

RESOLUTION NO 14/23/CONS

PUBLIC CONSULTATION ON THE PROMINENCE OF AUDIOVISUAL AND RADIO MEDIA SERVICES OF GENERAL INTEREST AND ACCESSIBILITY OF THE AUTOMATIC NUMBERING SYSTEM OF THE DIGITAL TERRESTRIAL TELEVISION CHANNELS

THE AUTHORITY

AT the Council meeting of 25 January 2023;

HAVING REGARD TO Law No 249 of 31 July 1997 *establishing the Communications Regulatory Authority and laying down rules relating to the telecommunications and radio-television systems* (hereinafter the ‘*Founding Law*’);

HAVING REGARD TO Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), in view of changing market realities (hereinafter the ‘*Audiovisual Media Services Directive*’);

HAVING REGARD TO Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (hereinafter the ‘*European Electronic Communications Code*’);

HAVING REGARD TO Legislative Decree No 207 of 8 November 2021 *implementing Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)* (hereinafter the ‘*Electronic Communications Code*’);

HAVING REGARD TO Legislative Decree No 208 of 8 November 2021 *implementing Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the consolidated law on the provision of audiovisual media services in view of changing market realities* (hereinafter ‘*TUSMA*’);



HAVING REGARD TO Resolution No 223/12/CONS of 27 April 2012, *adopting the new Regulation on the organisation and operation of the Communications Regulatory Authority*, as last amended by Resolution No 434/22/CONS;

HAVING REGARD TO Resolution No 401/10/CONS of 22 July 2010 *regulating the time limits for proceedings*, as last amended by Resolution No 118/14/CONS;

HAVING REGARD TO Resolution No 353/11/CONS of 22 June 2011 *on the new regulation on digital terrestrial television broadcasting*, as last amended by Resolution No 565/14/CONS;

HAVING REGARD TO Resolution No 383/17/CONS of 5 October 2017 *adopting the Regulation governing access pursuant to Articles 22 et seq. of 7 August 1990, No 24 and Articles 5 et seq. of Legislative Decree No 33 of 14 March 2013*;

HAVING REGARD TO Resolution No 107/19/CONS of 5 April 2019, *adopting the Regulation on the consultation procedures in proceedings falling under the Authority's competence*;

HAVING REGARD TO Resolution No 216/00/CONS of 5 April 2000, *determining decoder standards and standards for the reception of conditional access television programmes and, in particular, Annex A, entitled 'Technical specifications for the production of tuner-decoders for the reception of digital television signals'*;

HAVING REGARD TO Resolution No 155/09/CONS of 31 March 2009 *integrating Resolution No 216/00/CONS following the new national frequency allocation plan*;

HAVING REGARD TO Resolution No 629/10/CONS of 9 December 2010 *integrating Resolution No 216/00/CONS following the automatic numbering plan for digital terrestrial television channels*;

HAVING REGARD TO Resolution No 685/15/CONS of 16 December 2015, *amending the determination of decoder standards and standards for the reception of conditional access television programmes referred to in Resolution No 216/00/CONS*;

HAVING REGARD TO Resolution No 367/13/CONS of 4 June 2013 *constituting the Technical Panel tasked with identifying solutions relating to decoder standards, thematic navigation between channels by means of electronic programme guides (EPG), in view of the obligation to integrate DVB-T2 into all devices suitable for*

receiving radio and television services, sold from 1 January 2015, pursuant to Article 3(d)(5) of Decree-Law No 16 of 2 March 2012, converted, with amendments, by Law No 44 of 26 April 2012;

HAVING REGARD TO Resolution No 482/14/CONS of 23 September 2014 *establishing a permanent observatory on the innovation of audiovisual media services;*

HAVING REGARD TO Resolution No 39/19/CONS of 7 February 2019 on the *National frequency allocation plan for the digital terrestrial television service (NFAP)*, as amended by Resolution No 162/20/CONS of 23 April 2020 and, most recently, Resolution No 43/22/CONS of 10 February 2022;

HAVING REGARD TO Resolution No 116/21/CONS of 21 April 2021 *updating the automatic numbering plan for digital terrestrial television channels, the arrangements for allocating numbers to providers of audiovisual media services authorised to broadcast audiovisual content in digital terrestrial technology and the associated conditions of use;*

HAVING REGARD TO Resolution No 266/22/CONS of 19 July 2022 *approving the Guidelines on the content of additional obligations for the public radio, television and multimedia service pursuant to Article 59(6) of Legislative Decree No 208 of 8 November 2021. (Five-year period: 2023-2028);*

HAVING REGARD TO the requests for information sent to stakeholders on 22 July 2022, 12 September 2022 and 13 October 2022;

HAVING REGARD TO the request for a hearing submitted by the Confindustria Radio Television Association;

HAVING HEARD at the hearing of 11 October 2022 the Confindustria Radio Television Association;

HAVING CONSIDERED the replies to the requests for information sent to interested parties;¹

¹ The subjects who responded to the request for information are: Aeranti-Corallo, Amazon Italia Services S.r.l., ANDEC (Associazione Nazionale Importatori e Produttori di Elettronica Civile), Anitec-Assinform (Associazione Italiana per l'Information and Communication Technology (ICT)), Apple Distribution International Ltd., Associazione "Media Audiovisivi Europei" (M.AV.E.), Associazione OMItaliane, Associazione Tv Insieme, Confindustria Radio Televisioni, Dazn Media Services S.r.l., Discovery Italia S.r.l., GEDI Gruppo Editoriale S.p.A., Google Italy S.r.l., La7 S.p.A., Mediaset S.p.A., Radio 24 (Il Sole 24 ore S.p.A.), Radio Italia S.p.A., Radio Nazionali Associate, Rai – Radiotelevisione Italiana S.p.A., RTL 102,500 HIT RADIO S.r.l., Sky Italia S.r.l., The Walt Disney Company Italia S.r.l., TIM S.p.A.,

WHEREAS:

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1. Premise

The purpose of this provision is to take measures to ensure adequate prominence for audiovisual and radio media services of general interest and the automatic numbering system of digital terrestrial television channels, as provided for in Article 29 of the *TUSMA*.

The article in question provides, in fact, that the Authority will issue: *i*) the guidelines defining the criteria qualifying a service as ‘*of general interest*’ in order to give it adequate prominence (paragraphs 1 and 2) and *ii*) the regulatory requirements to ensure that the automatic numbering system of digital terrestrial television channels is installed and easily accessible on all television sets using digital terrestrial technology (paragraph 7).

The prominence of some categories of content and services has been the subject of attention by the Italian legislator since the early ’70s, up to the most recent provisions of the *TUSMA* and the *ad hoc* standards included in the latest *Electronic Communications Code*. In addition, the European legislator, with the *Audiovisual Media Services Directive*, also provided that Member States may take measures to ensure due prominence to certain types of services.

In particular, the intent of the Italian legislator was to ensure adequate prominence for audiovisual media services of general interest, regardless of the delivery platform, in order to ensure pluralism, freedom of expression, cultural diversity and effectiveness of information for the widest possible audience. At the same time, the legislator also sought to preserve the availability and accessibility of content accessible via a digital terrestrial platform and, through the imposition of access obligations on network

Vodafone Italia S.p.A..

operators, to ensure that interested parties have access to electronic programme guides (EPGs) and application programming interfaces (APIs).

In short, through these standards, described in detail in the next paragraph, the legislator wanted to ensure that the relevant offers are immediately brought to the – limited – attention of users and that – through the new revenue from the newly acquired significance – multimedia content providers are able to refinance the production of content of general interest.

This measure aims to implement the aforementioned regulatory provisions on prominence, taking into account the continuous development of the technological and market context, in which the positioning of audiovisual content is increasingly strategic.

Thanks to the digitisation and dissemination of IP broadcasting, in recent years there has been, in fact, an exponential increase in the supply of audiovisual and radio content, which at the same time is increasingly fragmented, as a result of the presence of a plurality and diversity of providers and of platforms and devices available for enjoying content. In this context, it is not always easy for the user to identify informational, political, educational, scientific, but also entertainment content, relevant to the building of collective consciousness and the formation of public opinion.

This context is made even more complex by the increasingly frequent use by users of devices connected to the Internet, such as the latest-generation smart TVs, decoders and TV boxes, which have made methods of searching and displaying channels and programmes that are more varied and complex, compared to the use of the conventional numeric keypad: the Electronic Programme Guide and the associated channel list, necessary (but also possible). It refers to specific keys on remotes that directly take one to particular applications, content or audiovisual media providers (usually non-linear), graphic interfaces for content presentation, as well as advanced text or voice search functions. In addition, use of voice assistants in the home, in the car, on smartphones and on tablets is increasing, with the immediate consequence that access to audiovisual and radio content is increasingly intermediated by the providers of such devices.

