



The European VOD Coalition response to the proposal for a European Media Freedom Act

The European VOD Coalition (the “Coalition”) welcomes the opportunity to further discuss the European Commission’s proposal for a European Media Freedom Act (EMFA).

The Coalition represents video-on-demand (VOD) companies active across the EU and who operate a range of business models in different EU markets but have a common focus on investing in audiovisual content and distribution. Our members are driving investment in the EU’s cultural and creative sector, and beyond, by creating jobs and partnering locally with thousands of EU SMEs.

Media regulation is an important topic for the Coalition. The media sector is a significant part of the European economy and plays an invaluable role in democratic societies. As part of this ecosystem, VOD services offer an increasingly wide range of diverse content that entertains, informs, and educates citizens across the EU every day.

The Coalition has four core asks for co-legislators in response to the Commission’s proposal:

- Support the proposal’s use of the single market as its legal basis and a Regulation as the best legal instrument to avoid further regulatory fragmentation in the media landscape.
- Change to a principle-based approach on new market concentration measures that reflect the realities of the media ecosystem by extending the scope beyond media service providers.
- Refine user customisation rights on interfaces to safeguard commercial and innovation freedom, editorial decisions, and align with established customisation practices.
- Support a more consistent approach to best practice sharing for cross-media measurement methodologies that reflects the realities of the media and advertising ecosystem.

Legal basis

We welcome the internal market lens of the EMFA and choice of Regulation as the legal instrument, based on our sector’s experience with the Audiovisual Media Services Directive (AVMSD).

The AVMSD has only recently been implemented across the EU and as a result the full impact of different national practices and effectiveness of new mechanisms remains to be measured. Our industry currently faces many challenges due to diverging national implementation and additional regulatory gold-plating. The divergence stems from the fact that certain Member States have used the AVMSD as a tool to introduce protectionist measures, weakening the Internal Market’s benefits for companies operating in it as a result. If the legal basis of the Media Freedom Act changes it could



result in even more barriers for cross-border operators, such as most of our members. This would also result in a divergent transposition in Member States where media service providers are in most need of the provisions, especially on the independence of journalists and state interference.

We welcome a clearer link between the principles that the EMFA sets for national measures in terms of proportionality and the AVMSD which provides its foundations. And we support the explicit recognition in Article 20 that national measures restricting media companies' freedom must always be justified, transparent, non-discriminatory, and proportionate. The language however can be further strengthened by clarifying its interaction with the Audiovisual Media Services Directive (AVMSD) and detailing the process in which the appeal bodies deal with notices.

Market concentrations

For pan European VOD providers looking to grow, consolidation helps to scale and establish partnerships to ensure longevity. To succeed, our members need to keep investing in content distribution, partnerships, and creating scripted and non-scripted content. All this work positively impacts media pluralism by increasing a diversity of content and cultural exchange. National measures governing market concentrations and media pluralism are varied and this has not led to less pluralism. For instance, we note that the Nordic countries have thriving pluralistic media markets with fewer rules.

We also wish to stress that media service providers do not operate in silos where consolidation becomes a zero-sum game. In recent years, traditional media companies have increasingly competed with online content service providers who have gained size and relevance in the delivery of news and information. If new measures are warranted these should include all online content services in its scope. To reflect these two points better in the EMFA concretely, we propose that market concentration measures should be focused on providing a principle-based framework to guide member states and the Board rather than detailed obligations. The scope should go beyond companies with full editorial control when assessing market concentrations.

User customisation

Over the last decade, consumer choice and access to VOD services in Europe has grown exponentially. We support the overall objectives of the proposal to grant users more control and to not unduly incentivise viewers into specific AV offers. VOD services have been developed and expanded in response to demand and offer a diverse range of content for consumers. Services are now accessible on a wide range of devices and interfaces alongside other entertainment services such as gaming and music. Developers of interfaces displaying these varied service offerings constantly adapt their displays and partnerships. In more advanced models of interfaces, the user's view is no longer a static sorting of apps but is instead a dynamic order based on various methods of customisation, personalisation, and promotion.

Media and other entertainment services engage with these developers to strike (primarily time limited) deals for the promotion of their services and content which has proven to be a valuable addition to our sector. For example, when a VOD player enters a new market, the promotion of their



services allows for fair competition by being able to notify local audiences of this recent launch. This is also equally important in case of high-end content releases and creates mutually beneficial partnerships. Dynamic interfaces which would allow users to change the ‘default settings’ do not reflect how interfaces currently offer customisation and presents a misleading functionality for subscribers. Additionally, the terms are too broad and risk impacting valuable partnership arrangements for VOD providers as well as for national partners. User customisation should be defined to fit current practices, particularly when we have a non-exhaustive list of examples that function well, such as: the creation of a favourite lists; sorting the arrangement based on last opened; and sorting based on most frequently opened applications.

On a final note, the proposal currently enshrines services categorised as public value without prejudice to AVMSD Article 7a. Prioritising “services of general interests” on user interfaces is against the spirit of granting user customisation rights and does not fit with the principle of freedom of choice. For instance, an Italian citizen living in Belgium (that may not speak French or Dutch) would have no choice but to be forced to have national public Belgium services on their home screen. This goes against the principle of pluralism and is a large risk in cases where a government has significant influence on the content of public broadcast services. We therefore recommend removing the reference to Article 7a of the AVMSD.

Audience measurement

The VOD Coalition values the new principles put forward for audience measurement systems. We also welcome the enhanced transparency of methodologies used by proprietors of audience measurement systems and their sharing of these with media service providers and advertisers. We encourage all players to be part of or to follow the principles set out by industry benchmarks agreed within self-regulatory bodies. We support the proposed open nature of these discussions, under a new European Board for Media Services, and encourage the Board to invite not only proprietors of audience measurement systems but also advertisers and media service providers.

The new Board

The Coalition welcomes the proposed changes to the European Regulators Group for AVMS and the renewed focus on more cooperation among national regulators and on alleviating the divergence in national laws. We believe this could contribute towards making it easier for VOD players to scale their businesses and look for new opportunities to launch in new EU markets. However, we believe the proposal should go further in ensuring the Board’s independence and provide more agency to the Board on how and where it decides to act or to provide opinions.

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