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PART 1/3

**COMMISSION STAFF WORKING DOCUMENT**

**IMPACT ASSESSMENT REPORT**

***Accompanying the document***

**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**

{COM(2022) 457 final} - {SEC(2022) 322 final} - {SWD(2022) 287 final}

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## 1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

The President of the Commission announced a European Media Freedom Act in her 2021 State of the Union address, stating: "*Media companies cannot be treated as just another business. Their independence is essential. Europe needs a law that safeguards this independence – and the Commission will deliver a Media Freedom Act in the next year*"[1].

Media services play a unique role in the internal market, by providing access to a plurality of views and reliable sources of information to citizens and businesses alike. As media services are capital- and knowledge-intensive[2], they require scale to remain competitive, which can be achieved through cross-border provision of services, investment and establishment in the internal market. For this to happen, they need a predictable regulatory environment.

However, the internal media market is not sufficiently integrated. Over the last years, Member States have adopted various national rules related to media pluralism, such as rules to examine the effect of market transactions on media pluralism. While this is a legitimate public interest, divergent approaches at national level, tailored only to local contexts, have created fragmentation in the internal market, causing legal uncertainty and increasing compliance costs for media companies[3]. Uncoordinated national rules and discriminatory practices make it difficult for media market players to operate and expand across borders.

In addition, the internal media market has become increasingly digital as media services are provided and accessed through the internet, which is by nature cross-border. In the last decade, European media companies have also faced fierce competition from global online platforms. While such platforms have become gateways to media content and dominate online advertising, their business models tend to amplify polarising content or disinformation[4]. The corresponding shift of advertising revenues online has drained financial resources from the traditional media sector affecting its financial sustainability, and in turn the quality and diversity of content on offer[5]. This trend indicates how the market is failing to provide sustainable returns for independent news and quality journalism, which are public goods[6], and help counter disinformation.

There is also increasing influence on media undermining their independence. As evidenced by the Commission's annual Rule of Law reports[7] and the Media Pluralism Monitor, interference in media, historically present in some EU Member States, has recently increased in several of them. The Media Pluralism Monitor shows a general deterioration in the EU media landscape in the areas of market

[1] 2021 State of the Union Address by President von der Leyen, Strasbourg, 15 September 2021.
[2] See Annex 5.
[3] See section 2.2 and Annex 7.
[4] See section 2.2.2.
[5] This is corroborated by the findings of the Media Pluralism Monitor, which reported growing risks to media pluralism in the digital environment, see 2021 MPM (full report).
[6] See Annex 5.
[7] See the 2020 and 2021 Rule of Law Reports - 2020 Rule of Law Report, The Rule of law situation in the European Union (COM(2020) 580 final); 2021 Rule of Law Report, The rule of law situation in the European Union (COM(2021) 700 final). The 2021 Rule of Law Report signalled problems with political pressure or influence on the media, insufficient media ownership transparency and unfair allocation of state advertising in several Member States.

plurality, reflecting the growing economic threats to media, and political independence, with risks related mainly to the lack of protection for editorial autonomy[8].

The EU has already acted to protect the financial sustainability of the press through the copyright reform[9], to foster a level playing field between broadcasters and online media players through the revised Audiovisual Media Services Directive (AVMSD)[10], and to make digital markets fairer and more contestable with the upcoming Digital Services Act (DSA)[11] and Digital Markets Act (DMA)[12]. The European Media Freedom Act (EMFA), which is underpinned by this Impact Assessment report, would complement this framework by fostering regulatory convergence and cooperation, promoting free provision of quality media services and ensuring fair and transparent allocation of economic resources in the internal media market.

This would make it easier for media outlets to operate in multiple Member States, to produce and provide their content freely across borders, reach wider audiences and compete with online players in the internal market. It would facilitate entry of newcomers in media markets, foster quality of media services for the benefit of citizens and businesses and enhance trust in media. The initiative would strengthen the internal market for media and thereby media freedom and pluralism, which are protected by the Charter of Fundamental Rights[13]. In turn, it would also reinforce the rule of law, which as stated in the Conditionality Regulation is a precondition for the integrity and sustainability of the internal market at large[14]. Where the rule of law is strong, businesses feel confident about investing[15]. In contrast, businesses will hesitate to invest in countries where media independence is not upheld, with adverse effects on the economy[16].

The intervention would focus on media law areas not regulated at EU level and address a number of regulatory gaps in the existing EU rules[17]. The AVMSD contributes indirectly to fostering media freedom and pluralism by guaranteeing the independence of media regulators, gathered in the European Regulators Group for Audiovisual Media Services (ERGA). However, it does not address directly any of the issues that would be covered by the initiative. Also, the DSA and DMA constitute horizontal instruments, which do not cover the sector-specific issues targeted by the initiative. The EU competition rules do not address the impacts that market operations could have on media pluralism or independence. The antitrust rules cannot tackle the un-transparent methodology for online audience measurement in a structured way. The state aid rules are applied on a case-by case basis and often *ex post* and do not sufficiently address the problems created by the unfair allocation of state resources to media service providers. The horizontal ownership transparency requirements of

[8] For more details see 2021 MPM (full report). The area of market plurality covers transparency of media ownership; news media concentration; online platforms - concentration and competition enforcement; media viability and commercial and owner influence over editorial content. The area of political independence covers political independence of media; editorial autonomy; media and elections; state regulation of resources and support to media and independence of public service media governance and funding.

[9] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, OJ L 130, 17.5.2019.

[10] Directive 2010/13/EU as amended by Directive (EU) 2018/1808 ('AVMSD'), OJ L 303, 28.11.2018.

[11] COM/2020/825 final – to be updated when published.

[12] COM/2020/842 final – to be updated when published.

[13] Article 11 of the EU Charter of Fundamental Rights.

[14] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

[15] See the Economic and Social Committee opinion *The rule of law and its impact on economic growth* (2020).

[16] Research has found that countries do not fully recover economically if their press freedoms are compromised, even if the rights of the media are restored, see J. Nguyen, A. Valadkhani, A. Nguyen and A. Wake, *Press Freedom and the Global Economy: The Cost of Slipping Backwards*, Journalism Studies, 22:4, 2021, pp. 399-417.

[17] For further details see section 5.1 and Annex 9 on the interplay between the proposed intervention and relevant EU legislation.

the Anti-Money Laundering and EU Company Law Directives do not address additional, media-specific transparency elements, such as the information on the interests of media owners in other businesses.

The initiative will build on the case law of the Court of Justice of the EU (CJEU) which recognised that restrictions to the fundamental freedoms of the Treaty on grounds of the public interest objective of protecting media pluralism must be appropriate and proportionate[18]. It will not interfere with the conditions regulating market access, such as licensing of media services in the Member States.

Both the European Parliament[19] and the Council of the European Union[20] have repeatedly called for the Commission to take action to lift barriers to the proper functioning of the internal media market and promote pluralism and independence in that market. Respondents to the public consultation and participants in the targeted stakeholders' consultations underlined the importance of promoting a common framework removing barriers to the proper functioning of the EU media market and promoting pluralism and freedom in this market[21].

## 2. PROBLEM DEFINITION

### 2.1 Context and scope

Uncoordinated national rules and procedures related to media pluralism[22], insufficient cooperation between national media regulators, interference in editorial decisions of media services, as well as opaque and unfair allocation of economic resources to media raise internal market barriers and/or lead to an uneven level playing field between media market players across the EU. Such barriers and practices make it difficult for media players to use the internal market to its full potential and to fulfil properly their societal role to inform citizens and businesses. The gravity of the problems varies across the EU and some issues are more serious for certain Member States. This is explained below when describing the problems and their underlying drivers.

The issues identified above concern the entire information ecosystem. They affect both media companies (and journalists) as providers of information services as well as citizens and businesses as

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[18] Case C-719/18, *Vivendi SA v Autorità per le Garanzie nelle Comunicazioni*. See also cases C-288/89 *Gouda*; C-380/05 *Centro Europa 7* and C-555/19 *Fussl Modestraße Mayr*.

[19] Resolution of 21 May 2013 on the EU Charter, 2011/2246(INI); Resolution of 3 May 2018 on Media pluralism and media freedom in the EU, 2017/2209(INI); Resolution of 25 November 2020 on strengthening media freedom: protecting journalists in Europe, hate speech, disinformation and the role of platforms (2020/2009(INI)); Resolution of 20 October 2021 on Europe's Media in the Digital Decade: an Action Plan to Support Recovery and Transformation (2021/2017(INI)); Resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU, 2021/2036(INI); Resolution of 9 March 2022 on foreign interference in all democratic processes in the European Union, including disinformation (2020/2268(INI)).

[20] Council conclusions on media freedom and pluralism in the digital environment, OJ C 32, 4.2.2014; Council conclusions on safeguarding a free and pluralistic media system, OJ C 422, 7.12.2020; Council conclusions on 'Europe's Media in the Digital Decade: An Action Plan to Support Recovery and Transformation' 8727/21; Council conclusions on building a European Strategy for the Cultural and Creative Industries Ecosystem, OJ C 160, 13.4.2022; Declaration of the European Ministers responsible for Culture, Audiovisual and Media meeting in Angers on 7 and 8 March 2022.

[21] See Annex 2.

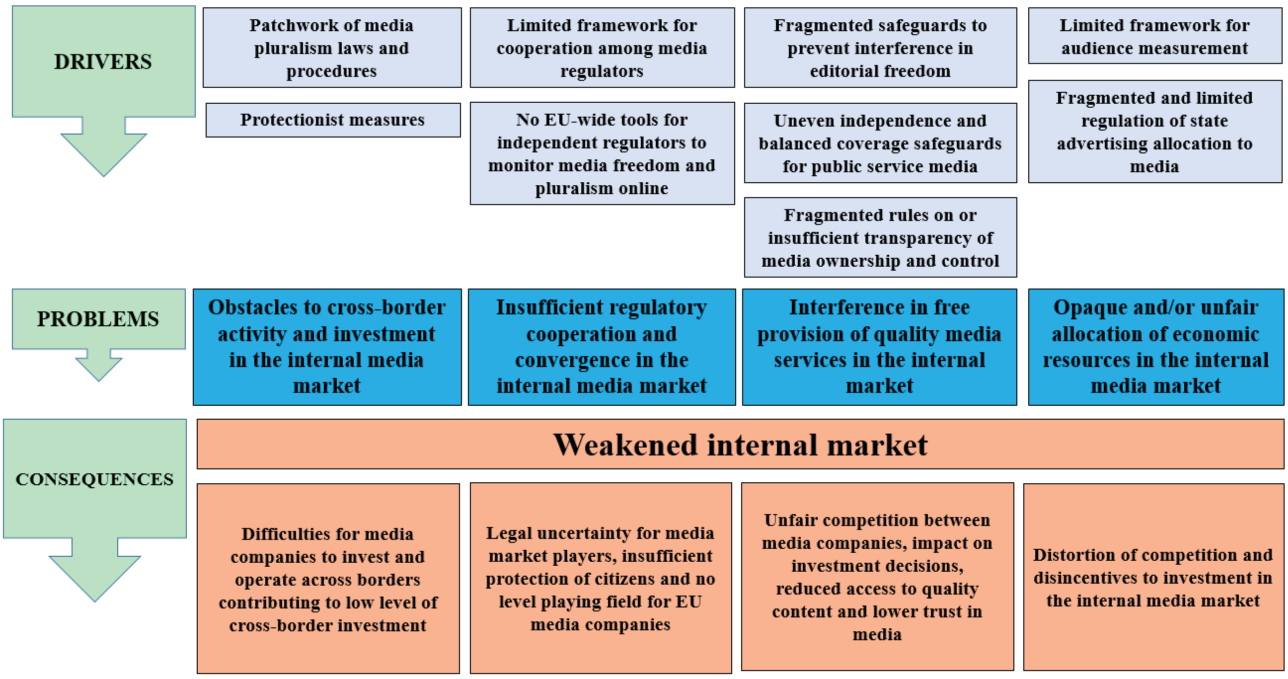
[22] The definition of media pluralism is quite debated and is influenced by different political, economic and legal contexts, by the academic approach used, and by market and technological developments. The concept bears different meanings, from the "marketplace of ideas" of economic and political liberalism to a functional definition of the notion of the "public sphere". According to the latter, which has become a feature of the European debate on this topic, versus the more liberal and market-oriented approach of the US, media pluralism is associated with deliberative democracy and implies that citizens have access to a wide array of information as a precondition for their best participation in the democratic debate. See the Study on media plurality and diversity online (forthcoming, VIGIE 2020-825) for a further discussion on this topic. For the purpose of this Impact Assessment, 'media pluralism' will be understood as a plurality of voices or opinions expressed and issues analysed in the media (diversity in the range of content available or "internal pluralism", a concept particularly relevant when assessing the diversity of content that is offered in oligopolistic or monopolistic media markets), and a plurality of media outlets and their types (diversity of sources and ownership or "external pluralism", which refers, instead, to the structure of the media market, including the diversity of media ownership and streams of funding, but may also reflect various operational functions of the media; from this second perspective, concentration in the media market or even a potential concentration in a market that naturally evolves towards oligopoly or monopoly has been seen as the greatest risk to the democratic debate).

recipients of information. The initiative would cover in principle all media, including audiovisual, radio and the press. However, some of its provisions would apply only to a certain category, such as providers regulated at EU level (audiovisual media and video-sharing platforms) or public service media. Some of the provisions would also concern other media market players (providers of audience measurement systems, media content distributors, and very large online platforms).

### 2.2 What are the problems?

The initiative seeks to tackle a series of problems affecting the proper functioning of the internal media market[23]. These problems are the result of a number of drivers.

*Figure 1 Problem tree*




#### 2.2.1 Obstacles to cross-border activity and investment in the internal media market

Media players face obstacles hindering their operation and investment in the internal media market. As discussed under drivers below, these barriers stem from diverging and uncoordinated national measures and procedures related to media pluralism and/or are the result of discriminatory or protectionist measures or decisions. The problem affects especially the broadcasting sector, which is traditionally regulated (at EU and/or national level), and to a lesser extent the press sector (where covered by the national rules).

72% of all respondents to the public consultation[24] consider the legislation in their Member State inadequate or disproportionate to ensure the free provision of media services within the internal market and to protect media pluralism and independence[25]. More than half of business associations

[23] The evidence of the problems identified is supported by the available data to the possible extent. However, in some areas such data remains limited. This may stem in particular from the sensitivity of the issues at stake and the cautious approach of media companies when reporting on certain issues.
[24] Including in particular citizens, consumer organisations and civil society.
[25] Including more than half of respondents from Hungary, Spain, Italy, Romania, Poland, Greece, Croatia and Slovakia.

and (mostly large) companies responding to the public consultation identified difficulties to the exercise of business activities in the EU media market[26]. Among those business associations and companies that identified such difficulties, rules restricting market entry or operation and discriminatory administrative decisions hampering the operation of media outlets were identified among the most prevalent. Rules restricting market entry or operation were pointed out as an obstacle by 50% of them[27], while discriminatory administrative decisions were identified by 41%[28]. Long and costly processes regarding cross-national media market transactions were also mentioned in targeted stakeholder interviews as discouraging cross-border investment[29].

Companies and business associations responding to the public consultation that expressed an opinion on this matter considered the following national rules to affect the entry or hinder operation in the EU media market to a large or very large extent: rules setting out quantitative limitations (e.g. on the number of channels or licences owned by a single entity) (mentioned by 32%); rules that prevent a media player that has been granted a licence to operate in one media-related service from obtaining further licences to provide other media or related services (mentioned by 29%); rules to examine the effect of market transactions on media pluralism (mentioned by 23%); rules to limit the participation or control of media by companies active in other sectors (mentioned by 16%); rules on prior notification and approval required for operation of media players (mentioned by 14%)[30]. Large companies generally reported to be affected by such national requirements more than small or micro-sized companies.

As regards diverging national scrutiny procedures for the assessment of media market operations, 68% of all respondents to the public consultation[31] considered them among the main barriers in the internal media market. 25% of those business associations and companies that identified difficulties in the EU media market were aware of issues in this area. As explained in the corresponding driver below, such divergences relate to the existence of specific media pluralism scrutiny (or lack thereof), involvement (or not) of media regulators in such scrutiny or varying assessment criteria[32]. The different approaches to media market scrutiny (or lack of any scrutiny in some cases) translate into an uneven treatment of market transactions from a media pluralism standpoint across the internal market. The 2021 Media Pluralism Monitor points to high risk to market plurality in many Member States[33].

Several cases and case studies provide evidence of problems faced by media market players across the EU. In particular, the Vivendi case[34] has shown that national media pluralism rules can effectively prevent a company established in the EU to enter another EU market. In its judgment, the

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[26] When asked to identify such difficulties from a list of 6 issues, 56% identified at least one of them as problematic or gave their own example of a difficulty. At the same time, small or micro-sized companies reported to be affected by such national requirements less than large ones.
[27] Such rules were pointed out by Metropole, United Media, European Publishers Council, Association of European Radios, Associação Portuguesa de Imprensa, DIGITALEUROPE, Vivendi, Visapress CRL, Altice Media, Vodafone, Sky Group, Association of Commercial Television and Video on Demand Services in Europe, Association of Commercial Broadcasters in Austria, Bitkom e.V., Ringier Hungary Kft, ZVEI e.V.
[28] Such decisions were pointed out Metropole, United Media, European Publishers Council, Association of European Radios, DIGITALEUROPE, Vivendi, Vodafone, Sky Group, ACT - Association of Commercial Television and Video on Demand Services in Europe, Association of Commercial Broadcasters in Austria, Bitkom e.V., Ringier Hungary Kft, SC Mediapress SRL.
[29] See Annex 2.
[30] *Ibidem.*
[31] Including in particular citizens, civil society and trade unions.
[32] While in some Member States the assessment criteria are clearly specified by the law and/or specific guidelines, in certain Member States they are only defined in the course of the assessment procedure. See Annex 7.
[33] Bulgaria, Cyprus, Czechia, Spain, Finland, Croatia, Hungary, Ireland, Lithuania, Latvia, Malta, Poland, Romania, Slovenia and Slovakia. See the 2021 MPM risk map for market plurality in Annex 7.
[34] Case C-719/18, *Vivendi SA v Autorità per le Garanzie nelle Comunicazioni*.

CJEU held that the Italian legislation was incompatible with the market freedoms because the provisions at stake bore no relation to the risk to media pluralism. Despite the CJEU ruling that the law unduly restricted cross-border investments in the media sector, the uncertainty in the Italian market persists and Vivendi eventually abandoned the transaction.

A number of market players reported on regulatory barriers due to the application of national laws and procedures relevant for media in the targeted interviews conducted as part of the Impact Assessment study. The companies interviewed[35] referred to various barriers faced in different Member States (Croatia, Greece, Slovenia and Hungary). In this context, several companies pointed to a lack of a common framework for media market scrutiny as potentially discouraging investment and argued for EU-based common principles and criteria and independent institutions[36].

*As regards media market scrutiny, when the pro-government media conglomerate KESMA was created in Hungary, the media regulator, although formally empowered by the law to provide opinions on media market operations, was excluded from the scrutiny of the operation[37]. Concerning regulatory obstacles, the United Media Group reported to have encountered barriers related to a patchwork of restrictions in the South-Eastern region of Europe. Notably in Greece, shortly after the group entered the market through its acquisition of Forthnet, a law preventing satellite operators from holding free-to-air terrestrial broadcasting licences was introduced[38]. This prohibition, seemingly targeting the group, has been considered as significantly limiting growth opportunities of cross-border media players in the media market.*

In some cases, challenges faced in the media market including in the regulatory environment have forced market players to leave certain markets. For instance, in Czechia, Slovakia and Bulgaria, key foreign investors left these markets between 2006 and 2018[39]. Other market players continue to operate in certain markets but face heavier burdens compared to their local competitors: this is the case, for instance, of the independent cross-border broadcaster RTL in Hungary, which following the 2014 enactment of a tax on advertising revenues in Hungary, was the only one subject to this tax[40].

*Consequences*

Regulatory burdens and obstacles to the exercise of economic activities in the internal media market create legal uncertainty and undermine the willingness of companies to invest and operate in media markets across the EU. This is true in particular for the complexity of and divergences in the procedural requirements and criteria used in the assessment of media market transactions. As a result, media companies bear additional administrative costs and legal fees when trying to enter new markets, which prevents them from making the most of the internal market and scale up[41]. These

[35] United Media Group, Media For Europe and Central European Media Enterprises.
[36] See Annex 2.
[37] As the operation to create the Central European Press and Media Foundation (KESMA) was declared of "strategic national interest", the competition regulator and consequently also the media regulator was excluded from its scrutiny. Bypassing the media regulator was considered as affecting significantly its independence, and further deteriorating media pluralism in Hungary. See E. Brogi, I. Nenadic, M. Viola de Azevedo Cunha, P. L. Parcu, *Assessing certain recent developments in the Hungarian media market through the prism of the Media Pluralism Monitor*, July 2019. See also the 2020 Rule of Law report.
[38] Article 43, paragraph 2 of Law 4779/2021.
[39] A total of 11 of the 17 most prominent foreign owners left Eastern Europe, including MTG and Axel Springer, see report from the Media Development Investment Fund, *Media capture in Europe*, May 2019. The report explains that foreign media present in Eastern Europe faced various challenges, among others in the regulatory field, following which an exodus took place.
[40] *Ibidem*: "In 2014, the government adopted a new law that imposed a disproportionately high tax on the revenues generated by media outlets with a specific level of income. […] only RTL Klub, the most popular television channel in the country not yet captured, fell into that category. Because of these legal provisions, the owner of RTL Klub, the German conglomerate Bertelsmann, experienced a slump in its revenues the following year".
[41] As explained in Annex 5, there are only a few pan-European media groups.

obstacles contribute to the relatively low level of cross-border business activity in the media sector within the internal market[42]. Some EU countries have become increasingly closed to services imports in the broadcasting sector[43]. In extreme cases, as illustrated above, such obstacles may force players out of certain markets.

**What are the problem drivers?**

**Patchwork of media pluralism laws and procedures**

There are various national measures related to media pluralism, which are uncoordinated at EU level. The corresponding rules and procedures vary across the EU: some Member States do not have rules at all, whereas others do; in the latter case, there are considerable differences.

In particular, some Member States have ownership limitations based on audience reach, others have market shares' limitations or capital control restrictions or cross-media ownership restrictions[44]. For example, under the French Law on the Freedom of Communication[45], to prevent cross-media concentration and possible negative impacts on media pluralism, a licence cannot be obtained by a person/entity who is in more than two of the following situations: (i) it holds one or more licences for terrestrial television services in an area with a population of more than 4 million, (ii) it holds one or more licences for radio services serving areas with a population of up to 30 million, or (iii) it publishes one or more daily political and general newspapers representing more than 20% of the total circulation of daily political and general newspapers. In contrast, in Ireland there are no specific numerical ownership thresholds, but no person or group of persons should have control of or substantial interests in an 'undue number' of sound broadcasting services, or an 'undue amount' of communications media in a specified area[46].

There are also differences in the procedures applicable to the scrutiny of market transactions for media pluralism purposes. For instance, while in some Member States all media transactions are scrutinised regardless of revenue thresholds[47], other countries apply revenue multipliers in order to ensure that competitive threats do not pass undetected and are brought under scrutiny even when the outlets involved have low revenues[48]. Fragmentation also characterises the existence of specific pluralism 'checks' (or lack thereof[49]), involvement of the media regulator in such media market scrutiny or criteria used during the scrutiny. In particular, some Member States have specific rules

[42] For example, there were 867 cross-border investments (including mergers, acquisitions and expansions) in media compared to 3 027 in tourism and 22 106 in retail over the period 2013-2021 (own analysis of Orbis cross-border investment database). Mergers and acquisitions activity in media has steadily gone down since 2013 and has not recovered post Covid. Non-national or foreign ownership of news media is low, from 1-4% of companies (JRC elaboration based on Orbis/Bureau van Dijk data). While arguably there are other factors which may be at play, such as cultural and linguistic specificities, there are several cross-border media groups in the EU. For example, Bauer media group, a German company, owns magazines, digital products and radio and TV stations in Ireland, Poland, Slovakia, Denmark, Sweden and Finland, leaving full editorial and content independence to their local teams.
[43] Since 2014, the OECD has observed that some EU countries have become more and more closed to services imports in broadcasting sector - this includes notably Czechia (index deteriorating by 29%) and Hungary (index deteriorating by 25%).
[44] Study on media plurality and diversity online (forthcoming, VIGIE 2020-825) and Annex 7.1.
[45] Law n° 86-1067 of 30 September 1986 - Articles 41-1 and 41-1-1.
[46] Section 66 of Broadcasting Act 2009.
[47] Croatia and Ireland, Study on media plurality and diversity online (forthcoming, VIGIE 2020-825).
[48] Austria and Germany, *ibidem.*
[49] See Annex 7.3. 14 Member States do not seem to have any explicit media pluralism scrutiny and market transactions are analysed by competent authorities on competition law grounds only. In such cases, reliance only on competition analysis, with its economic-centric focus does not allow to address non-economic sensitivities pertinent to media pluralism. For instance, in the Orlen/Polska Press case, the Polish competition authority stated that "it is beyond question to use subjective and conceptual criteria or categories not defined in antitrust law in concentration proceedings" (UOKiK, 5 February 2022).

and procedures for the assessment of the impact of media market operations on media pluralism[50]. This media pluralism 'check' is often carried out by the media regulator (in the form of a binding or non-binding opinion) independently and/or upon consultation by the competition authority[51]. A number of Member States[52] have in place systems enabling Ministries or Governmental bodies to intervene in the media market scrutiny conducted by the relevant regulators, and to override their decisions on non-economic grounds, ranging from protection of media pluralism to the safeguarding of public security or other general interests[53]. Such fragmentation of national approaches to media market scrutiny raises the administrative and compliance costs of and uncertainty for media service providers, affecting their ability to operate across borders.

