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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

COMMENTS FROM SLOVENIA

Articles 1, 2 (12), 3, 5, 6, 7, 12, 19, 20 and recitals 6, 18, 22

Proposed changes are in bold and underlined.

First Presidency compromise proposals	Proposed amendments	Explanation
Chapter I **General Provisions** *Article 1* Subject matter and scope		
1.This Regulation lays down common rules for the proper functioning of the internal market for media services, including the establishment		

of the European Board for Media Services, while preserving the quality of media services.		
2. This Regulation shall not affect rules laid down by: (a) Directive 2000/31/EC; (b) Directive 2019/790/EU; (c) Regulation 2019/1150; (d) Regulation (EU) 2022/XXX [the Digital Services Act]; (e) Regulation (EU) 2022/XXX [the Digital Markets Act]; (f) Regulation (EU) 2022/XXX [Regulation on the transparency and targeting of political advertising].		
3. This Regulation shall not affect the possibility for Member States to adopt more detailed **or stricter** rules in the fields covered by Chapter II and Section 5 of Chapter III,	3. This Regulation shall not affect the possibility for Member States to adopt more detailed **or stricter** rules in the fields covered by Chapter II and Section 5 of Chapter III, provided that those rules comply with Union	*We propose to add an additional provision regarding the existing national laws on media services or content, where this is applicable. The aim is to guarantee the clarity of the existing provisions, since in certain cases, adressed with this Regulation, the provisions already exists in national laws and are indeed in line with the proposed Regulation so that*

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provided that those rules comply with Union law.	law, **without prejudice to the already existing national laws and measures in line with this Regulation and national law implementing Directive 2010/13/EU.**	*they could be accepted as in accordance with it.*
Article 2 Definitions		
(12) "national regulatory authority or body" means **any** authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU;	(12) "national regulatory authority or body" means **any** authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU **or any other authority or body within the scope of the Regulation, established at the national level and in accordance with the principles of the functioning of the authorities or bodies in the Article 30 of Directive 2010/13/EU**;	*Since the scope of the Regulation covers all the media content, it does not take into the consideration that certain media services (such as print) or content were already regulated at national level and under national jurisdiction. The Regulation proposal would lead to increasing financial means and human resources as well as to the need for possible additional law amendments. We propose to cover all the possibilites and to ensure the faisibility of the Regulation.*
Chapter II Rights and duties of media service providers and recipients		
Article 3		

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Rights of recipients of media services		
Member States shall respect the right **of** recipients of media services in the Union **[…]** to receive a plurality of news and current affairs content, produced with respect for editorial freedom of media service providers, to the benefit of the public discourse.	**Recipients of media services** in the Union shall have the right to receive **the information and media content**, produced **and distributed** with respect for editorial freedom of media service providers **and in official languages of the country of destination**, to the benefit of the public discourse.	*We prefer the original wording of the Commission given the declaratory status of the provision. As the media content reflects also the cultural and linguistical diversity and taking into account the fast grow of crossborder services, the rights of receiving the media content in official languages of the targeted territory becomes closely related to the factual media pluralism and availability of the content. In this regard we also mention the Article 22 of Charter of Fundamental Rights of European Union, that the Union shall respect cultural, religious and linguistic diversity.* *Additionally we suggest to generalize media content and replace the wording "news and current affairs" with information and media content. Our position is define the rights and obligations of the media service providers and media services as such as general as possible,*

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		since the limitation of the obligations either in the frame of transparency of ownership or in the context of concentration, and due to different understanding of its meaning, will finally have a restricted effect and added value.
Article 4 Rights of media service providers	*Article 4* **Independence of the media**	
1. Media service providers shall have the right to exercise their economic activities in the internal market without restrictions other than those **that are in compliance with** Union law.		
2. Member States shall respect effective editorial freedom of media service providers. Member States, including their national regulatory authorities and bodies, shall not **[…]** interfere in or try to influence **[…]** editorial policies and **editorial** decisions by media service providers.		

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2a. Member States shall not oblige media service providers and their employees to disclose information on their sources unless this is justified by an overriding requirement in the public interest, provided for in national law, in accordance with Article 52(1) of the Charter and in compliance with other Union law**. Member states shall not:**		
(a) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, or their employees **or** their family members, or their corporate and private premises, on the ground that **media service providers or their employees** refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest **[…]**;	**(a)** detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, **journalists, other media workers or employees or** their family members, or their corporate and private premises, on the ground that **media service providers or their employees, journalists and other media workers** refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest **[…]**;	

