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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 1 to 5 - Comments from: AT, CY, DE, DK, EE, FI, FR, IE, NL, SK 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, Cyprus, Germany, Denmark, Estonia, Finland, France, Ireland, the Netherlands, Slovakia.

**AT 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**

**Articles 1 to 5**

*- Table for comments -*

<p><b>Commission proposal</b> Interinstitutional File 2022/0277 (COD) COM (2022) 457 final</p>	<p><b>Comments and drafting suggestions from delegations</b></p>
<p><b>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)</b></p>	
<p><b>Chapter I</b> <b>General Provisions</b> <i>Article 1</i> Subject matter and scope</p>	
<p>1. This Regulation lays down common rules for the proper functioning of the internal market for media services, including the establishment of the European Board for Media Services, while preserving the quality of media services.</p>	<p>The precise wording has to be discussed after the delivery of the legal opinion the Council Legal Service concerning the legal basis of this file. – “Quality of media services” provokes discussions about freedom of expression. It should be considered to take elements from recital 11 such as media “produced by journalists and editors in an independent manner and in line with journalistic standards”.</p>

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<p>2. This Regulation shall not affect rules laid down by:</p> <ul style="list-style-type: none"><li>(a) Directive 2000/31/EC;</li><li>(b) Directive 2019/790/EU;</li><li>(c) Regulation 2019/1150;</li><li>(d) Regulation (EU) 2022/XXX [the Digital Services Act];</li><li>(e) Regulation (EU) 2022/XXX [the Digital Markets Act];</li><li>(f) Regulation (EU) 2022/XXX [Regulation on the transparency and targeting of political advertising].</li></ul>	<p>Art 27 EMFA changes the AVMSD only with regard to Art 30b, but the rest of the AVMSD 2010/13/EU as amended by RL (EU)2018/1808 remains unaffected. In this respect, the AVMSD should be mentioned in paragraph 2 "with the exception of the changes brought about by Art 27 of this regulation".</p>
<p>3. This Regulation shall not affect the possibility for Member States to adopt more detailed rules in the fields covered by Chapter II and Section 5 of Chapter III, provided that those rules comply with Union law.</p>	<p>MS should not only be given the opportunity to issue "more detailed" but also "stricter rules" (as it is – among other examples- also formulated in Art. 4 Para. 1 and Art. 28b Para. 6 AVMSD). Moreover Chapter VI should be included, in particular stricter and more detailed rules on the national level should be allowed for Art 24 (allocation of state advertising).</p>

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<p style="text-align: center;"><i>Article 2</i></p> <p style="text-align: center;">Definitions</p>	
<p>For the purposes of this Regulation, the following definitions shall apply:</p> <p>(1) ‘media service’ means a service as defined by Articles 56 and 57 of the Treaty, where the principal purpose of the service or a dissociable section thereof consists in providing programmes or press publications to the general public, by any means, in order to inform, entertain or educate, under the editorial responsibility of a media service provider;</p>	<p>Is there a difference between "consists in providing programs" to the wording of the AVMSD "devoted to providing programs"? Why is another wording used?</p> <p>In recital 7, podcasts are also mentioned under "media services" - but these are neither "programmes" nor "press publications". If podcasts are to be covered by the EMFA, this should be stipulated in the legislative text.</p>
<p>(2) ‘media service provider’ means a natural or legal person whose professional activity is to provide a media service and who has editorial responsibility for the choice of the content of the media service and determines the manner in which it is organised;</p>	<p>The term "professional" is too vague and should be defined. Recital 7 is insufficient in this regard: “any form of economic activity” can also include “Influencers”, earning (a lot of) money regularly, but doing their activity not as profession but as private persons – nonetheless this can be a “service” (within the AVMSD regime this activity might fall under the definition of AVMS where only “the service” for remuneration is relevant, not the “professional” aspect.) By the way: in recital 7, line number 5 – should the term “for consideration” not correctly be “for remuneration”?</p>
<p>(3) ‘public service media provider’ means a media service provider which is entrusted with a public service mission under national law or receives national public funding for the fulfilment of such a mission;</p>	<p>Instead of "mission" the term "remit" should be used (like in the state aid decisions on PBS).</p> <p>The word "or" between "under national law" and "receives national public funding" should be replaced by "and" or at least “and/or”. Otherwise commercial organizers that receive public funds for individual tasks (like special news programmes) could also come under the heading.</p>
<p>(4) ‘programme’ means a set of moving images or sounds constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider;</p>	<p>Why does the definition differ from the wording of the AVMSD (Art 1, b)?</p>

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(5) 'press publication' means a publication as defined in Article 2(4) of Directive 2019/790/EU;

Does the exception in Art 2 para. 4, last sentence of Directive 2019/790/EU also apply to this definition (exception for scientific or academic purposes)?

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<p>6) ‘audiovisual media service’ means a service as defined in Article 1(1), point (a), of Directive 2010/13/EU;</p>	<p>Does “audiovisual commercial communication”, which is part of the definition of an AV media service in the AVMSD also have a meaning in the context of this file? We have doubts.</p>
<p>(7) ‘editor’ means a natural person or a number of natural persons possibly grouped in a body, regardless of its legal form, status and composition, that takes or supervises editorial decisions within a media service provider;</p>	<p>In the German translation of the file the term “editor” is translated as “Redakteur”. Editor in German also means the "media owner/Medieninhaber" who is responsible and liable for the content finally (so would “supervise editorial decisions”). Moreover "editor" is also translated as "publisher/Herausgeber" in German, who has only to determine the basic direction of the medium. We understand the term here both as “Redakteur” and “Medieninhaber” but will carefully listen to arguments of other member states who have already expressed difficulties with the correct application of this term.</p>
<p>(8) ‘editorial decision’ means a decision taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of a media service provider;</p>	
<p>(9) ‘editorial responsibility’ means the exercise of effective control both over the selection of the programmes or press publications and over their organisation, for the purposes of the provision of a media service, regardless of the existence of liability under national law for the service provided;</p>	<p>Differs from the wording of the definition in Art 1, c AVMSD, in particular with regard to the phrase "regardless of the existence of liability ...." (AVMSD: “Editorial responsibility does not necessarily imply and legal liability”). Although the result might be the same, it is questionable (especially for lawyers) why a different wording is used in different instrument obviously meaning the same.</p>
<p>(10) ‘provider of very large online platform’ means a provider of an online platform that has been designated as a very large online platform pursuant to Article 25(4) of Regulation (EU) 2022/XXX [Digital Services Act];</p>	
<p>(11) ‘video-sharing platform service’ means a service as defined in Article 1(1), point (aa), of Directive 2010/13/EU;</p>	

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<p>(12) ‘national regulatory authority or body’ means the authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU;</p>	
<p>(13) ‘media market concentration’ means a concentration as defined in Article 3 of Regulation (EC) No 139/2004 involving at least one media service provider;</p>	<p>We are entering a scrutiny reservation on this point. The definition should be discussed in the context of Article 21. It may already be noted that Articles 21 and 22 are viewed extremely critically, also as regards the legal basis in primary law. We will come back in the discussion on both articles.</p> <p>In addition, it seems questionable whether the proposed definition can be correct in that one can already speak of a "media merger" if only <u>one</u> of the two companies is a media service provider.</p>
<p>(14) ‘audience measurement’ means the activity of collecting, interpreting or otherwise processing data about the number and characteristics of users of media services for the purposes of decisions regarding advertising allocation or prices or the related planning, production or distribution of content;</p>	<p>This definition should also be dealt within the discussions on Article 20.</p> <p>Actually we want to refer to the ECTA proposal and ask for further assessment:</p> <p>Article 2 (14) ‘audience measurement’ means the activity of collecting, interpreting or otherwise processing data about the number and characteristics of users of media services and of users of online platforms for the purposes of decisions regarding advertising allocation or prices or the related buying, planning, selling production or distribution of content;</p>
<p>(15) ‘State advertising’ means the placement, publication or dissemination, in any media service, of a promotional or self-promotional message, normally in return for payment or for any other consideration, by, for or on behalf of any national or regional public authority, such as national, federal or regional governments, regulatory authorities or bodies as well as state-owned enterprises or other state-controlled entities at the national or regional level, or any local government of a territorial entity of more than 1 million inhabitants;</p>	<p>The definition of 'state advertising' includes exclusively paid advertising by state agencies in media services (.in any media service...). However, it is factually incomprehensible why the principles set out in Article 24 for the award of state advertising contracts should not apply to state advertising contacts with online sharing platform providers and/or social media providers where a lot of public advertising is already transferred to.</p> <p>The term "state-owned" is unclear. Does the term include only those enterprises that are 100% state-owned? Or even lower percentages? Does "state-controlled" entity mean a simple</p>



**AT COMMENTS**

	majority stake of the state or a blocking minority? Further clarification is needed.
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<p>(16) 'spyware' means any product with digital elements specially designed to exploit vulnerabilities in other products with digital elements that enables the covert surveillance of natural or legal persons by monitoring, extracting, collecting or analysing data from such products or from the natural or legal persons using such products, in particular by secretly recording calls or otherwise using the microphone of an end-user device, filming natural persons, machines or their surroundings, copying messages, photographing, tracking browsing activity, tracking geolocation, collecting other sensor data or tracking activities across multiple end-user devices, without the natural or legal person concerned being made aware in a specific manner and having given their express specific consent in that regard;</p>	
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## AT COMMENTS

<p>(17) ‘serious crime’ means any of the following criminal offences listed in Article 2(2) of the Council Framework Decision 2002/584/JHA58:</p> <ul style="list-style-type: none"><li>(a) terrorism,</li><li>(b) trafficking in human beings,</li><li>(c) sexual exploitation of children and child pornography,</li><li>(d) illicit trafficking in weapons, munitions and explosives,</li><li>(e) murder, grievous bodily injury,</li><li>(f) illicit trade in human organs and tissues,</li><li>(g) kidnapping, illegal restraint and hostage-taking,</li><li>(h) organised or armed robbery,</li><li>(i) rape,</li><li>(j) crimes within the jurisdiction of the International Criminal Court.</li></ul> <p>58 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1-20).</p>	<p>As European law currently stands, Member States have a wide discretion in defining serious crimes, depending in particular on their social priorities and the specificities of their legal systems. That discretion affects the way how they define what constitutes a serious crime. The “seriousness of a crime” is not an autonomous concept of Union law, it is left to the Member States.</p> <p>It is therefore necessary to delete Art 1 para 17 of the legal text. If somewhere mentioned in the recitals, it should be stated, that serious crimes are defined autonomously by member states.</p> <p>An additional explanation might possibly follow by the experts in our Federal Ministry of Justice.</p>
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## AT COMMENTS

<p>Chapter II</p> <p>Rights and duties of media service providers and recipients</p> <p>Article 3</p> <p>Rights of recipients of media services</p>	
<p>Recipients of media services in the Union shall have the right to receive a plurality of news and current affairs content, produced with respect for editorial freedom of media service providers, to the benefit of the public discourse.</p>	<p>It is undoubtedly correct that, following the case law of the ECtHR, freedom of the press and information is also the right of the public / the recipients; the question arises however if Art 3 is just a declarative principle in this file or whether subjective rights could possibly be created by it. We have taken note of the EC's explanation that no individual obligations for media service providers should be constituted that are not already covered by existing law. But the wording could bring up discussions on possible positive obligations of member states like demands for state aids for the pluralism of media. It should be clarified in the recitals that the latter is not the case, respecting at the same time that following the case law of the ECtHR states have a positive obligation to create a legal framework conducive to the development of free, independent and pluralistic media.</p> <p>In Article 3, the terms “news and current affairs” are used for the first time in the normative text. Here, too, it is important that these terms are clearly defined. The expression comes from the Council of Europe Convention on Transfrontier Television and can already be found in EU legal texts (Directive 89/552/EEC; Art 3 Directive (EU) 2019/789), but there is no legally binding definition so far. For the sake of legal certainty, at least the statement in the Explanatory Report of the Convention on Transfrontier Television could be used, namely, the term `current affairs` refers to strictly news-related programmes such as commentaries on news, analysis of news developments and political positions on</p>

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	events in news“ – of course under the condition that this is the understanding. Also other member states questioned for clarification already, so that further work on the definition is necessary. The economic activities are subject to the Fundamental Freedoms of the internal market.
<i>Article 4</i> Rights of media service providers	
1. Media service providers shall have the right to exercise their economic activities in the internal market without restrictions other than those allowed under Union law.	Why does this sentence focus on “economic activities” only? Moreover the added – normative - value of this provision is unclear compared to existing European law. Any restrictions to media freedom (including economic activities) must be in line with Art 11 CFREU and Art 10 ECHR.

