POSITION PAPER

VAUNET
German Media Association

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

Date January 16, 2023

A. Preliminary remarks

VAUNET is the umbrella organisation of private audio and audiovisual media in Germany. The diverse business areas of the approximately 160 members include TV, radio, web and streaming offerings. The trade association aims to create acceptance for the political and economic concerns of the audio and audiovisual media on a national and European level and to raise awareness of the great socio-political and cultural importance of the industry in the digital age.

VAUNET supports the fundamental objective of the draft European Media Freedom Act (EMFA) to improve the conditions for the media to contribute to the formation of public opinion in Europe. Unhindered access to professionally and independently - in particular, free from state influence - journalistically and editorially produced information and content is a core prerequisite for the formation of opinion for all European citizens.

Strengthening freedom of opinion and media freedom necessarily also means strengthening the economic conditions of media companies. These contribute significantly to a diverse media landscape with content that supports the formation of opinion, such as news and reports. Therefore, the EMFA would be the right place for improvements to strengthen the economic conditions of media service providers. Approaches to establish a level playing field with large non-European tech-competitors and a media impact assessment of new regulations that have a direct or indirect monetary impact could contribute to this. This concerns effects such as additional complex supervisory review and administrative procedures, increasing reporting and archiving obligations, but also legal uncertainties. The latter arise, for example, in the case of unclear relationships of new legal acts to existing law.

In the area of tension between freedom of expression and freedom of the media on the one hand and a regulatory framework safeguarding these freedoms on the other, the criterion of proportionality and especially the aspect of necessity are of significant importance. Any

regulation that impairs the freedom of media companies to operate as part of the cultural and creative industries must be critically reviewed.

It must be considered that the European Treaties deliberately do not provide legal grounds for the regulation of media pluralism at the EU institutions. Against the background of the diversity of the linguistic and cultural areas in the Member States and regions of Europe - both aspects were also emphasised by the Council of the European Union in its conclusions on securing a free and pluralistic media system (2020/C 422/08) - the motto of the European Union "United in diversity" applies in a very special way to the European media landscape, especially to local and regional, non-cross-border media such as local television and radio. In this European media landscape, it is therefore not possible to conclude from different regulations and procedures that there is a "fragmentation of the internal market" in need of regulation, but they reflect the specifics of the Member States.

In this respect, VAUNET refers to the resolution of the German Bundesrat (resolution of 25 November 2022 - Drs. 514/22(B) -), in which the Bundesrat, in accordance with Art. 6 of Protocol (No. 2) to the Treaty on the Functioning of the European Union on the application of the principles of subsidiarity and proportionality, states that and why, in its opinion, the EMFA is not compatible with the principle of subsidiarity.
The so-called subsidiarity complaint, which has meanwhile been joined by other parliaments, is comprehended by VAUNET. Safeguarding the media pluralism is within the competence of the Member States. The adherence to a clear division of competences does not change the fact that the objective of diverse, non-state and independent media for the whole of Europe, which is pursued with the EMFA, is shared without reservation. For this, however, a more balanced approach must be chosen, considering the principles asserted, or individual topics with a clear reference to pluralism must be removed from the EMFA.
The legal instrument of a regulation chosen by the European Commission can only be considered in a few cases in the media sector. It is necessary that there is a proven need for a Europe-wide regulation, that cultural specifics at Member State level must take a back seat, that a solution via a directive would be impossible and that the advantage of Europe-wide harmonisation prevails. In VAUNET's view, these prerequisites are not met for parts of the EMFA where the focus is on ensuring pluralism, which is not changed by the

possibility granted to the Member States to enact more detailed provisions on parts of the EMFA (cf. Art. 1(3) EMFA).

In anticipation of this, VAUNET calls on the European Parliament and the Council of the European Union to carefully examine the necessity and the effects of the proposed regulations on the media regulations of the Member States in the further procedure. In case of doubt, a minimum harmonisation by a directive is the more suitable instrument for the media sector for regulatory aspects that ensure pluralism.

