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**NOTE**

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From: Presidency  
To: Permanent Representatives Committee

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Subject: Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of **audiovisual media services** in view of changing market realities (First reading)  
- *General approach*

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1. At its meeting of 26 April 2017, Coreper discussed the above proposal on the basis of a note<sup>1</sup> which set out the state of the file and in particular highlighted three main issues on which guidance was sought.

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<sup>1</sup> doc. 8242/17

2. On 2 May 2017, the Audiovisual Attachés met to fine-tune the Presidency compromise text on a number of secondary issues<sup>2</sup>. During the course of this meeting the Commission, responding to Coreper's request, also presented technical information regarding the consequences of the Council extending the scope of the Directive (through changes to the definition of "video-sharing platform services") beyond the extension proposed by the Commission.
3. Coreper now has the task of preparing this file with a view to agreeing a general approach at the EYCS Council on 22 - 23 May 2017. With this in mind the Presidency has prepared a new text, which responds to the concerns expressed by delegations on the three main issues at the Coreper meeting of 26 April 2017 and seeks to find a balanced compromise between the different positions. This text can be found in the Annex with the most recent changes indicated in ***italics bold underlined*** and *[...]*.
4. The following changes have been introduced on the **main outstanding issues**:
  - a) ***Extension of scope to video-sharing platforms (VSPs)***

The Presidency's changes seek to clarify and make more precise the extension of scope in relation to video-sharing platforms:

    - a change to "significant *functionality* of the service" in the definition of VSPs in Article 1(1)(aa)(iii) and clarification of this new concept in relation to social media in a new recital 3b,
    - further clarification of the regulatory framework for social media (only audiovisual content is covered and only in relation to the protection of minors and protection against hate speech, violence and terrorism) in a recital 3a,
    - explicit clarification regarding the scope in relation to on-line newspapers (recitals 3 and 3c) has been added, and the exclusion of GIFs and non-commercial video-sharing platforms has been explicitly stated (both in recital 3c),

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<sup>2</sup> doc. 8464/17

- a new requirement has been added for the appropriate measures taken by Member States in relation to VSPs to be *practicable and proportionate*, and for the size of the platforms and nature of their service to be taken into account when determining the precise nature of the measures (Article 28a(2)).

b) ***Jurisdiction and cooperation procedures***

The Presidency has made a number of significant changes to both Article 3 (derogation from freedom of reception) and Article 4(2) (anti-circumvention procedure). The objective of these changes is to improve the functioning and rapidity of co-operation between Member States when dealing with problematic cross-border cases, and to allow a derogation in urgent cases relating to public security to take place more quickly.

The specific changes are:

- a new requirement for the Member State having jurisdiction to co-operate sincerely and swiftly in dealing with notifications of infringements in the context of derogations from freedom of reception (Article 3(3a)),
- for urgent cases constituting a clear and present risk to public security the requirements for there to have been *two* infringements to trigger a derogation is reduced to *one* (Article 3(6)),
- Article 4(2), dealing with co-operation in cases where services are wholly or mostly targeted at other Member States, has been substantially revised. Obligations for sincere and swift co-operation, full information, and explanation of reasoning by the Member State having jurisdiction have been added.

c) ***Promotion of European works*** (Article 13)

The Presidency has decided not to introduce any further changes in this article.

5. In addition, **minor clarifying changes** have been made in:
- Article 28b, where the rules to determine jurisdiction in the case of video-sharing platform providers have been further specified and the relationship with the e-Commerce Directive clarified, thereby providing further legal certainty;
  - the recital in the footnote 27, where "people with a visual and hearing disability" was added to keep the terminology coherent.

6. **Remaining reservations**

The reservations of the delegations to the main issues as well as to other issues are listed in the footnotes in the attached document.

7. **Task for Coreper**

Coreper is invited to address the outstanding reservations relating to the three main issues listed in point 3 as well as the other reservations concerning the rest of the text.

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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**

[...] <sup>34</sup>

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<sup>3</sup> Recitals will be dealt with at a later stage.

<sup>4</sup> The following formatting is used in the attached document: normal font reproduces the text of the 2010/13/EU AVMS Directive, **bold** and [...] indicates the amending provisions from the Commission proposal (doc. 9479/16), **bold underlined** and [...] indicate the changes made by the Presidency until the Audiovisual Attachés meeting on 2 May, and **italics bold underlined** and [...] indicate the most recent changes made by the Presidency following the Audiovisual Attachés meeting on 2 May.