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(b) deploy spyware in any device or machine used by media service providers or, if applicable, their family members, or their employees or their family members **for the purpose of obtaining information on the sources of media service providers or their employees**, unless the deployment **(i)** is justified, on a case-by-case basis, on grounds of national security **[…]**; **(ii)** occurs in **[…]** investigations of **[…] the following crimes, as defined by national law:** - terrorism; - trafficking in human beings; - sexual exploitation of children and child pornography;		*We suggest to delete the term "spyware". We also suggest to delete the reference to "national security" as well as reference to "serious crime", as these notions are under the national jurisdictions. Adequate new wording of the paragraph is still being analysed.*

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- illicit trafficking in weapons, munitions and explosives; - murder, grievous bodily injury; - illicit trade in human organs and tissues; - kidnapping, illegal restraint and hostage-taking; - organised or armed robbery; or - rape; **or** **(iii) occurs in investigations of crimes within the jurisdiction of the International Criminal Court.** **Measures adopted pursuant to points (a) and (b) of the first subparagraph of this paragraph shall be provided for in national law, in accordance with Article 52(1) of the Charter and in compliance with other**		

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Union law. Member States shall not adopt a measure pursuant to point (b) where measures referred to point (a) are adequate and sufficient to obtain the information sought.		
3. Without prejudice and in addition to the right to effective judicial protection guaranteed to each natural and legal person, Member States shall **entrust** an independent authority or body **with relevant expertise** to **assist** media service providers or, if applicable, their family members, **or** their employees or their family members, **in cases** regarding breaches of paragraph **2a […]**, **and, where relevant, formulate general recommendations on the application of paragraph 2a**. **[…]**	~~Without prejudice and in addition to the right to effective judicial protection guaranteed to each natural and legal person,~~ Member States shall **~~entrust~~ guarantee the legal protection** ~~an independent authority or body **with relevant expertise** to **assist**~~ **to the** media service providers or, if applicable, their family members, **journalists,** media workers and other employees or their family members, **in cases** regarding breaches of paragraph **2a […]**, ~~**and, where relevant, formulate general recommendations on the application of paragraph 2a**. **[…]**~~	*As the legal certainty of such procedure is not clear with comparison to already existing legislative measures, we suggest either to delete this paragraph either to change it in the proposed wording.*
Article 5	*Article 5*	

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Safeguards for the independent functioning of public service media providers	Safeguards for the independent functioning of public service media providers	
1. **Member States shall ensure that** public service media providers **are editorially independent and** provide in an impartial manner a plurality of information and opinions to their audiences, in accordance with their public service **remit as defined at national level in line with Protocol No 29 on the system of public broadcasting in the Member States, annexed to the TEU and the TFEU**.	**1. Member States shall guarantee the independence of programming, editorial decisions and governance and adequate financing for the public service media providers, in compliance with the Protocol on the system of of public service broadcasting in the Member States, annexed to the Treaty of the European Union (so-called Amsterdam Protocol).** 2. **Public service media providers shall provide in an impartial manner a plurality of information and opinions as well as other media content, to their audiences, in accordance with their public service remit.**	*As the Amsterdam protocol amending the Treaty on European Union considers that the system of public broadcasting is directly related to the democratic, social and cultural needs of each society and the need to preserve media pluralism, it is necessary that the provision on public service media include also the reference to other content (such as culture or creation), not only information as such. Funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State.*
2. **Member States shall ensure that** the head of management **or** the members of the **management** board of public service media providers **are** appointed through transparent,	2. **Member States shall ensure that** the head of management **or** the members of the **management or supervising** board of public service media providers **are** appointed through	

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open and non-discriminatory procedures and on the basis of transparent, objective, non-discriminatory and proportionate criteria laid down in advance **at** national **level**. The duration of their term of office shall be established **at** national **level**, and be adequate and sufficient to ensure effective independence of the public media service provider. They may be dismissed before the end of their term of office only **[…]** where they no longer fulfil the **[…]** conditions required for the performance of their duties **[…]** or for specific reasons of illegal conduct or serious misconduct, as defined in advance **at** national **level**. Dismissal decisions shall be duly justified, subject to prior notification to the person concerned, and include the possibility for	transparent, open and non-discriminatory procedures. ~~and on the basis of transparent, objective, non-discriminatory and proportionate criteria laid down in advance **at** national **level**.~~ The duration of their term of office shall be established **at** national **level.** ~~and be adequate and sufficient to ensure effective independence of the public media service provider.~~ They may be dismissed before the end of their term of office only **<u>on the ground of predefined conditions</u>** ~~**[…]** where they no longer fulfil the **[…]** conditions required for the performance of their duties **[…]** or for specific reasons of illegal conduct or serious misconduct~~, as defined in advance **<u>by national law</u>**. ~~**at** national **level**~~.	

