

## Amendments to

# Commission’s 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, EMFA) and amending Directive 2010/13/EU (Text with EEA relevance) (2022/0277 (COD))

December 19, 2022

Commission’s Proposal	ZVEI amendments	
<p><b>Recital (28)</b>            Ensuring a consistent regulatory practice regarding this Regulation and Directive 2010/13/EU is essential. For this purpose, and to contribute to ensuring a convergent implementation of EU media law, the Commission may issue guidelines on matters covered by both this Regulation and Directive 2010/13/EU when needed. When deciding to issue guidelines, the Commission should consider in particular regulatory issues affecting a significant number of Member States or those with a cross-border element. This is the case in particular for national measures taken under Article 7a of Directive 2010/13/EU on the appropriate prominence of audiovisual media services of general interest. In view of the abundance of information and the increasing use of</p>	<p><b>Recital (28)</b>            Ensuring a consistent regulatory practice regarding this Regulation and Directive 2010/13/EU is essential. For this purpose, and to contribute to ensuring a convergent implementation of EU media law, the Commission may issue guidelines on matters covered by both this Regulation and Directive 2010/13/EU when needed. When deciding to issue guidelines, the Commission should consider in particular regulatory issues affecting a significant number of Member States or those with a cross-border element. This is the case in particular for national measures taken under Article 7a of Directive 2010/13/EU on the appropriate prominence of audiovisual media services of general interest. <del>In view of the abundance of information and the increasing</del></p>	<p>ZVEI does not detect an unlevel playing field to the detriment of content that is generally in scope of prominence rules. On the contrary, the introduction of prominence rules has the potential of further consolidating the market position of already strong media services providers (e.g., public service broadcasters). In consequence, market entry of new media services providers or such originating from another Member State will be more difficult in countries which apply prominence regulation. The corresponding part of the recital should thus be deleted.</p> <p>The AVMSD allows Member States to create rules for prominence regulation (Art. 7a AVMSD), but without providing any guardrails. This leaves too much room for divergent national solutions, which</p>

<p>digital means to access the media, it is important to ensure prominence for content of general interest, in order to help achieving a level playing field in the internal market and compliance with the fundamental right to receive information under Article 11 of the Charter of Fundamental Rights of the Union. Given the possible impact of the national measures taken under Article 7a on the functioning of the internal media market, guidelines by the Commission would be important to achieve legal certainty in this field. It would also be useful to provide guidance on national measures taken under Article 5(2) of Directive 2010/13/EU with a view to ensuring the public availability of accessible, accurate and up-to-date information related to media ownership. In the process of preparing its guidelines, the Commission should be assisted by the Board. The Board should in particular share with the Commission its regulatory, technical and practical expertise regarding the areas and topics covered by the respective guidelines.</p>	<p><del>use of digital means to access the media, it is important to ensure prominence for content of general interest, in order to help achieving a level playing field in the internal market and compliance with the fundamental right to receive information under Article 11 of the Charter of Fundamental Rights of the Union.</del>  Given the possible impact of the national measures taken under Article 7a on the functioning of the internal media market, <del>guidelines by the Commission would be</del> <b>it is important to achieve legal certainty in this field and develop a harmonized legal framework for the implementation of prominence measures based on Article 7a that prevents Member States from adopting diverging rules that would ultimately force providers of user interfaces to develop specific user interfaces for different parts of the internal market. The framework should further consider that the design of user interfaces of devices is an important distinctive feature among competitors. Requirements that lead to a uniform design must be prevented.</b>  It would also be useful to provide guidance on national measures taken under Article 5(2) of Directive 2010/13/EU with a view to ensuring the public availability of accessible, accurate and up-to-date information related to media ownership. In the process of preparing its guidelines, the Commission should be assisted by the Board. The Board should in particular share with the Commission its regulatory, technical and practical expertise regarding the areas and topics covered by the respective guidelines.</p>	<p>are increasingly fragmenting the internal market. The proposed non-binding guidelines cannot achieve harmonization and do not lead to more legal certainty. ZVEI therefore calls for a binding solution instead of widely differing national transpositions. The Commission should thus develop a reliable legal framework by the means of implementing acts (<i>comp. proposal for Art. 15 para 4</i>). It should distinguish between two levels, i.e., (i) rules on selection of prominence content which are and should remain different in Member States and (ii) rules on the findability/accessibility of prominent content which need to be harmonized to prevent the need for different devices and user interfaces in the internal market (e.g., one- or two-click access to all prominent content plus a search function is sufficient).  In any event, the European concept of prominence should set up a framework which respects the users' sovereignty, entrepreneurial freedom, and technical feasibility.</p>
<p><b>Recital (37)</b>  Recipients of audiovisual media services should be able to effectively choose the audiovisual content they want to watch according to their preferences. Their freedom in this area may however be constrained by commercial practices in the media sector, namely agreements for content prioritisation</p>	<p><b>Recital (37)</b>  Recipients of audiovisual media services should be able to effectively choose the audiovisual content they want to watch according to their preferences. Their freedom in this area may however be constrained by commercial practices in the media sector, namely agreements for content prioritisation</p>	<p>In any event, Media services that are to be made prominent under national prominence rules should not be excluded from the customization options. Otherwise, this provision would represent a step backwards compared to the status quo in restricting the customization options that are</p>