B. Summary / main points for revision

For VAUNET, it is crucial that the pursuit of the important and shared objectives of the EMFA is done in a proportionate way that neither deprives media service providers of the flexibility they urgently need for their task, nor hinders growth and further development - also across borders - in already highly competitive markets, nor challenges established regulations in demonstrably well-functioning national media landscapes without intention and necessity.

From VAUNET's point of view, the following points are particularly important for the upcoming work in the legislative process.

1. Art. 21 EMFA - Preserving economic development opportunities

The establishment of a complex European media concentration law, as envisaged in Art. 21 EMFA, should be avoided. In addition to the difficulty of delimiting competences between the EU's responsibility for the internal market and the cultural sovereignty of the member states, in particular for regional and local media pluralism, there is the threat of an additional regulatory construct, of which it is not clear how it relates to the member states' rules on safeguarding media pluralism. The regime envisaged here combines objectives and criteria from the protection of pluralism and anti-trust law with unclear effects on the internal market and without any prospect of successfully addressing any problems that may exist in these areas in some Member States. In principle, the following applies: The often necessary consolidation of media companies must always remain possible, just like economic and journalistic growth, in order to economically secure media companies and thus their contribution to media pluralism.

Moreover, the proposal is only aimed at media companies with journalistic-editorial services. In contrast, monopoly-like big-tech platforms operating in the same advertising markets are not subject to such specific measures. This threatens, in addition to legal uncertainty caused by additional layers of regulation at the EU level, further competitive disadvantages - at least in the form of delays due to additional supervisory procedures - for the already more heavily regulated media sector, which could lead to restrictions in media pluralism.

2. Art. 6 EMFA - Editorial independence is a matter of course

The requirements of the EMFA in Art. 6 para. 2 EMFA in conjunction with Recital 20 and the associated recommendations of the European Commission interfere disproportionately with the freedoms of media owners without justification. The preservation of editorial independence is already in the interest and in the own intrinsic as well as economic motivation of media companies. The restriction could have a negative impact on the attractiveness of media companies as the subject of shareholding changes and market movements. Art. 6 (2) EMFA in conjunction with Recital 20 as well as the associated recommendations of the European Commission could thus become an internal market barrier that contradicts the legal basis chosen by the European Commission (Art. 114 TFEU). Therefore, and in order to protect the economic freedom of the owners of media companies, the provision in Art. 6 EMFA and the associated Recital 20 should be deleted at the very least, however, Art. 6 para. 2 EMFA and Recital 20 must be deleted from the EMFA.

3. Art. 9-12 EMFA - Independent media need independent supervision

The independence of supervision of media organisations and their activities within the framework of strict regulation at European, Member State and regional level is a core prerequisite for the exercise and development of the media freedoms protected by the Charter of Fundamental Rights of the European Union, the European Treaties and the constitutions of the Member States. Only independently supervised media can operate independently themselves. This applies to all state institutions, the European Commission and equally to the Europe-wide cooperation of national regulatory bodies and must be consistently taken into account in the EMFA as a whole, especially in Art. 9-16. Against this background, the envisaged role of the European Commission in particular must be viewed critically.

4. Art. 23 EMFA – Configure audience measurement as a level playing field

The EMFA fails to achieve the welcomed goal set out in the recitals of providing media market players with access to objective audience data from transparent and verifiable audience measurement systems. Access to data is necessary for content providers for their further development and in competition with big-tech platforms and must be established in the EMFA.

5. Art. 17 EMFA - Effective protection of journalistic-editorial content

The necessary protection of journalistic content on large tech platforms is not sufficiently implemented in the EMFA. It is crucial for effective protection that the notification to content providers provided for in the draft is expanded in such a way that the dialogue is conducted in a solution-oriented manner in each individual case and *before* the restriction of dissemination or deletion.

6. Art. 19 EMFA - User autonomy must respect national provisions

VAUNET supports the right of personalisation and individualisation in the use of audio and audiovisual media. VAUNET welcomes the fact that national provisions on discoverability, e.g., for broadcasting and broadcast-like telemedia, including their exceptions, are to remain unaffected.