The proliferation of devices from which it is possible to access audiovisual and radio content has significantly changed the model for using the content itself. While until a few years ago such content was usable (and was enjoyed) mainly through digital terrestrial and satellite platforms, as well as through radio equipment, and while access to content via the Internet was limited to other platforms and devices, in recent years there have been widespread modes of use of “hybrid” content, since through the same device (such as, for example, a TV connected to the Internet) users can access audiovisual and radio content transmitted both in broadcast and via IP. Changes in the

use of audiovisual and radio media services, increasingly oriented towards the use of connected devices, have consequently given a prominent role to device manufacturers and developers of operating systems and software interfaces, who, by defining the logics underlying the visibility of and access to content (linear and on demand, broadcast and online), have thus strengthened their role as intermediaries.

It notes, in this context, also the change in consumption habits caused by the recent pandemic, which has moved many of the activities carried out daily to within the walls of the home and that, during the 2019-2021 period, the demand has increased for technological devices and connections: in 2021, home screens totalled approximately 119.4 million (+6.2 % compared to 2019), with an average of five screens per household, the number of households with an internet connection was 90.2 % of the total Italian households (+3.6 %) and those with both fixed and mobile network connections equalled 59.4 % of the total households (+6.2 %).²

Among the screens, Smart TVs in particular are on the rise, with more than 15 million in 2021 (+46.6 % in the last two years), and if, on the one hand, they breathe new life into television as a tool for satisfying the growing need for information and entertainment, on the other hand, they now represent additional devices – alongside smartphones and personal computers – that Italians can use to access more content and services than the traditional TV set, connect to the Internet and perform remote activities. Consider that in 2021, almost four million individuals use Smart TVs to browse websites, a habit that gives such devices a new hybrid role, halfway between a computer monitor and a television for accessing audiovisual and radio services. In fact, not all smart Smart TVs are used for all their features: out of 15.5 million Smart TVs present in Italian households in 2021, 12.3 million devices are actually connected to the Internet and about 2.6 million households have an unconnected Smart TV.³

Viewing habits have also evolved over the years: in 2020, more than seven million Italians watched television programmes aired simultaneously on linear television on the Internet, an increase of 24.6 % compared to the previous year. In addition, 24 million Italians (+48.4 %) connected to the Internet and used *ad hoc* applications, free or paid, to watch content, movies and programmes.⁴

More specifically, an analysis of TV audience ratings data for 2021 reveals an opposing trend between the audiences of digital terrestrial and satellite platforms, on the one hand, and video on demand, on the other. In fact, for free and paid channels, the number of users on the average day of the year decreases by 9 % compared to 2020,

² Fourth Auditel-Censis Report, 19 November 2021.

³ *Ibidem*.

⁴ *Ibidem*.



returning to values in line with those of the pre-pandemic crisis periods. Conversely, the paid video-on-demand services, after reporting a decisive increase in the market share in 2020 (from 11.2 to 14.3 million unique monthly site and app users on average for the year), continued to grow in 2021, reaching 14.9 million unique users.⁵

The success of video-on-demand services is also evidenced by the reduction in the level of concentration of the TV sector as a whole (whereby the HHI – Herfindahl-Hirschman Index – fell from 2,436 to 2,185 over the last year).⁶ Although the top three operators (Rai, Sky and Fininvest) still hold 79 % of total assets, it notes the incidence of video-on-demand service providers, gaining positions to jointly represent 11 % of the total.

A more detailed look at the pay-TV sector shows, on the one hand, that revenues from the sale of pay offers (pay-TV and pay-per-view) and advertising attributable to satellite and digital terrestrial platforms, which still make up the bulk of the total, decreased by 14.5 % in the last year and, on the other hand, that the resources generated by online service offers, including both subscription subscriptions (S-VOD) and the sale and rental of individual content (EST and T-VOD), show a growth rate in excess of 30 %. Revenues from the latter component, therefore, are becoming more and more significant, so much so that they reached EUR 1 billion in 2021, with an impact on the total pay-TV seven times higher than that of five years ago. The slowdown in satellite and digital terrestrial subscription revenues and the strengthening of the revenue shares of video-on-demand service providers (including Netflix, Dazn, Amazon Prime, Disney+, TIM Vision) affect the market structure: in fact, from 2020 to 2021, there was a reduction in the level of concentration of the pay-TV sector, with the HHI index falling from 6,485 to 5,264 (in 2019 it was above 7,000), although it continues to be high.⁷

As far as the radio sector is concerned, an initial examination of the radio audience data shows that at the top of the list of devices used for listening – in terms of the number of listeners on an average day – is the car radio (about 23.4 million, or about 70 % of the total number of listeners), followed by the radio device (9.8 million), the television device (about 3.8 million) and the smartphone (about 3.5 million).⁸ The car radio, and consequently listening to radio content on the move, still proves to be the main choice for accessing radio content.

⁵ See the 2022 Annual Report on activities carried out and work programmes, Communications Regulatory Authority.

⁶ *Ibidem*, Statistical Appendix.

⁷ *Ibidem*.

⁸ TER (Tavolo Editori Radio), 1st semester 2022.

In the scenario described, the multiplication of devices and platforms to access audiovisual and radio media services on the one hand, and the integration of IP transmission with ‘traditional’ television devices on the other, have profoundly changed the paradigm for accessing content. In this context, the way content is presented and searched through specific user interfaces is of enormous importance: while it is true that these methods allow users to orient themselves between a variety of services and programmes through personalised presentations (including on the basis of specific recommendation algorithms) based on their viewing habits, it is also true that by giving a different emphasis – including on the basis of the existence of licensing agreements entered into between audiovisual media service providers and equipment manufacturers – to the different content presented or limiting the possibilities of customisation, they are able to influence, if not direct, user choice.

Moreover, it is well known that the order in which the results of user searches on search engines are presented is of absolute importance: a higher ranking in the results list can increase by tens of times, if not hundreds,⁹ the probability that a link will be chosen. As a result, search engines deliberately alter, thus introducing various forms of search bias, the order of search results in order to maximise their profits from online advertising. In the absence of specific research on the subject, it is plausible to assume that, even in the context of the user interfaces of Smart TVs, decoders and other connected multimedia devices, the prominence of the content can take on a similar importance.

Often, in fact, the choice to give particular visibility to certain content is dictated by the opportunity to highlight the most successful content, such as those with a larger audience or those more “clicked”, or the content that can most likely arouse the user’s interest on the basis of previous views and user interaction with similar content. Such content does not always fall within the scope of content that can be defined as being of general interest; consider, for example, content that, although of less value than professional journalism content, by virtue of being presented in a more appealing way, is more likely to attract the user’s attention. The scenario depicted is made even more complex by the exponential increase in the consumption of non-linear and online content, accessible at any time the user decides to use it, which makes the findability of general interest content and services in the plethora of available services even more difficult.

⁹ Glick *et al.* (2014), “*How Does Ranking Affect User Choice in Online Search?*”, Review of Industrial Organization, 45:99–119, estimate that a change from the tenth to the first position in the order of search results can increase the probability of a link being clicked from about nine times to more than 120 times.



As also recognised by the *European Regulators Group for Audiovisual Media Services* (ERGA),¹⁰ while taking into account the new reality of the distribution and display of media content and the fact that the choices of platform operators and content distributors are geared towards gaining the greatest financial advantage rather than being based on considerations of general interest, the *Audiovisual Media Services Directive* provides that Member States may take appropriate legislative measures in order to incentivise service providers to ensure the prominence of audiovisual media services of general interest. Appropriate measures to ensure prominence can, in fact, play a key role in the fight against disinformation and in promoting investments in high-quality journalism and content.

The attention of users towards certain media content, in fact, determines the price of advertisements. The willingness of advertisers to pay to reach their target group depends on their characteristics (product category of the advertised good/service, size of the company, etc.) and on the affinity of the target group to which the advertising message is addressed (in a specific time frame) with the target of the advertised good/service. The theoretical price of advertising space is therefore a function of the quantity – share – and quality – affinity index – of the audience that at any given time uses the medium on which the content is conveyed: if content is difficult to find, advertising revenue may decrease accordingly. This decrease is in addition to the already significant loss of revenue caused by the proliferation of providers, and thus of offers, of media services, which contributes to creating significant audience fragmentation. In short, greater prominence involves better visibility of content and a greater number of clicks and views by users and, as a result, more investments, incentivised by higher advertising revenues.

In view of the technological and market context described, as well as the regulatory framework in which the procedure in question is initiated, it seems that it is as necessary as ever to strike a fair balance between the imposition of *ad hoc* requirements aimed at providing adequate prominence to certain categories of content and services on the one hand, and the opportunity to continue to ensure the widest choice for consumers on the other.

The following paragraphs give a brief description of the reference regulatory and technical framework (paragraph 2.), a representation of the provisions already adopted – or about to be adopted – regarding the prominence of services of general interest at a

¹⁰ See ERGA (2020), ‘*Ensuring Prominence and Access of Audiovisual Media Content to all Platforms (Findability) - Deliverable 1: Overview document in relation to Article 7a of the Audiovisual Media Services Directive*’.

