



Council of the European Union
General Secretariat

Brussels, 09 June 2021

**Interinstitutional files:
2020/0361 (COD)**

WK 7638/2021 INIT

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NOTE

From: DE Delegation
To: Working Party on Competitiveness and Growth (Internal Market - Attachés)
Working Party on Competitiveness and Growth (Internal Market)

Subject: DEU – Drafting proposal for an additional provision to ensure the protection of plurality of the media

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According to Article 1(6) of the **Directive 2000/31/EC** (“e-Commerce Directive”), the Directive does not affect measures taken at national level, in the respect of Community law, in order to promote **cultural and linguistic diversity** and to **ensure the defence of pluralism**.

The **new recital 9 of the Presidency compromise text (9288/21)** clarifies, however, that “Member States should not adopt or maintain **additional national requirements** on those matters **falling within the scope of this Regulation**, unless explicitly provided for in this Regulation, since this would affect the direct and uniform application of the fully harmonised rules applicable to the providers of intermediary services in accordance with the objectives of this Regulation. This does not preclude the **possibility to apply other national legislation** applicable to providers of intermediary services in accordance with Union law, **including Directive 2000/31/EC, in particular its Article 3**, which pursue **other legitimate public interest objectives**.”

Against this background and the specific wording of the **new recital 9** (“including Directive 2000/31/EC, in particular its Article 3”) the question arises whether **Article 1(6) of the e-Commerce Directive continues to apply to providers of intermediary services**. If this is the case, **national derogations to promote cultural and linguistic diversity and to ensure the defence of pluralism** would still be applicable to providers of intermediary services under the Regulation. However, **for the sake of legal clarity and as a precaution**, we request a **specific derogation clause for the protection of plurality of the media** which could be inserted as a **new Art. 1(6)** and read as follows:

<p>Article 1 Subject matter, objectives and scope</p>
<p>[...]</p> <p>“6. Member States may take appropriate measures other than those taken into consideration by this Regulation to protect plurality of the media. Any such legislation shall be compatible with the general principles and other provisions of Community law.”</p>

Such **derogation clauses for legitimate public interest objectives** are already provided for in Union law in **many legal acts** (cf. e.g. Article 1(6) e-Commerce Directive; Article 21(4) EC Merger Regulation or Article 85 General Data Protection Regulation). It is of utmost importance to us that the **protection of plurality of the media** will also be safeguarded under the DSA.

The right of the Member States to adopt national legislation to **protect the plurality of the media**, as set out above, follows from their competence to **safeguard media pluralism**. Due to the convergence of media, also in the online environment legislation to **ensure and foster media pluralism** is crucial. The right of the Member States includes in particular substantive rules, rules of procedure and enforcement rules, including the regulatory structure.