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Subject:	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 - <i>Annotated version</i>

At its meetings on 1, 12 and 26 September as well as on 3 and 28 October 2016, the Audiovisual Working Party conducted a detailed examination of the above proposal. An annotated version of the articles discussed during those meetings is annexed to this note.

The attached document is a consolidated version of the current AVMS directive 2010/13/EU¹ and the Commission proposal for amending this directive². The consolidated version therefore follows the structure of the 2010 AVMS directive, with the exception of the final provisions (transposition, entry into force, addressees) which are taken from the Commission proposal (Articles 2 to 4 of document 9479/16).

The following formatting is used in the annotated version:

- normal font reproduces the text of the 2010 AVMS Directive,
 - **bold** indicates the amending provisions from the Commission proposal,
 - **bold underlined** indicates a new text added to the 2010 AVMS Directive by the Commission amending proposal,
 - **~~bold strikethrough~~** is used for the text deleted from the 2010 AVMS Directive by the Commission amending proposal.
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¹ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) - OJ L 95, 15.4.2010, p.1.

² 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 (doc. 9479/16).

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**

[...]³

Article 1

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

(a) 'audiovisual media service' means:

³ The Recitals will be examined at a later stage.

MODIFIED (Point 1(a))⁴

- (i) a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, ~~which is under the editorial responsibility of a media service provider~~ and where the principal purpose of which is the provision of programmes 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 paragraph⁵;
- (ii) audiovisual commercial communication;

⁴ Refer to points under Article 1 of doc. 9479/16.

⁵ AT, BE and LT found the definition too restrictive as it did not cover certain services such as social media. BE, DE, EE, FR, HU, PL and SI asked for clarification of the term "dissociable section" as well as of the paragraph as a whole (also EL). FR suggested to clarify it further in recital 3 of the Commission proposal by making a reference to the judgement of the European Court of Justice (Case C-347/14). CION explained that the definition of the audiovisual media service now covers also audiovisual content that is part of another (non-audiovisual) service if it is independent (dissociated) in content and form from that other service, such as for instance stand-alone video sections offered by an on-line newspaper.

(aa) 'video-sharing platform service' means a service, as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, which meets the following requirements:⁶

(i) the service consists of the storage of a large amount of programmes or user generated videos, for which the video-sharing platform provider does not have editorial responsibility;⁷

(ii) the organisation of the stored content is determined by the provider of the service including by automatic means or algorithms, in particular by hosting, displaying, tagging and sequencing;

⁶ IE questioned the inclusion of video-sharing platforms in the scope of the directive, citing a possible negative impact on freedom of speech. CION commented that the measures listed in Article 28a aim at avoiding access to harmful content on video-sharing platforms, but content as such is not regulated *ex-ante* given the limitations of liability of platforms under the e-commerce directive. Many delegations (AT, EL, ES, FI, FR, LT, NL, PL, RO, SE, SI and UK) wished for more clarity of the requirements used in this paragraph, in particular which services are covered by the definition (non-commercial platforms, social media, cloud services, re-transmission services, catch-up TV). Regarding the concern of IE on a negative impact of the regulation on small and micro-platforms, CION replied that no exception is provided in this regard given the overriding importance of protecting minors and consumers.

⁷ FR asked for clarification of "large amount". It also pointed out that the requirement of storage excludes platforms providing live content. CION confirmed that measures listed in Article 28a are designed to be applied only *ex-post* and wondered what measure could be applied to regulate live content. EL suggested to add that this provision is without prejudice to the e-commerce directive (Article 14).

- (iii) the principal purpose of the service or a dissociable section⁸ thereof is devoted to providing programmes and⁹ user-generated videos to the general public, in order to inform, entertain or educate;**
- (iv) the service is made available by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC;**

MODIFIED (*Point 1(c)*)

- (b) ‘programme’ means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider ~~and the form and content of which are comparable to the form and content of television broadcasting. Examples of programmes include,~~ including feature-length films, videos of short duration¹⁰, sports events, situation comedies, documentaries, children’s programmes and original drama¹¹;**

⁸ AT and FR drew attention to the fact that this condition excludes video content provided on social networks since they are not distinct from the rest of the service.

⁹ AT suggested to add "and/or".

¹⁰ AT and ES suggested to delete the reference to the duration of videos, while FI, FR and IT asked for more clarity as to how to interpret "short duration". CION answered that the addition of this term follows the ECJ judgement (Case C-347/14) but that duration was not a limitative factor, the intention simply being to underline that also short length content can be considered as a "programme".

¹¹ FR thought that a list of examples should be moved to a recital, while EL suggested to add "musical performances".

NEW (Point 1(d))

(ba) 'user-generated video' ¹²means a set of moving images with or without sound constituting an individual item¹³ that is created and/or¹⁴ uploaded to a video-sharing platform by one or more users¹⁵;

- (c) 'editorial responsibility' means the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services. Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided;
- (d) 'media service provider' means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised;

NEW (Point 1(e))

(da) 'video-sharing platform provider' means the natural or legal person who provides a video-sharing platform service;

- (e) 'television broadcasting' or 'television broadcast' (i.e. a linear audiovisual media service) means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule;

¹² PL suggested to delete the definition and explain in a recital that user-generated video is a type of programme. RO suggested to add a recital on the protection of copyright.

¹³ AT and DE proposed to delete "individual item" while EL suggested to add "sequences of individual items".

¹⁴ EL and FI wanted to delete "or".

¹⁵ HU suggested to add "*private* users" to mark a distinction with "programme" (point b)) which is created by a media service provider (professional).

- (f) ‘broadcaster’ means a media service provider of television broadcasts;
- (g) ‘on-demand audiovisual media service’ (i.e. a non-linear audiovisual media service) means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider;
- (h) ‘audiovisual commercial communication’ means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;
- (i) ‘television advertising’ means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;
- (j) ‘surreptitious audiovisual commercial communication’ means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration;

- (k) ‘sponsorship’ means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting their name, trade mark, image, activities or products;
 - (l) ‘teleshopping’ means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment;
 - (m) ‘product placement’ means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration;
 - (n) ‘European works’ means the following:
 - (i) works originating in Member States;
 - (ii) works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 3;
 - (iii) works co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries and fulfilling the conditions defined in each of those agreements.
2. The application of the provisions of points (n)(ii) and (iii) of paragraph 1 shall be conditional on works originating in Member States not being the subject of discriminatory measures in the third country concerned.

3. The works referred to in points (n)(i) and (ii) of paragraph 1 are works mainly made with authors and workers residing in one or more of the States referred to in those provisions provided that they comply with one of the following three conditions:
- (i) they are made by one or more producers established in one or more of those States;
 - (ii) the production of the works is supervised and actually controlled by one or more producers established in one or more of those States;
 - (iii) the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.
4. Works that are not European works within the meaning of point (n) of paragraph 1 but that are produced within the framework of bilateral co-production agreements concluded between Member States and third countries shall be deemed to be European works provided that the co-producers from the Union supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.

CHAPTER II

MODIFIED (*Point 2*)

GENERAL PROVISIONS FOR AUDIOVISUAL MEDIA SERVICES

Article 2

1. Each Member State shall ensure that all audiovisual media services transmitted by media service providers under its jurisdiction comply with the rules of the system of law applicable to audiovisual media services intended for the public in that Member State.
2. For the purposes of this Directive, the media service providers under the jurisdiction of a Member State are any of the following:
 - (a) those established in that Member State in accordance with paragraph 3;
 - (b) those to whom paragraph 4 applies.
3. For the purposes of this Directive, a media service provider shall be deemed to be established in a Member State in the following cases:
 - (a) the media service provider has its head office in that Member State and the editorial decisions about the audiovisual media service are taken in that Member State;

MODIFIED (*Point 3(a)*)

- (b) if a media service provider has its head office in one Member State but editorial decisions¹⁶ on the audiovisual media service are taken in another Member State, it shall be deemed to be established in the Member State where ~~a significant part~~ the majority of the workforce¹⁷ involved in the pursuit of the audiovisual media service activity operates. ~~If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in each of those Member States, the media service provider shall be deemed to be established in the Member State where it has its head office. If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in neither of those Member States, the media service provider shall be deemed to be established in the Member State where it first began its activity in accordance with the law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State.~~
- (c) if a media service provider has its head office in a Member State but decisions on the audiovisual media service are taken in a third country, or vice versa, it shall be deemed to be established in the Member State concerned, provided that a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in that Member State.

¹⁶ BE and SE asked for a further clarification of "editorial decisions".

¹⁷ EL, HU and PL did not think that the proposed change to a majority of the workforce sufficiently addresses the problem of jurisdiction and that alternative criteria such as the share of commercial communications sold should be used. DK and SE found that neither the current nor the proposed new criteria to determine jurisdiction correspond to the reality of a modern media world. FR and LU were also against the proposed change. Together with EE and ES they asked for clarification as to what type of employees to include when calculating a "majority", with ES suggesting that only workforce involved in editorial decisions should be covered. AT and FR asked why the change to "the majority" was not also made in point c).

