

EL COMMENTS

Greece's proposal on article 25 and corresponding recital 50

Greece would like to thank the Swedish Presidency for the additions in the new compromise text with regard to art 25 and recital 50 aiming to strengthen the safeguards of the monitoring exercise of the implementation of the EMFA, which we believe holds significant importance.

As stated during the Council, our country's strong support for EMFA is also based on the fact that it will establish a common and reliable framework within the EU, which will be the safest and most objective criterion for evaluating the level of media freedom and pluralism in each Member State

Therefore, it is important that the Commission sets transparent and precise rules for all those contributing to the monitoring process of the implementation of the EMFA and assessing the level of media freedom and pluralism.

We believe that additional safeguards should be provided to prevent the inclusion of unreliable data and criteria that distort the objective picture of the media freedom in each member state.

In light of the above, we would like to request further elaboration and strengthening of the provision related to the monitoring of the Regulation's implementation.

In particular, we request the completion of Article 25 with the provision that the Commission shall issue guidelines to those who will carry out the monitoring, that will clearly define not only the key performance indicators, but also the methodology as well as the selection criteria of the participants assessors to whom the specific task will be assigned, ensuring their scientific competence and level of expertise.

The guidelines should be developed in consultation with the Board and the Contact Committee to reinforce institutional safeguards that protect the integrity of the process. This will prevent any future challenges to the evaluation's findings.

Draft proposal (proposed amendments in red):

Article 25¹

¹ Basis: AVMWP on 28 March – WK 3951/2023.

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

Recital 50²

(50) Risks to the functioning of the internal media market should be regularly monitored as part of the efforts to improve the functioning of the internal market for media services. Such monitoring should aim at providing detailed data and qualitative assessments, including as regards the degree of concentration of the market at national and regional level and risks of foreign information manipulation and interference. It should be conducted independently, **by a specialised academic entity in collaboration with researchers from the Member States**, on the basis of a robust list of key performance indicators **and methodology** developed and regularly updated

² Basis: AVMWP on 28 March – WK 3951/2023.

by the Commission **through guidelines issued** in consultation with the Board **and the Contact Committee**. Given the rapidly evolving nature of risks and technological developments in the internal media market, the monitoring should assess the prospective **economic viability** of the internal media market, to alert about vulnerabilities around media pluralism and editorial independence, and to help efforts to improve governance, data quality and risk management. In particular, the level of cross-border activity and investment, regulatory cooperation and convergence in media regulation, obstacles to the provision of media services, including in a digital environment, as well as transparency and fairness of allocation of economic resources in the internal media market should be covered by the monitoring. It should also consider broader trends in the internal media market and national media markets as well as national legislation affecting media service providers. In addition, the monitoring should provide a general overview of measures taken by media service providers with a view to guaranteeing the independence of individual editorial decisions, including those proposed in the accompanying Recommendation, and an analysis of their potential to reduce risks for the functioning of the internal market for media services. In order to ensure the highest standards of such monitoring, the Board, as it gathers entities with a specialised media market expertise, should be duly involved.



Council of the European Union
General Secretariat

Brussels, 24 May 2023

WK 6368/2023 ADD 1

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.

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 AT, BE, BG, CY, CZ, DK, EE, EL, HU, IT, LT

Delegations will find attached the written contributions from delegations that were made during or after the Audiovisual and Media Working Party meeting on 22 May 2023 in relation to the Presidency compromise proposals set out in WK 6368/2023 INIT.

BG COMMENTS

*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

**Proposal by BG following the discussion in the AVM WP on 22 May 2023 and in view of
the preparation of a compromise texts on some of the Articles in EMFA**

Article 6

Duties of media service providers

1. Media service providers shall make easily and directly accessible **in electronic and user friendly format** to the recipients of their services the following **information and provide it upon request to National regulatory authorities or bodies**:
 - (a) their legal name and contact details;
 - (b) the name(s) **and contact details** 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 within the meaning of Article 3, point 6 of Directive (EU) 2015/849 of the European Parliament and of the Council.
 - (d) **the legal name and contact details of any advertisers, sponsors or donors of private or commercial nature**
2. Without prejudice to national constitutional laws consistent with the Charter, **owners of** media service providers shall take measures that they deem appropriate with a view to guaranteeing the independence of individual editorial decisions. In particular, such measures shall aim to:
 - (a) guarantee that editors are free to take individual editorial decisions in the exercise of their professional activity; 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. **Media service providers shall update the information made available according to**
paragraph 1 within 30 days of any change to their ownership or control arrangements.

(21) The Recommendation that accompanies this Regulation² provides a catalogue of internal safeguards that **should** be adopted within media companies in this regard. The present

Regulation should not be construed to the effect of depriving the owners of private media service providers of their prerogative to set strategic or general goals and to foster the growth and financial viability of their undertakings. In this respect, this Regulation recognises that the goal of fostering editorial independence needs to be reconciled with the legitimate rights and interests of private media owners.

Amendments based on the Presidency compromise proposal in doc. WK 6368/2023 INIT

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) 2022/2065;

(e) Regulation (EU) 2022/1925;

(f) Regulation (EU) .../... [Regulation on the transparency and targeting of political advertising [2021/0381(COD)]].

(g) Regulation (EU) 2016/679.

3. This Regulation shall not affect the possibility for Member States to adopt more detailed **or stricter** rules in the fields covered by Chapter II [...], Section 5 , provided that those rules comply with Union law.

Article 2

Definitions

(14a) ‘public authority or entity’ means a national or subnational government, a regulatory authority or body, or an entity controlled, directly or indirectly, by a national or subnational government at [...] national , regional level or local level;

Article 24

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

1. Public funds or any other consideration or advantage granted, **directly or indirectly**, by public authorities to media service providers for the purposes of **state advertising or for the purpose of purchasing goods or services from them** shall be awarded according to

transparent, objective, proportionate and non-discriminatory criteria and through open, proportionate and non-discriminatory procedures. This Article shall not affect public procurement rules. 2. Public authorities **or entities, including national, federal or regional governments, regulatory authorities or bodies, as well as state-owned enterprises or other state-controlled entities at the national or regional level, or local governments,** shall make publicly available accurate, comprehensive, intelligible, detailed and yearly information about their advertising expenditure **of public funds [...]**, which shall include at least the following details: (a) the legal names of media service providers from which advertising services were purchased; (b) the total annual amount spent as well as the amounts spent per media service provider.

3. National regulatory authorities or bodies **or other competent independent authorities or**

bodies at national level shall monitor the allocation of state advertising in media markets **and,** in order to assess the **completeness** of the information on state advertising made available pursuant to paragraph 2, [...]may request from **those public authorities that fall**

under paragraph 2 further information, including information on the application of criteria

referred to in paragraph 1. **In case the monitoring and assessment are carried out by other competent independent authorities or bodies, they shall keep the national regulatory**

authorities or bodies at national level duly informed.

4. [...]

LT COMMENTS

LT proposal for art. 17 EMFA Regulation

Article 17	<p>LT still sees some risks with Article 17. If the presidency does not plan to delete it,</p> <p>perhaps these few things could help:</p> <p>a) explaining in the recitals what "to restrict the visibility of the content provided by such media service provider" means - that it means deleting the content or temporarily hiding it from everyone, and not other actions - like, downranking, labelling and all other actions that start with "de-".</p> <p>b) In para 1, it is said "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". Perhaps the good idea would be to add other points a, b, d. The authority should be able to provide information to VLOP about the fact that "media" is not editorially independent from third countries.</p> <p>c) not adding "within X hours" in para 2.</p>
-------------------	--

