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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Draft Council conclusions on the strengthening of European content in the digital economy - Adoption

In the course of several meetings, the Audiovisual Working Party has prepared the above set of conclusions with a view to their adoption at the Education, Youth, Culture and Sport Council on 26-27 November 2018.

With a view to resolving the last remaining difficulties of delegations, the Presidency has made three small adjustments to the text (points 29, 43 and 46).

The Permanent Representatives Committee is invited to examine the text of the draft conclusions as set out in the Annex, with a view to forwarding it to the Council for adoption and subsequent publication in the Official Journal.

Draft**Council conclusions on the strengthening of European content in the digital economy**

THE COUNCIL OF THE EUROPEAN UNION,

recalling the political background to this issue as set out in Annex¹,

RECOGNISES THAT

1. the content-producing and content-distributing sectors, which include content and works from the media (with audiovisual, print and online content) as well as other cultural and creative sectors, are essential pillars of Europe's social and economic development. The quality and diversity of European content are inherent to European identity and essential for democracy and social inclusion, as well as for vibrant and competitive European media, cultural and creative industries. These sectors also reinforce Europe's soft power globally. With their crossover effects, they foster innovation, creativity and wealth in other areas;
2. digital and online technologies are a huge opportunity to foster a new era of European creativity. They also provide the possibility of increasing access to European cultural content and to preserve, promote and disseminate our European cultural heritage, for instance through the use of virtual reality. Digital technologies enable all actors to gain new skills and knowledge, develop new services, products and markets and reach new audiences. Online platforms, in particular social media and video-sharing platforms, provide access to an enormous variety of content, especially from third parties, to countless users in the European Union and all over the world;

¹ The annex lists relevant documents related to the issues in question (EC communications, legislative acts, Council conclusions etc.).

3. at the same time, the use of digital and online technologies presents challenges for Europe's content-producing and content-distributing sectors as a whole. All actors must adapt their business strategies, develop new skills, broaden their knowledge, rethink the structure of their organisations and evaluate their financing and production/distribution models. Greater use of data is increasingly impacting value chains at all levels. These developments also have an enormous influence on users' expectations and behaviour;
4. the digital transformation has been significantly shaped by global online platforms. In particular the algorithm-driven business models of those online platforms which offer cultural and creative content, including media content, and which are based on the personalised distribution of content and advertising targeted at users have raised questions concerning transparency, disinformation, media pluralism, taxation, remuneration of content creators, protection of privacy, promotion of content and cultural diversity;
5. it is appropriate to highlight the following political priorities on the European Union's agenda:
 - A. Fostering diversity, visibility and innovation
 - B. Establishing a level playing field
 - C. Strengthening trust in information and sources
 - D. Improving skills and competences.
6. in light of the developments mentioned above and taking the citizens' interests into account, it is necessary for the Council to respond in a comprehensive manner and without prejudice to ongoing negotiations on legislative proposals and on the next Multiannual Financial Framework;

A. FOSTERING DIVERSITY, VISIBILITY AND INNOVATION

UNDERLINES THAT

7. media pluralism is important to ensure that citizens have access to a range of information and viewpoints. Cross-border collaboration among the players of the media sector may help to achieve critical mass and reach wider audiences. Excessive concentration of the content-producing and content-distributing sectors may threaten citizens' access to a range of content;
8. digital technologies have the potential to facilitate cross-border access to linguistically diverse media, cultural and creative content in Europe and beyond, for instance via translation or subtitles. Platforms active in the field of the media and cultural industries in Europe can make a significant contribution either by providing access to European content or by providing content themselves or by producing new European content;
9. the revised Audiovisual Media Services Directive (AVMSD) is aimed at further strengthening the promotion of European audiovisual content, in particular by establishing requirements for the share of European works in on-demand catalogues and the prominence of such works in on-demand services. Creative Europe MEDIA accompanies the AVMSD by supporting the circulation and promotion of non-national audiovisual works across Europe;
10. appropriate national and EU supporting instruments can play an important role in the digital transformation of the content-producing and content-distributing sectors;
11. the content-producing sectors need to be inclusive and should provide a diverse range of viewpoints and perspectives to enhance the visibility of the diverse European media, cultural and creative content and to reach a wider audience;
12. public service media organisations need to maintain a high and sustained level of journalistic standards and investment in high-quality European content and need to continue to develop innovative ways for delivering this content to the public;

