

GIGAEurope's Feedback on the European Media Freedom Act Proposal

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Introduction

As [GIGAEurope](#) represents private operators that invest in and operate Gigabit and 5G connectivity networks across Europe, our members play a key role in aggregating and distributing (public service, commercial and user-generated) content that is available online and over video-sharing platforms.

GIGAEurope wholly supports the objectives of the European Media Freedom Act proposal (the draft Regulation) to protect media independence and pluralism. These are essential ingredients for functioning democracies and markets.

To enhance the operation of the internal media market, it is important that regulatory gaps in existing media regulation are addressed and the strengthening of European media companies is supported to enable the development of viable offerings in a highly competitive global environment.

Bearing this in mind, GIGAEurope also welcomes this opportunity to highlight certain practical aspects of the draft Regulation that impact the evolution of the European media market and our members, as aggregators and distributors of audiovisual media services (AVMS) content. This contribution is therefore limited to the following technical remarks.

Right of Customisation of AVMS Offer – Art. 19

GIGAEurope believes that the proposed right for media recipients to customise their content offerings would not contribute to the core objectives of this draft Regulation, namely to promote media freedom and pluralism. On the contrary, we believe that the proposed provisions would unintentionally lead to restriction of the freedom of expression, as well as the freedom to provide services and the free movement of goods in the internal market.

As distributors of AVMS content, GIGAEurope members are subject to prominence rules for specific public value content under Art. 7a of Directive 2010/13/EU, as amended by Directive 2018/1808/EU (the Audiovisual Media Services Directive or the AVMSD). As a result, distributors are compelled to offer media recipients an easily accessible list of public value content through their user interface, typically the Electronic Programming Guide (EPG) on the set-top box. On top of that, content distributors invest in personalisation functionalities in hardware and software which reflect content usage preferences.

GIGAEurope believes that giving recipients a right to override pre-installed settings on hardware and on the interface, except for those related to measures implementing the general content prominence provision under Art. 7a of the AVMSD, would be broadly superfluous if consistency with existing media regulation is intended. Moreover, it may even be counterproductive, if users were to

inadvertently use this right in a way that makes public value content less prominent or attractive to consume. Therefore, GIGAEurope believes that the proposed right of customisation constitutes a **disproportionate restriction of the editorial freedom of the distributor**, as enshrined in Art. 11 of the Charter and Art. 10 of the European Convention on Human Rights. As stated in recital 14 of the draft Regulation, the protection of editorial independence is a precondition for exercising the activity of media service providers and their professional integrity. Adding to the disproportionate effect of this right is the economic and technical impact of this provision on hardware manufacturing and interface software design, which constitutes an unjustified burden on smaller distributors in particular, thus negatively impacting their competitiveness and ability to provide AVMS offers across borders.

Finally, as the European Commission recognises, the media sector is (..) one of the (..) industrial ecosystems that are key for an inclusive and sustainable recovery and for the twin transition of the EU economy. In this context, GIGAEurope points out that storage and transmission of countless individually customised media profiles takes a toll on distributors' net zero trajectories, as it likely increases energy consumption associated with data transmission and data storage capacity.

GIGAEurope therefore calls for the removal of the right of customisation from the draft Regulation.

Guidance on Media Regulation Matters – Art. 15

As GIGAEurope members act as content distributors across borders, we particularly support any efforts towards more harmonised guidance with regard to national implementation of existing media regulations following from the AVMSD. In this context, we would like to underline the current market fragmentation arising from divergent national implementation of the provision on prominence of 'audiovisual media services of general interest' under Art. 7a of the AVMSD.

GIGAEurope believes that an exact definition of 'media services of general interest' is missing, which leads to incoherent national interpretations and applications and, in certain cases, to disproportional outcomes for domestic and cross-border distributors. For example, in Germany, the media authorities published a 'public value' list with around 280 broadcasting channels (including their apps and on-demand services) that have to be prioritised by distributors.

To maintain competitiveness of distributors, and avoid diluting the practical effects of this draft Regulation, GIGAEurope recommends that the Commission issues **clear and binding guidelines on the scope of 'audiovisual media services of general interest'** to support both the application of this draft Regulation and the national implementation of Art. 7a of the AVMSD.

European Board for Media Services & Regulatory Cooperation - Arts. 8-14

GIGAEurope supports efforts to strengthen and harmonise national regulatory authorities' activities in the media sector.

In the experience of our members, obstacles to cross-border cooperation between national regulators stem in practice from a **lack of enforcement agreements** between EU Members States, for example regarding the protection of minors (such as in the case of blocking of illegal content).

GIGAEurope therefore supports initiatives that drive better cross-border coordination between the national regulatory authorities in their practical enforcement efforts.

Assessment of Media Market Concentrations - Arts. 20-22

GIGAEurope believes that a predictable, pro-investment environment regarding cross-border mergers of media companies plays a key role in supporting competitive, independent and sustainable European media offerings that reflect a plurality of views. We note that media concentrations are already subject to extensive review procedures. In addition, many media concentrations are now also subject to foreign direct investment screening, depending on the scope and territory of the concentration. Against this background, GIGAEurope has some reservations regarding the additional layers of scrutiny currently foreseen under Art. 21 of the draft Regulation.

The scope of a ‘media market concentration’, defined under Art. 2(13) of the draft Regulation as inter alia “[...] involving **at least one media service provider**”, is exceptionally broad. This could result in a scenario where any transaction involving an undertaking which provides media services, or controls a media service provider, would be subject to an Art. 21 assessment, even if the transaction itself does not involve or impact the media portion of the business. Such a layered administrative process could unintentionally disincentivise valuable investment.

With legal certainty as one of the core guiding principles of the existing EU merger review system, **the Art. 21 process could benefit from streamlining**. The proposed relationship between national regulatory authorities (NRAs), the Board and the European Commission is complex and unclear, e.g. as regards the consequences of diverging opinions across these bodies and available recourse mechanisms for affected parties. It would be more straightforward to operate a system that cleaves more closely to the existing EU merger control regime, with the roles of NRAs versus the central EU regulator more clearly defined.

GIGAEurope thus calls for streamlining of Art. 21 in a way that complements existing merger review procedures and minimises additional layering of the administrative process. We also encourage the **development of clear guidance on the thresholds and substantive criteria** for the assessment to avoid unpredictable, and potentially inconsistent, national concentration review processes, e.g. on notions that are key to a harmonised approach, such as ‘pluralism’ and ‘editorial independence’, which are not currently defined in Art. 2 of the draft Regulation.