

## Consolidated text of Audiovisual Media Service Directive as amended by the 2018 Directive

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### CHAPTER I DEFINITIONS

#### 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 where the principal purpose of the service or a dissociable section thereof is devoted to providing programmes, ~~which is~~ under the editorial responsibility of a media service provider, to the general public ~~and the principal purpose of which is the provision of programmes~~, in order to inform, entertain or educate, ~~to the general public~~ by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC; ~~S~~ 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, where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing;

(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, 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, irrespective of its length, that is created by a user and uploaded to a video-sharing platform by that user or any other user;

(bb) 'editorial decision ' means a decision which is taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of the audiovisual media service;

(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-person~~ pursuing an economic activity; ~~;~~ ~~Such~~ such images accompany, ~~or~~ or are included in, a programme or user-generated video 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 video-sharing platform services or in ~~the production of~~producing audiovisual works, to the financing of audiovisual media services, video-sharing platform services, user-generated videos 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 or a user-generated video; 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 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 in another Member State, ~~it~~ the media service provider shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates. If a significant part of the workforce involved in the pursuit of the programme-related 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 programme-related 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.

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

5b. Member States shall establish and maintain an up-to-date list of the media service providers under their jurisdiction and indicate on which of the criteria set out in paragraphs 2 to 5 their jurisdiction is based. Member States shall communicate that list, including any updates thereto, to the Commission.

The Commission shall ensure that such lists are made available in a centralised database. In the event of inconsistencies between the lists, the Commission shall contact the Member States concerned in order to find a solution. The Commission shall ensure that the national regulatory authorities or bodies have access to that database. The Commission shall make information in the database publicly available.

5c. Where, in applying Article 3 or 4, 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 in accordance with point (d) of Article 30b(3). ERGA shall provide such an opinion within 15 working days from the submission of the Commission's request. The Commission shall keep the Contact Committee established by Article 29 duly informed.

When the Commission adopts a decision pursuant to Article 3(2) or (3), or Article 4(5), it shall also decide which Member State has jurisdiction.

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,~~ A Member States may provisionally derogate from paragraph 1 of this article where an audiovisual media service provided by a media service provider under the jurisdiction of ~~if the following conditions are fulfilled:~~

~~(a) a television broadcast coming from another Member State manifestly, seriously and gravely infringes Article 27(1) or (2) and/or point (a) of Article 6(1) or Article 6a(1) or prejudices or presents a serious and grave risk of prejudice to public health;~~

The derogation referred to in the first subparagraph shall be subject to the following conditions:

- ~~(ba)~~ during the previous 12 months, the ~~broadcaster-media service provider~~ has infringed the provision(s) referred to in point (a) on at least two prior occasions already performed one or more instances of conduct described in the first subparagraph;
- ~~(eb)~~ the Member State concerned has notified the ~~broadcaster-media service provider,~~ the Member State having jurisdiction over that provider and the Commission in writing of the alleged infringements and of the proportionate measures it intends to take should any such infringement occur again ~~and the Commission in writing of the alleged infringements and of the measures it intends to take should any such infringement occur again;~~
- ~~(c),~~ the Member State concerned has respected the right of defence of the media service provider and, in particular, has given that provider the opportunity to express its views on the alleged infringements; and having jurisdiction over that provider and the Commission in writing of the alleged infringements and of the proportionate measures it intends to take should any such infringement occur again;
- ~~(d)~~ consultations with the ~~transmitting~~ Member State having jurisdiction over the media service provider and the Commission have not resulted in an amicable settlement within one month of the Commission's receipt of the notification referred to in point (b) ~~and the Commission have not produced an amicable settlement within 15 days of the notification provided for in point (c), and the alleged infringement persists.~~

Within three months of the receipt of the notification of the measures taken by the Member State concerned and after having requested ERGA to provide an opinion in accordance with point (d) of Article 30b(3), ~~The~~ The Commission shall, ~~within 2 months following notification of the measures taken by the Member State,~~ take a decision on whether the ~~those~~ measures are

compatible with Union law. The Commission shall keep the Contact Committee duly informed. Where the Commission ~~if it~~ decides that ~~they~~ those measures are not compatible with Union Law, it shall require the Member State concerned ~~will be required~~ to put an end to the measures in question as a matter of urgency.

