

Joint Position Paper

On the proposal for the European Media Freedom Act: Strengthening media diversity in line with the European Single Market

ANGA, Bitkom and ZVEI are strongly aligned with the objectives of the proposed European Media Freedom Act (EMFA). Protecting media freedom and strengthening the EU internal market are crucial cornerstones of a strong and resilient Europe.

The EMFA has the potential to strengthen the internal market through a reliable and harmonised legal framework across the EU. 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 crucial:¹

- **Ensure harmonisation:** European harmonisation of the legal framework is most important. The proposed non-binding guidelines on prominence (*Art. 15 para 2a*) by the Commission can only mitigate the problem but will not grant sufficient legal certainty. ANGA, Bitkom and ZVEI call for a decent and more reliable legal framework.
- **Clarify scope and terminology:** Terms such as default settings (*Art. 19*) must be specified in the proposal. This creates legal certainty and avoids different interpretations in the Member States.
- **Keep proportionality:** The proposed regulations must stay proportionate to their pursued goal (*Art. 19 para 3 new*).

Guidance on media regulation matters Article 15 paragraph 2

Text proposed by the Commission	Amendments
2. Where the Commission issues guidelines related to the application of this Regulation or the national rules implementing Directive 2010/13/EU, the Board shall assist it by providing expertise on regulatory, technical or practical aspects, as regards in particular: (a) the appropriate prominence of audiovisual media services of general interest under Article 7a of Directive 2010/13/EU;	2. Where the Commission issues guidelines related to the application of this Regulation or the national rules implementing Directive 2010/13/EU, the Board shall assist it by providing expertise on regulatory, technical or practical aspects, as regards in particular: (a) the definition and designation appropriate prominence of audiovisual media services of general interest under Article 7a of Directive 2010/13/EU;

Article 15 paragraph 5 new

¹ For individual Position Paper see here: [ANGA](#), [Bitkom](#), [ZVEI](#)

	Amendments
	<p>5. The Commission shall adopt an implementing act laying down common criteria, as regards presentational aspects, for the implementation of appropriate prominence of audiovisual media services of general interest under Article 7a of Directive 2010/13 EU. The Board shall assist the Commission in this regard.</p>

Art. 7a of the Directive 2010/13/EU (AVMSD, as amended in 2018) allows Member States to create rules for prominence regulation of so-called “public-value” services, but without providing any harmonized criteria and safeguards. This leaves too much room for divergent national solutions, which are increasingly fragmenting the internal market. Thus, it is the right approach to aim for more harmonisation of the national regulations on prominence of content of general interest. However, the proposed non-binding guidelines cannot achieve the necessary levels of harmonisation and do not lead to significantly higher degrees of legal certainty. It is therefore necessary to further strengthen the legal framework to safeguard the competitiveness of the internal market.

We call for a more reliable legal framework for rules governing the findability and access to audiovisual content services that are to benefit from Member States’ prominence rules in order to create legal certainty on the entire internal market beyond non-binding guidelines.

Specifically, we would welcome binding provisions which prevent Member States from adopting diverging prominence rules that would ultimately force manufacturers as well as service providers to develop tailor-made product designs or user interfaces for different national or even regional parts of the internal market. A single European concept of prominence should set up a framework which respects the users’ sovereignty, entrepreneurial freedom, and technical feasibility.

A legally binding framework should be achieved by either one of the following alternatives (ranked according to their suitability to reach harmonisation both as regards their level of legal certainty and the time needed for implementation):

- an implementing act by the Commission which aligns Member States’ approach when adopting prominence rules and would also ensure uniform criteria on how findability of prominent services should be implemented in Member States’ legislation/regulation (*proposal Article 15 paragraph 5 (new)*),
- an amendment of Art. 7a AVMSD, which provides sufficient safeguards against disproportionate obligations and specifies general principles as to how Member States should approach the concept of prominence in their national legislation, by stipulating the necessary safeguards for the balancing of interests concerned, e.g. as foreseen by Art. 114 EEC: “reasonable obligations”; “Such obligations shall be imposed only where they are necessary to meet general interest objectives as clearly defined by each Member State and shall be proportionate and transparent.”, or Rec. 26 subpara. 2 AVMSD (2018).

Detailed rules on the designation of “public-value” services should not be in the scope of a harmonised European legal act and should in principle remain open to different approaches in Member States. However, such rules must be apt to ensuring that the privileged status is only granted to societally relevant audiovisual media services which cater for the democratic, social and cultural needs of the general public and contribute in an outstanding manner to media diversity and the individual and general forming of opinion.

