



Council of the European Union
General Secretariat

Brussels, 28 February 2023

WK 2881/2023 INIT

LIMITE

AUDIO
CODEC
DIGIT
MI
DISINFO
FREMP

COMPET
EDPS
DATAPROTECT
JAI
SERVICES
POLGEN

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

CONTRIBUTION

From:	General Secretariat of the Council
To:	Audiovisual and Media Working Party (Attachés) Audiovisual and Media Working Party
N° Cion doc.:	COM (2022) 457 final
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) Interinstitutional File 2022/0277 (COD) - COM (2022) 457 final - EMFA Regulation – Articles 19, 20, 21 and 22, and Recitals 29 and 37-44. - Comments from AT, DE, FI, FR, HU, NL, PT delegations.

Delegations will find attached comments on the subject mentioned above (Interinstitutional File 2022/0277 (COD) - COM (2022) 457 final) from the following delegations: Austria, Germany, Finland, France, Hungary, the Netherlands, Portugal.

FINLAND

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)

Interinstitutional File 2022/0277 (COD) - COM (2022) 457 final

Articles 19-22

- Table for comments -

Commission proposal Interinstitutional File 2022/0277 (COD) COM (2022) 457 final	Comments and drafting suggestions from delegations	
Section 4 Provision of media services in a digital environment		
<i>Article 19</i> Right of customisation of audiovisual 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 audiovisual media services in order to customise the audiovisual media offer according to their interests or preferences in compliance with the law. This provision shall not af-	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 audiovisual media services in order to customise the audiovisual media offer according to their interests or preferences in compliance with the law. This provision shall not	It is unclear whether or not the article applies to devices since the article (and recital 37) speak only about “default settings” which to our knowledge is a term used mainly in connection with user interfaces. We think that changing of default settings of devices, such as remote controls, is

fect national measures implementing Article 7a of Directive 2010/13/EU.	affect national measures implementing Article 7a of Directive 2010/13/EU.	impossible to execute in practice. Therefore, we believe this article would practically prohibit quick access control functions. Therefore, we would suggest limiting the scope of the article to user interfaces.
2. When placing the devices and user interfaces referred to in paragraph 1 on the market, manufacturers and developers shall ensure that they include a functionality enabling users to freely and easily change the default settings controlling or managing access to and use of the audiovisual media services offered.		
Section 5 Requirements for well-functioning media market measures and procedures		
<i>Article 20</i> National measures affecting the operation of media service providers		
1. Any legislative, regulatory or administrative measure taken by a Member State that is liable to affect the operation 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 preparation or the adoption of a regulatory or administrative measure as referred to in paragraph 1 shall be subject to clear timeframes set out in advance.	Any national procedure used for the purposes of the preparation or the adoption of a regulatory or administrative measure as referred to in paragraph 1 shall be subject to clear timeframes set out in advance shall be taken without undue delay.	<p>We suggest deleting paragraph 2 or at least replacing the idea of “timeframes set out in advance” with something more like “without undue delay”.</p> <p>When preparing or adopting a regulatory or administrative measure it might be impossible to set out a clear timeframe in advance. Regulatory measures are, for example, subject to political decision making which can affect the timeframe of the measures.</p>
3. Without prejudice and in addition to its right to effective judicial protection, any media service provider subject to an administrative or regulatory 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 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. The Board, upon request of the Commission, shall draw up an opinion where a national legislative, regulatory or administrative measure is likely to affect the functioning of the internal market for media services. 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. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.		
5. Where a national authority or body adopts a measure that affects individually and directly a media service provider and is likely to affect the functioning of the internal market for media services, it shall communicate, at the request of the Board, and where applicable, of the Commission, without undue delay and by electronic means, any relevant information, including the summary of the facts, its measure, the grounds on which the national authority or body has based its measure, and, where applicable, the views of other authorities concerned.		

<p><i>Article 21</i></p> <p>Assessment of media market concentrations</p>		<p>We think it would be important to stress and clarify, for example in the recitals, that the intention of the opinions is not to slow down, obstruct or prevent corporate acquisitions and mergers in the national media markets and that the opinions are only commentary.</p>
<p>1. Member States shall provide, in their national legal systems, substantive and procedural rules which ensure an assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence.</p> <p>These rules shall:</p> <p>(a) be transparent, objective, proportionate and non-discriminatory;</p> <p>(b) require the parties to a media market concentration that could have a significant impact on media pluralism and editorial independence to notify that concentration in advance to the relevant national authorities or bodies;</p> <p>(c) designate the national regulatory authority or body as responsible for the assessment of the impact of a notifiable concentration on media pluralism and editorial independence or ensure the</p>	<p>1. Member States shall provide, in their national legal systems, substantive and procedural rules which ensure an assessment of media market concentrations significantly impacting media pluralism in the internal market that could have a significant impact on media pluralism and editorial independence</p>	<p>In the smaller media markets, mergers occur frequently, but maybe only few have an impact on the functioning of the internal market for media services. Therefore, the internal market perspective and cross-border nature of the concentrations should be underlined in the text to avoid misunderstanding where national mergers that have no real impact on the functioning of the internal market are being assessed by opinions.</p>

<p>involvement of the national regulatory authority or body in such assessment;</p> <p>(d) set out in advance objective, non-discriminatory and proportionate criteria for notifying media market concentrations that could have a significant impact on media pluralism and editorial independence and for assessing the impact of media market concentrations on media pluralism and editorial independence.</p> <p>The assessment referred to in this paragraph shall be distinct from the 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.</p>		
<p>2. In the assessment referred to in paragraph 1, the following elements shall be taken into account:</p> <p>(a) the impact of the concentration on media pluralism, including its effects on the formation of public opinion and on the diversity of media players on the market, taking into account the online environment and the parties' interests, links or activities</p>	<p>2. In the assessments referred to in paragraph 1, the following elements shall may be taken into account:</p>	<p>We support increasing flexibility regarding the assessment of media market concentrations</p>

<p>in other media or non-media businesses;</p> <p>(b) the safeguards for editorial independence, including the impact of the concentration on the functioning of the editorial teams and the existence of measures by media service providers taken with a view to guaranteeing the independence of individual editorial decisions;</p> <p>(c) whether, in the absence of the concentration, the acquiring and acquired entity would remain economically sustainable, and whether there are any possible alternatives to ensure its economic sustainability.</p>		
<p>3. The Commission, assisted by the Board, may issue guidelines on the factors to be taken into account when applying the criteria for assessing the impact of media market concentrations on media pluralism and editorial independence by the national regulatory authorities or bodies.</p>		
<p>4. The national regulatory authority or body shall consult the Board in advance on any opinion or decision it aims to adopt assessing the impact on media plu-</p>	<p>4. The national regulatory authority or body shall consult the Board in advance on any opinion or decision it aims to adopt assessing the impact on media</p>	<p>The suggested amendment would improve the aim of the rules laid down in the article.</p>

<p>pluralism and editorial independence of a notifiable media market concentration where such concentrations may affect the functioning of the internal market.</p>	<p>pluralism and editorial independence of a notifiable media market concentration where such concentrations may likely affect the functioning of the internal market.</p>	
<p>5. Within 14 calendar days from the receipt of the consultation referred to in paragraph 4, the Board shall draw up an opinion on the draft national opinion or decision referred to it, taking account of the elements referred to in paragraph 2 and transmit that opinion to the consulting authority and the Commission.</p>		
<p>6. The national regulatory authority or body referred to in paragraph 4 shall take utmost account of the opinion referred to in paragraph 5. Where that authority does not follow the opinion, fully or partially, it shall provide the Board and the Commission with a reasoned justification explaining its position within 30 calendar days from the receipt of that opinion. Without prejudice to its powers under the Treaties, the Commission may issue its own opinion on the matter.</p>		
<p><i>Article 22</i></p> <p>Opinions on media market concentrations</p>		

<p>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 media market concentrations likely to affect the functioning of the internal market for media services to the attention of the Commission.</p>		
<p>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.</p>		
<p>3. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.</p>		

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)

Interinstitutional File 2022/0277 (COD) - COM (2022) 457 final

German amendments to Art. 20-22 EMFA

Original text	Proposed amendments	Explanation
Section 5 Requirements for well-functioning media market measures and procedures	Section 5 Requirements for well-functioning media market measures and procedures	
<i>Article 20</i> National measures affecting the operation of media service providers	<i>Article 20</i> National measures affecting the operation of media service providers	
1. Any legislative, regulatory or administrative measure taken by a Member State that is liable to affect the operation of media service providers in the internal market shall be duly justified and proportionate. Such measures shall be reasoned, transparent, objective and non-discriminatory.	1. Any legislative, regulatory or administrative measure taken by a Member State that is liable to have an impact on affect the operation of media service providers with a Union dimension in the internal market shall be duly justified and proportionate. Such measures shall be	The element/threshold of the possibility of impairment of the operations of media providers in the internal market ("..liable to affect...") is in view of the far-reaching legal consequences attached to it (validity of a standard of Union law, compliance with which is subject to the review by the COM as "guardian of the treaties") too vague and needs

	<p>reasoned, transparent, objective and non-discriminatory.</p>	<p>to be specified. ERGA already stated this point in its position from November 2022. For example, one could think of an element based on the criterion of "Community dimension" (or nowadays rather "Union dimension") within the meaning of Article 1 (2) of Regulation (EC) 139/2004 (regardless of the different types of object under consideration).</p>
<p>2. Any national procedure used for the purposes of the preparation or the adoption of a regulatory or administrative measure as referred to in paragraph 1 shall be subject to clear timeframes set out in advance.</p>	<p>2. — Any national procedure used for the purposes of the preparation or the adoption of a regulatory or administrative measure as referred to in paragraph 1 shall be subject to clear timeframes set out in advance.</p>	<p>The intention of the provision is understandable, but it does not seem to apply indefinitely, especially in the area of preparation or issuance of a regulatory measure or an administrative act within the meaning of paragraph 1. A time limit that has already been established in advance cannot always be demanded here without further ado. In the case of ex officio proceedings, a general preclusion in the event of official inactivity within a compulsory predefined time limit is generally alien to German intervention</p>

		<p>administration/danger defense law (beyond general trust protection considerations).</p> <p>This would be different in the case of proceedings upon application.</p> <p>If the abstract legal requirement that the authority must, for example, set a "reasonable period of time" in the course of the hearing required under general procedural law or that the authority must submit an application "without delay" were sufficient, this would be only partially conducive to the actual objective of the standard.</p>
<p>3. Without prejudice and in addition to its right to effective judicial protection, any media service provider subject to an administrative or regulatory 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 shall be</p>	<p>3. — Without prejudice and in addition to its right to effective judicial protection, any media service provider subject to an administrative or regulatory 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 shall be independent of the parties involved and of any</p>	<p>Member States are to be required to create, in addition to and independently of the judicial process, a further independent, expert national appeal body with regard to national media supervision measures within the meaning of Article 20 Para. 1.</p>

<p>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.</p>	<p>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.</p>	<p>This is an improper interference with existing functioning national administrative and judicial channels and their structures.</p> <p>German law does not (yet) have an intermediary complaints body. Unless preliminary proceedings before the authorities have already been ruled out and the direct route to court has thus been opened up, the media supervisory authority itself (as a "party involved") is the appeal authority against measures taken by the media supervisory authority. There are no other superordinate independent bodies beyond the courts; the legal supervisory authority or the highest state authority as a potential appeal authority is not independent in the required sense.</p> <p>COM itself explained in the AVMWP that – contrary to the wording of the proposal – specialized courts (such as administrative courts in particular) would also be sufficient and that new bodies would not necessarily</p>
---	---	---

		<p>have to be set up in addition to the jurisdiction.</p> <p>Essential is therefore the professional ability (skill) of the respective appeal body for effective review. If the provision is not completely deleted but maintained, we therefore at least propose that this be clarified in the wording</p> <p>The compromise proposal takes this up.</p>
<p>4. The Board, upon request of the Commission, shall draw up an opinion where a national legislative, regulatory or administrative measure is likely to affect the functioning of the internal market for media services. 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. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.</p>	<p>4. The Board, upon request of the Commission, shall draw up an opinion where a national legislative, regulatory or administrative measure is likely to affect the functioning of the internal market for media services. 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. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.</p>	<p>It remains unclear how legislative and administrative measures are distinguished from regulatory measures. The suitability of the board, especially in its composition of representatives of national executive bodies which are themselves subject to national regulation, appears questionable in order to evaluate the corresponding national (legislative) measures.</p>

<p>5. Where a national authority or body adopts a measure that affects individually and directly a media service provider and is likely to affect the functioning of the internal market for media services, it shall communicate, at the request of the Board, and where applicable, of the Commission, without undue delay and by electronic means, any relevant information, including the summary of the facts, its measure, the grounds on which the national authority or body has based its measure, and, where applicable, the views of other authorities concerned.</p>	<p>2. Where a national authority or body adopts a measure that affects individually and directly a media service provider and is likely to affect the functioning of the internal market for media services, it shall communicate, at the request of the Board, and where applicable, of the Commission, without undue delay and by electronic means, any relevant information, including the summary of the facts, its measure, the grounds on which the national authority or body has based its measure, and, where applicable, the views of other authorities concerned.</p>	<p>Concerning the element "is likely to affect the functioning of the internal market" see above.</p> <p>The Commission should remain in its role as guardian of the Treaties and consult the Board accordingly on technical or other professional issues.</p>
<p><i>Article 21</i></p> <p>Assessment of media market concentrations</p>	<p><i>Article 21</i></p> <p>Assessment of media market concentrations</p>	<p>Due to the limited regulatory mandate to the EU concerning media pluralism, provisions concerning media market concentration should first of all and at least remain principle based, especially when addressing Member States and their legislation concerning mergers without any relevance or a certain significance for the</p>

