



Council of the European Union  
General Secretariat

**Brussels, 14 February 2023**

**WK 2185/2023 INIT**

**LIMITE**

**AUDIO  
CODEC  
DIGIT  
MI  
DISINFO  
FREMP**

**COMPET  
EDPS  
DATAPROTECT  
JAI  
SERVICES  
POLGEN**

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## **CONTRIBUTION**

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From:	General Secretariat of the Council
To:	Audiovisual and Media Working Party (Attachés) Audiovisual and Media Working Party
N° Cion doc.:	COM (2022) 457 final
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) Interinstitutional File 2022/0277 (COD) - COM (2022) 457 final - EMFA Regulation – Articles 17 to 19 - Comments from CY, DE, FI, LV, NL, and SI delegations.

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Delegations will find attached comments on the subject mentioned above (Interinstitutional File 2022/0277 (COD) - COM (2022) 457 final) from the following delegations: Cyprus, Germany, Finland, Latvia, the Netherlands, and Slovenia.

## CY COMMENTS

### Comments on wk01630.en23 PCYProposal

Article 13 – paragraph 4(a) **‘to provide the type of cooperation requested’**: can we have an explanation on what this type of cooperation could be? We understand that in order the requested authority to address the request, it will provide information and/or data. Therefore, our question is whether this type of cooperation can be anything else than the provision of relevant information and/or data, the provision of which doesn’t breach any other national law.

Article 13 – paragraph 6 **‘regular updates’**: we want to make sure that **‘regular updates’** is not interpreted as twice per week. We understand it as interpreted as not more than a week.

Article 13 – paragraph 7 and Article 14 paragraph 4 **‘in consultation with the Commission’**: we would welcome confirmation that the Commission will only provide its views on the examined issues and that the Board maintains its independence in decision-making.

Article 14 – paragraph 4: **‘sufficiently addressed’**: we would welcome some elaboration on how sufficiently is interpreted and understood, taking into consideration the particularities of the legal system of each member-state and the need to respect the procedures and policies adopted by each national regulatory authority.

Article 16 – paragraph 1 **‘media services provided by media service providers’**: we welcome a clear interpretation of what this media service can be. Considering the definition of ‘media service’ provided in Article 2 of the discussed Regulation that refers to press publication we emphasise that Cyprus Radio Television Authority doesn’t have any responsibility and/or jurisdiction on press publications (neither on printed newspapers and/or magazine nor on online news sites, unless online platforms are considered Video Sharing Platforms as per the AVMSD 2018/1808).

Recital 27 – **‘a mechanism is needed’** can we have some more information on this mechanism? (eg structure, procedures etc...)

## **DE 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**

#### **German amendments to Art. 17-19 EMFA**

##### **General remarks:**

In general, GER welcomes the fact that Art. 17 recognizes the special role and responsibility of media service providers. The provision takes up an important discussion regarding the DSA and goes in the right direction. However, in order to achieve even greater added value in terms of free and pluralistic media and users' freedom of information, the intermediary services must take their responsibility. GER therefore submits the following proposals for amendments and reserves the right to make further proposals in connection with Art. 17, in particular with regard to an additional provision of comparable content regarding very large online search engines and regarding the involvement of national regulatory authorities or self- or co-regulatory bodies in the procedure. This is due to the envisaged short time frame, within which it is not possible to hand in substantiated and comprehensive proposals on these complex issues raised.

Original text	Proposed amendments	Explanation
<p style="text-align: center;"><b>Section 4</b></p> <p style="text-align: center;"><b>Provision of media services in a digital environment</b></p>		
<p style="text-align: center;"><i>Article 17</i></p> <p style="text-align: center;">Content of media service providers on very large online platforms</p>	<p style="text-align: center;"><i>Article 17</i></p> <p style="text-align: center;">Content of media service providers on very large online platforms</p>	<p>As mentioned intermediary services should, according to their significant importance for the distribution of media content and their accessibility for the user, assume greater responsibility in terms of preserving free and pluralistic media and users' freedom of information. Art. 17 should balance the right of platforms to set their own general terms and conditions with the public interest to safeguarding media freedom and diversity, the</p>

