



11 APRIL 2022

# DIGITALEUROPE position paper on the European Media Freedom Act

## Key messages

- ▶ Differing national transpositions of EU law should be avoided to **prevent regulatory fragmentation and barriers to the free movement of goods and services** in the internal market.
- ▶ DIGITALEUROPE supports the creation of a **legal framework that ensures the harmonised application** of media law across the EU.
- ▶ **Technological preconditions to fulfil the regulatory requirements** (e.g. standards) must be assessed before regulations are implemented.
- ▶ **Ensure coherent application of the legal framework** to avoid divergent implementation and enforcement by regulatory bodies.

## Preventing fragmentation of the Internal Market

DIGITALEUROPE believes in the benefits of a Single Market for goods for EU businesses and citizens alike. A strong internal market based on the EU fundamental freedoms safeguards innovation and accelerates technological developments.

It is only right that the European Commission has set itself the goal of preventing further fragmentation of the internal market.

DIGITALEUROPE welcomed the Audiovisual Media Services Directive (AVMSD) since it aimed at harmonising European media policy. Consistent European rules strengthen the Single Market by ensuring predictability and reliability, which are crucial for our members' business activities.

However, Member States increasingly undermine the country-of-origin principles of the AVMSD, leading to fragmentation of the single market and operational burdens for cross-border services. Diverging concepts to safeguard media pluralism combined with the above deviations from infringements of the country-of-origin principle can make it impossible to provide pan-EU media services (and as a result reduce pluralism) if providers are forced to adapt their user interfaces to the prominence rules in each Member State.

The AVMSD's scope for implementation has been stretched to such an extent that Member States (e.g. Germany and France) have introduced or are in the process of introducing user interface regulation (based on Art. 7a AVMSD) that would require substantial adaptation of software -- or even hardware in the case of remote controls -- specifically for these markets.

Furthermore, Member States have created new barriers to market entry through the introduction of relatively high investment obligations and levies for VoD services (e.g. France and Italy) based on Art. 13(2) of AVMSD. In addition, the national systems are fundamentally different in terms of reporting, allocation of investments etc. requiring a complex and burdensome compliance infrastructure which can be prohibitive in any service wishing to go into a second or third EU market. Both measures apply a country of destination approach, which raises not only operational costs and expenses in product development for our members but also results significantly in hindering the freedom of the cross-border provisions of goods (Smart TV & other devices) and services (audiovisual) in the internal market.



## **Towards more harmonised application of media law**

We, therefore, are in favour of the creation of a legal framework that ensures the harmonised application of media law across the EU instead of differing national transpositions that create regulatory fragmentation and barriers to the free movement of goods and services in the internal market.

As it is unclear if a new media regulation on the EU level can provide for this, we suggest preventing legal fragmentation and undue burdens for cross-border device manufacturers, service providers and media companies, by improving the functioning of the internal media market and better enforcement of the country-of-origin principle.

In order to prevent legal fragmentation, contradiction and conflicting regulations, any new legislation must be evidence-based and intended to improve the functioning of the internal media market.

Therefore, rules to foster media pluralism (e.g. public value, prominence) on the Member State level should be limited to measures that do not result in fragmenting the single market.

DIGITALEUROPE advocates for coordination of enforcement on the European level which leaves no room for divergent and excessive implementation. To avoid compliance burdens for cross-border service and goods providers, it is necessary to ensure a coherent and uniform application of EU legislation. For DIGITALEUROPE it is important that on the EU level a uniform application is ensured and can be enforced.



## Technical feasible implementation

The implementation of media regulation must be technically feasible. Technological preconditions to fulfil the regulatory requirements like standardised signalling or labelling (e.g. as general interest for prominence regulation) must be tackled before any regulation can be enforced.

Moreover, the implementation must remain proportionate. The implementation must not lead to the burdening of a specific product. Rules that intervene in the hardware of certain products impose an obvious unreasonable additional burden. Local adaptations of software should be limited to what is necessary for the user to find and access local services. As a matter of fact, user interfaces provided by smart TV manufacturers already allow this today.