	<p>internal market. In these cases of a media concentration, especially on the mere regional or local level, it should remain the very member states' right and duty to protect and promote media pluralism. Especially Art. 21 paras. (2)-(6) are thus unnecessarily detailed. In contrast, EMFA should rather focus on serious cases of cross border-mergers with some relevance to the internal market (e.g. comparable with the threshold in Art. 1 Para. 2 Regulation (EC) No 139/2004) and thus some significance for media pluralism on European level. Such a threshold has also already been called for by ERGA.</p> <p>For us, it is central that the examination under merger control law and the concentration control - where such exists - coexist as separate examination regimes in the media sector.</p> <p>In order to emphasise this parallelism even more clearly in the EMFA than is already the</p>
--	---

	<p>case in the regulation of Art. 21 para. 1, subpara. 2 EMFA, and to make it clear beyond doubt that national competition law including national merger control remains unaffected by the regulations of the EMFA, Art. 1 para. 2 EMFA ("This regulation shall not affect rules laid down by: [...]") could also be supplemented by a reference to the European and national competition rules including merger control.</p> <p>It must also be clearly regulated at this point that neither EU antitrust law nor other rules of competition law within EMFA may overrule media market concentration assessments and measures taken on national level focussing on protecting and promoting media pluralism on the national (and even more so on the regional or local) level. National media concentration measures in line with basic principles that serve to ensure diversity should not be</p>
--	--

		classified as an obstacle to competition at the European level.
1. Member States shall provide, in their national legal systems, substantive and procedural rules which ensure an assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence. These rules shall:	1. Without prejudice to the Member States' power to adopt legislation regarding the assessment of the impact of media market concentrations on media pluralism at national, regional and local level and the necessary measures to protect media freedom and pluralism at these levels, Member States shall provide, in their national legal systems, substantive and procedural rules which ensure an assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence that mergers in the media market are assessed within a procedure being independent with a view to any actual or foreseeable negative effects on media freedom and	<p>With a view to the limited regulatory mandate to the EU (which requires a market reference), any EU regulation shall be limited to mergers with an important cross-border impact.</p> <p>Germany is examining the inclusion of printed press products into the media concentration instrument. Germany is especially assessing accordance with constitutional law in this respect. Therefore, Germany reserves to propose corresponding drafting suggestions in the course of the ongoing deliberations.</p> <p>It needs to be clarified, that the regulation has no impact on national mediaconcentration law focussing on media pluaralism as well as national merger control procedures under competition law.</p> <p>Specific national regulations and measures to ensure diversity of opinion and media</p>

	<p>pluralism in the internal market. These rules shall:</p>	<p>diversity, i.e. the media concentration law in the narrower sense, should remain unaffected and fall under the legislative sovereignty of Member States.</p> <p>The element/threshold of the possibility of "significant" impacts on media pluralism ("... which could have a significant impact on media pluralism and editorial independence...") is - like the element of the possibility of impairment in Art. 20 para. 1 - too vague. Instead, or for clarification, the characteristic and the criteria of the "Community dimension" (or "Union dimension") of the merger within the meaning of Art. 1 Paras. 1 and 2 of Regulation (EC) No 139/2004 could be an alternative link. This would also ensure that the standard would only be applied (with priority) if the case is relevant to the internal market.</p> <p>Possibly, this restriction/reference could already be made in connection with the</p>
--	--	---

		definition of "media market concentration" in Article 2 para. 13, which is based on Regulation (EC) No 139/2004 anyway.
(a) be transparent, objective, proportionate and non-discriminatory;	(a) be transparent, objective, proportionate and non-discriminatory;	
(b) require the parties to a media market concentration that could have a significant impact on media pluralism and editorial independence to notify that concentration in advance to the relevant national authorities or bodies;	(b) ensure through effective investigative provisions such as notification obligations for parties to a media market concentration or appropriate investigative powers for the relevant national authorities or bodies require the parties to a media market concentration that could have a significant impact on media pluralism and editorial independence to notify that concentration in advance to that the relevant national authorities or bodies get knowledge in a timely manner of a media market concentration with a potential Union dimension;	The element/threshold of the possibility of "significant" impacts on media pluralism ("... which could have a significant impact on media pluralism and editorial independence...") is – like the element of the possibility of impairment in Art. 20 para. 1 – too vague. This would lead to some uncertainty regarding the notification requirements for the parties involved. Instead, or for clarification, the characteristic and the criteria of the "Community dimension " (or "Union dimension") of the merger within the meaning of Art. 1 Paras. 1 and 2 of Regulation (EC) No 139/2004 could be an alternative link. This would also ensure that the standard would

	<p>only be applied (with priority) if the case is relevant to the internal market.</p> <p>Possibly, this restriction/reference could already be made in connection with the definition of "media market concentration" in Article 2 para. 13, which is based on Regulation (EC) No 139/2004 anyway.</p> <p>Editorial freedom is not to be seen as an end in itself but as part of safeguarding media pluralism, and in this respect is also subject to the respective constitutional requirements for the overall system.</p> <p>Generally, according to our understanding of the purpose of the provision, it is not important at this point that a prior notification by companies must be explicitly stipulated. But it is crucial that the competent authorities and bodies (in the sense of point (c)) become aware of a potentially critical merger.</p> <p>However, how this is made possible – for</p>
--	--

		example through such a notification obligation – should be left to the specifics in the law of the member states.
(c) designate the national regulatory authority or body as responsible for the assessment of the impact of a notifiable concentration on media pluralism and editorial independence or ensure the involvement of the national regulatory authority or body in such assessment;	(c) designate the national regulatory authority or body as responsible for the assessment of the impact of a notifiable concentration on media pluralism and editorial independence or ensure the involvement of the national regulatory authority or body in such assessment;	Editorial freedom is not to be seen as an end in itself but as part of safeguarding media pluralism, and in this respect is also subject to the respective constitutional requirements for the overall system.
(d) set out in advance objective, non-discriminatory and proportionate criteria for notifying media market concentrations that could have a significant impact on media pluralism and editorial independence and for assessing the impact of media market concentrations on media pluralism and editorial independence.	(d) set out in advance objective, non-discriminatory and proportionate criteria for notifying detecting media market concentrations that could have a significant impact on media pluralism and editorial independence with a Union dimension and for assessing the impact of media market concentrations on media pluralism and editorial independence .	<p>Deletion of the reference to the notification as a consequential change (see point (b)). The requirements in general ("objective, non-discriminatory and proportionate" criteria - as well as "transparent") are redundant because they are already covered by point (a).</p> <p>The limitation of the examination of editorial freedom also follows the idea that this is not an end in itself, but part of the safeguarding of media pluralism.</p>

		<p>The freedom to form opinions should be emphasized.</p> <p>[The last half sentence has been moved here from Para 2 point (a).]</p>
<p>The assessment referred to in this paragraph shall be distinct from the 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.</p>	<p>The assessments and measures referred to in this paragraph shall be distinct from the competition law assessments including those provided for under European and national merger control rules. It shall be without prejudice to Article 21(4) of Regulation (EC) No 139/2004, where applicable.</p> <p>Before a decision under Regulation (EC) No 139/2004 is issued in proceedings relating to a media service, opinions by the Board and, where applicable, by the Commission issued under paragraphs 3 to 6 must be taken into account. The relevant national regulatory authorities or bodies under paragraph 1 subparagraph 1 section (c) must be consulted in advance and the decision must be taken in agreement.</p>	<p>The relationship of the evaluations declared as different in this respect remains unclear so far. It must be recognised and clarified that media concentration law reviews and measures - where they exist - stand alongside market-specific procedures of merger control. With the adjustment it could be made clear, that neither European nor national merger control law is excluded.</p> <p>In merger control proceedings under the EU Merger Control Regulation (unlike the German GWB under Section 40 Para. 4 Sentence 3), Member State measures to ensure media diversity that run counter to the Regulation are permitted under Art. 21 Para. 4, but an examination of the effects of mergers on the</p>

		media pluralism does not exist in the concrete case-by-case examination. The amendment is proposed in order to give the reports and the diversity of media more weight in the context of competition law and to link them to concrete legal consequences.
2. In the assessment referred to in paragraph 1, the following elements shall be taken into account:	2. In the assessment referred to in paragraph 1, the following elements shall be taken into account:	Paragraph 2 should be deleted. In terms of its level of detail, the specification goes beyond the level of a principle-based regulation, the specification of which should be left to the Member States (see Art. 21 Para. 1 and also Art. 1 Para. 3).
(a) the impact of the concentration on media pluralism, including its effects on the formation of public opinion and on the diversity of media players on the market, taking into account the online environment and the parties' interests, links or activities in other media or non-media businesses;	(a) the impact of the concentration on media pluralism, including its effects on the formation of public opinion and on the diversity of media players on the market, taking into account the online environment and the parties' interests, links or activities in other media or non-media businesses;	

<p>(b) the safeguards for editorial independence, including the impact of the concentration on the functioning of the editorial teams and the existence of measures by media service providers taken with a view to guaranteeing the independence of individual editorial decisions;</p>	<p>(b) the safeguards for editorial independence, including the impact of the concentration on the functioning of the editorial teams and the existence of measures by media service providers taken with a view to guaranteeing the independence of individual editorial decisions;</p>	<p>See above.</p> <p>Also Point (b) again represents a foreign body in media concentration law (see above on paragraph 1 sentence 1). (Individual) editorial freedom and independence is not an end in itself, but part of the overall consideration for pluralism.</p>
<p>(c) whether, in the absence of the concentration, the acquiring and acquired entity would remain economically sustainable, and whether there are any possible alternatives to ensure its economic sustainability.</p>	<p>(c) whether, in the absence of the concentration, the acquiring and acquired entity would remain economically sustainable, and whether there are any possible alternatives to ensure its economic sustainability.</p>	<p>See above.</p> <p>In addition this is not a question that is at the forefront of the evaluation of the merger from the point of view of safeguarding diversity. Rather, the focus must be on journalistic competition and the question of whether or how this can be protected or supported by measures to safeguard media diversity.</p> <p>From the point of view of ensuring diversity, every merger is not necessarily justified if the economic viability of the company concerned would be lost without the merger, which is in this respect without alternative; it would,</p>

		<p>however, be justified if diversity in the market would otherwise suffer (even further). The question would be what diversity otherwise exists in the market.</p> <p>Systematically, the issue here must not be the question of economic viability, but rather the question of the measures imposed on the company in the event of a merger.</p>
<p>3. The Commission, assisted by the Board, may issue guidelines on the factors to be taken into account when applying the criteria for assessing the impact of media market concentrations on media pluralism and editorial independence by the national regulatory authorities or bodies.</p>	<p>3. The Commission, assisted by the Board, may issue guidelines on the factors to be taken into account when applying the criteria for assessing the impact of media market concentrations on media pluralism and editorial independence by the national regulatory authorities or bodies.</p>	<p>Paragraph 3 should also be deleted in its current form. The COM should not be given the power to enact more detailed norm-defining guidelines within the legal framework for media pluralism, which is to be designed and to be executed in a way that is fully independent and remote from the state. The current proposal would run counter to the allocation of competences and the provision's systematics, which provide for the Member States to design and specify the rules (Art. 1 Para. 3).</p>

	<p><i>Alternatively (compromise versus full deletion):</i></p> <p>3.2. The Commission, assisted by the The Board, may issue guidelines opinions on the factors to be taken into account that might be relevant when applying the criteria for assessing the impact of media market concentrations with a potential Union dimension on media pluralism and editorial independence by the national regulatory authorities or bodies.</p>	<p>At best, it could alternatively be recognized that the Board may issue opinions on suitable elements/factors that might be relevant when considering media market concentrations in relation to the effects on pluralism and diversity of opinion in the internal market.</p> <p>It should be clear that such more detailed indications do not exhaustively cover the assessment of media concentrations in this respect, in order to allow an assessment on the basis of further necessary criteria by the national authorities.</p> <p>Clear reference to the internal market should be made.</p>
4. The national regulatory authority or body shall consult the Board in advance on any opinion or decision it aims to adopt assessing the impact on media pluralism and editorial independence of a notifiable media market concentration where such	<p>4. 2./3. The national regulatory authority or body shall consult-inform the Board in advance on any opinion or decision it aims to adopt assessing the impact on media pluralism and editorial independence of a notifiable media market concentration where such</p>	<p>In view of the regulatory power, only those mergers/concentrations that are relevant for the internal market should be covered by the binding requirements of Article 21. In all other respects, requirements should not go beyond recommendations.</p>

<p>concentrations may affect the functioning of the internal market.</p>	<p>concentrations may affect the functioning of the internal market.</p> <p>The national regulatory authority or body may, in advance of a decision or action, ask the Board for an opinion on the impact of a, in its view, relevant media market concentration on media pluralism and the functioning of the internal market. This applies accordingly in cases of paragraph 1, subparagraph 2.</p>	<p>There should be no obligation on the part of the national regulatory authority or body to consult the Board – on the one hand, to preserve the competence of the national authority and, on the other hand, to avoid delaying procedures at national level. It should rather be a right of the authority to call the Board and ask for support (to support also smaller authorities): The national regulatory authority or body may, in advance of a decision or measure, ask the Board for an opinion on the impact of a media market concentration on media pluralism and the functioning of the internal market.</p> <p>In addition, it should only provide an indication of relevant cases to the Board so that it is informed. The Board should also have the right to take a position in all cases in which it recognizes a relevance to the internal market.</p>
--	--	--

