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WORKING PAPER

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CONTRIBUTION

From:	General Secretariat of the Council
To:	Audiovisual Working Party
N° prev. doc.:	14580/16 AUDIO 128 DIGIT 133 CONSOM 283 TELECOM 242 CODEC 1689
N° Cion doc.:	9479/16 AUDIO 68 DIGIT 55 CONSOM 121 IA 28 CODEC 744 TELECOM 98
Subject:	Comments from the Austrian delegation - Presidency compromise text amending Directive 2010/13/EU (AVMS)

Delegations will find attached the comments from the Austrian delegation to the Presidency compromise text that concerns the proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU (AVMS).

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AUSTRIAN DRAFTING PROPOSALS

January 2017

As a contribution to the drafting of a new compromise text, Austria takes the liberty to provide some suggestions (partly already included in Document WK 1673 2016 INIT and WK 754 2016 INIT) for changes to the presidency compromise text 14580/16:

1. In Article 1 para 1 litera ba) is worded as follows:

“ba) ‘user-generated video’ means a set of moving images with or without sound and irrespective of its length, that has been created and uploaded by users of a video-sharing platform.”

Reasoning: *The element “constituting an individual item” (in the actual definition of the presidency text) would only make sense if there were also an entity in the definition of which a video could be an individual item (comparable to the definition of ‘programme’). This part of the text is therefore superfluous. On the other hand the element “irrespective of its length” should be added (just as in the definition of ‘programme’).*

2. In each case in Article 2 para 5b, in Article 3 para 4 and in Article 4 para 4 litera c the second sentence is worded as follows:

“The Commission may seek a statement of ERGA on the technical and factual aspects of the matter that has to be delivered within 15 working days and shall request the Contact Committee to provide an opinion within another 15 working days [one month] from the submission of the request to the Contact Committee.”

Reasoning: *Legal clarity and certainty by making a clear distinction between the statement of ERGA and the opinion of the Contact Committee.*

3. Article 7 is worded as follows:

“Article 7

1. Member states shall ensure that audiovisual media service providers by means of suitable measures continuously increase the respective share of programmes made accessible for people with a visual or hearing disability as compared to the share as of 1 January 2019.

2. Member states may fully or partly waive the requirements to make services gradually accessible as referred to in para 1 for audiovisual media services with low audience or being a small or micro enterprise as defined in Commission Recommendation of 6 May 2003. An audiovisual media service is considered to have a low audience if – in case of linear services – it has an audience share of lower than X% or – in case of non-linear services – has a unique user number below xx.000.”

Reasoning: *The formulation is the attempt to introduce a more ambitious goal while at the same time acknowledging the necessity for exemptions.*

4. Art 9 para 4 is worded as follows:

“4. In addition to the prohibitions in Art 9 (1) programmes shall not contain product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.”

Reasoning: Article 9 para 1 litera d and f already contain two of the prohibitions actually repeated and to be found in Article 11 para 4. The proposal aims at reducing redundances of the proposal.

5. In Article 13 para 5 the following sentence is inserted after the 1st sentence:

“An audiovisual media service is considered to have a low audience if – in case of linear services – it has an audience share of lower than X% or – in case of non-linear services – has a unique user number below xx.000.”

Reasoning: The proposal tries to contribute to legal certainty and clarity by defining the term “low audience”.

6. In Article 23 para 2 a new litera d) is added:

2. Paragraph 1 shall not apply to:

a) to c) [as presidency compromise text]

“d) neutral elements between

- between editorial content and advertising- or teleshopping-spots or

- between such spots.”

Reasoning: The addition is a reaction to the ECJ-Judgement C-314/12 and the draft position of the Committee on the Internal Market and Consumer protection. It serves the interest of the consumer that black seconds are not too short (and therefore provide more orientation) and at the same time the interest of the broadcaster that the time without any promotional “messages” is not counted as advertising time.

7. The existing Article 28b para 2 becomes para 3 and Article 28b para 1 and 2 (new) are worded as follows:

“Article 28b.

1. A video sharing platform provider is deemed to be established in a Member State if

a) it has its head office in that Member State or

b) there is no head office in a Member State but a parent company in the sense of Article 2 (9) in connection with Article 22 of Directive 2013/34/EU is established in a Member State or

c) there is no parent company established in a Member State, but a subsidiary is established in that Member State or

d) in case that neither a head office nor a parent company or a subsidiary are established in a Member State, if another entity or part of the group to which the social network belongs is established on the territory of a Member State.

2. In case that according to paragraph 1 there is more than one parent company or more than one subsidiary or more than one other part or entity of the group to which the video sharing platform provider belongs established in one or more Member States the provider is deemed to be established in that Member State in which the group, to which the provider belongs, first began its activities by establishing a company.”

Reasoning: The proposal tries to contribute to future proof and clear (objective) criteria for the assessment of the jurisdiction instead of letting a VSPP decide where and by whom he would like to be regulated.