<p>between manufacturers of devices or providers of user interfaces controlling or managing access to and use of audiovisual media services, such as connected televisions, and media service providers. Prioritisation can be implemented, for example, on the home screen of a device, through hardware or software shortcuts, applications and search areas, which have implications on the recipients' viewing behaviour, who may be unduly incentivised to choose certain audiovisual media offers over others. Service recipients should have the possibility to change, in a simple and user-friendly manner, the default settings of a device or user interface controlling and managing access to, and use of, audiovisual media services, without prejudice to measures to ensure the appropriate prominence of audiovisual media services of general interest implementing Article 7a of Directive 2010/13/EC, taken in the pursuit of legitimate public policy considerations.</p>	<p>between <del>manufacturers of devices or</del> providers of user interfaces controlling or managing access to and use of audiovisual media services, such as connected televisions, and media service providers. Prioritisation can be implemented, for example, on the home screen of a <b>user interface device</b>, through hardware or software shortcuts, applications and search areas, <del>which have implications on the recipients' viewing behaviour, who may be unduly incentivised to choose certain audiovisual media offers over others</del>. Service recipients should have the possibility to <del>change</del> <b>customize</b>, in a simple and user-friendly manner, the <b>arrangement of applications or content of audiovisual media services within a default settings of a device or</b> user interface controlling and managing access to, and use of, audiovisual media services. <b>This could, for example, be implemented by the creation of a list of favorites. without prejudice to measures to ensure the appropriate prominence of audiovisual media services of general interest implementing Article 7a of Directive 2010/13/EC, taken in the pursuit of legitimate public policy considerations.</b> User interface elements primarily serving the operation of the relevant devices as such (e.g., menu guides) or other elements of the user interface that are unrelated to the use of audiovisual media services do not need to be subject to customisation by the user.</p>	<p>available to users. Media offers which must be made prominent according to national regulation based on Art. 7a AVMSD should not be fixed on user interfaces with no possibility to change. Otherwise, the potential risk of abuse, which is inherent to the concept of prominence, would be deprived of any possibility of correction (<i>comp. alternate proposal Art. 19 para 2</i>).</p> <p>The term "default settings" is too broad, since it would include user interface elements primarily serving the operation of the devices as such (e.g., menu guides) or other elements of the user interface that are unrelated to the use of the audiovisual media services or elements that would require a change of hardware. Such elements should be clearly excluded from the scope of Art. 19 MFA to avoid technical implementation efforts that would be disproportionate to the goal of easy access of content.</p>
<p>... (17)</p>	<p>[Add after (17)]</p> <p><b>(18) 'user interface' means a service that provides a textual or visual overview of audiovisual media services or their content, which serves the purpose of orientation and directly enables the selection of services or content by the user.</b></p>	<p>In Art. 19 the EMFA sets up obligations for user interface providers which we believe are not serving the purpose of the EMFA (see above). If they are nevertheless retained, it would be necessary to include a definition of 'user interface' and 'user interface provider' in Art. 2.</p> <p>Given that not all devices run their own user interfaces (or operating systems) but, in some</p>