CZ COMMENTS

CZ amendment

Recital 31

(31) Very large online platforms act for many users as a gateway for access to media services. Media service providers who exercise editorial responsibility over their content play an important role in the distribution of information and in the exercise of freedom of information online. When exercising such editorial responsibility, they are expected to act diligently and provide information that is trustworthy and respectful of fundamental rights. **The effective and independent exercise of editorial responsibility is also crucial to guarantee that the media content is compliant** with the regulatory or self-regulatory requirements they are subject to in the Member States. Therefore, also in view of users' freedom of information, where providers of very large online platforms consider that content provided by such media service providers is incompatible with their terms and conditions, while it is not contributing to a systemic risk referred to in Article 34 of Regulation (EU) 2022/2065 of the **European Parliament and of the Council**²³, they should duly consider freedom and pluralism of media, in accordance with Regulation (EU) 2022/2065 and provide, as early as possible, the necessary explanations to media service providers as their business users in the statement of reasons under Regulation (EU) 2019/1150. To minimise the impact of any restriction to that content on users' freedom of information, very large online platforms should endeavour to submit the **clear and detailed** statement of reasons prior to the restriction taking effect without prejudice to their obligations under Regulation (EU) 2022/2065 and **give an opportunity to the concerned media service provider to respond to such a statement of reasons. Following the reply of the media service provider, or in the absence of such a reply within an appropriate period of time, the provider of a very large online platform should inform the media service provider concerned if it intends to proceed with such a restriction or suspension. The length of the period of time for the response of the media service provider should be determined in line with the principle of proportionality and with regard to the time sensitivity and seriousness of the risk or harm addressed by the restriction or suspension in question.** This Regulation should not prevent a provider of a very large online platform to take expeditious measures either against illegal content disseminated through its service, or in order to mitigate systemic risks posed by dissemination of certain content through its service, in compliance with Union law, in particular pursuant to Regulation (EU) 2022/2065.

Reasoning:

Added wording shall replace the fixed time frame in the wording of Art. 17/2; this means to omit the text "within X hours" in the Art. 17/2

The amendment is highlighted in yellow.

Proposal for a modification to article 7 EMFA – Consistency with Digital Services Act (DSA)

1. Motivation

With this modification, we propose to bring the supervision and enforcement of the obligations enshrined in article 17 of the European Media Freedom Act (EMFA) under the responsibility of the Commission. Following the logic set out in the Digital Services Act (DSA), we believe the Commission is better placed for this task than the national regulatory authorities.

We wish to stress the importance of coherency between the EMFA and DSA as a factor in the effective enforcement of both instruments. The EMFA does not only impose obligations on very large online platforms, it also deals more generally with [providers of] information society services (as defined in Directive 2000/31/EC) which fall under the scope of the DSA.

Concerning very large online platforms, the DSA specifies in its considerations that the Commission is by and large made responsible for their oversight and for public enforcement because of the potential impact and challenges involved in effectively supervising these providers (cons. 124 DSA). The Commission is said to be better placed to address these systemic infringements affecting multiple Member States, other serious repeated infringements and any failure to establish effective mechanisms required (cons. 125 DSA). Therefore, in the interest of efficiency, to avoid duplication and to ensure compliance with the principle of *ne bis in idem*, the Digital Services Act accords either an exclusive competence for the Commission concerning very large online platforms or at least a priority for the Commission to exercise its competence in certain cases (cons. 125 DSA).

Very large online platforms are said to be of great importance and given their reach and impact, their failure to comply with obligations applicable to them may affect a substantial number of recipients of the services across different Member States (cons. 137 DSA).

We therefore believe bringing the supervision and enforcement of article 17 of the EMFA under the responsibility of the Commission promotes coherency and effective enforcement. Concerning very large online platforms, the reasoning developed in the DSA and its considerations applies *mutatis mutandis* to the obligations the EMFA imposes on them. In this regard, we suggest to modify article 7 as following.

2. Modification of Article 7 EMFA proposal

1. The national regulatory authorities or bodies as defined in Art 2 (12) shall ensure, where applicable through consultation or coordination with other relevant authorities or bodies, or, where relevant self-regulatory bodies in their Member States, the application of Chapter III **with the exception of article 17 whose supervision is ensured by the European Commission pursuant to the applicable provisions of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).**

EE COMMENTS

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

Original version and **bold** = PRES previous compromise text to AVMWP

Bold underlined = PRES new compromise text to AVMWP 22 May

Article 1¹

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/**2065**;

(e) Regulation (EU) 2022/**1925**;

(f) Regulation (EU) .../... [Regulation on the transparency and targeting of political advertising [**2021/0381(COD)**]].

(g) **Regulation (EU) 2016/679.**

¹ Basis 1: AVMWP on 14 March – WK 3419/2023. Basis 2: AVMWP on 28 March – WK 3951/2023. Basis 3: AVMWP on 17 April – WK 4717/2023.

3. This Regulation shall not affect the possibility for Member States to adopt more detailed **or stricter** rules in the fields covered by Chapter II [...], Section 5 and **Article 24** of Chapter III, provided that those rules comply with Union law.

Article 2²

Definitions

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

(10) ‘provider of very large online platform’ means a provider of an online platform that has been designated as a very large online platform pursuant to Article 33(4) of Regulation (EU) 2022/2065;

(14) ‘audience measurement’ means the activity of collecting, interpreting or otherwise processing data about the number and characteristics of users of media services **or users of content on online platforms** for the purposes of decisions regarding advertising allocation or **pricing** or planning, production or distribution of content;

(14a) ‘public authority or entity’ means a national or subnational government, a regulatory authority or body, or an entity controlled, **directly or indirectly**, by a national or subnational government at national or regional level;

(15) ‘State advertising’ means the placement, publication or dissemination, in any media service, of a promotional or self-promotional message **or a public announcement or an information campaign**, normally in return for payment or for any other consideration, by, for or on behalf of [...] a public authority or entity [...];

Section 4

Provision of and access to media services in a digital environment

² Basis 1: AVMWP on 26 January – WK 866/2023 (para 12), AVMWP on 14 March – WK 3419/2023 (paras 1–6, 16 and 17) and AVMWP on 28 March – WK 3951/2023 (paras 7–9a, 14, 14a and 15). Basis 2: AVMWP on 17 April – WK 4717/2023.

Article 17³

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 by and accepted in the relevant media sector in one or more Member States **for the exercise of editorial responsibility and editorial standards; and**
- (d) **provide the contact details of the relevant national regulatory authorities or bodies or representatives of the co- or self-regulatory mechanisms referred to in point (c).**

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

2. Where a provider of a very large online platform decides to suspend the provision of its online intermediation services in relation to content provided by a media service provider that submitted a declaration **and contact details** pursuant to paragraph 1 of this Article or to restrict the visibility of the content provided by such media service provider, on the grounds that such content is incompatible with **the terms and conditions of the online intermediation services, which are not adapted to mitigate a systemic risk according to Article 35(1)(b) of the Regulation (EU) 2022/2065 [Digital Services Act], and** 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, **[...]prior to the restriction or suspension taking effect.**

³ Basis: AVMWP on 21 February – WK 2273/2023.

3. Providers of very large online platforms shall take all the necessary technical and organisational measures to ensure that complaints under Article 11 of Regulation (EU) 2019/1150 by media service providers that submitted a declaration pursuant to paragraph 1 of this Article are processed and decided upon with priority and without undue delay.

4. Where a media service provider that submitted a declaration pursuant to paragraph 1 considers that a provider of very large online platform repeatedly restricts or suspends the provision of its services in relation to content provided by the media service provider without sufficient grounds, the provider of very large online platform shall engage in a meaningful and effective dialogue with the media service provider, upon its request, in good faith with a view to finding an amicable solution, within a reasonable timeframe for terminating unjustified restrictions or suspensions and avoiding them in the future. The media service provider may notify the details and outcome of such exchanges to the Board.

4a. In case a provider of very large online platforms rejects a declaration by a media service provider submitted pursuant to paragraph 1 of this Article or in case no amicable solution was found following the dialogue pursuant to paragraph 4 of this Article, the media service provider concerned may use the mediation mechanism under Article 12 of Regulation (EU) 2019/1150. The media service provider concerned may notify the outcome of such mediation to the Board.

5. Providers of very large online platforms shall make publicly available on an annual basis **detailed** information on:

(a) the number of instances where they imposed any restriction or suspension on the grounds that the content provided by a media service provider that submitted a declaration in accordance with paragraph 1 [...] is incompatible with their terms and conditions;

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

(c) the number of dialogues with media service providers pursuant to paragraph 4.

