



Council of the
European Union

Brussels, 19 December 2016
(OR. en)

14580/16

**Interinstitutional File:
2016/0151 (COD)**

LIMITE

**AUDIO 128
DIGIT 133
CONSOM 283
TELECOM 242
CODEC 1689**

NOTE

From: General Secretariat of the Council
To: Delegations

No. Cion doc.: 9479/16 AUDIO 68 DIGIT 55 CONSOM 1211A 28 CODEC 744
TELECOM 98

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
- Presidency compromise text

Delegations will find attached a compromise text on the above mentioned subject, prepared jointly by the Slovak Presidency and the incoming Maltese Presidency, in preparation for the meeting of the Audiovisual Working Party on 10 January 2017.

Only the recitals with a direct link to the changes proposed in articles are included. The rest of the recitals will be examined at a later stage.

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 attached document:

- 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,
- **bold grey shaded** indicates a text modified by the Presidency.
- ~~**bold strikethrough grey shaded**~~ indicates a text deleted by the Presidency.

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 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

[...]

Article 1

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

(a) 'audiovisual media service' means:

- (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 paragraph;**
- (ii) audiovisual commercial communication;

(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:

(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;

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

(iii) the principal purpose of the service, or a dissociable section of that service or a significant proportion of the content of the service is devoted to providing programmes and or user-generated videos to the general public, in order to inform, entertain or educate;³

(iv) the service is made available by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC;

³ *Recital 3 to be modified as follows:* “Directive 2010/13/EU should remain applicable only to those services the principal purpose of which is the provision of programmes in order to inform, entertain or educate. The principal purpose requirement should be also considered to be met if the service has audiovisual content and form which is dissociable from the main activity of the service provider, such as stand-alone parts of online newspapers featuring audiovisual programmes or user-generated videos where those parts can be considered dissociable from their main activity. ~~Social media services are not included, except if they provide a service that falls under the definition of a video-sharing platform.~~ A service should be considered to be merely an indissociable complement to the main activity as a result of the links between the audiovisual offer and the main activity. As such, channels or any other audiovisual services under the editorial responsibility of a provider may constitute audiovisual media services in themselves, even if they are offered in the framework of a video-sharing platform which is characterised by the absence of editorial responsibility. In such cases, it will be up to the providers with editorial responsibility to abide by the provisions of this Directive.”

(b) ‘programme’ means a set of moving images with or without sound, constituting an individual item, irrespective of its length, 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, video clips of short duration, sports events, situation comedies, documentaries, children’s programmes and original drama;

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

(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;

(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;

(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

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 **on a daily basis** in that Member State.;
 - (b) **if a media service provider has its head office in one Member State but editorial decisions on the audiovisual media service are taken on a daily basis in another Member State, it shall be deemed to be established in the Member State where a significant part the majority of the workforce 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.
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.

5aa. Member States shall ensure that media service providers inform the competent national regulatory authorities about any changes that may affect the establishment of jurisdiction in accordance with paragraphs 2, 3 and 4.

5a. Member States shall establish ~~communicate to the Commission~~ a list of the audiovisual media service providers under their jurisdiction and indicate on which the criteria, set out in paragraphs 2 to 5, ~~on which~~ their jurisdiction is based. Member States shall communicate this list to the Commission. In case of inconsistencies the Commission shall contact the Member States concerned in order to find a solution. ~~They~~ Member States shall ~~subsequently~~ inform the Commission without undue delay of any changes to that list. The Commission shall ensure that the competent independent national regulatory authorities have access to this list information. To the extent possible, the Commission shall make this information publicly available.

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) or the Contact Committee to provide an opinion on the matter within 15 working days from submission of the Commission's request. ~~If the Commission requests an opinion from ERGA, the time limits set out in Articles 3(5) and 4(5) shall be suspended until ERGA has adopted an opinion.~~

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.