~~3. Paragraph 2 shall be without prejudice to the application of any procedure, remedy or sanction to the infringements in question in the Member State which has jurisdiction over the broadcaster concerned.~~

43. A Member State may provisionally derogate from paragraph 1 of this Article where an audiovisual media service provided by a media service provider under the jurisdiction of another Member State manifestly, seriously and gravely infringes point (b) of Article 6(1) or prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence.

The derogation referred to in the first subparagraph shall be subject to the following conditions:

(a) during the previous 12 months the conduct referred to in the first subparagraph occurred at least on one prior occasion;

and

(b) the Member State concerned has notified the media service provider, the Member State having jurisdiction over that provider and the Commission in writing of the alleged infringement and of the proportionate measures it intends to take should any such infringement occur again.

The Member State concerned shall respect the rights of defence of the media service provider concerned and, in particular, give that provider the opportunity to express its views on the alleged infringements.

Within three months of the receipt of the notification of the measures taken by the Member State concerned and after having requested ERGA to provide an opinion in accordance with point (d) of Article 30b(3), the Commission shall take a decision on whether those measures are compatible with Union law. The Commission shall keep the Contact Committee duly informed. Where the Commission decides that those measures are not compatible with Union law, it shall require the Member State concerned to put an end to the measures in question as a matter of urgency.

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

5. Member States may, in urgent cases, no later than one month after the alleged infringement, derogate from the conditions laid down in points (a ) and (b ) of paragraph 3. Where this is the case, the measures taken shall be notified in the shortest possible time to the Commission and to the Member State under whose jurisdiction the media service provider falls, indicating the reasons for which the Member State considers that there is urgency. 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 require the Member State in question to urgently put an end to those measures.

6. If the Commission lacks information necessary to take a decision pursuant to paragraph 2 or 3, it shall, within one month of the receipt of the notification, request from the Member State concerned all information necessary to reach that decision. The time limit within which the Commission is to take the decision shall be suspended until that Member State has provided such necessary information. In any case, the suspension of the time limit shall not last longer than one month.

7. Member States and the Commission shall regularly exchange experiences and best practices regarding the procedure set out in this Article in the framework of the Contact Committee and ERGA.

~~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. Member States may, in urgent cases, derogate from the conditions laid down in point (b) of paragraph 4. 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 jurisdiction the media service provider falls, indicating the reasons for which the Member State considers that there is urgency.~~

~~6. Without prejudice to the Member State's possibility of proceeding with the measures referred to in paragraphs 4 and 5, 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 the Member State in question to refrain from taking any proposed measures or urgently to put an end to the measures in question.~~

#### 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, provided that such rules are in compliance with Union law.
2. ~~In cases w~~here a Member State:
  - (a) has exercised its freedom under paragraph 1 to adopt more detailed or stricter rules of general public interest<sup>17</sup> and
  - (b) assesses that a broadcaster-media service provider under the jurisdiction of another Member State provides an audiovisual media service a television broadcast which is wholly or mostly directed towards its territory<sup>17</sup>

it may contact-request the Member State having jurisdiction ~~with a view to achieving a mutually satisfactory solution to~~ to address any problems ~~posed~~ identified in relation to this paragraph. Both Member States shall cooperate sincerely and swiftly with a view to achieving a mutually satisfactory solution.

Upon receiving ~~On receipt of~~ a substantiated request ~~by the first Member State~~ under the first subparagraph, the Member State having jurisdiction shall request the broadcaster-media service provider to comply with the rules of general public interest in question. The Member State having jurisdiction shall regularly inform the first-requesting Member State of the steps taken to address the problems identified . Within two months of the receipt of the request, the Member State having jurisdiction shall inform the requesting Member State and the Commission of the results obtained and explain the reasons where a solution could not be found. results obtained following this request within 2 months.

