

# MEDIA REGULATION

## Study on Serbia's Regulatory Authority's Legal Framework and its Alignment with European Standards



Harmonising Horizons:  
towards EU Standards and  
Human Rights Protection

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## 1 LIST OF ABBREVIATIONS

	<b>Full reference</b>
ACC	Audio-visual commercial communication
AI Act	Artificial Intelligence Act
AVMS	Audio-visual media services
AVMSD	Audio-visual media services Directive
CoE	Council of Europe
CRPD	Convention on the Rights of Persons with Disabilities, United Nations
DMA	Digital Markets Act
DSA	Digital Services Act
DSC	Digital Services Coordinator
ECTT	European Convention on Transfrontier Television
EMFA	European Media Freedom Act
EPRA	European Platform of Regulatory Authorities
ERGA	European Regulators Group for Audio-visual Media
EU	European Union
HFSS	High fat, salt or sugar (foods)
MSPs	Media Service Providers
RA	Regulatory Authority
REM	Regulatory Authority of Electronic Media, SERBIA
T&C	Terms and Conditions
UN	United Nations
VLOPs	Very Large Online Platforms
VLOSEs	Very Large Online Search Engines
VSP	Video-sharing platform
WHO	World Health Organisation
	<b>Agencies, bodies, regulators and platforms in other countries</b>
ACM	Authority for Consumers and Markets (The Netherlands)
AFM	Authority for the Financial Markets (The Netherlands)
AP	Data Protection Authority (The Netherlands)
ARCEP	Regulator for Electronic Communications, Postal and Print media distribution (France)
Arcom	Regulatory Authority for Audio-visual and Digital Communication (France)
BAI	Broadcasting Authority of Ireland (Ireland)
CMA	Competition and Markets Authority (United Kingdom)
ComReg	Communications Regulator (Ireland)
CSA	Conseil Supérieur de l'Audiovisuel (France)
CvdM	Media Regulatory Authority (The Netherlands)
DSA N	Digital Services Act Network (Sweden)
DRFC	Digital Regulators Cooperation Forum (United Kingdom)
FCA	Financial Conduct Authority (United Kingdom)
Hadopi	High Authority for distribution of works & protection of rights on the internet (France)
ICO	Information Commissioner's Office (United Kingdom)
Ofcom	Office of Communications (United Kingdom)
PTS	Swedish Post and Telecom Authority (Sweden)
SDT	Digital Regulation Cooperation Platform (The Netherlands)
SPBA	Swedish Press and Broadcasting Authority (Sweden)

## 2 INTRODUCTION AND CONTEXT OF THE STUDY

The purpose of this study is to identify future actions to support the Regulatory Authority of Electronic Media in Serbia (REM) with the development of regulatory processes under the future Protecting freedom of expression and of the media in Serbia (PROFLEX) action in relation to the implementation of the Audio-visual Media Services Directive (AVMSD), and also the implementation of new and emerging EU legislation such as the Digital Services Act (DSA) and the European Media Freedom Act (EMFA).

As a candidate for membership of the European Union (EU), Serbia is expected to incorporate the EU acquis in the national legislative framework, and hence update the Law on Electronic Media. As regards audio-visual commercial communications, this is largely transposed via the Law on Advertising, which will need to be updated alongside the Electronic Media Act.

Preparation for membership of the EU also involves a broader alignment with general principles and standards promoted by the AVMS Directive (many of which will be included in the forthcoming European Media Freedom Act), and therefore also the standards of the Council of Europe (CoE). These include for example: the promotion of media pluralism, cultural diversity, consumer protection, the proper functioning of the internal market and the promotion of fair competition. Also key are the protection and promotion of freedom of expression; the prohibition of incitement to hatred and incitement to violence; the independence of the national regulatory authority; transparency of media ownership; and legal safeguards for the independent functioning of public service media.

In addition, Serbia currently has the opportunity to participate as a third country in a range of European Union programmes. A new legal basis for the Creative Europe Programme (2021-2027) was established in May 2021.<sup>1</sup> Regarding the Creative Europe Programme, the conditions for future participation in the MEDIA and CROSS strands are possible only if the countries can provide evidence showing that they have fulfilled the conditions set out in the AVMS Directive. The Media strand specifically relates to the audio-visual media production sector. The Cross-sectoral Strand includes (among others) the promotion of *“cross-sectoral activities that aim at adjusting to the structural and technological changes faced by the media, including enhancing a free, diverse, and pluralistic media environment, quality journalism and media literacy, including in the digital environment.”* The Creative Europe Programme is in the process (end 2022- mid 2023) of evaluating the legislative frameworks in a range of third countries in order to assess the potential for future participation in the programme. The new deadline for finalisation of alignment with the AVMS Directive is the end of May 2023.<sup>2</sup>

Additional and emerging EU regulations that will impact on the regulatory structure in Serbia include the Digital Services Act (DSA), the proposal for a Regulation on the transparency and targeting of political advertising, and the proposed European Media Freedom Act (EMFA).

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<sup>1</sup> [Regulation \(EU\) 2021/818](#) of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027)

<sup>2</sup> Drafting of this document was completed in February 2023.

On 27 October 2022, the Digital Services Act (DSA) was published in the EU Official Journal (as Regulation (EU) 2022/2065), aiming to fully harmonise the rules on the safety of online services and the dissemination of illegal content online.<sup>3</sup> The DSA is now part of the EU acquis. The DSA requires an independent regulator – a Digital Service Coordinator (DSC) to implement the foreseen regulation. EU Member States are just beginning to implement this and to designate Digital Service Coordinators. Research will be needed in order to provide some overview of the national approaches and the impact of the DSA on the existing independent regulatory bodies in terms of resources, finances etc.

The proposal for a “Regulation on the transparency and targeting of political advertising”<sup>4</sup> requires that a competent regulatory body will need to be designated to implement and enforce this regulation.

The European Media Freedom Act will introduce obligations regarding a range of issues including media pluralism, state advertising, the independence of public broadcasters, and the safety of journalists.<sup>5</sup>

These two regulations are yet not finalised. It is not yet clear what additional roles and remits national media regulatory authorities will have following the adoption of the new legislation, or how different member states will implement the regulations and designate relevant authorities. The chapters below provide some analysis of these issues and also examine the various position papers of the European Regulators Group for Audiovisual Media (ERGA). Following the developments at the domestic level, both of these regulations could be an area of focus in future studies under the PROFREX actions.

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<sup>3</sup> European Commission (2022) [Regulation \(EU\) 2022/2065](#) – Digital Services Act.

<sup>4</sup> [Proposal for a Regulation](#) of the European Parliament and of the Council on the transparency and targeting of political advertising

<sup>5</sup> [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.

### 3 METHODOLOGY

The aim of this study is to:

- a) Identify progress and the existing gaps in the transposition and implementation of the revised AVMS Directive that may be remedied through action by REM within its legal remit; and provide advice on the type and scope of the action needed (i.e., proposal of amendments to the existing legal basis, adoption of secondary legislation and/or other acts or documents).
- b) Review of provisions affecting the activity of media regulatory authorities in the EU Digital Service Act and the proposed Media Freedom Act, and identify elements of a road map towards aligning REM's regulatory frameworks and practices with the provisions thereof.
- c) Outline possible risks and challenges in the process of transposition of the revised AVMSD, the Digital Services Act and the proposed European Media Freedom Act.
- d) Identify the need for, and feasibility of, reforms/interventions regarding the legal and regulatory framework and the regulatory practices of REM, indicating also the related technical assistance needs.

The approach to the study involved several in-depth discussions with the representatives of REM to gather inputs and exchange views on: the aim and plan for developing the baseline study; the mandate of REM according to domestic legislation; the current status of transposition of the AVMSD into domestic legislation in Serbia; the REM's internal regulations and practices; and the REM's needs and expectations in terms of technical assistance interventions under the proposed PROFREX action.

An analysis was carried out to provide details of the key provisions of the legislative changes that would impact the work of the NRA. This included a needs analysis of the current legislation. It also involved discussions on the current Secondary Acts of the REM, with regard to what may need to be updated, and where completely new Secondary Acts are needed.

In addition, relevant European comparative analyses, and the research and background papers of key organisations (such as the European Regulators Group for Audio-visual Media – ERGA, and the European Platform of Regulatory Authorities – EPRA) were reviewed in order to have an overview of current practice and approached in other European countries.



## 4 AUDIO-VISUAL MEDIA SERVICES DIRECTIVE: KEY CHANGES

### 4.1 Overview of changes

The 2018 AVMS Directive has introduced the following changes to Directive 2010/13/EU:

- Due to the growing importance of non-linear audio-visual media services (on-demand services), the Directive aimed to introduce a level playing field for broadcasting and on-demand services;
- The scope has been expanded to include video-sharing platforms (YouTube and similar platforms), whereby these rules also apply to other types of platforms (such as social media) where *“a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both”*;
- The protection of minors from harmful content has been strengthened, with the requirement that *“the most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures”*. In addition, co-regulatory codes must be developed to protect minors from advertising for certain goods;
- Obligations regarding European works are strengthened for on-demand services;
- Obligations for AVMS providers to provide accessible audio-visual media content are strengthened, whereby Member States are now expected to ensure *“without undue delay”* that services are made *“continuously and progressively more accessible”*.
- The Directive introduces strong provisions for the independence of National Regulatory Authorities (NRAs).

### 4.2 Necessary amendments to the legislative framework

#### 4.2.1 Scope, definitions and jurisdiction

Amendments are needed in the Law on Electronic Media, the Law on Advertising, and the Law on Public Information and Media in Serbia, in order for the legislative framework to align with the AVMS Directive. The following provides a brief summary of these changes.

The Law on Electronic Media will need to be adjusted to reflect changes in the scope of the AVMS Directive, in particular with regard to the inclusion of video-sharing platforms in the scope (under Article 1).