		<p>The procedure should also apply mutatis mutandis in cases in which the interests of media pluralism and the protection of diversity are affected in a merger control procedure.</p>
<p>5. Within 14 calendar days from the receipt of the consultation referred to in paragraph 4, the Board shall draw up an opinion on the draft national opinion or decision referred to it, taking account of the elements referred to in paragraph 2 and transmit that opinion to the consulting authority and the Commission.</p>	<p>3./4. When the Board is asked for an opinion Within 14 calendar days from the receipt of the consultation referred to in paragraph 4, the Board shall draw up an opinion without delay on the draft national opinion or decision referred to it, taking into account of the elements referred to in paragraph 2 , where applicable, the implications of proceedings under Regulation (EC) No 139/2004 referred to under paragraph 1 subparagraph 2 and transmit that opinion to the consulting authority and the Commission.</p>	<p>The time limit seems rigid and may be too short for complex cases.</p> <p>When the panel is called upon, it shall deliver an opinion without delay and shall communicate it to the consulting authority and to the Commission.</p> <p>The procedure should also apply mutatis mutandis in cases in which the interests of media pluralism and the protection of diversity are affected in a merger control procedure (see for exemple § 40 par. 4 of the german GWB).</p>
<p>6. The national regulatory authority or body referred to in paragraph 4 shall take utmost account of the opinion referred to in paragraph 5. Where that authority does not</p>	<p>4./5. The national regulatory authority or body referred to in paragraph 4 shall take utmost account of the opinion referred to in paragraph 5. Where that authority does not</p>	<p>The Commission should have the possibility to react to the opinion. A binding effect does not seem appropriate and not verifiable, since it is to be applied in the context of national law.</p>

follow the opinion, fully or partially, it shall provide the Board and the Commission with a reasoned justification explaining its position within 30 calendar days from the receipt of that opinion. Without prejudice to its powers under the Treaties, the Commission may issue its own opinion on the matter.	follow the opinion, fully or partially, it shall provide the Board and the Commission with a reasoned justification explaining its position within 30 calendar days from the receipt of that opinion. Without prejudice to its powers under the Treaties, the Commission may issue its own opinion on the matter.	The Commission, as guardian of the Treaties, is in principle limited to verifying the existence of the regulations and ensuring their application.
	5./6. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.	Adoption of paragraph 3 of Article 22.
<i>Article 22</i> Opinions on media market concentrations	<i>Article 22</i> Opinions on media market concentrations	Due to the adjustments to the procedural steps in Article 21, the content of Article 22 is obsolete. Paragraph 3 has been transferred to the new Article 21 (7).
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,	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,	

<p>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 media market concentrations likely to affect the functioning of the internal market for media services to the attention of the Commission.</p>	<p>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 media market concentrations likely to affect the functioning of the internal market for media services to the attention of the Commission.</p>	
<p>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.</p>	<p>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.</p>	
<p>3. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.</p>	<p>3. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.</p>	

AT-PROPOSAL for amendments¹ to the

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. **Reminder to improve the clarification of the term “utmost account” in the recitals of EMFA:**

We are fully aware that the wording “the regulatory authority should do its utmost”/...”should take utmost account of...” the opinion/guidelines etc by the Board/EC [(Art 13 (6 and 7); 16 (2); 21 (6) EMFA)] is an established term in regulation frameworks like the EECC and the GDPR. However, the wording appears very vague and does not contribute to legal certainty. The Presidency has proposed an explanation (in context with Art 16 EMFA) in Recital 24 (Doc WK 1630/2023 INIT). We would propose to take up this proposal by the Presidency with the following additions/modification:

“While such opinions would not be legally binding, the decision to deviate therefrom should be properly explained **by the regulatory authority, which has to deal with the content of the opinion and give sufficient reasons why the opinion is not taken into account. The explanation of the regulatory authority**~~—and could—~~ **must** be taken into account by the Commission in its tasks of ensuring the consistent application of this Regulation and of the national measures implementing Directive 2010/13/EU.”

This kind of explanation should also be used in the recitals referring to Articles 13 (6) and (7) and 21(6) as regards the wording that the authority/authorities should “do its/their utmost” or “take utmost account”.

¹ [changes to the current text: **bold and unterlined**]

II. Proposal for amendments of Art 20:

Article 20 is amended (to read) as follows:

„National regulatory or administrative measures affecting the operation of media service providers

1. Any ~~legislative~~, regulatory or administrative measure taken by a national regulatory authority or body of a Member State that is liable to directly affects the pursuit of the content-related media service activity ~~operation 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. In the ~~Any~~ national procedure used for the purposes of the preparation or the adoption of a regulatory or administrative measure as referred to in paragraph 1 ~~shall be subject to clear timeframes set out in advance. In the Member State concerned has respected the right of defence of the media service provider and, in particular, has must be given the opportunity to express its views on the matter.~~

3. ~~Without prejudice and in addition to its right to effective judicial protection, Member States shall ensure that effective appeal mechanisms exist at national level² for any media service provider subject to an administrative or regulatory 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. The appeal body, which may be a court,³ 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. The Board, upon request of the Commission, supported at least by one third of its members, shall draw up an opinion whether a national ~~legislative~~, regulatory or administrative measure manifestly, seriously and gravely endangers the rights and duties of media service providers and recipients as foreseen by this Regulation in Chapter II. 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. Opinions by the Board and, ~~where applicable,~~ by the Commission shall be made publicly available. The Commission shall keep the Contact Committee established by Article 29 of Directive 2010/13/EU duly informed.

5. ~~Where a national authority or body adopts a measure that affects individually and directly a media service provider and is likely to affect the functioning of the~~

² Same wording as in Art. 30 para 6 AVMS-D.

³ Same wording as in Art. 30 para 6 AVMS-D.

~~internal market for media services, it shall communicate, For the purposes of an assessment according to paragraph 4 a national authority or body at the request of the Board~~ shall communicate, at the request of the Board, and where applicable, of the Commission, without undue delay and by electronic means, any relevant information, including the summary of the facts, its measure, the grounds on which the national authority or body has based its measure, and, where applicable, the views of other authorities concerned.

III. Proposal for amendments in Articles 2 (13), 21 and 22:

Article 2

Definitions

- (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 **and another undertaking whose combined activities may have the potential of an impact on media pluralism and editorial independence in the internal market;**

Recital

- (NEW) **To reduce the risk of subjecting a potentially large number of mergers which do not affect media pluralism and editorial independence to the rules on media market concentration, the nature of the other undertaking involved should be considered. In particular, the definition ('media market concentration') applies to mergers where the other undertaking is active in markets upstream or downstream of media markets including, among others, companies active in the media production value chain, but also to tech companies that have relevant infrastructure or innovations that can develop into new business models for media companies. This particularly includes companies active in the advertising value chain, such as advertising exchanges.**

Article 21

Assessment of media market concentrations

1. Member States shall provide, in their national legal systems, substantive and procedural rules which ensure 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 to a media market concentration that could have a significant impact on media pluralism and editorial independence to notify that concentration in advance to the relevant national authorities or bodies;
- (c) designate the national regulatory authority or body as responsible for the assessment of the impact of a notifiable concentration on media pluralism and editorial independence or ensure the involvement of the national regulatory authority or body in such assessment;
- (d) set out in advance objective, non-discriminatory and proportionate criteria for notifying media market concentrations that could have a significant impact on media pluralism and editorial independence and for assessing the impact of media market concentrations on media pluralism and editorial independence.

The assessment referred to in this paragraph shall be distinct from the 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 impact of the concentration on media pluralism, including its effects on the formation of public opinion and on the diversity of media players 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 impact of the concentration on the functioning of the editorial teams and the existence of measures by media service providers taken with a view to guaranteeing the independence of individual editorial decisions;
 - (c) whether, in the absence of the concentration, the acquiring and acquired entity would remain economically sustainable, and whether there are any possible alternatives to ensure its economic sustainability.
3. The Commission, assisted by the Board, may issue guidelines on the factors to be taken into account when applying the criteria for assessing the impact of media market concentrations, **which are likely to affect the functioning of the internal market**, on media pluralism and editorial independence by the national regulatory authorities or bodies.
4. The national regulatory authority or body shall consult the Board in advance on any opinion or decision it aims to adopt assessing the impact on media pluralism and editorial independence of a notifiable media market concentration where such concentrations ~~may~~ **are likely to** affect the functioning of the internal market.
5. Within 14 calendar days from the receipt of the consultation referred to in paragraph 4, the Board shall draw up an opinion on the draft national opinion or decision referred to it, taking account of the elements referred to in paragraph 2 and transmit that opinion to the consulting authority 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. Where that authority does not follow the opinion, fully or partially, it shall provide the Board and the Commission with a reasoned justification explaining its position within 30 calendar days from the receipt of that opinion. Without prejudice to its powers under the Treaties, the Commission may issue its own opinion **where such concentrations are likely to affect the functioning of the internal market.**

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 media market concentrations likely to affect the functioning of the internal market for media services 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,~~ **where such concentrations are likely to affect the functioning of the internal market.**
3. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.

Recitals

- (41) 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 means of a joint procedure.** 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.
- (43) The Board should be empowered to provide opinions on draft decisions or opinions by the designated or involved national regulatory authorities or bodies, where the notifiable concentrations **are likely to** affect the functioning of the internal media market. This would be the case, for example, where such concentrations involve **an acquisition by an** undertaking established in another Member State **than the target or a target** operating in more than **two** Member States or result in media service providers having a significant influence on formation of public opinion in **more than two** given **national** media markets. Moreover, where the concentration has not been assessed for its impact on media

pluralism and editorial independence by the relevant national authorities or bodies, or where the national regulatory authorities or bodies have not consulted the Board regarding a given media market concentration, but that media market concentration fulfills the criteria mentioned above and is therefore considered 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 concentrations are likely to affect the functioning of the internal market, the Commission retains the possibility to issue its own opinions following the opinions drawn up by the Board.

**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)

Interinstitutional File 2022/0277 (COD) - COM (2022) 457 final

NL amendments to Art. 17, 19-22 and 12 (e-m) EMFA

General remarks: Besides making written comments on art. 19-22 and 12 (e-m), The Netherlands also proposes an amendment to strike article 17. See the explanation below.

Original text	Proposed amendments	Explanation
Section 4 Provision of media services in a digital environment		
<i>Article 17</i> Content of media service providers on very large online platforms	<i>Article 17</i> Content of media service providers on very large online platforms	<p>After studying the article and taking into consideration the discussion, NL proposes to strike this article.</p> <p>The current proposal raises the question of what actors will qualify for the media privilege in an online environment as a regulatory matter. Existing national regulatory and self-regulatory frameworks are not suitable as a framework since they are not meant to include all good faith media actors. NL does not have a legal definition of journalist and opposes settling this matter through a legal definition at the EU level.</p> <p>This proposal introduces the possibility of negative side effects and abuse by non good-faith actors and</p>

		<p>possibly of strategic behavior by VLOPs.</p> <p>Importantly, we believe that the problem that the proposed article 17 intends to address, is already addressed in the DSA. We remain convinced that the DSA contains a sufficient legal framework to hold VLOPs accountable for undesirable and/or unjustified restrictions of media services on their service.</p> <p>We propose awaiting the application of the DSA and monitoring the effects thereof, either by the working group or the Board for Media Services, prior to adopting the additional obligation of article 17.</p> <p><u>Relevant DSA articles</u> Article 14 paragraph 4 DSA stipulates that intermediary services, including (very large) online platforms, must take into account the fundamental rights of the recipients of the service when applying and enforcing their terms and conditions. This explicitly includes the freedom of expression and pluralism of the media. The fact that a media service is involved, will thus explicitly have to be taken into account when online platforms engage in content moderation. This will be a factor that, in</p>
--	--	---

		<p>principle, will weigh heavily in favor of the freedom of expression.</p> <p>Article 17 DSA further introduces the obligation for hosting services, including VLOPs , to provide clear and specific statement of reasons to any affected recipients of the service when imposing restrictions on their users.</p> <p>Article 34 and 35 DSA prescribes VLOPs and VLOSES to identify, analyze and assess systemic risks stemming from their service and to mitigate such risks. Pursuant to article 34, such risks explicitly include any actual or foreseeable negative effects for the exercise of fundamental rights, including the freedom and pluralism of the media.</p> <p>It is likely that these provisions from the DSA already adequately address the goals that the proposed article 17 MFE aims to achieve, albeit in a way that raises less practical issues than the proposed article does.</p>
<p><i>Article 19</i></p> <p>Right of customisation of audiovisual media offer</p>		
<p>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</p>		

of audiovisual media services in order to customise the audiovisual media offer according to their interests or preferences in compliance with the 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 and developers shall ensure that they include a functionality enabling users to freely and easily change the default settings controlling or managing access to and use of the audiovisual media services offered.		
Section 5 Requirements for well-functioning media market measures and procedures		
<i>Article 20</i> National measures affecting the operation of media service providers		
1. Any legislative, regulatory or administrative measure taken by a Member State that is liable to affect the operation 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 preparation or the adoption		

