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NOTE

From:	General Secretariat of the Council
To:	Audiovisual and Media Working Party (Attachés) Audiovisual and Media Working Party
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU - Presidency compromise proposals

With a view to the Audiovisual and Media Working Party meeting on 28 March 2023 (agenda item 4 c)), delegations will find attached in the Annex, a set of Presidency compromise texts regarding Articles 7 and 13-16, as well as Recitals 22-30b.

Where there were no previous compromise proposals tabled by the Presidency, the new compromise texts are in **bold**. Where there were previous compromise proposals tabled by the Presidency (in related WK documents), the previous compromise texts are in **bold**, and the new ones are in **bold underlined**.

EMFA Regulation
Presidency compromise texts
Articles 7 and 13-16 + Recitals 22-30b
AVMWP meeting on 28 March 2023

Article 7¹

National regulatory authorities or bodies

1. The national regulatory authorities or bodies **as defined in Art 2 (12)** shall **ensure, where applicable through consultation or coordination with other relevant authorities or bodies, or, where relevant self-regulatory bodies in their Member States,** the application of Chapter III. [...]
2. The national regulatory authorities or bodies shall be subject to the requirements set out in Article 30 of Directive 2010/13/EU in relation to the exercise of the tasks assigned to them by this Regulation.
3. Member States shall ensure that the national regulatory authorities or bodies have adequate financial, human and technical resources to carry out their tasks under this Regulation.
4. Where needed for carrying out their tasks under this Regulation, the national regulatory authorities or bodies **are empowered to request the** natural or legal persons to which Chapter III applies to provide, within a reasonable time period, information **and data** that is proportionate and necessary for carrying out the tasks under Chapter III. [...]

(no amendments are proposed to articles 8 and 9)

¹ Basis: AVMWP on 26 January 2023 – WK 866/2023

Article 10²

Structure of the Board

1. The Board shall be composed of representatives of national regulatory authorities or bodies **as defined in Article 2(12)**.

2. Each member of the Board shall have one vote.

2a. The Board shall take decisions by a two-thirds majority of its members. [...]

3. Where a Member State has more than one national regulatory authority or body, those regulatory authorities or bodies shall coordinate with each other as necessary and appoint a joint representative which shall exercise the right to vote.

4. The Board shall be represented by its Chair. The Board shall elect a Chair from amongst its members[...]. The term of office of the Chair shall be **one year, renewable once**.

5. The Commission shall designate a representative to the Board. The representative of the Commission shall participate in **the deliberations** of the Board, without voting rights. The Chair of the Board shall keep the Commission informed about the [...] activities of the Board. The Board shall consult the Commission in preparation of its work programme [...].

6. The Board [...] may invite experts and, in agreement with the Commission, **permanent** observers to attend its meetings.

[...]

8. The Board shall adopt its rules of procedure [...], in agreement with the Commission.

² Basis: AVMWP on 26 January 2023 – WK 866/2023

Article 11³

Secretariat of the Board

1. The Board shall have a secretariat, which shall be provided by the Commission.
2. The main task of the secretariat shall be to contribute to the **independent** execution of the tasks of the Board laid down in this Regulation and in Directive 2010/13/EU. **In particular,** it shall provide administrative and organisational support to the activities of the Board [...].
- 3. The secretariat shall coordinate closely with the Board and its Chair. When assisting the Board with drawing up opinions, the secretariat shall follow the guidance of the Board as regards the content of such opinions.**

Article 12⁴

Tasks of the Board

1. Without prejudice to the powers granted to the Commission by the Treaties, the Board shall advise **and support** the Commission [...] on [...] matters related to media services within its competence [...] **as well as** promote the effective and consistent application of **Chapter III of** this Regulation and **the implementation of** Directive 2010/13/EU throughout the Union. The Board shall therefore:

³ Basis: AVMWP on 26 January 2023 – WK 866/2023

⁴ Basis: AVMWP on 26 January 2023 – WK 866/2023 (except para 1(e)-(m), which contain first Presidency text proposals)

(a) **provide** technical expertise **to** the Commission **in its task to ensure** the correct application of **Chapter III of** this Regulation and the consistent implementation of Directive 2010/13/EU across all Member States, without prejudice to the tasks of national regulatory authorities or bodies;

(b) promote cooperation and the effective exchange of information, experience and best practices between the national regulatory authorities or bodies on the application of the Union and national rules applicable to media services, including this Regulation and Directive 2010/13/EU, in particular as regards Articles 3, 4 and 7 of that Directive;

[...]