European level (paragraph 3.) and the contents of the prominence measures that are the subject of this measure (paragraph 4.).

2. The reference regulatory and technical framework

The national reference regulatory framework of this measure consists mainly of the *TUSMA* and the *Electronic Communications Code*.

In order to ensure pluralism, freedom of expression, cultural diversity and the effectiveness of information to the widest possible users, Article 29 of the *TUSMA* provides, in paragraph 1, that adequate prominence should be ensured for audiovisual and radio media services of general interest provided through any means of reception or access and through any platform. The following paragraph 2 gives the Authority the task of defining, through guidelines, the criteria for the qualification of a service as a service of general interest, as well as the methods and criteria that manufacturers of equipment suitable for receiving broadcast or radio signals, providers of indexing, aggregation or retrieval services for audiovisual or sound content or, also, providers who determine how the services are presented on user interfaces, must comply with to ensure that the provisions of paragraph 1 are respected.

On the subject of prominence, paragraph 7 of Article 29 of the *TUSMA* also provides that all devices suitable for receiving a digital terrestrial television signal, even if Internet-enabled, must have the automatic numbering system of digital terrestrial television channels installed. That article also provides that the numbering system must be easily accessible, that the Authority must release the regulatory requirements necessary for the implementation of those provisions and that it shall issue, in respect of the parties producing or importing the apparatus, the necessary measures to ensure compliance.¹¹

In this context, it also notes the provisions of Article 72(2) of the *Electronic Communications Code*, namely that ‘[...] without prejudice to measures that could be taken against undertakings designated as having significant market power within the meaning of Article 79, the Authority may impose: [...] d) to the extent necessary to ensure accessibility for end-users to digital broadcasting services and related complementary services specified by the Authority, the obligation on operators to ensure access to the other resources referred to in Part 2 of Annex 2 on fair, reasonable and non-discriminatory terms’, i.e. to ensure access to application programming interfaces (APIs) and access to electronic programme guides (EPGs).

¹¹ The *TUSMA* also specifies the sanction that the Authority must apply in the event of non-compliance with the aforementioned measures (see Article 1(31) of Law No 249 of 31 July 1997).

While paragraph 7 of Article 29 of the *TUSMA* is purely national, the provisions referred to in Article 29(1) and (2) of the *TUSMA* have been adopted to transpose Article 7a of the *Audiovisual Media Services Directive*, which provides that ‘*Member States may take measures to ensure the appropriate prominence of audiovisual media services of general interest*’. Recital 25 of the *Directive* specifies, moreover, that Member States may impose obligations to ensure the appropriate relevance of content of general interest within defined objectives of general interest, such as media pluralism, freedom of expression and cultural diversity. Those obligations, for legitimate public interest considerations, should be imposed only if proportionate and only if they are necessary to achieve objectives of general interest clearly defined by Member States in accordance with European Union law.

In this regard, it should be noted that the Italian legislator had already recognised the nature of the dominant general interest of the radio and television service when, by Law No 103 of 14 April 1975, it indicated that the broadcasting of radio and television programmes constituted, pursuant to Article 43 of the Constitution, an essential public service of dominant general interest, aimed at broadening the participation of citizens and contributing to the social and cultural development of the country in accordance with the principles enshrined in the Constitution.

Subsequently, by Law No 223 of 6 August 1990, the dominant general interest of ‘*broadcasting of radio or television programmes, carried out by any technical means*’ was also extended to private concessionaires for radio and television broadcasting. This principle was also expressed in Article 7 of the previous consolidated text,¹² and, finally, reiterated in Article 6(1) of the *TUSMA*, with the provision ‘*information via an audiovisual or radio media service constitutes a service of general interest [...]*’.

It is also appropriate to recall the provisions of the agreement concluded in 2017 between the Ministry of Economic Development and RAI on the occasion of the concession for the public radio, television and multimedia service.¹³ Article 1 of the Agreement stipulates that the concession concerns the public radio, television and multimedia service ‘*to be understood as a service of general interest*’, consisting of the production and dissemination of audiovisual and multimedia content on all platforms, directed, including through the use of new technologies, to ensure complete and impartial information, as well as to promote education, civil growth, the faculty of

¹² Legislative Decree No 177 of 31 July 2005, as amended by Legislative Decree No 44 of 15 March 2010.

¹³ ‘*Agreement between the Ministry of Economic Development and RAI on the concession for the public radio, television and multimedia service (approved by Prime Minister’s Decree on the proposal of the Minister for Economic Development in agreement with the Minister for Economy and Finance of 28 April 2017)*’.

judgement and criticism, progress and social cohesion, to promote the Italian language, culture, creativity and environmental education, to safeguard national identity and ensure social benefits.

In the field of radio, television and multimedia public services, it is noted that the direction of improving and updating RAI's presence in the digital environment, expressed recently both in the Authority's resolution approving the guidelines on the content of radio, television and multimedia public service obligations,¹⁴ and in the Guidelines on the content of service contracts 2023-2028, approved by the Council of Ministers on 18 May 2022. In both measures, the development of corporate policies aimed at ensuring the visibility and access of RAI content on connected televisions, with particular regard to the listing of content, to the mechanisms of customisation and filtering, in line with the guidelines on prominence provided by the *TUSMA*, is urged.

The regulatory framework described, while providing for adequate prominence to be given to audiovisual and radio media services of general interest and to the automatic channel numbering system of digital terrestrial television, does not provide indications as to the technical feasibility of these provisions, nor does it specify how the prominence measures are to be implemented. In this regard, it is noted that in order to explore the opportunity to design technical solutions that can assist Member States in the implementation of the prominence measures provided for by the *Audiovisual Media Services Directive*, in 2021 the DVB (*Digital Video Broadcasting*) consortium established an ad hoc task force (named the *CM-TF-AVMS group*). The task force has recently produced a technical document containing the commercial requirements aimed at supporting the effective implementation of the provisions referred to in Article 7(a) of the *Directive*.¹⁵ In short, the proposed solution – consisting of an additional specification of the DVB standard, rather than an ad-hoc solution – would enable, through a specific signalling mechanism, the unambiguous identification of services as services of general interest, once implemented by the platforms and providers distributing such services, as well as by device manufacturers who must implement prominence measures in accordance with the *Audiovisual Media Services Directive*.

3. The European context

To confirm the interest and attention aroused by the prominence of services of general interest, it should be noted that this topic has featured in the work programme of

¹⁴ See Resolution No 266/22/CONS of 19 July 2022 approving the Guidelines on the content of additional obligations for the public radio, television and multimedia service pursuant to Article 59(6) of Legislative Decree No 208 of 8 November 2021. (Five-year period: 2023-2028).

¹⁵ 'Commercial requirements for AVMS signalling', DVB Document C101 of February 2022.

the *European Regulators Group for Audiovisual Media Services* (ERGA) since 2020, when the topic was addressed in a first report;¹⁶ interest was then confirmed in 2021 and 2022, as part of the work of Subgroup 1 (SG1), coordinated by the Authority.

In 2021, SG1 produced a report on the exchange of best practices on the prominence of services of general interest,¹⁷ while in 2022 it detailed how algorithms and recommendation systems can ensure the prominence both of services of general interest and of European works on on-demand media services (subject to other provisions of the Directive).¹⁸

So far, beyond Italy, only five States have adopted, or are about to adopt, measures concerning the prominence of content of general interest (Belgium, France, Germany, Ireland and the United Kingdom).¹⁹

In order to provide a summary of the content, scope and interpretation of the measures taken so far in Europe, please find below: *i*) the state of adoption of the measures; *ii*) the definition of services of general interest; *iii*) the way in which prominence is guaranteed and *iv*) those affected by the obligations and on what type of platforms or devices prominence should be guaranteed.

3.1 The status of the adoption of prominence measures

In Belgium, the decree transposing the *Audiovisual Media Services Directive* allows the Government to lay down rules ensuring adequate significance, visibility and findability to audiovisual media services of general interest; at the moment, the government has not yet implemented this provision.

In France, measures relating to the prominence of content of general interest have been in force since 1 January 2022 (as a result of a government order of 21 December 2020). In addition, in April 2022, the Government notified the European Commission of a draft implementing decree setting the thresholds for identifying operators subject to the obligations.²⁰ In July 2022, the European Commission issued an opinion on the draft

¹⁶ See ERGA (2020) '*Ensuring Prominence and Access of Audiovisual Media Content to all Platforms (Findability) - Deliverable 1: Overview document in relation to Article 7a of the Audiovisual Media Services Directive*'.

¹⁷ See ERGA (2021) '*Consistent implementation and enforcement of the new AVMSD framework. Workstream 1 Best practice exchange: Analysis of implementing national measures: Overview document on the exchange of best practices regarding Art. 7a and 7b AVMS*'.

¹⁸ See ERGA (2022) '*Exploring how algorithms and recommendation systems could ensure the appropriate prominence of audiovisual media services of general interest (Article 7a) as well as the prominence of European works (Article 13(1))*'.