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.
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 State:
 - (a) ~~a television broadcast coming from another Member State~~ manifestly, seriously and gravely infringes ~~Article 27(1) or (2) and/or~~ Articles 6 ~~or 12(1), or both;~~
 - (b) prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence; or
 - (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 broadcaster media service provider has, in the opinion of the Member State concerned, contravened infringed point (a), (b) or (c) of paragraph 2 on at least two prior occasions;
 - ~~(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 infringements and of the measures it intends to take should any such infringement alleged contraventions infringements occur again;

~~(d)~~(c) consultations with the ~~transmitting~~ Member State which has jurisdiction over the provider and the Commission have not produced an amicable settlement within 15 days one month of the notification provided for ~~point (e), and the alleged infringement persists~~ in point (b);

~~(d)~~ the broadcaster media services provider has contravened infringed 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 defence of the media services provider concerned in respect of points b) and d) and, in particular, has given the media services provider the opportunity to express its views on the alleged ~~contraventions~~ infringements within a period set out in national law and the measures that that Member State intends to take. It shall duly ~~take into account~~ consider those views as well as the views of the Member State of jurisdiction.

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

4. The Commission shall, within ~~2~~three months following the complete notification of the measures taken by the Member State in application of paragraphs 2 and 3 and after having consulted ERGA [take a decision on whether ~~the~~ those measures are compatible with Union law]⁴. The Commission may request ERGA or the Contact Committee to provide an opinion.

~~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~~ one month from its receipt, or from the receipt of any additional information requested, the Commission does not request any further information strictly necessary to reach a decision.~~

⁴ Under examination by the Council Legal Service.

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 this information requested within the period set out fixed by the Commission or where it provides incomplete information, the Commission shall reject the notification on the grounds of incomplete notification. take a decision that the measures taken by the Member State in accordance with paragraph 2 are incompatible with Union law. If it the Commission decides that they are not the measures are incompatible with Union law, As a result the Member State [will be required to shall put an end to the measures in question as a matter of urgency]⁵, without prejudice to the possibility of that Member State submitting a new notification.

4a. The Commission shall examine the compatibility of the notified measures [with Union law. Where it comes to the conclusion that these measures are incompatible with Union law, the Commission shall require the Member State concerned to refrain from taking any intended measures or to urgently put an end to those measures.]⁶

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

⁵ Under examination by the Council Legal Service.

⁶ Under examination by the Council Legal Service.

~~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;~~

~~(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) to (d) and (e) of paragraph 3.~~ 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 these 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~~].⁷

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;

⁷ Under examination by the Council Legal Service.

Article 4

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 ~~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 30a~~, 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 **media service provider broadcaster** under the jurisdiction of another Member State provides **an audiovisual media service television broadcast** which is wholly or mostly directed towards its territory;

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 **media service provider 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.

3. The first Member State may adopt appropriate measures against the **media service provider broadcaster** concerned where it assesses that:

- (a) the results achieved through the application of paragraph 2 are not satisfactory; and
- (b) the **media service provider 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.

When a regulatory authority in one Member State receives a request from a media service provider under its jurisdiction that wishes to provide a service directed wholly or mainly at the audience of another Member State, the national regulatory authority in the Member State having jurisdiction shall inform the regulatory authority of the receiving Member State when this information becomes available.

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.

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

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 media service provider 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 media service provider broadcaster concerned and, in particular, has given the media service provider broadcaster the opportunity to express its views on the alleged circumvention and the measures the notifying Member States intends to take;

(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. The Commission may request ERGA or the Contact Committee to provide an opinion.

5. The Commission shall decide within 3 months following the complete 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 one month ~~3 months~~ from its receipt or from the receipt of any additional information requested, the Commission does not request any further information strictly necessary to reach a decision.

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~~ this information requested within the period set out fixed by the Commission or provides incomplete information, the Commission shall reject the notification on the grounds of incomplete notification. ~~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,~~ As a result, the Member State ~~in question~~ shall refrain from taking the ~~proposed~~ intended measures.

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.