(d) when requested by the Commission, provide opinions on the technical and factual issues that arise with regard to Article 2(5c), Article 3(2) and (3), Article 4(4), point (c) and Article 28a(7) of Directive 2010/13/EU;

(e) in **consultation** with the Commission, draw up opinions with respect to:

(i) requests for cooperation [...] between national regulatory authorities or bodies, in accordance with Article 13(7) of this Regulation;

(ii) requests for enforcement measures in case of disagreement between the requesting authority or body and the requested authority or body regarding the actions recommended pursuant to Article 14(4) of this Regulation;

(iii) national measures concerning media **services from** outside of the Union, in accordance with Article 16(2) of this Regulation;

(f) upon request of the Commission, draw up opinions with respect to:

(i) national measures which are likely to **significantly** affect the **operation of media service providers in** the internal market, in accordance with Article 20(4) of this Regulation;

(ii) media market concentrations which are likely to affect the functioning of the internal market for media services, in accordance with Article 22(1) of this Regulation;

(g) draw up opinions on draft national **assessments** on the impact on media pluralism and editorial independence of a notifiable media market concentration where such a concentration **is likely to** affect the functioning of the internal market, in accordance with Article 21(5) of this Regulation;

(h) assist the Commission in drawing up guidelines with respect to:

(i) the application of this Regulation and **the implementation of** Directive 2010/13, in accordance with Article 15(2) of this Regulation.

(ii) **elements** to be taken into account when applying the criteria for assessing the impact of media market concentrations, in accordance with Article 21(3) of this Regulation;

(iii) the application of Articles 23(1), (2) and (3) pursuant to Article 23(4) of this Regulation.

(i) upon request of at least one of the concerned authorities, mediate in the case of disagreements between national regulatory authorities or bodies, in accordance with Article 14(3) of this Regulation;

(j) foster cooperation on **harmonised** standards related to [...] design of devices or user interfaces, in accordance with Article 19(4) of this Regulation;

(k) coordinate national measures related to the dissemination of or access to content of media **services from** outside of the Union that target **or reach** audiences in the Union, where **such media services** prejudice or present a serious and grave risk of prejudice to public **security, including the safeguarding of national** security and defence, in accordance with Article 16(1) of this Regulation;

(l) organise a structured dialogue between providers of very large online platforms, representatives of media service providers and of civil society, and report on its results to the Commission, in accordance with Article 18 of this Regulation;

(m) foster the exchange of best practices related to the deployment of audience measurement systems, in accordance with Article 23(5) of this Regulation.

2 (new). Where the Commission requests advice or opinions from the Board, it may indicate a time limit, unless otherwise provided for in Union law, taking into account the urgency of the matter.

3 (new). The Board shall forward its deliverables to the contact committee established by **Article 29 of Directive 2010/13/EU.**

Article 13⁵

Structured cooperation

1. A national regulatory authority or body ('requesting authority') may request cooperation [...] at any time from one or more national regulatory authorities or bodies ('requested authorities') for the purposes of exchange of information or **mutual assistance** relevant for the consistent and effective application of this Regulation or the [...] **implementation of** Directive 2010/13/EU.

[...] (*para 2 has been moved to new para 8*)

3. Requests for cooperation [...] shall contain all the necessary information, including the purpose of and reasons for it.

4. The requested authority may refuse to address the request only in the following cases:

(a) it is not competent for the subject matter of the request or **to provide the type of cooperation requested [...]**;

(b) execution of the request would infringe this Regulation, Directive 2010/13/EU or other Union legislation or **national** law compliant with Union law to which the requested authority is subject.

(c) the scope or the subject matter of the request is unjustified or disproportionate [...].

The requested authority shall, **without undue delay**, provide reasons for any refusal to address a request. **In cases under point (a) of the first subparagraph, it shall, where possible, indicate the competent authority.**

⁵ Basis: AVMWP on 8 February 2023 – WK 1630/2023

[...]