## Coordination at the EU level between national media regulators

Further strong governance mechanisms should be implemented to ensure harmonized application of EU law and the application of the country-of-origin principle. Existing organisations like ERGA could play an important role in assuring that national peculiarities are respected, but not implemented in a discriminatory manner. DIGITALEUROPE welcomes the cooperation on the Member State level within ERGA, although we understand ERGA lacks necessary implementing and enforcement powers.

Regardless of how the cooperation between European and national authorities is organised, additional burden by creating overlapping structures must be avoided. The competent authority must be provided with the corresponding power to intervene in the event of a finding of incompatibility.

Everyone benefits from a functioning Single Market, companies and citizens alike. Consequently, DIGITALEUROPE calls on decision-makers and regulators to work more closely together toward this aim.

FOR MORE INFORMATION, PLEASE CONTACT:



Martina Piazza

**Officer for Digital Technology and Innovation Policy**

[martina.piazza@digitaleurope.org](mailto:martina.piazza@digitaleurope.org)

---

## About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

# DIGITALEUROPE Membership

## Corporate Members

Accenture, Airbus, Amazon, AMD, Apple, Arçelik, Assent, Atos, Autodesk, Banco Santander, Bayer, Bidao, Bosch, Bose, Bristol-Myers Squibb, Brother, Canon, Cisco, Danfoss, Dassault Systèmes, DATEV, Dell, Eli Lilly and Company, Epson, Ericsson, ESET, EY, Fujitsu, GlaxoSmithKline, Global Knowledge, Google, Graphcore, Hewlett Packard Enterprise, Hitachi, HP Inc., HSBC, Huawei, Intel, Johnson & Johnson, Johnson Controls International, JVC Kenwood Group, Konica Minolta, Kry, Kyocera, Lenovo, Lexmark, LG Electronics, Mastercard, Meta, Microsoft, Mitsubishi Electric Europe, Motorola Solutions, MSD Europe Inc., NEC, Nemetschek, NetApp, Nokia, Nvidia Ltd., Oki, OPPO, Oracle, Palo Alto Networks, Panasonic Europe, Philips, Pioneer, Qualcomm, Red Hat, ResMed, Ricoh, Roche, Rockwell Automation, Samsung, SAP, SAS, Schneider Electric, Sharp Electronics, Siemens, Siemens Healthineers, Sky CP, Sony, Sopra Steria, Swatch Group, Technicolor, Texas Instruments, TikTok, Toshiba, TP Vision, UnitedHealth Group, Visa, Vivo, VMware, Waymo, Workday, Xerox, Xiaomi, Zoom.

## National Trade Associations

**Austria:** IOÖ

**Belgium:** AGORIA

**Croatia:** Croatian Chamber of Economy

**Cyprus:** CITEA

**Czech Republic:** AAVIT

**Denmark:** DI Digital, IT BRANCHEN, Dansk Erhverv

**Estonia:** ITL

**Finland:** TIF

**France:** AFNUM, SECIMAVI, numeum

**Germany:** bitkom, ZVEI

**Greece:** SEPE

**Hungary:** IVSZ

**Ireland:** Technology Ireland

**Italy:** Anitec-Assinform

**Lithuania:** Infobalt

**Luxembourg:** APSI

**Moldova:** ATIC

**Netherlands:** NLdigital, FIAR

**Norway:** Abelia

**Poland:** KIGEIT, PIIT, ZIPSEE

**Portugal:** AGEFE

**Romania:** ANIS

**Slovakia:** ITAS

**Slovenia:** ICT Association of Slovenia at CCIS

**Spain:** AMETIC

**Sweden:** TechSverige, Teknikföretagen

**Switzerland:** SWICO

**Turkey:** Digital Turkey Platform, ECID

**Ukraine:** IT Ukraine

**United Kingdom:** techUK