7. Art. 3 EMFA - Rights of recipients of media services

With regard to the rights of recipients of media services provided for in Art. 3 EMFA, it should be made clear that no individual claim for pluralism of news and information is to be established. The safeguarding of pluralism is subject to the broad prerogative of national legislators, who must take media freedoms into account.

8. Art. 5 EMFA - Public service media providers

With reference to the regulations proposed in Art. 5 EMFA, the EMFA must make it clear that the proven regulations and solutions reached within European state aid law remain unaffected. The secondary law regulation of funding must neither lead to an overcompensation of the statutory mission nor to an expansion of this mandate.

9. Art. 24 EMFA - Extend transparency of state advertising expenditure

The regulation on transparency in state advertising expenditure must be extended to all media providers receiving state advertising expenditure, explicitly also to online platforms, and to any form of state funding. A restriction to journalistically-editorially produced media services and state advertising expenditure is not sufficient to create transparency in this area.

C. In detail:

1. The procedure on mergers in the media sector could have a negative impact on the internal market - Art. 21 EMFA

By regulating the assessment of mergers in the media market which could have a significant impact on media pluralism and editorial independence, the European Commission intends to close the alleged loophole that such effects could not be considered in the context of antitrust procedures at European level. In doing so, it reverts to its internal market competence, which it ultimately justifies via aspects of safeguarding media pluralism.

a. Preliminary remark

Regulation that places additional restrictions on acquisitions within the EU would not support media pluralism, but rather hinder it. Consolidation of media companies is often necessary to counter economic downturns, to preserve editorial offices and thus to preserve media pluralism. Merger regulations should also not ignore the fact that additional media-specific economic rules further deepen regulatory asymmetries between media companies and big-tech platforms competing for the same advertisers. What is needed instead is a clear step towards a level playing field.

b. Procedural design

For the assessment of mergers, the Member States are to be obliged pursuant to Art. 21(1) MFA-E to establish transparent, objective, proportionate and non-discriminatory procedures. In view of Art. 288 TFEU, this approach argues in favour of structuring the EMFA as a directive instead of a regulation also regarding such a regulation.

The rules to be adopted by the Member States should provide for the obligation to notify mergers that could potentially have a significant impact on media pluralism and editorial independence. The assessment itself should consider, for example, the impact of a proposed merger on the formation of public opinion and the diversity of media players in the market, as well as the interests of the parties in relation to (and their links with) other media or non-media companies. The same applies to ensuring the independence of individual editorial decisions and whether the parties would remain economically viable without the merger and whether there are alternatives to ensure economic viability.

For this purpose, the Commission may issue guidelines to be considered in the assessment by the national regulatory authorities. Furthermore, in the event of a potential impairment of the functioning of the internal market, a prior consultation of the new European Media Services Board is required, whose opinion must be taken into account as much as possible. If this is not the case, this deviation must be justified. In addition, the Commission may issue its own opinion on merger matters.

c. Necessity of the regulation

Many Member States already have well-functioning rules to prevent dominant power on opinion forming or special merger control rules which consider the - partly also national - specificities of media markets. In this respect, the necessity of an additional Europe-wide regulation is questionable and, in any case, the relationship to the existing member state regulations urgently needs to be clearly regulated.

In Germany, the Interstate Media Treaty (Medienstaatsvertrag, MStV) provides for the control of changes in shareholdings for television companies with the media concentration law (§§ 60 f. MStV). In doing so, it ties in with dominant power on opinion forming arising at the companies and thus with a criterion that focuses on the functioning of opinion-forming processes. It is planned to establish a convergent and no longer exclusively television-concentrated media concentration law. With Art. 21 EMFA, an additional supervisory procedure with considerable procedural effort for the national regulatory authorities and the regulated companies would possibly be added to the procedures provided for in national regulations. Thus, the necessity of the proposal in this point is more than questionable.