## CHAPTER I

### DEFINITIONS

#### *Article 1*

1. For the purposes of this Directive, the following definitions shall apply<sup>5</sup>:
  - (a) 'audiovisual media service' means:<sup>6</sup>

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<sup>5</sup> *A new recital to be added:* **“In accordance with existing case law by the Court of Justice, the freedom to provide services guaranteed under the Treaties may be restricted for overriding reasons in the public interest, such as to obtain a high level of consumer protection, provided that such restrictions are justified, proportionate and necessary. Therefore, a Member State may take certain measures to ensure respect for its consumer protection rules which do not fall in the coordinated area of this Directive. Measures taken by a Member State to enforce its national consumer protection regime, including in relation to gambling advertising, would need to be justified, proportionate to the objective sought to attain, and necessary as required under EU case law. In any event, a receiving Member State must not take any measures which would prevent the re-transmission, in its territory, of television broadcasts coming from another Member State.”**

<sup>6</sup> *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. [...] 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 ***such as providing news in written form***. 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.”

- (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, 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:<sup>7</sup>
- (i) the service consists of the storage or livestreaming of [...] programmes or of user-generated videos, for which the video-sharing platform provider does not have editorial responsibility;
  - (ii) the organisation of the stored [...] or livestreamed programmes or user-generated videos is determined by the video-sharing platform provider [...] including by automatic means or algorithms, in particular by [...] displaying, tagging and sequencing;

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<sup>7</sup> CZ, DK, FI, IE, LU, NL, SE and UK delegations and the CION: reservation on the extension of scope of the video-sharing platform services to small platforms, livestreamed content and social media (this reservation also covers Article 28a).

- (iii) the principal purpose of the service, [...] a dissociable section [...] of that service or a significant [...] functionality of the service is devoted to providing programmes or user-generated videos to the general public, in order to inform, entertain or educate;<sup>8</sup> and

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<sup>8</sup> *A new recital 3a to be added: "Video sharing platform services provide audiovisual content which is increasingly accessed by the general public and in particular by young people. This also applies to social media services that have become an important medium to share information, entertain and educate, including by providing access to programmes and user-generated videos. These services compete for the same audiences and revenues as the audiovisual media services. Furthermore they also have a considerable impact [...] in that they facilitate the possibility for users to shape and influence the opinions of other users. [...] Therefore, in order to protect minors from harmful content and all citizens from incitement to hatred, violence and terrorism, it is reasonable to require that these services should be covered by this Directive. In the case of social media services, these services should be covered insofar as and to the extent that they meet the requirements defining a video-sharing platform service."*

*A new recital 3b to be added: "While the aim of this Directive is not to regulate social media services as such, social media services should be covered if the provision of programmes and user-generated videos constitute a significant functionality of that service. The provision of programmes and user-generated content could be considered to constitute a significant functionality of the social media service if the audiovisual content is not merely ancillary to the activities of that social media service. The assessment whether the provision of programmes and user-generated videos constitutes a significant functionality should be carried out on a case-by-case basis, taking into consideration the totality of the functionalities offered by the service, the average use by the recipients of the service or the perception by the general public. Criteria [...] could also include [...] whether the service has put in place shared revenue models for the distribution and placement of audiovisual commercial communications in and around the [...] programmes and user-generated videos. [...]"*

*A new recital 3c to be added: "Where a dissociable section of the service constitutes a video-sharing platform service for the purposes of this Directive, only that section should be covered by the provisions applicable to video-sharing platforms in the Directive, and only as regards programmes and user-generated videos. Video clips embedded in editorial content of electronic versions of newspapers and magazines and animated images such as GIFS should not be covered by this Directive. The definition of a video-sharing platform service should not cover non-economic activities, such as audiovisual content on private websites and non-commercial communities of interest."*



- (iv) the service is made available by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC;
- (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, 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;
- (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<sup>9</sup>*

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.

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<sup>9</sup> HU, PL and PT: general reservation on Articles 2, 3 and 4 because they do not address the shortcomings of the country of origin principle.

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:<sup>10</sup>
- (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 regular basis**<sup>11</sup> 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 regular basis in another Member State or other Member States, it shall be deemed to be established in the Member State where the majority of the workforce<sup>12</sup> involved in the pursuit of the programme-related audiovisual media service activities operates;**<sup>13</sup>
  - (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.

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<sup>10</sup> EL and HU reservation: a new criterion to determine jurisdiction according to the Member State that is targeted by the audiovisual commercial communications to be added.

<sup>11</sup> ***A new recital to be added: "Effective editorial responsibility is ensured through editorial decisions taken on a regular basis. In order to assess where editorial decisions are taken on a regular basis, account should be taken of the frequency of such decisions and their link to the day-to-day operation of the audiovisual media service."***

<sup>12</sup> ***A following recital to be added: "If editorial decisions are taken on a regular basis in more than two Member States, the majority is determined on the basis of the biggest share of the workforce involved in the pursuit of programme-related audiovisual media service activities."***

<sup>13</sup> LU and UK: reservation on the “majority of the workforce”.

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.