4. Media service providers to whom the provisions of paragraph 3 are not applicable shall be deemed to be under the jurisdiction of a Member State in the following cases:
- (a) they use a satellite up-link situated in that Member State;
 - (b) although they do not use a satellite up-link situated in that Member State, they use satellite capacity appertaining to that Member State.
5. If the question as to which Member State has jurisdiction cannot be determined in accordance with paragraphs 3 and 4, the competent Member State shall be that in which the media service provider is established within the meaning of Articles 49 to 55 of the Treaty on the Functioning of the European Union.

NEW (*Point 3(b)*)

5a. Member States shall communicate to the Commission a list of the audiovisual media service providers under their jurisdiction and the criteria set out in paragraphs 2 to 5 on which their jurisdiction is based¹⁸. They shall subsequently inform the Commission without undue delay¹⁹ of any changes to that list. The Commission shall ensure that the competent independent regulatory authorities have access to this information.

¹⁸ AT, DE, DK and SI had doubts about the list, in particular given the administrative burden and financial costs related to putting such a list together and updating it. ES and HU suggested that the public should have access to the list in a reusable format. FR and LT pointed to the difficulty to update the list with media service providers using a satellite up-link (see paragraph 4) since satellite up-links are volatile and it is therefore difficult to determine Member State of jurisdiction rapidly. LV suggested to add among the criteria "targeted audience".

¹⁹ DE proposed to delete "without undue delay", while HU asked to clarify this term.

5b. Where, in applying Articles 3 and 4 of this Directive, the Member States concerned do not agree on which Member State has jurisdiction, they shall bring the matter to the Commission's attention without undue delay. The Commission may request the European Regulators Group for Audiovisual Media Services (ERGA) to provide an opinion on the matter within 15 working days from submission of the Commission's request²⁰. If the Commission requests an opinion from ERGA, the time-limits set out in Articles 3(5)²¹ and 4(5) shall be suspended until ERGA has adopted an opinion²².

6. This Directive does not apply to audiovisual media services intended exclusively for reception in third countries and which are not received with standard consumer equipment directly or indirectly by the public in one or more Member States.

MODIFIED (*Point 4*)

Article 3

- 1. Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by this Directive.**

²⁰ SE, supported by AT, DK, EE and FR, was against mentioning that the Commission may request an opinion from ERGA as this was not a mandatory requirement and made the procedure more complicated. DE proposed to replace ERGA with the Contact Committee.

²¹ AT pointed out that the correct reference is Article 3(~~4~~).

²² AT and PL wanted to know what will happen after ERGA delivers its opinion, including what deadlines will be applied. In its response, CION clarified that ERGA's opinion on jurisdiction is a part of cooperation procedures described in Articles 3 and 4 and therefore the follow-up to the opinion, as well as the deadlines, will be the ones set out in those articles.

2. ~~In respect of television broadcasting~~, Member States may provisionally derogate from paragraph 1 ~~if the following conditions are fulfilled~~ if an audiovisual media service provided by a media service provider under the jurisdiction of another Member State²³:
- (a) ~~a television broadcast coming from another Member State~~ manifestly, seriously and gravely²⁴ infringes ~~Article 27(1) or (2) and/or~~ Articles 6 or 12, or both²⁵;
 - (b) prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence; or²⁶
 - (c) prejudices or presents a serious and grave risk of prejudice to public health.
3. Member States may only apply paragraph 2 where the following conditions are met:
- ~~(b)~~(a) during the ~~previous~~ 12 months preceding the notification referred to in point (b) of this paragraph, the broadcaster has infringed the provision(s) referred to in the media service provider has, in the opinion of the Member State concerned, contravened point (a), (b) or (c) of paragraph 2 on at least two prior occasions²⁷;
 - ~~(e)~~(b) the Member State concerned has notified the ~~broadcaster~~ media service provider, the Member State which has jurisdiction over the provider and the Commission in writing of the alleged ~~infringements~~ contraventions and of the measures it intends to take should any such ~~infringement~~ alleged contraventions occur again;

²³ Among the derogation grounds, AT proposed to add "consumer protection", while FR suggested a reference to violation of human dignity and glorification of terrorism (supported by ES). Regarding a reference to terrorism, CION underlined that issues related to terrorism are dealt with in the currently negotiated proposal for a directive on combatting terrorism.

²⁴ EE asked to clarify the difference between "seriously" and "gravely".

²⁵ LT suggested to delete "or both" at the end of the sentence considering it superfluous.

²⁶ EE asked to clarify the definition of "public security" since it could not find a sufficiently clear interpretation of the term in the existing case-law cited by the Commission.

²⁷ PL proposed that one contravention of the grounds listed in paragraph 2 should be sufficient for a Member State concerned to start a notification procedure. PL also considered that a reference to paragraph 2 as such is sufficient, without the need to list individual points.

~~(d)~~(c) consultations with the ~~transmitting~~ Member State which has jurisdiction over the provider and the Commission have not produced an amicable settlement within 45 days one month of the notification provided for ~~point (e), and the alleged infringement persists~~ in point (b);²⁸

(d) the media services provider has contravened point (a), (b) or (c) of paragraph 2 at least once after the notification provided for in point (b) of this paragraph;

(e) the notifying Member State has respected the rights of defence²⁹ of the media services provider concerned and, in particular, has given the media services provider the opportunity to express its views on the alleged contraventions and the measures that that Member State intends to take. It shall duly take into account those views as well as the views of the Member State of jurisdiction.³⁰

Points (a) and (d) of paragraph 3 shall apply only in respect of linear services³¹.

²⁸ PL proposed to delete the entire paragraph in order to simplify the procedure.

²⁹ AT asked to clarify what "rights of defence" mean, and together with EE suggested to give an indicative list of those rights in a recital. LT suggested to add a 1 month deadline for a media provider to exercise its rights of defence.

³⁰ AT and PL did not find it clear what "duly take into account" means, with PL suggesting to delete the entire sentence.

³¹ AT and PL queried the limitation to linear services.

- 4. The Commission shall, within ~~2 months~~ three months following the notification of the measures taken by the Member State in application of paragraphs 2 and 3 and after having consulted ERGA³², take a decision on whether ~~the~~ those measures are compatible with Union law. That period shall begin on the day following the receipt of a complete notification. The notification shall be considered as complete if, within three months from its receipt, or from the receipt of any additional information requested, the Commission does not request any further information.³³**

Where the Commission considers the notification as incomplete, it shall request all necessary additional information. The Commission shall inform the Member State of the receipt of the response to that request.

Where the Member State concerned does not provide the information requested within the period fixed by the Commission or where it provides incomplete information, the Commission shall take a decision that the measures taken by the Member State in accordance with paragraph 2 are incompatible with Union law³⁴. ~~If it~~ the Commission decides that ~~they are not~~ the measures are incompatible with Union law, the Member State ~~will be required to~~ shall put an end to the measures in question as a matter of urgency.

³² ES was against the role of ERGA in this area, while AT and DE preferred to have the Contact Committee involved in the procedure instead of ERGA.

³³ CZ, HU, LT and PL did not welcome the extension of deadlines. EL suggested that a list of examples of information that a notification has to contain could be in a recital.

³⁴ DE questioned the possibility for the Commission to declare incompatibility with EU law in case of an incomplete notification.

~~3.5.~~ ~~Paragraph 2~~ Paragraphs 3 and 4 shall be without prejudice to the application of any procedure, remedy or sanction to the ~~infringements~~ contraventions³⁵ in question in the Member State which has jurisdiction over the ~~broadcaster~~ media service provider concerned.

~~4.~~ ~~In respect of on-demand audiovisual media services, Member States may take measures to derogate from paragraph 1 in respect of a given service if the following conditions are fulfilled:~~

~~(a) the measures are:~~

~~(i) necessary for one of the following reasons:~~

~~—— public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons,~~

~~—— the protection of public health,~~

~~—— public security, including the safeguarding of national security and defence,~~

~~—— the protection of consumers, including investors;~~

~~(ii) taken against an on-demand audiovisual media service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives;~~

~~(iii) proportionate to those objectives;~~

³⁵ In response to EL question on why "infringement" was replaced with "contravention", CION said that "contravention" was legally a more correct term.

~~(b) — before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the Member State has:~~

~~(i) — asked the Member State under whose jurisdiction the media service provider falls to take measures and the latter did not take such measures, or they were inadequate;~~

~~(ii) — notified the Commission and the Member State under whose jurisdiction the media service provider falls of its intention to take such measures.~~

5.6. Member States may, in urgent cases, derogate from the conditions laid down in ~~point (b) of paragraph 4~~ points (b) and (c) of paragraph 3³⁶. Where this is the case, the measures shall be notified in the shortest possible time to the Commission and to the Member State ~~under whose~~ which has jurisdiction over the media service provider ~~falls,~~ indicating setting out the reasons for which the Member State considers that there is such urgency that derogating from those conditions is necessary.

