

ACT

Association of Commercial
TV & VoD Services in Europe

MAY 2024

EUROPEAN MEDIA FREEDOM ACT

ACT PRACTITIONER'S GUIDE



PRACTITIONER'S GUIDE - CONTENTS

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- **EMFA** = European Media Freedom Act
- **MSP** = Media Service Provider
- **MS** = Member States

- **PSM** = Public Service Media
- **VLOP** = Very Large Online Platforms
- **EC** = European Commission

- **NRA** = National Regulatory Authority
- **EBMS** = European Board for Media Services

EMFA OBJECTIVES




The EMFA lays down common rules for the proper functioning of the EU's internal market for media services. These notably relate to:

- ✓ **The protection of sources**
- ✓ **Media concentration**
- ✓ **Avoiding government interference in media activities**
- ✓ **Public Service Media**
- ✓ **A new Board of media regulators**



MEDIA OWNERSHIP

MSPs must disclose:

-  Their legal names and contact details
-  Information on owners, incl. links with governments and beneficial owners
-  Revenues from public authorities (incl. state advertising) or 3rd countries' entities

MSPs must make this information "easily and directly accessible" to viewers (e.g. hosted on a website)

EC may issue guidelines

National **media ownership databases** will have to compile this information and make it publicly available

EDITORIAL INDEPENDENCE

EMFA **forbids MSs to interfere** in or try to influence MSPs' editorial policies and editorial decisions.

EMFA mandates that **MSPs take measures they deem appropriate** to guarantee the **independence of editorial decisions**. In particular, by:

- Guaranteeing that editorial decisions can be taken freely within the established editorial line of the MSP
- Ensuring disclosure of any actual or potential conflict of interest that may affect the provision of news

What does it mean?

- Editorial decision refers to decisions taken by editors within an established “long-term” editorial line
- Owners have “legitimate rights” to set goals, foster growth and be financially viable. They have the right to determine the editorial line and shape the composition of their teams.
- However, EMFA objective is also “notably” to shield from “undue interference” editorial decisions of editors on specific pieces of content

In short: MSPs should adopt internal safeguards tailored to their “size, structure and needs”

There are various ways to comply with these provisions. For more details and best practices, reach out to us.



To protect and ensure the visibility of reputable media content online and prevent unjustified platform take-down of MSP content, EMFA introduces a specific **procedure**. This procedure only applies when content removal is not related to platform obligations under the AVMSD, DSA (e.g. protection of minors, risks mitigation) and rules on illegal content.

REGISTRATION

MSPs can register with **VLOPs** by declaring that they:

- are an MSP complying with EMFA
- are editorially independent
- are subject to editorial standards (reg or self-reg)
- do not use AI without editorial review

... and providing their and their regulator/self-regulator contact details.

PROCEDURE

VLOP wants to restrict or suspend registered MSP content

VLOP must notify MSP with a statement of reasons

VLOP can restrict / suspend MSP content

MSP has 24h* to reply to the VLOP's statement of reasons

** less during crises referred to in the DSA*

MSP can request a **VLOP**, if it repeatedly restricts or suspends MSP content without sufficient grounds, to enter into a meaningful, good faith dialogue to terminate the situation.