**5-a. 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 and maintain an up-to-date list of the audiovisual media service providers under their jurisdiction and indicate on which [...] criteria set out in paragraphs 2 to 5, their jurisdiction is based [...]. Member States shall communicate this list, including any updates, to the Commission. In case 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 have access to this [...] list. 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) to provide an opinion in accordance with Article 30a(3)(e) on the matter within 15 working days from submission of the Commission's request. [...] The Commission shall keep the Contact Committee duly informed.<sup>14 15</sup>
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.

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<sup>14</sup> *Recital 5 to be modified as follows:* "Establishing jurisdiction requires an assessment of factual situations against the criteria laid down in Directive 2010/13/EU. The assessment of such factual situations might lead to conflicting results. In the application of the cooperation procedures provided for in Articles 3 and 4 of Directive 2010/13/EU, it is important that the Commission can base its findings on reliable facts. The European Regulators Group for Audiovisual Media Services (ERGA) should therefore be empowered to provide opinions on jurisdiction upon the Commission's request. Where the Commission in the application of Articles 3 and 4 of Directive 2010/13/EU decides to consult ERGA, it should provide the Contact Committee with information, including on a notification received from a Member State under these cooperation procedures, and on ERGA's opinion."

<sup>15</sup> ES reservation: ERGA and the Contact Committee should be treated equally (also concerns Article 3(4) and Article 4(4)(c) where the same provision is used).

2. Member States may provisionally derogate from paragraph 1 if an audiovisual media service provided by a media service provider under the jurisdiction of another Member State:
- (a) manifestly, seriously and gravely infringes Articles 6 or 12(1) [...];
  - (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:
- (a) during the 12 months preceding the notification referred to in point (b) of this paragraph, the broadcaster [...] has, in the opinion of the Member State concerned, [...] infringed point (a), (b) or (c) of paragraph 2 on at least two occasions;<sup>16</sup>
  - (b) the Member State concerned has notified the media service provider, the Member State which has jurisdiction over [...] that provider and the Commission in writing of the alleged [...] infringements and of the measures it intends to take should any such alleged [...] infringements occur again;
  - (c) consultations with the Member State which has jurisdiction over the provider and the Commission have not produced an amicable settlement within one month of the notification provided for in point (b);
  - (d) the [...] broadcaster has [...] infringed point (a), (b) or (c) of paragraph 2 at least once after the notification provided for in point (b) of this paragraph;

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<sup>16</sup> LT: reservation on two infringements.



- (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 [...] infringements within a period set out in national law and the measures that [...] the notifying Member State intends to take. It shall duly [...] 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.

3a. Where a Member State which has jurisdiction over a media service provider has received a request for consultation under paragraph 3(c), it shall give due consideration to that request and cooperate sincerely and swiftly with the Member State concerned with a view to reaching an amicable settlement.

4. The Commission shall, within three months following the complete notification of the measures taken by the Member State in application of paragraphs 2 and 3 [...] take a decision on whether those measures are compatible with Union law. [...] The Commission may request ERGA to provide an opinion in accordance with Article 30a(3)(e). The Commission shall keep the Contact Committee duly informed [...].

The notification shall be considered as complete if it contains all information necessary to assess the criteria in paragraph 2 and the conditions in paragraph 3 and if, within [...] one month from its receipt, [...] the Commission does not request any further information strictly necessary to reach a decision.

[...]

Where the Member State concerned does not provide [...] this information [...] within the period [...] set out by the Commission [...], the Commission shall [...] reject the notification on the grounds of incomplete notification. As a result, the Member State shall put an end to the measures in question as a matter of urgency, 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.**

**5. Paragraphs 3 and 4 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.**

**6. Without prejudice to point (e) of paragraph 3, Member States may, in urgent cases, derogate from the conditions laid down in points (b) [...] to (d) of paragraph 3.<sup>17</sup>**

***In urgent cases that constitute a clear and present risk to public security and without prejudice to point (e) of paragraph 3, Member States may additionally derogate from the conditions laid out in point (a) of paragraph 3 if the Member State concerned considers that the broadcaster has infringed point (b) of paragraph 2 on at least one occasion and that Member State provisionally derogates from paragraph 1 within one month following such alleged infringement.***

***Where a Member State applies this paragraph [...], the measures shall be notified in the shortest possible time to the media service provider, the Commission and to the Member State which has jurisdiction over the media service provider, setting out the reasons for which the Member State considers that there is such urgency that derogating from those conditions referred to in this paragraph is necessary.***

**7. [...] 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 require the Member State concerned to [...] urgently put an end to those measures.**

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<sup>17</sup> LT: reservation on the need to wait for two infringements before triggering a derogation procedure in urgent cases.

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.

