

Directive 2010/13/EU of the European Parliament and of the Council
of 10 March 2010 on the coordination of certain provisions laid
down by law, regulation or administrative action in Member States
concerning the provision of audiovisual media services (Audiovisual
Media Services Directive) (codified version) (Text with EEA relevance)

[^{F1}CHAPTER IXA

PROVISIONS APPLICABLE TO VIDEO-SHARING PLATFORM SERVICES

Article 28a

1 For the purposes of this Directive, a video-sharing platform provider established on the territory of a Member State within the meaning of Article 3(1) of Directive 2000/31/EC shall be under the jurisdiction of that Member State.

2 A video-sharing platform provider which is not established on the territory of a Member State pursuant to paragraph 1 shall be deemed to be established on the territory of a Member State for the purposes of this Directive if that video-sharing platform provider:

- a has a parent undertaking or a subsidiary undertaking that is established on the territory of that Member State; or
- b is part of a group and another undertaking of that group is established on the territory of that Member State.

For the purposes of this Article:

- a ‘parent undertaking’ means an undertaking which controls one or more subsidiary undertakings;
- b ‘subsidiary undertaking’ means an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking;
- c ‘group’ means a parent undertaking, all its subsidiary undertakings and all other undertakings having economic and legal organisational links to them.

3 For the purposes of applying paragraph 2, where the parent undertaking, the subsidiary undertaking or the other undertakings of the group are each established in different Member States, the video-sharing platform provider shall be deemed to be established in the Member State where its parent undertaking is established or, in the absence of such an establishment, in the Member State where its subsidiary undertaking is established or, in the absence of such an establishment, in the Member State where the other undertaking of the group is established.

4 For the purposes of applying paragraph 3, where there are several subsidiary undertakings and each of them is established in a different Member State, the video-sharing platform provider shall be deemed to be established in the Member State where one of the subsidiary undertakings first began its activity, provided that it maintains a stable and effective link with the economy of that Member State.

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

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

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

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

7 Where, in applying this Article, the Member States concerned do not agree on which Member State has jurisdiction, they shall bring the matter to the Commission's attention without undue delay. The Commission may request ERGA to provide an opinion on the matter in accordance with point (d) of Article 30b(3). ERGA shall provide such an opinion within 15 working days from the submission of the Commission's request. The Commission shall keep the Contact Committee duly informed.

Article 28b

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

- a minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 6a(1);
- b the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter;
- c the general public from programmes, user-generated videos and audiovisual commercial communications containing content the dissemination of which constitutes an activity which is a criminal offence under Union law, namely public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541, offences concerning child pornography as set out in Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council⁽¹⁾ and offences concerning racism and xenophobia as set out in Article 1 of Framework Decision 2008/913/JHA.

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

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

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

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

3 For the purposes of paragraphs 1 and 2, the appropriate measures shall be determined in light of the nature of the content in question, the harm it may cause, the characteristics of the category of persons to be protected as well as the rights and legitimate interests at stake, including those of the video-sharing platform providers and the users having created or uploaded the content as well as the general public interest.

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

Those measures shall consist of, as appropriate:

- a including and applying in the terms and conditions of the video-sharing platform services the requirements referred to in paragraph 1;
- b including and applying in the terms and conditions of the video-sharing platform services the requirements set out in Article 9(1) for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform providers;
- c having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications as far as they know or can be reasonably expected to know;
- d establishing and operating transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 provided on its platform;
- e establishing and operating systems through which video-sharing platform providers explain to users of video-sharing platforms what effect has been given to the reporting and flagging referred to in point (d);
- f establishing and operating age verification systems for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors;
- g establishing and operating easy-to-use systems allowing users of video-sharing platforms to rate the content referred to in paragraph 1;
- h providing for parental control systems that are under the control of the end-user with respect to content which may impair the physical, mental or moral development of minors;

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- i establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the video-sharing platform provider in relation to the implementation of the measures referred to in points (d) to (h);
- j providing for effective media literacy measures and tools and raising users' awareness of those measures and tools.

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

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

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

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

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

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

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

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

Textual Amendments

- F1** Inserted by [Directive \(EU\) 2018/1808 of the European Parliament and of the Council of 14 November 2018 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 \(Audiovisual Media Services Directive\) in view of changing market realities.](#)

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- (1) [^{F1}Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).]

Textual Amendments

- F1** Inserted by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 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 (Audiovisual Media Services Directive) in view of changing market realities.