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This is a discussion draft to reflect one of our demands. The full EBU position is available [here](#).

RESPECT FOR EDITORIAL FREEDOM/INDEPENDENCE ON ACTIVE ONLINE PLATFORMS

Public service media (PSM) organisations offer a range of diverse content catering to the whole of society, through their own platforms but also through third-party platforms. Abiding by strict EU and national media laws and guided by professional editorial standards, PSM as well as other media service providers apply the same high standards and are subject to the same regulatory oversight regardless of how their services are distributed and consumed. Exercising editorial control in a responsible manner is key to safeguarding the public's trust in media and its independence.

Although online platforms have facilitated the circulation of expressions, they also pose a risk to the same in so far as they often define the legality of speech on their platforms through their content standards/community guidelines. As a result, not only they remove or suspend content that is illegal under EU or national law, but they also ban content that is considered contrary to their non-negotiable community standards, even if lawful and appropriate under applicable EU and national laws and regulations.¹

Exercising and safeguarding editorial freedom and independence is key to safeguard public trust in media service providers. Allowing global platforms to ban and/or erroneously remove media content and services when they allegedly clash with unilaterally imposed community standards creates a serious threat for editorial freedom, cultural diversity and media pluralism in Europe.

It is necessary that the Digital Services Act (DSA) establishes an obligation for online platforms to refrain from interfering with or controlling content and services from media service providers that are already subject to specific regulation and independent oversight, in particular providers of audio/radio services and of audiovisual media services pursuant to Art. 1(1)(a) Audiovisual Media Services Directive (see [annex](#)), as regards all of their content and services.

For this content and services, platforms would not be held liable. This provision would ensure the continued responsibility and liability of media service providers for their content and services.

This obligation is a necessary and proportionate response to current challenges, because it is limited to online platforms' approach to content and does not affect the essence of their freedom to conduct a business, such as through their terms and conditions.

The DSA must stop online platforms from imposing a double regulation on media service providers, thereby undermining the effectiveness of EU and national rules as well as media providers' professional content standards that are also an expression of national cultural specificities. Some actions online platforms undertake even result in a disproportionate interference of media service providers' editorial freedom.

It is also necessary to ensure that online platform providers do not deviate from or circumvent the new obligations imposed by the future DSA by contractual arrangements.

¹ See the [EBU's reply](#) to the DSA package consultation, in particular pp. 16, 19f. See also the [annex](#) to Nordvision's reply to the DSA consultation.

ANNEX

Model provision and accompanying recitals for an EU Directive

Art. XX

1. Members States shall ensure that active online platforms do not interfere with or exercise control over content and services provided by a media service provider that has editorial control over the content and that is already subject to specific media regulation, oversight and/or complaints mechanisms.

2. Each Member State shall identify the media service providers pursuant to paragraph 1 under its jurisdiction and shall inform the Commission. Member States shall set out transparent, clear and objective criteria and shall identify the relevant media service providers in consultation with the main national stakeholders. The Commission shall publish the information in the Official Journal of the European Union. Upon publication, Member States shall mutually recognise the media service providers.

Alternative para. 2

2. The Commission shall lay down the criteria for the identification of media service providers pursuant to paragraph 1 on the basis of a proposal by ERGA [and/or other relevant national regulatory/supervisory bodies]. In compliance with these guidelines, a Member State shall identify the media service providers under its jurisdiction in consultation with the main national stakeholders. Each Member State shall notify the relevant media service providers to the Commission. The Commission shall review the compatibility of the information with the guidelines and EU law for any manifest error and shall publish the information in the Official Journal of the European Union. Upon publication, Member States shall mutually recognise the media service providers.

3. Member States shall ensure that it is the responsibility of the media service provider having editorial responsibility to comply with the relevant EU and national rules governing the provision of the content and service, including liability.

Art. YY

Member States shall ensure that any contractual provisions or content standards between active online platforms and media service providers which are contrary to this Directive shall be unenforceable.

Recitals

(xx)

Active online platforms take content-related decisions (whether by automatic means or not) by organising, ranking, labelling, personalising, monetising or otherwise moderating or commercialising content for public use. They have become an important communications medium, capable of impacting public opinion forming and ultimately democracy.

Active online platforms should therefore be subject to a positive obligation, respecting the editorial freedom and independence of media service providers, in particular providers of

audiovisual media services according to Art. 1(1)(a) of the Audiovisual Media Services Directive, including text-based services of those providers as well as providers of audio/radio services as defined by national media law.

Active online platforms should refrain from interfering with or exercising control over media content as identified by a Member State, in particular by taking-down, removing, suspending, filtering or de-referencing content or similar measures which have the effect of denying users access to the unaltered and unabridged content as originally conceived by a media service provider. They should also be prohibited from shortening, interrupting or modifying media content in any way. This obligation complements Art. 7b of the Audiovisual Media Services Directive protecting the integrity of audiovisual media services provided by media service providers.

(yy)

It should fall on the media service provider bearing editorial responsibility to comply with EU and national laws governing the provision of the service including respect for content standards. This should include liability for such content under national law.

Any complaints or flags by users about a media service provider's content made available on an active online platforms should therefore be dealt with by the responsible media provider, who should, however, not be liable for user-generated comments made in relation to or linked to such content. [Any obligation to refrain from interfering with or controlling a media service provider's content should not apply to user-generated content.]

(zz)

In designing the obligation to respect media service providers' editorial freedom and independence, a balancing exercise is necessary, taking into account the different fundamental rights and freedoms at stake. Any limitation of these rights and freedoms needs to preserve their very essence.

The obligation to respect media service providers' editorial freedom imposed on active online platforms serves general interest objectives, above all, the freedom of expression including the right to receive information as well as media pluralism, media freedom and cultural diversity.

It is proportionate to the aims pursued as it merely impacts active online platform providers' content standards (as laid down, for example, in their community guidelines), leaving unaffected their ability to do business and to determine the terms and conditions for trading on their platforms.

Justification

In order to safeguard public trust in media service providers, it is important to protect their editorial freedom and independence.

Active online platforms have become important communications channels, allowing users to express their opinions and impart information. Yet, they govern their communications space and set the standards for permissible speech in a unilateral manner, unaccountable to the

public. This creates a serious threat for media service providers' editorial freedom and independence, cultural diversity and media pluralism in Europe.

It must therefore be ensured that active online platforms do not subject content and services from media service providers that are already subject to regulation, independent oversight and/or complaints mechanisms to any control or interference. Otherwise, this would lead to an unjustifiable double regulation of media service providers when such content is made available on active online platforms, undermining applicable laws as well as content standards (e.g. rules to protect vulnerable audiences, such as minors or persons with disabilities, advertising rules).

It is in the public interest to impose a proportionate obligation on active online platform providers that merely affects their approach to content, while leaving intact the essence of their freedom to conduct a business.

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