		<p>freedom of expression and the media as well as the user's right of information.</p> <p>Since very large online search engines have a similar crucial role to very large online platforms when it comes to accessing and distributing media content, we believe that it needs to be discussed if a comparable provision for very large online search engines shall be included and GER reserves the right to amend its proposals accordingly.</p>
<p>1. Providers of very large online platforms shall provide a functionality allowing recipients of their services to declare that:</p> <p>(a) it is a media service provider within the meaning of Article 2(2);</p> <p>(b) it is editorially independent from Member States and third countries; and</p>	<p>1. Providers of very large online platforms shall provide a functionality allowing <del>recipients</del> <b>media service providers</b> of their <del>services</del> to declare that:</p> <p>(a) it is a media service provider within the meaning of Article 2(2);</p> <p>(b) it is editorially independent from Member States and third countries; <del>and</del></p>	<p>Art. 17 so far only refers to the existence of declarations by media service providers pursuant to Art. 17 (1).</p> <p>Art. 17 (1) should additionally provide that media service providers designate their competent supervisory body in the Member State (supervisory authority or self-/co-regulatory body), if such a body exists. This body should be involved in the further procedure and be able to issue a confirmation</p>

<p>(c) it is subject to regulatory requirements for the exercise of editorial responsibility in one or more Member States, or adheres to a co-regulatory or self-regulatory mechanism governing editorial standards, widely recognised and accepted in the relevant media sector in one or more Member States.</p>	<p>(c) it is subject to regulatory requirements for the exercise of editorial responsibility in one or more Member States, or adheres to a co-regulatory or self-regulatory mechanism governing editorial standards, widely recognised and accepted in the relevant media sector in one or more Member States; <b>and</b></p> <p><b>(d) it is subject to the supervision of an independent national regulatory authority or body or to the supervision of a self- or co-regulatory mechanism, state its name and contact details.</b></p>	<p>that the information provided by the media service provider in accordance with paragraph 2 (new) (a) to (d) is correct. This will also enable online platforms to know whether a media service provider is subject to supervision or has committed to certain standards through self-/ co-regulation.</p>
	<p><b>(1a) Providers of very large online platforms may review declarations of media service providers according to paragraph 1 and ask for evidence, including a confirmation by the national regulatory authority or body or the self- or co-regulatory body identified under paragraph 1 (d), that the information provided by the</b></p>	<p>From our point of view, the question arises as to whether it would not be advisable to provide for the possibility of verification or a complaints mechanism with regard to whether the statements are correct.</p>

	<p><b>media service provider in accordance with paragraph 1 (a) to (d) is correct.</b></p> <p><b>If the very large online platform has reasonable grounds to doubt the outcome of such a review that the conditions of paragraph 1 are not met, it may submit the matter to the Board for a decision with a clear and specific justification. The Board shall decide without undue delay.</b></p>	
<p>2. Where a provider of 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 pursuant to paragraph 1 of this Article, on the grounds that such content is incompatible with its terms and conditions, without that content contributing to a systemic risk referred to in Article 26 of the Regulation (EU) 2022/XXX [Digital Services Act], it shall take all possible measures, to the extent consistent with their obligations under</p>	<p>2. Where a provider of a very large online platform <del>decides</del> <b>intends to remove, disable access to or otherwise to</b> suspend the provision of its online intermediation services in relation to content provided by a media service provider that submitted a declaration pursuant to paragraph 1 of this Article, on the grounds that such content is incompatible with its terms and conditions, without that content contributing to a systemic risk referred to in Article 26 of the Regulation (EU) 2022/XXX [Digital Services Act], it shall take all possible</p>	<p>Media service providers should be heard before content is deleted and thus have the opportunity to comment on the legality of the complaint by the very large online platforms. In order to ensure media freedom and independence, the national supervisory authorities should also be informed prior to deletion.</p> <p>Article 17(2) should be supplemented by the obligation of the respective provider of very large online platforms to also communicate the</p>