	<p><b>(19) ‘user interface provider’ means the natural or legal person whose professional activity is to provide a user interface and who determines predominately on the design of the overview of media services and the order or manner in which they are presented.</b></p>	<p>cases, those of independent third parties, it must be made clear, that the provider of a user interface (i.e., the person that is subject to Art. 19 para 2) is the party which determines the design of the relevant overviews, and the technical features of the user interface</p>
<p><b>Article 12 Tasks of the Board</b>  Without prejudice to the powers granted to the Commission by the Treaties, the Board shall promote the effective and consistent application of this Regulation and of national rules implementing Directive 2010/13/EU throughout the Union. The Board shall:</p> <p>(a) (...)</p> <p>(j) foster cooperation on technical standards related to digital signals and the design of devices or user interfaces, in accordance with Article 15(4) of this Regulation;</p> <p>(l) (...)</p>	<p><b>Article 12 Tasks of the Board</b>  Without prejudice to the powers granted to the Commission by the Treaties, the Board shall promote the effective and consistent application of this Regulation and of national rules implementing Directive 2010/13/EU throughout the Union. The Board shall:</p> <p>(a) (...)</p> <p><del>(j) foster cooperation on technical standards related to digital signals and the design of devices or user interfaces, in accordance with Article 15(4) of this Regulation;</del></p> <p>(l) (...)</p>	<p>A solution that involves harmonized standards should always be sought within the existing European and international standardisation bodies. Thus, it remains unclear why Art. 12 (j) in connection with Art. 15 para 4 calls for fostering the cooperation between audiovisual media service providers, regulatory authorities, manufactures, and developers on ‘technical standards’. Any new mechanism would only be desirable in the event of an unlevel “playing field” in the existing European and international harmonised standardisation. ZVEI does not observe any shortcomings in European or international standardisation that would require the creation of an alternative working group.</p> <p>Apart from the misleading wording (‘technical standards’), it is unclear which regulatory gap this proposal addresses. On the one hand, digital signals for the reception of audiovisual media services are already standardised worldwide (DVB project). On the other hand, the design of devices or their user interfaces should not be subject to any kind of standardisation. For manufactures, the individual design of devices and user interfaces are key competitive factors. Any regulatory intervention in the design of devices or user interfaces would disproportionately infringe entrepreneurial freedom and restrict innovations. Without being able to demonstrate a regulatory necessity for such a serious intervention, this measure cannot be justified and should thus be deleted. In consequence, Art. 15 para 4 should be deleted for the same reasons.</p>

<p><b>Article 15 Guidance on media regulation matters</b></p> <p>1. The Board shall foster the exchange of best practices among the national regulatory authorities or bodies, consulting stakeholders, where appropriate, and in close cooperation with the Commission, on regulatory, technical or practical aspects pertinent to the consistent and effective application of this Regulation and of the national rules implementing Directive 2010/13/EU.</p> <p>2. Where the Commission issues guidelines related to the application of this Regulation or the national rules implementing Directive 2010/13/EU, the Board shall assist it by providing expertise on regulatory, technical or practical aspects, as regards in particular:</p> <p>(a) the appropriate prominence of audiovisual media services of general interest under Article 7a of Directive 2010/13/EU;</p> <p>(b) making information accessible on the ownership structure of media service providers, as provided under Article 5(2) of Directive 2010/13/EU.</p> <p>3. The Commission may issue an opinion on any matter related to the application of this Regulation and of the national rules implementing Directive 2010/13/EU. The Board shall assist the Commission in this regard, where requested.</p> <p>4. The Board shall foster cooperation between media service providers, standardization bodies or any other relevant stakeholders in order to facilitate the development of technical standards related to digital signals or design of devices or user interfaces controlling or managing access to and use of audiovisual media services.</p>	<p><b>Article 15 Guidance on media regulation matters</b></p> <p>1. The Board shall foster the exchange of best practices among the national regulatory authorities or bodies, consulting stakeholders, where appropriate, and in close cooperation with the Commission, on regulatory, technical or practical aspects pertinent to the consistent and effective application of this Regulation and of the national rules implementing Directive 2010/13/EU.</p> <p>2. Where the Commission issues guidelines related to the application of this Regulation or the national rules implementing Directive 2010/13/EU, the Board shall assist it by providing expertise on regulatory, technical or practical aspects, as regards in particular:</p> <p>(a) the <del>selection appropriate prominence</del> of audiovisual media services of general interest under Article 7a of Directive 2010/13/EU;</p> <p>(b) making information accessible on the ownership structure of media service providers, as provided under Article 5(2) of Directive 2010/13/EU.</p> <p>3. The Commission may issue an opinion on any matter related to the application of this Regulation and of the national rules implementing Directive 2010/13/EU. The Board shall assist the Commission in this regard, where requested.</p> <p><b>4. The Board shall foster cooperation between media service providers, standardization bodies or any other relevant stakeholders in order to facilitate the development of technical standards related to digital signals or design of devices or user interfaces controlling or managing access to and use of audiovisual media services.</b></p> <p><b>4.-The Commission shall adopt implementing acts laying down uniform conditions for the implementation of appropriate prominence of audiovisual media services of general interest under Article 7a of Directive 2017/13 EU. The Board shall assist the Commission in this regard, where requested.</b></p>	<p>It is the right approach to aim for more harmonisation of the national regulations on prominence of content of general interest. While non-binding guidelines are appropriate regarding the selection of specific content that should be subject to prominence rules at the Member State level, they would only have limited effect on the current trend towards a diverging technical implementation of the Art. 7a AVMSD.</p> <p>Nonetheless, legal certainty is a basic requirement for manufacturers of consumer devices who sell TVs, set-top-boxes, and TV sticks on the entire internal market. It is therefore necessary to further strengthen the legal framework to safeguard the competitiveness of the internal market. ZVEI calls for a more reliable legal framework for rules governing the findability and access to content that is subject to prominence rules (see above) which creates legal certainty on the entire internal market beyond non-binding guidelines: An implementing act by the Commission would prevent Member States from adopting diverging prominence rules and would ensure uniform conditions for the implementation of prominence of audiovisual media services of general interest (new para. 4).</p>
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<p><b>Article 19 Right of customisation of audiovisual media offer</b></p> <p>1.Users shall have a right to easily change the default settings of any device or user interface controlling or managing access to and use of audiovisual media services in order to customise the audiovisual media offer according to their interests or preferences in compliance with the law. This provision shall not affect national measures implementing Article 7a of Directive 2010/13/EU.</p> <p>2.When placing the devices and user interfaces referred to in paragraph 1 on the market, manufacturers and developers shall ensure that they include a functionality enabling users to freely and easily change the default settings controlling or managing access to and use of the audiovisual media services offered.</p>	<p><del><b>Article 19 Right of customisation of audiovisual media offer</b></del></p> <p><del>1. Users shall have a right to easily change the default settings of any device or user interface controlling or managing access to and use of audiovisual media services in order to customise the audiovisual media offer according to their interests or preferences in compliance with the law. This provision shall not affect national measures implementing Article 7a of Directive 2010/13/EU.</del></p> <p><del>2. When placing the devices and user interfaces referred to in paragraph 1 on the market, manufacturers and developers shall ensure that they include a functionality enabling users to freely and easily change the default settings controlling or managing access to and use of the audiovisual media services offered.</del></p>	<p>We believe customization is a helpful tool for user convenience and important for competitors to individually design their products. However, it is not needed nor even helpful in the context of safeguarding media freedom and therefore not justified under the legal basis of the EMFA. We would therefore suggest deleting Art. 19.</p>
	<p><b>Article 19 Right of customisation of audiovisual media offer</b></p> <p>1.Users shall have a right to easily <b>customize the arrangement of applications or content of audiovisual media services change the default settings of on a any device or</b> user interface controlling or managing access to and use of audiovisual media services <b>based on in order to customise the audiovisual media offer according to</b> their interests or preferences in compliance with the law. <b>This provision shall not affect national measures implementing Article 7a of Directive 2010/13/EU.</b></p> <p>2.When placing user interfaces <del>referred to in paragraph 1</del> on the market, <del>manufacturers and developers providers of user interfaces</del> shall ensure that they include a functionality enabling users to <b>freely and easily make the customization referred to in Paragraph 1 by taking appropriate measures such as allowing users to create favorites lists or watchlists change the default settings controlling or</b></p>	<p>If the provision is nevertheless retained, the last sentence of Art. 19 para. 1 must not prohibit customization options for Media services which have to be made prominent according to national regulation on the basis of Art. 7a AVMSD should not be fixed on user interfaces with no possibility to change (<i>comp. recital 37</i>).</p> <p>The term “default settings” is too broad and should be specified to the arrangement of applications and content. By contrast, user interface elements primarily serving the operation of the devices as such (e.g., menu guides) or other elements of the user interface that are unrelated to the use of the audiovisual media services and any customization that would require changes to the hardware (“device”) should be clearly excluded from the scope of Art. 19 MFA to avoid divergent interpretations</p> <p>A right to rearrange or sort the media offer on user interfaces should also only apply insofar as its</p>



