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PV/CONS 29  
EDUC 252  
JEUN 72  
CULT 73  
AUDIO 74  
SPORT 38

## DRAFT MINUTES

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Subject: **3541st** meeting of the Council of the European Union  
**(Education, Youth, Culture and Sport)**,  
held in Brussels on 22 and 23 May 2017

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### **In document 9547/17 ADD 1, on page 5, the statement by Austria should read as follows:**

"Right at the beginning of the Maltese Presidency's text proposal, it is explicitly and correctly stated that the 'recitals will be dealt with at a later stage'. Given the central importance of all recitals for the interpretation of the legal text Austria may emphasize:

1. For the assessment whether the providing of user-generated videos and programs is an **'essential function'** recital 3b has to be understood as putting a focus on a **qualitative** assessment about how important audiovisual content on a social network is. In this respect it can also be an indicator of significance whether the service uses algorithms to decide which audiovisual content is run and how prominently it is displayed. The wording *'constitutes a minor part'* in recital 3b must therefore not be understood as just requiring a mere quantitative analysis of the manifold content. A social network therefore does certainly not automatically fall out of the scope of the directive if in a comparison of the entirety of its content the share of audiovisual content is lower than the share of text and images.
2. Austria assumes that the work on the recitals, as announced by the Presidency text, will give an opportunity to dissolve the contradiction between the legal text in Article 30a para 3 point e and the wording of recital 37. ERGA's task as defined in Article 30a para 3 (especially point e) is to provide 'technical expertise' and opinions 'on the technical and factual aspects' but not to issue legal statements."