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NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

Subject: Draft Council conclusions on assessment of the legal framework for
audiovisual media services and video-sharing platform services
- Approval

The Audiovisual and Media Working Party (AVMWP) has examined the draft conclusions on the above-mentioned subject. The text attached meets with the agreement of all delegations.

The Permanent Representatives Committee is invited to confirm that there is an agreement on the attached text and submit it to the Council (EYCS) for approval at its session on 13 May 2025 and subsequent publication in the Official Journal of the European Union.

Draft Council conclusions on the assessment of the legal framework for audiovisual media services and video-sharing platform services

THE COUNCIL OF THE EUROPEAN UNION,

Recalling the reference documents set out in the Annex¹,

RECOGNISES THAT:

1. The Audiovisual Media Services Directive (AVMSD)² is the main legal act regulating the EU audiovisual media market. Following its amendment in 2018, it has also covered video-sharing platform services (VSP services) and established the European Regulators Group for Audiovisual Media Services (ERGA), a highly qualified body composed of representatives of national regulatory authorities.
2. The European Media Freedom Act (EMFA)³ additionally underlines the unique role of media services. EMFA establishes the European Board for Media Services ('the Board'), which replaces and succeeds ERGA, and is tasked with promoting the consistent and effective application of the AVMSD and EMFA. EMFA also recalls the fact that the protection of media freedom and media pluralism are two of the main pillars of democracy.

¹ The Annex lists documents related to the relevant matters.

² Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 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) (OJ L 95, 15.4.2010, p. 1) and 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 (OJ L 303, 28.11.2018, p. 69–92).

³ Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act) (OJ L, 2024/1083, 17.4.2024).

3. Legal clarity as well as simple and coherent rules are important for all audiovisual media service (AVMS) providers and video-sharing platform (VSP) providers. The relationship between the AVMSD and other relevant EU legal acts, in particular the Digital Services Act (DSA)⁴ and the E-Commerce Directive (ECD)⁵, should be clear. While the DSA and the ECD have established horizontal rules for the activities of online intermediary service providers, the AVMSD sets out sectoral content-specific rules and should remain the main legal framework of audiovisual regulation to safeguard and promote the further development of a diverse, fair, safe, trustworthy and competitive EU audiovisual media market as well as independent, trustworthy and culturally diverse European audiovisual content.
4. The audiovisual media market, consumption habits and the overall EU legal framework are constantly evolving. Pursuant to Article 33 of the AVMSD, the European Commission is to submit to the European Parliament and the Council an *ex post* evaluation of the impact of this Directive and its added value, accompanied, where appropriate, by proposals for its review.
5. Through these conclusions, the Council intends to draw the Commission's attention both to:
 - a) the relevance of the AVMSD as a whole and its capacity, as an internal market directive, to provide the balance between the preservation of the principle of subsidiarity and the respect for Member States' competence to develop cultural policies in line with the Treaties and other Union law, on the one hand, and the fulfilment of other EU objectives, including the proper functioning of the internal market by, among others, the country-of-origin principle, on the other hand;
 - b) certain areas that are jointly considered important and that should be among others analysed in depth by the Commission within the evaluation procedure.

⁴ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).

⁵ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1–16).

Certain topics indicated by Member States also remain, so these conclusions should not be seen as setting out an exhaustive list of areas that the Council considers as requiring evaluation. The Council's aim is to open a fact-based discussion on some aspects of the audiovisual media framework, without limiting that discussion or pre-empting any possible future negotiations on the AVMSD.

SCOPE OF THE DIRECTIVE

CONSIDERING THAT:

6. It is paramount that the scope of the AVMSD remains adaptable as the audiovisual market continues to evolve. The scope should be wide and clear enough to cover all relevant types of audiovisual media content and services offered in the internal market, regardless of their means of distribution. Some uncertainties have been noticed with respect to the classification of developing forms of audiovisual online activities⁶.
7. Recital 3 of the AVMSD⁷ has clarified that channels, or any other audiovisual services under the editorial responsibility of a provider, can constitute audiovisual media services in themselves, even if they are offered on VSPs. Some users of VSP services (often referred to with terms such as 'influencers' or 'professional content creators'⁸) are now well-established audiovisual media market players who have an important impact on the market and public opinion. Their services are frequently used by children and young people. However, some inconsistencies have been reported across the internal market as regards classification of these players as AVMS providers⁹.

