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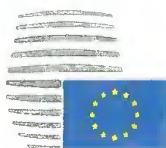
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Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU - Letter to the Chair of the European Parliament Committee on Culture and Education

Following the Permanent Representatives Committee meeting of 19 January 2024 which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency sent the attached letter, together with its Annex, to the Chair of the European Parliament Committee on Culture and Education (CULT).



**Council of
the European Union**

SGS 24 / 000226

Brussels, 19 January 2024

Mrs Sabine VERHEYEN

Chair and Rapporteur, European Parliament Committee on Culture and Education
European Parliament
60, rue Wiertz
1047 BRUSSELS

Subject: *Proposal for a Regulation of the European Parliament and of the Council
establishing a common framework for media services in the internal market
(European Media Freedom Act) and amending Directive 2010/13/EU*

Dear Mrs Verheyen,

Following the informal meeting between the representatives of the three institutions held on 15 December 2023, a draft overall compromise text was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise text contained in the Annex to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this file at first reading.

Yours sincerely,

Pierre CARTUYVELS
Chairman of the Permanent Representatives
Committee (Part 1)

copy to: Věra JOUROVÁ, Vice-President of the Commission,
Thierry BRETON, Commissioner,
Ramona STRUGARIU, Rapporteur for opinion, EP LIBE Committee
Geoffroy DIDIER, Rapporteur for opinion, EP IMCO Committee

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Independent media services play a unique role in the internal market. They represent a fast-changing and economically important sector and at the same time provide access to a plurality of views and reliable sources of information to citizens and businesses alike, thereby fulfilling the general interest function of ‘public watchdog’ ***and constituting an indispensable factor in the process of the formation of public opinion.*** Media services are

increasingly available online and across borders while they are not subject to the same rules and the same level of protection in different Member States. *While some matters related to the audiovisual media sector have been harmonised at the Union level through Directive 2010/13/EU of the European Parliament and of the Council¹, the scope and matters covered by that Directive are limited. Moreover, the radio or press sectors are not covered by that Directive, despite their increasing cross-border relevance in the internal market.*

- (2) Given their unique role, the protection of media freedom and pluralism *as main pillars of democracy and rule of law constitute* an essential feature of a well-functioning internal market for media services (or ‘internal media market’). This market, *including audiovisual media services as well as radio and press*, has substantially changed since the beginning of the new century, becoming increasingly digital and international. It offers many economic opportunities but also faces a number of challenges. The Union should help the media sector *so that it can* seize those opportunities within the internal market, while at the same time protecting the values, such as the protection of the fundamental rights, that are common to the Union and to its Member States.
- (3) In the digital media space, citizens and businesses access and consume media content *and services*, immediately available on their personal devices, increasingly in a cross-border setting. *This is the case both for audiovisual media as well as for the press and radio which are easily accessible (for example via online news portals or podcasts) through the Internet. The availability of content in a number of languages and the easy access through smart devices, such as smartphones or tablets increases the cross-border relevance of media services, already established in a judgment of the Court of Justice². This relevance is underpinned by the growing use and acceptance of automatic translation or subtitling tools which reduces the linguistic barriers within the internal market, and the convergence of the different types of media, combining audiovisual and non-audiovisual content in the same offer.*
- (4) However, the internal market for media services is insufficiently integrated, *and suffers*

¹ *Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).*

² *Judgment of the Court of Justice of 12 December 2006, Germany v Parliament and Council, C-380/03, ECLI:EU:C:2006:772, paragraphs 53 and 54.*

*from a number of market failures that are increased by the digitalisation. First, global online platforms act as gateways to media content, with business models that tend to disintermediate access to media services and amplify polarising content and disinformation. These platforms are also essential providers of online advertising, which has diverted financial resources from the media sector, affecting its financial sustainability, and consequently the diversity of content on offer. As media services are knowledge- and capital-intensive, they require scale to remain competitive, to meet their audiences' needs and to thrive in the internal market. To that effect, the possibility to offer services across borders and obtain investment including from or in other Member States is particularly important. Second, a number of national restrictions hamper **the** free movement within the internal market. In particular, different national rules and approaches related to media pluralism and editorial independence, insufficient cooperation between national regulatory authorities or bodies as well as opaque and unfair allocation of public and private economic resources make it difficult for media market players to operate and expand across borders and lead to an uneven level playing field across the Union. **Third, the good functioning** of the internal market for media services **is** challenged by providers **(including those controlled by certain third countries)** that systematically engage in disinformation, including information manipulation and interference, and **use** the internal market freedoms **for abusive purposes, thus thwarting the proper functioning of market dynamics.***

- (4a) The fragmentation of rules and approaches which characterises the media market in the Union negatively affects to varying degrees the conditions for the exercise of economic activities in the internal market by media service providers in different sub-sectors, including the audiovisual, radio, and press sub-sectors, and undermines their capability to efficiently operate cross-border or establish operations in other Member States. National measures and procedures could be conducive to media pluralism in a Member State, but the divergence and lack of coordination between Member States' national measures and procedures may lead to legal uncertainty and additional costs for media companies willing to enter new markets, and prevent them from benefiting from the scale of the internal market for media services. Moreover, discriminatory or protectionist national measures affecting the operation of media companies disincentivise cross-border investment in the media sector and in some cases may force media companies that are already operating in a given market to exit it. These obstacles affect companies*

active both in the broadcasting (including audiovisual and radio) and press sub-sectors. Although the fragmentation of editorial independence safeguards concerns all media sub-sectors, it affects the press sector especially as national regulatory or self-regulatory approaches differ more in relation to the press. The internal market for media services may also be affected by insufficient tools for regulatory cooperation between national regulatory authorities, which is key for ensuring that media market players (often active in different media subsectors) systematically engaging in disinformation, including foreign information manipulation and interference, do not benefit from the scale of the internal market for media services. Furthermore, while biased allocation of economic resources, in particular in the form of state advertising, is used to covertly subsidise media outlets in all the media sub-sectors, it tends to have a particularly negative impact on the press, which has been weakened by decreasing levels of advertising revenues. Finally, the challenges stemming from the digital transformation reduce the ability of companies in all media sub-sectors, and in particular the smaller ones in the radio and press sector, to compete on a level playing field with online platforms, which play a key role in online distribution of content.

- (5) Moreover, in response to challenges to media pluralism and media freedom online, some Member States have taken regulatory measures and other Member States are likely to do so, with a risk of furthering the divergence in national approaches and restrictions to free movement in the internal market. *Therefore, it is necessary to harmonise certain aspects of national rules related to media pluralism or editorial independence, thereby guaranteeing high standards in this area.*
- (6) Recipients of media services in the Union (natural persons who are nationals of Member States or benefit from rights conferred upon them by Union law and legal persons established in the Union) should be able to **█** enjoy *pluralistic media content produced in accordance with editorial freedom* in the internal market. *This is key for fostering public discourse and civic participation, as a broad range of reliable sources of information and quality journalism empowers citizens to make informed choices, including about the state of their democracies. It is also essential for cultural and linguistic diversity in the Union given the role of media services as carriers of cultural expression. Member States should respect the right to a plurality of media content and contribute to an enabling media environment by making sure that relevant framework conditions are in place. Such approach reflects the right to receive and impart information and the requirement to*

respect media freedom and media pluralism pursuant to Article 11 of the Charter of Fundamental Rights of the European Union (‘the Charter’), *in conjunction with Article 22 of the Charter which requires the Union to respect cultural, religious and linguistic diversity. Furthermore, in fostering the cross-border flow of media services, a minimum level of protection of service recipients should be ensured in the internal market.* In the final report of the Conference on the Future of Europe, citizens called on the EU to further promote media independence and pluralism, in particular by introducing legislation addressing threats to media independence through EU-wide minimum standards³. *It is thus necessary to harmonise certain aspects of national rules related to media services, taking also in consideration Article 167 of the TFEU, which reaffirms the importance of respecting the national and regional diversity of the Member States. However, Member States should have the possibility to adopt more detailed or stricter rules in specific fields, provided that those rules, ensure a higher level of protection of media pluralism or editorial independence, in line with this Regulation and comply with Union law and that Member States do not restrict the free movement of media services from other Member States which comply with the rules laid down in these fields. Member States should also retain the possibility to maintain or adopt measures to preserve media pluralism or editorial independence at national level regarding aspects not covered by this Regulation insofar as such measures comply with Union law, including Regulation (EU) 2022/2065 of the European Parliament and of the Council⁴. It is also appropriate to recall that this Regulation respects the Member States’ responsibilities as referred to in Article 4(2) TEU, in particular their powers to safeguard essential state functions.*

- (7) For the purposes of this Regulation, the definition of a media service should be limited to services as defined by the Treaty and therefore should cover any form of economic activity. *The definition of a media service should cover in particular television or radio broadcasts, on-demand audiovisual media services, audio podcasts or press publications.* This definition should exclude user-generated content uploaded to an online platform unless it constitutes a professional activity normally provided for consideration (be it of financial or of other nature). It should also exclude purely private correspondence, such as

³ *Conference on the Future of Europe – Report on the Final Outcome, May 2022, in particular proposal 27 (1) and 37 (4).*

⁴ *Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).*

e-mails, as well as all services that do not have the provision of audiovisual or audio programmes or press publications as their principal purpose, meaning where the content is merely incidental to the service and not its principal purpose, such as advertisements or information related to a product or a service provided by websites that do not offer media services. ***Corporate communication and distribution of informational or promotional materials for public or private entities should be excluded from the scope of this definition. Furthermore, since the operation of media service providers in the internal market may take different forms, the definition of media service provider should cover a wide spectrum of professional media actors falling within the scope of this definition, including freelancers.***

- (7a) ***Public service media providers should be understood as those concurrently entrusted with a public service remit and receiving public funding for the fulfilment thereof. This should not cover private media undertakings that have agreed to carry out certain specific tasks of general interest in return for payment, as a limited part of their activities.***
- (8) In the digitalised media market, providers of video-sharing platforms or very large online platforms may fall under the definition of media service provider. In general, such providers play a key role in the content organisation, including by automated means or algorithms, but do not exercise editorial responsibility over the content to which they provide access. However, in the increasingly convergent media environment, some providers of video-sharing platforms or very large online platforms have started to exercise editorial control over a section or sections of their services. Therefore, ***when such entities exercise editorial control over a section or sections of their services, they*** could be qualified both as a video-sharing platform provider or a very large online platform provider and as a media service provider.
- (9) The definition of audience measurement should cover measurement systems developed as agreed by industry standards within self-regulatory organisations, like the Joint Industry Committees, and measurement systems developed outside such self-regulatory approaches. The latter tend to be deployed by certain online players, ***including online platforms***, who self-measure or provide their proprietary audience measurement systems to the market, ***without abiding*** by the commonly agreed industry standards ***or best practices***. Given the significant impact that such audience measurement systems have on the advertising and

media markets, they should be covered by this Regulation. *In particular, the capacity to provide access to media content and the ability to target their users with advertising allow online platforms to compete with the media service providers whose content they distribute. Thus, the definition of ‘audience measurement’ set out in this Regulation should be understood as also including measurement systems enabling to collect, interpret, or otherwise process information about the use of media content and content created by users on online platforms that are primarily used to access such content. This would ensure that also providers of audience measurement that are intermediaries involved in content distribution are transparent about their audience measurement activities, fostering the ability of media service providers and advertisers to make informed choices.*

- (10) State advertising should be understood broadly as covering promotional or self-promotional activities, *public announcements or information campaigns* undertaken by, for or on behalf of a wide range of public authorities or entities, including *national or subnational* governments, regulatory authorities or bodies as well as *entities controlled by national or subnational governments*. *Such control can result from rights, contracts or any other means which confer the possibility of exercising decisive influence on an entity. In particular, ownership of capital or the right to use all or part of the assets or rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an entity are relevant factors, as laid down in Article 3(2) of Council Regulation (EC) No 139/2004⁵*. However, the definition of state advertising should not include *official announcements that are justified by an overriding reason of public interest, such as* emergency messages by public authorities which are necessary, for example, in cases of natural or sanitary disasters, accidents or other sudden incidents that can cause harm to individuals. *Where the emergency situation has ended, announcements pertaining to that emergency and placed, promoted, published or disseminated in return for payment or for any other consideration should be considered state advertising for the purposes of this Regulation.*
- (11) In order to ensure that society reaps the benefits of the internal media market, it is essential not only to guarantee the fundamental freedoms under the Treaty, but also the legal

⁵ *Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1-22).*

certainty which *is needed for the enjoyment of benefits of an integrated and developed market. Recipients of media services should be able to access* quality media services *in a well-functioning internal market*, which have been produced by journalists **█** in an independent manner and in line with *ethical and* journalistic standards and hence provide trustworthy information *This is particularly relevant for news and current affairs content, which comprises a wide category of content of political, societal or cultural interest, (at local, national or international level)*. News and current affairs content *has the potential to play a major role in shaping public opinion and has a direct impact on democratic participation and societal well-being. In this context, news and current affairs content should be understood as covering any type of news and current affairs content, regardless of the form it takes. News and current affairs content can reach audiences in diverse formats, such as documentaries, magazines or talk-shows, and can be disseminated in diverse ways, including by means of uploading it on online platforms.* Quality media services are also an antidote against disinformation, including foreign information manipulation and interference. *Access to such services should also be ensured by preventing attempts to silence journalists, ranging from threats and harassments to censorship and cancelling of dissenting opinions, which may limit the free flow of information into the public sphere by reducing the quality and plurality of information. The right to a plurality of content does not entail any correspondent obligation on any given media service provider to adhere to standards not set out explicitly by law.*

- (12) This Regulation does not affect the freedom of expression *and information* guaranteed to individuals under the Charter. The European Court of Human Rights has observed that in such a sensitive sector as audiovisual media, in addition to its negative duty of *non-interference*, the public powers have a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism⁶.
- (13) The free flow of trustworthy information is essential in a well-functioning internal market for media services. Therefore, the provision of media services should not be subject to any restrictions contrary to this Regulation or other rules of Union law, such as Directive 2010/13/EU **█** providing for measures necessary to protect users from illegal and harmful content. Restrictions could also derive from measures applied by national public authorities in compliance with Union law.