*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 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 under the jurisdiction of another Member State provides [...] an audiovisual media service which is wholly or mostly directed towards its territory;

it may request the Member State having jurisdiction to address any identified problems under this paragraph. Where a Member State which has jurisdiction over a media service provider has received such a request, it shall cooperate sincerely and swiftly with the Member State concerned with a view to assessing the identified problems and finding [...] a mutually satisfactory solution. On receipt of a substantiated request by the [...] Member State concerned, the Member State having jurisdiction shall request the [...] media service provider to comply with the rules of general public interest in question. When requesting the media service provider to comply with the rules of general public interest in question, the Member State having jurisdiction shall fully inform the Member State concerned of its contacts with the media service provider concerned. Either Member State may invite the Contact Committee established pursuant to Article 29 to examine the case.

The Member State having jurisdiction shall inform the [...] Member State **concerned and the Commission** of the results obtained following the request **addressed to the media service provider concerned** within 2 months. **The Member State having jurisdiction over that media service provider shall explain the reasons where a solution could not be found.**

3. The first Member State may adopt appropriate **and effective** measures against the **[...] media service provider** concerned where it assesses that:
- (a) the results achieved through the application of paragraph 2 are not satisfactory; and
  - (b) 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 first Member State.<sup>18</sup>

**[...]**

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 where the following conditions are met:**
- (a) **it has notified the Commission and the Member State in which the [...] media service provider is established of its intention to take such measures while substantiating the grounds on which it bases its assessment;**
  - (b) **it has respected the rights of defence of the [...] media service provider concerned and, in particular, has given the [...] media service provider the opportunity to express its views on the alleged circumvention and the measures the notifying Member States intends to take;**

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<sup>18</sup> EL, HU, PL and SI: reservation on the efficiency of the circumvention procedure as the intention to circumvent the rules is very difficult to prove.

(c) the Commission has decided [...] that the measures are compatible with Union law, 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 to provide an opinion in accordance with Article 30a(3)(e). The Commission shall keep the Contact Committee duly informed.

5. The Commission shall decide within 3 months following the complete notification provided for in point (a) of paragraph 4 [...]. The notification shall be considered as complete if, within [...] one month from its receipt [...], the Commission does not request any further information strictly necessary to reach a decision.

[...]

Where the Member State concerned does not provide [...] this information [...] within the period [...] set out by the Commission, [...] the Commission shall [...] reject the notification on the grounds of incomplete notification. As a result, the Member State shall refrain from taking the 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. [...] <sup>19</sup>

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.

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<sup>19</sup> Text moved to Article 4a.

Article 4a (new)

**1. Member States [...] are encouraged to use co-regulation and to foster 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 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 [...].**

**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. These codes shall be 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.**

**The Commission shall make these codes publicly available and may give them appropriate publicity.**

**The draft Union codes of conduct [...] and amendments [...] thereof shall be submitted to the Commission by the signatories of these codes. [...] The Commission [...] shall consult the Contact Committee on those draft codes or amendments thereof.**

**[...]**

## CHAPTER III

### PROVISIONS APPLICABLE TO AUDIOVISUAL MEDIA SERVICES

#### *Article 5*

**1a.** 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) the Member State having jurisdiction over the media service providers and the competent regulatory authorities or supervisory bodies.

**1b. Member States may adopt legislative measures providing that, in addition to the information listed in paragraph 1, audiovisual media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners, as well as information related to politically exposed persons who own media service providers, provided that such measures respect the essence of the fundamental rights and freedoms concerned and are necessary and proportionate in a democratic society to safeguard an objective of general interest.**<sup>20 21</sup>

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<sup>20</sup> *A new recital to be added: "Transparency of media ownership is directly linked to the freedom of expression, a cornerstone of democratic systems. Information concerning the ownership structure of audiovisual media service providers, where such ownership results in the control or the exercise of a significant influence over the content of the services provided, allows users to make an informed judgement about such content. Member States should be able to determine whether and to what extent information about the ownership of a media service provider should be accessible to users, provided that the essence of the fundamental rights and freedoms concerned is respected and that such measures are necessary and proportionate. Member States should also be able to determine whether and to what extent it is necessary and proportionate that politically exposed persons declare their ownership of media service providers and that information concerning such ownership should be accessible to users, provided that the essence of the fundamental rights and freedom concerned is respected."*

*A new recital to be added: "Because of the specific nature of audiovisual media services, especially the impact of these services on the way people form their opinions, users have a legitimate interest in knowing who is responsible for the content of these services. In order to strengthen freedom of expression, and by extension, to promote media pluralism and to avoid conflicts of interest, it is important for Member States to ensure that users have easy and direct access at any time to information about media service providers. It is for each Member State to decide, in particular with respect to the information which may be provided on ownership structure, beneficial owners and politically exposed persons, how this objective can be achieved without prejudice to any other relevant provisions of Union law and ensuring, in particular, full compliance with the provisions of the General Data Protection Regulation (EU) No 2016/679 and Articles 7, 8 and 52 of the Charter." (modified recital 45 of the 2010/13/AVMS directive)*

<sup>21</sup> SE, UK and CION: scrutiny reservation.