	<p><del>managing access to and use of the audiovisual media services offered.</del></p> <p><b>3. Paragraph 1 and 2 shall not apply to user interfaces if their implementation is technically impossible or only possible with disproportionate effort.</b></p>	<p>implementation would be technically feasible and could be realised with proportionate effort. For that reason, it is also necessary to delete the “freely” in Art. 19 para. 2. It would be disproportionate to require user interface providers to allow users to change just any visual element of the relevant service.</p>
<p><b>Article 28 Entry into force and application</b></p> <p>1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.</p> <p>2. This Regulation shall apply from [6 months after the entry into force]. However, Articles 7 to 12 and 27 shall apply from [3 months after the entry into force] and Article 19(2) shall apply from [48 months after the entry into force].</p> <p>3. This Regulation shall be binding in its entirety and directly applicable in all Member States.</p>	<p><b>Article 28 Entry into force and application</b></p> <p>1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.</p> <p>2. This Regulation shall apply from [6 months after the entry into force]. However, Articles 7 to 12 and 27 shall apply from [3 months after the entry into force] and Article 19 <del>(2)</del> shall apply from [48 months after the entry into force].</p> <p>3. This Regulation shall be binding in its entirety and directly applicable in all Member States.</p>	<p>It is important to properly align the transitional periods. As currently drafted, the 48-month transitional period in Art.28 para 2 EMFA only applies to the obligation to facilitate customization in Art. 19 para 2 EMFA. It does not apply to the users' right to customization in Art. 19 para 1 MFA, which would thus apply from 6 months after the MFA's entry into force. To avoid contradictory implementation deadlines, it is necessary to correct this assumed editorial oversight.</p>

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