⁶ *Centro Europa 7 S.R.L. and Di Stefano v. Italy [GC], no 38433/09, § 134, ECHR 2012.*

- (14) The protection of editorial independence is a precondition for exercising the activity of media service providers and their professional integrity *in a safe media environment*. Editorial independence is especially important for media service providers providing news and current affairs content given its societal role as a public good. Media service providers should be able to exercise their economic activities freely in the internal market and compete on equal footing in an increasingly online environment where information flows across borders.
- (15) Member States have taken different approaches to the protection of editorial *freedom and independence*, which is increasingly challenged across the Union. In particular, there is growing interference with editorial decisions of media service providers in several Member States. Such interference can be direct or indirect, from the State or other actors, including public authorities, elected officials, government officials and politicians, for example to obtain a political advantage. Shareholders and other private parties who have a stake in media service providers may act in ways which go beyond the necessary balance between their own business freedom and freedom of expression, on the one hand, and editorial freedom of expression and the information rights of users, on the other hand, in pursuit of economic or other advantage. *Given the societal role of the media, such undue interference may negatively affect the public opinion forming process*. Moreover, recent trends in media distribution and consumption, including in particular in the online environment, have prompted Member States to consider laws aimed at regulating the provision of media content. Approaches taken by media service providers to guarantee editorial independence also vary. As a result of such interference and fragmentation of regulation and approaches, the conditions for the exercise of economic activities by media service providers and, ultimately, the quality of media services received by citizens and businesses are negatively affected in the internal market. It is thus necessary to put in place effective safeguards enabling the exercise of editorial freedom across the Union so that media service providers can independently produce and distribute their content across borders and service recipients can receive such content.
- (16) Journalists and editors are the main actors in the production and provision of trustworthy media content, in particular by reporting on news or current affairs. *Sources are tantamount to “raw material” for journalists: they are the basis for the production of media content, in particular news and current affairs content*. It is **█** therefore *crucial* to protect journalists’ capability to collect, fact-check and analyse information, *in particular*

information imparted *or communicated* confidentially, *both offline and online, which relates to or is capable of identifying journalistic sources*. Media service providers and *their editorial staff, in particular* journalists (including those operating in non-standard forms of employment, such as freelancers) should be able to rely on a robust protection of journalistic sources and *confidential* communications, including against *undue interference and* deployment of surveillance technologies. Without such protection, *the free flow of sources to the media service providers* may be deterred *and thus the free exercise of the economic activity by media service providers may be hindered, also to the detriment of information to* the public, *including* on matters of public interest. As a result, journalists' freedom to exercise their economic activity and fulfil their vital 'public watchdog' role may be *jeopardised by such obstacles*, thus affecting negatively access to quality media services. *In order to avoid circumvention of* the protection of journalistic sources *and confidential communications and guarantee adequate respect for private and family life, home and communication in accordance with the Charter, safeguards should also apply to persons who because of their regular private or professional relationship with media service providers or members of their editorial staff are likely to have information that could identify journalistic sources or confidential communications. This should include persons living in a close relationship in a joint household and on a stable and continuous basis, as well as individuals who are or have been professionally involved in the preparation, production or dissemination of programmes or press publications, who are only targeted due to their close links with media service providers, journalists or other members of the editorial staff. The protection of journalistic sources and confidential communications should also benefit staff of media service providers, such as the technical staff including cybersecurity experts, who could be targeted given their important support role to journalists in their daily work which requires solutions to ensure the confidentiality of journalists' work and the resulting likelihood that they have access to information concerning journalistic sources or confidential communications. The protection of journalistic sources and confidential communications is consistent with and* contributes to the protection of the fundamental right enshrined in Article 11 of the Charter. *It is also crucial for safeguarding the 'public watchdog' role of media service providers, and particularly of investigative journalists, in democratic societies, and for upholding rule of law. In light thereof, ensuring an adequate level of protection for journalistic sources and confidential communications requires that measures for the obtaining of such*

information are authorised by an authority that can independently and impartially assess whether this is justified by an overriding reason of public interest, such as a court, a judge, a prosecutor acting in a judicial capacity, or another such authority with competence to authorise these measures in accordance with national law. It also requires that surveillance measures are subject to regular review by such authority to ascertain if the conditions justifying the use of the measure continue to be fulfilled. This requirement is also met where the regular review is intended to verify if the conditions justifying an extension of the authorisation for the use of the measure are fulfilled. In this regard, it should also be recalled that, in line with the established case-law of the European Court of Human Rights, a right to an effective judicial protection presupposes, in principle, being informed in due time, without jeopardising the effectiveness of ongoing investigations, of the surveillance measures taken without the knowledge of the person concerned in order to effectively exercise this right. In order to further strengthen such right, it is important that media service providers, journalists as well as persons in a regular or professional relationship to them, are able to rely on an adequate assistance in the exercise of this right, which may be of legal, financial or other nature such as providing information on available judicial remedies. Such assistance could be effectively provided, for example, by an independent authority or body, or, where no such authority or body exists, a self-regulatory body or mechanism. The purpose of this Regulation is not to harmonise the concepts of “detain”, “inspect”, “search and seizure” and “surveillance” as referred to in Article 4.

- (17) The protection of journalistic sources *and confidential communications* is currently regulated heterogeneously in the Member States. Some Member States provide an absolute protection against coercing journalists to disclose information that identify their source, *including communications that are held under a commitment of confidentiality*, in criminal and administrative proceedings. Other Member States provide a qualified protection confined to judicial proceedings based on certain criminal charges, while others provide protection in the form of a general principle. This leads to fragmentation in the internal media market *and uneven standards of protection for journalistic sources and confidential communications across the Union. To that end, this Regulation introduces common minimum standards of protection for journalistic sources and confidential communications with regard to coercive measures used by Member States to obtain such information. For the purpose of ensuring the effective protection of journalistic sources*

and confidential communications, Member States should not make use of such measures, including deployment of intrusive surveillance software, in relation to media service providers, their editorial staff or any persons who, because of their regular or professional relationship with a media service provider or its editorial staff, might have information related to or capable of identifying journalistic sources or confidential communications. Moreover, media professionals, in particular journalists and other media professionals involved in editorial activities, work increasingly on cross-border projects and provide their services to cross-border audiences, and by extension providers of media services. As a result, media service providers are likely to face barriers, legal uncertainty and uneven conditions of competition. Therefore, the protection of journalistic sources and confidential communications needs harmonisation and further strengthening at Union level. This should be without prejudice to further or absolute protection at national level.

(17a) Intrusive surveillance software, including in particular what is commonly referred to as 'spyware', represents a particularly invasive form of surveillance over media professionals and their sources. It can be deployed to secretly record calls or otherwise use the microphone of an end-user device, film or photograph natural persons, machines or their surroundings, copy messages, access encrypted content data, track browsing activity, track geolocation or collect other sensor data or track activities across multiple end-user devices. It has dissuasive effects on the free exercise of the economic activities in the media sector. It jeopardises, in particular, the trusted relationship of journalists with their sources, which is the core of the journalistic profession. Given the digital and intrusive nature of spyware and the use of devices across borders, it has a particularly detrimental impact on the exercise of the economic activities of media service providers in the internal market. It is therefore necessary to ensure that media service providers, including journalists, operating in the internal media market rely on a robust harmonised protection in relation to the deployment of spyware in the Union, including when Member States' authorities resort to private parties for its deployment. In particular, the deployment of spyware should only take place if it is justified by an overriding reason of public interest, it is provided for in national law or Union law, it is in compliance with Article 52(1) of the Charter as interpreted by the Court of Justice and other Union law, it has been authorised ex ante, or, in exceptional and urgent cases, subsequently confirmed by a judicial authority or an independent and impartial

decision-making authority, it occurs in investigations of offences referred to in Article 2(2) of the Council Framework Decision 2002/584/JHA⁷, and punishable in the Member State concerned by a custodial sentence or a detention order for a maximum period of at least three years or other serious offences punishable in the Member State concerned by a custodial sentence or a detention order for a maximum period of at least five years, as determined by the law of that Member State, and if no other less restrictive measure would be adequate and sufficient to obtain the information sought. Under the principle of proportionality, limitations may be made to an individual's rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the Union. Thus, as regards specifically the deployment of intrusive surveillance software, it is necessary to ascertain that the offence in question attains the threshold of seriousness as laid down in Article 4(2)(c), that the investigation and prosecution of that offence merit, in view of an individual assessment of all the relevant circumstances in a given case, the particularly intrusive interference with the fundamental rights and economic freedoms consisting in the deployment of intrusive surveillance software, that there is sufficient evidence of the commission of that offence, and that the deployment of intrusive surveillance software is relevant for the purpose of establishing the facts related to the investigation and prosecution of that offence.

- (18) Public service media established by the Member States play a particular role in the internal media market, by ensuring that citizens and businesses have access to *a diverse content offer, including* quality information and impartial *and balanced* media coverage, as part of their *remit as defined at national level in line with Protocol No 29 on the system of public broadcasting in the Member States, annexed to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). They play an important role in upholding the fundamental right to freedom of expression and information, enabling people to seek and receive diverse information, and promoting the values of democracy, cultural diversity and social cohesion. They provide a forum for public discussion and a means of promoting the broader democratic participation of citizens. Independence of public service media is key during electoral periods to ensure citizens have access to impartial and quality information.* However, public service media can be particularly exposed to the risk of interference, given their institutional proximity to

⁷ *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).*

the State and the public funding they receive. This risk *is* exacerbated by uneven safeguards related to *balanced coverage by and independent governance of* public service media *in* the Union. *Both the communication from the Commission of 13 July 2022, entitled “2022 Rule of Law Report”, and the 2022 Media Pluralism Monitor by the Centre for Media Pluralism and Media Freedom, confirm the fragmentation of such safeguards and point to risks stemming from inadequate funding. As shown by the European Audiovisual Observatory in their 2022 report ‘Governance and independence of public service media’ (the ‘EAO report’), guarantees for the independent functioning of public service media vary across the Union, with differences in their scope and the level of detail in national approaches. In particular, legal frameworks to ensure balanced coverage by public service media vary across the Union. Moreover, rules vary across the Union as regards the appointment and dismissal of the management of public service media. For instance, most national legal orders set out several grounds for dismissal while others do not provide for any specific rules. Where rules exist, in some cases they are insufficient or are not effective in practice. There are also cases of legislative reforms in Member States increasing the governmental control of public service media, including as regards the appointment of heads or members of the management board of public service media. Approaches to ensuring funding adequacy and predictability for public service media also diverge across the Member States. Where safeguards do not exist or are insufficient, there are risks of political interference in the editorial line or governance of public service media. Non-existent or insufficient safeguards for independence may also lead to lack of stability in funding, thus exposing public service media to the risk of (further) political control. This may lead to cases of partial reporting or biased media coverage by public service media, instances of interference by the government in appointments or dismissal of their management, arbitrary adjustments of or unstable funding of such media. All this negatively affects the access to independent and impartial media services, thereby affecting the right to freedom of expression as enshrined in Article 11 of the Charter, and may lead to distortion of competition in the internal market for media services, including those established in other Member States.*

(18a) In the national media environments characterised by a co-existence of public and private media service providers, public service media contribute to the promotion of media pluralism and foster competition in the media sector, by producing a wide range of

content that caters to various interests, perspectives, and demographics, and offering alternative viewpoints and programming options, making available a rich and unique offer. Public service media providers compete with private media companies and online platforms, including those established in other Member States, for audiences and, where applicable, for advertising resources. This concerns commercial broadcasters, in both the audiovisual and radio sub-sectors, and publishers, and is particularly true in the current digital media environment, in which all media expand into the online sphere and increasingly provide their services across borders. Where this dual and competitive media market, which is distinctive for large parts of the Union, is functioning well, it ensures a diverse and qualitative supply of media services in all subsectors. However, where public funding does not serve to fulfil the remit benefiting all viewers but to serve partisan views, due to political interference in governance and the editorial line, it may affect trading conditions and competition in the Union to an extent contrary to the common interest. The Court of First Instance has confirmed that “public service broadcasting can have its State funding declared to be compliant with the provisions of the Treaty on State aid only inasmuch as the qualitative requirements set out in the public service remit are complied with”⁸.

(18b) While risks of what is commonly referred to as ‘media capture’ are relevant for the entire market for media services, public service media are particularly exposed to such risks, given their proximity to the state. Diverging or insufficient safeguards for the independent functioning of public service media providers may prevent or disincentivise media service providers from other Member States to operate in or enter a given media market. While independent media companies invest their resources in high-quality reporting complying with journalistic standards, certain “captured” public service media providers not adhering to such standards may provide imbalanced reporting, while being subsidised by the State. The competitive advantage that independent media may obtain through independent reporting, could be lessened as captured public service media may unduly retain their market position. Politicised media markets can affect advertising markets as a whole, as businesses have to factor in politics in addition to devising effective advertising campaigns. If public service media, which are usually considered as trusted sources of information, provide biased coverage on the political or economic

⁸ *Judgment of the Court of First Instance of 26 June 2008, SIC v. Commission, T-442/03, ECLI:EU:T:2008:228, paragraph 211.*

situation or concerning specific economic actors as a result of being captured, this may also reduce the ability of companies to inform themselves properly about the economic situation in a given market and thus taking informed business decisions. Such capture may therefore adversely impact the functioning of the internal market. Finally, as a result of biased reporting by certain “captured” public service media in some Member States, citizens may turn to alternative sources of information, in particular those available on online platforms, which may further weaken the level playing field in the internal market.

(18c) It is thus necessary that Member States, building on the international standards developed by the Council of Europe in this regard, put in place effective legal safeguards for the independent functioning of public service media, across the Union, free from governmental, political, economic or private interests, without prejudice to national constitutional laws consistent with the Charter. This should include principles suited to Member States’ organisation of their public service media, such as those that exist in national administrative or corporate law frameworks, as applicable also to private listed companies, for the appointment and dismissal of the persons or bodies which have a role in determining editorial policies or constitute the highest decision-making authority in this respect within the public service media provider, which should be set out at national level. It is also necessary to guarantee that, without prejudice to the application of the Union’s State aid rules, public service media providers benefit from transparent and objective funding procedures, which guarantee adequate and stable financial resources for the fulfilment of their public service remit, enable predictability in their planning and allow them to develop within their public service remit. Preferably, such funding should be decided and appropriated on a multi-year basis, in line with the public service remit of public service media providers, to avoid potential for undue influence from yearly budget negotiations. The requirements laid down in this Regulation do not affect the competence of Member States to provide for the funding of public service media as enshrined in the Protocol No 29.