*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 directed against a group of persons or a member of such a group defined by reference to sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;**<sup>22 23</sup>

**ab) [...] public provocation to commit a terrorist offence as set out in Article 5 of Directive 2017/XXX/EU on combating terrorism.**<sup>24 25</sup>

*Article 6a*

[...]<sup>26</sup>

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<sup>22</sup> ***Recital 8 to be modified:*** "In order to ensure coherence and give certainty to businesses and Member States' authorities, the notion of "incitement to **violence or** hatred" should, to the appropriate extent, be aligned to the definition in the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law [...]."

<sup>23</sup> **SE:** reservation on the extension of grounds for incitement to violence and hatred (also applies to Article 28a(1)(b)).

<sup>24</sup> ***A new recital 8a to be added:*** "**The terrorist threat has grown and evolved in recent years. Offences related to terrorist activities are of a very serious nature as they can lead to a terrorist act being committed. Therefore, and in order to protect the population from such threats, there is a need to address public provocation to commit a terrorist offence in this Directive. This should be aligned, to the appropriate extent, with Article 5 of Directive on Combating Terrorism, in order to ensure coherence and give legal certainty to businesses and Member States' authorities.**"

<sup>25</sup> **CION:** scrutiny reservation on adding terrorism.

<sup>26</sup> Text moved to Article 12(1a).

Article 7<sup>27</sup>

1. Member States shall ensure that media service providers under their jurisdiction develop appropriate and proportionate measures to enable their services to be made progressively accessible to people with a visual or hearing disability.
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.<sup>28</sup>
3. [...] Member States shall ensure that emergency information, including public communications and announcements in natural disaster situations, which is made public through audiovisual media services, is provided in a manner which is accessible to people with a visual or hearing disability.<sup>29</sup>

*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.

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<sup>27</sup> CIION: scrutiny reservation on re-including Article 7 due to the parallel proposal of the horizontal European Accessibility Act which covers also accessibility requirements in audiovisual media services.

<sup>28</sup> A new recital to be added: "When deciding about the means to achieve accessibility in audiovisual media services under their jurisdiction, Member States can take into account criteria such as whether the provider has a low audience or low turnover. In order to measure the progress that media service providers have made in making their services progressively accessible to people with visual or hearing disabilities, Member States should require from the providers established on their territory to report to them on a regular basis."

<sup>29</sup> A new recital to be added: "Emergency information should continue to be made public through audiovisual media services even if there are circumstances where it is not possible to provide such information in a manner that is accessible to people with a visual or hearing disability."

## 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. 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 covered by Article 20 of the Directive 2014/40/EU [...]** 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 [...] are encouraged [...] to use co-regulation and to foster 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 [...], of foods and beverages containing nutrients, and substances with a nutritional or physiological effect, in particular fat, saturated fats, 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 [...] limit 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 [...] shall also ensure that audiovisual commercial communications [...] do not [...] emphasise the positive quality of the nutritional aspects of such foods and beverages.**

**[...]**

3. **[...] Member States [...] are encouraged [...] to use co-regulation and to foster 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 limit the exposure of minors to audiovisual commercial communications for alcoholic beverages.**
4. **The Commission [...] shall encourage the exchange of best practices on self- and co-regulatory [...] codes of conduct referred to in paragraphs 2 and 3. [...]**
- 4a. Member States and the Commission may foster self-regulation through Union codes of conduct 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**;<sup>30 31</sup>

(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 covered by Article 20 of the Directive 2014/40/EU**.
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 choose to prohibit the showing of a sponsorship logo during children's programmes, documentaries and religious programmes.

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<sup>30</sup> ***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. [...] 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."

<sup>31</sup> **ES:** reservation on restricting the use of sponsorship.

Article 11

1. Paragraphs 2, 3 and 4 shall apply only to programmes produced after 19 December 2009.
2. Product placement shall be [...] allowed in all audiovisual media services, except in news and current affairs programmes, consumer affairs programmes, religious programmes and children's programmes [...].<sup>32</sup>
3. Programmes that contain product placement shall meet the following requirements:
  - (a) their content and organisation in a schedule, in the case of television broadcasting, [...] or in a catalogue in the case of on-demand audiovisual media service, 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;<sup>33</sup>
  - (ba) they shall not give undue prominence to the product in question;<sup>34</sup>

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<sup>32</sup> *Recital 16 to be modified as follows:* "Product placement should not be allowed in news and current affairs programmes, consumer affairs programmes, religious programmes and children's programmes [...]. In particular, evidence shows that product placement and embedded advertisements can affect children's behaviour as children are often not able to recognise the commercial content. There is thus a need to continue to prohibit product placement in children's programmes [...]. Consumer affairs programmes are programmes offering advice to viewers, or including reviews on the purchase of products and services. Allowing product placement in such programmes would blur the distinction between advertising and editorial content for viewers who may expect a genuine and honest review of products or services in such programmes."

