

**THE COMPARISON BETWEEN THE CURRENT AUDIOVISUAL MEDIA SERVICES (ADVMS) DIRECTIVES AND THE PROPOSAL FOR AMENDING THE DIRECTIVES PROPOSED BY THE EUROPEAN COMMISSION.**

**SPECIFIC PROVISION RELATED TO MINOR PROTECTION AND CONSUMER LITERACY.**

	<b>PROPOSAL</b>	<b>CURRENT DIRECTIVES</b>	<b>EXPLANATORY NOTE OF THE PROPOSAL.</b>
<b>INTRODUCTION</b>	<p>The audiovisual media landscape is changing at a rapid pace due to ever-increasing convergence between television and services distributed via the internet. Consumers increasingly access on-demand content via smart/connected TVs and portable devices. Young consumers, particularly, watch videos, including user-generated content, on the internet.</p> <p>However, TV broadcasting, video-on-demand and user-generated content are subject to different rules and varying levels of consumer protection.</p> <p>The Digital Single Market (DSM) strategy for Europe calls for a modernization of the Audiovisual Media Services Directive (AVMSD) to reflect these market, consumption and technological changes. It requires the Commission to focus on the scope of application of the AVMSD and on the nature of the rules applicable to all market players in particular those for the protection of minors and advertising rules</p>		
<b>Article (1)</b>			
<b>SCOPE OF APPLICATION.</b>	<p>(a) ‘audiovisual media service’ means:</p> <p>"(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;"</p> <p><b>"(aa) 'video-sharing platform service' means a service, as defined by</b></p>	<p>1. For the purposes of this Directive, the following definitions shall apply:</p> <p>(a) ‘audiovisual media service’ means:</p> <p>(i) a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes, in order to inform,</p>	<p>A new feature is the extension of the scope of the directives to cover, in certain respects, video-sharing platform services which do not have editorial responsibility for the content that they store but which organise that content, through various means.</p>

	<p><b>Articles 56 and 57 of the Treaty on the Functioning of the European Union, which meets the following requirements:</b></p> <p><b>(i) the service consists of the storage of a large amount of programmes or user-generated videos, for which the video-sharing platform provider does not have editorial responsibility;</b></p> <p><b>(ii) the organisation of the stored content is determined by the provider of the service including by automatic means or algorithms, in particular by hosting, displaying, tagging and sequencing;</b></p> <p><b>(iii) the principal purpose of the service or a dissociable section thereof is devoted to providing programmes and user-generated videos to the general public, in order to inform, entertain or educate;</b></p> <p><b>(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></p>	<p>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;</p>	
	<p><b>"(b) 'programme' means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider, including feature-length films, videos of short duration, sports events, situation comedies, documentaries, children's programmes and original drama;"</b></p> <p><b>"(ba) 'user-generated video' means a set of moving images with or without sound constituting an individual item that is created and/or uploaded to a video-sharing platform by one or more users;"</b></p>	<p>(b) 'programme' means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider <b>and the form and content of which are comparable to the form and content of television broadcasting.</b> Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children's programmes and original drama;</p>	
	<p><b>"(da) 'video-sharing platform provider' means the natural or legal person who provides a video-sharing platform service;"</b></p>	<p>(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 organized;</p>	

Article (6)	<p>(6a)</p> <p><b>1. Member States shall ensure that audiovisual media service providers provide sufficient information to viewers about content which may impair the physical, mental or moral development of minors. For this purpose, Member States may use a system of descriptors indicating the nature of the content of an audiovisual media service.</b></p> <p><b>2. For the implementation of this Article, Member States shall encourage co-regulation.</b></p> <p><b>3. The Commission and ERGA shall encourage media service providers to exchange best practices on co-regulatory systems across the Union. Where appropriate, the Commission shall facilitate the development of Union codes of conduct.";</b></p>	<p>(6) Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.</p>	<p>In order to empower viewers, including parents and minors, in making informed decisions about the content to be watched, it is necessary that audiovisual media service providers provide sufficient information about content that may impair minors' physical, mental or moral development. This could be done, for instance, through a system of content descriptors indicating the nature of the content. Content descriptors could be delivered through written, graphical or acoustic means.</p>
Article (12)	<p><b>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.</b></p> <p><b>The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures, such as encryption and effective parental controls.";</b></p>	<p>Member States shall take appropriate measures to ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction which might seriously impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see such on-demand audiovisual media services.</p>	<p>The revised Directive provides for alignment of the standards of protection for TV broadcasting and on-demand services. Article 12 requires that programmes that 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. This is regardless of whether such programmes are broadcast</p>

			by TV broadcasters or provided by on-demand media service providers. With a view to this alignment, Article 27 of the current Directive (applicable to TV broadcasting only) is removed.
<b>Article (28)</b>			
	<p><b>(28a)</b></p> <p><b>1. Without prejudice to Articles 14 and 15 of Directive 2000/31/EC, Member States shall ensure that video-sharing platform providers take appropriate measures to:</b></p> <p><b>(a) protect minors from content which may impair their physical, mental or moral development;</b></p> <p><b>(b) protect all citizens from content containing incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to sex, race, colour, religion, descent or national or ethnic origin.</b></p> <p><b>2. What constitutes an appropriate measure for the purposes of paragraph 1 shall be determined in light of the nature of the content in question, the harm it may cause, the characteristics of the category of persons to be protected as well as the rights and legitimate interests at stake, including those of the video-sharing platform providers and the users having created and/or uploaded the content as well as the public interest.</b></p> <p><b>Those measures shall consist of, as appropriate:</b></p> <p><b>(a) defining and applying in the terms and conditions of the video-sharing platform providers the concepts of incitement to violence or hatred as referred to in point (b) of paragraph 1 and of content which may impair the physical, mental or moral development of minors, in accordance with Articles 6 and 12 respectively;</b></p> <p><b>(b) establishing and operating mechanisms for users of video-sharing platforms to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 stored on its platform;</b></p> <p><b>(c) establishing and operating age verification systems for users of</b></p>	<p>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.</p> <p>2. A right of reply or equivalent remedies shall exist in relation to all broadcasters under the jurisdiction of a Member State.</p> <p>3. Member States shall adopt the</p>	<p>An important share of the content stored on video-sharing platforms is not under the editorial responsibility of the video-sharing platform provider. However, those providers typically determine the organisation of the content, namely programmes or user-generated videos, including by automatic means or algorithms. Therefore, those providers should be required to take appropriate measures to protect minors from content that may impair their physical, mental or moral development</p>

	<p><b>video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors;</b></p> <p><b>(d) establishing and operating systems allowing users of video-sharing platforms to rate the content referred to in paragraph 1;</b></p> <p><b>(e) providing for parental control systems with respect to content which may impair the physical, mental or moral development of minors;</b></p> <p><b>(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).</b></p>	<p>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.</p> <p>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.</p> <p>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.</p>	

**Note:** Highlight Indicate New Changes.