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<p>2. Member States shall respect effective editorial freedom of media service providers.</p> <p>Member States, including their national regulatory authorities and bodies, shall not:</p> <p>(a) interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers;</p> <p>(b) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, their employees or their family members, or their corporate and private premises, on the ground that they refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest, in accordance with Article 52(1) of the Charter and in compliance with other Union law;</p> <p>(c) deploy spyware in any device or machine used by media service providers or, if applicable, their family members, or their employees or their family members, unless the deployment is justified, on a case-by-case basis, on grounds of national security and is in compliance with Article 52(1) of the Charter and other Union law or the deployment occurs in serious crimes investigations of one of the aforementioned persons, it is provided for under national law and is in compliance with Article 52(1) of the Charter and other Union law, and measures adopted pursuant to sub-paragraph (b) would be inadequate and insufficient to obtain the information sought.</p>	<p>Editorial secrecy is particularly protected in Austria – it applies absolutely, even if most serious crimes are prosecuted. The provision stipulates in paragraph 2, b (same in 2, c) that interventions in the public interest should be possible in accordance with Art 52 GRC. This shows the importance of the question whether stricter regulations can be enacted at Member State’s level. The European Commission explained that stronger national provisions protecting editorial sources would be allowed. We would appreciate if this could be expressed in the text of the file.</p> <p>It should also be pointed out that in Austria there is no legal basis for the state to install spyware or similar for law enforcement purposes.</p>
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**AT COMMENTS**

<p>3. Without prejudice and in addition to the right to effective judicial protection guaranteed to each natural and legal person, Member States shall designate an independent authority or body to handle complaints lodged by media service providers or, if applicable, their family members, their employees or their family members, regarding breaches of paragraph 2, points (b) and (c). Media service providers shall have the right to request that authority or body to issue, within three months of the request, an opinion regarding compliance with paragraph 2, points (b) and (c).</p>	<p>The three-month decision period in Art 4 is rejected. It is unclear which effect a decision of the designated independent authority or body should have in addition to already existing remedies which can be sought at courts.</p>
<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;">Safeguards for the independent functioning of public service media providers</p>	<p>In general, the admissibility of this provision under the law of competence is questioned, particularly with regard to the Protocol to the Amsterdam Treaty (Protocol on the system of public broadcasting in the Member States).</p>
<p>1. Public service media providers shall provide in an impartial manner a plurality of information and opinions to their audiences, in accordance with their public service mission.</p>	<p>It is true that paragraph 1 makes an important statement in terms of content, which is guaranteed in the Austrian ORF-Act. However, this is a wording that is typically laid down in the public service remit. According to the Amsterdam television protocol, this is clearly a matter for the MS to define.</p> <p>If the result of the examination by the Legal Service should affirm the basis of competence with Art 114 the sentence could be introduced by the wording “Without prejudice to the competence of Member States to confer and define the public service remit of public service media, these media shall...”</p>

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<p>2. The head of management and the members of the governing board of public service media providers shall be appointed through a transparent, open and non-discriminatory procedure and on the basis of transparent, objective, non-discriminatory and proportionate criteria laid down in advance by national law.</p> <p>The duration of their term of office shall be established by national law, and be adequate and sufficient to ensure effective independence of the public media service provider. They may be dismissed before the end of their term of office only exceptionally where they no longer fulfil the legally predefined conditions required for the performance of their duties laid down in advance by national law or for specific reasons of illegal conduct or serious misconduct as defined in advance by national law.</p> <p>Dismissal decisions shall be duly justified, subject to prior notification to the person concerned, and include the possibility for judicial review. The grounds for dismissal shall be made available to the public.</p>	<p>We have noted that the European Commission has explained that the term “governing board” only refers to the executive level (management level, CEO) like in Austria the General Director of the ORF, but does not refer to internal supervisory bodies of the broadcaster (like the Board of Trustees – “Stiftungsrat” of the ORF.) This should be clarified in the recitals. As already said we are actually not convinced and have strong concerns that para 2 is covered by Art 114 TFEU.</p>
<p>3. Member States shall ensure that public service media providers have adequate and stable financial resources for the fulfilment of their public service mission. Those resources shall be such that editorial independence is safeguarded.</p>	<p>Instead of "public service mission" the term "public service remit" should be used. The sentence could be introduced by a referal to the (wording of the) Amsterdam protocol (“Whithout prejudice...”).</p>
<p>4. Member States shall designate one or more independent authorities or bodies in order to monitor compliance with paragraphs 1 to 3.</p>	<p>At first we want to stress that in Austria we have a long tradition in supervising the public service broadcaster’s legal obligations by an independent regulatory authority (KommAustria, which is a tribunal in the sense of Art 6 ECHR). As far as the principles of impartiality, objectivity and program plurality are concerned, however, the authority will only deal with these provisions on the basis</p>



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	<p>of individual complaints / formal requests in individual cases. However, there is no ex-official control by KommAustria. We noted that the European Commission stated that the obligation "to monitor" (para 4) would be already fulfilled when there are regular reports from the designated (regulatory) body on the application of this provision, but there is no ex-officio monitoring required. We would ask that this is stated in the text that such the reports satisfy as a minimum requirement.</p>
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**CY 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**

**Articles 1 to 5**

*- Table for comments -*

<p><b>Commission proposal</b> Interinstitutional File 2022/0277 (COD) COM (2022) 457 final</p>	<p><b>Comments and drafting suggestions from delegations</b></p>
<p><b>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)</b></p>	
<p><b>Chapter I</b> <b>General Provisions</b> <i>Article 1</i> Subject matter and scope</p>	
<p>1. This Regulation lays down common rules for the proper functioning of the internal market for media services, including the establishment of the European Board for Media Services, while preserving the quality of media services.</p>	

## CY COMMENTS

<p>2. This Regulation shall not affect rules laid down by:</p> <ul style="list-style-type: none"><li>(a) Directive 2000/31/EC;</li><li>(b) Directive 2019/790/EU;</li><li>(c) Regulation 2019/1150;</li><li>(d) Regulation (EU) 2022/XXX [the Digital Services Act];</li><li>(e) Regulation (EU) 2022/XXX [the Digital Markets Act];</li><li>(f) Regulation (EU) 2022/XXX [Regulation on the transparency and targeting of political advertising].</li></ul>	
<p>3. This Regulation shall not affect the possibility for Member States to adopt more detailed rules in the fields covered by Chapter II and Section 5 of Chapter III, provided that those rules comply with Union law.</p>	

## CY COMMENTS

<p style="text-align: center;"><i>Article 2</i></p> <p style="text-align: center;">Definitions</p>	
<p>For the purposes of this Regulation, the following definitions shall apply:</p> <p>(1) ‘media service’ means a service as defined by Articles 56 and 57 of the Treaty, where the principal purpose of the service or a dissociable section thereof consists in providing programmes or press publications to the general public, <b>by any means</b>, in order to inform, entertain or educate, under the editorial responsibility of a media service provider;</p>	<p>“by any means” could be considered as a very broad and unspecific term, should n’t the means be specified? For example internet (online programmes) and also on-demand services.</p>
<p>(2) ‘media service provider’ means a natural or legal person whose professional activity is to provide a media service and who has editorial responsibility for the choice of the content of the media service and determines the manner in which it is organised;</p>	
<p>(3) ‘public service media provider’ means a media service provider which is entrusted with a public service mission under national law or receives national public funding for the fulfilment of such a mission;</p>	
<p>(4) ‘programme’ means a set of moving <b>images and/or sounds</b> constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider;</p>	<p>We would welcome a rephrasing in the form of “images <b>and/or</b> sounds”; yet we don’t have a strong opinion on this.</p>
<p>(5) ‘press publication’ means a publication as defined in Article 2(4) of Directive 2019/790/EU;</p>	

## CY COMMENTS

6) ‘audiovisual media service’ means a service as defined in Article 1(1), point (a), of Directive 2010/13/EU;	
(7) ‘editor’ means a natural person or a number of natural persons possibly grouped in a body, regardless of its legal form, status and composition, that takes or supervises editorial decisions within a media service provider;	
(8) ‘editorial decision’ means a decision taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of a media service provider;	We have concerns on whether this reference is useful
(9) ‘editorial responsibility’ means the exercise of effective control both over the selection of the programmes or press publications and over their organisation, for the purposes of the provision of a media service, regardless of the existence of liability under national law for the service provided;	
(10) ‘provider of very large online platform’ means a provider of an online platform that has been designated as a very large online platform pursuant to Article 25(4) of Regulation (EU) 2022/XXX [Digital Services Act];	
(11) ‘video-sharing platform service’ means a service as defined in Article 1(1), point (aa), of Directive 2010/13/EU;	

## CY COMMENTS

<p>(12) ‘national regulatory authority or body’ means the authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU;</p>	
<p>(13) ‘media market concentration’ means a concentration as defined in Article 3 of Regulation (EC) No 139/2004 involving at least one media service provider;</p>	
<p>(14) ‘audience measurement’ means the activity of collecting, interpreting or otherwise processing data about the number and characteristics of users of media services for the purposes of decisions regarding advertising allocation or prices or the related planning, production or distribution of content;</p>	
<p>(15) ‘State advertising’ means the placement, publication or dissemination, in <b>any</b> media service, of a promotional or self-promotional message, normally in return for payment or for any other consideration, by, for or on behalf of any national or regional public authority, such as national, federal or regional governments, regulatory authorities or bodies as well as state-owned enterprises or other state-controlled entities at the national or regional level, or any local government of a territorial entity of more than <b>1 million inhabitants</b>;</p>	<p>Same as above by stating “any” media leaves room for ambiguity</p> <p>We have concerns on this number as Cyprus seems to be on a borderline. We would welcome some clarification on what basis this number was chosen and on whether Cyprus could ask for an exception/</p>

## CY COMMENTS

<p>(16) ‘spyware’ means any product with digital elements specially designed to exploit vulnerabilities in other products with digital elements that enables the covert surveillance of natural or legal persons by monitoring, extracting, collecting or analysing data from such products or from the natural or legal persons using such products, in particular by secretly recording calls or otherwise using the microphone of an end-user device, filming natural persons, machines or their surroundings, copying messages, photographing, tracking browsing activity, tracking geolocation, collecting other sensor data or tracking activities across multiple end-user devices, without the natural or legal person concerned being made aware in a specific manner and having given their express specific consent in that regard;</p>	
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## CY COMMENTS

(17) 'serious crime' means any of the following criminal offences listed in Article 2(2) of the Council Framework Decision 2002/584/JHA<sup>58</sup>:

- (a) terrorism,
- (b) trafficking in human beings,
- (c) sexual exploitation of children and child pornography,
- (d) illicit trafficking in weapons, munitions and explosives,
- (e) murder, grievous bodily injury,
- (f) illicit trade in human organs and tissues,
- (g) kidnapping, illegal restraint and hostage-taking,
- (h) organised or armed robbery,
- (i) rape,
- (j) crimes within the jurisdiction of the International Criminal Court.

<sup>58</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1-20).



**CY COMMENTS**

<p style="text-align: center;"><b>Chapter II</b> <b>Rights and duties of media service providers and recipients</b> <i>Article 3</i> Rights of recipients of media services</p>	
<p>Recipients of media services in the Union shall have the right to receive a plurality of news and current affairs content, produced with respect for editorial freedom of media service providers, to the benefit of the public discourse.</p>	<p>Is there any particular reason that only current affairs content is stated? Although we understand the significance of news and current affairs content, we believe that other kind of content, such as sports, cultural, and entertainment could be added.</p> <p>Only the provision of news and current affairs content is set here, shouldn't the right to entertain, inform and/or educate themselves by media services also be included</p>
<p style="text-align: center;"><i>Article 4</i> Rights of media service providers</p>	
<p>1. Media service providers shall have the right to exercise their economic activities in the internal market without restrictions other than those allowed under Union law.</p>	

## CY COMMENTS

2. Member States shall respect effective editorial freedom of media service providers.

Member States, including their national regulatory authorities and bodies, shall not:

(a) interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers;

(b) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, their employees or their family members, or their corporate and private premises, on the ground that they refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest, in accordance with Article 52(1) of the Charter and in compliance with other Union law;

(c) deploy spyware in any device or machine used by media service providers or, if applicable, their family members, or their employees or their family members, unless the deployment is justified, on a case-by-case basis, on grounds of national security and is in compliance with Article 52(1) of the Charter and other Union law or the deployment occurs in serious crimes investigations of one of the aforementioned persons, it is provided for under national law and is in compliance with Article 52(1) of the Charter and other Union law, and measures adopted pursuant to sub-paragraph (b) would be inadequate and insufficient to obtain the information sought.

## CY COMMENTS

<p>3. Without prejudice and in addition to the right to effective judicial protection guaranteed to each natural and legal person, Member States shall designate an independent authority or body to handle complaints lodged by media service providers or, if applicable, their family members, their employees or their family members, regarding breaches of paragraph 2, points (b) and (c). Media service providers shall have the right to request that authority or body to issue, within three months of the request, an opinion regarding compliance with paragraph 2, points (b) and (c).</p>	
<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;">Safeguards for the independent functioning of public service media providers</p>	
<p>1. Public service media providers shall provide in an impartial manner a plurality of information <del>and opinions</del> and content to their audiences, in accordance with their public service mission.</p>	<p>We would welcome the addition of the word “content”. i.e a plurality of information, opinions, and content.</p>

**CY COMMENTS**

<p>2. The head of management and the members of the governing board of public service media providers shall be appointed through a transparent, open and non-discriminatory procedure and on the basis of transparent, objective, non-discriminatory and proportionate criteria laid down in advance by national law.</p> <p>The duration of their term of office shall be established by national law, and be adequate and sufficient to ensure effective independence of the public media service provider. They may be dismissed before the end of their term of office only exceptionally where they no longer fulfil the legally predefined conditions required for the performance of their duties laid down in advance by national law or for specific reasons of illegal conduct or serious misconduct as defined in advance by national law.</p> <p>Dismissal decisions shall be duly justified, subject to prior notification to the person concerned, and include the possibility for judicial review. The grounds for dismissal shall be made available to the public.</p>	<p>“similarly with other high level management posts in the public sector and wider public sector of the member state” could be added.</p>
<p>3. Member States shall ensure that public service media providers have adequate and stable financial resources for the fulfilment of their public service mission. Those resources shall be such that editorial independence is safeguarded.</p>	
<p>4. Member States shall designate one or more independent authorities or bodies in order to monitor compliance with paragraphs 1 to 3.</p>	

**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**

**Articles 1 to 5**

*- Table for comments -*

<b>Commission proposal</b> Interinstitutional File 2022/0277 (COD) COM (2022) 457 final	<b>Comments and drafting suggestions from delegations</b>
<b>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)</b>	
<b>Chapter I</b> <b>General Provisions</b> <i>Article 1</i> Subject matter and scope	
1. This Regulation lays down common rules for the proper functioning of the internal market for media services, including the establishment of the European Board for Media Services, while preserving the quality of media services.	