[...]

6. The requested authority shall do its utmost to address and reply to the request without undue delay [...] **and, where possible, provide** regular updates on the progress of the execution of the request. [...] *(partially moved to new para 8)*

7. Where the requesting authority **considers that the requested authority has not sufficiently addressed or replied** to its request, it shall inform the requested authority without undue delay, explaining the reasons for its position. If the **requesting authority and the requested authority do not come to an agreement**, [...] either authority may refer the matter to the Board. **In accordance with timelines to be established by the Board**, the Board shall issue, in **consultation** with the Commission, an opinion on the matter, including recommended actions. The **authorities concerned** shall do **their** utmost to take into account the opinion of the Board.

8 (new). Where a national regulatory authority or body considers that there is a serious and grave risk of **limitation** of the **freedom to provide or receive media services in the** internal market [...] or a serious and grave risk of prejudice to public **security, including the safeguarding of national** security and defence, it may request other national regulatory authorities or bodies to provide accelerated cooperation [...], **including for the purposes of ensuring effective application of national measures under Article 3 of the Directive 2010/13/EU**. In case of requests for accelerated cooperation [...], the requested authority shall **do its utmost to address such requests** within 14 calendar days. **Paragraphs [...] 3, 4 and 7 of this Article shall apply accordingly.**

Article 14⁶

Requests for enforcement of obligations by video-sharing platforms

1. Without prejudice to Article 3 of Directive 2000/31/EC, a national regulatory authority or body (**‘requesting authority’**) may **submit a duly justified** request to another national regulatory authority or body (**‘requested authority’**), **which is competent for the subject matter of the request**, to take necessary and proportionate actions for the effective enforcement of the obligations imposed on video-sharing platform **providers** under Article 28b(1) **to 28b(3)** of Directive 2010/13/EU.
2. The requested [...] authority [...] shall, without undue delay and within 30 calendar days, inform the requesting [...] authority [...] about the actions taken or planned pursuant to paragraph 1.
3. In the event of a disagreement between the requesting [...] authority [...] and the requested [...] authority [...] regarding actions taken **or planned** pursuant to paragraph 1, either authority may refer the matter to the Board for mediation in view of finding an amicable solution.

⁶ Basis: AVMWP on 8 February 2023 – WK 1630/2023

4. If no amicable solution has been found following mediation by the Board, the requesting [...] authority [...] or the requested [...] authority [...] may request the Board to issue an opinion on the matter. In its opinion the Board shall assess whether [...] **the request referred to in paragraph 1 has been sufficiently addressed**. If the Board considers that the requested authority has not **sufficiently addressed** such a request, the Board shall recommend actions to **address** the request. The Board shall issue its opinion, in **consultation** with the Commission, without undue delay.

5. The requested [...] authority [...] shall, without undue delay and within **timelines to be established by the Board in its rules of procedure**, inform the Board, the Commission and the requesting authority [...] of the actions taken or planned in relation to the opinion.

Article 15⁷

Guidance on media regulation matters

1. The Board shall foster the exchange of best practices among the national regulatory authorities or bodies, consulting stakeholders, where appropriate, [...] on regulatory, technical or practical aspects pertinent to the consistent and effective application of **Chapter III** of this Regulation and [...] **implementation of** Directive 2010/13/EU.

⁷ Basis: AVMWP on 21 February 2023 – WK 2273/2023

2. Where the Commission issues guidelines related to the application of **Chapter III** of this Regulation or the [...] **implementation of** Directive 2010/13/EU, the Board shall assist it by providing expertise on regulatory, technical or practical aspects, as regards in particular:

(a) the appropriate prominence of audiovisual media services of general interest under Article 7a of Directive 2010/13/EU;

(b) making information accessible on the ownership structure of media service providers, as provided under Article 5(2) of Directive 2010/13/EU.

Where the Commission issues guidelines related to the implementation of Directive 2010/13/EU, it shall consult the contact committee established pursuant to Article 29 of that Directive.