**Protectionist measures**

National rules and procedures related to media pluralism may be applied in a disproportionate or discriminatory way and turn ultimately into obstacles to the functioning of the internal media market. They can be used to prevent the entry or operation in a given market of non-national media outlets for protectionist or politically motivated reasons.

For instance, the controversy surrounding the acquisition of a stake by Vivendi (a French company) in Mediaset (an Italian company) raised questions as to whether the relevant Italian legislation was applied for genuine media pluralism purposes. As indicated above, the Italian law was ultimately considered by the CJEU as not suitable for the purpose of protecting media pluralism. Another example has been the attempt to pass a law in Poland to prohibit majority ownership of broadcast media by foreign companies. This draft law was considered to be targeting the main independent player on the Polish television market[54]. Albeit vetoed by the President, in practice the rationale of the law was upheld in the resolution by the media regulator[55]. The application of the recent Greek law preventing pay TV satellite licence holders from controlling or investing in terrestrial television and the introduction of a discriminatory advertising tax in Hungary, cited above, provide further examples.

### 2.2.2 Insufficient regulatory cooperation and convergence in the internal media market

National media regulators are key for the proper implementation and enforcement of media law across the EU. The AVMSD acknowledged the role of the European Regulators Group for Audiovisual Media Services (ERGA) in fostering "consistent regulatory practice" and "convergent implementation" of the EU media rules[56]. While ERGA concluded a voluntary Memorandum of Understanding (MoU) to strengthen cooperation between its members, its current status as an expert group and the informal character of its cooperation leaves ERGA without sufficient tools to solve cross-border issues, take collective action or take a position on practical issues in key areas of media

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[50] See Annex 7.3.
[51] *Ibidem.*
[52] This is the case in Cyprus, France, Germany, Ireland, Italy, Nertherlands, Portugal, Slovenia and Spain.
[53] For example, in Cyprus, the Council of Ministers, by means of a reasoned Order, can block a concentration which is deemed to be of major interest as regards the effect it may have on public security, the pluralism of the media and the principles of sound administration, Articles 36-38 of Control of Concentration between Undertakings Law 83 (I) of 2014; in France, the competent Minister can intervene in the assessment of a media market transaction and rule on it for reasons of general interest other than the maintenance of competition, Article L430 of Code of Commerce; in Ireland, the competent Minister can block a media merger on the grounds of public interest in protecting plurality of the media, section 28 of the Competition Act of 2002, amended by the Competition and Consumer Protection Act of 2014. See Annex 7 for further examples.
[54] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Poland (SWD(2021) 722 final).
[55] See Business Insider Poland, *Polska koncesja TVN24 przedłużona. KRRiT przyjęła uchwałę, która ma cel taki jak lex TVN*, 22 September 2021.
[56] Recitals 57 and 58 of the revised AVMSD. For example, in 2021 ERGA adopted reports concerning the implementation of AVMSD provisions on video-sharing platforms and promotion of European works.

regulation other than technical or factual aspects related to jurisdiction[57]. This problem affects mainly providers regulated at EU level, i.e. providers of audiovisual media services and video-sharing platforms, and ultimately also impacts consumers and other media market players, such as media content distributors.

In its response to the public consultation, ERGA has stated that "additional cooperation, also in areas not covered by the AVMSD, is required", referring to online issues, in particular as regards media pluralism[58]. Moreover, as reported by ERGA on the implementation of the MoU, "only half of the requests for cooperation monitored were fully completed to the mutual satisfaction of the requesting and receiving NRAs". Member States also consider the current cooperation framework as not entirely satisfactory, pointing to cumbersome and time-consuming character of the procedures for cooperation between regulators[59]. 86% of all the respondents to the consultation who expressed an opinion on the issue, including 68% of companies and business associations and 92% of public authorities, consider that the current institutional set-up of ERGA is not sufficient to enable national media regulators to effectively contribute to the proper functioning of the internal media market and safeguarding media pluralism. 70% of all the respondents who expressed an opinion on the matter, including 51% companies and business associations and all respondent public authorities, considered that strengthened cooperation and coordination between national media regulators would be needed to find common EU approaches to key concepts of media regulation. 40% of all the respondents who expressed an opinion on the matter, including 36% of companies and business associations and 71% of public authorities, agreed that there is a lack of legally binding cooperation procedures[60].

Russia's war against Ukraine has shown the importance of coordination between media regulators, who, in this context, were not empowered to jointly address threats stemming from the transmission of Russian propaganda channels endangering public security. Lack of coordination in this area affects a wide range of media market players, in particular content distributors such as cable, satellite and online providers. Without coordination, they can be subject to fragmented national measures vis-a-vis channels in the different markets they operate in. Moreover, as explained the corresponding driver below, enforcement of national restrictions vis-à-vis distributors under jurisdiction of other Member States also poses challenges, allowing 'rogue' traders to continue to operate in the respective markets. ERGA itself confirmed that the "question of cross border cooperation in the area of channels/media under the influence of third countries […] has repeatedly (and again very recently) raised consistency and coordination issues" and called on the Commission to address this regulatory gap urgently as there is a need for a more joined-up approach to threats coming from abroad[61]. 74% of respondents to the public consultation that identified areas for strengthened cooperation of media regulators highlighted the need for coordination in cases related to activities by service providers (including from third countries) contravening European media standards.

*Following the outbreak of Russia's war against Ukraine, regulators from Estonia, Latvia, Lithuania and Poland suspended broadcasting of some Russian and Belarussian channels under the AVMSD framework. Such decisions could not be properly enforced, and the channels continued to be available in the respective territories (in particular via satellite). In parallel, in order to address threats to the Union's*

[57] See the corresponding driver below.
[58] ERGA position paper for the Public Consultation of the European Media Freedom Act, March 2022.
[59] See Report on the application of Directive 2010/13/EU "Audiovisual Media Services Directive" for the period 2014-2019.
[60] However, 17 companies and business associations (out of 28) disagreed that there is a lack of legally binding cooperation procedures.
[61] ERGA position paper for the Open Public Consultation, quoted above.

*public order and security, the EU put in place economic sanctions, targeting the core outlets of the Russian information manipulation machine (i.e. Russia Today and Sputnik)[62]. Further channels were covered by the economic sanctions later on[63]. Due to legal gaps, ERGA was not in a position to coordinate national approaches.*

Moreover, there is no EU-wide framework for monitoring and safeguarding media freedom and pluralism online carried out by independent, specialised regulators. As explained in the corresponding driver below, approaches in this area vary across Member States, which risks creating fragmentation for services inherently available across borders. Media-specific monitoring is crucial for detecting and consistently addressing risks to media pluralism and editorial integrity in the online sphere. Online platforms, which play a key role in content moderation and distribution, built their business models on capturing users' attention and stimulating users' engagement. They tend to 'push' users to a similar type of content, locking them in 'information bubbles', and amplify more controversial content that is likely to attract more views and be shared further[64]. Online platforms are also often misused for the spread and amplification of online disinformation[65] and their content moderation practices may in some cases affect editorial integrity[66]. If not monitored by independent and specialised media regulators, such (inherently cross-border) risks may not be properly addressed, with adverse effects on the integrity and quality of media content offer online and thus the functioning of the internal market. This can ultimately undermine the level playing field between media providers and online platforms.

*Research has found that, for instance, YouTube recommendations may drive people into "ideologically like-minded information spaces"[67]. Another study found that YouTube's recommendation tool prioritises right-wing extremist content after prior interactions with such content[68]. Twitter acknowledged the imbalance of political views within its content feed: its algorithmic amplification appeared to favour right-leaning news sources[69]. On Facebook, dominance of extremist political content was discovered, too[70]. This may have a*

[62] Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine; Case T-125/22, *RT France v Council*.

[63] Rossiya RTR/RTR Planeta, Rossiya 24/Russia 24 and TV Centre International. See Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

[64] M. Wolfowicz, D. Weisburd and B. Hasisi, *Examining the interactive effects of the filter bubble and the echo chamber on radicalization*, Journal of Experimental Criminology, 2021; J. Whittaker, S. Looney, A. Reed, F. Votta, *Recommender systems and the amplification of extremist content*, Internet Policy Review, Vol. 10(2), 2021; A. Sîrbu, D. Pedreschi, F. Giannotti, and J. Kertész, *Algorithmic bias amplifies opinion fragmentation and polarization: A bounded confidence model*, PloS one, Vol. 14(3), 2019. See also Facebook's Civil Rights Audit – Final Report, 8 July 2020, p. 56.

[65] In the first half of 2021, RT Germany was able to generate more interactions on Facebook than the pages of Bild, Der Spiegel and Tagesschau combined, despite its small number of followers compared to those media services, see: Avaaz, *Deutschlands Desinformations-Dilemma 2021*, 6 September 2021.

[66] UNESCO report, *Reporting facts: Free from fear or favour*, 2020. The report explains that journalistic autonomy is threatened by the business models of certain cross-border internet companies and that this situation has driven many media outlets to compromise with their editorial processes.

[67] D. Röchert, M. Weitzel and B. Ross, *The Homogeneity of Right-Wing Populist and Radical Content in YouTube Recommendations*, International Conference on Social Media and Society, July 2020. The study found a high degree of homogeneity of right-wing populist and neutral political content in the recommendation network.

[68] A. Reed et al, *Radical Filter Bubbles: Social Media Personalisation Algorithms and Extremist Content*, Global Research Network on Terrorism and Technology: Paper No. 8, 2019.

[69] R. Chowdhury and L. Belli, *Examining algorithmic amplification of political content on Twitter*, Twitter blog, 21 October 2021.

[70] For instance, in Germany posts promoting far-right nationalists political party appeared more than three times as often as rivals. See: A. Waller and C. Lecher, *Germany's far-right political Party, the AfD, is dominating Facebook this election*, The Markup, 22 September 2021.

*profound impact on voting patterns[71]. On Google News, five most recommended news organisations accounted for 69% of the recommendations, which suggests a concentration towards a handful of sources[72]. Users also recognise the impact of platforms on the access to trustworthy information: seven out of ten Europeans say they often come across news or information on social media that misrepresents reality or is even false[73]. 84% of journalists surveyed in a study agreed that disinformation is affecting quality journalism[74].*

ERGA lacks tools to monitor media-specific risks online in a coordinated manner. While it has been voluntarily monitoring the compliance of platforms with their commitments under the Code of Practice on Disinformation, not all media regulators were involved, as this issue was outside ERGA's remit. Media regulators have unique expertise in balancing freedom of expression and other societal interests, such as public security. It would be desirable that such a monitoring covered the whole of the EU on a regular basis. Furthermore, disinformation on EU affairs is not monitored systematically at national or EU level, with risks for its spread during EU elections or more generally, as shown recently in the context of the war in Ukraine[75].

The results of the public consultation and targeted stakeholders' interviews also confirmed that the current cooperation between media regulators is insufficient to provide a high level of regulatory convergence for media market players. Almost half of respondents from business associations and companies identified diverging interpretation of regulatory concepts as an obstacle for the freedom to exercise a business activity in the EU media market[76]. 40% of companies and business associations who responded to the public consultation supported the need for common guidance or best practices exchange by independent media regulators in key areas of media regulation, such as prominence of content of general interest[77]. ERGA also recognised deficiencies in its powers and tools, stating that "ERGA could […] where relevant, issue guidance based on existing best practices in order to assist Member States and/or NRAs in developing approaches regarding key areas of media regulation"[78].

*Consequences*

In the absence of a formalised and structured cooperation and monitoring framework, media regulators cannot provide the legal certainty and consistency required by a wide range of actors

[71] A study based on data collected in the context of Italian and German elections found a positive correlation between the use of Internet as a source of political information and voting for populist parties, see M. Schaub, *Voter mobilisation in the echo chamber: Broadband internet and the rise of populism in Europe, European Journal of Political Research*, Volume 59, Issue 4, November 2020. A study carried out in Sweden before the 2018 parliamentary elections also found that right-wing parties received more engagement for their Facebook posts than other political parties did and that, as a general trend, hyper-partisan news sources received more audience engagement than mainstream ones, see A.O. Larsson, *Right-wingers on the rise online: Insights from the 2018 Swedish elections*, Volume 22, Issue 12, 2020

[72] E. Nechushtai & S.C. Lewis, *What kind of news gatekeepers do we want machines to be? Filter bubbles, fragmentation, and the normative dimensions of algorithmic recommendations*, Computers in Human Behavior, Volume 90, January 2019.

[73] Standard Eurobarometer 94: Media use in the EU, 2021.

[74] J. Wetzler, *Journalism Research: From Broken Revenue Models to Embracing an "Open" Ethos*, Creative Commons and Open Journalism, 2022, p.4.

[75] Research indicates differences in the way EU elections and EU affairs are reported on at national level, with potential repercussions on the participation in EU elections, see e.g. K. Gattermann, *Media Personalization during European Elections: the 2019 Election Campaigns in Context*, JCMS, 2020. The Commission issues reports on European Parliament elections but they do not foresee monitoring of media coverage of EU elections.

[76] 49% of companies and business associations that identified difficulties pointed to issues in this area. This was pointed out by Metropole, United Media, European Publishers Council, Association of European Radios, DIGITALEUROPE, Vivendi, Vodafone, Sky Group, Association of Commercial Television and Video on Demand Services in Europe, Association of Commercial Broadcasters in Austria, Bitkom e.V., Ringier Hungary Kft, and SC Mediapress SRL. In particular, 63% of all respondents considered that divergent regulatory approaches in the area of balanced media coverage or exposure to plurality of views (including during elections) create challenges for media companies' ability to operate in the EU media market. See Annex 2.

[77] Among all the areas identified by companies and business associations for further guidance, prominence of content of general interest was identified by 53% of companies and business associations. This need has been confirmed by the findings of the Study on media plurality and diversity online (forthcoming, VIGIE 2020-825).

[78] ERGA position paper for the Open Public Consultation, quoted above.

active in the internal media market and a sufficient level of protection to EU citizens and businesses. Regulatory fragmentation[79] leads to uneven level playing field between regulated entities in an increasingly digital media market[80]. It also affects cross-border availability of diverse and trustworthy information for citizens and businesses.

Moreover, without effective cooperation, the internal media market can easily be abused by 'rogue' media players undermining EU democratic values. Such outlets - directly or indirectly controlled by foreign governments – usually operate without any guarantees for editorial independence, spread disinformation and undermine trust[81]. This puts media players who comply with EU media standards at a competitive disadvantage, further distorting the level playing field in the media market.

**What are the problem drivers?**

**Limited framework for cooperation among media regulators**

Under the AVMSD, ERGA is to provide technical expertise to the Commission[82]; to exchange experience and best practices on the application of the regulatory framework for audiovisual media services; to cooperate and provide its members with the information necessary for the application of the Directive; and to give opinions, when requested by the Commission, on the technical and factual aspects in a few areas specified by the Directive (all related to jurisdiction matters)[83]. EU law, therefore, foresees only a limited cooperation framework among media regulators, constraining ERGA, in most cases, to a forum for exchange of best practices and issuing position papers.

As regards third country media providers affecting the EU information space, Article 3 of the AVMSD allows Member States to restrict reception on their territory of media services from other Member States where they prejudice or present a serious and grave risk of prejudice to public security, including national security and defence. Such temporary restrictions can be enforced only vis-a-vis content distributors (e.g. cable companies) established in the Member State imposing the restrictions. The AVMSD does not provide any tool to have the restrictions implemented by distributors established in other Member States (e.g. satellite operators). In practice this results in an enforcement gap: restricted content continues to reach the households which receive the signal of the satellite operator established in another Member State. Similar problems arise online: there is no framework to ensure that restrictions on re-transmission under AVMSD are complied with by online distributors. Also, the AVMSD does not regulate issues related to protection of the EU's information space from third country providers outside EU jurisdiction.

**No EU-wide tools for independent regulators to monitor media freedom and pluralism online**

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[79] Regarding the implementation of Article 7a of the revised AVMSD, Germany has been the first Member State to determine at national level criteria for general interest content. In particular, under the German rules, commercial audiovisual media service providers can take part in a special "tendering process" organised by the media authorities in order to apply for the general interest status and benefit from prioritisation on user interfaces. Regulatory discussions in France confirm an interest in introducing prominence rules with a focus on remote control devices. The Netherlands are currently studying the problem definition, the possible criteria for content of general interest, policy options and the scope in view of new legislation; See the German Media State Treaty; the French Broadcasting/audiovisual media Loi n° 86-1067, as amended by Decree n°2021-1382 of 25 October 2021; L. Kayali, "French public TV boss braces for more battles with Netflix", Politico, 27 January 2022; Executive summary of the Study on Prominence in view – exploration of the due prominence of general interest content, commissioned by the Dutch Ministry of Education, Culture and Science, 2021; Study on media plurality and diversity online (forthcoming, VIGIE 2020-825).

[80] Audience figures from Auditel about the Italian market show how 50% of viewing time on TV is "spontaneous" and not "planned". This suggests that a system which would give prominence and guide viewers to watching certain media services rather than others would significantly affect viewing figures (data obtained from Mediaset in May 2022 for the period of 27 February – 30 April 2022).

[81] UNESCO, *Reporting facts: free from fear or favour*, 2020. See also https://euvsdisinfo.eu/.

[82] See Recital 58: "the Commission should be free to consult ERGA on any matter relating to audiovisual media services and video-sharing platforms".

[83] Article 30b of the revised AVMSD.

The DSA will oblige very large online platforms to assess and mitigate risks for freedom of expression and information as well as for civic discourse and electoral processes, and public security (including those related to disinformation) and regulate platforms' content moderation practices. The DSA entrusts the monitoring and enforcement of these provisions to the Commission, supported by a network of Digital Services Coordinators (to be appointed by Member States, including by designating existing regulatory authorities such as the media regulators) and with the participation of other relevant national authorities on the basis of their expertise. The DSA allows sector-specific interventions to be plugged in to its framework, for instance as regards tools for cooperation between media regulators in this area. The initiative could address any remaining sector-specific issues related to the monitoring and addressing media-specific risks online by independent regulators (who have a specialised expertise in media pluralism issues), which may not be sufficiently tackled by the DSA as a horizontal instrument.

Moreover, a few Member States have taken regulatory measures to address certain aspects of media pluralism and freedom online, with diverging monitoring and enforcement frameworks at national level, which remain uncoordinated at EU level[84].

#### 2.2.3 Interference in free provision of quality media services in the internal market

Editorial independence is a pre-condition for a well-functioning media market where quality media content (i.e. content produced independently and in line with deontological standards) may freely flow across borders. European media increasingly face interference in their editorial decisions, both from public authorities and private owners[85]. This interference affects the editorial freedom of media companies, and their capacity to independently produce and freely distribute their content across borders, thus hindering the exercise of their economic activities. In addition, media service providers adhering to standards of editorial independence and considering to expand the provision of services to additional markets are likely to be deterred by a high risk climate of interference in Member States they consider to invest in. As testified by developments in certain countries, such as in Hungary[86] and Poland[87] over the last years, the investment environment has become increasingly hostile vis-à-vis foreign companies in several Member States[88]. The resulting exodus of foreign media owners from certain markets driven by both regulatory and political pressure reasons[89] has not been counterbalanced by new media services entering the markets. Also, journalists cannot work freely in the internal market when they face political or undue commercial pressure concerning the media content they produce. Overall, interference with editorial freedom affects the ability of media to inform, educate and entertain the public through quality media services. The issue of availability of quality content is no longer confined to individual national markets. The digital shift has triggered a change in the way citizens access and consume media content which is immediately available on

[84] In Germany, the 2020 Interstate Media Treaty envisages that, in order to ensure diversity of opinions, online platforms may not, directly or indirectly, unreasonably obstruct journalistic and editorial offers on whose perceptibility they potentially have a major influence, or treat them differently without an objective justification, see Staatsvertrag zur Modernisierung der Medienordnung in Deutschland. A draft 2021 legislative proposal in Poland aims, among others, at safeguarding the right to trustworthy information by introducing new procedures for the protection of the information space. In Greece, Article 191 of the Greek Criminal Code criminalised creation or any distribution of fake news. The Spanish ministerial order of 30 October 2020 provides for monitoring of social media to detect disinformation campaigns coming from foreign countries. See also French law 2018-1202 of 22 December 2018 aiming to curb information manipulation, in particular during election periods.

[85] See, for example, Reporters without Borders, World Press Freedom Index and UNESCO report, *Journalism is a public good: World trends in freedom of expression and media development*, 2021.

[86] See S.Griffen, *Hungary: a lesson in media control*.

[87] See *Poland's free media is shrinking,* originally published in the Gazeta Wyborcza, republished by the International Press Institute in English.

[88] See OECD, referring in particular to deteriorating investment conditions in Czechia and Hungary, see footnote 43.

[89] See also above, footnote 39.

their personal devices. In a digital space frontiers have become much less relevant. As consumers have the right to buy products that abide by common safety standards in the internal market, citizens should be able to expect quality media content in the same market. This is not just important for fundamental rights but also for the economy and functioning of the internal market. Quality of media services is key to foster trust in cross-border services and allow media companies to expand their activities[90]. For example, investors should be able to rely on trustworthy reports in order to make efficient commercial decisions which may affect cross-border transactions. At the same time, advertisers increasingly seek to invest in media that fulfil certain quality requirements. Initiatives such as the cross-industry Global Alliance for Responsible Media have been created to encourage monetisation of online content that ensures a brand-safe environment[91].

The problem is exacerbated by the business models of online platforms that tend to amplify media content which is not produced in line with deontological standards, is biased or amounts to disinformation[92]. This distorts the playing field online against providers of quality media content. The problem of interference in free provision of quality media services affects all media companies and most of the Member States, although to varying degrees.

Many media companies, business associations, NGOs and citizens who responded to the call for evidence and took part in targeted consultations pointed to state and commercial interference in media and its negative impact on media pluralism, affecting the circulation of media content and the effective functioning of the internal media market. 85% of all respondents to the public consultation were aware of cases of state interference while almost a third were aware of private interference. 43% of respondents to a recent Eurobarometer survey considered media not to be independent from political or commercial pressure in their Member State[93].

The Commission's Rule of Law reports refer to political pressure on the media in Czechia, Malta, Slovenia, Poland, Bulgaria and Hungary[94], with instances of consolidation of pro-government media in Hungary and interference in the editorial independence of media in Poland[95]. According to the 2021 MPM, political independence of media (related to the lack of conflict of interest rules and political control over media outlets and news agencies) is at high or medium risk in 21 Member States[96]. 'Media capture'[97] has severely compromised the operation or even led certain media groups to stop operations altogether in some Member States[98].