Regarding the definitions outlined (under Article 4), in the Directive, nine did not change (editorial responsibility, media service provider, television broadcasting, broadcaster, on-demand audio-visual media service, television advertising, surreptitious advertising, teleshopping, European works). In addition, several definitions have changed (see below):

- Audio-visual media service – which now includes in the definition the extended phrase: *“where the principal purpose of the service or a dissociable section thereof is devoted to providing programmes.”*
- Programme – this definition no longer contains the phrase: *“the form and content of which are comparable to the form and content of television broadcasting”*. In addition, *“video-clips”* are included in the concept.

Definitions for “Audio-visual media service”; “Programme” (currently the law refers to “programme content”, and may require an additional definition – at least the definition must make reference to user-generated content) need updating.

The 2018 amendments introduced four new definitions: “video-sharing platforms”, “user-generated-content”, “editorial decisions”, and “video-sharing platform provider”, which will need to be added in the law.

The other changes are related to audio-visual commercial communications (ACCS): “audio-visual commercial communication”, “sponsorship” and “product placement”. In order to be aligned with the Directive these definitions need references to user-generated videos, and to video-sharing platforms. The majority of definitions and provisions relevant for audio-visual commercial communications are in the Law on Advertising (2016), having been removed from the Law on Electronic Media in 2016.

In the Law on Advertising, the following definitions need to be adapted: “audio-visual commercial communication” (which needs to include advertising linked to user-generated content and videos); “sponsorship” and “product placement”.

With regard to jurisdiction, the current law is closely aligned with the AVMS. However, several additional provisions need to be added to the Law on Electronic Media: to oblige providers of AVMS to inform the Agency of any changes that may affect the determination of their Jurisdiction status; the Agency will maintain and up-to-date list of AVMS providers under the jurisdiction of Serbia.

#### **4.2.2 Broad objectives and European standards**

The AVMS Directive has broad objectives such as the promotion of media pluralism, cultural diversity, consumer protection, the proper functioning of the internal market and the promotion of fair competition.

Many of these standards align with those of the Council of Europe. The European Convention on Trans frontier Television (ECTT) <sup>6</sup> also addresses the issues of: freedom of expression, reception and retransmission; right of reply; prohibiting pornography, violence, incitement to racial hatred; and the protection of minors etc. The Council of Europe has provided numerous resolutions and recommendations, and also standards and guidelines addressing issues such as the independence of NRAs,<sup>7</sup> media pluralism and transparency of media ownership,<sup>8</sup> combatting hate speech,<sup>9</sup> among others.

Specific standards and principles include:

- The protection and promotion of freedom of expression.
- The freedom of reception and retransmission, and the relevant rules on derogation from these freedoms.
- The prohibition of illegal content.
- Protective clauses and those relevant to human rights issues and the protection of more vulnerable members of society, including: the principle of non-discrimination; the prohibition of incitement to hatred and incitement to violence; the protection of

<sup>6</sup> European [Convention](#) on Transfrontier Television.

<sup>7</sup> Council of Europe [Recommendation Rec\(2000\)23](#) on the independence and functions of regulatory authorities for the broadcasting sector and the 2008 [Declaration](#) of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector.

<sup>8</sup> Council of Europe [Recommendation CM/Rec\(2018\)111](#) of the Committee of Ministers to member States on media pluralism and transparency of media ownership.

<sup>9</sup> Council of Europe [Recommendation CM/Rec\(2022\)16](#) of the Committee of Ministers to member States on combating hate speech.

minors from harmful content. the rights of people with disabilities to accessible audio-visual media content;

- Independence of the regulatory authority.
- Transparency of media ownership.
- The right to reply.
- Promoting access to services of general interest and to events of importance for society.

### **4.2.3 Freedom of expression**

The provisions of the AVMS Directive build on the fundamental right to freedom of expression enshrined in Article 10 of the European Convention of Human Rights and Article 11 of the EU Charter of Fundamental Rights. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. It obliges member states to ensure that freedom of expression, freedom of the media and pluralism are guaranteed in their legal frameworks and respected in the audio-visual media services. These basic values are emphasised in the recitals, and more specifically in Article 3 and Article 30 (2) of the AVMS Directive.

The right to freedom of expression is guaranteed in the Serbian Constitution (Article 46), as well as the right to information. The Law on Public Information and Media also guarantees the freedom of information, and prohibits: censorship; and discrimination against media professionals (Articles 4, 10, 15) The Law on Electronic Media, Article 3 covers the interpretation of the law and requires that the provisions of this Law shall be interpreted (among others) in line with current international standards of human and minority rights, as well as the practices of international institutions which supervise their implementation. The RA is tasked with the protection and development of freedom of opinion and expression, in order to protect the public interest in the field of electronic media and the protection of electronic media users (Article 5 – Foundation).

### **4.2.4 Freedom of reception and retransmission of services**

The Directive requires (under Article 3 (1)) that *“Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audio-visual media services from other Member States for reasons which fall within the fields coordinated by this Directive.”*

Article 4 of the European Convention on Transfrontier Television (ECTT) also obliges Parties to the Convention to guarantee freedom of reception and retransmission of programme services which comply with the terms of the Convention. In both cases, derogations are allowed where services infringe national content rules. The major changes in the Directive relate to the procedures to be taken in relation to derogations and the role of the European Regulators Group for Audio-visual Media (ERGA) in this process.

For candidate countries, it is important to also include a reference to the ECTT, which is currently the only instrument that applies to audio-visual media services established in non-EU countries that are party to the Convention.

### **4.2.5 Prohibition of illegal and harmful content**

The Law on Electronic Media, under Article 51 prohibits discrimination and also prohibits hatred or violence on the basis of the characteristics of discrimination. The general obligations

of media service providers in relation to programme content are covered in Article 47. This article includes the obligation that media service providers will “4) *not provide programme content that highlights and supports drug abuse, violence, criminal or other misconduct, or provide content that abuses the credulity of viewers and listeners.*”

Hence the additional requirements that media service providers under their jurisdiction do not contain any: (a) *incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter; (b) public provocation to commit a terrorist offence* can be added under Article 51 and/ or 47.

In relation to VSPs, it is advisable to add a relevant obligation under a specific chapter addressing VSPs (see more below).

#### **4.2.6 Protection of minors**

This covers obligations on audio-visual media services to protect minors from harmful content, and the protection of minors from harm in the context of audio-visual commercial communications (ACCs). These include also the prohibition of advertising for certain products and the need to limit the exposure of minors to ACCs for certain other types of products. It is important that the same obligations are applied to both the linear (broadcasting) services and the non-linear (on-demand services), while the methods for achieving the aim of protection of minors may differ. There is some strengthening of obligations to protect from harmful content, whereby “*the most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures*”. The Directive adds a provision regarding data of minors, as the personal data of minors collected or otherwise generated by media service providers in implementing protection measures shall not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.

Of importance is the new requirement that co-regulatory codes be developed (with the media services (including VSPs) and the NRA and all relevant stakeholders) that aim to effectively reduce the exposure of minors to audio-visual commercial communications for alcoholic beverages, and for HFSS (foods high in fat, salt or sugar).<sup>10</sup> This provision addresses broad concerns regarding child obesity and follows the World Health Organisation (WHO) “Recommendations on the Marketing of Food and Non-Alcoholic Beverages to Children.”<sup>11</sup>

Regarding VSPs, they are also obliged to respect the rules regarding the protection of minors, to be added under a specific chapter relating to VSPs.

#### **4.2.7 Accessibility of audio-visual media services**

The Charter of Fundamental Rights of the European Union ratified in 2000 states that the EU recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community (Article 26). The UN Convention on the Rights of Persons with Disabilities (CRPD) sets out minimum standards for protecting and safeguarding a full range of civil, political, social, and economic rights for people with disabilities. In particular, signatory states shall ensure that persons with disabilities shall enjoy access to cultural materials in

<sup>10</sup> Foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars

<sup>11</sup> WHO “[Recommendations on the Marketing of Food and Non-Alcoholic Beverages to Children](#)”.

accessible formats and enjoy access to television programmes, film, etc. in accessible formats. In summary:

Article 9 of the Convention addresses the broad concept of accessibility including access to information and communication, and information and communication technologies and systems.

Article 21 addresses the right to exercise freedom of expression and opinion and access to information.

Article 30 recognises the right of persons with disabilities to take part on an equal basis with others in cultural life.<sup>12</sup>

The AVMS Directive has significantly strengthened the obligations of media service providers in this regard. Article 52 of the current Law on Electronic Media addresses the protection of the rights of people with disabilities. It aligns with the former Directive as regards “encouraging” audio-visual media services to make their content available to people with “hearing and vision impairments”.

In 2015, the Serbian Regulatory Authority of Electronic Media (REM) issued a Recommendation on the use of subtitles and sign language in order to improve the provision of audio-visual media content and their accessibility to people with hearing impairments.<sup>13</sup> This recommendation defines how subtitles and sign language will be used. Following this, in 2019, the REM issued a Recommendation on better accessibility of program content to persons with disabilities.<sup>14</sup> The initial plan was to draft a rulebook, which would be binding for the media service providers (MSPs) and which would enable better accessibility of media content to people with disabilities. However, the Ministry of Culture and Information issued an opinion that, according to the Law on Electronic Media, the REM does not have the authority to determine the obligations of a media service provider through a bylaw in this case. So instead the REM decided to adopt a Recommendation, which is not binding on media service providers.

The alignment of the current legislation with the AVMS Directive will need to give the REM the remit to take action in the area of accessibility and implement the strengthened provisions.

#### **4.2.8 Independence of national regulatory authorities**

Council of Europe (CoE) standards have had a strong influence on the development of legislative frameworks regarding the establishment and functioning of regulatory authorities (RAs) and the measures needed to guarantee their independence.

In 2000, the COE issued a recommendation addressing the general legislative framework; the appointment, composition and functioning of regulatory authorities; financial independence; powers and competence; and accountability. A further Declaration of the Committee of Ministers was published in 2008.

