

Opinion

to the EU COM White Paper “How to master Europe’s digital infrastructure needs?” on the future of electronic communications infrastructures in the European Union

Date June 28, 2024

1. General Remarks

VAUNET - Verband Privater Medien e. V. appreciates the opportunity to comment on the EU Commission’s White Paper and respectfully requests that the following considerations be taken into account in the further consultation process.

VAUNET is the German umbrella organization of private media providers. It represents over 160 companies that provide private journalistic and editorial radio, television and streaming services and distribute them via a variety of technical channels. With their offerings, its members enrich Europe’s media landscape through diversity, creativity and innovation.

A robust and resilient digital infrastructure is essential to reliably supply users with high-quality and diverse audiovisual media content via terrestrial, cable and satellite, as well as via the internet. VAUNET therefore welcomes that the White Paper promotes the expansion of digital networks.

However, we urge caution in all structural and regulatory considerations to ensure the separation between infrastructure and content regulation, as outlined in the European Electronic Communication Code (EECC), is maintained. Regulatory measures must always consider the unique role private media plays in democracy, society and pluralism.

It is therefore essential to prevent direct and indirect financial burdens on audio-visual media providers to facilitate the refinancing of media diversity. At the same time, it is important to ensure that consumers have the easiest possible access to media services. It is important to keep the expenditure of private households on infrastructure to a minimum. In this regard, the European Union is performing better than the USA.

However, this situation should not be jeopardised by considerations on future telecommunications regulation aimed at concentrating the market on large pan-European companies. This would have a detrimental impact on competition in services, prices and supply, ultimately to the detriment of private media and consumers.

Against this backdrop, VAUNET considers the comments in section 3.2.2. on Pillar II and scenarios 4 and 6 of the White Paper described in the same context to be particularly critical.

2. Extension of the scope to include CDN

Section 3.2.2 of the white paper addresses proposals for measures to "complete the digital single market". It is recommended that consideration be given to "extending the scope of existing regulation" to achieve a regulatory framework that promotes investment. In particular, the inclusion of content delivery networks (CDN) and cloud providers in the EECC should be considered.

VAUNET believes that it is not possible to assess these considerations based on the information provided in the White Paper. Further clarification is needed on the specific legal implications of extending the scope of application.

Nevertheless, it should always be noted that the use of CDN has advantages for both providers and end users of audio-visual media. CDN shorten the path of data transport. This ensures an optimal user experience by reducing latency. Concurrently, this results in a reduction in the load on networks, which has a beneficial impact on energy consumption. Regardless of whether the inclusion of CDN in the EECC is appropriate due to differences in business and service models compared to infrastructure operators, it is essential to preserve the advantages outlined above.

In particular, the regulatory inclusion of CDN should not result in an increase in the costs of media distribution, meaning that the use of CDN can no longer be refinanced. However, this is to be feared if CDN providers are burdened with additional costs due to regulatory and administrative requirements, which they pass on to downstream markets.

3. VAUNET maintains its position against any direct or indirect infrastructure contributions

VAUNET fully welcomes the European Commission's objective of enhancing connectivity capacities. Private media providers are dependent on being able to reach the broadest possible population with their content.

However, VAUNET believes that regulatory instruments should not result in market distortions. VAUNET welcomes the statement in section 3.2.2 of the White Paper that there has been virtually no regulatory intervention in the contractual relationships of market participants in the transit and peering market and that the interconnection market is generally functioning well. Consequently, the idea of so-called "infrastructure charges" or "network fees" is rightly not explicitly pursued further in the White Paper.

This aligns with the findings of the EU COM consultation "The Future of the electronic communications sector and infrastructure" held on October 10, 2023.¹ In this consultation, a broad majority from business, science and civil society expressed opposition against the introduction of direct or indirect infrastructure charges, citing the absence of a market failure necessitating regulation.