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[90] Quality of service is an important element of a well-functioning internal market. See, for example, Directive 2006/123/EC on services in the internal market, which contains an entire chapter on quality of services. The Services Directive does not apply to audiovisual services.
[91] WFA, Global Alliance for Responsible Media.
[92] Section 2.2.2.
[93] Eurobarometer 94: Media use in the European Union, 2021.
[94] See 2021 Rule of Law Report.
[95] In Hungary, KESMA was created as a result of transferring by media owners affiliated and/or sympathetic to the Hungarian government of their media ownership rights to the new entity, with a clear pro-government editorial 'line', see 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary SWD(2020) 316. Following the 2020 acquisition of Polska Press (local and regional news owner) by PKN Orlen (state-controlled energy company), several editors-in-chief were dismissed, see Reporters without Borders, *With firing of four editors, 'repolonisation' under way in Poland*, 10 May 2021.
[96] See the 2021 MPM risk map for political independence in Annex 6.
[97] A. Mungiu-Pippidi, *How Media and Politics Shape Each Other in the New Europe*, in: K. Jakubowicz and M. Sükösd, *Finding the Right Place on the Map: Central and Eastern European Media Change in a Global Perspective*, Chicago, 2018, defines media capture as a situation in which the news media are controlled "either directly by governments or by vested interests networked with politics". See also as regards Bulgaria, S. Antonov, *The Age of the Oligarchs: How a group of political and economic magnates have taken control of Bulgaria*, Reuters Institute Fellowship Paper, 2013.
[98] Media Development Investment Fund, quoted above, refers to the exodus of key foreign investors from Eastern Europe between 2006-2018 and the purchase of these entities by domestic figures closely linked with political parties or interest groups, or politicians themselves. For example, Verlagsgruppe Handelsblatt group sold the publishing house Economia to Zdenek Bakala, a coal magnate. Five years later, Rheinisch Bergische Verlagsgesellschaft (RBVG), another German publisher, sold Mafra (publisher of two of the best-selling dailies in the country at the time) to Andrej

State interference can also take the form of unwarranted surveillance of journalists or their sources, jeopardising such sources and preventing news gathered through them from being produced and provided by the journalists and media[99]. A varying level of protection against deployment of surveillance systems[100] across the EU affects the functioning of the internal media market: media service providers will likely abstain from operating in Member States where they have to fear a lack of effective protection of journalistic sources, in particular since the reputation of a newspaper or a broadcaster might suffer in the eyes of potential sources and the public when its journalists are forced to disclose sources, as the European Court of Human Rights pointed out[101]. Also journalists cannot produce media content freely in the internal market if they cannot rely on a consistently high level of protection of their sources. This results in uneven conditions of competition for journalists and media service providers and can cause barriers to their freedom to provide services. Ultimately, such state interference prevents journalists from fulfilling their societal role of providing citizens and businesses with quality information and investigative reporting which is key to counteract disinformation.

Public service media play a particular role in the EU's media landscape, by enriching public debate and ensuring that all citizens have access to quality information and balanced media coverage and thus can participate to a fair degree in public life. In this context, safeguards for their independence are key. However, public service media can be particularly exposed to interference, given their proximity to the state and the public funding they receive[102]. Political interference in editorial coverage[103] and governance of public service media (dismissals and appointments of its management)[104] are common in certain Member States, which shows fragmentation as to the necessary safeguards or their implementation. Biased reporting by public service media, enjoying public funding but not fulfilling the public remit, distorts competition with private media (often coming from abroad) that compete for the same advertising revenues. The functioning of the internal market can be hampered in this case because private media service providers can be deterred from entering such markets. Moreover, citizens may turn to alternative sources of information, in particular very large online platforms, which further distorts the level playing field between media and such (global) platforms.

79% of all respondents to the public consultation reported instances of state interference in editorial decisions or management of public service media in the EU. 70% of all respondents[105] were aware of cases of appointment and/or dismissal procedures of management of public service media used to undermine their independent functioning[106]. The 2021 MPM reports the growing politicisation of

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Babis, owner of the Agrofert manufacturing colossus who then became Prime Minister. A year later, Daniel Kretinsky, a Czech financier, bought one of the most profitable publishing businesses in the country, the Swiss-German owned Ringier Axel Springer Media.

[99] See European Parliament's committee of inquiry to investigate the use of Pegasus and other spyware. See also 2021 Rule of Law Report, p. 18.

[100] See *Pegasus and surveillance spyware*, European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, May 2022

[101] See *Sanoma Uitgevers B.V. v. The Netherlands*, case 38224/03, judgement of 14 September 2010.

[102] Although public funding would be considered as state aid under Article 107(1) TFEU, public service media benefit from the derogation provided for services of general economic interest on the basis of Article 106(2) TFEU, insofar as the funding is provided to fulfil their public service mission.

[103] See OSCE statement on the 2020 presidential elections in Poland. See also on government influence or pressure on public service media and the news coverage and the alleged misinformation by Hungarian public service media, *Report on Media Freedom 2022* by the Civil Liberties Union for Europe.

[104] See 2021 MPM (full report), p. 88.

[105] 18 out of 57 business associations and companies were not aware of such instances, while 25 out of 57 business associations and companies and business associations did not provide an answer to this question.

[106] See Annex 2.

public service media, with high or medium risk to the independence of their governance and funding in 16 Member States[107].

Private pressure on media and the editorial decisions may come both from inside and outside of the media outlet. Media owners can unduly interfere in editorial decisions, pursuing their own economic or political interests. Such interference can be facilitated by insufficiently developed internal independence safeguards within media companies[108]. As a result, media can deviate from journalistic principles and report with the sole purpose of attracting viewers, engage in 'influence peddling' or even abstain from publishing certain content[109]. The Mapping Media Freedom platform reports 111 alerts under the category of incidents caused by employer or publisher in the past 5 years[110]. A Latvian research project found that almost half of the journalists surveyed felt that they had to take into account the interests of their business owners and the latter's political allies[111]. The 2021 MPM reports high or medium risk of commercial and owner influence over editorial content in 22 Member States[112].

*In terms of private interference, Reporters without Borders (RSF) highlighted the decision by a French broadcaster to suppress a documentary in May 2015 as "the classic example of influence peddling in the news media"* [113]*. According to RSF, the TV channel's owner used his influence over the media outlet to benefit his business partners and his own interests. Biased coverage by the Polish public broadcaster, in particular during presidential elections, has been identified by ODIHR: "the governance and funding of the public broadcaster TVP does not ensure editorial independence and enables the government to exert pressure on TVP content. During this campaign […] the TVP failed in its legal duty to provide balanced and impartial coverage"*[114]*. Similarly, in the context of the Hungarian parliamentary elections, ODIHR considered that while "the public broadcaster fulfilled its mandate to provide free airtime to contestants, [...] its newscasts and editorial outputs clearly favoured the ruling coalition"*[115].

Interference is also facilitated by the lack or insufficient transparency on the factors of influence over editorial decisions in media[116]. 76% of all respondents to the public consultation identified insufficient media ownership transparency as an issue for the freedom to exercise a business activity in the EU media market[117]. 81% of all respondents considered that the information on who owns or controls the media in the internal market is accessible only to a limited extent or not at all[118]. While the majority of Member States have media-specific ownership registries, covering mainly audiovisual media, the accessibility and granularity of the information (in particular as regards business interests of media owners in other media or no-media sectors) vary. Such granularity is key to ensure transparency on the factors of influence over editorial decisions and media accountability vis-à-vis their audiences. Access to information on media companies may be used by different

[107] 2021 MPM (full report), p. 154. See the 2021 MPM risk map for public service media in Annex 6.
[108] See, for example, the findings of the French Senate Committee of Enquiry on media concentration.
[109] For instance, influence peddling concerns were raised by Reporters without Borders in France (see box) and Bulgaria.
[110] See Mapping Media Freedom platform.
[111] See A. Rožukalne, *Self-censorship in Latvian journalism: A research note*, European Journal of Communication, 2020.
[112] See the 2021 MPM risk map for commercial and owner influence over editorial content in Annex 6.
[113] Reporters Without Borders, *Le Système B" – RSF's shock documentary about Vincent Bolloré's media*, 14 October 2021.
[114] OSCE, Poland Presidential Election 28 June 2020, ODIHR Special Election Assessment Mission: Statement of Preliminary Findings and Conclusions. See also 2020 Rule of Law Report.
[115] OSCE, Hungary Parliamentary Elections 8 April 2018, ODIHR Limited Election Observation Mission: Final Report.
[116] See M. Cappello (ed.), *Transparency of media ownership*, IRIS *Special*, European Audiovisual Observatory, Strasbourg, 2021. See also the 2020 and 2021 Rule of Law Reports.
[117] See Annex 2.
[118] *Ibidem*. At the same time, nearly half of (mostly large) companies and a third of business associations considered that the information on who owns or controls media companies operating in the EU media market is accessible to a large extent.

groups, such as banks, consumers, suppliers and investors. Access to data on market shares is essential for those companies that aim to invest in any given market, as it is a key indicator for market assessment and an important metric by which to assess how competitors are performing to gauge revenue creating opportunities, to assess their brands' positioning against those of their competitors and to predict future growth[119]. It is also reported that "transparency contributes to a market environment characterised by open and fair competition, while enabling media providers to demonstrate their own independence and can therefore also be used as indicators of a quality offering"[120]. The specific nature of media services reinforces the need for media ownership transparency also for the general public, as it contributes to safeguarding editorial independence[121].

*Consequences*

Interference by public and private actors in editorial independence impacts the functioning of the internal media market. It hampers the exercise of economic activities in the media sector and thus the free provision of media content across borders, discourages investment and affects the quality of media services provided in the internal market. Such interference - and the resulting lower quality of the affected media services - distorts competition between media service providers and makes it even more difficult for quality media to compete in the online environment. Moreover, as companies' decisions are influenced by market information and coverage in news media, interference can also mislead business decisions and distort the market in other sectors[122]. Finally, interference leads to lower public trust in media, with adverse knock-on effects on the financial situation of media operating in the internal market[123].

**What are the problem drivers?**

**Fragmented safeguards to prevent interference in editorial freedom**

In many Member States, legal guarantees for editorial independence are in place. Whereas in some Member States, such legal guarantees rest on general clauses providing for the freedom of expression and/or the ability of broadcasters to choose their programmes[124], for instance, in Sweden, the law envisages an institution of a 'responsible editor' as a sole entity supervising publications in a given news outlet and makes it clear that any restriction of responsible editors' power is considered null and void[125]. However, in some Member States, these safeguards appear to be insufficient. The 2021 MPM reports high risks in the area of editorial autonomy in 11 Member States, pointing to the lack of regulatory safeguards to guarantee autonomy (from politically motivated influence) when appointing and dismissing editors-in-chief in those Member States[126]. In particular, for Croatia, the 2021 MPM talks of "systematic cases of interference in appointment and dismissals of editors-in-

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119 E. Borman-Shoap, S.T.T. Li, N.E. St Clair, G. Rosenbluth, S. Pitt, & M.B. Pitt, *Knowing Your Personal Brand: What Academics Can Learn from Marketing 101*, Academic Medicine, 94:9, 2019, pp. 1293–1298 and J.A. Welch, & P.R. Nayak, *Strategic sourcing: a progressive approach to the make-or-buy decision*, Academy of Management Perspectives, 6:1, 1992, pp. 23–31 cited in the study on media plurality and diversity online (forthcoming, VIGIE 2020-825).

120 See M. Cappello (ed.), quoted above.

121 *Ibidem*. See also Council of Europe, recommendation CM/Rec(2018)11 of the Committee of Ministers to member states on media pluralism and transparency of media ownership.

122 L. Graf-Vlachy, A. Griffith Oliver, R. Banfield, A. König, J. Bundy, *Media coverage of firms, integration, and directions for future research*, Journal of Management, 2019.

123 EBU Media Intelligence Service, Market Insights - Trust in Media 2020, June 2020.

124 E.g. Article 3 of the Electronic Media Act 2009 in Croatia and Article 12 of the Constitution in Finland.

125 The Freedom of the Press Act, Chapter 5, Art. 3.

126 2021 MPM (full report), see a risk map in Annex 6.

chief"[127]. In Czechia, it was reported that the former Prime Minister Andrej Babiš could control some of the most popular media outlets[128]. In Poland, the perception of politically biased media is widespread[129]. In Hungary, there was no framework which would have prevented the orchestrated media capture by the government that has taken place over the last years[130].

The ways in which Member States protect journalistic sources diverge too, leading to uneven protection across the EU[131]. The regulatory divergences relate, among others, to judicial actions that can or cannot be taken in the context of disclosing journalistic sources or legal exemptions when a source must be disclosed[132]. Also, while almost all Member States' legal frameworks regulate targeted surveillance used by intelligence services, national legal frameworks often lack clear definitions indicating the categories of persons and scope of activities that may be subject to intelligence collection[133]. Moreover, in certain European countries journalists have been put increasingly under pressure to reveal their sources of information[134]. Apart from covert surveillance, it is reported that lawsuits are brought against journalists to force disclosure of their sources[135].

Also, media companies take different approaches to mitigating risks of 'internal' pressure on their editorial teams. Some media companies have put in place corporate governance mechanisms, such as charters of ethics, committees of ethics or codes of conduct for journalists[136]. In some media outlets, journalists have a say on the selection of the editor-in-chief or can even veto ownership changes[137]. In others, they can participate in the managerial decisions and the division of the economic gains[138]. However, even where some of the corporate tools referred to above are required by the law (as in France[139]), their ineffective application may translate into risks to editorial independence[140]. When it comes to the question whether commercial interests unduly influence editorial content, the 2021 MPM cites 12 Member States with high risks[141]. This is due to apparent lack of acking safeguards against commercial interests (for example, in Czechia, Greece and Latvia) or also the missing separation between editorial and advertising content (for example, in Sweden).

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[127] 2021 MPM (Country report Croatia), p. 12.
[128] See Boková, Terezie: Babiš's Media: The Erosion of Freedom of Press in Czechia, VerfBlog, 2021/10/15, https://verfassungsblog.de/babiss-media/
[129] See 2021 (Country report Poland), p. 14.
[130] See International Press Institute, Mission Report: Media Freedom in Hungary ahead of 2022 election
[131] While some Member States rely on constitutional provisions (e.g. Austria, Germany, Sweden, Spain or Portugal), others have specific provisions in secondary legislation, for instance in press laws or criminal and civil procedure codes (e.g. Belgium, Cyprus, France, Ireland, Slovakia), see European Federation of Journalists, *EFJ Policy Document on Protection of Sources*, 2013.
[132] *Ibidem.*
[133] European Union Agency for Fundamental Rights, Surveillance by intelligence services: fundamental rights safeguards and remedies in the EU – Volume I: Member States' legal frameworks, 2017, p. 27.
[134] As reported by the NGO "Forbidden Stories", the use of spyware was deployed by state authorities to target investigative journalists in Hungary. Six organisations representing media freedom community considered in a joint statement such situation "the involvement of the Hungarian government among others, raises significant implications for journalists' security and the protection of their sources as well as raising concerns through the chilling effect such applications have on journalists beyond those immediately affected and ultimately, on everyone's right to information", see: EFJ, *Spyware Pegasus helped target investigative journalists in Hungary*, statement coordinated by the Media Freedom Rapid Response (MFRR), 20 July 2021.
[135] *Ibidem.* See also Report on Media Freedom 2022 by the Civil Liberties Union for Europe referring to Italy, Poland and Spain as recent examples of forced disclosure of sources.
[136] For instance, the French newspaper Le Monde decided to introduce a catalogue of internal control measures. Similarly, the Polish media company Agora adopted 3 internal codes of ethics.
[137] For instance, journalists of the newspaper Les Echos can veto the appointment of the new editor-in-chief, while journalists of Le Monde can block arrival of a new shareholder through the so-called *droit d'agrément*.
[138] For example, journalists have a right of co-determination in business decisions the media group Der Spiegel (including when it comes to filling management posts). In the Polish press group Polityka, employers, and in particular journalists, have also a special status in a corporate structure with a right of approval of the strategic decisions of the group.
[139] Law No. 2016-1524 ('Loi Bloche').
[140] The 2022 report of the committee of inquiry on concentration of media of the French Senate considered that, even though certain audiovisual media are expected to set up ethics committees, their independent status vis-à-vis management or shareholders remains questionable in some cases.
[141] 2021 MPM (full report), pp. 64-66. See also a risk map in Annex 6.

Another key safeguard to prevent interference in editorial freedom is media self-regulation[142]. Self-regulatory mechanisms, which typically bring together journalists and media outlets, and often take form of codes of journalistic ethics, empower journalists and help them resist political and commercial pressure[143]. However, the European landscape of media self-regulation varies. Media councils operate in only sixteen Member States[144]. Also, there are differences in terms of their size, scope of activities, legal identity or recognition under the national law, which can have a bearing on their effectiveness. In those Member States where media councils are not yet established, the media community may lack incentives to develop them[145].

**Uneven independence and balanced coverage safeguards for public service media**

Public service media are entrusted with a public service remit. Safeguards for the independence of and balanced coverage by public service media are fragmented across the EU, and there are differences in the scope and the level of detail in national approaches[146].

In particular, rules vary across the EU when it comes to the appointment of the management of public service media. For instance, different approaches exist relating to appointment procedures and relevant guarantees of independence. Some national laws provide for appointments by the parliament (in some cases reflecting the relative representation of parties) or by the government, while others entrust the media authority with this role. Also, the qualification requirements as well as the independence safeguards vary across the EU. In some Member States, the law establishes an explicit incompatibility for the members of the management board with a role in political parties, while in others there are no rules concerning political incompatibility[147]. As regards dismissals of management, most national laws list several grounds, such as criminal convictions, breaches of confidentiality obligation, lack of performance of duties for a certain period of time, misconduct, while others do not provide for any specific rules. When it comes to internal pluralism of public service media, most Member States have in place specific measures during and outside elections periods, but in some Member States the existing provisions serve more as general guidance than a basis for official procedural cases[148]. In addition, the rules may be insufficient or not work in practice. The 2021 MPM cites a high risk for the independence of public service media governance and funding for 12 Member States[149]. It reports the escalation of pressure on the Czech public television as a consequence of the lack of legislative safeguards for the political independence of public service media[150]. Reporting on Romania, it points out that the procedures allow for the dismissal of members of the board based on a political vote and without due consideration for their

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[142] As reported by the 2021 Media Pluralism Monitor, six Member States in which editorial autonomy scores low risk (Belgium, Denmark, Estonia, Germany, the Netherlands, and Sweden) have a robust system of journalistic self-regulation.
[143] Recommendation CM/Rec(2018)11 on media pluralism and transparency of media ownership.
[144] R. A. Harder & P. Knapen, *Media Councils in the Digital Age: An inquiry into the practices of media self-regulatory bodies in the media landscape today*, 2021. In some countries, there are ethical commissions which may function as press councils but they are part of associations/trade unions of journalists thus not integrating employers' representation. They do have their own process to address complaints from the public. See Annex 8.
[145] For instance, B. Klimkiewicz, 2021 MPM, country report: Poland, p. 9, July 2021, reports that self-regulatory measures have not been implemented effectively in Poland due to the growing polarisation and fragmentation of the journalistic community.
[146] ERGA, Internal Media Plurality in Audiovisual Media Services in the EU: Rules & Practices, 2018, and F.J. Cabrera Blázquez, M. Cappello, J. Talavera Milla, S. Valais, Governance and independence of public service media, IRIS *Plus*, European Audiovisual Observatory, Strasbourg, 2022.
[147] *Ibidem.* See also Support study for the preparation of an impact assessment to accompany an EU initiative on the European Media Freedom Act (forthcoming, VIGIE 2021 – 644).
[148] ERGA, Internal Media Plurality in Audiovisual Media Services in the EU: Rules & Practices (ERGA Report), 2019.
[149] 2021 MPM (full report), pp. 86-88. See also a risk map in Annex 6.
[150] 2021 MPM (full report), p. 88. See also EBU, 'Public service media in the Czech Republic under threat', press release, 9 April 2021.

performance[151]. The MPM also highlights the growing partisanship of the public broadcaster in Poland, stemming from the politically-controlled mechanism of appointment of the management[152].

Sometimes legislative reforms aim at strengthening government control of public service media. In Hungary, structural changes, implemented through the Media Act of 2010 brought about tighter government control of public service media, and in Italy the 2015 reform of RAI reinforced the role of the government in the appointment of the board members[153].

**Fragmented rules on or insufficient transparency of media ownership and control**

The revised AVMSD merely encourages Member States to adopt measures related to information on media ownership structure and only as regards audiovisual media. It remains silent on the presentation, form or granularity of such information. Rules on the disclosure and reporting of media ownership exist in most Member States. However, the effective disclosure and the granularity of the information available in the media-specific registries varies[154]. Also, making media-specific ownership information accessible to public authorities does not necessarily lead to accessibility to the public and conditions of access may vary[155].

The Anti-Money Laundering (AML) Directive aims to ensure the beneficial ownership transparency of corporate and other legal entities incorporated within the EU. It requires, besides unrestricted access to beneficial ownership information for competent authorities, that information on beneficial ownership is available to the general public through central registers in each Member State. The EU Company Law Directive harmonises disclosure requirements for EU limited liability companies and requires that such information is publicly available in the national business registers and can be accessed through the Business Registers Interconnection System. However, these instruments do not require the disclosure of information on the interests of media companies’ owners in other media or non-media economic sectors.

### 2.2.4 Opaque and/or unfair allocation of economic resources in the internal media market

Economic resources in the internal media market mainly come from advertising. Advertising resources may come from private parties and from the state. Different systems of audience measurement exist across the EU media market which have an impact on the allocation of (private) advertising revenues, in particular in the audiovisual sector. In particular, the opacity of and biases inherent to proprietary systems of audience measurement skew advertising revenue flows, affecting negatively media companies, and disadvantage competitors that provide audience measurement services abiding by industry-agreed standards[156]. Given that the opacity problem concerns proprietary systems of (cross-border) online players, the issue is pertinent for all Member States. Moreover, non-transparent and/or unfair allocation of state advertising (i.e. commercial communication paid for by the state authorities or state-controlled entities[157]) puts independent

[151] See M. Popescu, R. Bodea and R. Toma, 2021 MPM, country report: Romania, p. 16.
[152] See B. Klimkiewicz, 2021 MPM, country report: Poland, p. 14.
[153] Holtz-Bacha, *The kiss of death. Public service media under right-wing populist attack*, European Journal of Communication, 2021.
[154] See Annex 7.5.
[155] See Study on the implementation of the new provisions in the revised Audiovisual Media Services Directive (AVMSD), 2021.
[156] See S. B Micova and S. Jacques, *The playing field in audiovisual advertising: What does it look like and who is playing?*. Centre on Regulation in Europe, 2019; J. Greenhouse, (2021). The four big forces conspiring to ruin one’s analytics. Applied Marketing Analytics, *7*(2), 115-121; Studies and lawsuits also point to the increased risks of ‘ad fraud’ when transparent measurement is not the norm.
[157] Understood in this context as encompassing central, regional, local governments as well as public companies, foundations and other bodies.

media outlets in different sectors, including cross-border service providers, at a competitive disadvantage. This is an issue, to a larger or lesser extent, in most Member States.

Audience measurement is of key importance for the media and advertising ecosystem, being the core tool for understanding the market dynamics, calculating advertising prices, allocating advertising revenue[158], and planning the content production in accordance with the preferences of the audiences. However, as described in the corresponding driver below, audience measurement systems developed and used by certain market players outside the agreed industry standards[159] lack transparency and/or fairness.

In particular, online players increasingly self-measure or provide to the market their proprietary audience measurement systems which are developing as 'alternative currencies' competing with the market-wide agreed ones, and lead in some cases to different actual measurement results in practice[160]. As such players are often vertically-integrated and have significant market power in online advertising[161], they can easily modify measurement methods to their benefit and, consequently, have no incentive to share information on their systems and methodologies with other market players. Studies also point to concerns about advertising 'fraud' in areas where no common measurement systems exist[162]. The issues in this area may prompt Member States to intervene in this market[163]. A coordinated approach by media regulators at EU level would be needed to ensure consistency in the internal market in view of the inherent cross-border nature of proprietary systems of audience measurement provided by online players.

*In the DAZN case, the Italian media regulator found that the audience data gathered by the streaming provider on the basis of a self-measurement system was 50% higher than the audience data measured by Auditel - the Italian joint industry committee - which distorted the distribution of television rights revenues[164]. In the Facebook case, the platform was found to have overstated the success of videos posted on its social network, largely exaggerating the time spent by users watching them, with negative effects on the competition in the advertising market[165].*

Only 5% of companies and business association respondents to the public consultation regard audience measurement for online platforms to be transparent, objective or performed in an inclusive way[166]. 55% of the respondent companies identify audience measurement methods as the most

[158] See Support study for the preparation of an impact assessment to accompany an EU initiative on the European Media Freedom Act (forthcoming, VIGIE 2021/644).
[159] Such agreed industry standards are customarily implemented, for instance, within joint industry committees. See AGCOM, "Sector Inquiry On Media Audience Measurement Systems", 2017.
[160] A. X. Wu & H. Taneja, *Platform enclosure of human behavior and its measurement: using behavioural trace data against platform episteme*, New Media & Society, 23(9), 2021, pp. 2650-2667.
[161] Taken together, Google and Facebook generated around 80% of all the search and display advertising revenues in the UK, see CMA report on Online platforms and digital advertising, 2019. In 2016, the French Competition Authority estimated that Google had earned around 50% of the digital advertising revenues generated in France, see Autorité de la concurrence, Avis n° 18-A-03, 2018; Google-Alphabet and Facebook together control more than 50% of the worldwide digital advertising market, whereas no media company figures among the top 20 market players. Players who produce original content hardly benefit from the emergence of the digital advertising market, see Study on media plurality and diversity online (forthcoming, VIGIE 2020-825).
[162] Mediaocean, *2021 Market Report and 2022 Outlook*, 6 January 2022; Integral Ad Science (IAS), *the 2022 Industry Pulse Report*, 20 January 2022; Study on the impact of recent developments in ad tech and their impact on privacy, publishers and advertisers (forthcoming, VIGIE 2020/663)
[163] In its resolution 194/21/CONS, the Italian media regulator pointed to the necessity to ensure an independent verification and transparency of methodologies deployed by actors operating in the market of online audience measurement who do not abide by the standards agreed at industry level and recognised as the relevant official 'currency'.
[164] AGCOM Decision 18/22/CONS. AGCOM stressed that it was not possible to verify if the parameters of the system were the same as those by Auditel.
[165] LLE ONE LLC and Others v. FACEBOOK INC, United States District Court for the Northern District of California Oakland Division. Facebook was found to have inflated its viewership metrics by 150 to 900%.
[166] Including one tech company, one public relations company and one national media association.

important area of action at EU level[167]. 54% of all the respondents see potential EU action as useful to ensure an independent auditing of audience measurement.

