies do not comply with standards and best practices agreed by the industry** shall provide, without undue delay and free of costs, to media service providers and advertisers, as well as to third parties authorised by media service providers and advertisers, accurate, detailed, comprehensive, intelligible and up-to-date information on the methodology used by their audience measurement systems. This provision shall not affect the Union's data protection and privacy rules.
3. National regulatory authorities or bodies shall encourage the drawing up of codes of conduct by providers of audience measurement systems, together with media service providers, **providers of online platforms**, their **respective** representative organisations **or** any other interested parties, **or encourage adherence with existing codes of conduct by these entities. Such codes of conduct shall be** intended to contribute to compliance with the principles referred to in paragraph 1, including by promoting independent and transparent audits.

4. The Commission, assisted by the Board, may issue guidelines on the practical application of paragraphs 1, 2 and 3 [...], **considering, where appropriate, the codes of conduct referred to in paragraph 3.**
5. The Board shall foster the exchange of best practices related to the deployment of audience measurement systems through a regular dialogue between representatives of the national regulatory authorities or bodies, representatives of providers of audience measurement systems, **media service providers, providers of online platforms** and other interested parties.

Article 24

Allocation of **public funds** for state advertising **and purchases**

1. Public funds or any other consideration or advantage **made available, directly or indirectly,** by public authorities **or entities** to media service providers for the purposes of **state** advertising [...] shall be awarded according to transparent, objective, proportionate and non-discriminatory criteria and through open, proportionate and non-discriminatory procedures. **The award of supply or service contracts by public authorities or entities to media service providers shall be based on transparent, open, proportionate and non-discriminatory procedures.** This Article shall not affect **the awarding of public contracts and concession contracts under [...] Union public procurement rules or the application of Union state aid rules.**
2. Public authorities **or entities** [...] shall make publicly available accurate, comprehensive, intelligible, detailed and yearly information about their **state** advertising expenditure [...], which shall include at least the following details:
 - (a) the legal names of media service providers from which advertising services were purchased;
 - (b) the total annual amount spent as well as the amounts spent per media service provider.

Member States may exempt subnational governments of territorial entities of less than 100,000 inhabitants, and entities controlled, directly or indirectly, by such subnational governments, from the obligations under this paragraph.

3. National regulatory authorities or bodies **or other competent independent authorities or bodies in the Member States** shall monitor the allocation of state advertising in media markets **and**, in order to assess the **completeness** of the information on state advertising made available pursuant to paragraph 2, [...] may request from **those public authorities or entities that fall under** paragraph 2 further information, including information on the application of criteria referred to in paragraph 1. **In case the monitoring and assessment are carried out by other competent independent authorities or bodies, they shall keep the national regulatory authorities or bodies [...] duly informed.**
4. [...]

Chapter IV

Final Provisions

Article 25

Monitoring exercise

1. The Commission shall ensure an independent monitoring of the internal market for media services, including risks to and progress in its functioning [...]. The findings of the monitoring exercise shall be subject to consultation with the Board. **They shall be presented and discussed with the contact committee established by Article 29 of Directive 2010/13/EU.**
2. The Commission shall define key performance indicators, **methodological safeguards to protect the objectivity, and selection criteria of the researchers** for the monitoring referred in paragraph 1, in consultation with the Board.
3. The monitoring exercise shall [...] include:
 - (a) a detailed analysis of [...] media markets of all Member States, including as regards the level of media concentration and risks of foreign information manipulation and interference;
 - (b) an overview and forward-looking assessment of the **functioning** of the internal market for media services as a whole, **including as regards the impact of online platforms**;
 - (c) an overview of measures taken by media service providers with a view to guaranteeing the independence of [...] editorial decisions **and an analysis of the expected reduction in risks for the functioning of the internal market for media services.**
4. The monitoring shall be carried out annually, and **the results thereof, including the methodology and data, shall be made** publicly available.

Article 26

Evaluation and reporting

1. By [four years after the entry into force of this Regulation] [...], and every four years thereafter, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee.
2. For the purposes of paragraph 1 and upon its request, Member States and the Board shall send relevant information to the Commission.
3. In carrying out the evaluations referred to in paragraph 1, the Commission shall take into account:
 - (a) the positions and findings of the European Parliament, the Council and other relevant bodies or sources;
 - (b) outcomes of the relevant discussions carried out in relevant fora;
 - (c) relevant documents issued by the Board;
 - (d) findings of the monitoring exercise referred to in Article 25.

Article 27

Amendments to Directive 2010/13/EU

1. Article 30b of Directive 2010/13/EU is deleted.
2. References to Article 30b of Directive 2010/13/EU shall be read as references to Article 12 of this Regulation.
3. References in Union law to the European Regulators Group for Audiovisual Media Services (ERGA) shall be read as references to the European Board for Media Services (the Board).

Article 28

Entry into force and application

[...] This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

[...] This Regulation shall apply from [**18** months after the entry into force]. However, Articles 7 to 12 and 27 shall apply from [**12** months after the entry into force] and Article 19[...] shall apply from [48 months after the entry into force].

[...] This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President