<p>of a regulatory or administrative measure as referred to in paragraph 1 shall be subject to clear timeframes set out in advance.</p>		
<p>3. Without prejudice and in addition to its right to effective judicial protection, any media service provider subject to an administrative or regulatory 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 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.</p>		
<p>4. The Board, upon request of the Commission, shall draw up an opinion where a national legislative, regulatory or administrative measure is likely to affect the functioning of the internal market for media services. 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. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.</p>	<p>4. The Board, upon request of the Commission, shall draw up an opinion where a national legislative, regulatory or administrative measure is likely to affect the functioning of the internal market for media services. 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. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.</p>	<p>Legislation is within the scope of national governments and parliaments. National regulators should be consulted during the legislative procedure, but should not interfere on a European level in national legislation.</p> <p>This is without prejudice to the right vested with the Commission to start infraction procedures if national legislation is incompatible with Union law.</p>

<p>5. Where a national authority or body adopts a measure that affects individually and directly a media service provider and is likely to affect the functioning of the internal market for media services, it shall communicate, at the request of the Board, and where applicable, of the Commission, without undue delay and by electronic means, any relevant information, including the summary of the facts, its measure, the grounds on which the national authority or body has based its measure, and, where applicable, the views of other authorities concerned.</p>		
<p><i>Article 21</i> Assessment of media market concentrations</p>		
<p>1. Member States shall provide, in their national legal systems, substantive and procedural rules which ensure an assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence. These rules shall:</p> <p>(a) be transparent, objective, proportionate and non-discriminatory;</p> <p>(b) require the parties to a media market concentration that could have a significant impact on media pluralism and editorial independence to notify that concentration</p>	<p>1. Member States shall provide, in their national legal systems, substantive and procedural rules which ensure an assessment of media market concentrations that could have a substantial impact on media pluralism and safeguards for editorial independence. These rules shall:</p> <p>(a) be transparent, objective, proportionate and non-discriminatory;</p> <p>(b) require the parties to a media market concentration that could have a substantial impact on media pluralism and safeguards</p>	<p>The word ‘substantial’ connects better to competition policy. It replaces the word ‘significant’.</p> <p>Added ‘safeguards’ when referring to editorial independence, since it is also the term used in 21(2)b.</p>

<p>in advance to the relevant national authorities or bodies;</p> <p>(c) designate the national regulatory authority or body as responsible for the assessment of the impact of a notifiable concentration on media pluralism and editorial independence or ensure the involvement of the national regulatory authority or body in such assessment;</p> <p>(d) set out in advance objective, non-discriminatory and proportionate criteria for notifying media market concentrations that could have a significant impact on media pluralism and editorial independence and for assessing the impact of media market concentrations on media pluralism and editorial independence.</p> <p>The assessment referred to in this paragraph shall be distinct from the 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.</p>	<p>for editorial independence to notify that concentration in advance to the relevant national authorities or bodies;</p> <p>(c) designate the national regulatory authority or body as responsible for the assessment of the impact of a notifiable concentration on media pluralism and safeguards for editorial independence or ensure the involvement of the national regulatory authority or body in such assessment;</p> <p>(d) set out in advance objective, non-discriminatory and proportionate criteria for notifying media market concentrations that could have a substantial impact on media pluralism and safeguards for editorial independence and for assessing the impact of media market concentrations on media pluralism and safeguards for editorial independence.</p> <p>The assessment referred to in this paragraph shall be distinct from the 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.</p>	
<p>2. In the assessment referred to in paragraph 1, the</p>	<p>2. In the assessment referred to in paragraph 1, the</p>	<p>Introduced “expected” under a), since it will be an</p>

<p>following elements shall be taken into account:</p> <p>(a)the impact of the concentration on media pluralism, including its effects on the formation of public opinion and on the diversity of media players on the market, taking into account the online environment and the parties' interests, links or activities in other media or non-media businesses;</p> <p>(b)the safeguards for editorial independence, including the impact of the concentration on the functioning of the editorial teams and the existence of measures by media service providers taken with a view to guaranteeing the independence of individual editorial decisions;</p> <p>(c)whether, in the absence of the concentration, the acquiring and acquired entity would remain economically sustainable, and whether there are any possible alternatives to ensure its economic sustainability.</p>	<p>following elements shall be taken into account:</p> <p>(a)the expected impact of the concentration on media pluralism, including its effects on the formation of public opinion and on the diversity of media players on the market, taking into account the online environment and the parties' interests, links or activities in other media or non-media businesses;</p> <p>(b)the safeguards for editorial independence, including the impact of the concentration on the functioning of the editorial teams and the existence of measures by media service providers taken with a view to guaranteeing the independence of individual editorial decisions;</p> <p>(c)whether, in the absence of the concentration, the acquiring and acquired entity would remain economically sustainable, and whether there are any possible alternatives to ensure its economic sustainability.</p>	<p>expectation, and it will be hard to introduce relevant remedies if needed.</p> <p>NL is a strong advocate of maintaining b), since safeguarding editorial independence will make sure the multitude of views in the media landscape.</p>
<p>3. The Commission, assisted by the Board, may issue guidelines on the factors to be taken into account when applying the criteria for assessing the impact of media market concentrations on media pluralism and editorial independence by</p>	<p>3. The Commission, assisted by the Board, may issue guidelines on the factors to be taken into account when applying the criteria for assessing the impact of media market concentrations on media pluralism and safeguards for editorial</p>	<p>These guidelines should have a non-binding nature.</p> <p>Comment on 'safeguards', see comment on 21(1).</p>

the national regulatory authorities or bodies.	independence by the national regulatory authorities or bodies.	
4. The national regulatory authority or body shall consult the Board in advance on any opinion or decision it aims to adopt assessing the impact on media pluralism and editorial independence of a notifiable media market concentration where such concentrations may affect the functioning of the internal market.	4. The national regulatory authority or body shall consult the Board in advance on any opinion or decision it aims to adopt assessing the impact on media pluralism and safeguards for editorial independence of a notifiable media market concentration where such concentrations may affect the functioning of the internal market.	Comment on 'safeguards', see comment on 21(1).
5. Within 14 calendar days from the receipt of the consultation referred to in paragraph 4, the Board shall draw up an opinion on the draft national opinion or decision referred to it, taking account of the elements referred to in paragraph 2 and transmit that opinion to the consulting authority 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. Where that authority does not follow the opinion, fully or partially, it shall provide the Board and the Commission with a reasoned justification explaining its position within 30 calendar days from the receipt of that opinion. Without prejudice to its powers under the Treaties, the Commission may issue its own opinion on the matter.		

<p><i>Article 22</i></p> <p>Opinions on media market concentrations</p>		
<p>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 media market concentrations likely to affect the functioning of the internal market for media services to the attention of the Commission.</p>	<p>1. The Board may bring media market concentrations likely to affect the functioning of the internal market for media services to the attention of the Commission. 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 safeguards for 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 media market concentrations likely to affect the functioning of the internal market for media services to the attention of the Commission.</p>	<p>The text order has been edited. The Commission should be informed before it could request the Board to draw up an opinion on a media services. The Board is informed on those mergers, as mentioned in 21(4).</p> <p>Comment on safeguards of editorial independence, see 21(1).</p>
<p>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.</p>	<p>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.</p>	<p>This sub-article creates legal uncertainty for the acquiring and to be acquired entity. It could interfere in an already final decision on the merger by the national regulator or DG COMP.</p> <p>The EC already has the power to issue Recommendations on policy issues (TFEU, art. 292), as</p>

		mentioned in the Commission proposal.
3. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.	3. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.	See comment above.
Section 2 European Board for Media Services		
<i>Article 12</i> Tasks of the Board		
<p>e) in agreement with the Commission, draw up opinions with respect to:</p> <p>(i) requests for cooperation and mutual assistance between national regulatory authorities or bodies, in accordance with Article 13(7) of this Regulation;</p> <p>(ii) requests for enforcement measures in case of disagreement between the requesting authority or body and the requested authority or body regarding the actions recommended pursuant to Article 14(4) of this Regulation;</p> <p>(iii) national measures concerning media service providers established outside of the Union, in accordance with Article 16(2) of this Regulation;</p>		
<p>f) upon request of the Commission, draw up opinions with respect to:</p> <p>(i) national measures which are likely to affect the functioning of the internal market for media services, in</p>		

<p>accordance with Article 20(4) of this Regulation;</p> <p>(ii)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;</p>		
<p>g) draw up opinions on draft national opinions or decisions assessing the impact on media pluralism and editorial independence of a notifiable media market concentration where such a concentration may affect the functioning of the internal market, in accordance with Article 21(5) of this Regulation;</p>		
<p>h) assist the Commission in drawing up guidelines with respect to:</p> <p>(i)the application of this Regulation and of the national rules implementing Directive 2010/13, in accordance with Article 15(2) of this Regulation.</p> <p>(ii)factors 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;</p> <p>(iii)the application of Articles 23(1), (2) and (3) pursuant to Article 23(4) of this Regulation.</p>		

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 technical standards related to digital signals and the design of devices or user interfaces, in accordance with Article 15(4) of this Regulation;		
k) coordinate national measures related to the dissemination of or access to content of media service providers established outside of the Union that target audiences in the Union, where their activities prejudice or present a serious and grave risk of prejudice to public security and defence, in accordance with Article 16(1) 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.		
	n) issues non-binding opinions on its own	This will allow the Board to draw up opinions, without

	<p>initiative on issues deemed relevant to the Board regarding the application of Chapter III of this Regulation or Directive 2010/13/EU, these advices will be sent to the Commission and the Contact Committee, as mentioned in Directive 2010/13/EU</p>	<p>influence of the Commission. This could help to strengthen the independent position of the Board.</p> <p>The opinions could have broad subjects, but the scope is limited to Chapter III of EMFA and AVMSD. This is proposed since the tasks of the Board are limited to Chapter III of EMFA and AVSMD.</p> <p>The opinions will be sent at least to the Commission and the Contact Committee, since the Commission and the Contact Committee are the most relevant recipients of the opinions. This sub-article will give a broader scope than sub-article c, since sub-article c relies on a request by the Commission.</p>
--	---	--

Hungarian comments

As indicated during the previous working party meeting, please find below the Hungarian comments and drafting suggestions on Article 19 to 22 of the EMFA proposal.

Article 19. Right of customisation of audiovisual media offer

We suggest to revise the text of Article 19 in a way that it should consider public service media to a greater extent. It is important to highlight that a service provider cannot exclude public service media from its channel offering.

Article 20. National measures affecting the operation of media service providers

Article 20 para (1) and (2) violate the subsidiarity of Member States. The general wording covers areas of law where the Member States have exclusive competence. But it is also worrisome that harmonized areas of law will also fall under the scope of EMFA. For example, the orders of EMFA must be applied to all tax rules, company law legislation or to procedural law because based on the current wording. It also would cover the exclusive competence of the member states on the frequency management of the independent national regulatory. Practically any legislative measure can affect the operation of media service providers in the internal market.

Also the wording “*affect the operation of media service providers*” is too general, any regulatory or administrative measure may have direct or indirect effects on media service providers and their internal market operations.

Regarding para (2) the content of the provision is not entirely clear. Also the phrase “*timeframes*” is not understandable in this context.

Regarding para (3) of the article it is not clear what the wording “in addition” covers. In its current form this violates several legal principles, as well as the competences of the Member States, and is also contrary to other directives. It is absolutely necessary to clarify the regulatory purpose first and only then it is possible to make a proposal to the wording.

We suggest the deletion of paragraph (4). In our view the recommendation represents an intervention in the exclusive competence of the Member States and its authorities, and seriously violates the sovereignty of the Member States. The suggestion applies without limitation to legislative, regulatory and administrative measures covering all branches of law, on which the Board and the Commission can issue an opinion without limitation. The Board's power to deliver opinions also violates the independence of the regulatory authorities, such as Article 30 of the AVMS Directive.

Regarding para (5) it should be clarified what type of measures the Board and the Commission can request information for. If this only applies to administrative measures, the material scope should be clarified. Also in this paragraph instead of “*likely*” we recommend the more precise wording of **directly and significantly**.

All the previous comments apply to the corresponding recitals of 39 and 43 as well. Since it can exist also without internal market involvement, we do not recommend citing the following case as an example. As such we recommend to delete the end of Recital 39 : “~~*or when the concerned media service provider has a significant influence on the formation of public opinion in the Member State.*~~” Likewise, we suggest to delete the following part of Recital 43: “~~*...or result in media service providers having a significant influence on formation of public opinion in a given media market...*~~”

Article 21. Assessment of media market concentration.

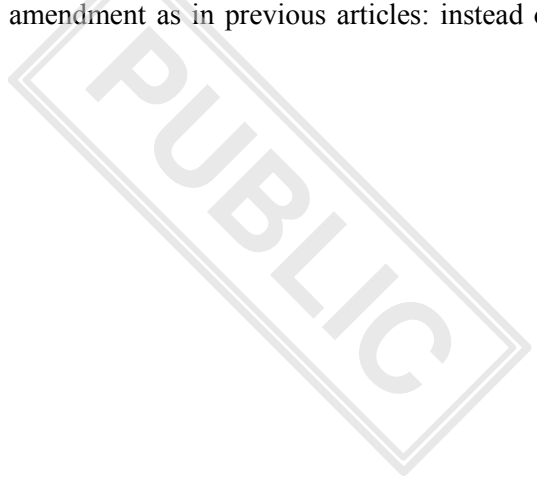
Regarding para (1) in our view this is an unreasoned interference in the formation of the media system of the Member States. In our opinion, the rule shall only be applied to cross borders media market concentrations or to media concentrations that directly affect the internal market of media services.

