

NOTE

Articles 4 and 9 of the AVMS Directive, as amended by Directive 2018/1808. *Amends shown in italic text and deletions.* Taken from <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

Consolidated version of the AVMS directive
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02010L0013-20181218>

The real issues from these amendments for our purposes are in articles 4a, which introduces some specific delivery pressures on self-regulation, and in articles 9 and 22 which are related to the content of commercial communications. (We show article 4 because it inter alia reflects new scope in replacing where applicable 'broadcasters' with 'media service providers' and because it introduces article 4a)

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

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

~~On receipt of a substantiated request by the first Member State~~ *Upon receiving a substantiated request under the first subparagraph, the Member State having jurisdiction shall request the broadcaster the media service provider to comply with the rules of general public interest in question. The Member State having jurisdiction shall inform the first Member State of the results obtained following this request within 2 months. Either Member State may invite the contact committee established pursuant to Article 29 to examine the case. The Member State having jurisdiction shall regularly inform the requesting Member State of the steps taken to address the problems identified. Within two months of the receipt of the request, the Member State having jurisdiction shall inform the requesting Member State and the Commission of the results obtained and explain the reasons where a solution could not be found. Either Member State may invite the Contact Committee to examine the case at any time.*

3. ~~The first~~ Member State concerned may adopt appropriate measures against the ~~broadcaster~~ *media service provider* concerned ~~where it assesses that:~~
 - (a) *it assesses that* the results achieved through the application of paragraph 2 are not satisfactory; and
 - (b) ~~the broadcaster~~ *it has adduced evidence showing that the media service provider* in question has established itself in the Member State having jurisdiction in order to circumvent the stricter rules, in the fields coordinated by this Directive, which would be applicable to it if it were established in the ~~first~~ *Member State concerned; such evidence shall allow for such circumvention to be reasonably established, without the need to prove the media service provider's intention to circumvent those stricter rules.*

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 ~~broadcaster~~ *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 that media service provider the opportunity to express its views on the alleged circumvention and the measures the notifying Member State intends to take; and*
 - (c) the Commission has decided, *after having requested ERGA to provide an opinion in accordance with point (d) of Article 30b (3), that the measures are compatible with Union law, in particular that assessments made by the Member State taking the measures under paragraphs 2 and 3 of this Article are correctly founded; the Commission shall keep the Contact Committee duly informed.*
5. ~~The Commission shall decide within 3 months following the notification provided for in point (a) of paragraph 4. If the Commission decides that the measures are incompatible with Union law, the Member State in question shall refrain from taking the proposed measures. Within three months of the receipt of the notification provided for in point (a) of paragraph 4, the Commission shall take the decision on whether those measures are compatible with Union law. Where the Commission decides that those measures are not compatible with Union law, it shall require the Member State concerned to refrain from taking the intended measures.~~
If the Commission lacks information necessary to take the decision pursuant to the first subparagraph, it shall, within one month of the receipt of the notification, request from the Member State concerned all information necessary to reach that decision. The time limit within which the Commission is to take the decision shall be suspended until that Member State has provided such necessary information. In any case, the suspension of the time limit shall not last longer than one month.
6. Member States shall, by appropriate means, ensure, within the framework of their ~~legislation~~ *national law*, that media service providers under their jurisdiction effectively comply with ~~the provisions~~ of this Directive.
7. Directive 2000/31/EC shall apply unless otherwise provided for in this Directive. In the event of a conflict between ~~a provision of~~ Directive 2000/31/EC and ~~a provision of~~ this Directive, this Directive shall prevail, unless otherwise provided for in this Directive.'

The following article is inserted

**Article 4a*

1. *Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct adopted at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. Those codes shall:*
- (a) *be such that they are broadly accepted by the main stakeholders in the Member States concerned;*
 - (b) *clearly and unambiguously set out their objectives;*
 - (c) *provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at; and*
 - (d) *provide for effective enforcement including effective and proportionate sanctions.*
2. *Member States and the Commission may foster self-regulation through Union codes of conduct drawn up by media service providers, video-sharing platform service providers or organisations representing them, in cooperation, as necessary, with other sectors such as industry, trade, professional and consumer associations or organisations. Those codes shall be such that they are broadly accepted by the main stakeholders at Union level and shall comply with points (b) to (d) of paragraph 1. The Union codes of conduct shall be without prejudice to the national codes of conduct.*
- In cooperation with the Member States, the Commission shall facilitate the development of Union codes of conduct, where appropriate, in accordance with the principles of subsidiarity and proportionality.*
- The signatories of Union codes of conduct shall submit the drafts of those codes and amendments thereto to the Commission. The Commission shall consult the Contact Committee on those draft codes or amendments thereto.*

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

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

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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* 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. *Audiovisual commercial communications for alcoholic beverages in on-demand audiovisual media services, with the exception of sponsorship and product placement, shall comply with the criteria set out in Article 22. (see below)*
3. *Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 4a (1)* regarding inappropriate audiovisual commercial communications for alcoholic beverages. Those codes shall aim to effectively reduce the exposure of minors to audiovisual commercial communications for alcoholic beverages.*
4. Member States ~~and the Commission shall encourage media service providers to develop codes of conduct~~ shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 4a (1)* regarding inappropriate audiovisual commercial communications, accompanying or included in children's programmes, for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular ~~those such as~~ fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes ~~of which~~ in the overall diet are not recommended.

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

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

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Article 22

Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria:

- (a) it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages;
- (b) it shall not link the consumption of alcohol to enhanced physical performance or to driving;
- (c) it shall not create the impression that the consumption of alcohol contributes towards social or sexual success;
- (d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;
- (e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;
- (f) it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.

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