State advertising may be used to favour and covertly subsidise certain media outlets that publish or broadcast government-friendly information. Indeed, state advertising is often a way to reward media outlets that are close to, or uncritical of state authorities[168]. Weakened financial viability of media outlets and consequent increased dependence on state support exacerbates the problem[169]. Insufficient transparency of the process and criteria used to allocate state advertising[170] makes it easier for state actors to use it to favour only certain media outlets, which are usually local or national players[171]. 75% of respondents to the public consultation assessed the level of transparency of state advertising in their Member States as insufficient[172]. Also, many concrete instances of discriminatory allocation of state advertising were reported in the public consultation, call for evidence and other targeted consultations[173]. 67% of all the respondents agreed that such practices create distortion in the internal market, including 96% of companies and business associations that expressed their opinion on the matter[174]. The 2021 MPM recorded a high risk in the state advertising area in 20 Member States due to the lack of rules on the distribution of such advertising and the lack of transparency on the beneficiaries and the amounts spent[175]. The 2021 Rule of Law Report underlines that regulatory gaps persist in many Member States, while public authorities continue to direct significant advertising revenue only to certain media outlets.

*In Austria, high amounts of state advertising raise continuing concerns about the transparency and fairness in its allocation[176]. In Croatia, state advertising has been considered as often undermining the political independence of media outlets, which are economically dependent on such funding, notably at local level. In Hungary, the allocation of state advertising has been seen as a factor allowing the government (the largest advertiser in the market) to exert political influence over the media, with high amounts of advertising funds going to government-friendly media, to the detriment of independent media players[177]. In Poland, state advertising appears to be directed mostly to media outlets supportive of the government[178].*

Consequences

[167] Including mostly broadcasters, publishers and advertising ecosystem players. See Annex 2.
[168] Study on media plurality and diversity online (forthcoming, VIGIE 2020-825). There are other ways for governments to favour media outlets, for example by allowing the (privileged) use of public facilities (see a press report on the alleged preferential use of state building by a newspaper in Bulgaria) or giving priority to pro-government outlets at press briefings or otherwise granting them generous access to state leaders and information, see V. Munk and F. Bakró-Nagy, *How Hungary's pro-government outlets are favoured at press briefings (Telex)*, International Press Institute, 2022. In Bulgaria, oligarchs with close ties to the government have privileged access to public procurement contracts, see S. Antonov, *Bulgaria's Media Oligarchs and Press Freedom*, European Journalism Observatory, 25 September 2014.
[169] 2021 MPM (full report), p. 19.
[170] Monitoring or mapping of distribution of state advertising is regularly conducted only in a small number of Member States. See Study on media plurality and diversity online (forthcoming, VIGIE 2020-825).
[171] Feedback from cross-border stakeholders indicates that they are particularly affected by this issue in certain markets. In Hungary, the main beneficiaries of state advertising spending before 2010 were foreign-owned companies with the biggest audience reach. As Hungarian investors with political ties began to gain ground, there was a shift in advertising spending to the benefit of domestic media outlets. See Mérték, State advertising 2006-2017.
[172] See Annex 2. Out of the 10 public authorities that expressed their opinion regarding the issue, 8 said it was sufficiently transparent.
[173] See Annex 2. All stakeholder categories except public authorities found that the transparency of the criteria for allocation, the beneficiaries and the amounts of state advertising were insufficient in their Member State.
[174] Representing mostly TV and radio broadcasters and publishers.
[175] See 2021 MPM (full report), p. 6. See the 2021 MPM risk map for state advertising in Annex 6.
[176] On subsequent developments in Austria see M. Karnitschnig, "Austria's Kurz under suspicion for bribery and embezzlement in corruption probe", Politico, 6 October 2021.
[177] KESMA remains the main beneficiary of the state advertising budget in Hungary, see 2020 and 2021 rule of law reports. .
[178] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Poland (SWD(2021) 722 final).

Non-transparent and/or biased proprietary systems of audience measurement distort competition in the advertising markets across the internal market. They result in information asymmetry, increasing the risks of advertising based on inflated audience data, and prevent media market players from taking informed investment decisions[179]. This affects the ability of media companies to monetise content and invest in new content, with negative impacts on their cross-border economic activity and viability. The level playing field between audience measurement providers (which often operate across the internal market) is also distorted, as some of them follow agreed industry standards, while others do not.

Channeling public funds to pro-government media outlets through state advertising distorts competition and discourages investments by independent media players, including non-national ones[180]. In particular, allocation of state advertising only or predominantly to pro-government outlets risks - under certain conditions - turning it into a form of uncontrolled state support to the detriment of competing market players.

**What are the problem drivers?**

**Limited framework for audience measurement**

The market of online audience measurement is fragmented. A traditional way to measure audience is through Joint industry committees (JICs), which are self-regulatory bodies, comprising the main actors in the television and radio advertising value chain, which are tasked with agreeing on audience measurement systems[181]. Besides organisations following the traditional JIC model (e.g. ÖWA in Austria, AGOF in Germany, Auditel in Italy, Médiametrie in France), an increasing number of new players emerged that do not take part in the JICs active in the relevant national market and provide proprietary audience measurement solutions which do not abide by the industry-agreed standards of transparency and reliability.

As self-regulation has generally worked well in the past, regulation in the sector has been very limited. The main example concerns the Italian media regulator, AGCOM, which monitors the activity of the JICs and has supervision power over the results of their audience measurement systems. To that end, providers are required to provide to AGCOM information on their measurement methodologies[182].

The DMA sets out certain obligations on gatekeepers, such as giving access to performance measurement tools to publishers and advertisers. However, it does not require gatekeepers to be transparent, objective and inclusive in the methodologies used to carry out audience measurement.

**Fragmented and limited regulation of state advertising allocation to media**

[179] Information obtained in the context of the targeted interviews.
[180] The partisan use of state advertising significantly altered the media landscape in Hungary by putting independent media at a competitive disadvantage, forcing some of them out of the market, see A. Bátorfy and Á. Urbán (2020) State advertising as an instrument of transformation of the media market in Hungary, East European Politics, 36:1, 44-65. In Romania, the government provided the national public broadcaster with an amount of state advertising which accounted for almost half of the total Romanian advertising market, see *Media capture in Europe* cited above.
[181] EMRO Audience Survey Inventory (EASI) 2020. The data coming out of such measurement systems expresses a 'currency': the unit of measurement used by all market players to assess return on investments in both editorial and advertising terms. Such an approach ensures that users of such figures (television, radio and advertising industries) do not face contradictory data when entering into advertising contracts.
[182] Law n. 249/97, art. 1, para 6, let. b) n. 11; AGCOM Deliberation No. 130/06/CSP.

EU public procurement rules exclude contracts for audiovisual and radio media services altogether[183], and the regulation of state advertising is highly fragmented across Member States. Besides 13 countries lacking specific rules and relying on general procurement rules (where applicable), existing specific legal measures show a large variety of approaches as regards the forms of advertising covered, the entities that are subject to the rules[184], the thresholds triggering their application, the entities entitled to access the information on advertising and the allocation criteria[185].

In a number of Member States, the legislation addresses the issue of transparency of state advertising, but not the fair or non-discriminatory distribution of such expenditure. For instance, in France, advertising purchased using state or public funds must be contractually defined, and prices must be made transparent and public[186], while in Ireland, although the placement of public advertising is carried out through a tendering process based on general public procurement rules, the criteria for the distribution of individual advertisements are unclear[187]. As a result, transparency rules do not automatically eliminate unfair or discriminatory allocation of state advertising to the media, which in some countries (e.g. Hungary, Bulgaria, Poland) is also used to support partisan outlets, impairing the position of more critical or independent media and altering the competition in national markets[188].

In some Member States, the applicability of the rules depends on thresholds. In Finland, the law only applies to service contracts above EUR 60 000[189]. In Austria, only advertising expenditure exceeding EUR 5 000 per quarter of a year has to be disclosed, leaving many recipients of state advertising unknown[190]. A national report[191] has found that at least one-third of public advertising contracts fall below the threshold.

The 2021 MPM reports that state advertising has been used to exert political influence over national and local media by covertly subsidising government-friendly media or buying influence over the rest particularly in Central-Eastern European countries[192]. Such conditions contribute to the growing biased and unbalanced allocation of resources to media service providers across the EU, which ultimately has a structural impact on the proper functioning of the internal market.

### 2.3 How likely is the problem to persist?

Without EU intervention, media will operate in a substantially weakened internal market. Over time, all the above problems and their consequences can be expected to become increasingly acute[193].

Member States will have no incentives to address the fragmentation of their laws and procedures related to media pluralism and such laws will continue to be misused in certain cases for protectionist reasons. Further fragmentation is likely to arise given the inherent cross-border nature of digital media services and Member States' likely attempts to address media plurality challenges online (as

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[183] Directive 2014/24/EU of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014, see Articles 4 and 10(b).
[184] Only four Member States have rules applying to online media or plan to have them.
[185] See Annex 7.6; Study on media plurality and diversity online (forthcoming, VIGIE 2020-825).
[186] Law 29 January 1993 "Sapin Law" no. 93-12; Law 9 December 2016 "Sapin 2 Law".
[187] 2021 Media Pluralism Monitor, country report for Ireland.
[188] Study on media plurality and diversity online (forthcoming, VIGIE 2020-825).
[189] Ministry of Economic Affairs and Employment in Finland, EU and national thresholds.
[190] See Annex 7.6; Study on media plurality and diversity online (forthcoming, VIGIE 2020-825).
[191] Court of Audit, Sonderaufgaben des RH nach den Medientransparenzgesetzen, 2015.
[192] 2021 MPM (full report), pp. 80 and 84.
[193] According to the Media Pluralism Monitor (MPM), over the period of 3 years, the risk in the area of market plurality increased from 53% to 64% and then to 66%; and the risk in the area of political independence increased from 46% to 47% and then to 49%.

already manifested in some Member States[194]). This, in turn, will continue to induce costs and make it more difficult for media companies to invest and operate across borders, while an increase in the level of cross-border investment is unlikely[195]. Insufficient regulatory cooperation and convergence will continue depriving media market players of legal certainty, generating higher compliance costs. Challenges to effective protection of citizens and EU media companies from 'rogue' non-EU market players would persist.

Interference in editorial independence of media would continue disrupting the internal media market and the single market as a whole. The increase in the online consumption of media content is also expected to continue, with online platforms upholding their position as the main news gateway[196]. As a result, free provision of media services across borders would continue to be hampered, leading to a less diverse quality media offer for EU citizens and businesses. Un-transparent and unfair allocation of economic resources in the internal media market would continue distorting fair competition and market conditions and thus weaken the ability of European media companies to scale up.

The likely aggravation of the problems would result in less investment in and cross-border ownership of media. The weaker economic position of media companies would reduce their ability to invest in quality reporting or innovative business models. Overall, the persistence of the problems would translate in less quality content circulating in the EU information space, affecting businesses' and citizens' right to receive and impart information, including across borders.

## 3. WHY SHOULD THE EU ACT?

### 3.1 Legal basis

If the Commission decides to adopt a legislative proposal, it will be grounded on Article 114 TFEU. This is the appropriate legal basis for measures aiming at improving the functioning of the internal market. It is right to resort to this legal basis where differences between national rules are such as to obstruct the fundamental freedoms and thus have a direct effect on the functioning of the internal market or cause significant distortions of competition[197]. Article 114 TFEU can also serve as a legal basis to prevent the emergence of new obstacles to the functioning of the internal market resulting from the divergent development of national laws, provided that the emergence of such obstacles is likely and that the measure in question is designed to prevent them[198].

The proposal's primary aim would be to contribute to the development and protection of the internal market for media services, thereby also pursuing several further legitimate public interests (including the protection of users) and reconciling in a fair manner the fundamental rights of all the individuals concerned. It would also seek to prevent future obstacles to the provision of media services, in particular online, where challenges related to media pluralism are likely to prompt divergent national approaches.

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[194] See section 2.2.2.
[195] Mergers and acquisitions activity in media has steadily gone down since 2013, JRC elaboration based on Orbis/Bureau van Dijk data.
[196] For instance in 2022, reading or watching news was considered as the most frequent activity that consumers in Germany carry out on social media platforms. This trend has been accelerated in the period of the COVID-19 pandemic, during which online platforms strengthened their market position and attracted new audiences. See also Annex 5.
[197] Case C-547/14, *Philip Morris*, paragraph 58; Case C-58/08, *Vodafone*, paragraph 32; Case C-491/01, *British American Tobacco*, paragraphs 59 and 60; Case C-376/98, *Germany v EP and Council*, paragraph 83.
[198] Case C-58/08, *Vodafone*, paragraph 33; Case C-301/06, *Ireland v EP and Council*, paragraph 64.

Article 114 TFEU has been used by other initiatives pertinent to the media sector, such as the proposal for the Copyright Directive[199] and the proposal for a Regulation on online transmissions and retransmissions[200]. Most recently, the Digital Services Act[201] and the proposal for a Regulation on political advertising[202] were based on Article 114 TFEU.

The CJEU case law confirms that Article 114 TFEU is an appropriate legal basis for the creation of new structures under EU law. This is particularly relevant given the governance aspect of the initiative. The proposal would aim to foster closer cooperation between national media regulators within an EU Board, which would be empowered to promote the effective and consistent application of the new framework (including via non-binding opinions upon request by or in agreement with the Commission and assisting the Commission in drawing up guidance). The CJEU has previously held that Article 114 TFEU allows for the establishment of a Union body responsible for contributing to the implementation of a process of harmonisation in situations where, in order to facilitate the uniform implementation and application of acts based on that provision, the adoption of non-binding supporting and framework measures seems appropriate[203].

### 3.2 Subsidiarity: Necessity of EU action

As mentioned above[204], the European Parliament and the Council have called upon the Commission to address shortcomings in the EU media market and safeguard media freedom and pluralism in that market. Respondents to the public consultation and participants in the targeted stakeholders' consultations have underlined the relevance of a common framework lifting barriers to the proper functioning of the EU media market and fostering pluralism and freedom in that market[205].

A common EU approach, promoting convergence, transparency, legal certainty and a level playing field for the relevant media market players is the best way to advance the internal media market.

The objectives of the intervention cannot be achieved by Member States acting alone, as the problems are increasingly of a cross-border nature and not limited to single Member States or to a subset of Member States. Production, distribution and consumption of media content, including news, are increasingly digital and cross-border as the internet continues to drive the transformation of traditional media business models. Provision of media services across the EU is affected by global platforms which act as gateways to media content whilst dominating online advertising. The identified market failures in the EU media market have Union relevance as they arise across borders and affect several Member States.

The initiative will take due account of the Protocol 29 on the system of public broadcasting in the Member States. It will not interfere with Member States' competence to provide funding for public service media so that they can fulfil their public service remit, as conferred, defined and organised at national level. It would only envisage general principles to strengthen the independence of public service media and reinforce their societal role as recognised in the Protocol. This Impact Assessment discards the option of a full harmonisation of rules applicable to public service media (as regards

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[199] Proposal for a Directive on copyright in the Digital Single Market, COM/2016/0593 final.
[200] COM/2016/594 final.
[201] COM/2020/825 final – to be updated when published.
[202] COM/2021/731 final – to be updated when published.
[203] Case C-217/04, *United Kingdom v European Parliament and Council* (ENISA), para 44.
[204] See section 1.
[205] See Annex 2.

their remits, organisation and funding conditions), to ensure that the initiative is compatible with the Protocol and Member States' competences in this area.

The initiative will not interfere with national identities or regulatory traditions in the media field, in line with Article 4(2) of the Treaty on European Union (TEU). The Impact Assessment discards the option of a full harmonisation of national media pluralism laws. It takes due account of stakeholders' views that uniform and detailed EU media pluralism rules would be undesirable and disproportionate, as such rules must be adapted to the historic and cultural background of each Member State.

Instead, the initiative would aim to strike the right balance between generally couched provisions and more specific rules that allow to reach the policy objectives (including legal certainty). Member States would have to ensure that independent media regulators are involved in the scrutiny of media transactions, guided by a set of qualitative criteria. It would include a mechanism enabling media regulators to consult each other and draw up non-binding opinions at EU level in view of promoting the proper functioning of the internal media market, in respect of Commission's powers under the Treaties. The Member States' powers on media concentration would remain with the competent authorities.

### 3.3 Subsidiarity: Added value of EU action

The initiative would only comprise measures at EU level that are necessary for the proper functioning of the internal media market. It would reduce the burden for market players to comply with different national legal regimes when they operate in several Member States. It would increase predictability and enhance legal certainty for media market players, thereby promoting fair competition and cross-border investment. It would also allow for a coordinated response of media regulators in matters affecting the EU's information space.

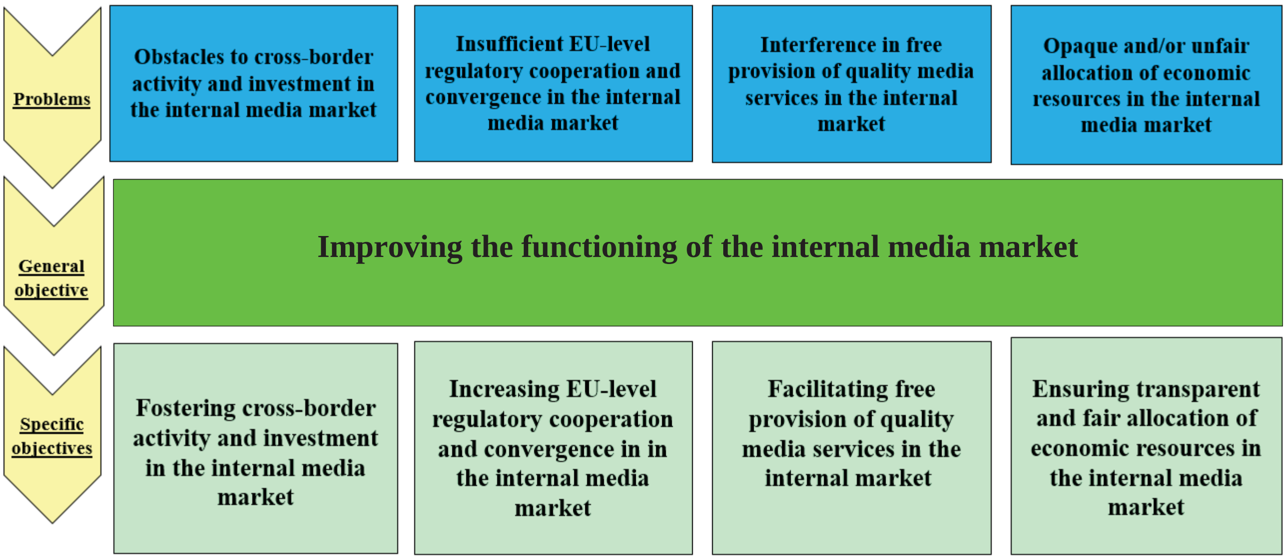
Intervention at national level would not solve the identified problems. Action by Member States would lack scale or the necessary harmonising effect and would increase disparity and fragmentation. Furthermore, Member States might lack incentives to reform their media frameworks, e.g. changing rules meant to shield national markets or players from competition or making the allocation of state resources more transparent and fair. The potential creation of a common governance structure to ensure the implementation of the new framework also requires EU intervention. In addition, in view of the inherent cross-border nature of digital markets, any national attempt to regulate media diversity online could only partly solve the issues for recipients of media services. Finally, considering that in some cases the interference in editorial independence and operation of media comes directly from the state, it is unlikely that such a problem would be addressed voluntarily and effectively at the national level.

The initiative, by establishing a common EU framework fostering cross-border activity, strengthening cooperation between regulators, promoting free provision of quality media content, and addressing practices that distort competition, would create conditions more favourable for the development of media services across borders and increase consumer choice by better access to quality media content. This will strengthen the internal media market whilst promoting media freedom and pluralism, protected under the Charter of Fundamental Rights. This will ultimately promote the rule of law and democracy, two core EU values under Article 2 TEU.

## 4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

### 4.1 General objective

*Figure 2 Intervention logic*




The general objective of the intervention is to improve the functioning of the internal media market and foster the provision of quality media services, thus strengthening the integrity of the internal market as a whole.

### 4.2 Specific objectives

**Fostering cross-border activity and investment in the internal media market**

The objective is to make it easier for media market players to expand their operations across the internal market, gradually increasing cross-border investments in terms of their number and value. To this end, the initiative would aim to coordinate certain elements of the diverging national media pluralism frameworks in order to facilitate cross-border service provision. It will aim in particular at ensuring that when assessing media market transactions, national independent authorities approach media pluralism consistently across the EU media market through common criteria and coordination at EU level.

**Increasing regulatory cooperation and convergence in the internal media market**

The objective is to strengthen regulatory cooperation to better enforce the EU media framework in the cross-border context and to foster regulatory convergence through EU-level opinions and guidance, promoting thus consistent approaches to media independence and media pluralism, including online. The goal is also to provide tools for collective - EU-wide - action by independent regulators to protect the EU internal market from service providers (including from third countries) not following EU media standards

**Facilitating free provision of quality media services in the internal market**

The objective is to ensure that consumers and businesses benefit from trustworthy content provided by independent media in an increasingly digital and inherently cross-border market for media services. In order to foster provision of quality media services in the internal market, the initiative will aim to mitigate the trend of undue public and private interference in editorial freedom. It will enhance media-specific ownership transparency, with a view of strengthening media accountability and independence. It will also aim to promote self-regulation for the independent functioning of media companies. Moreover, the initiative will aim to ensure that journalists can work without interference in particular when it comes to protection of their sources.

**Ensuring transparent and fair allocation of economic resources in the internal media market**

The objective is to ensure a level playing field for media market players by promoting transparent and fair allocation of economic resources. This would be achieved by enhancing the transparency, non-discrimination, proportionality, objectivity and inclusiveness of audience measurement methodologies, in particular online. It would also aim at ensuring transparency, non-discrimination, proportionality and objectivity of state advertising to media, in order to minimise the risks of favouring pro-government outlets or using public support for partisan interests, to the detriment of other players in the market, and thus promote fair competition in the internal media market.

## 5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

### 5.1 What is the baseline from which options are assessed?

Under the baseline scenario, the Commission would not propose any change to the current EU legislative framework relevant to media services. The baseline scenario is dynamic, as it takes into account all existing relevant EU laws (e.g. AVMSD) and those being finalised (e.g. DSA and DMA).

The Commission would keep enforcing the revised AVMSD[206], which applies to audiovisual media and video-sharing platforms (but not to the radio and the press), and provides a framework to protect consumers, especially minors, from illegal and harmful audiovisual content, both offline and online. As the AVMSD does not address the fragmentation of national laws and procedures related for media pluralism, there would be no common standards for assessing the impact of media market operations on media pluralism and no coordination of national approaches to media pluralism at EU level.

The Commission could launch infringement proceedings following a complaint or on its own initiative, in case of national rules or decisions breaching EU law. However, infringements can only address problems *ex post* and do not allow for a systematic approach against restrictions in the media market. They are also no effective remedies against protectionist measures targeting individual companies[207].

Cooperation between national media regulators would continue within ERGA on audiovisual media matters, without a sufficient framework for them to address (enforcement) problems affecting several Member States, to assist the Commission in drawing regulatory guidance on key media law aspects, and to take collective action to protect the EU's information space. As the AVMSD does not regulate enforceability of national decisions related to restrictions of third country services under EU jurisdiction and does not address such issues at all in relation to providers outside EU jurisdiction[208],

[206] The Commission will continue to ensure the proper implementation of the Directive. Most recently, the Commission decided to refer to the CJEU 5 Member States due to the lack of transposition of the Directive.
[207] It is important that the Commission uses its discretionary power in a strategic way to focus its enforcement efforts on the most important breaches of EU law. Certain categories of cases, in particular individual cases of incorrect application, can often be satisfactorily dealt with by other, more appropriate mechanisms at EU and national level, see Commission Communication *EU law: Better results through better application*, OJ C 18, 19.1.2017.
[208] See section 2.2.2.

under the baseline scenario, the EU would lack an effective mechanism to protect its internal market against such providers.