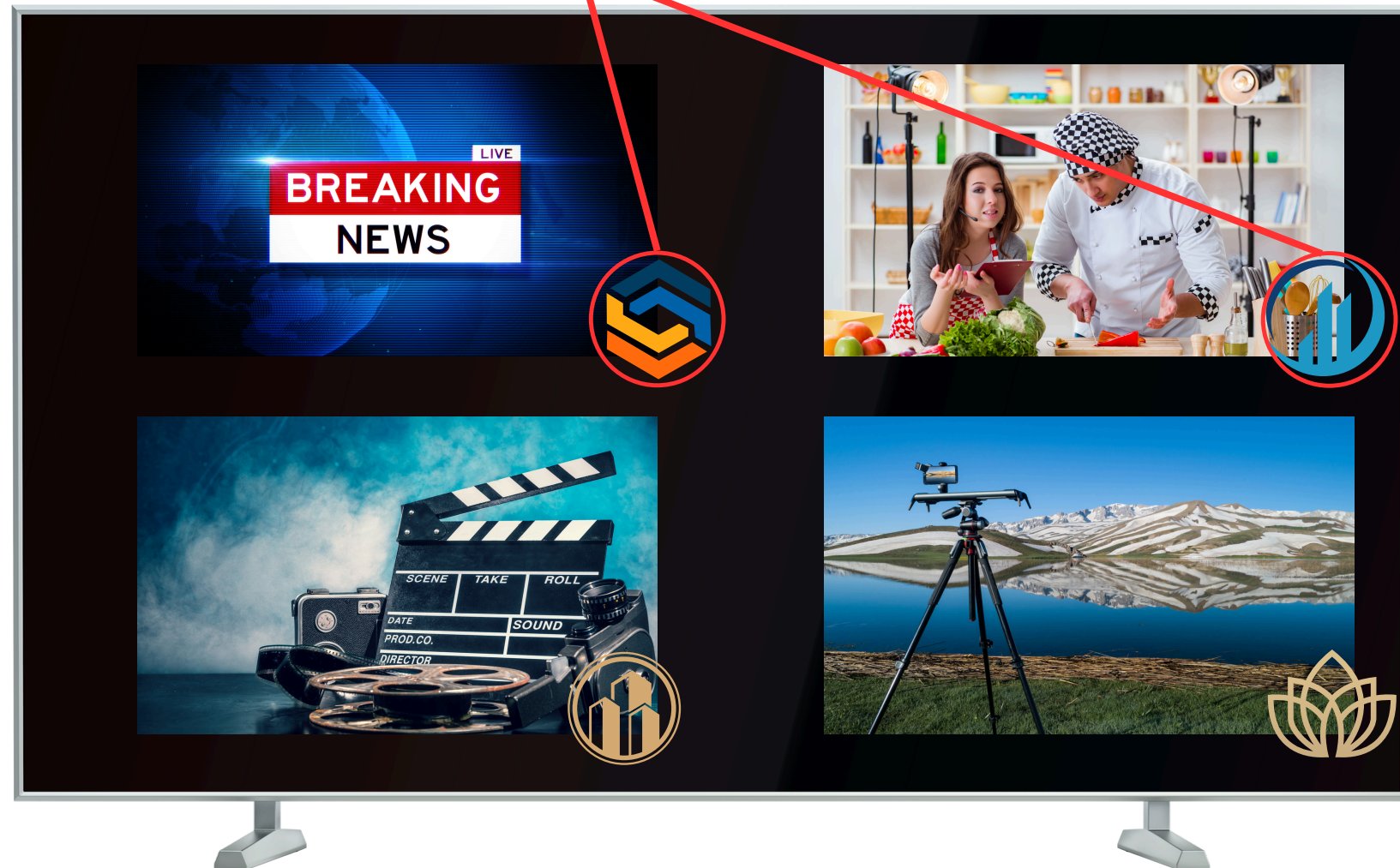
MSP can ask EBMS opinion on the outcome.



