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General Secretariat

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**LIMITE**

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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 AT, FR, and IT 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: Austria, France, and Italy.

## AT-PROPOSAL for amendments<sup>1</sup> to the

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**

(1) In Article 2 the following definition is inserted between the definition of ‚programme‘ and the definition of ‚press publication‘:

“4a. **current affairs content‘: strictly news-related content such as commentaries on news, analysis of news developments and political positions on events in news.**“

(2) Article 11 paragraph 3 is amended (to read) as follows:

“3. The secretariat shall provide administrative and organisational support to the activities of the Board. The secretariat shall also assist the Board in carrying out its tasks. **In fulfillment of its tasks according to paragraph 2 and to this paragraph the secretariat shall act only upon the instruction of the Board or its Chair.**“

(3) In Article 27 the following point 0 is inserted:

“0. Article 29 paragraph 2 letters (a), (b), (d), (e) and (f) of Directive 2010/13/EU are amended (to read) as follows:

„(a) to facilitate effective implementation of this Directive **and promote the effective and consistent application of the European Media Freedom Act** through regular consultation on any practical problems arising from **their** application, and particularly from the application of Article 2 **of this Directive**, as well as on any other matters on which exchanges of views are deemed useful;“

„(b) to deliver own-initiative opinions or opinions requested by the Commission on the application by the Member States of this Directive **or of the European Media Freedom Act**;“

„(c) *[remains unchanged]*<sup>2</sup>

„(d) to discuss the outcome of regular consultations which the Commission holds with representatives of **media service providers**, producers, consumers, manufacturers, service providers and trade unions and the creative community;“

„(e) to facilitate the exchange of information between the Member States and the Commission on the situation and the development of regulatory activities regarding **audiovisual** media services, taking account of the Union’s **audiovisual media** policy, as well as relevant developments in the technical field;“

„(f) to examine any development arising in the **media** sector on which an exchange of views appears useful.““

#### **Rationale:**

1. As Article 3 and 6 create rights and obligations also related to „current affairs content“, it needs a clear and common understanding of the term. As the term (used in Directive 2010/13/EU and now also

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<sup>1</sup> [changes to the current text: **bold and unterlined**]

<sup>2</sup> current text. „(c) *to be the forum for an exchange of views on what matters should be dealt with in the reports which Member States must submit pursuant to Article 16(3) and on their methodology;*“

integrated in the Regulation) originates from the European Convention on Transfrontier Television it is obvious to use the same explanation as in Point 243 of the Explanatory Report to this Convention.

2. To secure the independence of the Board it is necessary to include the secretariat (in the guarantee of independence) by clearly stating that - whenever the secretariat acts in fulfillment of its duties to contribute to the execution of the tasks of the Board (paragraph 2) and to support and assist the Board (paragraph 3) – it can only be bound by instructions of the Board and/or its Chair. For all other aspects – such as questions relating to employment law, disciplinary law etc the employees fully remain within the supervision and control of the Commission, who is responsible for the provision of the staff.

3. According to Recital (52) of DIRECTIVE (EU) 2018/1808 the Contact Committee *„aims at facilitating an effective implementation of Directive 2010/13/EU and should be regularly consulted on any practical problems arising from its application.“* The recital also states that *„the work of the Contact Committee should not be limited to the existing audiovisual policy issues, but should also cover the relevant developments arising in this sector.“*

Following this fundamental idea of the co-legislators of establishing a forum of exchange between Member States and the Commission with regard to „policy issues“, it is only consequent and therefore indispensable to amend also the tasks of this Committee especially when it comes to media policy issues.

**Written comments of the French delegation  
following the meeting of the audiovisual group on February 8<sup>th</sup>, 2023**

**a) Article 15**

The possibility granted to the European Commission to issue guidelines and opinions on the application of the entire regulation and on all the national rules implementing the AVMS Directive seems to go beyond the initial objectives of the proposal.

Currently, the AVMS Directive allows the Commission to issue guidelines on two fields only (media literacy on the one hand, and calculation of the share of European works, the definition of low audience and low turnover on the other). Without prejudice to the Commission's powers as guardian of the Treaties, article 15 should emphasize the need for guidelines on article 17 (according to paragraph 6) and article 23 of the regulation. The French authorities have a reservation regarding the issuance of guidelines for article 21 and would like to wait for the discussions on February 21 before taking a further stand.