(19) It is crucial for the recipients of media services to know with certainty who owns and is behind the media so that they can identify and understand potential conflicts of interest which is a prerequisite for forming well-informed opinions and consequently to actively participate in a democracy. Such transparency is also an effective tool to *disincentivise and thus to* limit risks of interference with editorial independence. *Furthermore, it contributes*

to an open and fair market environment and enhances media accountability vis-à-vis the recipients of media services, ultimately contributing to the quality of media services in the internal market. It is thus necessary to introduce common information requirements for media service providers across the Union that should include proportionate *and targeted* requirements to disclose *relevant information on their ownership and advertising revenues received from public authorities or entities.* Such information is necessary for the recipients of media services to understand and be able to enquire about potential conflicts of interest, including where media owners are politically exposed, as a pre-condition for their ability to assess the reliability of information they receive. This can only be achieved if the recipients of media services have user friendly and up-to-date media ownership information at their disposal in a user friendly manner, in particular at the time they are viewing, listening or reading media content, so that they can put the content in the right context and form the right impression of it. Thus, the disclosure of targeted media ownership information would produce benefits clearly outweighing any possible impact of the disclosure obligation on fundamental rights, including the right to private and family life and the right to protection of personal data. In this context, the measures taken by Member States under Article 30(9) of Directive (EU) 2015/849⁹ should not be affected. The required information should be disclosed by the relevant providers *in an electronic format, for instance* on their websites, or other medium that is easily and directly accessible. *To further contribute to a high level of media ownership transparency, Member States should also entrust national regulatory authorities or bodies, or other competent authorities and bodies, with developing media ownership databases. Such databases should work as a one-stop-shop allowing recipients of media services to easily check the relevant information related to a given media service provider. In view of national administrative specificities as well as in view of reducing administrative burden, Member States should have flexibility in deciding which authority or body will be in charge of developing such media ownership databases. This could be, for instance, a national regulatory authority or body, or another administrative body, which could in turn rely on the assistance of another body with relevant expertise*

⁹ *Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73-117).*

for the fulfilment of this task.

- (20) Media integrity also requires a proactive approach to promote editorial independence by ***media companies providing news and current affairs content***, in particular through internal safeguards. Media service providers should adopt proportionate measures to guarantee ■ the freedom of the editors to take ***editorial decisions within the established long-term editorial line of the media service provider***. The objective to shield ***editorial decisions, notably those taken by editors-in-chief and editors***, on specific pieces of content ***from undue interference*** contributes to ensuring a level playing field in the internal market for media services and the quality of such services. ***Those measures should aim to ensure the respect for the independence standards throughout the entire editorial process within the media, including in view of safeguarding the integrity of journalistic content***. That objective is also in conformity with the fundamental right to receive and impart information under Article 11 of the Charter. In view of these considerations, media service providers should also ensure transparency of actual or potential conflicts of interest ***vis-à-vis*** their service recipients.
- (21) ***Media service providers*** should ***adopt*** internal safeguards with a view to guaranteeing the independence of ■ editorial decisions ***tailored in line with*** their ***size, structure and needs***. The Recommendation that accompanies this Regulation provides a catalogue of voluntary internal safeguards that can be adopted within media companies in this regard. ***This*** Regulation should not be construed to the effect of depriving the owners of private media service providers of their prerogative to set strategic or general goals and to foster the growth and financial viability of their undertakings. In this respect, this Regulation ***should recognise*** that the goal of fostering editorial independence needs to be reconciled with the legitimate rights and interests of private media owners, ***such as the right to determine the editorial line of the media service provider and shape the composition of their editorial teams***.
- (22) Independent national regulatory authorities or bodies are key for the proper application of media law across the Union. ***While*** national regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU ***often do not have competences related to the press sector, they*** are best placed to ensure the correct application of the requirements related to regulatory cooperation and a well-functioning market for media services ***in general, as envisaged in*** ■ this Regulation. ***National regulatory authorities or bodies should have the***

resources necessary for the fulfilment of their tasks in terms of staffing, expertise, and financial means, including to enable their participation in the activities of the Board. They should be provided with technical resources, for instance relevant digital tools. Where appropriate, Member States should, to the necessary extent, increase the resources allocated to national regulatory authorities or bodies, taking into account the additional tasks conferred upon them under this Regulation. National regulatory authorities or bodies should also have appropriate powers, in particular to request information and data from any natural or legal person to which this Regulation applies, or which, for purposes related to their trade, business or profession, may reasonably be in possession of the information and data needed, in respect of the rights and interest of such persons.

(22a) In order to ensure a consistent application of this Regulation and other Union media law, it is necessary to set up an independent advisory body at Union level gathering such authorities or bodies and coordinating their actions, the European Board for Media Services (hereinafter referred to as ‘the Board’). In the performance of its tasks and the exercise of its powers, the Board should be fully independent, including from any political or economic influence, and neither seek nor take instructions from any government, institution (either national, supranational, or international), and public or private person or body. The European Regulators Group for Audiovisual Media Services (ERGA), established by Directive 2010/13/EU, has been essential in promoting the consistent implementation of that Directive. The Board should therefore build on ERGA and replace it. This requires a targeted amendment of Directive 2010/13/EU to delete its Article 30b, which establishes ERGA, and to replace references to ERGA and its tasks as a consequence. The amendment of Directive 2010/13/EU by this Regulation is justified in this case as it is limited to a provision which does not need to be transposed by Member States and is addressed to the institutions of the Union.

(23) The Board should bring together senior representatives of the national regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU, appointed by such authorities or bodies. In cases where Member States have several relevant regulatory authorities or bodies, including at regional level, a joint representative should be chosen through appropriate procedures and the voting right should remain limited to one representative per Member State. *For the purposes of their activities within the Board, national regulatory authorities or bodies should be able to consult and coordinate with*

relevant competent authorities or bodies and, where relevant, with self-regulatory bodies in their Member States. This should not affect the possibility for the other national regulatory authorities or bodies to participate, as appropriate, in the meetings of the Board. The Board should also have the possibility to invite, *on a case-by-case basis, external experts* to attend its meetings. *It should also have the possibility to designate*, in agreement with the Commission, *permanent observers to attend its meetings*, including in particular regulatory authorities or bodies from candidate countries, potential candidate countries ■ or ad hoc delegates from other competent national authorities. Due to the sensitivity of the media sector and following the practice of ERGA decisions in accordance with its rules of procedure, the Board should adopt its decisions on the basis of a two-thirds majority of the votes. *The Board's rules of procedure should specify in particular the role, tasks and appointment procedures of the Chair and the Vice-Chair, and the prevention and management of conflict of interests of the Members of the Board. To support the Chair and the Vice-Chair, the Board should have the possibility to set up a Steering Group. The composition of the Steering Group should take into account the principle of geographical balance. The specific arrangements for the Steering Group should be specified by the Board in its rules of procedure. The ERGA Chair and Vice-Chair, advised by the members of the ERGA Board, should facilitate an orderly, transparent and effective transition from ERGA to the Board, until the Chair and Vice-Chair of the Board, as referred to in Article 10 of this Regulation, are elected.*

- (23a) *Where the Board deals with matters beyond the audiovisual media sector, it should rely on an effective consultation mechanism involving stakeholders from the relevant media sectors active both at national and Union level which could include press councils, journalistic associations, trade union and business associations and give such stakeholders the possibility to highlight to the Board the developments and issues relevant to their sectors. This consultation mechanism should enable the Board to gather targeted input from the relevant stakeholders and obtain relevant information supporting the work of the Board. The practical arrangements of such a consultation mechanism, to be established by the Board in its rules of procedure, should take into account the need for transparency, diversity and fair geographical representation. The Board may also consult academia in order to gather additional relevant information.*
- (24) Without prejudice to the powers granted to the Commission by the Treaties, it is essential that the Commission and the Board *cooperate closely, enabling the Board to advise and*

support the Commission on matters related to media services within its competence. The Board should actively support the Commission in its tasks of ensuring the consistent application of this Regulation and **implementation of** Directive 2010/13/EU. For that purpose, the Board should in particular advise and assist the Commission on regulatory, technical or practical aspects pertinent to the application of Union law, promote cooperation and the effective exchange of information, experience and best practices and draw up opinions *in the cases envisaged by this Regulation, taking, into account, where relevant, the situation regarding media freedom and pluralism in the concerned media markets. Such opinions would not be legally binding but useful as guidance for the national regulatory authorities or bodies concerned and could be taken into account by the Commission in its tasks of ensuring the consistent application of this Regulation and implementation of Directive 2010/13/EU. By making best efforts to implement the opinion of the Board, or by properly explaining any deviation therefrom, national regulatory authorities or bodies should be considered to have done their utmost to take the opinion of the Board into account.* In order to effectively *and independently* fulfil its tasks, the Board should be *assisted by a secretariat provided by the Commission and devoted to the activities of the Board. The secretariat should be adequately resourced for the performance of its tasks. Without prejudice to the Commission's institutional and budgetary autonomy, it is important that the Commission takes into account the needs communicated by the Board, in particular in relation to the qualifications, expertise and profile of the secretariat's staff for the effective performance of its tasks. The secretariat should also be able to rely on the expertise and* resources of *national regulatory authorities or bodies. This would be key to assist the Board when it is preparing its deliverables. Therefore, the secretariat should include an appropriate number of staff seconded by those national regulatory authorities or bodies to benefit from their competences and experience. In its mission of contributing to the independent execution of the tasks of the Board, the secretariat should follow only the instructions of the Board when supporting the Board in the fulfilment of its tasks under this Regulation. The secretariat should provide substantive, administrative and organisational support to the Board, and assist the Board when it is carrying out its tasks, notably by conducting relevant research or information-gathering activities.*

- (25) Regulatory cooperation between independent media regulatory authorities or bodies is essential to make the internal market for media services function properly. However,

Directive 2010/13/EU does not provide for a structured cooperation framework for national regulatory authorities or bodies. Since the revision of the EU framework for audiovisual media services by Directive 2018/1808/EU of the European Parliament and of the Council¹⁰, which extended its scope to video-sharing platforms, there has been an ever-increasing need for close cooperation among national regulatory authorities or bodies, in particular to resolve cross-border cases. Such a need is also justified in view of the new challenges in the EU media environment that this Regulation seeks to address, including by entrusting national regulatory authorities or bodies with new tasks.

- (26) ***Aware of these challenges, and in order to respond to the need for closer cooperation in the field of audiovisual media services, ERGA members agreed in 2020 on a Memorandum of Understanding, which sets out non-binding mechanisms for cross-border cooperation to strengthen the application of Union rules relevant for audiovisual media services and video-sharing platform services. Building on this voluntary framework and in order to ensure the effective enforcement of Union media law acquis, to avoid the raising of additional barriers in the internal market for media services and to prevent the possible circumvention of the applicable rules by rogue media service providers, it is essential to provide for a clear, legally binding framework for national regulatory authorities or bodies to cooperate effectively and efficiently with one another within the established legal framework. Such a framework is crucial for upholding the country of origin principle, which is a cornerstone of Directive 2010/13/EU as well as for ensuring that regulatory authorities or bodies are able to exercise oversight over relevant media service providers. The objective should be to ensure the consistent and effective application of this Regulation and the implementation of Directive 2010/13/EU, for instance by ensuring a smooth exchange of information between national regulatory authorities or bodies or allowing to quickly address queries related to jurisdiction issues. Where national regulatory authorities or bodies exchange information, all relevant Union and national law on exchange of information, including relevant data protection law, should be respected. Such cooperation, and in particular the accelerated cooperation, is of key relevance to support actions to protect the internal market from***

¹⁰ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities (OJ L 303, 28.11.2018, p. 69-92).

such rogue media service providers, while ensuring compliance with fundamental rights, in particular freedom of expression. In particular, such accelerated cooperation is needed to prevent that media services suspended in certain Member States under Articles 3(3) and 3(5) of Directive 2010/13/EU continue to be provided via satellite or other means in those Member States, and thus to contribute to the ‘effet utile’ of the relevant national measures, in compliance with Union law. The opinions of the Board will be important for the effective functioning of the cooperation mechanism.

- (27) Due to the pan-European nature of video-sharing platforms, national regulatory authorities or bodies need to have a dedicated tool to protect *users* of video-sharing platform services from certain illegal and harmful content, including commercial communications. In particular, *without prejudice to the country of origin principle*, a mechanism is needed to allow any relevant national regulatory authority or body to request its *counterpart* to take necessary and proportionate actions to ensure enforcement of obligations *by video-sharing platform providers* under *Articles 28b(1) to 28b(3) of Directive 2010/13/EU*. *This is key for ensuring that audiences, and in particular minors, are effectively protected across the Union when accessing the content on video-sharing platforms and that they can rely on the appropriate level of transparency when it comes to commercial communications online. Mediation and possible opinions by the Board will be conducive to ensure mutually acceptable and satisfactory results for the national regulatory authorities or bodies concerned.* In case the use of such mechanism does not lead to an amicable solution, the freedom to provide information society services from another Member State can only be restricted if the conditions set out in Article 3 of Directive 2000/31/EC of the European Parliament and of the Council¹¹ are met and following the procedure set out therein.
- (28) Ensuring a consistent regulatory practice *and effective implementation of* 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 *cross-border* matters covered by both this Regulation and Directive 2010/13/EU, when needed. When deciding to issue guidelines, *and in light of the relevant discussions with the contact committee established by Directive 2010/13/EU for matters related to that*

¹¹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1-16).

Directive, the Commission should consider in particular regulatory issues affecting a significant number of Member States or those with a cross-border element. In view of the abundance of information and the increasing use of digital means to access the media, it is important to ensure prominence for content of general interest, in order to help achieving a level playing field in the internal market and compliance with the fundamental right to receive information under Article 11 of the Charter **■** . Given the possible impact of the national measures taken under Article 7a of *Directive 2010/13/EU* 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 *and Article 6(1) of this Regulation*. 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.