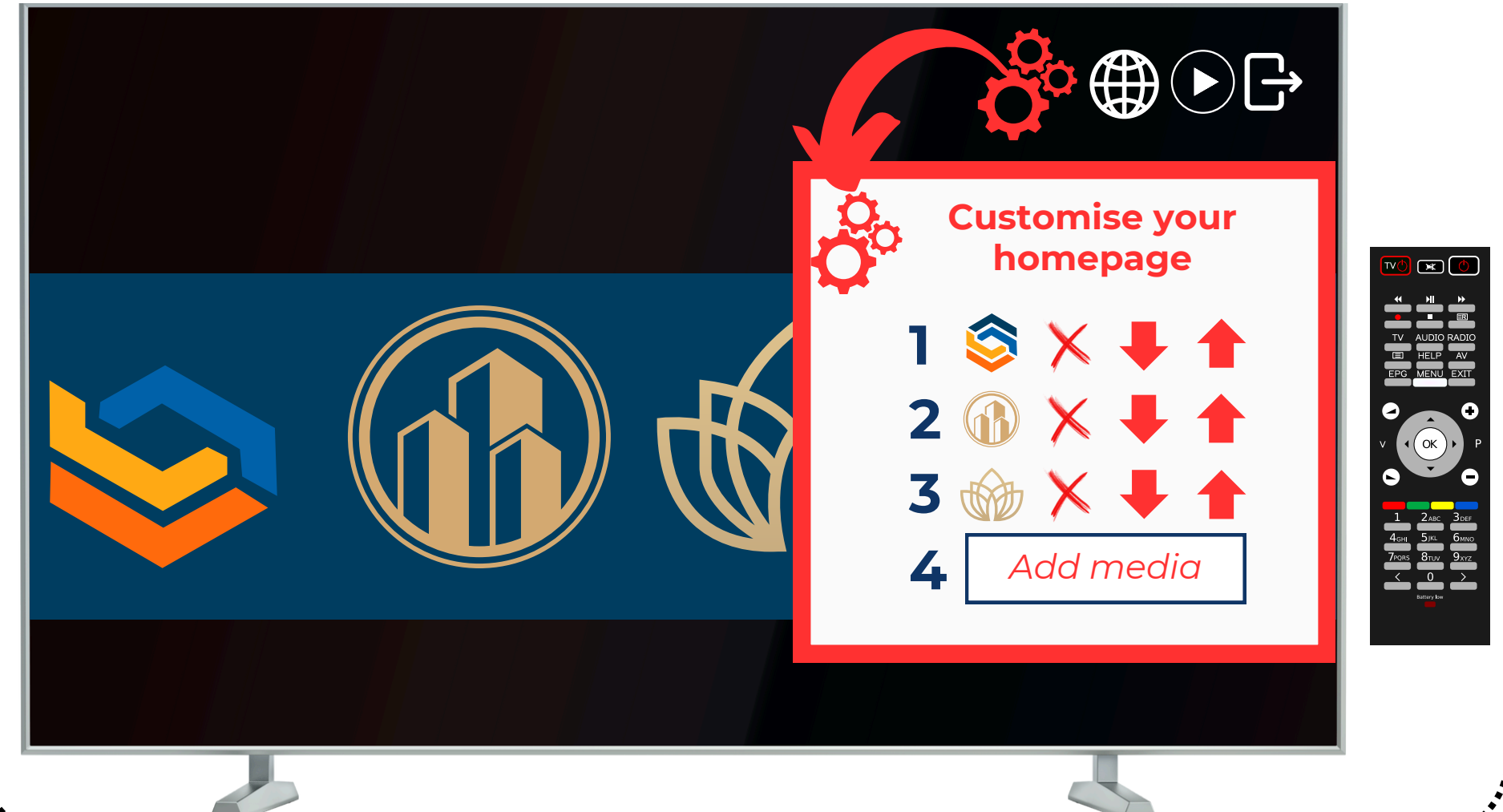
- EBMS will regularly organise a structured dialogue between VLOPs, MSPs and civil society.
- The EC will issue guidelines to facilitate the consistent and effective implementation of this article.

EMFA mandates that providers of interfaces used to access media content (TV, radio), must:

Ensure that the source of the media content is consistently and clearly identifiable (ie. **media attribution**)



Allow users to change the **configuration** of devices or user interfaces used to access media
This does not apply to individual items within catalogues



EBMS will collaborate with MSPs and standardisation bodies to develop **standards**

AUDIENCE MEASUREMENT

EMFA introduces obligations for audience measurement systems (AMS):

BASIC PRINCIPLES

AMS providers must ensure that their systems and methodologies are transparent, impartial, inclusive, proportional, non-discriminatory, comparable, and verifiable.



