

Position Paper

On the Commission's Proposal for the Media Freedom Act

ZVEI is strongly aligned with the objectives of the Media Freedom Act (MFA). Protecting media freedom and strengthening the EU internal market are crucial cornerstones of a strong and resilient Europe.

The MFA has the potential to strengthen the EU's internal market through a reliable legal framework across Europe. Fragmentation of the internal market and an inconsistent law enforcement stand against this goal and are rightfully addressed by the proposal. However, the measures proposed in the draft need further adjustment to tackle the complexity that has arisen from 27 national media laws in the EU and the legal uncertainty and additional costs that go along with it.

For creating a stronger internal market and more reliability and predictability in this sector the following points are most relevant:

- **Ensure harmonization:** European harmonization of the legal framework is most important: The proposed non-binding guidelines on prominence by the Commission can only mitigate the problem, but do not grant sufficient legal certainty. ZVEI calls for a decent and more reliable legal framework.
- **Reduce complexity:** Complexity of regulations must be reduced and overlapping regulations must be avoided. It has to be ensured that the scope of the MFA is consistent with existing EU legislation such as the Audiovisual Media Services Directive or the Digital Markets Act.
- **Keep proportionality:** The proposed regulations must stay proportionate to their pursued goal. The individual measures proposed have to be justified on the basis of a specific regulatory objective, otherwise their proportionality cannot be assessed.
- **Apply coherent enforcement:** A uniform application must be ensured, and enforcement needs to be strengthened at the European level. Regardless of how the cooperation between national authorities is organised, additional burden by creating overlapping structures must be avoided.

Further Harmonization

Guidelines on prominence (Art. 15 para 2 lit a)

It is the right approach to aim for more harmonization of the national regulations on prominence of content of general interest. The Audiovisual Media Services Directive (AVMS) leaves a vast scope for implementation to the Member States to create rules for prominence regulation (Art 7 a AVMS). This leaves too much room for interpretation and divergent national solutions, which are increasingly fragmenting the single market. This has led to additional operational burden and requires immense effort to ensure compliance of the products with the divergent national rules. Thus, it is necessary to realize a consistent regulatory practice in the Member States. The possibility that the Commission can issue guidelines on prominence, according to Art. 15 para 2 lit a MFA, is an important step towards a more harmonized legal framework on prominence regulation. It is necessary that those guidelines also reflect the technical feasibility and effectiveness of EU-wide requirements on prominence. They should set boundaries on how prominence regulation should be implemented by Member States, while leaving freedom to the manufacturers or providers of user interfaces to develop corresponding solutions for the entire European internal market. To come to fair and appropriate guidelines, it is needed to set up a transparent stakeholder dialogue with the European Commission and the new European Board for Media Services. ZVEI will contribute with technical expertise and advice to support such a process.

But since these guidelines are non-binding for Member States, they have only a limited effect on a convergent implementation of the AVMS. It would need comprehensive adoption of these guidelines by the Member States in order to reduce the market fragmentation caused by the transposition requirements on prominence. It is questionable whether the national legal texts will be retroactively adapted in Member States which have already introduced rules on prominence such as Germany and France. Legal certainty is a basic requirement for manufacturers of consumer devices who sell TVs, set-top-boxes and TV sticks on the whole European internal market. It is therefore necessary to further strengthen the legal framework to safeguard the competitiveness of the European internal market. ZVEI calls for a decent and more reliable legal framework beyond non-binding guidelines which creates legal certainty on the whole internal market.

Opening clause for the Member States (Art. 1 para. 3)

Art. 1 para 3 MFA creates an opening clause for Member States to adopt more detailed rules. To not endanger the harmonization aimed at in the proposal, this opening clause needs to be interpreted narrowly and remain limited to the referred sections and to the adoption of more detailed rules but not rules which are different in their level of regulation. Conversely, it is important that Art. 1 para 3 MFA clarifies, that the provisions in the sections not referred to in the opening clause are conclusively regulated within the MFA and that any deviating regulation by the Member States is prevented.

Reduced Complexity

Cooperation in 'technical standards' (Art. 15 para 4)

While it is important to avoid diverging technical standards, a solution for harmonization should always be sought within the existing European and international standardization bodies. Thus, it remains unclear why Art. 15 para 4 calls for fostering the cooperation between audiovisual media service providers, regulatory authorities and manufactures and developers on 'technical standards'. Any new mechanism would only be justified in the event of an unlevel "playing field" in the existing European and international harmonized standards. ZVEI does not observe such shortcomings in European or international standardization that would require the creation of an alternative working group.