Accordingly, this possibility should also be limited to article 7a and article 5 paragraph 2 of the AVMSD, which purpose is directly related to this regulation.

Moreover, the AVMSD establishes a contact committee whose consultation appears to be useful in drawing up the guidelines on article 7a and article 5(2) of AVMSD or on Chapter III of the EMFA.

Lastly, the French authorities propose to adjust recital 28 accordingly and to specify that national measures taken under article 7a of Directive 2010/13/EU on the appropriate prominence of audiovisual media services of general interest shall not be affected by article 3 of Directive 2000/31/EC in order to guarantee their effectiveness.

<i>Article 15</i>	<i>Article 15</i>
Guidance on media regulation matters	Guidance on media regulation matters
<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 pertinent 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</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 pertinent to the consistent and effective application of this Regulation and <del>of the national rules implementing</del> Directive 2010/13/EU.</p> <p>2. Where the Commission issues guidelines related to the application of <b>articles 17 paragraphe 6, [21] and 23 of this Regulation or undermentioned articles of the national rules implementing</b> Directive 2010/13/EU, the Board shall <del>assist</del> <b>provide it by providing</b> expertise on regulatory, technical or practical aspects, as regards <del>in particular:</del></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><b>The Commission shall also consult the Contact Comitee established by article 29 of Directive 2010/13/EU when issuing the abovementioned</b></p>

<p>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>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.</p>	<p><b>guidelines related to articles 7a and 5(2) of Directive 2010/13/EU and articles 17, [21] and 23 of this Regulation.</b></p> <p>3. The Commission may issue an opinion on <del>any matter related to the application of Chapter III of this Regulation and under Articles 7a and 5(2) of the national rules implementing Directive 2010/13/EU.</del> The Board shall <b>provide its expertise to assist</b> the Commission in this regard, <del>where requested.</del></p> <p>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.</p>
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<p style="text-align: center;"><i>Recital 28</i></p> <p>(28) Ensuring a consistent regulatory practice regarding this Regulation and Directive 2010/13/EU is essential. For this purpose, and to contribute to ensuring a convergent implementation of EU media law, the Commission may issue guidelines on matters covered by both this Regulation and Directive 2010/13/EU when needed. When deciding to issue guidelines, the Commission should consider in particular regulatory issues affecting a significant number of Member States or those with a cross-border element. This is the case in particular for national measures taken under Article 7a of Directive 2010/13/EU on the appropriate prominence of audiovisual media services of general interest. In view of the abundance of information and the increasing use of digital means to access the media, it is important to ensure prominence for content of general interest, in order to help achieving a level playing field in the internal market and compliance with the fundamental right to receive information under Article 11 of the Charter of Fundamental Rights of the Union. Given the possible impact of the national measures taken under Article 7a on the functioning of the internal media market, guidelines by the Commission would be important to achieve legal certainty in this field. It would also be useful to provide guidance on</p>	<p style="text-align: center;"><i>Recital 28</i></p> <p>(28) Ensuring a consistent regulatory practice regarding this Regulation and Directive 2010/13/EU is essential. For this purpose, and to contribute to ensuring a convergent implementation of EU media law, the Commission may issue guidelines on matters covered by <del>both</del> <b>articles 17, [21] and 23 of this Regulation and articles 7a and 5(2) of Directive 2010/13/EU</b> when needed. When deciding to issue guidelines, the Commission should consider in particular regulatory issues affecting a significant number of Member States or those with a cross-border element. <del>This is the case in particular for national measures taken under Article 7a of Directive 2010/13/EU on the appropriate prominence of audiovisual media services of general interest.</del> In view of the abundance of information and the increasing use of digital means to access the media, it is important to ensure prominence for content of general interest, in order to help achieving a level playing field in the internal market and compliance with the fundamental right to receive information under Article 11 of the Charter of Fundamental Rights of the Union. <b>In order to guarantee their effectiveness,</b> national measures taken under Article 7a of Directive 2010/13/EU on the appropriate prominence of audiovisual media services of general interest <b>shall not be affected by article 3 of Directive 2000/31/EC</b> <del>Given the possible impact of the national measures taken under Article 7a on the functioning of the internal media market,</del> and guidelines by the Commission would be important to achieve legal certainty in this field. It would also be useful to provide guidance on national measures taken under Article 5(2) of Directive 2010/13/EU with a view to</p>
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<p>national measures taken under Article 5(2) of Directive 2010/13/EU with a view to ensuring the public availability of accessible, accurate and up-to-date information related to media ownership. In the process of preparing its guidelines, the Commission should be assisted by the Board. The Board should in particular share with the Commission its regulatory, technical and practical expertise regarding the areas and topics covered by the respective guidelines.</p>	<p>ensuring the public availability of accessible, accurate and up-to-date information related to media ownership. In the process of preparing its guidelines, the Commission should <del>be assisted by</del> <b>consult</b> the Board. The Board should in particular share with the Commission its regulatory, technical and practical expertise regarding the areas and topics covered by the respective guidelines.</p>
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**b) Article 17:**