<sup>33</sup> ES: reservation on restricting the use of product placement.

<sup>34</sup> ES and PT: reservation on restricting the use of product placement.

- (c) viewers shall be clearly informed of the existence of product placement [...] by an **appropriate identification** 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.

[...] Member States may [...] waive the requirements set out in point (c) [...] **except for programmes produced or commissioned by the media service provider [...] or by a company affiliated to [...] that 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 covered by Article 20 of the Directive 2014/40/EU [...] or product placement from undertakings whose principal activity is the manufacture or sale of [...] 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.**



- 1. Member States shall take appropriate measures to ensure that programmes provided by audiovisual 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 [...] strict access control measures, such as encryption and effective parental controls, without prejudice to Member States adopting stricter measures.<sup>35 36</sup>**

**The Commission may encourage media service providers to exchange best practices on co-regulatory codes of conduct. Where appropriate, Member States and the Commission may [...] foster self-regulation through Union codes of conduct referred to in Article 4a(2).**

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<sup>35</sup> **A new recital to be added: “The appropriate measures for the protection of minors applicable to television broadcasting services should also apply to on-demand audiovisual media services. This should increase the level of protection. The minimum harmonisation approach allows Member States to develop a higher degree of protection for content which may impair the physical, mental or moral development of minors. The most harmful content, which may impair the physical, mental or moral development of minors, but is not necessarily a criminal offence, should be subject to the strictest measures ensuring that such content is only accessible to adults.”**

<sup>36</sup> **PL:** reservation on relaxing the rules for the most harmful content on TV. **DE:** reservation on using the term “the most harmful content” instead of the original term “programmes...which might seriously impair”.

1a.<sup>37</sup> 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.<sup>38</sup>

For the implementation of this [...] paragraph, Member States [...] are encouraged to use co-regulation as provided for in Article 4a(1).

The Commission [...] shall encourage media service providers to exchange best practices on co-regulatory [...] 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.

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

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<sup>37</sup> Text moved from Article 6a.

<sup>38</sup> ***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 [...], an acoustic warning, a visual symbol or any other means, describing the nature of the content.”

## CHAPTER IV

*[deleted]*

### Article 13

1. Member States shall ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 20% share of European works in their catalogues and ensure prominence of these works<sup>39, 40</sup>

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<sup>39</sup> *Recital 21 to be modified as follows:* "Providers of on-demand audiovisual media services should promote the production and distribution of European works by ensuring that their catalogues contain a minimum share of European works and that those are given enough prominence. **Prominence is about promoting European works through facilitating access to such works. Prominence can be ensured through various means such as a dedicated section for European works that is accessible from the service homepage, possibility to search for European works in the search tool available as part of the service, the use of European works in campaigns of the service or a minimum percentage of European works promoted from the catalogue e.g. by using banners or similar tools.**"

<sup>40</sup> CZ, DE, DK, FI, NL, LU, SE and UK reservation on the quota obligation for on-demand services. ES and FR: reservation on the amount of the percentage share which should be raised to 30%.

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. 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 such a financial contribution, it shall take into account any financial contributions imposed by targeted Member States.<sup>41</sup> Any financial contribution shall comply with Union law, in particular with State aid rules.<sup>42</sup>**
3. **Member States shall report to the Commission by [date – no later than three years after adoption] at the latest and every two years thereafter on the implementation of paragraphs 1 and 2.**

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<sup>41</sup> ***Recital 24 to be modified as follows:*** "When Member States impose financial contributions to media service providers [...], such contributions [...] **should** seek an adequate promotion of European works while avoiding risks of double imposition for media service providers. With this view, if the Member State where the media service provider is established imposes a financial contribution, it [...] **should** take into account any financial contributions imposed by targeted Member States."

<sup>42</sup> **FI, LU, NL and UK:** reservation on the financial contribution and in particular on the possibility for a Member State to require such a contribution from media service providers established outside its territory, but targeting its audience.

4. 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.
5. [...] 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 in cases where they would be impracticable or unjustified by reason of the nature or theme of the [...] audiovisual media services.<sup>43</sup>
- 5a. 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 5 after consulting the Contact Committee.

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<sup>43</sup> *Recital 25 to be modified as follows:* "In order to ensure that obligations on promotion of European works do not undermine market development and to allow for the entry of new players in the market, companies with no significant presence on the market should not be subject to such requirements. This is in particular the case for companies with **a low turnover** and low audience [...]. **Low audience can be determined for instance on the basis of a viewing time or sales, depending on the nature of the service, while the determination of low turnover should take into account the different sizes of audiovisual markets in Member States.** It could also be inappropriate to impose such requirements in cases where - given the nature or theme of the on-demand audiovisual media services - they would be impracticable or unjustified."