6.7. Without prejudice to the Member State's possibility of proceeding with the measures referred to in ~~paragraphs 4 and 5~~ paragraph 6, the Commission shall examine the compatibility of the notified measures with Union law in the shortest possible time. Where it comes to the conclusion that the measures are incompatible with Union law, the Commission shall ~~ask~~ require the Member State ~~in question~~ concerned to refrain from taking any ~~proposed~~ intended measures or urgently to put an end to the those measures ~~in question.~~

³⁶ EE and LT considered that the proposed emergency procedure is insufficient as it still requires two previous contraventions before it can be launched (paragraph 3(b)). LT suggested that a Member State should be also allowed to derogate from paragraph 3(d), and that additional wording should be put in a recital.

8. Member States and the Commission shall regularly exchange experiences and best practices regarding the procedure set out in paragraphs 2 to 7 in the framework of the contact committee established pursuant to Article 29 and ERGA;³⁷

Article 4³⁸

MODIFIED (Point 5(a))

- 1. Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules ~~in the fields coordinated by this Directive~~ with regard to Articles 5, 6, 6a, 9, 10, 11, 12, 13, 16, 17, 19 to 26, 30 and 30a³⁹, provided that such rules are in compliance with Union law.**
2. In cases where a Member State:
 - (a) has exercised its freedom under paragraph 1 to adopt more detailed or stricter rules of general public interest; and
 - (b) assesses that a broadcaster under the jurisdiction of another Member State provides a television broadcast which is wholly or mostly directed towards its territory;

³⁷ EL proposed to add regulatory authorities, while EE asked for a clear distinction between the role of the Contact Committee and the one of ERGA. In its response CION underlined that ERGA's role is to give technical advice on the basis of which the Commission takes a position, while the Contact Committee represents the positions of Member States.

³⁸ PL and SE expressed serious doubts about the changes proposed by the Commission in this article which they consider will complicate even further a procedure that is currently ineffective. AT, BE and FR wanted Article 4 to cover also on-demand services, in a similar fashion to Article 3.

³⁹ AT, DE and PL were against the proposed change. They were supported by FR and SE that asked for the reasons of not listing Articles 14, 15, 28a and 28b, while SI doubted the inclusion of Article 30 which it considers to be very strict already. CION clarified that the reason for leaving out Article 28a is that maximum harmonisation is proposed for this article. Concerning Articles 6a and 12, AT pointed to a contradiction between a possibility to apply stricter rules on the one hand and on the other hand to use co- and self-regulation.

it may contact the Member State having jurisdiction with a view to achieving a mutually satisfactory solution to any problems posed. On receipt of a substantiated request by the first Member State, the Member State having jurisdiction shall request the broadcaster to comply with the rules of general public interest in question. The Member State having jurisdiction shall inform the first Member State of the results obtained following this request within 2 months. Either Member State may invite the contact committee established pursuant to Article 29 to examine the case.⁴⁰

3. The first Member State may adopt appropriate measures against the broadcaster concerned where it assesses that:
 - (a) the results achieved through the application of paragraph 2 are not satisfactory; and
 - (b) the broadcaster in question has established itself in the Member State having jurisdiction in order to circumvent the stricter rules, in the fields coordinated by this Directive, which would be applicable to it if it were established in the first Member State.⁴¹

NEW (*Point 5(b)*)

The Member State which took steps in accordance with points (a) and (b) of paragraph 2 should substantiate the grounds on which it bases its assessment of the alleged circumvention.⁴²

Such measures shall be objectively necessary, applied in a non- discriminatory manner and proportionate to the objectives which they pursue.

⁴⁰ PL proposed to strengthen the obligations of a Member State of jurisdiction such as the need to inform its broadcaster about the existence of stricter rules in the receiving Member State.

⁴¹ PL and SE criticised the provision in paragraph 3(b) which makes it impossible to prove that a broadcaster has established itself in a Member State only to avoid stricter rules applied by another Member State. PL proposed to add objective criteria in order to make this provision effective.

⁴² PL was against this addition.

MODIFIED (Point 5(c))

4. A Member State may take measures pursuant to paragraph 3 only if where the following conditions are met:
- (a) it has notified the Commission and the Member State in which the broadcaster is established of its intention to take such measures while substantiating the grounds on which it bases its assessment; ~~and~~
 - (b) it has respected the rights of defence of the broadcaster concerned and, in particular, has given the broadcaster the opportunity to express its views on the alleged circumvention and the measures the notifying Member States intends to take;⁴³
 - ~~(b)~~(c) the Commission has decided, after having consulted ERGA, that the measures are compatible with Union law, ~~and~~ in particular that assessments made by the Member State taking those measures under paragraphs 2 and 3 are correctly founded.⁴⁴
5. The Commission shall decide within 3 months following the notification provided for in point (a) of paragraph 4. That period shall begin on the day following the receipt of a complete notification. The notification shall be considered as complete if, within 3 months from its receipt, or from the receipt of any additional information requested, the Commission does not request any further information.
- Where the Commission considers the notification as incomplete, it shall request all necessary additional information. The Commission shall inform the Member State of the receipt of the response to that request.

⁴³ AT pointed to the inconsistencies of wording between this provision and the one in Article 3(3)(e). LT suggested to add a 1 month deadline for a media provider to exercise its rights of defence (likewise in Article 3(3)(e)).

⁴⁴ DE preferred to consult the Contact Committee instead of ERGA.

Where the Member State concerned does not provide the information requested within the period fixed by the Commission or provides incomplete information, the Commission shall take a decision that the measures taken by the Member State in accordance with paragraph 3 are incompatible with Union law. If the Commission decides that the measures are incompatible with Union law, the Member State in question shall refrain from taking the ~~proposed~~ intended measures;⁴⁵

6. Member States shall, by appropriate means, ensure, within the framework of their legislation, that media service providers under their jurisdiction effectively comply with the provisions of this Directive.

MODIFIED (*Point 5(d)*)

- 7.⁴⁶ **Member States shall encourage co-regulation and/or self-regulatory regimes self-regulation through codes of conduct⁴⁷ adopted at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. ~~These regimes~~ Those codes shall be such that they are broadly accepted by the main stakeholders in the Member States concerned ~~and~~. The codes of conduct shall clearly and unambiguously set out their objectives. They shall provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at. They shall provide for effective enforcement, including when appropriate effective and proportionate sanctions.**⁴⁸

⁴⁵ DE questioned the possibility for the Commission to declare incompatibility with the EU law in case of an incomplete notification (likewise in Article 3(4)).

⁴⁶ AT suggested a separate article that would deal with co-/self-regulation.

⁴⁷ In response to the DE question on why the terminology was changed, the CION replied that the new terms are in line with its Better Regulation Agenda. Many Member States wondered whether co-regulation is obligatory. To clarify that this type of regulation is voluntary, EE and PL proposed to replace “shall encourage” with “may encourage”.

⁴⁸ FR underlined that co- and self-regulation should remain complementary to legislative action. CZ found that the role of Member States in the implementation of the directive was not clear and questioned the proportionality of the aim to define the requirements for self-regulation. SE, supported by DK, questioned the obligation to monitor, evaluate and enforce co- and self-regulation which is in principle voluntary. CION confirmed that Member States are only encouraged to use this type of regulation, but if they do, an assessment must be put in place to guarantee a proper implementation of EU law.

Draft Union codes of conduct referred to in Articles 6a (3), 9(2) and 9(4) and amendments or extensions to existing Union codes of conduct shall be submitted to the Commission by the signatories of these codes.⁴⁹

The Commission may ask ERGA⁵⁰ to give an opinion on the drafts, amendments or extensions of those codes. The Commission may publish those codes as appropriate⁵¹.

8. Directive 2000/31/EC shall apply unless otherwise provided for in this Directive. In the event of a conflict between a provision of Directive 2000/31/EC and a provision of this Directive, the provisions of this Directive shall prevail, unless otherwise provided for in this Directive.

⁴⁹ DK, FR, IE and PL wanted more clarity about the relation between national codes of conduct and EU codes, namely which would prevail in case of contradictory provisions. FR suggested to add that EU codes are “without prejudice to the existing national codes”. DE and ES asked about how compliance with the EU code of conduct will be ensured and what will happen in the case of non-compliance. AT, BG, DK, ES and LV asked to clarify, in a recital, how EU codes will be drawn up, who will draft them and what role Member States will have in their preparation. CION answered that EU codes would be complementary to the national codes. They should remain an exception, with the initiative coming from the industry and Commission having a role of a facilitator. Therefore, they could not be enforced in the same way as legislative measures. As an example CION mentioned that an EU code concerning video-sharing platforms could be envisaged.

⁵⁰ DE proposed to replace ERGA with the Contact Committee, while ES suggested that both ERGA and the Contact Committee are associated to this task.

⁵¹ EL suggested that it should be obligatory for the Commission to publish the EU codes of conduct.

