

Comments on the Draft resolution from ARCOM on the appropriate visibility conditions for services of general interest

(Notification [2024/0093/FR](#))

On February 20th 2024, the French Audiovisual and Digital Communication Regulatory Authority (ARCOM) notified to the European Commission two draft texts related to the promotion of services of general interest (SGI) in France:

- a draft decision on the **list of services classified as being of general interest** ([2024/0092/FR](#)), pursuant to the provisions of Article 20-7 of Act No 86-1067 of 30 September 1986 on freedom of communication;
- a draft resolution on the **appropriate visibility conditions for services of general interest** and the arrangements for collecting the information ([2024/0093/FR](#)) referred to in the same article of the same law.

As a representative of the digital industries, AFNUM (Alliance Française des Industries du Numérique) wishes to submit for consideration by the European Commission certain observations and recommendations relevant to ARCOM's proposed implementation of appropriate visibility conditions for services of general interest.

With regard to the **criteria specified by ARCOM for the purpose of designating services of general interest**, AFNUM refers to the European Commission's observations in response to the Italian authorities on the implications of an overly extensive list of services which would include only national players and the need to ensure obligations imposed are proportionate taking account legitimate public policy considerations.

With regard to the draft resolution on the **appropriate visibility conditions for services of general interest**, AFNUM draws the Commission's attention to **(I)** the risk posed by a fragmented implementation of article 7a of the Audiovisual Media Services Directive in terms of undermining the EU Single Market in the field of multimedia devices and services. To address this risk, AFNUM calls for legal clarification and technical harmonization at European level, which would give operators of product and software interfaces the legal certainty and regulatory stability necessary to pursue their pan-EU operations. AFNUM also wishes to submit for consideration **(II)** observations and recommendations to ensure the practical implementation and effectiveness of ARCOM's proposed implementing rules.

I- The Commission should provide guidelines on the application of Article 7a of Directive 2018/1808

The proposed rules from ARCOM result from the FR transposition of [article 7a](#) of the Audiovisual Media Services Directive (AVMSD) 2018/1808, which states that “*Member States may take measures to ensure the appropriate prominence of audiovisual media services of general interest*”.

As a reminder, on July 12th 2023, the Commission issued a detailed opinion in response to the

notification by Italian authorities of draft rules concerning the implementation of appropriate visibility obligations ([2023/0205/I](#)). In its opinion, the Commission recalled the principle of free movement of cross-border services enshrined in Article 56 of the Treaty of the Functioning of the European Union (TFEU), as well as the rule laid down in Article 3 of the "e-commerce" Directive 2000/31/EC that information society services are subject only to the legal system of the Member State in which their provider is established (country of origin principle or home country control). Under this provision, a Member State other than the Member State of establishment may not derogate from the freedom to provide information society services guaranteed by the e-commerce Directive except by adopting ad hoc measures on a case-by-case basis. The Commission reasoning was confirmed by the Court of Justice of the European Union (CJEU) in the "Google Ireland" case (No. C-376/22) of November 9th 2023.

The clarifications recently provided both by the Commission and the CJEU on the scope of the country-of-origin principle as applied in the context of the e-Commerce Directive **demonstrate that the conditions of application of Article 7a of AVMSD need to be clarified.**

In this regard, Regulation (EU) 2024/1083 of 11 April 2024 (European Media Freedom Act), in its article 16, states that the Commission guided by the newly established European board for media services will establish guidelines on the application of Article 7a.

AFNUM welcomes the timely production of such guidelines. These should provide practical indications on how prominence may be implemented in each Member State, that would allow providers of user interfaces to have EU-wide harmonized methods for granting prominence to SGI in each country and be fully compatible with the Single Market.

II- Additionally, the draft from ARCOM needs to be substantially amended

In its draft resolution on the appropriate visibility conditions for SGI, ARCOM prescribes two possible ways to present SGI on user interfaces: (i) by ensuring appropriate visibility to each SGI, or (ii) by means of an environment that regroups all SGIs.

In a separate note published with the draft by ARCOM [on its website](#), but not communicated to the Commission as part of this notification, the regulator advocated that this environment regrouping all SGIs be implemented through a common application developed jointly by the editors of SGIs. This would indeed facilitate the user experience, ensure an appropriate exposure of audiovisual group services and content, and provide for easier implementation by user interface operators. We believe that it would also be a means to move towards an EU-wide harmonization of art. 7a of AVSMD, which will also be in the scope of the Commission's future guidelines.

AFNUM supports this approach of a common application regrouping all SGIs and, more generally, all measures towards EU harmonization. Such a common application can be developed using an open cross-platform specification already embedded in all TV sets, such as ETSI TS 102 796 1.5.1 (HbbTV), or as a native application for the specific operating system installed on the TV.

However, the current draft resolution from ARCOM does not make the obligation to ensure appropriate visibility of SGIs dependant on the availability of a common application developed by SGI

editors. This means that, before such common application has been released by SGI editors, **user interface providers would be obliged to implement an interim solution** to ensure either appropriate visibility to each SGI, or to an environment that regroups all SGIs. **This would clearly be disproportionate in terms of development and deployment costs.**

Therefore, we suggest the following change:

“Art. 1 – Provided that editors of services of general interest have made available to a user interface provider a common application grouping all such services, the operations required by a user to access this application ~~a service of general interest~~ or an environment grouping together the services of general interest may not be more numerous or of a more restrictive nature than those required to access any other audiovisual communication service accessible from the interface, subject to the consequences of its personalization at the sole initiative of the user”.

Additionally, the draft resolution should clarify that the obligation should only apply to user interfaces installed on devices that have been first placed on the market after its date of publication. Otherwise, as Recital 4 of the draft resolution seems to imply, this would suggest that the prominence obligations are retroactive, i.e. would also apply to devices that have already been placed on the market and installed on customers premises, which is clearly illegal. Also, **user interface providers should be granted sufficient and reasonable time for implementation and entry into compliance.** Therefore, we suggest adding a new article at the end of the resolution:

“Art. XXX-The obligations of the previous articles should apply to software and virtual interfaces that have been installed on devices which have been first placed on the market following 18 months after the publication of this resolution.”

AFNUM thanks the European Commission for giving due consideration to our observations.

AFNUM (Alliance Française des Industries du Numérique) represents, in France, manufacturers in the consumer electronics, IT, printing, networks, photography and connected objects sectors. The economic weight of AFNUM's member companies is 35,000 direct jobs and 130,000 indirect and induced jobs in France for a turnover of 29 billion euros. AFNUM is a member of FIEEC, MEDEF and DIGITALEUROPE.