6. With a view to facilitating the consistent and effective implementation of this Article, the Commission **shall** issue guidelines to **facilitate** the **effective implementation** of the **functionality referred to** in paragraph 1, including the modalities of involvement of civil society organisations and, where relevant, national regulatory authorities or bodies in the review of the declarations under paragraph 1.

Article 18⁴

Structured dialogue

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

Article 19⁵

Right of customisation of audiovisual and audio 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 and audio media services in order to customise the media offer according to their interests or preferences in compliance with **Union** law. This provision shall not affect national measures implementing Article 7a of Directive 2010/13/EU.
2. When placing the devices and user interfaces referred to in paragraph 1 on the market, manufacturers 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 and audio media services offered.
- 3. Member States shall take appropriate measures to ensure that manufacturers and developers comply with paragraph 2.**
4. The Board shall foster cooperation between media service providers, standardisation bodies or any other relevant stakeholders in order to facilitate the development of **harmonised** standards related to [...] design of devices or user interfaces controlling or managing access to

⁴ Basis: AVMWP on 21 February – WK 2273/2023.

⁵ Basis: AVMWP on 3 March – WK 2862/2023.

and use of audiovisual and audio media services **or those devices related to carrying the digital signals.** (*former art 15(4)*)

Section 5

Requirements for well-functioning media market measures and procedures

Article 20⁶

National measures affecting the operation of media service providers

1. [...] Legislative, regulatory or administrative **measures** taken by a Member State that **are** 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 adoption of [...] **an** administrative measure as referred to in paragraph 1 shall be [...] set out in advance **and carried out without undue delay.**
3. [...] Any media service provider subject to a regulatory or administrative measure referred to in paragraph 1 that concerns it individually and directly shall have the right to appeal against that measure to an appellate body. That body, **which may be a court**, shall be independent of the parties involved and of any external intervention or political pressure liable to jeopardise its independent assessment of matters coming before it. It shall have the appropriate expertise to enable it to carry out its functions effectively.
4. [...] **If** a regulatory or administrative measure **referred to in paragraph 1** is likely to **significantly** and adversely affect the **operation of media service providers in** the internal market, **the Board may draw up an opinion on the measure.** Following **that** opinion [...], and without prejudice to its powers under the Treaties, the Commission may issue its own opinion on the matter. [...] The Board and [...] the Commission shall **make their opinions** publicly available.
5. [...] **For the purposes of drawing up an opinion under paragraph 4**, the Board, and where applicable, the Commission [...], **may request** relevant information **from a national**

⁶ Basis: AVMWP on 3 March – WK 2862/2023.

authority or body that adopts a regulatory or administrative measure referred to in paragraph 1 that concerns, individually and directly, a media service provider. **The national authority or body concerned shall provide that information** without undue delay and by electronic means.

Article 21⁷

Assessment of media market concentrations

1. Member States shall provide, in **national law**, substantive and procedural rules which **allow for** an assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence. These rules shall:

- (a) be transparent, objective, proportionate and non-discriminatory;
- (b) require the parties involved in the concentration [...] to notify such concentration in advance to relevant national authorities or bodies **or provide such authorities or bodies with appropriate powers to obtain information from those parties necessary to assess the concentration**;
- (c) designate the national regulatory authorities or bodies as responsible for the assessment [...] or ensure their involvement in such assessment;
- (d) set out in advance objective, non-discriminatory and proportionate criteria for notifying **such** media market concentrations [...] and for assessing the impact [...] on media pluralism and editorial independence.

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

2. In the assessment referred to in paragraph 1, the following elements shall be taken into account:

- (a) the **expected** impact of the **media market** concentration on media pluralism, including its effects on the formation of public opinion and on the diversity of media **services and content**

⁷ Basis: AVMWP on 3 March – WK 2862/2023.

on the market, taking into account the online environment and the parties' interests, links or activities in other media or non-media businesses;

(b) the safeguards for editorial independence, including the [...] measures **taken** by media service providers [...] with a view to guaranteeing the independence of editorial decisions;

(c) whether, in the absence of the **media market** concentration, the entities concerned would remain economically sustainable, and whether there are any possible alternatives to ensure its economic sustainability.

3. The Commission, assisted by the Board, may issue guidelines on [...] **the elements referred to in paragraph 2.**

4. [...] Where **a media market concentration is likely to** affect the functioning of the internal market for media services, the national regulatory authority or body shall consult the Board in advance on **its draft assessment or its opinion, as relevant.**

5. Within the timelines to be established by the Board in its rules of procedure, the Board **may** draw up an opinion on the draft **assessment or draft opinion of the consulting national regulatory authority or body**, taking account of the elements referred to in paragraph 2 and transmit that opinion to the such authority or body and the Commission.

6. The national regulatory authority or body referred to in paragraph 4 shall take utmost account of the opinion referred to in paragraph 5. [...]

Article 22⁸

Opinions on media market concentrations

1. In the absence of an assessment or a consultation pursuant to Article 21, the Board, upon request of the Commission, shall draw up an opinion on the impact of a media market concentration on media pluralism and editorial independence, where a media market concentration is likely to affect the functioning of the internal market for media services. The Board shall base its opinion on the elements set out in Article 21(2). The Board may bring **such** concentrations to the attention of the Commission.

⁸ Basis: AVMWP on 3 March – WK 2862/2023.

2. Following the opinion of the Board, and without prejudice to its powers under the Treaties, the Commission may issue its own opinion on the matter.
3. [...] The Board and [...] the Commission shall **make their** opinions publicly available.

Section 6

Transparent and fair allocation of economic resources

Article 23⁹

Audience measurement

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

⁹ Basis: AVMWP on 28 March – WK 3951/2023.

4. The Commission, assisted by the Board, may issue guidelines on the practical application of paragraphs 1, 2 and 3, considering, **where appropriate, the codes of conduct referred to in paragraph 3.**

5. The Board shall foster the exchange of best practices related to the deployment of audience measurement systems through a regular dialogue between representatives of the national regulatory authorities or bodies, representatives of providers of audience measurement systems, **media service providers, providers of online platforms** and other interested parties.

Article 24¹⁰

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

1. Public funds or any other consideration or advantage granted, directly or indirectly, by public authorities to media service providers for the purposes of **state advertising or for the purpose of purchasing goods or services from them** shall be awarded according to transparent, objective, proportionate and non-discriminatory criteria and through open, proportionate and non-discriminatory procedures. This Article shall not affect **the awarding of public contracts and concession contracts under the Union public procurement rules or the application of Union state aid rules.**

2. Public authorities or entities, [...] **excluding subnational** governments of territorial entities of **less than 100,000** inhabitants, shall make publicly available accurate, comprehensive, intelligible, detailed and yearly information about their **state** advertising expenditure [...], which shall include at least the following details:

(a) the legal names of media service providers from which advertising services were purchased;

(b) the total annual amount spent as well as the amounts spent per media service provider.

3. National regulatory authorities or bodies or other competent independent authorities or bodies at national level shall monitor the allocation of state advertising in media markets and, in order to assess the **completeness** of the information on state advertising made available pursuant to paragraph 2, may request from **those public authorities that fall under**

¹⁰ Basis: AVMWP on 28 March – WK 3951/2023.

paragraph 2 further information, including information on the application of criteria referred to in paragraph 1. In case the monitoring and assessment are carried out by other competent independent authorities or bodies, they shall keep the national regulatory authorities or bodies at national level duly informed.

4. [...]

Chapter IV

Final Provisions

Article 25¹¹

Monitoring exercise

1. The Commission shall ensure an independent monitoring of the internal market for media services, including risks to and progress in its functioning . The findings of the monitoring exercise shall be subject to consultation with the Board. They shall be presented and discussed with the Contact Committee.

2. The Commission shall define key performance indicators to be used for the monitoring referred in paragraph 1, in consultation with the Board.

3. The monitoring exercise shall include:

(a) a detailed analysis of media markets of all Member States, including as regards the level of media concentration and risks of foreign information manipulation and interference;

(b) an overview and forward-looking assessment of the functioning of the internal market for media services as a whole;

(c) an overview of measures taken by media service providers with a view to guaranteeing the independence of individual editorial decisions and an analysis of the expected reduction in risks for the functioning of the internal market for media services.