7. Member States ~~shall~~ **may** encourage co-regulation and/or self-regulatory regimes self-regulation through codes of conduct 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:

- ~~be~~ **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.~~

Member States and the Commission may encourage self-regulation through ~~Draft Union~~ codes of conduct referred to in Articles ~~6a (3), 9(2) and 9(4)~~ and 12(1a). The draft Union codes of conduct shall be without prejudice to the national codes of conduct. The draft Union codes of conduct and amendments ~~or extensions~~ to existing Union codes of conduct shall be submitted to the Commission by the signatories of these codes.

The Commission shall consult ~~may ask~~ the Contact Committee ~~ERGA to give an opinion on the drafts, amendments or extensions of~~ on those codes. It shall make them available to the public. The Commission may give appropriate publicity to these codes ~~publish those codes as appropriate.~~

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.

CHAPTER III

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

[(da) to be added: provision on media ownership transparency]⁸

⁸ Under examination by the Council Legal Service.

Article 6

Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any:

aa) incitement to violence 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, nationality, religion or nationality belief, disability, age or sexual orientation;

[ab) to be added: wording concerning incitement to terrorism]⁹.

Article 6a¹⁰

~~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.~~

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

~~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.~~

⁹ Under examination by the Council Legal Service.

¹⁰ Wording of the Article moved to Article 12.

Article 7

Member States shall ensure that media service providers under their jurisdiction make their services gradually 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.

Article 9

1. Member States shall ensure that audiovisual commercial communications provided by media service providers **and video-sharing platform providers** 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;
 - (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;

- (e) audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;
- (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.

2. Member States and the Commission ~~shall~~ **may** 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 children's programmes and programmes aimed at a with a significant children's audience, 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.**

Those codes shall aim ~~should be used~~ to effectively limit ~~reduce~~ 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 without emphasising the positive quality of the nutritional aspects of such foods and beverages.

The 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.¹¹

3. Member States and the Commission shall encourage the development of self- and co-regulatory codes of conduct regarding inappropriate audiovisual commercial communications for alcoholic beverages. Those codes shall also aim ~~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 codes of conduct referred to in paragraphs 2 and 3 systems across the Union. Where ~~if considered~~ appropriate, Member States and the Commission ~~may shall~~ facilitate the development encourage self-regulation through Union codes of conduct.

¹¹ Merged with paragraph 4.

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;
 - (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 services¹² in particular by making special promotional references to those goods or services;**
 - (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.

¹² ***Recital 14 to be modified as follows:*** “Sponsorship represents an important means of financing audiovisual media services or programmes while promoting a legal or physical person's name, trade mark, image, activities or products. **As such, for sponsorship to constitute a valuable form of advertising technique for advertisers and audiovisual media service providers, sponsorship announcements can contain promotional references to the goods or services of the sponsor, while not directly encouraging the purchase of the goods and services.** Sponsorship announcements should continue to clearly inform the viewers of the existence of a sponsorship agreement. The content of sponsored programmes should not be influenced in such a way as to affect the audiovisual media service provider's editorial independence.”

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 programmes, documentaries and religious programmes.

Article 11

1. Paragraphs 2, 3 and 4 shall apply only to programmes produced after 19 December 2009.
2. Product placement shall be ~~prohibited~~ admissible allowed in all audiovisual media services, except in news and current affairs programmes, consumer affairs programmes, religious programmes, children's programmes and programmes aimed at a 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.~~

3. Programmes that contain product placement 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;**
- (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 in particular by making special promotional references to those goods or services;**
- ~~(c) they shall not give undue prominence to the product in question;~~**
- ~~(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.

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

Article 12

1. 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.

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

1a.¹³ 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 ~~shall~~ **may** use a system of ~~descriptors~~ indicating the nature of the content of an audiovisual media service.¹⁴

For the implementation of this Article, Member States ~~may~~ **shall** encourage co-regulation.