The Commission would enforce the upcoming DSA[209] and the DMA[210], which provide horizontal frameworks relevant for the EU online space. Given their broad scope, these instruments would not allow to address the issues targeted by the initiative, such as monitoring and addressing media-specific risks online or differences in audience measurement systems, in particular as regards transparency of measurement methodologies used. The DSA does not recognise specifically the role for ERGA in its coordinated approach to monitoring and evaluation of such risks. The DMA does not specifically require gatekeepers that conduct audience measurement to share their methodologies with partners, including media companies.

The Anti-Money Laundering (AML) Directive[211] would continue to be the main horizontal instrument to ensure beneficial ownership transparency through the central registers in each Member State[212]. The EU Company Law Directive[213] would continue to regulate the information that limited liability companies need to disclose in business registers. The revised AVMSD would continue to encourage Member States to adopt measures to make accessible information on the ownership structure of (only) audiovisual media. However, these instruments would leave unaddressed the specific transparency needs for the entire media sector, in particular the availability of information on the involvement of media companies' owners in other media or non-media economic sectors.

The Commission would also continue to enforce EU competition rules. Such rules, and more specifically the Merger Regulation[214], do not, however, address the impact of market operations on media pluralism, leaving these issues to Member States. As a result, divergences in national approaches in this area would persist. The EU antitrust rules would not be able to tackle opacity in audience measurement in a structured way. State aid rules would continue to be applied on a case-by-case basis and often *ex post*, once the harm occurred. In any case, they would not compel Member States to be more transparent and fairer when allocating state advertising in the first place and could not address issues with the independent functioning of public service media.

In addition to the above, EU Member States, as members of the Council of Europe, would also refer to international instruments such as Council of Europe Recommendation on media pluralism and transparency of media ownership[215], the Guidelines on the guarantees of the independence of public service broadcasting and the Recommendation to Member States on public service media

[209] COM/2020/825 final – to be updated when adopted.
[210] COM/2020/842 final – to be updated when adopted.
[211] Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012, and repealing Directive 2005/60/EC Directive 2006/70/EC.
[212] In relation to the beneficial ownership information of corporate and other legal entities, the name, the month and year of birth, the country of residence, the nationality of the beneficial owner as well as the nature and extent of the beneficial interest held, would be available to the general public. This framework is expected to be strengthened through the AML Regulation, once adopted and implemented, see Proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (COM/2021/420 final).
[213] Directive (EU) 2017/1132 of 14 June 2017 relating to certain aspects of company law, OJ L 169, 30.6.2017.
[214] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004. Article 21(4) of the Regulation explicitly leaves it to Member States to take appropriate measures to protect other legitimate interests such as the plurality of the media.
[215] Recommendation CM/Rec(2018)1[1] of the Committee of Ministers to Member States on media pluralism and transparency of media ownership.

governance[216], which however are soft law instruments with no binding force and challenges remain with their implementation in practice including within the EU[217].

### 5.2 Description of the policy options

In addition to the baseline, three options are retained for assessment. They each include a different package of measures, with a gradually increasing level of approximation of certain aspects of national frameworks related to media pluralism and independence. The option of full harmonisation was discarded at an early stage, due to its likely incompliance with principles of subsidiarity and proportionality (see section 5.4).

The **first option** is based on a set of recommendations to Member States and, in certain areas, to companies in the media market. While this option has a non-binding character, its uptake would be monitored by a robust evaluation system by the Commission.

The **second option** would envisage a higher level of approximation of national frameworks by a balanced legislative harmonisation of certain areas of national media frameworks pertinent to the provision of media services in the internal market comprising minimum harmonisation and detailed rules. It would be coupled with and complemented by a Recommendation which would include a catalogue of targeted actions for media companies and Member States in the areas of media independence and transparency.

The **third option** would entail the most detailed level of approximation through introduction of specific legal obligations which would aim to more effectively contribute to provision of quality media services in the internal market and transparent and fair allocation of economic resources in the internal media market, in particular through reporting and transparency obligations.

The specific measures envisaged by the options have been designed so that all the problems identified are tackled in a complementary manner in order to remove or minimise the sources of internal market obstacles faced by media service providers and the factors undermining the quality of media services as perceived by consumers. In particular, the measures under different options focus on both rules or administrative practices of public authorities in the Member States and practices of private parties affecting the functioning of the internal media market. The design of the measures under different options also takes account of: (i) the competence of Member States to regulate a particular aspect of the provision of media services or of media freedom and pluralism (e.g. Member States enjoy particular prerogatives in certain fields under Union laws such as those pertaining to public service media) and (ii) the measures already provided by relevant Union law (e.g. several Union law instruments already seek to ensure the transparency of beneficial ownership of companies, including those operating in the media sector).

The proper functioning of the legal provisions envisaged under options 2 and 3 would be ensured by a new governance structure based on the EU-level cooperation between national media regulators. All the options recognise the core principles of the AVMSD, including provisions on the independence of media regulators.

*Table 1 Design of policy options*

[216] Recommendation No. R (96) 10 of the Committee of Ministers to Member States on the Guarantee of the Independence of Public Service Broadcasting.

[217] In order to increase the uptake of its recommendations, for instance in relation to safety of journalists, the Council of Europe issued a detailed implementation guidance, underlying the need for more strategic and systematic implementation.

| | CONTENT | LEGAL CHARACTER | LEVEL OF APPROXIMATION | DRIVER FOR EFFECTIVENESS |
|---|---|---|---|---|
| **Option 1:** *Recommendation on media pluralism and independence* | *Recommendations to implement a set of actions to promote media pluralism, editorial independence and transparency/fairness in the media market* | *Non-binding recommendations* | *No legal approximation of national frameworks* | *Readiness and willingness of Member States and companies in the media market to implement the Recommendation* |
| **Option 2:** *Legislative proposal + Recommendation on media independence* | *Legislative instrument and a recommendation to media companies and Member States to foster media independence and transparency* | *Binding legislative instrument comprising minimum harmonisation and detailed rules +*<br><br>*Non-binding recommendations to complement the legal instrument* | *Approximation of core elements of national media frameworks that are relevant for the internal market, in full recognition of national regulatory traditions* | *Obligation for Member States and private parties concerned to comply with the legal instrument*<br><br>*Interest of Member States and media companies to implement the Recommendation in view of ensuring compliance with the legal instrument* |
| **Option 3:** *Enhanced legislative proposal* | *All the legislative elements of option 2 + further obligations for companies in the media market and regulators to foster the availability of quality media services and transparent/fair allocation of economic resources in the media market* | *Binding legislative instrument with the higher level of harmonisation (more direct obligations to Member States)* | *Detailed level of approximation, in particular by establishing certain common obligations for Member States* | *Obligation for Member States and private parties concerned to comply with the legal instrument* |

The following table provides an overview of the policy options vis-à-vis the problems and objectives they aim to achieve:

*Table 2 Summary of policy options*

| PROBLEMS | OBJECTIVES | OPTIONS |
|---|---|---|

| | | |
|---|---|---|
| ***Obstacles to cross-border activity and investment in the internal media market*** | ***Fostering cross-border activity and investment in the internal media market*** | ***Option 1***<br>*Recommendations on standards for media pluralism measures and media market scrutiny procedures*<br>***Option 2***<br>*Principles/rules for media pluralism measures and media market scrutiny +EU level reaction mechanism*<br>***Option 3***<br>*As in option 2* |
| ***Insufficient regulatory cooperation and convergence in the internal media market*** | ***Increasing regulatory cooperation and convergence in the internal media market*** | ***Option 1***<br>-<br>***Option 2***<br>*Framework for regulatory cooperation, convergence and collective action at EU level*<br>***Option 3***<br>*As in option 2* |
| ***Interference in free provision of quality media services in the internal market*** | ***Facilitating free provision of quality media services in the internal market*** | ***Option 1***<br>*Recommendations to foster media independence safeguards, including for public service media, to protect journalists' sources, and to promote media ownership transparency*<br>***Option 2***<br>*Principles/rules on media independence, including for public service media, and protection of journalists' sources*<br>*+ Recommendations to promote editorial independence within media companies and media ownership transparency*<br>***Option 3***<br>*Principles/rules as in option 2*<br>*+*<br>*Balanced media coverage obligations for all audiovisual media*<br>*Reporting on balanced coverage by public service media*<br>*Obligations on editorial independence for media companies*<br>*Media ownership transparency requirements + EU-wide registry* |
| ***Opaque and/or unfair allocation of economic resources in the internal media market*** | ***Ensuring transparent and fair allocation of economic resources in the internal media market*** | ***Option 1***<br>*Recommendations on transparent, objective and inclusive audience measurement and transparent/fair allocation of state advertising*<br>***Option 2***<br>*Rules on transparent, objective and inclusive audience measurement and transparent/fair allocation of state advertising*<br>***Option 3***<br>*Rules as in option 2*<br>*+*<br>*Further obligations on transparency of audience measurement and transparency of and reporting on state advertising* |

***Governance for the assessed options***

| ***Option 1*** | ***Option 2 and 3*** |
|---|---|
| ***The European Commission*** | ***The Board***[218]<br><br>*The main actor to promote the effective and consistent application of the new framework* |

[218] The Board representing media regulators could have a status similar to the European Data Protection Board (EDPB) under the General Data Protection Regulation (GDPR), which was set up as an independent body of the Union.

| | | |
|---|---|---|
| | *Would encompass and reinforce the current ERGA* | |
| | ***The Board would be supported by*** | |
| | ***Commission secretariat (SUB-OPTION A)*** | ***Support office (SUB-OPTION B)*** |
| | *Provided by the Commission* | *Independent entity* |
| | *Administrative and organisational support to the Board*<br>*Support to the Board for substantive tasks* | *Administrative and organisational support to the Board*<br>*Support to the Board for substantive tasks*<br>*Additional EU-wide tasks:*<br>- *Reporting on media coverage of European elections*<br>- *Monitoring disinformation related to activities of the EU* |

### 5.2.1 Option 1: Recommendation on media pluralism and independence

This policy option envisages a recommendation encouraging Member States and, in certain areas, companies in the media market to implement a set of actions to promote media pluralism, editorial independence as well as transparency and fairness in the media market.

To **foster cross-border activity and investment in the internal media market,** the recommendation would invite Member States to follow certain standards with regard to national media pluralism measures/decisions (transparency, proportionality and non-discrimination) and media pluralism scrutiny procedures (involvement of media regulators in examination of media market transactions, recommended criteria for the analysis of the impact of such transactions on media pluralism).

To **facilitate free provision of quality media services in the internal market,** the recommendation would:

(i) call on Member States to protect media from interference (by public and private entities);
(ii) encourage Member States to provide relevant safeguards for independent management of and balanced coverage by public service media;
(iii) invite Member States to ensure protection of journalistic sources and communication;
(iv) encourage media companies to deploy internal independence safeguards;
(v) propose a catalogue of recommended independence safeguards for media companies and invite them to foster/adhere to media self-regulation; and
(vi) encourage Member States and media companies to step up actions to ensure availability of media ownership information, including on business activities or interests of media owners.

To **ensure transparent and fair allocation of economic resources in the internal media market** the recommendation would invite Member States to publish regular reports on the distribution of advertising resources to media and would recommend establishing tools, such as dedicated registries, to monitor state advertising expenditure. It would also invite relevant media market players (including those online) to be transparent, objective and inclusive in their audience measurement methodologies.

The recommendation would not envisage any action to **increase regulatory cooperation and convergence in the internal media market,** as the non-binding nature of the instrument would not be suitable to establish a framework for structured cooperation.

The recommendation would be complementary to the existing international guidelines and recommendations, referred to in the baseline. It would have a more targeted character focusing on the actions in the three areas presented above. It would provide more detailed guidance in such areas and address some novel issues, such as internal safeguards for editorial independence within media companies, which are not yet covered by the international standards.

In view of its effective uptake, the recommendation would envisage a specific monitoring and evaluation mechanism by the Commission. For this purpose, Member States would be invited to regularly submit to the Commission all relevant information on actions taken to implement the recommendation. The Commission, in consultation with ERGA, would also develop a set of key performance indicators that would allow to assess the uptake of the recommendation across the Union, by both Member States and companies in the media market.

### 5.2.2 Option 2: Legislative proposal + Recommendation on media independence

This option would consist of a legislative instrument and a recommendation on media independence. The legislative instrument would provide common rules for the internal market for media services, governed by an EU-level framework for structured cooperation between media regulators within the Board. This would be combined with a soft law instrument - a recommendation- which would encourage media companies and Member States to foster media independence and transparency.

To **foster cross-border activity and investment in the internal media market**, the legislative instrument would envisage general requirements of transparency, proportionality and non-discrimination for national measures or decisions affecting the operation of media service providers in the internal market. These requirements would be drawn from the CJEU jurisprudence. It would also coordinate certain process requirements for national scrutiny of media market transactions. Independent media authorities would need to be involved in such scrutiny, and be able to issue an opinion or take a decision. They would carry out the analysis of the media pluralism impact based on common qualitative criteria, covering risks to media plurality and editorial integrity as well as media sustainability.

The national authorities would be required to seek the views of the Board on their draft opinions or decisions. The Board would be competent to deliver opinions on such draft decisions or opinions submitted by media authorities affecting the proper functioning of the internal media market. The authorities would be obliged to take utmost account of the opinions of the Board and provide explanations in case they would not follow them. Where there is no draft opinion or decision, the Board would be empowered, upon request of the Commission, to issue non-binding opinions on the transactions potentially affecting the proper functioning of the internal media market. The graph below presents how this framework would work in practice.

*Figure 3 Coordination of media market scrutiny*

**Coordination of scrutiny of media market concentrations**

- Member States to adopt substantive and procedural rules for an assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence, ensuring the involvement of media regulators
- Common qualitative criteria for the analysis of the media pluralism or editorial independence impact; the Commission, assisted by the Board, may issue guidelines on the factors to be taken into account when applying the criteria
- Media regulators to consult in advance the Board on their draft opinions/decisions related to assessment of media market concentrations that may affect the functioning of the internal market. The Board to issue opinions on such drafts
- Media regulators to take utmost account of the opinions of the Board and provide explanations in case they would not follow them
- Where no assessment or consultation by a national authority, but a concentration is likely to affect the functioning of the internal market - the Board, upon the Commission's request, to issue an opinion
- Following the opinions of the Board, the Commission may issue its own opinion on the matter

In view of **increasing regulatory cooperation and convergence in the internal media market**, the legislative instrument would set up a framework for regulatory cooperation, convergence and collective action. This would include:

(i) A mechanism for a structured cooperation between media regulators in all areas of EU media law to exchange information, solve cross-border issues and enforce EU media acquis (in particular when it comes to media players operating across borders e.g. video-sharing platforms). It would also foresee a mutual assistance mechanism for situations of serious media freedom or pluralism risks with a cross-border dimension, including to ensure effective cross-border enforcement of national restrictions to retransmission of audiovisual media services. In cases where a request for cooperation would not be addressed, the Board would act as a mediator in order to find an amicable solution. Ultimately, it would be able, in agreement with the Commission, to deliver opinions recommending actions to be taken by the concerned regulator in order to address the request.

(ii) Tasks for the Board to assist the Commission in drawing up guidance on technical or practical aspects of regulation relevant for media independence and pluralism, in view of reducing risks of divergent interpretations across the Member States.

(iii) A possibility for the Board to coordinate measures to protect the EU information space from third-country media services which threaten the Union's public order and security. The Board would be empowered to coordinate national measures related to temporary restrictions to distribution of such media services, in full compliance of Article 52(1) of the Charter.

(iv) A mechanism for the Board to monitor media-specific risks on very large online platforms.

To **facilitate free provision of quality media content in the internal market**, this option would encompass legal principles on media independence and a right of non-disclosure of journalistic sources (contained in a legal instrument) and a recommendation on media independence (contained in a soft law instrument, covering the elements listed under points (iv), (v) and (vi) under option 1).

To foster quality media services in the internal market, the legal instrument would provide for the protection of editorial independence and integrity of media (against interference by both public and private entities) as well as information requirements as regards the control over news media. To enhance the independent functioning of public service media, it would envisage a general principle of balanced media coverage by public service media and targeted safeguards related to their governance, namely to appointments and dismissals of their management. For journalists, it would stipulate a right of non-disclosure of journalistic sources, coupled with safeguards to ensure that such a right is not circumvented by public authorities, and provide safeguards against the deployment of surveillance software.

The recommendation would encourage all media companies to deploy internal safeguards for editorial independence and include a catalogue of possible actions that they could take in this regard, within their corporate structures, based on best practices in the sector. Such actions could relate to (i) empowering journalists within the corporate structure of media, (ii) ensuring independent functioning of editorial teams and (iii) guaranteeing long-term investment in content production. It would encourage media companies to foster and adhere to self-regulatory instruments (codes of journalistic ethics) and bodies. The recommendation would also invite Member States and media companies to take actions to ensure availability of media ownership information, including on the interests and activities of media owners in other media or non-media economic sectors. The effective uptake of the recommendation would be monitored by the Commission (in cooperation with the Board) and as part of a general EU-level monitoring of risks to resilience of the internal media market[219].

To **ensure transparent and fair allocation of economic resources in the internal media market**, the legislative instrument would stipulate rules related to audience measurement and state advertising. For audience measurement systems, it would envisage requirements of transparency of their methodologies, impartiality, inclusiveness and verifiability. It would oblige providers of proprietary audience measurement systems to make available, at the request of third parties, information on the methodology of their systems. The Board would foster exchanges of best practices. Independent auditing of audience measurement systems would also be encouraged. Regarding state advertising, its allocation across the Member States would need to be subject to transparent, objective and non-discriminatory criteria. Availability of information on advertising spending, including amounts spent and beneficiaries, would need to be ensured.

As regards governance, two alternatives could be envisaged under option 2:

**Sub-option A:** the governance system would be based on the Board[220] composed of senior representatives of the relevant national regulatory authorities (building on the current ERGA). It would be the main actor in charge of promoting the effective and consistent application of the legislative instrument. In its activities, the Board would be assisted by a secretariat, provided by the European Commission[221]. The secretariat would provide administrative and organisational support to the Board. It would also assist the Board in carrying out its substantive tasks, e.g. by conducting analytical or research-oriented tasks.

**Sub-option B:** the Board would have the same role as under sub-option A - it would be the main actor in promoting the effective and consistent application of the substantive aspects of the new legislation. It would be assisted by an independent EU office[222], both for administrative and organisational as well as substantive aspects, e.g. conducting analytical or research-oriented tasks

[219] Building on the current tools available, in particular the Media Pluralism Monitor.

[220] The Board representing media regulators could have a status similar to the European Data Protection Board (EDPB) under the General Data Protection Regulation (GDPR), which was set up as an independent body of the Union (Article 68 of the GDPR).

[221] A similar model i.e. a secretariat provided by the Commission was for instance used in the Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data, where the Commission provided a secretariat to the Working Party on the Protection of Individuals with regard to the Processing of Personal Data (Article 29 Working Party).

[222] Under this sub-option, the office could have a similar organisational status as the Agency for Support for BEREC (the ‘BEREC Office’), which is a decentralised EU agency supporting the Body of European Regulators for Electronic Communications (BEREC).

and/or providing technical expertise. The office would enjoy independence from the Commission and would be composed of experts with specialised knowledge of media regulation matters.

The independent office would also have its own tasks with an EU-wide dimension. These would include (i) monitoring and reporting on the media coverage of the European elections, building upon the Commission's reports on elections to the European Parliament[223] and (ii) taking appropriate actions to combat disinformation related to the activities of the Union.

#### 5.2.3 Option 3: Enhanced legislative proposal

This option would encompass all the legislative elements of option 2. In addition, it would include further obligations for companies in the media market and regulators to foster the availability of quality media services and transparent/fair allocation of economic resources in the media market.

Firstly, when it comes to **facilitating free provision of quality media services**, on top of the legislative elements of option 2, the legal instrument would introduce requirements on balanced media coverage for all audiovisual media, including during elections. Regarding public service media, under this option, on top of the obligation of balanced media coverage of option 2, such media would be required to publish regular reports on how this obligation is fulfilled. Under this option, instead of a flexible recommendation on media independence foreseen under option 2, strict legal obligations would be introduced in this area. The legislative instrument would envisage uniform obligations for media companies to set up internal independence safeguards (with micro enterprises exempted from such rules). This would include mechanisms to (i) empower journalists within the corporate structure of media, (ii) ensure independent functioning of editorial teams and (iii) guarantee long-term investment in content production. Media companies would also be legally required to foster and adhere to self-regulatory mechanisms. Moreover, the legislative instrument would include obligations for Member States and media companies to ensure availability of (all) media ownership information, including on the interests and activities of media owners in other sectors. This would be coupled with the establishment of a centralised EU media ownership registry, covering all EU media service providers.

Secondly, to further **ensure transparent and fair allocation of economic resources in the internal media market**, the legislative instrument would stipulate an obligation of external independent audit that would have to be ensured by all audience measurement service providers. Such providers would also be required to notify the methodologies of audience measurement systems to national media regulators. In the area of state advertising, it would require all media companies to submit to national media regulators the information on state advertising received. Moreover, national media regulators would be tasked to establish and maintain a registry on allocation of state advertising.

The two governance sub-options foreseen under option 2 would apply to option 3.

***Stakeholders' views:***

*Citizens and most other stakeholders, including the media freedom community, consumer organisations, media regulators and ERGA, public and private broadcasters, content distributors and advertising ecosystem players are supportive of a legislative proposal, regulating at least certain substantive areas. Among those*

[223] Building upon the Commission's reports on elections to the European Parliament, see for example COM(2020) 252 final, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, Report on the 2019 elections to the European Parliament.

*stakeholders, there is a wide support for a principle-based approach as opposed to no action or detailed standard-setting.*

*According to public authorities, the most useful areas of EU action would be regulatory cooperation to support common standards for media pluralism and media ownership transparency. They are also in favour of strengthening the role and resources of ERGA for further EU cooperation.*

*The majority of NGOs identified the independence of public service media as the most important area for EU action. Citizens support in particular transparency and fairness in the allocation of state advertising and transparency of media ownership.*

*While public service broadcasters remind of the importance of Amsterdam Protocol, they largely support EU action to introduce safeguards for their own independence. They advocate for principle-based rules to safeguard independence of all media. They support specifically safeguards for editorial integrity and media plurality online and guidance on the appropriate prominence of audiovisual media services of general interest. On the latter issue, content distributors call for guidance in view of fragmented national approaches. Intermediaries are cautious about new regulatory burdens in this area.*

*Private broadcasters are in favour of common principles for media pluralism measures and audience measurement transparency, objectivity and verifiability, on the latter aspect agreeing with publishers and advertising ecosystem players. They express caution against new burdens and advocate for better prominence of their content.*

*Publishers, who are traditionally unregulated, are in favour of self-regulation and express a preference for a recommendation. They do however support measures on state advertising, audience measurement and protection of journalistic sources. Private broadcasters and publishers in particular plead for effective regulation of online platforms and warn against measures preventing market consolidation.*

*Both large and SME media companies support EU-level action on state advertising and audience measurement. Small and micro companies express more support for EU action on media ownership transparency whereas, in comparison, large companies put more emphasis on the need to foster self-regulation.*

*As regards governance, there is a wide support for an oversight based on ERGA. Regulators and the media freedom community are in favour of reinforcing ERGA, while companies and business associations would rather keep it in its current form. Concerning the support structure for ERGA, all options covered by the public consultation received similar support. The highest number of respondents considered that ERGA should be assisted by an independent secretariat, followed by ERGA in its current status and ERGA assisted by a Commission secretariat*[224]*.*

While all three options presented above respond to the four specific objectives of the initiative and the same substantive areas, they vary in their level of ambition and expected **effectiveness**. The legislative options 2 and 3 are expected to be more effective than Option 1 across the four objectives due to the differences in legal nature. In particular, Option 1 represents a cautious approach mindful of the local, cultural and historical circumstances in each Member State. The effectiveness of this option largely depends on the readiness and willingness of Member States and private parties concerned to implement the non-binding recommendations. In contrast, legally binding measures under Options 2 and 3 would guarantee the achievement of the expected policy results, in particular thanks to the generally-available compliance enforcement mechanisms, such as national courts in the Member States and infringement proceedings at the EU level.

[224] 143 out of 917 respondents fully or somewhat agreed with the arrangement of ERGA as an independent European regulatory body assisted by an independent secretariat. 105 respondents would keep ERGA in its current status and 98 respondents would see a reinforced ERGA assisted by the Commission secretariat.

Regarding the two legislative options, while their effectiveness is considered comparable for the first two specific objectives, Option 3 is expected to be more effective than Option 2 in achieving the results under the third and the fourth objective (albeit at a substantially higher cost).

For example, under the third objective, Option 2 would encompass legal principles on media independence and rules on non-disclosure of journalistic sources as well as a recommendation on media independence, while Option 3 would envisage uniform obligations for media companies to set up internal independence safeguards, leading to its greater effectiveness due to the binding nature of the detailed rules in this area. Concerning public service media, Option 2 would establish an obligation of balanced coverage by such media and provide for targeted safeguards for the independent appointments and dismissals of management of public service media. Option 3 would add a further targeted obligation - to publish regular reports on how the balanced media coverage obligation is fulfilled. Such a reporting obligation is likely to incentivise public service media to comply with the balanced coverage obligation. Option 3 would also introduce balanced media coverage obligations for all audiovisual media, which would lead to its higher effectiveness as regards this objective, although at a substantially higher costs for media companies.