**DE COMMENTS**

<p>2. This Regulation shall not affect rules laid down by:</p> <ul style="list-style-type: none"><li>(a) Directive 2000/31/EC;</li><li>(b) Directive 2019/790/EU;</li><li>(c) Regulation 2019/1150;</li><li>(d) Regulation (EU) 2022/XXX [the Digital Services Act];</li><li>(e) Regulation (EU) 2022/XXX [the Digital Markets Act];</li><li>(f) Regulation (EU) 2022/XXX [Regulation on the transparency and targeting of political advertising].</li></ul>	<p>It should be made clear how the rules laid down by the AVMS Directive are intended to be affected by the proposed regulation.</p>
<p>3. This Regulation shall not affect the possibility for Member States to adopt more detailed rules in the fields covered by Chapter II and Section 5 of Chapter III, provided that those rules comply with Union law.</p>	<p>We wonder how the restriction of the power to Chapter 2 and Chapter 3 Section 5 is to be understood and to what extent this is compatible with the cultural sovereignty of the Member States.</p>

**DE COMMENTS**

<p style="text-align: center;"><i>Article 2</i> Definitions</p>	<p>General Comment: Some of the definitions contained in Art. 2 and their relationship to other European legal acts and national law still require clarification. To this end, the definitions still need to be examined in detail, in particular in connection with the respective substantive regulations and after the language versions have been submitted. Why were the definitions formulated in such a way that they refer to each other (e.g. media service / programme)?</p>
<p>For the purposes of this Regulation, the following definitions shall apply:</p> <p>(1) ‘media service’ means a service as defined by Articles 56 and 57 of the Treaty, where the principal purpose of the service or a dissociable section thereof consists in providing programmes or press publications to the general public, by any means, in order to inform, entertain or educate, under the editorial responsibility of a media service provider;</p>	
<p>(2) ‘media service provider’ means a natural or legal person whose professional activity is to provide a media service and who has editorial responsibility for the choice of the content of the media service and determines the manner in which it is organised;</p>	
<p>(3) ‘public service media provider’ means a media service provider which is entrusted with a public service mission under national law or receives national public funding for the fulfilment of such a mission;</p>	
<p>(4) ‘programme’ means a set of moving images or sounds constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider;</p>	
<p>(5) ‘press publication’ means a publication as defined in Article 2(4) of Directive 2019/790/EU;</p>	

## DE COMMENTS

6) 'audiovisual media service' means a service as defined in Article 1(1), point (a), of Directive 2010/13/EU;	
(7) 'editor' means a natural person or a number of natural persons possibly grouped in a body, regardless of its legal form, status and composition, that takes or supervises editorial decisions within a media service provider;	
(8) 'editorial decision' means a decision taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of a media service provider;	
(9) 'editorial responsibility' means the exercise of effective control both over the selection of the programmes or press publications and over their organisation, for the purposes of the provision of a media service, regardless of the existence of liability under national law for the service provided;	
(10) 'provider of very large online platform' means a provider of an online platform that has been designated as a very large online platform pursuant to Article 25(4) of Regulation (EU) 2022/XXX [Digital Services Act];	
(11) 'video-sharing platform service' means a service as defined in Article 1(1), point (aa), of Directive 2010/13/EU;	

**Commented [M(TD1):** Needs to be adjusted. To our knowledge it is Article 33(4) of the current version.



**DE COMMENTS**

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<p>(12) ‘national regulatory authority or body’ means the authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU;</p>	
<p>(13) ‘media market concentration’ means a concentration as defined in Article 3 of Regulation (EC) No 139/2004 involving at least one media service provider;</p>	
<p>(14) ‘audience measurement’ means the activity of collecting, interpreting or otherwise processing data about the number and characteristics of users of media services for the purposes of decisions regarding advertising allocation or prices or the related planning, production or distribution of content;</p>	
<p>(15) ‘State advertising’ means the placement, publication or dissemination, in any media service, of a promotional or self-promotional message, normally in return for payment or for any other consideration, by, for or on behalf of any national or regional public authority, such as national, federal or regional governments, regulatory authorities or bodies as well as state-owned enterprises or other state-controlled entities at the national or regional level, or any local government of a territorial entity of more than 1 million inhabitants;</p>	

**DE COMMENTS**

<p>(16) 'spyware' means any product with digital elements specially designed to exploit vulnerabilities in other products with digital elements that enables the covert surveillance of natural or legal persons by monitoring, extracting, collecting or analysing data from such products or from the natural or legal persons using such products, in particular by secretly recording calls or otherwise using the microphone of an end-user device, filming natural persons, machines or their surroundings, copying messages, photographing, tracking browsing activity, tracking geolocation, collecting other sensor data or tracking activities across multiple end-user devices, without the natural or legal person concerned being made aware in a specific manner and having given their express specific consent in that regard;</p>	
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## DE COMMENTS

(17) 'serious crime' means any of the following criminal offences listed in Article 2(2) of the Council Framework Decision 2002/584/JHA<sup>58</sup>:

- (a) terrorism,
- (b) trafficking in human beings,
- (c) sexual exploitation of children and child pornography,
- (d) illicit trafficking in weapons, munitions and explosives,
- (e) murder, grievous bodily injury,
- (f) illicit trade in human organs and tissues,
- (g) kidnapping, illegal restraint and hostage-taking,
- (h) organised or armed robbery,
- (i) rape,
- (j) crimes within the jurisdiction of the International Criminal Court.

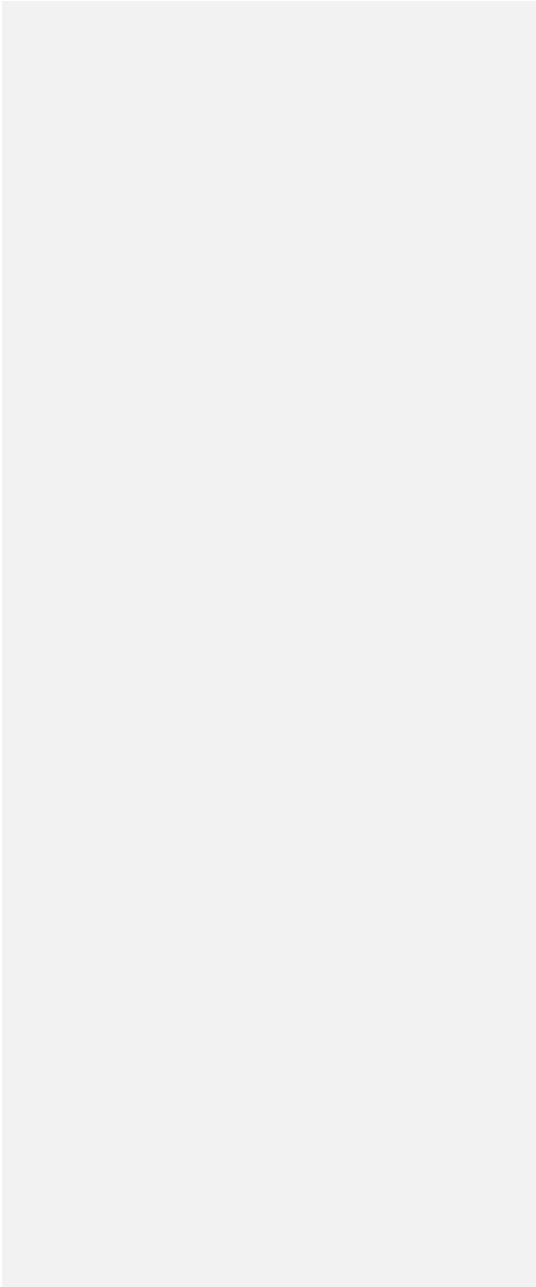
<sup>58</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1-20).

**DE COMMENTS**

<p style="text-align: center;"><b>Chapter II</b> <b>Rights and duties of media service providers and recipients</b> <i>Article 3</i> Rights of recipients of media services</p>	<p>Overall, chapter II raises the question of whether there is supervision of compliance with the respective provisions and, if so, who should be responsible for enforcing them. Are there any connecting factors in this regard beyond the 'monitoring' under Article 25?</p>
<p>Recipients of media services in the Union shall have the right to receive a plurality of news and current affairs content, produced with respect for editorial freedom of media service providers, to the benefit of the public discourse.</p>	<p>The internal market reference required for Article 114 needs to be clarified. We also ask whether the provisions of Article 3 go beyond the guarantee of respect for media pluralism enshrined in Article 11(2) of the Charter and Article 10 of the ECHR. If so, what specific obligations follow from Article 3 and how is it to be understood in the sense of freedom of expression and information under Article 11(1) of the Charter and the corresponding national constitutions? Furthermore, to whom exactly are the obligations under Article 3 addressed and how and by whom are they enforceable, if any? Should there be a direct, actionable individual right of the citizen against the media service provider and/or bodies of the respective Member State?</p> <p>As we understand the Commission's explanatory remarks, Article 3 may not grant any enforceable rights against individual media service providers, but shall contain a basic principle.</p>
<p style="text-align: center;"><i>Article 4</i> Rights of media service providers</p>	
<p>1. Media service providers shall have the right to exercise their economic activities in the internal market without restrictions other than those allowed under Union law.</p>	<p>What is meant by 'restrictions other than those allowed under Union law'? We ask for explanations and examples of what should and should not be allowed. In addition, the question arises as to what is meant by "economic activities" – does this mean the editorial work of the media service providers or</p>

**DE COMMENTS**

	only the purely economic activity (e.g. exploitation of content, display of advertising)?
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## DE COMMENTS

<p>2. Member States shall respect effective editorial freedom of media service providers.</p> <p>Member States, including their national regulatory authorities and bodies, shall not:</p> <p>(a) interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers;</p> <p>(b) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, their employees or their family members, or their corporate and private premises, on the ground that they refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest, in accordance with Article 52(1) of the Charter and in compliance with other Union law;</p> <p>(c) deploy spyware in any device or machine used by media service providers or, if applicable, their family members, or their employees or their family members, unless the deployment is justified, on a case-by-case basis, on grounds of national security and is in compliance with Article 52(1) of the Charter and other Union law or the deployment occurs in serious crimes investigations of one of the aforementioned persons, it is provided for under national law and is in compliance with Article 52(1) of the Charter and other Union law, and measures adopted pursuant to sub-paragraph (b) would be inadequate and insufficient to obtain the information sought.</p>	<ul style="list-style-type: none"><li>• With regard to Article 4(2): Why is the obligation limited to the Member States? Should not the institutions of the European Union also be subject to this obligation (in particular in the light of the fact that the Commission has proposed a decision role for itself in supervision)?</li><li>• Need for clarification on Art. 4 para. 2 lit. (a): The media regulation authorities and bodies are responsible for media supervision and thus exert influence on the media service providers with every supervisory-related measure that is necessary to ensure compliance with media law provisions. Should such a case be considered unlawful, legal recourse is open to those affected. What kind of supervision should still be permitted according to the draft law?</li><li>• With regard to Article 4(2)(a) and (b) we ask about the relationship to the proposal of a regulation laying down rules to prevent and combat child sexual abuse COM(2022) 209 final : Is the EMFA more specific, so that the individual communication of a journalist (or of his or her family members) would not fall within the scope of the other proposal for a regulation? Who falls into the protected area when talking about family members (possibly question for the Legal Service to answer</li></ul>
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**DE COMMENTS**

<p>3. Without prejudice and in addition to the right to effective judicial protection guaranteed to each natural and legal person, Member States shall designate an independent authority or body to handle complaints lodged by media service providers or, if applicable, their family members, their employees or their family members, regarding breaches of paragraph 2, points (b) and (c). Media service providers shall have the right to request that authority or body to issue, within three months of the request, an opinion regarding compliance with paragraph 2, points (b) and (c).</p>	<p>Does Article 4(3) mean a single central body for complaints, or can there be several? How does that body relate to the bodies referred to in Article 5(4)?</p>
<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;">Safeguards for the independent functioning of public service media providers</p>	<p>General Comment: In the case of Article 5 in particular, it is unclear to us to what extent the provisions can be based on the EU's competence within the internal market. What is the relationship between the rules and those of State aid law, in particular with regard to the rules and requirements of the so-called Amsterdam “Protocol on the system of public broadcasting in the Member States”, under which public service broadcasting and its financing are not covered by State aid law? In connection with this, the question of the role of the Commission also arises, here too we ask for an explanation as to whether and how compliance with this regulation and its individual components should be supervised and, if necessary, enforced.</p>
<p>1. Public service media providers shall provide in an impartial manner a plurality of information and opinions to their audiences, in accordance with their public service mission.</p>	<p>What is meant by 'mission' since the so-called Amsterdam “Protocol on the system of public broadcasting in the Member States” refers to 'remit' when it comes to the mission of public service broadcasting?</p>