CHAPTER III

MODIFIED (*Point 6*)

PROVISIONS APPLICABLE TO ~~ALL~~ AUDIOVISUAL MEDIA SERVICES

Article 5

Member States shall ensure that audiovisual media service providers under their jurisdiction shall make easily, directly and permanently accessible to the recipients of a service at least the following information:

- (a) the name of the media service provider;
- (b) the geographical address at which the media service provider is established;
- (c) the details of the media service provider, including its electronic mail address or website, which allow it to be contacted rapidly in a direct and effective manner;

MODIFIED (*Point 7*)

- (d) ~~where applicable~~ **the Member State having jurisdiction over the media service providers and the competent regulatory authorities or supervisory bodies;**⁵²

⁵² LV, supported by CZ, EL and PL, proposed to add information about media ownership.

MODIFIED (Point 8)

Article 6⁵³

Member States shall ensure by appropriate means that audiovisual media services⁵⁴ provided by media service providers under their jurisdiction do not contain any incitement to violence⁵⁵ or hatred based directed against a group of persons or a member of such a group defined by reference to sex, race racial or ethnic origin, religion or nationality belief, disability, age or sexual orientation⁵⁶.

NEW (Point 9)

Article 6a⁵⁷

- 1. Member States shall ensure that audiovisual media service providers provide sufficient information to viewers about content which may impair the physical, mental or moral development of minors. For this purpose, Member States may use a system of descriptors indicating the nature of the content of an audiovisual media service.**⁵⁸

⁵³ SE found the extension of grounds in this Article as well as in Article 28a(1)(b) problematic as it risks to threaten freedom of expression and media freedom. CION explained that the wording was modified in order to align it with the definition contained in the Council Framework Decision 2008/913/JHA, which punishes by means of criminal law incitement to violence and hatred, as well as with Article 21 of the Charter of Fundamental Rights.

⁵⁴ DE proposed to add video-sharing platform services.

⁵⁵ EL suggested to add "excessive violence".

⁵⁶ BE, EE, LT and PT expressed their preference for an open list. FR questioned the deletion of "nationality" and the addition of "group of persons", and proposed to add among the grounds "glorification of terrorism". HR proposed to add "body shaming".

⁵⁷ EE and SE found some of the provisions in this article too detailed, in particular the second sentence of paragraph 1 and paragraph 3, and suggested to move them to a recital. ES, supported by BG, FR, IT and SE, suggested to put all the provisions dealing with the protection of minors together in one article.

⁵⁸ There were many questions on what is meant by "a system of descriptors", with CY, EL and UK suggesting clarification in a recital. CION answered that it had in mind the description of the harmful nature of content by using e.g. pictograms. BE, CY and FR pointed to the fact that they do not use pictograms and therefore would prefer the wording of current Article 27(3). DK suggested to add "other systems" to take into account other ways to identify harmful content.

2. For the implementation of this Article, Member States shall encourage co-regulation.⁵⁹

3. The Commission and ERGA shall encourage media service providers to exchange best practices on co-regulatory systems across the Union. Where appropriate, the Commission shall facilitate the development of Union codes of conduct.⁶⁰

DELETED (Point 10)

*~~Article 7~~*⁶¹

~~Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability.~~

Article 8

Member States shall ensure that media service providers under their jurisdiction do not transmit cinematographic works outside periods agreed with the rights holders.

⁵⁹ On the BE question of whether the current self-regulatory system could be maintained, CION answered that only if it was accompanied by legislation. DE suggested to align this paragraph with the one in Article 4(7) by adding that Member States shall encourage co-regulation “to the extent permitted by their legal systems”.

⁶⁰ FR, HU and PL underlined that the Commission proposal does not address the problem with channels established outside a Member State but targeting its territory which identify content differently to the way that viewers in the receiving Member State are accustomed. CION replied that an EU code of conduct could be a way to address this problem as it would harmonise descriptors across the EU. However, FI, FR and PL questioned the added value of Union codes of conduct in this area, with FR being against the harmonisation of descriptors at EU level and instead proposing to focus on media literacy. AT and DE were against ERGA having a role in this field.

⁶¹ A majority of Member States were against the deletion of the Article (AT, BE, CZ, DE, DK, EE, EL, ES, FI, FR, IT, LT, LU, LV, NL, PL, PT, SE, SI and UK). At the same time EL, NL, PT, SE and UK were in favour of a new Article 7 being more ambitious than the current wording. IT would like to see a possibility of using co-/self-regulation for the implementation of this Article.

Article 9

1. Member States shall ensure that audiovisual commercial communications provided by media service providers⁶² under their jurisdiction comply with the following requirements:
 - (a) audiovisual commercial communications shall be readily recognisable as such. Surreptitious audiovisual commercial communication shall be prohibited;
 - (b) audiovisual commercial communications shall not use subliminal techniques;
 - (c) audiovisual commercial communications shall not:
 - (i) prejudice respect for human dignity;
 - (ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;⁶³
 - (iii) encourage behaviour prejudicial to health or safety;
 - (iv) encourage behaviour grossly prejudicial to the protection of the environment;
 - (d) all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited;⁶⁴

⁶² AT, DE, ES, LT, PL, SE and SI and asked for the qualitative rules on commercial communications also to be applied to video-sharing platforms in order to ensure a level-playing field between all the services. IE and PT proposed that a receiving Member State be allowed to impose stricter rules on commercial communications to services originating from another Member States if a majority of commercial communications targets its territory. AT found that the Commission proposal for Article 9 was lacking substance and together with DE and SE asked for the requirements of Article 22 to be applied in the case of Article 9 and extended to all the services. DK asked for an explanation, in a recital, of the legal status regarding commercial communications containing gambling services, in particular whether a receiving Member State can take measures against such services if a service provider is under the jurisdiction of another Member State.

⁶³ LT suggested to harmonise the grounds for discrimination with those for hate speech and incitement to violence (Article 6 and Article 28a(1)(b)).

⁶⁴ LT proposed to include electronic cigarettes and energy drinks in this provision. CION recalled Directive 2014/40/EU which extends the prohibition concerning tobacco products in commercial communications to electronic cigarettes (explained in recital 27 of the Commission proposal).

- (e) audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;⁶⁵
- (f) audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls shall be prohibited;
- (g) audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.⁶⁶

MODIFIED (*Point 11(a)*)

2. Member States and the Commission shall encourage ~~media service providers to develop~~ the development of self- and co-regulatory codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in ~~children's~~ programmes with a significant children's audience⁶⁷, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, ~~in particular those such as fat, trans fatty acids, salt/sodium and sugars~~, excessive intakes of which in the overall diet are not recommended, in particular fat, trans-fatty acids, salt or sodium and sugars.

⁶⁵ SE suggested to make the rules clearer and stricter by e.g. specifying that commercial communications for alcohol should not be aimed at young people under 25 years old.

⁶⁶ EL suggested to add a reference to media literacy.

⁶⁷ *Also concerns Article 11(2):* Many Member States (AT, BE, CY, CZ, DK, EE, ES, FI, FR, HU, IE, LT, NL, RO and SI) found the proposed new term too vague. They either asked for a more precise definition of what is meant by "significant", or proposed to maintain the current wording. They were supported by DE and UK that questioned the feasibility of implementing this provision. EE suggested to replace it with "content aimed at children's audience", while HU proposed to define "significant" as a programme where more than 35% of those watching are under 12 years old. CION, supported by LV and SE, explained that the aim was to extend the current protection from programmes for children to programmes which are viewed by a share of children that is proportionately higher than the share of children in general audience.

Those codes should be used to effectively reduce⁶⁸ the exposure of minors to audiovisual commercial communications of foods and beverages that are high in salt, sugars or fat or that otherwise do not fit national or international nutritional guidelines. Those codes should provide that the audiovisual commercial communications are not to emphasise the positive quality of the nutritional aspects of such foods and beverages.⁶⁹

⁷⁰The Commission and ERGA shall encourage the exchange of best practices on self and co-regulatory systems across the Union. Where appropriate, the Commission shall facilitate the development of Union codes of conduct.⁷¹

NEW (Point 11(b))

- 3. Member States and the Commission shall encourage the development of self- and co-regulatory codes of conduct regarding inappropriate audiovisual commercial⁷² communications for alcoholic beverages. Those codes should be used to effectively limit the exposure of minors to audiovisual commercial communications for alcoholic beverages.**
- 4. The Commission and ERGA shall encourage the exchange of best practices on self- and co-regulatory systems across the Union. If considered appropriate, the Commission shall facilitate the development of Union codes of conduct.**

⁶⁸ In response to an IE question, CION clarified that there is no difference between “*reducing* exposure” in this paragraph and “*limiting* exposure” in paragraph 3.

⁶⁹ AT proposed to delete the entire subparagraph and found in particular the reference to “international nutritional guidelines” difficult to implement. FI suggested to move this and the last subparagraph to a recital.

⁷⁰ FR and LV suggested to merge this subparagraph with paragraph 4 in order to avoid repetition.

⁷¹ AT, DE, EE and ES were against exchange of best practices on self-regulation, with ES asking to involve the Contact Committee. NL was against EU codes of conduct in this area.