Under the fourth objective, for audience measurement systems, Option 2 would envisage requirements of transparency, impartiality, inclusiveness and verifiability of their methodologies, while Option 3 would also oblige all audience measurement service providers to undergo external independent audits and to notify the methodologies of audience measurement systems to national media regulators, which would put pressure on the providers to effectively comply with the legal requirements. Similarly, in the field of state advertising, Option 2 would require that its allocation is subject to transparent, objective and non-discriminatory criteria and that key information on advertising spending is published. Option 3 would add a requirement for all media companies to submit to national media regulators the information on state advertising received, and for the regulators - to establish and maintain registries on allocation of state advertising. The additional scrutiny by the regulators and the public - in the latter case thanks to the availability in one place of the information on the advertising expenditure allocated/received by different authorities and media outlets - would lead to a greater effectiveness of the envisaged allocation criteria, although at a cost.

### 5.3 The choice of the legal instrument

The legal basis of Article 114 TFEU (see section 3.1) provides flexibility with regard to the choice of the legal instrument. Therefore, the legislative elements of the assessed options could be potentially delivered by a regulation or a directive.

A regulation would be a more constraining delivery instrument, given its direct application. It would prevent any potential divergences or distortions during the transposition process and would stipulate directly applicable rights, for instance to journalists, and obligations, for example, for providers of audience measurement systems. It would also allow to address the problems faster, in order to avoid further obstacles to free provision and reception of media services, which undermine media freedom and pluralism in the internal market. The recourse to a regulation would also be preferable given the institutional component of the initiative (the establishment of the Board).

A directive could also be used for a legislative instrument. This could be supported by the argument of specificities of national media markets and the potential need for a margin of manoeuvre in transposing the legal principles. However, recognising the sensitivities of the topics covered by the initiative and its objective of protecting media companies from state interference, the choice of this instrument has certain drawbacks. Firstly, taking into consideration the experience of the recent

AVMSD transposition, a directive would delay the application of EU rules due to a lengthy transposition process. Secondly, the AVMSD experience has shown discrepancies in national transposition of some of its key concepts. Finally, stakeholders expressed concerns that some Member States could use the transposition process as a pretext to introduce or keep legislative measures that in substance run against independent media service providers or are otherwise discriminatory.

Overall, a carefully balanced regulation, underpinned by a structured cooperation framework for media regulators within the Board, could warrant a similar level of flexibility as a directive, while addressing the problems in a quicker manner.

### 5.4 Option discarded at an early stage

An option of **full harmonisation** of national rules related to media pluralism and independence, enforced by a new regulatory EU agency (incorporating the existing ERGA), was considered but discarded at an early stage.

Under such an option, full harmonisation of national media ownership laws, including ownership thresholds and transparency, could be coupled with notification obligations to and review by the Agency of draft decisions related to media market scrutiny. The agency would be also in charge of an EU media pluralism scrutiny procedure for transactions with an EU-wide dimension (put in place in parallel to the EU competition rules). It would also include *ex ante* exclusive powers for the EU agency to restrict foreign media service providers.

This option would harmonise national laws related to editorial independence and media pluralism, including rules on balanced media coverage by all media, also during election periods, content findability and must-carry obligations, including online. It would also introduce common criteria for remits, organisation and funding of public service media (with the agency tasked to issue reports on independence of public service media). It would also envisage an EU-wide standardisation of audience measurement systems, with the agency certifying systems that could be applied in the EU. It would also fully harmonise transparency, non-discrimination, proportionality and objectivity in allocation of state advertising (with specific thresholds on expenditure) and establish an EU-wide portal on distribution of state advertising.

Such an option was discarded, based on competence (subsidiarity) and proportionality criteria. Full harmonisation of national media ownership laws, including thresholds, is neither necessary nor proportionate. Stakeholders point out that uniform media ownership laws across the Union would be undesirable and disproportionate[225]. In particular, media industry players underlined that any EU-level intervention should not become an anti-concentration tool[226].

Full harmonisation of key media law aspects related to media pluralism could run counter to the freedom of expression and freedom to conduct business, especially for non-audiovisual media. While requiring balanced media coverage by public service media is reasonable and proportionate as foreseen in option 2 (given the remit of such media for the fulfillment of which they receive state funding) and could also be considered for all audiovisual media, given that private media may also be subject to national rules in this area[227], detailed obligations for all media, including the press,

[225] See Study on the implementation of the new provisions in the revised Audiovisual Media Services Directive (AVMSD), 2021.
[226] See Annex 2.
[227] ERGA, *Internal Media Plurality in Audiovisual Media Services in the EU: Rules & Practices*, 2018.

could lead to adverse effects on their editorial freedom and capacity to invest in content. Harmonised must-carry obligations for media content online could be difficult to implement and enforce.

Full harmonisation of criteria applicable to public service media remits, organisation and funding would not respect the subsidiarity principle and undermine the Amsterdam Protocol. Such a detailed EU-level intervention would have adverse effects, in particular in those Member States where there are no risks to the independent functioning of public service media.

Standardisation of audience measurement systems would disrupt the market and future innovation. Setting standards at EU level in this area could undermine the existing well-functioning joint industry committees. The majority of respondents to the public consultation expressed interest in regulatory intervention promoting a common understanding of the key concepts related to audience measurement, instead of standardisation in this area.

Establishing a regulatory EU agency for the enforcement of EU media law acquis would not be a proportionate way to achieve the objectives. Full centralisation of regulatory competences at EU level would be difficult to justify with regard to the principle of subsidiarity. National media regulators oppose such a set up as they fear it would have an impact on their independence. From the budgetary perspective, establishing a new regulatory agency would be a costly option. Such expenditure would be unnecessary as the goals of the intervention could be attained with a lighter, more decentralised governance structure.

## 6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

The policy options were evaluated for the economic, social and fundamental rights impacts, including the SME test. Environmental impacts are expected to be null or marginal[228] for all the options compared to the baseline and are not considered.

The quantitative estimates shown in this section should be considered with caution owing to the scarce data availability and the multidimensional nature of the proposed intervention, which makes it difficult to determine with certainty the direction and strength of causal links. Estimates were thus calculated using best-effort assumptions based on qualitative evidence collected from media companies and regulators.

### 6.1. Economic impacts

**Overview**

To estimate the overall economic benefits of the options an economic model is used, in line with other studies carried out to assess the impact of policy options where there are significant gaps in data available[229]. The economic benefits are modelled as increases in revenues for media service providers[230]. As a first step, a baseline scenario[231] is developed on how the identified problems would evolve over time in case no policy action is taken. On this basis, revenues for the media are estimated for the 2021-2027 period. Total revenues are expected to grow at a 3% CAGR in the four sub-segments of the media market (television and home video, internet advertising, newspapers and

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[228] A very limited negative impact could possibly result from additional storage required for the increased electronic correspondence or the technical and organisational actions under options 2 and 3.

[229] In particular, the Data Act Impact Assessment. See ICF (2022), Study on model contract terms and fairness control in data sharing and in cloud contracts and on data access rights.

[230] Model developed by the support study. See Annexes 3 and 4 for a more detailed summary of the methodology.

[231] Additional details on the baseline scenario are reported in Annex 4.

radio), driven in particular by the growth in online advertising, whilst newspaper and radio revenues are expected to stagnate. An annual average for the period is estimated at EUR 105.9 billion, and this serves as the baseline for revenues.

*Table 3 Breakdown of the (yearly) quantitative estimate of the baseline by sector (2021-2027), EUR million*

| Radio | Newspaper | TV and home video | IT and TV advertising | Yearly average |
|---|---|---|---|---|
| 8 591 | 18 278 | 51 641 | 27 462 | 105 972 |

Subsequently the impacts, in terms of benefits and costs, of the different policy options are estimated as incremental changes in revenues compared to the baseline. This ensures comparability of the impacts of each option. The impacts are derived through a causal pathway, for three types of benefits - competitiveness, trade and investment flows; market viability; and consumer choice. Also, the costs related to regulatory complexity are integrated. The assessment of these impacts was informed by the evidence collected through the supporting study (desk research, interviews, online surveys, workshop)[232].

The comparison showed that the benefits impacts would be uncertain or weak in policy option 1, and increasingly more positive in options 2 and 3, as they would be more effective through a more complete set of measures. At the same time, the benefits of option 3 would be off-set by increased regulatory complexity due to the burdensome additional requirements, in particular on balanced media coverage for all audiovisual services and transparency obligations on state advertising. These qualitative impacts were converted into quantitative impact scores using a seven level scale ranging from highly negative, over uncertain/weak, to highly positive. Each quantitative impact score is determined by comparing how many levels better or worse than the baseline the policy option is from a qualitative perspective. An unweighted average impact score is calculated for each policy option, based on the average of all individual scores for each of the four impacts.

The gross economic benefits of the different policy options were then estimated by increasing (multiplying) the baseline revenues by the quantitative impact score. In the final step, for each policy option, net benefits for the first year were calculated as total increased estimated revenues minus all the one-off and annual costs, while net benefits for the subsequent years were calculated as total benefits less all the recurrent costs[233].

*Table 4 Overall economic impacts of the options*

| Unit: EUR million | Baseline | PO1 | PO2A | PO2B | PO 3A | PO 3B |
|---|---|---|---|---|---|---|
| Baseline forecast | 105 972 | 105 972 | 105 972 | 105 972 | 105 972 | 105 972 |
| Impact score | 1.00 | 1.010 | 1.028 | 1.025 | 1.028 | 1.025 |
| Modelled revenues | 105 972 | 107 032 | 108 887 | 108 622 | 108 887 | 108 622 |
| | | | | | | |
| PO benefit per year | | 1 060 | 2 914 | 2 649 | 2 914 | 2 649 |
| | | | | | | |

[232] Support study for the preparation of an impact assessment to accompany an EU initiative on the European Media Freedom Act (forthcoming, VIGIE 2021 – 644).
[233] See Annex 4 for a full explanation of the assessment of the economic impacts.

| | | | | | | |
|---|---|---|---|---|---|---|
| PO cost - companies (year 1 annual cost + one off) | | 19.4 | 21.8 | 21.8 | 355.3 | 355.3 |
| PO cost per year - companies (recurrent) | | 8.0 | 10.0 | 10.0 | 140.8 | 140.8 |
| | | | | | | |
| PO cost - public authorities (year 1 annual cost + one off) | | 0.96 | 7.44 | 13.66 | 11.38 | 17.60 |
| PO cost - public authorities (recurrent) | | 0.96 | 6.12 | 12.35 | 9.31 | 15.54 |
| | | | | | | |
| Net PO – companies - benefit year 1 | | 1 039.3 | 2 885.0 | 2 613.9 | 2 547.6 | 2 276.4 |
| Net PO benefit year – companies -1+n (recurrent) | | 1 050.8 | 2 898.1 | 2 627.0 | 2 764.1 | 2 493 |

As shown in the table above, all policy options are expected to have a beneficial net impact compared to the baseline. Benefits are higher for options 2 and 3 compared to option 1, which stems from the non-binding nature of option 1. Option 2A would provide the highest level of net benefits due to the higher costs for companies in the media market and/or public authorities envisaged in options 2B and 3A-B.

With regard to the distribution of economic impacts, measures envisaged within each policy option are expected to affect public authorities and media market players to a different extent. The main economic impacts are assessed by area and by policy option in the section below. An analysis of the single market dimension and distribution of impacts is also provided. However, a quantitative breakdown of economic impacts by Member States and stakeholder group is not captured by the economic model due to the lack of data and the numerous factors on which calculations depend. Therefore a qualitative distributional analysis is developed.

**Assessment of main economic impacts**

Media pluralism measures and media market scrutiny

Under **Option 1,** recommendations on standards for media pluralism measures or decisions affecting the operation of media service providers in the internal market and for media market scrutiny procedures will be introduced. These will address the problem of fragmentation by encouraging and gradually increasing some level of regulatory convergence with regard to such measures and procedures. The potential additional involvement of the national media regulators will add relevant knowledge and analysis. Some increase in investor confidence and reduction in legal costs are also expected. Respondents to the online survey[234] suggested that the introduction of a recommendation could bring some (limited) improvement of market conditions in Member States currently facing risks of interference in the media market. However, the non-binding nature of the recommendation does not guarantee a uniform distribution of the expected benefits and could even lead to further divergence between Member States.

Under **Option 2 and Option 3,** a combination of general requirements for national measures or decisions and coordination of basic process requirements for national scrutiny of media market transactions will reduce the obstacles created by the current patchwork of media pluralism laws and procedures and mitigate the risk of using media market measures for protectionist reasons. The

[234] See Annex 2.

Board will be tasked to issue opinions on specific cases that may affect the proper functioning of the internal media market. The Board will analyse national decisions/opinions from the market and legal perspective, looking at complex matters such as opinion-forming power of the media, editorial integrity, market dynamics and viability, paying due account to the cross-border dimension, and drawing from its own expertise and best practices across Europe. Moreover, the Board will enjoy a high level of independence from national governments and authorities as well as private parties. As a result, it can be expected that national authorities will take account of the opinions of the Board in most cases.

The resulting more predictable, coherent and less protectionist internal media market will provide greater legal certainty and fairer competition for media players, reducing compliance costs and facilitating cross-border investment. Media players, in particular providers of news content and non-national outlets, which are, respectively, more likely to suffer from political pressure or protectionist measures, will have higher confidence to undertake new investments.

Based on feedback from stakeholders, potential reduction in legal costs can be estimated at EUR 30 million per year[235], due to streamlining of procedures for media market operations. SMEs will particularly benefit because of their reduced financial capacity. Stakeholders indicated that large broadcasters, who have traditionally been regulated in more detail, are expected to benefit because they are more prone to cross-border integration in order to achieve economies of scale in a capital-intensive industry. For example, a cross-border integration between three broadcasters would yield cost efficiencies (stemming from digitalisation of operations, company IT and data, administration, procurement and advertising sales) between EUR 160-360 million. Moreover, if wider business opportunities are also factored in (production of premium content, new technological standards for connected TVs, new digital advertising formats), benefits of between EUR 320-720 million can be projected[236].

*Single market dimension and distribution of impacts*

Impacts of **Option 1** can potentially affect all media companies in the newspaper, radio and television sectors. However, only media companies operating in Member States which decide to adopt the recommendation will be affected both in terms of benefits and costs[237].

**Options 2 and 3** can be particularly beneficial to harmonise divergent media pluralism laws and procedures. This could be particularly relevant for 15 Member States[238] where there is a lack or weakness of measures on media market scrutiny and a high risk for market plurality has been highlighted (see section 2.2.1). This will lead to improved and more even conditions for investment across significant parts of the internal media market, thus facilitating scaling up across borders, innovation and quality content.

With regard to media market players, the two options will particularly benefit: (i) providers of news media content, which are more politically sensitive, and non-national entities especially in countries which are reported to have more protectionist measures[239]; (ii) large broadcasters which can achieve

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[235] Based on best-efforts assumption that 1/3 of all media transaction cases would require intense scrutiny and a potential reduction of legal costs in such cases by 2/3. See Annex 4.
[236] See Annex 4.
[237] In order to calculate the costs, the support study assumes that policy option 1 may reach an uptake of the 40% of companies affected. See Annex 4 for further details.
[238] Bulgaria, Cyprus, Czechia, Spain, Finland, Croatia, Hungary, Ireland, Lithuania, Latvia, Malta, Poland, Romania, Slovenia and Slovakia
[239] For example, in Italy, Poland or Greece. For additional information see section 2.2.1 and the support study

economies of scale through higher cross-border integration; and (iii) companies active in the radio sector and digital-only publishers, which can benefit from a clearer legal framework.

Framework for regulatory cooperation and convergence

Under **Option 2 and Option 3**[240], in order to address the problem of insufficient regulatory cooperation and convergence, a general mechanism for a structured cooperation between media regulators and a specific mutual assistance mechanism for situations of serious media freedom or pluralism risks with a cross-border dimension will be introduced. This will lead to quickly solving cross-border cases and thus to effective enforcement of the legal requirements for media players (including online). In particular, guidance by the Commission with the assistance of the Board on technical or practical aspects of regulation relevant for media independence and pluralism, applicable especially in the audiovisual sector, will reduce differences in interpretation and application of EU media rules across the Member States and enable regulators to address emerging obstacles to the functioning of the media market in a structured and coherent way. This will lead to more even and effective enforcement of the legal requirements for media players. The Board will also monitor media-specific risks on very large online platforms, thus contributing to consistent protection of media pluralism online. The Board will also be empowered to coordinate measures to protect the EU information space from media services providers (including from third countries) which threaten the Union's public order and security. This will help national regulators to jointly address threats more speedily and consistently and close the current enforcement gap where viewers may receive the restricted content from a satellite provider established in another Member State. It will notably improve the level playing field for media market players by protecting them from entities producing and distributing media content (often disinformation) without observing journalistic standards ('rogue traders'). It will also provide more clarity for content distributors regarding restrictions they are to comply with. Overall these measures will result in a more stable and convergent regulatory environment for media market players and greater legal certainty[241].

*Single market dimension and distribution of impacts*

**Options 2 and 3** will positively affect the cooperation between NRAs of all Member States in comparison to the current collaboration under ERGA, in particular as regards cross-border issues where timeliness and sharing of information are key in delivering positive outcomes. At the same time, each NRA will have to bear costs to familiarise and comply with the new framework.

With regard to media market players, all sectors can be positively affected by measures in this area. However, a reduced regulatory fragmentation across borders can be particularly relevant for providers of audiovisual media services, which are currently regulated in a more detailed manner than other media sectors and which are more prone to expanding their operations to other Member States. In addition, better enforcement of audiovisual regulation across borders will benefit media service providers competing with global video-sharing platforms by enhancing the level playing field through timely and effective measures.

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[240] Option 1 does not include any measure in this area, as explained above.

[241] For example, a higher level of regulatory convergence on prominence of content of general interest will improve fair competition in the internal media market and economic viability of media companies. Stakeholders underline that systems which guide viewers to watching certain media services affect significantly viewing figures and, therefore, revenues. This systemic impact is explained by the fact that (based on Auditel data concerning the Italian market) as much as 50% of all TV viewing time is 'spontaneous', where end-users are 'open' to view media content promoted to them. Also, such regulatory convergence will foster the economies of scale in the internal media market: content distributors (such as cable providers) or providers of user interfaces (such as smart TV manufacturers) will be subject to comparable prominence requirements across the EU.

Quality of media services

*Editorial independence safeguards*

**Option 1** would, in order to address the problem of growing interference in the provision of quality media services, call on Member States to protect media independence, invite them to provide safeguards for public service media, encourage media companies to deploy internal independence safeguards (including a catalogue of recommended safeguards) and to foster media self-regulation. Such recommendations would provide support to all media, in particular to companies who wish to develop their resilience to internal and external pressures. Increased adherence to deontological standards of, for example, accuracy, objectivity and relevance would help deter interference and preserve the quality of content produced. However, the actual impact of the recommendation would depend on the extent to which Member States and companies follow it. The same applies to the call to Member States and companies to step up actions on transparency of media ownership information, including on business activities or interests of media owners in other media or non-media sectors. If such a recommendation is taken up, it would foster predictability of the market and potentially encourage further investments.

**Option 2** would combine the legal principle of protection of editorial independence or integrity of media and legal principles for public service media independence, with practical recommendations for media companies on editorial independence safeguards and development of self-regulation. By anchoring the recommendations for media companies in the law (which would spell out a principle of protection of editorial independence of media), and backing them with an effective monitoring system, the actual uptake of internal safeguards (which have shown their effectiveness for companies that already have them) is expected to be greater. Increased adherence to self-regulatory mechanisms and greater media ownership transparency, including on business interests of the owners, will also help deter interference and preserve the quality of content produced and contribute to higher autonomy of editors. Option 2 would, therefore, help reduce the risks for media companies of political or commercial pressures. It will also enable a more level playing between all media companies who abide by the same professional standards. Consumers would benefit from the increase in the choice and trustworthiness of media content, and trust of audiences in media would grow, which, in turn, would generate additional revenue for media companies. Principles for public service media independence would also increase the effectiveness of the use of state resources.

**Option 3**, in addition to the legal principles of option 2, would require all media service providers to set up detailed and uniform internal independence safeguards. The safeguards will be codified in law in order to specify an obligatory governance architecture for media outlets which will establish checks and balances in favour of editorial independence for all media outlets at national and local levels, across audiovisual, radio and the press (with a derogation for micro-enterprises where governance systems would be disproportionate). Furthermore, adherence to self-regulatory mechanisms will be obligatory. This approach would have the advantage of providing a mechanism for enforcement and thus provides for full consistency of safeguards across the internal market. Additionally, common transparency requirements for all media companies when it comes to the owners' activities in other media or non-media related sectors would contribute to achieve further consistency in the internal market with positive effects on potential investments. The potential benefits would be achieved more quickly, but at a higher cost for media market players[242].

*Protection of journalistic sources*

In response to the unwarranted surveillance or pressure on journalists or their sources, **Option 1** would invite Member States to take actions geared at ensuring protection of journalistic sources and communication, **options 2 and 3** would stipulate a right of non-disclosure of journalistic sources, coupled with safeguards to ensure that such a right is not circumvented by public authorities, and safeguards against surveillance. This would, to different degrees depending on the option, protect journalists against unwarranted surveillance or other forms of pressure and ensure that journalists in different media sectors can communicate with their sources, which is necessary for the production of media content, particularly for investigative reporting or reporting on politically and commercially sensitive matters. While under option 1, the level of protection would depend on the uptake of the recommendation across the EU, options 2 and 3 would grant a uniform level of protection to journalists across the EU. They would thus contribute to a freer flow of media services in the EU media space. As a result, trustworthiness and diversity of media content would be safeguarded, also for the benefit of consumers.

*Single market dimension and distribution of impacts*

**Option 1** can potentially affect all media companies in the newspaper, radio and television sectors. However, the distribution of such impacts is strictly linked to the uptake of the recommendations at the national level, which remains uncertain.

Impacts of **Option 2** can be particularly relevant for significant parts of the single market as 21 Member States are currently considered (by the Media Pluralism Monitor) at high or medium risk of political or commercial influence over editorial choices (see section 2.2.3). Improvement of common professional standards will increase the quality of media services across the single market thus increasing consumer welfare and demand whilst increasing opportunities for cross-border reporting, cooperation, mobility and integration. More transparency across the EU on media owners will increase accountability for their business interests across borders.

In this area, under Option 2 all media companies could be affected, even if the distribution of benefits and costs depends on the uptake of specific recommendations e.g. the extent to which internal control mechanisms will be introduced. This uptake is however expected to be greater in comparison to Option 1[243].

On top of policy option 2, **Option 3** would introduce further obligations which would affect all EU Member States as well as all media market players in the newspaper, radio and television sectors, in terms of benefits and especially in terms of higher costs.

Transparency and fairness in allocation of economic resources

*Audience measurement systems*

[242] For costs related to media ownership measures, see section on social impacts below.
[243] See Annex 4 for further details.

**Option 1** would recommend that market players are transparent, objective and inclusive in their audience measurement methodologies, which could incite some providers of online proprietary systems to improve their measurement systems.

Under **Option 2**, the requirements of transparency, impartiality, inclusiveness and verifiability of audience measurement methodologies, accompanied by the encouragement of independent auditing and guidance issued by the Commission with the assistance of the Board, will lead to adoption of minimum standards across all systems for all media in the internal market. The specific requirement for proprietary systems to disclose their methodology upon request will apply, in particular, to online players and will benefit media companies relying on such online systems for audience data, notably broadcasters and the press. The media will thus be empowered to verify and understand the characteristics of their online audiences and their behaviour, recognise any possible biases, as well as to better assess the value for money of online advertising prices. This transparency will also improve accountability of providers of proprietary systems and act as a counterweight against potential attempts by them to unduly inflate their audiences.

This option will foster fairer competition for advertising revenue between media companies and online players as well as competition between audience measurement service providers. As advertising revenues are key to the viability of media, the financial benefits for media companies will be significant. In particular, in the traditional media environment, media companies typically receive 85% of the value paid by an advertiser (the remaining 15% going to the intermediating sales agency). However, in the online environment, as a result of targeted programmatic advertising, media companies typically receive only 40%[244] of the value, whilst the majority is captured by vertically integrated online intermediaries (who are active both on the advertising and audience measurement markets). The new requirements would help to redress the balance. If we assume the share of advertising value accruing to the media increases to 45%[245], due to the strengthened negotiating position of media companies, this would represent a potential increase of EUR 450 million[246]. The possible gain would be recurrent and growing (in line with the growth of internet advertising and the share of programmatic advertisement spending). Furthermore, greater reliability of measurement of online audiences will be valuable to media regulators in the context of assessing the opinion forming power of market players.