¹ [Results of the exploratory consultation on the future of the electronic communications sector and its infrastructure | Shaping Europe's digital future \(europa.eu\)](#)

Nevertheless, the White Paper states surprisingly that cases requiring regulation must be considered in the future:

"...subject to careful assessment, policy measures could be envisaged to ensure swift resolution of disputes. For example, the commercial negotiations and agreements could possibly be further facilitated by providing for a specific timeline and by considering the possibility for requests for dispute resolution mechanisms, in case commercial agreements could not be found within a reasonable period of time."

Scenario 4 (p. 36) described in the same context also aims for "a regulatory level playing field and equivalent rights and obligations for all actors and end-users of digital networks", without specifying standards or even definitions for "equivalent obligations".

And finally, the White Paper refers to the European Declaration on Digital Rights and Principles for the Digital Decade 2022, which contains a call for a set of rules in which all market participants should make a "fair and proportionate contribution" to the costs of telecommunications infrastructures.²

Against this backdrop, the impression arises that the EU COM is still considering the idea of network fees.

Therefore, VAUNET once again urges to reject any regulatory intervention in the telecommunications market that imposes direct or indirect payment obligations on audiovisual media, whether through a dispute resolution mechanism, mandated negotiations or other mechanisms that effectively amount to network charges for data-intensive services.

Network fees not only jeopardize the innovation and competitiveness of the media, but also pluralism. Network fees should therefore be rejected including for the following reasons:

- Private media providers do not "generate" data traffic. Rather, it is the end users who trigger data transport on the internet with their demand for content and pay the telecommunications providers for this. Any obligation to pay an infrastructure contribution therefore leads to an unjustified double payment for the same service.
- Audiovisual media providers are already investing heavily in digital infrastructures for the benefit of end users and telecommunications providers. Some private media providers already pay fees for data transport and compression, e.g. to CDN providers, based on contractual agreements. In addition, private media provide high-quality content, which increases the demand for broadband connections. Infrastructure providers therefore benefit from investments made by private media in content production and distribution.
- Private media also make a significant contribution to reducing bandwidth. In addition to CDN, they often use compression and caching technology, which can reduce data

² [EUR-Lex - 52022DC0028 - EN - EUR-Lex \(europa.eu\)](#); Chapter II, Solidarity and inclusion.

6 is limited by competences stated under European law. Above all, the principle of subsidiarity must be upheld, e.g. regarding frequencies used for terrestrial broadcasting. For instance, the principle of subsidiarity must be upheld regarding frequencies used for the terrestrial distribution of media services, as these can only be dealt with at Member State level due to national characteristics.

Furthermore, the approach of providing globally harmonized frequencies for the production of media content (PMSE) is a crucial aspect of pan-European and global media production. The media and culture industry relies on the usability of the entire 470-694 MHz frequency range and free access to satellite communication throughout Europe.

The VAUNET also assumes a positive development of private local networks. For instance, campus networks in companies or at events provide an opportunity to respond to the individual needs of private media offerings in connection with electronic communication networks. However, VAUNET still sees a need for action in the area for transnational media productions. Above all, a framework is needed that ensures the uncomplicated and short-term use of private and locally unbound networks.

5. Final Remarks

Ultimately, in light of the potential for a Digital Networks Act, VAUNET reiterates the fundamental tenet that any regulatory intervention should be founded upon a transparent and inclusive process, accompanied by a comprehensive analysis. It is imperative that the necessity for regulatory intervention is substantiated by evidence.

In line with the European Commission's Better Regulation Principles, any proposed legislation should therefore undergo a due process in the form of a comprehensive public consultation with all relevant stakeholders. In connection with the effects on the telecommunications market to be analyzed, this also requires an impact assessment for those affected.

This is particularly relevant for private media providers, whose cost-intensive journalistic and editorial content plays a vital role in ensuring pluralism and democracy in Europe. A media compatibility test is therefore crucial for any regulatory intervention. The VAUNET is committed to contributing to such a test in the future.