<p>Union law, including Regulation (EU) 2022/XXX [Digital Services Act], 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 suspension taking effect.</p>	<p>measures, to the extent consistent with their obligations under Union law, including Regulation (EU) 2022/XXX [Digital Services Act], to <del>communicate to</del> <b>inform</b> the media service provider concerned <b>of its intention, provide a clear and specific</b> <del>the</del> statement of reasons <del>accompanying that decision</del>, as required by Article 4(1) of Regulation (EU) 2019/1150 <b>and hear the media service provider</b> prior to <b>implementation of a decision</b><del>the suspension taking effect</del>. <b>The provider of a very large online platform is obliged to submit its statement of reasons also to the competent supervision authority or body identified by the media service provider in accordance with paragraph 1.</b></p>	<p>respective reasons for its decision to the respective competent authorities/bodies of the Member States. Such a notification to the national supervisory authorities will make it possible to take action against the media service provider at an early stage if it commits an infringement of the law.</p> <p>At the same time, they will be able to inform the provider of the respective very large online platform of supervisory measures that have already been carried out (protection against double controls).</p>
<p>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</p>	<p><b>3. If, within 24 hours, the media service provider gives the provider of a very large online platform sufficient grounds to consider that the respective content is not incompatible with its terms and conditions,</b></p>	<p>In Art. 17, a mechanism should be provided which takes into account the prominent role of media services. A clear time frame should also be provided here. Deletion of the content in</p>



<p>that submitted a declaration pursuant to paragraph 1 of this Article are processed and decided upon with priority and without undue delay.</p>	<p><b>the very large online platform may not implement its decision in the meaning of paragraph 2. If, after due consideration, the provider of a very large online platform still considers the respective service or content incompatible with its terms and conditions, it shall “...”.</b></p> <p>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.</p>	<p>dispute should not take place before the review is completed.</p> <p><b>GER is currently still examining the exact modalities of the further procedure, including the possible involvement of the national regulatory authorities or self- or co-regulatory bodies of the national supervisory authorities. A separate wording proposal may be submitted after further examination.</b></p>
<p>4. Where a media service provider that submitted a declaration pursuant to paragraph 1 considers that a provider of very large online platform frequently restricts or suspends the provision of its services in relation to content</p>	<p>4. Where a media service provider that submitted a declaration pursuant to paragraph 1 considers that a provider of a very large online platform frequently <b>claims incompatibility of</b> <del>restricts or suspends the</del></p>	<p>The wording could be made more specific with regard to the standard of review of the platform.</p>

<p>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 for terminating unjustified restrictions or suspensions and avoiding them in the future. The media service provider may notify the outcome of such exchanges to the Board.</p>	<p><del>provision of its services in relation to</del> content provided by the media service provider <b>with its terms and conditions</b> <del>without sufficient grounds</del>, 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 for terminating unjustified restrictions or suspensions and avoiding them in the future. The media service provider may notify the outcome of such exchanges to the Board.</p>	
<p>5. Providers of very large online platforms shall make publicly available on an annual basis information on:</p> <p>(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 of this Article is</p>	<p>5. Providers of very large online platforms shall make publicly available on an annual basis information on:</p> <p>(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 of this Article is</p>	

<p>incompatible with their terms and conditions; and</p> <p>(b) the grounds for imposing such restrictions.</p>	<p>incompatible with their terms and conditions; and</p> <p>(b) the grounds for imposing such restrictions.</p>	
<p>6. With a view to facilitating the consistent and effective implementation of this Article, the Commission may issue guidelines to establish the form and details of the declaration set out in paragraph 1.</p>	<p>6. With a view to facilitating the consistent and effective implementation of this Article, the Commission may issue guidelines to establish the form and details of the declaration set out in paragraph 1.</p>	
<p style="text-align: center;"><i>Article 18</i></p> <p style="text-align: center;">Structured dialogue</p>	<p style="text-align: center;"><i>Article 18</i></p> <p style="text-align: center;">Structured dialogue</p>	
<p>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 of this Regulation, to foster access to diverse offers of independent media on very large online platforms and to monitor adherence to self-regulatory initiatives aimed</p>	<p>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 of this Regulation, 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</p>	

<p>at protecting society from harmful content, including disinformation and foreign information manipulation and interference.</p>	<p>society from harmful content, including disinformation and foreign information manipulation and interference.</p>	
<p>2. The Board shall report on the results of the dialogue to the Commission.</p>	<p>2. The Board shall report on the results of the dialogue to the Commission <b>and the Member States.</b></p>	<p>In para. 2, it should be included that the Member States are also informed about the outcome of the structured dialogue, because the insights gained in this procedure are also relevant for the Member States.</p>
<p><i>Article 19</i> Right of customisation of audiovisual media offer</p>	<p><i>Article 19</i> Right of customisation of audiovisual media offer</p>	
<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>1. Users shall have a right to easily change the default settings of any <del>device or</del> user interface controlling or managing access to and use of audiovisual <b>or audio</b> media services in order to customise the audiovisual <b>or audio</b> media offer according to their interests or preferences in compliance with the law. This provision <del>shall</del> <b>does</b> not affect national measures implementing Article 7a of Directive 2010/13/EU <b>or other</b></p>	<p>In Art. 19(1), it should be clarified that national regulations on discoverability, even if they were not adopted on the basis of Art. 7a of Directive 2010/13/EU, remain valid and can be further developed, as they serve to ensure diversity. This applies in particular against the background that Art. 7a AVMS Directive only regulates the discoverability of audiovisual media services. In GER, however, there are</p>