~~Either Member State may invite the Contact Committee to examine the case at any time.~~

~~Either Member State may invite the contact committee established pursuant to Article 29 to examine the case.~~

3. The ~~first~~ Member State concerned may adopt appropriate measures against the broadcaster-media service provider concerned where ~~it assesses that~~:
- (a) it assesses that the results achieved through the application of paragraph 2 are not satisfactory; and
  - (b) it has adduced evidence showing that the media service provider 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 Member State concerned; such evidence shall allow for such circumvention to be reasonably established, without the need to prove the media service provider's intention to circumvent those stricter rules. 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.

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 whereif the following conditions are met:
- (a) it has notified the Commission and the Member State in which the broadcaster-media service provider 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 concerned and, in particular, has given that media service provider the opportunity to express its views on the alleged circumvention and the measures the notifying Member State intends to take; and
  - (c) the Commission has decided, after having requested ERGA to provide an opinion in accordance with point (d) of Article 30b(3) , that the measures are compatible with Union law, in particular that assessments made by the Member State taking the measures under paragraphs 2 and 3 of this Article are correctly founded; the Commission shall keep the Contact Committee duly informed.

~~the Commission has decided 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.~~

5. Within 3 months following of the receipt of the notification provided for in point (a) of paragraph 4, Tthe Commission shall take the decision on whether those measures are compatible with Union law ~~decide within 3 months following the notification provided for in point (a) of paragraph 4. If Where~~ the Commission decides that the those measures are

~~incompatible-not compatible~~ with Union law, it shall require the Member State concerned ~~to in question shall~~ refrain from taking the intended ~~proposed~~ measures.

If the Commission lacks information necessary to take the decision pursuant to the first subparagraph, it shall, within one month of the receipt of the notification, request from the Member State concerned all information necessary to reach that decision. The time limit within which the Commission is to take the decision shall be suspended until that Member State has provided such necessary information. In any case, the suspension of the time limit shall not last longer than one month.

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

7. Directive 2000/31/EC shall apply unless otherwise provided for in this Directive. In the event of a conflict between Directive 2000/31/EC and this Directive, this Directive shall prevail, unless otherwise provided for in this Directive. Member States shall encourage co-regulation and/or self-regulatory regimes at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. These regimes shall be such that they are broadly accepted by the main stakeholders in the Member States concerned and provide for effective enforcement.

~~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.~~

#### Article 4a

1. Member States shall encourage the use of co-regulation and the fostering of 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. Those codes shall **■** :

(a) be such that they are broadly accepted by the main stakeholders in the Member States concerned;

(b) clearly and unambiguously set out their objectives;

(c) provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at; and

(d) provide for effective enforcement including effective and proportionate sanctions.

2. Member States and the Commission may foster self-regulation through Union codes of conduct drawn up by media service providers, video-sharing platform service providers or organisations representing them, in cooperation, as necessary, with other sectors such as industry, trade, professional and consumer associations or organisations. Those codes shall be such that they are broadly accepted by the main stakeholders at Union level and

shall comply with points (b) to (d) of paragraph 1. The Union codes of conduct shall be without prejudice to the national codes of conduct.

In cooperation with the Member States, the Commission shall facilitate the development of Union codes of conduct, where appropriate, in accordance with the principles of subsidiarity and proportionality.

The signatories of Union codes of conduct shall submit the drafts of those codes and amendments thereto to the Commission. The Commission shall consult the Contact Committee on those draft codes or amendments thereto.

The Commission shall make the Union codes of conduct publicly available and may give them appropriate publicity.

3. Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in compliance with this Directive and Union law, including where their national independent regulatory authorities or bodies conclude that any code of conduct or parts thereof have proven not to be sufficiently effective. Member States shall report such rules to the Commission without undue delay.