4. The monitoring shall be carried out annually, and [...]the results **thereof, including the methodology and data**, shall be made publicly available.

¹¹ Basis: AVMWP on 28 March – WK 3951/2023.

Article 26

Evaluation and reporting

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

Article 27

Amendments to Directive 2010/13/EU

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

Article 28

Entry into force and application

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

2. This Regulation shall apply from [6 months after the entry into force].

However, Articles 7 to 12 and 27 shall apply from [3 months after the entry into force] and Article 19 shall apply from [48 months after the entry into force].

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

Recital 1¹²

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

Recital 2¹⁴

(2) Given their unique role, the protection of media freedom and pluralism is an essential feature of a well-functioning internal market for media services (or ‘internal media market’). This market, including audiovisual media services as well as radio and press, has substantially changed since the beginning of the new century, becoming increasingly digital and international. It offers many economic opportunities but also faces a number of challenges. The Union should help the media sector seize those opportunities within the internal market,

¹² Basis: AVMWP on 17 April – WK 4717/2023 (no amendments).

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

¹⁴ Basis: AVMWP on 17 April – WK 4717/2023 (no amendments).

while at the same time protecting the values, such as the protection of the fundamental rights, that are common to the Union and to its Member States.

Recital 3¹⁵

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

Recital 4¹⁷

(4) However, the internal market for media services is insufficiently integrated, and suffers from a number of market failures that are increased by the digitalisation. First, global online platforms act as gateways to media content, with business models that tend to disintermediate access to media services and amplify polarising content and disinformation. These platforms are also essential providers of online advertising, which has diverted financial resources from the media sector, affecting its financial sustainability, and consequently the diversity of content on offer. As media services are knowledge- and capital-intensive, they require scale to remain competitive and to thrive in the internal market. To that effect, the possibility to offer services across borders and obtain investment including from or in other Member States is particularly important. Second, a number of national restrictions hamper the free movement

¹⁵ Basis: AVMWP on 17 April – WK 4717/2023 (no amendments).

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

¹⁷ Basis: AVMWP on 17 April – WK 4717/2023 (no amendments).

within the internal market. In particular, different national rules and approaches related to media pluralism and editorial independence, insufficient cooperation between national regulatory authorities or bodies as well as opaque and unfair allocation of public and private economic resources make it difficult for media market players to operate and expand across borders and lead to an uneven level playing field across the Union. Third, the good functioning of the internal market for media services is challenged by providers (including those controlled by certain third countries) that systematically engage in disinformation, including information manipulation and interference, and use the internal market freedoms for abusive purposes, thus thwarting the proper functioning of market dynamics.

Recital 4a (new)

(4a) The fragmentation of rules and approaches which characterizes the media market in Europe negatively affects to varying degrees the conditions for the exercise of economic activities in the internal market by media service providers in different sub-sectors, including the audiovisual, radio, and press sub-sectors, and undermines their capability to efficiently operate cross-border or establish operations in other Member States. In particular, diverging and uncoordinated national measures and procedures related to media pluralism lead to legal uncertainty and additional costs for media companies willing to enter new markets, and prevent them from benefiting from the scale of the internal market for media services. Moreover, discriminatory or protectionist national measures affecting the operation of media companies disincentivise cross-border investment in the media sector and in some cases may force media companies that are already operating in a given market to exit it. These obstacles affect companies active both in the broadcasting (including audiovisual and radio) and press sectors. Although the fragmentation of editorial independence safeguards concerns all media sub-sectors, it affects the press sector to an even greater degree because of varying national regulatory or self-regulatory approaches in this area. The internal market for media services may also be affected by insufficient tools for regulatory cooperation between national regulatory authorities, which is key for ensuring that media market players (often active in different media subsectors) systematically engaging in disinformation, including information manipulation and interference, do not benefit from the scale of the internal market for media services. Furthermore, while biased allocation of economic resources, in particular in the form of state advertising, is used to covertly subsidise media outlets in all the media sub-sectors, it

tends to have a particularly negative impact on the press, which has been weakened by decreasing levels of advertising revenues. Finally, the challenges stemming from the digital transformation reduce the ability of companies in all media sub-sectors, and in particular the smaller ones in the radio and press sector, to compete on a level playing field with online platforms, which play a key role in online distribution of content.

Recital 6¹⁸

(6) [...] Natural persons who are nationals of Member States or benefit from rights conferred upon them by Union law and legal persons established in the Union should be able to effectively enjoy the freedom to receive services, including free and pluralistic media services **of news and current affairs content produced in accordance with editorial freedom** in the internal market, to the benefit of cultural and linguistic diversity. This reflects the right to receive and impart information **and the requirement to respect media freedom and media pluralism** pursuant to Article 11 of the Charter of Fundamental Rights of the European Union ('the Charter'), in conjunction with Article 22 of the Charter which requires the Union to respect cultural, religious and linguistic diversity. Furthermore, in fostering the cross-border flow of media services, a minimum level of protection of service recipients should be ensured in the internal market. In the final report of the Conference on the Future of Europe, citizens called on the EU to further promote media independence and pluralism, in particular by introducing legislation addressing threats to media independence through EU-wide minimum standards.¹⁹ It is thus necessary to harmonise certain aspects of national rules related to media services, taking also in consideration Article 167 of the TFEU, which reaffirms the importance of respecting the national and regional diversity of the Member States. However, Member States should have the possibility to adopt more detailed or stricter rules in specific fields, provided that those rules comply with Union law and that Member States do not restrict the free movement of media services from other Member States which comply with the rules laid down in these fields.

¹⁸ Basis 1: AVMWP on 14 March – WK 3419/2023. Basis 2: AVMWP on 17 April – WK 4717/2023.

¹⁹ Conference on the Future of Europe – Report on the Final Outcome, May 2022, in particular proposal 27 (1) and 37 (4).

Recital 9²¹

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

Recital 10²²

(10) State advertising should be understood broadly as covering promotional or self-promotional activities undertaken by, for or on behalf of a wide range of public authorities or entities, including **national and subnational** governments, regulatory authorities or bodies as well as enterprises or entities which are controlled by national or subnational governments in different sectors, at national or regional level [...]. **Such control** can result from rights, contracts or any other means which confer the possibility of exercising decisive influence on an enterprise or entity. In particular, ownership of capital or the right to use all or part of the assets or rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an enterprise or entity are relevant factors, as **laid down in Article 3(2) of Council Regulation (EC) No 139/2004**. However, the definition of State advertising should not include public announcements that are justified by an overriding reason of public interest, such as emergency messages by public authorities which are necessary in cases of natural or sanitary disasters, accidents or similar sudden incidents that can cause harm to individuals.

²¹ Basis 1: AVMWP on 28 March – WK 3951/2023. Basis 2: AVMWP on 17 April – WK 4717/2023.

²² Basis 1: AVMWP on 28 March – WK 3951/2023. Basis 2: AVMWP on 17 April – WK 4717/2023.

Recital 31²³

(31) Very large online platforms act for many users as a gateway for access to media services. Media service providers who exercise editorial responsibility over their content play an important role in the distribution of information and in the exercise of freedom of information online. When exercising such editorial responsibility, they are expected to act diligently and provide information that is trustworthy and respectful of fundamental rights. The effective and independent exercise of editorial responsibility is also crucial to guarantee that the media content is compliant with the regulatory or self-regulatory requirements they are subject to in the Member States. Therefore, also in view of users' freedom of information, where providers of very large online platforms consider that content provided by such media service providers is incompatible with their terms and conditions, while it is not contributing to a systemic risk referred to in Article 34 of Regulation (EU) 2022/2065 of the European Parliament and of the Council²⁴, they should duly consider freedom and pluralism of media, in accordance with Regulation (EU) 2022/2065 and provide, as early as possible, the necessary explanations to media service providers as their business users in the statement of reasons under Regulation (EU) 2019/1150²⁵. To minimise the impact of any restriction to that content on users' freedom of information, very large online platforms should endeavour to submit the clear and detailed statement of reasons prior to the restriction taking effect without prejudice to their obligations under Regulation (EU) 2022/2065 and **give an opportunity to the concerned media service provider to respond to such a statement of reasons. Following the reply of the media service provider, or in the absence of such a reply within an appropriate period of time, the provider of a very large online platform should inform the media service provider concerned if it intends to proceed with such a restriction or suspension.** This Regulation should not prevent a provider of a very large online platform to take expeditious measures either against illegal content disseminated through its service, or in order to mitigate systemic risks posed by dissemination of certain content through its service, in compliance with Union law, in particular pursuant to Regulation (EU) 2022/2065.