d. Thresholds

The proposal leaves open the design of the thresholds for the applicability of the regulations (to be enacted). It remains unclear when potential effects of mergers in the media market on media pluralism and editorial independence are to be considered *significant*. Moreover, the definition of Art. 2 No. 13 EMFA leads to the fact that every merger within the meaning of Art. 3 Council Regulation (EC) No. 139/2004 (ECMR), in which

a media service provider is involved, is defined as media market concentration without examining actual concentration phenomena.
With the reservation of the issuance of mandatory guidelines to be implemented by the European Commission, the EMFA shifts an essential part, which is also necessary to assess the actual effects of the proposal, from the legislative to the executive. Due to its fundamental importance, however, it is precisely the scope of application that requires a decision by the legislative bodies. A determination made in this way would have to take better account of the correlation between market structure and media pluralism. Contrary to the assumption of the European Commission on which Rec. 44 EMFA is apparently based, it is not possible - apart from extreme market situations - to infer a diverse media landscape from a large number of media service providers in the market, nor is this possible the other way round.
A purposeful and proportionate approach would have to strike a balance between media pluralism and opinion diversity on the one hand and the promotion of the internal market on the other.

e. Safeguards to protect editorial independence

The review criterion provided for in Art. 21 (2) lit. a) EMFA of the intended safeguards for editorial independence, including the effects of the merger on the functioning of the editorial teams and the existence of measures by the media service providers to ensure the independence of individual editorial decisions, is intended to prevent "undue influence" by the future owner, according to Rec. 44 EMFA.

It remains open when an influence is to be considered "undue", so that the regulation is likely to cause considerable legal uncertainty. Since the obligation to establish corresponding protective measures pursuant to Art. 6 (2) EMFA also exists outside of merger projects, it can be assumed that the effect also extends beyond a merger. From VAUNET's point of view, the linking of Art. 21 and Art. 6 (2) EMFA must not lead to a spiral of further and further restrictions on entrepreneurial freedom and the principle of self-organisation of media companies. However, this would be the case if further measures had to be taken with each merger.

Changes in shareholdings and mergers in general desired in the internal market would also be less likely if detailed statements on the future internal organisation had to be made prior to the implementation of such a merger - without the certainty of being allowed to implement the merger.

f. Economic viability

In Art. 21(2) EMFA, the consideration of the economic viability of the companies involved in a notified merger ranks equally with the other criteria to be included in the assessment. The regulatory objective remains unclear. If the internal market is to be protected, a functioning internal market also includes the possibility of company acquisitions apart from restructuring mergers. However, the wording in the EMFA may allow the conclusion that a given economic viability of the companies involved could have a negative impact on the assessment of the proposed merger. Such a provision would prevent desired market movements in the internal market, since in this case only risky (and thus unattractive) investments would be conceivable. Justifying mergers that do not meet the criteria of Art. 21(2) lit. a) and b) EMFA via Art. 21(2) lit. c) EMFA would probably correspond to the actual intention of the proposal. This would require a clear clarification in the text of the regulation.

It should be noted that mergers of media companies are not automatically accompanied by a reduction in media pluralism. On the contrary, the opening of further circles of recipients, which as a rule differ from those reached by one's own offerings, is often precisely the focus of an economically sensible change in shareholdings. Thus, the provision potentially stands in the way of market movements that do not pose a threat to media pluralism. This can be prevented by a rewording, oriented towards a demand-oriented market definition and clearly taking into account the actual pluralism of media and opinions.

As a result, the draft regulation on the assessment of mergers in the media market provides for a procedure that is questionable in terms of competence and instruments and potentially counteracts the goal of realising the internal market. Its effectiveness is questionable, while at the same time it entails high compliance costs and, due to a lack of sufficient concretisation, carries the risk of legal uncertainty.

2. Editorial independence is a guarantee of success, not a regulatory goal - Art. 6 (2) EMFA

Art. 6 (2) EMFA obliges media service providers who provide news and content for current information to take measures to ensure the independence of individual editorial decisions and to disclose potential conflicts of interest. Recital 20 EMFA concretises this to the effect that editors, after having agreed once with the owners on an overall editorial line, should be free to make individual decisions within the scope of their professional activity.