⁶ As mentioned in paragraph 8.

⁷ OJ L 303, 28.11.2018, p. 69–92.

⁸ Other terms are also used in practice. Please see: Analysis and recommendations concerning the regulation of vloggers, ERGA, Subgroup 1, 2021, p. 3.

⁹ Mapping report on the rules applicable to video-sharing platforms Focus on commercial communications, EAO 2022, Table 14. Obligations regarding (v)blogs and (v)blogging, pp. 34-37; Learning from the practical experiences of NRAs in the regulation of vloggers, ERGA Subgroup 1, 2023, p. 15; Reporting on the application of Directive 2010/13/EU "Audiovisual Media Services Directive" as amended by Directive (EU) 2018/1808, for the period 2019-2022 (SWD (2024) 4 final), p. 4.

INVITES THE EUROPEAN COMMISSION TO:

8. Analyse whether the AVMSD definitions cover all relevant services providing audiovisual media content, and assess, on the basis of the analysis, the potential need for clarifications, taking into account the goals and main values of the AVMSD, including a high level of protection of viewers (especially minors), a level playing field as well as the need for proportionality. This includes assessing the need for further clarification that specific groups of content creators on VSPs (often referred to with terms such as ‘influencers’ or ‘professional content creators’) are covered by the scope of the AVMSD.

PROTECTION OF MINORS

CONSIDERING THAT:

9. The AVMSD lays down rules to ensure a high level of protection of minors on linear and non-linear audiovisual services, as well as on VSPs. It also allows Member States to introduce more detailed or stricter rules, provided that they are compatible with applicable Union law.
10. The DSA establishes a harmonised and horizontal regulatory framework applicable to online intermediary services, including VSP services. It requires providers of online platforms to take appropriate and proportionate measures to protect minors and requires providers of very large online platforms (VLOPs) and of very large online search engines (VLOSEs) to diligently identify, analyse and assess systemic risks stemming from the design or functioning of their service. The AVMSD brings additional value by providing specific rules that apply to all sizes of providers determining what audiovisual content – both editorial content and audiovisual commercial communication - can be harmful to minors.
11. The international nature of the most widely used on-demand AVMS and VSP services raises regulatory challenges that must be addressed using the cooperation mechanisms provided under Union law.

INVITES THE EUROPEAN COMMISSION TO:

12. Examine whether, in view of evolving market realities and changing consumption habits, the existing rules still adequately ensure a high level of protection of minors from potentially harmful or unsuitable content that may impair their physical, mental or moral development on services providing audiovisual content – both editorial content and audiovisual commercial communication – in all Member States, as well as a level playing field for all relevant players in the audiovisual market, whilst taking account of the nature of the services.
13. Analyse the interplay between the rules of the AVMSD and those of the DSA, to examine the coherence and clarity of their application for audiovisual content as regards the protection of minors, taking into account the need to ensure an adequate level of protection on VSPs.

INVITES MEMBER STATES TO:

14. Engage, within the existing scope of the AVMSD, in closer and more effective cross-border cooperation on the protection of minors, in particular by enhancing the ability of national regulatory authorities (NRAs) and other competent authorities to deal effectively with identified violations in the case of AVMS, and lack of application of measures in the case of VSP services. This is especially relevant for services targeting broad audiences across other EU Member States, in order to ensure prompt and effective protection.
15. Promote dialogue and cooperation with non-governmental entities and researchers in order to gather knowledge and good practices on effective protection of minors, and promote proactive media and film literacy initiatives designed for minors.