²³ Basis: AVMWP on 21 February – WK 2273/2023.

²⁴ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).

²⁵ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57-79).

Recital 32²⁶

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

Recital 33²⁷

(33) To this end, providers of very large online platforms should provide a functionality on their online interface to enable media service providers to declare that they meet certain requirements, while at the same time retaining the possibility not to accept such self-declaration where they consider that these conditions are not met. **When a media service provider declares itself subject to regulatory requirements or adhering to co- or self-regulatory mechanisms, it should be able to provide contact details of the relevant national regulatory authority or body or of the representatives of the co- or self-regulatory mechanism. In case of reasonable doubts, this would enable the very large online platform to confirm with these authorities or bodies that the media service provider is subject to such requirements or mechanisms. Where relevant, providers of very large online platforms should** rely on information regarding adherence to these requirements, such as the machine-readable standard of the Journalism Trust Initiative or other relevant codes of conduct. Guidelines by the Commission **would be key** to facilitate an effective implementation of such functionality, **in particular by contributing to the wide** involvement of relevant civil society organisations in the review of the declarations, **ensuring consultations with the national regulatory authorities or bodies or co- or self-regulatory bodies and minimising risks of** potential abuse of the functionality.

²⁶ Basis: AVMWP on 21 February – WK 2273/2023 (no amendments).

²⁷ Basis: AVMWP on 21 February – WK 2273/2023 (no amendments).

Recital 34²⁸

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

Recital 35²⁹

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

Recital 36³⁰

(36) Building on the useful role played by ERGA in monitoring compliance by the signatories of EU Code of Practice on Disinformation, the Board should, at least on a yearly basis, organise a structured dialogue between providers of very large online platforms, representatives of media service providers and representatives of civil society to foster access to diverse offers of independent media on very large online platforms, discuss experience and best practices related to the application of the relevant provisions of this Regulation and to monitor adherence to self-regulatory initiatives aimed at protecting society from harmful

²⁸ Basis: AVMWP on 21 February – WK 2273/2023 (no amendments).

²⁹ Basis: AVMWP on 21 February – WK 2273/2023.

³⁰ Basis: AVMWP on 21 February – WK 2273/2023.

content, including those aimed at countering disinformation. The Commission **should**, where relevant, **take into consideration** the reports on the results of such structured dialogues when assessing systemic and emerging issues across the Union under Regulation (EU) 2022/2065 and may ask the Board to support it to this effect.

Recital 37³¹

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

³¹ Basis: AVMWP on 3 March – WK 2862/2023.

Recital 37a (new, former Recital 29)³²

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

Recital 38³³

(38) While different legislative, regulatory or administrative measures, **including those taken by national regulatory authorities or bodies, could be justified and conducive to media pluralism, such measures could also** negatively affect the operation of media service providers in the internal market. **They could, for instance, make it more burdensome for a company established in the Union to enter another national market or could unduly restrict cross-border investment in the media sector, hindering or rendering less attractive the exercise of the freedom of establishment and the freedom to provide services as guaranteed by Union law. Such measures could** 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.

³² Basis: AVMWP on 3 March – WK 2862/2023.

³³ Basis: AVMWP on 3 March – WK 2862/2023.

Recital 39³⁴

(39) Without prejudice to the application of the Union's competition and State aid rules as well as national measures taken in compliance with such rules, it is [...] key that the Board is empowered to issue an opinion where national measures are likely to significantly and adversely affect the operation of media service providers across borders, in particular by preventing or hindering their economic activities in such a way that the provision of their media services in a given market is seriously undermined. 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 it concerns a media service provider that, because of, inter alia, its market shares, audience reach or level of circulation, has a significant influence on the formation of public opinion in that Member State, **and it prevents such media service providers from effectively operating in a given market or entering a new one.**

Recital 40a (new)

(40a) Media market concentrations are assessed differently across the Union from the media pluralism standpoint. The rules and procedures vary across the Union. Some Member States rely on competition assessments only, whereas others have dedicated frameworks for specific media pluralism assessment of concentrations. In the latter case, there are considerable differences. In some cases, all media transactions are scrutinised, irrespective of whether they reach certain thresholds, while in other cases an assessment is conducted only when specific thresholds are exceeded or certain qualitative criteria are met. For instance, for the purposes of such assessment some Member States apply revenue multipliers in order to ensure that competitive threats do not pass undetected and are brought under scrutiny even when the outlets involved have low revenues. Where they exist, there are also differences in the procedures applicable to the scrutiny of market transactions for media pluralism purposes. This scrutiny is often carried out independently by the media regulator (through a self-standing assessment) or with the involvement of the media regulator by the competent authority (through an opinion, that could be a stand-alone contribution or written views or comments in the context of an ongoing assessment). Certain national rules enable Ministries

³⁴ Basis: AVMWP on 3 March – WK 2862/2023.

or governmental bodies to intervene in the media market scrutiny on non-economic grounds, ranging from protection of media pluralism to the safeguarding of public security or other general interests. Such different and uncoordinated national measures applicable to media market concentrations can lead to diverging assessments of market transactions involving media companies and result in legal uncertainty as well as regulatory, administrative or economic burdens for media companies willing to operate across borders, thus distorting competition in the internal market for media services. In some cases, national measures in this area can effectively prevent a media company established in the Union from entering another national market, without being genuinely aimed at promoting media pluralism.³⁵ Ultimately, instead of achieving greater media plurality, this may reinforce the oligopolistic dynamics in the media market. In order to remove obstacles hindering the media service providers' ability to operate in the internal market, it is important that this Regulation sets out common requirements for assessing media market concentrations across the Union.

Recital 40³⁶

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

³⁵ Case C-719/18, Vivendi SA v Autorità per le Garanzie nelle Comunicazioni.

³⁶ Basis: AVMWP on 3 March – WK 2862/2023.

into account is the reduction of competing views within that market as a result of the concentration.

Recital 41³⁷

(42) National regulatory authorities or bodies, who have specific expertise in the area of media pluralism, should be involved in the assessment of the impact of media market concentrations on media pluralism and editorial independence where they are not the designated authorities or bodies themselves, **for example, by 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.

Recital 42³⁸

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

³⁷ Basis: AVMWP on 3 March – WK 2862/2023 (no amendments).

³⁸ Basis: AVMWP on 3 March – WK 2862/2023.

Recital 43³⁹

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

Recital 44⁴⁰

(44) With a view to ensuring pluralistic media markets, the national authorities or bodies and the Board should take account of a set of criteria. In particular, impact on media pluralism should be considered, including notably the effect on the formation of public opinion, taking into account [...] the online environment. Concurrently, it should be considered whether other media outlets, providing different and alternative content, would still coexist in the given market(s) after the media market concentration in question. Assessment of safeguards for editorial independence should include the examination of potential risks of undue interference by the prospective owner, management or governance structure in the individual editorial decisions of the acquired or merged entity. The existing or envisaged internal safeguards

³⁹ Basis: AVMWP on 3 March – WK 2862/2023.

⁴⁰ Basis: AVMWP on 3 March – WK 2862/2023.

aimed at preserving independence of the individual editorial decisions within the media undertakings involved should also be taken into account. In assessing the potential impacts, the effects of the concentration in question on the economic sustainability of the entity or entities subject to the concentration should also be considered and whether, in the absence of the concentration, they would be economically sustainable, in the sense that they would be able in the medium term to continue to provide and further develop financially viable, adequately resourced and technologically adapted quality media services in the market.