¹⁹ Source Cullen (2022) '*Prominence/discoverability of audiovisual media services of general interest*'.

²⁰ The draft decree proposes two thresholds above which providers are subject to the obligations envisaged: *i*) 150,000 user interfaces for services available on an audiovisual device in the last calendar

decree, which expressed an unfavourable opinion on the measures since: *i*) the proposed obligations, as they also apply to providers established in other Member States, risked constituting a restriction on the cross-border provision of information society services and *ii*) the decree presented the risk of constituting a requirement for user interface providers to ‘monitor’ the information transmitted.²¹

In Germany, measures relating to the prominence of content of general interest have been in force since 7 November 2020. The ‘*Interstate Media Treaty*’, which transposes the *Audiovisual Media Services Directive*, provides that certain content must be readily available on user interfaces.

In Ireland, the draft decree transposing the *Audiovisual Media Services Directive* provides that the regulator may take measures to ensure the prominence of certain programmes and services in interactive guides.

In the UK, measures are already in place to ensure the prominence of public service linear services, while measures on the prominence of public service on-demand services are currently being discussed.

3.2 The definition of services of general interest

In Belgium, the public service and designated commercial services fall within the scope of television services of general interest.

In France, the services covered by the measures are the services and programmes offered by public service providers.²² The National Regulatory Authority (ARCOM) may decide to include other programmes and services, after a phase of public consultation, taking into account their contribution to pluralism and cultural diversity

year (e.g. television equipment, video projectors, peripherals connected to television equipment, connected personal assistants); *ii*) three million unique visitors per month for user interfaces provided by distributors of online audiovisual services or those available in app stores.

²¹ The European Commission specified that the first measure is contrary to the provisions of Article 3(4) (b) of the *E-Commerce Directive*, which provides for Member States to follow a mandatory procedure, consisting of requesting the Member State in which the service providers are based to take measures and, if this does not happen or if the measures prove to be inadequate, to notify the measure to the European Commission and the Member State. In this regard, the European Commission has stated that the French authorities have not provided any information on how these provisions will be complied with. As regards the second measure, the European Commission has pointed out that it is not compatible with Article 15(1) of the aforementioned *Directive*, which provides that in the provision of information society services Member States shall not impose a general obligation on providers to monitor the information that they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.

²² France Télévisions, Radio France, France Médias Monde, Arte-France, Parliamentary Channel, National Audiovisual Institute and TV5.

and opinion. The list of programmes covered by the prominence measures is made public by the French authority.

The content of the measures envisaged in Germany are public service services (broadcasting, online and radio). With regard to broadcasting and online commercial programmes, they can be defined as services of general interest – after the provider has made an explicit request to the authority – according to certain criteria, such as the time devoted to political and historical events, the time devoted to regional and local information, the ratio of in-house content to third-party content, the percentage of accessible offers, the ratio of experienced or inexperienced staff involved in programming, the share of European works, the percentage of services aimed at a 'young' audience. The lists of programmes of general interest shall be made public by the authority and shall be valid for three years.

In Ireland, the draft decree provides that the programmes and services covered by the measures may be programmes, broadcasting services and on-demand media services of the public service,²³ and that the regulator may take measures only for programmes concerning certain topics such as, but not limited to, Irish culture, history, tradition, society, sport, climate change, environmental sustainability, impartial or independent journalism, science, and education.

In the United Kingdom, the services subject to any further prominence measures should be a selection of the on-demand content of the public service, provided that they are provided free of charge.

3.3 How prominence is ensured

In Ireland, the draft decree provides that the regulator may require providers of user interfaces to: *i)* reserve a section of the home page to some categories of public service content or services; *ii)* include in the home page a well highlighted link to the EPG; *iii)* offer search features that allow users to easily find public service content.

In France, prominence can be ensured: *i)* on the home page or the screen; *ii)* in the sections that provide suggestions to users; *iii)* in search results of searches made by users; *iv)* on remote controls or devices that allow access to audiovisual services. The option chosen must ensure that the provider of the service or programme given prominence is correctly identified.

²³ A public service programme is an audiovisual programme broadcast or made available in the catalogue of a public on-demand service (i.e. services offered by the public service providers RTÉ and TG4, by holders of a television service contract, i.e. Virgin Media One, by media service providers designated as a public broadcasting service or on-demand service by the Ministry of Communications following a recommendation by the regulator).

In Germany, two levels of findability are defined for broadcasting services on user interfaces of television reception devices:²⁴ the first is aimed at ensuring the findability of broadcasting services in general, the second to give significance to certain services within the section of broadcasting services.²⁵ Appropriate significance must also be ensured to online services that make a significant contribution to diversity of opinion. How prominence measures are to be implemented is not defined, but it is left to the entity responsible for the user interface to decide how to technically implement the measures. User interface providers have six months, from the date of publication of the lists of services of general interest, to implement the prominence obligations. The effective compliance with the prominence measures is supervised and controlled by the authorities.

In the United Kingdom, proposals on how to ensure the prominence of public service on-demand services include: i) the inclusion of a single tile on Smart TV home pages, through which all public service online catch-up TV services would be highlighted and made available; ii) a prominent positioning within the sections where suggestions are provided to users and content searches are carried out. The measures currently envisaged for linear broadcasting services of the public service relate to the numbering of channels in the EPG: the first five channels are reserved for public service providers.

In Belgium, the concrete ways in which prominence is guaranteed to services of general interest have not yet been defined.

3.4 The parties affected by the obligations and the platforms and devices on which prominence must be ensured

In Belgium, the entities on whom the prominence obligations may be imposed have not yet been identified. The decree provides that measures can be imposed on all entities who control the user interface and have an impact on the visibility and findability of content.

In France, the entities subject to the obligations are the providers and operators of user interfaces that have a number of users above a threshold set by decree.²⁶ These

²⁴ User interfaces are defined as interfaces that provide a textual, audio or video overview of the offers or content of one or more media platforms, where the media platform means the service that offers broadcasting and/or online broadcasting-like programmes in an aggregate offer.

²⁵ In particular, significance to the services of public and commercial providers that include content of regional importance produced by third parties and to private services that make a significant contribution to diversity of opinion.

²⁶ The user interface is defined as any system that allows the user to choose between different audiovisual services (or between programmes related to those services), installed on a television apparatus, on a

entities must ensure, within a specified period of time established by decree, appropriate visibility to services of general interest, in accordance with specific conditions laid down by ARCOM. Those entities subject to the obligations are required to inform the regulator, in accordance with a procedure defined by the regulator, of the measures put in place in order to comply with the obligations.

In Germany, prominence must be ensured on the user interfaces of devices that receive programmes provided by dedicated infrastructure platforms (e.g. cable network) and open network platforms (such as IPTVs).²⁷

In Ireland, based on the above-mentioned draft decree, the prominence obligations will apply to providers of interactive guides, i.e. user interfaces, accessible through a terminal, through which a user can select a service or programme.²⁸

In the United Kingdom, obligations should be addressed to platform providers that are used by a significant number of users as the primary means of accessing on-demand TV content. The rules will be established by Ofcom, which shall also be responsible for dispute resolution.

4. Prominence measures

Measures concerning the prominence of audiovisual and radio media services of general interest and the automatic numbering system of digital terrestrial television channels, subject to national consultation with this provision, originate from the reference regulatory framework, represented in paragraph 2., and are located in a context, the European context – described in paragraph 3. – in which some States have already undertaken – and, in some cases, concluded – the regulatory activity regarding services of general interest.

As mentioned in the preceding paragraphs, while the provisions of Article 29(7) of the *TUSMA* – i.e. the provision that the automatic numbering system of digital terrestrial television channels is installed and easily accessible on all devices suitable for the reception of a digital terrestrial television signal – is purely national, the provisions referred to in Article 29(1) and (2) of the *TUSMA* are derived from the European Union principle expressed in Article 7(a) of the *Audiovisual Media Services Directive*.

device connecting to the television apparatus or on connected personal assistants, or a system made available by a distributor or in an app store.

²⁷ The measures do not concern Internet platforms, such as social media or search engines, in view of their different business model and their function as content intermediaries, unlike media platforms or user interfaces where the provider decides the content to be offered.

²⁸ The measures do not concern Internet platforms, such as social media or search engines.

Moreover, while, in the first case, the Authority must issue regulatory requirements implementing the provisions of the *TUSMA*, in the latter case the Authority must define by means of guidelines the criteria for the qualification of a service as a service of general interest and the methods and criteria to be followed by the affected parties.

In view of this dual task assigned to the Authority and the different nature of the regulatory action provided for in the *TUSMA*, this measure contains two annexes, the first containing the Regulation on the installation and accessibility of the automatic numbering system for digital terrestrial television channels and the second containing guidelines on the criteria for services of general interest.

The following paragraphs present the prominence measures proposed, concerning the two subjects covered by this measure.

4.1. Accessibility of the automatic numbering system of digital terrestrial television channels

As regards the accessibility measures of the automatic numbering system for digital terrestrial television channels, which in accordance with the provisions of the *TUSMA* must be installed and easily accessible on all devices suitable for receiving the digital terrestrial television signal, the following is noted.