[Right of customisation of audiovisual media offer
Article 19 paragraph 1 and 2 and 3 \(new\)](#)

Text proposed by the Commission	Amendments
<p>1. Users shall have a right to easily change the default settings of any device or user interface controlling or managing access to and use of audiovisual media services in order to customise the audiovisual media offer according to their interests or preferences in compliance with the law. This provision shall not affect national measures implementing Article 7a of Directive 2010/13/EU.</p> <p>2. When placing the devices and user interfaces referred to in paragraph 1 on the market, manufacturers and developers shall ensure that they include a functionality enabling users to freely and easily change the default settings controlling or managing access to and use of the audiovisual media services offered.</p>	<p>1. Users shall have a right to easily customize the arrangement of audiovisual media services or of applications allowing users to directly access such services change the default settings of on a any device or user interface controlling or managing access to, and use of, audiovisual media services once in accordance with in order to customise the audiovisual media offer according to their interests or preferences in compliance with the law. This provision shall not affect national measures implementing Article 7a of Directive 2010/13/EU. This provision shall not extend to arrangements which are unrelated to the use and access of audiovisual media services. but serve to implement obligations in respect of compulsory information placings such as the imprint and other kind of transparency information as foreseen by Union law or by national law in compliance with Union law.</p> <p>2. When placing the devices and user interfaces referred to in paragraph 1 on the market, manufacturers and developers providers of user interfaces shall ensure that they include a functionality enabling users to freely and easily make the customization referred to in Paragraph 1 by taking appropriate measures change the default settings controlling or managing access to and use of the audiovisual media services offered.</p>

We believe customization is a helpful tool for user convenience while it is important for manufacturers and service providers to individually design their products, including user interfaces, in line with their respective editorial and commercial approach. However, an obligation to enable unlimited and unconditioned customization of user interfaces is neither needed nor helpful in the context of safeguarding media freedom, and therefore not justified under the legal basis of the EMFA. If the provision is nevertheless retained, **it must not extend customization options for audiovisual media services to elements of user interfaces which are unrelated to the use and access of audiovisual media services, such as**

- arrangements which serve to implement obligations in respect of compulsory information placings such as the imprint and other kind of transparency information according to national regulation;
- user interface elements primarily serving the operation of the devices as such (e.g. menu guides; options for consumption of content such as Pause/Play, Rewind, Instant Restart, Story summary, information on cast members).

In this context the term “default settings” is too broad and should be specified to the arrangement of media offers. Any **customization that would require changes to the hardware should be clearly excluded from the scope** of Art. 19 EMFA.

Audiovisual media services that are to be made prominent under national prominence rules (based on Union law, as the case may be, e.g. on the basis of Art. 7a AVMSD) should not be excluded from the

customization options (Art. 19 para 1 last sentence). Otherwise, this provision would represent a step backwards compared to the status quo in restricting the customization options that are available to users. Media offers which must be made prominent according to national legislation/regulation, for instance based on the AVMSD provisions, should not be fixed on user interfaces with no possibility to change. Otherwise, the potential risk of abuse, which is inherent to the concept of prominence, would be deprived of any possibility of correction.

Right of customisation of audiovisual media offer Article 19 paragraph 3 (new)

Text proposed by the Commission	Amendments
	<p>3. Paragraph 1 and 2 shall apply to user interfaces only to the extent that the implementation of such functionalities is technically feasible and feasible under proportionate efforts.</p>

A right to rearrange or sort the media offer on user interfaces should also only apply insofar as its implementation would be technically feasible and could be realised with proportionate effort. In its current wording Article 19 paragraph 2 does not meet the principle of proportionality because it does not consider

- (i) whether the user interface is technically apt to offer such a functionality and
- (ii) whether such a functionality's implementation would be disproportional to the economic and operational capabilities of the provider.

Entry into force and application Article 28 paragraph 2

Text proposed by the Commission	Amendments
<p>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(2) shall apply from [48 months after the entry into force].</p>	<p>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 (2) shall apply from [48 months after the entry into force].</p>

It is important to properly align the transitional periods. As currently drafted, the 48-month transitional period in Art. 28 para. 2 EMFA only applies to the obligation to facilitate customization in Art. 19 para. 2 EMFA. It does not apply to the users' right to customization in Art. 19 para. 1 EMFA, which would thus apply from 6 months after the EMFA's entry into force. **To avoid contradictory implementation deadlines, it is necessary to correct this assumed editorial oversight.**

The logo for ANGA, consisting of the word "ANGA" in a bold, blue, sans-serif font.The logo for bitkom, consisting of the word "bitkom" in a blue, sans-serif font, with a small blue square above the letter 'i'.The logo for zvei, consisting of the word "zvei" in a blue, sans-serif font, with the tagline "electrifying ideas" in a smaller, orange, sans-serif font below it.

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.

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