Recital 45⁴¹

(45) Audience measurement has a direct impact on the allocation and the prices of advertising, which represents a key revenue source for the media sector. It is a crucial tool to evaluate the performance of media content and understand the preferences of audiences in order to plan the future production of content. Accordingly, media market players, in particular media service providers and advertisers, should be able to rely on objective audience data stemming from transparent, unbiased and verifiable audience measurement solutions. However, certain new players that have emerged in the media ecosystem, **such as online platforms, that do not abide by the industry standards or best practices agreed within the relevant self-regulatory bodies and** provide their own measurement services without making available information on their methodologies. This could result in **non-comparable measurement systems**, information asymmetries among media market players and in potential market distortions, to the detriment of equality of opportunities for media service providers in the market.

Recital 46⁴²

(46) **Relevant market players have traditionally agreed upon a set of measurement methodologies in order to carry out audience measurement in a transparent and reliable manner and develop impartial and trusted benchmarks to be used when assessing the performance of media and advertising content. These measurement methodologies are**

⁴¹ Basis: AVMWP on 28 March – WK 3951/2023.

⁴² Basis: AVMWP on 28 March – WK 3951/2023.

either reflected in relevant industry standards and best practices or are organised and consolidated by self-regulatory bodies, such as the Joint Industry Committees, which are established in several Member States and bring together all the key stakeholders operating in the media and advertising industry. In order to enhance the verifiability and reliability **and thus comparability** of audience measurement methodologies, in particular online, transparency obligations should be laid down for providers of audience measurement systems that do not **follow the relevant industry standards and best practices or do not** abide by the industry benchmarks agreed within the relevant self-regulatory bodies. Under these obligations, such actors, when requested and to the extent possible, should provide advertisers and media service providers or parties acting on their behalf, with information describing the methodologies employed for the measurement of the audience. Such information could consist in providing elements, such as the size of the sample measured, the definition of the indicators that are measured, the metrics, the measurement methods and the margin of error as well as the measurement period. **The enhanced methodological transparency resulting from these obligations should enable media service providers and advertisers to better assess the performance of their content, as they would be able to compare more easily the results of the different audience measurement systems available on the market. However, the need to increase the transparency and contestability of audience measurement systems should be reconciled with the freedom of providers of audience measurement systems to develop their own measurement systems, as part of their freedom to conduct business. For this reason, the transparency obligations by which the providers of audience measurement systems should abide pursuant to this Regulation should not entail the disclosure of information which is the result of research and development investments, such as data science technologies protected by intellectual property rights.** The obligations imposed under this Regulation should **also** be without prejudice to any obligations that apply to providers of audience measurement services under Regulation (EU) 2019/1150 or Regulation (EU) 2022/1925 of the European Parliament and of the Council⁴³, including those concerning ranking, self-preferencing, **or providing access to performance measuring tools and the relevant data.**

⁴³ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, p. 1-66).

Recital 47⁴⁴

(47) Codes of conduct, drawn up either by the providers of audience measurement systems or by organisations or associations representing them, **could** contribute to the effective application of this Regulation and should, therefore, be encouraged. Self-regulation, **including relevant existing codes of conduct, have** already been used to foster high quality standards in the area of audience measurement. Its further development could be seen as an effective tool for the industry to agree on the practical solutions needed for ensuring compliance of audience measurement systems and their methodologies with the principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination and verifiability. When drawing up such codes of conduct, in consultation with all relevant stakeholders and notably media service providers **and providers of online platforms**, account could be taken in particular of the increasing digitalisation of the media sector and the objectives of **increasing comparability of different audience measurement methodologies and** achieving a level playing field among media market players.

Recital 48⁴⁵

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

⁴⁴ Basis: AVMWP on 28 March – WK 3951/2023.

⁴⁵ Basis: AVMWP on 28 March – WK 3951/2023.

Council⁴⁶ does not apply to public service contracts for the acquisition, development, production or co-production of programme material intended for audiovisual media services or radio media services. Media-specific rules on state advertising, where they exist, diverge significantly from one Member State to another.

Recital 49⁴⁷

(49) In order to ensure undistorted competition between media service providers and to avoid the risk of covert subsidies and of undue political influence on the media, it is necessary to establish common requirements of transparency, objectivity, proportionality and non-discrimination in the allocation of public funds or other state resources, to media service providers for the purpose of state advertising or purchasing goods or services from them other than state advertising, **for example, audiovisual productions, market data and consulting or training services**. As regards state advertising the common requirements should cover the allocation taking place both directly or indirectly, for instance through specialised intermediaries. **It is also necessary to establish common requirements** to publish information on the beneficiaries of state advertising expenditure and the amounts spent. It is important that Member States make the necessary information related to state advertising publicly accessible in an electronic format that is easy to view, access and download, in compliance with Union and national rules on commercial confidentiality. This Regulation **should** not affect the application of the **Union public procurement and State aid rules**.

Recital 50⁴⁸

(50) Risks to the functioning of the internal media market should be regularly monitored as part of the efforts to improve the functioning of the internal market for media services. Such monitoring should aim at providing detailed data and qualitative assessments, including as regards the degree of concentration of the market at national and regional level and risks of foreign information manipulation and interference. It should be conducted independently, **by**

⁴⁶ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65-242).

⁴⁷ Basis: AVMWP on 28 March – WK 3951/2023.

⁴⁸ Basis: AVMWP on 28 March – WK 3951/2023.

a specialised academic entity in collaboration with researchers from the Member States, on the basis of a robust list of key performance indicators, developed and regularly updated by the Commission, in consultation with the Board. Given the rapidly evolving nature of risks and technological developments in the internal media market, the monitoring should assess the prospective **economic viability** of the internal media market, to alert about vulnerabilities around media pluralism and editorial independence, and to help efforts to improve governance, data quality and risk management. In particular, the level of cross-border activity and investment, regulatory cooperation and convergence in media regulation, obstacles to the provision of media services, including in a digital environment, as well as transparency and fairness of allocation of economic resources in the internal media market should be covered by the monitoring. It should also consider broader trends in the internal media market and national media markets as well as national legislation affecting media service providers. In addition, the monitoring should provide a general overview of measures taken by media service providers with a view to guaranteeing the independence of individual editorial decisions, including those proposed in the accompanying Recommendation, and an analysis of their potential to reduce risks for the functioning of the internal market for media services. In order to ensure the highest standards of such monitoring, the Board, as it gathers entities with a specialised media market expertise, should be duly involved.

Recital 51

To prepare the ground for a correct implementation of this Regulation, its provisions concerning independent media authorities, the Board and the required amendments to Directive 2010/13/EU (Articles 7 to 12 and 27 of this Regulation) should apply 3 months after the entry into force of the Act, while all other provisions of this Regulation will apply 6 months after the entry into force of this Regulation. In particular, this is needed to ensure that the Board will be established in time to ensure a successful implementation of the Regulation.

Recital 52

Since the objectives of this Regulation, namely ensuring the proper functioning of the internal market for media services, cannot be sufficiently achieved by the Member States, because

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

Recital 53

This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter, in particular Articles 7, 8, 11, 16, 47, 50 and 52 thereof.

Accordingly, this Regulation should be interpreted and applied with due respect to those rights and principles. In particular, nothing in this Regulation should be interpreted as interfering with freedom of information or freedom of the press, or incentivising Member States to introduce requirements for editorial content of press publications.

Recital 54

The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council⁴⁹ and delivered an opinion on 11 November 2022⁵⁰,

⁴⁹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

⁵⁰ OJ C 487, 22.12.2022, p. 9.

HU COMMENTS

Thank you very much for today's meeting! Please find below the Hungarian comment and drafting suggestion regarding article 17 (4a) that was also presented during the meeting:

For dispute settlement Hungary recommends to follow measures of the DSA instead of P2B. Under the DSA it is the media service provider who can designate the forum, not the VLOPs, which solution seems more practical in the situation under consideration.

“In case a provider of very large online platforms rejects a declaration by a media service provider submitted pursuant to paragraph 1 of this Article or in case no amicable solution was found following the dialogue pursuant to paragraph 4 of this Article, the media service provider concerned may use the **mediation out-of-court dispute settlement** mechanism under Article ~~12~~ **21** of Regulation (EU) ~~2019/1150~~ **2022/2065**. The media service provider concerned may notify the outcome of such mediation to the Board.”