⁷² ES asked to clarify what is meant by “inappropriate audiovisual commercial communications”.

Article 10

1. Audiovisual media services or programmes that are sponsored shall meet the following requirements:
 - (a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

MODIFIED (*Point 12*)

- (b) **they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;**⁷³
 - (c) viewers shall be clearly informed of the existence of a sponsorship agreement.
Sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or at the end of the programmes.
2. Audiovisual media services or programmes shall not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.
3. The sponsorship of audiovisual media services or programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.

⁷³ AT, CZ, DE, LT, LV, PL and SE were against the deletion of "special promotional references". They were concerned that by allowing sponsors to make promotional references to their products or services, the boundary between advertising and sponsorship would become blurry. In addition, CZ asked to specify the criteria that would allow a distinction to make between advertising and sponsorship.

4. News and current affairs programmes shall not be sponsored. Member States may choose to prohibit the showing of a sponsorship logo during children's programmes⁷⁴, documentaries and religious programmes.

MODIFIED (*Point 13*)

*Article 11*⁷⁵

1. Paragraphs 2, 3 and 4 shall apply only to programmes produced after 19 December 2009.
2. Product placement shall be ~~prohibited~~ admissible in all audiovisual media services, except in news and current affairs programmes, consumer affairs programmes, religious programmes and programmes with a significant children's audience.
3. ~~By way of derogation from paragraph 2, product placement shall be admissible in the following cases unless a Member State decides otherwise:~~
 - ~~(a) in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes;~~
 - ~~(b) where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme.~~

~~The derogation provided for in point (a) shall not apply to children's programmes.~~

⁷⁴ LT asked for the ban on sponsorship of alcoholic beverages, tobacco products and medicinal products during children's programmes.

⁷⁵ DE and HU were against the proposed change of the approach to product placement, which shifts from the prohibition to its admission. SI expressed concerns about the new rules having a negative impact on editorial responsibility.

3. Programmes that contain product placement shall meet ~~at least all~~⁷⁶ the following requirements:

- (a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;⁷⁷**
- (b) they shall not directly encourage the purchase or rental of goods or services, ~~in particular by making special promotional references to those goods or services;~~⁷⁸**
- ~~(c) they shall not give undue prominence to the product in question;~~⁷⁹**

~~(d)~~(c) viewers shall be clearly informed of the existence of product placement.

Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.

By way of exception, Member States may choose to waive the requirements set out in point ~~(d)~~ (c) provided that the programme ~~in question~~ concerned has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.

⁷⁶ LT proposed to reinsert "all".

⁷⁷ PL proposed to extend this provision also to video-sharing platforms.

⁷⁸ AT, DE, FR, HU, LT, LV, PL and RO were against the proposed change: they were concerned it would blur the boundary between content and commercial communications and could make product placement close to surreptitious advertising.

⁷⁹ AT and RO were against the deletion of the paragraph. CION explained that this provision was difficult to reconcile with the concept of product placement which precisely aims at drawing attention to a product.

4. In any event programmes shall not contain product placement of: ⁸⁰

- (a) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;
- (b) specific medicinal products or medical treatments available only on prescription in the Member State under whose jurisdiction the media service provider falls.

~~CHAPTER IV~~

~~PROVISIONS APPLICABLE ONLY TO ON-DEMAND~~

~~AUDIOVISUAL MEDIA SERVICES~~

⁸⁰ EE, EL and SE suggested to add alcoholic beverages to the list of products to be prohibited, and EL also proposed to include foods high in salt, sugars or fat. AT pointed to the fact that these prohibitions are already set out in Article 9 which also apply to product placement.

Article 12⁸¹

Member States shall take appropriate measures to ensure that ~~on-demand audiovisual media services~~ programmes provided by audiovisual media service providers under their jurisdiction, which may ~~might seriously~~ 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 on-demand audiovisual media services~~. 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.⁸²

The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures, such as encryption and effective parental controls.⁸³

⁸¹ As with the related Article 6a, FR, HU and PL raised the problem for a receiving Member State to make providers respect its stricter rules on the protection of minors in the case of providers under the jurisdiction of a different Member State, but targeting its territory. In this regard, PL highlighted that this issue will also concern the most harmful content such as pornography which is currently banned on TV, but which the Commission is proposing to allow provided that the strictest measures are in place. DE, EE, HU and SE proposed to extend the provisions of this article also to video-sharing platforms. DK, EE, EL, FI, PT and SE wanted to mention the role of media literacy in protecting minors.

⁸² SE, supported by EE and FI, found these provisions to be too detailed and suggested to move them to a recital. DK and SE proposed to include also non-technical measures. EL suggested to use co-regulation for the implementation of these provisions and to set up a complaint/appeal mechanism.

⁸³ LT proposed to add a possibility that the most harmful content can be banned in a Member State, which the CION considered to be an obstacle to an alignment for linear and on-demand services.

CHAPTER IV

PROVISIONS APPLICABLE ONLY TO ON-DEMAND AUDIOVISUAL MEDIA SERVICES

MODIFIED (*Point 15*)

Article 13

1. Member States shall ensure that providers of on-demand audiovisual media services ~~provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service~~ secure at least a 20% share⁸⁴ of European works in their catalogue and ensure prominence⁸⁵ of these works.

⁸⁴ CZ, DE, DK, FI, LU, NL, SE and UK were against the introduction of a quota for on-demand services. On the other hand, ES, FR, HU, IT, LT and PL were in favour and even proposed to increase the share to 30% (ES), 40% (FR) or 50% (LT). FI asked about how a share is to be calculated (share of titles or share of their duration), to which CION replied that given current disparate practice among Member States, a common methodology will need to be established.

⁸⁵ DE was against the obligation to ensure prominence of European works, while FR and NL asked for clarification of what is meant by "prominence".

- 2.⁸⁶ Member States may require providers of on-demand audiovisual media services under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contributions to national funds. Member States may require providers of on-demand audiovisual media services, targeting audiences in their territories, but established in other Member States to make such financial contributions.⁸⁷ In this case, the financial contribution shall be based only on the revenues earned in the targeted Member States. If the Member State where the provider is established imposes a financial contribution, it shall take into account any financial contributions imposed by targeted Member States.⁸⁸ Any financial contribution shall comply with Union law, in particular with State aid rules.**
- 23. Member States shall report to the Commission ~~no later than 19 December 2011~~ by [date – no later than three years after adoption] at the latest and every ~~four~~ two years thereafter on the implementation of paragraphs 1 and 2.⁸⁹**
- 34. The Commission shall, on the basis of the information provided by Member States and of an independent study, report to the European Parliament and to the Council on the application of paragraphs 1 and 2, taking into account the market and technological developments and the objective of cultural diversity.**

⁸⁶ DK, LU, NL and UK were against this provision, while DE, HU, PT and RO were in favour. CION recalled that Member States are not obliged to impose a levy.

⁸⁷ EL, HR, IE, LT, PL, PT, RO and SI proposed to extend the possibility for a Member State to impose a levy also to linear service providers established in a different Member State, but targeting its territory. PL suggested to extend this derogation to the country of origin principle further to media services providers established outside the EU, but targeting the EU. ES and FR would like to see the derogation also to apply to paragraph 1 (quotas).

⁸⁸ IT and PL suggested a cooperation procedure between Member States could be used so on-demand providers established elsewhere do pay a levy in the targeting Member States. Such a procedure could also help Member States to calculate a levy due for their territory. FR proposed to take into account the work of OECD to prevent double taxation. FR also suggested to add a criterion of "subscription" to recital 23 of the Commission proposal.

⁸⁹ DE suggested to return to the original frequency of reporting, i.e. 4 years.

5. Member States shall waive the requirements laid down in paragraphs 1 and 2 for providers with a low turnover or low audience or if they are small and micro enterprises. Member States may also waive such requirements in cases where they would be impracticable or unjustified by reason of the nature or theme of the on demand audiovisual media services.⁹⁰

CHAPTER V

PROVISIONS CONCERNING EXCLUSIVE RIGHTS AND SHORT NEWS REPORTS IN TELEVISION BROADCASTING

Article 14

1. Each Member State may take measures in accordance with Union law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events by live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due time. In so doing the Member State concerned shall also determine whether these events should be available by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.

⁹⁰ AT, ES, FR and PL asked for clarification of terms such as "low turnover", "low audience", "microenterprise" or "nature or theme" of the on-demand service. BG and EE pointed to the fact that although micro and small-enterprises are defined in the Commission recommendation 2003/361/EC, Member States are free in interpreting it. DE wanted to know how to interpret requirements that are "impracticable or unjustified".

2. Member States shall immediately notify to the Commission any measures taken or to be taken pursuant to paragraph 1. Within a period of 3 months from the notification, the Commission shall verify that such measures are compatible with Union law and communicate them to the other Member States. It shall seek the opinion of the contact committee established pursuant to Article 29. It shall forthwith publish the measures taken in the *Official Journal of the European Union* and at least once a year the consolidated list of the measures taken by Member States.
3. Member States shall ensure, by appropriate means within the framework of their legislation, that broadcasters under their jurisdiction do not exercise the exclusive rights purchased by those broadcasters after 18 December 2007 in such a way that a substantial proportion of the public in another Member State is deprived of the possibility of following events which are designated by that other Member State in accordance with paragraphs 1 and 2 by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other Member State in accordance with paragraph 1.