As is known, pursuant to Article 32(2) of the previous consolidated text on audiovisual and radio media services (hereinafter also *TUSMAR*),²⁹ as of 2010 the Authority is the institution responsible for adopting the automatic numbering plan for digital terrestrial television channels (LCN - Logical Channel Numbering). The automatic ordering of channels, in a nutshell, allows the receiving device to order television programmes automatically, in order to allow the user to view them according to a predefined order that meets the criteria of ease of use and respect for habits consolidated over time. As early as 2010, the national legislator, when transposing the European Union Directive, extended the scope of safeguards aimed at facilitating the user's orientation in the new digital offering and facilitating the use of the new programmes.

From a regulatory point of view, over the years the Authority has adopted several provisions concerning the automatic numbering system of digital terrestrial television channels. In 2010, with the resolution approving the first automatic numbering plan for

²⁹ See Legislative Decree No 177 of 31 July 2005, Consolidated text on audiovisual and radio media services.



digital terrestrial television channels, both free-to-air and paid³⁰ the Authority provided that decoders, including those integrated in televisions, intended exclusively for the reception of digital terrestrial programmes, should have a graphical interface that allows at least the display of the list of all national and local channels and the numbering assigned to each of them through the LCN descriptor, in order to facilitate their use by users. Furthermore, where technically possible, decoders were to have a graphic display divided into thematic programming genres, through which, by selecting a thematic genre, it would be possible to access the list of channels related to the same genre and choose the programme to be viewed without having to type in the LCN channel number.

These provisions show that, as early as 2010, the Authority intended to provide for the installation – albeit implicitly, since the display presupposes its installation – of the LCN system on decoders and televisions with integrated decoders. Moreover, with the provision of a special graphical interface and a thematic display, the aim was to make the use of content available in a digital terrestrial manner immediate and easy.

The above-mentioned resolution was subsequently annulled by the Council of State.³¹ The above provisions were subsequently taken up again in 2015,³² with the decision that amended the determination of decoder standards and the standards for the reception of television programmes with conditional access that had already been laid down by the Authority in 2000.³³ In this context, the Authority reiterated the provisions of the resolution approving the first automatic numbering plan for digital terrestrial television channels, introducing a “Navigator” – that is, a system defined by the manufacturer, which allows the user to configure and control the tuning automatically – with the task of providing, through an easy-to-use graphic display and navigation, the list of all national and local terrestrial digital channels and their numbering assigned through the LCN descriptor, as well as, where technically possible, a graphic display divided by thematic programming genres. The decision in question provided, in addition, that the user had to be able to navigate the graphical display offered by the Navigator via a button on the remote control.

³⁰ See Article 2 of Annex A to Resolution No 366/10/CONS of 15 July 2021 *updating the automatic numbering plan for digital terrestrial television channels, both free-to-air and paid, the arrangements for allocating numbers to providers of audiovisual media services authorised to broadcast audiovisual content in digital terrestrial technology and the associated conditions of use*.

³¹ Judgements No 04658/2012, No 04659/2012, No 04660/2012 and No 04661/2012, filed on 31 August 2012.

³² See Resolution No 685/15/CONS of 16 December 2015, amending the determination of decoder standards and standards for the reception of conditional access television programmes in Resolution No 216/00/CONS.

³³ See Resolution No 216/00/CONS of 7 April 2000, determining the decoder standards and standards for the reception of conditional access television programmes.

From the analysis of the answers to the preliminary enquiry, as to how to ensure the accessibility of the automatic numbering system for digital terrestrial television, what emerges first of all is the importance of the presence of the number keys on the remote controls and of their enabling, regardless of the environment from which they are selected. In addition, several entities have pointed out that only the end user must be able to modify the automatic ordering of LCN channels and that no ‘*intermediate*’ operator must alter the order defined by the Authority. Finally, many entities noted the need for the ways of accessing digital terrestrial television channels to be easy to understand and for these channels to have adequate prominence on home pages, menus and overlays (i.e. the information or images provided in overlays during the airing of a programme).

In light of the above, in line with previous regulatory provisions and with the provisions of the *TUSMA*, and also taking into account the initial feedback received from interested parties through the reply to the request for preliminary information, the Authority considers it necessary to reiterate the obligation to install the automatic numbering system for digital terrestrial television channels on all devices suitable for the reception of the digital terrestrial television signal. Reference is made, in particular, to all television devices, including Internet-enabled devices, and to the decoders, including those integrated into televisions. In addition, taking into account that, as mentioned, the Authority is the institution responsible for adopting the automatic numbering plan for digital terrestrial television channels, it is deemed necessary to provide that software interface operators and manufacturers of devices suitable for receiving a digital terrestrial television signal allocate the numbering in accordance with the plans established by the Authority, without prejudice to the user’s right to reorder the channels at his/her own discretion.

As regards the accessibility of the automatic numbering system, the Authority considers it appropriate and proportionate to provide that remote controls (at least one remote control, if there is more than one), supplied together with a device suitable for receiving a digital terrestrial television signal, must have the number keys that allow access to the digital terrestrial television channels and that these keys must be enabled, and therefore usable by the user, from any environment (linear or online), i.e. regardless of the service, functionality or application that the user is currently using.

In addition, TV content transmitted in a digital terrestrial manner must be accessible directly from the first window of the home page of devices, i.e. in the first level of offering to the user. It must also be possible to access the automatic numbering system with a maximum number of two clicks, from any environment of the device, i.e. regardless of the service, functionality or application that the user is currently using.

The Authority also considers it appropriate to provide for the use of a single logo for the tile or icon allowing access to the automatic numbering system of digital terrestrial television channels, and therefore to its contents, on all devices suitable for receiving a digital terrestrial television signal.

In this regard, in order to take due account of the latest technological developments, and also considering it essential to have a useful opportunity to exchange views with market actors, in order to define the implementation methods for the latter provision, the Authority considers it necessary to set up a technical panel at the conclusion of this procedure, open to the participation of all parties affected, such as device manufacturers, operators and developers of user interfaces, as well as audiovisual media service providers.

Finally, with the aim of allowing all those affected by the measures identified above to adapt their systems and implement the necessary changes to software or hardware, the Authority considers it appropriate to provide for a period of six months, starting from the publication of the final measure, for the implementation of the measures envisaged, with the exception of the implementation of the provision regarding the logo for the tile or icon allowing access to the automatic numbering system of terrestrial digital television channels, for which the Authority foresees a period of six months from the conclusion of the Technical Panel's work.

4.2. The prominence of services of general interest

The analysis of the European experiences relating to the prominence of services of general interest, as set out in paragraph 3., showed that, in Europe, the definition of the prominence standards for services of general interest is still at a very early stage. In the few cases where prominence measures have already been adopted, i.e. in France and Germany, services of general interest were identified as, in the first instance, the public service and, secondly, following an evaluation phase by the authorities, commercial services meeting certain criteria. In both cases, the authorities publish the list of programmes covered by the prominence measures. Moreover, both in France and in Germany, the choice – from a number of options – of the means for technical implementation of the measures is left to the discretion of the entities that are able to determine how the services are presented on user interfaces.

In their replies to the request for preliminary information, several entities identified public and commercial services that are accessible free of charge to the entire population and are subject to standards and regulatory provisions for the protection of general interests as services of general interest. In addition, many stakeholders pointed out that the prominence of these services must be ensured on the home page, as well as

in all programme guide, search and recommendation functions that allow the user to access those services. Several entities also recalled the importance of the presence of numeric keys on remote controls and their functioning regardless of the environment from which they are selected. Finally, some entities noted that the prominence rules must also be applied to devices for the reception of mobile radio services.

In light of the relevant regulatory framework and also considering the European experience in this field and the initial feedback received from stakeholders through the response to the request for preliminary information, the Authority considers it appropriate to identify a basket of services of general interest including audiovisual and radio media services disseminated free of charge by the public service concessionaire on terrestrial digital, satellite, and online – i.e. catch-up TV and catch-up radio – means, the freely available catalogues of the public service concessionaire, the FM services distributed online – including radio services disseminated by the public service concessionaire in DAB+, and, on the basis of the principle expressed in Article 6 of the TUSMA, which, as already mentioned, qualifies news as a service of general interest, national audiovisual and radio commercial services distributed free of charge on digital terrestrial, satellite and online – i.e. catch-up TV and catch-up radio – means, the freely available catalogues corresponding to commercial services in broadcasting, the FM services distributed online – and local audiovisual and radio commercial services distributed over digital terrestrial means, having an editorial angle, i.e. generalist, semi-generalist and thematic ‘news’ programming services, as defined in the update of the new automatic numbering plan for digital terrestrial television channels referred to in Resolution No 116/21/CONS.³⁴

In addition, taking into account the intention of the Italian legislator to extend, as early as in 1990, the nature of the dominant general interest to private concessionaires for radio and television broadcasting too, the Authority intends to also include in the basket of services of general interest national commercial audiovisual and radio services distributed free of charge on digital terrestrial, satellite and online means – i.e. catch-up TV and catch-up radio, catalogues available free of charge corresponding to commercial services in broadcasting, FM services distributed online, as well as local commercial audiovisual and radio services distributed on digital terrestrial and commercial radio services distributed in DAB+, which help to ensure media pluralism and cultural diversity and diversity of opinion.