Regarding para (1) point d) we suggest to specify what “*criteria*” means. If it means criteria for permissibility of media concentration, then it is not possible to establish it in advance.

Regarding para (4) we suggest the deletion of word “*may*” at wording “*... concentrations may affect the functioning...*”

Article 22 Opinion on media market concentrations

It is not clear to which types of cases Article 22 will be applicable. As assessment and consultation are already mandatory under Article 21, it is understood that this Article presupposes a breach of the obligation under the previous Article and creates a special rule for issuing an opinion. Furthermore in para (1) of this Article we suggest the same amendment as in previous articles: instead of “likely” we suggest the wording **directly and significantly.**



Portugal comments on articles discussed during the AVMWP 21.02.2023

The comments are separated in two parts, as a function of document which the comments refer to. Part I contains comments to the Commission proposal (COM (2022) 457 final) and Part II contains comments to the presidency proposal (WK 2273/2023 INIT)

Part I – Articles 12, 19-22 of the Commission Proposal

Commission proposal Interinstitutional File 2022/0277 (COD) COM (2022) 457 final	Comments and drafting suggestions from delegations
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)	
<i>Article 12</i> Tasks of the Board Without prejudice to the powers granted to the Commission by the Treaties, the Board shall promote the effective and consistent application of this Regulation and of national rules	Portugal considers that the analysis of article 12 is deeply intertwined with the analysis of the articles which it references (e.g., articles 13(7), 14(4), 16(2)). Therefore, a previous discussion on these topics is essential.

implementing Directive 2010/13/EU throughout the Union. The Board shall:

(a) – (d)

(e) in agreement with the Commission, draw up opinions with respect to:

(i) requests for cooperation and mutual assistance between national regulatory authorities or bodies, in accordance with Article 13(7) of this Regulation;

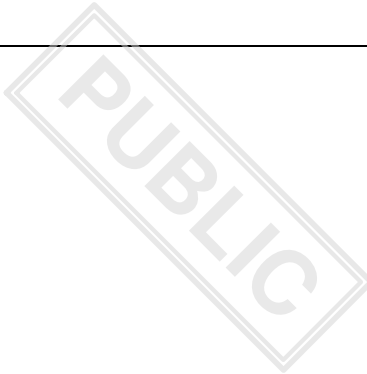
(ii) requests for enforcement measures in case of disagreement between the requesting authority or body and the requested authority or body regarding the actions recommended pursuant to Article 14(4) of this Regulation;

(iii) national measures concerning media service providers established outside of the Union, in accordance with Article 16(2) of this Regulation;

<p>(f) upon request of the Commission, draw up opinions with respect to:</p> <p>(i) national measures which are likely to affect the functioning of the internal market for media services, in accordance with Article 20(4) of this Regulation;</p> <p>(ii) 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;</p>	<p>Portugal can accept that the Board can issue non-binding opinions on these matters <u>if, and only if</u>, the Board is <i>de facto</i> independence of the Board <i>vis-a-vis</i> the European Commission is guaranteed.</p> <p>This independence entails that:</p> <ol style="list-style-type: none"> (1) the Board may only issue guidance through its own volition. In other words, the Commission may not request the Board to draw up opinions. (2) The secretariat of the Board is independent from the Commission. <p>The non-binding nature of these opinions should be explicitly stressed in the provisions.</p> <p>Moreover, we hope to clarify the cases in which the Board is justified in intervening. We do not consider that the sentences “likely to affect the functioning of the internal market for media services” and “significant influence on the formation of public opinion” (foreseen in recital 39 and 40) are sufficiently clear.</p> <p>Not only is the impact hard to assess, but we also have doubts about the justifications of a single marker for news content</p>
---	---

	Concerning paragraph 2, we suggest that the intervention of the Board be contingent on two factors: the media market concentration operation involves enterprises of significant dimension, and the operation involves enterprises from different member-states.
(g) draw up opinions on draft national opinions or decisions assessing the impact on media pluralism and editorial independence of a notifiable media market concentration where such a concentration may affect the functioning of the internal market, in accordance with Article 21(5) of this Regulation;	Portugal can accept that the Board can issue non-binding opinions on these matters <u>if, and only if</u> , the Board is <i>de facto</i> independent <i>vis-a-vis</i> the European Commission and the non-binding nature of these opinions is explicitly stated.

<p>(h) assist the Commission in drawing up guidelines with respect to:</p> <p>(i) the application of this Regulation and of the national rules implementing Directive 2010/13, in accordance with Article 15(2) of this Regulation.</p> <p>(ii) factors 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;</p> <p>(iii) the application of Articles 23(1), (2) and (3) pursuant to Article 23(4) of this Regulation.</p>	<p>Portugal can accept that the Board should be able to assist the Commission in technical matters. However, since the NRAs are responsible for enforcing this chapter of the regulation (see article 7) and since these NRAs are independent, it is hard to see how these independent NRAs should receive guidance from the Commission.</p> <p>Furthermore, with regards to paragraph ii (“factors to be taken into account...”, we consider that the competence for issuing guidelines on this subject-matter should rest with the Board and not with the Commission, since the risk-assessment evaluation should be performed by NRAs.</p>
<p>(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;</p>	
<p>(j) foster cooperation on technical standards related to digital signals and the design of devices or user interfaces, in accordance with Article 15(4) of this Regulation;</p>	

<p>(k) coordinate national measures related to the dissemination of or access to content of media service providers established outside of the Union that target audiences in the Union, where their activities prejudice or present a serious and grave risk of prejudice to public security and defence, in accordance with Article 16(1) of this Regulation;</p>	
<p>(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;</p>	
<p>(m) foster the exchange of best practices related to the deployment of audience measurement systems, in accordance with Article 23(5) of this Regulation.</p>	

<p style="text-align: center;"><i>Article 19</i></p> <p>Right of customisation of audiovisual media offer</p>	
<p>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 audiovisual media services in order to customise the audiovisual media offer according to their interests or preferences in compliance with the law. This provision shall not affect national measures implementing Article 7a of Directive 2010/13/EU.</p>	<p>We would like to clarify:</p> <p>Why is this right only applicable to audiovisual media services?. We consider that “television alike” content from editors of press publications is increasingly using audiovisual formats (e.g., data content and graphical models) which are also an editorial choice.</p>
<p>2. When placing the devices and user interfaces referred to in paragraph 1 on the market, manufacturers and developers shall ensure that they include a functionality enabling users to freely and easily change the default settings controlling or managing access to and use of the audiovisual media services offered.</p>	<p>Secondly, is this right compatible with the obligation to confer prominence to certain content (european works), as foreseen in the Audiovisual Services Directive?</p> <p>Thirdly, how does this article links with DSA articles 25 and 27 (“Online interface design and organization” and “Recommender system transparency”, respectively)?</p>

<p style="text-align: center;">Section 5</p>	
---	--

Requirements for well-functioning media market measures and procedures	
<p style="text-align: center;"><i>Article 20</i></p> <p>National measures affecting the operation of media service providers</p>	
<p>1. Any legislative, regulatory or administrative measure taken by a Member State that is liable to affect the operation of media service providers in the internal market shall be duly justified and proportionate. Such measures shall be reasoned, transparent, objective and non-discriminatory.</p>	<p>Portugal believes it is necessary to gather further evidence on the existence of an internal market of journalistic content given that written press or radio are predominantly guided towards regional or national information.</p>
<p>2. Any national procedure used for the purposes of the preparation or the adoption of a regulatory or administrative measure as referred to in paragraph 1 shall be subject to clear timeframes set out in advance.</p>	<p>Are administrative measures taken by the national regulatory authority covered by n.º1? If so, we would like to underline that the national regulatory authority cannot be subject to any guidelines or opinions by Government or any other political organisations, including the European Commission.</p> <p>On recital 39, the notion “likely to affect the functioning of the internal market” should be clarified. How to measure “significant influence on the formation of public opinion”?</p> <p>Could a national law regulating state advertisement and its distribution throughout the territory be considered as affecting the internal market?</p>

--	--


<p>3. Without prejudice and in addition to its right to effective judicial protection, any media service provider subject to an administrative or regulatory 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 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.</p>	<p>Portugal would appreciate further clarification concerning the “appellate body” referred to in this paragraph.</p>
<p>4. The Board, upon request of the Commission, shall draw up an opinion where a national legislative, regulatory or administrative measure is likely to affect the functioning of the internal market for media services. Following the opinion of the Board, and without prejudice to its powers under the Treaties, the</p>	<p>If “national legislative, regulatory or administrative measure” could cover measures from national regulatory authorities, Portugal has concerns with regard to the Commission issuing opinions as national regulatory authorities are independent entities. Portugal could accept opinions issued by the Board in</p>

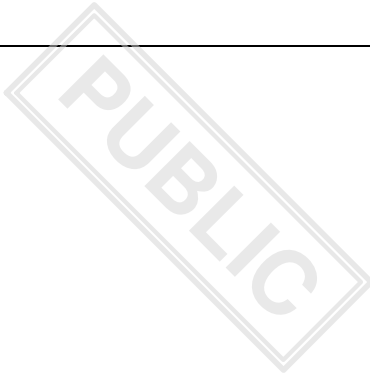
Commission may issue its own opinion on the matter. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.	case the independence of the Board is safeguarded, and the non-binding nature of the opinions is clarified.
--	---

5. Where a national authority or body adopts a measure that affects individually and directly a media service provider and is likely to affect the functioning of the internal market for media services, it shall communicate, at the request of the Board, and where applicable, of the Commission, without undue delay and by electronic means, any relevant information, including the summary of the facts, its measure, the grounds on which the national authority or body has based its measure, and, where applicable, the views of other authorities concerned.	Are the measures referred to in this article the same as measures referred to in article 20(1)?
---	---

<i>Article 21</i> Assessment of media market concentrations	
--	--

<p>1. Member States shall provide, in their national legal systems, substantive and procedural rules which ensure an assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence. These rules shall:</p> <p>(a) be transparent, objective, proportionate and non-discriminatory;</p> <p>(b) require the parties to a media market concentration that could have a significant impact on media pluralism and editorial independence to notify that concentration in advance to the relevant national authorities or bodies;</p> <p>(c) designate the national regulatory authority or body as responsible for the assessment of the impact of a notifiable concentration on media pluralism and editorial independence or ensure the involvement of</p>	<p>We would like clarification on the following concept “significant impact on media pluralism and editorial independence”;</p> <p>Moreover, we believe it is necessary to define when a media market concentration “may affect the functioning of the internal market” and in which cases an intervention by the Board is warranted. We consider that this impact is hardly verifiable and that the vision of a single market for news content is not sufficiently justified.</p> <p>We suggest that the intervention of the Board is only justified in situations which imply market concentration of significant dimension, and which involve more than one member-state</p>
---	---

<p>the national regulatory authority or body in such assessment;</p> <p>(d) set out in advance objective, non-discriminatory and proportionate criteria for notifying media market concentrations that could have a significant impact on media pluralism and editorial independence and for assessing the impact of media market concentrations on media pluralism and editorial independence.</p> <p>The assessment referred to in this paragraph shall be distinct from the 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.</p>	
<p>2. In the assessment referred to in paragraph 1, the following elements shall be taken into account:</p> <p>(a) the impact of the concentration on media pluralism, including its effects on the formation of public opinion and on the diversity of media players</p>	

<p>on the market, taking into account the online environment and the parties' interests, links or activities in other media or non-media businesses;</p> <p>(b) the safeguards for editorial independence, including the impact of the concentration on the functioning of the editorial teams and the existence of measures by media service providers taken with a view to guaranteeing the independence of individual editorial decisions;</p> <p>(c) whether, in the absence of the concentration, the acquiring and acquired entity would remain economically sustainable, and whether there are any possible alternatives to ensure its economic sustainability.</p>	
<p>3. The Commission, assisted by the Board, may issue guidelines on the factors to be taken into account when applying the criteria for assessing the impact of media market concentrations on media pluralism and</p>	<p>On n.º 6, we consider that the risk assessment of the impact of a media market concentration on media pluralism or on editorial independence must be performed by NRAs. Therefore, we have concerns</p>

editorial independence by the national regulatory authorities or bodies.	that the Commission could issue its opinions on these issues.
4. The national regulatory authority or body shall consult the Board in advance on any opinion or decision it aims to adopt assessing the impact on media pluralism and editorial independence of a notifiable media market concentration where such concentrations may affect the functioning of the internal market.	On n.º 5, we could accept non-binding opinions from the Board on these matters <u>if, and only if</u> , the Board is <i>de facto</i> independent <i>vis-a-vis</i> the European Commission and that the non-binding nature of these opinions is explicitly stated.
5. Within 14 calendar days from the receipt of the consultation referred to in paragraph 4, the Board shall draw up an opinion on the draft national opinion or decision referred to it, taking account of the elements referred to in paragraph 2 and transmit that opinion to the consulting authority and the Commission.	Issuing guidelines must be an exclusive competence of the Board and not of the Commission, regardless of whether it is assisted by the Board (or not).
6. The national regulatory authority or body referred to in paragraph 4 shall take utmost account of the opinion referred to in paragraph 5. Where that authority does not follow the opinion, fully or partially, it shall provide the Board and the Commission with a reasoned justification explaining	

its position within 30 calendar days from the receipt of that opinion. Without prejudice to its powers under the Treaties, the Commission may issue its own opinion on the matter.	
--	--

<p><i>Article 22</i></p> <p>Opinions on media market concentrations</p>	
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 media market concentrations likely to affect the functioning of the internal market for media services to the attention of the Commission.	The same comments as in the previous articles apply, <i>mutatis mutandis</i> .