### CHAPTER III

#### PROVISIONS APPLICABLE TO ~~ALL~~ AUDIOVISUAL MEDIA SERVICES

##### Article 5

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

- (a) ~~the its~~ name ~~of the media service provider~~;
- (b) the geographical address at which ~~the media service provider it~~ is established;
- (c) the details ~~of the media service provider~~, including its ~~electronic e~~mail address or website, which allow it to be contacted rapidly in a direct and effective manner;
- (d) ~~the Member State having jurisdiction over it and the competent regulatory authorities or bodies or supervisory bodies where applicable, the competent regulatory or supervisory bodies.~~

2. Member States may adopt legislative measures providing that, in addition to the information listed in paragraph 1, media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners. Such measures shall respect the fundamental rights concerned, such as the

private and family life of beneficial owners. Such measures shall be necessary and proportionate and shall aim to pursue an objective of general interest.

#### Article 6

1. Without prejudice to the obligation of Member States to respect and protect human dignity, Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any:

(a) incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter ;

(b) public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541.

2. The measures taken for the purposes of this Article shall be necessary and proportionate and shall respect the rights and observe principles set out in the Charter.

~~Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.~~

#### Article 6a

1. Member States shall take appropriate measures to ensure that audiovisual media services provided by media service providers under their jurisdiction which may 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 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.

2. Personal data of minors collected or otherwise generated by media service providers pursuant to paragraph 1 shall not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.

3. Member States shall ensure that media service providers provide sufficient information to viewers about content which may impair the physical, mental or moral development of minors. For this purpose, media service providers shall use a system describing the potentially harmful nature of the content of an audiovisual media service.

For the implementation of this paragraph, Member States shall encourage the use of co-regulation as provided for in Article 4a(1).

4. The Commission shall encourage media service providers to exchange best practices on co-regulatory codes of conduct. Member States and the Commission may foster self-regulation, for the purposes of this Article, through Union codes of conduct as referred to in Article 4a(2) .

#### Article 7

1. Member States shall ensure, without undue delay, that services provided by media service providers under their jurisdiction are made continuously and progressively more accessible to persons with disabilities through proportionate measures.

2. Member States shall ensure that media service providers report on a regular basis to the national regulatory authorities or bodies on the implementation of the measures referred to in paragraph 1. By ... [four years after the date of entry into force of this amending Directive] and every three years thereafter, Member States shall report to the Commission on the implementation of paragraph 1.

3. Member States shall encourage media service providers to develop accessibility action plans in respect of continuously and progressively making their services more accessible to persons with disabilities. Any such action plan shall be communicated to national regulatory authorities or bodies.

4. Each Member State shall designate a single, easily accessible, including by persons with disabilities, and publicly available online point of contact for providing information and receiving complaints regarding any accessibility issues referred to in this Article.

5. Member States shall ensure that emergency information, including public communications and announcements in natural disaster situations, which is made available to the public through audiovisual media services, is provided in a manner which is accessible to persons with disabilities.

~~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 7a

Member States may take measures to ensure the appropriate prominence of audiovisual media services of general interest.

## Article 7b

Member States shall take appropriate and proportionate measures to ensure that audiovisual media services provided by media service providers are not, without the explicit consent of those providers, overlaid for commercial purposes or modified.

For the purposes of this Article, Member States shall specify the regulatory details, including exceptions, notably in relation to safeguarding the legitimate interests of users while taking into account the legitimate interests of the media service providers that originally provided the audiovisual media services.

## 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 under their jurisdiction comply with the following requirements:
  - (a) audiovisual commercial communications shall be readily recognisable as such;  
~~S~~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, as well as for electronic cigarettes and refill containers 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, mental or moral detriment to minors; ~~and~~ 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 encourage media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in children's programmes, 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. Audiovisual commercial communications for alcoholic beverages in on-demand audiovisual media services, with the exception of sponsorship and product placement, shall comply with the criteria set out in Article 22.~~

3. Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 4a(1) regarding inappropriate audiovisual commercial communications for alcoholic beverages. Those codes shall aim to effectively reduce the exposure of minors to audiovisual commercial communications for alcoholic beverages.

4. Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 4a(1) regarding inappropriate audiovisual commercial communications, accompanying or included in children's programmes, for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall diet are not recommended.