	<p><b>national measures to enhance discoverability to secure media pluralism.</b></p>	<p>also rules for the discoverability of audio content.</p> <p>Within the framework of the Council conclusions on securing a free and pluralistic media system, it was affirmed that media-specific and diversity-related regulation of media platforms and intermediaries is necessary and that securing media pluralism is primarily the responsibility of the Member States. This should also be reflected in the regulatory text.</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>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>	

**FINLAND**

**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**

**Articles 15 and 17-18**

*- Table for comments -*

<p><b>Commission proposal</b></p> <p>Interinstitutional File 2022/0277 (COD) COM (2022) 457 final</p>	<p><b>Comments and drafting suggestions from delegations</b></p>	
<p><b>Section 3</b></p> <p><b>Regulatory cooperation and convergence</b></p>		
<p><i>Article 15</i></p> <p>Guidance on media regulation matters</p>		
<p>1. The Board shall foster the exchange of best practices among the national regulatory authorities or bodies, consulting stakeholders, where appropriate, and in close cooperation with the Commission, on regulatory, technical or practical aspects perti-</p>		

<p>ment to the consistent and effective application of this Regulation and of the national rules implementing Directive 2010/13/EU.</p>		
<p>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:</p> <p>(a) the appropriate prominence of audiovisual media services of general interest under Article 7a of Directive 2010/13/EU;</p> <p>(b) making information accessible on the ownership structure of media service providers, as provided under Article 5(2) of Directive 2010/13/EU.</p>		

<p>3. The Commission may issue an opinion on any matter related to the application of this Regulation and of the national rules implementing Directive 2010/13/EU. The Board shall assist the Commission in this regard, where requested.</p>		
<p style="text-align: center;"><b>Section 4</b></p> <p style="text-align: center;"><b>Provision of media services in a digital environment</b></p>		
<p style="text-align: center;"><i>Article 17</i></p> <p style="text-align: center;">Content of media service providers on very large online platforms</p>		
<p>1. Providers of very large online platforms shall provide a functionality allowing recipients of their services to declare that:</p> <p>(a) it is a media service provider within the meaning of Article 2(2);</p> <p>(b) it is editorially independent from Member States and third countries; and</p>	<p>(c) it is subject to regulatory requirements for the exercise of editorial responsibility in one or more Member States, <del>or</del> <b>and</b> adheres to a co-regulatory or self-regulatory mechanism governing editorial standards, widely recognized and accepted in the relevant media sector in one or more Member States, <b>where such mechanism is in operation/in place.</b></p>	<p>We suggest clarifying wording “regulatory requirements” in the paragraph 1, sub-paragraph c. In some cases, media service providers can be subject to obligations of certain rules, such as rules laid down in the AVMSD. However, it does not necessarily mean that these media service providers are committed to the self-regulation mechanisms governing editorial standards.</p>



<p>(c) it is subject to regulatory requirements for the exercise of editorial responsibility in one or more Member States, or adheres to a co-regulatory or self-regulatory mechanism governing editorial standards, widely recognized and accepted in the relevant media sector in one or more Member States.</p>		<p>We would like to emphasize the importance of self-regulatory systems and to ensure that quality journalism that in compliance with the editorial standards resulting from self-regulatory guidelines is protected on the platforms. We also note that not all Member States possibly have widely recognize self-regulatory systems.</p>
<p>2. Where a provider of 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 pursuant to paragraph 1 of this Article, on the grounds that such content is incompatible with its terms and conditions, without that content contributing to a systemic risk referred to in Article 26 of the Regulation (EU) 2022/XXX [Digital Services Act], it shall take all possible measures, to the</p>	<p>2. Where a provider of very large online platform decides to suspend the provision of its online intermediation services in relation to content <b>or services</b> provided by a media service provider that submitted a declaration pursuant to paragraph 1 of this Article, on the grounds that such content <b>or services</b> is incompatible with its terms and conditions, without that content contributing to a systemic risk referred to in Article 26 of the Regulation (EU) 2022/XXX [Digital Services Act], it shall take all possible measures, to the</p>	<p>In many cases, not only content by media service providers but also <b>accounts</b> of media service providers are removed from the platforms due to the flagging of content or content being incompatible with platform's terms and conditions. Article 17 seems to apply only the content provided by a media service provider. It should be considered, if the scope of the article is extended to the accounts of media service providers as well.</p> <p>It should be considered if VLOPs should communicate, for example meaningful and concrete reasons accompanying the</p>