The French authorities welcome this provision, which acknowledges the particular role that very large online platforms play in providing access to media services and content. They suggest amending article 17 to improve its effectiveness and clarity. They consider that it should be clearly stated that "restriction" of content based on the platform's terms and conditions are covered by the mechanism, in addition to "suspension" of the provision of the online intermediation service.

Further, the French authorities insist on the need to provide, without any uncertainty, that the statement of reasons shall be communicated to the media service provider and that the media service provider may be heard by the platform within a proper timeframe, before the restriction is effective.

They also agree with the suggestion from several other Member States during the latest group that media service providers should be entitled to challenge the decision of a very large online platform not to accept a self-declaration. They therefore suggest referring this dispute to a certified out of court settlement body, inspired by article 21 of the DSA. The French authorities recognise that directly referring to article 21 of the DSA in article 17 of the EMFA would be a concise drafting solution, however after further analysis, they consider that article 21 of the DSA includes some elements which are specific to the DSA and would require adapting the mechanism to the EMFA regulation (mention of "individuals", "notices" and of the certification by Digital Services Coordinators, fee-charging system depending on the outcome of the dispute, etc.). The French authorities submit a proposal for a new article 17a which essentially copies article 21 of the DSA and adapts its DSA-specific elements to the EMFA regulation (deletion of the paragraph on notices, certification by the Board rather than the DSC, amendment of the fee charging system).

The French authorities understand the Commission's explanations regarding the supervision of Section 4. However, to strengthen the effectiveness of the mechanism, they suggest that the Board may issue an opinion and recommend actions to be taken when no amicable solution is found pursuant to paragraph 4 of Article 17. If a very large online platform does not follow the Board's opinions or recommendations, the Commission should also consider this when evaluating the service's compliance with the DSA.

Regarding recital 31, the French authorities suggest simplifying it so as to recall the idea that online platforms shall implement Article 17 of the EMFA proposal, without prejudice to other existing instruments for combating the dissemination of illegal content, in particular the Copyright Directive.

Proposals for amendments:

<i>Article 17</i>	<i>Article 17</i>
<p>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</p>	<p>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</p>

<p>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, 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>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 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>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</p>	<p>third countries; and</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><b>1a. A media service provider whose declaration to a provider of a very large online platform has been rejected shall be entitled to select any out-of-court dispute settlement body that has been certified in accordance with Article 17a in order to resolve disputes relating to those decisions. The first subparagraph is without prejudice to the right of the media service provider concerned to initiate proceedings to contest those decisions by the providers of online platforms before a court in accordance with the applicable law.</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 <b>or to restrict the visibility of such content</b>, 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 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, <b>and to provide the media service provider with an opportunity to reply to the statement of reasons, within 24 hours</b>, prior to the suspension <b>or the restriction</b> 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 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>
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<p>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 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>service provider may notify the outcome of such exchanges to the Board.</p> <p><b>4a. In case an amicable solution is not found, the matter may be referred to the Board, which may issue an opinion and recommend measures to be taken.</b></p> <p><b>4b. In cases, where a very large online platform repeatedly does not take into account opinions or recommended measures issued by the Board, the Commission shall consider this in its assessment of the compliance of the very large online platform <del>or search engine</del> with its obligations relating to systemic risks mitigation measures pursuant to Regulation 2022/2065.</b></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 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, <b>including modalities of involvement of relevant civil society organisations and, where relevant, of independent authorities or bodies in the review of the declarations, and address any potential abuse of the functionality.</b></p>
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	<p style="text-align: center;"><b>Article 17a</b></p> <p style="text-align: center;"><b>Out-of-court dispute settlement</b></p> <p><b>1. Where a media service provider has selected an out-of-court dispute settlement body pursuant to paragraph 1a of Article 17, both parties shall engage, in good faith, with the selected certified out-of-court dispute settlement body with a view to resolving the dispute.</b></p> <p><b>The certified out-of-court dispute settlement body shall not have the power to impose a binding settlement of the dispute on the parties.</b></p> <p><b>2. The Board shall, for a maximum period of five years, which may be renewed, certify the body, at its request, where the body has demonstrated that it meets all of the following conditions:</b></p>
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**(a) it is impartial and independent, including financially independent, of providers of online platforms and of media service providers ;**