The protection of the freedom of broadcasting and the freedom of the press deliberately encompasses both the institutional activities of media service providers and the individual activities of media owners and journalistic-editorial staff. A split brings with it the danger of weakening the common commitment to democratically relevant communication processes based on a relationship of trust.

Editorial independence is a prerequisite for high-quality reporting and thus a matter of course for successful information media services. If this were not guaranteed, it would not be possible for media service providers to attract professional journalists to work in the editorial offices. Moreover, users would not accept dependent and thus potentially biased information and news. A regulatory requirement that interferes that strongly with the economic and media freedoms and editorial responsibility of media owners is therefore not necessary in this area. It would even be a hindrance, since in this way the investment in a product that is removed from one's own ability to factor in does not seem very attractive. An owner-side engagement with the media product may also be necessary in exceptional cases - for example, for reasons of liability - so that no permanent damage occurs with any consequences for media pluralism.
Moreover, it should be pointed out that the legal framework of private broadcasting only provides for an external plurality in the overall broadcasting market, i.e., the definition and also modification of different editorial orientations is inherent in the system.

If one also takes the European Commission's understanding of the relationship between owners of media services and their journalistic employees as expressed in Recital 20 EMFA

as a basis, Art. 6 (2) EMFA can develop into an internal market barrier and counteract the pluralism objective of the EMFA: With Art. 114 TFEU as the legal basis, the EMFA sees media primarily as economic goods in the internal market. If, however, the fundamental orientation of information media can only be determined by means of an agreement with the journalistic staff and any change of orientation - if such a change is to be possible at all in view of Recital 20EMFA - may only take place by consensus, this may hinder changes in shareholding relationships. In addition, there is a risk of restricting media pluralism if consensus cannot be reached on economically necessary changes to the overall editorial line - for example, in response to changes in the demand on the recipient's side.

3. Strengthen media freedom, make supervision consistently non-state-affiliated - Art. 4 (2), 9-12 EMFA

a. Preservation of editorial freedom

With Art. 4 (2) EMFA, the Member States are obliged to respect the *actual editorial freedom* of media service providers. This is intended to prevent, among other things, direct or indirect influence on editorial strategies and decisions of media service providers or the attempt to exert such influence.

A law that is supposed to protect the freedom of the media in its very name must go further in this aspect. It is necessary to address the whole scope of guaranteed media freedoms covered by Art. 11 (2) of the Basic Law and Art. 10 of the ECHR. This means not only subjective rights, but also the guarantee of a legal framework, that provides for conditions for the diversity of opinions and media pluralism. Moreover, the coverage of only the Member State level is not sufficient. Particularly in view of the strong role that the European Commission grants itself in the EMFA in media supervision (see below), the protection against influence on institutions of the European Union must also be extended in the abstract guarantee in Art. 4 (2) EMFA. This applies even more in view of the blanket declaration of no objection regarding the competences of the Commission in Art. 9 sentence 2 EMFA.

b. European Board for Media Services

VAUNET supports the fundamental statement of the European Commission in Recital 22 EMFA that independent regulatory authorities located in the Member States are crucial for

the implementation of a regulatory framework. This framework must, moreover, in addition to ensuring the fulfilment of the public task of media companies, also guarantee their refinanceability.

Compared to the Audiovisual Media Services Directive, however, the EMFA shows clearly more pronounced possibilities for the European Commission to influence the board's work. The European Commission must be consulted, or even reach agreement, in accordance with Art. 10 (5) and (8), precisely with regard to the preparation of the work programme and the rules of procedure of the board. This gives an institution that is clearly part of the state sphere extensive possibilities of influence that directly affect the core of the board's work and are not compatible with the principle of its independent and non-state-affiliated position. The same applies to the necessity of consent when inviting and hearing external experts, Art. 10 (6) EMFA. Such a requirement can directly influence the views and opinions available to the board.
A board that cannot decide itself and independently on its work content, its working methods and the external expertise that may be required to fulfil its tasks can hardly be considered independent.