## DE COMMENTS

<p>2. The head of management and the members of the governing board of public service media providers shall be appointed through a transparent, open and non-discriminatory procedure and on the basis of transparent, objective, non-discriminatory and proportionate criteria laid down in advance by national law.</p> <p>The duration of their term of office shall be established by national law, and be adequate and sufficient to ensure effective independence of the public media service provider. They may be dismissed before the end of their term of office only exceptionally where they no longer fulfil the legally predefined conditions required for the performance of their duties laid down in advance by national law or for specific reasons of illegal conduct or serious misconduct as defined in advance by national law.</p> <p>Dismissal decisions shall be duly justified, subject to prior notification to the person concerned, and include the possibility for judicial review. The grounds for dismissal shall be made available to the public.</p>	<p>What does Article 5(2) mean by the term "members of the governing board", the management or the committees?</p> <p>What is the relationship between Article 5(2) and other legal provisions, such as labour law, or legal proceedings in the case of a possible dismissal procedure?</p>
<p>3. Member States shall ensure that public service media providers have adequate and stable financial resources for the fulfilment of their public service mission. Those resources shall be such that editorial independence is safeguarded.</p>	<p>The financing guarantee provided for in paragraph 3 addresses an important issue. However, care must be taken to ensure that national regulatory powers are not curtailed.</p>
<p>4. Member States shall designate one or more independent authorities or bodies in order to monitor compliance with paragraphs 1 to 3.</p>	<p>How should an independent monitoring be constituted, especially regarding the duties addressing the member states e.g. in par. 3, and what is the intention of "monitoring" in respect of the enforcement of the stated rules?</p>



**DK 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**

**Articles 1 to 5**

*- Table for comments -*

<p><b>Commission proposal</b> Interinstitutional File 2022/0277 (COD) COM (2022) 457 final</p>	<p><b>Comments and drafting suggestions from delegations</b></p>
<p><b>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)</b></p>	
<p><b>Chapter I</b> <b>General Provisions</b> <i>Article 1</i> Subject matter and scope</p>	
<p>1. This Regulation lays down common rules for the proper functioning of the internal market for media services, including the establishment of the European Board for Media Services, while preserving the quality of media services.</p>	

## DK COMMENTS

<p>2. This Regulation shall not affect rules laid down by:</p> <ul style="list-style-type: none"><li>(a) Directive 2000/31/EC;</li><li>(b) Directive 2019/790/EU;</li><li>(c) Regulation 2019/1150;</li><li>(d) Regulation (EU) 2022/XXX [the Digital Services Act];</li><li>(e) Regulation (EU) 2022/XXX [the Digital Markets Act];</li><li>(f) Regulation (EU) 2022/XXX [Regulation on the transparency and targeting of political advertising].</li></ul>	
<p>3. This Regulation shall not affect the possibility for Member States to adopt more detailed rules in the fields covered by Chapter II and Section 5 of Chapter III, provided that those rules comply with Union law.</p>	

## DK COMMENTS

<p style="text-align: center;"><i>Article 2</i> Definitions</p>	<p>As it was proposed at the meeting that the definitions should be reviewed in continuation of the discussion of the specific articles, where they have relevance, Denmark reserves the right to raise the questions and comments on the definitions at later meetings, including definition 10-15.</p>
<p>For the purposes of this Regulation, the following definitions shall apply:</p> <p>(1) ‘media service’ means a service as defined by Articles 56 and 57 of the Treaty, where the principal purpose of the service or a dissociable section thereof consists in providing programmes or press publications to the general public, by any means, in order to inform, entertain or educate, under the editorial responsibility of a media service provider;</p>	
<p>(2) ‘media service provider’ means a natural or legal person whose professional activity is to provide a media service and who has editorial responsibility for the choice of the content of the media service and determines the manner in which it is organised;</p>	
<p>(3) ‘public service media provider’ means a media service provider which is entrusted with a public service mission under national law or receives national public funding for the fulfilment of such a mission;</p>	<p>The definition of public service provider is very broad in a danish context. Denmark asks the Commission to clarify whether it is the intention that the definition should only cover public service media providers who are fully publicly funded?</p> <p>In a danish context the definition also covers commercial media service providers and it also applies to media enterprises that broadcast on public service licences, but as companies are independent legal entities that compose their own boards. Will the requirements in article five include these media service providers?</p>
<p>(4) ‘programme’ means a set of moving images or sounds constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider;</p>	

## DK COMMENTS

(5) 'press publication' means a publication as defined in Article 2(4) of Directive 2019/790/EU;

Denmark notices that there is not formed a specific definition of "press publication" in this regulation. Denmark, like other Member States who raised the subject on the last meeting, would ask the Commission to elaborate on the definition in order to clarify whether it covers local, regional and smaller media.

## DK COMMENTS

6) ‘audiovisual media service’ means a service as defined in Article 1(1), point (a), of Directive 2010/13/EU;	
(7) ‘editor’ means a natural person or a number of natural persons possibly grouped in a body, regardless of its legal form, status and composition, that takes or supervises editorial decisions within a media service provider;	
(8) ‘editorial decision’ means a decision taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of a media service provider;	
(9) ‘editorial responsibility’ means the exercise of effective control both over the selection of the programmes or press publications and over their organisation, for the purposes of the provision of a media service, regardless of the existence of liability under national law for the service provided;	
(10) ‘provider of very large online platform’ means a provider of an online platform that has been designated as a very large online platform pursuant to Article 25(4) of Regulation (EU) 2022/XXX [Digital Services Act];	
(11) ‘video-sharing platform service’ means a service as defined in Article 1(1), point (aa), of Directive 2010/13/EU;	

## DK COMMENTS

<p>(12) ‘national regulatory authority or body’ means the authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU;</p>	
<p>(13) ‘media market concentration’ means a concentration as defined in Article 3 of Regulation (EC) No 139/2004 involving at least one media service provider;</p>	
<p>(14) ‘audience measurement’ means the activity of collecting, interpreting or otherwise processing data about the number and characteristics of users of media services for the purposes of decisions regarding advertising allocation or prices or the related planning, production or distribution of content;</p>	
<p>(15) ‘State advertising’ means the placement, publication or dissemination, in any media service, of a promotional or self-promotional message, normally in return for payment or for any other consideration, by, for or on behalf of any national or regional public authority, such as national, federal or regional governments, regulatory authorities or bodies as well as state-owned enterprises or other state-controlled entities at the national or regional level, or any local government of a territorial entity of more than 1 million inhabitants;</p>	

## DK COMMENTS

<p>(16) 'spyware' means any product with digital elements specially designed to exploit vulnerabilities in other products with digital elements that enables the covert surveillance of natural or legal persons by monitoring, extracting, collecting or analysing data from such products or from the natural or legal persons using such products, in particular by secretly recording calls or otherwise using the microphone of an end-user device, filming natural persons, machines or their surroundings, copying messages, photographing, tracking browsing activity, tracking geolocation, collecting other sensor data or tracking activities across multiple end-user devices, without the natural or legal person concerned being made aware in a specific manner and having given their express specific consent in that regard;</p>	
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## DK COMMENTS

(17) 'serious crime' means any of the following criminal offences listed in Article 2(2) of the Council Framework Decision 2002/584/JHA<sup>58</sup>:

- (a) terrorism,
- (b) trafficking in human beings,
- (c) sexual exploitation of children and child pornography,
- (d) illicit trafficking in weapons, munitions and explosives,
- (e) murder, grievous bodily injury,
- (f) illicit trade in human organs and tissues,
- (g) kidnapping, illegal restraint and hostage-taking,
- (h) organised or armed robbery,
- (i) rape,
- (j) crimes within the jurisdiction of the International Criminal Court.

<sup>58</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1-20).



**DK COMMENTS**

<p><b>Chapter II</b> <b>Rights and duties of media service providers and recipients</b> <i>Article 3</i> Rights of recipients of media services</p>	
<p>Recipients of media services in the Union shall have the right to receive a plurality of news and current affairs content, produced with respect for editorial freedom of media service providers, to the benefit of the public discourse.</p>	
<p><i>Article 4</i> Rights of media service providers</p>	
<p>1. Media service providers shall have the right to exercise their economic activities in the internal market without restrictions other than those allowed under Union law.</p>	<p>Denmarks would appreciate if the Commission can provide examples of restrictions that are not allowed under Union law?</p>

## DK COMMENTS

2. Member States shall respect effective editorial freedom of media service providers.

Member States, including their national regulatory authorities and bodies, shall not:

(a) interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers;

(b) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, their employees or their family members, or their corporate and private premises, on the ground that they refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest, in accordance with Article 52(1) of the Charter and in compliance with other Union law;

(c) deploy spyware in any device or machine used by media service providers or, if applicable, their family members, or their employees or their family members, unless the deployment is justified, on a case-by-case basis, on grounds of national security and is in compliance with Article 52(1) of the Charter and other Union law or the deployment occurs in serious crimes investigations of one of the aforementioned persons, it is provided for under national law and is in compliance with Article 52(1) of the Charter and other Union law, and measures adopted pursuant to sub-paragraph (b) would be inadequate and insufficient to obtain the information sought.

Denmark is currently looking into the requirements of article 4.2 and 4.3 and therefor have general scrutiny reservations.

**DK COMMENTS**

<p>3. Without prejudice and in addition to the right to effective judicial protection guaranteed to each natural and legal person, Member States shall designate an independent authority or body to handle complaints lodged by media service providers or, if applicable, their family members, their employees or their family members, regarding breaches of paragraph 2, points (b) and (c). Media service providers shall have the right to request that authority or body to issue, within three months of the request, an opinion regarding compliance with paragraph 2, points (b) and (c).</p>	
<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;">Safeguards for the independent functioning of public service media providers</p>	
<p>1. Public service media providers shall provide in an impartial manner a plurality of information and opinions to their audiences, in accordance with their public service mission.</p>	

## DK COMMENTS

<p>2. The head of management and the members of the governing board of public service media providers shall be appointed through a transparent, open and non-discriminatory procedure and on the basis of transparent, objective, non-discriminatory and proportionate criteria laid down in advance by national law.</p> <p>The duration of their term of office shall be established by national law, and be adequate and sufficient to ensure effective independence of the public media service provider. They may be dismissed before the end of their term of office only exceptionally where they no longer fulfil the legally predefined conditions required for the performance of their duties laid down in advance by national law or for specific reasons of illegal conduct or serious misconduct as defined in advance by national law.</p> <p>Dismissal decisions shall be duly justified, subject to prior notification to the person concerned, and include the possibility for judicial review. The grounds for dismissal shall be made available to the public.</p>	<p>In Denmark the DR is managed by an executive board made up of 11 members who are appointed for a four-year period. Three members, including the chairman, are appointed by the Minister for Culture, six by Parliament and two by the employees of DR as laid down in national law. The executive board is responsible for the financial management of DR and also establish the guidelines for the activities and appoints the members of the Management Board. The Management Board is in charge of the day-to-day administrative and financial management and has overall programme responsibility.</p> <p>Denmark asks the Commission to confirm whether this procedure is sufficient in relation to the requirements in article five? And whether “the head of management and the members of the governing board” in this case cover the executive board as well as the Management Board of the DR”?</p> <p>Could the Commission in extension hereto elaborate on the meaning of “the head of management and the members of the governing board” as it should be understood in article 5.2?</p> <p>The executive board of state-owned TV2 is appointed by the Minister of culture at a general Assembly where the state is participating as sole shareholder. Whereas the executive boards of the TV 2 regional channels are appointed by the board of representatives.</p> <p>Denmark asks the Commission to confirm whether this procedure is sufficient in relation to the requirements of article 5.2?</p>
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**DK COMMENTS**

	<p>According to law the executive board of the DR must be composed so that the entire board represents media, cultural, management and business insight. It is also stated that the executive board of TV 2 should represent media, legal and financial insight as well as managerial insight in general relation to cultural institutions.</p> <p>Denmark asks the Commission to confirm whether the criterieas are sufficient according to article 5.2?</p>
<p>3. Member States shall ensure that public service media providers have adequate and stable financial resources for the fulfilment of their public service mission. Those resources shall be such that editorial independence is safeguarded.</p>	<p>Denmark asks the Commission to clarify the meaning of “adequate and stable financial rresources” as well as the link between the amounts of financial support and safeguarding editorial independence.</p>
<p>4. Member States shall designate one or more independent authorities or bodies in order to monitor compliance with paragraphs 1 to 3.</p>	<p>Denmark asks the Commission to clarify the criteria defining an ”independent body”. In Denmark the majority of the Radio and TV Board, including the chairman, is appointed by the Minister for Culture. Denmark asks the Commission to confirme whether this procedure is sufficient in relation to the requirements in article five?</p>

## EE 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**

**Articles 1 to 5**

*- Table for comments -*

<b>Commission proposal</b> Interinstitutional File 2022/0277 (COD) COM (2022) 457 final	<b>Comments and drafting suggestions from delegations</b>
<b>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)</b>	
<b>Chapter I</b> <b>General Provisions</b> <i>Article 1</i> Subject matter and scope	
1. This Regulation lays down common rules for the proper functioning of the internal market for media services, including the establishment of the European Board for Media Services, while preserving the quality of media services.	