INVITES THE MEMBER STATES AND THE COMMISSION, WITHIN THE SPHERES OF THEIR RESPECTIVE COMPETENCES, TO

13. encourage the development of competitive European platforms, providing access to European content and promote the creation and the use of an online directory of European films;
14. promote and support, as appropriate, initiatives and non-invasive tools that incentivise the discoverability and accessibility of the broadest possible range of European content and works, including content from small countries and in less-spoken languages as well as general interest content;
15. where appropriate and possible, facilitate cooperation between public service media and private media providers as a means of enabling European actors to better compete with global players and to safeguard the production of and access to European content in an online world;
16. recognise that online platforms, like all other actors, have to act in line with the rules and regulations in the market sectors where they render their services;
17. further support content-producing and content-distributing sectors in accessing financial means and acknowledge the role of coproduction. Where appropriate and in accordance with Union law, a combined system of government incentives, private sources of finance (e.g. risk capital, crowdfunding) and public funding could contribute to a dynamic European content industry;
18. promote innovative approaches in the area of audience development and build awareness of the importance of collecting and processing data in a trustworthy way, notably in compliance with EU legislation on data protection and privacy, to enable a better understanding of the needs and expectations of target groups and to enrich the creation process;

19. increase social diversity in the content-producing sector and improve gender equality with regard to employment, fair remuneration and visibility, and encourage independent research, including the regular collection of comparable data on the proportion of women involved in the creation, production and distribution process;

INVITES THE COMMISSION TO

20. continue to support and regularly evaluate the independent Media Pluralism Monitoring tool for assessing risks to media pluralism in the EU in the digital environment;
21. reflect on the growing roles of online business models in content production and dissemination and their effect on media pluralism;

B. ESTABLISHING A LEVEL PLAYING FIELD

UNDERLINES THAT

22. in order to meet the challenges arising from the digital transformation of the economy, the taxation system should ensure that all companies pay their fair share of taxes and that there is a global level-playing field;
23. there are ongoing discussions and reflections on how to address the needs of the future ecosystem for digital media and cultural and creative content, including consumer needs. In particular, this concerns the appropriate definition of online markets and the consideration of new, potentially relevant competitive factors such as big data, algorithms and artificial intelligence;
24. the scope of the revised Audiovisual Media Services Directive has been extended to ensure that qualitative rules on advertising, the protection of minors from harmful content and the protection of the general public from hate speech and content that constitutes a criminal offence are also applicable to audiovisual content distributed by video-sharing platforms;

25. the content-producing sector needs comparable statistics and data analysis;
26. there is a diverse range of online platforms offering a variety of functions and services. Some aggregate information and enable searches, others give access to, host and index content and services designed and/or operated by third parties, others facilitate the sale of goods and services (including audio-visual services). They may carry out several functions in parallel, and may also rank or otherwise affect access to and visibility of content;

INVITES THE MEMBER STATES AND THE COMMISSION, WITHIN THE SPHERES OF THEIR RESPECTIVE COMPETENCES, TO

27. recognise the relevance of the ongoing discussions within the Council related to the taxation of the digital economy;
28. promote fairness by ensuring that online platforms are transparent in their terms and conditions, their performance information with regard to works that they distribute, their listing parameters, their ranking practices and their advertising practices which are embedded within their service, without infringing on trade secrecy;
29. **encourage equitable** [...] remuneration **throughout** [...] the digital value chain;
30. continue to work towards creating conditions in which European content creators, including cultural and media professionals, can capitalise on the opportunities presented by the digital economy.

INVITES THE COMMISSION, TO

31. continue its efforts to ensure a level playing field in the European content sectors where online platforms are active, taking the specific sizes and types of platforms into consideration;
32. reflect, in view of the developments in the ecosystem for digital media and cultural and creative content, upon how to avoid any distortion of competition;

33. continue reflecting with Member States to ensure legal certainty concerning the activities of online platforms in the ecosystem for digital media and cultural and creative content , inter alia, in view of the eCommerce Directive;

C. STRENGTHENING TRUST IN INFORMATION AND SOURCES

UNDERLINES THAT

34. against a background of fragmented information landscapes and threats to national security, professional media play a key role in the production, dissemination and verification of information and thus are indispensable to public discourse. In this context, the role of independent public service media in safeguarding democracy, pluralism, social cohesion and cultural and language diversity remains vital. Moreover, many private media actors deliver content which is also in the public interest. In this context, the Council both underlines the importance of citizens' media literacy and source criticism and notes the Commission's Communication on disinformation;
35. media pluralism, which depends on the existence of a diversity of media ownership and diversity of content as well as independent journalism, is key to challenging the spread of disinformation and ensuring that European citizens are well-informed. Cooperation and alliances in these sectors may have positive effects for its actors in regard to economic sustainability and competitiveness in a global context;
36. as content is increasingly distributed via online platforms, the Council notes the Commission's efforts to combat illegal content online and the illegal distribution of content;
37. safe working conditions for journalists are essential in the changing media landscape in order to ensure professional and independent journalism;
38. whistleblowers play an important part in enabling the work of journalists and the independent press, in fulfilling their role as the public watchdog;