<p>extent consistent with their obligations under Union law, including Regulation (EU) 2022/XXX [Digital Services Act], 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 suspension taking effect.</p>	<p>extent consistent with their obligations under Union law, including Regulation (EU) 2022/XXX [Digital Services Act], to communicate to the media service provider concerned the statement of <b>meaningful and detailed</b> reasons accompanying that decision, as required by Article 4(1) of Regulation (EU) 2019/1150, prior to the suspension taking effect.</p>	<p>decision to suspend content provided by a media service provider. The suggested clarification would decrease the risk that media service providers only received generic email notifications prior to the suspension taking effect.</p>
<p>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.</p>		
<p>4. Where a media service provider that submitted a declaration pursuant to paragraph 1 considers that a provider of very large</p>	<p>4. Where a media service provider that submitted a declaration pursuant to paragraph 1 considers that a provider of very</p>	<p>We suggest adding indication of a reasonable timeframe to the paragraph 4 for the dialogue and finding solution to de-</p>

<p>online platform frequently 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 for terminating unjustified restrictions or suspensions and avoiding them in the future. The media service provider may notify the outcome of such exchanges to the Board.</p>	<p>large online platform frequently 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 <b>within a reasonable timeframe</b> for terminating unjustified restrictions or suspensions and avoiding them in the future. The media service provider may notify the outcome of such exchanges to the Board.</p>	<p>crease uncertainty of media service providers in case their content or account is removed from the platform. Reasonable timeframe could be defined in more detailed in the recitals.</p>
<p>5. Providers of very large online platforms shall make publicly available on an annual basis information on:</p> <p>(a) the number of instances where they imposed any restriction or suspension on the grounds that the content provided</p>		

<p>by a media service provider that submitted a declaration in accordance with paragraph 1 of this Article is incompatible with their terms and conditions; and</p> <p>(b) the grounds for imposing such restrictions.</p>		
<p>6. With a view to facilitating the consistent and effective implementation of this Article, the Commission may issue guidelines to establish the form and details of the declaration set out in paragraph 1.</p>		
<p><i>Article 18</i></p> <p>Structured dialogue</p>		
<p>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 of this Regulation, to foster</p>		

<p>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.</p>		
<p>2. The Board shall report on the results of the dialogue to the Commission.</p>		

**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) COM (2022) 457 final**

**- Table for comments –**

<p style="text-align: center;"><b>Section 4</b></p> <p style="text-align: center;"><b>Provision of media services in a digital environment</b></p> <p style="text-align: center;"><i>Article 17</i></p> <p style="text-align: center;"><b>Content of media service providers on very large online platforms</b></p>
<p><b>General remarks:</b> As regards the Article as a whole, LV sees a problem with a self-declaration mechanism that lacks the element of verification. As has been pointed by many civil society organisations, such a mechanism is open to abuse by rogue players. In Europe we know only too well that media can also serve as a tool of information manipulation, propaganda and disinformation, especially those originating in authoritarian countries. In the case of RT France v the Council at the EU Court of Justice, RT France claimed that it distributed its content under the aegis of an independent editorial committee and ethics committee. It further argued that, even if the various RT channels belonged to the same group and shared a number of values, RT France was a quite independent channel and master of its editorial line. This we know to be untrue.</p> <p>If the article is to be retained and media service providers are to be given preferential treatment by VLOPs, then we have to be sure that they are genuinely independent and adhere to generally accepted journalistic standards. To avoid the situation whereby VLOPs themselves have to investigate the bona fides of declarants and decide on whether they qualify for preferential treatment, we propose verification prior to the submission of a declaration.</p> <p>The platforms should not only explain to the content holder the reasons for its removal or restriction of access (Article 15 of the DSA), but also collate all relevant information and provide Member States with an overview of the functioning of the article, including the operation of the complaints mechanism as well as information on accessibility restrictions or restrictions on or deletions of user accounts. The availability of the relevant, accurately gathered information would give an insight into both the functioning of platforms and their ability to respond to challenges in the information space of EU Member States as well as the algorithms they apply.</p>