**(b) it has the necessary expertise in relation to the issues arising in the protection of freedom of speech, of media freedom and media diversity online, allowing the body to contribute effectively to the settlement of a dispute;**

**(c) its members are remunerated in a way that is not linked to the outcome of the procedure;**

**(d) the out-of-court dispute settlement that it offers is easily accessible, through electronic communications technology and provides for the possibility to initiate the dispute settlement and to submit the requisite supporting documents online;**

**(e) it is capable of settling disputes in a swift, efficient and cost-effective manner and in at least one of the official languages of the institutions of the Union;**

**(f) the out-of-court dispute settlement that it offers takes place in accordance with clear and fair rules of procedure that are easily and publicly accessible, and that comply with applicable law, including this Article.**

**3. Certified out-of-court dispute settlement bodies shall report to the Board, on an annual basis, on their functioning, specifying at least the number of disputes they received, the information about the outcomes of those disputes, the average time taken to resolve them and any shortcomings or difficulties encountered. They shall provide additional information at the request of the Board.**

**The Board shall, every two years, draw up a report on the functioning of the out-of-court dispute settlement bodies that they certified. That report shall in particular:**

**(a) list the number of disputes that each certified out-of-court dispute settlement body has received annually;**

**(b) indicate the outcomes of the procedures brought before those bodies and the average time taken to resolve the disputes;**

**(c) identify and explain any systematic or sectoral shortcomings or difficulties encountered in relation to the functioning of those bodies;**

**(d) identify best practices concerning that functioning;**

**(e) make recommendations as to how to improve that functioning, where appropriate.**

**Certified out-of-court dispute settlement bodies shall make their decisions available to the parties within a reasonable period of time after the receipt of the complaint.**

	<p><b>4. The fees charged by the out-of-court dispute settlement body shall be reasonable and shall in any event not exceed the costs incurred by the body.</b></p> <p><b>Certified out-of-court dispute settlement bodies shall make the fees, or the mechanisms used to determine the fees, known to the media service providers and to the provider of the online platform concerned, before engaging in the dispute settlement.</b></p> <p><b>5. The Board shall revoke the certification it has given an out-of-court dispute settlement body if it determines, following an investigation either on its own initiative or on the basis of the information received by third parties, that the out-of-court dispute settlement body no longer meets the conditions set out in paragraph 2. Before revoking that certification, the Digital Services Coordinator shall afford that body an opportunity to react to the findings of its investigation and its intention to revoke the out-of-court dispute settlement body's certification.</b></p> <p><b>6. The Board shall publish a list of the out-of-court dispute settlement bodies that they have certified in accordance with paragraph 3, including where applicable the specifications referred to in the second subparagraph of that paragraph, as well as the out-of-court dispute settlement bodies the certification of which they have revoked, on a dedicated website that is easily accessible, and keep it up to date.</b></p> <p><b>7. This Article is without prejudice to Directive 2013/11/EU and alternative dispute resolution procedures and entities for consumers established under that Directive.</b></p>
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<p>(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, 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 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,</p>	<p>(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, 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 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. To minimise the impact of any restriction to that content on users' freedom of information, very large</p>
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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. 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].

(...)

(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. 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.

(...)

(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 on their content are frequently imposed by providers of very large online platforms without sufficient grounds, in order to find an amicable solution for terminating any unjustified restrictions 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

online platforms should endeavour to submit, **within 24 hours**, 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, **including measures taken in compliance with EU legislation such as Directive (EU) 2019/790**, 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].