³⁴ See Annex A to Resolution No 116/21/CONS *updating the new automatic numbering plan for digital terrestrial television channels, the arrangements for allocating numbers to providers of audiovisual media services authorised to broadcast audiovisual content in digital terrestrial technology and the associated conditions of use.*

The free distribution of services is an essential condition in order to comply with the provisions of the law, since the explicit purpose of the provision referred to in paragraph 1 of Article 29 of the TUSMA is *‘to ensure pluralism, freedom of expression, cultural diversity and effectiveness of information for the widest possible audience’* (emphasis added).

To this end, the Authority shall identify a list of indicators to be taken into account in the assessment of the inclusion of a commercial service in the basket of services of general interest: the time spent on news (national, regional and local), the time spent on current social, educational and cultural programmes, the share of European works, the percentage of accessible offers.

Within 30 days of the adoption of the final measure, providers of commercial audiovisual and radio services distributed free of charge on digital terrestrial, satellite and online means, as well as commercial radio services distributed in DAB+, may send a formal request to the Authority, through a form available on its website, indicating the service proposed as a service of general interest and specifying the values of the criteria indicated above.

At the end of the procedure for assessing the applications received, the Authority shall publish on its website the list of public and commercial services identified as services of general interest and to which the prominence measures described below apply. Service providers included in the list of services of general interest are required to notify the Authority of any changes to what was stated during the procedure described above, in order to allow for a possible reassessment of the application for inclusion in the basket of services of general interest.

After one year from the date of publication of the list, the providers of new services, offered after the publication of the list and satisfying the criteria identified in this measure, can send a formal request to the Authority, through the form available on its website, indicating the service proposed as a service of general interest, specifying that it is a newly introduced service and indicating the values of the criteria met. Where appropriate, following the assessment of the applications received, the Authority shall publish the updated list on its website. This procedure shall be repeated annually from the date of publication of the list.

Once the scope of the basket of services of general interest has been defined, it shall be necessary to identify the devices and interfaces on which appropriate prominence should be provided, as well as the entities subject to the obligations and methods for implementing the prominence measures.

As regards the devices on which the prominence measures are to be implemented, the Authority considers it necessary to identify all devices and user interfaces allowing access to services of general interest as defined in the preceding paragraphs, including traditional televisions and Internet-enabled televisions, terrestrial and satellite television decoders, devices that connect to a television or screen and offer access to audiovisual and radio media services, devices that allow listening to radio services in DAB+, user interfaces or applications available from a distributor or in an app store that allow access to services of general interest on other devices, such as smartphones and personal computers.

In view of the above and also taking into account the provisions of the *TUSMA*, the Authority considers that the natural entities subject to the prominence obligations are those who are able to influence the manner in which the content and services are presented to users, i.e. manufacturers of devices suitable for receiving audiovisual or radio signals and those who determine how the services are presented on user interfaces.

As regards the way in which the parties subject to the obligations must ensure the prominence of the services of general interest on the devices and interfaces identified above, please note the following: In light of the above considerations and especially given the technological and market scenario described in the premise, a one size fits all approach, i.e. a regulation providing for a single technical implementation of the prominence measures that adapts to all devices and interfaces is not deemed appropriate for the context. Similarly, it is not considered appropriate to propose excessively detailed regulation on how to ensure the prominence of services of general interest, as this would entail, at this stage, the need for a short-term revision of the rules, in order to keep pace with the rapid succession of technological developments and user behaviour resulting from them, and would jeopardise the correct application of the principle of technology neutrality and the safeguarding of the single market, which can be achieved by harmonising the approach adopted at a European level.³⁵ In addition, the proportionality of the regulation with respect to the objective to be achieved must always be ensured.

In view of the above, the Authority considers it appropriate, first of all, to introduce provisions differentiated between audiovisual and radio services of general interest distributed on digital terrestrial, satellite and online means, on the one hand, and radio services of general interest distributed in DAB+, on the other, in view of the different devices used for the use of these services.

In view of the above, in order to ensure the prominence of audiovisual and radio services of general interest disseminated on digital terrestrial, satellite and online means,

³⁵ See ERGA (2021), *op. cit.*.

the Authority considers it necessary that the parties subject to the obligations provide for the introduction of a dedicated tile or icon, immediately visible on the home page of the device, i.e. in the first level of offering to the user, which acts as the sole point of access to services of general interest. This tile shall be called ‘Highlights’ and shall lead to a screen containing the logos of the public service concessionaire and the national general audiovisual media service providers, placed in the same order of allocation as the associated LCN numbers, which when selected provide access to the offer of the related media services. In the same screen there shall also be icons for *local TV*, *Radio* and other icons that can group thematic channels.

In addition, it must be possible to access services of general interest with a maximum number of two clicks, from any environment of the device, i.e. regardless of the service, functionality or application that the user is currently using.

In addition, the Authority considers it appropriate to identify a number of additional implementation options compared to the previous one, from among which the parties subject to the prominence measures are required to choose at least one: *i*) a placement of the basket of services of general interest among the top five positions in the sections that provide suggestions to users; *ii*) a ranking of the basket of services of general interest among the top five positions in the list of results of searches carried out by users; *iii*) the introduction of an *ad hoc* button for the whole basket of services of general interest (or multiple buttons for different types of services) on remote controls or devices that allow access to services.

The parties subject to the obligations, by virtue of their knowledge of the products and responsibilities, will be able to choose the additional option that best suits the interface and the device on which they will have to ensure significance to services of general interest.

As regards the prominence of radio services of general interest broadcast in DAB+, the Authority considers it necessary that the entities subject to the obligations provide for the placement of services of general interest among the top positions on the list of admissible programmes submitted to users.

In addition, in order to take into account the changing technological and market scenario, it also considers it essential to explore the possible impact on this regulation of the new technological solutions that are emerging recently, such as the DVB-I standard, in order to facilitate the convergence between broadcast transmissions and IP transmissions, and its integration with the HbbTV (*Hybrid Broadcast Broadband TV*), the Authority considers it appropriate to launch an *ad hoc*, Technical Panel open to the participation of all stakeholders, such as, in this case, device manufacturers, audiovisual

and radio service providers, operators and developers of the user interfaces of the devices mentioned.

Finally, with the aim of allowing all those identified as being subject to the prominence measures to adapt their systems and implement the necessary changes to software or hardware, the Authority considers it appropriate to provide a period of six months, starting from the publication of the list of services of general interest, for the implementation of the prominence measures of audiovisual and radio services of general interest.

All entities subject to the obligations are required to inform the Authority of the measures put in place in order to comply with the obligations. The Authority shall ensure that the measures envisaged are effectively and correctly implemented. In the event of infringements, the Authority shall apply the sanctions referred to in Article 1(31) of Law No 249 of 31 July 1997.

HAVING HEARD the report of Commissioner Laura Aria, rapporteur pursuant to Article 31 of the *Regulation on the organisation and operation of the Authority*;

RESOLVES

Article 1

1. A public consultation is hereby launched on the guidelines and regulatory prescriptions aimed at ensuring the prominence of audiovisual and radio media services of general interest and the accessibility of the automatic channel numbering system of digital terrestrial television pursuant to Article 29(1), (2) and (7) of the *TUSMA*.

2. The text of the consultation, referred to in paragraph 1, the regulatory impact analysis (RIA) and the consultation procedures, are set out respectively in Annexes A, B, C and D to this resolution, which form an integral and substantial part thereof.

3. This measure may be challenged before the Lazio Regional Administrative Court within 60 days of its publication.

4. This resolution, including Annexes A, B, C and D, shall be published on the Authority's website.

Rome, 25 January 2023

THE PRESIDENT
Giacomo Lasorella

THE COMMISSIONER
RAPPORTEUR
Laura Aria

Attesting the conformity of the decision
THE GENERAL SECRETARY
Giulietta Gamba

ANNEX A
Resolution No 14/23/CONS

**DRAFT REGULATION ON ACCESSIBILITY OF THE AUTOMATIC
NUMBERING SYSTEM OF THE DIGITAL TERRESTRIAL TELEVISION
CHANNELS**

Article 1

Definitions

1. The following definitions are set out for the purposes of this regulation:
 - a) *Founding Law*: Law No 249 of 31 July 1997 *establishing the Communications Regulatory Authority and laying down rules relating to the telecommunications and radio-television systems*;
 - b) *Consolidated Act* or *TUSMA*: Legislative Decree No 208 of 8 November 2021 *implementing Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the*

coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the Consolidated Act on the provision of audiovisual media services in view of changing market realities;

- c) Authority: the Communications Regulatory Authority;
- d) The Relevant Directorate: the relevant Directorate in accordance with the Regulation concerning the organisation and operation of the Authority;
- e) devices suitable for receiving a digital terrestrial television signal: television devices, including Internet-enabled devices, and decoders, including those integrated into televisions, allowing access to digital terrestrial television channels;
- f) user interface: any system that allows the user to choose among different audiovisual services (or among programmes relating to those services), installed on a television set or on a device connecting to the television set;
- g) automatic numbering system: the automatic numbering system of digital terrestrial television channels.