3. Where the Commission issues an opinion on a matter related to the application of Chapter III of this Regulation and implementation of Directive 2010/13/EU, the Board shall assist the Commission.

Article 16⁸

Coordination of measures concerning media services from outside the Union

1. **Without prejudice to Article 3 of Directive 2010/13/EU**, the Board shall, **upon request of the national regulatory authorities or bodies from at least two Member States**, coordinate relevant measures by **the** national regulatory authorities or bodies **concerned**, related to the dissemination of or access to media services **originating from outside the Union or** provided by media service providers established outside the Union that, **irrespective of their means of distribution or access**, target **or reach** audiences in the Union where, inter alia in view of the control that may be exercised by third countries over them, such media services prejudice or present a serious and grave risk of prejudice to public security, **including the safeguarding of national security** and defence.

2. The Board, in **consultation** with the Commission, may issue opinions on appropriate national measures under paragraph 1. **Without prejudice to their powers under national law, the** competent national authorities **concerned**, including the national regulatory authorities or bodies, shall do their utmost to take into account the opinions of the Board.

3 (new). The Board, in consultation with the Commission, shall draw up a list of criteria that national regulatory authorities or bodies may take into consideration when exercising their regulatory powers over media service providers referred to in paragraph 1.

⁸ Basis: AVMWP on 8 February 2023 – WK 1630/2023

Recital 22⁹

(22) Independent national regulatory authorities or bodies are key for the proper application of media law across the Union. **While** national regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU **often do not have competences related to the press sector, they** are best placed to ensure the correct application of the requirements related to regulatory cooperation and a well-functioning market for media services **in general, as** envisaged in [...] this Regulation. **National regulatory authorities or bodies should have the resources necessary for the fulfilment of their tasks in terms of staffing, expertise, and financial means. They should be provided with technical resources, for instance relevant digital tools. They should also have appropriate [...] powers, in particular [...] to request information from any natural or legal person to which this Regulation applies, or which, for purposes related to their trade, business or profession, may reasonably be in possession of the information needed, in respect of the rights and interest of such persons.**

⁹ Basis: AVMWP on 26 January 2023 – WK 866/2023

Recital 22a¹⁰ (*split from recital 22*)

(22a) In order to ensure a consistent application of this Regulation and other Union media law, it is necessary to set up an independent advisory body at Union level gathering such authorities or bodies and coordinating their actions. **In the performance of its tasks and the exercise of its powers, this body should neither seek nor take instructions from any government, institution (either national, supranational, or international), and public or private person or body.** The European Regulators Group for Audiovisual Media Services (ERGA), established by Directive 2010/13/EU, has been essential in promoting the consistent implementation of that Directive. The European Board for Media Services ('the Board') should therefore build on ERGA and replace it. This requires a targeted amendment of Directive 2010/13/EU to delete its Article 30b, which establishes ERGA, and to replace references to ERGA and its tasks as a consequence. The amendment of Directive 2010/13/EU by this Regulation is justified in this case as it is limited to a provision which does not need to be transposed by Member States and is addressed to the institutions of the Union.

¹⁰ Basis: AVMWP on 26 January 2023 – WK 866/2023

Recital 23¹¹

(23) The Board should bring together senior representatives of the national regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU, appointed by such authorities or bodies. In cases where Member States have several relevant regulatory authorities or bodies, including at regional level, a joint representative should be chosen through appropriate procedures and the voting right should remain limited to one representative per Member State. **For the purposes of their activities within the Board, national regulatory authorities or bodies should be able to consult and coordinate with relevant competent authorities or bodies and, where relevant, with self-regulatory bodies in their Member States.** This should not affect the possibility for the other national regulatory authorities or bodies to participate, as appropriate, in the meetings of the Board. **The Commission does not have a member in the Board but designates a representative without voting rights.** The Board should [...] have the possibility to invite, **on a case-by-case basis, [...] external experts [...]** to attend its meetings. **It should also have the possibility to invite**, in agreement with the Commission, **permanent** observers, including in particular regulatory authorities or bodies from candidate countries, potential candidate countries, EEA countries, or ad hoc delegates from other competent national authorities. Due to the sensitivity of the media sector and following the practice of ERGA decisions in accordance with its rules of procedure, the Board should adopt its decisions on the basis of a two-thirds majority of the votes.