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judicial review. The grounds for dismissal shall be made available to the public.		
3. Member States shall ensure that public service media providers have adequate and stable financial resources for the fulfilment of their public service **remit**. Those resources shall be such that editorial independence is safeguarded, **and shall be allocated through a transparent process.**	3. **Member States shall not seek to influence the governance or the programming and editorial independent decisions through limiting the adequate financing.**	
4. Member States shall **put in place mechanisms** to monitor **the application of** paragraphs 1 to 3.	4. **Member States shall enable independent supervising bodies to monitor the application of paragraphs 1 to 3.**	
Article 6 Duties of media service providers providing news and current affairs content	*Article 6* Duties of media service providers providing **information** and **media content**	
1. Media service providers providing news and current affairs content shall make easily and	1. Media service providers providing **information and media content** shall	*As the Regulation covers all the media services and their content, there is no factual or legal*

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directly accessible to the recipients of their services the following information: (a) their legal name and contact details; (b) the name(s) of their direct or indirect owner(s) with shareholdings enabling them to exercise influence on the operation and strategic decision making; (c) the name(s) of their beneficial owners **as defined in** Article 3, point **(**6**)** of Directive (EU) 2015/849 **[…]**.	make easily, **publicly** and directly accessible to the recipients of their services the following information:	*reason to limit additionally the scope to only one segment of the media, specially if the transparency of the ownership is closely linked to the media concentration assessment.*
2. Without prejudice to constitutional **or other** national **[…]** laws consistent with the Charter, media service providers providing news and current affairs content shall take measures that they deem appropriate with a view to guaranteeing **[…]** editorial independence **[…]**. In particular, such measures shall aim to: (a) guarantee that **[…]** editorial decisions **can**		

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be taken freely within the **established editorial line** of **the media service provider**; and (b) ensure disclosure of any actual or potential conflict of interest by any party having a stake in media service providers that may affect the provision of news and current affairs content.		
3. The obligations under **paragraph 2 of** this Article shall not apply to media service providers that are micro-**undertakings** within the meaning of Article 3**(1)** of Directive 2013/34/EU.	3. ~~The obligations under **paragraph 2 of** this Article shall not apply to media service providers that are micro-**undertakings** within the meaning of Article 3**(1)** of Directive 2013/34/EU.~~	
Article 7 National regulatory authorities or bodies		
1. The national regulatory authorities or bodies **as defined in Art 2 (12)** shall be responsible for the application of Chapter III **[…]**	1. The national regulatory authorities or bodies **as defined in Art 2 (12)** shall be responsible for the the application of Chapter III. **[…]**	*The question is what about other parts of Regulation, that also include the monitoring.*

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2. The national regulatory authorities or bodies shall be subject to the requirements set out in Article 30 of Directive 2010/13/EU in relation to the exercise of the tasks assigned to them by this Regulation.	2. The national regulatory authorities or bodies shall be subject to the requirements set out in Article 30 of Directive 2010/13/EU **and to the requirements of the national legislation on the independent functionning of the regulatory authorities or bodies** in relation to the exercise of the tasks assigned to them by this Regulation.	
3. Member States shall ensure that the national regulatory authorities or bodies have adequate financial, human and technical resources to carry out their tasks under this Regulation.		
4. Where needed for carrying out their tasks under this Regulation, the national regulatory authorities or bodies **shall be able to request the** natural or legal persons to which Chapter III applies to provide, within a reasonable time period, information **and data** that is		

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proportionate and necessary for carrying out the tasks under Chapter III. **[…]**		
Article 10 Structure of the Board		
5. The Commission shall designate a representative to the Board. The representative of the Commission shall participate in all activities and meetings of the Board, without voting rights. The Chair of the Board shall keep the Commission informed about the ongoing and planned activities of the Board. The Board shall consult the Commission in preparation of its work programme and main deliverables.	5. The Commission shall designate a representative to the Board. The representative of the Commission shall participate in all activities and meetings of the Board, without voting rights. The Chair of the Board shall keep the Commission informed about the ongoing and planned activities of the Board. **The work programme and main deliverables of the Board are adopted by the Board in cooperation with the Commission.** ~~The Board shall consult the Commission in preparation of its work programme and main deliverables.~~	

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6. The Board **[…]** may invite experts and, in agreement with the Commission, **permanent** observers to attend its meetings.		
8. The Board shall adopt its rules of procedure **[…]**, in agreement with the Commission.	8. The Board shall adopt its rules of procedure **[…]**, ~~in agreement with~~ **the Commission shall give its prior opinion.**	
Article 12 Tasks of the Board		
1. 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 **measures** implementing Directive 2010/13/EU throughout the Union, without prejudice to the already existing national law and measures in line with this Regulation and national law	**1**. Without prejudice to the powers granted to the Commission by the Treaties, the Board shall promote the effective and consistent application **of the chapter III.** of this Regulation and of national **measures** implementing Directive 2010/13/EU throughout the Union, without prejudice to the already existing national law and measures in line with this Regulation and national law	