The 2020 Government Strategy for the development of the public information system in the Republic of Serbia recognised the need to update audio-visual policy (as regulated under the

<sup>12</sup> [Convention on the Rights of Persons with Disabilities](#) (CRPD):

<sup>13</sup> REM (2015): [Recommendation](#) on the use of subtitles and sign language in order to improve the provision of audio-visual media content and their accessibility to people with hearing impairments

<sup>14</sup> REM (2019): [Recommendation](#) on better accessibility of program content to persons with disabilities

Electronic Media Law). In particular, several issues were raised regarding the need to strengthen the capacities and independence of the RA – the REM.

The Strategy recommended changes regarding (among others): the processes for nominating candidates for members of the REM Council; the need to ensure that the REM Council can adopt their Statute and by-laws independently without approval of the Assembly or other executive authorities; improvement of the procedure for the adoption of the REM financial plan; improvement of the status of employees in the REM and enhancement of the professionalisation of the REM; a clearer role of the REM in monitoring the media during election campaigns, etc.<sup>15</sup>

#### **4.2.9 Transparency of media ownership**

The AVMS Directive emphasises (under recital 15) that *“Transparency of media ownership is directly linked to freedom of expression, a cornerstone of democratic systems”*. The AVMSD requires a minimum of public information about services (Article 5), and national lists of audio-visual media services (Article 2). The most recent CoE standards in this area are from 2018.

The Council of Europe standards are more detailed with regard to transparency of ownership: *“Media transparency requirements should be specific and include a requirement for media outlets operating within State jurisdiction to disclose ownership information directly to the public on their website or other publication and to report this information to an independent national media regulatory body or other designated body, tasked with gathering and collating the information and making it available to the public. This body should be provided with sufficient and stable financial resources and staff to enable it to effectively carry out its tasks.”*

The recommendation also focuses on the transparency of financing of media outlets:

*High levels of transparency should also be ensured with regard to the sources of financing of media outlets in order to provide a comprehensive picture of the different sources of potential interference with the editorial and operational independence of the media and allow for effective monitoring and controlling of such risks. To this end, States are encouraged to adopt and implement legislation or other equally effective measures that set out the disclosure of information on the sources of the media outlet’s funding obtained from State funding mechanisms (advertising, grants and loans). States are furthermore encouraged to promote the disclosure by media outlets of contractual relations with other media or advertising companies and political parties that may have an influence on editorial independence.*

It is worth noting that Transparency of Media Ownership is addressed again in the proposal for a European Media Freedom Act (see chapter 6).

#### **4.2.10 European Works**

The AVMS Directive (as amended in 2018) introduced a level playing field for linear services (broadcasting) and non-linear (on-demand audio-visual media services) with regard to most of the obligations in the Directive – there are different obligations, for example, regarding the promotion of European works.

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<sup>15</sup> [Strategy](#) - development of the public information system in the Republic of Serbia for the period 2020-2025. "Official Gazette of RS", number 11 of 7 February 2020. "Official Gazette of RS", number 11 of 7 February 2020.

The updated rules in the Directive regarding audio-visual commercial communications were intended as a response to market developments. The aim was to create a more fair regulatory environment for all players in the audio-visual sector, including more flexibility for broadcasters in terms of advertising. Hence, there is more flexibility regarding the proportion of advertising during the day, and product placement is no longer prohibited but allowed with certain limitations.

A key aim of the AVMS Directive is the promotion of European works, and this is achieved by placing quota requirements on broadcasters (Article 16) and requirements on broadcasters to support the independent production sector requiring a minimum of 10% of broadcast time or 10% of programming budget for European works for independent producers (Article 17).

The revision of the AVMS Directive increased the obligations of non-linear (on-demand) audio-visual services regarding the promotion of European works (under Article 13) and introduced quotas for European works in the catalogues alongside the obligation to ensure the prominence of these works.

#### **4.2.11 Extending the scope of the Directive to include video-sharing platforms**

The scope of the Directive has been extended to include video-sharing platforms (VSPs). Updates of the law will need to ensure that VSPs are defined and explicitly included in the Law, as set out in Article 28a of the Directive. It has been common practice in other European countries to extend the scope of the Directive to video-sharing platforms by adapting the national legislation to update the subject of the law, and by including the relevant definitions alongside all definitions in the law, and by introducing a specific chapter on video-sharing platforms (Croatia, Spain, Slovenia, Italy, France, Greece, and in the draft laws of Montenegro and Kosovo\*). These specific chapters on VSPs generally include:

- Provisions on Jurisdiction (Croatia, France, Greece, Italy, Slovenia, and in the draft laws of Montenegro and Kosovo);
- Obligations of VSPs, (Croatia, France, Greece, Slovenia, Spain, Italy, and in the draft laws of Montenegro and Kosovo);
- Measures to be taken by VSPs (Croatia, France, Greece, Spain, Slovenia, Italy, and in the draft laws of Montenegro and Kosovo).

In addition, various national laws have included reference to VSPs in relation to the competences of the RA, and also under the general provision on media literacy (Spain), under general provisions regarding self- and co-regulation (Croatia, Spain), regarding requirements for registration (Croatia, Spain, Slovenia and the draft laws of Montenegro and Kosovo), regarding requirements to pay a fee to the Agency (Croatia, Slovenia), and in relation to media transparency requirements to provide an *impressum* (Spain).

### **4.3 Role and remit of the regulator in implementing the AVMS**

This section includes feedback from the REM with regard to current policies and bylaws and in relation to those that will need to be updated in order to implement the Directive.

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\* "This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ opinion on the Kosovo Declaration of Independence.

### **4.3.1 Current tasks and competences of the RA – need for expansion**

Discussions with the REM, along with the brief needs analysis of the current legislation, and a review of the types of Secondary Acts in force, indicated the following main changes regarding tasks and competences.

There are three main areas that need to be considered regarding the tasks and competences of the REM in the context of the implementation of the AVMS Directive.

The most significant will concern the implementation of the provisions concerning video-sharing platforms.

- Identification, establishment of jurisdiction and registration of services;
- Administration and calculation of regulatory fee;
- Secondary Acts to outline obligations of VSPs and measures to be taken by VSPs;
- Assessment of measures taken by VSPs;
- Development of co-regulatory codes.

Although the REM has done significant work in the area of improving the accessibility of audio-visual media content for people with disabilities, the regulator currently has no clear remit to introduce rules in this area. The revised legislation will need to ensure the remit is expanded in this area. The Directive specifically requires media services to report to the RAs on these issues. In addition, the REM is an important player in promoting collaborative action in this area by bringing together the key stakeholders.

The increased obligations for on-demand services to promote European works – with a quota of 30% in their catalogues, and the obligation to ensure prominence of such works – will also bring additional tasks. The REM will need to develop new rules for implementation, using EU guidance and the experiences of other countries.

### **4.3.2 Secondary Acts: Rulebooks, instructions and recommendations**

The table (overleaf) provides a first overview of the main changes brought about by the Directive. It also lists the current secondary acts in force that may need revision, alongside potential new acts (Rulebooks, Recommendations etc.).

The table also presents a first indication of potential research via the future PROFREX action to support the REM in this process.



Table 1: Key changes in the AVMS Directive

Key developments	Need change in law	Rulebooks, recommendations	Potential research needs
European works on on-demand services	<b>Update:</b> quota obligations (30%) and ensuring prominence	<b>Update :</b> Rulebook on procedures for European Works to be updated, or develop a <b>New</b> Rule book specifically for on-demand services	Research on approaches in other countries
Identification and registration of VSPs	<b>New:</b> Chapter/ provisions on VSPs	<b>New:</b> Rulebook addressing procedures for identification and registration VSPs	Research on identification/ registration: EU Guidelines, ERGA Guidance, practice on local level
VSPs measures for protection and assessment of measures	<b>New:</b> chapter/ provisions on VSPs	<b>New:</b> Rulebook on procedures for VSPs to implement measures	Research on approaches in other countries
Development of co-regulation	<b>New:</b> Specific new provision in law	<b>New:</b> Procedures and criteria for developing co-regulation	Research on co-regulatory structures
Accessibility of services	<b>Update:</b> Stronger provisions	<b>New</b> Rule book to be developed based on former Recommendation	Research on practice in other countries: progressive approach; funding; technological tools
Protection of minors	<b>Update:</b> Stronger provisions	<b>Update:</b> of Rulebook	Examples from other countries
Advertising and sponsorship/ commercial communications	<b>Update:</b> Change in some provisions: VOD have same obligations / need to reflect VSPs <b>Update:</b> Law on Advertising	<b>Update:</b> of Rulebook <b>Update:</b> of Recommendations	Examples from other countries
Product Placement	<b>Update:</b> No longer prohibited, but rules on presentation remain	<b>New:</b> Rule book to be developed based on former Recommendation	Examples from other countries
Reducing exposure of minors to ACCs for HFSS foods, and alcohol	<b>Update:</b> Stronger provisions	<b>New:</b> Development of co-regulation with industry	Examples from other countries
Reality TV	Relates to both protection of minors and protection of human dignity as key principles	<b>New:</b> Potential development of Rules and/ or Recommendations	Examples: UK, France (Protection of human dignity/ duty of care); Others (Scheduling/ watershed)
Hate speech	<b>Update:</b> Strong prohibitions for AVMS and VSPs	<b>New:</b> Potential development of Guidance	Examples from other countries

#### 4.4 Potential needs under the PROFREX action

As indicated in the table above, there are a range of areas where future research, papers, and workshops under the PRO-FREX action could prove valuable to the REM.

A key area concerns the inclusion of video-sharing platforms in the scope of the Directive. Secondary acts in order to clarify rules and criteria related to the issues below. Overviews of EU Guidelines, ERGA Guidance, and European best practice (via EPRA) will be key:

- Identification, establishment of jurisdiction and registration;
- Requirements to pay a fee to the Agency, and calculation of fee (Croatia, Slovenia);
- Obligations of VSPs;
- Measures to be taken by VSPs to ensure compliance with obligations;
- Approaches to assessment of measures taken by VSPs, to be carried out by the RA;
- Development of self- and co-regulatory codes.