## 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 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 minutes.**<sup>44</sup> 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 [...] **shall** 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;

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<sup>44</sup> DE and PT: reservation on extending the time between advertising breaks from 20 to 30 mins.

- (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. 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 in paragraph 1a.<sup>45</sup>**

*Article 23*

1. **The [...] proportion of television advertising spots and teleshopping spots 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 00:00 shall not exceed 20 % of that period.<sup>46 47</sup>**

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<sup>45</sup> AT, EL and LV reservation: sponsorship and product placements should also comply with stricter criteria on alcohol advertising.

<sup>46</sup> ***Recital 19 to be modified as follows: "[...] It is important for broadcasters to have more flexibility and to be able to decide when to place advertising in order to maximise advertisers' demand and viewers' flow. Thus, for the period from 06:00 to 18:00, the limit of 20% of advertising should be calculated on the basis of that period. In the same way, for the period from 18:00 to 00:00, the limit of 20 % of advertising should be calculated on the basis of that period. [...]"***

<sup>47</sup> DE, ES, FI, NL and PT: reservation on reducing flexibility for the quantitative limit of TV advertising.

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) product placements;

**(ca) neutral frames between editorial content and television advertising or teleshopping spots, and between individual spots.**<sup>48</sup>

*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.

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<sup>48</sup> **A new recital to be added: "Neutral frames separate editorial content from television advertising or teleshopping spots, as well as separate individual spots. They allow the viewer to clearly distinguish when one type of audiovisual content ends and the other starts. It is necessary to clarify that neutral frames are excluded from the quantitative limit set out for television advertising. This is in order to ensure that the time used in neutral frames does not impact on the time used for advertising and that revenues generated from the advertising are not negatively affected."**

*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.

*Article 27*

[deleted]

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. **Without prejudice to Articles 14 and 15 of Directive 2000/31/EC, Member States shall ensure that video-sharing platform providers under their jurisdiction take appropriate measures to:**
  - (a) **protect minors from [...] programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development;**
  - (b) **protect [...] 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 such a group defined by reference to sex, [...] racial or ethnic origin, nationality, religion or belief, [...] disability, age or sexual orientation;**

**(ba) protect the general public from programmes, user-generated videos and audiovisual commercial communications containing the public provocation to commit a terrorist offence as set out in Article 5 of Directive 2017/XXX/EU on combating terrorism;**

- 1a. Member States shall ensure that video-sharing platform providers comply with the requirements set out in Article 9(1) with respect to audiovisual commercial communications that are marketed, sold and arranged by those video-sharing platform providers. Taking into account the limited control exercised by video sharing platforms over audiovisual commercial communication that are not marketed, sold and arranged by those video sharing platform providers, Member States shall ensure that the video sharing platform providers take appropriate measures to comply with the requirements set out in Article 9(1).**
- 2. [...] For the purposes of paragraphs 1 and 1a, 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 and/or uploaded the content as well as the public interest. *The 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.***



[...] Such measures shall [...] include, as appropriate:<sup>49</sup>

- (a) [...] including and applying, in the terms and conditions of the video-sharing platform [...] services, [...] the requirements not to incite to violence or hatred as referred to in point (b) of paragraph 1 and not to publicly provoke the commitment of terrorist offences as referred to in point (ba) of paragraph 1, in accordance with Article 6, as well as the [...] concept of content which may impair the physical, mental or moral development of minors, in accordance with Article [...] 12(1) [...];
- (aa) [...] 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;
- (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 or livestreamed 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;

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<sup>49</sup> FR: reservation on the measures not being sufficiently comprehensive; FR wants to include additional measures.

- (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 [...] **paragraph 2**, Member States [...] **are encouraged to use** co-regulation as provided for in Article **4a(1)**.
4. Member States shall establish the necessary mechanisms to assess the appropriateness of the measures, referred to in paragraph 2 [...] taken by video-sharing platform providers. Member States shall entrust [...] the **assessment of those measures to the national regulatory authorities [...]**.<sup>50</sup>

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<sup>50</sup> FR: reservation, FR wants to introduce an obligation to consult among national authorities concerned on the appropriateness of the measures.

5. Member States [...] may impose on video-sharing platform providers measures that are more detailed or stricter than the measures referred to in [...] paragraph 2. [...] When adopting such measures, [...] Member States shall [...] comply with the requirements set out by applicable Union law, such as [...] those set in Articles 14 and 15 of Directive 2000/31/EC or Article 25 of Directive 2011/93/EU. <sup>51</sup>
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 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 [...] shall encourage video-sharing platform providers to exchange best practices on co-regulatory [...] codes of conduct referred to in paragraph 3 [...].
8. [...] Member States and the Commission may [...] foster self-regulation through Union codes of conduct referred to in Article 4a(2).