## EE COMMENTS

<p>2. This Regulation shall not affect rules laid down by:</p> <ul style="list-style-type: none"><li>(a) Directive 2000/31/EC;</li><li>(b) Directive 2019/790/EU;</li><li>(c) Regulation 2019/1150;</li><li>(d) Regulation (EU) 2022/XXX [the Digital Services Act];</li><li>(e) Regulation (EU) 2022/XXX [the Digital Markets Act];</li><li>(f) Regulation (EU) 2022/XXX [Regulation on the transparency and targeting of political advertising].</li></ul>	
<p>3. This Regulation shall not affect the possibility for Member States to adopt more detailed rules in the fields covered by Chapter II and Section 5 of Chapter III, provided that those rules comply with Union law.</p>	

## EE COMMENTS

<p style="text-align: center;"><i>Article 2</i></p> <p style="text-align: center;">Definitions</p>	
<p>For the purposes of this Regulation, the following definitions shall apply:</p> <p>(1) ‘media service’ means a service as defined by Articles 56 and 57 of the Treaty, where the principal purpose of the service or a dissociable section thereof consists in providing programmes or press publications to the general public, by any means, in order to inform, entertain or educate, under the editorial responsibility of a media service provider;</p>	
<p>(2) ‘media service provider’ means a natural or legal person whose professional activity is to provide a media service and who has editorial responsibility for the choice of the content of the media service and determines the manner in which it is organised;</p>	<p>There will be two parallel concepts of “media service” and “media service provider” in two major legal acts regulating same area - media services in the EU: the EMFA regulation and the AVMS Directive. These concepts have a different notion and scope and this could raise a question of legal clarity for media service providers and also for national regulatory authorities.</p>
<p>(3) ‘public service media provider’ means a media service provider which is entrusted with a public service mission under national law or receives national public funding for the fulfilment of such a mission;</p>	<p>As concepts of PSM in national laws could differ there would be a need to mention in the definition also the independence as one of the key criterion of public service media provider.</p> <p>Probably it’s better to use here the concept of “public service remit” instead of “public service mission”.</p>
<p>(4) ‘programme’ means a set of moving images or sounds constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider;</p>	
<p>(5) ‘press publication’ means a publication as defined in Article 2(4) of Directive 2019/790/EU;</p>	



## EE COMMENTS

<p>6) ‘audiovisual media service’ means a service as defined in Article 1(1), point (a), of Directive 2010/13/EU;</p>	
<p>(7) ‘editor’ means a natural person or a number of natural persons possibly grouped in a body, regardless of its legal form, status and composition, that takes or supervises editorial decisions within a media service provider;</p>	<p>As referred to proposed definition of “editor” the concepts of “editorial decision” and “editorial responsibility” could mean independence of each individual journalist and editor, which could fragmentize editorial integrity of an editorial board and a media service provider. Editor’s decision and independence are not the same as editorial decision, editorial independence and freedom – principles protecting media service providers from external influence and interference. Is there a real need to define an editor or maybe it’s more pertinent to define editorial board besides media service provider, if needed ?</p> <p>But such definition does not nullify the risk of the fragmentation of the professional integrity of media service provider where concrete line of editorial responsibility could turn bleary.</p>
<p>(8) ‘editorial decision’ means a decision taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of a media service provider;</p>	
<p>(9) ‘editorial responsibility’ means the exercise of effective control both over the selection of the programmes or press publications and over their organisation, for the purposes of the provision of a media service, regardless of the existence of liability under national law for the service provided;</p>	
<p>(10) ‘provider of very large online platform’ means a provider of an online platform that has been designated as a very large online platform pursuant to Article 25(4) of Regulation (EU) 2022/XXX [Digital Services Act];</p>	
<p>(11) ‘video-sharing platform service’ means a service as defined in Article 1(1), point (aa), of Directive 2010/13/EU;</p>	

## EE COMMENTS

## EE COMMENTS

<p>(12) ‘national regulatory authority or body’ means the authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU;</p>	
<p>(13) ‘media market concentration’ means a concentration as defined in Article 3 of Regulation (EC) No 139/2004 involving at least one media service provider;</p>	
<p>(14) ‘audience measurement’ means the activity of collecting, interpreting or otherwise processing data about the number and characteristics of users of media services for the purposes of decisions regarding advertising allocation or prices or the related planning, production or distribution of content;</p>	
<p>(15) ‘State advertising’ means the placement, publication or dissemination, in any media service, of a promotional or self-promotional message, normally in return for payment or for any other consideration, by, for or on behalf of any national or regional public authority, such as national, federal or regional governments, regulatory authorities or bodies as well as state-owned enterprises or other state-controlled entities at the national or regional level, or any local government of a territorial entity of more than 1 million inhabitants;</p>	

## EE COMMENTS

<p>(16) ‘spyware’ means any product with digital elements specially designed to exploit vulnerabilities in other products with digital elements that enables the covert surveillance of natural or legal persons by monitoring, extracting, collecting or analysing data from such products or from the natural or legal persons using such products, in particular by secretly recording calls or otherwise using the microphone of an end-user device, filming natural persons, machines or their surroundings, copying messages, photographing, tracking browsing activity, tracking geolocation, collecting other sensor data or tracking activities across multiple end-user devices, without the natural or legal person concerned being made aware in a specific manner and having given their express specific consent in that regard;</p>	
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## EE COMMENTS

(17) 'serious crime' means any of the following criminal offences listed in Article 2(2) of the Council Framework Decision 2002/584/JHA<sup>58</sup>:

- (a) terrorism,
- (b) trafficking in human beings,
- (c) sexual exploitation of children and child pornography,
- (d) illicit trafficking in weapons, munitions and explosives,
- (e) murder, grievous bodily injury,
- (f) illicit trade in human organs and tissues,
- (g) kidnapping, illegal restraint and hostage-taking,
- (h) organised or armed robbery,
- (i) rape,
- (j) crimes within the jurisdiction of the International Criminal Court.

<sup>58</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1-20).

## EE COMMENTS

<p style="text-align: center;"><b>Chapter II</b> <b>Rights and duties of media service providers and recipients</b> <i>Article 3</i> Rights of recipients of media services</p>	
<p>Recipients of media services in the Union shall have the right to receive a plurality of news and current affairs content, produced with respect for editorial freedom of media service providers, to the benefit of the public discourse.</p>	<p>This provision seems to be too overall declaration for the Regulation and one can ask what is a concrete legal notion of this requirement. Right to receive an information and provisions on free flow of information are already enacted in several legal acts in Europe and also in national laws. An added value of this provision in the EMFA Regulation is not clear enough.</p>
<p style="text-align: center;"><i>Article 4</i> Rights of media service providers</p>	
<p>1. Media service providers shall have the right to exercise their economic activities in the internal market without restrictions other than those allowed under Union law.</p>	

## EE COMMENTS

<p>2. Member States shall respect effective editorial freedom of media service providers.</p> <p>Member States, including their national regulatory authorities and bodies, shall not:</p> <p>(a) interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers;</p> <p>(b) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, their employees or their family members, or their corporate and private premises, on the ground that they refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest, in accordance with Article 52(1) of the Charter and in compliance with other Union law;</p> <p>(c) deploy spyware in any device or machine used by media service providers or, if applicable, their family members, or their employees or their family members, unless the deployment is justified, on a case-by-case basis, on grounds of national security and is in compliance with Article 52(1) of the Charter and other Union law or the deployment occurs in serious crimes investigations of one of the aforementioned persons, it is provided for under national law and is in compliance with Article 52(1) of the Charter and other Union law, and measures adopted pursuant to sub-paragraph (b) would be inadequate and insufficient to obtain the information sought.</p>	<p>It's very important to underline here that Member State shall respect effective editorial freedom of media service provider, not editorial freedom at the level of each individual journalist and editor. That's why it seems doubtful to extend in the EMFA Regulation a model of editorial independence and editorial freedom to individual editor. This way could lead to unacceptable interference into the editorial independence and freedom of a media service provider.</p>
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## EE COMMENTS

<p>3. Without prejudice and in addition to the right to effective judicial protection guaranteed to each natural and legal person, Member States shall designate an independent authority or body to handle complaints lodged by media service providers or, if applicable, their family members, their employees or their family members, regarding breaches of paragraph 2, points (b) and (c). Media service providers shall have the right to request that authority or body to issue, within three months of the request, an opinion regarding compliance with paragraph 2, points (b) and (c).</p>	
<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;">Safeguards for the independent functioning of public service media providers</p>	
<p>1. Public service media providers shall provide in an impartial manner a plurality of information and opinions to their audiences, in accordance with their public service mission.</p>	<p>The definition of public service media provider (PSM) enacts that PSM means a media service provider, providing programmes or press publications to the general public, by any means, in order to inform, entertain or educate, under its editorial responsibility.</p> <p>The PSM as a media service provider can provide its services by any means, including new online platforms and other technical means for the whole society, for various social and ethnical groups and age classes. There would be a need to revise and update the application of Union’s state aid rules, which set up some restrictions for the PSM, not fostering to execute its public service remit, not allowing to make fully independent decision on the provision of quality media new services by all technical means.</p> <p>There could be relevant provision in the EMFA Regulation indicating a need to review and if needed then update the EU Broadcasting Communication (2009), taking into account latest developments in the area of the provision of content services and wider public interests. We should acknowledge a clear need for more efficient use of the rich</p>



## EE COMMENTS

	<p>and diverse potential of public service media in Europe to provide quality media services by all technical means for the whole society.</p> <p>Today it seems that there is a discordance between the wide definition of public service media provider and public service remit from one side and some outdated approaches in the application of the EU's state aid rules on operation and funding of public service media from another side.</p>
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## EE COMMENTS

<p>2. The head of management and the members of the governing board of public service media providers shall be appointed through a transparent, open and non-discriminatory procedure and on the basis of transparent, objective, non-discriminatory and proportionate criteria laid down in advance by national law.</p> <p>The duration of their term of office shall be established by national law, and be adequate and sufficient to ensure effective independence of the public media service provider. They may be dismissed before the end of their term of office only exceptionally where they no longer fulfil the legally predefined conditions required for the performance of their duties laid down in advance by national law or for specific reasons of illegal conduct or serious misconduct as defined in advance by national law.</p> <p>Dismissal decisions shall be duly justified, subject to prior notification to the person concerned, and include the possibility for judicial review. The grounds for dismissal shall be made available to the public.</p>	
<p>3. Member States shall ensure that public service media providers have adequate and stable financial resources for the fulfilment of their public service mission. Those resources shall be such that editorial independence is safeguarded.</p>	
<p>4. Member States shall designate one or more independent authorities or bodies in order to monitor compliance with paragraphs 1 to 3.</p>	<p>As usual there is a body in all Member States supervising over the activities of public service media providers and there are also relevant provisions in the legal acts regulating functioning and governance of PSM. The schemes of funding of PSM and the formation of state annual budget is regulated by the Law. It seems legally complicated to give a competence of supervision over the</p>

## EE COMMENTS

	formation of state budget, besides government and State Audit Office, to some other authority which does not have real lever and active role in this area.
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## FI 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**

**Articles 1 to 5**

*- Table for comments -*

<b>Commission proposal</b> Interinstitutional File 2022/0277 (COD) COM (2022) 457 final	<b>Comments and drafting suggestions from delegations</b>
<b>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)</b>	
<b>Chapter I</b> <b>General Provisions</b> <i>Article 1</i> Subject matter and scope	
1. This Regulation lays down common rules for the proper functioning of the internal market for media services, including the establishment of the European Board for Media Services, while preserving the quality of media services.	- In terms of the clarity of the Act, it would be useful to explain the scope more clearly

## FI COMMENTS

<p>2. This Regulation shall not affect rules laid down by:</p> <ul style="list-style-type: none"><li>(a) Directive 2000/31/EC;</li><li>(b) Directive 2019/790/EU;</li><li>(c) Regulation 2019/1150;</li><li>(d) Regulation (EU) 2022/XXX [the Digital Services Act];</li><li>(e) Regulation (EU) 2022/XXX [the Digital Markets Act];</li><li>(f) Regulation (EU) 2022/XXX [Regulation on the transparency and targeting of political advertising].</li></ul>	<ul style="list-style-type: none"><li>- Based on the paragraph 2, it remains unclear what is the relationship between this regulation and rules laid down in the mentioned directives and regulations</li><li>- In a case of conflicting rules, which regulation prevails?</li></ul>
<p>3. This Regulation shall not affect the possibility for Member States to adopt more detailed rules in the fields covered by Chapter II and Section 5 of Chapter III, provided that those rules comply with Union law.</p>	

## FI COMMENTS

<i>Article 2</i> Definitions	
For the purposes of this Regulation, the following definitions shall apply:  (1) ‘media service’ means a service as defined by Articles 56 and 57 of the Treaty, where the principal purpose of the service or a dissociable section thereof consists in providing programmes or press publications to the general public, by any means, in order to inform, entertain or educate, under the editorial responsibility of a media service provider;	
(2) ‘media service provider’ means a natural or legal person whose professional activity is to provide a media service and who has editorial responsibility for the choice of the content of the media service and determines the manner in which it is organised;	
(3) ‘public service media provider’ means a media service provider which is entrusted with a public service mission under national law or receives national public funding for the fulfilment of such a mission;	
(4) ‘programme’ means a set of moving images or sounds constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider;	
(5) ‘press publication’ means a publication as defined in Article 2(4) of Directive 2019/790/EU;	