The organisational location of the secretary`s office of the board at the European Commission (Art. 11 No. 1 EMFA) also reinforces these concerns. However, they are clearly intensified by the envisaged responsibility of the secretary`s office to support the board in the *performance of its tasks* (Art. 11 No. 3 EMFA). Thus, the secretary`s office does not only take over organisational tasks. If the staff of the European Commission, who are dependent on instructions, carry out preparatory work for decisions or draw up draft decisions, there are considerable possibilities of exerting political influence.
In addition to these organisational provisions, the many different ways in which the European Commission is closely involved in the board's work (cf. task descriptions according to Art. 12 EMFA) are particularly important. The board may perform certain tasks only at the request of the European Commission ("upon request"), others only "in agreement" with it. Independence includes not only the substantive work, but also and especially the independent selection of subjects.

Therefore, from VAUNET's point of view, the activities of the board should be completely protected from political influence and the influence of the European Commission. In the EMFA, all references to the European Commission should be deleted with regard to the activities of the board itself and the execution of its tasks. At most, a support of the board strictly limited to organisational tasks and excluding any influence on the work itself is compatible with the principle of a non-state-affiliated and independent supervision of media service providers.

4. Independent audience measurement is a refinancing requirement - Art. 23 EMFA

For the area of audience measurement, the EMFA in Recital 45 correctly recognises its importance for the refinancing of private media services as well as the problematic information asymmetries between large platform providers and media service providers. However, with Art. 23 EMFA the draft fails to achieve the goal stated in the recitals of providing media market players with access to objective audience data from transparent, unbiased and verifiable audience measurement systems with regard to this competitive relationship.

Increasingly, journalistic content from media service providers is also consumed via large tech-platforms. Thus, monopoly-like platform providers profit from third-party content and an asymmetrical distribution of the benefits that their playout generates. Access to data generated using their own content is necessary for content providers to develop further.

If Art. 23 (2) EMFA only prescribes the provision of information on the methodology used by these platform providers, who regularly maintain their own measurement systems, then it does not include the data itself by means of audience measurement, which is also deemed necessary by the EMFA itself. Therefore, Art. 23 MFG-E should be extended in its scope of application to online platforms, especially VLOPs, and the publication of the corresponding media usage data should be anchored.

Furthermore, the definition of audience measurement in Art. 2 No. 14 EMFA only covers data on the number and characteristics of users of media services. However, a classification in the respective advertising environment is also required. The EMFA leaves

open the question of the comparability of data collected by Joint Industry Committees (JICs) and platform operators. This circumstance could be remedied by the participation of the dominant platforms in the existing cross-market JIC models. This is an imperative step in the interest of a level playing field, which is a central building block of media pluralism.

Moreover, the protection of trade secrets, as provided for in Art. 23 Para. 2 EMFA should be clearly related to all media service providers. The present draft could be misunderstood to mean that only the trade secrets of providers of their own audience measurement systems are protected.

5. Effectively protect journalistically produced content - Art. 17 EMFA

From the European Commission's point of view, the EMFA is to be used to complement the horizontally designed Digital Services Act (DSA) in a sector-specific way. From VAUNET's point of view, this announcement by the Commission has not yet been sufficiently implemented regarding the necessary protection of journalistic content on large tech platforms.

Content from service providers who exercise editorial responsibility, comply with European and national law and journalistic and editorial principles, and are subject to subsequent media supervision, should not be subject to an additional ex-ante "supervision" by global commercial online platforms.

From VAUNET's point of view, it is important that measures taken by platform providers that restrict media content and its availability are not only subject to an extremely vaguely formulated prior notification obligation, as provided for in Art. 17 EMFA. Such a requirement would only allow for earlier recourse to the courts. It is crucial for effective protection in the sense of the contribution to freedom of expression that this content represents in accordance with the mandate of media that the notification provided for in Art. 17 (2) EMFA is extended in such a way that the dialogue provided for in Art. 17 (4) EMFA after the issue and only for repeated cases is conducted in each individual case and *before* the restriction of dissemination or deletion in a solution-oriented manner. At best, a decision by an independent institution should always be awaited.