2. In so far as not expressly provided for in this article, please refer to the provisions of the TUSMA.

Article 2

Scope of application

1. This Regulation governs the methods of installation and the accessibility conditions of the automatic numbering system of the digital terrestrial television channels.
2. The provisions of this Regulation shall apply to all manufacturers of devices suitable for receiving a digital terrestrial television signal and to all operators of user interfaces allowing access to digital terrestrial television channels.

Article 3

Installation of the automatic numbering system

1. The automatic numbering system of the digital terrestrial television channels shall be

installed on all devices suitable for receiving a digital terrestrial television signal.

2. The operators of user interfaces that allow access to digital terrestrial television channels and the manufacturers of devices suitable for receiving a digital terrestrial television signal shall assign the numbers in accordance with the provisions of the automatic numbering plans for the digital terrestrial television channels established by the Authority.

D1. Do you agree with the confirmation of the obligation to install the automatic numbering system of the digital terrestrial television channels on all devices suitable for receiving the digital terrestrial television signal?

D2. Do you agree with the provision that the operators of software interfaces and the manufacturers of devices suitable for receiving the digital terrestrial television signal assign the numbers in accordance with the provisions of the plans established by the Authority?

Article 4

Accessibility of the automatic numbering system

1. At least one of the remote controllers supplied in conjunction with a device suitable for the reception of the digital terrestrial television signal shall contain the numeric keys allowing access to the digital terrestrial television channels.

2. The numeric keys that allow access to the digital terrestrial television channels are enabled, and therefore usable by the user, from any environment, service, functionality or application that the user is using at the time the key is pressed.

3. Digital terrestrial television channels are accessible via a tile or icon present in the first window of the home page of devices suitable for receiving the digital terrestrial television signal, i.e. in the first level of offering to the user.

4. The automatic numbering system of the digital terrestrial television channels is accessible with a maximum number of two clicks (actions) by the user, from any environment of the device, i.e. regardless of the service, functionality or application that the user is currently using.

5. The image or wording on the tile or icon referred to in paragraph 3 shall be identical on all devices suitable for receiving the digital terrestrial television signal and on all



user interfaces allowing access to the digital terrestrial television channels.

D3. Do you agree with the provision concerning the supply of remote controls (at least one) for devices suitable for the reception of the digital terrestrial television signal, which contain the numeric keys and that these keys can be used by the user from any environment?

D4. Do you agree with the provision that TV content transmitted in a digital terrestrial manner will be accessible directly from the first window of the home page of the devices and that the automatic numbering system will be accessible with a maximum number of two clicks?

D5. Do you agree with the provision concerning the use of a single logo for access to the automatic numbering system of the digital terrestrial television channels?

Article 5

Supervision

1. The Authority monitors compliance with the rules contained in this measure.
2. In the event of infringements of the rules contained in this measure, the Authority shall apply the penalties referred to in Article 1, paragraph 31, of the *Founding Law*.

Article 6

Technical Panel

1. A Technical Panel shall be set up at the relevant Directorate to define the implementing rules for the provision referred to in Article 4(5).
2. The Technical Panel, open to the participation of device manufacturers, operators and developers of user interfaces, audiovisual media service providers and other stakeholders, is chaired and coordinated by the relevant Directorate.
3. During the work, the Technical Panel defines a proposal on the topics covered, on which the Authority expresses itself by adopting a specific resolution.
4. The work of the Technical Panel shall be launched, upon notice on the Authority's website, within 90 days of the publication of this resolution and will have a maximum



duration of 60 days.

D6. Do you agree with the provision concerning the launch of an *ad hoc* Technical Panel in order to reach a shared definition of the logo for access to the automatic numbering system of the digital terrestrial television channels?

Article 7

Transitional and final provisions

1. The provisions contained in this measure shall enter into force six months after the publication of this resolution, with the exception of the provision referred to in paragraph 5 of Article 4 which shall enter into force six months after the conclusion of the Technical Panel's work referred to in Article 6.

D7. Do you agree with the provision concerning the timing of implementation of the measures?

ANNEX B
Resolution No 14/23/CONS

**GUIDELINES RELATING TO THE PROMINENCE OF AUDIOVISUAL AND
RADIO MEDIA SERVICES OF GENERAL INTEREST**

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1. The scope of application and purpose of the guidelines

1. The purpose of these guidelines is to define the criteria for the qualification of a service as ‘*of general interest*’ in order to give it appropriate prominence, as provided for in Article 29(1) and (2) of the *TUSMA*.

2. In order to ensure pluralism, freedom of expression, cultural diversity and the effectiveness of information to the widest possible users, Article 29 of the *TUSMA* in fact provides, in paragraph 1, that adequate prominence should be ensured for audiovisual and radio media services of general interest provided through any means of reception or access and through any platform. The following paragraph 2 gives the Authority the task of defining, through guidelines, the criteria for the qualification of a service as a service of general interest, as well as the methods and criteria that manufacturers of equipment suitable for receiving broadcast or radio signals, providers of indexing, aggregation or retrieval services for audiovisual or sound content or, also, providers who determine how the services are presented on user interfaces, must comply with to ensure that the provisions of paragraph 1 are respected.

3. Therefore, the guidelines first define the basket of services of general interest to which appropriate prominence must be provided, and then identify the devices and user

interfaces affected by the prominence measures, as well as the entities subject to the provisions and how they are implemented.

4. Hereinafter, ‘user interface’ refers to any system that allows the user to choose among different audiovisual services (or among programmes related to those services), installed on a television set or on a device that connects to the television set, or any system made available by a distributor or in an app store.

2. Services of general interest

5. The basket of services of general interest includes audiovisual and radio media services disseminated free of charge by the public service concessionaire on terrestrial digital, satellite, online means – i.e. the catch-up TV and the catch-up radio, the freely available catalogues of the public service concessionaire, the FM services distributed online –, including radio services disseminated by the public service concessionaire in DAB+, as well as national audiovisual and radio commercial services distributed free of charge on digital terrestrial, satellite and online means – i.e. catch-up TV and catch-up radio, the freely available catalogues corresponding to commercial services in broadcasting, the FM services distributed online – and local audiovisual and radio commercial services distributed over digital terrestrial means, with generalist, semi-generalist and thematic ‘news’ programming services, as defined in the update of the new automatic numbering plan for digital terrestrial television channels referred to in Resolution No 116/21/CONS, and which have an editorial angle.

6. In addition, following an evaluation procedure implemented by the Authority, the basket of services of general interest shall also include national commercial audiovisual and radio services distributed free of charge on digital terrestrial, satellite and online means – i.e. catch-up TV and catch-up radio, catalogues available free of charge corresponding to commercial services in broadcasting, FM services distributed online, as well as local commercial audiovisual and radio services distributed on digital terrestrial and commercial radio services distributed in DAB+, which contribute to ensuring media pluralism and cultural diversity and diversity of opinion.

7. In the procedure for evaluating the inclusion of a commercial service in the basket of services of general interest, the following indicators shall be considered:

- the time devoted to information (national, regional and local);
- the time devoted to current affairs and social, educational and cultural programmes;
- the share of European works;

- the percentage of accessible offers.
8. The evaluation procedure shall be carried out in accordance with the procedures set out below.
9. Within 30 days of the adoption of the measure approving these guidelines, providers of national audiovisual and radio commercial services distributed free of charge on digital terrestrial, satellite and online means – i.e. catch-up TV and catch-up radio, the catalogues available free of charge corresponding to commercial services in broadcasting, FM services distributed online –, as well as local commercial audiovisual and radio services distributed on digital terrestrial and commercial radio services distributed in DAB+, shall send a formal request to the Authority, through a form available on the institutional website, indicating the service proposed as a service of general interest and specifying, for each proposed service, the values of the criteria indicated in the previous points.
10. At the end of the procedure for assessing the applications received, the Authority shall publish on its website the list of public and commercial services identified as services of general interest.
11. Service providers included in the list of services of general interest are required to promptly notify the Authority of any changes to what was stated during the procedure described above, in order to allow for a possible reassessment regarding the inclusion of the service in the basket of services of general interest.
12. After one year from the date of publication of the list, the providers of new services, offered after the publication of the list and satisfying the criteria identified in this measure, can send a formal request to the Authority, through the form available on its website, indicating the service proposed as a service of general interest, specifying that it is a newly introduced service and indicating the values of the criteria met. Where appropriate, following the assessment of the applications received, the Authority shall publish the updated list on its website. This procedure shall be repeated annually from the date of publication of the list.