Research on the development and implementation of co-regulation in other countries (involving all stakeholders) would also be very useful. This is particularly relevant regarding the obligations of all services to use these mechanisms to reduce the exposure of minors to ACCs for HFSS foods, and for alcohol.

With the strengthened obligations for video-on-demand services regarding the promotion of European works, the REM will need to develop new rules for implementation, using EU guidance and the experiences of other countries.

The REM as already done significant work in the area of accessibility of audio-visual content with the development of recommendations in this area. Alignment with the Directive implies that the remit of the REM should be expanded to include the power to develop rules in this area. Further research on the latest developments in other countries could be useful.

Reality TV has been regulated in many other countries in relation to scheduling and watersheds. According to a recent EPRA report, reality and talent shows are often covered by general provisions on the protection of minors from harmful content.<sup>16</sup> Some countries (UK and France) have issued guidelines and rules with a focus on human dignity concerning the responsibilities of media services towards participants in these programmes. This is an area where the REM may wish to develop Rules or Recommendations.

There are strong prohibitions of hate speech on audio-visual media services and on VSPs. Given the complexity of the concept of hate speech, it is advisable for the REM to develop Guidance on these issues for media services to address hate speech, discrimination, and denigration. Several regulators developed such Guidance documents with reference to European standards including CoE recommendations in this area.<sup>17</sup>

<sup>16</sup> EPRA (2016): [Case Study on the Protection of Minors](#): Reality and Talent Shows. Comparative Background Document.

<sup>17</sup> Council of Europe Recommendation [CM/Rec\(2022\)16\[1\]](#) of the Committee of Ministers to member States

## 5 THE DIGITAL SERVICES ACT

The Digital Services Act (DSA)<sup>18</sup> is part of what is known as the EU Digital Services Package. The second aspect of this package is the Digital Markets Act (DMA), which will not be addressed in the context of this study. The DMA concerns market and competition issues, and only applies to the very large technology companies identified as “gatekeepers”, and the enforcement will be carried out by the European Commission. Hence, it is not covered in detail here.

The aim of the Digital Services Act is to modernise the rules of the e-Commerce Directive (2000) in relation to illegal content and to address transparency of advertising and disinformation online. According to the European Commission website, the rules are intended to: *“better protect consumers and their fundamental rights online; establish a powerful transparency and a clear accountability framework for online platforms; foster innovation, growth and competitiveness within the single market”*.

### 5.1 Specific aims of the DSA and protection of fundamental rights

The European Commission has summarised the key content of the Digital Services Act, which includes those outlined below.

- measures to counter illegal goods, services or content online, such as a mechanism for users to flag such content and for platforms to cooperate with “trusted flaggers”
- new obligations on traceability of business users in online market places, to help identify sellers of illegal goods or reasonable efforts by online market places to randomly check whether products or services have been identified as being illegal in any official database
- effective safeguards for users, including the possibility to challenge platforms’ content moderation decisions
- ban on certain type of targeted adverts on online platforms (when they target children or when they use special categories of personal data, such as ethnicity, political views, sexual orientation)
- transparency measures for online platforms on a variety of issues, including on the algorithms used for recommendations
- obligations for very large platforms and very large online search engines to prevent the misuse of their systems by taking risk-based action and by independent audits of their risk management systems
- access for researchers to key data of the largest platforms and search engines, in order to understand how online risks, evolve, in order to scrutinise how platforms work.
- oversight structure to address the complexity of the online space: EU countries will have the primary role, supported by a new European Board for Digital Services; for very large platforms, supervision and enforcement by the Commission
- Codes of conduct and technical standards will assist platforms and other players in their compliance with the new rules. Other codes will enhance measures taken to ensure accessibility of platforms for people with disabilities or support further measures on advertising.
- All online intermediaries offering their services in the single market, whether they are established in the EU or outside, will have to comply with the new rules.<sup>19</sup>

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<sup>18</sup> [Proposal](#) for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC

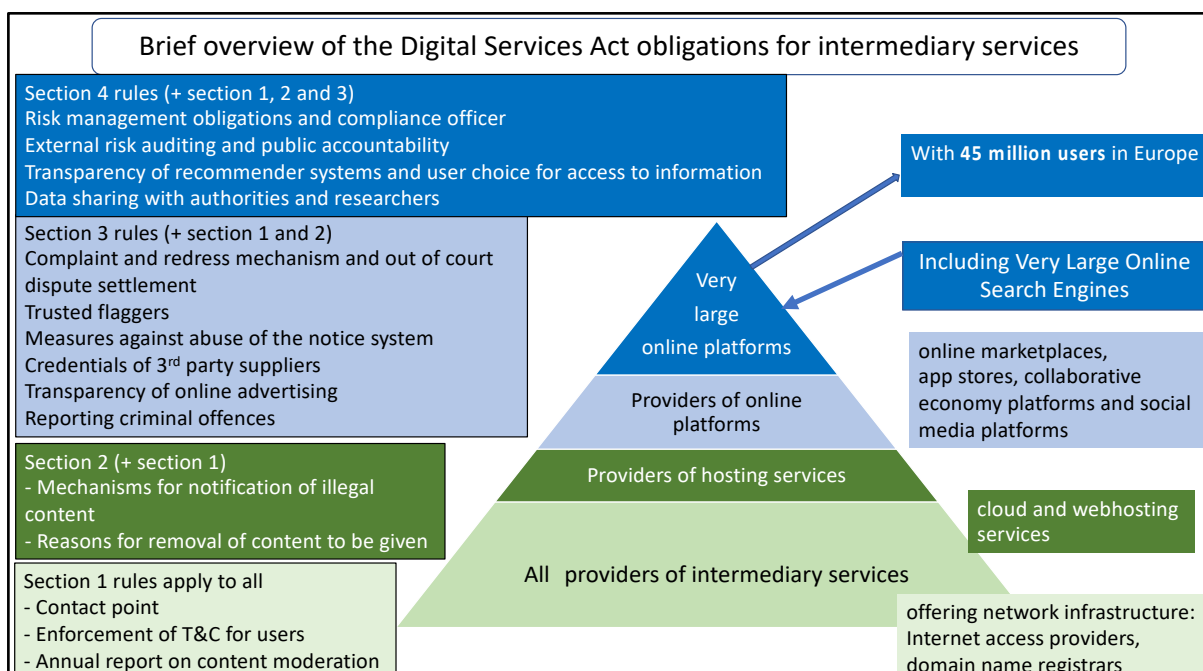
<sup>19</sup> [European Commission website: Europe fit for the Digital Age: new online rules for platforms.](#)

## 5.2 What services are in the scope of the DSA

The DSA discusses the passive nature of some intermediaries and provisions on the exemption of liability of providers of intermediary services liability (similar to those of the E-Commerce Directive) – i.e., conditions under which providers of mere conduit services (Article 3), caching services (Article 4) and hosting services (Article 5) are exempt from liability for the third-party information they transmit and store. Once made aware of the existence of illegal content, intermediaries are obliged to remove it.<sup>20</sup>

In addition, it recognises that a range of intermediary services exert more influence on the content available to the user: *“recognising the particular impact of very large online platforms on our economy and society, the proposal sets a higher standard of transparency and accountability on how the providers of such platforms moderate content, on advertising and on algorithmic processes”*.

The DSA categorises intermediaries in what has become known as the “pyramid”, and the responsibilities and obligations vary according to category. The responsibilities are however cumulative, with each layer having the obligations of the layer below plus additional obligations. The figure below provides an illustration of the pyramid. It is important to note at the outset that those services considered to be “Very Large Online Platforms” (VLOPs) and “Very Large Online Search Engines” (VLOSEs) will fall under the supervision of the European Commission for the purposes of the DSA.



## 5.3 Overview of obligations

### 5.3.1 Contact points, terms and conditions for users, means to notify illegal content

All services are required to have an electronic contact point. They must also provide terms and conditions (T&C) for the users and enforce these terms and conditions. All services must also provide annual reports regarding content moderation. In addition to the above, cloud and web

<sup>20</sup> [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')

hosting services must also have mechanisms for notification of illegal content. They must provide reasons for the removal of content.

### **5.3.2 Online platforms: terms and conditions for users, means to notify illegal content**

There are significant additional requirements for providers of online platforms (a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public), including for example e-commerce platforms, online stores, social media platforms, content sharing platforms such as video-sharing platforms.

Regarding e-commerce platforms (that allow consumers to conclude distance contracts with traders), they must ensure that such traders are traceable (identifiable).

Online platforms must provide recipients of the service access to an effective internal complaint-handling system. There must also be access to an out-of-court dispute settlement (see more below under implementation). Providers of online platforms have to give priority to notices submitted by trusted flaggers and ensure that these are processed and decided upon without undue delay (see more below regarding the designation of “trusted flaggers”). They must introduce measures and protection against misuse of the service by users via warnings, suspensions etc. Platforms must provide, every six months reports that include data on disputes, and suspensions of users. Providers of online platforms shall not design, organise or operate their online interfaces in a way that deceives or manipulates the recipients of their service or in a way that otherwise materially distorts or impairs the ability of the recipients of their service to make free and informed decisions.

Regarding transparency, there are two key issues. It should be clear that information presented is an advertisement, the identity of the person for whom the advertising is presented, the natural or legal person who paid for the advertisement, and the potential to adjust the parameters of the targeting of the advertisement.

Platforms also need to provide clear information on the parameters used in their recommender systems, as well as any options for the recipients of the service to modify or influence those main parameters.

Finally, providers of online platforms accessible to minors shall put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors, on their service.

### **5.3.3 Very Large Online Platforms and Very Large Online Search Engines**

There are further additional obligations for the VLOPs and the VLOSEs to manage systemic risks:

- To identify, analyse and assess any systemic risks in the Union stemming from the design or functioning of their service and its related systems, including algorithmic systems, or from the use made of their services. This is intended to: prevent the dissemination of illegal content; prevent negative effects on human rights and human dignity; prevent negative effects on civic discourse and electoral processes, and public security; and negative effects in relation to gender-based violence, the protection of public health and minors and serious negative consequences to the person’s physical and mental well-being.