VIDEO-SHARING PLATFORM PROVIDERS' OBLIGATIONS

CONSIDERING THAT:

16. Audiovisual content is a very important, attractive and vivid element of a digital environment. The attractiveness of audiovisual content has made VSP providers prominent players in the audiovisual media market, without the same obligations as AVMS providers. The growth of VSP providers sharpens competition for viewers and audiovisual commercial communication, posing increased challenges for AVMS providers.
17. The development of VSP services has brought new opportunities for individuals in terms of freedom of expression and access to information. However, this rapid development has simultaneously entailed significant risks for VSP users and for society as a whole.
18. While VSP providers, as defined by the AVMSD, do not have editorial responsibility for the content accessible on their services¹⁰, they do have a decisive influence on the curation, presentation and visibility of that content, which e.g. may have a significant impact on the formation of public opinion. Given their influence, they have an important responsibility with regard to protection of the public in this environment.

¹⁰ Unless they are also classified as AVMS providers.

INVITES THE EUROPEAN COMMISSION TO:

19. Evaluate existing solutions provided by the AVMSD, while taking into account the relevant EU rules such as those laid down in the DSA, and their application to online platforms that are also VSP services; and assess whether the current AVMSD provisions on VSP services are sufficient to protect the general public from harm and other societal risks stemming from audiovisual content available on VSPs and to promote a level playing field, including in the area of audiovisual commercial communications.
20. Analyse the need for changes, while bearing in mind the need for legal clarity, regulatory coherence and the added value provided by the AVMSD's rules on VSP services, as well as the potential need for simplification of the rules applicable to online platforms.

MEASURES AND POLICIES TO SUPPORT AUDIOVISUAL MEDIA SERVICES AND CONTENT

CONSIDERING THAT:

21. The increasing problem of spreading of disinformation and foreign information manipulation and interference (FIMI) continues to be one of the greatest challenges that European democracies need to tackle. Although traditional media, and especially public service media, are considered by citizens of most European countries as a reliable source of information, the dynamic development of technology, the increasing role of global online platforms, including social media, and the rapidly growing use of artificial intelligence have changed consumers' habits and are having a profound impact on the media market.

22. Global online platforms can act as gateways to media content, with business models that tend to disintermediate access to media services and their use, may result in polarising content and disinformation becoming amplified.
23. Advertising is a very important source of financing for media outlets and audiovisual media services. However, the growing importance of online platforms and VSP services among audiences, especially among young generations, has led to a decrease in advertising revenues for traditional media, and in particular for audiovisual media services. A level playing field might help to ensure that media service providers sufficiently monetise their content in the digital transition context.
24. In view of the rapidly changing model of content consumption and the need to preserve and foster media pluralism and cultural diversity, the AVMSD recalls the possibility for Member States to take some measures to promote content of general interest (prominence of AVMS of general interest in Article 7a of the AVMSD) under certain conditions and in compliance with EU law.
25. Prominence measures could be useful in reinforcing access to pluralistic media in the online audiovisual landscape and promoting a more level playing field between AVMS providers and VSPs, as well as developers and manufacturers of devices and interfaces, which can act as gatekeepers for access to media content and services through their own systems of recommendations and interfaces. Furthermore, the visibility of content produced in line with journalistic standards can be an effective tool in the fight against disinformation and FIMI.
26. In the light of other EU legal acts, the current provisions of the AVMSD have become unclear as to what extent Member States can adopt provisions on prominence regarding undertakings established in other Member States.

INVITES THE MEMBER STATES TO:

27. Assess, where applicable, the effectiveness of national measures to promote content of general interest, including by considering the relevance of developing effective national prominence regimes without prejudice to and in full respect of media freedom of relevant media services, including their independence, and in compliance with EU law.
28. Support self- and co-regulation initiatives taken by relevant organisations and media outlets whose primary objectives are to tackle disinformation and FIMI empower citizens and strengthen public trust, while safeguarding journalistic standards and ethics.
29. Structurally support media service providers supplying content produced in line with journalistic standards and strengthen media pluralism by introducing policies for media service providers applying professional journalistic standards, in order to help increase the amount of valuable content in AVMS and on VSPs without compromising their independence.
30. Continue their efforts to promote and support media literacy that empowers citizens to use media effectively and safely.