Article 15

1. Member States shall ensure that for the purpose of short news reports, any broadcaster established in the Union has access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted on an exclusive basis by a broadcaster under their jurisdiction.
2. If another broadcaster established in the same Member State as the broadcaster seeking access has acquired exclusive rights to the event of high interest to the public, access shall be sought from that broadcaster.

3. Member States shall ensure that such access is guaranteed by allowing broadcasters to freely choose short extracts from the transmitting broadcaster's signal with, unless impossible for reasons of practicality, at least the identification of their source.
4. As an alternative to paragraph 3, Member States may establish an equivalent system which achieves access on a fair, reasonable and non-discriminatory basis through other means.
5. Short extracts shall be used solely for general news programmes and may be used in on-demand audiovisual media services only if the same programme is offered on a deferred basis by the same media service provider.
6. Without prejudice to paragraphs 1 to 5, Member States shall ensure, in accordance with their legal systems and practices, that the modalities and conditions regarding the provision of such short extracts are defined, in particular, with respect to any compensation arrangements, the maximum length of short extracts and time limits regarding their transmission. Where compensation is provided for, it shall not exceed the additional costs directly incurred in providing access.

CHAPTER VI

PROMOTION OF DISTRIBUTION AND PRODUCTION OF TELEVISION PROGRAMMES

Article 16

1. Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve for European works a majority proportion of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.

2. Where the proportion laid down in paragraph 1 cannot be attained, it must not be lower than the average for 1988 in the Member State concerned.

However, in respect of Greece and Portugal, the year 1988 shall be replaced by the year 1990.

3. Member States shall provide the Commission every 2 years, starting from 3 October 1991, with a report on the application of this Article and Article 17.

That report shall in particular include a statistical statement on the achievement of the proportion referred to in this Article and Article 17 for each of the television programmes falling within the jurisdiction of the Member State concerned, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it.

The Commission shall inform the other Member States and the European Parliament of the reports, which shall be accompanied, where appropriate, by an opinion. The Commission shall ensure the application of this Article and Article 17 in accordance with the provisions of the Treaty on the Functioning of the European Union. The Commission may take account in its opinion, in particular, of progress achieved in relation to previous years, the share of first broadcast works in the programming, the particular circumstances of new television broadcasters and the specific situation of countries with a low audiovisual production capacity or restricted language area.

Article 17

Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10 % of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping, or alternately, at the discretion of the Member State, at least 10 % of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria. It must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within 5 years of their production.

Article 18

This Chapter shall not apply to television broadcasts that are intended for local audiences and do not form part of a national network.

CHAPTER VII

TELEVISION ADVERTISING AND TEleshopping

Article 19

1. Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.
2. Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.

Article 20

1. Member States shall ensure, where television advertising or teleshopping is inserted during programmes, that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme concerned, and the rights of the right holders are not prejudiced.

MODIFIED (Point 16)

2. **The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least ~~30~~ 20 minutes.**⁹¹ The transmission of children's programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes. No television advertising or teleshopping shall be inserted during religious services.

Article 21

Teleshopping for medicinal products which are subject to a marketing authorisation within the meaning of Directive 2001/83/EC, as well as teleshopping for medical treatment, shall be prohibited.⁹²

⁹¹ CZ, EL, ES, FR, IT, LT, LV, PL, RO and SI were against the proposed change. Among their concerns was a negative effect on the integrity of works, consumer protection and the price of advertising. On the other hand CY, DE, EE, FI, IE, LU, NL, PT and SE were in favour of the proposed change. Some of these delegations proposed not to have any limit at all, believing in market self-regulation. LU pointed to the different rules for linear and non-linear services in this area which it found problematic.

⁹² DE proposed to extend the ban also to veterinary medicinal products in line with Directive 2001/82/EC.

Article 22

Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria:

- (a) it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages;
- (b) it shall not link the consumption of alcohol to enhanced physical performance or to driving;
- (c) it shall not create the impression that the consumption of alcohol contributes towards social or sexual success;
- (d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;
- (e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;
- (f) it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.

Article 23

MODIFIED (Point 17)

1. The daily proportion of television advertising spots and teleshopping spots within a ~~given clock hour~~ the period between 7:00 and 23:00 shall not exceed 20 %.⁹³
2. Paragraph 1 shall not apply to⁹⁴:
 - (a) announcements made by the broadcaster in connection with its own programmes and ancillary products⁹⁵ directly derived from those programmes or with programmes from other entities belonging to the same media group⁹⁶;
 - (b) sponsorship announcements⁹⁷;
 - (c) ~~and~~ product placements.

⁹³ CZ, FR, LV, PL and RO spoke against the change to a daily limit, arguing that this will lead to increased amount of advertising especially during the prime time. In reaction to this concern, EL and IE mentioned a possibility to introduce a specific 20 % limit to the advertising during the peak hours. On the other hand, DE, DK, ES, FI, HR, NL and PT were in favour of the change, with NL suggesting no limits at all and ES proposing to extend the daily limit until midnight. PL and UK had doubts about the positive medium- and long-term impact of this measure on advertising revenues of broadcasters. LV and SE thought the proposed measure goes too far as it will create an administrative burden for national regulators. AT was concerned that the proposed change would exclude longer forms of advertising and teleshopping spots as 80 % of the time between 7-23 h would have to be editorial content according to the ECJ judgment in case C-314/14. In response to a CY question, CION clarified that outside the period between 7h and 23h, no limit would apply to the amount of advertising broadcasted.

⁹⁴ Regarding the EL suggestion to add to the list also public and charity announcements, CION said that this is already covered in recital 97 of the 2010 AVMS directive.

⁹⁵ LU proposed to add "and services".

⁹⁶ AT, CY, IT and PL asked for an explanation of what is meant by "other entities belonging to the same media group". CION clarified that this concerns e.g. audiovisual media services that belong to the same media group and want to promote each other's programmes.

⁹⁷ AT and SE questioned the Commission approach to allow, on the one hand, promotional references in sponsorship messages and on the other hand exclude such messages from the time limit.

Article 24

Teleshopping windows shall be clearly identified as such by optical and acoustic means and shall be of a minimum uninterrupted duration of 15 minutes.

Article 25

This Directive shall apply *mutatis mutandis* to television channels exclusively devoted to advertising and teleshopping as well as to television channels exclusively devoted to self-promotion.

However, Chapter VI as well as Articles 20 and 23 shall not apply to these channels.

Article 26

Without prejudice to Article 4, Member States may, with due regard for Union law, lay down conditions other than those laid down in Article 20(2) and Article 23 in respect of television broadcasts intended solely for the national territory which cannot be received directly or indirectly by the public in one or more other Member States.

CHAPTER VIII

~~PROTECTION OF MINORS IN TELEVISION BROADCASTING~~

~~Article 27~~

- ~~1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.~~
- ~~2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.~~
- ~~3. In addition, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.~~

CHAPTER IX

RIGHT OF REPLY IN TELEVISION BROADCASTING

Article 28

1. Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies. Member States shall ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions. The reply shall be transmitted within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the broadcast to which the request refers.
2. A right of reply or equivalent remedies shall exist in relation to all broadcasters under the jurisdiction of a Member State.
3. Member States shall adopt the measures needed to establish the right of reply or the equivalent remedies and shall determine the procedure to be followed for the exercise thereof. In particular, they shall ensure that a sufficient time span is allowed and that the procedures are such that the right or equivalent remedies can be exercised appropriately by natural or legal persons resident or established in other Member States.
4. An application for exercise of the right of reply or the equivalent remedies may be rejected if such a reply is not justified according to the conditions laid down in paragraph 1, would involve a punishable act, would render the broadcaster liable to civil-law proceedings or would transgress standards of public decency.
5. Provision shall be made for procedures whereby disputes as to the exercise of the right of reply or the equivalent remedies can be subject to judicial review.

CHAPTER IXa

PROVISION APPLICABLE TO VIDEO-SHARING PLATFORM SERVICES

Article 28a⁹⁸

1. Without prejudice to Articles 14 and 15 of Directive 2000/31/EC, Member States shall ensure that video-sharing platform providers take appropriate measures to:

(a) protect minors from content which may impair their physical, mental or moral development;

(b) protect all citizens⁹⁹ from content containing incitement to violence¹⁰⁰ or hatred directed against a group of persons or a member of such a group defined by reference to sex, race, colour, religion, descent or national or ethnic origin.¹⁰¹

⁹⁸ DK, IE and UK questioned the appropriateness of the level of regulation given the small number of providers that are targeted by this provision. PL proposed to extend the obligations of video-sharing platforms to make them more aligned with those of on-demand services, namely that the platforms should comply with the same requirements on commercial communications (supported by BE, DE, ES and FR) and the promotion of European works.