<p>1. Providers of very large online platforms shall provide a functionality allowing recipients of their services to declare that:</p> <ul style="list-style-type: none"> <li>(a) it is a media service provider within the meaning of Article 2(2);</li> <li>(b) it is editorially independent from Member States and third countries;</li> <li>(c) it is subject to regulatory requirements for the exercise of editorial responsibility in one or more Member States, or adheres to a co-regulatory or self-regulatory mechanism governing editorial standards, widely recognised and accepted in the relevant media sector in one or more Member States.</li> </ul> <p><b>1a. The declaration referred to in Paragraph 1 should be accompanied by a statement by an independent competent authority or institution in the Member State concerned attesting to the veracity of the declaration.</b></p>	<p>New paragraph 1a</p>
<p>2. Where a provider of 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 pursuant to paragraph 1 of this Article, on the grounds that such content is incompatible with its terms and conditions, without that content contributing to a systemic risk referred to in <b>Article 34 26</b> of the Regulation (EU) 2022/XXX [Digital Services Act], it shall take all possible</p>	<p>We believe that platforms should not be the ones to determine who is a bona fide media service provider and who is not. Verified declarations should obviate the need for this.</p> <p>Article 26 of DSA covers “Advertising on online platforms”, we believe the correct corresponding article would be Article 34 of DSA on “Risk assessment”.</p>

<p>measures, to the extent consistent with their obligations under Union law, including Regulation (EU) 2022/XXX [Digital Services Act], 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 suspension taking effect.</p>	
<p>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.</p>	<p>At this point, it is unclear whether Article 17.3 of the EMFA duplicates the mechanism that media service providers will be able to use under the DSA. And what added value would there be in creating a separate complaints mechanism for the media under P2B Regulation, why would they not be able to use the mechanisms already set up by the DSA? We would encourage this to be clarified in the recitals.</p>
<p>4. Where a media service provider that submitted a declaration pursuant to paragraph 1 considers that a provider of very large online platform frequently 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 for terminating unjustified restrictions or suspensions and avoiding them in the future. The media</p>	<p>17.4 in LV's view is too general because it is not clear how the media and the VLOPs should engage in dialogue in order to find a solution. On the other hand, Article 21 of the DSA already provides for detailed out-of-court settlement of disputes. As in the previous paragraph, we see no clear justification for creating a separate mechanism/dialogue. There should be instead a reference to the DSA mechanism.</p>



<p>service provider may notify the outcome of such exchanges to the Board.</p>	
<p>5. <b>Without prejudice to articles 15, 24 and 42 of Regulation (EU) 2022/2065, the reports prepared</b> by providers of very large online platforms shall <b>include a specific section concerning relevant, disaggregated information on media service providers, including:</b><del>—make publicly available on an annual basis information on:</del></p> <p>(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 of this Article is incompatible with their terms and conditions; and</p> <p>(b) the grounds for imposing such restrictions.</p>	<p>Article 17.5 – Articles 15, 24 and 42 of the DSA already oblige the VLOPs to provide public reports at least once a year, ensuring transparency, on compliance with a number of conditions. In our view, the EMFA would be an appropriate place to clarify that these VLOP reports should pay particular attention to and provide a special section on media service providers. The information should be about the concrete media service providers concerned and not about media service providers as a whole.</p>
<p>6. In order to facilitate the consistent and effective implementation of this Article, the Commission may issue guidelines specifying the form and details of the declaration referred to in paragraph 1.</p>	
<p>Recital (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</p>	<p>Article 26 of DSA covers “Advertising on online platforms”, we believe the correct corresponding article would be Article 34 of DSA on “Risk assessment”.</p>

responsibility, they are expected to act diligently and provide information that is trustworthy and respectful of fundamental rights, in line 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** ~~26~~ of Regulation (EU) 2022/XXX [the Digital Services Act], they should duly consider freedom and pluralism of media, in accordance with Regulation (EU) 2022/XXX [the Digital Services Act] 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 of the European Parliament and of the Council[1]. To minimise the impact of any restriction to that content on users' freedom of information, very large online platforms should endeavour to submit the statement of reasons prior to the restriction taking effect without prejudice to their obligations under Regulation (EU) 2022/XXX [the Digital Services Act]. In particular, 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/XXX [the Digital Services Act].