REINFORCED OBLIGATIONS FOR PROPRIETARY AMS



Providers of proprietary AMS* must:

- Ensure that methodologies are audited once a year
- Provide MSPs and advertisers information on systems and methodology used
- Provide MSPs aggregated data on their content and services

**Proprietary = AMS which do not follow the industry standards and best practices agreed through self-regulation*

CODE OF CONDUCT & BEST PRACTICES

- NRAs will encourage providers to develop codes of conduct or comply with jointly agreed and widely accepted standards
- EBMS will foster dialogue between NRAs and stakeholders on best practices
- **EC will issue guidelines**



MEDIA REGULATION PRINCIPLES



All national measures (i.e. law, regulatory decisions) liable to affect media pluralism* and editorial independence must be *justified, proportionate, reasoned, transparent, objective* and *non-discriminatory*. These principles may be used to challenge national measures before Courts.



EBMS can issue opinions on administrative or regulatory measures when they significantly affect the operation of MSPs in the internal market



MSPs *independently* and *directly* affected by a measure (i.e. their license is revoked) can request an EBMS opinion

* Media pluralism is not defined per se, but referenced throughout the text. EMFA, however, clarifies that “some measures may hinder or render less attractive the exercise of the freedom of establishment and the freedom to provide services in the media sector, to the detriment of media pluralism and or editorial independence operating in the internal market”.



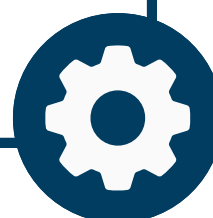
Member States must have rules in place allowing for an assessment of media market concentrations impacting media pluralism and editorial independence. For major / cross-border mergers, the EBMS and EC will both be involved.

Media market concentration?

A concentration involving at least one MPS or one online platform that can be used to access media content.

Procedural aspects

- National rules and notification criteria must be set out in advance / be transparent, objective, proportionate, non-discriminatory
- Involved parties must notify the NRAs or NRAs must have powers to obtain necessary information to assess
- Assessment timeframes must be specified in advance