## FI COMMENTS

6) ‘audiovisual media service’ means a service as defined in Article 1(1), point (a), of Directive 2010/13/EU;	
(7) ‘editor’ means a natural person or a number of natural persons possibly grouped in a body, regardless of its legal form, status and composition, that takes or supervises editorial decisions within a media service provider;	
(8) ‘editorial decision’ means a decision taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of a media service provider;	
(9) ‘editorial responsibility’ means the exercise of effective control both over the selection of the programmes or press publications and over their organisation, for the purposes of the provision of a media service, regardless of the existence of liability under national law for the service provided;	
(10) ‘provider of very large online platform’ means a provider of an online platform that has been designated as a very large online platform pursuant to Article 25(4) of Regulation (EU) 2022/XXX [Digital Services Act];	The reference seems to be incorrect, the designation of VLOPs/VLOSEs is in art. 33(4) of the DSA
(11) ‘video-sharing platform service’ means a service as defined in Article 1(1), point (aa), of Directive 2010/13/EU;	

## FI COMMENTS

<p>(12) ‘national regulatory authority or body’ means the authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU;</p>	
<p>(13) ‘media market concentration’ means a concentration as defined in Article 3 of Regulation (EC) No 139/2004 involving at least one media service provider;</p>	
<p>(14) ‘audience measurement’ means the activity of collecting, interpreting or otherwise processing data about the number and characteristics of users of media services for the purposes of decisions regarding advertising allocation or prices or the related planning, production or distribution of content;</p>	
<p>(15) ‘State advertising’ means the placement, publication or dissemination, in any media service, of a promotional or self-promotional message, normally in return for payment or for any other consideration, by, for or on behalf of any national or regional public authority, such as national, federal or regional governments, regulatory authorities or bodies as well as state-owned enterprises or other state-controlled entities at the national or regional level, or any local government of a territorial entity of more than 1 million inhabitants;</p>	<ul style="list-style-type: none"><li>- The definition ”state-owned enterprises” is not clear enough; what types of enterprises it includes? Partly or wholly owned enterprises?</li><li>- The definition should be more clear, in terms of how big or small regional governments/municipalities fall under the definition</li></ul>



## FI COMMENTS

<p>(16) 'spyware' means any product with digital elements specially designed to exploit vulnerabilities in other products with digital elements that enables the covert surveillance of natural or legal persons by monitoring, extracting, collecting or analysing data from such products or from the natural or legal persons using such products, in particular by secretly recording calls or otherwise using the microphone of an end-user device, filming natural persons, machines or their surroundings, copying messages, photographing, tracking browsing activity, tracking geolocation, collecting other sensor data or tracking activities across multiple end-user devices, without the natural or legal person concerned being made aware in a specific manner and having given their express specific consent in that regard;</p>	
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## FI COMMENTS

<p>(17) ‘serious crime’ means any of the following criminal offences listed in Article 2(2) of the Council Framework Decision 2002/584/JHA<sup>58</sup>:</p> <ul style="list-style-type: none"><li>(a) terrorism,</li><li>(b) trafficking in human beings,</li><li>(c) sexual exploitation of children and child pornography,</li><li>(d) illicit trafficking in weapons, munitions and explosives,</li><li>(e) murder, grievous bodily injury,</li><li>(f) illicit trade in human organs and tissues,</li><li>(g) kidnapping, illegal restraint and hostage-taking,</li><li>(h) organised or armed robbery,</li><li>(i) rape,</li><li>(j) crimes within the jurisdiction of the International Criminal Court.</li></ul> <p>58 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1-20).</p>	<ul style="list-style-type: none"><li>- The definition for ‘serious crime’ is very narrow. In terms of the definition of ‘serious crime’, the competence of Member States should be clarified</li></ul>
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## FI COMMENTS

<p style="text-align: center;"><b>Chapter II</b> <b>Rights and duties of media service providers and recipients</b> <i>Article 3</i> Rights of recipients of media services</p>	
<p>Recipients of media services in the Union shall have the right to receive a plurality of news and current affairs content, produced with respect for editorial freedom of media service providers, to the benefit of the public discourse.</p>	
<p style="text-align: center;"><i>Article 4</i> Rights of media service providers</p>	
<p>1. Media service providers shall have the right to exercise their economic activities in the internal market without restrictions other than those allowed under Union law.</p>	

## FI COMMENTS

<p>2. Member States shall respect effective editorial freedom of media service providers.</p> <p>Member States, including their national regulatory authorities and bodies, shall not:</p> <p>(a) interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers;</p> <p>(b) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, their employees or their family members, or their corporate and private premises, on the ground that they refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest, in accordance with Article 52(1) of the Charter and in compliance with other Union law;</p> <p>(c) deploy spyware in any device or machine used by media service providers or, if applicable, their family members, or their employees or their family members, unless the deployment is justified, on a case-by-case basis, on grounds of national security and is in compliance with Article 52(1) of the Charter and other Union law or the deployment occurs in serious crimes investigations of one of the aforementioned persons, it is provided for under national law and is in compliance with Article 52(1) of the Charter and other Union law, and measures adopted pursuant to sub-paragraph (b) would be inadequate and insufficient to obtain the information sought.</p>	<p>- Terms ‘sanction, intercept, subject to surveillance or search and seizure’ should be clarified</p> <p>- ‘Spy’ might refer to unauthorized acquisition of information, which is already generally prohibited and criminalized</p> <p>- What is the relationship to right to privacy (as defined in the Charter and ECHR)?</p>
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## FI COMMENTS

<p>3. Without prejudice and in addition to the right to effective judicial protection guaranteed to each natural and legal person, Member States shall designate an independent authority or body to handle complaints lodged by media service providers or, if applicable, their family members, their employees or their family members, regarding breaches of paragraph 2, points (b) and (c). Media service providers shall have the right to request that authority or body to issue, within three months of the request, an opinion regarding compliance with paragraph 2, points (b) and (c).</p>	
<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;">Safeguards for the independent functioning of public service media providers</p>	<p>- Deeper analysis on the relationship between article 5 and the legal basis of the proposal (art. 114) is welcomed</p>
<p>1. Public service media providers shall provide in an impartial manner a plurality of information and opinions to their audiences, in accordance with their public service mission.</p>	

## FI COMMENTS

<p>2. The head of management and the members of the governing board of public service media providers shall be appointed through a transparent, open and non-discriminatory procedure and on the basis of transparent, objective, non-discriminatory and proportionate criteria laid down in advance by national law.</p> <p>The duration of their term of office shall be established by national law, and be adequate and sufficient to ensure effective independence of the public media service provider. They may be dismissed before the end of their term of office only exceptionally where they no longer fulfil the legally predefined conditions required for the performance of their duties laid down in advance by national law or for specific reasons of illegal conduct or serious misconduct as defined in advance by national law.</p> <p>Dismissal decisions shall be duly justified, subject to prior notification to the person concerned, and include the possibility for judicial review. The grounds for dismissal shall be made available to the public.</p>	<ul style="list-style-type: none"> <li>- It should be clarified which bodies ‘the Governing Board’ refers to. Do e.g. administrative councils consisting of representatives of the parliament fall under the definition?</li> <li>- It should be clarified would it be solely up to the Member States to decide on the necessary level of transparency and openness</li> <li>- It should be clarified, what is the relationship between this regulation and acts regulating Limited Liability Companies, taking into account that latter regulates the appointment and dismissal of the Board of Directors and Managing Director (in Finland Yle is a state-owned LLC)</li> <li>- What is the relationship of the transparency requirements and data protection/right to privacy? E.g the grounds for dismissal are most likely not in favor of the person dismissed, may contain sensitive information and so on.</li> </ul>
<p>3. Member States shall ensure that public service media providers have adequate and stable financial resources for the fulfilment of their public service mission. Those resources shall be such that editorial independence is safeguarded.</p>	<ul style="list-style-type: none"> <li>- What is the relationship to Amsterdam protocol, that states that “<i>the provisions of the Treaties shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting</i>”?</li> </ul>
<p>4. Member States shall designate one or more independent authorities or bodies in order to monitor compliance with paragraphs 1 to 3.</p>	

**[FR 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**

**Articles 1 to 5**

*- Table for comments -*

<b>Commission proposal</b> Interinstitutional File 2022/0277 (COD) COM (2022) 457 final	<b>Comments and drafting suggestions from delegations</b>
<b>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)</b>	
<b>Chapter I</b> <b>General Provisions</b> <i>Article 1</i> Subject matter and scope	
1. This Regulation lays down common rules for the proper functioning of the internal market for media services, including the establishment of the European Board for Media Services, while preserving the quality of media services.	

**[FR COMMENTS]**

<p>2. This Regulation shall not affect rules laid down by:</p> <ul style="list-style-type: none"><li>(a) Directive 2000/31/EC;</li><li>(b) Directive 2019/790/EU;</li><li>(c) Regulation 2019/1150;</li><li>(d) Regulation (EU) 2022/XXX [the Digital Services Act];</li><li>(e) Regulation (EU) 2022/XXX [the Digital Markets Act];</li><li>(f) Regulation (EU) 2022/XXX [Regulation on the transparency and targeting of political advertising].</li></ul>	<p><b><u>(a)bis Directive 2014/41/EU;</u></b></p> <p>Cette directive contenant des dispositions en matière de mise en œuvre de techniques spéciales d’enquête (notamment interceptions de communication avec l’assistance d’un autre EM), ne serait-il pas utile de l’ajouter ici ?</p>
	<p><b><u>2bis. This Regulation does not apply to the the activities concerning national security and defence, regardless of who is carrying out those activities whether it is a public authority or a private operator acting at the request of a public authority.</u></b></p> <p>Clause d’exclusion analogue à celle figurant le mandat du Conseil pour le règlement ePrivacy.</p>
<p>3. This Regulation shall not affect the possibility for Member States to adopt more detailed rules in the fields covered by Chapter II and Section 5 of Chapter III, provided that those rules comply with Union law.</p>	<p>La délégation française a pris bonne note des réponses apportées par la Commission et le service juridique du Conseil lors du groupe audiovisuel et médias du 13 octobre sur la notion de “more detailed measures”. La délégation française a compris que cette rédaction prévoit donc la capacité pour les Etats membres de prendre des mesures potentiellement plus strictes. Il est suggéré d’ajouter ce point dans la rédaction de l’article : « This Regulation shall not affect the possibility for Member States to adopt more detailed or</p>



**[FR COMMENTS]**

	<p>stricter rules in the fields covered by Chapter II and Section 5 of Chapter III, provided that those rules comply with Union law. »</p> <p>En effet, la délégation française estime essentiel que les Etats membres disposent d'une telle possibilité afin de ne pas avoir un règlement qui nivellerait pas par le bas des dispositifs nationaux qui seraient d'ores et déjà plus exigeants.</p>
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**[FR COMMENTS]**

<p style="text-align: center;"><i>Article 2</i> Definitions</p>	<p>La délégation française s’interroge sur l’absence de définition à l’article 2 du concept de « news and current affairs » développé dans les articles 3 et 6 et qui en conditionne la mise en œuvre. Qu’est-il entendu par cette notion ?</p> <p>En outre, à défaut d’avoir des définitions claires de certains concepts apparaissant dans la proposition de règlement dans l’article 2, la délégation française considère qu’ils pourraient être davantage éclairés par exemple dans les considérants afin de donner une meilleure indication de la portée et de l’impact réels des dispositions proposées dans la proposition d’EMFA. Ceci pourrait être particulièrement intéressant par exemple pour les concepts suivants: "significant impact on media pluralism and editorial independence" (article 21) ; “disinformation, foreign information manipulation and interference” (articles 18 et 25), “significant influence on the formation of public” (considérant 39).</p>
<p>For the purposes of this Regulation, the following definitions shall apply:</p> <p>(1) ‘media service’ means a service as defined by Articles 56 and 57 of the Treaty, where the principal purpose of the service or a dissociable section thereof consists in providing programmes or press publications to the general public, by any means, in order to inform, entertain or educate, under the editorial responsibility of a media service provider;</p>	
<p>(2) ‘media service provider’ means a natural or legal person whose professional activity is to provide a media service and who has editorial responsibility for the choice of the content of the media service and determines the manner in which it is organised;</p>	
<p>(3) ‘public service media provider’ means a media service provider which is entrusted with a public service mission under national law or receives national public funding for the fulfilment of such a mission;</p>	

**[FR COMMENTS]**

<p>(4) 'programme' means a set of moving images or sounds constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider;</p>	
<p>(5) 'press publication' means a publication as defined in Article 2(4) of Directive 2019/790/EU;</p>	

**[FR COMMENTS]**

<p>6) ‘audiovisual media service’ means a service as defined in Article 1(1), point (a), of Directive 2010/13/EU;</p>	
<p>(7) ‘editor’ means a natural person or a number of natural persons possibly grouped in a body, regardless of its legal form, status and composition, that takes or supervises editorial decisions within a media service provider;</p>	<p>La délégation française s’interroge sur le champ de la notion d’«editor» car elle est susceptible de recouvrir plusieurs notions en droit français et pose dès lors la question de son articulation avec le régime français de responsabilité pénale dans le domaine de la presse.</p> <p>En effet, la définition du terme « editor » à l’article 1 (7) pose difficulté en lien avec l’article 6(2) en ce que les prérogatives attribuées à l’ « editor » selon la définition de l’article 1(7) correspondent davantage à la notion de directeur de publication et non à celle d’un rédacteur en chef (et ce alors que la version française de la proposition de Règlement fait référence au « chef de la rédaction »).</p> <p>Plus largement, la délégation française s’interroge sur qui porte la responsabilité pénale des propos résultant d’une décision éditoriale ? Quels seront les rôles respectifs et les responsabilités qui y sont associées des propriétaires des médias, des directeurs de la publication, des rédacteurs en chef et des journalistes ?</p>
<p>(8) ‘editorial decision’ means a decision taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of a media service provider;</p>	
<p>(9) ‘editorial responsibility’ means the exercise of effective control both over the selection of the programmes or press publications and over their organisation, for the purposes of the provision of a media service, regardless of the existence of liability under national law for the service provided;</p>	