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. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.	

Part II – Articles 15, 17 and 18 of the Presidency compromise proposal

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 **and civil society representatives**, 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 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);

(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-regulatory or self-regulatory mechanism [...], widely recognised 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 **restrict or** 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, on the grounds that such content is incompatible with **the** terms and conditions **of the online intermediation services**, without that content contributing 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 frequently 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 for terminating unjustified restrictions or suspensions and avoiding them in the future. The media service provider may notify the outcome of such exchanges 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; and

(b) the grounds for imposing such restrictions **or suspensions**.

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.

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.

Recital 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. This is the case in particular for national measures taken under Article 7a of Directive 2010/13/EU on the appropriate prominence of audiovisual media services of general interest. 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.

[Portugal has no comments on recitals 31, 33, 35 and 36]

Written comments following the meeting of the audiovisual group (courtesy translation) on the 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)

Follow up of the meeting of the audiovisual and media group on January 21, 2023

Article 15 and recital 28

The possibility granted to the European Commission to issue guidelines and opinions on the application of the entire regulation and on all the national rules implementing the AVMS Directive seems to go beyond the initial objectives of the proposal.

Currently, the AVMS Directive explicitly mentions the power of the Commission to issue guidelines on two fields only (media literacy on the one hand, and calculation of the share of European works, the definition of low audience and low turnover on the other). Without prejudice to the Commission's powers as guardian of the Treaties, article 15 should emphasize the need for guidelines on Chapter III of the regulation.

Accordingly, this prerogative should be explicitly mentioned for article 7a and article 5 paragraph 2 of the AVMSD, which purpose is directly related to this regulation. Moreover, the AVMSD establishes a contact committee whose consultation appears to be useful in drawing up the guidelines on article 7a and article 5(2) of AVMSD.

In paragraph 3, the Commission's power to issue opinions outside the infringement procedure should be limited to Chapter III of this regulation.

Lastly, the French authorities propose to adjust recital 28 accordingly and to specify that national measures taken under article 7a of Directive 2010/13/EU on the appropriate prominence of audiovisual media services of general interest shall not be affected by article 3 of Directive 2000/31/EC in order to guarantee their effectiveness.

<i>Article 15</i> Guidance on media regulation matters	<i>Article 15</i> Guidance on media regulation matters
<p>1. The Board shall foster the exchange of best practices among the national regulatory authorities or bodies, consulting stakeholders, where appropriate, and in close cooperation with the Commission, on regulatory, technical or practical aspects pertinent to the consistent and effective application of this Regulation and of the national rules implementing Directive 2010/13/EU.</p> <p>2. Where the Commission issues guidelines related to the application of this Regulation or the national rules implementing Directive 2010/13/EU, the Board shall assist it by providing expertise on regulatory, technical or practical aspects, as regards in particular:</p> <p>(a) the appropriate prominence of audiovisual media services of general interest under Article 7a of Directive 2010/13/EU;</p>	<p>1. The Board shall foster the exchange of best practices among the national regulatory authorities or bodies, consulting stakeholders, where appropriate, and in close cooperation with the Commission, on regulatory, technical or practical aspects pertinent to the consistent and effective application of this Regulation and of the national rules implementing Directive 2010/13/EU.</p> <p>2. Where the Commission issues guidelines related to the application of Chapter III of this Regulation or undermentioned articles of the national rules implementing Directive 2010/13/EU, the Board shall assist provide it by providing expertise on regulatory, technical or practical aspects, as regards in particular:</p> <p>(a) the appropriate prominence of audiovisual media services of general interest under Article 7a of Directive 2010/13/EU;</p>

<p>(b) making information accessible on the ownership structure of media service providers, as provided under Article 5(2) of Directive 2010/13/EU.</p> <p>3. The Commission may issue an opinion on any matter related to the application of this Regulation and of the national rules implementing Directive 2010/13/EU. The Board shall assist the Commission in this regard, where requested.</p> <p>4. The Board shall foster cooperation between media service providers, standardisation bodies or any other relevant stakeholders in order to facilitate the development of technical standards related to digital signals or design of devices or user interfaces controlling or managing access to and use of audiovisual media services.</p>	<p>(b) making information accessible on the ownership structure of media service providers, as provided under Article 5(2) of Directive 2010/13/EU.</p> <p>The Commission shall also consult the Contact Committee established by article 29 of Directive 2010/13/EU when issuing the guidelines related to Directive 2010/13/EU, in particular to articles 7a and 5(2) of Directive 2010/13/EU.</p> <p>3. The Commission may issue an opinion on any matter related to the application of Chapter III of this Regulation and of the national rules implementing Directive 2010/13/EU. The Board shall provide its expertise to assist the Commission in this regard, where requested.</p> <p>4. The Board shall foster cooperation between media service providers, standardisation bodies or any other relevant stakeholders in order to facilitate the development of technical standards related to digital signals or design of devices or user interfaces controlling or managing access to and use of audiovisual media services.</p>
---	---

<p style="text-align: center;"><i>Recital 28</i></p> <p>(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 matters covered by both this Regulation and Directive 2010/13/EU when needed. When deciding to issue guidelines, the Commission should consider in particular regulatory issues affecting a significant number of Member States or those with a cross-border element. This is the case in particular for national measures taken under Article 7a of Directive 2010/13/EU on the appropriate prominence of audiovisual media services of general interest. 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 of Fundamental Rights of the Union. Given the possible impact of the national measures taken under Article 7a on</p>	<p style="text-align: center;"><i>Recital 28</i></p> <p>(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 matters covered by both Chapter III of this Regulation and articles 7a and 5(2) of Directive 2010/13/EU when needed. When deciding to issue guidelines, the Commission should consider in particular regulatory issues affecting a significant number of Member States or those with a cross-border element. This is the case in particular for national measures taken under Article 7a of Directive 2010/13/EU on the appropriate prominence of audiovisual media services of general interest. 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 of Fundamental Rights of the Union. In order to guarantee their</p>
---	---

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.

effectiveness, national measures taken under Article 7a of Directive 2010/13/EU on the appropriate prominence of audiovisual media services of general interest **shall not be affected by article 3 of Directive 2000/31/EC** ~~Given the possible impact of the national measures taken under Article 7a on the functioning of the internal media market,~~ and 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~~ **consult** 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.

Articles 17 et 18

Regarding article 17, the French authorities welcome the changes made by the Presidency to § 1 of article 17, with the exception of the reference, in c), to “the exercise of editorial responsibility” which might exclude media service that adhere to self-regulatory mechanisms. Therefore, they suggest deleting this part of the paragraph.

The French authorities consider that Articles 17 and 18, which focus on media freedom and pluralism of information, should only concern media services “providing news and current affairs content”, as provided for in Article 6 of the draft Regulation (“providing news and current affairs content”). However, they consider that this concept, which is not clearly defined, should be clarified, and intend to propose a definition to be included in Article 2.

Further, in cases where very large online platforms reject media service providers’ attempts to declare themselves pursuant to §1 of article 17, the French authorities invite the Presidency to consider referring these cases to out-of-court settlement mechanisms. Whilst such cases could also be referred to a national authority, this would not be possible regarding the press sector in France which is not supervised by a regulator. The French authorities understand from the Commission’s comments during the latest group that this mechanism could be the one mentioned by article 12 of the P2B regulation and they agree that this solution would be appropriate.

In §2, while the French authorities appreciate the reference to restrictions of the provision of services, they believe that article 17 should refer to “restrictions of visibility”. They otherwise agree with the amendments made by the Presidency.

The French authorities understand the Commission’s explanations regarding the supervision of Section 4. However, to strengthen the effectiveness of the mechanism, they suggest that the Board may issue an opinion and recommend actions to be taken when no amicable solution is found pursuant to paragraph 4 of Article 17. If a very large online platform does not follow the Board’s opinions or recommendations, the Commission should also consider this when evaluating the service’s compliance with the DSA. These cases could also be referred to the out-of-court dispute settlement mechanism where relevant (i.e. press sector).

In light of recent news concerning very large online platforms offering paid services to their users which could include better visibility for content published by these paid users, the French authorities consider it is necessary to introduce an obligation for these platforms to promote visibility of media service providers which meet the criteria set out in paragraph 1 of Article 17 and foster access to diverse offers of such media services. This obligation would help counter undesirable practices such as recommending content to users based on the platform’s remuneration, on the one hand, and facilitate access to diverse content and opinions,

thus promoting civic discourse, on the other. The French authorities suggest that the Commission's guidelines also cover the implementation of this obligation by the VLOPs. They are also considering whether the Commission should take into account VLOP's compliance with this new paragraph when assessing mitigation of systemic risks pursuant du article 35 of the DSA.

Regarding recital 31, the French authorities suggest simplifying it so as to recall the idea that online platforms shall implement Article 17 of the EMFA proposal, without prejudice to other existing instruments for combating the dissemination of illegal content, in particular the Copyright Directive.

Regarding article 18, as a fall-back solution to their proposal for a new obligation in article 17, the French authorities would like to reiterate their previous comments:

They propose to ask the Board and the Commission to encourage the drafting of a voluntary code of conduct at EU level by those concerned by Article 18, which would aim to ensure the best visibility of content of services of general interest to the public on very large online platforms, as well as promote a pluralistic representation of such services. Similarly to the Code of Practice on Disinformation, the Code could include precise objectives and indicators which would be evaluated by the Board and the Commission and would address promotion of content on a wide range of interfaces. The Code could become binding for a given very large online platform pursuant to Article 45 of the DSA, as a systemic risk mitigation measure.

Proposals for amendments:

<i>Article 17</i>	<i>Article 17</i>
Content of media service providers on very large online platforms	Content of media service providers on very large online platforms
<p>1. Providers of very large online platforms shall provide a functionality allowing recipients of their services to declare that:</p> <p>(a) it is a media service provider within the meaning of Article 2(2);</p> <p>(b) it is editorially independent from Member States and third countries; and</p> <p>(c) it is subject to regulatory requirements for the exercise of editorial responsibility in one or more Member States, or adheres to a co-regulatory or self-regulatory mechanism governing editorial standards, widely recognised and accepted in the relevant media sector in one or more Member States.</p>	<p>1. Providers of very large online platforms shall provide a functionality allowing recipients of their services to declare that:</p> <p>(a) <i>declare that</i> it is a media service provider within the meaning of Article 2(2) <i>providing news and current affairs content</i> ;</p> <p>(b) <i>declare that</i> it is editorially independent from Member States and third countries; and</p> <p>(c) <i>declare that</i> it is subject to regulatory requirements for the exercise of editorial responsibility in one or more Member States, or adheres to a co-regulatory or self-regulatory mechanism governing editorial standards, widely recognised and accepted in the relevant media sector in one or more Member States; <i>and</i></p> <p><i>(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).</i></p> <p><i>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.</i></p> <p><i>1a. A media service provider whose declaration to a provider of very large</i></p>

<p>2. Where a provider of 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 pursuant to paragraph 1 of this Article, on the grounds that such content is incompatible with its terms and conditions, without that content contributing to a systemic risk referred to in Article 26 of the Regulation (EU) 2022/XXX [Digital Services Act], it shall take all possible measures, to the extent consistent with their obligations under Union law, including Regulation (EU) 2022/XXX [Digital Services Act], 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, prior to the suspension taking effect.</p> <p>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.</p> <p>4. Where a media service provider that submitted a declaration pursuant to paragraph 1 considers that a provider of very large online platform frequently 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 for terminating unjustified restrictions or suspensions and avoiding them in the future.</p>	<p><i>online platform has been rejected shall be entitled to lodge a complaint before an out-of-court dispute settlement body in accordance with Article 12 of Regulation (EU) 2019/1150 without prejudice and in addition to its right to effective judicial protection.</i></p> <p>2. Where a provider of 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 pursuant to paragraph 1 of this Article or to restrict the visibility of such content, on the grounds that such content is incompatible with its terms and conditions, without that content contributing to a systemic risk referred to in Article 26 34 of the Regulation (EU) 2022/XXX2065 [Digital Services Act], it shall take all possible measures, to the extent consistent with their obligations under Union law, including Regulation (EU) 2022/XXX [Digital Services Act], 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 24 hours, prior to the suspension or the restriction taking effect.</p> <p>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.</p> <p>4. Where a media service provider that submitted a declaration pursuant to paragraph 1 considers that a provider of very large online platform frequently restricts or suspends the provision of its services in relation to content provided by the media service provider or restrict the visibility of such content 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 for terminating unjustified restrictions or suspensions and avoiding them in the future.</p>
--	---

The media service provider may notify the outcome of such exchanges to the Board.

The media service provider may notify the outcome of such exchanges to the Board.

4a. In case an amicable solution is not found, the matter may be referred to the Board, which may issue an opinion and recommend measures to be taken, or to an out-of-court dispute settlement body in accordance with Article 12 of Regulation (EU) 2019/1150.

4b. In cases, where a very large online platform repeatedly does not take into account opinions or recommended measures issued by the Board, the Commission shall consider this in its assessment of the compliance of the very large online platform with its obligations relating to systemic risks mitigation measures pursuant to Regulation 2022/2065.