(...)

(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. **Where providers of very large online platforms do not accept such self-declarations, the media service provider should be entitled to appeal this decision before out-of-court settlement bodies certified by the Board.** 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 **and, where relevant, of relevant independent authorities or bodies** 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.

(...)

(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 on their content are frequently imposed by providers of very large online platforms without sufficient grounds, in order to find an amicable solution for terminating any unjustified restrictions 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. **In case an amicable solution is not found, the matter may be referred to the Board, which could issue an opinion and recommend**

media freedom and freedom of information.	<b>measures to be taken. However, when a very large online platform repeatedly fails to take into account opinions [and recommended measures] issued by the Board, the Commission should take it into account in its assessment of the compliance of the very large online platform with its obligations relating to systemic risks mitigation measures pursuant to the Digital Services Act.</b>
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**c) Article 18:**

As they had indicated in previous working groups, the French authorities welcome the structured dialogue. In the field of news media, the promotion and recommendation of content often aims to retain users' attention, and therefore exposes them to content that is relevant to their interests and opinions. This practice does not always take into account, on the one hand, the reliability of the content in question, nor on the other hand the need to present diverse and pluralistic information. This leads both to the promotion of sometimes unreliable content and to the locking up of users in information bubbles, which is detrimental to the quality of public debate and the proper functioning of democratic institutions.

To address these issues, the French authorities wish to reiterate their proposal to ask the Board and the Commission to encourage the drafting of a voluntary code of conduct at EU level by those concerned by Article 18. This Code would aim to ensure the best visibility of content of services of general interest to the public on very large online platforms, as well as promote a pluralistic representation of such services. Similarly to the Code of Practice on Disinformation, the Code could include precise objectives and indicators which would be evaluated by the Board and the Commission and would address promotion of content on a wide range of interfaces. The Code could become binding for a given very large online platform pursuant to Article 45 of the DSA, as a systemic risk mitigation measure.

Proposals for amendments:

<i>Article 18</i> Structured dialogue	<i>Article 18</i> Structured dialogue <b>and Code of conduct</b>
<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 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>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.</p> <p>2. The Board shall report on the results of the dialogue to the Commission.</p> <p><b>3. The Commission and the Board shall encourage and facilitate the drawing up of voluntary codes of conduct at Union level by providers of very large online platforms, representatives of media service providers and representatives of civil society to promote visibility and pluralism of media service providers which meet the criteria set out in paragraph 1 of Article 17 on very large online platforms.</b></p>

	<p><b><i>4. Providers of very large online platforms shall provide the Board with all the necessary information, when requested, for the purpose of the involvement of the Board pursuant to articles 17(4), (4a), (4b) and 18(1) and (2) of this regulation.</i></b></p>
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	<p><b><i>(36a) The Board should also encourage and facilitate the drawing up of voluntary codes of conduct at Union level by providers of very large online platforms, representatives of media service providers and representatives of civil society to promote visibility and pluralism of media service providers.</i></b></p>
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## **IT 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**

#### **Italian amendments to Art. 17-18 EMFA**

**General Remark:** Italy welcomes Article 17, but it considers that it is necessary to introduce additional measures in addition to the obligation of negotiation in good faith between the parties. Main Italian remarks on article 17 are here summarized:

Paragraph 1: we think that the self-declarations must be easily verifiable in an independent way by anyone who may be concerned. Furthermore, in order to prevent unjustified decisions to be taken by Vlops, there must be an independent complaint and redress mechanism.

Paragraph 2: the wording must be consistent with paragraph 4, where it is written “restricts or suspends”. Furthermore, assessment compatibility criteria with Vlops’ terms and conditions are to be made explicit by the Act, in order to guide evaluations in an appropriate and transparent way and therefore make any decisions consistent and predictable.

Paragraph 4: the expression “frequently” is too vague. On the other side, it is preferable avoiding any exact definitions (e.g. “more than three times in a quarter”) and, in any case, the media service provider must always have the right to request a dialogue, even after a single decision that might be considered unjustified.

End of paragraph 4: there must be a reinforcement beyond the expression “may notify”. Furthermore, should the dialogue fail, the media service provider has the right to appeal to the court or to the same complaint mechanism provided for in paragraph 2.

As far as article 18 is concerned, Italy doesn’t have amendments to be proposed.