**[FR COMMENTS]**

<p>(10) ‘provider of very large online platform’ means a provider of an online platform that has been designated as a very large online platform pursuant to Article 25(4) of Regulation (EU) 2022/XXX [Digital Services Act];</p>	<p>Les autorités françaises soulignent qu’il semble y avoir une erreur dans la référence au DSA à l’article 2(10) EMFA, qui mentionne l’article 25(4) du DSA, cet article étant a priori devenu l’article 33(4) de la version définitive du DSA.</p> <p>Concernant la catégorie des très grandes plateformes du DSA visée ici, la délégation française s’interroge sur l’inclusion ou non des très grands moteurs de recherche dans le champ d’application du règlement, avec les très grandes plateformes. Elle considère que les moteurs de recherche jouent un rôle important dans l’accès à l’information en ligne et que les très grands moteurs de recherche devraient être assujettis aux mêmes obligations que les très grandes plateformes en ligne.</p> <p>Dès lors, la délégation française estime qu’il conviendrait d’ajouter après le (10) un paragraphe (10bis) pour les fournisseurs de moteurs de recherche en ligne, calqué sur le (10) et renvoyant au 33(4) du règlement DSA.</p>
<p>(11) ‘video-sharing platform service’ means a service as defined in Article 1(1), point (aa), of Directive 2010/13/EU;</p>	<p>Concernant la définition de "video-sharing platform service", à la lecture du considérant 8 et notamment de la dernière phrase du 1er paragraphe, « Therefore, such an entity could be qualified both as a video-sharing platform provider or a very large online platform provider and as a media service provider », la délégation française estime qu’il serait utile de préciser que la qualification de “media service provider” ne vaudrait que pour cette activité et non pour l’ensemble du service.</p>

**[FR COMMENTS]**

<p>(12) ‘national regulatory authority or body’ means the authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU;</p>	<p>La notion de « national regulatory authority or body » renvoie aux autorités désignées à l’article 30 de la directive SMA et instaure d’office le régulateur audiovisuel en tant qu’autorité de référence pour le secteur de la presse pour l’application du règlement, alors même qu’il s’agit d’un secteur autorégulé en France.</p>
<p>(13) ‘media market concentration’ means a concentration as defined in Article 3 of Regulation (EC) No 139/2004 involving at least one media service provider;</p>	
<p>(14) ‘audience measurement’ means the activity of collecting, interpreting or otherwise processing data about the number and characteristics of users of media services for the purposes of decisions regarding advertising allocation or prices or the related planning, production or distribution of content;</p>	<p>Cette définition ne vise que les activités de collecte, d’interprétation ou de traitement de données relatives au nombre et aux caractéristiques des utilisateurs de services de médias notamment à des fins de prise de décisions relatives à la publicité. Ainsi, la délégation française se pose la question de savoir si cette notion couvre uniquement la méthodologie relative au calcul du nombre d’utilisateurs d’un service en général ou si des méthodologies de calcul plus fines sont également couvertes (<u>par exemple, le calcul de l’audience de la publicité</u>) ? La Commission pourrait-elle fournir des exemples de cas concrets de prise de décisions relatives à la publicité que cette définition entend couvrir?</p>
<p>(15) ‘State advertising’ means the placement, publication or dissemination, in any media service, of a promotional or self-promotional message, normally in return for payment or for any other consideration, by, for or on behalf of any national or regional public authority, such as national, federal or regional governments, regulatory authorities or bodies as well as state-owned enterprises or other state-controlled entities at the national or regional level, or any local government of a territorial entity of more than 1 million inhabitants;</p>	<p>La délégation française pourra constater que, selon sa compréhension, la notion de “State advertising” englobe les publicités des entreprises détenues par l’Etat. Elle s’interroge sur le fait de savoir si une entreprise comme EDF devrait ainsi respecter l’ensemble des obligations prévues à l’article 24 ? Le champ de la définition pourrait-il se limiter aux autorités publiques et aux gouvernements en tant que tels ou n’inclure pour les publicités d’entreprises publiques que celles n’ayant pas vocation à promouvoir un service ou bien commercialement proposé par lesdites entreprises?</p>

**[FR COMMENTS]**

<p>(16) ‘spyware’ means any product with digital elements specially designed to exploit vulnerabilities in other products with digital elements that enables the covert surveillance of natural or legal persons by monitoring, extracting, collecting or analysing data from such products or from the natural or legal persons using such products, in particular by secretly recording calls or otherwise using the microphone of an end-user device, filming natural persons, machines or their surroundings, copying messages, photographing, tracking browsing activity, tracking geolocation, collecting other sensor data or tracking activities across multiple end-user devices, without the natural or legal person concerned being made aware in a specific manner and having given their express specific consent in that regard;</p>	<p>La pertinence technique de la définition est à analyser ; elle pourrait en effet recouvrir un grand nombre de techniques (<i>Trojan, backdoors, etc.</i>).</p> <p>L’utilité de cette définition est en tout état de cause tributaire du maintien ou non de la disposition du règlement où elle est utilisée (article 4(2)(c)).</p> <p>Voir développement concernant l’article 4(1) c) sur la définition de spyware.</p>
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**[FR COMMENTS]**

<p>(17) ‘serious crime’ means any of the following criminal offences listed in Article 2(2) of the Council Framework Decision 2002/584/JHA<sup>58</sup>:</p> <ul style="list-style-type: none"><li>(a) terrorism,</li><li>(b) trafficking in human beings,</li><li>(c) sexual exploitation of children and child pornography,</li><li>(d) illicit trafficking in weapons, munitions and explosives,</li><li>(e) murder, grievous bodily injury,</li><li>(f) illicit trade in human organs and tissues,</li><li>(g) kidnapping, illegal restraint and hostage-taking,</li><li>(h) organised or armed robbery,</li><li>(i) rape,</li><li>(j) crimes within the jurisdiction of the International Criminal Court.</li></ul> <p><sup>58</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1-20).</p>	<p>La délégation française propose la suppression : la criminalité grave n'est pas - et ne devrait pas devenir - un concept autonome dans le droit de l'UE. Cette notion existe – ou n'existe pas – dans le droit national des États membres et l'identité constitutionnelle des États membres en ce qui concerne les principes fondateurs de leur droit pénal doit être respectée. Cela a été rappelé à plusieurs reprises par la CJUE ces dernières années.</p>
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**[FR COMMENTS]**

<p style="text-align: center;"><b>Chapter II</b></p> <p style="text-align: center;"><b>Rights and duties of media service providers and recipients</b></p> <p style="text-align: center;"><i>Article 3</i></p> <p style="text-align: center;">Rights of recipients of media services</p>	
<p>Recipients of media services in the Union shall have the right to receive a plurality of news and current affairs content, produced with respect for editorial freedom of media service providers, to the benefit of the public discourse.</p>	<p>La délégation française, sans y être défavorable, a du mal à mesurer la portée et les modalités de mise en œuvre de cet article, octroyant un droit très général.</p>
<p style="text-align: center;"><i>Article 4</i></p> <p style="text-align: center;">Rights of media service providers</p>	
<p>1. Media service providers shall have the right to exercise their economic activities in the internal market without restrictions other than those allowed under Union law.</p>	<p>La délégation française s’interroge sur la nature exacte des restrictions qui sont visées ici. De plus, elle souhaiterait que la dernière phrase du considérant 13 soit ajoutée au sein de ce paragraphe.</p> <p>Elle se pose également la question de l’articulation entre l’interdiction de prévoir des restrictions autres que celles prévues par le droit de l’Union et la possibilité laissée aux États membres à l’article 20 de prendre des mesures nationales pouvant affecter les opérations des médias sur le marché intérieur, lorsqu’elles sont dûment justifiées et proportionnées.</p>

[FR COMMENTS]

<p>2. Member States shall respect effective editorial freedom of media service providers.</p> <p>Member States, including their national regulatory authorities and bodies, shall not:</p> <p>(a) interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers;</p> <p>(b) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, their employees or their family members, or their corporate and private premises, on the ground that they refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest, in accordance with Article 52(1) of the Charter and in compliance with other Union law;</p> <p>(c) deploy spyware in any device or machine used by media service providers or, if applicable, their family members, or their employees or their family members, unless the deployment is justified, on a case-by-case basis, on grounds of national security and is in compliance with Article 52(1) of the Charter and other Union law or the deployment occurs in serious crimes investigations of one of the aforementioned persons, it is provided for under national law and is in compliance with Article 52(1) of the Charter and other Union law, and measures adopted pursuant to sub-paragraph (b) would be inadequate and insufficient to obtain the information sought.</p>	<p>Cet article prévoit des dérogations à l'interdiction de principe de prendre des mesures de surveillance à l'égard des journalistes, mais il ne contient pas de clauses d'exclusion de son champ d'application des matières qui ne relèvent pas de la compétence de l'Union – comme la sauvegarde de la sécurité nationale. C'est la raison pour laquelle les autorités françaises sollicitent l'ajout d'une clause d'exclusion explicite et refusent que les enjeux en matière de sécurité nationale ne soient traités dans le cadre d'une dérogation.</p> <p>Les autorités françaises sont particulièrement attachées au principe de la protection du secret des sources des journalistes dans l'exercice de leur mission d'information du public, particulièrement consacré dans le droit national. En revanche, la nécessité et la proportionnalité de l'extension du bénéfice d'une telle disposition au profit de l'ensemble des « employés » des fournisseurs de services de médias (qui ne seraient donc pas des journalistes mais pourraient être des employés de ces sociétés en charge de fonctions administratives ou techniques), ainsi qu'au bénéfice des membres de la famille des journalistes et de ces employés, pose question. Il serait utile que la Commission précise ce que recouvrent précisément ces différentes catégories de personnes et qu'elle expose les arguments l'ayant conduit à conclure à la nécessité et la proportionnalité d'une telle extension.</p> <p>Enfin, la notion de spyware est définie de façon particulièrement large et il conviendrait de savoir si elle peut éventuellement recouvrir des interceptions de correspondances émises par la voie des télécommunications (écoute téléphonique), des géolocalisations, ou encore la technique spéciale d'enquête qu'est la captation de données informatiques, décidées dans le cadre d'enquêtes pénales.</p>
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	<p>Le champ des mesures que recouvre le litera c) devrait être précisé afin d'identifier celles qui seront concernées et apprécier l'opportunité d'une telle restriction. Enfin, le champ des personnes concernées (membre de la famille, employés) semble particulièrement vaste alors que les dérogations prévues au litera c) semblent particulièrement restrictives.</p> <p>La délégation française propose, en conséquence, les modifications suivantes:</p> <p>2. Member States shall respect effective editorial freedom of media service providers <b><u>and journalists</u></b>.</p> <p>Member States, including their national regulatory authorities and bodies, shall not: <del>(a)</del> interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers <b><u>and journalists</u></b>.</p> <p><b><u>2a. The sources and journalistic communications of media service providers and journalists shall be confidential.</u></b></p> <p><b><u>- Any form of detention, sanction, interception, surveillance of media service provider and journalists ;</u></b></p> <p><b><u>- Any search, seizure, or inspection of their corporate and private premises</u></b></p> <p><b><u>shall not be ordered on the ground that they refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest, and provided for under Union law or Member States law.</u></b></p>
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**[FR COMMENTS]**

<p>3. Without prejudice and in addition to the right to effective judicial protection guaranteed to each natural and legal person, Member States shall designate an independent authority or body to handle complaints lodged by media service providers or, if applicable, their family members, their employees or their family members, regarding breaches of paragraph 2, points (b) and (c). Media service providers shall have the right to request that authority or body to issue, within three months of the request, an opinion regarding compliance with paragraph 2, points (b) and (c).</p>	<p>3. Without prejudice and in addition to the right to effective judicial protection guaranteed to each natural and legal person, Member States shall designate an independent authority or body to handle complaints lodged by media service providers or, <del>if applicable, their family members, their employees or their family members</del> <b>journalists</b> regarding breaches of paragraph 2, <del>points (b) and (c)</del> <b>2a</b>. Media service providers <b>and journalists</b> shall have the right to request that authority or body to issue, within three months of the request, an opinion regarding compliance with paragraph <b>2a</b>.</p>
<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;">Safeguards for the independent functioning of public service media providers</p>	
<p>1. Public service media providers shall provide in an impartial manner a plurality of information and opinions to their audiences, in accordance with their public service mission.</p>	<p>Si la délégation française salue la volonté d’instaurer au niveau européen de grands principes visant à garantir l’indépendance des médias de service public, elle appelle néanmoins à une certaine vigilance quant au respect du protocole d’Amsterdam qui octroie une large marge de manœuvre aux Etats dans l’organisation et la définition des missions de service public et leur financement.</p>

[FR COMMENTS]