IT COMMENTS

EMFA Regulation Amendments proposed by Italy

- Articles 1, 2(10), 2(14), 2(14a), 2(15) Scope, definitions

There has been expanded the definitions of: (14) audience measurement in order to include users of online platforms; (14a) public entities covered by the regulation on state advertising in order to include companies directly or indirectly controlled by the State or local authorities; (15) 'state advertising' in order to include information campaigns and institutional messages.

We agree with these changes. However, it should be noted that the definition of 'media market concentration', which is limited to operations involving at least one 'media service provider', does not include certain cases of concentration operations in media markets that have a direct impact on pluralism (e.g. those involving advertising concessionaires).

- Articles 17 to 28 Provision of and access to media services in a digital environment, Requirements for the proper functioning of media market measures and procedures (including mergers), Transparent and fair allocation of economic resources, Final provisions

Art. 17: The amendments are acceptable. In relation to the new paragraph (4a), which introduces a kind of compulsory attempt of conciliation before the mediation bodies of the P2B Regulation before going to the Board, since disputes on disinformation fall within the scope of Article 21 DSA Regulation, it is proposed to supplement the new paragraph as follows (in red):

"4a. In case a provider of very large online platforms rejects a declaration by a media service provider submitted pursuant to paragraph 1 of this Article or in case no amicable solution was found following the dialogue pursuant to paragraph 4 of this Article, the media service provider concerned may use the mediation mechanism under **Article 12 of Regulation (EU) 2019/1150 or the out of court dispute settlement under Article 21 of Regulation (EU) 2022/2065**. The media service provider concerned may notify the outcome of such mediation to the Board."

Art. 19: the extension of the scope of application to radio service offers is supported and it is considered of paramount importance.

Art. 21 para. 1): we agree with the amendment to paragraph 1(b) introducing an alternative mechanism to prior notification of concentrations:

"(b) require the parties involved in the concentration [...] to notify such concentration in advance to relevant national authorities or bodies or provide such authorities or bodies with appropriate powers to obtain information from those parties necessary to assess the concentration;"

In this way, it will be possible to preserve the existing system of exemption provided for 'sub-threshold' mergers, in respect of which it should be noted that the competent authority (AGCOM) is already endowed with the power to request information, referred to here as an alternative supervisory mechanism. We therefore support this amendment.

With regard to subparagraph (c) paragraph 1, it is argued that the role of the media regulators under the AVMS directive should be made explicit in order to ensure that the functions of supervision, assessment and verification of concentrations are carried out by authorities that are independent of market players (including, for example, state-owned public service broadcasting and digital concessionary companies) and have adequate expertise in media markets.

Art. 21(2): we agree with the amendment aimed at specifying that the assessment procedures are aimed at evaluating the impact of concentrations on media markets, since the entire discipline of the EMFA proposal is oriented towards the purpose of guaranteeing pluralism, which finds specific application and *raison d'être* in the media and communications sector, as a constitutional safeguard informed by the freedom of manifestation of thought referred to in Article 21 of the Constitution and the corresponding freedom of expression referred to in Article 11 of the Nice Charter.

Art. 23: With regard to the issue of audience measurement, also taking into account the amendments made to recital 45, it is considered appropriate to include among the principles of audience measurement also that of comparability of metrics and results. Therefore, it is proposed to amend paragraph 1) as follows (text in red): “ 1. Providers of audience measurement systems and methodologies shall ensure that their systems and methodologies comply with the principles of transparency, impartiality, **comparability**, inclusiveness, proportionality, non-discrimination and verifiability.”- **I have heard your comment that “comparability” is the result of other parameters so I guess you won’t take in consideration our comments ☺**

Furthermore, it is recommended to specify that audience measurement providers, even if they are located outside the EU territory or operate outside the European standardization systems, are subject to the control of the national industry authority. Therefore, it is proposed to change the amendment to paragraph 2 as follows (changes in red)

“2. Without prejudice to the protection of undertakings’ business secrets, providers of audience measurement systems developed outside relevant self-regulatory organisations or whose methodologies do not comply with standards and best practices agreed by the industry shall provide, without undue delay and free of costs, to media service providers advertisers, and **national regulatory authorities or bodies**, as well as to third parties authorised by media service providers and advertisers, accurate, detailed, comprehensive, intelligible and up-to-date information on the methodology used by their audience measurement systems. This provision shall not affect the Union’s data protection and privacy rules.”

- **Recitals 1-4a, 6, 9-10 e da 31 a 54.**

Rec. 13 it is proposed to delete the text in brackets '(for example via online news portals or podcasts)' as the example of podcasts as a means of access to radio services is incorrect.

Rec. 39a (new) it is indicated that the role of the media regulators under the AVMS-Directive should be made explicit in order to ensure that the functions of supervision, evaluation and verification of concentrations are carried out by authorities which are independent of market players (including, for example, state-owned companies with public service broadcasting and digital licences) and which have adequate expertise in media markets.

We furthermore reiterate our proposal, supported by Netherland today, to propose at least in recital 49 (if it is not possible to insert it in the same art. 24.1 for the advanced stage of the negotiations) the following amendment:

"This Regulation should not affect the application of Union public procurement and State aid rules, which are applied on a case-by-case basis. In application of this Regulation, Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market should be taken into account and should apply."

Contribution from Italy

Italy supports and shares the French proposal on article 20.

<i>2nd Presidency compromise (12 May 2023)</i>	<i>Amendments proposals FR</i>
1. [...] Legislative, regulatory or administrative measures taken by a Member State that are 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. [...] Legislative, regulatory or administrative measures taken by a Member State that are liable to directly affect the operation media pluralism and editorial independence of media service providers in the internal market shall be duly justified and proportionate. Such measures shall be reasoned, transparent, objective and non-discriminatory. This Article does not apply where the national measure is otherwise governed by State aid rules.

CY COMMENTS

<i>2nd Presidency compromise (12 May 2023)</i>	<i>Amendments proposals FR</i>
<p>1. [...] Legislative, regulatory or administrative measures taken by a Member State that are 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>1. [...] Legislative, regulatory or administrative measures taken by a Member State that are liable or are expected to be liable to directly affect the operation media pluralism and editorial independence of media service providers in the internal market shall be duly justified and proportionate. Such measures shall be reasoned, transparent, objective and non-discriminatory. This Article does not apply where the national measure is otherwise governed by State aid rules.</p>

DK COMMENTS

Danish Amendments to the European Media Freedom Act: AVMWP May, 22

Proposals from Denmark are **highlighted in yellow**

Article Recital	Presidency Compromise Proposal	Proposed Amendments (DK)	Explanation
Articles 7–16			
17	Content of media service providers on very large online platforms		
17.2	Where a provider of a very large online platform decides to [...]suspend the provision of its online intermediation services in relation to content provided by a media service provider that submitted a declaration and contact details pursuant to paragraph 1 of this Article or to restrict the visibility of the content provided by such media service provider , on the grounds that such content is incompatible with the terms and conditions of the online intermediation services , without 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 [within X hours] 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.	Where a provider of a very large online platform decides to [...]suspend the provision of its online intermediation services in relation to content provided by a media service provider that submitted a declaration and contact details pursuant to paragraph 1 of this Article or to restrict the visibility of the content provided by such media service provider , on the grounds that such content is incompatible with the terms and conditions of the online intermediation services , without 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 within 48 hours 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 is important that a media service provider has the opportunity to reply to the platforms before their content is restricted or suspended from platforms. A specific timeframe is an adequate measure to support this. We propose that a 48 hour time limit is included.