INVITES THE MEMBER STATES AND THE COMMISSION, WITHIN THE SPHERES OF THEIR RESPECTIVE COMPETENCES, TO

39. strengthen the European media ecosystem in order to secure the sustainable production and visibility of professional journalism as a way to empower citizens, protect democracy and to effectively counter the spread of disinformation;
40. ensure the effective protection of journalists and other media actors as well as their sources, inter alia in the field of investigative journalism;
41. promote professional journalism across Member States and encourage cross-border journalism through the development of skills, training and the development of new technologies for newsrooms;
42. promote independent journalism and protect journalists from undue influence;
43. promote the legal distribution of content and **consider the importance of reducing [...]** illegal distribution and unauthorised use of creative content;
44. ensure increased access to and the free flow of information to the benefit of the media and the public, enhancing the transparency of public government and the freedom of the media and empowering citizens to enjoy their freedom of expression;

INVITES THE COMMISSION, TO

45. continue to support projects which monitor media freedom and media pluralism and provide legal and practical help to journalists and media practitioners under threat;
46. **continue the regular monitoring [...]** of the Code of Practice on Disinformation **and inform Member States about the effects of its implementation, especially with a view to the European Parliament elections in 2019;**
47. enhance the transparency and predictability of State aid in the context of the digital media and cultural and creative ecosystem and make a user-friendly online repository available with reference to the applicable State aid rules and relevant case law;

D. IMPROVING SKILLS AND COMPETENCES

UNDERLINES THAT

48. new developments create a need for new capacities. Media literacy is a decisive factor for both users and content creators. At the same time professionals from the content industries need to be equipped with a mix of creative, digital and entrepreneurial skills allowing them to make the most of existing and emerging technologies;

INVITES THE MEMBER STATES AND THE COMMISSION, WITHIN THE SPHERES OF THEIR RESPECTIVE COMPETENCES, TO

49. promote and support media literacy and digital literacy in order to further develop a critical approach among citizens towards distributed or promoted media content and encourage further training in media and digital literacy among media professionals;
50. adapt training, competence and promotion programmes so that these are more closely aligned with the use of both old and new media and technologies, such as the principles of quality journalism, visual literacy, artificial intelligence, blockchain technology, virtual reality and data analytics. Ensuring conditions for both high-quality media research and journalism education are crucial factors in sustaining a high-quality European media landscape;
51. establish a structured dialogue between students, academics and the industry in order to foster innovation in the content-producing sectors, and harness the potential of creativity and cultural diversity for innovation.

INVITES THE COMMISSION, TO

52. improve media literacy through support for educational initiatives aimed at both students and professional educators and other professionals such as librarians and journalists as well as through targeted awareness-raising campaigns within civil society.

Council conclusions

- Council conclusions *on European Audiovisual Policy in the Digital Era*, 25.11.2014, 2014/C 433/02
- Council conclusions *on cultural and creative crossovers to stimulate innovation, economic sustainability and social inclusion*, 27.5.2015, 2015/C 172/04
- Council conclusions *on developing media literacy and critical thinking through education and training*, 30.5.2016, 2016/C 212/05
- Council conclusions *on promoting access to culture via digital means with a focus on audience development*, 21.11. 2017, 2017/C 425/03

Legislative Acts

- Directive of the European Parliament and of the Council *on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)*, 8.6.2000, 2000/31/EC
- Directive of the European Parliament and of the Council *on the harmonisation of certain aspects of copyright and related rights in the information society*, 22.5.2001, 2001/29/EC
- Directive of the European Parliament and of the Council *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)*, 10.3.2010, 2010/13/EU
- Regulation of the European Parliament and of the Council *establishing the Creative Europe Programme (2014 to 2020)*, 11.12.2013, No 1295/2013

Communications and recommendations from the Commission

- Communication from the Commission *A Digital Single Market Strategy for Europe*, 6.5.2015, COM(2015) 192 final
- Communication from the Commission *Online Platforms and the Digital Single Market Opportunities and Challenges for Europe*, 25.5.2016, COM(2016) 288 final
- Communication from the Commission *Tackling Illegal Content Online - Towards an enhanced responsibility of online platforms*, 28.9.2017, COM(2017) 555 final
- Commission Recommendation *on measures to effectively tackle illegal content online*, 1.3.2018, EU(2018) 334 final
- Communication from the Commission *Artificial Intelligence for Europe*, 24.4.2018, COM(2018) 237 final
- Communication from the Commission *Tackling online disinformation: a European Approach*, 26.4.2018, COM(2018) 236 final
- Communication from the Commission *A New European Agenda for Culture*, 22.5.2018, COM(2018) 267 final

International agreements

- UNESCO Convention *on the Protection and Promotion of the Diversity of Cultural Expressions*,
20.10.2005
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