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implementing Directive 2010/13/EU. The Board shall **therefore**: (a) **provide** technical expertise **to** the Commission **in its task to ensure** the correct application of this Regulation and the consistent implementation of Directive 2010/13/EU across all Member States, without prejudice to the tasks of national regulatory authorities or bodies; (b) promote cooperation and the effective exchange of information, experience and best practices between the national regulatory authorities or bodies on the application of the Union and national rules applicable to media services, including this Regulation and Directive 2010/13/EU, in particular as regards Articles 3, 4 and 7 of that Directive;	implementing Directive 2010/13/EU. The Board shall **therefore**:	

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(c) advise **and support** the Commission **[…]** on **[…]** matters related to media services within its competence. **[…]** (d) when requested by the Commission, provide opinions on the technical and factual issues that arise with regard to Article 2(5c), Article 3(2) and (3), Article 4(4), point (c) and Article 28a(7) of Directive 2010/13/EU;		
2. *(new)* Where the Commission requests advice or opinions from the Board, it may indicate a time limit, unless otherwise provided for in Union law, taking into account the urgency of the matter.		

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Article 19 Right of customisation of audiovisual media offer		
4. The Board shall foster cooperation between media service providers, standardisation bodies or any other relevant stakeholders in order to facilitate the development of **harmonised** standards related to **[…]** design of devices or user interfaces controlling or managing access to and use of audiovisual media services **or those devices related to carrying the digital signals**. *(former art 15(4))*	**4.** The Board shall foster cooperation between media service providers, standardisation bodies or any other relevant stakeholders in order to facilitate the development of **harmonised** standards related to **[…]** design or digital signals of devices or user interfaces controlling or managing access to and use of audiovisual media services ~~**or those devices related to carrying the digital signals**~~. *(former art 15(4))*	

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Article 20 National measures affecting the operation of media service providers		
2. Any national procedure used for the purposes of the preparation or the adoption of **[…] an** administrative measure as referred to in paragraph 1 shall be **[…]** set out in advance **and carried out without undue delay**.	~~. Any national procedure used for the purposes of the preparation or the adoption of **[…] an** administrative measure as referred to in paragraph 1 shall be **[…]** set out in advance **and carried out without undue delay**.~~	*The provision is of procedural nature, already stipulated in general public or other procedural law. We suggest to delete it for the clarity of procedures.*

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(6) Recipients of media services in the Union (natural persons who are nationals of Member States or benefit from rights conferred upon them by Union law and legal persons established in the Union) should be able to effectively enjoy the freedom to receive free and pluralistic media services in the internal market. In fostering the cross-border flow of media services, a minimum level of protection of service recipients should be ensured in the internal market **as well as the right to receive the media services and their content in the official languages in the case of destination countries.** That would be in compliance with the right to receive and impart information pursuant to Article 11 of the Charter of Fundamental Rights of the European Union ('the Charter') and in compliance with the Article 22 of the Charter that the Union shall respect cultural, religious and linguistic diversity. It is thus necessary to harmonise certain aspects of national rules related to media services, **taking also in consideration the Article 167 of the TFEU on respecting the national and regional diversity of the Member States**. In the final report of the Conference on the Future of Europe, citizens called on the EU to further promote media independence and pluralism, in particular by introducing legislation addressing threats to media independence through EU-wide minimum standards1.

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

(18) Public service media established by the Member States play a particular role in the internal media market, by ensuring that citizens and businesses have access to quality information and impartial media coverage, as part of their mission. However, public service media can be particularly exposed to the risk of interference, given their institutional proximity to the State and the public funding they receive. This risk may be exacerbated by uneven safeguards related to independent governance and balanced coverage by public service media across the Union. This situation may lead to biased or partial media coverage, distort competition in the internal media market and negatively affect access to independent and impartial media services. It is thus necessary, building on the international standards developed by the Council of Europe in this regard, to put in place legal safeguards for the independent functioning of public service media across the Union. It is also necessary to guarantee that, without prejudice to the application of the Union's State aid rules, public service media providers benefit from sufficient and stable funding to fulfil their mission that enables predictability in their planning. **When the funding is not provided directly to the public services in the form of contributions**, the funding should be **preferebly** decided and appropriated on a multi-year basis, in line with the public service mission of public service media providers, to avoid potential for undue influence from yearly budget negotiations. The requirements laid down in this Regulation do not affect the competence of Member States to provide for the funding of public service media as enshrined in Protocol 29 on the system of public broadcasting in the Member States, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.

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

Council of the European Union
General Secretariat

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NOTE

From:	General Secretariat of the Council
To:	Audiovisual and Media Working Party (Attachés) Audiovisual and Media Working Party
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU - Comments from the SI delegation

Delegations will find attached comments on Articles 1, 2(12), 3, 5, 6, 7, 12, 19, 20, and recitals 6, 18, and 22 from the SI delegation.