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From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	14580/16 AUDIO 128 DIGIT 133 CONSOM 283 TELECOM 242 CODEC 1689
No. Cion doc.:	9479/16 AUDIO 68 DIGIT 55 CONSOM 1211A 28 CODEC 744 TELECOM 98
Subject:	AVMS: Definitions, hate speech and terrorism, accessibility and protection of minors - <i>Presidency compromise proposals</i>

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In preparation for the meeting of the Audiovisual Working Party on 3 March 2017, delegations will find attached 4 sets of Presidency compromise proposals on the following topics:

- definitions (Article 1),
- hate speech and terrorism (Article 6),
- accessibility (Article 7),
- protection of minors (Article 12).

The following formatting is used in the attached document:

- normal font reproduces the text of the 2010 AVMS Directive,
- **bold** indicates the amending provisions from the Commission proposal and text modified in the previous version (doc. 14580/16), which the Presidency has decided to keep,
- **bold underlined** and **~~bold underlined strikethrough~~** indicate new proposals by the Presidency, in comparison to doc. 14580/16.

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**

**VI. DEFINITIONS**

*Article 1*

1. For the purposes of this Directive, the following definitions shall apply:

(a) 'audiovisual media service' means:

(i) **a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service or a dissociable section thereof is devoted to providing programmes, under the editorial responsibility of a media service provider, in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC. Such an audiovisual media service is either a television broadcast as defined in point (e) of this paragraph or an on-demand audiovisual media service as defined in point (g) of this paragraph;**

(ii) audiovisual commercial communication;

[...]

(b) **'programme' means a set of moving images with or without sound, constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider, including feature-length films, video clips, sports events, situation comedies, documentaries, children's programmes and original drama;**

- (ba) 'user-generated video' means a set of moving images with or without sound constituting an individual item, irrespective of its length, that is created by a user and uploaded to a video-sharing platform by that user or any other user;

[...]

## VII. Provisions related to HATE SPEECH AND TERRORISM

### Article 6

Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any:

- aa) incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;<sup>1</sup>
- ab) public provocation to commit a terrorist offence as defined in Article 5 of Directive 2017/XXX/EU on Combating Terrorism.<sup>2</sup>

<sup>1</sup> *Recital 8 to be modified:* "In order to ensure coherence and give certainty to businesses and Member States' authorities, the notion of "incitement to violence or hatred" should, to the appropriate extent, be aligned to the definition in the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law which defines hate speech as "publicly inciting to violence or hatred". This should include aligning the grounds on which incitement to violence or hatred is based."

<sup>2</sup> *A new recital 8a to be added:* The terrorist threat has grown and evolved in recent years. Offences related to terrorist activities are of a very serious nature as they can lead to a terrorist act being committed. These offences comprise, inter alia, the glorification and justification of terrorism or the dissemination of messages or images both online and offline. Therefore, and in order to protect the population from such threats, there is a need to address this in this Directive. In order to ensure coherence and give legal certainty to businesses and Member States' authorities, the definition of 'public provocation to commit a terrorist offence' should be aligned, to the appropriate extent, with Article 5 of the Directive on Combating Terrorism.

## VIII. Provisions related to ACCESSIBILITY

### *Article 7*

- 1. Member States shall ensure that media service providers under their jurisdiction ~~make~~ develop appropriate and proportionate measures to enable their services ~~gradually~~ to be made increasingly and continuously accessible to people with a visual or hearing disability.**
- 2. Member States shall ensure that media service providers report, on an annual basis, to the national regulatory authorities on the implementation of the measures referred to in paragraph 1.**
- 3. Member States shall ensure that emergency information, including public communications and announcements in natural disaster situations, which is made public through audiovisual media services, is provided in a manner which is accessible to persons with disabilities.**

## **IX. Provisions related to PROTECTION OF MINORS**

### *Article 12*

- 1. Member States shall take appropriate measures to ensure that programmes provided by audiovisual media service providers under their jurisdiction, which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them. Such measures may include selecting the time of the broadcast, age verification tools or other technical measures. They shall be proportionate to the potential harm of the programme.**

**The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures, such as encryption and effective parental controls.**

[...]

- 1b. In addition to the measures referred to in paragraphs 1 and 1a, Member States shall encourage policies and schemes to develop media literacy skills.**

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