Via the EMFA, it must therefore be ensured that

- content of professional media providers is not restricted or hindered in dissemination, access and findability without their consent,
- professional media providers are informed immediately of any doubts about the legality of their contributions or their compatibility with general terms and conditions of the platform providers,
- the parties concerned reach a joint decision, alternatively independent bodies can decide on the case, and
- the content in question remains available on the platform in any case until a decision is made.

The EMFA sets the right direction here but must be significantly strengthened in the legislative work by the co-legislators in order to compensate for the protection gaps in the DSA to this effect, which ultimately enable content control by very large online platforms. In addition, VAUNET believes that the provision should cover all online platforms regardless of their number of users. In the audio sector, for example, there are platforms that are essential for the market but probably do not qualify as very large online platforms according to the DSA.

Classical media offerings and tech-platforms are in a competitive relationship on the advertising market. The media offerings, which are strongly regulated on several levels, are contrasted by comparatively weakly regulated monopoly-like platforms. It is therefore even more important to prevent a one-sided determination of the availability of socially desired contributions to public and individual opinion-forming.

6. Individual adaptation of the audiovisual media offer - Art. 19 EMFA

Users are to be granted the right to modify and individualise devices and user interfaces via Art. 19 EMFA. This right finds its limit where the Member States have taken national measures to implement Art. 7a AVMSD.

Within the framework of user autonomy, VAUNET supports the right to personalisation and individualisation in the use of audiovisual media, understood as audio and audiovisual media. VAUNET welcomes the fact that national provisions on findability, e.g., for broadcasting (TV and radio[1]) and telemedia-like broadcasting, including their exceptions, are to remain unaffected, as this also prevents these important provisions from being undermined.

7. Rights of recipients of media services - Art. 3 EMFA

According to Art. 3 EMFA, the recipients of media services have the right to receive a variety of news and content for current information, created with respect for the editorial freedom of the media service providers. According to the text, this is intended to serve public discourse.

Notwithstanding the fact that media fulfil their social function in the way described, the regulation raises questions due to its vagueness. For example, it seems unclear whether it establishes an individual claim to pluralism of news and information and against whom this should be directed (e.g., against media service providers or against the Member States). Also, in markets for private broadcasters structured according to the principle of external plurality, the cause of any shortages does not usually lie with the individual media service provider, who can thus hardly be the addressee of the claim. Should Member States be confronted with a claim asserted based on Art. 3 EMFA, any decision would have to consider the legislative prerogative in the design of the legal framework for the media landscape on the one hand and the possibility of influencing market activities, i.e., the activities of individual media service providers, which is limited not least by media freedoms.

8. Public service media providers - Art. 5 EMFA

Public and private media providers together, understood as a dual system stand for a diverse and pluralistic media landscape. The private providers contribute comprehensively to this plurality with other starting points and framework conditions. Public and private media are united by the EMFA's intended objective of enabling journalistic, editorial and value-oriented

[1] Findability on new devices such as smart speakers or dashboards in cars is also essential for radio.

media offerings that promote a democratic, diverse and inclusive, sustainable society and form a reliable professional counterweight to disinformation online/fake news and hate speech. Both pillars need the necessary leeway to accomplish their tasks.

From VAUNET's point of view, Art. 5 EMFA is essentially within the freedoms and guarantees ensured by the German constitution. However, the EMFA must clarify that the proven regulations and solutions adopted within European state aid law remain unaffected. Furthermore, the first secondary law regulation of the financing of public service media in Art. 5 (3) EMFA - here, too, there are concerns about the preservation of the order of competences in view of the Amsterdam Protocol - must neither lead to an overcompensation of the legal mission nor to an expansion of this mission.

9. Transparency of state advertising expenditure - Art. 24 EMFA

VAUNET welcomes the creation of transparency in the area of state advertising expenditure. However, it seems questionable once again why the regulation only refers to journalistically and editorially produced media services. An extension to all media providers receiving state advertising expenditure, explicitly also online platforms, seems urgently needed. It should also be discussed whether the regulation must be limited to state advertising expenditure or should rather be extended to any form of state funding.