Under **Option 3,** the additional obligation of an external independent audit and the obligation to notify the methodologies of audience measurement systems to national media regulators would ensure regular third party verification. This would increase professional level scrutiny, potentially helping those media companies, in particular smaller ones, who do not have the capacity to analyse complex metrics. However there would be increased costs to audience measurement providers.

*Allocation of state advertising*

**Under Option 1,** Member States would be recommended to establish tools to monitor state advertising expenditure and publish regular reports on its distribution to media. Rendering such information public would increase scrutiny by the media and the general public, nudging public

[244] World Federation of Advertisers, *Brand safety and online disinformation, presentation for the European Commission*, 16 April 2018.
[245] Assuming an increase of just 5 percentage points from the current level of 40%.
[246] The advertising spent on Internet media in EU27 is growing every year. In 2020 it was at the level of EUR 35.6 billion (EAO, Yearbook Database, MAR-AD Advertising expenditures by media 2020), of which 25% (World Federation of Advertisers) can be attributed to programmatic advertising, equivalent to 9 billion (although its share is expected to grow year on year).

authorities and bodies towards fairer distribution of state advertising. The main beneficiaries would be those private media companies deprived of state advertising so far, in particular news media providers and, especially, media critical of the government in Member States where currently preferential allocation of state advertising is the most acute. However, the impact would greatly depend on the readiness of Member States to follow the recommendation.

**Option 2** would oblige Member States to adopt rules and criteria to ensure transparent, non-discriminatory and objective allocation of state advertising to media. It would also require pro-active publication of core information about the expenditure of state advertising. This obligation would create an opportunity for national authorities to review and justify their advertising policies and to demonstrate their fairness. If the adopted rules or practices did not comply with the principles, media companies would be able to contest them in national courts, and the Commission might launch infringement proceedings concerning systemic issues. As above, the main beneficiaries would be private media companies deprived of state advertising so far, in particular news media providers in the broadcasting and the press sectors (encompassing printed and online media) and, especially, media critical of the government in Member States where currently preferential allocation of state advertising is the most acute. As a result of the measures, a wider range of media outlets would have access to this revenue source and a more level playing field would be established, potentially incentivising cross-border activity.

State advertising can, in the most severe cases, be skewed over 80% in favour of pro-government media[247]. If, as a result of this option, the share of advertising of media which are not supportive of the government reached 50%[248], this would represent a 150%[249] increase in advertising revenue for such media. This would have a significant effect in a context where some news outlets receive the majority of their advertising income from the state, and some other media outlets, in particular SMEs, are in a precarious situation. Fairer allocation of state advertising in many Member States will, ultimately, improve fair competition in the internal media market as a whole. In addition, the measures would increase the effectiveness of the use of state resources.

**Under Option 3,** the additional obligation for national media regulators to establish and maintain a specific registry on allocation of state advertising would maximise the awareness and scrutiny of its distribution. The effect would be to generate further public debate and accountability, potentially increasing the extent of redistribution of state advertising revenues. Maintaining national registries would, however, add costs to companies in the media sector and national authorities compared to option 2.

*Single market dimension and distribution of impacts*

**Option 1** will affect NRAs and/or relevant national authorities in all Member States. As for the other areas, the uptake at national level should be considered uncertain, given the non-binding nature of

[247] Mérték, *State advertising spending – complaint update*, 2021. Comprehensive financial data on levels of state advertising in the EU27 are not available whereas the Media Pluralism Monitor has developed more qualitative indicators. Nonetheless some ad hoc figures illustrate the orders of magnitude. The MPM2022 reports that in Austria state advertising amounted to EUR 225 million equivalent to EUR 25 per capita. In Hungary it was estimated in 2020 at up to EUR 320 million equivalent to EUR 32 per capita.

[248] Assuming that state advertising is distributed evenly between pro-government and neutral or critical media.

[249] Based on a current scenario where pro-government media receive 80% of state advertising. Assuming that up to 30% of current state advertising going to pro-government outlets would go to independent outlets, this would represent an increase of 30 percentage points, which could translate into 150% increase.

the Option. Depending on this uptake, measures in this area can potentially affect all media companies in the newspaper, radio and television sectors.

**Under Option 2,** provisions on audience measurement would enhance transparency in particular of online players which operate across borders and have business strategies across the single market. They would benefit in particular broadcasters and newspapers who have lost significant advertising revenues to online platforms, in particular therefore in bigger Member States. Also, the rules on the distribution and transparency of state advertising would have a higher impact in the Member States which are reported (by the MPM) to lack such rules and where particular problems in this area persist (see section 2.2.4). All media market players in the newspaper, radio and television sectors could benefit from these measures. More effectively than in policy Option 1, a binding obligation on transparency of state advertising would mainly benefit those news media providers of Member States where the distribution of state advertising is unfair and non-transparent. Such news media providers can increase their revenue from state advertising and, therefore, improve the viability of the sector whilst increasing diverse, independent sources of information in these Member States.

**Option 3** would lead to further benefits but also additional costs. Audience measurement providers and large online platforms would face additional costs, related to the obligation to undertake independent audits on audience measurement. There would also be further costs for NRAs in all Member States and media market players in the newspaper, radio and television sectors (mainly because a national registry on state advertising would be mandatory).

**SME test**

In order to fully capture impacts on SMEs, data collection activities targeted this specific sector as much as possible. In particular, of 41 respondents to the online survey, half were SMEs. The responses helped to model the effects on SMEs. Under all options, SMEs will incur basic familiarisation costs related to media pluralism measures and media market scrutiny, estimated at EUR 8 million to 12 million. The cost-benefit ratios for SMEs differ between options, due to the different requirements. At the same time, the estimates show that around 40% of the benefits of all three policy options would accrue to SMEs, in line with their share of baseline revenues.

Under **Option 1**, SMEs consulted do not expect the adoption of a recommendation to generate major benefits due to its non-binding nature, which does not guarantee that all Member States will actually take action. Concerns therefore emerge about the level playing field across Europe for SMEs. The net annual benefit for SMEs under option 1 is estimated only at around EUR 402 the first year and EUR 414 million recurrently, with EUR 19 million in overall costs the first year and EUR 8 million per year in subsequent years, resulting in a lower cost-benefit ratio.

Under **Option 2**, mechanisms for increased regulatory convergence and cooperation would improve legal certainty and lower legal costs in particular for SMEs. This would also increase confidence to operate across borders, thus facilitating the entry of new players and increasing competition. In addition, the option would help balance the playing field for SMEs to compete with online platforms for advertising revenues. More transparent audience measurement systems would better inform advertisers' choices and balance the relations between media SMEs and online platforms. The requirements for state advertising would reduce market distortion and contribute to SMEs' sustainability. The recommendations on internal independence safeguards will pay due regard to the needs of smaller players. However, overall costs, estimated at EUR 21 million the first year and EUR 10 million per year in subsequent years, are expected to be balanced by increased benefits. The net annual benefit for SMEs under this option is estimated at EUR 1 146 million by the financial modelling.

**Option 3** would create additional set up and running costs for SMEs stemming from obligations on balanced media coverage for all audiovisual media and the set-up of uniform editorial independence safeguards for all media companies, with the exception of micro companies for the latter. SMEs would also face costs resulting from the obligation to provide information on state advertising received. Concerns emerged around the cumulative costs linked to these additional measures, estimated at EUR 351 million the first year and EUR 138 million per year in subsequent years, which are not expected to be proportionate to the additional benefits compared to Option 2. The net annual benefit for SMEs under this option is estimated at EUR 1 015 million through financial modelling[250].

**Governance**

Under **Option 1**, the Commission would develop a set of key performance indicators to monitor and evaluate the uptake of the Recommendation by Member States and relevant companies, based on their input. Three additional full time employees would join the Commission.

Under **Options 2 and 3**, the newly created Board, based on the current cooperation network between independent media regulators (ERGA), would promote the effective and consistent application of the proposed legal instrument. The output of the Board (e.g. its opinions) would provide legal certainty for media companies, thereby facilitating cross-border investments, and enhance a level playing field for media companies across the internal market. In particular, the Board would improve the consistency and quality of national market scrutiny measures and media law enforcement (including across borders), and protect the internal market from 'rogue' third-country media outlets. Enhanced cooperation and regulatory consistency will foster a more predictable regulatory environment for all media market players. It will facilitate the work of relevant national authorities (media regulators themselves as well as those in adjacent fields: competition and telecom regulators, relevant ministries). Citizens would ultimately benefit from a richer, more trustworthy and pluralistic media offer and a better (and quicker) enforcement of EU media rules, in particular online, enjoying a safer information space, with a high level of protection against harmful content and lower levels of disinformation compared to the baseline.

The Board would be supported by either a Commission secretariat with 8 to 10 full time employees (**sub-option A**) or an EU office composed of 30 to 35 full time employees - both providing support to the Board (while the office would have its own EU-wide tasks - **sub-option B**). Under **sub-option A**, administrative costs and costs related to the substantive supervisory tasks of the Board would lead to an annual operating budget of 1 million EUR[251], to be absorbed into the Commission's structures. Under **sub-option B**, the overall costs, leading to an annual operating budget of 5 million EUR[252], would be higher, since the office would need to establish its own administrative operations, cover physical and IT expenditure and take care of own research activities.

Compared to the current ERGA governance system in the baseline scenario, a (bigger) secretariat of the Board within the Commission could be set up very quickly and is expected to support the Board

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[250] See detailed calculation in Annex 4.
[251] Operating budget estimate based on current administrative costs for Commission support to ERGA.
[252] Operating budget estimate based on administrative costs for other similar EU support agencies (e.g. BEREC Office).

more effectively due to the existing pool of expertise within the Commission, which would result in better quality output of the Board. An EU office would arguably provide a similar output in the long term, possibly covering further activities with an EU dimension, but it would take longer to set up and become an EU-level expert body on media regulation. Both sub-options would promote higher confidence and trust in the regulatory and advisory work of the Board, enhancing the predictability in the market for the benefit of media companies and regulators. The national regulators would also see stronger support to their work thanks to an effective burden sharing and the expected spill-over effect of expertise and experience. Compared to the current governance system of ERGA, this would result in up to 20% in cost savings for NRAs, estimated at up to EUR 455 000[253], along with increased transparency and accountability of the support structure for media regulators[254].

*Single market dimension and distribution of impacts*

With regard to policy **Option 1**, limited benefits are expected for NRAs in all Member States due to slightly more efficient cooperation within ERGA thanks to an increased support from the European Commission.

With regard to policy O**ption 2 and 3**, the introduction of the Board for Media Services will allow all NRAs to benefit from a more efficient cooperation in comparison to the current ERGA, to a substantially higher extent than under policy option 1. Both in the case of sub-option A and sub-option B, each NRA can save up to 20% of the current annual expenditure related to coordination work in ERGA.

*Table 5 Expected costs linked to the elements of the intervention with major economic impacts*[255]

| | **Public authorities** | **Media market players** |
|---|---|---|
| Media pluralism measures and media market scrutiny | Under **options 2 and 3**, recurrent administrative costs for NRAs between EUR 44 100 - 96 600 for scrutiny of media market transactions in **sub-option A** and between EUR 31 500 and 69 000 in **sub-option B**. | Under **options 1, 2 and 3**, direct compliance costs between EUR 9.1 million and 13.7 million linked to familiarisation with the new provisions. |
| Framework for regulatory cooperation and convergence | Under **options 2 and 3,** one-off administrative costs of EUR 50 000 for the common IT tool to exchange information + direct recurrent administrative costs for NRAs between EUR 1.12 million and 3.36 million in **sub-option A** and EUR 0.8 million and 2.4 million in **sub-option B**. | No significant direct costs. |
| Editorial independence safeguards | No significant direct costs. | Under **option 1**, recurrent compliance costs between EUR 4.1 million and 8.2 million for an estimated share of 40% of small and |

[253] Based on evidence collected in the survey from four NRAs. See calculation notes in Annex 4.
[254] In their responses to the public consultation, 11 out of 19 responding NRAs were in favour of reinforced support to ERGA, arguing that the current resources and administrative support are insufficient.
[255] Annex 4 includes calculation notes for all the figures presented in these tables.

| | | |
|---|---|---|
| | | medium media market players (from 10 to 249 employees) in the newspaper, radio and television sectors implementing the recommendation to deploy internal safeguards. Under **option 2,** these costs would increase to between EUR 5.1 million and 10.2 million for an estimated share of 50% of SMEs and under **option 3**, the costs would amount to between EUR 10.3 and 20.5 million as all SMEs would have to set-up internal independence safeguards. |
| Protection of journalistic sources | No significant direct costs. | No significant direct costs. |
| Audience measurement systems | Under **option 2**, one-off adjustment costs for NRAs between EUR 69 000 and 415 000 and recurrent enforcement costs of EUR 592 000 in **sub-option A** and 423 000 in **sub-option B**. | Under **option 2**, minor familiarization costs concerning the requirements, to be incurred mainly by large online players, operating outside the joint industry committees (JICs).<br>Under **option 3**, cost of external audits for audience measurement providers operating in the joint industry committees (JICs) around EUR 27 000, and for large online platforms between EUR 55 000 and 545 000. |
| Allocation of state advertising | Under **options 2 and 3**, recurrent enforcement costs for NRAs between EUR 415 000 and 1.6 million. Obligation for national media regulators to establish and maintain a registry on allocation of state advertising **under option 3**: EUR 1.7 million. | Under **option 3**, recurrent costs are expected to range between EUR 18.3 million and 45.7 million. |
| Governance | Under **option 1**, EUR 490 000 in direct recurrent costs for the EU + EUR 473 000 enforcement annual costs for NRAs on monitoring and reporting on implementation of recommendations.<br>Under **options 2 and 3**, direct recurrent costs for the EU:<br>- 8-10 FTEs (between EUR 1 and 1.3 million) and operational budget of EUR 1 million in sub-option A;<br>- 30-35 FTEs (between EUR 3.9 and 4.6 million) and operational budget of EUR 5 million in sub-option B[256]. | No significant direct costs. |

[256] No realistic opportunities for administrative synergies that could reduce such costs were identified.

### 6.2. Social impacts

This section considers the main social impacts of the initiative, which are described below. Overall, the measures are expected to have considerable positive social impacts, stemming from an improved investment environment and better competitive conditions (e.g. when it comes to fairer audience measurement and allocation of state advertising). Given that the European media sector contributes to job creation and growth with a turnover exceeding 2% of EU added value, strengthening the internal media market (to a varying extent, depending on the option) could bring employment opportunities and provide more stability and security for journalists. Moreover, by enhancing media independence through the whole set of measures (in particular related to editorial independence safeguards and protection of journalists' sources/communication), the initiative would contribute to ensuring diverse and independent reporting for citizens and businesses. This would reduce risks of exposure to disinformation and raise the level of trust towards media. The intervention would have a positive impact on rule of law and democratic systems: it would contribute to raising the level of democratic debate and help media (and journalists) to fulfil their societal role of holding power to account.

<u>Framework for regulatory cooperation and convergence</u>

Under **Option 2 and Option 3,** to address current weaknesses in the cooperation framework between media regulators, a general mechanism will be established for a structured cooperation as well as a specific mutual assistance mechanism for situations of serious media freedom or pluralism risks with a cross-border dimension.  This structured cooperation would more effectively mobilise national regulatory authorities to respond to concrete concerns. Currently, only half of the requests for cooperation are fully completed to the mutual satisfaction of the requesting and receiving NRAs. A best effort assumption of a 50% increase in that proportion would mean that 75% of cases would be completed satisfactorily. This would improve the welfare of citizens and social cohesion, in particular by creating a safer online space with reduced exposure to illegal or harmful content. Moreover, collective action by the Board to protect the EU information space from media service providers (including from third countries) which threaten the Union's public order and security would shield citizens from 'rogue' media players ignoring journalistic standards and spreading disinformation.

In addition, a mechanism will be established for the Board to detect, evaluate and address media-specific risks on very large online platforms, for instance as regards amplification of online disinformation. It will provide a specialist analysis by independent regulators on sensitive media freedom and plurality issues, looking for example at the consequences of amplification of certain types of content online for shaping of public opinion. It will also monitor potential impacts of content moderation by platforms on media freedom and pluralism and the availability of quality media content to citizens, in particular younger, digital native generations, and to businesses. It would thus contribute to a safer, more reliable online space for the benefit of the entire society.

*Single market dimension and distribution of impacts*

In addition to the distribution of economic impacts described in section 6.1, social impacts of policy **Options 2 and 3** will be mainly relevant for citizens, increasing the effective protection from cross-border risks of illegal or harmful content and threats to media pluralism and media freedom.

<u>Quality of media services</u>

<u>*Public service media independence*</u>

Under **Option 1,** the recommendation would call on Member States to provide relevant safeguards for the independent management of and balanced coverage by public service media. Assuming that the recommendation is followed, it would reduce the discretion of governments or other political bodies in appointing and dismissing the management of PSM in an arbitrary manner, contributing to a more stable environment for their activities. As PSM play a central role in providing news and framing public political debate, the balanced coverage recommendation would contribute to a gradual improvement in rule of law and democratic standards.

Under **Option 2,** targeted independence safeguards for PSM (particularly on appointments and dismissals of management) and a general obligation of balanced media coverage would be established in law. The governance safeguards would provide a basis for recourse to courts if, for example, the management of a public broadcaster believes that they were dismissed without due justification, as well as for the Commission to launch infringement proceedings in case of deficient rules, amplifying the social benefits identified under Option 1. The balanced coverage obligation would ensure a more diverse programming, benefiting citizens, companies and civil society. It would also provide an additional protection layer from interference in editorial decisions, as journalists would be able to invoke it in response to attempts to control content, such as political news reporting. As a result, significant improvement in rule of law and democratic standards can be expected, especially in the Member States where issues have been identified. Another likely social benefit is greater EU-wide social cohesion, as citizens of different Member States will gain more equal access to independent, inclusive and diverse public service media content.

**Under Option 3,** the obligation of balanced media coverage by PSM would be combined with a requirement for such media to publish regular reports on the fulfilment of the obligation. This would create an opportunity for PSM to review their practices and results, justify their editorial stance and address specific points of concern. As these reports would be in the public domain, they would stimulate wider scrutiny, thus creating an incentive to meet EU standards, albeit at a cost for PSM.

*Balanced media coverage for audiovisual media*

Under **Option 3**, given the particularly strong influence of television on public opinion, all audiovisual media would be required to provide balanced coverage in news and current affairs reporting, including during elections. The measure would foster common standards for such reporting by both public and private broadcasters in all Member States. This measure can be expected to enhance equal access by citizens to a plurality of viewpoints, in particular during elections, although at a significant cost for private audiovisual media.

*Transparency of media ownership*

**Option 1** would call on Member States and companies to step up actions to ensure availability of media ownership information, including on business activities or interests of media owners in other media or non-media sectors. Assuming that the recommendation is followed, it would lead to revealing such specific potential sources of influence on media content in different sectors, enabling audiences to critically analyse the content they are exposed to (e.g. to discover biases in the way news is presented or even withheld) and to make informed choices of their media, in particular for news content of political nature.

**Option 2** would set out common information requirements for media service providers and would recommend to step up actions to ensure availability of media ownership information, including on business activities or interests of media owners. It would, therefore, help revealing the potential sources of influence on media content in different sectors. This would enable interested parties, such as researchers and investigative journalists, to bring media ownership information, covering multiple Member States, to the attention of the general public, thus generating additional social benefits. Enhanced transparency of media ownership would increase accountability, deter interference and ultimately increase citizens' trust in media, thus strengthening social cohesion.

Under **Option 3,** Member States would be required to ensure the availability of media ownership information, including on the interests and activities of media owners in other sectors. This would be coupled with the establishment of a centralised EU media ownership registry, covering all EU media service providers. The obligation upon Member States combined with the centralised registry would provide a comprehensive overview of media ownership across the internal market. This would considerably amplify the benefits identified above for Options 1 and 2, but at a higher cost.

*Single market dimension and distribution of impacts*

As for the distribution of economic impacts, the distribution of social impacts will remain uncertain under policy **Option 1**.

In addition to the distribution of impacts described in section 6.1., **Options 2 and 3** will have greater impact in those 16 Member States which are reported to be at high or medium risk for the independence of PSM governance and funding (see section 2.2.3). New costs to disclose information on media ownership are expected to be borne by media companies in those 12 countries[257] which are reported not to have a national media ownership registry.

**Option 3** would introduce further obligations which are expected to add costs for public service media (additional obligation to publish regular reports) and broadcasters (additional obligation to ensure a balanced media coverage). Moreover, the compliance with a new EU registry is expected to bring additional costs in particular for NRAs.

*Table 6 Expected costs linked to the elements of the intervention with major social impacts*[258]

| | **Public authorities** | **Media companies** |
|---|---|---|
| Public service media independence safeguards | Under **options 2 and 3**, one-off adjustment costs for NRAs between EUR 447 000 and 1.7 million + EUR 42 000 in recurrent direct enforcement costs. | Under **option 2**, average one-off costs for PSM of EUR 357 300 (one PSM per Member State).<br>Under **option 3**, additional annual costs of EUR 1 million for PSM reporting on the fulfilment of the balanced media coverage obligation. |
| Balanced media coverage for all audiovisual media | Under **option 3**, EUR 203 000 in recurrent direct enforcement costs | Under **option 3**, EUR 182 million one-off and EUR 87.4 million recurrent costs for all audiovisual companies to comply with the obligation of balanced coverage. |
| Transparency of media ownership | Under **option 3**, between EUR 446 672 and 2.05 million in recurrent enforcement costs for NRAs linked to specific | Under **option 1**, recurrent compliance costs between EUR 0.3 million and 3.4 million for an estimated share of 40% of media market players implementing the recommendation on transparency. Under **option 2**, these costs would increase to between EUR 0.4 million |

[257] Austria, Belgium, Croatia, Czech Republic, Cyprus, Denmark, Finland, Luxembourg, Malta, Slovakia, Slovenia, Sweden
[258] Annex 4 includes calculation notes for all the figures presented in these tables.

| | | |
|---|---|---|
| | ownership transparency requirements and an EU-wide media ownership registry. | and 4.2 million for an estimated share of 50% of media market players. Under **option 3**, recurrent costs for all media market players implementing the transparency requirements on media ownership between EUR 4.5 and 45.7 million. |

### 6.3. Fundamental rights impacts

All options have a positive impact on protection of media freedom and pluralism, which are an integral part of the EU Charter of Fundamental Rights (Article 11 of the Charter).

Under **option 1**, citizens will benefit from the recommendations on safeguards for media pluralism and independence, including for public service media, in those countries and by those media companies that decide to take relevant actions. Where implemented, the recommendations could improve citizens' access to trustworthy information, help them exercise their right to receive information and reduce the social divide in access to media content. At the same time, due to the risk of further fragmentation linked to the uneven adoption of measures by the Member States, it could be expected that Member States already performing better (as assessed by the Commission's Rule of Law reports, the Media Pluralism Monitor and international rankings) would continue doing so, while those underperforming would not significantly improve; uneven protection of media freedom and pluralism would therefore persist.

**Options 2 and 3**, by enhancing regulatory convergence in the internal media market, safeguarding editorial independence and increasing transparency and fairness in the allocation of economic resources, will facilitate the provision of independent and quality media services across borders, hence promoting media freedom and pluralism. The key role of the Board, fully independent from the governments and any other public or private entities, will contribute to effective and impartial upholding of freedom of expression across the EU, protected by Article 11 of the Charter. Under **option** 3, the additional obligations on balanced media coverage for all audiovisual media may impact editorial freedom of private media companies. **Options 2 and 3** will also have a positive impact on the freedom to conduct a business (Article 16 of the Charter), when it comes to lifting obstacles to the freedom of establishment and to provide services and limiting the risks of certain media market players being subject to discriminatory treatment. Under **option 3**, however, businesses would be subject to costs linked to the additional obligations on editorial independence (obligation to establish uniform internal independence safeguards), which could adversely affect the autonomy of business owners to organise their corporate structure and newsrooms. This, together with the additional obligations on balanced media coverage for all audiovisual media, media ownership transparency and audience measurement would result in limitations to the freedom to conduct business.

## 7. How do the options compare?

The options were compared in terms of effectiveness (how each option is likely to achieve the specific policy objectives), efficiency (the extent to which the proposals provide a reasonable balance between benefits and costs), coherence with other EU policies, and proportionality (i.e. whether the costs are commensurate with the objectives of the initiative). The comparative analysis of policy options is based on the quantitative results of the economic estimates and qualitative evidence for social and fundamental rights impacts presented in section 6.