⁹⁹ EE proposed to replace "citizens" with "people".

¹⁰⁰ EL suggested to extend the protection to content containing violence, to which CION reacted that this is covered in point a).

¹⁰¹ ES, LT and LV pointed to the inconsistency between the wording in this paragraph and that in Article 6 as well as in the recitals. ES and FR proposed to add "glorification of terrorism" and "violation of human dignity".

2. What constitutes an appropriate measure for the purposes of paragraph 1¹⁰² shall be determined in light of the nature of the content in question, the harm it may cause, the characteristics of the category of persons to be protected as well as the rights and legitimate interests at stake, including those of the video-sharing platform providers and the users having created and/or uploaded the content as well as the public interest.

Those measures¹⁰³ shall consist of, as appropriate:

- (a) defining and applying in the terms and conditions of the video-sharing platform providers the concepts of incitement to violence or hatred as referred to in point (b) of paragraph 1 and of content which may impair the physical, mental or moral development of minors, in accordance with Articles 6 and 12 respectively;¹⁰⁴**
- (b) establishing and operating mechanisms for users of video-sharing platforms to report or flag¹⁰⁵ to the video-sharing platform provider concerned the content referred to in paragraph 1 stored on its platform;**

¹⁰² FI, LU and UK found the measures listed in this paragraph to be too prescriptive. As an alternative, EL, FI and UK proposed to achieve the objectives of paragraph 1 through media literacy while LU suggested to give the task of monitoring compliance with these objectives to national regulators. BE, CZ, DE and LU were concerned about the compatibility between the measures listed in this paragraph and the e-commerce directive, notably regarding the notice and take-down of illegal content and the limited liability. Regarding the question of AT and FI about how to apply the measures, CION clarified that a Member State can choose from the list those measures that it considers appropriate in given circumstances. To make this clear, DE and LT suggested to add "and/or" after each measure.

¹⁰³ FR suggested, as additional measures, a fast processing of reports of harmful content and prevention from uploading content previously removed (supported by ES). LT proposed to have an obligation to remove illegal content within 24 hours after the notification. CION stressed the need for any measures proposed to be in line with the e-commerce directive.

¹⁰⁴ PL had concerns about leaving a definition of the concepts such as harmful content and hate speech to providers, since there are no sanctions foreseen in the Commission proposal and the possibility for the State to intervene is limited given the maximum harmonisation proposed. In its reply CION explained that definitions to be adopted by platforms will have to comply with the law of the Member State and that co-regulation can be used in order to give more detailed guidance to providers.

¹⁰⁵ In response to a DE question on the difference between "report" and "flag", CION explained that reporting means communicating the existence of illegal content, while flagging means applying a pre-defined category to this content.

- (c) establishing and operating age verification systems for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors;¹⁰⁶
- (d) establishing and operating systems allowing users of video-sharing platforms to rate¹⁰⁷ the content referred to in paragraph 1;
- (e) providing for parental control systems with respect to content which may impair the physical, mental or moral development of minors;
- (f) establishing and operating systems through which providers of video-sharing platforms explain to users of video-sharing platforms what effect has been given to the reporting and flagging referred to in point (b).
3. For the purposes of the implementation of the measures referred to in paragraphs 1 and 2, Member States shall encourage co-regulation as provided for in Article 4(7).¹⁰⁸
4. Member States shall establish the necessary mechanisms to assess the appropriateness of the measures referred to in paragraphs 2 and 3 taken by video-sharing platform providers. Member States shall entrust this task to the authorities designated in accordance with Article 30.¹⁰⁹

¹⁰⁶ In response to a FI question, CION clarified that this provision can be applied to adult content. HU considered this provision to be ambitious and was concerned about the burden it may cause to platform providers.

¹⁰⁷ DE, FR and LT found the term "rate" vague, with FR expressing doubts about the efficiency of a rating system. LT suggested to replace "rate" with "index/mark/label".

¹⁰⁸ DE, FR, PL and LU questioned the compatibility of co-regulation with the maximum harmonisation proposed for platforms. To the CZ question on the role of the State in co-regulation, CION stressed that if the objectives are not met via co-regulation, the State has a possibility to intervene.

¹⁰⁹ FI was against this provision which it considered too burdensome for national regulators, the concern also being shared also by SE. CION stressed that Article 30(1) gives a possibility to Member States to appoint more than one regulator if the tasks needed to be shared.

- 5. Member States shall not impose on video-sharing platform providers measures that are stricter than the measures referred to in paragraph 1 and 2.¹¹⁰ Member States shall not be precluded from imposing stricter measures with respect to illegal content. When adopting such measures, they shall respect the conditions set by applicable Union law, such as, where appropriate, those set in Articles 14 and 15 of Directive 2000/31/EC or Article 25 of Directive 2011/93/EU.**
- 6. Member States shall ensure that complaint and redress mechanisms are available for the settlement of disputes between users and video-sharing platform providers relating to the application of the appropriate measures referred to in paragraphs 1 and 2.¹¹¹**
- 7. The Commission and ERGA shall encourage video-sharing platform providers to exchange best practices on co-regulatory systems across the Union. Where appropriate, the Commission shall facilitate the development of Union codes of conduct.**
- 8. Video-sharing platform providers or, where applicable, the organisations representing those providers in this respect shall submit to the Commission draft Union codes of conduct and amendments to existing Union codes of conduct. The Commission may request ERGA to give an opinion on the drafts, amendments or extensions of those codes of conduct. The Commission may give appropriate publicity to those codes of conduct.¹¹²**

¹¹⁰ DE, PL and UK were against maximum harmonisation, while FR entered a scrutiny reservation on this paragraph.

¹¹¹ FI, IE and NL asked for more details about how to interpret this provision. CION explained that rather than relying on the will of individual platforms to establish such a mechanism, Member States will have to ensure that platforms under their jurisdiction put in place complaint and redress mechanisms. In addition, CION clarified that it is not required to involve the national regulator in dispute settlement and instead the parties could go to the court.

¹¹² Concerning paragraphs 7 and 8: DE was against mentioning ERGA and LT had concerns that both provisions could be interfering with national legislation.

- 1. Member States shall ensure that video-sharing platform providers which are not established on their territory, but which have either a parent company or a subsidiary¹¹⁴ that is established on their territory or which are part of a group and another entity of that group is established on their territory, are deemed to have been established on their territory for the purposes of Article 3(1) of Directive 2000/31/EEC.¹¹⁵**

For the purposes of applying the first subparagraph, where the parent company, the subsidiary or the other entity of the group are each established in different Member States, the provider shall be deemed to have been established in the Member State where its parent company is established or, in the absence of such an establishment in a Member State, where its subsidiary is established or, in the absence of such an establishment in a Member State, where the other entity of the group is established.

For the purposes of applying the second subparagraph, where there are several subsidiaries each of which are established in different Member States, or where there are several other entities of the group each of which are established in different Member States, the Member States concerned shall ensure that the provider designates in which of these Member States it shall be deemed to have been established.¹¹⁶

¹¹³ PL proposed to apply the approach outlined in this Article also to audiovisual media service providers which are established outside the EU. DE questioned the application of the country of origin principle in the case of platforms. FR and PL were concerned that the different points of attachments proposed (parent company, subsidiary, group) will result in "forum shopping" from the side of platforms. They also wondered about how a Member State can make a platform provider established in another Member State comply with its co-regulatory system. IE found this article to be overly complicated and asked the Commission to provide further clarification.

¹¹⁴ AT asked for a definition of the terms "parent company" and "subsidiary".

¹¹⁵ AT and PL wanted to know how a Member State should determine establishment, with AT also questioning the added value of the reference to the e-commerce directive.

¹¹⁶ AT wondered about how the several Member States concerned will ensure in practice that a provider does designate just one Member State of establishment.

- 2. Member States shall communicate to the Commission a list of the video-sharing platform providers established on their territory and the criteria, set out in Article 3(1) of Directive 2000/31/EC and in paragraph 1, on which their jurisdiction is based. They shall update the list regularly. The Commission shall ensure that the competent independent regulatory authorities have access to this information.**¹¹⁷

CHAPTER X

CONTACT COMMITTEE

Article 29

1. A contact committee is established under the aegis of the Commission. It shall be composed of representatives of the competent authorities of the Member States. It shall be chaired by a representative of the Commission and meet either on his initiative or at the request of the delegation of a Member State.
2. The tasks of the contact committee shall be:
 - (a) to facilitate effective implementation of this Directive through regular consultation on any practical problems arising from its application, and particularly from the application of Article 2, as well as on any other matters on which exchanges of views are deemed useful;
 - (b) to deliver own-initiative opinions or opinions requested by the Commission on the application by the Member States of this Directive;

¹¹⁷ IE pointed to the fact that most Member States do not compile a list of video-sharing platforms and wanted to know whether it will be for a national regulator to draw up such a list. It also asked how the Commission will handle disputes over jurisdiction arising from these lists.