<p>2. The head of management and the members of the governing board of public service media providers shall be appointed through a transparent, open and non-discriminatory procedure and on the basis of transparent, objective, non-discriminatory and proportionate criteria laid down in advance by national law.</p> <p>The duration of their term of office shall be established by national law, and be adequate and sufficient to ensure effective independence of the public media service provider. They may be dismissed before the end of their term of office only exceptionally where they no longer fulfil the legally predefined conditions required for the performance of their duties laid down in advance by national law or for specific reasons of illegal conduct or serious misconduct as defined in advance by national law.</p> <p>Dismissal decisions shall be duly justified, subject to prior notification to the person concerned, and include the possibility for judicial review. The grounds for dismissal shall be made available to the public.</p>	<p>Certaines sociétés de l’audiovisuel public, telles qu’Arte ou TV5 Monde, ont été créés par des traités internationaux qui ne respectent pas les dispositions de l’article, dans la mesure où les conditions de nomination et de révocation des dirigeants ne sont pas prévues par la loi nationale mais dans des textes <i>ad hoc</i>. Il conviendrait donc de clarifier comment les dispositions de l’article pourraient s’appliquer à ces structures.</p>
<p>3. Member States shall ensure that public service media providers have adequate and stable financial resources for the fulfilment of their public service mission. Those resources shall be such that editorial independence is safeguarded.</p>	
<p>4. Member States shall designate one or more independent authorities or bodies in order to monitor compliance with paragraphs 1 to 3.</p>	<p>La délégation française s’interroge sur la portée du contrôle que devront exercer les autorités indépendantes citées pour garantir le respect des principes établis par l’article, car en France, il appartient au législateur de s’assurer, chaque année, par le biais de l’adoption du projet de loi de finances,</p>

**[FR COMMENTS]**

	de l'adéquation entre le financement alloué aux organismes public et les missions qui leurs sont assignées.
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## IE 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**

**Articles 1 to 5**

*- Table for comments -*

<b>Commission proposal</b> Interinstitutional File 2022/0277 (COD) COM (2022) 457 final	<b>Comments and drafting suggestions from delegations</b>
<b>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)</b>	
<b>Chapter I</b> <b>General Provisions</b> <i>Article 1</i> Subject matter and scope	
1. This Regulation lays down common rules for the proper functioning of the internal market for media services, including the establishment of the European Board for Media Services, while preserving the quality of media services.	

## IE COMMENTS

<p>2. This Regulation shall not affect rules laid down by:</p> <ul style="list-style-type: none"><li>(a) Directive 2000/31/EC;</li><li>(b) Directive 2019/790/EU;</li><li>(c) Regulation 2019/1150;</li><li>(d) Regulation (EU) 2022/XXX [the Digital Services Act];</li><li>(e) Regulation (EU) 2022/XXX [the Digital Markets Act];</li><li>(f) Regulation (EU) 2022/XXX [Regulation on the transparency and targeting of political advertising].</li></ul>	
<p>3. This Regulation shall not affect the possibility for Member States to adopt more detailed rules in the fields covered by Chapter II and Section 5 of Chapter III, provided that those rules comply with Union law.</p>	<p>We would suggest the following:</p> <p>“3. This Regulation shall not affect the possibility for Member States to adopt more detailed <b>or stricter</b> rules in the fields covered by Chapter II and Section 5 of Chapter III <b>and Article 24</b> provided that those rules comply with Union law.”</p> <p>IE notes that obligations under Article 24 are directed at public authorities rather than media service providers. Given the size of the State and the proportion of State advertising that is placed by local governments of territorial entities of less than 1 million inhabitants, IE would like to retain the flexibility to require those local governments to make public the information specified in Article 24.</p>



## IE COMMENTS

<p style="text-align: center;"><i>Article 2</i></p> <p style="text-align: center;">Definitions</p>	
<p>For the purposes of this Regulation, the following definitions shall apply:</p> <p>(1) ‘media service’ means a service as defined by Articles 56 and 57 of the Treaty, where the principal purpose of the service or a dissociable section thereof consists in providing programmes or press publications to the general public, by any means, in order to inform, entertain or educate, under the editorial responsibility of a media service provider;</p>	
<p>(2) ‘media service provider’ means a natural or legal person whose professional activity is to provide a media service and who has editorial responsibility for the choice of the content of the media service and determines the manner in which it is organised;</p>	
<p>(3) ‘public service media provider’ means a media service provider which is entrusted with a public service mission under national law or receives national public funding for the fulfilment of such a mission;</p>	<p>We would suggest using the term ‘public service remit’ rather than ‘mission’. This is more closely related to the official role of public service media in legislation and is the term used in the Amsterdam Protocol.</p> <p>In addition, we would like to clarify the scope of the definition. In Ireland, we have a commercial, free-to-air broadcaster who does not receive public funding but who has certain limited public service obligations under national law. Their public service obligations are considerably more limited than public service broadcasters in receipt of national funding. Would they fall within the scope of this definition?</p>
<p>(4) ‘programme’ means a set of moving images or sounds constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider;</p>	

## IE COMMENTS

(5) 'press publication' means a publication as defined in Article 2(4) of Directive 2019/790/EU;	
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## IE COMMENTS

6) ‘audiovisual media service’ means a service as defined in Article 1(1), point (a), of Directive 2010/13/EU;	
(7) ‘editor’ means a natural person or a number of natural persons possibly grouped in a body, regardless of its legal form, status and composition, that takes or supervises editorial decisions within a media service provider;	
(8) ‘editorial decision’ means a decision taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of a media service provider;	
(9) ‘editorial responsibility’ means the exercise of effective control both over the selection of the programmes or press publications and over their organisation, for the purposes of the provision of a media service, regardless of the existence of liability under national law for the service provided;	
(10) ‘provider of very large online platform’ means a provider of an online platform that has been designated as a very large online platform pursuant to Article 25(4) of Regulation (EU) 2022/XXX [Digital Services Act];	
(11) ‘video-sharing platform service’ means a service as defined in Article 1(1), point (aa), of Directive 2010/13/EU;	

## IE COMMENTS

<p>(12) ‘national regulatory authority or body’ means the authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU;</p>	
<p>(13) ‘media market concentration’ means a concentration as defined in Article 3 of Regulation (EC) No 139/2004 involving at least one media service provider;</p>	
<p>(14) ‘audience measurement’ means the activity of collecting, interpreting or otherwise processing data about the number and characteristics of users of media services for the purposes of decisions regarding advertising allocation or prices or the related planning, production or distribution of content;</p>	
<p>(15) ‘State advertising’ means the placement, publication or dissemination, in any media service, of a promotional or self-promotional message, normally in return for payment or for any other consideration, by, for or on behalf of any national or regional public authority, such as national, federal or regional governments, regulatory authorities or bodies as well as state-owned enterprises or other state-controlled entities at the national or regional level, or any local government of a territorial entity of more than 1 million inhabitants;</p>	

## IE COMMENTS

<p>(16) ‘spyware’ means any product with digital elements specially designed to exploit vulnerabilities in other products with digital elements that enables the covert surveillance of natural or legal persons by monitoring, extracting, collecting or analysing data from such products or from the natural or legal persons using such products, in particular by secretly recording calls or otherwise using the microphone of an end-user device, filming natural persons, machines or their surroundings, copying messages, photographing, tracking browsing activity, tracking geolocation, collecting other sensor data or tracking activities across multiple end-user devices, without the natural or legal person concerned being made aware in a specific manner and having given their express specific consent in that regard;</p>	
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## IE COMMENTS

(17) ‘serious crime’ means any of the following criminal offences listed in Article 2(2) of the Council Framework Decision 2002/584/JHA<sup>58</sup>:

- (a) terrorism,
- (b) trafficking in human beings,
- (c) sexual exploitation of children and child pornography,
- (d) illicit trafficking in weapons, munitions and explosives,
- (e) murder, grievous bodily injury,
- (f) illicit trade in human organs and tissues,
- (g) kidnapping, illegal restraint and hostage-taking,
- (h) organised or armed robbery,
- (i) rape,
- (j) crimes within the jurisdiction of the International Criminal Court.

<sup>58</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1-20).

## IE COMMENTS

<p style="text-align: center;"><b>Chapter II</b> <b>Rights and duties of media service providers and recipients</b> <i>Article 3</i> Rights of recipients of media services</p>	
<p>Recipients of media services in the Union shall have the right to receive a plurality of news and current affairs content, produced with respect for editorial freedom of media service providers, to the benefit of the public discourse.</p>	
<p style="text-align: center;"><i>Article 4</i> Rights of media service providers</p>	
<p>1. Media service providers shall have the right to exercise their economic activities in the internal market without restrictions other than those allowed under Union law.</p>	

## IE COMMENTS

<p>2. Member States shall respect effective editorial freedom of media service providers.</p> <p>Member States, including their national regulatory authorities and bodies, shall not:</p> <p>(a) interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers;</p> <p>(b) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, their employees or their family members, or their corporate and private premises, on the ground that they refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest, in accordance with Article 52(1) of the Charter and in compliance with other Union law;</p> <p>(c) deploy spyware in any device or machine used by media service providers or, if applicable, their family members, or their employees or their family members, unless the deployment is justified, on a case-by-case basis, on grounds of national security and is in compliance with Article 52(1) of the Charter and other Union law or the deployment occurs in serious crimes investigations of one of the aforementioned persons, it is provided for under national law and is in compliance with Article 52(1) of the Charter and other Union law, and measures adopted pursuant to sub-paragraph (b) would be inadequate and insufficient to obtain the information sought.</p>	<p>Notwithstanding support for the overall goal of enhancing media freedom, our Ministry of Justice have noted the following concerns:</p> <ul style="list-style-type: none"><li>• Article 114 TFEU dealing with the internal market is an inappropriate legal base for legislation which is in effect regulating policing powers.</li><li>• Per Article 4(2) TFEU, National Security remains the sole responsibility of Member States, and the Union does not have the competence to legislate in this space</li></ul>
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## IE COMMENTS

<p>3. Without prejudice and in addition to the right to effective judicial protection guaranteed to each natural and legal person, Member States shall designate an independent authority or body to handle complaints lodged by media service providers or, if applicable, their family members, their employees or their family members, regarding breaches of paragraph 2, points (b) and (c). Media service providers shall have the right to request that authority or body to issue, within three months of the request, an opinion regarding compliance with paragraph 2, points (b) and (c).</p>	
<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;">Safeguards for the independent functioning of public service media providers</p>	
<p>1. Public service media providers shall provide in an impartial manner a plurality of information and opinions to their audiences, in accordance with their public service mission.</p>	

## IE COMMENTS

<p>2. The head of management and the members of the governing board of public service media providers shall be appointed through a transparent, open and non-discriminatory procedure and on the basis of transparent, objective, non-discriminatory and proportionate criteria laid down in advance by national law.</p> <p>The duration of their term of office shall be established by national law, and be adequate and sufficient to ensure effective independence of the public media service provider. They may be dismissed before the end of their term of office only exceptionally where they no longer fulfil the legally predefined conditions required for the performance of their duties laid down in advance by national law or for specific reasons of illegal conduct or serious misconduct as defined in advance by national law.</p> <p>Dismissal decisions shall be duly justified, subject to prior notification to the person concerned, and include the possibility for judicial review. The grounds for dismissal shall be made available to the public.</p>	
<p>3. Member States shall ensure that public service media providers have adequate and stable financial resources for the fulfilment of their public service mission. Those resources shall be such that editorial independence is safeguarded.</p>	<p>Recital 18 refers to the need to guarantee that public service media providers benefit from ‘sufficient and stable funding’ rather than ‘adequate and stable financial resources’. We would suggest that the language in Recital 18 and Article 5(3) is aligned to avoid any interpretive confusion that might arise and suggest ‘sufficient and stable funding’ is used throughout.</p>
<p>4. Member States shall designate one or more independent authorities or bodies in order to monitor compliance with paragraphs 1 to 3.</p>	<p>CION comments at Working Party suggested the role of the independent body could be limited to reporting (in particular in relation to funding which is a decision to be taken by Government).</p>

## IE COMMENTS

	<p>This should be reflected in the text. Suggested revision:</p> <p>“Member States shall designate one or more independent authorities or bodies in order to <del>monitor compliance with</del> <b>review and report on</b> paragraphs 1 to 3.”</p>
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## **NL COMMENTS:**

- We as NL do not yet have an official position and are still in the process of analysis. However, we do have a few preliminary comments that have emerged from internal consultations.
- The Commission has clarified that the Board has no competence on Chapter 2. However, we wonder how this relates to Article 12 (Chapter III), where this Board is tasked with promoting effective and consistent implementation of the entire regulation?
- Article 4(2)(C) prohibits the use of spyware by MS. This term is not further defined and does not seem technologically neutral to us. What about, for instance, surveillance software and or hacking systems? It strikes us that a specific detection technique is highlighted for further regulation. In our view, discussions on competence, and what conditions and safeguards apply to them, should not be confused with discussions on technical capabilities. Can the Commission explain why spyware was specifically chosen?

## **SK COMMENTS**

### **EMFA Regulation – Articles 1 to 5 Slovakia comments**

Regarding Articles 1 – 5, the Slovak delegation has no further comments beyond those raised at the AVMWP meeting on 13 October 2022.

Slovakia enters a general scrutiny reservation until the completion of national consultations on the proposal for the regulation. We expect that the consultations should be concluded by 30 November 2022 (following the completion of the intersectoral comment process on the proposal for an official preliminary opinion on the proposal for the regulation).