*Table 7 Comparison of policy options*

| Options | Effectiveness | Efficiency | Coherence | Proportionality |
|---|---|---|---|---|
| **Policy option 1** | 0/+ | + | + | + |
| **Policy option 2 sub-option A** | + + | + + + | + + + | + + + |
| **Policy option 2 sub-option B** | + + | + + | + + | + + + |
| **Policy option 3 sub-option A** | + + + | + | + + | + + |
| **Policy option 3 sub-option B** | + + + | + | + | + + |

*+++ very positive impact; ++ positive impact; + moderate positive impact; 0/+ - limited positive impact; 0 no or very limited positive impact; - moderate negative impact; -- negative impact; --- very negative impact*

### 7.1 Effectiveness

*1) Fostering cross-border activity and investment in the internal media market:* **Option 1** would imply voluntary actions by Member States which could lead, only over time and depending of their uptake, to a better functioning internal media market and greater legal certainty. **Options 2 and 3** (which are the same in substance in this area) would significantly increase legal certainty over the baseline reducing the current fragmentation in the procedures for (and outcomes) of media market scrutiny. A Board supported by a Commission secretariat would provide an agile and expert supervisory system to be set up rapidly, while a Board supported by an EU office could, over time, acquire a high degree of specialisation in media regulation.

*2) Increasing regulatory cooperation and convergence in the internal media market:* **Option 1** is not suitable to address this objective. **Options 2 and 3** (which are the same in substance in this area) would increase the effective cooperation of media regulatory authorities in tackling the cross-border challenges of media regulation, such as protecting the EU information space from 'rogue' third-country media service providers, convergence of regulatory approaches in key areas of media regulation relevant for media pluralism or lack of tools to monitor media-specific risks on very large online platforms. They are expected to result in higher regulatory predictability which can increase incentives for legitimate market entries. A Commission secretariat would effectively assist the Board to address key cross-border challenges and emerging issues, while an EU office could support the Board with research activities linked to regulatory guidance.

*3) Facilitating free provision of quality media services in the internal market*: **Option 1** is expected to bring improvements compared to the baseline scenario over time, if its different recommendations are implemented by all or most Member States and media companies consistently. Under **Option 2**, the combination of a legislative instrument and a recommendation on media independence, is expected to largely meet this objective, marking a clear improvement compared to the baseline scenario both in terms of magnitude and timing, ensuring free provision of quality media services in the EU. The additional targeted obligations under **Option 3**, in particular balanced coverage by all audiovisual media, uniform internal independence safeguards within companies and an EU-wide media ownership-registry, would further contribute to the availability of quality media content. A Board supported by a Commission secretariat or an EU office would promote the effective and consistent application of the legislation and could contribute to the uptake of the recommendation. The EU office would in addition have EU wide tasks of monitoring media coverage of EU elections and EU-related disinformation.

*4) Ensuring transparent and fair allocation of economic resources in the internal media market:* depending on the readiness of the actors involved to follow the recommendations, **Option 1** could nudge public authorities and market players towards more transparency and fairness in distribution of economic resources. Under **Option 2**, the obligations for providers of audience measurement systems and requirements to Member States on transparency, non-discrimination, proportionality and objectivity in allocation of state advertising should improve the conditions for fair competition (by providing the level playing field in the internal media market) compared to the baseline. The convergent application of the new rules would be supported by the fact that the Board would foster best practices regarding audience measurement systems and of state advertising allocation. **Option 3** would be slightly more effective in achieving the objective, due to the additional obligation on external audit for audience measurement systems and the obligation to notify the methodologies of such systems to national media regulators and the additional reporting and transparency measures for state advertising.

*Table 8 Effectiveness*

| Options | Objective 1 | Objective 2 | Objective 3 | Objective 4 |
|---|---|---|---|---|
| **Baseline** | 0 | 0 | 0 | 0 |
| **Policy option 1** | 0/+ | 0 | + | 0/+ |
| **Policy option 2 sub-option A** | + + | + + | + + | + + |
| **Policy option 2 sub-option B** | + + | + + | + + | + + |
| **Policy option 3 sub-option A** | + + | + + | + + + | + + + |
| **Policy option 3 sub-option B** | + + | + + | + + + | + + + |

*+++ very positive impact; ++ positive impact; + moderate positive impact; 0/+ - limited positive impact; 0 no or very limited positive impact; - moderate negative impact; -- negative impact; --- very negative impact*

## 7.2 Efficiency

**Option 1** is expected to generate low costs for public authorities and media market players, which should get acquainted with the new framework, in line with limited expected benefits (notably increased revenues for media of EUR 1 billion per year). **Option 2** is expected to bring higher direct compliance and enforcement costs for public authorities in comparison to the baseline. However, NRAs can expect between 10% and 20% in costs savings compared to the current NRAs' expenditure related to coordination in ERGA[259]. Media companies that take voluntary actions on independence safeguards and media ownership would face marginal costs. Public service media would face some costs linked to the principle of balanced media coverage. Economic benefits are

[259] Based on input gathered from NRAs.

estimated at EUR 2.9-2.6 billion in the form of increased revenues for media per year. Overall, option 2 is the most cost-effective option as costs are a very low proportion of benefits. **Option 3** entails additional compliance and enforcement costs for public authorities and, especially, for media companies and other media market players. These stem from the obligations on internal independence safeguards (for all media companies except micro enterprises) and on balanced media coverage (for all audiovisual media companies), requirements on external independent audit and notification to media regulators (for all audience measurement service providers) and reporting and transparency obligations on state advertising (for all media companies and media regulators). No significant additional benefits are expected for public authorities, while media market players may experience only slightly higher benefits in comparison to Option 2 related to the additional obligations on fair allocation of resources. Overall, increased gross revenues of EUR 2.9-2.6 billion are accompanied by higher costs, equivalent to up to 13-14 % of the benefits in year 1, thus representing lower cost-effectiveness than option 2. Citizens are expected to face no costs, while direct benefits and wider positive impacts increase with options 2 and 3.

Regarding governance **sub-options A and B**, for both Options 2 and 3, the Commission secretariat (sub-option A) would be less costly than an EU office (sub-option B), since its administrative costs would be streamlined and absorbed into the Commission's structures. Establishing an EU office would incur overhead costs and require a high level of staffing whilst, at the same time, not benefitting from wider expertise available in the Commission. This would make in particular option 2A much more efficient than option 2B (while for options 3A and 3B, the main factor further decreasing their overall efficiency are their significant costs, especially for media companies).

### 7.3 Coherence with other EU policies

All policy options are coherent with the single market objectives of freedom of establishment and freedom to provide services laid down in the TFEU (Articles 49 and 56), with the right to receive and impart information enshrined in the EU Charter of Fundamental Rights (Article 11) and with the objectives of the revised AVMSD, including the independence of media regulators gathered in ERGA. **Options 2 and 3** would further contribute to achieving these objectives with the more constraining measures foreseen and with the creation of the Board. All options are also coherent with the Digital Services Act (DSA) and the Digital Markets Act (DMA). Under options 2 and 3, the Board would be able to monitor media-specific risks, including disinformation spread, on very large online platforms (VLOPs). Options 2 and 3 would complement the DMA by requiring proprietary audience measurement providers to share the methodologies of their measurement systems with third parties, including media companies. Horizontal ownership transparency requirements of the Anti-Money Laundering and EU Company Law Directives would be complemented by media-specific transparency elements included in the three options, aimed in particular at promoting transparency on the business interests and activities of media owners. However, **Option 3** would be less coherent with regard to the measures envisaged in this area, as hard law media-specific ownership requirements and an EU registry under this option would create additional regulatory density vis-à-vis the existing horizontal ownership frameworks[260]. When considering the two governance sub-options, **sub-option A** will assure a smoother interaction between NRAs and the support structure

[260] In particular, the EU registry could be seen as somewhat duplicating the horizontal transparency frameworks that rely on interconnection of national registers instead.

and higher coherence of the measures with other EU interventions (such as those under the DSA and DMA), due to closer coordination and easier access to wider expertise in the Commission.

### 7.4 Proportionality

**Option 1**, while in line with the problems and drivers identified, does not seem to use the most appropriate tools to address them and would not provide the necessary elements to improve the functioning of the single market, at least in the short term. **Options 2 and 3** bring more substantial costs for compliance and enforcement, but these costs are likely to be outweighed by the significant potential benefits to be reaped for media market players, national regulators and citizens. These options are expected to improve the functioning of the internal media market without interfering with national identities or regulatory traditions in the media field, in line with Article 4(2) of the Treaty on European Union (TEU). This is especially true of **option 2** that combines soft and hard law instruments. Moreover, both options are expected to increase the cross-border dimension of the media sector, both in terms of investment and consumption, supporting the creation of a genuine single market for media. National regulatory authorities will benefit from enhanced cooperation to deal with cross-border and EU-wide issues, while (as members of the independent Board) remaining in the lead of enforcing media regulation. European citizens will enjoy higher levels of quality media content and a safer information space providing a plurality of views, without having to incur costs. The additional costs for media market players (and national regulators) stemming from **option 3** reduce partially the proportionality of that option to reach the specific objectives of the initiative. Regarding the two governance options, a positive proportionality effect of **sub-option B** in terms of savings for national regulators is neutralised by its higher cost compared to **sub-option A**.

## 8. Preferred option

Against the above assessment, the preferred option recommended for political adoption is **option 2 sub-option A**, i.e. a legislative instrument and a recommendation to media companies and Member States to foster media independence, underpinned by a governance structure consisting of the Board assisted by a Commission secretariat. This option will meet the general objective of the intervention - to improve the functioning of the internal media market - in an efficient, coherent, proportionate and largely effective way. The financial modelling estimates the net economic benefits, in terms of increased revenues, at EUR 2 885 million for the first year and EUR 2 898.1 million for the following years, above the expected benefits from other options.

In particular, the legislative instrument will establish some core principles/rules for the media market, and empower the Board, the collective body of independent media regulators, to come up with expert views, opinions and collective action, hence preserving national regulatory discretion in the media sector. The principles/rules could be relied upon in front of national courts and the Commission could launch infringements proceedings in particular in case of systemic issues. Moreover, national media authorities could be granted targeted enforcement powers in certain areas of the new legislation, such as the rules on audience measurement. The non-binding element of the option - the recommendation - will guide the regulatory effort on the more sensitive issues (media independence safeguards) or matters where significant progress has been achieved as a result of other EU legal instruments (media ownership transparency). Such a multi-layered and flexible approach will bring the desired benefits while optimising the costs for media market players and public authorities, especially taking into account the lower cost of the Commission secretariat compared to the EU office.

The table below presents how the measures of the preferred option would address the problems identified and what would be their expected outcomes.

*Table 9 Measures and their expected outcomes*

<table>
<tr><td colspan="2">Problem: Obstacles to cross-border activity and investment in the internal media market<br>Objective: Fostering cross-border activity and investment in the internal media market</td></tr>
<tr><td>Measures:<br>Principles/rules for media pluralism measures and media market scrutiny procedures + EU level reaction mechanism (opinions by the Board)</td><td>Expected outcomes:<br>✓ Higher legal certainty for media companies and investors<br>✓ Greater consistency in assessments of media pluralism impacts of market transactions<br>✓ Increased cross border investment in the media market<br>✓ Richer media offer</td></tr>
<tr><td colspan="2">Problem: Insufficient regulatory cooperation and convergence in the internal media market<br>Objective: Increasing regulatory cooperation and convergence in the internal media market</td></tr>
<tr><td>Measures:<br>Mechanism for a structured cooperation between media regulators within the Board and tasks for the Board to assist the Commission in issuing technical/practical guidance in key areas of media law</td><td>Expected outcomes:<br>✓ Improved cooperation in tackling cross-border cases in the media sector<br>✓ Better enforcement of EU media rules, in particular online, thus safer online space<br>✓ More stable/convergent regulatory environment, more level playing field and fairer competition in the internal media market</td></tr>
<tr><td>Collective action by the Board vis-à-vis service providers (including from third countries)</td><td>✓ Safer information space (better protection against ‘rogue’ media players)<br>✓ Higher level of certainty for the media content distributors established in the EU</td></tr>
<tr><td>Mechanism for monitoring media pluralism online by the Board</td><td>✓ More level playing field and fairer competition in the internal media market, more diverse media offer online<br>✓ Fewer risks to media freedom/pluralism online, lower level of disinformation</td></tr>
<tr><td colspan="2">Problem: Interference in free provision of quality media services in the internal market<br>Objective: Facilitating free provision of quality media services in the internal market</td></tr>
<tr><td>Measures:<br>Principles on media independence + common information requirements for media service providers<br>+<br>recommendations to promote editorial independence and media ownership transparency</td><td>Expected outcomes:<br>✓ More level playing field and fairer competition in the internal media market<br>✓ Higher quality and greater diversity of media services, higher trust in media services<br>✓ Better informed business/investment decisions by media companies and other media market investors<br>✓ Higher level of citizens’ media literacy</td></tr>
<tr><td>Independence safeguards for governance of public service media and an obligation of balanced media coverage for PSM</td><td>✓ More independence in management and editorial decisions of public service media<br>✓ Fairer competition in the internal media market<br>✓ Higher quality and greater diversity of content provided by public service media</td></tr>
<tr><td>Safeguards for the integrity of journalists’ sources and communication</td><td>✓ Enhanced protection of journalists from risks of interference<br>✓ Greater diversity of quality content in the internal media market</td></tr>
<tr><td colspan="2">Problem: Opaque and/or unfair allocation of economic resources in the internal media market<br>Objective: Ensuring transparent and fair allocation of economic resources in the internal media market</td></tr>
</table>

| Measures: | Expected outcomes: |
|---|---|
| Principles/rules on transparent, objective and inclusive audience measurement + best practices exchangeby the Board | ✓ Fairer competition between traditional media players and online players for advertising revenue across the internal market, better media content monetisation<br>✓ Better informed decisions on advertising spending by businesses<br>✓ Accurate data for assessment of audience reach and opinion forming power of media by media regulators |
| Principles/rules on transparent/fair allocation of state advertising | ✓ Fairer and more transparent allocation of state advertising resources in the market<br>✓ Broader range of media players benefitting from state advertising, lower risks of competition distortion resulting from misuse of state advertising<br>✓ Lower risks of dependence of certain media outlets on the state and hence of manipulated information |

## 9. REFIT (SIMPLIFICATION AND IMPROVED EFFICIENCY)

REFIT is not applicable to this initiative. No fitness check or evaluation of the existing policy framework were carried out. The current EU policy framework for media is determined by the AVMSD that was last reviewed in 2018 and still needs to be transposed in some Member States. The Directive contains a number of media regulatory measures related to consumer protection and promotion of public policy interests, such as cultural diversity, and does not regulate media pluralism and independence issues, to be addressed by the intervention.

## 10. APPLICATION OF THE 'ONE IN, ONE OUT' APPROACH

The preferred option would entail no costs for citizens, and only negligible adjustment costs for businesses, i.e. overall one-off costs for all companies between EUR 9.4 and 14 million and recurrent annual costs between EUR 5.6 and 14.5 million that will be absorbed into business-as-usual costs[261]. Most of the measures considered under the preferred option would result in obligations on Member States or their authorities. Only a few measures contemplated under the preferred option may arguably entail some new burdens in the form of negligible costs for media market players.

Media service providers already keep, provide to the national authorities and make public media ownership information as a result of legal obligations stemming from the laws transposing the AML Directive and the AVMSD, as well as national rules on business registers. Companies that decide to implement the recommendation to take (additional) actions to ensure availability of media ownership information, including on the interests and activities of media owners in other media or non-media economic sectors, could face marginal additional costs only.

The (voluntary) deployment of internal independence safeguards and adherence to self-regulatory instruments by SMEs following the recommendation would also entail marginal additional costs only that will be absorbed into the business-as-usual costs.

The initiative is not expected to impose burdens on the providers of traditional audience measurement systems. The preferred option will oblige providers of proprietary audience measurement systems, namely online players, to disclose relevant information on methodologies of their audience measurement systems to third parties so that results of such systems can be verified. In

[261] For example, recurrent costs would, on average, range between EUR 257 and 670 per small and medium sized company.

view of wider transparency obligations under the DMA, such specific additional disclosure obligations are not expected to generate significant new burdens, and the relevant costs are expected to be absorbed into the business-as-usual costs.

Monitoring media-specific risks on very large online platforms by the Board is expected to lead to heightened scrutiny of such risks and measures to mitigate them by the platforms. In view of wider risk assessment and mitigation obligations for very large online platforms under the DSA, such monitoring is not expected to generate significant new burdens, if any at all, and the relevant costs are expected to be absorbed into the business-as-usual costs.

Since there are no significant costs for citizens or businesses associated to the measures considered under the preferred option, there is no need to apply the one in, one out approach.

## 11. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

Following the adoption of the legislative instrument, a period between three and six months will be given to Member States to adapt their national frameworks, depending on the relevant provisions. Subsequently, its effectiveness will be assessed by the Commission four years after the entry into force of the new rules and every four years thereafter. This will be a part of the Commission's obligation to monitor and report on the implementation to the Council, the European Parliament and the European Economic and Social Committee.

The evaluation will be based on a robust system for data collection and monitoring, which is in itself foreseen in the legislative instrument under the preferred option. This includes both the reporting obligations to the Board by Member States (for instance, in relation to fair and transparent allocation of state advertising), as well as the new resilience mechanism. This mechanism would take the form of an upgraded and more systematic Media Pluralism Monitor, integrating the internal market dimension and based on specific key performance indicators. It would provide a detailed analysis of risks to the resilience of the internal media market. It would entail both a granular analysis of the situation in the Member States and an overview of the situation in the internal market as a whole.

The recommendation under the preferred option will envisage a specific monitoring scheme to assess its uptake. Member States will need to submit to the Commission all relevant information regarding actions taken on media ownership transparency.  Other areas covered by the recommendation will be included in the above resilience mechanism. The table below summarises tentative indicators proposed to monitor the achievement of the specific objectives of the intervention, to be further developed, including as part of the resilience mechanism.

*Table 10 Summary of monitoring actions and indicators*

| Specific objective | Proposed indicators and expected results | Baseline | Dara source |
|---|---|---|---|
| ***Fostering cross-border activity and investment in the internal media market*** | **Indicator** - number and value of cross-border investments in the EU27 Member States' media markets (annual)<br>**Expected result** - gradual increase in cross-border investments' number and value | Investments 2013-2021 by investors:<br>- EU: 478 transactions<br>- non-EU: 389 transactions<br>Value of 60% of transactions: EUR 84 billion | Eurostat<br>ORBIS or similar database<br>Resilience mechanism<br>Data by the Board<br>Stakeholders' reports |

| | | | |
|---|---|---|---|
| | **Indicator** - number of opinions by the Board on national media market scrutiny decisions taken into account by the relevant national authority (annual)<br>**Expected result** – share of opinions by the Board taken into account by Member States | n/a | Resilience mechanism<br>Data provided by the Board and Member States |
| ***Increasing regulatory cooperation and convergence in the internal media market*** | **Indicator** - share of cases solved by the Board under the cooperation mechanism and the mutual assistance mechanism (annual)<br>**Expected result** - share of cases solved by the Board | n/a | Data provided by the Board<br>Reports of the Digital Services Board |
| | **Indicator** - number of guidance documents /reports issued by the Commission and/or the Board, as the case may be, in key regulatory areas for media pluralism (each 3 years)<br>**Expected result** – increased number of areas pertinent to media pluralism covered by EU level guidance/reports | n/a | Data provided by the Board |
| ***Facilitating free provision of quality media services in the internal market*** | **Indicator** - risk scores (annual) on:<br>- political independence of media<br>- editorial autonomy<br>- independence of public service media governance<br>- commercial & owner influence over editorial content<br>- protection of journalistic sources<br>- transparency of media ownership<br>**Expected result** - gradual reduction in risk scores | Respective 2021 MPM risk scores[262]:<br>- 54%<br>- 55%<br>- 50%<br>- 60%<br>- 16%<br>- 58% | Resilience mechanism<br>Council of Europe platform to promote the protection of journalism and safety of journalists<br>Media Freedom Mapping database<br>Stakeholders' reports |
| | **Indicator** - number of Member States with media self-regulatory bodies (annual)<br>**Expected result** - gradual increase in the number of Member States with self-regulatory bodies | 16 | Resilience mechanism<br>Stakeholders' reports e.g. the Alliance of Independent Press Councils |

[262] The MPM risk score for the EU is influenced by the following aspects:
- political independence of media: the existence and effectiveness of regulatory safeguards against political control over media outlets and news agencies;
- editorial autonomy: the existence and effectiveness of self-regulation in ensuring editorial independence;
- independence of public service media governance and funding: the risks which stem from appointment procedures for top management positions in the public service media and the risks arising from the PSM funding mechanisms and procedures;
- commercial & owner influence over editorial content: the mechanisms granting social protection to journalists in cases where ownership and/or the editorial line change, rules and/or self-regulation on the appointment and dismissal of editors-in-chief, laws prohibiting advertorials, regulations stipulating the obligation of journalists and/or media outlets to not be influenced by commercial interests and, more generally, whether media are governed by practices through which commercial interests dictate editorial decisions online and offline;
- protection of journalistic sources: the existence and levels of the implementation of rules;
- transparency of media ownership: the existence and effectiveness of media-specific regulatory safeguards relating to disclosure of media ownership, transparency of beneficial ownership, disclosure of media ownership online and transparency of beneficial ownership online.

| | | | |
|---|---|---|---|
| | **Indicator** - citizens' perceived trust in media (biannual)<br>**Expected result** - gradual increase in trust in media | Percentage of respondents who trust the following media:<br>58%: radio<br>51%: television<br>51%: press<br>35%: internet[263] | Eurobarometer or other similar surveys |
| ***Ensuring transparent and fair allocation of economic resources in the internal media market*** | **Indicator** – number of cases related to incompliance with the principles for audience measurement systems (annual)<br>**Expected result** - gradual decrease of audience measurement systems incompliant with the new EU framework | Nielsen[264]: 61% of marketers agree to have access to the quality audience data needed to get the most of their media budget | Data provided by the Board<br>EAO reports<br>Stakeholders reports |
| | **Indicator** - risk score (annual) on the distribution of state advertising<br>**Expected result** - gradual reduction in the risk score | 2021 MPM risk score on state advertising[265]: 70% | Resilience mechanism<br>Data provided by Member States |

[263] Standard Eurobarometer 94: Media use in the EU, 2021. p. 27.
[264] Figure indicated for EMEA by Nielsen, Global Annual Marketing Report 2022, 12 April 2022.
[265] The MPM risk score for the EU on distribution of state advertising is a sub-category of an indicator on state regulation of resources and support to the media sector. It takes into account the existence (or lack thereof) of legislation ensuring fair and transparent rules regarding the distribution criteria, the amounts allocated and the beneficiaries of state advertising, the effectiveness and shortcomings of such rules and whether problems exist in the market.

## Glossary

| Term or acronym | Meaning or definition |
|---|---|
| Audience measurement | Audience measurement is the process of collecting, reporting and interpreting data about the number and characteristics of individuals using media services. It is crucial for companies operating in the internal media market, allowing them to understand market dynamics, calculate and foresee advertising prices and plan content production in accordance with the preferences of the audiences. |
| AVMSD | Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), as amended by Directive 2018/1808 of the European Parliament and of the Council of 14 November 2018. |
| CJEU | Court of Justice of the European Union |
| Deontological standards | Principles of ethics and good practice for journalistic work often included in a self-regulatory code. While various codes may have some differences, most share common elements such as the principles of truthfulness, objectivity and accuracy. |
| DSA | 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 [COM/2020/825 final] |
| DMA | Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act) [COM/2020/842 final] |
| Editorial independence | Freedom of editors to make decisions without public or private interference (e.g. by politicians or owners/management of the media in question). |
| ERGA | European Regulators Group for Audiovisual Services, which brings together heads or high-level representatives of national independent regulatory bodies in the field of audiovisual services, to advise the Commission on the implementation of the EU's Audiovisual Media Services Directive. |
| EAO | European Audiovisual Observatory, which focuses on collection, preparation and distribution of economic and legal information on the film, linear TV and VOD sectors in Europe. |
| Media pluralism | Media pluralism encompasses a plurality of voices or opinions expressed and issues analysed in the media (diversity in the range of content available – internal pluralism), and a plurality of media outlets and their types - print, radio, television or online - (diversity of ownership and sources – external pluralism). |
| Media service provider | The natural or legal person who has editorial responsibility for the choice of the content of the media service and determines the manner in which it is organised. |
| Online platforms | Providers of hosting services which, at the request of a recipient of the service, stores and disseminates information to the public. |

| | |
|---|---|
| PSM | Public service media, i.e. media service providers entrusted with a public service mandate. |
| SME | Small and medium-sized enterprise, i.e. an enterprise that satisfies the criteria laid down in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.05.2003, p. 36): employs fewer than 250 persons, has an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million. |
| State advertising | Any advertising funds for media by national, federal, regional and local governments, regulatory authorities or bodies, fully or partially state-owned enterprises and other state-controlled entities, functioning at national, federal and local level. |
| Very large online platforms | Online platforms with a significant societal and economic impact by covering, among their monthly users, at least 10% of the EU population (approximately 45 million users). |