- (c) to be the forum for an exchange of views on what matters should be dealt with in the reports which Member States must submit pursuant to Article 16(3) and on their methodology;
- (d) to discuss the outcome of regular consultations which the Commission holds with representatives of broadcasting organisations, producers, consumers, manufacturers, service providers and trade unions and the creative community;
- (e) to facilitate the exchange of information between the Member States and the Commission on the situation and the development of regulatory activities regarding audiovisual media services, taking account of the Union's audiovisual policy, as well as relevant developments in the technical field;
- (f) to examine any development arising in the sector on which an exchange of views appears useful.

CHAPTER XI

MODIFIED (Point 20)

~~COOPERATION BETWEEN REGULATORY BODIES~~ AUTHORITIES OF THE MEMBER STATES

MODIFIED (Point 21)

Article 30¹¹⁸

- 1. ~~Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of this Directive, in particular Articles 2, 3 and 4, in particular through their competent independent regulatory bodies.~~**

Each Member State shall designate one or more independent national regulatory authorities. Member States shall ensure that they are legally distinct¹¹⁹ and functionally independent of any other public or private body. This shall be without prejudice to the possibility for Member States to set up regulators having oversight over different sectors.

¹¹⁸ Many Member States found that this Article was too detailed, in particular as far as paragraphs 3 to 6 were concerned, and interfered with the principle of subsidiarity (AT, DE, DK, ES, FI, LT, NL, SE and SI). Instead, they would prefer that only some basic principles for the independence of national regulators were set out. LT and LV suggested to add that national regulators are encouraged, on a voluntary basis, to cooperate before giving licences to media providers established outside their jurisdiction, but targeting their territories.

¹¹⁹ DE suggested to delete "legally distinct".

2. Member States shall ensure that national regulatory authorities exercise their powers impartially and transparently and in accordance with the objectives of this Directive, in particular media pluralism, cultural diversity, consumer protection, internal market and the promotion of fair competition. National regulatory authorities shall not seek or take instructions from any other body in relation to the exercise of the tasks assigned to them under national law implementing Union law. This shall not prevent supervision in accordance with national constitutional law.
3. The competences and powers of the independent regulatory authorities, as well as the ways of making them accountable shall be clearly defined in law.¹²⁰
4. Member States shall ensure that national regulatory authorities have adequate enforcement powers to carry out their functions effectively.
5. The Head of a national regulatory authority or the members of the collegiate body fulfilling that function within a national regulatory authority, may be dismissed only if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance in national law. A dismissal decision shall be made public and a statement of reasons shall be made available.
6. Member States shall ensure that independent national regulatory authorities have separate annual budgets. The budgets shall be made public. Member States shall also ensure that national regulatory authorities have adequate financial and human resources to enable them to carry out the task assigned to them and to actively participate in and contribute to ERGA.¹²¹

¹²⁰ EL proposed to add that national regulators should not exercise ex-ante influence on broadcasters.

¹²¹ AT, DE and EL were against making financial contributions to ERGA.

7. Member States shall ensure that effective mechanisms exist at national level under which any user or media services provider or video-sharing platform provider who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body. The appeal body shall be independent of the parties involved in the appeal.

That appeal body, which should¹²² be a court, shall have the appropriate expertise to enable it to carry out its functions effectively. Member States shall ensure that the merits of the case are duly taken into account and that there is an effective appeal mechanism.

Pending the outcome of the appeal, the decision of the national regulatory authority shall stand, unless interim measures are granted in accordance with national law.

NEW (Point 22)

Article 30a

1. The European Regulators Group for Audiovisual Media Services (ERGA) is hereby established.¹²³

¹²² AT suggested to replace "should" with "may" or "can".

¹²³ AT, DE, DK, ES, FI, FR, LT and SE were in favour of restricting the competences of ERGA so they do not interfere with the competences of Member States nor with the ones of the Contact Committee. AT, DE, FI and SE wanted ERGA to be an advisory body of a technical nature. DK, FI and SE would prefer a simpler wording of Article 30a. They also suggested to deal with ERGA only in this article instead of referring to it in different parts of the text.

2. It shall be composed of national independent regulatory authorities in the field of audiovisual media services. They shall be represented by the heads or by nominated high level representatives of the national regulatory authority with primary responsibility for overseeing audiovisual media services, or in cases where there is no national regulatory authority, by other representatives¹²⁴ as chosen through their procedures. A Commission representative¹²⁵ shall participate in the group meetings.

3. ERGA's shall have the following tasks:¹²⁶

(a) to advise and assist the Commission in its work to ensure a consistent implementation in all Member States of the regulatory framework for audiovisual media services;¹²⁷

¹²⁴ AT and BE found this provision being in contradiction with Article 30(1) which requires a Member State to have a national regulatory authority. In response to their question what is meant with "other representatives", CION said that this wording aims at accommodating different structures of regulatory authorities.

¹²⁵ EL proposed that also the rotating Presidency participates in ERGA's meetings and that Member States should be informed about the results of the meetings. To the latter CION replied that meeting agendas and minutes as well as ERGA's opinions are already publicly available.

¹²⁶ BE, DK, EL, FR, NL and LV asked to set a clear division of tasks between ERGA and the Contact Committee (Article 29). DE was of the views that ERGA should only be a platform for exchange of experience and therefore supported only tasks under points c) and d)

¹²⁷ BE and EE found the ERGA's task of assisting the Commission unclear and therefore problematic (also in point b)), while AT said that "implementation of the regulatory framework" was in the competence of Member States, and not ERGA.

- (b) to advise and assist the Commission as to any matter related to audiovisual media services within the Commission's competence. If justified in order to advise the Commission on certain issues, the group may consult market participants, consumers and end-users in order to collect the necessary information;¹²⁸
- (c) to provide for an exchange of experience and good practice as to the application of the regulatory framework for audiovisual media services;
- (d) to cooperate and provide its members with the information¹²⁹ necessary for the application of this Directive, in particular as regards Articles 3 and 4 thereof;
- (e) to give opinions, when requested by the Commission, on the issues envisaged in Articles 2(5b), 6a(3), 9(2), 9(4) and on any matter relating to audiovisual media services, in particular on the protection of minors and incitement to hatred.¹³⁰
4. The Commission shall be empowered to adopt, by means of an implementing act, the rules of procedure for ERGA.¹³¹

¹²⁸ AT proposed to delete point b) which it found superfluous.

¹²⁹ PL wanted to specify the type of information to be provided.

¹³⁰ AT, FI and SE were against ERGA giving opinions.

¹³¹ BE, EE, FR, LV, RO and SE were of the view that ERGA, and not the Commission, should adopt its own rules of procedure. CION confirmed that this will be the case.

CHAPTER XII

FINAL PROVISIONS

Article 31

In fields which this Directive does not coordinate, it shall not affect the rights and obligations of Member States resulting from existing conventions dealing with telecommunications or broadcasting.

Article 32

Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

MODIFIED (*Point 23*)

Article 33

The Commission shall monitor Member States' application of the Directive, including its application of co-regulation and self-regulation through codes adopted at national level.¹³²

¹³² AT, CZ and DE found this provision unclear. DE suggested to add "if applicable" at the end of the sentence to clarify that monitoring of co-/self-regulation will be done only if a Member State opted for this type of implementation of the directive.

~~Not later than 19 December 2011~~ By [date – no later than four years after adoption] at the latest, and every three years thereafter, the Commission shall submit to the European Parliament, to the Council and to the European Economic and Social Committee a report on the application of this Directive ~~and, if necessary, make further proposals to adapt it to developments in the field of audiovisual media services, in particular in the light of recent technological developments, the competitiveness of the sector and levels of media literacy in all Member States.~~¹³³

~~That report shall also assess the issue of television advertising accompanying or included in children's programmes, and in particular whether the quantitative and qualitative rules contained in this Directive have afforded the level of protection required.~~

By [date - no later than 10 years¹³⁴ after adoption] at the latest, the Commission shall submit to the European Parliament and the Council an ex post evaluation, accompanied where appropriate by proposals for its review, in order to measure the impact of the Directive and its added value.

Article 2 (doc. 9479/16)

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [date – no later than 1 year after entry into force]¹³⁵ at the latest. They shall forthwith communicate to the Commission the text of those provisions.

¹³³ BE, EL, ES, FI, HR, IE, LV, PL and PT and asked for "media literacy" to be reintroduced in the text.

¹³⁴ CZ, ES, LT and LV found the proposed period to be too long and proposed shorter periods varying between 3 and 7 years.

¹³⁵ BE, BG, CZ, DE, DK, ES, EE, FI, FR, LV, NL, PT, RO, SI and UK found the transposition period to be too short. All these delegations proposed to extend it to 2 years, except NL and UK (18 months).

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.¹³⁶

Article 3 (doc. 9479/16)

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 4 (doc. 9479/16)

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

¹³⁶ In response to DE question on the difference between paragraphs 1 and 2, CION explained that the directive might be transposed not only by media law, but also by other laws. The aim is therefore to have a complete overview of national legislation into which the directive was transposed.