Those codes shall aim to effectively reduce the exposure of children to audiovisual commercial communications for such foods and beverages. They shall aim to provide that such audiovisual commercial communications do not emphasise the positive quality of the nutritional aspects of such foods and beverages.

5. Member States and the Commission may foster self-regulation, for the purposes of this Article, through Union codes of conduct as referred to in Article 4a(2).

#### 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 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 , as well as electronic cigarettes and refill containers.
  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.
  4. News and current affairs programmes shall not be sponsored. Member States may prohibit the sponsorship of children's programmes. 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~~ This Article shall apply only to programmes produced after 19 December 2009.
2. Product placement shall be ~~prohibited~~ allowed in all audiovisual media services, except in news and current affairs programmes, consumer affairs programmes, religious programmes and children's programmes.
3. Programmes that contain product placement shall meet the following requirements:
  - (a) their content and organisation within a schedule , in the case of television broadcasting, or within a catalogue in the case of on-demand audiovisual media services, shall under 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 ;
  - (c) they shall not give undue prominence to the product in question;
  - (d) viewers shall be clearly informed of the existence of product placement by an appropriate identification at the start and at 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.

Member States may waive the requirements set out in point (d) except for programmes produced or commissioned by a media service provider or by a company affiliated with that media service provider.

~~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.~~

~~Programmes that contain product placement shall meet at least all of 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;~~

~~(c) — they shall not give undue prominence to the product in question;~~

~~(d) — 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) provided that the programme in question 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) cigarettes and other tobacco products, as well as electronic cigarettes and refill containers, ~~or cigarettes~~ or product placement from undertakings whose principal activity is the manufacture or sale of ~~cigarettes and other tobacco~~those 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

~~Member States shall take appropriate measures to ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction which 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 such on-demand audiovisual media services.~~~~[deleted]~~

#### Article 13

1. Member States shall ensure that media service providers of on-demand audiovisual media services ~~provided by media service providers~~ under their jurisdiction secure at least a 30% promote, where practicable and by appropriate means, the production of and access to share of European works in their catalogues and ensure prominence of those 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.~~
2. Where Member States require media service providers under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contribution to national funds, they may also require media service providers targeting audiences in their territories, but established in other Member States to make such financial contributions, which shall be proportionate and non-discriminatory .
3. In the case referred to in paragraph 2, 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 such 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.
4. Member States shall report to the Commission by three years after the entry into force of this amending Directive and every two years thereafter on the implementation of paragraphs 1 and 2.~~Member States shall report to the Commission no later than 19 December 2011 and every 4 years thereafter on the implementation of paragraph 1.~~
35. 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.
6. The obligation imposed pursuant to paragraph 1 and the requirement on media service providers targeting audiences in other Member States set out in paragraph 2 shall not apply to media service providers with a low turnover or a low audience. Member States may also waive such obligations or requirements where they would be impracticable or unjustified by reason of the nature or theme of the audiovisual media services.

7. The Commission shall issue guidelines regarding the calculation of the share of European works referred to in paragraph 1 and regarding the definition of low audience and low turnover referred to in paragraph 6, after consulting the Contact Committee.

## 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.
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 television advertising and teleshopping spots shall be admissible in sports events. 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~~ television advertising, teleshopping, or both, once for each scheduled period of at least 30 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. The transmission of teleshopping shall be prohibited during children's programmes. 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

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

1. The proportion of television advertising spots and teleshopping spots ~~within a given clock hour~~ within the period between 06 .00 and 18 .00 shall not exceed 20 % of that period. The proportion of television advertising spots and teleshopping spots within the period between 18.00 and 24.00 shall not exceed 20 % of that 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, sponsorship announcements and product placements or with programmes and audiovisual media services from other entities belonging to the same broadcasting group;
  - (b) sponsorship announcements;
  - (c) product placements;
  - (d) neutral frames between editorial content and television advertising or teleshopping spots, and between individual spots.