INVITES THE EUROPEAN COMMISSION TO:

31. Taking into account ERGA's legacy in monitoring signatories' compliance with the EU Code of Practice on Disinformation, and given the new areas of competence of the Board created by the EMFA, engage regularly with Member States on the outcomes of the structured dialogue between providers of VLOPs (in particular those which fall within the definition of VSP services), representatives of media service providers and other key stakeholders, especially as regards compliance with self-regulatory initiatives aimed at protecting users from harmful content, including initiatives aimed at countering disinformation.

32. Map current constraints and experiences in ensuring appropriate prominence in a cross-border digital media context and assess prominence rules interactions with EU law and examine how prominence schemes can effectively address relevant services, including services under other Member States' jurisdiction¹¹ and in accordance with EU law.
33. Monitor the impact of the current rules on the sustainability of the European media within the digital ecosystem and on a level playing field in the audiovisual media market, specifically in the field of advertising.
34. Taking into account the need for Member States to structurally strengthen and support media service providers, continue facilitating the leverage effect of public aid through a review of the application of state aid rules, including, where appropriate, the state aid General Block Exemption Regulation (GBER).

ACCESSIBILITY OF EVENTS OF MAJOR IMPORTANCE FOR SOCIETY

CONSIDERING THAT:

35. Article 14 of the AVMSD, which regulates events of major importance for society, only covers broadcasters. However, sports events are no longer distributed and consumed only through linear audiovisual media services. They are increasingly made available through other services, with restricted and paid access. In effect, a large part of the national public might be deprived of free access to these events, which are of particular social and cultural importance.

¹¹ According to the report on the implementation and cross-border enforcement of the European legal framework for digital and audiovisual media services (ERGA Subgroup 4, 2024, p. 2), the prominence of services of general interest has been difficult to enforce across borders

INVITES THE EUROPEAN COMMISSION TO:

36. Analyse the key developments in the field of distribution of events of major importance for society and evaluate if the subjective scope of Article 14 of the AVMSD remains relevant to safeguarding wide access to these events.

CROSS-BORDER SITUATIONS AND COOPERATION

CONSIDERING THAT:

37. Bilateral cooperation procedures, most prominently through the ERGA Memorandum of Understanding, have proven to be important and effective tools for addressing cross-border issues and have allowed for a good balance to be struck between freedom to receive the services, on the one hand, and the safeguarding of other core values in the European audiovisual market on the other. Multilateral cooperation via the Board (previously ERGA) and through the Contact Committee is also an invaluable tool for tackling cross-border challenges. Moreover, Article 14 of the EMFA brings new solutions to further reinforce such structured media regulators' cooperation within the internal market, while giving a prominent role to the Board in promoting the consistent implementation of the AVMSD throughout the Union.
38. Some specific issues in the existing AVMSD provisions¹², mainly in Article 2(4) in conjunction with Article 3, have however been identified by the ERGA and pointed out by Member States, with particular regard to cases involving AVMS originating from third countries.

¹² Report on the implementation and cross-border enforcement of the European legal framework for digital and audiovisual media services (ERGA Subgroup 4, 2024, pp. 5, 14-17); The practical application and future of cross-border enforcement of media law (ERGA Subgroup 1, 2023, p. 8).

39. Some problems in relation to cross-border enforcement have been noted too, within the online environment¹³. Article 15 of the EMFA provides for a new dedicated mechanism for media regulators that is aimed at facilitating the effective cross-border enforcement of the AVMSD obligations for VSP providers. It is expected that the new provision will contribute to reducing these problems.

INVITES THE EUROPEAN COMMISSION TO:

40. Monitor the application and effectiveness of the new cooperation tools provided by the EMFA.
41. Assess the existing cross-border provisions set out in the AVMSD, to ensure the effective enforcement of the AVMSD rules within the internal market, with particular regard to third-country service providers, taking into account the market developments.
42. Evaluate the practical application of the cross-border mechanisms provided by the E-commerce Directive with respect to VSP services, while respecting the importance of the country-of-origin principle as a core rule of the internal market, as well as taking into account the necessity for the EU to ensure a high level of protection of minors and to respect and promote media pluralism and cultural diversity.

INVITES MEMBER STATES TO:

43. Engage in further active cooperation and exchange of good practices with a view to solving specific problems in cross-border cases.