- Introduce measures to mitigate such risks. A range of measures are introduced to achieve this.
- The platforms may be required to introduce crisis response mechanisms to adapt swiftly and efficiently in reaction to crises affecting public security or public health.
- Providers of very large online platforms and of very large online search engines shall be subject, at their own expense and at least once a year, to independent audits to assess compliance.
- Additional obligations on transparency of advertising - to provide a repository containing more detailed information on all advertising.
- Providers of very large online platforms or of very large online search engines shall provide the Digital Services Coordinator of establishment or the Commission, at their reasoned request and within a reasonable period specified in that request, access to data that are necessary to monitor and assess compliance.
- And give access to their data, under set conditions, both to regulators and vetted researchers and let independent auditors check yearly whether they comply with the new obligations and follow the prescribed recommendations.
- Providers of very large online platforms or of very large online search engines shall establish a compliance function, which is independent from their operational functions and composed of one or more compliance officers, including the head of the compliance function.
- Further reporting obligations.

## **5.4 Where the DSA meets the Audio-visual Media Services Directive**

### **5.4.1 Distinct fields**

There are certain elements relevant to online trading and marketplaces such as *“traceability of business users in online market places, to help identify sellers of illegal goods”*, which would be outside the scope of media regulators and more appropriate for institutions and agencies dealing with markets, fair trade, illegal trade and consumer rights.

In addition, the recital describes a range of illegal content and services, many of which, again, fall under the context of e-commerce and do not have relevance for the media regulator including: the sale of non-compliant or counterfeit products, the sale of products or the provision of services in infringement of consumer protection law, the illegal offer of accommodation services or the illegal sale of live animals. Hence, it is clear that the DSA also requires enforcement by agencies in the field of crime prevention in relation to illegal and counterfeit goods, and the fields of fair trade and consumer rights. Copyright infringements are also included in the potential illegal content, as addressed in the relevant EU Laws on Union law on copyright and related rights.

On the other hand, the recital also includes the following in the list of potential illegal content: such as illegal hate speech or terrorist content and unlawful discriminatory content, and illegal activities such as the sharing of images depicting child sexual abuse. These are also key elements of illegal content prohibited on VSPs by the AVMS Directive.

Further potential illegal content cited in the recital include the unlawful non-consensual sharing of private images and online stalking. While these are not included in the AVMS

Directive – as they will tend to relate to person-to-person offences, several countries are also developing legislation in relation to these issues (for example, United Kingdom and Ireland).

#### **5.4.2 “Appropriate measures” versus clear obligations for VSPs.**

It is worth noting that the AVMS lists a range of “appropriate measures” to be taken by VSPs to fulfil their obligations but leaves a certain discretion to the Member States to choose appropriate measures, or for the NRA to elaborate this in a secondary Act, or in turn to leave it to the VSPs to decide on appropriate measures. In all cases the NRA will assess whether the measures taken by the VSP are appropriate.

In contrast, the DSA specifies certain measures that must be taken. There are several examples outlined in the following sections, for example, platforms must provide a functionality whereby users can identify commercial communications in the content that they upload. Under the DSA, this is described as an “appropriate measure”.

#### **5.4.3 Terms and conditions**

Under the AVMSD (Article 28b) appropriate measures for VSPs include the inclusion and application in the “Terms and Conditions” for users, the requirements to protect: minors from programmes, user-generated videos and audio-visual commercial communications which may impair their physical, mental or moral development in accordance with Article 6a(1); and the general public from programmes, user-generated videos and audio-visual commercial communications containing incitement to violence or hatred; and the general public from programmes, user-generated videos and audio-visual commercial communications containing content the dissemination of which constitutes an activity which is a criminal offence under Union law (provocation to commit a terrorist offence, offences concerning child pornography) and offences concerning racism and xenophobia).

A further measure is to include in the “Terms and Conditions” for users the requirement that ACCS included by users who upload content abide by the requirements set out in article 9(1) of the Directive (detailed in the next section).

The Digital Services Act provides a much more detailed provision on “Terms and Conditions” (T&C). The T&C should: clarify restrictions that they impose in relation to the use of their service; include information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review, as well as the rules of procedure of their internal complaint handling system; be set out in clear, plain, intelligible, user-friendly and unambiguous language, and shall be publicly available in an easily accessible and machine-readable format. Users should be informed of any changes to the T&C. There are specific rules requiring that a service primarily directed at minors or predominantly used by them, has clear T&C expressed in a way that minors can understand.

Enforcement of T&C should have due regard to the rights and legitimate interests of all parties involved, including the fundamental rights of the recipients of the service, such as the freedom of expression, freedom and pluralism of the media, and other fundamental rights and freedoms as enshrined in the Charter.

Very large online platforms and very large online search engines shall publish their terms and conditions in the official languages of all the Member States in which they offer their services.

These more detailed rules on the presentation and content of T&C are useful for the development of rules on T&C in relation to VSPs, as under the AVMS Directive.

#### **5.4.4 Advertising and commercial communications**

Audio-visual commercial communications include in their definition advertising, sponsorship, product placement and teleshopping. The AVMS regulates audio-visual commercial communications on broadcast, on-demand and video-sharing platform services (including those platforms that qualify as video-sharing platform services where the sharing of third-party content is more than a minor part of activities).

As the general rules on the presentation and content of advertising apply to all three types of service, it is worth reiterating them here: audio-visual commercial communications (ACCs) should be recognisable, not use subliminal techniques and surreptitious advertising is prohibited; they should not prejudice respect for human dignity or promote discrimination, or encourage behaviour prejudicial to health or safety or encourage behaviour grossly prejudicial to the protection of the environment.

It is completely prohibited to advertise certain products such as tobacco, cigarettes and e-cigarettes, and also medicinal products and medical treatment available only on prescription. ACCs for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages.

Regarding the protection of minors, ACCs shall not cause physical, mental or moral detriment to minors; therefore, they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.<sup>21</sup>

The rules for VSPs require that ACCs conform to all of the above. This concerns both the advertising that the platforms themselves market sell and arrange, and also the ACCs that appear on their platforms (but are marketed, sold and arranged by third parties). Users should be informed of where programmes and user-generated videos contain audio-visual commercial communications.

To achieve the above, the VSPs should ensure that the Terms and Conditions for users outline the content rules regarding ACCs that they upload, and also provide them with a functionality to declare whether videos that they are uploading contain ACCs.

The Digital Services Act introduces strong rules regarding the transparency of advertising on online platforms (Article 26). The first rule (as with audio-visual media services and VSPs) is that users of their services should be able to identify that the information that they are seeing is an advertisement. In addition, the following information must also be clear: the natural or legal person on whose behalf the advertisement is presented; the natural or legal person who paid for the advertisement if that person is different from the natural or legal person referred to above; meaningful information directly and easily accessible from the advertisement about the main parameters used to determine the recipient to whom the advertisement is presented and, where applicable, about how to change those parameters.

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<sup>21</sup> Article 9 (1) AVMS



Online platforms have to provide recipients of the service with a functionality to declare whether the content they provide is, or contains, commercial communications.

It is important to note that the AVMS lists a range of “appropriate measures” to be taken by VSPs to fulfil their obligations but leaves a certain discretion to the Member States to choose appropriate measures or in turn to leave it to the VSPs to decide on appropriate measures. In all cases the NRA will assess whether the measures taken are appropriate.

In contrast, the DSA specifies certain measures that must be taken: platforms have to provide a functionality whereby users can identify commercial communications in the content that they upload.

#### **5.4.5 Protection of minors**

The Digital Services Act provides a broad obligation (article 28): *1. Providers of online platforms accessible to minors shall put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors, on their service.*

The AVMSD prohibits video sharing platforms from processing the personal data of minors for commercial purposes such as direct marketing, profiling and behavioural advertising when trying to protect minors (by deploying parental control or rating systems). The DSA also repeats this obligation under Article 28 (2).

The only further detail in the DSA is addressed to the VLOPS with regard to mitigating risks, Article 35: *(j) taking targeted measures to protect the rights of the child, including age verification and parental control tools, tools aimed at helping minors signal abuse or obtain support, as appropriate;*

Article 44 of the DSA states that the Commission shall consult the European Board for Digital Services (see under 5.5 below), and shall support and promote the development and implementation of voluntary standards set by relevant European and international standardisation bodies, at least in respect of the following: *(j) standards for targeted measures to protect minors online.*

With regard to Terms and Conditions (Article 14), *3. Where an intermediary service is primarily directed at minors or is predominantly used by them, the provider of that intermediary service shall explain the conditions for, and any restrictions on, the use of the service in a way that minors can understand.*

#### **5.4.6 Trusted flaggers**

The list of appropriate measures to be taken by VSPs under the AVMSD include: *(d) establishing and operating transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 provided on its platform;*

*(e) establishing and operating systems through which video-sharing platform providers explain to users of video-sharing platforms what effect has been given to the reporting and flagging referred to in point (d);*

*No further detail is provided regarding “flagging”. The 2022 Strengthened Code of Practice of Disinformation introduced a Commitment for signatories of the Code that also refers to the flagging of content: Commitment 23. Relevant Signatories commit to providing users with the*

functionality to flag harmful false and/or misleading information that violates Signatories' policies or terms of service.<sup>22</sup>

The Digital services Act provides the most detail on flagging – in particular with a focus on “trusted flaggers”. Article 19 (1) of the DSA states that: Online platforms shall take the necessary technical and organisational measures to ensure that notices submitted by trusted flaggers through the mechanisms referred to in Article 14, are processed and decided upon with priority and without delay.