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- (30) *National* regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU have specific practical expertise that allows them to effectively balance the interests of the providers and recipients of media services while ensuring the respect for the freedom of expression *and safeguarding and promoting media pluralism*. This is key in particular when it comes to protecting the internal market from activities of media *services from* outside the Union, *irrespective of the means by which they are distributed or accessed*, that target *or reach* audiences in the Union where, inter alia in view of the control that may be exercised by third countries over them, they may prejudice or pose risks of prejudice to public security. *Risks of prejudice to public security may relate to public provocations to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541 and systematic, international campaigns of foreign information manipulation and interference with a view to destabilising the Union as a whole or particular Member States. In this regard, the coordination between national regulatory authorities or bodies to face together possible public security threats stemming from such media services needs to be strengthened and given a legal framework to ensure the effectiveness and possible coordination of the national measures adopted in line with Union media legislation.*

- (30a) *It is necessary to coordinate the national measures that may be adopted to counter public security threats by media services originating from or established outside of the Union and targeting audiences in the Union, including the possibility for the Board, in consultation with the Commission, to issue opinions on such measures, as appropriate, in particular where a situation affects several Member States. In this regard, risks to public security need to be assessed with a view to all relevant factual and legal elements, at national and European level, including any existing assessments of how the concerned media service is disseminated or received on the territory of the Union. The objective should be to allow for a more coordinated approach for the concerned national regulatory authorities or bodies in relation to restrictions on the distribution of such media services, without prejudice to the competences of Member States or their national regulatory authorities or bodies in line with Union law. In this regard, the concerned national regulatory authorities or bodies should be able to take into account the opinions of the Board when considering taking measures against a media service provider. This is without prejudice to the competence of the Union under Article 215 of the Treaty on the Functioning of the European Union.*
- (30b) *In order to further support national regulatory authorities or bodies in their role of protecting the internal media market from rogue media service providers, the Board should draw up a list of criteria concerning the media service providers established or originating from outside of the Union. Such a list would help the national regulatory authorities or bodies concerned in situations when a relevant media service provider seeks jurisdiction in a Member State, or when a media service provider already under the jurisdiction of a Member State, appears to pose serious and grave risks to public security. Elements to be covered in such a list could concern, inter alia, ownership, management, financing structures, editorial independence from third countries or adherence to a co-regulatory or self-regulatory mechanisms governing editorial standards in one or more Member States.*
- (31) Very large online platforms act for many users as a gateway for access to media services. Media service providers who exercise editorial responsibility over their content play **a key** role in the distribution of information and in the exercise of freedom of information online. When exercising such editorial responsibility, they are expected to act diligently and provide information that is trustworthy and respectful of fundamental rights, in line with the regulatory **requirements or co-regulatory** or self-regulatory **mechanisms** they are

subject to in the Member States. Therefore, also in view of users' freedom of information where providers of very large online platforms consider that content provided by such media service providers is incompatible with their terms and conditions, they should duly consider freedom and pluralism of media, in accordance with Regulation (EU) 2022/2065 and provide, as early as possible, the necessary explanations to media service providers *in the statement of reasons within the meaning of Article 4(1) of Regulation (EU) 2019/1150 of the European Parliament and of the Council and Article 17 of Regulation (EU) 2022/2065*. To minimise the impact of any restriction to that content on users' freedom of information, very large online platforms should *submit the statement of reasons prior to the suspension or restriction of visibility taking effect. In addition, they should provide the media service provider with an opportunity to reply to the statement of reasons, within 24 hours, prior to the restriction of visibility or suspension taking effect. A shorter timeframe could apply in the event of a crisis as referred to in Article 36(2) of Regulation (EU) 2022/2065, in particular to take into account of an urgent need for moderation of the relevant content in such exceptional circumstances. The use of labelling or age-gating by providers of very large online platforms in accordance with their terms of service and in line with Union law should not be understood as a restriction of visibility for the purposes of this Regulation. Following the reply of the media service provider, or in the absence of such a reply within the given period of time, the provider of a very large online platform should inform the media service provider concerned if it intends to proceed with such a restriction or suspension. This Regulation should not affect the obligations of very large online platforms to take measures either against illegal content disseminated through their services, or in order to assess and mitigate systemic risks posed by their services, for example through disinformation, or in order to protect minors. In this context, nothing in this Regulation should be construed as deviating from the obligations of providers of very large online platforms pursuant to Articles 28, 34 and 35 of Regulation (EU) 2022/2065 and Article 28b of Directive 2010/13/EU.*

- (32) It is furthermore justified, in view of an expected positive impact on freedom to provide services and freedom of expression, that where media service providers *comply with* certain regulatory or self-regulatory standards, their complaints against decisions of providers of very large online platforms are treated with priority and without undue delay.
- (33) To this end, providers of very large online platforms *providing access to media content*

should provide a functionality on their online interface to enable media service providers to declare that they meet certain requirements, while at the same time retaining the possibility not to accept such self-declaration where they consider that these conditions are not met.

When a media service provider declares itself compliant with regulatory requirements or co- or self-regulatory mechanisms, it should be able to provide contact details of the relevant national regulatory authority or body or of the representatives of the co- or self-regulatory mechanism, including those provided by widely-recognised professional associations representing a given sub-sector and operating at national or European level. In case of reasonable doubts, this would enable the very large online platform to confirm with these authorities or bodies that the media service provider is subject to such requirements or mechanisms. Where relevant, providers of very large online platforms should rely on information regarding adherence to these requirements, such as the machine-readable standard of the Journalism Trust Initiative, developed under the aegis of the European Committee for Standardisation, or other relevant codes of conduct. Recognised civil society organisations, fact-checking organisations and other relevant professional organisations recognising the integrity of media sources on the basis of standards agreed with the media industry should also have the possibility to flag to the very large online platforms any potential lack of compliance by media service providers with the relevant requirements for the self-declaration. Guidelines issued by the Commission would be key to facilitate an effective implementation of such functionality. The guidelines should contribute, to minimising risks of potential abuse of the functionality, in particular by providers engaging systematically in disinformation, information manipulation and interference, including those controlled by certain third countries, taking account of the criteria to be developed by the Board in accordance with Article 16(2b). For this purpose, they could cover arrangements related to the involvement of recognised civil society organisations, including fact checking organisations, in the review of the declarations and where relevant national regulatory authorities.

- (34) This Regulation recognises the importance of self-regulatory mechanisms in the context of the provision of media services on very large online platforms. They represent a type of voluntary initiatives, for instance in a form of codes of conduct, which enable media service providers or their representatives to adopt common guidelines, including on ethical standards, correction of errors or complaint handling, amongst themselves and for

themselves. Robust, inclusive and **widely accepted** media self-regulation represents an effective guarantee of quality and professionalism of media services and is key for safeguarding editorial integrity.

- (35) Providers of very large online platforms should engage with media service providers that respect standards of credibility and transparency and that consider that restrictions **or suspensions** on their content are **repeatedly** imposed by providers of very large online platforms without sufficient grounds, in order to find an amicable solution for terminating any unjustified restrictions **or suspensions** and avoiding them in the future. Providers of very large online platforms should engage in such exchanges in good faith, paying particular attention to safeguarding media freedom and freedom of information. ***The Board should inform the Commission of its opinions on the outcome of the dialogue, which may consequently be taken into account by the Commission in the context of the enforcement of Regulation (EU) 2022/2065.***
- (36) Building on the useful role played by ERGA in monitoring compliance by the signatories of EU Code of Practice on Disinformation, the Board should, at least on a yearly basis, organise a structured dialogue between providers of very large online platforms, representatives of media service providers and representatives of civil society to foster access to diverse offers of independent media on very large online platforms, discuss experience and best practices related to the application of the relevant provisions of this Regulation, ***including as regards the moderation processes by very large online platforms***, and to monitor adherence to self-regulatory initiatives aimed at protecting society from harmful content, including those aimed at countering disinformation. The Commission may, where relevant, examine the reports on the results of such structured dialogues when assessing systemic and emerging issues across the Union ***as part of its enforcement of Regulation (EU) 2022/2065*** and may ask the Board to support it to this effect.
- (37) Recipients of **■** media services ***providing programmes*** should be able to effectively choose the **■** content they want to watch ***or listen to*** according to their preferences. Their freedom in this area may however be constrained by commercial practices in the media sector, ***such as*** agreements for content prioritisation between ***media service providers and*** manufacturers of devices or providers of user interfaces controlling or managing access to and use of ***media services providing programmes***, such as connected televisions ***or car***

audio systems. Prioritisation can be implemented, for example, on the home screen of a device, through hardware **settings** or software shortcuts, applications and search areas, which have implications on the recipients' behaviour, who may be unduly incentivised to choose certain media offers over others. **User choice may also be limited by closed circuits of pre-installed applications.** Users should have the possibility to change **at any time**, in a simple, **easily accessible** and user-friendly manner, the **configuration, including** default settings of a device, **comprising remote controls, or of a** user interface controlling or managing access to, and use of, **media services providing programmes.** **This should be understood as covering all the customisation features of devices or user interfaces which orientate or guide users in their choices of media services or content they wish to access, and allow them to find or discover such services or content, taking into account the goal of fair access to media services in all their diversity, from the perspective of both users and media service providers. This right should not extend to individual items, such as programmes, within an on-demand service catalogue and is** without prejudice to measures to ensure the appropriate prominence of audiovisual media services of general interest implementing Article 7a and 7b of Directive 2010/13/EC, taken in the pursuit of legitimate public policy considerations. **Manufacturers, developers and importers should be able to demonstrate the effective user-friendliness of the functionality required when placing their relevant products on the market. Member States should ensure, through appropriate measures, that devices and interfaces placed on their market, by relevant market players, comply with the relevant requirements set out in this Regulation. This could be achieved through monitoring of the application and the effectiveness of the actions taken by such market players.**

(37a) Visual identities of media service providers consist of brands, logos, trademarks or other characteristic traits and enable recipients of media services providing programmes to determine easily who bears the editorial responsibility for the service. Visual identities are also a key competitive asset for media service providers, enabling them to differentiate their media offer on the market. Therefore, it is important that visual identities of media service providers providing programmes are preserved when users access their media services through different devices and user interfaces. To this end, manufacturers, developers and importers of devices and user interfaces should make sure that such visual identities as provided by such media service providers are not removed or modified

- (37b) *In order to ensure a level playing field in the provision of diverse media services providing programmes in the face of technological developments in the internal market and to ensure fair access to media services in all their diversity, it is necessary to find common harmonised standards for devices and user interfaces controlling or managing access to and use of media services providing programmes or digital signals conveying the content from source to destination. In this context, it is important to avoid diverging technical standards creating barriers and additional costs for the industry and consumers while encouraging solutions to implement existing obligations concerning media services.*
- (38) Different legislative, regulatory or administrative measures *could be justified and conducive to media pluralism. However, some measures may hinder or render less attractive the exercise of the freedom of establishment and the freedom to provide services in the media sector, to the detriment of media pluralism or editorial independence* of media service providers *operating* in the internal market. *Such measures can take various forms including*, for example, rules to limit the ownership of media companies by other companies active in the media sector or non-media related sectors. They also include decisions related to licensing, *such as revoking, or making more difficult the renewal of media service providers' licenses, as well as decisions related to authorisation or prior notification for media service providers.* In order to mitigate their potential negative impact on *media pluralism or editorial independence of media service providers operating in the internal market* and enhance legal certainty *in the internal market for media services*, it is important that such measures comply with the principles of objective justification, transparency, non-discrimination and proportionality. *Administrative measures that are liable to affect media pluralism or editorial independence should be adopted within predictable timeframes. Such timeframes should have a sufficient length to ensure an adequate assessment by media service providers of the measures and their foreseeable consequences. Moreover, media service providers which are individually and directly concerned by regulatory or administrative measures should have the right to appeal against such measures before an independent appellate body. If the appellate body is not a court, it should have the adequate resources necessary to its effective functioning.*
- (39) *Without prejudice to the application of the Union's competition and State aid rules as well as national measures taken in compliance with such rules, it is* ■ *key that the Board,*

where national regulatory or administrative measures are likely to significantly affect the operation of media service providers in the internal market, is empowered to issue an opinion. The opinions of the Board should focus on national measures that have the potential to disrupt the activities of media service providers in the internal market, for instance by preventing or obstructing their operation in such a way that the provision of their media services in a given market is seriously undermined. This could be the case when a national administrative measure is addressed specifically to a media service provider providing its services towards more than one Member State, or when it concerns a media service provider that, because of, inter alia, its market shares, audience reach or level of circulation, has a significant influence on the formation of public opinion in that Member State, and it prevents such media service providers from effectively operating in a given market or entering a new one. The Board can issue such opinions on its own initiative or on the Commission's request. The Board should also be empowered to issue an opinion on such measures upon request of individually and directly affected media service providers. To that end, the concerned media service provider should submit a duly justified and reasoned request to the Board. In its request, the concerned media service provider should in particular indicate whether it already exhausted all the available national remedies by challenging the contested measures before national courts or other competent national authorities or bodies, and the type of decision(s) resulted from this. Most notably, the request should also indicate the reasons for which the concerned media service provider considers the contested measure(s) to significantly affect its operation in the internal market, as well as the reasons for which it considers that such measure(s) directly and individually affect its legal situation.

- (39a)** *Media market concentrations are assessed differently across the Union from the media pluralism standpoint. The rules and procedures vary across the Union. Some Member States rely on competition assessments only, whereas others have dedicated frameworks for specific media pluralism assessment of concentrations. In the latter case, there are considerable differences. In some cases, all media transactions are scrutinised, irrespective of whether they reach certain thresholds, while in other cases an assessment is conducted only when specific thresholds are exceeded or certain qualitative criteria are met. For instance, for the purposes of such assessment some Member States apply revenue multipliers in order to ensure that competitive threats do not pass undetected and are brought under scrutiny even when the outlets involved have low revenues.*

Where they exist, there are also differences in the procedures applicable to the scrutiny of market transactions for media pluralism purposes. This scrutiny is often carried out independently by the media regulator (through a self-standing assessment) or with the involvement of the media regulator by the competent authority (through an opinion, that could be a stand-alone contribution or written views or comments in the context of an ongoing assessment). Certain national rules enable Ministries or governmental bodies to intervene in the media market scrutiny on non-economic grounds, ranging from protection of media pluralism to the safeguarding of public security or other general interests. The divergence and lack of coordination between Member States' rules and procedures applicable to media market concentrations can result in legal uncertainty as well as regulatory, administrative or economic burdens for media companies willing to operate across borders, thus distorting competition in the internal market for media services. In some cases, national measures in this area can effectively prevent a media company established in the Union from entering another national market, without being genuinely aimed at promoting media pluralism¹². Ultimately, instead of achieving greater media plurality, this may reinforce the oligopolistic dynamics in the media market. In order to lower obstacles hindering the media service providers' ability to operate in the internal market, it is important that this Regulation sets out a common framework for assessing media market concentrations across the Union.

- (40) Media play a decisive role in shaping public opinion and *providing citizens with information which is relevant for an active participation* in democratic processes. This is why Member States, *independently from competition law assessments*, should provide for rules and procedures in *national law to allow for* assessment of media market concentrations that could have a significant impact on media pluralism *and* editorial independence. *In this context, media pluralism should be understood as the possibility to have access to a variety of media services and media content which reflect diverse opinions, voices and analyses.* National rules and procedures can have an impact on the freedom to provide media services in the internal market and need to be properly framed and be transparent, objective, proportionate and non-discriminatory. Media market concentrations subject to such rules should be understood as covering those which could result in a single entity controlling or having significant interests in *the market concerned and thus having* substantial influence on the formation of public opinion in a given media

¹² *Case C-719/18, Vivendi SA v Autorità per le Garanzie nelle Comunicazioni.*

market ■ in one or more Member States. An important criterion to be taken into account is the reduction of competing views within that market as a result of the concentration.