¹¹ Basis: AVMWP on 26 January 2023 – WK 866/2023

Recital 24¹²

(24) Without prejudice to the powers granted to the Commission by the Treaties, it is essential that the Commission and the Board work and cooperate closely, **enabling the Board to advise and support the Commission on matters related to media services within its competence. The** Board should actively support the Commission in its tasks of ensuring the consistent application of this Regulation and **implementation of** Directive 2010/13/EU. For that purpose, the Board should in particular advise and assist the Commission on regulatory, technical or practical aspects pertinent to the application of Union law, promote cooperation and the effective exchange of information, experience and best practices and draw up opinions in **consultation** with the Commission or upon its request in the cases envisaged by this Regulation. **[...] Such opinions would not be legally binding but useful as guidance for the national regulatory authorities or bodies concerned and could be taken into account by the Commission in its tasks of ensuring the consistent application of this Regulation and implementation of Directive 2010/13/EU [...]. By making best efforts to implement the opinion of the Board, or by properly explaining any deviation therefrom, national regulatory authorities or bodies should be considered to have done their utmost to take the opinion of the Board into account.** In order to effectively fulfil its tasks, the Board should be able to rely on the expertise and human resources of a secretariat provided by the Commission. The Commission secretariat should provide administrative and organisational support to the Board, and help the Board in carrying out its tasks, **for example by carrying out relevant research or information-gathering activities.**

(no amendments are proposed to recital 25)

¹² Basis: AVMWP on 8 February 2023 – WK 1630/2023

(26) **Aware of these challenges, and in order to respond to the need for closer cooperation in the field of audiovisual media services, ERGA members have agreed a Memorandum of Understanding, which sets out non-binding mechanisms for cross-border cooperation. However, to ensure the effective enforcement of Union media law, [...] to avoid the raising of additional barriers in the internal market for media services and to prevent the possible circumvention of the applicable media rules by rogue media service providers, it is essential to provide for a clear, legally binding framework for national regulatory authorities or bodies to cooperate effectively and efficiently. Such a framework is crucial for upholding the country of origin principle, which is a cornerstone of Directive 2010/13/EU as well as for ensuring that regulatory authorities or bodies are able to exercise oversight over relevant media service providers. The objective should be to ensure the consistent and effective application of this Regulation and the implementation of Directive 2010/13/EU, for instance by ensuring a smooth exchange of information between national regulatory authorities or bodies or allowing to quickly address queries related to jurisdiction issues. Where national regulatory authorities or bodies exchange information, all relevant Union and national law on exchange of information, including relevant data protection law, should be respected. Such cooperation, and in particular the accelerated cooperation, is of key relevance to support actions to protect the internal market from such rogue media service providers [...], while ensuring compliance with fundamental rights, in particular freedom of expression. In particular, such accelerated cooperation is needed to prevent that media services suspended in certain Member States under Articles 3(3) and 3(5) of Directive 2010/13/EU [...] continue to be provided via satellite or other means in those Member States [...], and thus to contribute to the ‘effet utile’ of the relevant national measures, in compliance with Union law. The opinions of the Board will be important for the effective functioning of the cooperation mechanism.**

¹³ Basis: AVMWP on 8 February 2023 – WK 1630/2023

Recital 27¹⁴

(27) Due to the pan-European nature of video-sharing platforms, national regulatory authorities or bodies need to have a dedicated tool to protect viewers of video-sharing platform services from certain illegal and harmful content, including commercial communications. In particular, a mechanism is needed to allow any relevant national regulatory authority or body to request its **counterpart** to take necessary and proportionate actions to ensure enforcement of obligations [...] by video-sharing platform providers **under Articles 28b(1) to 28b(3) of Directive 2010/13/EU. This is key for ensuring that audiences, and in particular minors, are effectively protected across the Union when accessing the content on video-sharing platforms and that they can rely on the appropriate level of transparency when it comes to commercial communications online. Mediation and possible opinions by the Board will be conducive to ensure mutually acceptable and satisfactory results for the national regulatory authorities or bodies concerned.** In case the use of such mechanism does not lead to an amicable solution, the freedom to provide information society services from another Member State can only be restricted if the conditions set out in Article 3 of Directive 2000/31/EC of the European Parliament and of the Council⁵³ are met and following the procedure set out therein.