Article 22 details the concept of a “trusted flagger” whereby: *the status of ‘trusted flagger’ under this Regulation shall be awarded, upon application by any entity, by the Digital Services Coordinator of the Member State in which the applicant is established, to an applicant that has demonstrated that it meets all of the following conditions:*

- (a) *it has particular expertise and competence for the purposes of detecting, identifying and notifying illegal content;*
- (b) *it is independent from any provider of online platforms;*
- (c) *it carries out its activities for the purposes of submitting notices diligently, accurately and objectively..*

Hence, flagging is referenced in relation to the obligations of VSPs under the AVMSD, in relation to online platforms with regard to the Strengthened Code on Disinformation, and also in the DSA. In the DSA, providers of online platforms have to give priority to notices submitted by trusted flaggers and ensure that these are processed and decided upon without undue delay.

Table 2: Where the AVMSD meets the DSA

Where the AVMSD meets the DSA		
Type	AVMSD	DSA
<b>Prohibition of illegal content</b>	<ul style="list-style-type: none"> <li>- Incitement to hatred/ incitement to violence/ incitement to terrorism.</li> <li>- Discriminatory speech</li> <li>- Racism and xenophobia</li> <li>- Child pornography</li> </ul>	<p><b>Among others:</b></p> <ul style="list-style-type: none"> <li>- Illegal hate speech or terrorist content,</li> <li>- Unlawful discriminatory content</li> <li>- Illegal activities such as the sharing of images depicting child sexual abuse</li> </ul>
<b>Terms and conditions</b>	<ul style="list-style-type: none"> <li>- Inclusion and applying in the terms and conditions of the video-sharing platform services.</li> <li>- the requirements regarding the protection of minors, regarding protection of the general public from illegal content; and those regarding ACCS.</li> </ul>	<p><b>More detail:</b></p> <ul style="list-style-type: none"> <li>- Clarify restrictions imposed on users; include information on content moderation procedures.</li> <li>- Details on complaints procedure where mainly used by minors</li> <li>- T&amp;C expressed in a way that minors can understand.</li> </ul>

<sup>22</sup> The Strengthened [Code of Practice on Disinformation](#).

Where the AVMSD meets the DSA		
Type	AVMSD	DSA
		<ul style="list-style-type: none"> <li>- VLOPs and VLOSEs shall publish T&amp;C in the official languages of all the Member States in which they offer their services.</li> </ul>
<b>Transparency of advertising</b>	<b>Rules for VSPs:</b> <ul style="list-style-type: none"> <li>- Respect general rules on content and identification of advertising</li> <li>- User should be informed where programmes and user-generated videos contain audio-visual commercial communications.</li> <li>- Functionality for users to declare whether videos that they are uploading contain ACCs.</li> </ul>	<ul style="list-style-type: none"> <li>- Users of their services should be able to identify that the information that they are seeing is an advertisement.</li> <li>- Functionality whereby users can identify commercial communications in the content that they upload.</li> </ul> <p><b>Additional information required:</b></p> <ul style="list-style-type: none"> <li>- The natural or legal person on whose behalf the advertisement is presented.</li> <li>- The natural or legal person who paid for the advertisement.</li> <li>- The main parameters used to determine the recipient to whom the advertisement is presented and, where applicable, about how to change those parameters.</li> </ul>
<b>Protection of minors</b>	<ul style="list-style-type: none"> <li>- Detailed obligations on protection of minors.</li> </ul>	<p><b>Broad obligation to be addressed via codes:</b></p> <ul style="list-style-type: none"> <li>- Providers of online platforms accessible to minors shall put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors, on their service.</li> </ul>
<b>Trusted flaggers</b>	<p><b>Vague reference:</b></p> <ul style="list-style-type: none"> <li>- Establishing and operating transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag content</li> </ul>	<p><b>More detailed:</b></p> <ul style="list-style-type: none"> <li>- Details the concept of a "trusted flagger".</li> <li>- Outlines the designation of "trusted flaggers".</li> <li>- Notices submitted by trusted flaggers are processed and decided upon with priority and without delay.</li> </ul>

#### 5.4.7 The perspective of the ERGA

In June 2021, the ERGA issued a paper with a set of proposals regarding the DSA. In particular, the ERGA was concerned regarding the interplay between the AVMS Directive and the DSA. Among others, the paper noted that:

*“In order to clarify any interpretation issues, the articles of the DSA which complement the AVMSD provisions on VSPs should be explicitly identified as such, e.g. in a dedicated recital of the Regulation” (para. 2.20).*

*“The DSA should expressly provide that NRAs designated as responsible Authorities by Member States for VSPs under the AVMSD need to be entrusted, at national level, with the implementation and enforcement of the DSA rules concerning online content regulation. In the same way, the DSA should refer to ERGA and task it with supporting/ensuring the cross-border implementation of the DSA regarding online content regulation” (para. 2.24).<sup>23</sup>*

Regarding the obligations of online platforms, the paper also noted (as indicated above) that in many cases the DSA was more specific regarding concrete enforcement than the AVMSD. In this context the document referred to: Terms and Conditions, transparency of online advertising, reporting and flagging, complaints and dispute settlements, and co-regulation. The main issues were the extent to which the more detailed rules in the DSA could or should be applied to the same obligations in the AVMSD. There was also a concern regarding the potential difference in implementing these rules at the national level where the AVMSD has already been implemented by Member States. Would it still be possible to have consistent rules under the DSA? The paper stressed the need to establish common frameworks between Member States.

In its position paper of November 2022, the ERGA emphasised the importance to *“to secure and optimise the interplay between the DSA and the Audio-visual Media Services Directive (AVMSD) in order to alleviate related implementation risks and therefore ensure the effective application of both instruments.”<sup>24</sup>*

The ERGA also suggested that the Act should *“explicitly mention the role of the audio-visual sectoral authorities in the DSA in order to ensure proper and coherent implementation of both the AVMSD and the DSA, especially when it comes to online content regulation and video-sharing platforms pursuant to art.28b of AVMSD.”*

The final version of the DSA does not appear to have solved all of these dilemmas and does not explicitly mention ERGA and audio-visual sector authorities as key players in the enforcement of the Act.

### 5.5 Enforcement of the DSA

The European Commission will be the primary regulator for very large online platforms (VLOPs) and very large online search engines (VLOSEs). The Digital Services Coordinator Board (see below) will cooperate with the Commission where necessary. The Commission will also chair the Board.

<sup>23</sup> ERGA (2021): [Proposals Aimed at Strengthening the Digital Services Act \(DSA\)- With Respect to Online Content Regulation](#)

<sup>24</sup> ERGA (2022): Digital Services Act (DSA) – ERGA priorities for the trilogue negotiations

### 5.5.1 The Digital Services Coordinator Role

At the national level, a Digital Services Coordinator will have to be appointed.

Article 37 of the DSA outlines the designation and role of the Digital Services Coordinator:

*"1. Member States shall designate one or more competent authorities as responsible for the application and enforcement of this Regulation ('competent authorities').*

*2. Member States shall designate one of the competent authorities as their Digital Services Coordinator. The Digital Services Coordinator shall be responsible for all matters relating to application and enforcement of this Regulation in that Member State, unless the Member State concerned has assigned certain specific tasks or sectors to other competent authorities...."*

The Digital Services Coordinator will be an independent authority with strong requirements to perform their tasks impartially and with transparency. The new Digital Services Coordinator within each Member State will be an important regulatory hub, ensuring coherence and digital competence. The Digital Services Coordinators will cooperate within an independent advisory group, called the European Board for Digital Services (see more below), which can support with analysis, reports and recommendations, as well as coordinating the new tool of joint investigations by Digital Services Coordinators.

The Digital Services Act is complex and horizontal – hence addressing many sectors. As noted above it covers areas such as disseminating illegal and counterfeit goods, the need to ensure transparency of traders, alongside issues of harmful and illegal content online. Hence, there needs to be a role in the supervisory structure for a range of national authorities dealing with issues such as markets, fair trade, consumer protection, data protection etc.

The DSA is also complex with regard to the various roles that need to be carried out by the DSC. An interesting analysis regarding future tasks of the DSC carried out by a German institute (Stiftung Neue Verantwortung) highlights the issue of data analysis.

*The DSA is a data-generating piece of legislation. It contains 20 reporting obligations for VLOPs, the Commission or DSCs, there are various transparency and evaluation reports and, crucially, DSCs and vetted researchers have the right to request data from VLOPs. Analysing different types of data will require data science capabilities at the DSC. Various governments and regulators have begun to establish data science units, one example being the French Pôle d'Expertise de la Régulation Numérique (PEReN).<sup>25</sup>*

In addition, the DSC will be in charge of coordinating cooperation with other relevant bodies, supervising obligations relevant to the DSC specific regulatory field, engagement in the complaints systems, vetting researchers who will have access to data, designating trusted flagger institutions, and participating in the European Board for Digital Services, etc.

### 5.5.2 The European Board for Digital Services

The DSA establishes a European Board for Digital Services ('the Board'), which is tasked with supporting the consistent application of the DSA. The Board will be made up of all the national DSCs and chaired by the European Commission. The Board's role is mainly advisory and will

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<sup>25</sup> "Platform oversight: Here is what a strong Digital Services Coordinator should look like". [German Stiftung Neue Verantwortung Policy Brief](#).

include contributing to the drafting of Codes of Conduct and supporting joint investigations between DSCs and the European Commission.

## **5.6 Domestic approaches, role of the RA, and cooperation**

This section provides a brief first overview of the approaches of various countries to the implementation of the DSA. It is suggested that this topic be further expanded for future study under the PROFREX actions. This is particularly important as to date not many countries have implemented procedures for the enforcement of the DSA.

### **5.6.1 Designation of the DSC**

All EU Member States are expected to appoint the Digital Services Coordinator by 17 February 2024. There are some examples of where the incumbent media regulator is likely to be designated as the national Digital Services Coordinator (DSC). In France, it is anticipated Arcom will be the designated DSC. Arcom emerged from a merger of the audio-visual media regulator the CSA (Conseil Supérieur de l'Audiovisuel) and the High Authority for the Distribution of Works and Protection of Rights on the Internet (Hadopi). Arcom is the Regulatory Authority for Audio-visual and Digital Communication. It remains separate from the ARCEP, the regulator for Electronic Communications, Postal and Print media distribution).