- (41) National regulatory authorities or bodies, who have specific expertise in the area of media pluralism, should be involved in the assessment of the impact of media market concentrations on media pluralism and editorial independence where they are not the designated authorities or bodies themselves. ***The involvement of those national regulatory authorities or bodies should be substantive, for instance by ensuring that their views are taken into account in the competition assessment.*** In order to foster legal certainty and ensure that the rules and procedures are genuinely geared at protecting media pluralism and editorial independence, it is essential that objective, non-discriminatory and proportionate criteria for notifying and assessing the impact of media market concentrations on media pluralism and editorial independence are set out in advance.
- (42) When a media market concentration constitutes a concentration falling within the scope of Council Regulation (EC) No 139/2004 ■ , the application of this Regulation or of any rules and procedures adopted by Member States on the basis of this Regulation should not affect ***and should be distinct from*** the application of Article 21(4) of Regulation (EC) No 139/2004. Any measures taken by the designated or involved national regulatory authorities or bodies based on their assessment ***media market concentrations that could have a significant impact*** on media pluralism and editorial independence should therefore be aimed at protecting legitimate interests within the meaning of Article 21(4), third subparagraph, of Regulation (EC) No 139/2004, and should be in line with the general principles and other provisions of Union law. ***This Regulation should be without prejudice to more detailed national rules applicable to media market concentrations taking place, in particular, at regional or local level.***
- (43) The Board should be empowered to provide opinions on draft ***assessments*** by the designated or ***draft opinions by the*** involved national regulatory authorities or bodies, where the ***media market*** concentrations ***are likely to*** affect the functioning of the internal media market. This would be the case, for example, where such concentrations involve ***acquisitions by or of an*** undertaking established in another Member State or operating ***across borders***, or result in media service providers having a significant influence on formation of public opinion in a given media market ***with potential effects on audiences in the internal market.*** ***Where a media market*** concentration has not been ***or could not be***

assessed for its impact on media pluralism and editorial independence by the relevant authorities or bodies *at the national level*, or where the national regulatory authorities or bodies have not consulted the Board regarding a media market concentration, *that* is considered likely to affect the functioning of the internal market for media services, the Board should be able to provide an opinion, *on its own initiative or* upon request of the Commission. In *this context*, the Commission *should retain* the possibility to issue its own opinions .

- (44) With a view to ensuring pluralistic media markets, the national authorities or bodies and the Board should take account of a set of criteria. In particular, *the expected* impact on media pluralism should be considered, including notably the effect on the formation of public opinion, taking into account the online environment. *In this respect, and particularly where relevant in order to assess the possible impact on the formation of public opinion in significant parts of a given media market, the geographical reach of the entities involved in the media market concentration should also be taken into account.* Concurrently, it should be considered whether other media outlets, providing different and alternative content, would still coexist in the given market(s) after the media market concentration in question. Assessment of safeguards for editorial independence should include the examination of potential risks of undue interference by the prospective owner, management or governance structure in the editorial decisions of the acquired or merged entity. The existing or envisaged internal safeguards aimed at preserving *ethical and professional standards as well as the* independence of the editorial decisions within the media undertakings involved should also be taken into account. In assessing the potential impacts, the effects of the concentration in question on the economic sustainability of the entity or entities subject to the concentration should also be considered and whether, in the absence of the concentration, they would be economically sustainable, in the sense that they would be able in the medium term to continue to provide and further develop financially viable, adequately resourced and technologically adapted quality media services in the market. *Where applicable, the assessment should also take into account the commitments that any of the involved parties may offer in order to ensure that the relevant media market concentration guarantees media pluralism and editorial independence. Where relevant, the findings of the Commission's annual rule of law reports related to media pluralism and media freedom should also be taken into account by the national authorities or bodies and the Board in their assessment.*

- (45) Audience measurement has a direct impact on the allocation and the prices of advertising, which represents a key revenue source for the media sector. It is a crucial tool to evaluate the performance of media content and understand the preferences of audiences in order to plan the future production of content. Accordingly, media market players, in particular media service providers and advertisers, should be able to rely on objective **and comparable** audience data stemming from transparent, unbiased and verifiable audience measurement solutions. ***In principle, audience measurement should be carried out in accordance with widely-accepted industry self-regulatory mechanisms.*** However, certain new players that have emerged in the media ecosystem, ***such as online platforms, do not abide by the industry standards or best practices agreed through relevant industry self-regulatory mechanisms and*** provide their ***proprietary*** measurement services without making available information on their methodologies. This could result in ***audience measurement solutions that are not comparable***, information asymmetries among media market players, and **■** potential market distortions, to the detriment of equality of opportunities for media service providers in the market. ***Therefore, it is important that audience measurement systems and methodologies made available on the market ensure an appropriate level of transparency, impartiality, inclusiveness, proportionality, non-discrimination, comparability, and verifiability.***
- (46) ***Relevant market players have traditionally agreed upon a set of measurement methodologies in order to carry out audience measurement in a transparent and reliable manner and develop impartial and trusted benchmarks to be used when assessing the performance of media and advertising content. These measurement methodologies are either reflected in relevant industry standards and best practices or are organised and consolidated by self-regulatory bodies, such as the Joint Industry Committees, which are established in several Member States and bring together all the key stakeholders operating in the media and advertising industry.*** In order to enhance the verifiability, ***reliability, and comparability*** of audience measurement methodologies, in particular online, transparency obligations should be laid down for providers of ***proprietary*** audience measurement systems that do not ***follow the relevant industry standards and best practices or do not*** abide by the industry benchmarks agreed within the relevant self-regulatory bodies. Under these obligations, such actors, when requested and to the extent possible, should provide advertisers and media service providers or parties acting on their behalf, with information describing the methodologies employed for the measurement of

the audience. Such information could consist in providing elements, such as the size of the sample measured, the definition of the indicators that are measured, the metrics, the measurement methods, *the measurement period, the coverage of measurement*, and the margin of error. *To ensure an adequate level of effectiveness of this transparency obligation and foster the trustfulness of the proprietary audience measurement systems, the methodologies and their application should yearly be subject to independent audits. Furthermore, in order to help achieving a level playing field and fostering the clarity and contestability of the relevant information that is provided to the market, it is also key that that the audience measurement results are made available. For this reason, media service providers should be able to request providers of proprietary audience measurement systems to provide information on the audience measurement results concerning their own media content and services. In particular, providers of proprietary audience measurement systems should ensure that this information is provided in an industry-standard form, includes the relevant non-aggregated data, and is of high-quality and detail allowing the requesting media service providers to carry out an effective and meaningful assessment of the reach and performance of their media content and services. The need to increase the transparency and contestability of proprietary audience measurement systems should be reconciled with the freedom of providers of audience measurement systems to develop their own measurement systems, as part of their freedom to conduct business. In particular, the transparency obligations by which the providers of audience measurement systems should abide pursuant to this Regulation should be without prejudice to the protection of providers of audience measurement's trade secrets as defined in Directive (EU) 2016/943¹³. The obligations imposed under this Regulation should also be without prejudice to any obligations that apply to providers of audience measurement services under Regulation (EU) 2019/1150 or Regulation (EU) 2022/1925 of the European Parliament and of the Council¹⁴, including those concerning ranking, self-preferencing, or providing access to performance measuring tools and the relevant data.*

¹³ *Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (Directive on the Protection of Trade Secrets) (OJ L 157, 15.6.2016, p. 1–18).*

¹⁴ *Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, p. 1).*

- (47) Codes of conduct, drawn up either by the providers of audience measurement systems or by organisations or associations representing them, ***together with media service providers, their representative organisations, providers of online platforms and other relevant stakeholders, could*** contribute to the effective application of this Regulation and should, therefore, be encouraged. ***Self-regulatory mechanisms widely recognised in the media industry have*** already been used to foster high quality standards in the area of audience measurement, ***ensuring the impartiality of the measurements and the comparability of the results. Their*** further development could be seen as an effective tool for the industry to agree on the practical solutions needed for ensuring compliance of audience measurement systems and their methodologies with the principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination, ***comparability***, and verifiability. When drawing up such codes of conduct, in consultation with all relevant stakeholders and notably media service providers ***and providers of online platforms***, account could be taken in particular of the increasing digitalisation of the media sector and the ***need to make increasingly comparable the different audience measurement solutions available on the market. In fact, comparability of audience measurement results is key for*** achieving a level playing field among media market players ***as it enables media service providers and advertisers to better gauge the success of their offer, which users increasingly consume across different devices and platforms. For this reason, the relevant industry players should be encouraged to make use of codes of conduct and other self-regulatory mechanisms to foster the development of audience measurement solutions which are comparable across different media and platforms. In addition, such codes of conduct should also foster the development of solutions ensuring the proper measurement of audiences of small media service providers.***
- (48) ***Public funds for the purposes of state advertising and supply or service contracts are*** an important source of revenue for many media service providers ***and providers of online platforms***, contributing to their economic sustainability. Access to ***such funds*** must be granted in a non-discriminatory way to any media service provider ***or provider of online platform*** from any Member State which can adequately reach some or all of the relevant members of the public, in order to ensure equal opportunities in the internal market. Moreover, ***public funds for the purposes of state advertising and supply or service contracts*** may make media service providers ***and providers of online platforms*** vulnerable to undue state influence ***or partial interests*** to the detriment of the freedom to provide

services and fundamental rights. Opaque and biased allocation of *such funds* is therefore a powerful tool to exert influence *on the editorial freedom of media service providers*, ‘capture’ media service providers *or covertly subsidise such providers to gain unfair political or commercial advantage or favourable coverage*. *Public funds for the purposes of state advertising and supply or service contracts* are in some regards regulated through a fragmented framework of media-specific measures and *Union* public procurement *rules*, which *do not* offer sufficient protection against preferential or biased distribution. In particular, Directive 2014/24/EU of the European Parliament and of the Council ¹⁵ does not apply to public service contracts for the acquisition, development, production or co-production of programme material intended for audiovisual media services or radio media services. Media-specific rules on *public funds for the purposes of state advertising and supply or service contracts*, where they exist, diverge significantly from one Member State to another. *This may create information asymmetry for media market players and have a negative impact on cross-border economic activity in the internal media market. Most importantly, it may distort competition, discourage investment and be detrimental to a level playing field in the internal media market.*

- (49) In order to ensure undistorted competition between media service providers and *online platforms and* to avoid the risk of covert subsidies and of undue political influence on the media, it is necessary to establish common requirements of transparency, objectivity, proportionality and non-discrimination in the allocation of *public funds or other* state resources to media service providers *and providers of online platforms* for the purpose of *state advertising or* purchasing goods or services from them other than state advertising, *for example, audiovisual productions, market data and consulting or training services*. *When possible, with due regard to national and local specificities of the respective media markets as well as national governance models and division of competences between national, regional and local level in the Member States, taking into account in particular the amount of state resources allocated and the number of potential providers of relevant advertising services or relevant goods or services other than advertising, such allocation should aim to ensure media plurality in particular by benefitting a variety of different media service providers and providers of online platforms. Such allocation should not result in unjustified and disproportionate advantage for certain providers. In order to*

¹⁵ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65-242).

ensure a high level of transparency, it is important that the criteria and procedures used to allocate public funds to media service providers and providers of online platforms for the purposes of state advertising and supply or service contracts are made publicly available in advance by electronic and user-friendly means. The common requirements regarding state advertising and supply or service contracts should cover the allocation taking place both directly or indirectly, for instance through specialised intermediaries such as advertising agencies and advertising exchange providers. It is also necessary to establish common requirements to publish information on the recipients of state advertising expenditure and the amounts spent. It is important that Member States make the necessary information related to state advertising publicly accessible in an electronic format that is easy to view, access and download, in compliance with Union and national rules on commercial confidentiality. It is also necessary for national regulatory authorities or bodies or other competent independent authorities or bodies in the Member States to monitor and report on the allocation of public funds for the purposes of state advertising to media service providers and providers of online platforms. Where requested by national regulatory authorities or bodies, public authorities and entities should provide them with additional information necessary to assess the completeness of information published and the application of criteria and procedures used for such funds. This Regulation should not affect the application of the Union public procurement and State aid rules.

- (50) Risks to the functioning of the internal media market should be regularly monitored as part of the efforts to improve the functioning of the internal market for media services. Such monitoring should aim at providing detailed data and qualitative assessments, including as regards the degree of concentration of the *media* market at national and regional level, and risks of foreign information manipulation and interference. It should be conducted independently, *by a specialised academic entity in collaboration with researchers from the Member States*, on the basis of a robust list of key performance indicators *and methodological safeguards*, developed and regularly updated by the Commission, in consultation with the Board. Given the rapidly evolving nature of risks and technological developments in the internal media market, the monitoring should assess the prospective *economic viability* of the internal media market, to alert about vulnerabilities around media pluralism and editorial independence, and to help efforts to improve governance, data quality and risk management. In particular, the level of cross-

border activity and investment, regulatory cooperation and convergence in media regulation, obstacles to the provision of media services, including in a digital environment ***and the position of media service providers therein***, as well as transparency and fairness of allocation of economic resources in the internal media market should be covered by the monitoring. It should also consider broader trends in the internal media market and national media markets as well as national legislation affecting media service providers. In addition, the monitoring should provide ***a general*** overview of measures taken by media service providers with a view to guaranteeing the independence of individual editorial decisions, including those proposed in the accompanying Recommendation, ***and an analysis of their potential to reduce risks for the functioning of the internal market for media services***. In order to ensure the highest standards of such monitoring, the Board, as it gathers entities with a specialised media market expertise, should be duly involved. ***Furthermore, where relevant, the monitoring exercise should take into account the findings of the Council of Europe Platform to promote the protection of journalism and safety of journalists and of the Media Freedom Rapid Response, given their effectiveness in identifying risks or threats to journalists and media service providers which can also affect the internal media market.***

(51a) It should be recalled that the Commission has the duty to monitor the application of this Regulation in line with its responsibility according to Article 17 of the Treaty on European Union. In this regard, the Commission has stated in its communication of 19 January 2017 entitled “EU law: Better results through better application”, that it is important that it focuses and prioritises its enforcement efforts on the most important breaches of Union law, affecting the interests of Union’s citizens and businesses.

(52) Since the objectives of this Regulation, namely ensuring the proper functioning of the internal market for media services, cannot be sufficiently achieved by the Member States, because they cannot or might not have incentives to achieve the necessary harmonisation and cooperation acting alone, but can rather, by reasons of the increasingly digital and cross-border production, distribution and consumption of media content as well as the unique role of media services, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in

that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

- (53) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter, in particular Articles 7, 8, 11, 16, 47, 50 and 52 thereof. Accordingly, this Regulation should be interpreted and applied with due respect to those rights and principles. In particular, nothing in this Regulation should be interpreted as interfering with freedom of information, **editorial freedom** or freedom of the press **as enshrined in national constitutional laws consistent with the Charter**, or incentivising Member States to introduce requirements for editorial content of press publications.
- (54) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁶ and delivered an opinion on **11 November 2022**.