The Commission ~~and ERGA shall~~ **may** encourage media service providers to exchange best practices on co-regulatory ~~codes of conduct systems across the Union~~. Where appropriate, Member States and the Commission ~~may~~ **shall** ~~facilitate the development of~~ **encourage** self-regulation through Union codes of conduct.

1b. In addition to the measures referred to in paragraphs 1 and 1a, Member States shall **encourage** policies and schemes to develop media literacy skills.

¹³ Text moved from Article 6a.

¹⁴ ***Recital 9 to be modified as follows:*** “In order to empower viewers, including parents and minors, in making informed decisions about the content to be watched, it is necessary that audiovisual media service providers provide sufficient information about content that may impair minors' physical, mental or moral development. This could be done, for instance, through a system of content descriptors indicating the nature of the content, **an acoustic warning, a visual symbol or any other technical means.** ~~Content descriptors could be delivered through written, graphical or acoustic means.~~”

CHAPTER IV

~~PROVISIONS APPLICABLE ONLY TO ON-DEMAND AUDIOVISUAL MEDIA SERVICES~~

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% share of European works in their catalogue and ensure prominence of these works.

- 2. 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. 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. Any financial contribution shall comply with Union law, in particular with State aid rules.**¹⁵
- 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.**
- 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.**

¹⁵ *Recital 22 to be modified as follows:* “In order to ensure adequate levels of investment on European works, Member States should be able to impose financial obligations to **on-demand** service providers established on their territory. Those obligations can take the form of direct contributions to the production of and acquisition of rights in European works. The Member States could also impose levies payable to a fund, on the basis of the revenues made with **on-demand** services that are provided in and targeted towards their territory. This Directive clarifies that, given the direct link between financial obligations and Member States' different cultural policies, Member States are also allowed to impose such financial obligations on providers of **on-demand** services established in another Member State which are targeted towards its territory. In this case financial obligations should only be charged on the revenues generated through the audience in that Member State.”

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 as defined in the Commission Recommendation of 6 May 2003¹⁶. 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.

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.

¹⁶ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

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.
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.** 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.

Article 22

1a. 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.

1b. Paragraph 1 shall apply to audiovisual commercial communications in on-demand audiovisual media services with the exception of sponsorship and product placement.

Article 23

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 % of this period. **Additionally, for the period between 19:00 and 23:00, the proportion of television advertising spots and teleshopping spots shall not exceed 20 % of this period.**

2. Paragraph 1 shall not apply to:
 - (a) announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes **or with programmes from other entities belonging to the same media group;**

 - (b) sponsorship announcements;

 - (c) ~~and~~ product placements.

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 28a

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 the general public ~~all citizens~~ from content and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to sex, racial or ethnic origin, ~~race, colour, nationality, religion or belief, disability, age or sexual orientation, descent or national or ethnic origin~~;¹⁷

(ba) protect the general public from content and audiovisual commercial communications containing [to be added: wording concerning incitement to terrorism]¹⁸;

(bb) ensure that audiovisual commercial communications comply with the requirements set out in Article 9(1).

1a. The appropriateness of the measures for audiovisual commercial communications shall take into account whether they are marketed, sold and arranged by video-sharing platform providers.

¹⁷ Wording aligned with Article 6.

¹⁸ Under examination by the Council Legal Service.

2. ~~What constitutes~~ For the purposes of paragraph 1, an appropriate measure ~~for the purposes of paragraph 1~~ 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 measures shall consist of, as appropriate:

- (a) ~~putting into effect 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(1) respectively;**
- (aa) putting into effect, in the terms and conditions of the video-sharing platform providers, the requirements set out in Article 9(1) for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform providers;**
- (b) establishing and operating mechanisms for users of video-sharing platforms to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 stored on its platform;**

- (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;**
- (d) establishing and operating systems allowing users of video-sharing platforms to rate 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);**
- (fa) providing for effective media literacy measures and tools and raising users' awareness of these measures and tools.**

3. For the purposes of the implementation of the measures referred to in paragraphs 1 and 2, Member States may shall encourage co-regulation as provided for in Article 4(7).

