



GIGAEurope response to the public consultation for European Media Freedom Act

March 2022

Introduction

GIGAEurope fully supports the European Commission's objectives with the European Media Freedom Act to warrant the proper functioning of our democratic societies in the European Union. Lack of media pluralism and independence, political interference in media ownership and regulation pose serious concerns for journalists and media companies alike.

How operators contribute to media freedom

The connectivity industry has been at the forefront of developing and delivering converged audiovisual services. GIGAEurope members engage in the following activities that promote media freedom:

- a. **Aggregate** (public service & commercial) channels into content offerings consisting of regulated must carry & basic TV channel packages and extended channel packages. This is regulated under the EECC (must carry) and the AVMSD (EPG regulation).

GIGAEurope members act as **aggregators** of audiovisual content with a view to providing the broadest access possible to public service channels (over linear and non-linear platforms) and by accommodating personal audiovisual content consumption preferences (e.g., time or place-shifted, recorded, on-demand, personalized rankings on EPGs). With regard to the EMFA's objective to ensure media pluralism, we stress that this activity is highly regulated through pre-defined '*must carry*' channels and through *rules regarding prominence* of - linear and non-linear - public service content (and European works) on the user interface of our Electronic Programming Guides. On the basis of these regulations (and on the basis of optimal frequency planning and commercial negotiations for non-must carry channels), our members contribute to ensuring pluriformity in local content offerings and allow for objective opinion-forming that is free from undue interference by state or private interests.

- b. **Give access** to public service media over (i) *linear and non-linear* platforms and by (ii) 'mere conduit' transmission of *online* content. This is regulated under the Open Internet Regulation (net neutrality) and ECD (mere conduit online content liability, general monitoring prohibition).

As gigabit connectivity providers, GIGAEurope members enable the widest possible **access** to (public service, commercial and user-generated) content that is available online and over video-sharing platforms. We underline that connectivity providers act as 'mere conduits' in this regard with



zero visibility nor editorial influence over the online content that they are transmitting. On the basis of the Open Internet Regulation, connectivity providers observe net neutrality rules to avoid any discrimination or preferential treatment of online content. Following the Electronic Commerce Directive, connectivity providers acting as 'mere conduits' have no general monitoring obligation as to the legitimacy of online content, nor are they liable for online content flowing over their networks.

GIGAEurope observations on a future European Media Freedom Act

We understand that the focus of a future EMFA is to warrant the pluralism and independence of public service media companies in the internal market. GIGAEurope members, as operators of electronic communications infrastructure for the distribution of media content **play an ancillary role** with regard to achieving these EMFA's core objectives.

We however recognize that through regulations impacting the distribution of media content over our electronic communications networks, governments and national media authorities **impact the level of access** for the general public, and their exposure to, a pluriform and independent media offering that serves the general interest.

Public service media and commercial media companies need access to operators' distribution infrastructure, offline and online, linear and non-linear. Governments impact this access, as far as relevant for media pluralism, with must carry legislation and legislation regarding the size of basic tv packages that are usually bundled with connectivity. There are different national rules regarding the presentation of media content on electronic programming guides, for example, depending on 'public value' of channels or platforms in markets like Germany or France. Regarding online, access is warranted on the basis of the Open Internet Regulation, which prevents operators from discriminating between internet traffic and online content platforms or media outlets owned by public service media or commercial media.

Different interpretations and varying levels of national implementation of relevant EU rules (the AVMSD and the EEC in particular) impact access to, availability and prominence of public service media content, whilst negatively impacting an internal market for our members' media distribution models and the presentation of public media content over our consumer content interfaces like electronic programming guides.

At this stage, GIGAEurope is still unclear about how a future EMFA would exactly apply to our sector because of the current **lack of clear definitions** regarding the terminology used to describe some fundamental concepts: 'media company', 'editorial decisions', 'media services', 'media market', 'public media content'.

We therefore would like to offer some general observations at this stage with regard to our current experiences with media freedom rules, as well as with operating in the internal market:

- As many GIGAEurope members operate across European borders, there is a strong need for a **harmonized** regulatory framework that conveys **legal certainty** applying to business decisions by our members like; entering new markets, investing in content & distribution rights, acquiring strategic media assets, investments in resilient gigabit fixed & wireless



distribution infrastructure and in innovative customer premises equipment (set top boxes), attractive & intuitive content interfaces (like EPGs), and ubiquitous content consumption functionalities (cloud-based personal video recording, replay-TV, time-shifting, on-demand platforms etc.).

- GIGAEurope believes that the scope of a future EMFA and any new rules and concepts contained therein should always be **proportionate and necessary** whilst **avoiding overlap or misalignment with existing EU legal frameworks** that already apply to operators and shape the parts of our business (AVMS, EECC, ECD, Open Internet Regulation) that are relevant for customers' access and exposure to pluriform linear and non-linear, online and off-line public media content.
- When it comes to media freedom regulation, GIGAEurope feels our members may run the **risk of being caught in situations of having to comply with national media rules and EU telecoms regulations that are contradicting**. This potentially leads to legal challenges and liabilities for our members and to concerning outcomes in practice with regard to the protection of fundamental rights like freedom of expression & information as enshrined in the Charter of Fundamental Rights of the European Union (EU Charter).
- Operators can only carry out restrictions on media freedom if there is **a legal basis** like in cases a broadcaster fails to obtain the required license(s) from the competent, independent media authority to operate in a given territory or in cases such a license is being revoked by the said authority.
- Operators may **only be obliged to block content online on the basis of a court order or a legislative order comparable in precision of scope and measures** in accordance with the notice-and-take-down procedure laid down in the Electronic Commerce Directive, whereby we are handed a concrete blacklist of IP-addresses determined by a third-party, independent administrative authority. ISPs should not be forced into the role of the 'deputy internet police'.
- Operators act on the instruction of national media regulators when it comes to implementing national and local pre-defined must carry line-ups. In that sense, **GIGAEurope supports the Commission's intention to ensure the independence of media regulators** and, where feasible, improve the cooperation between European media regulators to avoid internal market barriers to our services that cannot be justified by the public interest related to media pluriformity & independence.

With regard to the EMFA objective of fostering media and journalistic independence, we underline that, **as operators, we are not publishers**. As content aggregators and 'mere conduits', operators do not exercise editorial influence over public service and private channels' content.