HAVE ADOPTED THIS REGULATION:

Chapter I

General Provisions

Article 1

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 **safeguarding the independence and pluralism** of media services.
2. This Regulation shall not affect rules laid down by:
 - (a) Directive 2000/31/EC;
 - (b) Directive 2019/790/EU;
 - (c) Regulation 2019/1150;

¹⁶ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39-98).

- (d) Regulation (EU) **2022/2065**;
- (e) Regulation (EU) **2022/1925**;
- (f) Regulation (EU) 2022/XXX [Regulation on the transparency and targeting of political advertising];
- (g) **Regulation (EU) 2016/679.**

3. This Regulation shall not affect the possibility for Member States to adopt more detailed *or stricter* rules in the fields covered by Chapter II, Section 5 of Chapter III *and Article 24*, provided that those rules *ensure a higher level of protection for media pluralism or editorial independence in accordance with this Regulation and* comply with Union law.

Article 2 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 *remit* under national law *and* receives national public funding for the fulfilment of such a *remit*;
- (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;

- (6) ‘audiovisual media service’ means a service as defined in Article 1(1), point (a), of Directive 2010/13/EU;
- █
- (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;
- (9a) ‘online platform’ means online platform as defined in Article 3, point (i), of Regulation (EU) 2022/2065;**
- (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 33(4) of Regulation (EU) 2022/2065;
- (11) ‘video-sharing platform service’ means a service as defined in Article 1(1), point (aa), of Directive 2010/13/EU;
- (12) ‘national regulatory authority or body’ means **any** authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU;
- (12a) ‘user interface’ means a service which controls or manages access to and the use of media services providing programmes and which enables users to select among media services or content;**
- (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 **or one provider of an online platform providing access to media content;**
- (14) ‘audience measurement’ means the activity of collecting, interpreting or otherwise processing data about the number and characteristics of users of media services **or users of content on online platforms** for the purposes of decisions regarding advertising allocation **or pricing, purchases and sales or** planning, █ **or** distribution of content;

- (14a) *'proprietary audience measurement' means audience measurement which does not follow industry standards and best practices agreed through self-regulatory mechanisms;*
- (14a) *'public authority or entity' means a national or subnational government, a regulatory authority or body, or an entity controlled, directly or indirectly, by a national or subnational government;*
- (15) 'State advertising' means the placement, ***promotion***, publication or dissemination, in any media service ***or online platform*** of a promotional or self-promotional message ***or a public announcement or an information campaign***, normally in return for payment or for any other consideration, by, for or on behalf of ***a*** public authority ***or*** entity;
- (16) *'intrusive surveillance software' 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 including in an indiscriminate manner* ■ ;
-
- (17a) *'media literacy' means skills, knowledge and understanding that allow citizens to use media effectively and safely which are not limited to learning about tools and technologies but aim to equip citizens with the critical thinking skills required to exercise judgment, analyse complex realities and recognise the difference between opinion and fact.*

Chapter II

Rights and duties of media service providers and recipients *of media services*

Article 3

Right of recipients of media services

Member States shall respect the right of recipients of media services to have access to a plurality of editorially independent media content and ensure that framework conditions are in place in line with this Regulation to safeguard that right, to the benefit of free and democratic discourse.

Article 4

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 *pursuant to* Union law.
2. Member States shall respect *the* effective editorial freedom *and independence* of media service providers *in the exercise of their professional activity*. Member States, including their national regulatory authorities and bodies, shall not *interfere in or try to influence the editorial policies and editorial decisions of media service providers*.
- 2a. *Member States shall ensure that journalistic sources and confidential communications are effectively protected. Member States shall not carry out any of the following actions:*
 - (a) *oblige media service providers, their editorial staff, or any persons who, because of their regular or professional relationship with a media service provider or its editorial staff, might have information related to or capable of identifying journalistic sources or confidential communications, to disclose such information;*
 - (b) *detain, sanction, intercept* ■ *or inspect media service providers, their editorial staff or any persons who, because of their regular or professional relationship with a media service provider or its editorial staff, might have information related to or capable of identifying journalistic sources or confidential communications, subject any of them or their corporate or private premises to surveillance, search and seizure, for the purpose of obtaining such information;*
 - (c) *deploy intrusive surveillance software, on any material or digital device, machine or tool used by media service providers* ■ *, their editorial staff or any persons who, because of their regular or professional relationship with a media service provider or its editorial staff, might have information related to or capable of identifying journalistic sources or confidential communications.*
- 2b. *By way of derogation from paragraph 2a, points (a) and (b), Member States may take a measure referred to therein, provided that it:*
 - (a) *is provided for by national law or Union law;*
 - (b) *is in compliance with Article 52(1) of the Charter and other Union law;*

- (c) is justified on a case-by-case basis by an overriding reason of public interest and is proportionate; and*
- (d) is subject to prior authorisation by a judicial authority or an independent and impartial decision-making authority or, in duly justified exceptional and urgent cases, is subsequently authorised by such authority without undue delay.*

By way of derogation from paragraph 2a, point (c), Member States may deploy intrusive surveillance software, provided that the deployment complies with the conditions referred to in the first subparagraph of this paragraph and it is carried out for the purposes of investigations of one of the persons referred to in paragraph 2a, point (c), for offences referred to in Article 2(2) of Council Framework Decision 2002/584/JHA¹⁷ punishable in the Member State concerned by a custodial sentence or a detention order of a maximum period of at least three years or for other serious crimes punishable in the Member State concerned by a custodial sentence or a detention order of a maximum period of at least five years, as determined by the law of that Member State.

Member States shall not take a measure as referred to in paragraph 2a, point (c), where a measure as referred to in paragraph 2a, point (a) or (b), would be adequate and sufficient to obtain the information sought.

- 2c. Member States shall ensure that the surveillance measures referred to in paragraph 2a, point (b), and the deployment of intrusive surveillance software referred to in paragraph 2a, point (c), are regularly reviewed by a judicial authority or an independent and impartial decision-making authority in order to determine if the conditions justifying their use continue to be fulfilled.*
- 2d. The safeguards provided by Directive (EU) 2016/680 of the European Parliament and of the Council, including the right of the data subject to information and access to personal data undergoing processing, shall apply to any processing of personal data occurring in the context of the deployment of the surveillance measures referred to in paragraph 2a, point (b), or the deployment of intrusive surveillance software referred to in paragraph 2a, point (c).*

¹⁷ *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).*

3. *Member States shall ensure that media service providers or their editorial staff, or any persons who, because of their regular or professional relationship with a media service provider or its editorial staff, might have information related to or capable of identifying journalistic sources or confidential communications have a right to an effective judicial protection, in line with Article 47 of the Charter, in cases regarding breaches of paragraphs 2a to 2d.*

Member States shall entrust an independent authority or body with relevant expertise to provide assistance to those persons with regard to the exercise of that right. Where no such authority or body exists, those persons may seek assistance from a self-regulatory body or mechanism.

- 3a. *The Member States' responsibilities as laid down in the Treaty on European Union and the Treaty on the Functioning of the European Union are respected.*

Article 5

Safeguards for the independent functioning of public service media providers

1. *Member States shall ensure that public service media providers are editorially and functionally independent, and provide in an impartial manner a plurality of information and opinions to their audiences, in accordance with their public service remit as defined at national level in line with Protocol No 29 on the system of public broadcasting in the Member States annexed to the TEU and the TFEU.*
2. *Member States shall ensure that the procedures for the appointment and the dismissal of the head of management or the members of the management board of public service media providers aim to guarantee the independence of the public service media providers.*

The appointment of the head of management or the members of the management board of public service media providers shall be based on transparent, open, effective and non-discriminatory procedures and transparent, objective, non-discriminatory and proportionate criteria laid down in advance at national level. The duration of their term of office shall be sufficient for the effective independence of public service media providers.

Decisions on dismissal of the head of management or the members of the management board of public service media providers before the end of their term of office shall be

duly justified, *may be taken only exceptionally where they no longer fulfil the conditions required for the performance of their duties according to criteria laid down in advance at national level*, shall be *subject to prior notification* to the *person concerned* and *include the possibility for judicial review*.

3. Member States shall ensure that *funding procedures for public service media providers are based on transparent and objective criteria laid down in advance*. *Those procedures shall guarantee that* public service media providers have adequate, *sustainable and predictable* financial resources *corresponding to* the fulfilment of *and capacity to develop within* their public service *remit*. Those resources shall be such that editorial independence *of public service media providers* is safeguarded.
4. Member States shall designate one or more independent authorities or bodies *or put in place mechanisms free from political influence by the government* to monitor *the application of* paragraphs 1 to 3. *The results of the monitoring exercise shall be made available to the public*.

Article 6

Duties of media service providers ■

1. Media service providers ■ shall make easily and directly accessible to the recipients of their services *up-to-date* information *on*:
 - (a) their legal name(s) and contact details;
 - (b) the name(s) of their direct or indirect owner(s) with shareholdings enabling them to exercise influence on the operation and strategic decision making, *including direct or indirect ownership by the state or a public authority or entity*;
 - (c) the name(s) of their beneficial owners *as defined in* Article 3, point 6, of Directive (EU) 2015/849 ■ ;
 - (cd) *total annual amount of state advertising allocated to them and the total annual amount of advertising revenues received from public authorities or entities of third countries*.

- 1a. ***Member States shall entrust national regulatory authorities or bodies or other competent authorities or bodies to develop national media ownership databases containing the information set out in paragraph 1.***
2. Without prejudice to national constitutional laws consistent with the Charter, media service providers providing news and current affairs content shall take measures that they deem appropriate with a view to guaranteeing the independence of editorial decisions. In particular, such measures shall aim to:
- (a) guarantee that ***editorial decisions can be taken freely within the established editorial line of the media service provider***; and
 - (b) ensure disclosure of any actual or potential conflict of interest ■ that may affect the provision of news and current affairs content.

Chapter III

Framework for regulatory cooperation and a well-functioning internal market for media services

Section 1

Independent media authorities

Article 7

National regulatory authorities or bodies

1. The national regulatory authorities or bodies ***as defined*** in Article 2(12) ***shall ensure, where applicable through consultation or coordination with other relevant authorities or bodies, or, where relevant self-regulatory bodies in their Member States,*** the application of Chapter III ■ .
2. The national regulatory authorities or bodies shall be subject to the requirements set out in Article 30 of Directive 2010/13/EU in relation to the exercise of the tasks assigned to them by this Regulation.
3. Member States shall ensure that the national regulatory authorities or bodies have adequate financial, human and technical resources to carry out their tasks under this Regulation.

4. Where needed for carrying out their tasks under this Regulation, *Member States shall ensure that* the national regulatory authorities or bodies *are empowered to request the* natural or legal persons to which Chapter III applies *to provide, within a reasonable time period, information and data that are proportionate and necessary for carrying out the tasks under Chapter III.*

Member States shall ensure that requests can also be addressed to *any other natural or legal person that, for purposes related to its trade, business or profession, might reasonably be in possession of information and data that is proportionate and necessary for carrying out the tasks under Chapter III.*■

Section 2

European Board for Media Services

Article 8

European Board for Media Services

1. The European Board for Media Services ('the Board') is *hereby* established.
2. The Board shall replace and succeed the European Regulators Group for Audiovisual Media Services (ERGA) established by Directive 2010/13/EU.

Article 9

Independence of the Board

The Board shall act in full independence when performing its tasks or exercising its powers. In particular, the Board shall, in the performance of its tasks or the exercise of its powers, neither seek nor take instructions from any government, institution, person or body. This shall not affect the competences of the Commission or the national regulatory authorities or bodies in conformity with this Regulation.

Article 10

Structure of the Board

1. The Board shall be composed of representatives of national regulatory authorities or bodies *as defined* in Article 2(12).
2. Each member of the Board shall have one vote.

- 2a. ***The Board shall take decisions by a two-thirds majority of its members with voting rights.***
3. Where a Member State has more than one national regulatory authority or body, those regulatory authorities or bodies shall coordinate with each other as necessary and appoint a joint representative which shall exercise the right to vote.
4. The Board shall be represented by its Chair. The Board shall elect a Chair ***and Vice-Chair*** from amongst its members. ***The term of office of the Chair shall be one year, renewable once. The Board may set up a Steering Group.***
5. The Commission shall designate a representative to the Board. The representative of the Commission shall participate in ***the deliberations*** of the Board, without voting rights. The Chair of the Board shall keep the Commission informed about the **■** activities of the Board. **■**
6. The Board ***may invite experts and***, in agreement with the Commission, ***permanent*** observers to attend its meetings.
-
8. The Board shall adopt its rules of procedure, ***in consultation with the Commission. Those rules of procedure shall include the practical arrangements for the prevention and management of conflict of interests of the Members of the Board.***

Article 11

Secretariat of the Board

1. The Board shall ***be assisted by*** a secretariat, which shall be provided by the Commission, ***taking into account the needs indicated by the Board. The secretariat shall be adequately resourced for the performance of its tasks.***
2. The main task of the secretariat shall be to contribute to the ***independent*** execution of the tasks of the Board laid down in this Regulation and in Directive 2010/13/EU. ***The secretariat shall act on the sole instructions of the Board regarding its tasks under this Regulation.***

3. The secretariat shall provide administrative and organisational support to the activities of the Board. The secretariat shall also assist the Board **substantively** in carrying out its tasks.