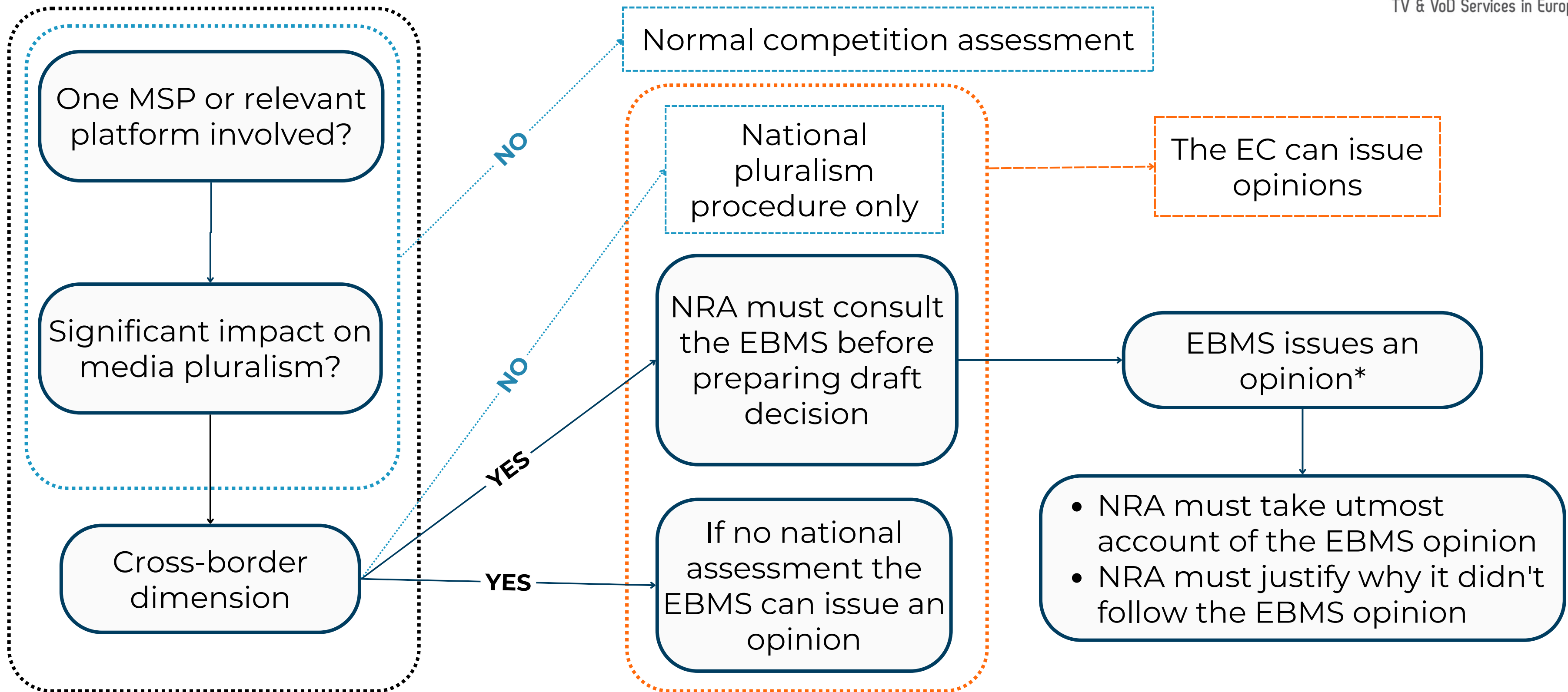


Substantive elements of the assessment

- Expected impact of the concentration on media pluralism, incl. on the formation of opinions and diversity of media services and offers, taking online into account
- Safeguards for editorial independence/ independence of editorial decisions
- Economic sustainability in the absence of the concentration and alternatives
- The state of media pluralism and freedom in the specific market
- Commitments of the parties to safeguard media pluralism and editorial independence

The EC will issue guidelines





*timelines to be foreseen by Board rules of procedure

PROTECTION OF SOURCES

EMFA imposes a number of safeguards to protect journalistic sources:

MSs must ensure that journalistic sources and confidential communications are effectively protected. They **cannot** do the following to MSPs and their staff:

1. **force them** to disclose sources/confidential info
2. **detain, sanction, intercept, inspect or surveil** them to obtain such info
3. deploy **spyware** to obtain such info

MS can derogate from these for a number of limited reasons. 1) and 2) on a case-by-case basis in a proportionate manner justified by “overriding reason of public interest” and 3) for a number of serious crimes (terrorism, etc..).

All derogations must be subject to ex ante review by an independent and impartial authority (possibly a judge). Spyware use must be periodically reviewed.



EMFA lays down a number of safeguards to ensure the independence and sustainable financing of public service media:



PSM must provide a plurality of information and opinions, in an impartial manner and in accordance with their public remit



PSM must be editorially and functionally independent



Procedures and criteria for the appointment of PSM must be transparent, open, effective and non-discriminatory. They must also aim to guarantee the independence of PSM.



Funding procedures must be based on transparent and objective criteria. Funding must be in line with the public service remit but allow for the capacity to develop within the remit.

STATE ADVERTISING

EMFA sets out obligations to ensure transparency and diversity of allocation of state advertising among providers, such as:

- ✔ MSs must allocate state advertising to MSPs and platforms, in a transparent, objective, proportionate and non-discriminatory manner & spread annual public spending across a variety of MSPs
- ✔ MSPs must report on state advertising they receive (see p. 2).
- ✔ Public authorities must annually disclose information on ad expenditure, inc. beneficiary names, business group names, and amounts spent per provider
- ✔ National authorities must monitor and annually report on how much was spent and to which providers



OTHER PROVISIONS

DISTRIBUTION STANDARDS

EBMS will promote collaboration between MSPs, standardisation bodies and relevant stakeholders to develop harmonised distribution standards (e.g. digital signals)



PROMINENCE

EC may issue guidelines on the appropriate prominence of MSPs of general interest



NEXT STEPS



APPROVAL

March 2024:
Parliament &
Council



APPLICATION

- **17 April 2024:** publication in the OJ
- **7 May 2024:** entry into force
- **Different enforcement dates** according to the provisions: overview available here



REVIEW

October 2029:
focus on the Board

CONTACTS

Should you have any questions,
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