		it shall inform the media service provider concerned.	
17.3	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.	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. within 24 hours.	Denmark has previously proposed that a deadline of 24 hours for the platforms for processing complaints. With media content time is everything, but we fear that complaints will not be processed with priority, thereby making the restricted or suspended content outdated and even irrelevant, even if the complaint is subsequently approved by the platform.
21	Assessment of media market concentrations		
21.2	<p>In the assessment referred to in paragraph 1, the following elements shall be taken into account:</p> <p>(a) the expected impact of the media market concentration on media pluralism, including its effects on the formation of public opinion and on the diversity of media services and content 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 [...] measures taken by media service providers [...] with a view to guaranteeing the independence of [...] editorial decisions;</p> <p>(c) whether, in the absence of the media market concentration, the [...] entities concerned would remain economically sustainable, and whether there are any possible alternatives to ensure its economic sustainability.</p>	<p>In the assessment referred to in paragraph 1, the following elements shall be taken into account:</p> <p>(a) the expected impact of the media market concentration on media pluralism, including its effects on the formation of public opinion and on the diversity of media services and content on the market, taking into account the online environment and the parties' interests, links or activities in other media or non-media businesses, and taking into account the levels of media freedom and pluralism in the individual Member States as referred to in recital 44;</p> <p>(b) the safeguards for editorial independence, including the [...] measures taken by media service providers [...] with a view to guaranteeing the independence of [...] editorial decisions, in line with national laws and the principle of self-</p>	When the Board provides assessments and issues statements regarding media market concentrations a more holistic view which includes the general levels of media freedom and plurality in a given Member State should be taken into account. This would allow the assessments of media markets to be more nuanced. And provide a more true representation of media freedom and media plurality

		<p>regulation.</p> <p>(c) whether, in the absence of the media market concentration, the [...] entities concerned would remain economically sustainable, and whether there are any possible alternatives to ensure its economic sustainability.</p>	
23	Audience measurement		
23.1	<p>Providers of audience measurement systems and methodologies shall ensure that their systems and methodologies comply with the principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination and verifiability.</p>	<p>Providers of audience measurement systems and methodologies shall ensure that their systems and methodologies comply with the principles of transparency, impartiality, inclusiveness, proportionality, comparability non-discrimination and verifiability.</p>	<p><i>Comparability</i>” of audience measurement services is central to media sectors today and should be added as one of the key principles in article 23 (1). The lack of comparability due to the differing standards in audience measurement is the source of distortions on the media market</p>
44	<p>With a view to ensuring pluralistic media markets, the national authorities or bodies and the Board should take account of a set of criteria. In particular, impact on media pluralism should be considered, including notably the effect on the formation of public opinion, taking into account [...] the online environment. Concurrently, it should be considered whether other media outlets, providing different and alternative content, would still coexist in the given market(s) after the media market concentration in question. Assessment of safeguards for editorial independence should include the examination of potential risks of undue interference by the prospective owner, management or governance structure in the individual editorial decisions of the acquired or merged entity. The existing or envisaged internal safeguards aimed at</p>	<p>With a view to ensuring pluralistic media markets, the national authorities or bodies and the Board should take account of a set of criteria. In particular, impact on media pluralism should be considered, including notably the effect on the formation of public opinion, taking into account [...] the online environment. Concurrently, it should be considered whether other media outlets, providing different and alternative content, would still coexist in the given market(s) after the media market concentration in question. Assessment of safeguards for editorial independence should include the examination of potential risks of undue interference by the prospective owner, management or governance structure in the individual editorial decisions of the acquired or merged entity. The existing or envisaged internal</p>	<p>When the Board provides assessments and publishes statements regarding issues of media pluralism and media freedom, a more holistic view of the general levels of media freedom and plurality in a given Member State should be taken into account. This would allow assessments of media markets to be more nuanced. And provide a more true representation of media freedom and media plurality</p>

	<p>preserving independence of the individual editorial decisions within the media undertakings involved should also be taken into account. In assessing the potential impacts, the effects of the concentration in question on the economic sustainability of the entity or entities subject to the concentration should also be considered and whether, in the absence of the concentration, they would be economically sustainable, in the sense that they would be able in the medium term to continue to provide and further develop financially viable, adequately resourced and technologically adapted quality media services in the market.</p>	<p>safeguards aimed at preserving independence of the individual editorial decisions within the media undertakings involved should also be taken into account. In assessing the potential impacts, the effects of the concentration in question on the economic sustainability of the entity or entities subject to the concentration should also be considered and whether, in the absence of the concentration, they would be economically sustainable, in the sense that they would be able in the medium term to continue to provide and further develop financially viable, adequately resourced and technologically adapted quality media services in the market. When drafting opinions and assessments concerning conditions in individual member states, the Board may take the existing levels of media freedom and pluralism in individual Member States into account, by using external and independent criteria, to ensure that the opinions and assessments by the Board are proportional to the level of media freedom and pluralism in each Member State.</p>	<p>By considering the levels of media freedom and plurality in each Member State, the resources of the Board will be directed towards the media markets in which the problems are most severe while minimizing the risk of undue interference in well-functioning media markets.</p>
5	Safeguards for the independent functioning of public service media providers		
5.2	<p>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, 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</p>	<p>Member States shall ensure that the persons or bodies constituting the highest decision-making authority within the public service media provider head of management or the members of the management board of public service media providers are appointed through 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</p>	<p>The phrase "Member state shall ensure that the head of management or the members of the management board" suggests that individual Member States have the freedom to choose whether or not to implement transparent procedures.</p>

	<p>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.</p> <p>Dismissal decisions shall be duly justified, subject to prior notification to the person concerned, and include the possibility for judicial review. The grounds for dismissal shall be made available to the public.</p>	<p>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.</p> <p>Dismissal decisions shall be duly justified, subject to prior notification to the person concerned, and include the possibility for judicial review. The grounds for dismissal shall be made available to the public with due regard for privacy protection legislation.</p>	<p>This ambiguity can be misinterpreted as allowing discretion in implementing transparency measures, undermining the overall intent of the article.</p> <p>The text should be aligned with recital 18, which explicitly states the requirement for transparent procedures when appointing individuals or bodies in the highest decision-making authority. This clarification aims to eliminate any potential misinterpretation and ensure consistency.</p> <p>Denmark also proposes highlighting the need to follow privacy protection legislation when publishing grounds for dismissal in Article 5.2</p>
--	---	---	--

AT COMMENTS

PROPOSAL AUSTRIA

We suggest a drafting addition for Art 24 para 2 EMFA (in bold), because we think that – in context of the wording of Art 2 (15) where “entity” falls generally under state advertising (of course if the entity is controlled by the state) - the exception in Art 24 para 2 should – to avoid legal uncertainty - also include the mentioning of the **entities** that are controlled by subnational governments.

Text:

2.” Public authorities or entities, [...] excluding subnational governments of territorial entities of less than 100,000 inhabitants **and excluding entities controlled, directly or indirectly, by such a subnational government**, shall make publicly available accurate, comprehensive, intelligible, detailed and yearly information about their state advertising expenditure [...], which shall include at least the following details:“

Article 25^[1]

Monitoring exercise

1. The Commission shall ensure an independent monitoring of the internal market for media services, including risks to and progress in its functioning . The findings of the monitoring exercise shall be subject to consultation with the Board. They shall be presented and discussed with the Contact Committee.

2. The Commission shall define key performance indicators to be used for the monitoring referred in paragraph 1, in consultation with the Board.

3. The monitoring exercise shall include:

(a) a detailed analysis of media markets of all Member States, including as regards the level of media concentration and risks of foreign information manipulation and interference, **furthermore the effects of the business models and practices of very large online platforms on media diversity in the internal market;**

^[1] Basis: AVMWP on 28 March – WK 3951/2023.

- (b) an overview and forward-looking assessment of the functioning of the internal market for media services as a whole;
- (c) an overview of measures taken by media service providers with a view to guaranteeing the independence of individual editorial decisions and an analysis of the expected reduction in risks for the functioning of the internal market for media services.
4. The monitoring shall be carried out annually, and [...] **the results thereof, including the methodology and data**, shall be made publicly available.

PROPOSAL AUSTRIA

We would like to add the following words in Art 25 para 3, a. The background is that we all agree, that the role of VLOPs for the media market cannot left out in the regular analysis.

Article 25¹

Monitoring exercise [...]

3. The monitoring exercise shall include:

- (a) a detailed analysis of media markets of all Member States, including as regards the level of media concentration and risks of foreign information manipulation and interference, **furthermore the effects of the business models and practices of very large online platforms on media diversity in the internal market;**

¹ Basis: AVMWP on 28 March – WK 3951/2023.