

Position Paper

2025 January

EMFA Guidelines - Prominence of audiovisual media services of general interest

Summary

The debate on the appropriate prominence of audiovisual media services of general interest is ongoing as the media landscape is developing rapidly and market dynamics continue to be high. Throughout recent years, the concept has been applied in a divergent manner in those Member States which chose to impose such regulation, leading to increasing fragmentation.

The European Media Freedom Act (EMFA) now opens up the possibility for the European Commission to issue guidelines on the appropriate prominence of audiovisual media services of general interest under Article 16 (2) (a) EMFA. This enables the rapid provision of a practical framework to ensure a conceptual common understanding.

Against this background, Bitkom calls on the European Commission, when drafting the aforementioned guidelines, to provide legal certainty and strengthen the internal market in accordance with the following observations:

General Remarks

The European Commission is entitled by the EMFA to establish guidance on media regulation matters inter alia in relation to subject-matter addressed in the Audiovisual Media Services Directive (AVMSD) and, more specifically, in respect of an appropriate prominence of audiovisual media services of general interest under the Directive's Article 7a which states that "Member States may take measures to ensure the appropriate prominence of audiovisual media services of general interest".

Bitkom continues to oppose legal provisions for the introduction of prominence rules for audiovisual media services of general interest. While we understand that giving prominence to content that indeed is to be considered particularly valuable for society at large, can be a desirable public policy goal, at the same time we are concerned about

its discriminatory potential, the negative impact on consumers' experience, and the undue bureaucratic burden it causes for the industry.

To date, there are Member States that have decided to impose prominence rules and have done so in considerably diverging ways (e.g. Germany, Italy, France) while other Member States have explicitly and for good reasons declined to follow this route. The imposition of such rules has led to legal fragmentation in the Internal Market.

We see, for example, a broad interpretation of what content, or services should be given prominence and, in some cases, overly detailed prescriptions for how prominence should be achieved on user interfaces (UI). Differing implementation practices lead to negative impacts on the freedom of service recipients as well as the freedom of respective providers, manufacturers and traders, in the EU internal market.

An immediate means to mitigate this fragmentation is the adoption of guidelines as specified in Art. 16 (2)(a) (EMFA).

Bitkom believes that such guidelines should contribute to the internal market by strengthening the country-of-origin-principle and providing legal certainty for manufacturers, developers, importers/distributors of respective consumer devices and providers of services, in particular of user interfaces, by fostering a common understanding among Member States, thereby limiting unintended consequences.

Bitkom would welcome further dialogue with the European Commission, the soon-to-be-established European Board of Media Services (or its predecessor ERGA, respectively), and the Contact Committee which all play a crucial role in implementing the EMFA.

Detailed requirements for prominence guidelines

Where Member States decide to impose rules on appropriate prominence, they should respect the following principles:

- **Country-of-origin principle:** The Commission should clarify that all Member State's measures must respect the general principles of Union law, and in particular that the country-of-origin (COO) principle applies to providers and other economic operators who provide services or circulate goods in the Internal Market. Once implemented in one Member State (i.e. their country of establishment), providers of user interfaces should be granted legal certainty for the entire EU single market.
- **Flexibility for UI providers:** If Member States adopt such measures, they should allow UI providers freedom in determining how to effectively highlight "services of general interest" on their services and devices. Detailed provisions would only lead to undue bureaucratic regulation for UI providers and other operators, could undermine the principle of proportionality, impede innovation, and unnecessarily restrict competition.

- **A principle-based approach should guide the Commission:** Such an approach appears to be the most suitable method to promote media diversity and innovation (e.g. through personalization) across the European Union.

It should encompass such governing principles as "non-discrimination," "transparency," and "user autonomy" on how to provide prominence while leaving to service providers and other relevant operators sufficient flexibility to develop, employ and - where subsequently deemed useful - modify unique and competitive user interfaces that offer a distinct selling proposition and cater for the needs of consumers.

- The European Commission should, when assessing the national transposition of such measures, in a second step and in cooperation with the European Board for Media Services, give examples of measures that would satisfy those principles. This would prevent legal fragmentation without establishing a "one-size-fits-all" model of a user interface regulation in those EU Member States concerned, which is likely to issue detrimental effects to the diversity of offerings.

- **User autonomy:** According to Art. 20(1)1 EMFA, "users shall have a right to easily change the configuration, including default settings, of any device or user interface controlling or managing access to and the use of media services providing programs in order to customize the media offering in accordance with their interests or preferences in compliance with Union law". Correspondingly, the EMFA establishes a clear obligation on "manufacturers, developers and importers [to] ensure that such devices and user interfaces include a functionality enabling users to freely and easily change at any time their configuration, including default settings controlling or managing access to and use of the media services offered". When striking the balance with national prominence legislation, in the end, primacy must be given to this user autonomy. An initial visibility of "services of general interest" may create positive user awareness. However, they must always be able to reorganize the services according to their individual preferences. This includes the autonomy of users to subsequently de-prioritize a "service of general interest" category or a service within that category.

- **Principle of non-discrimination:** Member States shall ensure that similar services are not without satisfying justification treated differently in terms of discoverability on user interfaces, including search functions.

- **Application of "services of general interest" regime:** Bitkom would welcome general criteria at the European level to guide the definition and assignment of the "general interest" status by independent national authorities. The establishment of such criteria should take into consideration those services which directly contribute to the fulfillment of the democratic, social and cultural needs of society and to the need to preserve media pluralism. The respective decision should be brought to the attention of the European Commission and the European Board for Media Services. This should enable a fruitful exchange of views among authorities and with the European Commission.

Bitkom represents more than 2,200 companies from the digital economy. They generate an annual turnover of 200 billion euros in Germany and employ more than 2 million people. Among the members are 1,000 small and medium-sized businesses, over 500 start-ups and almost all global players. These companies provide services in software, IT, telecommunications or the internet, produce hardware and consumer electronics, work in digital media, create content, operate platforms or are in other ways affiliated with the digital economy. 82 percent of the members' headquarters are in Germany, 8 percent in the rest of the EU and 7 percent in the US. 3 percent are from other regions of the world. Bitkom promotes and drives the digital transformation of the German economy and advocates for citizens to participate in and benefit from digitalisation. At the heart of Bitkom's concerns are ensuring a strong European digital policy and a fully integrated digital single market, as well as making Germany a key driver of digital change in Europe and the world.

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