Furthermore, the term 'technical standard' is misleading, since the usual terms used in technological regulation are either 'harmonized standards' or 'technical specification'. In contrast to 'harmonized standard', which refers to agreed standards in European or international standardisation bodies, 'technical specification' describes a regulation that is issued by the Commission on the basis of an explicit authorisation in the law. The MFA doesn't authorize the Commission to issue technical specifications for digital signals or for the design of devices or of user interfaces as mentioned in Art. 15 para 4 MFA. By using the term 'technical standards' it is somehow implied that a mixture of both is aimed at, without defining the implications in the proposal.

Quite apart from the misleading wording, it is unclear, which regulatory gap is addressed. On the one hand digital signals for the reception of audiovisual media services are already standardised worldwide (DVB project). On the other hand, the design of devices or of its user interfaces should not be subject to any kind of standardisation. For manufactures the design of the devices and user interfaces are central competitive factors. Regulatory intervention in the design of devices represents a disproportionate infringement on entrepreneurial freedom and restricts innovations. Without being able to demonstrate a regulatory necessity for such a serious intervention, this measure cannot be justified and is disproportionate.

Proportionality and effective regulation

Customization of user interfaces (Art 19)

The user should have the right to choose their media offers based on their personal interest. Users should have full autonomy over their media consumption. It is the goal of providers of user interfaces to empower the user to find the media offers they want. Personalization and customization options correspond to today's state of the art of user interfaces.

While we do not recognize a regulatory necessity to codify the status quo in Art. 19 MFA, its actual wording needs clarification. The term "default settings controlling or managing access to and use of the audiovisual media services offered" must be defined more precisely and should be limited to settings concerning the sorting and to the arrangement of audiovisual media offers. Menu guides of the user interface to operate the device should be clearly excluded from the scope to avoid divergent interpretations.

If the provision in Art. 19 MFA should be understood as meaning that content that is to be made prominent under national law would have to be excluded from the customization options, the provision would even represent a restriction compared with the current status quo. Users would be restricted in their configuration options by the proposed regulation. With respect to the right of the users enshrined in Art. 3 MFA to have access to a diverse and plural media offer, users should not be limited in their autonomy over their media consumption. Media offers which have to be made prominent according to national regulation on the basis of Art. 7 a AVMS, should not be fixed on user interfaces with no possibility to change. They should not be excluded from the right of the user to configure its user interface, as proposed in Art. 19 MFA.

The proposal for compulsory customization of every user interfaces according to Art. 19 MFA lacks proper justification. Due to this legal inaccuracy the scope of the regulation must remain proportionate and its implementation technically feasible. Thus, hardware-configuration by the user cannot be justified since it is disproportionate and must be clearly out of the scope to avoid divergent interpretations. A right to rearrange or sort the media offer on user interfaces should only apply insofar as its implementation would be technically possible and could be realized with proportionate effort.

Coherent and uniform enforcement

More coordination through the European Board for Media Services

ZVEI advocates for a coordinated enforcement on European level, which leaves no room for divergent and excessive implementation. To avoid compliance burden for cross-border services and providers of goods, it is necessary to ensure a coherent and uniform application of EU legislation. For achieving this goal, more coordination on EU level is needed.

The European Board for Media Services could play an important role as proposed in the MFA. Regardless of how the cooperation between national media authorities is organised, additional burden by creating overlapping structures must be avoided. The competences of the European Board for Media Services must remain clearly distinct from the competences of the national authorities.

ZVEI: Electro and Digital Industry Association

The ZVEI represents the common interests of the electrical and digital industry and the associated service companies in Germany and at international level. The association has more than 1,100 member companies, and 170 employees work in the ZVEI Group.

The industry employs around 882,000 workers in Germany (as of June 2022). In 2021, its turnover was around 200 billion euros.

The electrical and digital industry is one of the most innovative economic sectors in Germany. Almost a quarter of the industry's turnover is accounted for by product innovations. Every third innovation in the manufacturing industry as a whole gets its original impetus here. Almost a quarter of all R&D expenditure in the manufacturing sector in Germany comes from the electrical and digital industry. Every year, the sector spends around 20 billion euros on R&D and more than seven billion euros on investments.

Contact

Katrin Heyeckhaus • Head of Media Policy | Senior Legal Counsel • Fachverband Consumer Electronics •
Tel.: +4969 6302 421 • Mobil: +49174 9414 173 • E-Mail: Katrin.Heyeckhaus@zvei.org

ZVEI e. V. • Electro and Digital Industry Association • Lyoner Straße 9 • 60528 Frankfurt am Main • Germany
Lobbying Register ID.: R002101 • EU Transparency Register ID: 94770746469-09 • www.zvei.org

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