5. Providers of very large online platforms shall make publicly available on an annual basis 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 of this Article is incompatible with their terms and conditions; and

(b) the grounds for imposing such restrictions.

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 of this Article is incompatible with their terms and conditions; and

(b) the grounds for imposing such restrictions ***or suspensions.***

5a. Providers of very large online platforms shall promote visibility of media service providers which meet the criteria set out in paragraph 1 of Article 17 and foster access to diverse offers of such media services.

6. With a view to facilitating the consistent and effective implementation of this Article, the Commission may issue guidelines to establish the form and details of the declaration set out in paragraph 1.

6. With a view to facilitating the consistent and effective implementation of this Article, the Commission ~~shall~~ ***may*** issue guidelines to ***assist providers of very large online platforms in the application of paragraph 5a and to facilitate the effective implementation of the functionality referred to*** ~~to establish the form and details of the declaration set out in paragraph 1,~~ ***including modalities of involvement of relevant civil society organisations and, where relevant, of independent authorities or bodies in the***

	<i>review of the declarations, and address any potential abuse of the functionality.</i>
--	---

<p>(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, in line 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, while it is not contributing to a systemic risk referred to in Article 26 of Regulation (EU) 2022/XXX [the Digital Services Act], they should duly consider freedom and pluralism of media, in accordance with Regulation (EU) 2022/XXX [the Digital Services Act] 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) 2019/1150 of the European Parliament and of the Council. To minimise the impact of any restriction to that content on users' freedom of information, very large online platforms should endeavour to submit the statement of reasons prior to the restriction taking effect without prejudice to their obligations under Regulation (EU) 2022/XXX [the Digital Services Act]. In particular, 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/XXX [the Digital Services Act].</p> <p>(...)</p> <p>(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-</p>	<p>(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, in line 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, while it is not contributing to a systemic risk referred to in Article 26 of Regulation (EU) 2022/XXX [the Digital Services Act], they should duly consider freedom and pluralism of media, in accordance with Regulation (EU) 2022/XXX [the Digital Services Act] 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) 2019/1150 of the European Parliament and of the Council. To minimise the impact of any restriction to that content on users' freedom of information, very large online platforms should endeavour to submit, <i>within 24 hours</i>, the statement of reasons prior to the restriction taking effect without prejudice to their obligations under Regulation (EU) 2022/XXX [the Digital Services Act]. In particular, 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, <i>including measures taken in compliance with EU legislation such as Directive (EU) 2019/790</i>, 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/XXX [the Digital Services Act].</p> <p>(...)</p> <p>(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-</p>
--	--

declaration where they consider that these conditions are not met. Providers of very large online platforms may 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. Guidelines by the Commission may be useful to facilitate an effective implementation of such functionality, including on modalities of involvement of relevant civil society organisations in the review of the declarations, on consultation of the regulator of the country of establishment, where relevant, and address any potential abuse of the functionality.

(...)

(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 on their content are frequently imposed by providers of very large online platforms without sufficient grounds, in order to find an amicable solution for terminating any unjustified restrictions 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.

declaration where they consider that these conditions are not met. **Where providers of very large online platforms do not accept such self-declarations, the media service provider should be entitled lodge a complaint before an out-of-court dispute settlement body in accordance with Article 12 of Regulation (EU) 2019/1150.** Providers of very large online platforms may 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. Guidelines by the Commission may be useful to facilitate an effective implementation of such functionality, including on modalities of involvement of relevant civil society organisations **and, where relevant, of relevant independent authorities or bodies** in the review of the declarations, ~~on consultation of the regulator of the country of establishment, where relevant,~~ and address any potential abuse of the functionality.

(...)

(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 on their content are frequently imposed by providers of very large online platforms without sufficient grounds, in order to find an amicable solution for terminating any unjustified restrictions 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. **In case an amicable solution is not found, the matter may be referred to the Board, which could issue an opinion and recommend measures to be taken. However, when a very large online platform repeatedly fails to take into account opinions and recommended measures issued by the Board, the Commission should take it into account in its assessment of the compliance of the very large online platform with its obligations relating to systemic risks mitigation measures pursuant to the Digital Services Act.**

Article 18

Structured dialogue

1. The Board shall regularly organise a structured dialogue between providers of very

Article 18

Structured dialogue

1. The Board shall regularly organise a structured dialogue between providers of very

<p>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 of this Regulation, 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.</p> <p>2. The Board shall report on the results of the dialogue to the Commission.</p>	<p>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 of this Regulation, 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.</p> <p>2. The Board shall report on the results of the dialogue to the Commission.</p>
--	--

Article 19

The French authorities are pleased to note that the right to personalisation "does not affect" national measures to ensure appropriate visibility for audiovisual media services of general interest, taken pursuant to Article 7a of the AVMS Directive. They consider that the promotion of audiovisual media of general interest on devices, just like the right to customisation in Article 19 which aims at preventing constraints linked to commercial agreements, is a key measure in favour of fostering access to reliable information. Accordingly they consider that in order to be truly effective, the measures taken by a Member State pursuant to Article 7a must apply to manufacturers and developers of interfaces whose products and services are sold on the market of that Member State, regardless of the country of establishment.

Furthermore, as regards the scope of Article 19, the French authorities understand from the Commission's explanations in the previous groups that it intends to target mainly access to media services on connected television sets, distributors and application shops. The French authorities therefore suggest amending the wording of the article and the associated recital to clarify that the right to personalisation applies to audiovisual media services rather than content itself.

Proposal for amendments:

Article 19	Article 19
<p>Right of customisation of audiovisual media offer</p> <p>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 audiovisual media services in order to customise the audiovisual media offer according to their interests or preferences in compliance with the law. This provision shall not affect national measures implementing Article 7a of Directive 2010/13/EU.</p>	<p>Right of customisation of audiovisual media offer services and prominence of media services of general interest</p> <p>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 audiovisual media services in order to customise the audiovisual media services offer according to their interests or preferences in compliance with the law. This provision shall not affect lead to circumvention of national measures implementing Article 7a of Directive 2010/13/EU.</p> <p><i>This right does not apply within audiovisual media services regarding users'contents choices.</i></p>

2. When placing the devices and user interfaces referred to in paragraph 1 on the market, manufacturers and developers shall ensure that they include a functionality enabling users to freely and easily change the default settings controlling or managing access to and use of the audiovisual media services offered.	2. When placing the devices and user interfaces referred to in paragraph 1 on the market, manufacturers and developers shall ensure that they include a functionality enabling users to freely and easily change the default settings controlling or managing access to and use of the audiovisual media services offered. 3. Directives 2000/31/EC and Regulation (EU) 2022/2065 shall not affect the competence of Member States to take and to enforce measures implementing Article 7a of Directive 2010/13/EU.
--	---

Article 20 and recitals 38, 39

The French authorities wish to limit the scope of the measures referred to in Article 20 to those that are directly related to the purpose of the regulation, i.e., freedom of the media and the defense of pluralism, and therefore to measures applicable to media services providing news and current affairs content.

In addition, the wording of Article 20 should explicitly state that the provisions of this article are not applying to state aid measures in order to preserve the state aid rules that allow for the authorization of aid schemes and the exemption from notification of other measures adopted in order to ensure their legal certainty. They also point out that Article 20 should not provide a means of challenging measures implementing the AVMS Directive and that, like the rules on state aid, the provisions of this article should not be such as to affect these rules.

The French authorities suggest deleting paragraph 2, as they cannot guarantee that all the acts covered by the scope of the article will be subject to a precise timeframe fixed in advance.

With regard to paragraph 3, the French authorities propose that, rather than referring to a new appeal body, preference should be given to judicial remedy, with the introduction of an obligation for the Member States to ensure that the jurisdiction presents all the guarantees of impartiality and independence and that its control relates to both the substance and the form of the measure.

With regard to paragraph 4, they suggest that the Board could also draw up opinions at its own initiative. Mirroring changes should be made to Article 12(f).

Lastly, the French authorities are not very comfortable with the examples given by the recital 38 insofar as the measures referred to are, in France, primarily intended to defend media pluralism.

<i>Article 20</i> National measures affecting the operation of media service providers	<i>Article 20</i> National measures affecting the operation of media service providers
1. Any legislative, regulatory or administrative measure taken by a Member State that is liable to affect the operation of media service providers in the internal market shall be duly justified and proportionate. Such measures shall be reasoned, transparent, objective and non-discriminatory.	1. Any legislative, regulatory or administrative measure taken by a Member State that is liable to affect the transborder operation of media service providers providing news and current affairs content in the internal market shall be duly justified and proportionate. Such measures shall be reasoned, transparent, objective and non-discriminatory. This Article does not apply where the measure is

2. Any national procedure used for the purposes of the preparation or the adoption of a regulatory or administrative measure as referred to in paragraph 1 shall be subject to clear timeframes set out in advance.

3. Without prejudice and in addition to its right to effective judicial protection, any media service provider subject to an administrative or regulatory 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 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. The Board, upon request of the Commission, shall draw up an opinion where a national legislative, regulatory or administrative measure is likely to affect the functioning of the internal market for media services. 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. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.

5. Where a national authority or body adopts a measure that affects individually and directly a media service provider and is likely to affect the functioning of the internal market for media services, it shall communicate, at the request of the Board, and where applicable, of the Commission, without undue delay and by electronic means, any relevant information, including the summary of the facts, its measure, the grounds on which the national authority or body has based its measure, and, where applicable, the views of other authorities concerned.

otherwise governed by State aid rules and the national rules implementing Directive 2010/13/UE.

~~2. Any national procedure used for the purposes of the preparation or the adoption of a regulatory or administrative measure as referred to in paragraph 1 shall be subject to clear timeframes set out in advance.~~

3. Member States shall guarantee ~~Without prejudice and in addition to its~~ **the right to an** effective judicial protection, **for** any media service provider subject to an administrative or regulatory 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 **jurisdiction** 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. **When the case is referred to the jurisdiction the latter exercises a substantial control over the contested measure** ~~It shall have the appropriate expertise to enable it to carry out its functions effectively.~~

4. The Board, upon request of the Commission, **or on its own initiative** shall draw up an opinion where a national legislative, regulatory or administrative measure is likely to affect the functioning of the internal market for media services. ~~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.~~ Opinions by the Board and, ~~where applicable, by the Commission~~ shall be made publicly available.

5. Where a national authority or body adopts a measure that affects individually and directly a media service provider and is likely to affect the functioning of the internal market for media services, it shall communicate, at the request of the Board, and where applicable, of the Commission, without undue delay and by electronic means, any relevant information, including the summary of the facts, its measure, the grounds on which the national authority or body has based its measure, and, where applicable, the views of other authorities concerned.

<p>(38) Different legislative, regulatory or administrative measures can negatively affect the operation of media service providers in the internal market. They include, for example, 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 the functioning of the internal market for media services and enhance legal certainty, it is important that such measures comply with the principles of objective justification, transparency, non-discrimination and proportionality.</p>	<p>(38) Different legislative, regulatory or administrative measures can negatively affect the operation of media service providers in the internal market. They include, for example, 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 the functioning of the internal market for media services and enhance legal certainty, it is important that such measures comply with the principles of objective justification, transparency, non-discrimination and proportionality.</p>
<p>(39) It is also key that the Board is empowered to issue an opinion, on the Commission's request, where national measures are likely to affect the functioning of the internal market for media services. This is, for example, the case when a national administrative measure is addressed to a media service provider providing its services towards more than one Member State, or when the concerned media service provider has a significant influence on the formation of public opinion in that Member State.</p>	<p>(39) It is also key that the Board is empowered to issue an opinion, on the Commission's request or on its own initiative, where national measures are likely to affect the functioning of the internal market for media services. This is, for example, the case when a national administrative measure is addressed to a media service provider providing its services towards more than one Member State, or when the concerned media service provider has a significant influence on the formation of public opinion in that Member State.</p>

Articles 21 et 22 and recitals 40 to 44

First, the assessment of concentrations in the media sector should be understood as being able to cover also operations involving two online platforms considering the role of gatekeeper that they play in the access of citizens to media content. The French authorities therefore propose to make this clarification in recital 40 in order to broaden the interpretation of Article 21(1) This article should not affect the possibility for Member States to adopt stricter or more detailed rules at national level, in connection with article 1, paragraph 3.

Moreover, with regard to the designation of the competent authority for the assessment under Article 21(1)(c), provision should be made for the possibility of designating one or more authorities in order to allow operations that only concern the press sector not to be handled automatically by the competent authority under the AVMS Directive.

The wording should also be amended so that the assessment of concentrations in the media sector is limited to the impact of the operations on media pluralism, while keeping a reference to editorial independence as an assessment criterion in paragraph 2(b).

The Board will have to issue an opinion on operations likely to affect the functioning of the internal market. Recital 43 does not provide a satisfactory clarification of this concept. It states that, for example, an operation which involves at least one undertaking established in another Member State or "active in several Member States" or which results in a media service provider exercising "considerable influence on the formation of public opinion in a given media market" is likely to affect the internal market for the media. How, for this last example, can this considerable influence be measured and how can the relevant market be defined? This is a source of legal uncertainty for the national authority responsible for consulting the Board, which, in the event of doubt about the nature of the transaction, could also be tempted to systematically notify operations. A clearer criterion relating to the cross-border nature of the establishment of the parties to the transaction could be preferred.