¹³ Report on the implementation and cross-border enforcement of the European legal framework for digital and audiovisual media services (ERGA Subgroup 4, 2024, pp. 17-18); The practical application and future of cross-border enforcement of media law (ERGA Subgroup 1, 2023, p. 9).

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- 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 (OJ L 303, 28.11.2018, p. 69–92);
- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (E commerce Directive) (OJ L 178, 17.7.2000, p. 1–16);
- Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act) (OJ L, 2024/1083, 17.4.2024);

- Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1);
- Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (OJ L, 2024/1689, 12.7.2024);

European Parliament

- European Parliament resolution of 9 May 2023 on the implementation of the revised Audiovisual Media Services Directive (OJ C, C/2023/1062, 15.12.2023);

Council of the European Union

- Council conclusions on support for influencers as online content creators (OJ C, 2024/3807, 23.7.2024);
- Council conclusions on safeguarding a free and pluralistic media system (OJ C 422, 7.12.2020, p. 8);

European Commission

- Reporting on the application of Directive 2010/13/EU "Audiovisual Media Services Directive" as amended by Directive (EU) 2018/1808, for the period 2019-2022 (SWD (2024) 4 final);
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Europe's Media in the Digital Decade: An Action Plan to Support Recovery and Transformation (COM (2020) 784 final);
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Digital Decade for children and youth: the new European strategy for a better internet for kids (BIK+) (COM/2022/212 final);
- Communication from the Commission Guidelines on the practical application of the essential functionality criterion of the definition of a 'video-sharing platform service' under the Audiovisual Media Services Directive (OJ C 223, 7.7.2020, p. 3);
- Communication from the Commission Guidelines pursuant to Article 33a(3) of the Audiovisual Media Services Directive on the scope of Member States' reports concerning measures for the promotion and development of media literacy skills (OJ C 66, 23.2.2023, p. 3);

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Tackling online disinformation: a European Approach, (COM (2018) 236 final);
- Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (GBER) (OJ L 187, 26.6.2014, p. 1–78) *Last update: 1 July 2023*;

Council of Europe

- Guidance Note on countering the spread of online mis- and disinformation through fact-checking and platform design solutions in a human rights compliant manner, Steering Committee for Media and Information Society (CDMSI) of the Council of Europe, at its 24th meeting, 29 November-1st December 2023;

European Audiovisual Observatory

- The protection of minors on VSPs: age verification and parental control, EAO 2024;
- AVMSDigest Safe screens: protecting minors online, EAO 2024;
- Mapping of national rules applicable to video-sharing platforms: Illegal and harmful content online, EAO 2022;
- Mapping report on the rules applicable to video-sharing platforms – Focus on commercial communications, EAO 2022;
- New actors and risks in online advertising, EAO 2022;
- IRIS Special 2023-1: Public interest content on audiovisual platforms: access and findability, EAO 2023;
- Media literacy and the empowerment of users, EAO 2024;

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European Regulators Group for Audiovisual Media Services (ERGA)

- ERGA's views on the future priorities for media policy (ERGA, 2024);
- Report vloggers 1 - Analysis and recommendations concerning the regulation of vloggers (ERGA Subgroup 1, 2021);
- Report vloggers 2 - How to identify and localise vloggers and regulate their commercial communication (ERGA Subgroup 1, 2022);
- Learning from the practical experiences of NRAs in the regulation of vloggers (ERGA Subgroup 1, 2023);
- The implementation(s) of article 28b of the AVMSD: national transposition approaches and measures by video-sharing platforms (ERGA Subgroup 1, 2022);
- Overview document on the exchange of best practices regarding Arts. 7a and 7b of the AVMSD, (ERGA Subgroup 1, 2021);
- The practical application and future of cross-border enforcement of media law (ERGA Subgroup 1, 2023);
- Report on the implementation and cross-border enforcement of the European legal framework for digital and audiovisual media services (ERGA Subgroup 4, 2024);
- Report on ERGA MoU implementation in 2024 and its 4 years of functioning (ERGA, Subgroup 1, 2025);

Others

- The 2022 Code of Practice on Disinformation:
<https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>;
 - National reports on media literacy measures under the Audiovisual Media Services Directive 2020-2022;
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