*Article 28b*

- 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.

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<sup>51</sup> CZ, LU and NL delegations and the CION: reservation on the change to the minimum harmonisation.

1. [...] 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 parent undertaking as defined in point 9 of Article 2 of Directive 2013/34/EC;
- b) "subsidiary undertaking" means subsidiary undertaking as defined in point 10 of Article 2 of Directive 2013/34/EC;
- c) "group" means a parent [...] undertaking, all its [...] subsidiary undertakings and all other undertakings which are part of the group.

1a. For the purposes of applying [...] paragraph 1, 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.

**1b.** For the purposes of applying [...] paragraph 1a, 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.

**1c.** *For the purposes of this Directive, Articles 3, 12, 13, 14 and 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 1.*

2. 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 [...] criteria, set out in [...] paragraph -1 and 1, [...] their jurisdiction is based. [...] Member States shall communicate this list, including any updates, to the Commission. In case 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 have access to this [...] list. 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

### REGULATORY AUTHORITIES OR BODIES OF THE MEMBER STATES

#### *Article 30*

1. Each Member State shall designate one or more [...] national regulatory authorities or bodies. 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.<sup>52</sup>

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<sup>52</sup> *Recital 33 to be modified as follows: “**Member States should ensure that their national regulatory authorities are legally distinct from the government. However, this should not preclude Member States from exercising supervision in accordance with their national constitutional law.** Regulatory authorities **or bodies** of the Member States **should be considered to have achieved** the requisite degree of [...] independence [...] **if those regulatory authorities or bodies, including those that are constituted as public authorities or bodies, are functionally and effectively independent of their respective governments and of any other public or private body. [...] This is considered essential** to ensure the impartiality of [...] decisions **taken by a national regulatory authority or body.** **The** requirement of independence should be without prejudice to the possibility for Member States to establish regulators having oversight over different sectors, such as **the** audiovisual and tele**communications sectors**. 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 or bodies exercise their powers impartially and transparently and in accordance with the objectives of this Directive [...]. 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. The competences and powers of the [...] regulatory authorities or bodies, 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 or bodies have adequate financial and human resources and enforcement powers to carry out their functions effectively. Member States shall ensure that national regulatory authorities or bodies have separate annual budgets which shall be made public.
5. 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 only 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 made public [...].
6. *[deleted]*
7. 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 30-a (new)

**Member States shall ensure that their 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.**

**Member States shall ensure that, when their national regulatory authorities or bodies receive information from a media service provider under their jurisdiction that it wishes to 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 receiving Member State.**

*Article 30a<sup>53 54</sup>*

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

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<sup>53</sup> *Recitals 36 and 37 are to be modified as follows:*

- (36) ERGA has made a positive contribution towards consistent regulatory practice and has provided high level advice to the Commission on implementation matters. This calls for the formal recognition and reinforcement of its role in this Directive. The group should therefore be [...] established by virtue of this Directive.
- (37) The Commission should be free to consult ERGA on any matter relating to audiovisual media services and video-sharing platforms. ERGA should assist the Commission by providing [...] **technical** expertise and advice and by facilitating **the** exchange of best practices, **including on self- and co-regulatory codes of conduct**. In particular, the Commission should consult ERGA in the application of Directive 2010/13/EU with a view to facilitating its convergent implementation [...]. Upon the Commission's request, ERGA should provide **non-binding** opinions [...] on jurisdiction, **on measures derogating from freedom of reception and on measures addressing circumvention of jurisdiction**. **ERGA should also be able to provide technical advice on any regulatory matter related to audiovisual media service framework, including [...]** in the area of protection of minors and hate speech, as well as **on the content of** audiovisual commercial communications for foods high in fat, salt/sodium and sugars.

<sup>54</sup> **CION**: reservation on the reduced role of ERGA.

2. It shall be composed of [...] representatives of national [...] regulatory authorities or bodies in the field of audiovisual media services [...]. A Commission representative shall participate in [...] ERGA meetings.
3. ERGA shall have the following tasks:
  - (a) to [...] provide technical expertise to the Commission [...] to ensure a consistent implementation [...] of the regulatory framework for audiovisual media services;
  - (b) *[deleted]*
  - (c) to [...] exchange experience and [...] best practices [...] on the application of the regulatory framework for audiovisual media services;<sup>55</sup>
  - (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 [...] pursuant to Articles 2(5b), 3(4) and 4(4)(c).
4. [...] ERGA shall adopt its rules of procedure.

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<sup>55</sup> NL reservation: ERGA's role in the exchange of experience and best practices, including on co- and self-regulatory codes of conduct, should be recognised.

## 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 [...].**

**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.**

**By [date - no later than [...] eight 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 [...] 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*