In Ireland, the former Broadcasting Authority of Ireland has been expanded to become the Media Commission. It will implement the Audio-visual Media Services Directive, and also other provisions in the Online Safety and Media Regulation Act 2022. In addition, the Commission will also incorporate the Digital Services Coordinator. There remains a separate regulator – ComReg – the regulator responsible for the regulation of the electronic communications sector (telecommunications, radio communications, broadcasting transmission and premium rate services) and the postal sector in Ireland.

### **5.6.2 The key importance of collaboration at the national level**

In order to deal with the new challenges of regulation (in particular as regards the DSA), there is a growing trend to develop collaborative and cooperative approaches to the regulation of the online sphere.

*The digital environment has prompted policy-makers and regulatory authorities to review the frontiers of cooperative schemes, to take into account not only the cross-border challenges but also the cross-sectoral ones.*<sup>26</sup>

These types of national cooperation include the establishment of Fora or Platforms where the national media regulatory authorities work with Press Councils or Commissions, Electoral Commissions, Competition Authorities, Consumer Agencies, Copyright Protection bodies, Data Protection agencies etc. Examples include the Swedish DSA Network, the Dutch Digital Regulators Cooperation Platform (SDT), and the UK Digital Regulators Cooperation Forum

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<sup>26</sup> Quoted from the: Cabrera Blázquez F.J., Denis G., Machet E., McNulty B. (2021). [Media regulatory authorities and the challenges of cooperation. IRIS Plus. European Audiovisual Observatory. Strasbourg.](#)

(DRFC).<sup>27</sup> Key aims of such collaborations include enabling cooperation and the exchange of knowledge and experience between the various bodies, authorities and stakeholders.

In July 2020, the Digital Regulators Cooperation Forum (DRFC) was formed in the UK by Ofcom, the CMA (Competition and Markets Authority) the ICO (Information Commissioner's Office) (and later the FCA – the Financial Conduct Authority) to ensure a greater level of cooperation, given the unique challenges posed by regulation of online platforms. According to the Terms of Reference of the Forum, the goals of the DRCF are threefold:

- *to promote greater coherence, so that where regulatory regimes intersect the DRCF helps to resolve potential tensions, offering clarity for people and industry*
- *to work collaboratively on areas of common interest and jointly address complex problems*
- *to work together to build the necessary capabilities, learning from what each regulator is doing and striving to be best in class, both now and in the future.*<sup>28</sup>

The Dutch Digital Regulation Cooperation Platform (SDT) was launched by the Authority for Consumers and Markets (ACM), the Dutch Authority for the Financial Markets (AFM), the Dutch Data Protection Authority (AP), and the Dutch Media Authority (CvdM) in November 2021. According to the website: *the SDT wishes to understand the opportunities and risks in the digital society and put them on the agenda. In addition to such studies, the SDT also wishes to be able to take advantage of those opportunities as well as deal with the risks. While doing so, the SDT will keep in mind various public interests. Furthermore, the four SDT members wish to invest collectively in knowledge and expertise and share these with each other. Finally, they collectively wish to ensure efficient and effective enforcement of compliance with rules and regulations (Dutch and European).*<sup>29</sup>

The SDT will also coordinate how to enforce compliance with new European rules with regard to digitalisation, including upcoming rules for online platforms, data and the platform economy, such as the proposals for a Digital Services Act (DSA), Digital Markets Act (DMA), and Artificial Intelligence (AI) Act.<sup>30</sup>

Similarly, in Sweden, the RA developed a DSA Network as a voluntary forum for cooperation between interested authorities on matters that primarily concern the DSA. The authorities involved deal with media regulation, telecommunications, data protection, competition, consumer protection and cross-border trade.<sup>31</sup> The authorities saw the need for further cooperation regarding the regulation of online platforms and considered there to be great value in a closer dialogue regarding the DSA.

Hence, a key approach to the implementation of the DSA is the establishment of such a collaborative platform in order to coordinate the regulation of online platforms, maximise resources and share experiences.

<sup>27</sup> See for example: Details from the: Cabrera Blázquez F.J., Denis G., Machet E., McNulty B., Media regulatory authorities and the challenges of cooperation, IRIS Plus, European Audiovisual Observatory, Strasbourg, December 2021.

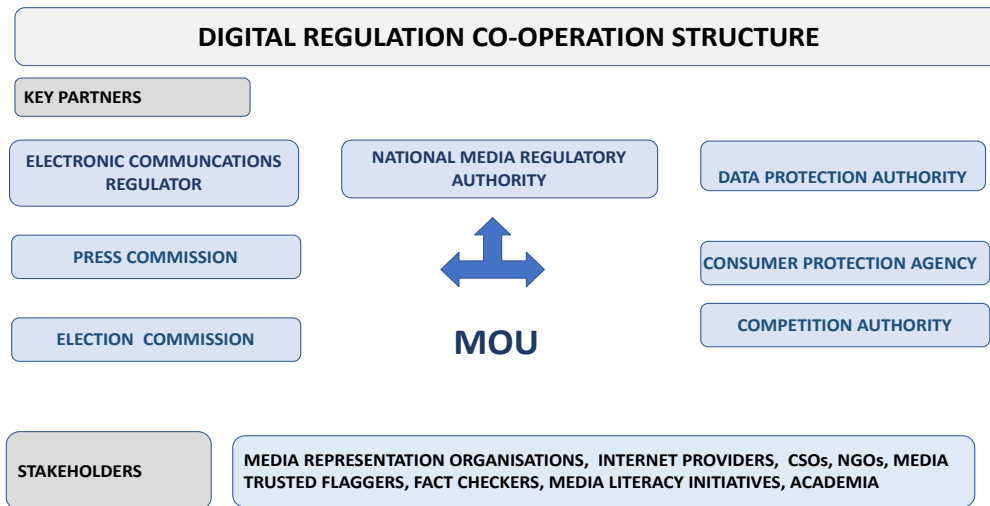
<sup>28</sup> [Terms of reference](#) for the The Digital Regulation Cooperation Forum (DRCF)

<sup>29</sup> [The Digital Regulation Cooperation Platform \(SDT\)](#)

<sup>30</sup> [Ronan Ó Fathaigh \(2022\):](#) New Dutch regulatory collaboration involving Dutch Media Authority opens first joint-investigation IRIS 2022-4:1/20.

<sup>31</sup> The network currently consists of representatives from the SPBA, the Swedish Media Council, the Swedish Post and Telecom Authority, the Swedish Authority for Privacy Protection, the Swedish Competition Authority, the Swedish Consumer Agency, the National Board of Trade Sweden and the Swedish Agency for Digital Government.

An illustrative example of how such a cooperative/ collaborative forum could be structured is outlined below. The co-operation between the main partners can be formal or informal. Additional stakeholders – in particular media organisations, civil society etc. - can be included for discussion on specific issues.



## 5.7 Potential needs under the PROFREX action

The key issue with the DSA is that its implementation is an evolving area that will develop between now and early 2024. Hence updates, information and research regarding national approaches to developing a regulatory structure will be important for all RAs. This would include (among others):

- Designation of DSCs
- Key expertise that may need to be added within NRAs
- Approach to the designation of “trusted flaggers”
- Cooperation/collaboration between different agencies.

Further discussions/investigations and updates on the intersection between the AVMS Directive and the DSA in terms of rules and obligations will also be important over the coming months. This is particularly the case as the European Commission may provide further guidance in this area. Future work of the ERGA (opinions, positions guidance and reports) will also need to be reviewed.

It is recommended that in the context of PROFREX that the organisation of a workshop to bring together different bodies and agencies that represent sectors regulated by the DSA (media regulator, data commissioner, communications regulator, consumer protection agency etc) would be extremely useful for the REM and for other stakeholders. Bringing these players together to discuss the key challenges, and to exchange information and expertise would be a very valuable input.



## 6 NOTE ON THE EUROPEAN DEMOCRACY ACTION PLAN

The European Commission's European Democracy Action Plan was published in December 2020 with the main goal of strengthening democratic resilience.<sup>32</sup> The key aims of the Action Plan are to:

- Protect election integrity and promote democratic participation
- Strengthen media freedom and media pluralism
- Counter disinformation

Regarding the protection of election integrity, and the promotion of free and fair elections, the European Commission published its Proposal for a Regulation on the transparency of political advertising in November 2021.<sup>33</sup> The proposed regulation introduces: harmonised transparency obligations for providers of political advertising and related services to retain, disclose and publish information connected to the provision of such services; and harmonised rules on the use of targeting and amplification techniques in the context of the publication, dissemination or promotion of political advertising that involve the use of personal data.

The proposal does not cover other aspects regulated at the national level like the legality of the content of political advertisement and the periods during which advertisements are permitted, or the nature of participants in the democratic process. The scope of the regulation covers political advertising in all media (not just online). It is intended to complement the Digital Services Act (see previous chapter), which already requires transparency of advertising. The regulation stipulates that providers of advertising services (political advertising publishers) have a range of reporting requirements and obligations to share information with competent authorities. It remains to be seen whether such authorities may be the media regulatory authorities or national election commissions. Both the European Cooperation Network on Elections and the European Regulators Group for Audio-visual Media Services (ERGA) are mentioned in the recital. The regulation has been adopted by the Council (December 2022) and the Parliament (February 2023) and moves forward to trilogue negotiations with the Commission, Parliament and Council.<sup>34</sup>

With regard to strengthening media freedom and pluralism, the focus of the European Democracy Action plan is on the safety of journalists, and on curbing the use of abusive use of Strategic lawsuits against public participation (SLAPPs), and also to enhance the transparency of media ownership. The aim of countering disinformation has led to a strengthened Code of Practice on Disinformation, and the development of new measures to counter foreign interference via disinformation campaigns.

The further key legislative proposal which emerged from the European Democracy Action Plan is the European Commission proposal for a European Media Freedom Act published in September 2022 (see next chapter).<sup>35</sup> This proposal further addresses some of the key aims outlined in the European Democracy Action plan.