#### 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**  
**PROVISIONS APPLICABLE TO VIDEO-SHARING PLATFORM SERVICES**

Article 28a

1. For the purposes of this Directive, a video-sharing platform provider established on the territory of a Member State within the meaning of Article 3(1) of Directive 2000/31/EC shall be under the jurisdiction of that Member State.
  
2. A video-sharing platform provider which is not established on the territory of a Member State pursuant to paragraph 1 shall be deemed to be established on the territory of a Member State for the purposes of this Directive if that video-sharing platform provider:
  - (a) has a parent undertaking or a subsidiary undertaking that is established on the territory of that Member State; or
  - (b) is part of a group and another undertaking of that group is established on the territory of that Member State.

For the purposes of this Article:

- (a) "parent undertaking" means an undertaking which controls one or more subsidiary undertakings;
  - (b) "subsidiary undertaking" means an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking;
  - (c) "group" means a parent undertaking, all its subsidiary undertakings and all other undertakings having economic and legal organisational links to them.
3. For the purposes of applying paragraph 2, where the parent undertaking, the subsidiary undertaking or the other undertakings of the group are each established in different Member States, the video-sharing platform provider shall be deemed to be established in the Member State where its parent undertaking is established or, in the absence of such an establishment, in the Member State where its subsidiary undertaking is established or, in the absence of such an establishment, in the Member State where the other undertaking of the group is established.
  
  4. For the purposes of applying paragraph 3, where there are several subsidiary undertakings and each of them is established in a different Member State, the video-sharing platform provider shall be deemed to be established in the Member State where one of the subsidiary undertakings first began its activity, provided that it maintains a stable and effective link with the economy of that Member State.

Where there are several other undertakings which are part of the group and each of them is established in a different Member State, the video-sharing platform provider shall be deemed to be established in the Member State where one of these undertakings first began its activity, provided that it maintains a stable and effective link with the economy of that Member State.

5. For the purposes of this Directive, Article 3 and Articles 12 to 15 of Directive 2000/31/EC shall apply to video-sharing platform providers deemed to be established in a Member State in accordance with paragraph 2 of this Article.

6. Member States shall establish and maintain an up-to-date list of the video-sharing platform providers established or deemed to be established on their territory and indicate on which of the criteria set out in paragraphs 1 to 4 their jurisdiction is based. Member States shall communicate that list, including any updates thereto, to the Commission .

The Commission shall ensure that such lists are made available in a centralised database. In the event of inconsistencies between the lists, the Commission shall contact the Member States concerned in order to find a solution. The Commission shall ensure that the national regulatory authorities or bodies have access to that database. The Commission shall make information in the database publicly available .

7. Where, in applying this Article, 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 ERGA to provide an opinion on the matter in accordance with point (d) of Article 30b(3). ERGA shall provide such an opinion within 15 working days from the submission of the Commission's request. The Commission shall keep the Contact Committee duly informed.

#### Article 28b

1. Without prejudice to Articles 12 to 15 of Directive 2000/31/EC, Member States shall ensure that video-sharing platform providers under their jurisdiction take appropriate measures to protect :

(a) minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 6a(1) ;

(b) the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter;

(c) the general public from programmes, user-generated videos and audiovisual commercial communications containing content the dissemination of which constitutes an activity which is a criminal offence under Union law, namely public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541, offences concerning child pornography as set out in Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council (17) and offences concerning racism and xenophobia as set out in Article 1 of Framework Decision 2008/913/JHA.

2. Member States shall ensure that video-sharing platform providers under their jurisdiction comply with the requirements set out in Article 9(1) with respect to audiovisual commercial communications that are marketed, sold or arranged by those video-sharing platform providers.

Member States shall ensure that the video-sharing platform providers under their jurisdiction take appropriate measures to comply with the requirements set out in Article 9(1) with respect to audiovisual commercial communications that are not marketed, sold or arranged by those video-sharing platform providers, taking into account the limited control exercised by those video-sharing platforms over those audiovisual commercial communications.