¹⁴ Basis: AVMWP on 8 February 2023 – WK 1630/2023

Recital 28¹⁵

(28) Ensuring a consistent regulatory practice regarding this Regulation and Directive 2010/13/EU is essential. For this purpose, and to contribute to ensuring a convergent implementation of EU media law, the Commission may issue guidelines on **cross-border** matters covered by both this Regulation and Directive 2010/13/EU when needed. When deciding to issue guidelines, **and in light of the relevant discussions with the contact committee established by Directive 2010/13/EU**, the Commission should consider in particular regulatory issues affecting a significant number of Member States or those with a cross-border element. [...] In view of the abundance of information and the increasing use of digital means to access the media, it is important to ensure prominence for content of general interest, in order to help achieving a level playing field in the internal market and compliance with the fundamental right to receive information under Article 11 of the Charter [...]. Given the possible impact of the national measures taken under Article 7a **of Directive 2010/13/EU** on the functioning of the internal media market, guidelines by the Commission would be important to achieve legal certainty in this field. It would also be useful to provide guidance on national measures taken under Article 5(2) of Directive 2010/13/EU with a view to ensuring the public availability of accessible, accurate and up-to-date information related to media ownership. In the process of preparing its guidelines, the Commission should be assisted by the Board. The Board should in particular share with the Commission its regulatory, technical and practical expertise regarding the areas and topics covered by the respective guidelines.

(Recital 29 has not been considered in this draft)

¹⁵ Basis: AVMWP on 21 February 2023 – WK 2273/2023

Recital 30¹⁶

(30) **National** regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU have specific practical expertise that allows them to effectively balance the interests of the providers and recipients of media services while ensuring the respect for the freedom of expression. This is key in particular when it comes to protecting the internal market from activities of media services from outside the Union that target or reach audiences in the Union where, inter alia in view of the control that may be exercised by third countries over them, they may prejudice or pose risks of prejudice to public security, including the safeguarding of national security and defence. **Such risks could take, for instance, the form of systematic, international campaigns of media manipulation and distortion of facts in view of destabilising the Union as a whole or particular Member States.** In this regard, the coordination between national regulatory authorities or bodies to face together possible public security [...] threats stemming from such media services needs to be strengthened and given a legal framework to ensure the effectiveness and possible coordination of the national measures adopted in line with Union media legislation. [...]
(parts of this recital have been moved to recital 26)

¹⁶ Basis: AVMWP on 8 February 2023 – WK 1630/2023

Recital 30a¹⁷ (*split from recital 30*)

(30a) (new) [...] It is necessary to coordinate the national measures that may be adopted to counter public security threats by media services originating or established outside of the Union and targeting audiences in the Union, including the possibility for the Board, in **consultation** with the Commission, to issue opinions on such measures, as appropriate. In this regard, risks to public security [...] need to be assessed with a view to all relevant factual and legal elements, at national and European level. **The objective should be to allow for a more coordinated approach for the concerned national regulatory authorities or bodies in relation to restrictions on the distribution of such media services, without prejudice to the competences of Member States or their national regulatory authorities or bodies in line with Union law.** [...] This should be without prejudice to the competence of the Union under Article 215 of the Treaty on the Functioning of the European Union.

Recital 30b (*new*)

(30b) (new) In order to further support national regulatory authorities or bodies in their role of protecting the internal media market from rogue media service providers, the Board should draw up a list of criteria concerning the media service providers established or originating from outside of the Union. Such a list would help national regulatory authorities or bodies in situations when a relevant media service provider seeks jurisdiction in a Member State, or when a media service provider already under the jurisdiction of a Member State, appears to pose serious and grave risks to national security and defence. Elements to be covered in such a list could concern, inter alia, ownership, management, financing structures, editorial independence from third countries or adherence to a co-regulatory or self-regulatory mechanisms governing editorial standards in one or more Member States.

¹⁷ Basis: AVMWP on 8 February 2023 – WK 1630/2023