

European Media Freedom Act: Right of customisation of audio-visual offer (Article 19)

ARTICLE 19's recommendations with regards to the right of customisation

For people using online platforms of various kinds (among others video-sharing, on demand, social media platforms, public service broadcasters etc.) the exposure to diverse content depends on a number of factors. Among the more incisive, we list the design (including dark patterns) and default settings of the interfaces or of the devices used to access the content, as well as the recommendation systems used by the platforms providing such content.

Multidisciplinary research has shown how impactful those factors can be on users' behaviours, and on their exposure to diversity¹. The European Commission's proposal recognises that the *status quo* is no longer sustainable, and grants users some agency to personalise the default settings on interfaces and devices. While being a welcomed step, Article 19 falls short in achieving its goal. On the one hand, it only focuses on interfaces and devices, leaving untouched recommender systems. On the other hand, it says nothing about the minimum options that should be provided to users that want to change the default settings.

Finally, we note that to provide users with real choice it is paramount to create the conditions for a variety of providers or recommender systems to be able to offer their services to users. To achieve this goal, ARTICLE 19 has repeatedly called for pro-competitive solutions that open the market to alternative players and diversify the environment while empowering users with real choice.²

Our recommendations:

- The scope of the right of customisation should concern all media offer and should be expanded as to include recommender systems.
- Article 19 should impose minimum alternatives to the default settings to be provided to users, in accordance with data protection, exposure diversity and other public interest goals.

¹ See, among others: CMA, Online Choice Architecture: How digital design can harm competition and consumers, 2022, available at: <https://www.gov.uk/government/publications/online-choice-architecture-how-digital-design-can-harm-competition-and-consumers>; FTC Report, Bringing Dark Patterns to life, 2022, available at: https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-report-shows-rise-sophisticated-dark-patterns-designed-trick-trap-consumers?utm_source=govdelivery; A. Fletcher, Behavioral Insights in the DMA: A Good Start, But How Will the Story End?, CPI, 2022, available at: <https://www.competitionpolicyinternational.com/behavioral-insights-in-the-dma-a-good-start-but-how-will-the-story-end/>

² See: ARTICLE 19, Taming Big Tech: A Pro-competitive Solution to Protect Free Expression, Policy Brief, 2021, available at: <https://www.article19.org/wp-content/uploads/2023/01/Taming-big-tech-UPDATE-Jan2023-P04b-Interactive-web.pdf>

- Article 19 should impose manufacturers and developers to provide fair and non-discriminatory access to providers willing to offer their own recommender systems on the platform or device that manufactures and developers put on the market.