Member States shall ensure that video-sharing platform providers clearly inform users where programmes and user-generated videos contain audiovisual commercial communications, provided that such communications are declared under point (c) of the third subparagraph of paragraph 3 or the provider has knowledge of that fact.

Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 4a(1) aiming at effectively reducing the exposure of children to audiovisual commercial communications for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall diet are not recommended. Those codes shall aim to provide that such audiovisual commercial communications do not emphasise the positive quality of the nutritional aspects of such foods and beverages.

3. For the purposes of paragraphs 1 and 2, the appropriate measures 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 or uploaded the content as well as the general public interest.

Member States shall ensure that all video-sharing platform providers under their jurisdiction apply such measures. Those measures shall be practicable and proportionate, taking into account the size of the video-sharing platform service and the nature of the service that is provided. Those measures shall not lead to any ex-ante control measures or upload-filtering of content which do not comply with Article 15 of Directive 2000/31/EC. For the purposes of the protection of minors, provided for in point (a) of paragraph 1 of this Article, the most harmful content shall be subject to the strictest access control measures.

Those measures shall consist of, as appropriate:

- (a) including and applying in the terms and conditions of the video-sharing platform services the requirements referred to in paragraph 1;
- (b) including and applying in the terms and conditions of the video-sharing platform services 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;
- (c) having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications as far as they know or can be reasonably expected to know;
- (d) establishing and operating transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 provided on its platform;
- (e) establishing and operating systems through which video-sharing platform providers explain to users of video-sharing platforms what effect has been given to the reporting and flagging referred to in point (d);
- (f) 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;
- (g) establishing and operating easy-to-use systems allowing users of video-sharing platforms to rate the content referred to in paragraph 1;
- (h) providing for parental control systems that are under the control of the end-user with respect to content which may impair the physical, mental or moral development of minors;
- (i) establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the video-sharing platform provider in relation to the implementation of the measures referred to in points (d) to (h);
- (j) providing for effective media literacy measures and tools and raising users' awareness of those measures and tools.

Personal data of minors collected or otherwise generated by video-sharing platform providers pursuant to points (f) and (h) of the third subparagraph shall not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.

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

5. Member States shall establish the necessary mechanisms to assess the appropriateness of the measures referred to in paragraph 3 taken by video-sharing platform providers. Member States shall entrust the assessment of those measures to the national regulatory authorities or bodies.

6. Member States may impose on video-sharing platform providers measures that are more detailed or stricter than the measures referred to in paragraph 3 of this Article . When adopting such measures, Member States shall comply with the requirements set out by applicable Union law, such as those set out in Articles 12 to 15 of Directive 2000/31/EC or Article 25 of Directive 2011/93/EU.

7. Member States shall ensure that out-of-court redress mechanisms are available for the settlement of disputes between users and video-sharing platform providers relating to the application of paragraphs 1 and 3. Such mechanisms shall enable disputes to be settled impartially and shall not deprive the user of the legal protection afforded by national law.

8. Member States shall ensure that users can assert their rights before a court in relation to video-sharing platform providers pursuant to paragraphs 1 and 3.

9. The Commission shall encourage video-sharing platform providers to exchange best practices on co-regulatory codes of conduct referred to in paragraph 4.

10. Member States and the Commission may foster self-regulation through Union codes of conduct referred to in Article 4a(2).

## 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~~ **AUTHORITIES AND BODIES OF THE MEMBER STATES**

### Article 30

~~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.~~

1. Each Member State shall designate one or more national regulatory authorities, bodies, or both . Member States shall ensure that they are legally distinct from the government and

functionally independent of their respective governments and 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.

2. Member States shall ensure that national regulatory authorities or bodies exercise their powers impartially and transparently and in accordance with the objectives of this Directive, in particular media pluralism, cultural and linguistic diversity, consumer protection, accessibility, non-discrimination, the proper functioning of the internal market and the promotion of fair competition.

National regulatory authorities or bodies 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. Member States shall ensure that the competences and powers of the national regulatory authorities or bodies , as well as the ways of making them accountable are clearly defined in law.