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<sup>32</sup> [Communication](#) from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European democracy action plan

<sup>33</sup> [Proposal](#) for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising.

<sup>34</sup> The drafting of this document was completed in February 2023, and the Proposed Regulation on transparency of political advertising has progressed further since then.

<sup>35</sup> The drafting of this document was completed in February 2023, and the EMFA has progressed further since then.

## 7 EUROPEAN MEDIA FREEDOM ACT

### 7.1 Overview

The Commission published the European Media Freedom Act on 16 September 2022.<sup>36</sup> The regulation includes, among others, safeguards against political interference in editorial decisions and against surveillance. It puts a focus on the independence and stable funding of public service media as well as on the transparency of media ownership and of the allocation of state advertising. It also sets out measures to protect the independence of editors and disclose conflicts of interest. The Act will address the issue of media concentrations and create a new independent European Board for Media Services, comprised of national media authorities.

This Board will replace the current ERGA. The ERGA has published a Position Paper on the EMFA broadly welcoming the proposal and including a range of recommendations to enhance and clarify the proposal.<sup>37</sup>

### 7.2 Protection of editorial integrity, journalism sources

Article 4 covers the “Rights of media service providers”: *Member States including their national regulatory authorities and bodies, shall not interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers.*

It provides for the protection of sources:

*Member States shall not detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, their employees or their family members, or their corporate and private premises, on the ground that they refuse to disclose information on their sources unless this is justified by an overriding requirement in the public interest, in accordance with Article 52(1) of the Charter and in compliance with other Union law.*

Further rules prohibit surveillance or the use of spyware unless justified by circumstances such as serious crimes investigations.

This section of rules represents a minimum harmonisation and is accompanied by a Recommendation, which sets out a catalogue of voluntary good practices for media companies to promote editorial independence.

### 7.3 Public media services

Article 5, according to the Recital of the Proposal, builds on the international standards developed by the Council of Europe in this regard, to put in place legal safeguards for the independent functioning of public service media across the Union. These address (in summary):

- The obligation for Public service media providers to provide in an impartial manner a plurality of information and opinions to their audiences, in accordance with their public service mission.

<sup>36</sup> [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.

<sup>37</sup> ERGA (2022): [Proposal](#) of the Commission for a European Media Freedom Act (EMFA)- ERGA position- November 2022.

- Appointments of management and governing bodies should be carried out through a transparent, open and non-discriminatory procedure and on the basis of transparent, objective, non-discriminatory and proportionate criteria laid down in advance by national law. The Article also addresses durations of mandate and the need for rules on dismissals to be laid down in advance by national law (and these reflect the CoE standards in the area. Such dismissal decisions must be justified and include the possibility for judicial review.
- Member States shall ensure that public service media providers have adequate and stable financial resources for the fulfilment of their public service mission. Those resources shall be such that editorial independence is safeguarded.
- Member States shall designate one or more independent authorities or bodies in order to monitor compliance with paragraphs 1 to 3.

The inclusion of these provisions in Article 5 is an important step in formalising the principles-based approach of the CoE to ensuring the independence and proper functioning of public media services.

#### **7.4 Transparency of media ownership**

The proposal will complement the existing framework by requiring all media service providers providing news and current affairs content to provide information on media ownership in particular on direct, indirect and beneficial owners, to recipients of media services.

This is building on the AVMS Directive, which (under Article 5 (1)) states that Member States may require audio-visual media outlets to publish information on their ownership structure, including the beneficial owners. With the EMFA, media service providers of news and current affairs will have an obligation to do this.

The proposal is accompanied by a Recommendation, which sets out a catalogue of voluntary good practices for Member States aimed to increase media ownership transparency.

#### **7.5 The European Board for Media Services**

The regulation proposes to transform the ERGA into the European Board for Media Services ('the Board'). Hence the proposal more precisely identifies media regulators as the key bodies for the implementation of parts of the regulation (Article 8). Specifically Chapter III: "Framework for regulatory cooperation and a well-functioning internal market for media services" (covered below). The proposal also outlines details for the functioning of the Board (Articles 10, 11, and 12).

The tasks of the Board include the structured cooperation between regulators, requests for enforcement of obligations by video-sharing platforms, providing guidance on media regulation matters, and coordinating measures concerning media service providers established outside the Union. This institutionalises the ERGA Memorandum of Understanding created to address issues of cooperation. The Board will also promote the effective and consistent application of the EU media law framework, in particular by assisting the Commission in preparing guidelines. It will issue opinions on national measures and decisions affecting media markets and media market concentrations.

Article 9 focuses on the Independence of the Board. As candidate countries currently have Observer status at the ERGA, it will be very important that this status remains with regard to the European Board for Media Services. Recital 23 emphasises that:

The Board should also have the possibility to invite to attend its meetings, in agreement with the Commission, experts and observers, including in particular regulatory authorities or bodies from candidate countries, potential candidate countries, EEA countries, or ad hoc delegates from other competent national authorities.

## 7.6 Transparency of State advertising

The proposal ensures that state advertising is systematically subject to ex ante rules on transparency, notably as regards the beneficiaries and the amounts spent, and on fair allocation of such advertising. Article 24 states that *“public funds or any other consideration or advantage granted by public authorities to media service providers for the purposes of advertising shall be awarded according to transparent, objective, proportionate and non-discriminatory criteria and through open, proportionate and non-discriminatory procedures”*.

The following information should be made public by the relevant authorities: (a) *the legal names of media service providers from which advertising services were purchased;* (b) *the total annual amount spent as well as the amounts spent per media service provider.*

The proposed regulation also provides that the national regulatory authorities or bodies shall monitor the allocation of state advertising in media markets.

In its Position Paper on the EMFA,<sup>38</sup> the ERGA stated that *“While fully subscribing to the objective of fostering transparency of state advertising, ERGA would like to note that such a task to monitor information about state advertising from any public or state entity (put on NRAs by the current proposal) today falls on very few NRAs, and may be considered as potentially sensitive”*.

The Paper proposed (among others) that *“the EMFA provision should therefore be clarified what exactly is expected of NRAs: a high-level monitoring or an in-depth analysis. If the latter would be confirmed, then proper increased resources should be guaranteed to NRAs.”*

## 7.7 Audience measurement

Under Article 3, the proposal requires that: *“audience measurement systems and methodologies shall comply with principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination and verifiability”*.

National regulatory authorities or bodies shall encourage the drawing up of codes of conduct by providers of audience measurement systems, together with media service providers, their representative organisations and any other interested parties, to comply with the regulation, including by promoting independent and transparent audits.

## 7.8 Protection of media pluralism

Regarding the protection of media pluralism, the proposed regulation requires that Member States shall provide, in their national legal systems, substantive and procedural rules which

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<sup>38</sup> ERGA (2022): [Proposal](#) of the Commission for a European Media Freedom Act (EMFA)- ERGA position- November 2022.

ensure an assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence.

Such approaches already exist in Ireland, the UK, Germany and Austria and usually involve an assessment from, or opinion of, the media regulatory authority to be provided to competition authorities.<sup>39</sup>

One of the tasks of the Board will be to issue opinions on national measures and decisions affecting media markets and media market concentrations.

## **7.9 Protection of media content on very large platforms**

The proposal aims to protect media content (Article 17) published on large platforms. With the goal of protecting media pluralism, it establishes that media service providers are not treated like any other content provider by the very large online platforms in the context of their content moderation.

Specifically, there should be safeguards against the unjustified removal of content produced according to professional standards.

The Board will be tasked with the organisation of structured dialogues between providers of very large online platforms, representatives of media service providers and representatives of civil society to discuss experience and best practices in the application of Article 17.

This so-called proposal for “media privilege” has been widely discussed. It is considered crucial on the one hand to ensure that media content is properly disseminated. On the other hand, there are concerns that this will hamper actions that are countering disinformation.

## **7.10 Additional elements of the proposal**

The proposal also aims to ensure the following.

National measures affecting the operation of media service providers should be duly justified and proportionate, and should be reasoned, transparent, objective and non-discriminatory.

Users shall have a right to customise audio-visual media service offers by being able to change the default settings.

## **7.11 Potential role of the media regulatory authorities**

The national regulatory authorities or bodies shall be responsible for the application of Chapter III. It is stated that 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. In addition, the national regulatory authorities or bodies shall have appropriate powers of investigation, with regard to the conduct of natural or legal persons to which Chapter III applies (Article 7).

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<sup>39</sup> See for example: D. Kevin (2018): [Jurisdictional Review of plurality policies, guidelines, practices and rules](#). Prepared on behalf of the Broadcasting Authority of Ireland (BAI).

- Participate in the European Board for Media Services
- Monitor the allocation of state advertising in media markets
- Development of codes of conduct by providers of audience measurement systems, together with media service providers, their representative organisations and any other interested parties

### **7.12 Potential needs under the PROFREX action**

This proposal is still at an early stage of discussion and consultation, and it remains to be seen what the final shape of the regulation will be.

As with the DSA, the continued development of the proposal will need to be reviewed. When it comes into force, the approaches of the NRAs will also be of importance. European comparative studies and the future work of the ERGA (opinions, positions, guidance and reports) will also need to be reviewed.

- Developing codes for audience measurement systems
- Providing opinions regarding the impact of media mergers/ concentrations on media pluralism – with potential research on the system in other countries

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*The action "Protecting freedom of expression and of the media in Serbia (PROFREX)", implemented under the Horizontal Facility III, enables the beneficiary institutions and civil society organisations in Serbia to progress towards meeting their reform agendas in the field of freedom of expression and freedom of media, in line with the European standards. It aims at contributing to an improved environment for the exercise, in particular by journalists and media actors, of their rights of freedom of expression, in a more pluralistic and safer media environment, in line with the standards as set by in accordance with Article 10 of the European Convention of Human Rights.*

*\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ opinion on the Kosovo Declaration of Independence*

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