## IT COMMENTS

Original text	Proposed amendments	Explanation
<p align="center"><b>Section 4</b></p> <p align="center"><b>Provision of media services in a digital environment</b></p>		
<p align="center"><i>Article 17</i></p> <p align="center"><b>Content of media service providers on very large online platforms</b></p>	<p align="center"><i>Article 17</i></p> <p align="center"><b>Content of media service providers on very large online platforms</b></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;</p> <p>and (c) it is subject to regulatory requirements for the exercise of editorial responsibility in one or more Member States, or adheres to a</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;</p> <p>and (c) it is subject to regulatory requirements for the exercise of editorial responsibility in one or more Member States, or adheres to a</p>	<p>La verifica del rispetto dei requisiti previsti dall'autodichiarazione è fondamentale, perché dal possesso di tali requisiti discendono le restanti disposizioni dell'articolo 17. E' quindi indispensabile che sia prevista una modalità indipendente per verificare il rispetto dei requisiti dichiarati dai fornitori dei servizi di media. E' inoltre necessaria la previsione di affidare a un soggetto terzo la vigilanza e la competenza di ricevere i reclami dei fornitori</p>

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<p>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>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><b>Member States shall ensure that media service providers self-declarations can be easily verified.</b></p> <p><b>Member States shall also provide an effective and expeditious complaint and redress independent mechanism.</b></p>	<p>di servizi di media nel caso in cui le piattaforme ritengano non valide le autodichiarazioni.</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</p>	<p>2. Where a provider of very large online platform decides <b>to restrict and or to suspend</b> 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</p>	<p>Il testo del comma 2 non è coerente con il comma 4, perché nel comma 2 si parla di “sospensione” mentre nel comma 4 di “restrizione e sospensione”. E’ quindi necessario integrare il comma 2 per prevedere il più ampio spettro di situazioni.</p> <p>Inoltre, è necessario esplicitare i criteri e le modalità con le quali le grandi piattaforme sono legittimate ad effettuare la valutazione di compatibilità con i propri termini e condizioni.</p>



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<p>Act], it shall 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.</p>	<p>Regulation (EU) 2022/XXX [Digital Services Act], it shall 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.</p> <p><b>In order to assess the content compatibility with their terms and conditions, Very large online platforms refer to the following criteria: ...</b></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</p>		

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<p>(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 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>4. Where a media service provider that submitted a declaration pursuant to paragraph 1 considers that a provider of very large online platform <b>frequently</b> 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.</p> <p><b>The media service providers have always the right to appeal to the court or to the</b></p>	<p>Il termine "frequentemente" appare troppo vago e comunque anche un'unica rimozione deve poter essere oggetto di reclamo.</p> <p>La procedura di reclamo prevista non è efficace ai fini della tutela dei fornitori di servizi di media; è necessario introdurre misure ulteriori oltre all'obbligo di negoziazione in buona fede tra le parti, come ad esempio la previsione del ricorso a un'Autorità terza indipendente o il riconoscimento di un diritto di ricorso al giudice o all'Autorità nazionale competente.</p> <p>Inoltre, la norma non dice quali sono le conseguenze nel caso in cui la soluzione amichevole in seguito al dialogo significativo non venga trovata; se la possibilità di</p>

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	<p><b>competent National Authority, through the effective and expeditious complaint and redress independent mechanism provided for in paragraph 2.</b></p> <p><del>The media service provider may notify the outcome of such exchanges to the Board.</del></p> <p><b>Very large online platform shall notify to the Board the outcome of such dialogue and/or the outcome of such complaint and redress independent mechanism.</b></p>	<p>introdurre sanzioni per il mancato rispetto delle previsioni da parte delle piattaforme può risultare eccessivo, si dovrebbe almeno rafforzare l'obbligazione prevedendo che le piattaforme debbano in ogni caso informare il Comitato/la Commissione dell'esito del dialogo anziché, com'è nella proposta attuale, la semplice comunicazione facoltativa dell'esito degli scambi da parte del fornitore di servizi di media</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>		

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<p>incompatible with their terms and conditions; and (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 style="text-align: center;"><b>Article 18</b> <i>Structured dialogue</i></p>	<p style="text-align: center;"><b>Article 18</b> <i>Structured dialogue</i></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>		

