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**NOTE**

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**From:** General Secretariat of the Council  
**To:** Audiovisual and Media Working Party (Attachés)  
Audiovisual and Media Working Party

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**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 and explanatory note

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With a view top the Audiovisual and Media Working Party on 8 February 2023 (agenda item 4), delegations will find attached

- In Annex I, a set of Presidency compromise texts regarding Articles 13, 14 and 16 and Recitals 24, 26, 27, 30 and 30a
- In Annex II, an explanatory note to the above-mentioned Presidency compromise texts

**EMFA Regulation**  
**Presidency compromise texts**  
**Articles 13, 14 and 16 + Recitals 24, 26, 27, 30 and 30a**  
**AVMWP on 8 February 2023**

*Article 13*

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, disproportionate or not sufficiently specified.**

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.**

[...]

[...]

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 prejudice to the functioning of the internal market for media services or a serious and grave risk of prejudice to public 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 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 2, 3 and 5 of this Article shall apply accordingly.**

## *Article 14*

### 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 Articles 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.
  
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 30 calendar days [...] from the receipt of the opinion referred to in paragraph 4, inform the Board, the Commission and the requesting authority [...] of the actions taken or planned in relation to the opinion.

## *Article 16*

Coordination of measures concerning media service providers established outside the Union

1. **Without prejudice to Article 3 of Directive 2010/13/EU**, the Board shall, **upon request of the national regulatory authorities 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 provided by media service providers established outside the Union that target 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 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.

### Recital 24

(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. In particular, the Board should actively support the Commission in its tasks of ensuring the consistent application of this Regulation and of the national **measures** implementing 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 agreement with the Commission or upon its request in the cases envisaged by this Regulation. **While such opinions would not be legally binding, the decision to deviate therefrom should be properly explained and could be taken into account by the Commission in its tasks of ensuring the consistent application of this Regulation and of the national measures implementing Directive 2010/13/EU.** 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.**

Recital 26

**(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 media service providers which do not comply with European media content standards, 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.**

#### Recital 27

(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 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 Council are met and following the procedure set out therein.

#### Recital 30

(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 service providers established outside the Union that target 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 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 and defence 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*)

Recital 30a (*split from recital 30*)

**(30a)** [...] It is necessary to coordinate the national measures that may be adopted to counter public security and defence threats by media services 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 and defence 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.



## **EMFA Regulation**

### **Explanatory note to Presidency compromise texts**

#### **Articles 13, 14 and 16 + Recitals 24, 26, 27, 30 and 30a**

#### **AVMWP on 8 February 2023**

**Art 13(1)** Draft changes to clarify that the **cooperation** foreseen in Art 13 consists of exchange of information and/or mutual assistance.

**Art 13(2)** The paragraph on the accelerated cooperation is moved down to new Art 13(8) in line with proposals from MS to facilitate reading.

**Art 13(3)** Draft changes to reflect the proposals on Art 13(1)

**Art 13(4)** In (a) draft change to reflect deletion of “measures” in Art 13(1). New (c) in line with suggestions from MS to add possible reasons for rejections.

Additions to clarify the timeframe (leaving out details) and to clarify requirement of help when requested authority is not competent.

**Art 13(5)** has been deleted

**Art 13 (6)** Changes to simplify and clarify the process. Deletion of detailed timeframe.

**Art 13(7)** Attempt to simplify the process. Deletion of timeframe of the opinion of the Board – but explicit reference that such should be established by the Board. Change from required agreement by the Commission to required **consultation** with the Commission.

**Art 13(8) (new)** Changes to clarify the nature of the accelerated cooperation. “while ensuring compliance with fundamental rights...” moved to recital 26 to cover the whole Art 13. However, timeframes for accelerated cooperation has been kept because necessary for **accelerated** cooperation (also motivated by requirement targeting NRA:s, not the Board).

**Recital 24** Addition to clarify the nature of an opinion of the Board.

**Recital 26** Main proposed additions/changes should clarify the nature of the cooperation mechanism in Art 13 in general and to specifically distinguish the accelerated cooperation set up for bilateral issues, from the multilateral coordination of Art 16.

In addition, additions to underline that Art 13 builds on the ERGA MoU, to clarify that all exchange of information should be done with respect to data protection law, that all

cooperation and requests should be done in compliance with fundamental rights – especially freedom of expression and lastly to explain why an opinion from the Board could be useful.

**Art 14(1)** Clarifications and limitations of the scope of Art 14 to requests of enforcement related to Art 28b(1) to 28b(3) of AVMSD specifically.

**Art 14(2), 14(3) and 14(5)** Editorial changes only.

**Art 14(4)** Changes to underline that requests need to be addressed, but not necessarily complied with by requested authority. Same changes as Art 13 in relation to the involvement of the Commission.

**Recital 27** Additions to clarify why a separate Art 14 on VSPs and how it differs from Art 13.

**Art 16(1)** Additions to clarify that the process foreseen in Art 3 remains unaffected, to limit the scope to instances where at least two NRAs want the cooperation and that the coordination of measures only targets NRAs concerned.

**Art 16(2)** Change from required agreement of the Commission for opinions from the Board, to required consultation with the Commission. Additional clarifications on the opinion from the Board on the scope of measures and what authorities that can be targeted.

**Recital 30 and 30a** Addition to exemplify “risks of prejudice to public security and defence” and addition to give more explanation of aim of the article and how it differs from Art 13 and Art 14.