Recital (33) To this end, providers of very large online platforms should provide a functionality on their online interface to enable media service providers to submit a verified declaration 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. Providers of very large online platforms may 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 may be useful to facilitate an effective implementation of such functionality. ; including on modalities of involvement of relevant civil society organisations in the review of the declarations, on consultation of the regulator of the country of establishment, where relevant, and address any potential abuse of the functionality.~~

We believe that platforms should not be the ones to determine who is a bona fide media service provider and who is not. Verified declarations should obviate the need for this.

*Article 19*

**Right of customisation of audiovisual media offer**

*General remarks:* in essence, the article mandates software developers, as well as smart device manufacturers, to allow users to change their access settings to a media service. On the one hand, it will prevent, for example, Huawei or Xiaomi from including apps/settings on their devices that favour content from or sponsored by a certain country, without the user having the right to change them or to create obstacles for the user that make it difficult to change the settings. For example, a smart device purchased from a company of a particular authoritarian state may have a web browser (analogous to Google Chrome, Mozilla, etc.) developed by a company of a particular authoritarian state, which is designated as the default browser and which already has built-in functionality that favours, promotes or otherwise mandates legitimate content from media sponsored by that state.

On the other hand, this obligation places a burden on a wide range of software developers. Their software/device will have to be able to recognise what media content is. How to ensure this technically? Plus, LV agrees with the duty of monitoring, because the competent authority will have to be able to check the functionality of the various software (including all kinds of applications, search engines, web browsers, operating systems, etc.) as well as the devices. Moreover, this functionality may be somehow technologically hidden/deceptive.

One might add here that the key point is that it is easy for the user to change the settings, and that the burden of proof lies on the software developer/manufacturer. Perhaps this can be somehow reflected in the Recitals.

## NL COMMENTS

Written comments from NL on the Presidency compromise texts concerning articles 15,17 and 18 and recitals 28, 29 and 31–36

### *Article 15*

Guidance on media regulation matters

3. The Commission may issue an opinion on any matter related to the application of this Regulation and of the national rules implementing Directive 2010/13/EU. The Board **and, if applicable, the Contact Committee as mentioned in Directive 2010/13/EU** shall assist the Commission in this regard, ~~where requested.~~ **The Board and the Contact Committee will be informed once the Commission issues an opinion.**

#### Motivation

Concerning the first sentence, we are interested in the considerations of the Legal Service of the Council on the scope of this competence (to issue opinions on any matter...), which might be too wide. The provisions of Article 15 may touch on national media policy, or at least provide information that may be relevant to national media policy. In that respect, the Netherlands would be in favor of involving the Contact Committee. Cooperation could also be promoted within the Contact Committee, in order to facilitate the exchange of information.

### *Article 17*

Content of media service providers on very large online platforms

We are still studying the article and therefore have no text proposal yet. We are in principle positive about the procedural approach of this regulation (not suspending without warning). We have heard from both online platforms and NGOs that they have concerns about this proposal. It could create a loophole that could be exploited by disinformation actors. We want to watch out for this. We are also uncomfortable with the fact that online platforms determine which statement is accepted, so who is protected and who is not. There is also no possibility of objection.

### *Recital 36*

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 **examples, data (notifications and handling thereof)**, 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 content, including those aimed at countering disinformation. The Commission may, where relevant, examine the reports on the results of such structured dialogues when assessing systemic and emerging issues across the Union under Regulation (EU) 2022/XXX [Digital Services Act] and may ask the Board to support it to this effect.

#### Motivation

Currently, it is hard to assess the scale of the problem (i.e. takedown of media service content on VLOPs that is problematic from a media freedom perspective). In order to be able to discuss the problems encountered by media service providers it is useful to base the dialogue on real data and examples. Actual data on complaints and complaint handling can inform independent research, DSA codes of practice and Council of Europe standard setting.