Furthermore, the Commission's opinions provided for in Article 21(6) and Article 22(2), in addition to the Board's opinion, on the same issues, appear difficult to justify, particularly in view of the Commission's powers regarding merger control under competition law. Consequently, it could be proposed that the Board "may consult" the Commission when issuing its opinions so that it can contribute its expertise concerning the internal market, but the latter should not issue competing opinions.

Lastly, the French authorities propose to clarify the concept of media pluralism in recital 40 in order to ensure a common understanding.

<p style="text-align: center;"><i>Article 21</i></p> <p>Assessment of media market concentrations</p> <p>1. Member States shall provide, in their national legal systems, substantive and procedural rules which ensure an assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence. These rules shall:</p> <p>(a) be transparent, objective, proportionate and non-discriminatory;</p> <p>(b) require the parties to a media market concentration that could have a significant impact on media pluralism and editorial independence to notify that concentration in advance to the relevant national authorities or bodies;</p> <p>(c) designate the national regulatory authority or body as responsible for the assessment of the impact of a notifiable concentration on media pluralism and editorial independence or ensure the involvement of the national regulatory authority or body in such assessment;</p> <p>(d) set out in advance objective, non-discriminatory and proportionate criteria for notifying media market concentrations that could have a significant impact on media pluralism and editorial independence and for assessing the impact of media market concentrations on media pluralism and editorial independence.</p> <p>The assessment referred to in this paragraph shall be distinct from the 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.</p>	<p style="text-align: center;"><i>Article 21</i></p> <p>Assessment of media market concentrations</p> <p>1. Member States shall provide, in their national legal systems, substantive and procedural rules which ensure an assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence. These rules shall:</p> <p>(a) be transparent, objective, proportionate and non-discriminatory;</p> <p>(b) require the parties to a media market concentration that could have a significant impact on media pluralism and editorial independence to notify that concentration in advance to the relevant national authorities or bodies;</p> <p>(c) designate one or several the national regulatory authority or body as responsible for the assessment of the impact of a notifiable concentration on media pluralism and editorial independence or ensure the involvement of the national regulatory authority or body in such assessment;</p> <p>(d) set out in advance objective, non-discriminatory and proportionate criteria for notifying media market concentrations that could have a significant impact on media pluralism and editorial independence and for assessing the impact of media market concentrations on media pluralism and editorial independence.</p> <p>The assessment referred to in this paragraph shall be distinct from the 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.</p>
---	---

<p>2. In the assessment referred to in paragraph 1, the following elements shall be taken into account:</p> <p>(a) the impact of the concentration on media pluralism, including its effects on the formation of public opinion and on the diversity of media players on the market, taking into account the online environment and the parties' interests, links or activities in other media or non-media businesses;</p> <p>(b) the safeguards for editorial independence, including the impact of the concentration on the functioning of the editorial teams and the existence of measures by media service providers taken with a view to guaranteeing the independence of individual editorial decisions;</p> <p>(c) whether, in the absence of the concentration, the acquiring and acquired entity would remain economically sustainable, and whether there are any possible alternatives to ensure its economic sustainability.</p> <p>3. The Commission, assisted by the Board, may issue guidelines on the factors to be taken into account when applying the criteria for assessing the impact of media market concentrations on media pluralism and editorial independence by the national regulatory authorities or bodies.</p> <p>4. The national regulatory authority or body shall consult the Board in advance on any opinion or decision it aims to adopt assessing the impact on media pluralism and editorial independence of a notifiable media market concentration where such concentrations may affect the functioning of the internal market.</p> <p>5. Within 14 calendar days from the receipt of the consultation referred to in paragraph 4, the Board shall draw up an opinion on the draft national opinion or decision referred to it, taking account of the elements referred to in paragraph 2 and transmit that opinion to the consulting authority and the Commission.</p>	<p>2. In the assessment referred to in paragraph 1, the following elements shall be taken into account:</p> <p>(a) the impact of the concentration on media pluralism, including its effects on the formation of public opinion and on the diversity of media players on the market, taking into account the online environment and the parties' interests, links or activities in other media or non-media businesses;</p> <p>(b) the safeguards for editorial independence, including the impact of the concentration on the functioning of the editorial teams and the existence of measures by media service providers taken with a view to guaranteeing the independence of individual editorial decisions;</p> <p>(c) whether, in the absence of the concentration, the acquiring and acquired entity would remain economically sustainable, and whether there are any possible alternatives to ensure its economic sustainability.</p> <p>3. The Commission, assisted by the Board, may issue guidelines on the factors to be taken into account when applying the criteria for assessing the impact of media market concentrations on media pluralism and editorial independence by the national regulatory authorities or bodies.</p> <p>4. The national regulatory authority or body shall consult the Board, except when the concentration involves only written press publishers, in advance on any opinion or decision it aims to adopt assessing the impact on media pluralism and editorial independence of a notifiable media market concentration where such concentrations may affect the functioning of the internal market.</p> <p>5. Within 14 calendar days from the receipt of the consultation referred to in paragraph 4, the Board shall draw up an opinion on the draft national opinion or decision referred to it, taking account of the elements referred to in paragraph 2 and transmit that opinion to the consulting authority and the Commission.</p>
--	--

6. The national regulatory authority or body referred to in paragraph 4 shall take utmost account of the opinion referred to in paragraph 5. Where that authority does not follow the opinion, fully or partially, it shall provide the Board and the Commission with a reasoned justification explaining its position within 30 calendar days from the receipt of that opinion. Without prejudice to its powers under the Treaties, the Commission may issue its own opinion on the matter.	6. The national regulatory authority or body referred to in paragraph 4 shall take utmost account of the opinion referred to in paragraph 5. Where that authority does not follow the opinion, fully or partially, it shall provide the Board and the Commission with a reasoned justification explaining its position within 30 calendar days from the receipt of that opinion. Without prejudice to its powers under the Treaties, the Commission may issue its own opinion on the matter.
--	---

<p style="text-align: center;"><i>Article 22</i></p> <p style="text-align: center;">Opinions on media market concentrations</p> <p>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 media market concentrations likely to affect the functioning of the internal market for media services to the attention of the Commission.</p> <p>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.</p> <p>3. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.</p>	<p style="text-align: center;"><i>Article 22</i></p> <p style="text-align: center;">Opinions on media market concentrations</p> <p>1. In the absence of an assessment or a consultation pursuant to Article 21, the Board, upon request of the Commission or on its own initiative, 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) and may consult the Commission for the purpose of this assessment. The Board may bring media market concentrations likely to affect the functioning of the internal market for media services to the attention of the Commission.</p> <p>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.</p> <p>3. Opinions by the Board and, where applicable, by the Commission shall be made publicly available.</p>
---	--

(40) Media play a decisive role in shaping public opinion and helping citizens participate in democratic processes. This is why Member States should provide for rules and procedures in their legal systems to ensure assessment of media market concentrations that could have a significant impact on media pluralism or	(40) Media and online platforms play a decisive role in shaping public opinion and helping citizens participate in democratic processes. This is why Member States should provide for rules and procedures in their legal systems to ensure assessment of media market concentrations that could have a
---	--

<p>editorial independence. Such 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 which have substantial influence on the formation of public opinion in a given media market, within a media sub-sector or across different media sectors 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.</p>	<p>significant impact on media—pluralism or editorial independence. Media pluralism should be understood as guaranteeing access to the media representing different currents of thought and opinions without anyone having a monopoly on the dissemination of their own opinions. Such 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 or in online platforms controlling access to media content which have substantial influence on the formation of public opinion in a given media market, within a media sub-sector or across different media sectors 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.</p>
<p>(41) 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. 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.</p>	<p>(41) When relevant, 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. 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.</p>
<p>(42) When a media market concentration constitutes a concentration falling within the scope of Council Regulation (EC) No 139/2004⁵⁵, the application of this Regulation or of any rules and procedures adopted by Member States on the basis of this Regulation should not affect 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</p>	<p>(42) When a media market concentration constitutes a concentration falling within the scope of Council Regulation (EC) No 139/2004⁵⁵, the application of this Regulation or of any rules and procedures adopted by Member States on the basis of this Regulation should not affect 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</p>

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.	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.
(43) The Board should be empowered to provide opinions on draft decisions or opinions by the designated or involved national regulatory authorities or bodies, where the notifiable concentrations may affect the functioning of the internal media market. This would be the case, for example, where such concentrations involve at least one undertaking established in another Member State or operating in more than one Member State or result in media service providers having a significant influence on formation of public opinion in a given media market. Moreover, where the concentration has not been assessed for its impact on media pluralism and editorial independence by the relevant national authorities or bodies, 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 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. In any event, the Commission retains the possibility to issue its own opinions following the opinions drawn up by the Board.	(43) The Board should be empowered to provide opinions on draft decisions or opinions by the designated or involved national regulatory authorities or bodies, except when the parties to the media market concentration are exclusively written press media , where the notifiable concentrations may affect the functioning of the internal media market. This would be the case, for example, where such concentrations involve at least one undertaking established in another Member State or operating in more than one Member State or result in media service providers having a significant influence on formation of public opinion in a given media market. Moreover, where the concentration has not been assessed for its impact on media pluralism and editorial independence by the relevant national authorities or bodies, 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 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. In any event, the Commission retains the possibility to issue its own opinions following the opinions drawn up by the Board.

Article 12 (e) to (m)

<p style="text-align: center;"><i>Article 12</i></p> <p style="text-align: center;">Tasks of the Board</p> <p>[...]</p> <p>(e) in agreement with the Commission, draw up opinions with respect to:</p> <p>(i) requests for cooperation and mutual assistance between national regulatory authorities or bodies, in accordance with Article 13(7) of this Regulation;</p>	<p style="text-align: center;"><i>Article 12</i></p> <p style="text-align: center;">Tasks of the Board</p> <p>[...]</p> <p>(e) in agreement with the Commission, draw up opinions with respect to:</p> <p>(i) requests for cooperation and mutual assistance between national regulatory authorities or bodies, in accordance with Article 13(7) of this Regulation;</p>
--	--

<p>(ii) requests for enforcement measures in case of disagreement between the requesting authority or body and the requested authority or body regarding the actions recommended pursuant to Article 14(4) of this Regulation;</p> <p>(iii) national measures concerning media service providers established outside of the Union, in accordance with Article 16(2) of this Regulation;</p>	<p>(ii) requests for enforcement measures in case of disagreement between the requesting authority or body and the requested authority or body regarding the actions recommended pursuant to Article 14(4) of this Regulation;</p> <p>(iii) national measures concerning media service providers established outside of the Union, in accordance with Article 16(2) of this Regulation;</p> <p>The Board may consult the Commission.</p>
<p>(f) upon request of the Commission, draw up opinions with respect to:</p> <p>(i) national measures which are likely to affect the functioning of the internal market for media services, in accordance with Article 20(4) of this Regulation;</p> <p>(ii) 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;</p>	<p>(f) upon request of the Commission or on its own initiative, draw up opinions, with respect to:</p> <p>(i) national measures which are likely to affect the functioning of the internal market for media services, in accordance with Article 20(4) of this Regulation;</p> <p>(ii) 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 except when the concentration involves only written press publishers, ;</p> <p>When the Board draw up opinions at its own initiative it may consult the Commission.</p>
<p>(g) draw up opinions on draft national opinions or decisions assessing the impact on media pluralism and editorial independence of a notifiable media market concentration where such a concentration may affect the functioning of the internal market, in accordance with Article 21(5) of this Regulation;</p>	<p>(g) draw up opinions on draft national opinions or decisions assessing the impact on media pluralism and editorial independence of a notifiable media market concentration where such a concentration may affect the functioning of the internal market, in accordance with Article 21(5) of this Regulation;</p>
<p>(h) assist the Commission in drawing up guidelines with respect to:</p> <p>(i) the application of this Regulation and of the national rules implementing Directive 2010/13, in accordance with Article 15(2) of this Regulation.</p> <p>(ii) factors to be taken into account when applying the criteria for assessing the impact of</p>	<p>(h) assist be consulted by the Commission in drawing up guidelines with respect to:</p> <p>(i) the application of Chapter III of this Regulation and of the national rules implementing Directive 2010/13, in accordance with Article 15(2) of this Regulation.</p> <p>(ii) factors to be taken into account when applying the criteria for assessing the impact of</p>

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.	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;	(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 technical standards related to digital signals and the design of devices or user interfaces, in accordance with Article 15(4) of this Regulation;	(j) foster cooperation on technical standards related to digital signals and the design of devices or user interfaces, in accordance with Article 15(4) of this Regulation;
(k) coordinate national measures related to the dissemination of or access to content of media service providers established outside of the Union that target audiences in the Union, where their activities prejudice or present a serious and grave risk of prejudice to public security and defence, in accordance with Article 16(1) of this Regulation;	(k) coordinate national measures related to the dissemination of or access to content of media service providers established outside of the Union that target audiences in the Union, where their programs include deliberately false or misleading information, or include false or misleading information likely to affect the democratic processes in the Union, or manifestly, seriously and gravely infringe article 6(1) of AVMSD activities prejudice or present a serious and grave risk of prejudice to public security and defence, in accordance with Article 16(1) of this Regulation. The Board coordination covers the promotion of cooperation and effective exchange of information between the national regulatory authorities or bodies as well as as well as issuing non-binding opinions on appropriate national measures against such audiovisual media service providers when requested by a a minimum number of Member States, to be defined in the Board rules of procedures.
(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;	(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.	(m) foster the exchange of best practices related to the deployment of audience measurement systems, in accordance with Article 23(5) of this Regulation.