

Position paper on the European Media Freedom Act

## **Enabling Media Plurality measures in conformity with the European single market: A way forward**

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ZVEI e.V. is the German association representing the Electrical and Digital Industry and promoting the development as well as use of new technologies. The member companies of ZVEI include manufacturers of consumer electronics such as Smart TV and TV sticks.

We believe in the benefits of a single market for goods for EU businesses and citizens alike. A strong internal market based on the EU fundamental freedoms safeguards innovation and accelerates technological developments.

It is only right that the European Commission has set itself the goal of preventing further fragmentation of the internal market.

Therefore, we want to draw attention to the fact that as a result of the transposition of the Audiovisual Media Services Directive (AVMSD), an increased number of national regulations force our members to adapt their products for individual national markets within the EU.

As providers of user interfaces giving access to audiovisual media content our members have become subject to media regulation implementing the AVMSD. The transposition of the AVMSD has resulted in a diverse set of rules which require the adaption of the user interfaces of devices, such as Smart TVs, sold throughout the EU for specific national markets. This raises not only the expenses and costs in product development for our members, but also results significantly in hindering the freedom of goods like Smart TVs and other devices as well as services.

The German transposition on the AVMSD has led to a very specific set of rules which is applicable to user interfaces as such of Smart TVs, including provisions of the prominence of general interest content. According to these provisions, general interest content has to be made easy to find on TV sets.

Although we understand the intentions, to give prominence to general interest content, in our view the risks of privileging some media content over other outweigh its thought of benefit. Rules on prominence hold a high risk of abuse. By defining general interest for themselves Member States can easily manipulate which content should be privileged. Our members

want to offer users the opportunity to experience the full diversity of media and opinions, and not become instrumentalized to be the voice of one dominant source.

Moreover, we wonder how a categorization of media will foster media plurality. Any classification of the media in general interest or not by executive authorities endangers the freedom and independence of media. Additionally, giving prominence to some media content strengthens existing successful brands by creating entry barriers for new media content providers. This would as a result be detrimental to media plurality.

We are not convinced that intentions to increase media plurality will be achieved by rules of prominence but rather will result in less media plurality. However, Art. 7a of the AVMSD has already given the Member States the opportunity to create rules for prominence. This opens a wide discretion on how prominence concepts and rules may be designed, which has already led to a fragmentation of the internal market. We therefore are in favour of a European solution instead of widely differing national transpositions.

### **Promotion of General Interest content**

In our view a European offer bundling general interest content of all the Member States could make a real impact on how general interest content is being received by users throughout Europe. Such an offer could be set up and managed by a European body to guarantee compliance with the fundamental values of the European Union. Technical feasibility foreseen such an offer could be integrated on user interface with little expense but a huge effect on media plurality. A positive side effect of a pan-European offer would be that the user could easily access not only national general interest content but all European general interest content. That could reduce risks that one voice prevails to a minimum and contribute to break up national opinion silos and to create a European public.

### **European harmonization**

Alternatively, the European Union could set a legal framework that ensures harmonized application of prominence rules for general interest content. The European Union should put in safeguards in order to prevent restrictions on the EU wide distribution of products and services by defining common red lines for prominence rules and concepts.

In order to prevent legal fragmentation, the European Union should harmonize functional prominence requirements for user interfaces and devices so that would allow for one product design for the European single market and at the same time have general interest content accessible with prominence. As a result, the general interest content could differ between Member States based on the national media landscape, but the underlying user interface and platform design can remain identical across the European Union.

### **Effective oversight**

ZVEI advocates for a coordination of enforcement on EU level which leaves no room for divergent and excessive national implementations. To reduce the risks of abuse to a minimum, safeguards should be raised to ensure that Member States cannot define content as general interest which would be discriminatory. Existing organisations like ERGA could play an important role in assuring that national peculiarities are respected, however not implemented in a discriminatory manner. Regardless of how the cooperation between

European and national authorities is organised, additional burden by creating overlapping structures must be avoided, while enforcement must be guaranteed. The competent authority must be provided with the corresponding power to intervene in the event of finding of an incompatibility.

### **Better regulation**

To avoid contradicting and conflicting regulations, it is of utmost importance that the scope of application is precise and proportionate. The scope should be consistent with existing EU terminology and be justified by the proven relevance of a service for public opinion.

We think that a specific market relevance and reach should be decisive. Corresponding considerations in the Digital Markets Act and/or Digital Services Act should provide orientation. The scope of application should be technology neutral and not product specific.

### **User sovereignty**

The user should keep the sovereignty over their device. Rules on prominence must not limit the user in experiencing media plurality according to their preferences. It must be ensured that the user's decision is respected and prevails. Prominence of general interest content must be subject to the users' ability to make changes. An individual and modifiable user experience is essential for its success and corresponds with today's user expectations.

### **Safeguarding of entrepreneurial freedom**

Rules on prominence to the benefit of selected content should not jeopardize existing business models. Besides the regulation of prominence of general interest content, the promotion of content must remain possible. Not only must the provider of a user interface have the ability to refinance its services, but also content providers must be given the possibility to draw attention to their service.

### **Technical feasible implementation**

The implementation of prominence must be technically feasible. Technological preconditions to fulfil the regulatory requirements like standardised signaling or labeling as general interest must be tackled before prominence can be enforced. The implementation must remain proportionate. The implementation must not lead to the burdening of a specific product. Rules that intervene in the hardware of certain product impose an unreasonable additional burden. Solutions to seek prominence should be applied to all addresses alike and should be software-based.

### **Autonomy over formation and design**

The design of their products is an important distinctive feature among competitors. Parameters that lead to a uniform design must be prevented. The implementation of prominence of general interest content should solely lay with the provider of the user interface. Regulatory requirements must be limited to determining the regulatory goal. They must not impose details on how to achieve the specific regulatory goal.

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**ZVEI: Electro and Digital Industry Association**

The ZVEI promotes the industry's joint economic, technological and environmental policy interests on a national, European and global level.

The sector has round about 877,000 employees in Germany. In 2021 the turnover was Euro 200 billion.

The electro and digital industry is the most innovative industry sector in Germany. One-third of the industries sales are based on new products. Every third innovation in Germany's manufacturing sector stems from solutions of this sector. More than 20 percent of all industrial R+D spending comes from this industry. Every year, the industry spends 20 billion euros on R+D, more than 6 billion euros on investments and two billion euros on training and further education.