D8. Do you agree with the definition of the basket of services of general interest?

D9. Do you agree with the provision of an *ad hoc* procedure for the assessment of the inclusion of additional commercial services in the basket of general services? Do you agree with the identified indicators?

3. The devices and interfaces covered by the measures

13. The devices on which appropriate prominence must be given to services of general interest are all the devices and user interfaces allowing access to services of general interest as defined in paragraph 2., including traditional televisions and Internet-enabled televisions, terrestrial and satellite television decoders, devices that connect to a television or screen and offer access to audiovisual and radio media services, devices that allow listening to radio services in DAB+, user interfaces or applications available from a distributor or in an app store that allow access to services of general interest on other devices, such as smartphones and personal computers.

D10. Do you agree with the identification of interfaces and devices on which the prominence measures are to be implemented?

4. The entities subject to the measures

14. The entities subject to the provisions set out in these guidelines are all those who are able to influence the manner in which the content and services are presented to users, i.e. manufacturers of devices suitable for receiving audiovisual or radio signals and those who determine how the services are presented on user interfaces.

D11. Do you agree with the identification of the entities subject to the prominence obligations?

5. How to implement the measures

In order to ensure the prominence of audiovisual and radio services of general interest disseminated on digital terrestrial, satellite and online means, as defined in paragraph 2., the entities subject to the provisions, as identified in paragraph 4., shall introduce a dedicated tile or icon, immediately visible on the home page of the device, i.e. in the first level of offering to the user, which acts as the sole point of access to services of general interest.

15. This tile shall be called ‘Highlights’ and shall lead to a screen containing the logos of the public service concessionaire and the national general audiovisual media service providers, placed in the same order of allocation as the associated LCN numbers, which when selected provide access to the offer of the related media services. On the same screen there are also icons from which you access the:

- *Local TV*: local commercial audiovisual services disseminated on digital terrestrial means and which have an editorial angle, i.e. generalist, semi-generalist and thematic 'news' programming services, as defined in the update of the new automatic numbering plan for digital terrestrial television channels referred to in Resolution No 116/21/CONS; any commercial local audiovisual services disseminated on digital terrestrial means resulting from the evaluation procedure described in paragraph 2.;
- *Radio*: radio media services disseminated free of charge by the public service concessionaire on digital terrestrial, satellite and online (i.e. the catch-up radio, the FM services distributed online); commercial radio services disseminated free of charge on digital terrestrial, satellite and online means (i.e. catch-up radio, the FM services distributed online) which have an editorial angle, i.e. generalist, semi-generalist and thematic 'news' programming services, as defined in the update of the new automatic numbering plan for digital terrestrial television channels referred to in Resolution No 116/21/CONS; any commercial radio services disseminated free of charge on digital terrestrial, satellite and online means (i.e. catch-up radio, the FM services distributed online) resulting from the evaluation procedure described in paragraph 2..
- Other icons that can group national audiovisual media services, other than generalists, disseminated free of charge on digital terrestrial, satellite and online means which have an editorial angle, i.e. semi-generalist and thematic 'news' programming services, as defined in the update of the new automatic numbering plan for digital terrestrial television channels referred to in Resolution No 116/21/CONS, as well as possible national commercial audiovisual services disseminated free of charge on digital terrestrial, satellite and online means resulting from the evaluation procedure described in paragraph 2..

16. In addition, the same entities ensure that it is possible to access services of general interest with a maximum number of two clicks by the user, from any environment of the device, i.e. regardless of the service, functionality or application that the user is currently using.

17. In addition to the previous provisions, the entities identified in paragraph 4. choose and implement at least one of the following solutions: i) a placement of the

basket of services of general interest among the top five positions in the sections providing suggestions to users; *ii*) a ranking of the basket of services of general interest among the top five positions in the list of results of searches carried out by users; *iii*) the introduction of an *ad hoc* key for the whole basket of services of general interest (or several keys for different types of services) on remote controls or devices that allow access to the services.

18. In order to ensure the prominence of radio services of general interest broadcast in DAB+, the entities subject to the obligations, as identified in paragraph 4., provide for the placement of services of general interest among the top positions on the list of admissible programmes submitted to users.

19. In order to explore the possible impact on this regulation of the new technological solutions that are emerging recently, such as the DVB-I standard, in order to facilitate the convergence between broadcast transmissions and IP transmissions, and its integration with the HbbTV (*Hybrid Broadcast Broadband TV*), within 90 days of the conclusion of this proceeding it is envisaged to launch a Technical Panel with a maximum duration of 90 days and open to the participation of all stakeholders, such as device manufacturers, audiovisual and radio service providers, operators and developers of the user interfaces of the devices mentioned. The Technical Panel is chaired and coordinated by the relevant Directorate in accordance with the Regulation concerning the organisation and operation of the Authority. During the work, the Technical Panel defines a proposal on the topics covered, on which the Authority expresses itself by adopting a specific resolution.

D12. Do you agree with the defined implementation methods to ensure the prominence of audiovisual and radio services of general interest disseminated on digital terrestrial, satellite and online means?

D13. Are other methods of implementation suggested to ensure the prominence of audiovisual and radio services of general interest?

D14. Do you agree with the defined implementation methods to ensure the prominence of radio services of general interest broadcast in DAB+?

D15. Do you agree with the provision concerning the launch of a Technical Panel to explore the possible impact on the regulation of new technological solutions?

6. Final provisions

20. In order to allow the adaptation of the systems and the implementation of the software or hardware changes provided for in these guidelines, a period of six months, starting from the publication of the list of services of general interest, is provided for the implementation of the prominence measures of audiovisual and radio services of general interest.

21. All entities subject to the obligations shall promptly inform the Authority of the measures implemented in order to comply with the obligations.

22. The Authority shall ensure that the measures envisaged are effectively and correctly implemented. In the event of infringements of the rules contained in this measure, the penalties provided for in Article 1(31) of Law No 249 of 31 July 1997 shall apply.

D16. Do you agree with the provision concerning the timing of implementation of the measures?

PRELIMINARY RIA Report
Resolution No 211/21/CONS

1. Legal framework

Resolution No 211/21/CONS

Legislative Decree No 208/2021, in particular Article 29 thereof

Resolution No 595/18/CONS, as amended by Resolution No 24/19/CONS

2. Reasons for the intervention

It should be noted that the exercise of the regulatory power conferred by the regulatory body on the Authority by virtue of Article 29 of Legislative Decree No 208/2021 does not in itself require recourse to the RIA, since it is a regulatory activity required by the primary rule which requires the following:

- (i) defining, through guidelines, the criteria for the qualification of a service as a service of general interest, as well as the methods and criteria that manufacturers of equipment suitable for receiving radio-television or radio signals, providers of indexing, aggregation or retrieval services for audiovisual or sound content or, also, providers who determine how the services are presented on user interfaces, must comply with to ensure compliance with the provisions of paragraph 1 of the same article.
- (ii) issuing the regulatory requirements necessary so that all devices suitable for receiving a digital terrestrial television signal, even if Internet-enabled, have the automatic numbering system of digital terrestrial television channels installed and easily accessible.

3. Area of intervention

Direct addressees of the obligations: producers of television equipment, including Internet-enabled, and of decoders, including those incorporated in televisions, which allow access to digital terrestrial television channels, manufacturers of equipment suitable for receiving audiovisual or radio signals, and those who determine how services are presented on user interfaces.

Indirect addressees: providers of audiovisual and radio media services.

4. Objectives and indicators:

- Firstly, to implement the primary legislation introduced by the Consolidated Act;

- Clarity in predetermining the direct addressees of obligations with the drawing up of the criteria they must adhere to in order to ensure prominence;
- Determination of conduct to be subject to sanctions.

5. Definition of alternative options

- option zero: no regulations with the impossibility of leaving the current regulation unchanged;
LCN
- option 1: prohibiting use for other 0-999 numbering services;
- option 2: option 1 plus highlighting via a home page and main menu icon that allows access to the LCN line-up;
- option 3: option 2 plus the availability of a remote control with numeric keys and activation of the numbering system line up by pressing a numeric key on the remote control.

Services of general interest

- option 1: highlighting via a home page tile that allows direct access to services of general interest;
- option 2: option 1 plus access to services of general interest in just two actions from any menu of the equipment;
- option 3: option 2 plus placing the basket of services of general interest in the first five suggestions, in the first five search results, or the introduction of an *ad hoc* button in remote controls for the whole basket of services of general interest.

6. Identification of the preferred option and justification of the choice

Given that option zero would not have been viable, since the regulatory activity, in this case, constitutes a legal obligation, the Authority decided to proceed by choosing:

- for the LCN system, option 3, as it is the only one capable of allowing easy access to this system according to the habits of users;
- for services of general interest, option 2, as it emerged that users find access difficult from different menus, with the addition of at least one of the options identified in option 3, given the relevance of search results or suggestions.