



Council of the European Union  
General Secretariat

---

---

**Interinstitutional files:  
2016/0151 (COD)**

---

---

**Brussels, 08 December 2016**

**WK 1673/2016 INIT**

**LIMITE**

**AUDIO  
DIGIT  
TELECOM  
CONSOM  
CODEC**

### WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

### **CONTRIBUTION**

|                |                                                                                                                                                                                                      |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| From:          | General Secretariat of the Council                                                                                                                                                                   |
| To:            | Audiovisual Working Party                                                                                                                                                                            |
| N° prev. doc.: | 13934/16 AUDIO 115 DIGIT 124 CONSOM 264 TELECOM 211 CODEC 1573                                                                                                                                       |
| N° Cion doc.:  | 9479/16 AUDIO 68 DIGIT 55 CONSOM 121 IA 28 CODEC 744 TELECOM 98                                                                                                                                      |
| Subject:       | Drafting proposal from the Austrian delegation<br>- Regulation of audiovisual commercial communication on video sharing platforms and social networks: proposal amending Directive 2010/13/EU (AVMS) |

Delegations will find attached the drafting proposal from the Austrian delegation for the regulation of audiovisual commercial communication on video sharing platforms and social networks, concerning the proposal for a Directive of the European Parliament and of the Council 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 in view of changing market realities.

---

WK 1673/2016 INIT

**LIMITE**

**EN**

**AUSTRIAN DRAFTING PROPOSAL**  
**for the regulation of audiovisual commercial communication on video sharing**  
**platforms and social networks**

**REASONING:**

*Austria welcomes the Commission's intention to include video platforms when it comes to the protection of minors and from content containing incitement to hatred and violence. However Austria still sees a need for more intensive deliberations about a future-proof formulation for the scope of the Directive.*

*By selling, marketing and placing commercial communication in connection with audiovisual content providers of video-sharing platforms as well as of social networks basically pursue business models comparable or even similar with/o those of audiovisual media service providers. They all compete for the same audiences. To create a level playing field it is therefore indispensable also to apply the basic requirements for audiovisual commercial communication to these other services. The mere reference to the E-Commerce Directive and the Unfair Commercial Practices Directive is not sufficient. The following text-proposal is to be understood as an input for the drafting.*

*It contains as point (bb) a suggestion for a definition of "social network".*

*It avoids (see Art Xa) the duplication of "responsibilities" for audiovisual commercial communication.*

*Art Za is meant as a first contribution to the attempt of finding a "water-proof" system of determining jurisdiction for social networks.*

**TEXT PROPOSAL:**

*(X) in Article 1, paragraph 1 is amended as follows:*

*[...]*

*(e) the following point (bb) is inserted:*

*"(bb) 'social network' means a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union provided via electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC and*

*a) used by people to build contacts and relations and to exchange with other people who share similar personal or career interests, activities, backgrounds or real-life connections and*

*b) when being used allows to share content such as information, photos, user-generated videos and programmes."*

*(Y) the following Chapter XYZ and Article Xa are inserted:*

**"CHAPTER XYZ**

**PROVISIONS APPLICABLE TO**  
**VIDEO SHARING PLATFORMS AND SOCIAL NETWORKS**

*Article Xa.*

In cases where the obligation to comply with the requirements of Art. 9, 10 and 11 does not already lie within the responsibility of an audiovisual media service provider, the Member State, in which the video platform provider or the social network provider is deemed to be established according to Article 28b or Article Za shall ensure that audiovisual commercial communication that is marketed, sold or arranged by a

- a) video-sharing platform provider in connection with videos or programmes stored on the video-sharing platform or
- b) social network provider in connection with videos and programmes shared on the social network.

complies with the requirements of Art 9, 10 and 11.”

*(Z) the following Chapter ZYX and Article Za are inserted:*

#### “CHAPTER ZYX

##### ESTABLISHMENT IN CASE OF SOCIAL NETWORKS

###### *Article Za.*

1. A social network 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 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 para 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 social network provider belongs established in one or more Member States the social network is deemed to be established in that Member State in which the group, to which the social media network belongs, first began its activities by establishing a company [ ...]”