Brussels, 19 September 2022  
(OR. en)

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**Interinstitutional File:  
2022/0277(COD)**

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AUDIO 86  
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MI 668  
DISINFO 72  
FREMP 183  
COMPET 712  
EDPS 1  
DATAPROTECT 256  
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SERVICES 18  
POLGEN 121

**COVER NOTE**

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From: Secretary-General of the European Commission, signed by Ms Martine  
DEPREZ, Director

date of receipt: 16 September 2022

To: General Secretariat of the Council

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No. Cion doc.: COM(2022) 457 final

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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

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Delegations will find attached document COM(2022) 457 final.

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Encl.: COM(2022) 457 final



Brussels, 16.9.2022  
COM(2022) 457 final

2022/0277 (COD)

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**

(Text with EEA relevance)

{SEC(2022) 322 final} - {SWD(2022) 286 final} - {SWD(2022) 287 final}

**EN**

**EN**



## **COMMENTS FROM SLOVENIA**

### *Article 15*

#### Guidance on media regulation matters

1. The Board shall foster the exchange of best practices among the national regulatory authorities or bodies, consulting stakeholders, and where appropriate, ~~and~~ in ~~close~~ cooperation with the Commission, on regulatory, technical or practical aspects pertinent to the consistent and effective application of this Regulation and of the national rules implementing 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 appropriate prominence of audiovisual media services of general interest under Article 7a of Directive 2010/13/EU;
  - (b) making information accessible on the ownership structure of media service providers, as provided under Article 5(2) of Directive 2010/13/EU.
- ~~3. The Commission may issue an opinion on any matter related to the application of this Regulation and of the national rules implementing Directive 2010/13/EU. The Board shall assist the Commission in this regard, where requested.~~
4. The Board shall foster cooperation between media service providers, standardisation bodies or any other relevant stakeholders in order to facilitate the development of technical standards related to digital signals or design of devices or user interfaces controlling or managing access to and use of audiovisual media services.

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## **Section 4**

### **Provision of media services in a digital environment**

#### *Article 17*

##### 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 declare that:
  - (a) it is a media service provider within the meaning of Article 2(2);

- (b) it is editorially independent from Member States and third countries; and
- (c) it is subject to regulatory requirements for the exercise of editorial responsibility in one or more Member States, or adheres to a co-regulatory or self-regulatory mechanism governing editorial standards, widely recognised and accepted in the relevant media sector in one or more Member States.

1. a. The functionality will allow to access to the information on the media service providers, that the users of the content will be able to verify.

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2. Where a provider of 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 pursuant to paragraph 1 of this Article, on the grounds that such content is incompatible with its terms and conditions, without that content contributing to a systemic risk referred to in Article 26 of the Regulation (EU) 2022/XXX [Digital Services Act], it shall notify the media service provider on the reasons accompanying that decision before the suspension with the right to reply ~~take all possible measures, to the extent consistent with their obligations under Union law, including Regulation (EU) 2022/XXX [Digital Services Act], 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 suspension taking effect.~~

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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 frequently 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 for terminating unjustified restrictions or suspensions and avoiding them in the future. The media service provider may notify the outcome of such exchanges to the Board.
5. Providers of very large online platforms shall make publicly available on an annual basis 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 of this Article is incompatible with their terms and conditions; and
  - (b) the grounds for imposing such restrictions.
6. With a view to facilitating the consistent and effective implementation of this Article, the Commission may issue guidelines to establish the form and details of the declaration set out in paragraph 1.

*Article 18*

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 of this Regulation, 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 [and when appropriate to the Member states.](#)

## EXPLANATION NOTES

As we have already proposed for the Article 12, our intent is to include differentiated roles of the Board depending on the articles that are subject of minimum or maximum harmonisation. In this sense the amending of the Article 15 should follow the same logic: since the Board as it was interpreted, should not have any role beside the Directive 2010/13/EU and the new provisions in chapter III., we propose to delete other possible obligations. Since the Commission has legal ground to issue guidelines, there is no particular need to articulate it as a general possibility, beside specific situations when the guidelines are indeed needed and useful.

As the media have a specific role in ensuring that their services, in line with editorial responsible decisions, provide the informations in general public interest, they should be notified of the intended suspension or restriction before the final suspension or restriction. On the same line we propose additional safeguard for the users to verify the information on the media service providers. Our proposal at this phase is provisory, as we understood that the Article in DSA have still to be checked and we have therefore to verify it with our authorities in this field.