4. Member States shall ensure that national regulatory authorities or bodies have adequate financial and human resources and enforcement powers to carry out their functions effectively and to contribute to the work of ERGA. Member States shall ensure that national regulatory authorities or bodies are provided with their own annual budgets, which shall be made public.

5. Member States shall lay down in their national law the conditions and the procedures for the appointment and dismissal of the heads of national regulatory authorities and bodies or the members of the collegiate body fulfilling that function, including the duration of the mandate. The procedures shall be transparent, non-discriminatory and guarantee the requisite degree of independence. The head of a national regulatory authority or body or the members of the collegiate body fulfilling that function within a national regulatory authority or body may be dismissed if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance at national level . A dismissal decision shall be duly justified, subject to prior notification and made available to the public .

6. Member States shall ensure that effective appeal mechanisms exist at national level. The appeal body, which may be a court, shall be independent of the parties involved in the appeal.



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

#### Article 30a

1. Member States shall ensure that national regulatory authorities or bodies 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.
2. In the context of the information exchange under paragraph 1, when national regulatory authorities or bodies receive information from a media service provider under their jurisdiction that it will provide a service wholly or mostly directed at the audience of another Member State, the national regulatory authority or body in the Member State having jurisdiction shall inform the national regulatory authority or body of the targeted Member State.
3. If the regulatory authority or body of a Member State whose territory is targeted by a media service provider under the jurisdiction of another Member State sends a request concerning the activities of that provider to the regulatory authority or body of the Member State having jurisdiction over it, the latter regulatory authority or body shall do its utmost to address the request within two months, without prejudice to stricter time limits applicable pursuant to this Directive. When requested, the regulatory authority or body of the targeted Member State shall provide any information to the regulatory authority or body of the Member State having jurisdiction that may assist it in addressing the request.

#### Article 30b

1. The European Regulators Group for Audiovisual Media Services (ERGA) is hereby established.
2. It shall be composed of representatives of national regulatory authorities or bodies in the field of audiovisual media services with primary responsibility for overseeing audiovisual media services, or where there is no national regulatory authority or body, by other representatives as chosen through their procedures. A Commission representative shall participate in ERGA meetings.
3. ERGA shall have the following tasks:
  - (a) to provide technical expertise to the Commission:
    - in its task to ensure a consistent implementation of this Directive in all Member States,
    - on matters related to audiovisual media services within its competence ;

- (b) to exchange experience and best practices on the application of the regulatory framework for audiovisual media services, including on accessibility and media literacy;
- (c) to cooperate and provide its members with the information necessary for the application of this Directive, in particular as regards Articles 3, 4 and 7 ;
- (d) to give opinions, when requested by the Commission, on the technical and factual aspects of the issues pursuant to Article 2(5c), Article 3(2) and (3), point (c) of Article 4(4) and Article 28a(7).

4. ERGA shall adopt its rules of procedure.

## **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

~~Not later than 19 December 2011, and every 3 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.~~

~~The Commission shall monitor Member States' application of this Directive .~~

~~By ... [four years after entry into force of this amending Directive ] 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.

By ... [eight years after entry into force of this amending Directive ] 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, of the impact of this Directive and its added value.

The Commission shall keep the Contact Committee and ERGA duly informed of the other's work and activities.

The Commission shall ensure that information received from Member States on any measure that they have taken in the fields coordinated by this Directive is communicated to the Contact Committee and ERGA.

#### Article 33a

1. Member States shall promote and take measures for the development of media literacy skills.
2. By ... [four years after the date of entry into force of this amending Directive] and every three years thereafter, Member States shall report to the Commission on the implementation of paragraph 1.
3. The Commission shall, after consulting the Contact Committee, issue guidelines regarding the scope of such reports.

#### Article 34

Directive 89/552/EEC, as amended by the Directives listed in Annex I, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex I, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

#### Article 35

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

## Article 36

This Directive is addressed to the Member States.

Operative parts of amending directive:

### Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... **[21 months** after entry into force **of this amending Directive** ]. They shall **immediately** communicate the text of those provisions **to the Commission** .

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.