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 national regulatory authorities with the assessment of those measures designated in accordance with Article 30.

- 5. Member States ~~may shall not~~ impose on video-sharing platform providers measures that are more detailed or stricter than the measures referred to in paragraphs 1 and 2. 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.**
- 6a. In addition to the measures referred to in paragraph 2, Member States shall encourage policies and schemes to develop media literacy skills.**
- 7. The Commission ~~and ERGA~~ may ~~shall~~ encourage video-sharing platform providers to exchange best practices on co-regulatory codes of conduct systems across the Union referred to in paragraph 3. Where appropriate, Member States and the Commission may ~~shall~~ facilitate the development of encourage self-regulation through 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~~ The draft Union codes of conduct and amendments to existing Union codes of conduct shall be submitted to the Commission by the signatories of these codes. The Commission shall consult ~~may~~ request the Contact Committee ~~ERGA to give an opinion on the drafts, amendments or extensions of~~ on those codes of conduct. It shall make them available to the public. The Commission may give appropriate publicity to these ~~those~~ codes of conduct.**

Article 28b

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 subsidiary 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.

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.

2. Member States shall establish ~~communicate to the Commission~~ a list of the video-sharing platform providers established on their territory and indicate on which the criteria, set out in Article 3(1) of Directive 2000/31/EC and in paragraph 1, ~~on which~~ their jurisdiction is based. Member States ~~They shall~~ update the list regularly communicate this list to the Commission. In case of inconsistencies the Commission shall contact the Member States concerned in order to find a solution. Member States shall inform the Commission of any changes to that list. The Commission shall ensure that the ~~competent independent~~ national regulatory authorities have access to this list information. To the extent possible, the Commission shall make this information publicly available.

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;

- (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

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

Article 30

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 distinct from the government 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.¹⁹

¹⁹ *Recital 33 to be modified as follows:* “Regulatory authorities of the Member States ~~can~~ **should** achieve the requisite degree of structural independence ~~only if established as separate legal entities~~. Member States should therefore guarantee the independence of the national regulatory authorities from both the government, public bodies and the industry with a view to ensuring the impartiality of their decisions. This requirement of independence should be without prejudice to the possibility for Member States to establish regulators having oversight over different sectors, such as audiovisual and telecom. National regulatory authorities should be in possession of the enforcement powers and resources necessary for the fulfilment of their tasks, in terms of staffing, expertise and financial means. The activities of national regulatory authorities established under this Directive should ensure respect for the objectives of media pluralism, cultural diversity, consumer protection, the internal market and the promotion of fair competition.”

- 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 national law.**
- 4. Member States shall ensure that national regulatory authorities have adequate financial and human resources and enforcement powers to carry out their functions effectively. Member States shall ensure that national regulatory authorities have separate annual budgets which shall be made public.²⁰**
- 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.**

²⁰ Wording initially in paragraph 6.

7. Member States shall ensure that the addressees of a decision taken by a national regulatory authority have the right to effective appeal 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, which may be a court, shall be independent of the parties involved in the appeal and ~~That appeal body, which should 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.

Article 30a

- 1. The European Regulators Group for Audiovisual Media Services (ERGA) is hereby established.**
- 2. It shall be composed of representatives 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 representatives as chosen through their procedures. A Commission representative shall participate in the group ERGA meetings.**

3. ERGA's shall have the following tasks:

- (a) to provide technical expertise 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;**
- (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;**
- (c) to provide for an exchange of experience and best good practices as to on the application of the regulatory framework for audiovisual media services;**
- (d) to cooperate and provide its members with the information 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 technical and factual aspects of the issues envisaged in pursuant to Articles 2(5b), 3(4) and 4(4)(c) 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.**

4. The Commission ERGA shall be empowered to adopt, by means of an implementing act, the its rules of procedure for ERGA.

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.

Article 33

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

~~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.~~

~~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 8 10 years 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

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 2 years after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

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.

Article 3

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

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