Article 11a

Consultation mechanism

1. **Where the Board considers matters beyond the audiovisual media sector, it shall consult representatives from the relevant media sectors operating at national or Union level.**
2. **The Board shall, in its rules of procedures, set out the arrangements to conduct the consultation referred to in paragraph 1. Such consultation shall ensure the possibility to involve several representatives, as appropriate.**
3. **Where possible, the Board shall make publicly available the results of the consultation.**

Article 12

Tasks of the Board

1. Without prejudice to the powers granted to the Commission by the Treaties, the Board shall **advise and support the Commission on matters related to media services within its competence as well as** promote the effective and consistent application of **Chapter III of** this Regulation and **the implementation of** Directive 2010/13/EU throughout the Union. The Board shall **therefore**:
 - (a) **provide technical expertise to** the Commission **in its task to ensure the consistent** application of **Chapter III of** this Regulation and the consistent implementation of Directive 2010/13/EU across all Member States, without prejudice to the tasks of national regulatory authorities or bodies;
 - (b) promote cooperation and the effective exchange of information, experience and best practices between the national regulatory authorities or bodies on the application of the Union and national rules applicable to media services, including this Regulation and Directive 2010/13/EU, in particular as regards Articles 3, 4 and 7 of that Directive;

■

- (d) when requested by the Commission, provide opinions on the technical and factual issues that arise with regard to Article 2(5c), Article 3(2) and (3), Article 4(4), point (c) and Article 28a(7) of Directive 2010/13/EU;
- (e) in **consultation** with the Commission, draw up opinions with respect to:
 - (i) requests for cooperation **■** between national regulatory authorities or bodies, in accordance with Article 13(7) of this Regulation;
 - (ii) requests for enforcement measures in case of disagreement between the requesting authority or body and the requested authority or body, **including recommended** actions, pursuant to Article 14(4) of this Regulation;
 - (iii) national measures concerning media **services from** outside of the Union, in accordance with Article 16(2) of this Regulation;
- (f) **on its own initiative or** upon request of the Commission, **or upon a duly justified and reasoned request of a media service provider that is individually and directly affected**, draw up opinions with respect to **regulatory or administrative measures which are likely to significantly affect the operation of media service providers in the internal market for media services, in accordance with Article 20(4) of this Regulation; ■**
- (g) draw up opinions on draft **assessments or draft opinions of national regulatory authorities or bodies** in accordance with Article 21(5) of this Regulation;
- (ga) **on its own initiative or upon request of the Commission, draw up opinions with respect to media market concentrations which are likely to affect the functioning of the internal market for media services, in accordance with Article 22(1) of this Regulation;**
- (h) assist the Commission in drawing up guidelines with respect to:
 - (i) the application of this Regulation and **the implementation of** Directive **2010/13/EU**, in accordance with Article 15(2) of this Regulation;
 - (ii) **elements referred to in Article 21(2), point (a) to (c)**, in accordance with Article 21(3) of this Regulation;

(iii) the application of Articles 23(1), (2) and (3) pursuant to Article 23(4) of this Regulation;

- (i) upon request of at least one of the concerned authorities *or bodies*, mediate in the case of disagreements between national regulatory authorities or bodies, in accordance with Article 14(3) of this Regulation;
- (j) foster cooperation on *harmonised* standards related to **■** design of devices or user interfaces *or digital signals carried by such devices*, in accordance with Article *19(4a)* of this Regulation;
- (k) coordinate *relevant measures by the* national *regulatory authorities or bodies concerned* related to the dissemination of or access to content of media *services from* outside of the Union that target *or reach* audiences in the Union, where *such media services* prejudice or present a serious and grave risk of prejudice to public security, *in accordance with Article 16(1) of this Regulation and, in consultation with the Commission, develop a set of criteria* in accordance with Article *16(2b)* of this Regulation;
- (l) organise a structured dialogue between providers of very large online platforms, representatives of media service providers and of civil society, and report on its results to the Commission, in accordance with Article 18 of this Regulation;
- (m) foster the exchange of best practices related to the deployment of audience measurement systems, in accordance with Article 23(5) of this Regulation;
- (mc) exchange experiences and best practices on media literacy, including to foster the development and use of effective measures and tools to strengthen media literacy;*
- (md) draw up a detailed annual report on its activities and tasks, which shall be made publicly available; the Chair shall present the report to the European Parliament when invited to do so.*

2. *Where the Commission requests advice or opinions from the Board, it may indicate a time limit, unless otherwise provided for in Union law, taking into account the urgency of the matter.*

3. *The Board shall forward its deliverables to the contact committee established by Article*

Section 3

Regulatory cooperation and convergence

Article 13

Structured cooperation

1. A national regulatory authority or body ■ ('requesting authority') *may request* cooperation, *including the exchange of information* or mutual assistance, at any time from one or more national regulatory authorities or bodies ('requested authorities') for the ■ consistent and effective application of *Chapter III* of this Regulation or the *implementation of* Directive 2010/13/EU.

3. Requests for cooperation ■ shall contain all the necessary information *related to the request*, including the purpose of and reasons for it.

4. The requested authority may refuse to address the request only in the following cases:

- (a) it is not competent for the subject matter of the request or *to provide the type of cooperation* requested;
- (b) execution of the request would infringe this Regulation, Directive 2010/13/EU or other Union legislation or *national* law compliant with Union law to which the requested authority is subject;
- (c) *the scope or the subject matter of the request is not duly justified or is disproportionate.*

The requested authority shall, *without undue delay*, provide reasons for any refusal to address a request. *In cases under point (a) of the first subparagraph, it shall, where possible, indicate the competent authority.*

6. The requested authority shall do its utmost to address and reply to the request without undue delay **and** provide ■ regular updates on the progress of **the** execution of the request. ■
7. Where the requesting authority **considers that** the requested authority **has not sufficiently addressed or replied** to its request, it shall inform the requested authority without undue delay, explaining the reasons for its position. If the **requesting authority and the** requested authority **do not come to an agreement concerning the request**, either authority may refer the matter to the Board. **In accordance with timelines to be established by the Board in its rules of procedure**, the Board shall issue, in **consultation** with the Commission, an opinion on the matter, including recommended actions. The **authorities concerned** shall do **their utmost** to take into account the opinion of the Board.
 - 7a. **Where a national regulatory authority or body considers that there is a serious and grave risk of limitation of the freedom to provide or receive media services in the internal market or a serious and grave risk of prejudice to public security, it may request other national regulatory authorities or bodies to provide accelerated cooperation, while ensuring compliance with fundamental rights, in particular freedom of expression, including for the purposes of ensuring effective application of national measures under Article 3 of the Directive 2010/13/EU. The requested authority shall reply to and do its utmost to address requests for accelerated cooperation within 14 calendar days. Paragraphs 3,4 and 7 of this Article shall apply mutatis mutandis to requests for accelerated cooperation.**
 - 7b. **Further details on the procedure of the structured cooperation under this Article shall be set out in the Board's rules of procedure.**

Article 14

Requests for enforcement of obligations **of** video-sharing **platform providers**

1. Without prejudice to Article 3 of Directive 2000/31/EC, a national regulatory authority or body (**'requesting authority'**) **may submit a duly justified** request **to** another national regulatory authority or body (**'requested authority'**), **which is competent for the subject matter of the request**, to take necessary and proportionate actions for the effective enforcement of the obligations imposed on video-sharing **platform providers** under Article **28b(1) to 28b(3)** of Directive 2010/13/EU.

2. The requested *authority shall inform the requesting authority*, without undue delay, *of the actions it has taken or plans to take, or* about the *reasons for which* actions *were not taken*, pursuant to *a request under* paragraph 1. *The Board shall establish the timelines for that purpose in its rules of procedure.*
3. In the event of a disagreement between the requesting █ authority █ and the requested authority *regarding actions taken or planned or a lack of actions* pursuant to paragraph 1, either authority █ may refer the matter to the Board for mediation in view of finding an amicable solution.
4. If no amicable solution has been found following mediation by the Board, the requesting █ authority █ or the requested █ authority █ may request the Board to issue an opinion on the matter. In its opinion the Board shall assess whether the █ request referred to in paragraph 1 *has been sufficiently addressed*. If the Board considers that the requested authority has not *sufficiently addressed* such a request, the Board shall recommend actions to *address* the request. The Board shall issue its opinion, in *consultation* with the Commission, without undue delay.
5. *Following receipt of the opinion referred to in paragraph 4, the requested authority* shall, without undue delay and within *timelines to be established by the Board in its rules of procedure*, inform the Board, the Commission and the requesting authority █ of the actions taken or planned in relation to the opinion.

Article 15

Guidance on media regulation matters

1. The Board shall foster the exchange of best practices among the national regulatory authorities or bodies, consulting stakeholders █ where appropriate █ , on regulatory, technical or practical aspects pertinent to the consistent and effective application of *Chapter III of* this Regulation and *implementation of* Directive 2010/13/EU.
2. Where the Commission issues guidelines related to the application of this Regulation or the *implementation of* Directive 2010/13/EU, the Board shall assist it by providing expertise on regulatory, technical or practical aspects, as regards in particular:
 - (a) the appropriate prominence of audiovisual media services of general interest under Article 7a of Directive 2010/13/EU;

- (b) making information accessible on the ownership structure of media service providers, as provided under Article 5(2) of Directive 2010/13/EU **and Article 6(1) of this Regulation.**

Where the Commission issues guidelines related to the implementation of Directive 2010/13/EU, it shall consult the contact committee established pursuant to Article 29 of that Directive.

3. **Where the Commission issues an opinion on a matter related to the application of this Regulation and implementation of Directive 2010/13/EU, the Board shall assist the Commission** █ .

█

Article 16

Coordination of measures concerning media *services from* outside the Union

1. **Without prejudice to Article 3 of Directive 2010/13/EU, the Board shall, upon request of the national regulatory authorities or bodies from at least two Member States, coordinate relevant measures by the national regulatory authorities or bodies concerned, related to the dissemination of or access to media services originating from outside the Union or provided by media service providers established outside the Union that, irrespective of their means of distribution or access, target or reach audiences in the Union where, inter alia in view of the control that may be exercised by third countries over them, such media services prejudice or present a serious and grave risk of prejudice to public security** █ .
2. The Board, in **consultation** with the Commission, may issue opinions on appropriate national measures under paragraph 1. **Without prejudice to their powers under national law the competent national authorities concerned, including the national regulatory authorities or bodies, shall do their utmost to take into account the opinions of the Board.**
- 2a. **Members States shall ensure that the national regulatory authorities or bodies concerned are not precluded from taking into account an opinion issued by the Board according to paragraph 2 when considering to take measures against a media service provider under paragraph 1.**

- 2b. *The Board, in consultation with the Commission, shall develop a set of criteria for the use of national regulatory authorities or bodies when they exercise their regulatory powers over media service providers referred to in paragraph 1. National regulatory authorities or bodies shall do their utmost to take into account the criteria developed by the Board.*

Section 4

Provision of *and access to* media services in a digital environment

Article 17

Content of media service providers on very large online platforms

1. Providers of very large online platforms shall provide a functionality allowing recipients of their services to:
 - (a) *declare that they are* media service *providers* within the meaning of Article 2(2) *and comply with Article 6(1)*;
 - (b) *declare that they are* editorially independent from Member States, *political parties*, third countries ■ and *entities controlled or financed by third countries*;
 - (c) *declare that they are* subject to regulatory requirements for the exercise of editorial responsibility in one or more Member States *and oversight by a competent national regulatory authority or body, or that they adhere to a co- or self- regulatory mechanism governing editorial standards, that is* widely recognised *by* and accepted in the relevant media sector in one or more Member States;
 - (ca) *declare that they do not provide content generated by artificial intelligence systems without subjecting it to human review or editorial control*;
 - (cb) *provide their legal name and contact details, including an email address, through which the provider of the very large online platform can communicate quickly and directly with them; and*
 - (cd) *provide the contact details of the relevant national regulatory authorities or bodies or representatives of the co- or self-regulatory mechanisms referred to in point (c).*

In case of reasonable doubts concerning the media service provider's compliance with point (c), the provider of a very large online platform shall seek confirmation on the matter from the relevant national regulatory authority or body or the relevant co- or self-regulatory mechanism.

- 1a. Providers of very large online platforms shall ensure that the information declared under paragraph 1, with the exception of the information set out in paragraph 1, point (cb), is made publicly available in an easily accessible manner on their online interface.*
- 1b. Providers of very large online platforms shall acknowledge receipt of declarations submitted under paragraph 1 and provide their contact details, including an email address, through which the media service provider can communicate directly and quickly with them. Providers of very large online platforms shall, without undue delay, indicate whether or not they accept the declaration.*
2. Where a provider of a very large online platform *intends to take a decision suspending* the provision of its online intermediation services in relation to content provided by a media service provider that submitted a declaration pursuant to paragraph 1 of this Article *or restricting the visibility of the content provided by such* media service provider, *on the grounds that such content is incompatible with its terms and conditions*, prior to the suspension *or restriction of visibility* taking effect it shall:
 - (a) communicate to the media service provider concerned the statement of reasons for its envisaged decision within the meaning of Article 4(1) of Regulation (EU) 2019/1150 and Article 17 of Regulation (EU) 2022/2065; and*
 - (b) give the media service provider the opportunity to reply to that statement within 24 hours or, in case of a crisis as referred to in Article 36(2) of Regulation (EU) 2022/2065, within a shorter timeframe which allows the media service provider sufficient time to reply in a meaningful manner.*

If following, or in the absence of, such a reply, the provider of a very large online platform takes a decision to suspend or restrict visibility of the content concerned, it shall inform the media service provider concerned without undue delay.

This paragraph shall not apply where providers of very large online platforms suspend the provision of their services in relation to the content of a media service provider or

restrict the visibility of such content in compliance with their obligations pursuant to Articles 28, 34 and 35 of Regulation (EU) 2022/2065 and Article 28b of Directive 2010/13/EU or their obligations relating to illegal content pursuant to Union law.

3. Providers of very large online platforms shall take all the necessary technical and organisational measures to ensure that complaints under Article 11 of Regulation (EU) 2019/1150 *or Article 20 of Regulation (EU) 2022/2065 by media service providers* are processed and decided upon with priority and without undue delay. *The media service provider may be represented by a body in the complaint procedure.*
4. Where a media service provider that submitted a declaration pursuant to paragraph 1 considers that a provider of *the* very large online platform *repeatedly* restricts or suspends the provision of its services in relation to content provided by the media service provider without sufficient grounds, the provider of *the* very large online platform shall engage in a meaningful and effective dialogue with the media service provider, upon its request, in good faith with a view to finding an amicable solution, *within a reasonable timeframe*, for terminating unjustified restrictions or suspensions and avoiding them in the future. The media service provider may notify the outcome *and the details* of such exchanges to the Board *and the Commission*. *The media service provider may request an opinion by the Board on the outcome of the dialogue, including where relevant recommended actions for the provider of the very large online platform. The Board shall inform the Commission of its opinion.*
- 4a. *In case a provider of a very large online platforms rejects or invalidates a declaration by a media service provider submitted pursuant to paragraph 1 or in case no amicable solution was found following the dialogue pursuant to paragraph 4, the media service provider concerned may use the mediation mechanism under Article 12 of Regulation (EU) 2019/1150 or resort to the out-of-court dispute settlement under Article 21 of Regulation (EU) 2022/2065. The media service provider concerned may notify the outcome of such redress mechanisms to the Board.*
5. Providers of very large online platforms shall make publicly available on an annual basis *detailed* information on:
 - (a) the number of instances where they imposed any restriction or suspension on the grounds that the content provided by a media service provider that submitted a

declaration in accordance with paragraph 1 is incompatible with their terms and conditions;

(b) the grounds for imposing such restrictions *or suspensions, including the specific clauses in their terms and conditions with which the media service providers' content was deemed incompatible;*

(bb) *the number of dialogues with media service providers pursuant to paragraph 4;*

(bc) *the number of instances in which they rejected declarations submitted by a media service provider under paragraph 1 and the grounds for rejection;*

(bd) *the number of instances in which they invalidated a declaration submitted by a media service provider under paragraph 1 and the grounds for invalidation.*

6. With a view to facilitating the consistent and effective implementation of this Article, the Commission *shall* issue guidelines to *facilitate the effective implementation* of the *functionality referred to* in paragraph 1.

Article 18

Structured dialogue

1. The Board shall regularly organise a structured dialogue between providers of very large online platforms, representatives of media service providers and representatives of civil society *in order to:*

(a) *discuss experience and best practices in the application of Article 17, including as regards the functioning of very large online platforms and their moderation processes for content provided by media service providers;*

(b) *foster access to diverse offers of independent media on very large online platforms;*

(c) *monitor adherence to self-regulatory initiatives aimed at protecting society from harmful content, including disinformation and foreign information manipulation and interference.*

2. The Board shall report on the results of the dialogue to the Commission *and, where possible, make the results of the dialogue publicly available.*

Article 19

Right of customisation of ■ media offer

1. Users shall have a right to easily change the **configuration, including** default settings, of any device or user interface controlling or managing access to and use of ■ media services **providing programmes** in order to customise the ■ media offer according to their interests or preferences in compliance with **Union** law. This provision shall not affect national measures implementing Article 7a **and 7b** of Directive 2010/13/EU.
2. When placing the devices and user interfaces referred to in paragraph 1 on the market, manufacturers, **developers and importers** shall ensure that **such devices and user interfaces** include a functionality enabling users to freely and easily change **at any time the configuration, including** default settings controlling or managing access to and use of the ■ media services offered.
 - 2a. **Manufacturers, developers and importers of devices and user interfaces referred to in paragraph 1 shall ensure that the visual identity of media service providers, to whose services their devices and user interfaces give access, is consistently and clearly visible to the users.**
 - 3a. **Member States shall take appropriate measures to ensure that manufacturers, developers and importers comply with paragraph 2 and 2a.**
 - 4a. **The Board shall foster cooperation between media service providers, standardisation bodies or any other relevant stakeholders in order to promote the development of harmonised standards related to design of devices or user interfaces controlling or managing access to and use of media services providing programmes or related to digital signals carried by such devices.**

Section 5

Requirements for well-functioning media market measures and procedures

Article 20

National measures affecting ■ media service providers

1. ■ Legislative, regulatory or administrative **measures** taken by a Member State that **are** liable to affect **media pluralism or editorial independence** of media service providers

operating in the internal market shall be duly justified and proportionate. Such measures shall be reasoned, transparent, objective and non-discriminatory.

2. Any national procedure used for the purposes of the [] adoption of *an* administrative measure as referred to in paragraph 1 shall be subject to [] timeframes, set out in advance, *and carried out without undue delay*.
3. [] Any media service provider subject to *a regulatory or administrative* measure referred to in paragraph 1 that concerns it individually and directly shall have the right to appeal against that measure to an appellate body. That body, *which may be a court*, shall be independent of the parties involved and of any external intervention or political pressure liable to jeopardise its independent assessment of matters coming before it. It shall have the appropriate expertise to enable it to carry out its functions effectively *and in a timely manner*.
4. *If a regulatory or administrative measure referred to in paragraph 1 is likely to significantly affect the operation of media service providers in the internal market*, the Board *shall, on its own initiative or* upon request of the Commission *or upon a duly justified and reasoned request of a media service provider that is individually and directly affected by such measure, draw up an opinion on the measure*. Without prejudice to its powers under the Treaties, the Commission may issue its own opinion on the matter.
[] The Board and [] the Commission shall *make their opinions* publicly available.
5. *For the purposes of drawing up an opinion under paragraph 4*, the Board, and where applicable, [] the Commission, *may request relevant information from a national authority or body that adopts a regulatory or administrative measure referred to in paragraph 1 that concerns, individually and directly, a media service provider*. The national authority or body *concerned shall provide that information without undue delay and by electronic means*.

Article 21

Assessment of media market concentrations

1. Member States shall provide *in* national *law*, substantive and procedural rules which *allow for* an assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence. These rules shall:

- (a) be transparent, objective, proportionate and non-discriminatory;
 - (b) require the parties *involved in the* media market concentration *to notify such concentration in advance to the relevant national authorities or bodies or provide such authorities or bodies with appropriate powers to obtain information from those parties necessary to assess the concentration*;
 - (c) designate the national regulatory *authorities or bodies* as responsible for the assessment ■ or ensure *their substantive involvement* in such assessment;
 - (d) set out in advance objective, non-discriminatory and proportionate criteria for notifying *such* media market concentrations ■ and for assessing the impact ■ on media pluralism and editorial independence;
- (da) specify in advance the timeframes for completing the assessment.*

The assessment referred to in this paragraph shall be distinct from *Union and national* competition law assessments, including those provided for under merger control rules. It shall be without prejudice to Article 21(4) of Regulation (EC) No 139/2004, where applicable.

2. In the assessment referred to in paragraph 1, the following elements shall be taken into account:

- (a) the *expected* impact of the *media market* concentration on media pluralism, including its effects on the formation of public opinion and on the diversity of media *services and media offer* on the market, taking into account the online environment and the parties' interests, links or activities in other media or non-media businesses;
- (b) the safeguards for editorial independence, including the *measures taken* by media service providers ■ with a view to guaranteeing the independence of ■ editorial decisions;
- (c) whether, in the absence of the *media market* concentration, the *entities concerned* would remain economically sustainable, and whether there are any possible alternatives to ensure *their* economic sustainability;

(ca) *where relevant, the findings of the Commission's annual rule of law report concerning media pluralism and media freedom;*

(cb) *where applicable, the commitments that any of the party involved in the media market concentration may offer to safeguard media pluralism and editorial independence.*

3. The Commission, assisted by the Board, *shall* issue guidelines on the *elements referred to in paragraph 2, point (a) to (c).*

4. *Where a media market concentration is likely to affect the functioning of the internal market for media services, the national regulatory authority or body shall consult the Board in advance on its draft assessment or draft opinion.*

5. Within *the timelines to be established by the Board in its rules of procedure*, the Board shall draw up an opinion on the draft *assessment or draft opinion of the consulting national regulatory authority or body*, taking account of the elements referred to in paragraph 2 and transmit that opinion to *such authority or body* and the Commission.

6. The national regulatory authority or body referred to in paragraph 4 shall take utmost account of the opinion referred to in paragraph 5. Where that authority does not follow the opinion, fully or partially, it shall provide the Board and the Commission with a reasoned justification explaining its position within *the timelines to be established by the Board.*

Article 22

Opinions on media market concentrations

1. In the absence of an assessment or a consultation pursuant to Article 21, the Board, *on its own initiative or* upon request of the Commission, shall draw up an opinion on the impact of a media market concentration on media pluralism and editorial independence, where a media market concentration is likely to affect the functioning of the internal market for media services. The Board shall base its opinion on the elements set out in Article 21(2). The Board may bring *such* concentrations **█** to the attention of the Commission.

2. **█** Without prejudice to its powers under the Treaties, the Commission may issue its own opinion on the matter.

3. **█** The Board and **█** the Commission shall *make their opinions* publicly available.

Section 6

Transparent and fair allocation of economic resources

Article 23

Audience measurement

1. **Providers of audience measurement systems shall ensure that their systems and the methodology used by their systems** comply with **the** principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination, **comparability** and verifiability.
2. Without prejudice to the protection of undertakings' **trade** secrets, **as defined in Article 2, point (1), of Directive (EU) 2016/943**, providers of proprietary audience measurement systems shall provide, without undue delay and free of **charge**, to media service providers, **to** advertisers **and** to third parties authorised by media service providers and advertisers **■** accurate, detailed, comprehensive, intelligible and up-to-date information on the methodology used by their audience measurement systems. **Providers of proprietary audience measurement systems shall ensure that the methodology used by their systems and the way in which it is applied is independently audited once a year. Providers of proprietary audience measurement systems shall provide, upon request, to each media service provider information on audience measurement results, including non aggregated data, which relate to its media content and media services. The obligations laid down in this paragraph shall** not affect the Union's data protection and privacy rules.
3. National regulatory authorities or bodies shall encourage **providers of audience measurement systems to draw up, together with media service providers, providers of online platforms, their representative organisations and any other interested parties, codes of conduct or shall encourage** providers of audience measurement systems **to comply with codes of conduct jointly agreed and widely accepted by** media service providers, their representative organisations and any other interested parties.

Codes of conduct as referred to in the first subparagraph of this paragraph shall be intended to promote the regular, independent and transparent monitoring of effective achievement of their objectives and compliance with the principles referred to in paragraph 1, including **through** independent and transparent audits.

4. The Commission, assisted by the Board, may issue guidelines on the practical application of paragraphs 1, 2 and 3, ***taking into account, where appropriate, the codes of conduct referred to in paragraph 3.***
5. The Board shall foster the exchange of best practices related to the deployment of audience measurement systems through a regular dialogue between representatives of the national regulatory authorities or bodies, representatives of providers of audience measurement systems, ***representatives of media service providers, representatives of providers of online platforms,*** and other interested parties.

Article 24

Allocation of ***public funds for state advertising and supply or service contracts***

1. Public funds or any other consideration or advantage ***made available, directly or indirectly,*** by public authorities ***or entities*** to media service providers ***and providers of online platforms*** for the purposes of ***state advertising and supply or service contracts with them*** shall be awarded according to transparent, objective, proportionate and non-discriminatory criteria ***made publicly available in advance by electronic and user-friendly means*** and through open, proportionate and non-discriminatory procedures.

Member States shall seek to ensure that the overall yearly public expenditure allocated for the purposes of state advertising is distributed to a wide plurality of media service providers represented on the market, taking into account the national and local specificities of the respective media markets.

This Article shall not affect ***the awarding of public contracts and concession contracts under Union public procurement rules or the application of Union state aid rules.***

2. Public authorities ***or entities*** ■ shall make publicly available ***by electronic and user-friendly means*** yearly information about their ***state advertising expenditure*** ■ , which shall include at least the following details:
 - (a) the legal names of media service providers ***or providers of online platforms*** from which ■ services were purchased;
 - (aa) ***if applicable the legal names of the business groups of which any such media service providers or providers of online platforms are part;***

- (b) the total annual amount spent as well as the amounts spent per media service provider *or provider of online platform*.

Member States may exempt subnational governments of territorial entities of less than 100.000 inhabitants, and entities controlled, directly or indirectly, by such subnational governments, from the obligations under point (aa) of this paragraph.

3. National regulatory authorities or bodies *or other competent independent authorities or bodies in the Member States* shall monitor *and report annually on* the allocation of state advertising *to media service providers and to providers of online platforms based on the details set out in paragraph 2. Annual reports shall be made publicly available in an easily accessible manner*. In order to assess the *completeness* of the information on state advertising made available pursuant to paragraph 2, national regulatory authorities or bodies *or other competent independent authorities or bodies in the Member States* may request from *those public authorities or entities that fall under* paragraph 2 further information, including *more detailed* information on the application of *the* criteria *and procedures* referred to in paragraph 1. *In case the monitoring, assessment and reporting are carried out by other competent independent authorities or bodies, they shall keep the national regulatory authorities or bodies duly informed.*

Chapter IV – Final Provisions

Article 25

Monitoring exercise

1. The Commission shall ensure an independent *and continuous* monitoring of the internal market for media services, including risks to and progress in its functioning █. The findings of the monitoring exercise shall be subject to consultation with the Board. *They shall be presented and discussed with the contact committee established by Article 29 of Directive 2010/13/EU.*
2. The Commission shall define key performance indicators, *methodological safeguards to protect the objectivity, and selection criteria of the researchers* for the monitoring referred in paragraph 1, in consultation with the Board.

3. The monitoring exercise shall include:
- (a) a detailed analysis of **■** media markets of all Member States, including as regards the level of media concentration and risks of foreign information manipulation and interference;
 - (b) an overview and forward-looking assessment of the *functioning* of the internal market for media services as a whole, *including as regards the impact of online platforms*;
 - (ba) an overview of risks to media pluralism and editorial independence of media service providers to the extent that they could impact the functioning of the internal market;*
 - (c) an overview of measures taken by media service providers with a view to guaranteeing the independence of **■** editorial decisions;
 - (ca) a detailed overview of frameworks and practices for the allocation of public funds for state advertising.*
4. The monitoring shall be carried out annually. *The results of the monitoring, including the methodology and data*, shall be made publicly available *and presented annually to the European Parliament*.

Article 26

Evaluation and reporting

1. By 3 years *from the date of application set out in Article 28(2), first subparagraph*, and every four years thereafter, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee.
 - 1a. *In the first evaluation referred to in paragraph 1, the Commission shall examine in particular the effectiveness of the functioning of the secretariat of the Board established under Article 11, including as regards the adequacy of resources in relation to the performance of its tasks.*
2. For the purposes of paragraph 1 and upon its request, Member States and the Board shall send relevant information to the Commission.

3. In carrying out the evaluations referred to in paragraph 1, the Commission shall take into account:
- (a) the positions and findings of the European Parliament, the Council and other relevant bodies or sources;
 - (b) outcomes of the relevant discussions carried out in relevant fora;
 - (c) relevant documents issued by the Board;
 - (d) findings of the monitoring exercise referred to in Article 25.
- 3a. *Where appropriate, the report referred in paragraph 1 may be accompanied by a proposal for an amendment of this Regulation.***

Article 27

Amendments to Directive 2010/13/EU

1. Article 30b of Directive 2010/13/EU is deleted.
2. References to Article 30b of Directive 2010/13/EU shall be read as references to Article 12 of this Regulation.
3. References in Union law to the European Regulators Group for Audiovisual Media Services (ERGA) shall be read as references to the European Board for Media Services (the Board).

Article 28

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. This Regulation shall apply from **15** months after the entry into force ■ .

However, **Article 3 shall apply from 6 months after the entry into force;**

Articles **4(1), 4(2), 6(2), 7 to 12 and 27** shall apply from **9** months after the entry into force;

Articles 13 to 16 shall apply from 12 months after the entry into force;

Article 19 shall apply from 36 months after the entry into force ■ .

3. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President
